

## Abstract

Modern society is based on respect for the individual and at the same time it has created the institute of justice under which parties, in the interest of maintaining social cohesion, should resolve their disputes using the system of applying rights. The task of the judiciary is therefore to be an impartial arbiter, which is an absolute criterion for the acceptance of authoritativeness of this body, or more precisely the functionality and signification of this institute within the social contract. Only an unbiased judge can be the only guarantee for the *nemo iudex in causa sua* principles to be observed.

The European Convention imposes on the states – members of the Council of Europe such legal conditions which guarantee every country the right for their affairs to be discussed fairly, in public and in a reasonable time limit by an independent and impartial court established by law which will decide about their civil rights and obligations or of any criminal charges raised against them. The Constitutional Order of the Czech Republic guarantees everybody the right to a fair trial conducted in accordance with the law before an impartial judge. Constitutional guarantees of fair legal proceedings before an impartial judge are supplemented with legal rules of the sub constitutional law. Yet, it is the requirement of impartiality of judges which protects the trust that the courts should inspire in a democratic society, in both the public and the parties on trial.

Impartiality of a judge is a subjective category which, in a broader sense, expresses the inner psychological relationship of a judge to a particular matter. It includes a relationship to not only the matter of a proceeding, but also to the parties or their legal representatives. Impartiality is therefore a state of judge's mind and soul of which only the judge is able to inform. In effect, it is impossible to examine the judge's subjective relationship to the matter. ESLP has developed a doctrine which tests the impartiality, especially in terms of objectiveness. However, it is not possible to consider an outside observer's (or a party involved in a trial) perspective of the judge as objective; it is necessary to consider whether there are real circumstances that could objectively lead to doubts about the judge's partiality. At the same time we must not confuse cause and effect; impartiality is merely a prerequisite for the discharge of an

office of a judge, not the result of decision-making of judges.

Judging a matter impartially is to take into account any information about a case. Impartial judicial decision-making is a prerequisite for a fair decision. It is in the interest of maintaining the viability of the society that the right to a fair trial, including the right to an impartial judge, was granted to all members of society unconditionally. Otherwise the social contract will be breached. Failure of the society to observe the social contract gives rise to negative consequences – social instability and moral decline, and they ultimately lead to a breakdown.

Society is constantly and unstoppably developing. As a result, the amount of daily changes in society puts increasing demands on ethics and morality of its members. Only society with mature and healthy morality is capable of reflection and maintaining viability. I am afraid that the current system of establishing judges in the Czech Republic does not reflect the reality and the society is not static. When selecting judges, it is necessary to stress that effective appeal must be applied to high moral values and ethical attitudes as the impartiality of judges is one of the main premises of public confidence in law and democratic rule of law.