



THE EFFECTS OF PREVENTION AS A COMPETENCE FIXATION CRITERION AND ITS IMPACT ON THE IMPARTIALITY OF THE JUDGE

ORIGINAL ARTICLE

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ABSTRACT

The present study aims to analyze the effects, even if unintentional, arising from the fixation of jurisdiction by precedence in criminal proceedings due to the judge's connection to the preliminary investigative phase for the criminal action. During the preliminary investigation stage, the judge is called upon to make a series of decisions and comes into contact with unilaterally produced pieces of information without adversarial process, circumstances that lead to a greater predilection for the theory being constructed. Factors that have the potential to impact the subsequent procedural phase due to the judge's closer proximity to those terms, resulting in a rejection of arguments presented by the opposing party, even if not by their own choice. After analyzing the issues involving precedence and its impact on the impartiality of the judge, an attempt is made to propose a solution to mitigate its negative effects.

Keywords: Impartiality of the judge, Negative effects of precedence, Preservation of cognition, Unconstitutionality, Judge of guarantees.

INTRODUCTION

In modern criminal proceedings, one of the primary premises is to establish means or mechanisms to ensure a trial by an impartial judge. Striving for conditions close to this desired outcome allows for equitable and just judicial decisions to be made to resolve specific cases.



However, according to the procedural model outlined by the Code of Criminal Procedure, despite the advancements introduced by the 1988 Federal Constitution and the few legislative changes, the influence of inquisitorial ideals, heavily influenced by the so-called Rocco Code (Italian Code of Criminal Procedure), is still evident. This influence reflects in the organization of the Brazilian criminal system and, most importantly, in the roles of the procedural participants.

The Brazilian model fundamentally remains an inquisitorial system, given the broad possibility for the judge to interfere with the evidentiary process (COUTINHO, 2009, p. 110).

This ideology, although not completely eradicated from the Code of Criminal Procedure, cannot be considered outdated merely through the separation of functions, the so-called *actum trium personarum*, true impartiality will only be achieved when the judge is removed from the evidentiary process (management of evidence) and dissociated from the indicia gathered during the preliminary investigation (COUTINHO, 2001, p. 28).

In this context, the accusatorial system represents the only democratic model capable of ensuring the judge's impartiality and eliminating the authoritarian bias of the previous regime. This system empowers the parties with the exclusive initiative for managing evidence (the adversarial principle), while the judge assumes a passive role, detached from the pursuit of evidentiary material (RITTER, 2019, p. 58, and SILVEIRA, 2013, p. 27).

As per the structure outlined by the Code of Criminal Procedure, during the preliminary phase of criminal prosecution, the judge is summoned to make a series of complex and invasive decisions that affect fundamental rights, relying exclusively on evidence unilaterally collected by the Judicial Police.

Contact with the indicia allows the judge to form a provisional, albeit involuntary, conviction about the likely existence of the crime and its authorship. This situation



raises doubts about the impartiality for the final judgment (SCHÜNEMANN, 2013, p. 207).

The practice of issuing decisions during the investigation phase gives the judge specialized insight into the investigated matter, which consequently impacts the criminal action due to preconceived notions about the subject matter. This imbalance disrupts the necessary equilibrium for conducting the criminal action, as the judge tends to confirm their previous position and is more receptive to those arguments that support their stance, disregarding contrary evidence (MAYA, 2020, p. 36-37).

The main problem arises from the criteria that establish jurisdiction by precedence, functionally linking the judge to the criminal case. This linkage can lead to subjective contamination stemming from the preceding procedural phase, resulting in an imbalance in cognitive activity (MAYA, 2014, p. 42).

In this context, the objective of this study is to analyze the harmful effects of applying precedence as a criterion for jurisdiction in light of the need to preserve the judge's impartiality. The study proposes concrete solutions or reinterpretation based on existing legal concepts within national procedural law.

