

THE EMOTIONAL INTELLIGENCE OF JUDGES  
AS A FUNDAMENTAL COMPONENT  
FOR THE ADMINISTRATION OF JUSTICE

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*ABSTRACT: Emotional intelligence is vital for the proper development of the personality. In the case of judges, the behavior and process of the administration of justice are fundamental to the rule of law. However, little attention has been paid to the issue of the emotional conditions of judges, which directly or indirectly affect individuals and court administrative personnel. Several health institutions have demonstrated the connection between people's mental and physical health, which not only implies the absence of disease, but also a healthy and suitable lifestyle to perform their work properly. In this specific case, this article aims to show how judges' good or bad emotional health can affect the decisions made in their courts and the importance of their effects on the people who need to abide by such rulings. It is imperative to continue requesting that the judicial authorities have the necessary resources to ensure they can do their work properly and the judgments issued are not hampered by health factors. Finally, it should be mentioned that this article also analyzes judges' behavior and thus raises awareness about the effects of mental and physical health, as it has an impact on the jurisdictional processes to which judges are party.*

**KEYWORDS:** *Judge, emotional intelligence, justice, mental health.*

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*RESUMEN: La inteligencia emocional es vital para el desarrollo adecuado de la personalidad. En el caso de los jueces, la conducta y la administración de justicia es fundamental para el estado de derecho. Sin embargo, se le ha prestado poca atención a la condición emocional del juez, que directa o indirectamente afecta a individuos así como a la administración de la corte. Diversas instituciones de salud han demostrado el estrecho vínculo que existe entre la salud mental y física de las personas que no solo implica el carecer de enfermedades si no el llevar un estilo de vida saludable y adecuado para la correcta ejecución de sus labores, en este caso específico se pretende exponer el como una buena o mala salud emocional de un juez puede repercutir en las decisiones que se llevan a cabo en su corte y la importancia que tienen estos efectos en las personas que acatan sus dictámenes. Es fundamental el continuar solicitando que autoridades judiciales cuenten con los requerimientos necesarios que aseguren el correcto desempeño de su trabajo y que las resoluciones que se lleven a cabo no se vean obstruidas por factores de salud. Por último hay que mencionar que este artículo también tiene como fin analizar el comportamiento de las personas juzgadas y así concientizar respecto de los efectos de la salud mental y física, pues impacta en los procesos jurisdiccionales de los que son parte los jueces.*

*PALABRAS CLAVE: Juez, inteligencia emocional, justicia, salud mental.*

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## I. INTRODUCTION

Protecting rights implies believing in people because the ones monitoring compliance are not institutions or legal systems,<sup>1</sup> but people specialized in delivering justice in their respective spheres (federal, state, or municipal).

It is therefore important to focus on legal operators because it is not only necessary to have statutory laws aligned with reality to achieve optimal justice within a system. Bodies and/or institutions are also needed to manage and

<sup>1</sup> LUIGI FERRAJOLI, *DEMOCRACIA Y GARANTISMO* 87 (Trotta 2008).

implement it. It is also necessary for those in charge of monitoring and administering justice are fit for such a responsibility.

It is therefore worth asking whether those serving as judges are well-suited for the role, i.e., whether in addition to having the legal knowledge, they are also in good (physical and mental) health because this last factor could be considered necessary to fit the profile required for this role since health also extends to psychological and emotional aspects. Having a positive attitude towards life, engaging in healthy personal relationships, limiting stressful situations and being optimistic are habits that cannot be absent from judicial operators because in some way they will have an impact on their work in the judiciary.<sup>2</sup>

This article is composed of nine sections. The first, second and third discuss the concept of good physical and mental health. The fourth, fifth and sixth deal with the ideal profile of judges and its context in Mexican domestic law, the importance of their training and the requirements to become a judge as stipulated in the Mexican legal framework, The seventh underlines the importance of emotional intelligence in judges, so they can optimally perform their judicial function. The eighth section lists the statements issued by the Council of the Federal Judiciary addressing complaints of misconduct of federal judges. The ninth section contains criticisms and proposals aimed at questioning, among other things, whether the requirements established by law, as well as those set forth in various Agreements of the Plenary of the Council of the Federal Judiciary, should add provisions requiring judges to have a healthy emotional intelligence, as this is an essential element for the performance of this role.

The objective of this research article is to highlight whether emotional intelligence in legal operators is a fundamental component of justice as several jurisprudential and legal texts have stressed the importance and implementation of human rights in regulatory frameworks as well as in the institutions in charge of their oversight. However, in our opinion, it seems that in order to succeed in this, it is necessary to focus on those in charge of administering justice because it is not enough for such person to have legal knowledge, but to also be physically, psychologically and emotionally stable and in full health, since these aspects will be reflected in the work of the internal administration of the count in charge, as well as its judgements.<sup>3</sup>

## II. THE CONCEPT OF GOOD HEALTH

To be in “good health” does not only mean to be free from disease, but also to enjoy physical, mental and social well-being. In this regard, the opening of

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<sup>2</sup> ANNAMARIA DI FABBIO, EMOTIONAL INTELLIGENCE 67 (Intech 2012).

<sup>3</sup> MICHAEL WALZER, LAS ESFERAS DE LA JUSTICIA 313 (FCE 2004).

the World Health Organization (WHO) Constitution<sup>4</sup> states that “the States Parties to this Constitution, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples” which, among others, include health, defined as: “...a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.<sup>5</sup> In 1992, “to live harmoniously in a changing total environment” was added to this description.

