**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE
IN COOPERATION WITH ACA-EUROPE**

***ETHICS AND RECRUITMENT
OF MEMBERS OF THE SUPREME ADMINSTRATIVE COURTS AND COUNCILS OF STATE***

Questionnaire

The Versailles seminar will address two related topics: ethics and recruitment.

The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.

The second topic will be addressed on Friday afternoon during the third round table.

Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.

I Ethics: Legal and institutional framework

1.1. General framework

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

X Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☐in the Constitution

X in the law

X in a regulatory text

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X in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

In Spain, the ethics and conduct of public servants are regulated by various legal frameworks. Let's explore these aspects:

General Regulations:

- The **Ley 7/2007, del Estatuto Básico del Empleado Público (EBEP)** (Basic Statute of Public Employees) serves as a fundamental reference. It outlines the rights, duties, and ethical standards for public employees across the country1.
- The EBEP establishes principles such as **diligence**, **impartiality**, and **responsibility**. It also emphasizes the importance of acting in the **public interest** and adhering to ethical norms1.

Autonomous Communities:

- Spain has **17 autonomous communities**, each with its own government and legislative powers. Some of these regions have their specific regulations related to public servants.
- Autonomous communities, and local entities, may enact additional laws or codes of ethics that apply to their own civil servants. These regulations can address regional peculiarities and local needs.

Judiciary:

- The **judiciary** in Spain has its own set of ethical guidelines or principles. Judges and magistrates adhere to the **Principios de Ética Judicial** (Judicial Deontological Principles).
- This document outlines principles such as **impartiality**, **integrity**, and **professional secrecy**. It ensures that judicial officers maintain high ethical standards in their work.

Military:

- The **Spanish Armed Forces** also have specific regulations governing the conduct of military personnel.
- These regulations cover areas such as **discipline**, **honor**, and **loyalty**. Military ethics emphasize the importance of upholding the Constitution and serving the nation.

Recent Developments:

- Spain, along with other OECD countries, has introduced laws and regulations to ensure the **ethical management and use of algorithms for AI by public institutions**. This reflects the growing importance of ethical considerations in the digital age.

In summary, while the EBEP provides a nationwide framework, regional autonomy allows for additional regulations. The judiciary and military also have their specific ethical guidelines. Maintaining integrity and ethical conduct is crucial for building public trust in institutions and their servants

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

XYes

☐No

If yes, they are enshrined (please check all applicable answers):

Xin the Constitution

Xin the law

Xin a regulatory text

Xin a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

We can find some ethical principles that underpin the Spanish judiciary at both the constitutional and legal levels:

1. Impartiality: The Spanish Constitution guarantees that judges must remain impartial in cases they judge. They should abstain from cases where they have no reason to be involved.
2. Independence: Courts and tribunals in Spain operate independently of any authority or individuals while exercising their jurisdictional power.

Nevertheless, the Principles of Judicial Ethics for the Spanish judiciary are outlined in a document that serves as a guide for judges. These principles aim to collect shared values and rules of conduct within the Spanish judiciary. Here are some key points:

1. Background and Context:
   - The adoption of these principles aligns with international developments, including the approval of the **Bangalore Principles** by the United Nations in 2001.
   - Other influential documents include the **Ibero-American Model Code of Legal Ethics** (2006) and the **London Declaration on Judicial Ethics** (2010).
2. Creation Process:
   - The **General Council of the Judiciary** initiated the process of creating these principles.
   - A committee composed of representatives from judicial associations, non-associate members of the judiciary, and experts collaborated to draft the principles.
   - The goal was to reflect the diversity of opinions within the judicial profession.
3. Differentiation from Discipline:
   - **Judicial ethics** and **disciplinary regime** are distinct concepts.
   - Ethics operate as a positive stimulus, aiming for excellence.
   - Discipline, on the other hand, relies on negative stimulation through sanctions for rule violations.
4. Content and Purpose:
   - The principles emphasize values such as **independence**, **integrity**, **impartiality**, and **professional responsibility**.
   - They serve as a roadmap for judges, promoting good conduct and public trust in the justice system.

1.2. Charter of Ethics

1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

XYes

☐No

If the answer is yes: On which date was this document adopted?