PRECEDENCE AS A CRITERION FOR JURISDICTION FIXATION

As Frederico Marques warns, "practical reasons compel the State to distribute the power to judge among various judges and courts, as it is not possible for a single judicial body to handle all disputes and decide all cases" (MARQUES, 1953, p. 36). Therefore, due to the functional need to structure judicial activity, either due to territorial extent or by delimiting it according to certain matters and/or individuals, there arises a necessity to allocate the exercise of jurisdiction to each judicial body or group of bodies comprising the Judiciary. This gives rise to the concept of jurisdiction.

In this regard, Scarance Fernandes states that "jurisdiction is the ability to exercise jurisdiction within the limits established by the Federal Constitution and ordinary legislation" (SCARANCE, 2007, p. 107). Thus, the exercise of judicial activity is subject



to certain limitations set by jurisdictional criteria, which are instituted to structure and facilitate the provision of judicial services.

Taking into account Frederico Marques' classifications of jurisdictional criteria as stipulated in the Federal Constitution and ordinary legislation, the most suitable model for the Brazilian legal system is a tripartite division based on material, territorial, and functional criteria (MARQUES, 1953, p. 51).

Briefly, functional jurisdiction is determined according to the phases of the legal process; material jurisdiction is defined based on the nature of the facts under trial; and lastly, territorial jurisdiction is established according to the place where the criminal offense occurred.

After completing all the steps to define the competent judge, a process that progresses from the abstract to the concrete (BADARÓ, 2016, p. 227), it may happen that in the concrete plane, two or more judicial bodies are equally competent to handle a case. This could be due to the existence of multiple criminal divisions or specialized chambers handling the same matter or in cases of crimes overlapping between two judicial districts, when it is not possible to pinpoint the exact location of the offense. Such impasses are resolved by using the criterion of precedence to establish jurisdiction.

According to Article 83 of the Code of Criminal Procedure, precedence determines jurisdiction when two or more judges are equally competent (in terms of subject matter or location), and the case will be tried by the judge who first performed any procedural act, even before the indictment or criminal complaint is filed.

This represents a functional linkage to the case by the judge who "first came into contact with the matter" (GRINOVER; CINTRA; DINAMARCO, 2010, p. 266). While this concept is widely recognized, it doesn't entirely meet the requirements stipulated in the Code of Criminal Procedure, as it demands not only simple contact with the case but also the execution of an act or measure related to the process by one judge before another.



One of the fundamental premises of the precedence rule stems from the legal requirement of having judges with the same jurisdiction. Otherwise, the determination wouldn't be made based on criteria, but rather on the competence of one judge prevailing over the others according to the rules governing subject matter and/or location.

For these reasons, it is understood that this is a subsidiary criterion for determining jurisdiction to be used when the others prove

insufficient to define the competent judge. However, there is a counterargument that denies it being a cause for determining jurisdiction precisely because it requires two or more competent judges. It merely serves as an indicator of which jurisdiction, among all competent ones, will prevail (MAYA, 2014, p. 112).

Furthermore, the literal interpretation of Article 83 of the Code of Criminal Procedure might lead to the conclusion that any judicial action would establish the judge as being "prevento" (first to act). The correct interpretation of the norm requires that the actions must be of a decision-making nature, albeit restricted to those maintaining an "accessory relationship" (KARAM, 2005, p. 149) with the object of the future criminal action. Such actions provide the judge with preliminary and summarized knowledge about the merits of the case. Examples include ordering precautionary measures (real or personal) and means of obtaining evidence (MAYA, 2020, p. 35).

Other actions aimed at propelling the progress of the preliminary investigation, without any relation to the merits of the main action, do not have the power to establish jurisdiction by precedence. Examples include agreeing to extend the deadline for completing the police investigation or responding to a request for explanations (Article 144 of the Penal Code), among others.

IMPARTIALITY OF THE JUDGE

It should be taken into consideration that the legal process can no longer be seen as a tool at the service of state punitive power, but rather as a limitation on that power and a guarantor of the fundamental rights of the accused and/or defendant. As Aury Lopes



Júnior warns, "respect for fundamental guarantees is not synonymous with impunity, and that has never been advocated" (LOPES, 2020, p. 38), functioning as a legitimizing factor in the path to a potential conviction.

