



Viti i XVI-të i Botimit, Nr.2

Dhjetor 2024

## PROFESSIONALISM, RESPONSIBILITY AND IMPARTIALITY OF A JUDGE AS A MILESTONE FOR A FAIR PROCESS.

**Manjola Islamaj\***

European University of Tirana

### **Përmbledhje**

Kur flasim për sistemin gjyqësor dhe drejtësinë në vetvete, përhere analiza na çon te pavarësia e gjykatave dhe panashmëria e gjyqtarit në gjykim.

Në fakt, koncepti i të dhënurit drejtësi, përtej respektimit të procedurës së procesit gjyqësor, lidhet dhe me rolin kryesor që luan në gjithë procesin gjyqësor gjyqtari.

Nuk mund të kuptohet një gjykatë e pavarur nëse nuk kemi të bëjme me respektimin e paanshmërisë në proces gjyqësor. Paanshmëria e gjyqtarit lidhet me trajtimin palevë në proces në mënyrë të barabartë, pa favorizuar asnjë palë, pa dhënë mendim mbi zgjidhjen apo komunikuar me palën e cila ka procesin në gjykim. Figura e paanshme e gjyqatrit absolutisht që na sjelle një gjykatë ku qytetari ka besim dhe një sistem gjyqësor me integritet, ku dhënia e drejtësisë kthehet në mision. Furgura e gjyqtarit dhe profesionalizmi i tij, janë kushte kumulative, me qëllim realizimin e drejtësisë dhe zbatimit të ligjit në funksion të dhënies drejtësi. Nuk është rastësor fakti që edhe gjatë procesit të Vetting, figura e gjyqtarit u vlerësua rreth vetëm në profilin e pasurisë, por edhe të profesionalizmit, figurës dhe moralit.

Kushtetuta e Republikës së Shqipërisë parashikon se “Gjyqtarët janë të pavarur dhe u nënshtrohen vetëm Kushtetutës dhe ligjeve”.

Pra në ushtrimin e funksionit, gjyqtari i referohet vetëm ligjit duke zbatuar me përpikmëri dhe përgjegjshmëri ligjin, duke garantuar një proces të drejtë gjyqësor.

Megjithatë këto parashikime do duhej të gjenin zbatim rigoroz në praktikë, nëpër sprotelet e gjykatave do ditë paraqiten kërkesa mbi “përfundimin e gjyqtarit nga gjykimi i çështjes”, si një tregues i humbjes së besimit të palëve pjesëmarrje në proces.

Duke marrë në konsideratë rëndësinë figurës së gjyqtarit në rolin e dhënë drejtësi, në problematikën që lindin rast pas rasti, në këtë temë do trajtoj gjerësisht, kuptimin e paanshmërisë së gjyqtarit, rëndësinë, shkaqet e kërtimeve të largimit të gjyqtarit nga gjykimi i një çështje, momentet kur gjyqtari vlerëon doreheqjen nga një gjykim i çështjes, si faktore kyç në realizimin e drejtësisë që të gjithë kemi prituri të reflektohes, sidomos dhe pas reformës së ashtuquajtur Vetting.

**Fjalë çelës:** *Gjyqtarët, Panashmëri, profesionalizëm, Kushtetuta, pavarësi, drejtësi*

## Abstract

When we talk about the judicial system and justice itself, the analysis always leads us to the independence of the courts and the impartiality of the judge in the trial.

In fact, the concept of giving justice, beyond respecting the procedure of the judicial process, is also related to the executive role played by the judge in the entire judicial process.

An independent court cannot be understood if we are not dealing with respect for impartiality in the judicial process. The impartiality of the judge is related to fair treatment in the process equally, without favoring any party, without giving an opinion on the solution or communicating with the party who has the process under trial. The impartial figure of the judge absolutely brought us a court where the citizen has faith and a judicial system with integrity, where the delivery of justice turns into a mission. The duty of the judge and his professionalism are cumulative conditions, in order to realize justice and the application of the law in the function of providing justice. It is no coincidence that during the vetting process, the judge's appearance was evaluated not only in terms of health, but also in terms of professionalism, image and morals.

