

GUARANTEEING THE INDEPENDENCE OF THE JUDGE IN CRIMINAL PROCEEDINGS

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Abstract: *The changes that have occurred domestically have mainly taken into account the changes that have occurred in EU law regarding the applicable domestic law, starting from the idea that the legal order applicable in each EU Member State is subsumed under the legal order at European level (Corsei & Ștefănoaia, 2022, p. 98).*

Guaranteeing the independence of the judge in criminal proceedings is the foundation of a fair and equitable judicial system. By ensuring this independence, the fundamental rights of the parties involved are protected and it is guaranteed that judicial decisions are taken exclusively on the basis of the law and evidence, without being influenced by external factors. This contributes to maintaining a fair trial, thus protecting the principles of the rule of law and democracy. In conclusion, the independence of the judge is essential for ensuring a trustworthy judicial system, which guarantees justice for all citizens, without discrimination or external interference.

Keywords: *independence; law, principle; judicial system.*

Introduction

The independence of the judge is one of the fundamental principles of a fair and equitable justice system, essential for ensuring a transparent, impartial and just criminal trial. In the context of criminal proceedings, this means that judges must be able to make decisions based solely on the law and the facts, without being influenced by external

factors such as political, economic or social pressures. Guaranteeing this independence is crucial for protecting the fundamental rights of citizens, as well as for maintaining public confidence in the judiciary.

Without such a guarantee, criminal proceedings risk becoming unfair and trust in the rule of law could be eroded. Therefore, the international legal order and the constitutions of democratic states place particular emphasis on protecting the independence of judges. In Romania, for example, this independence is guaranteed by the country's Constitution, criminal legislation and various international mechanisms, such as the European Convention on Human Rights. This principle is based on the idea that justice must be free from any external influence, thus ensuring that decisions are made objectively and fairly, in the interest of all parties involved in the process.

1. Protection of the status of judges

The protection of the status of judges is an essential concept within a democratic and fair justice system. It refers to the set of rights and guarantees that ensure the autonomy, independence and impartiality of judges, allowing them to exercise their function without being subject to external pressure or undue influence. The protection of the status of judges is fundamental to guaranteeing a fair trial and maintaining public confidence in the judicial system. The protection of the status of judges is essential to ensuring an independent, impartial and fair justice system that protects the fundamental rights of citizens and contributes to the functioning of the rule of law.

Therefore, the protection of the status of judges is a fundamental principle of the rule of law and represents an essential guarantee for the functioning of a fair, impartial and independent judicial system. Judges must have a status that protects their freedom to take decisions without being influenced by external factors, so as to ensure a fair trial for all parties involved. In this sense, the protection of the status of judges is achieved through a set of legal and institutional mechanisms aimed at their independence and integrity.

Independence of the judge (Pop, 2021, p. 10) is a fundamental principle of a fair, equitable and functional judicial system. In criminal proceedings, the independence of judges is essential for ensuring a fair trial and for protecting the fundamental rights of the parties involved. Guaranteeing the independence of judges involves a complex set of mechanisms and principles that protect judges from external influences, allowing them to make decisions based solely on the law and evidence. In the detailed analysis of guaranteeing the independence of judges in criminal proceedings, several essential aspects are addressed.

2. Independence of judges in criminal proceedings

In criminal proceedings, the independence of judges refers to their ability to make decisions objectively, without being influenced by external factors, such as political, economic or social authorities. This principle is regulated by the Constitutions of most democratic states and by international conventions, being a pillar of the rule of law.

The independence of the judge in criminal proceedings involves two important dimensions:

- **Decisional independence:** The judge must be free to make a decision based exclusively on the law and the objective assessment of the evidence, without external influences.
- **Personal independence:** Judges must be protected from any personal or external pressure that could affect their ability to issue an impartial decision.

3. Mechanisms for protecting the independence of the judge

The protection mechanisms are:

A. Irremovability of the judge

Irremovability is one of the fundamental guarantees of the independence of the judge, which prevents him from being changed or

removed from office without a well-founded reason, such as a conviction or a disciplinary sanction. The irremovability of the judge ensures that he cannot be subjected to political or economic pressure to make decisions favorable to a party or an authority. Also, the transfer of judges to another court must be carried out in a transparent and motivated manner, according to legal procedures.

B. Ensuring the protection of the status of judges through higher courts

Higher courts and independent judicial institutions, such as the Superior Council of Magistracy (CSM) in Romania, play a crucial role in protecting the status of judges. These institutions are responsible for protecting the independence of judges, monitoring compliance with legal procedures and managing the career of judges, such as promoting, sanctioning and guaranteeing their fair status. The CSM has the role of intervening when there are external pressures that may influence the work of judges.