Considering the role that a criminal judge assumes in the procedural structure – as a guarantor of rights and fundamental guarantees – their position is essential for the balance of the penal system. As a result, maintaining their impartiality is crucial to ensure legitimacy in their actions and to preserve the democratic structure of the criminal process.

Indeed, due to its significance, impartiality has been elevated to the hallmark of the accusatorial system (REALE, 2011, p. 99), the essence of jurisdiction (GIACOMOLLI, 2006, p. 210), or, as preferred by Pedro Aragonés Alonso, the "supreme principle of the process" (ARAGONES, 1997, p. 127).

Traditionally, beyond the concept of neutrality, impartiality has always been viewed solely in its subjective aspect, represented by the condition of an unbiased or equidistant third party role occupied by the judge (ZILLI, 2003, p. 140), both with regard to the parties and the subject matter of the criminal action. The judge must remain detached from the interests at stake (RITTER, 2019, p. 69).

In this context, investigating the indicators capable of revealing the subjective compromise of the judge represents an extremely arduous task, as it requires reflection related to issues of personal conviction in a specific case. Faced with these difficulties, the European Court of Human Rights (ECtHR), through its judgment in the Case Piersack vs. Belgium^[4], had the opportunity to define the contours of objective impartiality, which involves assessing whether the judge provides sufficient guarantees to eliminate any doubt about their impartiality.

The examination starts with the analysis of concrete situations that could raise doubts about the impartiality of the judicial body – events that could justify concerns about its absence – resulting in the loss of society's trust and, above all, that of the accused, as long as the generated fear can be objectively justified (GIACOMOLLI, 2016, p. 279).



In this aspect, the ECtHR is guided by the theory of appearance, emphasizing the importance of the judge not only being impartial subjectively but also appearing to be impartial. As stated by Badaró, "if society does not believe that justice has been done, because the accused was not guaranteed a trial by an impartial judge or court, the result of such a process will be illegitimate and detrimental to the Judiciary" (BADARÓ, 2016, 45).

Summing up the concept of objective impartiality, the ECtHR, during the judgment of the Case Delcourt vs. Belgium, stated that "it is not enough that justice is done, it must also be seen to be done" (our translation)[5].

As a consequence, in cases where reasonable doubt exists about the impartiality of the judge, even if subjectively it may not have directly influenced the process, their removal from the case is justified (RITTER, 2019, p. 77).

THE NEGATIVE EFFECTS OF JURISDICTION FIXATION ON IMPARTIALITY

As the contours of objective impartiality were being outlined, the ECtHR began to analyze various specific cases, questioning their potential violation, including the institute of jurisdiction fixation, with a special focus on cases where the same judge operates in different procedural phases, as occurs in Brazil, Spain, and Italy, involving a preliminary investigation stage and a trial stage (MAYA, 2014, p. 126).

The concept of jurisdiction fixation is characterized by binding the judge to the case due to having carried out some act or measure, establishing their competence for the future trial. Taking into account how the Code of Criminal Procedure structured criminal prosecution, consisting of an investigation phase and a procedural phase, in the first pre-processual phase, the judge is required to make a series of decisions, such as deliberating on the imposition of personal or real precautionary measures, which obliges them to judge the case at the end.



This involvement in the preliminary phase enables the judge, even if in a temporary and involuntary manner, to gain some initial knowledge about the guilt of the agent involved due to the proximity to unilaterally gathered information, which could influence the future final decision.

As a reflection of forming a provisional judgment about the existence of the crime and its authorship, the ECtHR, through the objective perspective of impartiality and utilizing the theory of appearance, based on the conception that "the court must not only be impartial but must also appear to be impartial, thus preserving society's trust in judicial decisions" (MAYA, 2014, p. 127), began to question the role of the judge in different phases of the same process.

