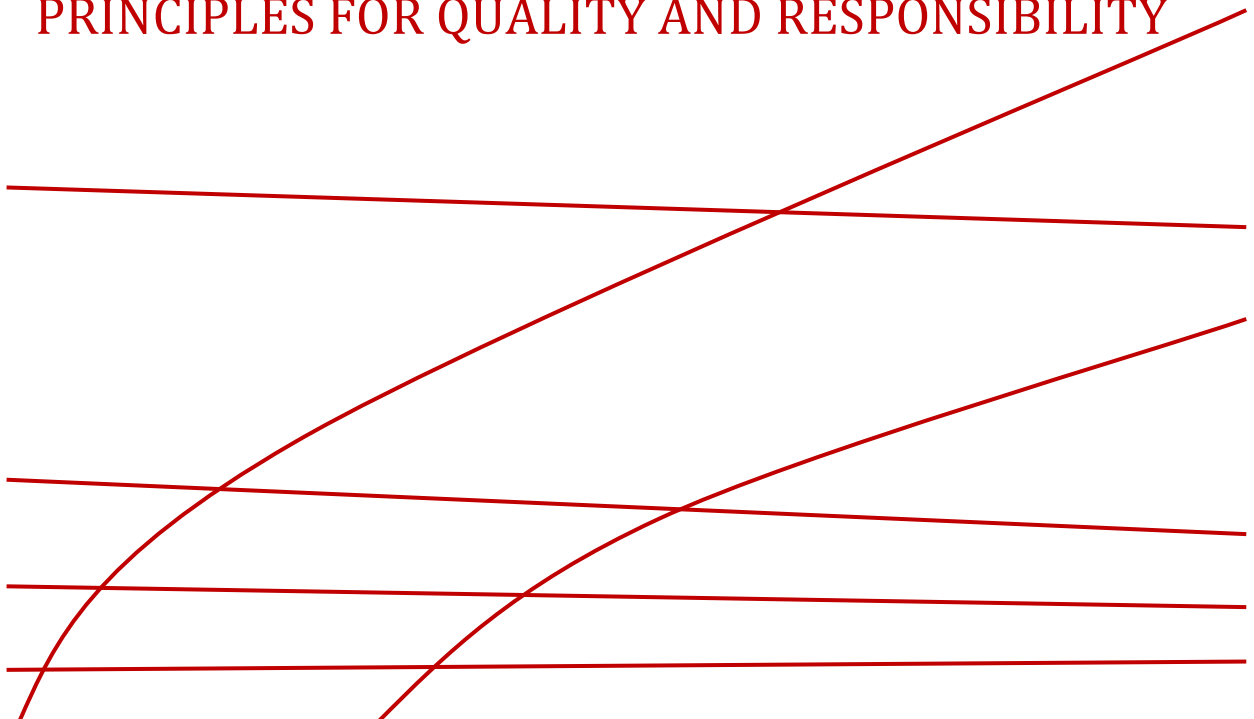




PORTUGUESE JUDGES' PLEDGE OF ETHICS

PRINCIPLES FOR QUALITY AND RESPONSIBILITY



LISBON 2009

INFORMATIVE NOTE

The document now being published has been approved by the organs of the Associação Sindical dos Juizes Portugueses (Union Association of Portuguese Judges):

- Deliberation of the meeting of the National Directorate, of 31.10.08: *“To approve the document (...) and, for the purposes set out in Article 21(e) of the ASJP Statutes, propose that the General Board vote in support of the document and recommend that the Eighth Congress include it in their respective conclusions”.*
- Deliberation of the meeting of the General Board, of 8.11.08: *“having analyzed the document (...) the General Board declares its agreement with the said document and recommends that the Eighth Congress of Portuguese Judges include it in their final conclusions”.*

The document was later endorsed by the Eighth Congress of Portuguese Judges, in the following three conclusions, which were unanimously approved:

“1. Self-regulation of judicial power in the fields of ethics and professional duties is fundamental in the definition of the rules of the respective statute and in the statement of the principles for the quality and responsibility of the Judiciary.

