

Scientific Journal of Applied Social and Clinical Science

JUDGE OF GUARANTEES: SOCIAL PRINCIPLES

Francisco Valadares Neto

Attorney. Speaker. Writer. Bachelor of Law (ILES/ULBRA, RO). Specialist in Public Law (FACIP). PhD in Legal and Social Sciences by Universidad Del Museo Social Argentino, Buenos Aires-AR. Currently, in addition to his activities as a lawyer, he holds the position of Legal Attorney for the Municipality of Brasília – Acre

Sérgio Nunes de Jesus

Effective Professor at: Instituto Federal de Educação, Ciência e Tecnologia de Rondônia – IFRO, campus Cacoal. PhD in Language Sciences (UNICAP, PE). Doctor in Educational Sciences (UTIC). Master in Linguistics (UNIR, RO). He is studying for a Master's degree in Science in International Business (Must University, Flórida-EUA). Graduated in Languages (UNEB, BA)

Bruna Caroline Farias Alves

Specialist in Material Law and Criminal Procedure from: Faculdade Conhecimento e Ciência (FCC). He is specializing in Criminal Law and Criminology (Centro Universitário Celso Lisboa). He is specializing in International Law (Centro Universitário Celso Lisboa). Bachelor of Law by: Faculdade Pan Amazônica (FAPAN, PA). He is studying for a degree in Nursing from: Faculdade Estácio de Sá (Estácio). He is part of the research group Criminal Law and Democracy (DPD) - CNPq-UFPA, Belém campus. Legal Director of the research group Academic League of Forensic Sciences - LIACF-UFPA, Belém campus

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Abstract: The institute of the guarantee judge, a new statute introduced by Law 13,964/19, is the subject of discussion in this article. In this context, the general objective is to clearly illustrate, with facts and justifications, the ways in which the institute strengthens and makes the Brazilian criminal justice system more aligned with the procedural rules established by the 1988 Constitution. In addition to supporting the rule that Pertinent evidence related to the development of the judge's conviction must be presented in opposing court proceedings. These considerations require a discussion of criminal procedural concepts, procedural systems and their historical development. Based on the research carried out, we agree with the statement that the institution of the judge of guarantees does not contradict moral standards, but emphasizes the need to implement impartiality in the nation's judicial system. As a result, it is up to the Judiciary to take on the challenge of adopting this new procedural figure, viewing it as something very beneficial and preparing the ground for its full realization. As it is a completely theoretical topic, the use of bibliographic processes is emphasized, as well as doctrinal and jurisprudential mechanisms.

Keywords: 1. Judge of Guarantees; 2. Brazilian Criminal Procedural System; 3. Constitutional Principles.

UNDERSTANDING THE PROBLEM...

Inserted into the Brazilian criminal procedural framework through Federal Law number 13,964, of December 24, 2019 (Anti-Crime Package), the figure of the judge of guarantees was created in order to control the legality of the criminal investigation and protect and guarantee the individual rights of the person (article 3-B, CPP - Criminal Procedure Code).

Article 3º-B. The guarantee judge is responsible for controlling the legality of the criminal investigation and for safeguarding individual rights whose franchise has been reserved for prior authorization by the Judiciary, with special responsibility for: (...). (Excerpts and omissions highlighted by us).

The implementation of guarantees by judges, for their defenders - in short, will favor the speed and quality of investigations and, above all, will preserve the impartiality of the magistrate judging the case.

Opponents of the guaranteed judge, in turn and despite other considerations, maintain that the institute will have a significant impact on the Brazilian public budget and that the number of magistrates is insufficient to fulfill the institute's objectives.

All arguments are valid and solid.

The fact is that the figure of the guarantee judge is a Brazilian legal reality.

The judge of guarantees was declared constitutional by the Federal Supreme Court (STF) which, in the judgments of ADIs 6,298, 6,299, 6,300 and 6,305, determined the obligation of its installation throughout the Brazilian territory within 12 (twelve) months, this period being possible be extended for the same period.

For the majority of ministers of the Excellency Court, the institution of the judge of guarantees will ensure respect for fundamental human rights and will significantly reduce the risk of bias in judgments.