In the face of a concrete risk of impartiality being compromised, the ECtHR, during the judgment of the Case *De Cubber vs. Belgium*, established a precedent that set the paradigm for subsequent decisions. This precedent highlighted the fear of loss of the judge's impartiality due to their involvement in the investigative phase, leading to concerns about the potential formation of their conviction about guilt during that early procedural stage. Thus, "under these conditions, it is legitimate to fear that, when the debates begin, the judge would not have complete freedom of judgment and would not offer, as a result, the necessary guarantees of impartiality" [6]. Therefore, a violation of objective impartiality is concluded, based on doubts about the guarantee of impartiality.

Despite the initial inclination of the ECtHR to abstractly disallow the judge's involvement in the preliminary phase of criminal prosecution, over time, this conception has become somewhat relativized. In the judgment of the Case *Hauschildt vs. Denmark*[7], the Court considered that it is not sufficient for the judge to have intervened in the preliminary investigation phase; the nature of the actions performed must be analyzed to gauge the level of conviction formed by the judge. Thus, decisions that require the formation of an understanding close to the guilt of the accused would be the ones justifying the fear of loss of objective impartiality (MAYA, 2020, p. 52-53).



Although the new interpretation provided by the ECtHR has the potential to generate greater uncertainty due to being based on a case-by-case analysis (COMAR, 2022, p. 274), the protection of impartiality at an international level is sensitively observed, seen as the true foundation of validity of the process (RITTER, 2019, p. 83-84).

In the Brazilian context, the consequences of defining objective impartiality can be extracted from the judgment of Habeas Corpus nº 164.494/PR conducted by the Supreme Federal Court, in which the impartiality of former judge Sérgio Moro was recognized due to his conduct as an accusing judge, including ordering coercive measures, phone tapping of defense attorneys to monitor and anticipate their strategies, disclosure of conversations obtained through wiretapping, acting to prevent compliance with

a decision issued by the Fourth Regional Federal Court, using abusive language in decision-making acts, lifting the confidentiality of plea bargain statements to influence the electoral process, and accepting a position as a Minister of State in the opposition government. All of these factors, even though they may not concretely question his impartiality, arouse the fear or concern of a lack of objective impartiality, thereby undermining the legitimacy of his actions due to the loss of trust placed in his role.

Furthermore, applying the evolution of jurisprudence established by the ECtHR to the Brazilian procedural reality, the detrimental effects of jurisdiction fixation in the face of the impartiality of the judge become apparent. As mentioned earlier, only decision-making acts that maintain an "accessory relationship" (KARAM, 2005, p. 149) with the object of the future criminal action bind the judge to the trial of the case.

These aforementioned acts are those that allow the judge to have preliminary, albeit limited, knowledge about the guilt of the agent, meaning they enable the "early formation of a judgment about the occurrence of the crime and its possible authorship" (RITTER, 2019, p. 153). Therefore, the judge's binding due to jurisdiction fixation poses an obstacle to ensuring the impartiality of the judge in its objective aspect.



In such cases, even though undesirably[8], it is impossible to preserve the cognitive activity of the judge due to the creation of pre-judgments derived from their proximity to the information elements and, most importantly, from the initial formation of conviction about the guilt of the agent. According to social psychology, such circumstances tend to make the judge more receptive to evidence confirming their previous decisions, to the detriment of contradictory evidence[9].

It cannot be denied that "the practice of decision-making actions allows the judge to have differentiated knowledge about the object of the investigation and future criminal action" (MAYA, 2020, p. 36). In this context, the theory of cognitive dissonance seeks to analyze a person's behavior in the face of two conflicting (dissonant) ideas and, in particular, the resolution of this state of contradiction, generating internal conflict, by making decisions in order to avoid its restoration (LOPES, 2020, p. 258 and RITTER, 2019, p. 146).