2. It is essential that judges permanently reflect on the principles of judicial ethics, consolidated in the central attributes of the judicial activity: independence, impartiality, integrity, humanism, diligence and reserve. Taking into account the singular nature of the body of judges, this reflection should be extended to their collective representation.

3. Within this scope, the document “Portuguese Judges’ Pledge of Ethics – Principles for Quality and Responsibility” constitutes a valid and important reference for the debate amongst Portuguese judges, sharing the concerns and attitude of their peers at the international level.”

FOREWORD

At a time when almost everything is ephemeral and in a state of crisis, Portuguese judges accept the values inherent in the ethics of being a judge as their most valuable property, their safest investment and their best credit.

United around the Association which represents them, with this document Portuguese judges seek to praise, value and disseminate the essential values of judicial ethics: independence, impartiality, integrity, humanism, diligence and reserve.

Via this means Portuguese judges also wish to accept the role of guardians of the values and principles summarized in this Pledge of Ethics, oriented to ensuring the rights, freedoms and fundamental guarantees of the citizens and the interest of the latter in the proper administration of Justice.

If the citizen has doubts about the Judicial System, may he always trust in the abilities of Portuguese judges to provide Justice, “giving each one that which is his own”.

ANTÓNIO MARTINS

President of the Associação Sindical dos Juízes Portugueses

(Union Association of Portuguese Judges)

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1. INTRODUCTION

This document, *Portuguese Judges' Pledge of Ethics – Principles for Quality and Responsibility*, is the initiative and institutional responsibility of the Associação Sindical dos Juizes Portugueses (Union Association of Portuguese Judges).

The new central position of the courts in the organization of political power in modern democratic societies, in which the functions of political, social and economic regulation are fragmented in a wide range of instances, destabilizing the classic figure of the omnipresent and omnipotent State, highlights the responsibility of the judicial power as an instance of resolution of conflicts and control of the other public powers, which will inevitably lead to the strengthening of the mechanisms of democratic legitimacy and responsibility. Judicial ethics is therefore a vital pillar in the quality of Justice and the legitimacy and responsibility of judges.

This work represents the will of the collective of Portuguese judges, who participated greatly in drawing it up. It was born out of the concern and commitment to contribute so that citizens, and the institutions and organizations that represent them, might have greater confidence in the Administration of Justice and in the exercise of the Judiciary. This strengthening of the legitimacy of the judicial power, via ethical practice, thus seeks to open the way to a new dynamic of the citizen in the Administration of Justice.

The formulation and presentation of the principles that make up the *Pledge of Ethics* seek, in particular:

- To promote independence, impartiality, integrity and competence in the exercise of the profession and connection to the values of Justice and Human

Rights that any citizen may legitimately expect from the courts and from each of the judges entrusted with the protection of his rights;

- To increase the level of public confidence in the system of justice, by means of the provision of information on the strict standards of conduct that guide the activity of judges;
- To aid judges in finding answers to questions regarding ethics and professional deontology, granting them autonomy in the respective decision and strengthening their independence in relations with the other powers and their quality and responsibility in relations with citizens.

This document, which should not be confused with the rules of deontology set out in the statute and which has neither a disciplinary nor a sanctioning purpose, brings together the principles of judicial ethics recognized by the judges following the process of discussion and joint reflection which preceded it. It constitutes an instrument of self-regulation, to which the judges commit themselves freely, its aim being, rather, to establish the high standards of ethics and quality which they seek to achieve and respect on a daily basis.