Even though its institution has already been decided by the Major Court, some considerations must be made regarding the figure of the judge of guarantees, especially with regard to the existence of legal mechanisms that inhibit the much-vaunted judicial partiality, one of the pillars for the implementation of the institute in the national legal system.

JUDGE OF GUARANTEES – SOCIAL PERSPECTIVES UNDER CONSTRUCTION

The magistrate with exclusive authority to act on all issues that have implications in the investigation phase is known as a judge of guarantees, leading to an exclusion criterion for that same judge in relation to the procedural phase, preventing him from acting in the future phase. Clearly incompatible with the “new process” is the institute of “prevention”. The “new Brazilian criminal process” is unquestionably incompatible.

Article 3-B of the CPP (Criminal Procedure Code), which establishes the prerogatives of the guarantee judge and was introduced into the Brazilian legal system by Law Number 13,964/2019, is a national innovation, but has already been established for decades in several countries, including some “Latin “. As demonstrated above, the judge’s role is to ensure that the rights of the accused are observed in the process.

As guarantees and impunity are frequently and incorrectly confused in Brazil, the nickname chosen was not the best. Instead of impunity, it might have been more appropriate to use the expression ‘investigative judge’, given the institute’s prejudices. It must be noted that the title chosen by Brazil is identical to the nomenclature adopted by Chile, and that the institute has characteristics and attributions similar to those of the Criminal Procedure Codes of many other countries in the world, including Portugal, Paraguay and Uruguay.

The guarantee judge is impartial and impassive; he responds only to invocation. When necessary, the accused uses his defense while the Public Prosecutor’s Office and the police conduct investigations into the facts. He then decides whether or not to take measures that restrict fundamental rights that are subject to the reservation of jurisdiction, such as searches and seizures, breaches of

confidentiality, precautionary arrests, security measures, etc. He also acts as protector of the law, the accuser’s rights and their guarantees.

The guarantee judge must act in the pre-procedural phase according to the rules of the 2019 reform, but it created a hybrid construction by allowing him to act until the procedural moment specified in article 399 of the CPP (Criminal Procedure Code); in other words, in addition to receiving or rejecting the accusation or complaint, he can also ask the defendant to present a preliminary defense. When you have decided whether or not to grant summary acquittal, you will schedule the pre-trial and trial hearing. If you still decide to pursue the case, he will take that action.

THE DUTY TO MOTIVATE DECISIONS IS ONE OF THESE MECHANISMS

Before tackling the topic, the existence of legal mechanisms that inhibit judicial bias, some considerations about impartiality, subjectivity and neutrality are imperative.

Any person’s intention of impartiality is commendable; however, it is difficult to be effective: human beings, in their private and professional lives, suffer diverse influences (cultural, family, personal, educational, social, etc.) that, inevitably, are formative of different feelings in the person (emotions, convictions, preferences, compassion, love, etc.).

When subjected to any situation, man, due to his influences and feelings, has pre-established concepts and opinions on issues submitted to him, inevitably demonstrating his preferences, empathy and antipathies, degree of acceptance and disapproval of conduct.

Therefore, the admission of the person’s unconditional neutrality is not credible.

If the previous premise is true - it is believed to be true -, in all evidence, the foundation that the creation and installation of the judge

of guarantees will eliminate the partiality of any magistrate in the application of criminal law falls to the ground.

The impartiality of magistrates (of guarantee or instruction), in general terms, must be characterized by the application of the law in the face of the evidence assigned to it, abstracting from any internal or external motivation in the exercise of their functions.

The judge, even if he has personal views on a given subject, will only be able to state law and justice taking into consideration the evidence submitted to him, applying the law to the case analyzed and justifying (motivating) his decisions.

THE REASONS FOR DECISIONS ELIMINATE BIAS

The duty to provide reasons is included in the Federal Constitution of 1988 (article 93, IX) which expressly declares that all decisions of the Judiciary will be motivated, penalty of procedural nullity:

Article 93: Complementary law, initiated by the Federal Supreme Court, will provide for the Statute of the Judiciary, observing the following principles: (...)

