### The Grammar of Bias: Judicial Impartiality in European Legal Systems

**Abstract** The concept of judicial objectivity is a cornerstone of modern legal systems. This article discusses the interplay between the lexical uses of the concept of judicial *objectivity* in cases that review the judicial impartiality of the court. The data for this project is retrieved from a large sample of over 800 decisions from Hungary, Italy, Lithuania, Slovakia, Slovenia, Spain and the UK. The study was completed in 2014. Analysis of the data shows that in situations of alleged judicial bias, the concept of objectivity is referred to in order to justify a series of judicial activities such as the assessment of procedures adopted by an allegedly biased court or the existence of subjective interest in a case. In particular, the study provides a strong indication of what Legrand called ‘pre-judices’, which are the cultural aspects embedded in the process of the professional socialisation of each legal system.

Legrand’s ideas relied on deductive analysis but, from a social perspective, he had too many variables and not enough data. This study focuses on lexical reference – retrieved by using Langacker’s studies on grammar – to the concept of objectivity in legal cases in which there is an allegation of judicial bias. The results show substantial differences in how courts operating in different legal systems engage with objective and personal allegations of bias. An objective allegation of bias suggests that the judge has a direct interest in the issues on which s/he is called upon to decide. A personal allegation of bias suggests that a judge has a personal or professional connection with one or more of the parties. In the sample considered in this study, objective allegations of bias tend to support narratives that justify an analysis of evidence and the facts of the case. These variations in how legal systems deliver decisions strongly support Legrand’s ideas of pre-judices.

This article is divided into three parts, preceded by an introduction and followed by a conclusion. The introduction explains the project’s methodology. The second section provides a theoretical overview of the interplay between the concepts of objectivity and judicial bias. Sections three and four discuss specific cases of objective and subjective bias. The conclusion reflects on the project’s results.

## Introduction

The existence of a direct connection between judicial objectivity and judicial impartiality is one of the key elements of a modern liberal democracy. For instance, there is some overlap in the meanings of objective interpretation and impartiality in Article 6[1] of the European Convention on Human Rights. In this article, though, I focus on interpreting data that describes the epistemic use of the concept of objectivity in cases that discuss an allegation of judicial bias across different legal systems[77]. The aim of this analysis is to verify the hypothesis of variations in how judges define the concept of objectivity. This analysis required a large sample of cases and a group of researchers with the lexical expertise necessary to extract contextual information from case law material in the countries studied.

The cases considered were appeal cases or first instance rulings over an ancillary issue in which the impartiality of a judge or expert witness was, for whatever reason, questioned. When deciding on an ancillary issue or an appeal case, the court has to provide objective narratives that confirm or deny the existence of an improper connection between the court or the expert witness and the object of the dispute. For instance, in R v Bow Street Metropolitan Stipendiary Magistrate Ex Parte Pinochet Ugarte (hereafter Pinochet n.2) [78], Lord Hoffmann’s impartiality was successfully questioned by the legal team representing the former dictator on the grounds that Lord Hoffmann was an unpaid company director of a charity associated with Amnesty International [78]. In Pinochet n.2, the House of Lords, using the reasonable person as a reference, explained that a perception of bias was sufficient to support a request for a retrial.

This article reports on the epistemic methods that courts such as the House of Lords (now the UK Supreme Court) adopt when engaging with an allegation of bias [78]. The epistemic method, such as the Lords’ evaluation of a reasonable person’s perception of bias, is retrieved exclusively from a contextual reading of the text of the decision. This process does not involve a qualitative analysis of the function carried by the judicial process (e.g. to deliver an objective decision) [21, 22]. In other words, the study does not intend to evaluate the quality of the epistemic method adopted by each of the legal systems considered in this project [38].