The principles contained herein are based on the professional experience of the judges, on doctrinal texts and on foreign and international instruments, emanating from organs to which Portugal, Portuguese judges or Portuguese judicial institutions belong and which have addressed issues of ethics and judicial deontology, in particular the following:

From the UN:

- Basic Principles on the Independence of the Judiciary – adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, endorsed by the UN General Assembly in 1985;

- Comments no.1 (2002) of the Working Party of the Consultative Council of European Judges (CCJE-GT) on the Code of Judicial Conduct – the Bangalore Draft;
- Comments on the Bangalore Principles of Judicial Conduct (March 2007);

From the Council of Europe:

- Consultative Council of European Judges (CCJE):
 - European Charter on the Statute of Judges (1998);
 - Opinion no. 1 (2001) of the CCJE on standards concerning the independence and irremovability of judges;
 - Opinion no. 3 (2002) of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality;
 - Opinion no. 4 (2003) of the CCJE, to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels;
 - Opinion no. 6 (2004) of the CCJE, to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement;
 - Opinion no. 7 (2005) of the CCJE on "justice and society";
 - Opinion no. 9 (2006) of the CCJE, to the attention of the Committee of Ministers of the Council of Europe on "the role of national judges in ensuring an effective application of international and European law";
 - Opinion no. 10 (2007) of the CCJE on the Council for the Judiciary at the service of society;

- Recommendation no. R(94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges;
- Proposals to update Recommendation no. R(94) 12 from a group of specialists of the Council of Europe on the independence, efficiency and role of judges (2007);

From International Associations of Judges:

- UIM – International Association of Judges – Universal Charter of the Judge (Taipei 1999);
- MEDEL – European Association of Magistrates for democracy and fundamental rights – Elements of a European Statute of the Judiciary (Palermo 1993);

Other regional and national instruments that establish principles of judicial ethics:

- *Burgh House* principles on the Independence of the International Judiciary;
- Code of Judicial Ethics – Italy (1994)
- Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (1995);
- Latimer House Guidelines for the *Commonwealth* (1998);
- Ethical Principles for Judges – Canada (1998);
- Charter of Citizens’ Rights Before the Administration of Justice – Spain (Full Session of Parliament – April 2002)
- Model Code of Judicial Conduct – USA (American Bar Association – 2004 Edition);
- Code of Judicial Ethics (International Criminal Court – 2005);
- Ibero-American Model Code of Judicial Ethics (2006);
- Guide to Judicial Conduct – England and Wales (revised edition – 2006);

- Weis Declaration of Ethics, of the Austrian Association of Judges (November 2007);
- Model Code of Judicial Conduct of the American Bar Association (ABA) – USA (2007);
- Code of Ethics of the National Judiciary (Brazil – National Council of Justice, 2008).

The presentation of the principles of judicial ethics is grouped according to the six central attributes of the judge: Independence, Impartiality, Integrity, Humanism, Diligence and Reserve. Each of these attributes, defined in general terms, is broken down into principles of wide-ranging content, which, in turn, are the object of comments and elaboration which will aid a better understanding of the practical significance. These comments, which essentially perform an operational function, may be updated and extended in the future.

It was also considered that the principles of judicial ethics are not limited to the individual attributes of the judge. The singular nature of the body of judges, as stated in the Constitution, leads to a collective entity, representation of which is by associations of judges which are private in terms of legal character. For this reason, judicial activity visible in society is not merely the sum of the individual acts of judges in cases or in the public domain, but is also, and increasingly so, their collective representation and intervention in the definition and performance of the public policies of Justice.

In this sense, with the same organization in terms of its form, the last chapter presents the principles which should guide judicial association, from the point of view of the collective ethics of judges.

Finally, it should be highlighted that the State is responsible for ensuring the appropriate preconditions for the organization, operation and performance of the

judicial function, on which the true independence of the judges and of the courts ultimately depends, and also the existence of the necessary conditions for full compliance with the demands of judicial ethics.

Therefore, for the purpose of ensure the organic independence of the judicial power, it is supposed that there is a guarantee that the independent governing bodies of the judges have administrative, financial and budgetary autonomy, and that they have the real capacity to participate in training judges, defining public policies of justice and managing and administering the courts. Furthermore, the individual independence of judges makes it necessary to ensure the protection and stability of the principles of irremovability and no liability for judicial acts, as well as security and adequate remuneration.

2. INDEPENDENCE

PROPOSITION

The independence of judicial power is inherent in the democratic Rule of Law and a guarantee of the administration, by the judges, of impartial justice on behalf of the citizens.