IX all judgments by the bodies of the Judiciary will be public, and all decisions will be substantiated, under penalty of nullity, and the law may limit the presence, in certain acts, to the parties themselves and their lawyers, or only to them, in cases in which that the preservation of the right to privacy of those interested in secrecy does not harm the public interest in information; (...). (Excerpts and omissions highlighted by us).

Justifying a judicial decision means saying that the judge must analyze all factual and legal issues placed for judgment (article 381, CPC - Civil Procedure Code, combined with article 489, CPC - Civil Procedure Code, and must demonstrate the need and adequacy of the measure imposed or the invalidation of

the act (article 20, LINDB):

CRIMINAL PROCEDURE CODE

Article 381. The sentence will contain:

I - the names of the parties or, when not possible, the information necessary to identify them;

II - a succinct statement of the accusation and defense;

III - indication of the factual and legal reasons on which the decision is based;

IV - indication of the articles of law applied;

V - the device;

VI - the date and signature of the judge. (Excerpts highlighted by us).

CIVIL PROCEDURE CODE

Article 489. The following are essential elements of the sentence:

I – The report, which will contain the names of the parties, the identification of the case, with a summary of the request and defense, as well as a record of the main occurrences that occurred during the progress of the process;

II – The grounds, in which the judge will analyze questions of fact and law;

III – The device, in which the judge will resolve the main issues that the parties submit to him. (Excerpts highlighted by us).

LAW OF INTRODUCTION TO BRAZILIAN LAW STANDARDS

Article 20. In the administrative, controlling and judicial spheres, decisions will not be made based on abstract legal values without considering the practical consequences of the decision.

Single paragraph. The motivation will demonstrate the need and adequacy of the measure imposed or the invalidation of an act, contract, adjustment, process or administrative rule, including in light of possible alternatives. (Excerpts highlighted by us).

In addition to expressing the meaning of the basis of a judicial decision, the national legal framework points out that it is not motivated, among other hypotheses, the decision that does not explain its relationship with the cause or the issue decided, that does not explain the concrete reason for incidence to the case analyzed and which disagrees with precedents or jurisprudential precedents.

In the criminal field, this is stated in the legal command of §2 of article 315, of the Code of Criminal Procedure:

Article 315. The decision to decree, replace or deny preventive detention will always be motivated and substantiated.

(...)

§2 Any judicial decision, whether interlocutory, sentence or judgment, is not considered to be well-founded if:

I - limit itself to indicating, reproducing or paraphrasing a normative act, without explaining its relationship with the cause or issue decided;

II - employ indeterminate legal concepts, without explaining the concrete reason for their impact in the case;

III - invoke reasons that would justify any other decision;

IV - not face all the arguments deduced in the process capable of, in theory, invalidating the conclusion adopted by the judge;

V - limit oneself to invoking a precedent or summary statement, without identifying its determining grounds or demonstrating that the case under trial fits those grounds;

VI - fail to follow the summary statement, jurisprudence or precedent invoked by the party, without demonstrating the existence of distinction in the case under trial or the overcoming of understanding. (...). (Excerpts and omissions highlighted by us).

In the same sense, the Code of Civil Procedure - of subsidiary application to criminal proceedings - also enshrines the postulate of the motivation of decisions, noting that, among other hypotheses, a decision that does not explain its relationship with the cause or the issue decided and that does not explain the specific reason for the incidence of the case analyzed:

Article 10. The judge cannot decide, at any level of jurisdiction, based on grounds on which the parties have not been given the opportunity to express themselves, even if it is a matter on which they must decide *ex officio*. (Excerpts highlighted by us).

Article 11. All judgments by the bodies of the Judiciary will be public, and all decisions will be substantiated, under penalty of nullity. (...). (Excerpts and omissions highlighted by us).

Article 371. The judge will assess the evidence contained in the case, regardless of the subject who promoted it, and will indicate in the decision the reasons for his conviction. (...). (Excerpts and omissions highlighted by us).

Article 489. The following are essential elements of the sentence:

(...)

II - the grounds, in which the judge will analyze questions of fact and law;

(...)

