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Judicial Independence and Impartiality in Contemporary Brazilian Criminal Procedure

Jacinto Nelson de Miranda Coutinho[1], Bruno Cunha Souza[2]

[1]Procedural Criminal Law, Universidad e Federal do Paraná (UFPR), Curitiba, Brazil
[2]Public Law, Curriculum Criminal Law and Criminal Procedure Law, "Sapienza" University of Rome, Rome, Italy
Email: jnmc@uol.com.br, bruno.cunhasouza@uniroma1.it

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Abstract

Recent data from the World Justice Project Rule of Law Index indicate that while the Brazilian Criminal Justice system is independent, it is also discriminatory and lacks impartiality. To better understand this diagnosis, this study: (i) analyzes the meaning of judicial independence and impartiality through a review of literature and jurisprudence from international courts; (ii) examines the Brazilian legal model in light of the criteria established by international courts for assessing independence and impartiality; and (iii) highlights problematic aspects of the Brazilian legal framework that contribute to the current status quo. The study concludes that: (i) Brazil does, in fact, have judicial independence; (ii) this independence has been misused through creative interpretations and judicial activism; (iii) in Brazil, impartiality functions more as an aleatory duty for judges rather than a guaranteed right for citizens; (iv) the dominant Brazilian jurisprudential interpretation of suspicion and impediment hypotheses as *numerus clausus* is not admissible; (v) the country's inquisitorial legal model steers judges away from impartiality and towards partiality; (vi) Brazil requires a new criminal procedure code; (vii) creative interpretations and judicial activism reinforce conservative elements of the inquisitorial criminal procedure, often acting against new legal reforms; and (viii) discrimination extends beyond the legal framework, meaning that even legislative changes may not be sufficient to fully address the issue.

Keywords

Independence, Impartiality, Judicial Branch, Brazilian Criminal Procedure

1. Methodological Considerations

In a globalized economy, any State that wishes to be internationally competitive must have stable institutions (rules of the game) internally, where competition can

take place as equally as possible among the organizations (players) operating in that market (About the distinction between institutions and organizations, see North, 1990). The issue pertains to basic principles of microeconomics, namely: individuals respond to incentives and seek to maximize their profits; a rational individual, when deciding to allocate scarce resources in a given market, considers what can be planned and the profit expectations that might be achieved. If the institutions are unstable, the level of planning and the predictability of profits are compromised, favoring merely opportunistic organizations at the expense of others that could contribute to true national economic (and, consequently, social) development. After all, "[...] the invisible hand can work its magic only if the government enforces the rules and maintains the institutions that are key to a market economy" (Mankiw, 2021: p. 9).

Therefore, considering the interests at stake, research conducted globally to assess the functioning of the legal institutions of States is particularly relevant. One such study is the World Justice Project (WJP) Rule of Law Index, "[...] the first attempt to systematically and comprehensively quantify the rule of law around the world and remains unique in its operationalization of rule of law dimension into concrete questions" (World Justice Project Rule of Law Index 2024, 2024: p. 185). Conducting its research since 2015, this Index applies a comprehensive methodology based on eight factors: (1) constraints on government powers; (2) absence of corruption; (3) open government; (4) fundamental rights; (5) order and security; (6) regulatory enforcement; (7) civil justice; and (8) criminal justice. The data is collected in each country through General Population Polls (GPPs) and Qualified Respondents' Questionnaires (QRQs), combining public perceptions with expert opinions. The responses obtained are scored across 44 sub-factors and aggregated into factor scores and an overall score (0 to 1), with higher scores reflecting stronger rule of law. The Index emphasizes both the legal framework (de jure) and its enforcement in practice (de facto), enabling global and regional comparisons while accounting for local contexts (World Justice Project Rule of Law Index 2024, 2024).

The Index methodology has its strengths and limitations. On one hand, the data collection is independent, the results reflect the conditions experienced by the population of each country and its approach helps reduce possible bias that could be introduced by any other particular data collection method. On the other hand, despite the data shedding light on rule of law dimensions that appear comparatively strong or weak, it is not specific enough to establish causation: in order to have a full picture of causes and possible solutions, it is necessary to use the Index in combination with other analytical tools (World Justice Project Rule of Law Index 2024, 2024). This particular methodological limitation leaves open gaps for specific local analysis on the subjects researched by WJP, and the focus here is to a couple of the identified gaps in Brazil.

Observing the country annually (Except for 2017 and 2018, as one evaluation covered both years. See WJP Rule of Law Index, n.d.-d), the Index has shown that,

from 2015 to 2023, the general adherence to the rule of law decreased from 0.55 to 0.49 and, in 2024, slightly increased to 0.50 (WJP Rule of Law Index, n.d.-b), which made Brazil earn the 5th position among the countries with the biggest rule of law improvements from 2023 to 2024 (World Justice Project Rule of Law Index 2024, 2024). While in 2015 it occupied the 44th position in the world ranking among the 102 researched countries, in 2024, among the 142 researched countries, Brazil is at the 80th position (WJP Rule of Law Index, n.d.-b) (as shown in **Figure 1**).

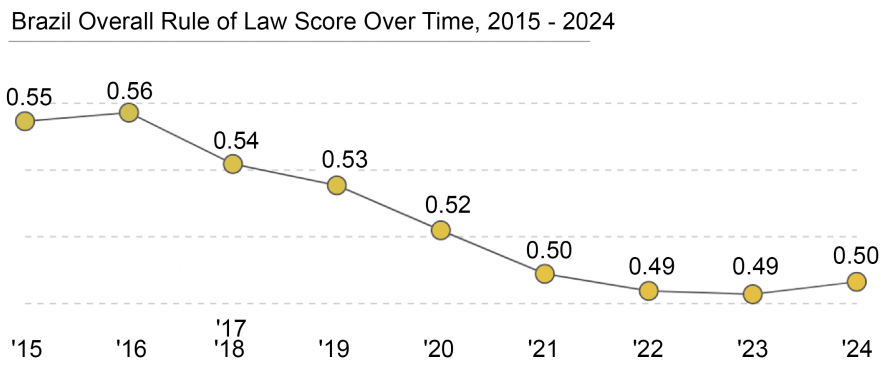

Figure 1. WJP Rule of Law Index 2024, available in: https://worldjusticeproject.org/rule-of-law-index/country/2024/Brazil/, access in: 23 Dec. 2024.

It could have been better, if the criminal justice problems were not highly influential on this outcome. For instance, it has been decades since national specialists have pointed out the need for a new criminal procedure code adapted to the Brazilian democratic Constitution from 1988. Since the present code—*Decreto-Lei n°. 3.689, de 03 de outubro de 1941*—is an incoherent patchwork of its original inquisitorial model, ideologically aligned with the *codice Rocco* from the Italian fascist regime and structurally similar to its Napoleonic procedural style (About the similarities and differences between the present Brazilian criminal procedure and the Italian fascist one, see Miranda Coutinho & Cunha Souza, 2024), it provides a fertile ground to judicial activism and its enhanced discriminatory practices and outcomes (E.g. see the arbitrary decision from the Brazilian Supreme Court—Supremo Tribunal Federal (STF)—about the Juiz das Garantias. Describes it: Miranda Coutinho, Milanez & Cunha Souza, 2023).

By the way, these are both problems that Brazil has been living with since immemorial times (About judicial activism, e.g., the Enrico Tullio Liebman's (1962: p. 500) conclusions about how differently the judges and specialists in law behaved in Brazil and in Continental Europe regarding written law. About the discriminatory practices, what the country's history suggests was confirmed from the WJP Rule of Law data.): an advantageous scenario for short-sighted opportunistic interest groups who condescendingly ignore the facts to adulate those in power—afraid of negative consequences or hoping this flexible private orientated way of

doing things could eventually be beneficial—and, obviously, damaging to the country's adherence to the rule of law. But now, unless denial overshadows reason, Brazilians will need to take action to face the Criminal Justice poor results highlighted by the WJP Rule of Law Index research (as shown in **Figure 2**).

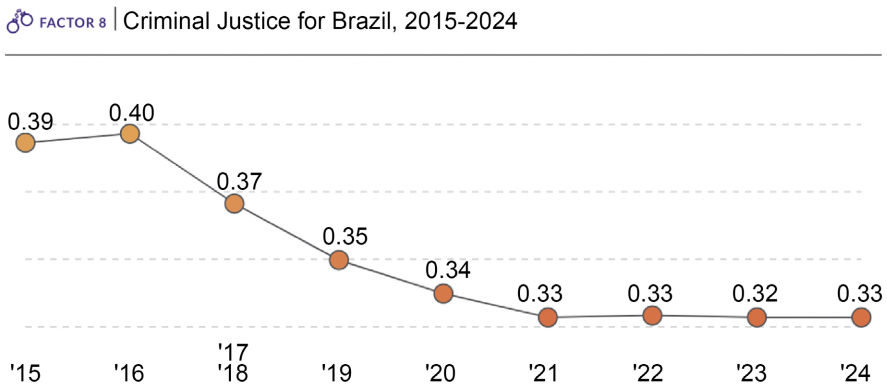

Figure 2. WJP Rule of Law Index 2024 (WJP Rule of Law Index, n.d.), available in: https://worldjusticeproject.org/rule-of-law-index/country/2024/Brazil/Criminal%20Justice/, access in: 23 dec. 2024.

The historical events are helpful to shed some light on this evaluation. Coherently with the WJP Index results, from 2015 to 2024, Brazil's criminal justice system grappled with profound challenges, often exposing its structural weaknesses and susceptibility to political manipulation. The Operation Car Wash (*Lava Jato*) investigation revealed widespread corruption, bringing temporary apparent accountability but also raising concerns about judicial impartiality and selective enforcement of the law, culminating in the annulment of former President Luiz Inácio Lula da Silva's conviction. During Jair Messias Bolsonaro's presidency (2019-2022), the justice system struggled to combat the growing influence of fake news, which fueled political polarization, undermined public trust, and shaped electoral outcomes. The January 8, 2023, attempt at a State coup by Bolsonaro supporters, echoing global trends of democratic destabilization, laid bare the justice system's reactive and controversial (Damaging the appearance of impartiality of the Brazilian Supreme Court, see the *Inquérito* no. 4.781, from the STF, which has been questioned and criticized by both left and right winged law researchers. For instance, on the one hand, Lenio Luiz Streck (2019) asserted that "The problems on the part of the STF are obvious, and they are exactly the ones I mentioned: assuming the roles of victim, investigator, prosecutor, and judge, all at the same time", translation of "Os problemas da parte do STF são óbvios, e são exatamente esses que eu disse: a assunção do papel de vítima, investigador, acusador e julgador, tudo ao mesmo tempo", on another, Vladimir Passos de Freitas (2022) expresses his concern about the institutional instability that the referred procedure might produce in the Brazilian's Justice system.) approach to addressing political violence and its inability to deal with similar threats. While Lula's return to power

in 2023 promised reforms to restore trust in institutions, systemic issues such as prison overcrowding, slow judicial processes, and the pervasive influence of disinformation remained inadequately addressed. Over the decade, Brazil's justice system revealed itself as both a battleground for the rule of law and a site of institutional fragility, struggling to keep pace with the country's political and social crises.