Applying this line of thought to criminal proceedings, it can be summarized in Schünemann's reasoning that the judge needs to resolve two conflicting conceptions (the prosecution's and the defense's), as well as establish their conviction about the subject matter of the criminal action, based on one of the conceptions presented by the parties (SHÜNEMANN, 2013, p. 208).

To eliminate this inconsistency of thoughts and stabilize cognitive activity, "since reading the case file produces an image of the facts, it is assumed that, tendentially, the judge will hold onto it (...), that is, tendentially they will overestimate the congruent information and underestimate the incongruent information" (SHÜNEMANN, 2013, p. 208), resulting in the preservation of the previously taken position through the overestimation of data and the selective search for information confirming prior cognitions (LOPES, 2020, p. 258-259).

When making a decision, the judge inadvertently commits to maintaining a specific position (RITTER, 2019, p. 146), known as the primacy effect, in order to reject dissonant activities. "Every person seeks a balance in their cognitive system, a non-contradictory relationship. The defense's thesis creates a contradictory relationship



with the initial (accusatorial) hypotheses and leads to (unpleasant) cognitive dissonance" (LOPES, 2020, p. 259).

Briefly departing from theoretical discourse, it's worth mentioning the research conducted by Gloeckner[10], which analyzed 90 (ninety) judgments from the Court of Justice of Rio Grande do Sul, finding that in all cases where pretrial detention was ordered, the accused was ultimately convicted, or the first-instance decision was overturned to convict at the second instance, and there was some mention, even if partial, of pretrial detention in the decision's rationale (GLOECKNER, 2015, p. 273-274).

Within the limits set by criminal procedural legislation, there is no remedy to ensure the impartiality of the judge, so only a reform in its structure could achieve such an ideal model (CHOUKR , 2006, p. 93). From this perspective, the best solution to align the system would be the implementation of the judge of guarantees, seen as a means of preserving the judge's original cognition during the trial of the criminal action.

The law does not provide answers about the possibility of judicial contamination derived from the judge's involvement in the pre-processual stage, which could lead to the provisional formation of a conviction about the accused's guilt long before the trial process begins. There are no means to achieve the exclusion of previously established knowledge.

Here, there is no actual impairment of the judge's impartiality stemming from their contact with the information elements, but only a predisposition and/or inclination of the highlighted path, which has the potential to generate risks to the expectation of impartiality placed by society on the judge's role.

Law n. 13.945/2019 introduced the creation of the judge of guarantees in Brazilian criminal procedure, stipulating that a judge who intervenes in the investigative phase will be disqualified from functioning in the procedural phase. This creates a division between the two major stages of the criminal process, with the aim of removing the investigative judge due to the lack of minimum conditions of impartiality. This creation



fosters the impartiality of the judge, mitigating potential contamination resulting from contact with the information elements produced during the preliminary investigation.

The judge of guarantees represents a kind of functional competence determined by the stage of the process, depending on the phase of criminal prosecution between distinct judicial bodies with diverse roles. The competence lies with the judge of guarantees to act during the pre-processual phase, between the initiation of the preliminary investigation and the acceptance (ratification) of the indictment, with disqualification from the subsequent judicial phase consisting of the trial and judgment. Once the indictment is accepted, the competence shifts to the trial judge. Consequently, the judge who oversaw the police investigation must be different from the one who will preside over the trial phase.

Article 3º-D of the Criminal Procedure Code introduced an impediment rule for the criminal process, justified by the need to preserve the impartiality of the judge, preventing the judge who participated in the preliminary investigation phase from also functioning as the trial judge.

With the establishment of the judge of guarantees, the articles regulating jurisdiction fixation need to be reinterpreted to align them with the new system. In certain situations, jurisdiction fixation will continue to function as a residual criterion of competence applicable up to the acceptance of the indictment or criminal complaint, aimed at determining which judge of guarantees will be competent among all the others. For this purpose, the judge who precedes in the performance of some act in the preliminary investigation will be the one with jurisdiction fixation.

