

The Perception of Impartiality in the Judiciary: When Appearance Becomes a Legal Standard

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Abstract: This article investigates whether the standard of “appearances of bias”, as developed by the European Court of Human Rights (ECtHR), functions in Serbian law as a genuinely operative legal standard or remains primarily a normative ideal. The research addresses the following question: to what extent has the Serbian judiciary moved beyond formal adoption of this standard to its substantive enforcement in disciplinary proceedings and institutional practice, particularly amid challenges posed by increasing public scrutiny and digital communication? Through a qualitative analysis of ECtHR case law, Serbian statutes, ethical codes, and documented disciplinary cases, the study identifies a significant implementation gap between European requirements and domestic realities. Findings suggest that, while the standard of perceived impartiality is recognized in Serbian legal texts, its consistent application is lacking, especially when judicial conduct is evaluated in the context of media exposure and online activity. The article concludes with concrete institutional recommendations for bridging this gap and strengthening mechanisms to promote both the reality and appearance of judicial impartiality, thus enhancing public confidence in the judiciary.

Keywords: judicial impartiality, appearances of bias, European Court of Human Rights, judicial ethics in Serbia.

INTRODUCTION

In democratic societies governed by the rule of law, judicial impartiality represents more than a procedural requirement – it is a constitutional value central to the legitimacy of the judiciary. Yet in modern democracies, the appearance of impartiality has become equally vital. Public confidence in the courts depends not only on the objective fairness of decisions but also on the perception that judges act independently, without bias or undue influence (Bassett & Perschbacher, 2006). As Zekavica (2019) argues, the protection of human dignity – an essential component of democratic legal orders – relies on a judiciary that both embodies and inspires public trust.

The European Court of Human Rights (ECtHR) has consistently affirmed this connection between perception and legitimacy. In *Delcourt v. Belgium* (1970, §31), the Court refers to

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the famous dictum that “justice must not only be done, it must also be seen to be done”. This formulation laid the groundwork for what would become the “objective standard of impartiality” or the “appearances of bias” doctrine under Article 6(1) of the European Convention on Human Rights (ECHR). According to this doctrine, even in the absence of actual bias, courts must ensure that proceedings are free from any appearance of partiality when assessed through the lens of a reasonable observer. Judicial legitimacy, therefore, rests not only on actual integrity but also on its external visibility.

This standard was first famously articulated by Lord Hewart in *R v. Sussex Justices, ex parte McCarthy* (1924), and was later elaborated in *Piersack v. Belgium* (1982) and *De Cubber v. Belgium* (1984). In these cases, the ECtHR clarified the dual test for judicial impartiality: a subjective test, focusing on the personal conviction and conduct of the judge in question, and an objective test, assessing whether the court provided sufficient guarantees to dispel any legitimate doubts about its impartiality (see *Piersack*, §30; *De Cubber*, §26). In *Kyprianou v. Cyprus* (2005), the Court reiterated that what is at stake is the confidence which the courts in a democratic society must inspire in the public (§118).

This raises an important theoretical and practical dilemma: can a judicial process be legally compromised solely due to public perception, even in the absence of actual bias? If so, what standards should guide the assessment of perceived impartiality, and how should courts and judicial councils react when public trust is at stake?

In Serbia, judicial impartiality is a constitutionally protected value and a statutory requirement. The Law on Judges in Serbia (Article 4) states that judges must uphold not only actual impartiality but also public trust in their impartiality. Similarly, the Code of Judicial Ethics emphasizes that judges should avoid behaviour that might “create even the appearance of partiality”. However, the extent to which this appearance-based standard is implemented in practice, especially in disciplinary proceedings or ethical reviews, remains unclear and arguably underdeveloped.

Moreover, in the digital age, public perception is increasingly shaped by media narratives and social networks, often amplifying minor missteps into perceived ethical breaches (United Nations Office on Drugs and Crime [UNODC], 2019). This context brings additional urgency to questions about how judicial systems should adapt the traditional principles of impartiality to new forms of public visibility and scrutiny.

Despite its normative recognition, the question remains to what extent the “appearance of bias” standard is functionally and consistently implemented in national judicial systems. This raises a research problem central to this article: does the Serbian judiciary merely adopt the appearance standard at the level of norms, or does it effectively integrate it into disciplinary and institutional practice, particularly in the context of contemporary challenges such as increased public scrutiny and digitalization?