PRINCIPLES

1. Judges, acting on behalf of the citizen, affirm and command respect for their independence and demonstrate it both in the exercise of their functions and beyond.
2. Judges respect the separation of powers and the sphere of activities of the other organs of sovereignty, under the terms of the Law.
3. Judges judge subject only to the Law and the decisions of higher courts given on appeal.

COMMENTS

1. The independence of the judicial power and of judges and the separation from the other powers of the State does not constitute a right *per se* but rather a guarantee of the citizens and an obligation of the State.

The judge scrupulously respects the principle of the separation of powers. When he has to give decisions with obvious political repercussions, he confines himself to applying the Law in order to provide a legal response to the actual case he has been called upon to decide. Yet, as a reflex, the safeguard of external

independence, which confers the conditions of impartiality of the courts and guarantees public confidence in Justice, leads the judge to oppose any attempt to politicize his own governing bodies or his function.

Independence and separation of powers determine that the judges and their independent governing bodies, within the scope of their functions, accept the democratic responsibility of being held accountable publicly regarding the functioning of the judiciary before the citizens and the other sovereign powers of the State.

2. Internally, the independence of the judges implies rejection by the judge of any type of hierarchical subordination or subjection to specific orders or general guidelines which interfere with the judicial function, namely within the framework of the activities inherent in management and discipline, judicial inspections and administrative presiding in the courts.

3. In the exercise of his function the judge is subject only to the Law and to the decisions of higher courts given whilst exercising their powers on appeal, with autonomy of spirit and freedom of legal and moral conscience, rejecting all attempts at influence, enticement, pressure or threat, from any powers or groups, whether public or private, or external or internal to the judicial order.

4. Notwithstanding those situations provided for in law, in order to preserve his independence and impartiality, the judge refuses to participate in political or administrative activities which imply subordination to other organs of sovereignty or the establishment of relationships of political trust. If, however, he agrees to exercise such activities, it is proper that he should voluntarily cease or suspend his position as judge under the terms stipulated in the statutory provisions.

3. IMPARTIALITY

PROPOSITION

Impartiality is the fundamental attribute of judges and of the judicial function, which seeks to guarantee the right of all citizens to a fair and equitable trial.

PRINCIPLES

1. In the exercise of the judicial function, judges are impartial, using the mechanisms to excuse themselves in situations which may give rise to doubts as to their impartiality, observing the rules of procedure that guarantee equality and judgment given after due hearing of the parties and rejecting all forms of discrimination.
2. Judges refuse to participate in extra-judicial activities which call into question their impartiality and which conflict or may come to conflict with the exercise of their function or which limit the confidence of the citizen in their independence and the impartiality of their decision.

COMMENTS

1. The impartiality of the judge is only effective in ensuring public confidence in the judicial system and in the integrity of the judge if this is recognized in the eyes of a reasonable person who is well-informed, objective and of good faith.

The power/duty to request to be excused in cases where his independence or impartiality can legitimately be questioned is exercised carefully by the judge,

who assumes this request before the parties in the case in a clear and natural manner, informing them of all the relevant circumstances, in such a way as not to be uncomfortable exercising the function should he remain in the case.

2. The judge directs the case and the hearings promoting real equality of the parties in the case and respecting the rights that guarantee judgment given after due hearing of the parties, and he rejects attitudes which create, either within the parties in the case or within the public, distrust regarding his impartiality or regarding the possibility of him having taken his decision before the evidence has been presented and before the arguments of the parties have been heard.

The judge activates debate on all the contested issues which are relevant to the decision and takes care to allow the evidence provided for in the law, in order to take the decision after obtaining the maximum information possible. This decision regarding cases has its grounds in the Law and in a conscientious analysis of the facts, with a free spirit and rejection of any influences, indications, requests, enticements, pressures or threats, whether direct or indirect, of a political, administrative, professional, popular, or family nature, or from any other source.

The judge also does not allow himself to be conditioned by trends in public opinion as reported by the media, by fear of criticism, by public outcry or by the reputation of the parties in the case, and decides conscientiously, with courage and consideration.