§1 Any judicial decision, whether interlocutory, sentence or judgment, is not considered to be well-founded if:

I – to be limited to indicating, reproducing

or paraphrasing a normative act, without explaining its relationship with the cause or issue decided;

II - employing indeterminate legal concepts, without explaining the concrete reason for their impact in the case;

III - invoke reasons that would justify any other decision;

IV - not face all the arguments deduced in the process capable of, in theory, invalidating the conclusion adopted by the judge;

V - **limit itself to invoking a precedent or summary statement, without identifying its determining grounds or demonstrating that the case under trial fits those grounds;**

VI - **fail to follow the summary statement, jurisprudence or precedent invoked by the party, without demonstrating the existence of distinction in the case under trial or the overcoming of understanding.** (...). (Excerpts and omissions highlighted by us).

Eliminating any doubts about the duty to motivate judicial decisions, the Federal Supreme Court (STF), with general repercussion, expressed that it demands the justification of any judicial decision, even if it is not necessary to examine in detail the major issues raised by the parties:

Topic 339. STF (Federal Supreme Court). The article 93, IX, of the Federal Constitution requires that the judgment or decision be substantiated, even if succinctly, without determining, however, the detailed examination of each of the allegations or evidence.

As it can be seen from the previous arguments, without any doubt, it is clear that the impartiality of any magistrate (of guarantee or investigation) is ensured through his duty to motivate decisions.

If any magistrate is oblivious to this stony command, the judicial procedure must be

declared null and void, with the understanding of the Federal Supreme Court (STF) and the Superior Court of Justice (STJ) being broad and unanimous in this sense:

HABEAS CORPUS — JUDGMENTS GIVEN IN APPEAL AND DECLARATORY MOTIONS — IMPUTATION OF DOUBLE-QUALIFIED THEFT — DECISIONS THAT DID NOT ANALYZE THE ARGUMENTS RAISED BY THE DEFENDANT'S DEFENSE — CONSTITUTIONAL REQUIREMENT TO MOTIVATE DECISION-MAKING ACTS — INFRINGEMENT — NULLITY OF THE JUDGMENT - REQUEST TO DEFER GONE IN PARTICLE THE BASIS CONSTITUTES THE ASSUMPTION OF LEGITIMATEITY OF JUDICIAL DECISIONS. — **The justification for decision-making acts qualifies as a constitutional assumption of validity and effectiveness of decisions issued by the Judiciary. Failure to comply with the duty imposed by article 93, IX, of the Political Charter, precisely because it translates into a serious transgression of a constitutional nature, affects the legal legitimacy of the decision-making act and irrevocably generates the consequent nullity of the judicial pronouncement.** Precedents. THE JUDICIAL DECISION MUST ANALYZE ALL ISSUES RAISED BY THE DEFENDANT'S DEFENSE. — The decisional act is null and void, which, in breach of the constitutional mandate that imposes on any judge or Court the duty to justify the sentence or ruling, fails to examine, to the significant detriment of the defendant, the relevant basis on which it is based the technical defense of the accused. (STF - Federal Supreme Court. HC 74073, reporting minister CELSO DE MELLO, First Panel, judged on 05/20/1997). (Excerpts highlighted by us).

CRIMINAL PROCEEDINGS. HABEAS CORPUS. DOUBLE CIRCUMSTANCED THEFT. JUDGMENT OF THE APPEAL. JUDGMENT THAT ADOPTS THE MOTIVATION CONTAINED IN THE FIRST-DEGREE JUDGMENT AND

