



## Impartiality – The Expression of Independence in the Act of Justice

Liliana CATAN<sup>1</sup>

**Abstract:** *The impartiality of judges is a fundamental principle of a fair justice system, guaranteeing that judicial decisions are taken objectively, without influence or prejudice. This directly depends on the independence of the judge, which ensures his freedom to act without external pressures, be they political, economic or social. The relationship between independence and impartiality is one of interdependence: without independence, impartiality becomes impossible, and without impartiality, independence loses its meaning. Protecting judicial independence is essential to guarantee that judges perform their role without constraints, and this is reflected in increasing public confidence in the justice system. Thus, the impartiality of judges is not only a professional obligation, but also an indispensable condition for the achievement of an authentic act of justice.*

**Keywords:** *impartiality; judge; fair trial; interdependence*

### 1. Introduction

In a state governed by the rule of law, justice is one of the essential pillars of democracy, with the main purpose of ensuring respect for the fundamental rights and freedoms of citizens. In this context, the impartiality of the judge constitutes a cardinal value of the act of justice, being indispensable for guaranteeing a fair trial.

However, this impartiality can only exist authentically under conditions in which the judge benefits from real independence, both in relation to other powers of the state and to any external influences.

The interdependence between independence and impartiality is essential, because a judge lacking independence risks becoming vulnerable to pressure

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<sup>1</sup> Judge at the Supreme Court of Justice of the Republic of Moldova - resigning, Republic of Moldova, Corresponding author: lcatan555@gmail.com.



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or interference, thus compromising the objectivity of his decisions. Therefore, the independence of the judge represents the foundation on which impartiality is built, and its consolidation is vital for maintaining public confidence in the justice system. This complex relationship between independence and impartiality deserves careful analysis, given its importance for the proper functioning of a modern and efficient justice system.

## **2. Impartiality of the Judge – Types of Impartiality**

“Impartiality has been appreciated by the European Court of Human Rights as an autonomous notion, independent of the notion of independence. Thus, this principle prohibits a magistrate of a court of law from taking prior notice, in one capacity or another, of elements in the file, and this is so that he does not feel bound by the first assessment he could have given to the file, which would lead to the violation of human rights. Therefore, the guarantee of human rights emerged as a legal institution and developed both in the internal realities of states and in the framework of interstate relations (Ștefănoaia, 2022, p. 151).

Indeed, it is important that the judge cannot be suspected of already having an opinion on the case before deciding on its merits. Suspicion of a judge is in fact a denial of the judge, since it affects both the judge and the decision pronounced by him (Piersack v. Belgium case).

The impartiality of a judge is so fundamental that it is presumed (Charrier & Chiriac, p. 234).

### **1) Functional impartiality**

- Separation of functions The Court has highlighted a case law based mainly on the nature of the functions of magistrates.

Thus, the principle of separation of the functions of criminal prosecution and trial was formulated and the cumulation of the functions of investigation and trial was condemned, the Court prohibiting, like domestic law, the trial by the same judge of the case at first instance and on appeal.

### **2) Incompatibility of investigative and judicial functions**

In the case of *Cubber v. Belgium*, the Court ruled that “a tribunal is not impartial which, although it is competent to judge the merits of a case, includes the investigating magistrate in its composition”. “The judge must discover the facts of the case without having a preconceived idea about them: the role of an investigating magistrate is precisely to form an opinion on the facts, especially in countries where

intimate conviction reigns”.

- Vertical incompatibility of the function of judge

Approaching the principle of personal impartiality, a magistrate cannot be competent to judge a case on which he has already ruled at a lower level and having the same facts. Thus, the same magistrate does not have the competence to judge, at the same level of jurisdiction, a case based on facts identical or sufficiently related to those he assessed in the previous case (for example, when the magistrate expresses himself regarding the person's behavior or makes an assessment of an act in which the given person is involved, etc.)

- Transversal incompatibility of the function of judge

This principle concerns cases in which a magistrate has judged at two levels of jurisdiction related acts within the framework of different actions. In this case, for the existence of a violation of this principle, the magistrate must, at the lower level, have made an assessment of the acts that are at the origin of the action examined at the higher level (if the acts are of a different nature - a criminal act followed by a disciplinary violation - there will be no violation of this principle).

Thus, the Code of Professional Ethics of Judges also provides for rule no. 5, with the following content: “Any influence on judges when resolving specific cases or giving instructions from the president of the court, his deputy or judges from other courts, when adopting decisions constitutes a serious interference in the administration of justice” (Code of Professional Ethics of Judges, p. 7).

### 3) Personal Impartiality

This principle implies that impartiality is not attached to the position, but to the person of the judge. It prohibits a judge from resolving a dispute since, whatever the reason, he already had knowledge, directly or indirectly, personally or through a third party of the parties, elements or circumstances of the case or expressed, objectively or not, an opinion about it.

These would also be situations in which there are family relations or personal relationships between the magistrates called to judge the cases.

In the case of *Remli v. France*, the Court found that a judge is not impartial if he judges a North African and during a suspension of the hearing makes some racist remarks in a discussion with journalists. The Law on the Status of Judges (Law no. 544 of 1995) stipulates in art. 19 that “the person of the judge is inviolable; inviolability extends to his home and office, the vehicles and means of telecommunications used by him, to his correspondence, personal goods and documents (Law on the status of judges, no. 544-XIII of 20.07.95 // Official Monitor of the Republic of Moldova, 1995, no. 59- 60/664).