In this sense, good health could be described as the condition in which both the body and the mind are working properly.<sup>6</sup> The main causes of poor health are diseases, a poor diet, injury, mental stress, lack of hygiene, and an unhealthy lifestyle, among others.

Although advances in medical research have led to a wide range of treatments available today to stave off, control and prevent diseases, we play a crucial role in taking care of our own health. Medical professionals all agree that good health starts with good eating habits and therefore, prevention and education are essential because if we fail to give sufficient importance to good (physical and mental) health, it can lead to the progressive decline, which can lead to long-term health problems.

When it began (1947), the World Federation for Mental Health (WFMH) defined mental health as “the state that enables the best physical, intellectual and emotional development of each individual, insofar as it is compatible with the development of other individuals”. Mental health is just as important as physical health, so it should not be neglected. This type of health ensures mental and emotional fitness; that is, the ability to adapt to change, cope with crises, establish meaningful relationships with other members of the community and find meaning in life, given that it is linked to reasoning, emotions and behavior when facing different situations in everyday life.

In its Summary Report on Promoting Mental Health: Concepts, Emerging Evidence, Practice, the World Health Organization established:<sup>7</sup>

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<sup>4</sup> The Constitution was adopted by the International Health Conference in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (*Off. Rec. Wld Hlth Org.*, 2, 100), and entered into force on 7 April 1948. Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirty-ninth and Fifty-first World Health Assemblies (resolutions WHA26.37, WHA29.38, WHA39.6 and WHA51.23) came into force on February 3<sup>rd</sup>, 1977; January 20<sup>th</sup>, 1984; July 11<sup>th</sup>, 1994, and September 15<sup>th</sup>, 2005 respectively and are incorporated in this text.

<sup>5</sup> World Health Organization, *Constitution*, WHO, (2006), available at [https://www.who.int/governance/eb/who\\_constitution\\_sp.pdf?ua=1](https://www.who.int/governance/eb/who_constitution_sp.pdf?ua=1).

<sup>6</sup> DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* Chapter 11 (Bloomsbury, 2014).

<sup>7</sup> *Summary Report on Promoting Mental Health: Concepts, Emerging Evidence, Practice, of the World*

Sustained socioeconomic determinants are a known risk to the mental health of individuals and communities. The clearest evidence is associated with indicators of poverty, including low levels of education. Poor mental health is also associated with rapid social change, stressful work conditions, gender discrimination, social isolation, unhealthy lifestyle, the threat of violence and poor physical health and human rights violations. There are also specific personality and psychological factors that make a person more prone to mental disorders. Finally, mental illness also has biological causes influenced by, for example, genetic factors or biochemical brain imbalances.

Based on the above, it follows that mental health, like mental problems, can be determined by personal, social, and environmental factors, which can be grouped into three domains: a. how the person feels about themselves; b. how they feel about others; and how they respond to the challenges of life.

But how does one diagnose mental health? In order to make a more accurate diagnosis, it is advisable to first check for complications related to physical conditions that could cause pain or discomfort. Subsequently, any potential physical ailment should be backed up with other laboratory tests, such as, thyroid function tests, alcohol and/or drug screening. Once the physical results have been verified, a psychological evaluation should be performed by a mental health specialist who can correlate physical discomfort with thoughts, feelings, and behavior patterns. The more information obtained, the more likely it will be to identify the possible mental disorder and suggest the treatment to be followed.

The typical symptoms of each mental illness are detailed in the “Diagnostic and Statistical Manual of Mental Disorders” (DSM-5) published by the American Psychiatric Association,<sup>8</sup> which is used by mental health professionals to diagnose mental disorders.

The DSM-5 is divided into three sections. Section I is entitled “DSM-5 Basics”, which establishes guidelines for the clinical and forensic use of the manual. Section II on “Diagnostic criteria and codes” contains the diagnostic criteria and codes for the different disorders while Section III on “Emerging measures and models” indicates dimensional measures for assessing symptoms, criteria on the cultural formulation of disorders and an alternative model for conceptualizing personality disorders, as well as a description of the clinical conditions currently under study.

The main types of mental illness covered in the manual are:<sup>9</sup> a. Neurodevelopmental disorders. b. Schizophrenia spectrum and other psychotic disorders.

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*Health Organization, WHO, (2004), available at [https://www.who.int/mental\\_health/evidence/promocion\\_de\\_la\\_salud\\_mental.pdf](https://www.who.int/mental_health/evidence/promocion_de_la_salud_mental.pdf).*

<sup>8</sup> María del Carmen Lara Muñoz, *Diagnóstico de los trastornos mentales: el DSM-5*, in SALUD MENTAL Y MEDICINA PSICOLÓGICA (Juan Ramón de la Fuente y Gerhard Heinze eds., 2014).

<sup>9</sup> AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-5)* (2014).

c. Bipolar and related disorders. d. Depressive disorders. e. Anxiety disorders. f. Obsessive-compulsive and related disorders. g. Trauma-and stress-related disorders. h. Dissociative disorders. i. Somatic symptom and related disorders. j. Feeding and eating disorders. k. Elimination disorders. l. Sleep-wake disorders. m. Sexual dysfunctions. n. Gender dysphoria. o. Disruptive, impulse-control, and conduct disorders. p. Substance-related and addictive disorders. q. Neurocognitive disorders. r. Personality disorders. s. Paraphilic disorders. And t. Other mental disorders.