This paper seeks to critically examine the legal evolution and operationalization of the “appearances of bias” standard in ECtHR case law, and to assess how this standard has been integrated into the Serbian legal framework. The paper addresses the following key questions:

- How has the ECtHR developed and refined the objective standard of judicial impartiality?
- To what extent has this standard been recognized and applied in Serbian law and judicial ethics?



- How should courts respond to perceived bias in cases involving high public visibility or media scrutiny?
- What institutional mechanisms are necessary to balance public trust with judicial independence, especially in an era of digital transparency?

This paper adopts a comparative and critical approach to advance a more nuanced understanding of perceived judicial impartiality as both a normative standard and a mechanism of democratic legitimacy. By systematically examining the gap between the European Court of Human Rights' evolving doctrine and its practical application in Serbia, the paper addresses the "implementation gap", defined as the discrepancy between formal commitments to the appearance of impartiality and their actual enforcement and institutional internalization. Employing a qualitative, interpretative methodology, the research combines doctrinal legal analysis with a comparative review of ECtHR and Serbian case law, statutory and ethical sources, and documented disciplinary practice, in order to assess the implications of this gap for judicial independence and public trust.

LEGAL FRAMEWORK – INTERNATIONAL AND DOMESTIC

The principle of judicial impartiality is a cornerstone of the right to a fair trial, enshrined in both international human rights instruments and national legal frameworks. However, the traditional requirement of actual impartiality has evolved in contemporary legal theory and practice to include the notion that judges must also appear to be impartial. This dual requirement aims to uphold not only the rule of law but also public confidence in the judiciary as an institution. This chapter examines how the concept of "appearances of bias" has been articulated and operationalized in both European human rights law and the Serbian legal system, including statutory and ethical provisions, as well as current disciplinary practice.

EUROPEAN STANDARDS – ARTICLE 6 ECHR

Article 6(1) of the European Convention on Human Rights (ECHR) guarantees that "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 [...] by an independent and impartial tribunal established by law". The jurisprudence of the ECtHR has consistently emphasized that judicial impartiality must be both actual and perceived: the appearance of impartiality is a legal standard, not a mere sociological observation.

THE CONCEPT OF "APPEARANCES OF BIAS"

The ECtHR has developed a two-fold test for evaluating impartiality:

- 1) Subjective impartiality refers to the judge's personal mindset and presumes impartiality unless evidence proves otherwise.
- 2) Objective impartiality concerns whether the circumstances of a case could legitimately lead to doubts about a judge's impartiality in the mind of a reasonable observer.



The second test is where the notion of “appearances of bias” becomes legally relevant. The Court has affirmed that even if no actual partiality is demonstrated, an appearance of bias may suffice to violate Article 6(1), particularly where institutional or procedural arrangements call judicial neutrality into question.

As further articulated by the Consultative Council of European Judges in Opinion No. 3 (Consultative Council of European Judges [CCJE], 2002), both actual impartiality and its appearance are essential for sustaining public confidence in the judiciary. The CCJE (2002) warns that even the perception of bias may be sufficient to undermine the legitimacy of judicial institutions.

KEY ECtHR CASE LAW

Piersack v. Belgium (1982) marked the ECtHR’s first formal articulation of this two-part test. In this case, the applicant challenged the impartiality of a judge who had formerly served as a senior prosecutor in the same office that had investigated the applicant’s case. Although there was no indication of actual bias, the Court found that the judge’s prior role gave rise to a reasonable appearance of partiality and thus breached Article 6(1) (§30).

De Cubber v. Belgium (1984) reaffirmed this reasoning. The applicant was tried by a judge who had previously acted in the same case as an investigating magistrate. The Court held that the judge’s prior involvement in pre-trial proceedings “objectively justified the applicant’s fears” of bias, thereby violating the right to an impartial tribunal (§28). The judgment emphasized the importance of structural safeguards to avoid even potential conflicts of role or appearance of partiality.

In *Kyprianou v. Cyprus* (2005), a Grand Chamber case, the Court expanded the application of the objective test to include judicial conduct during hearings. The applicant, a lawyer, was sentenced for contempt by the same bench he had criticized. Although no direct evidence of animosity was found, the tone and intensity of the exchange created an appearance of bias. The Court concluded that this undermined the impartiality of the tribunal (§127–131).

