INDEPENDENT AND IMPARTIAL JUDGES.

Article 117 Spanish Constitution:

“The judges members of the Judicial Power shall be independent, shall have fixed tenure (inamovibles), shall be accountable for their acts (responsables) and subject only to the rule of law (sometidos únicamente al imperio de la ley).

As you know this is the Legitimacy of their jurisdiction.

In Spain the appointment of judges is through official exams, and not through general election such as in the United States.

1. Independence and impartiality:

Those values shape judges as third entity to parties, in a position above the parties within the process. The judge is a third alien to the conflict that has to decide, without any direct or indirect interest in the outcome of the judgment, or without a tendency to favor the parties. The essential aim of judicial independence is to decide the conflict with a lack of personal interest and subject only to the rule of law.

It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by the executive or the legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular more senior judges. (judiciary.gov.uk)


As well as in fact being independent in this way, it is of vital importance that judges are seen to be both independent and impartial. Justice must not only be done - it must be seen to be done.

Judicial independence does, however, mean that judges must be free to exercise their judicial powers without interference from litigants, the State, the media or powerful individuals or entities, such as large companies. This is an important principle because judges often decide matters between the citizen and the state and between citizens and powerful entities. For example, it is clearly inappropriate for the judge in charge of a criminal trial against an individual citizen to be influenced by the state. It would be unacceptable for the judge to come under pressure to admit or not admit certain evidence, how to direct the jury, or to pass a particular sentence. Decisions must be made on the basis of the facts of the case and the law alone.
A JUDICIARY INDEPENDENT FROM PRESSURES OF THE STATE POWERS (LEGISLATIVE AND EXECUTIVE).

The independence of the judiciary is especially important in relation to the executive power. For that reason we have the Council of the Judiciary, which is a system of self-governance of the judiciary, and the Organic Law of the Judicial Power, which sets down some prohibitions and incompatibilities for the judges in order to preserve them from pressures of the executive.

Article 389 LOPJ, sets down the following:

a) prohibition to exercise any other jurisdiction alien to Judicial Power
b) prohibition to be eligible for political post or within the Public Administration. However, the LOPJ considers that if a Judge wants to leave his/her job as Judge and be part of the executive or to have a political post, when his term of office finishes and then wishes to return to his judicial office, he cannot return to his former allocation, but to another court in the same province or Autonomic Community. But as guarantee of his/her independence they cannot be eligible in a period of five years to be promoted to a higher Court when it implies a discretionary appointment (such as being promoted for other reasons rather than for the seniority) (article 360 LOPJ).
c) prohibition of remuneration for other jobs within the administration (389.3 LOPJ).
d) prohibition to be a member or join a political party or trade union. They can neither congratulate nor condemn political authorities, but only to exercise their right to vote in the general elections (article 395 LOPJ).

INDEPENDENCE FROM PARTIES AND FROM DIRECT OR INDIRECT INTEREST IN THE OUTCOME (MATTER AT ISSUE).

This kind of independence makes reference, without doubt, to the classic meaning linked to impartiality, and is embraced by the idea that the judges have to be neutral among the parties and in a position within the process as a third entity, above the parties and without personal interest in the matter at issue.

Indeed, the concept of impartiality is closely linked to that of independence and sometimes the two notions are considered together. The requirement of impartiality is contained in article 117 Spanish Constitution, article 14(1) of the International Covenant on Civil and Political Rights, article 7(1) of the African Charter of Human and Peoples’ Rights, article 8(1) of the American Convention on Human Rights and article 6(1) of the European Convention on Human Rights.

As to the requirement of impartiality in article 6(1) of the European Convention on Human Rights, the European Court of Human Rights has consistently ruled that it has
two requirements, namely, one subjective and one objective requirement. In the first place, “the tribunal must be subjectively impartial”, in that “no member of the tribunal should hold any personal prejudice or bias”, and this personal “impartiality is presumed unless there is evidence to the contrary”. Secondly, “the tribunal must also be impartial from an objective viewpoint”, in that “it must offer guarantees to exclude any legitimate doubt in this respect”. With regard to the objective test, the Court added that it must be determined whether there are ascertainable facts, which may raise doubts as to the impartiality of the judges, and that, in this respect, “even appearances may be of a certain importance”, because “what is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings”.

For that reason the Spanish law objectivizes the cases in which impartiality could be compromised or questioned through procedural mechanism such as the recusal (recusación) and self-recusal (abstención).

Self- recusal: the judges leave the process voluntarily because their interest in the case damages their impartiality. Examples: prejudiced against the moving party or in favor of the adverse party; is closely related to the defendant by blood or marriage;

Recusal: the motion of any party to disqualify a judge from deciding the case.

The causes for recusal are established in article 219 LOPJ, and they are specific, objective and not subject to extension to other causes or reasons. They are general criteria for guarantee judicial impartiality.

1. The judge is related by blood or marriage to any party, prosecutor, lawyer or procurador.
2. The Judge has been accused by any of the parties, claimant or defendant from any of the parties or has had or has any proceeding against them.
3. In criminal cases, if the judge has been the investigative judge and is to be the trial judge (if the same judge investigates and decides there is a prejudice that compromises his/her impartiality). Likewise, if the judge has been disciplinarily sanctioned by previous motion of any party.
4. The judge has a particular interest in the outcome of the process.
5. The judge has evident friendship or evident enmity with any of the parties, Lawyer, Public Prosecutor or procurador.
6. Any party is a subordinate of the judge…..etc…..

Once the judge has verified that one of the legal causes appears, he must abandon (give away) the case by way of self-recusal and not wait for the party’s motion to disqualify him.