However, as far as treatment is concerned, it depends on the type of mental illness diagnosed, as well as the severity and what is most effective in each case. In these cases, treatments are usually combined; that is, clinical therapy is combined with medication, as well as suggestions for some kind of activity (sport, art, and so on), which is what works best. It should be noted that each case is unique and special; therefore, it is not possible to generalize any type of treatment. What should be done is to propose an individualized approach to improvement based on each person's condition to ensure that all psychiatric, medical and social needs are addressed appropriately.<sup>10</sup> Medication will depend on each individual situation and how the body responds to it.

When psychotherapy is suggested as part of the treatment for a mental illness, it is to establish a conversation therapy between the specialist and the patient about the condition, which helps to understand the disease, the moods, feelings, thoughts, and behaviors. This understanding and knowledge gives the patient the ability to acquire skills to cope with situations and control stress. The length of the treatment depends on the damage sustained; in some cases it may be short, medium or long term.

It is also important to wonder whether a person with a mental illness could infect their environment, i.e., whether a mental illness has the same effect as a physical illness, like the flu that can be transmitted to the people around them. We would venture to answer in the affirmative, since the person who has lived with a mentally ill person may begin to feel similar emotions, albeit differently. In other words, "Emotional contagion is feeling or expressing an emotion similar that of the people around you because their feelings tell you to believe that you should have those same emotional reactions. We see how others respond, and emotional contagion is an extreme form of that..."<sup>11</sup>, according to the text published in the journal *Memory & Cognition*.<sup>11</sup>

It should be noted that not all mental illnesses are contagious, as in the case of someone suffering from schizophrenia, anxiety or some addiction, but they could trigger a bad mood or generate a state of permanent stress, thereby causing a different type of mental illness to the person living with someone who is toxic and has not been treated.

<sup>10</sup> DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* chap. 3 (Bantam books 1998).

<sup>11</sup> Jessee K. Marsh & Lindzi L. Shanks, *Thinking you can catch mental illness: How beliefs about membership attainment and category structure influence interactions with mental health category members*, 42 *MEMORY & COGNITION* 1011, 1025 (2014).

### III. THE IDEAL PROFILE FOR A JUDGE

Every society needs the presence of a hero or Supreme Being to deliver it from barbarism and lead it along the path of civilization. Thus, in any historical era, there is a need for someone outstanding entrusted with the task of judging, i.e., of striking a balance in each concrete case to restore universal harmony.<sup>12</sup>

Therefore, striking the proper balance is a difficult task because justice is the middle ground between committing an injustice and/or suffering from one.

The judicial officer is romanticized as a great man of law, emanating the image of holding on to the tablets of the Constitution or its Codes and conveying the idea of social order as a reflection of a just government.<sup>13</sup>

According to Manuel Atienza a good judge is defined as one who “...not only complies with codes of conduct but has professionally developed certain character traits that are judicial”.<sup>14</sup>

The Code of Ethics of the Federal Judiciary provides that “if the Constitution lays out the guiding principles of the judicial career with genuine moral content, such principles should also be regarded as guiding principles for the ethical behavior of judges and, consequently, as general guidelines for drafting a Code of Ethics to govern the conduct of public servants in the judiciary”.<sup>15</sup>

It is also worth mentioning a part of the preamble to the Code of Ethics of the Federal Judiciary, which gives a brief explanation of justice as stated in the Federal Constitution of 1824:

...there is no freedom without justice, and the basis of justice can be no other than the balance between the rights of others and our own... in the hope of ... to ensuring equality before the law, freedom without disorder, peace without oppression, justice without rigor, clemency without weakness; to mark the limits of the supreme authorities of the nation, to arrange them in such a way that their combination always produces good and makes evil impossible; to restore the legislative process, protecting it from all rashness and waywardness... to assure to the Judicial Power such independence that it never arouse concern for innocence nor offer guarantees to crime...” and with the awareness that “... the very conduct we observe greatly compromises our national honor. If we

<sup>12</sup> SALVADOR CÁRDENAS GUTIÉRREZ, *EL JUEZ Y SU IMAGEN PÚBLICA. UNA HISTORIA DE LA JUDICATURA MEXICANA* 129 (Suprema Corte de Justicia de la Nación, 2006).

<sup>13</sup> DAVID HELD, *MODELS OF DEMOCRACY* 27, 44, 48, 78, 92, 116, 152, 173, 201, 215, 253, 282, 308 (Stanford University Press, 2006).

<sup>14</sup> MANUEL ATIENZA, *REFLEXIONES SOBRE ÉTICA JUDICIAL* 18 (Suprema Corte de Justicia de la Nación 2008).

<sup>15</sup> Guillermo Ortiz Mayagoitia, *Palabras del ministro Guillermo I. Ortiz Mayagoitia en la Presentación del Código de Ética del Poder Judicial de la Federación*, in *COMENTARIOS A LA REFORMA CONSTITUCIONAL EN MATERIA PENAL* 18 (Suprema Corte de Justicia de la Nación 2005).

deviate from the constitutional path; if we do not hold maintaining order and scrupulously observing the laws included in the new Code as the most sacred of our duties; if we do not act together to save this repository and shield it from the attacks of the wicked; Mexicans, we will henceforth be miserable, without ever having been happy.