Unsurprisingly, as can be seen in the Brazilian's country profile from 2024 WJP Rule of Law Index, several red flags came up, mainly in the factors regarding Fundamental Rights, Order and Security and Criminal Justice (as shown in **Figure 3** and **Figure 4**).

Considering the Index results, although the other factors also deserve attention, it seems that the biggest issues for the rule of law in Brazil are related to Criminal Justice ("Factor 8 of the *WJP Rule of Law Index* evaluates a country's criminal justice system. An effective criminal justice system is a key aspect of the rule of law, as it constitutes the conventional mechanism to redress grievances and bring action against individuals for offenses against society. An assessment of the delivery of criminal justice should take into consideration the entire system, including the police, lawyers, prosecutors, judges, and prison officers", in WJP Rule of Law Index, n.d.-a), mainly to its 8.4 evaluation criteria, which is, whether the criminal system is impartial ("Measures whether the police and criminal judges are impartial and whether they discriminate in practice based on socio-economic status,

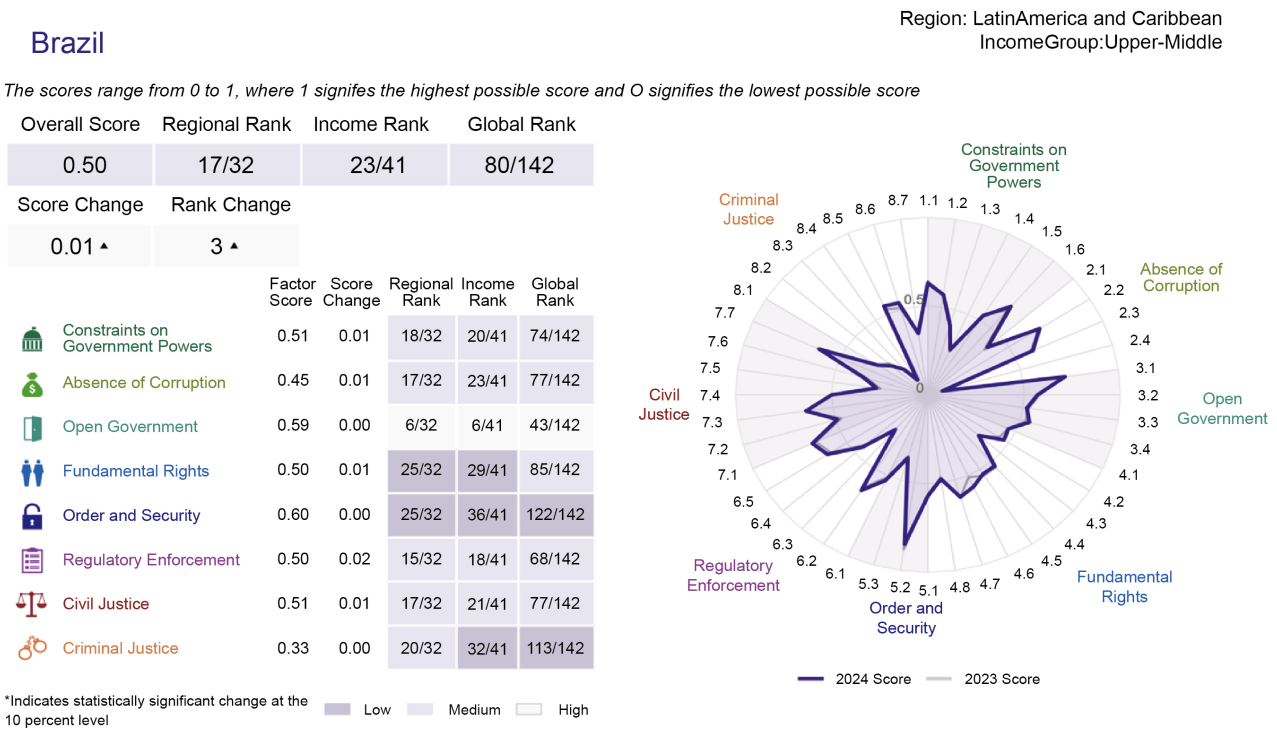

Figure 3. World Justice Project. World Justice Project Rule of Law Index 2024. Washington: WJP Rule of Law Index Permissions, 2024, p. 57.

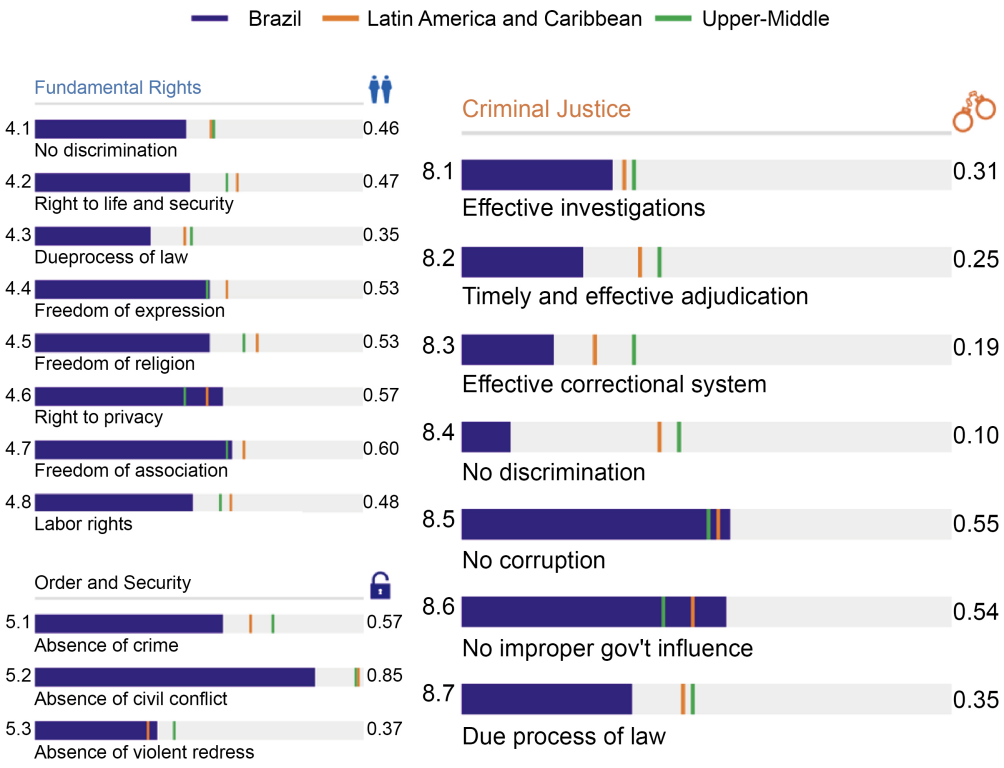

Figure 4. Selected info by the Authors from Brazil's profile in 2024. World Justice Project. World Justice Project Rule of Law Index 2024. Washington: WJP Rule of Law Index Permissions, 2024, p. 57.

gender, ethnicity, religion, national origin, sexual orientation, or gender identity", in WJP Rule of Law Index, n.d.-a). Conversely, despite the close relationship between independence and impartiality, in the evaluation criteria 8.6—whether the criminal system is free of improper government influence ("Measures whether the criminal justice system is independent from government or political influence", in WJP Rule of Law Index, n.d.-a)—the country scored above both regional and world averages. How is it possible that a country where improper government influence in the criminal system is apparently not a significant issue receives such a poor evaluation regarding its impartiality? Independency without impartiality could easily be interpreted as a privilege of a few, which is unacceptable in a rule of law State.

Since this delicate relationship touches the legitimacy conditions for the existence of a rule of law state, it is timely for Brazilians to evaluate the legal frameworks of independence and impartiality in their contemporary criminal procedure. Simultaneously, for foreigners, it is relevant and current to approach the topic in terms that are internationally shareable, facilitating understanding and enabling potential dialogue.

Thus, based on evaluative criteria inferred from the positions of international courts and legal doctrine, the Brazilian criminal procedure is analyzed through the legal framework governing its Judicial Branch, mainly focusing on the judge's relationship with the evidence. Initially, the discussion addresses the meaning of

the terms independence and impartiality, then describes the Brazilian legal system according to the highlighted meanings, and finally evaluates the degree to which Brazilian criminal procedure adheres to the criteria of independence and impartiality.

Since the evaluations by the WJP began in 2015 and the latest was conducted in 2024—at least as of the date of this research—it was decided to consider only the facts that occurred or, at the very least, were valid during the period from 2015 to 2024.

2. Independence and Impartiality

Independence and impartiality are terms that need to be interpreted considering the judges' role. Francis Bacon defines it well: "Judges ought to remember that their office is *jus dicere*, and not *jus dare*; to interpret law, and not to make law, or give law. Else will it be like the authority claimed by the church of Rome, which under pretext of exposition of Scripture doth not stick to add and alter; and to pronounce that which they do not find ; and by shew of antiquity to introduce novelty. Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. *Cursed* (saith the law) *is he that removeth the landmark*. The mislayer of a mere-stone is to blame. But it is the unjust judge that is the capital remover of landmarks, when he defineth amiss of lands and property. One foul sentence doth more hurt than many foul examples. For these do but corrupt the stream, the other corrupteth the fountain" (Bacon, 1908: pp. 251-252).

