

FINDING THE WAY TO DISPASSIONATENESS OF THE JUDGE IN THE CIVIL PROCEEDING.

ALEXANDRA KOTRECOVÁ

Fakulta práva Janka Jesenského, Vysoká škola v Sládkovičove, Katedra občianskeho práva

SASKIA POLÁČKOVÁ

Bratislavská vysoká škola práva, fakulta práva Bratislava, Ústav súkromného práva

Key words

Independence and impartiality of a judge, judge exclusion institute, civil proceeding, right to a fairly trial

A judge exclusion institute in civil proceeding considerably guarantees the interpretation of right to unbiased process, while the equality of party to a proceeding is well-preserved. These principal attributes of the civil proceeding are in fact able to exist, only if a judge performs and acts independently and impartially, he is not connected in any way to parties to the concrete proceeding, to their lawyers, or to in hand case. The status of the judge must be inevitably and absolutely neutral. The concrete content of the bias is given by process rules.

The present-day's tendencies, which are primarily expressed in slightly wrapped perception of actual status of the judge in a society, have remolded a meaning much more than the utilization of this institute. The main use is concentrated rather to its misuse, formation of obstructions, delays in a proceeding with one possible attainable result - inefficiency and an increase of proceeding outlay. What is worse, is the fact that it is not only about the misuse from parties to the process, but it is possible to deal with it from the side of judges. It happens particularly from the reason, that in case of the smallest doubt which is pointed out by the judge himself, or by the party to a process, there is a demand to preserve preventive effects of the device.

All recently stated solutions arise, an impression of necessarily acute withdrawal of undesirable state of the institute misuse, with the application of a legal tool. This is presented by a norm-setting. In case of legal judge exclusion manipulation in civil proceeding

according to the law regulation N° 99/1963 Statute-book Civil court order, in version of later regulations (thereinafter only C.c.o.). There is an indubitable fact, that some of the mentioned paragraphs have been changed 7 times since 2001 (e.g. regulation § 16 C.c.o.).

When looking at concrete changes in juridical adaptation, it is adequate to be like to accept them as a “test”. A motivation to improve the acute state is so intensive, that inner logic is absent in certain steps while in some of the cases is missing also the presence of real justness of their modification. There is also a problem of absence of communication in some cases, at law creation, among specialized experts from theoretical circles and judges from first degree courts, meeting the widest agenda. They are the courts, maybe the closest to a subject, invoking the law protection from the point of view of solved spheres. The final result is than elaboration of the juridical adaptation leading to an evident opacity.

It is necessary to mention, that the judge exclusion institute must be, in juridical order, adapted towards the real fulfillment of its real aim. However, when looking at recommended modifications and modifications in preparation, it is possible to deduce, that some of the prepared paragraph versions, are in this case, on the boundaries of constitutional character. As if the delicacy of this question and the demanded need of personal attitude was forgotten.

We think that not only appropriate and effective juridical ground is sufficient in the given case. Significant is mainly the ability of extremely right interpretation of the lawful version, which consequently results into the right application of concrete case. We think that it would be consistently illegal and neutral as far as arrangements of judge exclusions would be induced at place, where there haven't been fulfilled legitimate lawful conditions for process like this. This right interpretation is naturally necessarily connected with personality of the judge by himself.

Judge is the person, which disposes its own statute in a lawsuit. At the same time, he must fulfill assumptions for prosecution of the given profession. He has to have certain attitudes and pretension, moral principles as well as feeling of higher justice. The judge by himself should notice the existence of possible commitment following listed attributes first. Evaluates and judges the question of possible inner doubt about his own commitment, whereas it is one of the most resonant problems, while the exclusion of the judge in this case is not consistently judged either the decision about the final exclusion from the process cannot be always considered as right. The ability to differentiate between own inner feelings on one hand and facts, which can really stir doubts about the commitment, on the other hand. By a professional approach, he should act in such a way, that he wouldn't give the reason for self-

perception in commitment. Particularly realize the delicacy of participants figuring in objective case.

An effort to fulfill the significance of civil process basic principles is admittedly significant dimension. To cover it towards accomplishing an intention and aim, in which it utters. However, we think that it is not possible to achieve advisable the subject, by exclusive elaboration of only one institute. The lawsuit is a summary of operations, a sequence of procedures, which exist together and they make up each other. They create a mutual coexistence and are coherent. It is analogous also in a case of judge (judges) exclusion institute. It would be a utopia to fight for constant elaboration and development, with an effort to achieve that the elimination of its misuse will be minimal, or even disappear. Neither the most precise juridical adaptation in this case, cannot avoid the abolishment of case by the appellate or invocation court, according to competent establishments of the Civil court order.

Once admitted right is here for a concrete subject, while there is a possibility to dispose and act according to its declaration. Individually, it is possible when the subject right is a tool and a basic guarantee of the higher constitutional character. However, it remains to learn how to use it there and in such a way that is inevitable and desirable.

Contact – email:

alexandra.kotrecova@gmail.com