Micallef v. Malta (2009) further extended the objective standard to interlocutory decisions, such as interim injunctions. The Court ruled that pre-trial decisions by judges who have close family relationships with legal representatives may give rise to a violation of Article 6(1), even if these decisions do not finally dispose of the case. Importantly, this case established that the scope of Article 6 extends beyond trial proceedings, requiring impartiality at all stages of judicial adjudication (§99–101).

Through these cases, the ECtHR has firmly established that justice must be seen to be done and that the appearance of impartiality is indispensable for maintaining public trust in the judiciary.

A foundational document in this context is the United Nations Basic Principles on the Independence of the Judiciary (1985), which emphasize both actual and perceived independence as essential to the proper functioning of justice systems. These principles underscore that judicial authority is inseparable from public confidence in its impartiality and integrity.



COMPARATIVE INSIGHTS: REGIONAL AND UNIVERSAL STANDARDS

Beyond the European framework, other international and regional human rights systems also emphasize the relevance of perceived impartiality. The Inter-American Court of Human Rights, in *Apitz Barbera et al. v. Venezuela* (2008), highlighted that both judicial independence and the appearance of neutrality are essential for maintaining public trust in judicial institutions. The Court found that even the perception of bias, without clear evidence of interference, may be sufficient to constitute a violation of Article 8 of the American Convention on Human Rights. Such jurisprudence underscores that the concept of appearances as a legal standard is not unique to the ECtHR, but rather a general feature of international human rights protection.

A similar principle has been adopted by the African Court on Human and Peoples' Rights. In *Tanganyika Law Society and The Legal and Human Rights Centre v. Tanzania* (2013), the Court emphasized that any restriction on the independence or impartiality of judges – whether actual or perceived – must be subject to strict scrutiny, particularly in systems with fragile rule of law. The Court found that public perception of judicial integrity plays a decisive role in the legitimacy of national institutions and the protection of human rights under the African Charter.

Moreover, the United Nations Human Rights Committee (2007), in its *General Comment No. 32* interpreting Article 14 of the International Covenant on Civil and Political Rights (ICCPR), explicitly states that courts must “not only be impartial but must also appear impartial to a reasonable observer”. The Committee notes that perceived impartiality is especially relevant in states transitioning from authoritarianism or facing systemic institutional distrust. These interpretations support the growing consensus that judicial legitimacy is inherently relational: it depends as much on how justice is perceived as on how it is delivered.

Taken together, these regional and universal standards reinforce the position that perceived impartiality is a global legal requirement, not merely a European invention. They provide additional comparative justification for incorporating this standard more concretely into national legal systems, including Serbia's evolving framework.

SERBIAN LEGAL FRAMEWORK

Serbia, as a signatory to the ECHR and a country in the process of harmonizing its judiciary with European standards (Chapter 23 of EU accession negotiations), has incorporated principles of judicial impartiality into its constitutional, legislative, and ethical frameworks. However, the domestic implementation of the “appearances of bias” standard remains in its early stages, and judicial practice in this area is still evolving.

LAW ON JUDGES

Article 4 of the Law on Judges in Serbia directly incorporates the language of ethical legitimacy, stating that a judge shall act “independently, impartially, responsibly and with dignity” and “maintain public trust in their independence and impartiality at all times”. This formulation aligns closely with the objective standard articulated by the ECtHR.



Articles 31 and 32 of the Law regulate the incompatibility of judicial office with other professional roles, and outline the duty to report potential conflicts of interest. These provisions serve a preventive function, designed to avoid situations where a judge's impartiality might be compromised, or appear to be compromised, by private or political interests. Importantly, the High Judicial Council has jurisdiction to determine whether such a conflict exists and to issue a ruling on the incompatibility.

These legal provisions create a formal obligation for judges to avoid both actual and perceived impropriety, though enforcement mechanisms largely depend on the interpretation of ethical bodies rather than on binding jurisprudence.

JUDICIAL CODE OF ETHICS

The Code of Judicial Ethics of Serbia, ("Official Gazette RS of Republic of Serbia", No. 96/2010, 90/2021) adopted by the High Judicial Council and revised in 2021, operationalizes the abstract principles of impartiality into concrete expectations of judicial behaviour. It identifies seven pillars of judicial ethics, including independence, impartiality, integrity, and propriety, all of which are interlinked.