Intending law as any disposition made by an authority who was validly invested with the power to dictate general and abstract norms—the jurisdictional organs cannot have this power due to the absolute incompatibility between the functions of judge and legislator—Paolo Ferrua claims that the Judge's subjection exclusively to the law (In the Brazilian legal system, the principle is declared in the articles 35, I, and 79, from the *Lei Complementar no. 35,* from March 14th, 1979, which states: "Article 35—The duties of a magistrate are as follows: I—To uphold and enforce, with independence, composure, and precision, the legal provisions and official acts" and "Article 79—Upon taking office, the Judge must present a public declaration of their assets and take an oath to perform the duties of the position with integrity, upholding the Constitution and the laws" translation of, "Art. 35—São deveres do magistrado: I—Cumprir e fazer cumprir, com independência, serenidade e exatidão, as disposições legais e os atos de ofício" and "Art. 79—O Juiz, no ato da posse, deverá apresentar a declaração pública de seus bens, e prestará o compromisso de desempenhar com retidão as funções do cargo, cumprindo a Constituição e as leis". Also, in the 1988's Constitution, it can be inferred from art. 5˚, II, that declares: "Article 5—All persons are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreign residents in the country the inviolability of the rights to life, liberty, equality, security, and property, as follows: [...] II—No one shall be required to do or refrain from

doing anything except as required by law" translation of, "Art. 5° Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: [...] II—ninguém será obrigado a fazer ou deixar de fazer alguma coisa senão em virtude de lei".) is a necessary condition in order to have independence and impartiality (Ferrua, 2020). From the stated principle—the Judge's subjection exclusively to the law—the author derives two projections, one positive and the other negative: "In a legal system where judges are recruited through competitive exams and are politically unaccountable, a fundamental condition to ensure that impartiality is effectively guaranteed and that safeguards of independence from other powers do not degenerate into corporate privilege is the judge's subjection solely to the law: both in the positive sense that the judge's decision must find its basis in the law and in the negative sense that excludes any obligation to comply with any authority other than the law" (Translation of "In ordinamento di giudici reclutati per concorso e politicamente irresponsabili, condizione essenziale perché l'imparzialità sia effettivamente assicurata e le garanzie di indipendenza dagli altri poteri non de cadano a privilegio corporativo, è la soggezione del giudice alla sola legge: sia nel senso positivo per cui la decisione del giudice deve trovare la sua fonte nella legge sia nel senso negativo che esclude il vincolo rispetto a qualsiasi autorità diversa dalla legge", in Ferrua, 2020: p. 65).

The first projection is the assumption of a limit from which the law's interpretation ceases to exist and gives place to a law's creation. This limit is vague, just like the one from which a factual reconstruction based on available evidence becomes arbitrary, but, in both cases, it exists and should be carefully respected. Despite the fact that an interpretation act is expected from—and will always be formally present in—a judges' decision, it is not true that every judge's decision really follows from an interpretation act: no sane judge would declare that they disregard the text of a law to apply something they had made up in their mind instead, and that makes this issue hard to be documented and accordingly addressed. Therefore, considering that its disguise is formally an interpretation, Paolo Ferrua calls this activity an "creative" interpretation. The second projection is the non-binding of interpretations from other jurisdictional organs (except if it regards the same process) to a judge, who should take those into account, especially when coming from superior jurisdictions, but has the power not to follow them by justifying why they were not retained as sufficiently persuasive in that case (Ferrua, 2020). (In a similar way, affirming the "judges' general duty to conform their decisions to the Congress' law"—translation of, "el deber general de los jueces de ajustar sus decisiones a la ley del Congreso"—as a limit to the judicial function (Maier, 2016: p. 700). Eberhard Schmidt (1957: pp. 285-286) does not agree with the thesis according to which the submission to legal values represents a limit to the judicial function, arguing instead that this particular relationship between the judge and the Law represents the judicial independence's meaning and justification.)

Complementarily, Alberto Camon considers the Judges' exclusive subjection to the law as the first affirmation of the judicial independence: "[...] the law—and only the law—constitutes the source, the limit, and the measure of their powers" (Translation of, "[...] la legge—e solo essa—costituisce la fonte, il limite, la misura dei loro poteri", (Camon et al., 2020: p. 100).). Nonetheless, he highlights that the independence "it is not a 'final' value but an instrumental one, serving the principles of legality and equality, which can only be safeguarded where justice is not subjected to reasons of state or political interests" (Translation of, "Si tratta d'un valore non 'finale' ma strumentale, cioè servente rispetto a quelli della legalità e dell'uguaglianza, suscettibili d'essere tutelati solo dove la giustizia non sia assoggettata alla ragion di stato o comunque ad interessi politici", (Camon et al., 2020: p, 100).). In criminal procedure, judicial independence is usually considered "[...] above all, as a 'prerequisite' for the most eminent and symbolic aspect of the jurisdictional role: impartiality" (Translation of, "[...] sopratutto come 'pre-requisito' rispetto al tratto più eminente e simbolico del ruolo giurisdizionale: l'imparzialità", (Camon et al., 2020: p. 101).). The author points out that in the Italian Constitution impartiality—which is related to the judicial function concretely exercised, to the requirement that the decision is free from interests and prejudices—comes together with equidistance (*terzietà*)—which is related to the judges' institutional position, their status, equally distant from the parties. In conclusion, the author mentions as impartiality corollaries the demand principle—the one who makes requests is not the same as the one who decides them (*ne procedat iudex ex officio*)—the possibilities of refusing a judge in a case—impediments and suspicion—the admission of evidence only when required by one of the parties—and not the judge *ex officio*—and the limits during the cross examination for the judge's questioning testimonies (Camon et al., 2020: pp. 101-103).

Despite the fact that the qualifications independence and impartiality are often used together in international dispositions (E.g., the Universal Declaration of Human Rights—"Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations or of any criminal charge against them."—the American Convention on Human Rights—"Article 8.1: Every person has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law, in the determination of any criminal charge brought against them or their rights and obligations of a civil, labor, fiscal, or any other nature."—the International Covenant on Civil and Political Rights—"Article 14.1: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. The press and public may be excluded from all or part of a trial for reasons of morals, public order, or national security in a democratic society, or where the interest of the private lives of the parties so requires, or to the extent

strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; however, any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of minors requires otherwise, or the proceedings concern matrimonial disputes or the guardianship of children."—and the European Convention on Human Rights—"Article 6 (Right to a fair trial) 1: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]".), each one has a particular meaning and, therefore, specific criteria to be applied. To give an example, according to the European Court of Human Rights, they "[...] concern only the body called upon to decide on the criminal charge against an applicant and do not apply to the representatives of the prosecution who are only parties to the proceedings (*Kontalexis v. Greece*, 2011, § 57; *Haarde v. Iceland*, 2017, §94; *Thiam v. France*, 2018, §71)" (Guide on Article 6 of the Convention—Right to a Fair Trial (Criminal Limb), 2022: p. 24), in other words, are applicable "[...] equally to professional judges, lay judges and jurors (*Holm v. Sweden*, 1993, §30)" (Guide on Article 6 of the Convention—Right to a Fair Trial (Criminal Limb), 2022: p. 24). Instead, the WJP Rule of Law Index uses these terms more broadly, attributing them to the Criminal Justice System, taking the police and the judges into consideration, without saying if public prosecutors would also be included in the concept. Even if the International Courts position is more restrictive, in order to achieve a more complete analysis, independence and impartiality should also be discussed in relation to the police and the public prosecutor's office.

2.1. Independence

Independence is considered "[...] the most indispensable characteristic of «judging» and, therefore, of the judicial function" (Translation of, "[...] a *independência* como a mais irrenunciável característica do «julgar» e, portanto, da função judicial", in Figueiredo Dias, 2004: p. 303) in a rule of law state, as a consequence of the doctrine of separation of powers (See, for instance, how the subject was explained in the Portuguese doctrine (Figueiredo Dias, 2004: pp. 303-304): "Since, consequently, the courts as a whole—and each judge individually—are organs of sovereignty (ConstP, art. 71) and the judicial function belongs *exclusively* to them (art. 116), it must necessarily be concluded that *the material (objective) independence of the courts—strengthened by the personal (subjective) independence of the judges who compose them—is an indispensable condition for all genuine jurisprudence* (arts. 119 and 120 of the ConstP and III of the EJ)", translation of "Sendo por conseguinte os tribunais no seu conjunto—e cada um dos juízes de per si—órgãos de soberania (ConstP, art. 71.˚) e pertencendo *só* a eles a função judicial (art. 116.˚), tem por força de concluir-se que a *independência material (objectiva) dos tribunais—reforçada pela independência pessoal (subjectiva) dos juízes que os formam—é condição irrenunciável de toda a verdadeira jurisprudência* (arts.

119.˚ e 120.˚ da ConstP e III.˚ do EJ)".). Originally, its purpose was primarily to prevent interference by the Executive and the Monarch in the administration of Justice. However, independence has a broader meaning today: it encompasses independence from other branches of government, from any public interest groups, from the hierarchical organization of the judicial bureaucracy, and even from other courts (Figueiredo Dias, 2004: pp. 305-311).

The understanding about the topic is similar in the Brazilian doctrine, which highlights that the independence can be political—related to the Judicial Branch and its judges and expressed by the judicial self-government (*autogoverno da Magistratura*) the judges' professional guarantees (*vitaliciedade, inamovibilidade, irredutibilidade de vencimentos e vedação do exercício de determinadas atividades*)—or juridical—expressed by the principle that the judge is subjected only by the law and, consequently, the non-hierarchical subordination when practicing jurisdictional functions (For all, see Araujo Cintra, Grinover & Dinamarco, 1974/2007: p. 178 ss). But also, for its explanatory quality and popularity amongst Brazilian scholars, deserves to be mentioned Owen Fiss' conception (The authors' thought became popular in Brazil mainly through the (Fiss, 2005), translation of (Fiss, 2003), but his proximity with Latin America in general, especially with Argentina and Chile, started in 1985 when he developed a keen interest in the transitions from dictatorship to democracy.).

According to the Professor emeritus from the Yale Law School, "The authority of judges, I contend, arises not from any unique moral expertise, of which they have none, but from the limits on the office through which they exercise power. In my view, judges command our respect because they are insulated from politics and engage in a special dialogue with the public. Judges are required to hear grievances they might otherwise prefer to ignore, to assume personal responsibility for their decisions, and to justify those decisions on the basis of publicly acceptable reasons" (Fiss, 2003, Preface, Position 71). This is a position that makes sense with how he describes judicial independence, mainly focused on the United States legal model.