Judiciary:

- The **judiciary** in Spain has its own set of ethical guidelines or principles. Judges and magistrates adhere to the **Principios de Ética Judicial** (Judicial Deontological Principles).
- This document outlines principles such as **impartiality**, **integrity**, and **professional secrecy**. It ensures that judicial officers maintain high ethical standards in their work.
- The guidelines were adopted on December 20th, 2016. (https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Etica-Judicial/Principios-de-Etica-Judicial/)

1.2.2. Is the adoption of this document an obligation for your institution?

☐Yes

XNo

Please explain if necessary:

Two fundamental paragraphs of the explanatory memorandum of the principles of ethics explain this issue well.

'"There is no connection between the disciplinary regime and judicial ethics. The latter is only conceivable in terms of strict voluntariness and absence of legal responsibility, in contrast to discipline, which consists of mandatory rules whose violation carries legal consequences. Judicial ethics operates as a positive stimulus aimed at excellence, while discipline functions based on negative reinforcement, namely sanctions. Therefore, the effectiveness of these 'Principles of Judicial Ethics' will depend on the extent to which each judge embraces them as their own and translates them into behavioral models.

If ethics, in general, represents a proposal for a good and accomplished life, judicial ethics is the promise of good justice, as it incorporates the necessary qualities to achieve the purpose assigned by the Constitution: safeguarding the rights of citizens."

Moreover, it should be noted that there is no legal mandate requiring courts or the judiciary to adhere to a specific set of ethical guidelines. The existing ethical principles were established by the General Council of the Judiciary and have been presented to the entire judicial profession as a commitment to, or a benchmark for, excellence.

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

☐Yes

XNo

If yes, please explain the legal and political context that led to the adoption of this text:

The most immediate precursor to the current ethical principles can be found in the Ibero-American Model Code of Judicial Ethics, promoted and adopted by the Ibero-American Judicial Summit, where Spain has always played a very active role.

1.2.4. Who drafted this document?

XA working group composed exclusively of members of your jurisdiction

XA working group expanded to include outside persons

XA working group involving associations of administrative judges

☐Other

Please explain if necessary:

The principles were primarily developed by a working group composed of members of the judiciary, who listened to associations and conducted consultations with external experts.

1.2.5. Which authority signed and enacted this document?

☒The president of your institution

XA collegiate body of your institution

☐Other

Please explain if necessary:

It was approved by the full session of the General Council of the Judiciary.

1.2.6. Has this document undergone one or more revisions?

☐Yes

XNo

Please explain the purpose of these revisions if necessary:

1.2.7. What is the legal value of this document?

☐This document contains binding legal rules (hard law)

XThis document contains soft law standards

☐Other

Please explain if necessary:

Please see the explanatory to question 1.2.2

1.2.8. Please attach this document to your response, if possible in a French or English translation, in the form of an attached document or a web link.

https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Etica-Judicial/Principios-de-Etica-Judicial/

1.3. Scope of application of ethical rules:

1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

XYes

☐Partially

☐No

Please explain if necessary:

1.3.2. To whom do these ethical rules apply?

XTo members of your institution who are active within it

☒To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

☐To resigning members

☐To retired members

☐To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

☐Other

Please explain if necessary:

The ethical principles are designed for the exercise of judicial functions and, therefore, are not directed at those members of the judiciary who are not currently serving or hold positions outside the judiciary. However, this does not mean that the principles are not relevant to members of the judiciary when they are not strictly performing their duties but are engaged in social settings in such a way that their role is recognized. In this regard, Principle 9 states that judges must behave and exercise their rights in any activity where they are recognized as such, in a manner that does not compromise or harm the perception that, in a democratic state governed by the rule of law, society has about the independence of the Judiciary.

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

☐Yes

XNo

☐Not applicable

Please explain if necessary:

The Supreme Court and the Administrative Chamber do not have advisory roles but jurisdictional ones. However, it is possible for members of the Chamber to perform certain public functions related to their position in the judicial career, such as being part of an examination board or having specific roles in the electoral administration. Regardless, Principle 8 establishes that judges who, due to their membership in the Judiciary, hold

public offices will exercise their powers and make their decisions objectively, and when appropriate, especially in matters of selection, appointment, and promotion of members of the Judicial Career, with full respect for the principles of merit and capability. Thus, while it is accurate to say that a significant portion of the ethical principles focus on the exercise of jurisdictional functions per se, it is equally true that, in the performance of other public functions, the principles continue to guide the judge's work, albeit with necessary adjustments (mutatis mutandis).