The Constitution of the Republic of Albania provides that "Judges are independent and subject only to the Constitution and law".

So in the exercise of the function, the judge refers only to the law, applying the law meticulously and responsibly, guaranteeing a fair judicial process.

Although these provisions should be strictly implemented in practice, every day requests for "exclusion of the judge from judging the case" appear in the courts, as an indicator of the loss of confidence of the parties participating in the process.

Taking into consideration the importance of the figure of the judge in the role of the administration of justice, in the problems that arise case by case, in this topic I will deal extensively with the meaning of the judge's impartiality, the importance, the reasons for the removal of the judge from judging a case, the moments when the judge evaluates the resignation from a trial of the case, as a key factor in the realization of justice that we have all been waiting for to be reflected, especially after the so-called vetting reform.

**Keywords:** *Judges, Impartiality, professionalism, Constitution, independence, justice*

## 1. Foreword

It is an indisputable fact that the judicial system in our country as a whole has been in the attention of international, political and media factors. Our judicial system certainly needed restructuring, since we moved from that accusatory system to an inquisitorial system. But not only that, the very structure of the entire judicial system underwent changes from time to time in these twenty years, in order to create an independent judicial system, from which the courts judge impartially based on evidence, facts and laws. However, from time to time the problems arising with the system required a reformation that actually happened with the reform of 2016, the so-called "Vetting" (which in the sense would be the process of self-cleaning of the system). All this came as a need to remove from the justice system, specifically from the court, those judges and prosecutors, who after a rigorous investigation, were assessed as not being able to stay in their job positions. This whole decision would be based (and in fact was based), in terms of wealth, professional and moral. So, in essence, all of this had the purpose of giving justice a new image, but also cleaning the figure of the judge and elevating this figure. This would be the new justice, which let's say what passed through a "sieve", leaving inside it only those who would be called worthy after the assessment according to the relevant law to continue their work and re-realize justice. Justice, the judiciary as a whole has a great weight in the country, as it reflects not only democracy, but also the duty to solve the problems of citizens and foreign investors.

Our judicial system consists of three levels, the Supreme Court, the Court of Appeal with general jurisdiction and the Court of First Instance.

The Constitutional Court is not part of this system, as it evaluates the constitutionality of cases, but in the case of Vetting, this court was treated the same as the other three levels of the judicial system and had a series of dismissals of its members.

The reason why I am mentioning this in the introductory part of this paper is related to the fact that the figure of the judge plays an important role in the judicial process, in the credibility that the parties have in justice and in the guarantee of justice, in the functioning and implementation of the law. In the next part of this paper, the provision of the Constitution of the Republic of Albania regarding the figure of the judge will be analyzed, as well as the cases of how it is procedurally acted when the judge is unable to exercise his function, due to the relationship with the litigants.

## **2. LEGAL FRAMEWORK RELATED TO THE ROLE AND ROLE OF THE JUDGE IN A JUDICIAL PROCESS.**

Undoubtedly, we cannot understand a court system without its officials. Each link of the court has its own role in function of the transparency it offers to the public. As lawyers, since our formation in the auditors, we are enriched with the ideals that justice should be transparent, that the parties must have equal procedural means to defend themselves, to be heard in their own language, in order to guarantee a fair trial and unstoppable. But, all this role is undoubtedly played by the judge.

According to the Constitution of the Republic of Albania, specifically Article 136/a (Added by law no. 76/2016, dated 22.7.2016) provides that “1. Judges can be Albanian citizens who are appointed by the Supreme Judicial Council, after the end of Magistrate’s School and after completing the process of preliminary verification of their wealth and image, according to the law.” Obtaining the status of Magistrate comes from attending the School of Magistrates, from where the magistrates go through a filtering procedure at the Supreme Court of Justice, related to their figure, wealth or other criteria that a citizen must meet to be a judge. In this sense, the first filtering of magistrates, future judges who come out of this school with the right knowledge and principles of justice, begins. The importance of the selection of judges at this stage is great, since the moment they meet the appropriate criteria, in order to exercise this duty professionally, the foundation for impartial justice has been laid. However, problems arise when justice gives in to making a decision for private interests.