To Owen M. Fiss, there are three different forms of the judges' independence: (i) party detachment—regards the relationship between the judge and the parties in the court and its motive is an aspiration for impartiality—(ii) individual autonomy—regards the relationship between the judges individually considered and other members from the Judicial Branch—and (iii) political insularity—it is the requirement of independence from governmental institutions controlled by popular vote, mainly the Executive and Legislative Branches (Fiss, 2003: pp. 60-62). Coherently to his premise, he concludes: "The Constitution grants the executive and the legislature the power to make appointments, to decide whether salaries should be adjusted for inflation, and to define the judiciary's jurisdiction and structure, and because of the courts often need the political branches to implement their decisions, these branches are able to exercise significant influence over the judiciary. Judges are independent, but not too independent, as is indeed

appropriate in a democracy" (Fiss, 2003: p. 65).

In addition, there are some useful insights on the subject in Argentina's doctrine. Julio B. J. Maier (2016: p. 703) explains that independence "[...] means that each judge, when adjudicating and deciding a specific case, is free—*independent* of all powers, including the judiciary itself—to make their decision, and the only requirement is that their ruling conforms to the application of the applicable law, meaning that they must adhere to the law. Except for the law governing the case, their decision must not be influenced by orders of any kind or origin. *Judicial independence* lies in this—and nothing else" (Translation of "Ello implica que cada juez, cuando juzga y decide un caso concreto, es libre—*independiente* de todo poder, inclusive del judicial—para tomar su decisión y solo se le exige que su fallo se conforme con aplicar el Derecho vigente, esto es, que se someta a la ley. Salvo la ley que rige el caso, se pohíbe así que determine su decisión por órdenes de cualquier tipo y proveniencia. En ello—y no en otra cosa—reside la *independencia judicial*".). Likewise, Alberto M. Binder addresses a problem that is commonly overlooked by the legal literature in general. After recalling the widely known classification of independence as internal—or personal, regarding the judge individually—and external—or institutional, regarding the whole Judicial Branch—and clarifying that the external is instrumental to the internal one, he adds a third criterion to the classic classification, the bureaucratic or administrative profile of the judicial independence (Binder, 2016: p. 150).

According to Alberto M. Binder, while the Executive Branch—since its primary function is to administer—is essentially bureaucratic and the Legislative Branch—whose function is mainly to discuss matters that represent social interests—has political pluralism as its essence, the Judicial Branch "[...] is structured based on individuality and adherence to the law. Therefore, the constitutional guarantee of judicial independence is founded on individuals—detached from any bureaucratic structuring and the rules of political representation—who ensure the enforcement of the law in individual cases" (Translation of, "El Poder Judicial se configura sobre la base de la individualidad y de la sujeción a la ley. Por ello, la garantía constitucional de la independencia judicial se basa en personas—ajenas a toda estructuración burocrática y ajenas a las reglas del juego de la representatividad política—que aseguran la vigencia de la ley en los casos individuales", (2004, pp. 85-86).). In this conceptual framework, the Judicial Branch should be, by definition, anti-bureaucratic: not only far from political representation aspects of the Legislative, but also from the bureaucratic principle that informs the administrative power; while administering and legislating are functions executed taking into account general and abstract situations—which are naturally related to the global perspective that social policies must have—the jurisdictional one, instead, in order to balance the State powers, is a power meant to be concerned exclusively with the individual case, about the potential or actual impacts of those global activities on the individual's rights and interests: "For justice, there is nothing beyond the claim of Juan, Pedro, or María—the case in which they are

somehow involved. This is the other dimension of judicial independence, often overlooked. In short, judicial independence is, fundamentally, the guarantee that a specific person (with a name and surname), who has been vested with the power to resolve certain individual cases, is subject only to the Constitution and the law" (Translation of, "Para la justicia no existe otra cosa que el reclamo de Juan, Pedro o María, la causa en la cual ellos están de algún modo involucrados. Ésta es la otra dimensión de la independencia judicial, muchas veces soslayada. En síntesis, la independencia judicial es, sustancialmente, la garantía de que una persona determinada (con nombre y apellido), que ha sido investida del poder para solucionar ciertos casos individuales, sólo está sujeta a la Constitución y a la ley". (Binder, 2004: pp. 86-87).). Therefore, the author concludes that the main source of problems regarding judicial independence that needs attention can be seen in the judges' dependence on the bureaucratic structure in which they operate, because it produces a work routine that pushes them (i) to analyze the individual cases generically, as if they were different files of the same claim, and (ii) to delegate tasks that they were not supposed to, but the Judicial Branch structural disfunctions make them choose to prioritize between two equally valuable duties—to decide all cases and to do it themselves, personally—which can actually be done. In a scenario like this, the costs for the degraded judicial activity "[...] in fact, it is the citizens who pay the price, as they see one of the fundamental guarantees of our political system undermined. The main problem is not that of the judge, who is forced—much to their regret—to delegate their functions, but rather that of the citizen who seeks a judge to resolve their conflicts, pays taxes to ensure the existence of that judge, and, upon reaching the courts, discovers that their case is handled by an employee" (Translation of, "[...] de hecho la pagan los ciudadanos, que ven menoscabada una de las garantías básicas de nuestro sistema político. El principal problema no es el del jues, que está obligado—muy a su pesar—a delegar sus funciones, sino el del ciudadano que busca un juez para solucionar sus conflictos, paga sus impuestos para que exista ese juez y, cuando llega a los tribunales, descubre que su caso es atendido por un empleado", (Binder, 2004: p. 93).).

The Inter-American Court of Human Rights has affirmed judicial independence as "[...] one of the main objectives of the separation of public powers [...]" and as a guarantee aimed at "[...] preventing the judiciary in general, and its members in particular, from being subjected to possible undue restrictions in their functions by entities outside the judiciary, or even by magistrates exercising review or appeal functions" (Translation of, "[...] uno de los objetivos principales que tiene la separación de los poderes públicos [...]" and "[...] evitar que el sistema judicial en general y sus integrantes en particular se vean sometidos a posibles restricciones indebidas en el ejercicio de su función por parte de órganos ajenos al Poder Judicial o incluso por parte de aquellos magistrados que ejercen funciones de revisón o apelación", in Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 37: Independencia Judicial (2022: p. 14). According to its jurisprudence—similar to that of the European Court of Human Rights

and aligned with the United Nations' Basic Principles on the Independence of the Judiciary—judicial independence entails guarantees such as "[...] an appropriate appointment process, tenure security, and protection against external pressures" Translation of, "[...] un adecuado proceso de nombramiento, la inamovilidad en el cargo y la garantía contra presiones externas", in Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 37: Independencia Judicial (2022: p. 14).

Taking into account its jurisprudential developments, the European Court of Human Rights establishes four criteria to define a court as independent: (i) "the manner of appointment of its members", (ii) "the duration of their term of office", (iii) "the existence of guarantees against outside [and inside] pressures", and (iv) "whether the body presents an appearance of independence" (Guide on Article 6 of the Convention—Right to a Fair Trial (Criminal Limb), 2022: p. 24). These topics are the chosen criteria under which the legal regime of the Brazilian Judicial Branch and its judges will be described.

2.2. Impartiality

While judicial independence ensures the courts' ability to operate freely, unhindered by external pressures, this alone is insufficient to guarantee the objectivity of a trial. It is equally crucial to uphold the impartiality of judges, not only against external influences but also against any specific relationships that might connect them to the case they are tasked with judging: what matters most is not so much whether the judges ultimately succeeded in maintaining impartiality but rather ensuring they are shielded from any suspicion of failing to do so. This approach reinforces the community's confidence in the decisions made by its judiciary (Figueiredo Dias, 2004: pp. 315-316). This is why impartiality is commonly considered a duty of the judges (Boujikian, 2020; Dallari, 1996: p. 86). Maybe it is more than just a principle; and a mere duty if, by duty, one understands "the state of a person to whom something is prescribed" (Translation of "[...] lo stato della persona a cui è prescrito qualcosa;", in Cordero, 1986: p. 15).

Due to its importance and the role it has, impartiality is also a constitutive element of jurisdiction, which does not exist without it. A partial judge is not, legally speaking, a judicial body but an ally of the party with whom they align. That is why "an impartial judge is—dispelling euphemisms—one who remains equidistant from the interests to which the process and the criminal case refer. Hence their role as 'terzo', as the Italians say" (Translation of "Juiz imparcial é—afastando os eufemismos—aquele equidistante dos interesses aos quais o processo e o caso penal se referem. Daí sua função de 'terzo', como dizem os italianos", in Miranda Coutinho & Berti, 2022: p. 185).

This makes sense, primarily because it eliminates the possibility of invoking the notion of neutrality, "which does not exist and is not of this world" (Azevedo, 1989: pp. 21-22: "It becomes clear that the fragmentation of legal discourse is, in reality, the result of a particular conception of law—of its teaching and its

research—that, in the name of 'scientific neutrality'—which, in truth, is mere accommodation to the dominant power, whatever it may be—turns its back on history and on the interests and values that demand taking a stance, making choices, and engaging, rather than adhering to a neutrality that does not exist and is not of this world. (...) Whether one likes it or not, the interpreter's activity, especially that of the judge, unfolds in a series of value judgments, despite the theoretical limits one may attempt to impose. It may be possible to obscure the nature of judicial activity for a certain period, but it can never be truly constrained—never has been and never will be—because it is intrinsically tied to life and human interests." translation of, "Percebe-se que a cisão do discurso jurídico é em verdade efeito de uma concepção do direito, de seu ensino e de sua investigação, que, em nome da 'neutralidade científica'—diga-se da acomodação ao poder dominante, seja ele qual for—vira as costas para a história e para os interesses e valores que reclamam tomadas de posição, opções, engajamentos e não uma neutralidade que não existe e nem é deste mundo. (...) Queira-se ou não, a atividade do intérprete, sobretudo do juiz, desdobra-se em uma série de juízos de valor, não obstante os limites que teoricamente se lhe queira colocar. Pode-se buscar obscurecer por tempo mais ou menos longo a índole da atividade do juiz, mas não se consegue, nunca se conseguiu e nem se conseguirá limitar indefinidamente uma atividade intimamente ligada à vida e aos interesses humanos." (Azevedo, 1989: p. 24)). The very act of thinking is already a stance, especially because the words chosen to form the chain of signifiers that construct sentences exclude other words, thereby preventing neutrality from the outset.

Impartiality, however, presupposes taking a position, albeit not in favor of either party's interests. After all, impartiality is the characteristic or quality of being impartial; and impartial, in Portuguese, derives from "partial" with the prefix "in" (in the form of "im"), which negates it—thus, non-partial. "Partial", in turn, comes from the Latin pars, partis, meaning a part of a whole. This is the sense in which the term was used by Carnelutti in his famous text on "Truth, Doubt, and Certainty" (Carnelutti, 1965), which gained prominence in procedural law.