The article is one of the publications that mined data from a larger research project aimed at clarifying how judicial narratives qualify the concept of judicial objectivity [5]. The project involved over a dozen researchers and two coordinators. Each individual researcher had the linguistic and legal training necessary to analyse a large sample of random cases. I coordinated the final review of the data and prepared one report. Each researcher had to report on a sample of at least 100 cases in which the court explicitly qualified the concept of judicial objectivity. The analysis was carried out in two stages. First, the researchers were required to classify the type of lexical qualification of the concept of objectivity. This was a quasi-mechanical task without the direct use of Natural Language Tool Kit software [41]. A national legal database provided a list of cases in which the court referred to the concept of objectivity. The investigator ensured that lexical references to judicial objectivity were not a false positive or part of a scrawling verbiage in which the words ‘objectivity’, ‘objectively’ or ‘objective’ carried a limited reference to their lexical significance. For instance, epistemic processes that qualify bias were often proposed by one party’s challenging the impartiality of a judge, but the courts did not consider that narrative persuasive.

The selected cases were classified according to the object of the decision, and this article reports only on cases in which there was an allegation of judicial or expert bias. These cases included judicial narratives that indicated a court’s intention to qualify the concept of judicial objectivity; the narratives were divided into different groups:

a. The court refers to the subjective impartiality of the judge

b. The court refers to the objective impartiality of the judge

c. The court refers to external criteria

d. The court refers to the involvement of a third party

e. The court’s decision is de facto unbiased

f. The court’s decision considered all the facts of the case

g. The court’s decision refers to the opinion of experts

h. The court’s decision refers to legal rules and legal criteria

Negative variations, in which the court defined what could not be associated with the concept of objectivity, were considered false positives and not included.

The second stage of the study included a contextual analysis of the extracts for the purpose of labelling their functional use, as evaluated by the researcher. Skoczeń adopts an analogous methodology aimed at distinguishing context from co-text which might project individual perceptions on a semiotic analysis [34]. This methodology’s effectiveness is well demonstrated by Skoczeń and does not need to be reproduced in this article. These contextual narratives were characteristic of a particular legal system and were a direct representation of Legrand’s professional pre-judices:

These pre-judices (I use the term in its etymological, not in its negative, or acquired, sense) are actively forged, for example, through the schooling process, in which law students are immersed and through which they learn the values, beliefs, dispositions, justifications and the practical consciousness that allows them to consolidate a cultural code, to crystallize their identities and to become professionally socialized [24].

Pre-judices are, according to Legrand, mildly complex epistemic practices that are part of the professional socialisation process and vary with each legal system; by providing a vessel of shared meanings, they facilitate the inner workings of a legal system [25].

For instance, in some cases the court decided to evaluatethe evidence that a judge owned shares in a company involved in a dispute on which s/he was called to decide. In this situation, extracts (i.e. a sentence or a group of sentences that referred to the concept of objectivity) were inserted by the court into the decision to explain a specific activity that was perceived by the court as a necessary aspect of a fair judicial process. These activities included an evaluation of the allegations, a description of the facts and an analysis of the procedure that was perceived to be affected by bias. In addition, some judicial narratives had a rhetorical or explicative purpose, in which the extracts provide an indication of a connection between judicial narratives and the concept of objectivity. Their contextual evaluation, however, shows how those narratives are used in actual practice in different legal systems.

The analysis of contextual interpretations indicated that most legal systems included in this study associated the allegation of objective bias with an evaluation of factual narratives. Allegations of subjective bias, by contrast, are associated with a cluster of activities that appear to show national variations. For instance, the Slovakian sample indicates that compliance with procedural requirements is sufficient to rebut a claim of subjective bias. In the UK, the procedural soundness of a process cannot be the sole defence against the persuasiveness of an allegation of subjective bias [75]. These types of national variations in judicial practice are very similar to Legrand’s pre-judices [24, 25].

The lexical variations in how national systems construct judicial narratives that are all associated with the concept of objectivity, is one of the most thought-provoking aspects of this study. The implications are twofold. First, the study supports the existence of Legrand’s idea of national pre-judices. Second, the results of the study inform large international organisations such as the European Union (EU) or the World Bank of the variation in the lexical structure of judicial decisions [24, 32]. Posner, who has a less critical perception of the effect of the convergence of legal systems than Legrand, recommends adapting international legal rules to local cultures [7, 23, 32]. Similar conclusions using a different methodology appear in Izabela Skoczen’s *Minimal Semantics* *and Legal Interpretation* [34]. Before I substantiate my claim, a number of issues must be addressed as part of a preliminary analysis.