C. Protection from external influences (political, economic, media)

Judges must be protected from external pressures, including political or economic influences that may seek to influence their decisions. Protection against such pressures is achieved through regulations that establish the prohibition of influencing judges or interfering in their decision-making process. Protection from media and public pressure is also essential for judges to be able to make decisions based on evidence and not on pressures from the public business.

D. Ensuring a stable financial and professional status

A stable and fair financial status is essential for the independence of judges. If judges are not paid sufficient salaries, this could open the way for external economic pressures (Roxin, 2021, p. 42).

Working conditions, such as adequate resources for the performance of the activity, continuous training and ensuring a fair working environment, are also vital for the protection of the independence of the judge.

4. Establishing a legal framework conducive to the independence of judges in criminal proceedings

A. Constitutional and international regulations

The constitutions of most democratic states include the guarantee of the independence of judges as a fundamental principle. Also in international law, treaties such as the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union protect the right to a fair trial, which also includes the protection of the independence of judges. Article 6 of the ECHR provides for the right to a fair trial, and Article 3 of Protocol No. 1 adds a commitment to protect the independence of courts.

B. The role of international courts in protecting the independence of judges

The European Court of Human Rights plays a key role in protecting the independence of judges through its case-law. In criminal proceedings, the Court has established, through various decisions, legal standards regarding the protection of judges from any form of external influence.

5. Challenges to the protection of judicial independence in criminal proceedings

A. Political interference and external pressures

One of the greatest dangers to the independence of judges in criminal proceedings is political interference or external pressures, which may come from political authorities or from economic or social interest groups. In this sense, real judicial independence presupposes that judges have protection against any political, economic or other pressures (Mureşan, 2019, p. 25).

B. Economic and social instability environment

Economic or social instability can affect the independence of judges, especially in the context of an underfunded judicial system or where judges are under financial pressure. Underfunding of courts and

other judicial authorities can also lead to caseload overload and professional fatigue, which can reduce the capacity to ensure a fair trial. Furthermore, in a society, legal provisions are considered the foundation on which a true rule of law can be built. Thus, legal norms will establish, through their coercive and regulatory character, a framework that governs human behavior, maintaining order and ensuring justice. The purpose of establishing these rules is essentially to guide individuals, businesses and state bodies in their interactions and decision-making processes (Zisu, 2023, p. 189).

C. The impact of the media on judicial independence

The media plays an important role in shaping public opinion, and in high-profile cases, public pressure can indirectly influence judges' decisions. In this context, it is crucial that judges have the freedom to make decisions without being influenced by public opinion or media pressure.

6. Measures to strengthen judicial independence in criminal proceedings

To ensure real and effective independence, the state must adopt additional measures, such as:

- Continuous training programs for judges: Ensuring adequate and up-to-date training is essential for judges to be able to perform their role fairly and impartially.
- Reforming the judicial system: Creating a robust legal and institutional framework that protects judges from external influences and supports the process of appointment and promotion based on merit.
- Creating an effective mechanism for the protection of judicial independence: It is essential to have institutions and procedures in place to protect judges from any external or internal pressure.

Guaranteeing the independence of the judge in criminal proceedings is a fundamental element of the rule of law, essential for protecting the fundamental rights of citizens and ensuring a fair trial (Constantin, 2018, p. 37).

Mechanisms to protect the status of judges, such as irremovability, protection from external pressures and adequate working conditions, ensure that judges can make decisions based on law and facts, without external influences. At the same time, these protections need to be supported by an adequate legislative framework and by independent institutions that monitor their application, in order to prevent any form of abuse and maintain public confidence in the judicial system. For example, it is necessary, following the model offered by comparative law, to enhance the role of courts, which should analyse, on the occasion of each labour dispute, relative to the termination of an individual employment contract, the extent to which such termination could have been avoided by the employer, through various preventive methods (Corsei & Zisu, 2022, p. 152).

Conclusions

Ensuring the independence of judges in criminal proceedings is essential for the functioning of a fair and equitable justice system. The independence of judges not only protects the fundamental rights of persons involved in criminal proceedings, but also contributes to strengthening public confidence in the institutions of the rule of law. By ensuring mechanisms that prevent any form of external pressure or influence on judges, it is guaranteed that decisions are taken on the basis of evidence and the law, without being distorted by political or economic interests (Călin, 2020, p. 55).

In this sense, the protection of the independence of judges is not only a legal requirement, but also a pillar of democracy and the rule of law, which ensures respect for the principle of a fair trial for all citizens. Only by maintaining this independence can an impartial, transparent and accountable justice, essential for the proper functioning of society, be ensured.

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