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

☐Yes

☐Partially

☐No

Please explain if necessary:

In the case of Spain, the aforementioned duality does not exist; the administrative jurisdiction is part of the ordinary jurisdiction.

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:

Please, see above

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

☐Yes

☐No

☐Partially

XNot applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

1.4. Relationship between ethical and disciplinary rules:

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

☐Yes

XNo

If not, please give an example:

As indicated in the preamble of the ethical principles, the disciplinary regime has nothing to do with judicial ethics. The latter is only conceivable in terms of strict voluntariness and the absence of legal responsibility, unlike discipline, which consists of a set of mandatory rules whose violation leads to legal consequences. Judicial ethics operates as a positive stimulus aimed at excellence, while discipline works on the basis of negative stimulus, namely punishment. Therefore, the effectiveness of these "Judicial Ethics Principles" will stem from the extent to which each judge personally embraces them and translates them into models of behavior.

If ethics, in general, is a proposal for a good and successful life, judicial ethics is the promise of good justice in that it incorporates the necessary qualities to achieve the purpose assigned by the Constitution: the protection of citizens' rights.

Additionally, in accordance with the final provision of the Ethical Principles, it is clearly established that the present "Judicial Ethics Principles" cannot be used, either directly or indirectly, for disciplinary purposes, except when it benefits the subject of the procedure.

Moreover, the actions of the Commission of Ethics cannot interfere with the exercise of disciplinary authority nor involve itself in determining the civil or criminal liability of judges. Furthermore, the activities of the Commission will not serve as a reference or supplement in proceedings aimed at resolving civil, criminal, or disciplinary responsibilities, except when it benefits the party concerned. Finally, issues or matters that are under investigation, being prosecuted, or subject to disciplinary proceedings cannot be the subject of consultation to the Ethics Commission.

An example of the maximum distance between ethics and discipline can be found in Principle 5, which establishes that judges have the duty to demand legal improvements that benefit judicial independence as a guarantee for citizens. The lack or defective fulfillment of this duty would not, in principle, lead to disciplinary responsibility unless accompanied by other types of facts or circumstances that could justify a corrective response. Another example, perhaps not as clearly evident, derives from Principle 15, which stipulates that judges, in their role of directing oral proceedings, must ensure an appropriate atmosphere so that each party and other participants can freely and calmly

express their respective views on the facts and their positions on the application of law. They must also practice active listening as a guarantee of greater accuracy in decision-making. Again, the imperfect or not sufficiently excellent fulfillment of this duty would be almost impossible to classify under the factual assumption of a disciplinary rule, unless there are additional elements, such as disrespectful treatment, the use of excessive and inappropriate forms or manners, or simply preventing a party from exercising their right to inform and speak.

1.5. Training on ethical rules:

Are members of your institution made aware of or trained in ethics?

XYes

☐No

If yes, how and how often?

Judicial ethics content is included in both the ongoing training programs and the initial training of judges. The training plans are updated annually.

1.6. The College of Ethics

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

XYes

☐No

1.6.2. If yes, how is it appointed?

Yes, there is an ethics commission structured as follows:

- The commission is comprised of seven members who are ensured full independence in carrying out their duties.
- Six members are actively serving in the Judicial Career, including one Judge, three Magistrates, and two Supreme Court Magistrates.
- The seventh member is an individual of recognized prestige and a proven track record in the academic fields of Ethics, the Philosophy of Law, or Moral Philosophy.

Judicial members will be elected by all members of the Judiciary who are in active service.

The election will be conducted through personal, equal, direct, and secret voting, and must be called three months prior to the end of the Commission's term.
The electoral district will be unique for the entire national territory.

1.6.3. If yes and in the case of a collegiate body, how is it composed?

Please see above

1.6.4. Who can refer to this body?

XA member of your institution for an ethical question concerning them

XA magistrate from the lower courts for an ethical question concerning them

XThe president of your institution

☐Other members of your institution

☐A litigant who believes that a magistrate has disregarded their ethical obligations

This body can refer to itself

☐Others

Please explain if necessary:

From Article 1 of the section dedicated to the regulation of the ethics commission:

a) Issuing written opinions on consultations regarding specific cases presented by the Governing Chambers of the Courts, Judges' Assemblies, Judicial Associations, or any judge in active service.