3. The judge is free to participate in any civic activity provided that this is not capable of compromising his impartiality or harming the exercise of the judicial activity.

In particular, the judge refrains from joining collective organizations and from participating in public debates whenever, according to the assessment of a reasonable person who is well-informed, objective and of good faith, this may upset the image of impartiality or independence regarding issues that may come to be submitted to the courts.

The judge does not belong to organizations which require their members to pledge their loyalty or which, due to their secret nature, do not guarantee full transparency regarding the participation of their members.

4. The judge rejects affiliation with political parties and participation in any activities of a political nature or related to parties, whether public or private, namely in election campaigns, demonstrations, fundraising or other initiatives of a similar nature.

4. INTEGRITY

PROPOSITION

The professional, social and personal integrity of judges is a guarantee of fair and impartial decisions and of public confidence in the quality of the justice system.

PRINCIPLES

1. Judges adopt personal, social and professional behaviour which, in the eyes of a reasonable person who is well-informed, objective and of good faith, is regarded as honourable, loyal, considered and correct.
2. Judges recognize the same level of dignity and importance of the functions assigned to other judicial officers and of the parties in the case, always conducting themselves, before all of these and before the public, with politeness, respect and courtesy.

COMMENTS

1. Public confidence in the judges guarantees respect for their decisions and the prestige and positive image of the Administration of Justice and indeed the democratic Rule of Law. This perception in society of the incorruptibility, probity and honesty of judges may not be even slightly tarnished by any attitude of the judge which calls it into question.

As a subject of constant public scrutiny, a judge avoids conduct which calls into question confidence in his abilities to administer Justice, and always keeps in

mind that his personal example on a daily basis is relevant, even in encouraging permanent respect for the values of integrity, loyalty, moderation and correctness amongst his colleagues and the staff that assist him.

2. Participation in civic activities beyond the functions of judge, even where objectively his impartiality is not at risk, is rejected in all cases in which it is reasonably foreseeable that this will imply his subjection to public assessment which is demeaning or undignified. This will normally be the case for participation in associations connected with professional sports where, due to their specific emotional context and the type of language used and controversies which develop within them, the judge may easily be subject to disrespectful remarks and is marked by situations which are not fully transparent.

The judge also refuses to participate anonymously in public discussion forums in which his position as a judge is acknowledged, namely on the Internet, in order to give opinions which may call into question public confidence in his status.

In no situation will a judge take advantage of the prestige or rights granted by his status or invoke his position in activities in his private life in order to obtain benefit or preference which he could not otherwise legitimately expect.

3. All conduct which goes against the duties of correctness, politeness and respect in professional relations with colleagues, staff and judicial officers, and particularly with the parties in a case and their representatives, is rejected.

Notwithstanding his own jurisdiction to direct and pass sentence in a case, the judge refrains from unfair or demeaning reprimands to the parties in the case or to the public or any discourteous references to the technical and human capabilities of the prosecutors, attorneys, expert witnesses or staff, as well as

attitudes which demonstrate impatience or disapproval of the legitimate use of procedural rights.

Both in the course of his activity and beyond it, the judge also refrains from making discourteous comments regarding the decisions of other judges, especially when the reassessment of such decisions on appeal is in question.

4. It is an essential duty of the judge to at all times safeguard the dignity of citizens in their relations with the services which he is responsible for, and he shall not allow, in any manner, that conduct be adopted which calls into question their psychological, moral or social integrity.

For this purpose, he shall effectively manage the staff assigned to him, providing them with the necessary guidance so that they always act politely towards all users of the service and ensuring that any practices which violate this duty are remedied and sanctioned.

5. Within the scope of the performance of tasks which imply administrative superiority, namely in the functions of management and discipline, presiding over courts, judicial inspections and training, the judge acts with special impartiality, rigour and objectivity, regardless of any relationship of friendship or intention to be re-elected or appointed to the same or different functions.