IN THE OPINION OF THE PUBLIC PROSECUTOR AS REASONS FOR DECIDING. BASIS PER RELATIONEM NOT SET UP. ABSENCE OF BASIS FOR THE JUDGMENT. ABSOLUTE NULLITY RECOGNIZED. ORDER GRANTED. 1. The need to motivate judicial decisions is justified in that they can only be controlled or challenged if the reasons that justify them are duly presented, which is why, given the intelligence of article 93, IX, of the Carta Maior, judicial decisions devoid of autonomous justification are revealed to be null and void. 2. The Superior Courts of Justice have consolidated jurisprudential understanding in the sense that the collegial judgment that ratifies the reasons for deciding adopted in the first-degree sentence does not appear to be devoid of motivation, as long as there is a transcription of it in the judgment, using the so-called reasoning per relationem. 3. In casu, however, the simple remission made by the Reporting Judge in the vote leading to the ruling delivered on appeal, **it does not allow us to determine what were the reasons or foundations of the conviction sentence or the ministerial opinion incorporated into its decision, and it is also not possible to determine whether all the allegations formulated by the defense in the aforementioned appeal were satisfactorily rejected, resulting in the nullity of the judgment..** Precedents: HC number 219572/SP, Electronic justice diary of 11/05/2012 and HC number 210981/SP, Electronic justice diary of 11/21/2011. 4. Order of habeas corpus granted to, recognizing the nullity of the hostile judgment due to lack of motivation, determine that a new trial of Criminal Appeal number 0047834-73.2005.8.26.0050 be carried out, promoting the due justification of the decision. (STJ Superior Court of Justice - HC 220.562/SP, Rel. Minister ALDERITA RAMOS DE OLIVEIRA (JUDGE CALLED OF TJ/PE), SIXTH PANEL, judged on 02/05/2013, Electronic justice diary 02/25/2013). (Excerpts highlighted by us).

Not substantiating a judicial decision,

therefore, is an attack on the Democratic State of Law itself, founded, among others, on the principle of legality with the aim of guaranteeing and protecting the fundamental rights of the human person.

Legality materializes through the postulates of due legal process (article 5, LIV, Federal Constitution /1988) and its consequences, the contradictory and broad defense (article 5, LV, Federal Constitution/1988):

Article 5 Everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, under the following terms:

(...)

LIV - no one will be deprived of their freedom or their property without due legal process;

LV –litigants, in judicial and administrative proceedings, and defendants in general are guaranteed contradictory and full defense, with the means and resources inherent to it; (...). (Excerpts and omissions highlighted by us).

The principle of due legal process (article 5, LIV, Federal Constitution /1988) establishes the mandatory existence of a legally constituted process for the deprivation of rights linked to freedom and property, that is, any agent can only be prosecuted and judged in accordance with the law.

The postulates of contradictory and broad defense (article 5, LV, Federal Constitution /1988) guarantee the agent the right to contradict and defend himself using the means and resources made available to him by the Brazilian legal system.

In addition to being prosecuted and judged through a legally established procedure and with the exercise of the prerogatives of adversarial and full defense, any accused must

be judged by an independent and impartial authority, as enshrined in the Universal Declaration of Human Rights:

Article 10 - everyone has the right, in full equality, to have their cause fairly and publicly judged by an independent and impartial court that decides their rights **and obligations or the reasons for any accusation in criminal matters against them. deducted.** (Excerpts highlighted by us).

IMPARTIALITY: DISINTERESTED PERFORMANCE OF THE JUDGE IN THE TRIAL

The external action of the judge's personal feelings - of guarantees or instructions - in the judgment of the case will occur when the formation of his conviction is based on the assessment of the evidence produced under the scrutiny of the judicial adversary, as previously provided for in article 155, of the Code of Criminal proceedings:

Article 155. The judge will form his conviction through the free assessment of the evidence produced in judicial proceedings, and cannot base his decision exclusively on the information collected in the investigation, with the exception of precautionary, non-repeatable and anticipated evidence.

Single paragraph. Only with regard to the status of people will the restrictions established in civil law be observed. (Excerpts highlighted by us).

THE REASONS FOR DECISIONS, IN CONCLUSION, INHIBIT BIAS

The conception of impartiality of the magistrate, the basis used for the creation and implementation of the figure of the guarantee judge in the Brazilian criminal procedural system, does not subsist.

Human subjectivity is related to our ability

to empathize (or not) which allows us to perceive different perspectives, expanding our understanding of a given subject.

The human being, in any area of activity and in his private life, suffers diverse influences (cultural, family, personal, educational, social, etc.), and it is not credible, therefore, to admit neutrality without the manifestation of the particularities of each person.

Human subjectivity, therefore, does not lead to partiality, insofar as:

“(...) Personal convictions of a judge do not constitute, per se, a violation of impartiality. A judge’s opinion and beliefs, which are acceptable, must be distinguished from bias, which is unacceptable. (...)”. (United Nations. Comments on the Bangalore Principles of Judicial Conduct. Brasília: Federal Justice Council, 2008. P. 68). (Excerpts and omissions highlighted by us).