This study is not comparative research that adopts a functional approach [28] and thus neither assumes nor contests the notion that modern democratic legal systems carry out similar functions such as ensuring an objective and independent judicial system. The functional approach has already been analysed in a number of venues and been deployed in several well-reputed studies [12, 18, 29, 36, 39]. For instance, it is a functional requirement of modern civil procedures that they must regulate how evidence is presented to the court [6]. If the regimes of evidence were too strict, no court would be able to find a reasonable representation of the truth. There is a rich literature that questions the validity of the functional approach in comparative legal studies [30, 33, 37], but this study focuses on how legal narratives are extracted from the concept of objectivity to support a distinctive court epistemic practice [25]. Thus, the assumption adopted in the study is that legal objectivity is used as a lexical device by courts in cases in which it is called upon to explain a judicial narrative. Finally, the project’s aim was not to verify which legal system is better (or worse) at ensuring the functional independence of its judiciary.

As noted above, the project instead revealed a cluster of narratives associated with the concept of judicial objectivity. At the outset, it was not clear whether a particular legal system had a distinctive cluster of textual references to the concept of judicial objectivity. Moreover, if each country had a cluster of jurisprudential significances connected to the concept of objectivity, which was one of the research hypotheses, would these clusters be similar or diverging? The answer to the last research question was of particular importance for the judiciary of EU member states which, over the past thirty years, have been asked to implement EU treaties and Community Law in a uniform manner. Knowing how diverse the lexical understanding of general concepts was across EU judicial systems was also essential for proposals such as the European Civil Code[25]. These types of ambitious plans depend to a great extent on the existence of a common understanding of general legal concepts. This study shows that, even at the lexical level, all the European legal systems considered are semantically unique and thus unqualified general terms such as ‘judicial objectivity’, ‘transparency’ and ‘equality’ tend to generate different pragmatic effects in different jurisdictions. One issue that might require further research is whether cross-fertilisation of significances might foster the development of common understandings of concepts across legal systems.

## Judicial bias: A theoretical overview

Judicial impartiality is one of the essential elements of the rule of law [36]. However, the discussion of judicial impartiality is associated with an often polarized debate that questions the conceptual, explanatory and social plausibility of an unbiased judicial system. For instance, Baum challenges the very possibility of judicial independence [3].There are also strongly supported narratives from the critical legal studies movement that have focused, for instance, on the political nature of judicial power in modern constitutional systems [10]. From Christodoulidis’s perspective, the attempt to describe a legal system as impartial inevitably obscures some of its ideological connotations. This point is developed in particular against Dworkin’s idea of law as a cognitive process aimed at protecting rights [9]. The polemic questions the underpinning of modern liberal democracy; however, the large number of cases considered in this project does not confirm that political bias is relevant, which might be unexpected to some readers.

A theoretical discussion over the impartiality of judges engages two distinctive areas of law. The first is the constitutional requirement for political impartiality noted above. The debate over constitutional impartiality is part of diatribes between radical democrats and positivists concerning the interplay between liberalism and judicial narratives. Judges are expected to decide cases without allowing political views to affect their decisions [35]. This is one of the best-known functional requirements of the rule of law, and also among the most contested. Strikingly, this study focused on judicial narratives found only two cases in which a court has been asked to respond to claims of ideological bias. In a case discussed by the Budapest Metropolitan Court, No. 27.P. 24.578/2006./3, the judges decided: ‘Due to the requirement of political and ideological neutrality, it is beyond the jurisdiction of the court to take a stance on ideological or political questions’ [51]. This lexical engagement might trigger a series of debates in former colonies over the political nature of courts established by the controlling power in ways that suppress the indigenous and poorer sections of society, a debate that is particularly vigorous in Australia [13, 31].