So, the judge is not a guarantor of the accused's right to a fair trial, but he is responsible for ensuring that this right, when invoked, is protected at least to the level imposed by the ECtHR. Each judge should bear responsibility for his decision, because often opposite in the same file and often controversial solutions are given. Thus, the question arises: is each judge independent in solutions, in interpreting and applying the law as he wishes? The answer was given by Vitalie Pîrlog: *"Uneven practice is not proof of independence; on the contrary, they do not always realize that they are in a public service and that, for the population to have confidence in justice, they must know what to expect from justice. That is, there should be unitary solutions"* (Pîrlog, 2007, p. 12).

We regret to note that a viable and functional mechanism regarding the financial liability of the judge for issuing an illegal sentence, decision, conclusion or ruling, as well as for serious errors in the application and interpretation of the law, is missing. A provision in this regard is contained in the Law on Government Agent, no. 353 of 2004, in Article 17, paragraph (4): *"The action for restitution of the amounts specified in paragraph (1) shall be filed, under the terms of the law, by the Prosecutor General, within 1 year from the date on which the payment deadline, established by the Court or by the agreement for amicable settlement of the case, expired"*. (Law on Government Agent, No. 353-XV of 28.10.2004 // Official Monitor of the Republic of Moldova, 2004, No. 208-211/932).

The financial liability of a judge for a decision given intentionally contrary to the provisions of the law, as well as in cases where serious judicial errors are committed, intentionally or through serious negligence, is not an interference in the activity of the judge, which would bring an infringement on his independence and impartiality. The financial liability of judges would give additional responsibility to those who, according to the provisions of the Supreme Law, are called to administer justice in the name of the Law.

### **3. Factors Influencing the Relationship between Independence and Impartiality**

The relationship between the independence and impartiality of a judge is complex and dynamic, influenced by a series of internal and external factors. Understanding these factors is essential for identifying vulnerabilities and for strengthening a fair justice system.

Therefore, the factors that influence the relationship between independence and impartiality are:

### 1. External factors

These factors come from the social, political, economic and cultural environment and affect both independence and the perception of impartiality.

a. Political pressures - Direct or indirect political intervention in judicial activity can undermine the independence of judges and, implicitly, their impartiality. Examples include legislative influences that limit the autonomy of judges or the use of positions of power to dictate decisions. Judges who fear political repercussions may make decisions influenced by external agendas, instead of relying on the law and their own conscience.

b. Media pressures and public opinion - The media and public opinion can create expectations or pressures that influence judges' decisions. This can lead to populist decisions, to the detriment of objective justice. Without solid independence, judges can become vulnerable to public opinion pressures, compromising the impartiality of the act of justice.

c. Economic context - Insufficient resources for the judiciary or economic pressures on judges can affect their ability to exercise their function independently and impartially. Lack of resources can increase dependence on other administrative structures, eroding independence and impartiality.

d. Culture and social traditions - In some societies, traditions or social norms may put pressure on judges to act in accordance with community expectations rather than the letter of the law. These external influences can affect perceptions of judicial impartiality and create conflicts between local culture and international standards of justice.

### 2. Internal factors

These are related to the institutional structure of the judicial system, legislation, and the personal and professional quality of judges.

a. Integrity and ethics of the judge - The level of morality, professional ethics, and conscience of the judge is a crucial factor in maintaining impartiality. A judge with weak integrity can be influenced even under conditions of formal independence. Lack of continuous training on ethical standards can compromise impartiality, even if the institutional framework is adequate.

b. Institutional independence - A clear separation of powers in the state is an essential condition for the independence of judges. If this separation is unclear or violated, impartiality can be undermined. A judicial system subordinate to other

branches of state power loses its ability to act impartially.

c. Mechanisms for appointing and promoting judges - The way judges are appointed and promoted directly influences their independence. Politicized or subjective appointments can lead to dependency on those who control the appointment process. Lack of transparency in appointments or promotions can create obligations towards certain groups or individuals, affecting impartiality.

d. Disciplinary control and accountability of judges - The existence of disproportionate or abusive control mechanisms can limit the independence of judges, making them reluctant to make correct but unpopular decisions. Fear of unjustified disciplinary sanctions can affect both independence and impartiality.

### 3. Systemic factors

These include structural or legislative problems that affect the justice system.

a. Unclear or contradictory legal framework - A legal framework that does not provide clear guarantees for the independence of judges can create confusion and vulnerability. Judges may interpret the law under external influences, which affects impartiality.

b. Resources and funding of the judiciary - Underfunding of the judiciary can lead to dependence on other institutions or to poor working conditions, affecting the autonomy of judges. Limited resources can compromise the quality of justice and the perception of impartiality.

Therefore, the relationship between judicial independence and impartiality is influenced by multiple factors, each of which has a significant impact on the way justice is perceived and delivered. Strengthening this relationship requires:

1. Clear legislative measures to protect independence and promote professional ethics.
2. Eliminating external influences on the judiciary.
3. Investment in education and continuous training of judges.
4. Creating mechanisms for appointment, promotion and accountability based on transparency and merit.

By addressing these factors, a robust judicial system can be built, capable of guaranteeing both independence and impartiality, essential for fair justice.

#### 4. Conclusion

Judicial independence is the foundation of fair and equitable justice, and impartiality is the concrete expression of this independence. A judge who acts independently of external influences – be they political, social or economic – is better placed to demonstrate impartiality in adjudicating cases.

This relationship highlights the fact that impartiality cannot exist without independence, but also that independence is meaningless if the judge does not demonstrate objectivity and neutrality. Therefore, protecting and strengthening judicial independence are essential for guaranteeing impartiality and, implicitly, for maintaining public confidence in the justice system.

Thus, the impartiality of the judge becomes not only a moral and professional requirement, but also a legal imperative, being indispensable for the achievement of the act of justice in a state governed by the rule of law.

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