Therefore, for a judge to maintain equidistance from the interests involved in the process and the criminal case is a Herculean task because, as we know, with each procedural act, new knowledge emerges (especially evidentiary knowledge), and the natural tendency is to take a stance on what it represents, including, if applicable, a decision on the merits. However, such knowledge in the process is always partial and can obviously change in the next moment, often resulting in absurd—if not unjust—decisions. This way of acting/thinking/deciding (except in the admissible exceptions, such as precautionary measures) is neither what the law prescribes, nor what is desired, nor what is presumed. Yet, it happens in nearly all cases. And for a simple reason: this is the normal (natural?) mechanism used by humans in Western civilization. That is, reasoning is generally based on Aristotle's analytics (as systematized by Thomas Aquinas in the Middle Ages), advancing knowledge through syntheses derived from comparing premises: major

premise, minor premise, synthesis. This is the well-known syllogism. Thus, with each procedural act, the accumulated knowledge reshapes the existing perspective, leading to new conclusions, some of which (depending on the case) may inadvertently anticipate the final decision, even though this is always denied due to its clear illegality. In reality, and in most cases, the final decision is gradually constructed—just as it would be for any person in that situation—except in cases of blatant prejudgment, which is entirely illegal but widely practiced in inquisitorial proceedings (Hartmann, 2010: p. 155: "What happens with most authors is the mistake of believing—and worse, asserting—that judicial decisions truly derive from the evidence presented in the case files. This is not absolute. As has already been mentioned, it would be ideal if that were the case. However, not only due to personal factors but also because the judge manages the evidence, it often happens that the judge does not decide based on the evidence in the records but merely uses it to justify their decision." translation of, "O que ocorre com a maioria dos autores é o equívoco de acreditar e, pior, sustentar que, de fato, a decisão vai decorrer das provas acostadas aos autos de processo. Isso não é absoluto. Como já se disse, seria ideal que fosse assim. Porém, não só por conta dos elementos pessoais, mas também por ser gestor da prova, muitas vezes, repita-se, o juiz não decide com base na prova dos autos, mas apenas as utiliza para justificar a sua decisão". About the subject, regarding the free judicial conviction, see Nobili, 1974: p. 260 e ss.). Ultimately, much depends on the judge themselves who, even while understanding how knowledge enters the process, must resist appearances and ensure that partial conclusions do not compromise the doubts that should persist until the final decision, so that it represents the best possible conclusion. Certainly, this is neither simple nor easy, but it serves as a psychological relief, easing the burden of life. Judges who act this way are often considered the best precisely because they seem to be more at peace with life—so long as they are free from prejudgments. They frequently manage to maintain equidistance from the interests at stake in the proceedings and, therefore, remain impartial.

In this context, there are multiple reasons for doubt to arise about a judge's ability to remain impartial in a specific case. The legal implications of doubts about a judge's impartiality vary: when such doubts lead to the judge being barred from participating in a particular criminal proceeding and a decision that must be made independently of any objections from the parties involved, it is a case of judicial impediment (*impedimentos*); when these doubts merely allow the participants to challenge the judge's involvement in the trial, it regards the suspicions (*suspeições*) (Figueiredo Dias, 2004: pp. 315-316).

Thus, arguing that it is preferable to have a general clause rather than *numerus clausus* hypothesis to the impediments and suspicions, Jorge de Figueiredo Dias points out: "In conclusion, there is a true *general principle of law*, operative within the realm of judicial policy, underlying all matters concerning the impediments and suspicions of judges: the principle that it is the law's responsibility to ensure that, in any court and concerning all procedural participants, *an atmosphere of*

pure objectivity and unconditional adherence to the rule of law prevails. It is therefore incumbent upon each judge to avoid, at all costs, any circumstances that might disrupt that atmosphere, not—it must be emphasized once again—because such circumstances might cause the judge to lose impartiality, but because they might lead others to believe that impartiality has been compromised" (Translation of, "É, em conclusão, um verdadeiro *princípio geral de direito*, actuante no domínio da política judiciária, que se esconde atrás de toda a matéria respeitante aos impedimentos e suspeições do juiz: o de que é tarefa da lei velar por que, em qualquer tribunal e relativamente a todos os participantes processuais, reine uma *atmosfera de pura objectividade e de incondicional juridicidade*. Pertence pois a cada juiz evitar, a todo o preço, quaisquer circunstâncias que possam perturbar aquela atmosfera, não—uma vez mais o acentuamos—enquanto tais circunstâncias possam fazê-lo perder a imparcialidade, mas logo enquanto possam criar nos outros a convicção de que ele a perdeu", in Figueiredo Dias, 2004: p. 320).

In this regard, addressing the general principles related to jurisdiction, Jacinto Nelson de Miranda Coutinho explains that impartiality, while "[...] functioning as a goal to be achieved by the judge in the exercise of jurisdiction, for which mechanisms are sought to guarantee it", is also "[...] a guarantee both for those exercising jurisdiction and for those appearing before it. However, it remains an aspirational goal. The one thing that cannot be accepted in this context is a naïve, permissive view, like that of Pilate, treating it as something naturally inherent (as an evident defense mechanism) when, in truth, the reality is quite the opposite" (Translation from, "[...] funciona como uma meta a ser atingida pelo juiz no exercício da jurisdição, razão por que se busca criar mecanismos para garanti-la", "[...] é uma garantia tanto para aquele que exerce a jurisdição, como para aquele que demanda perante ela; mas não deixa de ser meta optata. Única coisa que se não pode aceitar, na espécie, é uma visão ingênua, permissiva dos espíritos à moda Pilatos, que a tomam como algo dado por natureza (como evidente mecanismo de defesa) quando, em verdade, o que se passa é exatamente o contrário", in Miranda Coutinho, 1998: pp. 173-174). Moreover, analyzing the doctrine on the topic of impartiality, André Szesz's doctoral thesis identified six essential aspects: (i) impartiality as a corollary of jurisdiction, (ii) impartiality as a consequence of the accusatory system, (iii) impartiality as related to the independence of judges, (iv) impartiality as the absence of the judge's interest in the specific case, (v) impartiality as the duty to treat parties equally, and (vi) impartiality as the prohibition of pre-judgment (Szesz, 2023: pp. 45-51).

The Inter-American Court of Human Rights considers impartiality a fundamental guarantee of due process: "the right to be judged by an impartial judge or tribunal [...], ensuring that the judge or tribunal, in exercising their adjudicating role, operates with the utmost objectivity in conducting the trial" (Translation from, "el derecho a ser juzgado por un juez o tribunal imparcial [...], debiéndose garantizar que el juez o tribunal en el ejercicio de su función como juzgador cuente con la mayor objetividad para enfrentar el juicio", in Cuadernillo de Jurisprudencia

de la Corte Interamericana de Derechos Humanos No. 12: Debido proceso, 2022: p. 140). In addition, the court "[...] has established that impartiality requires the judge involved in a particular dispute to approach the facts of the case without subjective prejudice and to offer sufficient objective guarantees that inspire the necessary confidence in the parties to the case as well as in citizens in a democratic society. The impartiality of the tribunal implies that its members do not have a direct interest, a predetermined position, a preference for any of the parties, and that they are not involved in the controversy. This is because the judge must appear to act without being subject to influence, incentives, pressure, threats, or interference, directly or indirectly, and must act solely and exclusively according to—and motivated by—the law" (Translation from, "[...] ha establecido que la imparcialidad exige que el juez que interviene en una contienda particular se aproxime a los hechos de la causa careciendo, de manera subjetiva, de todo prejuicio y, asimismo, ofreciendo garantías suficientes de índole objetiva que inspiren la confianza necesaria a las partes en el caso, así como a los ciudadanos en una sociedad democrática. La imparcialidad del tribunal implica que sus integrantes no tengan un interés directo, una posición tomada, una preferencia por alguna de las partes y que no se encuentren involucrados en la controversia. Ello puesto que el juez debe aparecer como actuando sin estar sujeto a influencia, aliciente, presión, amenaza o intromisión, directa o indirecta, sino única y exclusivamente conforme a—y movido por—el Derecho", in Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 12: Debido proceso, 2022: p. 140).

This understanding is closely aligned with the position of the European Court of Human Rights, which defines impartiality through two approaches: a subjective one—"[...] that is, endeavoring to ascertain the personal conviction or interest of a given judge in a particular case"—and an objective one—"that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect" (Guide on Article 6 of the Convention—Right to a Fair Trial (Criminal Limb), 2022: p. 26). Therefore, these approaches are the chosen criteria under which the legal regime of the Brazilian Judicial Branch and its judges will be described.

3. The Judicial Branch and Its Judges

Other than the international sources for regulating the Judicial Branch and its judges' legal regime, in the Brazilian criminal procedure model the subject is disciplined by the 1988's Constitution, *Lei Complementar no*. 35, from March 14th, 1979, *Lei Complementar no*. 152, from December 3rd, 2015, the Criminal Procedure Code (*Código de Processo Penal - Decreto-Lei no*. 3.689, October 3rd, 1941), the *Lei no*. 8.038, from May 28th, 1990, the Judicature's Ethics Code (Código de Ética da Magistratura Nacional, 2008) and the internal rules from each court. Hierarchically, first comes the Constitution; second, the international sources; third, the *Lei Complementar*; forth, the Criminal Procedure Code and the other ordinary

laws; and, finally, the internal rules from each court, the Judicature's Ethics Code and other administrative acts eventually applicable.

Considering the nature of the regulated subject, there are specific interpretation rules that should be followed and they are in the articles 2nd and 3rd, from the Criminal Procedure Code. According to them, the criminal procedural laws are applied immediately without affecting the validity of acts carried out under the previous law (Article 2nd) and that the criminal procedural laws can be extensively interpretated, analogically applicated and supplemented by general principles of law (Article 3rd). Although, the effects of the art. 2nd find a limit in the constitutional principle of the natural judge (*princípio do juiz natural*), which grants the citizens the right not to be judged by *ad hoc* judges (art. 5th, XXXLVII and LIII, 1988's Constitution) (About this subject, see Miranda Coutinho, 2008). In addition, through the art. 3rd it is appliable the canon 18th, from the Code of Canon Law, which states "Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation" (Code of Canon Law—Title I—Ecclesiastical Laws (Cann. 7-22), n.d.), because it supplements a lacking disposition about the matter in Brazil. The same reasoning could be used to apply the Civil Procedure Code, when its dispositions expand citizens' rights.