..

d) Exceptionally, prepare reports on matters or issues of general interest related to the ethical behavior expected of judges, according to the principles outlined in this text, at the request of the Governing Chambers of the Courts, Judges' Assemblies, or Judicial Associations.

1.6.5. Are the opinions given by this body made public?

XYes

☐No

1.6.6. If yes, are the published opinions anonymised?

XYes

☐No

1.6.7. Can these opinions be challenged before the court?

☐Yes

XNo

Please explain the legal scope of these opinions:

The acts of the Commission lack mandatory legal force and binding effects.

1.7. Declaration of interests

1.7.1. Must members of your institution complete a declaration of interests?

☐Yes

XNo

If yes, please briefly describe the modalities of its submission:

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

No

1.8. The oath

Do members of your institution have to take an oath?

XYes

☐No

If yes, what does this oath consist of and how is it taken?

According to Article 321 of the Organic Law of the Judicial Power:

> Judges will take an oath or make a promise, as applicable, before the Governing Chamber of the Court or Tribunal to which the Court for which they have been appointed belongs, and likewise, in a public hearing.
> The taking of office will be at the Court to which they have been assigned, in a public hearing and with the presence of the court staff. The judge who is currently exercising jurisdiction will confer the position.

The oath or promise is as follows: "I swear (or promise) to faithfully uphold the Constitution and the rest of the legal system at all times, loyalty to the Crown, to administer justice fairly and impartially, and to fulfill my judicial duties to everyone."

II Ethics: Content of rules

2. 1. Independence, impartiality and prevention of conflicts of interest

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

XIn cases of familial ties that may link the magistrate with a party

XIn cases of friendly ties that may link the magistrate with a party

XDue to previous functions performed by the magistrate

XOther

Please explain, citing any relevant jurisprudential examples

Below, we insert a list of all the reasons why a judge must abstain from involvement in the matter. If they do not abstain, and one of these reasons applies, they can be sanctioned and removed from the case.

> A marital bond or a comparable de facto situation and kinship by blood or marriage within the fourth degree with the parties or the representative of the Public Prosecutor's Office.
>
> A marital bond or a comparable de facto situation and kinship by blood or marriage within the second degree with the lawyer or the solicitor of any of the parties involved in the litigation or case.

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Being or having been a legal guardian or member of the guardianship organizations of any of the parties, or having been under the care or guardianship of any of them.

Being or having been reported or accused by any of the parties as responsible for a crime or misdemeanor, provided that the report or accusation led to the initiation of criminal proceedings, and these did not conclude with an acquittal or a dismissal order.

Having been disciplined as a result of a file initiated by complaint or at the initiative of any of the parties.

Having been a defender or representative of any of the parties, issued an opinion on the litigation or case as a lawyer, or having participated in it as a prosecutor, expert, or witness.

Being or having been a complainant or accuser of any of the parties.

Having a pending lawsuit with any of them.

Having a close friendship or manifest enmity with any of the parties.

Having a direct or indirect interest in the litigation or case.

Having participated in the instruction of the criminal case or having resolved the litigation or case at a previous instance.

Being or having been a subordinate of the judge who must resolve the litigious dispute.

Having held a public office, performed employment, or exercised a profession through which one has participated directly or indirectly in the subject matter of the litigation or case or in another related to it.

In processes where the public administration is a party, the judge or magistrate finds themselves with the authority or official who had issued the act, informed about the same, or carried out the fact on which the process is based, in any of the circumstances mentioned in causes 1 to 9, 12, 13, and 15 of this article.

A marital bond or a comparable de facto situation, or kinship within the second degree of blood or marriage, with the judge or magistrate who had issued a decision or carried out an action to be assessed by way of appeal or in any subsequent phase of the process.

The judge or magistrate having held a public or administrative office through which they could have become aware of the object of the litigation and formed an opinion to the detriment of due impartiality.

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

☐Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion

☐Prohibition for members of a judgement panel to consult the files of advisory panels

☐Other

Please explain if necessary:

Not applicable. The Supreme Court does not exercise advisory functions

2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

☐Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them

☐Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities

☐Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period

☐Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served

☐Other

Please explain if necessary:

In Spain, when a judge is permitted to temporarily leave their judicial position to take up other functions in the public or private sector, there are specific ethical rules that apply to such a departure and subsequent return.