5. HUMANISM

PROPOSITION

By granting the judge a creative role in the interpretation and application of the law, the exercise of judicial power binds him to the values of justice and the humanist principles of dignity of the human person and equality.

PRINCIPLES

1. In their relations with the parties in the case, especially those being judged by them, judges always keep in mind that they share the condition of human beings.
2. In the exercise of their functions judges ensure real respect for the fundamental rights which have been recognized in the Constitution and in Law, and treat all human beings as equals with regard to rights and duties, rejecting any distinction, exclusion, restriction or preference based on sex, race, colour, ascendancy, national or ethnic origin, religion, sexual orientation, or economic or cultural situation the aim or effect of which is to destroy or compromise the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms in political, economic, social or cultural fields, or in any other field of public life.

COMMENTS

1. The judge actively commits himself to respecting the dignity and equality of all the parties in the case, and does not demonstrate any kind of prejudice or

discrimination in relation to sex, racial or ethnic origin, physical or mental disability, religion or creed, sexual orientation or political conviction, which in any way may violate their personality or create an intimidating, hostile, degrading, humiliating or offensive environment.

Within the scope of his powers of direction and discipline in pleadings, the judge ensures that all the parties in the case and the staff that are assigned to him adopt conduct which respects the equality and dignity of the human person, and expresses his disapproval regarding all conduct which is prejudiced or discriminatory.

2. The judge binds himself to comply with and apply the Law and the principles of the legal system legitimately consecrated in the positive legal order by the proper bodies.

However, faced with the multiplicity and heterogeneity of cases brought to trial, the judge always keeps in mind that Justice and the Law are not limited to the strictly positivist and legalist interpretation of the rules and that the whole of the decision must be essentially fair and human and respect the fundamental rights of the democratic Rule of Law. This requires that the judge pays particular attention and is sensitive to constitutional, European Union and international sources of law.

The judge's awareness of belonging to a global legal order, with responsibilities which extend beyond the national legal framework and beyond the territory, requires that he performs his functions in a manner appropriate to affirm the universal validity of Human Rights.

3. The function of the judge as a guarantee of the rights of citizens also requires a careful reading of the case in the light of the principles of the Constitution and, when legally admissible, rejection of the concrete application of a law which infringes those principles. However, the judge keeps in mind that this exceptional mechanism is established principally as a guarantee of the citizens against laws which infringe their fundamental rights.

6. DILIGENCE

PROPOSITION

The merit of the judicial function is necessarily based on the competence and diligence of the judges.

PRINCIPLES

1. Throughout their professional life judges are committed to acquiring the knowledge, skills and personal qualities necessary in order for them to exercise their function with merit.
 2. In the exercise of their function, judges dedicate their activity to the proper functioning of the court and the timely handling of cases, so that cases submitted for their appreciation are decided with maximum quality and readiness.
 3. Judges are aware that the proper functioning of the court also depends on the adoption of organizational and procedural management criteria, with a view to simplifying the formal procedures, planning, monitoring and assessing the service, and the use of the new information and computerization technologies.
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COMMENTS

1. Judicial training is indispensable for safeguarding a judge's independence and impartiality, a presupposition of his legitimacy to administer Justice and a guarantee of true autonomy of reflection and decision.

In addition to the initial training, the judge accepts as his own responsibility the acquisition of permanent and specialized training, appropriate to the exercise of his functions, and he promotes this throughout his working life and works to constantly update his knowledge, maximize his skills and optimize his personal qualities.

Before exercising functions in court which require specialized skills, the judge keeps in mind the need to acquire the specific knowledge necessary, namely by attending appropriate training activities.

Besides this, the judge seeks to acquire training in non-legal areas of his interest, aiming to improve his knowledge and enrich his cultural background and personal qualities.

2. Merit is of primary importance to the exercise of the function of a judge, regardless of which stage he is at in his career or which court he exercises functions in. The assessment of merit, linked to professional experience, is thus a predominant factor in appointment, transfer and promotion.