The Brazilian Judicial Branch is constituted by its organs (Article 92, 1988's Constitution): *Supremo Tribunal Federal* (STF) (Article 101, from 1988's Constitution, establishes that the STF is composed of eleven Justices selected from citizens who are over thirty-five and under seventy years of age, possessing notable legal expertise and an unblemished reputation.), *Conselho Nacional de Justiça* (CNJ) (This organ is the responsible to control both the administration and finances from the Brazilian Judicial Branch and also ensure the compliance of the judges' functional duties. Its discipline is framed in the Article 103-B, 1988's Constitution), *Superior Tribunal de Justiça* (STJ) (It was stated in Article 104, 1988's Constitution, that the Superior Court of Justice is composed of at least thirty-three Justices.), *Tribunal Superior do Trabalho* (TST), *Tribunais Regionais Federais* (TRF) and *Juízes Federais*, *Tribunais* (TRT) and *Juízes do Trabalho*, *Tribunais* (TRE) and *Juízes Eleitorais*, *Tribunais* (TJM) and *Juízes Militares* and *Tribunais* (TJ) and *Juízes dos Estados* and from *Distrito Federal* and *Territórios*. These organs are divided in common and specialized justice, as it follows (as shown in **Figure 5**).

3.1. The Manner of Appointment of Its Members

In general (art. 93, I, 1988's Constitution), the appointment of the judges follows strictly the order of classification in a public competitive examination, supervised by the Brazilian Bar Association, consisting of tests and evaluation of qualifications, in which the candidate needs to hold a law degree and proof at least three years of legal experience in order to participate (These requirements could be complemented by the ones listed by the paragraphs from the article 78, *Lei*

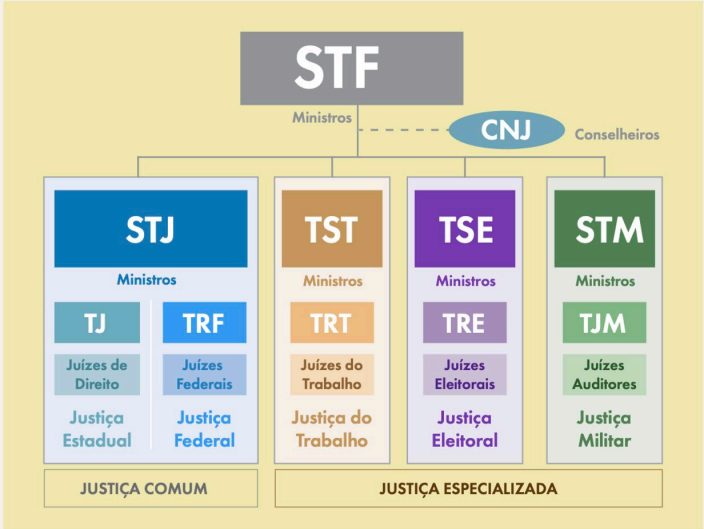

Figure 5. Brasil. Supremo Tribunal Federal (STF). Cartilha do Poder Judiciário/Supremo Tribunal Federal. Brasília: STF, Secretaria de Documentação, 2018, p. 5.

Complementar no. 35, from March 14th, 1979—for instance, the completion of an official prep course to be a magistrate, an inquire about moral and social aspects and an exam of both the physical and psychological sanity—but they need to be specified and required by law.). According to the art. 94, 1988's Constitution, one-fifth of the seats in the Federal Regional Courts, State Courts, and Courts of the Federal District and Territories are to be occupied by members of the Public Prosecutor's Office with more than ten years of service, as well as by lawyers with notable legal expertise and an unblemished reputation, who have at least ten years of effective professional activity. These candidates are to be nominated through a six-candidate list prepared by the representative bodies of their respective classes. The sole paragraph specifies that, after receiving these nominations, the court is responsible for forming a three-candidate shortlist, which is then sent to the Executive Branch. The Executive is required to select one candidate from this list for appointment within twenty days.

Although, to the Superior Courts the appointment occurs differently. In one hand, to the STF, the sole paragraph from the article 101, 1988's Constitution, provides that its Justices are appointed by the President of the Republic, following approval of their selection by an absolute majority of the Federal Senate. To the STJ, the article 104, sole paragraph, 1988's Constitution, establishes that the Justices of the Superior Court of Justice are to be appointed by the President of the Republic from among Brazilians aged over thirty-five and under seventy, who possess notable legal expertise and an unblemished reputation. Their selection must be approved by an absolute majority of the Federal Senate, with the following provisions: (i) one-third is to be selected from judges of the Federal Regional Courts and one-third from justices of the State Courts, based on a three-candidate shortlist prepared by the respective courts; (ii) one-third is to be chosen, in equal parts, from lawyers and members of the Public Prosecutor's Office (Federal, State,

Federal District, and Territories), alternately, as outlined in Article 94, 1988's Constitution.

In any case, accordingly to the article 79, *Lei Complementar no.* 35, from March 14th, 1979, in the act upon which takes the office, the Judge is required to present a public declaration of their assets and take an oath to perform the duties of the position with integrity, upholding the Constitution and the laws. This is also a way to perceive any unusual raise in a judge's asset, that could lead to an investigation about its causes in order to prevent eventual acts of corruption.

3.2. The Duration of Their Term of Office

After the appointment to the judge position, after two years, in case of those who earned the position through the public competitive contest, and immediately, from the appointment in the other cases, one can only be dismissed with a jurisdictional sentence, except on the case of those two years, when the dismissal could be done by the specific court to which that judge is working for (art. 93, I, 1988's Constitution). Because its duration is considered a lifetime, this is called *vitaliciedade*, even though the retirement a Brazilian judge is mandatory, at the age of seventy-five or in cases of proven disability, or optional, after thirty years of public service, with full salary (art. 74, *Lei Complementar no.* 35, from March 14th, 1979) (This is an interpretation from the art. 74, *Lei Complementar no.* 35, from March 14th, 1979, with the modification introduced by the article 2nd, from the *Lei Complementar no.* 152, from December 3rd, 2015, that changed the age for the compulsory retirement from seventy to seventy-five years.). It is worth mentioning, though, that there is a porpoise to reform the Brazilian Constitution being discussed in the Legislative Branch to limit the STF judges' mandate duration to eight years (PEC 16/2019—Senado Federal, n.d.).

3.3. The Existence of Guarantees against Outside and Inside Pressures

The 1988's Constitution sets an articulated separation of powers model to the Brazilian State. Its choices grant to the Judicial Branch self-government (articles 95 and 99), which is financial and political autonomy plus self-administration and self-organization, and to the judges' professional guarantees (articles 93, VIII, and 95, I, II and III), like the aforementioned *vitaliciedade*, irremovability (*inamovibilidade*) and irreducibility of earnings (*irredutibilidade de vencimentos*). Regarding the Executive Branch, there are both preventive and repressive guarantees, first, prohibiting the President (*Presidente da República*) to dictate provisory measures (*medidas provisórias*) about the organization of the Judicial Branch and the Public Accusator's Office and also about the career and guarantees from its members (art. 62, §1st, I, *c*) and sanctioning as a responsibility crime any act of the President against the free exercise of the Legislative Branch, the Judicial Branch, the Public Accusator's Office and the constitutional powers of the Federation unities or against the compliance to the law and to judicial sentences (art. 85, II and

VII). Regarding the Legislative Branch, it sets limits to the possibility to reform the Constitution, for instance, prohibiting the as an object of deliberation the porpoise tending to abolish the separation of the powers and the fundamental rights and individual guarantees (art. 60, §4°, III and IV), at the same time attributes to the Senate (*Senado Federal*) the competence to process and judge the Ministers (*Ministros*) of the STF, the members of the CNJ and the *Conselho Nacional do Ministério Público* (CNMP), the Prosecutor General of the Republic, and the Attorney General of the Union in cases of crimes of responsibility (art. 52, II).

Despite its incompatibility with the principle of the judges' subjection only to the law, in 2004, it was added to the 1988' Constitution the article 103-A, §§ 1st until 3rd, which disciplines the *súmulas vinculantes*, binding rules for the interpretation of determined norms elaborated by the STF. Aiming to enhance stability on the interpretations and reduce the number of cases to decide in the supreme court, this constitutional reform ended up undermining the aforementioned principle of the subjection of the judge exclusively to the law, by binding one's interpretation to a general one defined by a hierarchically superior court. Hence, it was an unfortunate way to address the problem of the excessive workload in the supreme court: firstly, because granting judges the power to legislate about the interpretation of any norm sounds incoherent with the legitimacy motives for their own independence; secondly, because to deal with an operational problem one should look at its causes instead of improvising a solution in order to keep the status quo.

The Brazilian Supreme Court has 11 judges (Article 101, Constitution) and a broad range of competence to deal with (Article 102, Constitution). Until July 1st, 2024, the country had 212.6 million people living in its territory (IBGE: Brazil's Population Reaches 212.6 Million, 2024). According to the STF's published data, in January 06, 2025, STF had 20.847 cases to judge in total: from January 1st, 2025, the court received 112 new cases and until that date filed only 12 of its cases; the court works with a congestion index (*Indicador de Congestionamento*—ICNG) of 99.97%, which indicates a clear inability to deal with its own workflow (Acervo STF, 2025). If the goal in a state with a strong rule of law is to grant as much as possible its citizens rights, Brazil's option for the *Súmulas Vinculantes* appears to be an inappropriate attempt to address the problem with the workflow in its supreme court, that could have been better faced by raising the number judges at the court and/or limiting the competence of the court—both solutions that would not have been incompatible with the subjection of the judges exclusively to the law. Also, considering the overwhelming workload, there is a problem in the Brazilian Justice in general which is the judges' dependence on their subordinates; even though those are judges in the Superior Courts, they are still humans and no matter how prepared or intellectually advantaged one could be, there is always the limit that comes from the brain's capacity to process information and respond to it in a day.

In one hand, the constitutional regime is complemented by the *Lei Complementar*

no. 35, from March 14th, 1979. In articles 30 and 31, granting the judges the faculty to refuse to be removed or promoted from their courts, both measures that could be taken only with the judges' authorization, it complements the guarantee of irremovability and, in its article 32, reassures the irreducibility of earnings and clarifies that the guarantee does not exclude the incidence of taxes. In another, it is restricted, like does the article 17, §4˚, which left open a possibility to the states to create temporary judges in order to substitute the lifetime ones in specific cases. But, since it violates the irremovability constitutional guarantee, the disposition was not received by the 1988's Constitution (argues in the same way: Neves, 2007).