Specifically, the Code provides that a judge must avoid any action, relationship, or communication that could "give rise to a perception of bias", even if no actual bias is present. For instance, the Code advises judges to exercise caution when using social media or engaging in public commentary, as such activity may influence public perceptions of impartiality (§12–17).

The Code also acknowledges the growing complexity of public perception in a digital environment, echoing the concerns raised in international documents such as the UNODC's Non-Binding Guidelines on the Use of Social Media by Judges (2019), which stress the risk of misinterpretation of seemingly innocuous online behaviour. It incorporates many principles derived from European standards. This alignment is particularly visible with the recommendations of Opinion No. 3 (CCJE, 2002), which highlight the necessity for judges to avoid both actual and apparent bias as a matter of professional conduct (CCJE, 2002).

DISCIPLINARY PRACTICE AND ETHICAL OVERSIGHT

Although the Law on Judges in Serbia and the Code of Ethics establish clear normative commitments to avoiding appearances of bias, disciplinary jurisprudence in Serbia has not yet developed a consistent body of case law based on this principle. The Ethics Committee of the High Judicial Council plays a consultative role, offering non-binding opinions on ethical matters, including perceived impartiality (High Judicial Council, 2024). These opinions are occasionally published as general interpretations of individual cases but are not systematically disseminated or codified into binding practice. As a result, judges lack clear and consistent institutional guidance on how to respond to ethically ambiguous situations involving the appearance of bias (Organization for Security and Co-operation in Europe [OSCE], 2016).

In practice, disciplinary actions in Serbia predominantly address explicit breaches of legal obligations, such as conflicts of interest, corruption, or failure to perform judicial du-



ties, while more nuanced concerns like perceived partiality are frequently overlooked. An analysis by the OSCE found that Serbian disciplinary jurisprudence tends to focus on violations that are easily provable, avoiding more complex, perception-based claims. This selective focus creates a normative gap between the ethical and legal standards formally adopted and the mechanisms available for their consistent enforcement (OSCE, 2016).

Moreover, public controversies surrounding high-profile judicial appointments or decisions, especially those that trigger media attention or civil society criticism, are rarely addressed through formal disciplinary or Ethics Committee procedures. This institutional silence persists even when public confidence in the judiciary is visibly eroded. A World Bank study on the perception of judicial performance in Serbia highlighted that the public frequently doubts the impartiality of judges, particularly in cases involving political sensitivity or elite actors. The study concludes that such perceptions have real consequences for the legitimacy of judicial institutions and the rule of law (World Bank, 2014).

The importance of addressing appearances was further affirmed by the ECtHR in *Svilen-gaćanin and Others v. Serbia* (2019), where the Court found that informal contacts between judges and executive officials during pending proceedings could create a legitimate appearance of partiality. The judgment emphasized that even if actual bias is absent, the structural context and perception of judicial independence must be preserved.

Taken together, these findings reinforce the conclusion that the standard of perceived impartiality, although formally recognized in Serbian legal and ethical instruments, has not yet been institutionally internalized in a manner consistent with ECtHR jurisprudence. The lack of binding disciplinary precedents, coupled with the limited normative weight of ethical opinions, underscores the need for Serbia to further develop its institutional capacities to enforce appearance-based standards of judicial conduct.

PERCEPTION VS. FACT: A LEGAL AND THEORETICAL DILEMMA

The concept of impartiality, though foundational to the judiciary, is far from self-evident in its application. It presents a persistent tension between legal objectivity and human perception, especially in modern democracies where transparency and accountability have become dominant norms. This chapter examines the key question at the heart of this inquiry: is mere perception enough to compromise judicial impartiality? And if so, how can we distinguish between legitimate concerns and subjective dissatisfaction?

These questions are not only theoretical but have profound implications for how justice is administered, communicated, and received by the public.

IS PERCEPTION ALONE SUFFICIENT TO COMPROMISE IMPARTIALITY?

The jurisprudence of the ECtHR firmly establishes that judicial impartiality encompasses not only actual neutrality but also the appearance of impartiality. As early as *Piersack v. Belgium* (1982) and *De Cubber v. Belgium* (1984), the Court articulated its dual standard: judges must be subjectively impartial, and also appear impartial to an objectively reasonable observer (§30; §26). This doctrine positions public perception as a cornerstone of judicial legitimacy.