A second case regarding the requirement for political neutrality in a general sense arose in the Supreme Court of Lithuania (CLS), No. 3K-3-93/2011, in which the court investigated the allocation of cases among Lithuanian jurisdictions [548]. These are the only cases in which judges were accused of political bias. The lack of judicial narratives that engage the political impartiality of judges might suggest a need for a qualitative analysis. It could be argued, for instance, that the level of doctrinal animosity linked to the debate over judicial impartiality in liberal democracies such as the one suggested by the CLS, should have resulted in a higher number of challenges to political independence [10].

The second area of law related to the debate over judicial impartiality concerns the relevant procedural requirements for trials. The impartiality of the court is questioned because a judge has a direct or relational interest in the issue on which the court has been asked to rule. For instance, a judge cannot have a direct monetary interest in an issue on which s/he is called to decide. A relational interest is less obvious than a direct interest, since the impartiality of the judge is questioned because of an incidental connection with an issue on which s/he must rule. Pinochet n.2 is one of the best examples of the potential effects of having a judge who has a relational interest in a case [75]; the House of Lords ultimately decided against extraditing the former Chilean head of state to Spain.

The British authorities had arrested Mr Pinochet in response to a Spanish international warrant that alleged a series of human rights violations by Mr Pinochet during his time as Chile’s leader. After a series of appeals, the case reached the House of Lords, which allowed British authorities to carry out the extradition procedures. However, after the decision, the legal team representing Mr Pinochet discovered that Lord Hoffman was an unpaid director of a charity linked to Amnesty International. This position was hardly a sinecure, yet Amnesty International had long campaigned vigorously against human rights violations in Chile and specifically for the arrest of Mr Pinochet [1].

There was no indication, the House of Lords pointed out, that Lord Hoffmann’s decision was substantially or procedurally obfuscated by his role as an unpaid director of the charity. However, the perception that he had a relational interest in the case was sufficient to grant a petition that allowed for a retrial of Mr Pinochet’s case. The justification for such a decision is of particular interest to the present project, as the Lords showed a concern with objective evidence and the link to perceptions of bias. In this case, the court argued that an external observer who had a fair understanding of the relevant facts of the case might have deemed the decision to be based a judge’s personal beliefs.

The court cannot rely on its knowledge of the integrity of the judge concerned to outweigh the appearance of bias in the eye of the bystander. The reference point must remain the reasonable observer. This is consistent with the test laid down under article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms [77]. the appropriate test is whether a fair-minded observer with knowledge of the relevant facts would have a suspicion of bias [78].

In other words, the perception of impropriety from an external standpoint was sufficient to deem Lord Hoffmann’s relational interest pernicious for the entire decision. The Pinochet n.2 case was not part of the sample considered in this study, yet it explains well that the connection between the public perception of bias and the concept of objectivity is a distinctive element of the cluster of narratives that UK judges deem integral to an independent decision process.

It is reasonable to suggest that the public perception is in fact a clear manifestation of a professional pre-judice; it is a distinctive element differentiating the British legal system from its Continental peers. In contrast, a contextual analysis of the extracts from the Spanish sample shows that subjective allegations of bias can be rebutted by focusing solely on the procedural elements of the case. There is no indication that an epistemic activity is selected with the aim of obscuring, as CLS suggested, the ideological effect of liberalism.

The studies confirmed instead Coleman and Leiter’s classification of three stages of metaphysical analysis in legal reasoning, in which epistemic practices in judicial reasoning can be derived from strong, modest and minimal metaphysical practices [10]. The evaluation of factual narratives is dominated by strong metaphysical assumptions. This connection is also present in theological narratives. Notably, Saul of Tarsus, in Philippians 4.8, makes a direct connection between truth and justice. A Talmudic legal scholar identifies the lies of witnesses as the *geneivat da’at*: the theft of someone’s mind [26]. However, Coleman and Leiter’s idea of strong metaphysical assumptions is part of an eminently *laic episteme* in which the validity of any legal reasoning depends on the requirements of the scientific method. For instance, judges tasked to evaluate a ballistics report, once they accept the procedural soundness of the scientific method that was adopted by the expert witness delivering that report, will consider the report as an objective representation of the truth. Thus, there is a strong connection between scientific methods and legal methods. This strong connection is evident in both the lexical structures and the contextual interpretations of all legal systems considered in this study.