WHAT LEADS TO BIAS IS JUDGING IN DISAGREEMENT WITH THE EVIDENCE

In this particular aspect and also corroborating the previous statements, it is certain that the Federal Constitution of 1988 recognizes the institution of the jury, ensuring it the fullness of defense, the secrecy of votes, the sovereignty of verdicts and the competence to judge intentional crimes against the life:

Article 5th. (...)

(...)

XXXVIII - the institution of the jury is recognized, with the organization that gives it the law, ensuring:

- a) the fullness of defense;
- b) the secrecy of votes;
- c) the sovereignty of verdicts;
- d) the competence to judge intentional

crimes against life; (...). (Excerpts and omissions highlighted by us).

Particularly the sovereignty of the jury's decisions, Brazilian courts have established the understanding that their decisions, even if not motivated by the jurors, are not absolute and irrevocable, and higher courts may revoke them when the total dissociation of the jurors' conclusion with the evidence presented in plenary:

Summary: REGIMENTAL APPEAL IN HABEAS CORPUS. JURY COURT. DECISION MANIFESTLY CONTRARY TO THE EVIDENCE OF THE RECORD (ARTICLE 593, III, d, OF THE CPP - Criminal Procedure Code). NON-VIOLATION OF THE CONSTITUTIONAL PRINCIPLE OF THE SOVEREIGNTY OF VERDICTS. IMPOSSIBILITY OF RE-EXAMINING FACTS AND EVIDENCE. 1. **The possibility of appeal, provided for in article 593, I, "d", of the Code of Criminal Procedure, when the jury's decision is manifestly contrary to the evidence in the case, it is not incompatible with the Federal Constitution, since the new decision will also be given by the Jury Court.**

Precedents 2. Examining the evidentiary support, in a way that undermines the Court of Appeal's understanding, is a measure incompatible with the narrow limits of habeas corpus. 3. Regulatory appeal that is dismissed." (HC 142621 AgR, Rapporteur: ALEXANDRE DE MORAES, First Panel, judged on 15/09/2017, ELECTRONIC PROCESS Electronic justice diary-222 DISCLOSED 28-09-2017 PUBLIC 29-09-2017). (Excerpts highlighted by us).

The jury's decisions, therefore, are not absolute. To think differently is to deny the validity of §3 and paragraph "d" of item III of article 593 of the Code of Criminal Procedure:

Article 593. An appeal may be filed within 5 (five) days:

(...)

III - of the decisions of the Jury Court, when:

(...)

d) **the jury's decision is clearly contrary to the evidence in the case.**

(...)

§3º **If the appeal is based on III, d, of this article, and the court is convinced that the jury's decision is manifestly contrary to the evidence in the case, it will grant it to subject the defendant to a new trial;** However, for the same reason, a second appeal is not permitted. (...). (Excerpts and omissions that were highlighted by us).

IT IS REAFFIRMED THAT THE REASONS FOR DECISIONS INHIBIT PARTIALITY

To curb judicial bias, regardless of any standard – which includes the guarantee court – there are mechanisms made available to those under jurisdiction to combat it.

The postulate of the reasons for judicial decisions is one of them.

THE PRINCIPLE OF IMPARTIALITY AND THE JUDGMENT OF GUARANTEES

The idea of impartiality naturally evolved to be recognized as something that is not partial, that appreciates and judges without having equitable ties, and that is judicious in its treatment in the common and current terminology of the Portuguese language.

It is imperative to constantly seek the complex guarantee of the judge's objective and subjective impartiality, in order to increase the effectiveness and applicability of the new procedural system proposed by law 13,964/2019. It is not enough to have a judge; the judge must meet minimum requirements so that he can perform his role. According to Lopes Junior (2021, p. 76).

The impartiality of the judicial body is a “supreme principle of the process” and, as such, essential for its normal development and obtaining a fair judicial distribution. On the basis of impartiality, the process is structured as a heteronomous type of distribution (Lopes Junior, 2021, p. 76).

The principle of impartiality cannot be reduced to a concept; it must be examined in light of the constitutional framework and supported by other principles rooted in the system of laws currently in force. The set of values, rights and guarantees that make up due legal process inherently includes impartiality.