3.4. Whether the Body Presents an Appearance of Independence

The political, financial, administrative and organizational autonomies previously highlighted makes it hard to argue that the Brazilian Judicial Branch and its judges has a great margin of independence. Nonetheless, it could be discussed the way of appointment of the Superior Courts' judges, mainly the ones from the STF: it is a discretionary choice from the President, who could choose anyone with notable legal expertise and an unblemished reputation, that afterwards needs to be approved by the absolute majority of the Senate (art. 101, 1988's Constitution). One of the latest choices for the court could cause some discomfort on those with republican ideals, since the President Luiz Inácio Lula da Silva has chosen his former lawyer, whose thoughts about sensitive topics were not public knowledge: several scholars, ideologically aligned with the government, overlooked this choice, as if there was nothing to be said about it; those ideologically compromised with the opposition criticized the President's choice, mainly due to a lack of sympathy towards Lula; others, also with their own ideological idiosyncrasies, might have watched the occurrence with estrangement. In fact, this indicates symptom of a problem in our model that needs to be thought about: one's particular affections should not be determinant of who goes or not to a supreme court; if what matters most is not so much whether the judges ultimately succeeded in maintaining impartiality but rather ensuring they are shielded from any suspicion of failing to do so, a reform on the subject might be timely (To address the problem and mitigate its consequences, Virgílio Afonso da Silva (2021: p. 500) has an interesting proposal: "If, instead of an absolute majority, a two-thirds vote of the Federal Senate were required, the possibility of the President of the Republic appointing candidates based on mere personal affinity or political preference would likely decrease. Another significant change, unrelated to the selection process but rather to the length of tenure, would be the adoption of fixed, non-renewable terms, as seen in various countries where members of supreme and constitutional courts serve for a decade or a similar period, ensuring a certain periodic renewal of the court. Under the current system in Brazil, if a president appoints individuals just above the minimum age requirement (35 years), they could remain on the Supreme Federal Court (STF) for nearly forty years, which may not be convenient", translation of "Se ao invés de maioria absoluta fossem necessários dois terços dos membros do

Senado Federal, a possibilidade de o presidente da República indicar nomes por simples simpatia pessoal ou preferência política tenderia a diminuir. Outra alteração relevante, não relacionada ao processo de escolha, mas ao tempo de permanência no tribunal, seria a adoção de mandatos fixos, não renováveis, como ocorre em diversos países, nos quais membros de cortes supremas e tribunais constitucionais permanecem no cargo por uma década ou tempo similar, garantindo certa renovação periódica do tribunal. Na forma como ocorre no Brasil, caso um presidente da República indique pessoas com pouco mais do que a idade mínima (35 anos), estas têm a possibilidade de permanecer no STF por quase quarenta anos, algo que pode não ser conveniente", (2021, p. 500).).

3.5. Impartiality through a Subjective Approach

Despite impartiality not being explicit in its text, its broadly accepted as an implicit constitutional principle in Brazil. In addition, it is expressed as a duty of acknowledgment of the incompatibilities, impediments and suspicion causes (art. 112, Criminal Procedure Code). Referring to the personal impartiality of the judge, the subjective approach is concerned to identify whether are there any bias or prejudice that could undermine the judgement of the case. These could be inferred statements or actions, expressed privately or publicly, that might reveal hostility or favoritism towards one of the parties, or also indicate prejudice or bias.

The suspicion exception (*exceção de suspeição*) is the legal instrument with which the parties can refuse a judge—or he could declare it himself—from working on a case based on his relationship with them. Its procedure is regulated by the articles 96, 97, 98, 99, 100, 101, 102, 103, 106, from the Criminal Procedure Code. The specific hypothesis for a suspicion exception are stated by the articles 253, 254, 255, 256 and 448 from the Criminal Procedure Code: the jurisprudence from de Superior Courts predominantly (It is possible to find cases at the STJ admitting extensive interpretation and analogy to the hypothesis stated by the Criminal Procedure Code, as it points out Choukr, 2014: p. 527.) interpret these as *numerus clausus* hypothesis, but this interpretation means reading strictly a law which grants a right, despite the general principle of law, highlighted by Figueiredo Dias (2004)—but that is also appliable in Brazil—according to which it is the law's responsibility to ensure that, in any court and concerning all procedural participants, *an atmosphere of pure objectivity and unconditional adherence to the rule of law* prevails. To justify the divergence from jurisprudential understanding, the necessary syllogistic operation for the Brazilian Law is as it follows: (a) the art. 3rd, from the Criminal Procedure Code, interpretative opening is integrated by the can. 18th, from the Code of Canon Law, from which combination it is inferred that laws restricting rights are interpreted strictly; (b) since the hypothesis of suspicion are stated to grant the right of being judged by an impartial judge—to a due process (*devido processo legal*), stated in the art. 5th, LIV, 1988's Constitution, could be also said to convince those who need a written source—therefore is the general rule that grants a (fundamental) right to the citizens; (c)

the suspicion exception—in one of its perspectives—means the citizen's right to refuse the judge whose impartiality seems reasonably doubtful; (d) assuming that *a*, *b* and *c* as true, not only the supplementary hypothesis regulated by the Civil Procedure Code (For instance, the art. 145, §1st, from the Civil Procedure Code, which allows the judge to declare his own suspicion for intimate reasons without the need of explicating the motives of that.), but also others non written in the law should be granted; (e) hence, the hypothesis of suspicion exceptions stated by law must be read as exemplificative.

Even though the possibilities of refusing a judge for his suspicion should be broader then considered nowadays in Brazil, it is assumed that the judges are subjectively impartial until proven otherwise (art. 98, Criminal Procedure Code) or when they declare themselves as partial (art. 97, Criminal Procedure Code). Ill intended judges, since they usually are intellectually advantaged persons, can quite easily avoid being caught when deciding to act on their prejudices, but human beings are highly influenced by their environment and some pressure or heated discussion in a hearing could give them in; that is why this represents the most common way to prove the subjective doubtful impartiality. Conversely, recently Brazil experienced a notorious case of lack of subjective impartiality that led to relevant political consequences for the country, which is, the suspicion declaration of the judge Sérgio Fernando Moro, who convicted Luiz Inácio Lula da Silva. In short, it was discovered that Moro exchanged messages with the prosecution of the case counseling on how to proceed in the case (These are facts broadly noticed in Brazil, see Fishman, Martins, Demori, Santi & Greenwald, 2019.). This is an example of a suspicion proven in a different way, in which the judge's suspicion was identified with the hypothesis stated by the art. 254, IV, Criminal Procedure Code, and proved with private conversations.

Also concerning the subjective approach of accessing impartiality, there is a heated discussion in Brazil about the possibility of a judge to have initiative in producing evidence (Since there is no time limit on when the judge's initiative can be used, this represents a great risk to the centrality of the parties in the evidence production during the criminal procedure.). The judges are currently allowed by the Criminal Procedure Code (art. 156th) to have the initiative in producing evidence on any case, but a considerable number of scholars argue that this power conflicts with the guarantee of being judged by an impartial judge, since someone who has hypothesis about a case would have already shown to have a position about it, and thus would be possible to expect a judge's suspicion based on this argument (For all, Lopes, 2020, chapter VII, 2.1.1.). The thesis, though, is not well accepted in the Superior Courts.

More recently, there is a controversial investigation ongoing in the STF, conducted by the Minister Alexandre de Moraes, who was also a victim in the case. The *Inquérito no.* 4.781 is an example of lacking both subjective and objective impartiality, since as a victim some sort of hostility against the persons investigated seems to be reasonably assumed and, even though there is an available

procedure applicable to the case stated by the art. 103, Criminal Procedure Code, and the articles 277 until 287, from the Internal Rules of the STF (*Regimento Interno do STF*), the STF's Minister did not follow it, ignoring his duty imposed by the art. 112, Criminal Procedure Code. And here seems oportune to remind Dalmo de Abreu Dallari's warning: "[...] independence, essential for a judge to deliver justice, must not serve as a pretext for maintaining the irresponsibility of governing bodies or all members of the courts. It is important to emphasize this point and clearly outline the foundations of the argument, to prevent, among other things, judges themselves—victims of the system—from being swayed by emotional arguments maliciously employed and reacting as if the demand for control were an accusation against all judges" (Translation of "[...] a independência, indispensável para que o juiz possa decidir com justiça, não deve servir de pretexto para que se mantenha a irresponsabilidade dos órgãos dirigentes ou de todos os integrantes dos tribunais. É importante insistir nesse ponto e deixar bem claros os fundamentos da argumentação, para evitar, entre outras coisas, que os próprios juízes, vítimas do sistema, sejam envolvidos por argumentos emocionais usados maliciosamente e reajam como se a exigência de controle significasse uma acusação a todos os juízes", in Dallari, 1996: p. 74).

3.6. Impartiality through an Objective Approach

The objective approach to impartiality, instead, referring to the structural or institutional guarantees that ensure it, examines whether, apart from the judge's behavior, there are facts that may raise legitimate doubts about their objectiveness. The question is whether the circumstances would lead a reasonable observer to fear a lack of impartiality. The law establishes hypothesis for impediments (articles 252nd and 449th, Criminal Procedure Code), which are processed as the suspicion exception, and which hypothesis the Superior Courts interpret as *numerus clausus*. The dominant interpretation of the impediments hypothesis inadmissible as well, since constitutes a restrictive reading of a law that grants a (fundamental) right. Thus, in this topic would also be: (i) recommendable the Figueiredo Dias' approach about the aforementioned general principle of law and (ii) appliable the operation to justify an exemplificative reading of the legal hypothesis.

Even though impartiality is treated as a non-written principle by the 1988's Constitution, its text attempt to guarantee the judges' impartiality through the due process (art. 5th, LIV) and, specifically, the art. 95th, sole paragraph, I, II, III, IV and V. The Legislative Branch declared its concern about the topic in the Criminal Procedure Code, when regulated the impediments and suspicions, the Civil Procedure Code, regulating further on and in a more complete way than to the criminal subject, and recently, with the *Lei no.* 13.964, December 24th, 2019, which represented the most important criminal procedure reform to the Code in Brazil.