From a legal-theoretical standpoint, this shift reflects a broader evolution in how legitimacy is conceptualized. As Niklas Luhmann has emphasized, institutional trust in courts is not merely rational or outcome-based, but rooted in expectations of procedural consistency and communicative transparency. In this sense, trust functions as a social mechanism that allows citizens to accept judgments they may not agree with, provided they perceive the process as legitimate (Luhmann, 1985). Similarly, Fuller's (1969) distinction between the internal morality of law and external procedural legitimacy reinforces the normative importance of transparency, consistency, and public visibility of judicial reasoning.

In parallel, Suchman (1995) distinguishes between strategic and institutional legitimacy. While strategic legitimacy refers to deliberate efforts by institutions to shape public opinion, institutional legitimacy is conferred when institutions align with deep-seated societal norms and expectations. Judicial authority, in this view, is sustained when courts behave in ways perceived as appropriate and procedurally fair, even absent deliberate image management. Suchman's framework directly informs how legal systems construct perceived legitimacy, offering insight into how courts must navigate both normative expectations and institutional resilience.

Bourdieu (1987) offers a sociological account of judicial legitimacy, describing law as a "field" in which authority is maintained through institutional rituals and symbolic power. Judges, in his view, operate not only through legal texts but through practices that reaffirm their neutrality and moral authority before the public. This performative dimension further supports the idea that appearance is not ancillary, but central to the functioning of judicial institutions. In the context of judicial ethics, Bourdieu helps us understand legitimacy not merely as a legal norm, but as an institutional practice embedded in symbolic capital and social expectations.

Contemporary democratic theory emphasizes the communicative function of judicial institutions, where legitimacy arises not merely from adherence to procedure, but from public recognition of fair and transparent conduct (Habermas, 1996). Courts do not merely decide cases; they also perform a communicative role in expressing legal and democratic values to the public (Post, 1995). Habermas's concept of communicative action thus aligns legal legitimacy with procedural transparency and dialogic justification, reinforcing the normative demand for courts to be intelligible and responsive to the public.

The theory of procedural justice developed by Tom R. Tyler reinforces this view, arguing that individuals are more likely to accept and comply with judicial decisions when they perceive the process to be fair, neutral, and respectful, regardless of the outcome. Procedural fairness thus becomes a critical dimension of legitimacy, particularly in societies with low institutional trust (Tyler, 1990).

These theoretical insights converge with the normative trajectory of international law, where the appearance of impartiality is not treated as symbolic, but as legally operative in protecting public confidence.

The ECtHR is not alone in recognizing the power of perception. The United Nations Human Rights Committee, in interpreting Article 14 of the ICCPR, has emphasized that tribunals must appear impartial to an informed observer, especially in systems transitioning from executive dominance to judicial independence. Similarly, the Court of Justice of the European Union (CJEU), in cases such as *Commission v. Poland* (C-791/19), has scrutinized



national judicial reforms that threaten the appearance of independence, underscoring the role of institutional perception in upholding the rule of law in the EU member states.

However, the growing relevance of perception poses interpretative challenges. Not all claims of bias are justified, some reflect subjective dissatisfaction, strategic litigation, or media misrepresentation. To address this, the ECtHR applies a “reasonableness” test: would a reasonably informed observer, aware of all the facts, perceive a legitimate risk to impartiality (*Micallef v. Malta*, 2009, §98; *Morice v. France*, 2015, §78)? This framework filters out frivolous accusations while protecting legitimate concerns.

This analytical rigor is largely absent in the Serbian context. While Article 4 of the Law on Judges in Serbia mandates the preservation of public trust, and the Code of Judicial Ethics warns against conduct that “creates the appearance of bias”, there is no formal mechanism for assessing whether a given perception is objectively reasonable. The Ethics Committee’s opinions remain non-binding and largely reactive.