Therefore, it must be understood as an implicit constitutional principle if the principle of impartiality is or is part of the concept of due process, which is specifically declared in the present in force as a fundamental principle of democratic judicial and administrative trials.

Despite this, it must be noted that only the accusatory approach guarantees objectivity. Therefore, impartiality will only be achieved when the magistrate is removed from investigative/instructive activity, in addition to the original separation of the roles of accuser and judge. Those who think that the constitution of the adversarial system in the modern constitutional system in the current constitutional model is sufficient must understand this as the fundamental reality.

Subjective impartiality is the absence of “prejudgments” on the part of the specific judge who has knowledge of a particular matter.

If a judge is objectively impartial, this means that he is supported by sufficient guarantees to dispel any legitimate doubts about his objectivity.

By normatively observing a series of hypotheses in which it is assumed that the magistrate is partial in the treatment of the actors in the process, the Brazilian procedural legislator, both in the civil and criminal spheres, went beyond the simple concept

of impartiality. A chapter on exceptions, “suspicion” and “impediment” is provided for in the Code of Civil Procedure, especially in articles 144 and 145, and in articles 112, 252 and 254, of the Code of Criminal Procedure.

The grounds for impeachment are described in article 144 of the Code of Civil Procedure, which states that a judge cannot exercise jurisdiction if it is difficult to maintain objectivity. When impartiality cannot be guaranteed, the judge cannot exercise jurisdiction. In the case of refusal or inaction, this gives rise to the possibility for the party to claim voluntary or exceptional jurisdiction.

From the legislator’s point of view, it is impossible for the judge to participate and act as an impartial magistrate free from pre-judgment in these situations, as his decision would not, at least in theory, be based on a judgment of subjective neutrality. This is due to the fact that the judge is extremely close to the interests at stake in the dispute or legal action. The case is not one of obstruction, but rather of suspicion, a failure linked to the judge’s particular issues, when there is suspicion that the judge may be biased towards one side or the other of the case.

In this regard, it is important to emphasize that the legislator treated the two types of exceptions differently, one of which, suspicion, potentially constitutes a remediable defect whenever it is not challenged in a timely manner by the interested party, and the other, a relative nullity. Intimate, sometimes personal, circumstances that appear to be less closely related to the interests being pursued and also show a reduced danger of contamination in the specific case are linked to the judge’s skepticism. In these terms, there is only a relative presumption of bias (*juris*) in the case of suspicion and, once the impediment has been discovered, there is an absolute presumption (*juris et de jure*) of contamination of the judge.

The CPP (Criminal Procedure Code) also includes in its provision's theories of cause of suspicion and obstacle, in accordance with the civil law bias. These exceptions can be found in article 252 of the code. The bibliographical comments on Nucci's observations on the subject are as follows:

A judge who is partial is considered prevented from acting, a situation presumed by law, in specific cases. Therefore, the hypotheses provided for in this article, which are objective in nature, indicate the impossibility of exercising jurisdiction in a given process. Its infraction implies the non-existence of the acts performed (Nucci, 2014, p. 332).

The proceedings are tainted because the judge may be influenced by suspicion. Essentially, the fundamental principles of due process, judicial independence and cognitive biases were violated by this conduct, not only with respect to the parties, but also with respect to the main issue of the dispute. Furthermore, Nucci claims that the list of elements that raise suspicions in the article is not exhaustive. This

is an example list; it is not complete.

Still on the subject, the supreme ideal of impartiality requires respect for all other principles, especially the right to a fair trial and a fair procedure. The idea of an impartial judge aims to accomplish the same things that have already been vehemently proven by the procedural legal rule of abstention and the necessary refusal of the judge to act, that is, it legitimizes any legal position that prohibits the participation of a judge who demonstrates "partiality negative" and it is highly valid to establish rules that require a favorable attitude on the part of the judge.

However, to formalize a fair trial and sentence, it is important that the judge also takes into consideration, in his decision the differences in social, economic and legal circumstances, which are and are intrinsic to the legal procedural relationship, the economic and cultural considerations that are intrinsic to the legal system. The judge will be in a position to be morally and ethically neutral when he is aware of all these aspects and how they relate to the "procedural equation".

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