

Abstract

The fairness of judicial procedure shall consist of, at least, two principles: independence and impartiality. It could be argued that the justice could not be promoted, while the human rights may be severely affected given that the court could not maintain those two principles suitably. Additionally, one may say that the impartiality is one of the most important principles of the court in strengthening its credibility and preserving the sacredness of law. Thus, in order to achieve those objectives, it could be said that the principle that guarantees the impartiality of judge as well as the principle of judicial impartiality are necessary and indispensable.

The principle of judicial impartiality may derive from some basic conceptions, including, for example, the actual availability of fairness in the real world as well as the common sense believing in the juridical fairness. Judges, hence, are expected not to have any conflict of interest or association with concerned parties. This expectation then has gradually evolved into statutes applicable in numerous countries worldwide. As a result, it becomes widely acknowledged that the court shall maintain its impartiality in order to render the justice for all parties. Moreover, one could also argue that the creation of public confidence and trust in juridical impartiality could also be another important mechanism in promoting justice.

Regarding the principle that guarantees the impartiality of prospective judges, it was revealed that, in Thailand, recruitment procedure and training program mainly focus on examinations that evaluate law-related proficiencies and skills; meanwhile less attention is paid to the assessment of ethics by means of some sort of short preparatory program. It could likely be said, hence, that some prospective judges may not be qualified ethically. This particular issue would ultimately affect the impartiality while performing their duties. Public confidence in juridical fairness, however, could be enhanced given that the juridical impartiality is suitably maintained and upheld. In addition, some incompatibilities between the Civil Code and the principle of judicial impartiality are also

found in this study. These include, for example, restricted ground and timeline in submitting the application to challenge the judge. This could render to the case where the judge, with probability or reason to be challenged, denies to recuse and continue the trial process until the sentence is pronounced. Despite the fact that such judgment may be effective under applicable laws, public confidence in juridical fairness is greatly declined. One could argue, moreover, that this particular issue violates the principle of juridical impartiality and may not conform to international norms. In addition, there is no criminal offence under Thai laws to penalize the judge who infringe the principle of juridical impartiality. Further, it could be said that public confidence in juridical impartiality and fairness could probably be lessened given that some incidents related to juridical independence are erupted.

The examinations of pertinent statutes and practices overseas revealed that the promotion and upholding of public confidence in juridical fairness is the focal point of every country. The principle of juridical impartiality thus shall be maintained at all cost. Also, one could argue that the decline of public confidence in juridical fairness would ultimately affect the sacredness of law and render to social disturbance. As a result, some countries have established a principle that the judge could be disqualified provided that he/she could not perform his/her duties impartially due to personal bias and prejudice. However, if the biased judge continues the trial process, his/her sentence shall be set aside and void or have no legal obligation. This is due to the fact that the trial process and sentence, proceeded by such disqualified judge, would not only breach the principle of juridical impartiality but also greatly reduce public confidence. Thus, I would recommend aforesaid practices to be applied in the context of Thai laws and relevant trial processes. This is to increase and promote public confidence in juridical impartiality and fairness.