3. The judge, in search of a fair, equitable and timely solution for the litigation in question, rejects mechanical and uncritical reproduction of other decisions and the use of formalities which impede or unnecessarily delay the acknowledgement of merit, and he maintains an open mind to hear and recognize new arguments and analyze the different alternatives offered by the Law, in order to confirm the criteria or points of view held and, if necessary, to repair or rectify decisions given, when the law so admits.

In the interpretation and application of the law, the judge gives critical attention to the legal practice and legal theory, and takes into account the need to incorporate within the decision-making process the principle of uniformity of

criteria for situations which are identical in subject matter and consideration of scientific development in the study of Law.

4. The judge provides reasoned grounds for his decisions, by means of a discourse which can be understood by those at whom it is directed, with clear and succinct language, such that the former understand not only the respective scope but also the logical and argumentative process on which the decision is built, even when they disagree with it.

5. The judge seeks to comply with the obligations of his functions within the time limits established by law and, when this is totally impossible, either due to the level of difficulty of the case or to an excessive caseload, within a reasonable time period. For this purpose, he discourages the unnecessary delaying of proceedings and the practice of time-wasting procedural actions and uses all the means at his disposal which allow for difficulties and insufficiencies of the court to be overcome or for their effects to be minimized, with a view to ensuring the greater usefulness and satisfactory settlement of the litigation and avoiding the injustice which results from a late decision.

The judge seeks to schedule proceedings in line with a reasonable forecast of the development of the work and the availability of the premises, so that he does not have to delay or postpone their start. When this cannot be avoided, he personally and in a timely manner informs the affected parties in the case of the reasons for such delay.

The judge does not accept extrajudicial commitments which are incompatible with the diligent exercise of his judicial functions.

6. The judge clearly informs the body with jurisdiction for managing human and physical resources of all difficulties in the performance of his work which require the use of extraordinary means of assistance. In the same way, the judge communicates that these are no longer necessary when the situation that determined their use has ended.

7. Aware that diligent performance of the judicial function and the correct functioning of the organization requires assistance from staff assigned to processing the case and performing administrative tasks, the judge takes an interest in the overall management of the organic unit for which he is responsible, requesting the necessary means, motivating the staff and accompanying and supervising the performance of their tasks in accordance with the planning that has been defined.

In the management of his cases, taking into account the aim of complying with the established caseload targets, without sacrificing the necessary quality and consideration of the decision, the judge seeks to simplify the formal and bureaucratic procedures, eliminate unnecessary tasks and routines, produce suitable planning and scheduling, implement methods which allow the results obtained to be permanently assessed and adopt the necessary correction measures and make use of the new information technologies and computer programmes of the courts.

The judge views the assessment of his performance and the attributing of a classification not only as a factor for grading merit and career progression, but also as a component in his learning process and an aid for identifying areas for improvement.

7. RESERVE

PROPOSITION

The reserve of judges is a direct implication of the impartiality by which they are bound and of the preservation of public confidence in judicial integrity.

PRINCIPLES

1. Judges refuse to make declarations or comments which involve value judgements about judicial or investigatory proceedings and also about matters which may reasonably be foreseen to become the subject of proceedings.
 2. In their relations with the media, judges ensure, within the legally applicable frameworks, the right to information, in accordance with the principles of equality of access to sources and transparency of proceedings.
 3. Notwithstanding the powers assigned to the independent governing bodies of judges and to presiding judges in the courts with regard to communication, whenever they deem it to be appropriate judges accept the responsibility of providing the necessary explanation either directly or through the medium of one of their assistants, whether orally or in writing.
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COMMENTS

1. Notwithstanding the protection of the right to information and of the media's access to sources, the judge naturally accepts the limitations imposed by the principle of reserve on his personal exercise of freedom of speech and the right to

express an opinion, keeping in mind its significance as a guarantee of public confidence in the impartiality and integrity of Justice.

Both in the exercise of his functions and beyond them, the judge maintains reserve with regard to any procedures or decisions taken, either his own or those of other judges or of any other judicial or police authority, and he refrains from commenting in public and participating in events at which it could be foreseen that those matters would be discussed or which it might be reasonable to suppose would lead to interference in the decision-making process of pending cases.