1. Temporary Leave and Functions:
   - Judges may be granted temporary leave to pursue other roles outside the judiciary. These roles could be in the public sector (such as government agencies) or the private sector (such as law firms or corporations).
   - The decision to grant temporary leave is subject to legal provisions and administrative procedures.
2. Ethical Considerations:
   - Judges must adhere to ethical standards even during their temporary leave, and depending on the new functions or duties. These standards may include:
     - **Impartiality**: Judges should avoid any actions that could compromise their impartiality or create conflicts of interest. For example, if the judge has been assigned abroad in an official liaison or advisory position related to the justice sector.
     - **Confidentiality**: Information obtained during their judicial service should remain confidential, even after leaving temporarily.
     - **Avoiding Influence**: Judges in a leave should not use their position to influence decisions or gain advantages in their new role.
     - **Recusal**: If a judge returns to the judiciary after temporary leave, they may need to recuse themselves from cases related to their previous role.
3. Return to Judicial Position:
   - When the temporary period ends, judges can return to their original judicial position.
   - The reinstatement into active service of a judge or magistrate in a voluntary leave of absence for personal interest lasting more than 10 years will require a prior declaration of suitability by the General Council of the Judiciary, which will collect reports and carry out the necessary actions for its verification.

2.1.4. Can a member of your institution receive gifts?

☐Yes

XYes, under certain conditions

☐No

Please explain if necessary:

Initially, the response ought to be negative, or to put it more accurately, it should be based on the premise that it is unethical for a judge to receive gifts related to their office or activities. Certainly, if those gifts are in exchange for any kind of judicial action or act, this constitutes a case of corruption and a crime. However, ethical principles, just like the law, leave an opening in Principle 28, indicating that a judge should not accept any gift, courtesy, or consideration that goes beyond logical social conventions and, under no circumstances, when it might compromise their appearance of impartiality. Indeed, nothing prevents a judge from receiving a type of courtesy that is clearly acceptable from the standpoint of social conventions and related to their office. A good example might be in the context of a visit from a President of a Foreign Supreme Court who gifts the President of the visited court a commemorative or official book of their judiciary.

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?

XYes

☐Yes, under certain conditions

☐No

Please explain if necessary:

2.2. Exercise of individual liberties

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

XYes

☐No

Please explain if necessary:

From an ethical standpoint, the Ethical Principles stipulate that judges, as citizens, have the right to freedom of expression, which they should exercise with caution and moderation to preserve their independence and appearance of impartiality, and to maintain social trust in the judicial system and jurisdictional bodies. From a disciplinary perspective, it is considered a serious offense to direct congratulations or criticisms at powers, authorities, public officials, or official corporations for their actions, invoking the status of a judge or using this status, as well as the excess or abuse of authority, or serious lack of consideration towards citizens, institutions, clerks, forensic doctors, or the rest of the personnel serving the Administration of Justice, members of the Public

Prosecutor's Office, lawyers and solicitors, social graduates, and officers of the Judicial Police.

Therefore, we can affirm that there are indeed nuances or limits to the freedom of expression of judges concerning aspects related to their duties. However, it is true that these limits must always be applied with utmost care and with full respect and coherence with the legal and jurisprudential benchmarks of the international realm in human rights.

2.2.2. In particular, is the use of social media by members of your institution regulated?

☐Yes

XNo

Please explain if necessary:

From an ethical viewpoint, there are opinions from the Ethics Commission on this matter. Regarding social media, the opinions encourage judges to seek adequate training on its functioning and use. They reference the self-directed course on Judicial Conduct and Ethics by the United Nations Office on Drugs and Crime (Vienna, 2019), which advises judges "not to post anything that could undermine public trust in the judiciary's impartiality, such as political opinions or controversial issues" and "not to identify oneself as a judge on social media." It also provides examples of codes of conduct from different states, all of which agree that judges should refrain from showing their political preferences.

Additionally, the London Declaration on Judicial Ethics, adopted by the General Assembly of the European Network of Councils for the Judiciary (2010), speaks of "moderation, seriousness, and prudence" as judicial qualities.