The connection is, when compared to an evaluation of the facts of the case, lower when judges are asked to interpret a legal text [11], which is a metaphysical activity that is bounded by precedents and statutory requirements. The interplay between judicial discretion and textual interpretation is one of the ‘old chestnuts’ of positivism and need not be reproduced here. It is important to note, however, that Hart and Dworkin’s long-distance debate is considered the most articulated of the discussions over the limits of judicial interpretation,[14, 19, 20 postscript] and that one of the agreements that emerged from this discussion is that textual interpretation is not a completely undetermined activity. In other words, it is not what Coleman and Leiter call a ‘weak metaphysical activity’ that might deliver unprovable results [9]. Judicial interpretation of a legal text is a restrained activity, which Coleman and Leiter define as metaphysically modest. It is so by way of comparison to the strong scientific method, which is part of judicial decision-making, and the weak interpretative method, which should never be part of judicial practices.

The key result of the allegations of objective judicial bias considered in this study is that a strong metaphysic is normally used to evaluate the veracity of an objective claim, while a modest metaphysic is adopted in cases in which there is an allegation of subjective judicial bias. The data analysis also shows that the modest metaphysic is culturally specific. Each legal system adopts a series of culturally specific pre-judices to assess the plausibility of an allegation of subjective bias.

## Allegations of objective judicial bias: A common legal language across Europe

In this section, I focus on allegations of objective bias, as when a judge has a financial interest in the case. The study shows that court narratives focus on the analysis of hard evidence and rely exclusively on scientific methodology for that analysis, as by employing financial forensic techniques in the financial interest example. The existence of a common lexical engagement and contextual significance with the allegation of objective bias is an indication of the quality of the judicial decisions across legal systems.

Allegations of objective bias tend to involve both judges and expert witnesses, yet allegations of objective judicial bias are very rare. It is also exceptional, in the sample, for allegations of judicial bias to be considered valid. For instance, in the judgement of the Vilnius Regional Court, No. 1A-543-209-2011, the court explained that an allegation of objective bias has to be supported by objective factual evidence [45]. Similar reasoning appears in the Supreme Court of Hungary in decision No. Kfv.II.37.563 [56]. In our sample, it is far more common to find allegations of objective bias regarding the activity of expert witnesses.

For instance, in decision No. I Ips 500/2008, the Supreme Court of Slovenia rejected the claim of bias made against the report of an expert witness. The court referred to European Court of Human Rights jurisprudence to argue that direct measurements and test results cannot be influenced by the activity of an expert witness, as they are evidence independent of interest. Another example of an obviously Ockhamist reason can be found in Lithuanian cases. The court, in the decision by Kaunas Regional Administrative Court No. II-112-423/2011, explained in a cogent narrative that one of the general principles of law is the principle of judicial objectivity [55], according to which no public officer or administration employee can participate in drafting an administrative document that might affect him or her directly or indirectly. In the Kaunas case, the civil servant was not affected by the report submitted to the court, so it was considered unbiased. A question over the objectivity of expert witnesses was also engaged in the Hungarian sample. In the Győr Regional Court of Appeal No. Bf.77/2008/13, the court addressed the objectivity of forensic expert opinions that included forensic medical experts and criminalists [47]. Again, the court assumed that experts should be considered unbiased by dint of being experts.

The Spanish cases also offer us a substantial number of instances in which courts explored a potential link between objectivity and impartiality. This was prominent in cases for which the court discussed public servants’ roles as independent assessors. In these decisions, the court confirmed that public servants and their actions were to be considered objective because their selection process is impartial and because they are experts on the areas in which they provide evidence [71, 74]. It is important to note that the sample of Spanish cases considered in this project did not evaluate the jurisprudence of the Spanish Constitutional Court. In principle, the grounds for disqualification of those justices are the same as those of ordinary judges. Nonetheless, the Constitutional Court operates with its own criteria, which are stricter than other Spanish jurisdictions [18]. The difference is particularly evident in constitutional cases that deal with the reform of the Spanish territorial system of governance [2, 42, 33]. Given the *sui generis* nature of the jurisprudence of the Spanish Constitutional Court, the sample of Spanish cases considered in this project focused on cases of objective bias affecting judges and expert witnesses. The analysis of these cases shows that Spanish courts repeatedly affirmed that civil servants are to be considered independent and objective expert observers [71, 72, 73, 74].