This gap has also been noted by both domestic and international observers. The European Commission’s 2025 Rule of Law Report highlights that only about 30 % of Serbian citizens perceive the judiciary as fairly or very independent, down from 36 % the previous year (European Commission, 2025). Similarly, the World Justice Project (2023) observes that courts “do not communicate in a planned and strategic consistent manner, providing a lack of transparency and no proactive sustainable communication mechanism with the public and media”. Civil society reports corroborate these concerns: The Judicial Research Centre – CEPRIS’s 2022 monitoring report shows significant deficiencies in judicial transparency and accountability (Judicial Research Centre, 2024), while Partners-Serbia’s 2023 analysis emphasizes weak proactive public communication by courts and prosecutorial services (Partners-Serbia, 2023).

In a hyper-visible digital age, where a judge’s social media interaction may be misconstrued as bias (UNODC, 2019), this lack of institutional clarity becomes problematic. As recognized in CCJE (2022) Opinion No. 25, judges must navigate a delicate balance between freedom of expression and the appearance of impartiality. Without formal guidelines or systematic case law, public trust becomes vulnerable to distortion by media framing or political rhetoric, a concern increasingly noted across democratic systems (Aydin-Cakir & Driscoll, 2024).

In conclusion, while perception alone can compromise judicial impartiality under international standards, its legal weight must be balanced by principled criteria. A well-articulated standard of reasonableness, embedded in institutional practice, is essential for preventing arbitrary attacks on judges while safeguarding public trust in courts as democratic institutions grounded in both procedural rigor and perceived legitimacy. This transformation is not merely a matter of technical harmonization with European standards, but a fundamental test of the maturity of Serbia’s legal culture.

DIFFERENTIATING LEGITIMATE CONCERNS FROM SUBJECTIVE DISSATISFACTION

A critical challenge lies in identifying when perceptions of bias are objectively reasonable, and when they reflect subjective dissatisfaction, strategic litigation, or misunderstanding of legal procedure. Courts must therefore engage in a contextual analysis, considering both the institutional setup and the specific facts of the case.



The ECtHR has developed a reasonableness test to assess this boundary. In *Micallef v. Malta* (2009), the Court emphasized that the perspective must be that of an “objective observer” who is reasonably informed, aware of the context, and able to separate fact from conjecture (§98). This prevents frivolous or exaggerated claims from undermining the integrity of judicial processes.

Similarly, in *Morice v. France* (2015), the Court clarified that not all expressions of doubt about a judge’s conduct will trigger Article 6 violations. The assessment must involve “whether the applicant’s doubts can be considered objectively justified in the light of the circumstances” (§78).

In the domestic context, Serbian law and ethics codes also acknowledge this distinction. Article 4 of the Law on Judges requires judges to maintain public trust, but does not establish a mechanism for evaluating the objectivity of public perception. The Judicial Code of Ethics cautions judges against behaviour that may create the appearance of bias, but again lacks clear criteria for when such perceptions warrant formal review.

This raises a procedural dilemma: who determines whether public doubt is reasonable? In the Serbian system, the Ethics Committee of the High Judicial Council does not possess binding authority. While it does publish general opinions on certain reported situations, these are typically limited to the specific circumstances of individual cases and do not constitute comprehensive interpretive guidelines. As a result, there are still no systematic or binding standards to guide judges and the public in assessing perceived impartiality. In contrast, the ECtHR has developed a substantial body of case law that articulates the benchmarks for evaluating both institutional design and individual conduct.

The lack of institutional engagement with this issue in Serbia results in a normative vacuum, where perception is recognized in theory but rarely investigated in practice. This opens space for unmediated public interpretation, often shaped by media coverage, political discourse, or social media reactions, which may lack the nuance required to fairly assess judicial impartiality.

THE ROLE OF MEDIA AND PUBLIC DISCOURSE

In today’s hyper-visible public sphere, the boundary between perception and reality is increasingly blurred. Media coverage of judicial behaviour can amplify perceived impropriety, even in cases where judges adhere strictly to procedural rules (Moriearty, 2010). The UNODC Non-Binding Guidelines on the Use of Social Media by Judges (2019) warn that online platforms magnify reputational risks and can distort public understanding of judicial conduct.

The digital environment has further complicated the task of maintaining both actual and perceived impartiality. Even seemingly benign online interactions may give rise to doubts regarding judicial neutrality. For instance, in England and Wales, a judge was investigated for being “connected” with a barrister on LinkedIn while the barrister was appearing before her in court. Although the investigation found no evidence of actual bias, it was recognized that such online connections could undermine public perception of impartiality (UNODC, 2019: 24). This case illustrates how digital communication, even in its most routine forms, can become a source of controversy regarding judicial ethics and integrity.