The purpose of this statement is to instruct the judges that the application and legal interpretation of the sources of law in force should be carried out pursuant to the guiding principles of legal ethics, to ensure respect at all times for the fundamental right of persons (individuals and legal entities) provided for in Article 17 of the Constitution on the access to and administration of accessible, prompt, complete, impartial and predictable justice.

On this, legal scholar Jesús Ángel Arroyo Moreno said:

For justice to be truly impartial and independent, the judge must act out of conviction and love his work. He must also have the courage to defend his convictions, without fear of repercussions, but also without being pigeonholed in misguided criteria. It is the judge's personal readiness to do justice, to give to each his due, that guarantees good and reasonable justice. Without it, everything is futile because justice depends on judges.<sup>16</sup>

Hence, to speak of an “ideal judge” entails being virtuous, committed to legal ethics and the proper administration of justice. Therefore, their performance and actions are decisive factors in the daily life of society because their clear, impartial and coherent rulings have an immediate impact on public trust.<sup>17</sup>

In this regard, Judge Julio César Vázquez-Mellado García pointed out that “the judge does not seek a conceptual truth when issuing rulings, but an eminently practical truth that resolves a dispute”.<sup>18</sup>

The author also indicated that to achieve a profile of excellence in judges, it is essential to have them participate in refresher and training activities offered by the Judicial Academy or other academic institution with the following main training attributes: 1. Sound legal training; 2. Ability to interpret, rationalize and argue their decisions from a judicial standpoint; 3. Ability to identify the underlying social conflicts in the issues; 4. Administrative skills for the proper management of the material and human resources assigned to them; 5. Trained in values enabling them to perform their work independently and autonomously; and 6. Knowledge of the so-

<sup>16</sup> Jesús Ángel Arroyo Moreno, *El juez*, JURÍDICA, ANUARIO DEL DEPARTAMENTO DE DERECHO DE LA UNIVERSIDAD IBEROAMERICANA 81 (1993).

<sup>17</sup> JOHN AGRESTO, *The Supreme Court and Constitutional democracy* 53, 54 (Cornell University Press, USA 1984).

<sup>18</sup> Julio César Vázquez-Mellado García, *El perfil del juez*, in CUADERNOS DE TRABAJO 2 (Instituto de la Judicatura Federal, 2014).



cial, cultural and economic conditions of the country and where they perform their duties.<sup>19</sup>

Piero Calamandrei pointed out that in idealizing judges

...so high is the mission of judges in our estimation and so necessary is our trust in them, that human weaknesses that go unnoticed or are forgiven in any other type of public official, seem inconceivable in a magistrate... Judges are like people who belong to a religious order. Each of them has to be an example of virtue if they do not want their believers to lose faith.<sup>20</sup>

Another important point is that judges must bear in mind the consequences of their actions and the duties of their role, given that a judge's highest ambition is to be the best possible judge; that is, the one best suited for the judicial career. However, when such a public servant does not act in accordance with the guiding principles of their position, accountability is the feature that is associated with the premise of judicial independence, since independence and accountability are mutually inherent concepts to prevent such independence from being transformed into arbitrariness in the exercise of public authority.

#### IV. THE IMPORTANCE OF JUDGES' EMOTIONAL INTELLIGENCE

A person is considered to be in good health when three areas are covered: physical health, emotional balance and psychological stability, aspects that are interrelated within the concept of comprehensive well-being.

To achieve this well-being, lifestyle habits must be forged; that is, to strive to adopt and consistently follow routines that bring -preferably long-term- health benefits. Furthermore, no habit works by itself, but one contributes to another and enhances others. For example, a healthy diet can enhance an exercise routine, which in turn contributes to improve one's mood, i.e., reducing feelings that are related to stress, depression, anxiety or others.

In short, health and well-being can result in a drastic improvement in the overall quality of life by enabling a person's body to function properly and thus be able to perform the different activities that are part of their daily routine. Health is a phenomenon that is achieved through countless actions and can be preserved for a long time or, alternatively, lost for a variety of reasons.<sup>21</sup>

But why is health important for judges and how can "good level of health" be reached and maintained?

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<sup>19</sup> *Id.*

<sup>20</sup> PIERO CALAMANDREI, ELOGIO DE LOS JUECES ESCRITO POR ABOGADOS 261-262 (Jurídicas Europa América 1989).

<sup>21</sup> RAN HIRSCHL, TOWARDS JURISTOCRACY 221 (Harvard University Press 2007).

First, it should be noted that a healthy lifestyle has several benefits, among which include ridding the body of pain and discomfort (bad eating habits, colitis, migraines, etc.), as well as various forms of mental disorders (stress, insomnia, depression, etc.). In addition, when in “good health”, people are able to optimize their capacity, thus enabling them to do a good job that will situate them as valuable members of their organization and, consequently, of society itself.

If stability in emotional intelligence is applied to the work of judges, will not only allow them to act congruently with their high moral standards, but also to have a clear, objective and solid mindset because there will be times during their career when decisions will require both legal knowledge and the counsel of their own conscience, which means putting in practice the values inherent to make effective the intrinsic values of their own work and in the law, without forgetting that their work is a determining factor for the daily life of society.