Likewise, the judge does not participate in events at which it can be reasonably foreseen that others will pronounce on matters which are subject to reserve, when this participation occurs in such a manner that the mere presence of the judge will give the opinions expressed the appearance of having institutional dignity or judicial confirmation.

2. Correct interpretation of the principle of reserve prevents the judge from using a judicial decision or public hearing in order to express opinions or personal considerations which are political, ideological or religious in character, which are not strictly necessary for the respective statement of grounds and which are clearly distanced from the object of the case.

3. The exercise of freedom of speech, of the right to express an opinion and of academic freedom allow, according to criteria of proportionality, appropriateness and necessity, for the exemption from the principle of reserve of any declarations, comments or interventions which, notwithstanding the legal provisions regarding the secrecy of justice and professional confidentiality, are essential for immediately complying with informative, pedagogic or academic objectives or for satisfying other legitimate interests.

In acts of public intervention in which he takes part, the judge always makes it clear in which capacity he presents himself, and does not permit that any doubt remains as to whether he is acting in a personal capacity or is representing third parties, in which case these are identified.

4. The need to give greater democratic transparency to the activity of judges leads the judge to understand and accept the increasing importance of communication, as a form of allowing for public knowledge and the legitimate exercise of the right to criticize the activity of the courts and the decisions of judges.

For this reason, in cases which are clearly of public interest, the judge keeps in mind the need to guarantee the right to information, via the provision of necessary and appropriate clarifications, under his direct responsibility or through bodies to which the management and representation of judges have been assigned, under the terms provided for in law.

Particularly in cases where the procedures or decisions should be directly communicated to the parties in the case or to the public under his direct responsibility, the judge ensures that this is done in an appropriate manner, keeping in mind the normal difficulties of the average citizen in understanding legal language and rituals. However, in this case, when providing clarification to the public on his own decision, the judge does not express in public any reasons which are not contained in the respective statement of grounds.

5. In cases not covered by the duty of reserve, when the judge provides information to media bodies under his own direct responsibility, he observes and ensures observation of the rules of equality of access to the source and transparency in procedures, states the grounds for decisions which he takes for this purpose, and includes in the proceedings all the requests which he has received.

8. JUDICIAL ASSOCIATION

PROPOSITION

Judicial association ensures collective representation of the body of judges before the citizens and before the State.

PRINCIPLES

1. Judicial association is bound up with the preservation of the conditions of judicial independence and the impartiality of judges, in the defence of fundamental rights and improving Justice.
 2. Judicial association is independent of any organizations which are political, social or trade union in character and ensures internal democratic pluralism, allowing judges to freely express their diversity.
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COMMENTS

1. Notwithstanding the actual powers of the public institutions with responsibility for managing the justice system, namely the independent governing bodies of judges and presiding judges in the courts, the collective representation of the body of judges is ensured by associations made up of them, which centralize the affirmation of their public duties before the citizens and their specific rights before the State.

When balancing representation of his public duties and his specific rights, the judge always keeps in mind that the exercise of his profession is instrumental in

relation to the essence of the judicial function of administering justice on behalf of the people. This determines collective acceptance of the principle that the claim of professional interests may not be placed above the rights of the citizens on behalf of whom he administers justice.

Considering their status as officers of organs of sovereignty and the special relevance that the interest of the citizens assumes in their collective decisions, judges consider carefully and sensibly the extent, limits and opportunity for admissible forms of protest that may appropriately be used, taking into account the general acceptance of their exceptional and subsidiary nature.

2. Democratic pluralism and the right of leaning within judicial association strengthen their legitimacy and the conditions of external representativeness and highlight, among judges, with full respect for their diversity, the values of solidarity and cohesion.

3. Externally, the inclusion of judicial associations in organizations which are political or trade union in character is inadmissible, since this is seen as being clearly contrary to the independence of judges. Besides formal membership, any concerted actions of protest or professional claims with any entities which do not exclusively represent judges are also rejected.