CONCLUSION

Not rarely, the judge comes into contact with unilaterally produced information elements without a counterargument during the investigative phase, with the ability to form an initial cognition about guilt, albeit through a provisional judgment. The situation tends to worsen when, during the preliminary investigation, the magistrate issues



decisions that touch on the merits of the criminal action, weighing indications of authorship and proof of materiality, using the investigative elements for this purpose.

In both situations, whether through contact with the material collected in the preliminary investigation or by issuing judicial decisions, the judge requires a very close engagement with the investigative data, creating the possibility of doubts about impartiality arising from the judge's unconscious and premature contamination.

In this scenario, there are no secure mechanisms to ensure the impartiality of the judge, as in such cases, the negative effects of bias can come into play, generating the fear of doubt regarding impartiality arising from the possibility of unconscious and premature contamination of the judge due to prior decision-making.

One way to preserve the originality of the cognition for the judgment of the merits can be through declaring the unconstitutionality of Articles 75 and 83 of the Criminal Procedure Code, as they represent a true obstacle to ensuring a trial by an impartial judge by allowing an imbalance in the procedural legal relationship through the formation of prior judgments about the accused's guilt. As a consequence, this would render the exercise of the right to a fair trial and ample defense unfeasible, as the judge might be more receptive to the evidentiary material confirming their prior decision, to the detriment of evidence to the contrary.

Although the Federal Supreme Court, in the Habeas Corpus nº 92,893/ES case, has already declared the constitutionality of bias in cases where a judge participated in the preliminary investigation phase and later was the rapporteur for the decision to accept the indictment, its decision was made incidentally and wasn't analyzed with the depth that the topic receives nowadays. Thus, the Court supported its arguments based solely on the judge's activities in the pre-processual stage as a mere administrator and supervisor of legality to form its reasoning, without any kind of weighing the need to preserve the judge's cognition in a way that prevents, even unconsciously, a preference for one thesis over another, originating from the prior judgment formed about guilt through the decision that binds them to the future trial.



On the other hand, due to the fluctuating jurisprudence of the ECtHR over time – starting with the idea that the mere participation of the judge in the investigative phase already implied a violation of objective impartiality, and evolving to the need to analyze the content of the act and the legal requirements demanded by local regulations – their reasoning can't be invoked solely to justify the implementation of the judge of guarantees in our country. However, its importance can't be denied, as it delineated the boundaries between objective and subjective impartiality and analyzed its applicability in specific scenarios. These judgments eventually influenced legislative changes in various legal systems.

Nevertheless, the ECtHR's jurisprudence brought the notion of the need to also analyze the appearance of impartiality based on the risk or fear of its loss, resulting from the judge's intervention during the preliminary investigation phase, which could generate harm to cognition at the time of sentencing due to potential pre-judgments. This conception, combined with studies arising from social psychology, led to a rethinking of the structure of criminal proceedings, especially the position and, most importantly, the condition of the judge during the preliminary investigation phase and its implications for future judgment.

Under the current configuration of our criminal procedure, with the judge's involvement in both stages of criminal prosecution (dual role), it creates a fertile ground for spreading cognitive dissonance, through the initial unconscious mental construction of facts and the confirmation bias, challenging the impartiality expected of the judge.

Here, there isn't an actual impairment of the judge's impartiality derived from contact with information elements, but only a predisposition and/or inclination towards the highlighted path, with the potential to generate risks to the expectation of impartiality placed by society on the figure of the judge.

Within the boundaries defined by criminal procedural legislation, there is no remedy to ensure the impartiality of the judge, so only through a reform in its structure would it be possible to achieve such an ideal model.[11] From this perspective, the best solution



to align the system will be the implementation of the judge of guarantees, seen as a means to contain the undesirable effects stemming from bias.

Therefore, the creation of the judge of guarantees by Law nº 13,945/2019 aims to minimize potential risks to impartiality, seeking to preserve the judge's cognition from the instruction and judgment of pre-judgments originating from intervention in the preliminary police investigation, preventing any information collected in the pre-processual stage from being brought to their knowledge.