The *Lei no.* 13.964 reformed partially the Criminal Procedure Code, albeit aimed to change to a new structure, in other words, wanted to surpass the inquisitorial model by implementing an accusatory one in the Brazilian criminal

procedure. Changes in the judges' powers touched a sensitive spot of the Judicial Branch, as it follows: instead of only one judge process the case from the *notitia criminis* until the sentence, with that law a new figure, called Guarantee's Judge (*Juiz das Garantias*), would be the competent authority to follow the investigation, when some jurisdictional decision was necessary, and decide about the admissibility of the accusation; instead of all the paperwork in which the investigation acts were documented in details end up in the trial's judge table to be used as convenient on sentencing, the accusation then would arrive to him just indicating the evidence sources that were to be produced during trial, forcing the judges attention on the oral production of the evidence (Would be a similar model to the Italian one (*doppio fascicolo*). About the subject, see (Bronzo, 2017).); the judges' initiative in producing evidence was also strongly limited to complementary questions (The Italians have an interesting perspective about this subject. For instance, Paolo Ferrua (2017: p. 127 ff.) and Franco Cordero (2012: p. 617) maintain that a residual and subsidiary exception to the rule prohibiting judges from taking the initiative in evidence is necessary, justifying that the unavailability of the object of criminal proceedings, resulting from the compulsory nature of the criminal prosecution (art. 112, *Cost.*), prevents a complete exclusion of the judge's initiative and that, if there were such an exclusion, even in the face of serious gaps in the body of evidence, the risk of a conviction of an innocent person or an acquittal of a guilty person would increase, given the damage to the correct reconstruction of the facts that this prohibition would cause. In any case, it is worth pointing out Paolo Ferrua's necessary clarification in this regard: "Undoubtedly, a systematic intrusion by the judge in the procedural instruction would put his impartiality at risk; but it is equally true that, taken to the extreme, impartiality could only be guaranteed by separating, as happens in jury proceedings, the figure of the one who directs the procedural interrogation from that of the one who decides on guilt. It is important that the times and methods of judicial intervention in evidentiary matters are well defined, limiting it to a strictly subsidiary dimension in relation to the initiative of the parties; in this way, the risk of invasiveness on the part of the judge will be inversely proportional to the professionalism of the litigants", translation of "Senza dubbio una sistematica intromissione del giudice nell'istruzione dibattimentale metterebbe a rischio la sua imparzialità; ma è altrettanto vero che, portata alle estreme conseguenze, l'imparzialità potrebbe essere salvaguardata solo separando, come accade nel processo con giuria, la figura di chi dirige l'escussione dibattimentale da quella di chi decide sulla colpevolezza. Importante è che siano bene definiti tempi e modi dell'intervento giudiziale in materia probatoria, da circoscrivere in una dimensione strettamente sussidiaria rispetto all'iniziativa delle parti; così il rischio di invadenza del giudice sarà inversamente proporzionale alla professionalità dei contendenti" (Ferrua, 2017: p. 127). About the italian criminal procedure system, see (Bronzo, 2024; Giostra, 2020 and its translation to portuguese, Giostra, 2022).), aiming just to clarify some obscurity, after the parties develop their own hypothesis about the facts' reconstruction,

stimulation the contradiction between them; and, finally, it was added two impediments to the judges: the first, is that who worked in a case's investigation cannot judge it in trial and, the second, is that who had access to an evidence declared inadmissible will not be allowed to sentence (this is referred to what would have become, respectively, the articles 3rd-D and 157th, §5th, from the Criminal Procedure Code).

Nonetheless, these reforms were all emptied by the STF, who declared the unconstitutionality of the art. 157th, §5th, from the Criminal Procedure Code, and altered through an "interpretation according to the Constitution" most of the important novelties brought by that law from 2019. This case represents an example of a problematic creative interpretation—the expression is intended as the act of giving a meaning to a text that is not supported by its grammatical and semantic structures. What really happened was that the STF decided to add words to the legal dispositions, often making the sentences bigger than they originally were—v.g., the words forced into the articles 3˚-B, VI and §1˚, and 3˚-C, from the Criminal Procedure Code—and in its vast majority transforming their meaning into the opposite of what stated the Legislative Power—v.g., when, through article 3˚-C and its paragraph's "interpretation", the Guarantee's Judge competence was restricted from assessing the admissibility of the accusation to initiating the prosecution and the power to access and, therefore, to potentially use the investigation files was expanded to the judge competent for the trial—that was how the *Lei no.* 13.964 came to the world as a stillborn (The mentioned sentence is on the Unconstitutionality Direct Actions (*Ações Diretas de Inconstitucionalidade*) no. 6.298, 6.299, 6.300 and 6.305 (*ADI No. 6.298, 6.299, 6.300 E 6.305, DF, STF*, 2023). The decision was commented in details by (Miranda Coutinho, Milanez & Cunha Souza, 2023).).

4. The Brazilian Criminal Procedure from the Perspectives of Independence and Impartiality

Despite the Brazilian legal system providing a reasonable degree of guarantees for judicial independence—both internally and externally—sufficient to meet international standards, the Judicial Branch faces serious challenges concerning its bureaucratic and administrative structure. Judges—especially in the superior courts but also in state courts—are highly dependent on their staff to carry out their duties.

Although, recently in Brazil some examples—other than those mentioned above—of judicial independence being abused through judicial activism, more specifically, through "creative interpretations", have led to harmful consequences to the rule of law in the country. For instance, despite Article 5th, LVII, of the 1988 Constitution, that establishes the presumption of innocence, the STF deemed the provisional execution of a sentence admissible (from 2016 to 2019)—a truly creative interpretation, under which it was possible to provisionally execute the sentence a against Luiz Inácio Lula da Silva (the case was mentioned, supra, in 3.5),

which affected the outcome of the 2018 presidential elections, leading to victory of the extreme-right winged candidate, Jair Messias Bolsonaro. Furthermore, in 2024, it considered the immediate execution of a jury conviction to be possible. One could argue that this is a matter of interpretation, but it sounds questionable—bordering on the absurd (On the topic of the presumption of innocence, see HC 84.078/2009 (*HC No. 84.078, MG, STF*, 2009); HC 126.929/SP/2016 (*HC No. 126.292, SP, STF*, 2016); ADC 43, 44, and 54/DF/2019 (*ADC No. 43, DF, STF*, 2019; *ADC No. 44, DF, STF*, 2019; *ADC No. 54, DF, STF*, 2019); RE 1.235.340/SC/2024 (*RE No. 1.235.340, SC, STF*, 2024), Theme 1068 (*Tema No. 1068, STF*, 2019), all from the STF.).

In terms of impartiality, the legal framework presents significant concerns, primarily due to two specific issues. First, the trial judge has access to the investigation files, which may be used as a basis for the judgment. This raises a risk that the judge, rather than relying exclusively on evidence produced through adversarial proceedings, may be influenced by elements unilaterally gathered by the prosecution. Such a practice could give rise to a perception of bias or favoritism toward the accusatory party, even though, under the current legal framework, this argument would be unlikely to prevail in court. Second, the judge is vested with broad powers to collect evidence ex officio during the proceedings. This prerogative not only encroaches upon the role of the parties in presenting and contesting evidence but also undermines the principle of objective impartiality. A judge actively engaging in fact-finding may create a reasonable perception of partiality, as it suggests a departure from the neutral and passive role traditionally expected in an accusatory system.

To face these problems, it would be recommended to adopt a new criminal procedure code, an accusatory one instead of the current inquisitorial model, with a serious policy for training the professionals to operate under the new structure—Chile is a good example of a country in South America that managed to do a similar task. Under the new structure, orality should prevail over written means during the procedure, moving the jurisdictional role from the judicial offices to the court rooms, where delegating tasks would be much harder. This is an approach that could benefit Brazilian citizens and promote a different work culture in the courts, enhancing the bureaucratic or administrative perspective of judicial independence. Other central aspects for a new code, from which impartiality would be reinforced, are enhancing the demand principle, prohibiting the trial judge from accessing, seeing and using the investigation files, excluding the judge's power of admitting evidence *ex officio* and limiting the judge's power of questioning declarative evidence to promote the centrality of the parties' role.

5. Conclusion

Considering the legal framework of the Brazilian criminal procedure model it is possible to draw some conclusions:

(i) despite its particularities on the appointment of the judges from the STF, the

Brazilian legal system has proper guarantees for its external judicial independence—such as *vitaliciedade*, irremovability and irredutibility of earnings and the limits on the legislative activity in those topics;

(ii) the independency, however, has been abused by judges who put themselves above the law, as the authentic source of it, especially in the STF, who's creative interpretations—arbitrary creations—and judicial activism are putting at risk the legitimacy of the Judicial Branch and contributing to enhance legal and social instability;

(iii) the Brazilian Criminal Procedure has some instruments to guarantee judicial impartiality, as a duty to the judges, even if in some cases the lack of compliance ends up bringing no consequences, and a power to the citizen, who could refuse a judge due to the doubtful impartiality, if the arguments brought are proven by the evidence, although these guarantees are more used as an aleatory "duty" than a proper citizen's guarantee;

(iv) the dominant Brazilian jurisprudential interpretation according to which the suspicion and impediments are expressed in *numerus clausus* in the law is not admissible, because it is restrictive to a law that statues a citizen's (fundamental) right to due process, and laws that grant rights cannot be read strictly;

(v) the Brazilian inquisitorial model, in which the judges have the power to produce evidence, to access the police paperwork documenting the investigation (*inquérito policial*) and to use this material when sentencing, pushes the judges away from the impartiality duty and towards an accusation role (mainly) or even a defensive one;

(vi) a new criminal procedure code, an accusatory one, is needed in Brazil, because the country history shows how partial reforms end up phagocytized by creative interpretations that adapt the new legal texts to the Code's previous structure, emptying the potential of their innovative effects;

(vii) however, a new criminal procedure code might not be enough to solve the country poor evaluation in the WJP Rule of Law Index, since the creative interpretations in name of justice are a tricky instrument, which benefits some and damages all;

(viii) it is hard to believe that the discriminatory way of operating the criminal procedure system in Brazil will change significantly within a couple of decades. One can only expect different outcomes when one starts acting differently, and in Brazil the part of the acting differently is still awaited. Due to its centuries of being a discriminatory society, waiting for a change within decades is an optimistic expectation: hope, paraphrasing Machado de Assis, is the poor's wealth (Machado de Assis & Chasteen, 2013: p. 55), and Brazil is known to all as a wealthy country.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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