On this, José Ramón Narváez Hernández explained that

...the sense of justice is that call from each person’s conscience, which helps to distinguish what is just from what is unjust. It is also called by other names, such as clamor for justice or social demand for justice... Common sense is possessed by only a few; it is associated with sound judgment, good sense, discernment, and the ability to propose solutions to improve oneself and/or society.<sup>22</sup>

In this way, the sense of justice and common sense seek to humanize justice, i.e., to make it less technical and formalist. A good level of emotional intelligence will have an impact on judicial work, particularly in two aspects:

- a. Internal administration of the jurisdictional body since it implies expertise in aspects of life related to family, work, workplace interactions and society, among others. On this point, it is necessary for judges to display maturity, tolerance, respect and empathy toward the different situations they may encounter in their administration. They are also responsible for their area to be effective, capable, competent and creative when dealing with their environment and influencing it to maximize the skills of each member as a key element for a smooth workflow, while removing those who show complete ineptitude in the judiciary. Judges should even be a source of inspiration for others who aspire to be judges and embrace their way of working.

But if the judge is not mentally stable, the results could be devastating. The working environment would reflect stress, insecurity, indifference, incomprehension and perhaps a lack of respect. Unease at the workplace, not a heavy workload, would be an important obstacle to work effectively, efficiently and with quality. This situation would not only be perceived

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<sup>22</sup> AMALIA AMAYA ET AL., *EMOCIONES Y VIRTUDES EN LA ARGUMENTACIÓN JURÍDICA* 70 (Tirant lo Blanch, 2017).

in the office, but it has a “domino effect”. In other words, good behaviors, like empathy, tolerance, responsibility, respect, optimism, and solidarity, or bad behaviors related to mental disorders, stress, intolerance and a lack of respect, among others, can manifest themselves outside the workplace and affect the people close to that worker, leading to a better or worse society, depending on the case.

- b. Administration of justice (rulings). If judges have good levels of emotional intelligence, justice will be better served. This is because the person will not experience any frustration that prevents them from objectively, professionally and impartially studying and analyzing the cases entrusted to them. Similarly, they will be able to put into practice the ethical principles of justice and will have the ability to enhance their skills to do an excellent job given that they will not only apply the law, but their decision will not be out of touch with the social reality, rendering judges empathetic and not merely legal technicians. Their commitment will have a significant impact and will be a key element for harmony and balance within the community.

#### V. JUDGES IN THE CONTEXT OF MEXICAN DOMESTIC LAW AND ITS VIRTUES

With the 2011 amendment to the Mexican Constitution, International Human Rights Law provisions were incorporated into the country’s legal system, as well as the use of interpretative principles, in order to achieve greater and better protection of human rights, which should obviously be reflected in the work of judges and in the drafting of their judgements.

The constitutional reform has had an impact on judges’ actions and on their final decisions.<sup>23</sup> To ensure the administration of justice in accordance with the challenges of legal paradigms, it is clear that judges must not only interpret the legal provision, but also be fully involved with the prevailing social context, be assisted by other branches (besides being a criterion, law is a multidisciplinary science) and be in good health.

Regarding this last point, a systematic analysis of Article 4 of the Political Constitution of the United Mexican States/Mexican Constitution, Article 12, paragraphs 1 and 2, of the International Covenant on Economic, Social and Cultural Rights, as well as Articles 2; 23; 24, Section I; 27, Sections III, IV, VIII and X; 28, 29, 32 and 33 of the General Health Law shows that the Mexican State is obliged to establish conditions that ensure medical assistance and services to all people in the event of illness. Furthermore, it is stipulated that adequate protection of the right to health consists of providing of comprehensive services, which includes the provision of adequate and full treatment, including,

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<sup>23</sup> ISABEL TRUJILLO, IMPARCIALIDAD 30, 69 (UNAM 2007).

if necessary, the supply of basic medicines. Hence, the protection of the right to health includes both physical and mental health.<sup>24</sup>

In this regard, in Court Opinion 8/2019 (10a.) the First Chamber of the Mexican Supreme Court of Justice established that the protection of the right to health should be one of the State's main objectives because it is a fundamental right. It should therefore be considered essential for legal operators, i.e., to ensure their general well-being, as this will impact their physical and psychological integrity, as well as their performance and quality work in the judiciary.

Moreover, a systematic interpretation of Articles 17; 94, eighth paragraph; 99, penultimate paragraph; 100, seventh paragraph; 101 and 128, all of which are in the Political Constitution of the United Mexican States,<sup>25</sup> provides the main guiding principles for judicial work: efficiency, probity, good repute, competence (professional ability), independence,<sup>26</sup> impartiality,<sup>27</sup> objectivity,<sup>28</sup> professionalism,<sup>29</sup> excellence,<sup>30</sup> loyalty, legality and transparency.

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<sup>24</sup> JOSÉ ROBERTO DROMI, *EL PODER JUDICIAL* 55-60 (UNSTA 1982).