An allegation of bias in expert witness statements was also engaged by the Budapest Regional Court of Appeal [50], which held that ‘the witness does not have any financial ties with the plaintiff […] and does not have any interest in the plaintiff’s winning the case. So it is logical to assume that expert witness statesmen are entirely neutral’ [50]. The similarity between the narratives derived from the Budapest Regional Court’s decision and the Spanish cases reported in this project might be unexpected. However, there are also strong similarities in the epistemic narratives that follow an allegation of objective bias among all judicial systems considered in this project.

The specific reasons for such similarities would require a qualitative analysis that includes semi-structured interviews with judges, but there is enough evidence from our lexical analysis of the cases to suggest a relationship between legal positivism and the metaphysical positivism that holds that only allegations that are proved by evidence can be considered scientifically truthful. Evidence has to be based on factual narratives or provided by professional or academic experts [11]. This result confirms Coleman and Leiter’s classification of three types of metaphysical analysis in legal reasoning. In particular, the study shows that allegations of objective bias are assessed by adopting hard metaphysical narratives which focus on evidence and the scientific method.

## Subjective judicial bias: The national grammar of judicial bias

In the previous section, I discussed the narratives that courts associate with an allegation of objective bias, explaining that all legal systems considered in this project tend to focus on hard evidence. This result might have been expected, but at the outset of this effort, there were doubts over the quality of the decision-making process in patrimonial political systems such as Italy. Fukuyama uses the term ‘low trust equilibrium’ to define the interplay between Italian citizens and public institutions [16]. However, the textual analysis of subjective allegations of judicial bias has led to one of the most interesting results of this project: allegations of subjective judicial bias are a proxy for a large variation in narratives and in related epistemic activities. These variations in the narratives are the manifestation, in lexical terms, of Legrand’s pre-judices [25]. One of the problems with Legrand’s article is that there are too many variables and not enough cases. This study is one of the few that retrieved evidence of such national clusters within a large-scale comparative analysis.

For instance, in cases of alleged subjective judicial bias, Hungarian and Slovakian judges tended to focus on the procedural correctness of the decision [47, 58, 69, 60, 61, 62, 63, 66, 66, 69]. In most cases considered in this study, the parties alleging subjective bias had to show that a personal relationship was the reason for irregularities in court procedures which affected the overall decision of the case. So, a perception of an improper relationship between one of the parties and a judge is normally considered insufficient by Slovakian and Hungarian courts to support a claim of judicial bias.

In the sample, there is an overlap between epistemic methods that evaluate objective and subjective claims, which is to be expected [12]. Some legal systems might focus on the procedural aspects of the case and not consider the evidence of a personal relationship with one of the parties as a key aspect of the case, as in Italy, while others might focus heavily on that perception, as in the UK. From the report on the Slovakian legal system, it is reasonably clear that its courts would consider an allegation of subjective bias plausible if it were supported by both objective and subjective epistemic practices, as in the Judgement of Šiauliai Regional Court No. 1A-83-116/2011, where the court explicitly asserts that a key element in an allegation of subjective bias is the existence of factual evidence of a pre-existing relationship between a party and a judge [48]. This stance is consistently maintained in several decisions [61, 58, 69, 60, 61, 62, 63, 66, 66, 69].