In previous opinions, the Judicial Ethics Commission pointed out the advisability for judges and magistrates to individually assess the possibilities and ways of presenting themselves on social media, as well as their use of it, in order to ensure their neutrality is not compromised. Once again, it is noted that, in accordance with the principles of judicial ethics, participation in social networks should be governed by prudence and moderation.

Given this context, the General Council of the Judiciary has expressed its support for the legislator to establish some form of regulation on the matter. This stance underscores the need for clear guidelines to help judges navigate the complexities of social media use while maintaining the integrity and impartiality required by their positions. The call for regulation reflects an understanding of the potential impact of judges' online behavior on public perception of the judicial system's impartiality and the broader implications for justice and democracy.

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

XYes

☐Yes, under certain conditions

☐No

Please explain if necessary:

Furthermore, the Judicial Ethics Commission advises judges not to participate in programs that may incite heated debates or sensationalism, nor in media outlets that lack plurality, in order to safeguard the image of independence and impartiality of those who exercise judicial functions. This guidance aims to protect the judiciary's reputation by encouraging judges to carefully consider the platforms they engage with and the potential implications of their participation in public discussions.

The Ethical Commission, as explained by the Council, starts from the premise that members of the judicial career, like any citizen, enjoy the fundamental right to freedom of expression and, therefore, can participate in the media and social networks.

However, it has pointed out that the freedom of expression of judges and magistrates has limits that arise from their status as representatives of the Judicial Power. For this reason, their interventions must be governed by respect for the principles of independence, integrity, impartiality, and transparency.

"In other words, members of the judicial career must exercise their freedom of expression with the necessary caution and moderation to preserve their independence and appearance of impartiality and, with them, the citizens' trust in Justice," the General Council of the Judiciary (CGPJ) has summarized.

Conducted in this manner, the Commission has deemed that the involvement of judges and magistrates in the media and social networks serves a pedagogical function, that of explaining the law and the workings of the judicial process.

Furthermore, it has emphasized that it is up to the judge to assess in each case the extent of their right to freedom of expression, considering that citizens perceive them as representatives of the Judicial Power.

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

XYes

☐Yes, under certain conditions

☐No

Please explain if necessary:

Private activities, such as teaching, require the approval of compatibility from the General Council of the Judiciary. This ensures that any additional activities undertaken by the judge do not detrimentally affect the reduction of their judicial duties.

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

XYes

☐No

Please clarify if necessary:

Please see above

2.2.6. Are members of your institution allowed to engage in political activities?

☐Yes

☐Yes, under certain conditions

XNo

Please explain if necessary:

As members of the judiciary, they cannot be involved in political activities, as it is legally incompatible. If they wish to engage in such activities, they must request some form of permission, such as a leave of absence or special services, depending on the circumstances.

2.2.7. Can members of your institution run for elections?

☐Yes

☐Yes, under certain conditions

XNo

Please explain if necessary:

Again, if they wish to participate in elections, they must disassociate themselves by obtaining special services leave.

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

☐Yes

☐Yes, under certain conditions

XNo

Please explain if necessary:

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

XYes

☐Yes, under certain conditions

☐No

Please explain if necessary:

2.2.10. Can a member of your institution sign a petition?

☐Yes

XYes, under certain conditions

☐No

Please explain if necessary:

Yes, depending on the circumstances. That is, they cannot do so when it involves engaging in political matters, but they can if it relates to their function and is specifically for its benefit.

2.2.11. Can a member of your institution participate in a demonstration?

☐Yes

XYes, under certain conditions

☐No

Please explain if necessary:

The Ethics Commission advised judges against attending demonstrations and political rallies due to the impact on the image of the judiciary. However, it does approve of their attendance at demonstrations called "on the occasion of threats to democracy, the rule of law, and fundamental freedoms."

The commission advises members of the judiciary not to attend political party rallies and, when it comes to demonstrations, to carefully consider before attending one what the public perception might be, as reported by the General Council of the Judiciary (CGPJ). The reports have been prepared based on inquiries from the judges themselves, even though the warning issued seems like common sense given that the Constitution forbids judges and magistrates from affiliating with political parties or unions, especially during a time when electoral campaigns seem to follow one after another.

The Commission explains that judges, like any other citizen, enjoy the fundamental right to attend a demonstration but, as with other rights, with certain limitations that are a consequence of "the ethical duty that affects their non-strictly professional life to avoid any action that could question the independence or the society's trust in the Judicial Power", which should lead them to act "with moderation and prudence".