Within the new framework, the judge who intervenes in the investigative phase will be disqualified from functioning in the procedural stage of instruction and judgment, splitting the two major moments of the criminal process, in order to prevent the judge's involvement that could pose risks to impartiality.

Although belatedly, due to Law nº 13,964/2019, the creation of the new procedural actor called the judge of guarantees was implemented, fostering the impartiality of the judge and avoiding any contamination resulting from decision-making during the preliminary investigation stage. However, the effectiveness of the said law is suspended due to the granting of precautionary measures in ADIs nº 6298, 6299, and 6300 until the merit is judged.

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APPENDIX - FOOTNOTE REFERENCES

2. "Prevention fixes jurisdiction: it does not determine it. That's why the term 'jurisdiction preventiva' is used for the competence of one judge advanced in relation to another, also competent" (MARQUES, José Frederico. **Da competência em processo penal**. São Paulo: Saraiva, 1953, p. 202).
3. "(...) utopian subjective abstraction, a complete isolation of the being from the social context in which it is inserted, seems unattainable for humans and, as such, for the judge" (MAYA, André Machado. **Imparcialidade e processo penal: da prevenção da competência ao juiz de garantias**. 2. ed. São Paulo: Atlas, 2014, p. 99).
4. EUROPEAN COURT OF HUMAN RIGHTS. **Case of Piersack v. Belgium (Application nº 8692)**. Strasbourg, 01 Oct. 1982. Available at: <http://hudoc.echr.coe.int/eng?i=001-57557>. Accessed on: 17 Nov. 2021.
5. EUROPEAN COURT OF HUMAN RIGHTS. **Case of Delcourt v. Belgium (Application nº 2689/65)**. Strasbourg, 17 Jan. 1970. Available at: <http://hudoc.echr.coe.int/eng?i=001-62025>. Accessed on: 17 Nov. 2022.
6. "Under these conditions, it is legitimate to fear that, when the debates began, the Magistrate would not have complete freedom of judgment and would not offer, therefore, the necessary guarantees of impartiality" (EUROPEAN COURT OF HUMAN RIGHTS. **Case of De Cubber v. Belgium (Application nº 98186/80)**. Strasbourg, 26 Oct. 1984. Available at: <http://hudoc.echr.coe.int/eng?i=001-57465>. Accessed on: 17 Nov. 2022.
7. EUROPEAN COURT OF HUMAN RIGHTS. **Case of Hauschildt v. Denmark (Application nº 10486/84)**. Strasbourg, 24 May 1989. Available at: <http://hudoc.echr.coe.int/eng?i=001-57500>. Accessed on: 17 Nov. 2022.
8. "The main consequence of our system in this regard is to allow the judge who has contact with the records of the investigation for any act (such as granting extensions, for example) to be undesirably influenced by everything that was produced prior to the criminal action, letting this influence emerge not only in the judgment of admissibility of the initial pleading but, above all, seeking to incorporate into their conviction about the merits elements of information that would not have that purpose" (CHOUKR, Fauzi Hassan. **As garantias constitucionais da investigação criminal**. 3. ed. Rio de Janeiro: Lumen Juris, 2006, p. 47).
9. "(...) enter the process without having against them the weight of any previous decision issued by themselves in favor of (or against) one of the parties" (LIMA, Renato Brasileiro de. **Pacote Anticrime: comentários à lei nº 13.965/19 – artigo por artigo** -. 2. ed. Salvador: Editora JusPodivm, 2021, p. 113).



10. GLOECKNER, Ricardo Jacobsen. Prisões cautelares, confirmation bias e o direito fundamental à devida cognição no processo penal. **Revista Brasileira de Ciências Criminais**, São Paulo, year 23, v. 117, p. 263-286, Jan./Feb. 2015.

11. CHOUKR, Fauzi Hassan. **As garantias constitucionais da investigação criminal**. 3. ed. Rio de Janeiro: Lumen Juris, 2006, p. 93.

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