<sup>25</sup> DERECHO A LA PROTECCIÓN DE LA SALUD. DIMENSIONES INDIVIDUAL Y SOCIAL, TESIS DE JURISPRUDENCIA, Primera Sala de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Décima Época*, febrero 2019, Tesis P. 1a./J. 8/2019, p.486 (Méx.):

RIGHT TO HEALTH PROTECTION. INDIVIDUAL AND SOCIAL DIMENSIONS. Health protection is an objective the State can legitimately pursue, since it is a fundamental right recognized in Article 4 of the Constitution, which expressly states that every person has the right to health protection. In this regard, we must not lose sight of the fact that this right has an individual or personal dimension, as well as a public or social one. In terms of the protection of the health of individuals, the right to health translates into achieving a certain general well-being composed of the person's physical, mental, emotional and social health, from which stems from another fundamental right, the right to physical and psychological integrity. It is, therefore, clear that the State has a constitutional interest in providing individuals with an adequate level of health and well-being. On the other hand, the social or public dimension of the right to health consists of the State's duty to address the health problems affecting society in general, as well as to establish the necessary mechanisms for all persons to have access to health services. This includes the obligation to take the necessary steps to achieve this end, such as developing public policies, monitoring the quality of health services, and identifying the main problems affecting the public health of the social conglomerate, among others.

<sup>26</sup> Judicial independence is a judge's ability not to be manipulated to obtain political benefits. Judges must decide without yielding to pressures or insinuations of any kind, being guided solely by their free judgment, adhering to the law.

<sup>27</sup> Impartiality is defined as a judge's attitude against influences unrelated to the law, coming from the parties in the processes under their authority.

<sup>28</sup> Objectivity is the judge's capacity to act in accordance with the criteria dictated by the law, regardless of the judge's inclinations or dislikes. It consists of the judge putting all subjective considerations aside; it is the absence of prejudice, which is necessary to attain the level of trust courts must inspire in citizens in a democratic society.

<sup>29</sup> Professionalism is the willingness to perform judicial duties responsibly and seriously, with the appropriate skills and dedication.

<sup>30</sup> According to the Code of Ethics of the Federal Judiciary, excellence should emerge as the ideal profile of a good judge. It is defined as a judge's daily efforts to perfect the following

Additionally, having worked in the Federal judiciary, we would add other virtues that we personally consider essential for legal operators, so they can take on the challenges of their role, such as: empathy, humility, tolerance, common sense and commitment to their job.<sup>31</sup> Judges should not only be interpreters of the principles and values contained in legal systems (the Constitution, international treaties, laws, regulations or other legal systems), but also carry out the onerous task of administering justice; that is to say, to give to each person their due when discussing human rights, aware that these are people who seek to be recognized in terms of their freedoms, but also to be heard, understood and comforted.

## VI. REQUIREMENTS TO BE A FEDERAL JUDGE [MAGISTRADO] IN MEXICO

Article 110 of the Organic Law of the Federal Judiciary sets out the categories pertaining to a Judicial Career.<sup>32</sup> It is therefore important to cite the requirements to become a judge (judge or *magistrado*) based on these provisions:

Article 106. In order to be appointed a circuit judge, it is necessary to be a Mexican national by birth, not to hold another nationality and to be in full enjoyment and exercise of their civil and political rights, to be over thirty-five years of age, to have a good moral standing, not to have been convicted of a felony with a prison sentence of more than one year, to have a legally issued law degree and to have practiced professionally for at least five years, in addition to the requirements contained in this law regarding the judicial career. Circuit judges shall serve for six years in the performance of their duties, at the end of which, if ratified, they may only be removed from their posts for the reasons specified in this law or by forced retirement upon reaching the age of seventy-five.

Article 107. A circuit court clerk must have at least three years of professional experience and meet the other requirements to be a judge, except for the

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judicial virtues: humanism, justice, caution, responsibility, integrity, patriotism, social commitment, loyalty, order, respect, decorum, diligence, perseverance, humility, simplicity, sobriety, and honesty.

<sup>31</sup> This sense entails combining the external senses (sight, touch, taste, smell, and hearing) with the internal senses (memory, imagination, intuition).

<sup>32</sup> The progression in the Mexican judiciary is as follows: i. *Magistrados de circuito*; ii. *Juez de distrito*; iii. *Secretario General de Acuerdos de la Suprema Corte de Justicia o de la Sala Superior del Tribunal Electoral del Poder Judicial de la Federación*; iv. *Subsecretario General de Acuerdos de la Suprema Corte de Justicia o de la Sala Superior del Tribunal Electoral del Poder Judicial de la Federación*; v. *Secretario de Estudio y Cuenta de Ministro o Secretarios de Estudio y Cuenta e Instructores de la Sala Superior del Tribunal Electoral del Poder Judicial de la Federación*; vi. *Secretario de Acuerdos de Sala*; vii. *Subsecretario de Acuerdos de Sala*; viii. *Secretario de Tribunal de Circuito o Secretario de Estudio y Cuenta de las Salas Regionales del Tribunal Electoral del Poder Judicial de la Federación*; viii Bis. *Asistente de Constancias y Registro de Tribunal de Alzada*; ix. *Secretario de Juzgado de Distrito*; ix Bis. *Asistente de Constancias y Registro de Juez de control o juez de enjuiciamiento*; and x. *Actuario del Poder Judicial de la Federación*.

minimum age. Court clerks must be Mexican citizens, in full exercise of their rights, with a legally issued law degree, have a good moral standing and not to have been convicted of a felony with a prison sentence of more than one year. Circuit court clerks shall be appointed in accordance with the provisions applicable to judicial careers.