In the Italian judicial system an allegation of bias has be supported by objective evidence. This is particularly difficult in cases in which a judge has an indirect personal relationship with individuals who are affiliated with crime syndicates such as the Sicilian Mafia [29]. Justice Carnevale, the former President of the Italian Supreme Court of Cassation, was accused of having an indirect personal relationship with such a syndicate [70] through a series of personal relationships with individuals who themselves had alleged associations with the Sicilian Mafia. These allegations are not uncommon in Italy, where the country’s politicians often act as kingpins of clientele networks. In Southern Italy, these clienteles are often but not always involved with organised crime networks. The term clientelism is defined as ‘an informal network of power relations between individuals’ that is a hallmark of Italian politics [3, 6, 16]. The practice of clientelism, which originated in rural societies, typically involves an informal vertical power relation between the power holder like the patron or landowner and a number of inferiors such as seasonal workers. However, Italian clientelism is horizontal and can include a nationwide network of individuals that exchange tangible favours like jobs, public contracts and political support [8, 16]. These types of connections can seldom be substantiated with objective evidence.

For instance, an Italian judge might have a shared friendship with a politician whose clientele networks [4, 16] might overlap with the constituency of crime syndicates. That judge might well be called upon to decide a case that involves a member of his friend’s political clientele, and that party might also be, perhaps unbeknownst to the judge, involved in a criminal organisation. However, beyond the simple fact of membership in either a clientele or a criminal syndicate or both, it is very difficult for a party to substantiate an allegation of judicial subjective bias, as the judge has a direct connection with the politician but only an indirect personal connection, at most, with one of the parties in a trial.

While the overlap of Italian clientalism with the Mafia may be unique in Europe [17], it is essential to remember that all legal systems must balance the requirement of judicial objectivity with limiting bogus allegations of bias which might undermine the functioning of the legal system as a whole. In cases of allegations of subjective judicial bias, judges tended to focus on the procedural correctness of the decision [57], though it can certainly be argued that by focusing on the orthopraxic aspect of judicial decisions a legal system might systematically deflect accusations of subjective bias. This aspect of the project likely requires further investigation, but it is important at this stage to remember that the epistemic activities that are associated with the qualification of the concept of judicial objectivity should be perceived by a national community of legal professional as adequate at a minimum.

In the cases considered in this project, it appears that allegations of judicial personal bias focus on the procedural appropriateness of a judicial decision, as in the Slovakian and Hungarian examples. In Italy a lack of direct personal connection with individuals involved in organised crime is sufficient to repel allegations of subjective bias [70]. In the UK legal system, unlike all other systems considered in this study, a reasonable perception of bias is deemed sufficient to justify a re-trial [75].

The jurisprudence of the Slovenian Supreme Court focuses instead on the effect that a professional relationship might have on the decision of a case. In decision No. I R 138/2009, the Supreme Court refused a request to transfer a case to a different judge [53]. The Supreme Court explained that the mere existence of prior professional contacts between the judge and a party had to have additional evidence of objective bias [53, 38]. One of the most thorough analyses of the effect of subjective bias in judicial is found in the Supreme Court of Lithuania case No. 3K-3-110/2011 [46]. The court decision explains in detail the process that parties should expect following an allegation of subjective bias. According to the court, there are two aspects to the requirement of judicial impartiality: subjective and objective. The former demands that a judge cannot have any personal prejudices, while the latter requires that a judge not have a personal or professional connection with any parties in a legal dispute. In particular, there should not be evidence that casts a *reasonable* doubt on the impartiality of the judge. These are, in Coleman and Leiter’s terms, the ideal epistemic conditions of modest metaphysical activity aimed at evaluating a claim in Lithuania [11]. They are also, from Legrand’ s perspective, a manifestation of a national pre-judice [24].

In that same decision, the Supreme Court of Lithuania explained that a previous indirect professional relationship between a judge and one party would not be sufficient to support an allegation of subjective judicial bias [48]. The appellant had questioned the impartiality of one appeal court judge who had a previous professional relationship with the judge of first instance whose decision was under review. However, the Supreme Court of Lithuania noted that the appeal judge was not involved in the case currently under review in the appeal court. In addition, the working relationship cited by the appellant between the two judges had ended two years before the appeal case was heard. The appeal No. 3K-3-110/2011 was thus rejected on the grounds of a lack of reasonable doubt over the impartiality of the appeal judge [49]. The test of reasonableness, the Supreme Court of Lithuania asserted, demands an evaluation of the nature and duration of such professional relationships and any specific circumstances that might hinder the independence of the judicial process [48, 53].