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

No

2.3. Case studies

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

The French Council of State proposes four questions to you, as an example:

- On impartiality: Can a consultant judge (*rapporteur public*) of the Council of State [responsible for presenting to the members of the judgement panel the case

before them, the legal issues it raises, and proposing a solution] receive a gift from a third party, not a party to the litigation, for the direction of the findings he has made in a case concerning the euthanasia of an elephant? (Opinion no. 2013/4 of 17 June 2013)

- On conflicts of interest: Which cases can a head of jurisdiction assign to a magistrate whose spouse is one of the most important members of the French Government? (Opinion no. 2017/4 of 18 September 2017)

- On conflicts of interest: Under what conditions can a former administrative magistrate practise as a lawyer? (Recommendation no. 2017-1 of 15 November 2017)

- On the obligation of discretion and freedom to produce intellectual works: Can a judicial magistrate seconded to the Council of State, during their secondment period, publish a historical essay on the *Ranucci* case, which had caused a stir and led to one of the last capital executions in France in 1976? (Opinion no. 2016/4 of 17 January 2017)

We would propose adding the following

- On conflicts of interest and impartiality.
  - I would like to consider a case related to the private life of a judge. In the context of a specific case, I became acquainted with a Christian Lawyers Association. I handled the case with full independence. However, after concluding it, I am considering the idea of joining this association in exercise of my ideological freedom and freedom of expression, defending Christian principles from the perspective of law and giving opinions about laws and natural law. I do not intend to be an active member of such an association, but rather a mere collaborator, knowing that I am thus defined by my private ideas in the exercise of my freedom of expression, which will never affect my judicial work. If I encounter a conflict with any case I handle, I know I do not have a conscientious objection and will apply the current law at all times. The issue is that I request the Commission to study this case to determine if my judicial independence will be affected by the mere fact of belonging to a private association of Christian religious ideas. Is it correct and possible as a judge to belong to such an association?
  - https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Comision-de-Etica-Judicial/Dictamenes/Dictamen--Consulta-05-22---de-9-de-marzo-de-2023--Sobre-la-adscripcion-de-un-Juez-a-una-Asociacion-entre-cuyas-actividades-esta-la-litigacion-ante-Tribunales

- On impartiality and public perception of justice
  - Within the framework of the rule of law, all citizens stand equal before the law, obliging each one of us to adhere to its mandates.

    As judges, we adhere to Article 318 of the Organic Law of the Judiciary, which mandates that upon assuming our office, we vow or pledge to loyally uphold the Constitution and the entire legal framework at all times.

    Furthermore, we operate with complete independence, secure in our positions, and answerable to no authority or hierarchy. Our sole allegiance is to the law, which is the foundation of our legitimacy.

    Consider the implications for judicial ethics, public perception of justice, and our perceived impartiality when a judge publicly declares on social media—seemingly in earnest, devoid of jest, irony, or sarcasm—that certain legislations, despite being legitimately passed and universally binding, should be flouted, regardless of personal disagreement with these laws. Similarly, what are the ramifications for judicial ethics and public perception of justice, as well as our impartial image, when judges publicly endorse politicians convicted of serious crimes or politically align themselves in manners not provided for constitutionally within our legal framework?

    I seek to understand how these actions impact the tenets of judicial ethics and the ethical behavior expected of us as judges. This inquiry pertains not only to our obligation to maintain an appearance of impartiality, to uphold public trust in being judged according to legal standards, and to sustain confidence in the judicial system and its courts, but also concerns the significance of the oath or promise we have made.

    https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Comision-de-Etica-Judicial/Dictamenes/Dictamen--Consulta-03-22---de-26-de-abril-de-2022--Libertad-de-expresion-de-Jueces-y-Magistrados--en-ningun-caso-pueden-estar-amparadas-por-el-principio-de-libertad-de-expresion-aquellas-manifestaciones-en-redes-sociales-y-medios-de-comunicacion-que-atenten-de-forma-grave-el-Estado-de-Derecho--el-orden-constitucional-y-la-propia-democracia---apartado-21-de-los-principios-de-etica-judicial-

- On independence and impartiality
  - I'd like to submit an inquiry to the Commission regarding whether attending a legally convened demonstration violates any ethical principle for a magistrate. I understand that the prohibition in Article 395 of the Organic Law on the

Judiciary (LOPJ) only applies to events attended in one's capacity as a member of the Judiciary, and not to those attended merely as a citizen, completely detached from one's status as a member of the judiciary. I would also appreciate clarification on whether, in the same terms, one could attend a rally organized by a political party, since, in this case, the second paragraph of Article 395 LOPJ might raise more doubts as it states that one cannot "take any part in legislative or local elections other than casting their personal vote."