Therefore, in Article 137 of the Constitution, there is the provision “The judge enjoys immunity for the opinions expressed and the decisions taken in the exercise of his functions, except in cases of intentionally giving a decision, as a result of a personal interest or bad faith.”

The Constitution of the Republic of Albania has shown itself to be careful, protecting the judge when he performs his duties related to opinions or decisions, whether intermediate or final in the resolution of the case, at the same time it provides for two moments where the judge can it is biased and not fair. Our Constitution connects these two moments with self-interest or bad faith. So, in no case can the judge for personal interests related to him go outside the framework of a fair trial. Regarding the second moment “bad faith”. In reality, the court’s relationship with the party is such that the party requests and claims in writing, and the court responds with decisions. It is important to note that the court should not at any time exceed the goals of the trial with the parties, and at no time can and should not promise about a possible future decision. Equally, the court must listen and respect the parties, their representatives, and finally, on the evidence and claims, express a decision.

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The judicial system is one of the important pillars of how the state functions, how legal issues are resolved, and where citizens expect the implementation of justice. But the independence of the judge and the judicial system as a whole can also be based on politics. Therefore, it is very important that the Court and Judges are independent.

Our constitution provides that “1. Judges are independent and subject only to the Constitution and laws.” What does this mean? Undoubtedly, judges cannot be dependent on any institution that does not regulate the functioning of the judge (KLJ), and cannot be politically dependent. They independently, impartially, rigorously apply the law and obey it themselves.

Undoubtedly, our Constitution is in a relationship with the European Convention on the Rights of One, according to which Article 6 stipulates that “”Every person has the right to have his case heard fairly, publicly and within a reasonable time by a court independent and impartial, created by law, which decides both on disputes regarding his rights and obligations of a civil nature, as well as on the validity of any criminal charges against him”

So, this article essentially requires guarantees on how the court functions. Justice can be delivered by a court that operates by law and is independent. We cannot understand justice without two sides of the coin. On the one hand, the independent court and on the other hand, the regular legal process.

The role of the judge, as a historical moment in the delivery of justice, is related to exactly two moments:

- Being totally independent
- Guaranteeing an orderly legal process.

It is a publicly known fact that our country, in the international arena, has often been criticized for its attitudes and approaches to justice. For this reason, it was deemed necessary in 2016 to reform Vetting. The purpose of this reform was to evaluate the judge’s image as a whole, financial, moral, inappropriate contacts, in order to move to a “sieve”, to remove from the system those judges who would not be considered suitable to continue their work and function Theirs.

The reform in justice undoubtedly had its good, positive and negative sides. But, in relation to our topic and discussion, today the question is, are we in front of an ideal judiciary, which, based on the reform, salary increase, restructuring of the judicial system, has made it impossible to touch the figure of the judge and the influence for making a decision in favor?

Seen from the perspective of a lawyer, my personal opinion is directly related to practical cases. So how many times in the hearings have we encountered decision-making or interpretations and misinterpretations of the law, which have been annulled in the Court of Appeal or the Supreme Court. So,

for litigants, when they notice that the decision is diametrically different from one level to another, they are convinced that the trial was not fair and independent.

What I would describe as more problematic in this case, is the fact that the same court, with different judicial bodies, on the same issue, share different attitudes. Justice cannot be totally dependent on the subjective opinion of the judge and leave it to his discretion. Justice, this logic must be followed for the same cases as a fixed practice, thereby ignoring the possibilities for the trial to develop. unbiased.

The importance of an impartial judge is a reflection of a functional and basic justice for democracy and the rule of law.