Another example of a mildly complex epistemic activity that can be tied to Coleman and Leiter’s idea of modest objectivity in law appears in the judgement of the Vilnius Regional Court No. 1A-543-209-2011 [45], which explained that a persuasive allegation of subjective bias requires two elements. Firstly, a persuasive allegation requires evidence of a personal relationship between one of the parties and the judge. Secondly, the personal relationship has to be associated with procedural defect on the trial [45]. The proceedings of case No. 1A-543-209-2011 might have been perceived as atypical by one of the parties, but the differences in the procedures adopted in that case were part of judicial prerogative [45]. The Vilnius Regional Court rejected the allegation of bias.

The criterion of reasonableness also appears, albeit implicitly, in Slovenian and Slovakian samples. These are cases in which the personal relationship between the party and the judge was so blatant that it did not require an evaluation of the procedural soundness of the case. In case No. I R 13/2010 the Supreme Court of Slovenia accepted an allegation of bias without evaluating the procedural aspect of the case. One party in case No. I R 13/2010 was a judge at the same tribunal in which the case had been heard [53]. In addition, one of the respondents in the same case was the judge’s husband [53]. In case III. ÚS 347/08, the Supreme Court of the Slovak Republic accepted the allegation of subjective bias regarding a decision in which the judge and one of the legal counsellors for the plaintiff shared the same residence and contact details [76].

Many more examples could be provided, but it appears reasonably clear that allegations of subjective bias tend to be assessed differently across legal systems, while allegations of objective judicial bias tend to be addressed with similar approaches. In each nation’s sample, the allegations of subjective bias were the proxy for a cluster of activities unique to that jurisdiction and, it can be reasonably assumed, a direct lexical manifestation of Legrand’s notion of legal pre-judices as the defining aspect of institutional culture [24, 25]. The clusters also support Coleman and Leiter’s definition of modest judicial objectivity [11]. Courts develop a constrained set of epistemic methods that is perceived by the professional community that has chosen it as objective.

## Conclusion: The grammar of subjective and objective bias

This article discussed the interplay between the concept of objectivity and judicial impartiality by considering a large sample of cases taken from Hungary, Italy, Lithuania, Slovakia, Slovenia, Spain and the UK. It focused on the lexical qualification of the concept of judicial objectivity in relation to allegations of judicial bias. The analysis of a large sample of these cases reveals the existence of two large groups of contextual narratives that are referred to when qualifying the concept of judicial objectivity: allegations of objective and subjective bias. The former are, in the great majority of the cases, a proxy for an evaluation of factual narratives in all legal systems considered in this study. This finding confirms some of Leiter and Coleman’s positions on the nature of the relative indeterminacy of judicial practices. That is, modern legal systems combine hard scientific narratives and textual interpretations. An allegation of objective bias is proxy for a court to evaluate hard evidence which has, due to the nature of the scientific method, a limited indeterminacy. The questioning of expert witnesses is also a proxy for analogous judicial qualifications in all the legal systems considered in this project.

The second group of narratives, by contrast, deals with qualifying a claim of subjective bias. In this group, the concept of judicial objectivity is associated with a claim of subjective bias to support larger clusters of contextual activities, and each legal system adopted a series of epistemic methods to evaluate a claim of subjective bias. In the UK, for instance, a perception of subjective judicial bias might be sufficient on its own to grant a retrial. In Slovenia, meanwhile, a successful allegation of subjective bias might require being coupled with a procedural violation. In Lithuania, a judge has to evaluate the reasonableness of a relationship, such as its duration and effect, that might affect a judge’s impartiality.

These results confirm Legrand’s work on pre-judices. In each legal system, judges are part of professional social groups with distinctive narratives and conceptions of what is right and appropriate. These conceptions are manifested directly in the lexical structure of judicial decisions over allegations of bias.

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