Furthermore, judges have increasingly become public figures, to a degree that would have been unimaginable just two decades ago. Their off-bench activities, such as public lectures, scholarly publications, media appearances, and especially social media presence, are subject to heightened public and media scrutiny. In this context, even a seemingly minor misstep can significantly affect public perceptions of a judge's impartiality. This evolving environment underscores the need for clearer institutional guidance on distinguishing between legitimate concerns about perceived bias and mere public controversy lacking legal substance.

While perception alone can legally compromise judicial impartiality, not all perceptions are created equal. The law must distinguish between objectively reasonable appearances of bias and subjective or opportunistic dissatisfaction. International jurisprudence, particularly from the ECtHR, offers useful guidance through its reasonableness standard and contextual analysis. In contrast, Serbia's legal system still lacks operational mechanisms for this distinction, despite recognizing the importance of public trust in judicial conduct. To address this gap, there is a pressing need for clearer guidelines, training, and institutional dialogue that help judges, lawyers, and the public interpret perceptions of bias within a principled legal framework, rather than through speculation or media pressure.

CONCLUSION

How should courts maintain legitimacy in an era where public perception shapes institutional authority as much as legal doctrine? This paper has examined judicial impartiality not only as a constitutional requirement, but as a relational standard rooted in public trust. The ECtHR has established, through its "objective test" (*Piersack v. Belgium*, 1982, §30; *De Cubber v. Belgium*, 1984, §26), that justice must not only be done but must be seen to be done. Perceived impartiality is thus no longer a rhetorical aspiration - it is a binding element of Article 6(1) ECHR and a prerequisite for democratic legitimacy (*Kyprianou v. Cyprus*, 2005, §118).

Serbia has formally adopted this standard through its Law on Judges (Art. 4) and the Judicial Code of Ethics, which affirm the duty to uphold public confidence. However, disciplinary practice remains narrowly focused on explicit violations, such as procedural failures or conflicts of interest, with little attention to perception-based concerns (OSCE, 2016). This legal formalism, visible also in overregulation of judicial discretion (Đorđević & Bodrožić, 2020), leaves unaddressed the more subtle but critical issue of how judicial behaviour is viewed by a "reasonable observer".

This normative gap is particularly visible in the context of digital communication. Judges are increasingly public figures, and their off-bench conduct, including on social media, can influence public perceptions in unintended ways. The CCJE (2022) in Opinion No. 25 recognizes this tension, encouraging judges to engage in public debate on issues such as the state of the judiciary, legal reforms, and the rule of law. Simultaneously, it warns that social media use requires special caution, as even a "like" can compromise the appearance of neutrality.

Addressing this implementation gap requires institutional reform. The Ethics Committee of the High Judicial Council should evolve from an advisory to a normative authority, ca-



pable of issuing binding, published guidance. The disciplinary framework must explicitly incorporate perceived bias as a reviewable standard, aligning with ECtHR jurisprudence. Training should prioritize the communicative dimensions of impartiality - media literacy, public perception, and ethical judgment in the digital age (UNODC, 2019). National guidelines on judicial expression, both traditional and digital, should be codified and broadly disseminated.

These recommendations are consistent with European best practices, including CCJE (2002) Opinion No. 3, which frames impartiality as both a value and a structural guarantee. By implementing them, Serbian institutions can reinforce public confidence and bring domestic practice into closer alignment with European human rights law.

Ultimately, impartiality is not simply a legal safeguard, it is an institutional ethic that must be practiced, seen, and believed. Without public confidence, even technically correct judgments risk losing legitimacy. If Serbia is to fulfil the Strasbourg Court's standards, it must make the appearance of justice not an abstract principle, but a functional reality. Future empirical research, including qualitative studies of judicial awareness and unpublished disciplinary decisions, may further illuminate how this transformation can be achieved. Furthermore, integrating insights from procedural justice theory into judicial training could improve awareness of how procedural behaviour impacts public trust. This includes not only legal correctness but also how decisions are communicated, how accessible the reasoning is, and how judges engage with the public, both offline and online. Combining theoretical insight with institutional reform ensures a more holistic approach to judicial legitimacy. Until then, the imperative remains: the justice system must be visibly just, or it risks being doubted altogether.

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