In 2021, a study on Judicial Impartiality and Independence stated that “Ultimately, any alleged violation must be subject to judicial review. The mere fact that violations are subject to review by a higher court is not sufficient to meet the criteria of Article 6. Judicial review must be effective, which means that the reviewing court must strike the right balance between maintaining the principle of legal certainty and respecting the rule of law.”

This finding totally coincides with the aforementioned analysis, highlighting the importance of innumerable with the guarantee of the right. The court cannot hide after giving a decision that there is a higher level and you can appeal. This finding, time after time, leads to denials, trials that last in the highest instances and in the end “Justice missing is justice denied”.

### **3. INSTRUMENTS FOR GUARANTEEING AN IMPARTIAL, LEGAL PROCESS.**

To think that the application of the principles of due process in a strict manner is ideal. However, there are moments when the litigants notice that their Constitutional rights, and those guaranteed by the relevant laws, are being violated. The question is, does a party who claims that the court is not independent and is not guaranteeing a fair and regular legal process have a procedural remedy?

Yes, there definitely is, and it is the environment that the party has at any time that determines that the judge has lost his impartiality. Kym jet is materialized in the request for the dismissal of the judge.

Even in our law, the cases of dismissal of the judge are foreseen: Considering my profile in the civil field, I am referring to the Code of Civil Procedure.

Article 72 of the Code of Civil Procedure stipulates: “The judge is obliged to waive the judgment of a specific case when:

1. has an interest in the case or in another dispute related to the one in the trial;
2. he himself or his wife is related up to the fourth degree or cousin up to the second degree or is bound by adoption obligations or lives permanently with one of the parties or guardians;
3. he himself or his wife is in a judicial conflict or enmity or in a credit or loan relationship with one of the parties, or one of the representatives;
4. gave advice or expressed an opinion on the case in the trial or participated in the trial of the case at another stage of the process, was questioned as a witness, as an expert or as a representative of one or the other party;
5. është kujdestar, punëdhënës i njërës prej palëve, administrator ose ka një detyrë tjetër në një ent, shoqatë, shoqëri ose institucion tjetër që ka interesa për çështjen në gjykim;

8. në çdo rast tjetër kur vërtetohen, sipas rrethanave konkrete, arsye serioze njëanshmërie...”.<sup>1</sup>

Duke mos dahsur të tejzgjatëm, dua të thekso se parashikimi i këtij neni ka një rëndësi të veçantë, pasi në eventualitetin shkeljes së drejtësisë, I vetmi mjet për palën është përjashtimi i gjyqtarit.

### Conclusions:

We can say without fear that the reform in justice absolutely brought a new fruit to our judicial system. But justice is not a phenomenon that is taken for granted. Justice is as abstract a concept as it is tangible. The moment it materializes is precisely when the judge announces the jury and proceeds with the trial of the case.

There are some lessons that I would suggest, to have that ideal justice that we all hope for.

- Increasing the number of unifying decisions, leaving no reason for solving similar issues in very different ways
- Guaranteeing an orderly legal process, applying judicial principles, the right time to listen to the parties and maintaining ethics in the communication that the court chooses with the parties, not looking down on lawyers
- Increasing control over judges by the bodies of the Supreme Court, encouraging this control with objectivity
- For any case of exclusion of the legal judge, notification of IDKLPKI.

In conclusion, as we explained above, the judge is already an exalted figure in our country. The vetting managed to restore citizens' confidence in the judiciary, but it is still necessary for judges and the law to walk parallel to each other.

The right cannot be subject to the principle that there is a higher court that controls decision-making and legality. The law must be applied at every level of the judiciary, reflecting the impartiality and independence of judges.

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<sup>1</sup> Ligjnr.7850, datë 29.7.1994për kodin civil tërepublikës së shqipërisë  
1(ndryshuar me ligjet nr. 8536, datë 18.10.1999, nr. 8781,datë 3.5.2001, nr. 17/2012, datë 16.2.2012, nr.121/2013,datë 18.4.2013, nr.113/2016, datë 3.11.2016; vgjk nr. 69, datë 27.12.2023)