Article 108. To be appointed district judge, it is necessary to be a Mexican national by birth, not to hold another nationality, to be in full exercise of their rights, to be over 30 years of age, to have a legally issued law degree, to have practiced professionally for at least five years, to have a good moral standing, and not to have been convicted of a felony with a prison sentence of more than one year. District judges shall serve for a period of six years, at the end of which, if ratified or appointed as circuit judges, they may only be removed from their posts for the reasons specified in this law or by forced retirement upon reaching seventy-five years of age.

Article 109. Court clerks must have at least three years of professional experience and meet the same requirements to be a judge, except for the minimum age. Court clerks must be Mexican citizens, in full exercise of their rights, with a legally issued law degree, have a good moral standing and not to have been convicted of a felony with a prison sentence of more than one year. Court clerks of the district courts shall be appointed in accordance with the provisions applicable to judicial careers.

In addition to the above, the interested parties must meet other requirements set for each call for District Judge and/or Circuit Judge appointments, including: use and management of information and communication technology tools to process trials and all their online instances, submitting a list of documents such as: birth certificate, Sole Population Registration Code, diploma and professional license, voting identification card or passport, curriculum vitae drawn up under oath, academic transcripts, proof of five years of work experience, information on any pre-existing condition, a list of family members by affinity and consanguinity who work at the Federal Judiciary.

The list of successful applicants is published and three stages must then be passed. The first step is to answer a questionnaire on technical legal knowledge. Once this phase has been passed with a minimum score of 8.5 (out of 10), the applicant goes on to the second stage, which consists of a drafting a proposed judgment on a case study. If successful, the next step is stage three, which consists of an oral examination on a legal topic listed in the published agenda.<sup>33</sup>

Four sections are required to draw up a judgment: a. preamble (identification information, i.e., file number, name of the plaintiff and/or appellant, name of the judge, name of the clerk, place and date); b. statement of facts (general background information on the main events of the case); c. recitals (information on the analysis: competence, temporality, grievances/concepts of violation and study of the merits of the case, i.e., decision); and, d. operative paragraphs (the meaning of the decision).

<sup>33</sup> See, JAVIER SALDAÑA SERRANO, *VIRTUDES DEL JUZGADOR* 48-51 (SCJN, 2007).

Therefore, the ability to prepare clear, simple, congruent, comprehensive judgments that are easy for society to understand is also required, as these documents are public and must be transparent. It would be of no practical use if judges' decisions were only understood by people with legal knowledge. Thus, one of the new challenges faced by those who dispense justice is to be able to make anyone understand what is written in their judgements. Hence, the legal language used calls for a special skill to know how to express and convey the idea.<sup>34</sup>

In a virtual chat on the Challenges of Justice in Mexico held on August 18, 2020, Chief Justice Arturo Zaldívar of the Supreme Court of Justice and of the Council of the Federal Judiciary spoke about the set of intersecting issues in the administration of justice, noting that:

In practice, federal justice is the final court for disputes and is often the last hope for people to obtain justice. The reform we propose will make federal justice accessible to all, will raise the quality of the judgments, through better training of judges and strengthening the judicial career, and will allow constitutional and human rights legal principles to better permeate the work of all legal operators.<sup>35</sup>

It follows from the above that emphasis has yet to be placed on judges' emotional intelligence as a key component of justice, as will be explained below. Misconduct of federal judicial officials is to be reported to the Council of the Federal Judiciary, the body responsible for preserving and strengthening the autonomy, independence and impartiality of the federal courts and the administrative areas under their jurisdiction, as well as for issuing and implementing regulations, guidelines, directives and policies in the areas of administration, oversight, discipline and judicial careers.

However, this body only hears of the misconduct of members of the Federal Judiciary through a written complaint filed by an employee of the judicial body or by a party involved in the dispute over the jurisdiction of the legal operator in question. Based on the results of this article, it is evident that this is insufficient because at no time during the performance of the public servant's duties is it considered whether they are healthy enough to continue with their work. Unfortunately, such issues are only investigated when a complaint has been made against a public servant, and only if it is well justified does it result in the imposition of an administrative sanction.

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<sup>34</sup> CARLO GUARNIERI & PATRIZIA PEDERZOLI, *LOS JUECES Y LA POLÍTICA* 16 (Taurus, 1999).

<sup>35</sup> *Palabras del Ministro Presidente Arturo Zaldívar en el primer encuentro nacional digital "Desafíos de la Justicia Mexicana"*, SUPREMA CORTE DE JUSTICIA DE LA NACIONAL (2022), available at [https://www.scn.gob.mx/sites/default/files/discurso\\_ministro\\_documento/202008/PALABRAS%20DEL%20MINISTRO%20PRESIDENTE%20ARTURO%20ZALDÍVAR%20EN%20EL%20PRIMER%20ENCUENTRO%20NACIONAL%20DIGITAL%20DESAFÍOS%20DE%20LA%20JUSTICIA%20MEXICANA\\_.pdf](https://www.scn.gob.mx/sites/default/files/discurso_ministro_documento/202008/PALABRAS%20DEL%20MINISTRO%20PRESIDENTE%20ARTURO%20ZALDÍVAR%20EN%20EL%20PRIMER%20ENCUENTRO%20NACIONAL%20DIGITAL%20DESAFÍOS%20DE%20LA%20JUSTICIA%20MEXICANA_.pdf).