I understand that, in both scenarios, the circumstance is to attend these events just as any other citizen, but it could also happen, especially in not very large cities, that one's presence at these events could feasibly be identified and, somehow, compromise the image of impartiality and neutrality that I believe is inherent to the judicial function.

https://www.poderjudicial.es/cgpj/es/Temas/Etica-Judicial/Comision-de-Etica-Judicial/Dictamenes/Dictamen--Consulta-05-23---de-19-de-septiembre-de-2023--Asistencia-a-manifestaciones-y-mitines-de-caracter-politico

III. Recruitment of members

3.1. Who can be recruited in your institution?

3.1.1. How many members do you recruit on average each year in your institution?

3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

The two pathways to being selected as a magistrate of the Supreme Court are: Seniority and merit competition: for career judges or magistrates with at least fifteen years of seniority. Quota for jurists of recognized prestige: for jurists with an exceptional professional career in the field of law. Four out of every five positions for magistrates of the Supreme Court will be allocated to magistrates with ten years in office and at least fifteen years in the judicial career. Two of these will be filled through selective tests or specialization (selective in civil and criminal law, specialization in administrative and labor law), and another two will be provided among magistrates based on merit and seniority criteria. The remaining position will be for jurists of recognized prestige with sufficient merits in the opinion of the CGPJ and more than fifteen years of professional practice.

3.1.3. Are age conditions set for the recruitment of these new members?

☐Yes

XNo

Please explain if necessary:

As a result of the impossibility of making appointments by the General Council of the Judiciary (until it is renewed), in the last three years no one has been selected for the position.

3.1.4. Are diploma conditions set for the recruitment of these new members?

☐Yes

XNo

Please explain:

Please see above 3.1.2

3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

☐Yes

XNo

Please explain:

Please see above 3.1.2

3.1.6. Are conditions of prior professional experience required to become a member of your institution?

XYes

☐No

Please explain:

Please see above 3.1.2

3.1.7. Can members of the lower courts become members of your institution?

XYes

☐No

Please explain:

Please see above 3.1.2

If yes, what is their proportion in the number of new members?

Please see above 3.1.2

3.1.8. How old is the youngest of your colleagues?

54 years old

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

Without a time limit

3.2. How does the recruitment procedure work in your institution?

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?

☐Yes

XNo

Please explain:

The recruitment of judges and magistrates is always carried out by the General Council of the Judiciary.

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

XYes

☐No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

XYes

☐No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

XYes

☐No

Please explain if necessary:

The selection through the quota for jurists of recognized competence with more than 15 years of professional experience requires a very thorough analysis of the professional career of all candidates, a career that, in these cases, has developed entirely or in part outside the judiciary or in positions that are not judge or magistrate roles.

3.3. What is the procedure for appointing members of your institution?

3.3.1. The appointment of members of your institution results from a decision:

☐by the executive branch (for example, a presidential decree)

☐by the judicial branch (by the president of your institution or a panel of independent judges)

Xother

Please explain if necessary:

Please see above 3.2.1

3.3.2. Can the appointment of members of your institution be challenged in court?

XYes, through an action at the time of the appointment of said members

☐Yes, as an exception regarding the regularity of the composition of the members of the judgement panel

☐No

If yes, before which judge?

The decision regarding the appointment of magistrates of the Supreme Court falls to the General Council of the Judiciary, and the acts of the General Council of the Judiciary can be contested through judicial proceedings before the Administrative Litigation Chamber of the Supreme Court.

3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?

Just like in any other procedure, through the rules of due process and respect for fundamental rights and guarantees. The challenge of an act by the General Council of the Judiciary follows exactly the same rules, in terms of process guarantees, as any other administrative litigation process, ensuring the parties the right to fully defend their rights and claims before the court, as well as a jurisdictional trial conducted by

independent judges and magistrates who are subject only to the mandates of the Constitution and the laws.