It seems to us that this “apparent solution” of imposing an administrative sanction on public servants who have committed wrongdoing is insufficient. If the Council of the Federal Judiciary is responsible for monitoring, it would seem that more disciplinary actions could be taken and more training could be given to legal operators throughout their judicial career, as follows:

- a. To verify whether those who given the opportunity to serve in a judicial or administrative position have stable mental health, as this would prevent corruption, sexual harassment, and harassment at work, among others. The type of personality would reflect the quality of the work and it would also question how the person would handle situations of power and stress, as well as how that could have an impact on judicial duties.
- b. Once the person is actively involved in judicial work, it seems that the only thing that matters in terms of health is the physical aspect. However, it is not enough to address this factor because health is not only made up of physical ailments, but also by mental ones (emotional and psychological). In other words, actions that also have an impact on taking care of emotional intelligence should also be implemented, such as, building habits to organize work, to avoid stress, to eat a balanced diet and do exercise; to know how to manage feelings (sadness, anxiety, anger, etc.).
- c. Even when it is necessary to comply with a certain number of cases, emphasis should be placed on the quality of the work. “Not having a backlog” is not enough because the legal operator must also make the effort, analyze and study each case, thus reflecting their professional commitment by reaching the best possible decision. It is therefore recommended that medical check-ups should include not only physical examinations, but also an additional psychological examination. We should not lose sight of the fact that judicial operators are foremost people, and they are not exempt from experiencing any situation that could lead to depression, alcoholism, insomnia, anxiety or stress. Perhaps achieving optimal health may not only mean medicine for physical discomfort, but also additional treatment to heal mind and feelings.<sup>36</sup>

Accordingly, if those who aspire to serve in the judiciary and of those who seek to ratify their position had their emotional intelligence were protected in terms of emotional intelligence, it would create a culture of greater interest in well-being thus produce a more aware and stable society, thereby ensuring a better justice system. Regarding the considerations in the statements referred to in the preceding section, the various sanctions against judges and

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<sup>36</sup> DANIEL HERRENDORF, *EL PODER DE LOS JUECES* 97-109 (Abeledo-Perrot, 1994).



other public servants who committed “misconduct”, i.e., actions related to sexual and labor harassment, lack of professionalism, leaking and selling confidential information, possible violations like bribery, improper use of information, influence peddling and concealment, as well as notorious ineptitude and carelessness in performing the functions or duties to be performed in a judicial career are noteworthy.<sup>37</sup>

However, such behaviors were not evaluated or considered before granting and/or ratifying public service positions, and that has to do with personality traits as well as personal life histories. It seems to us that it is not enough to meet the requirements laid down in Council of the Federal Judiciary regulations and agreements, like having studies attesting to legal knowledge and work experience, and passing the corresponding examinations for the position, for it would be worthwhile to take the emotional intelligence of such persons into consideration and to determine whether there is any behavior or disorder that would interfere with the ideal vision and determination for the administration of justice.

1. Assuming that the applicant has excellent knowledge of the law and perhaps of other social or scientific fields, in addition to having the experience for the position, if their training took place in an environment of family violence or their personality traits, those would be circumstances which could significantly affect objectivity, impartiality and professionalism when deciding on any issue related to said situation because their life history may be reflected in the case before them and they are called upon have to rule on it. Or when a judge who is not a parent has to settle a family dispute where children are involved, it would be difficult for the judge to empathize with the family’s situation because experience does not only mean having the latest training in the legal field and many years of service in the judiciary, but also being involved with real and social aspects like family living and being the cause of it because in this way there will be and they will be able to identify the bonds between dependents and the many circumstances they must face without losing objectivity, conveying such awareness of the circumstances to the parties and reaching the best decision to resolve the conflict.<sup>38</sup>

## VII. CRITICISM AND CONCLUSION

The art of judging goes beyond shaping judges who only resolve a certain number of cases every week, every month, every year. If so, it would simply be a matter of equipping a presence with artificial intelligence along with that integrates a database with all the legal systems that exist in a certain place and time, and just update them with any modifications so that the law could be applied according to each specific case.

<sup>37</sup> TEPJF, EL SISTEMA MEXICANO DE JUSTICIA ELECTORAL (2003).

<sup>38</sup> LARRY YACKLE, REGULATORY RIGHTS 80 (The University of Chicago Press, 2007).

But is that what makes justice be more effective? I would venture to say no, what humans want when the balance in the realm of their rights is upset and go to some judicial authority searching for justice, is for a person endowed with legal knowledge and virtues to restore balance by issuing a decision with both a human touch and legal excellence. Moreover, people want the entire community to be able to understand that decision because it was drafted in plain language and is in line with the social context.

Being a judge is actually a huge challenge because their work represents plays a fundamental role in conscientiously protecting human rights; that is, seriously taking care of them, trying to understand the full context. To do so, it is not enough to simply interpret the legal provision, but one needs to be fully immersed in the current social reality, to draw on other scientific and social fields and, above all, for judges to be foremost someone who should never lose their humane sensibility.

Health and well-being are basic elements for human beings and society as a whole to fully reach their professional development and harmony. Therefore, it would be prudent to take these aspects into consideration not only for judges, but also for litigants, teachers, other public servants and, taking a broad approach, not to confine it to the field of law, but spread it to all professions.

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