**4th lesson: The principles of the functioning of justice**

 **At the end of this course, the student should understand that the functioning of justice is governed by three major principles such as:**

* **Independence**
* **Free**
* **Advertising**

**He must also understand that the proper conduct of a trial is subject to compliance with certain rules of fairness such as:**

* **The right to a fair trial**
* **The presumption of innocence**
* **The principle of adversarial proceedings**

**I. The main operating principles of Justice**

**1. Independence**

Three powers coexist within the State:

* the **legislative power** : it is the Parliament (National Assembly and Senate) which votes on laws,
* the **executive power** : it is the Government which executes the laws,
* the **judiciary** : it is the judicial authority which controls the application of laws.

The **independence** of these three powers is guaranteed by the constitution.

The independence of the judiciary is an essential guarantee for those taking part in a trial (the litigants). This principle allows the magistrate to make his decision free from any instruction or pressure.

Justice is also **impartial** . Impartiality ensures that the magistrate is not influenced by his opinions or prejudices. And that all the arguments of the parties will be subject to an objective examination.

**2. Free**

The second major principle of the functioning of Justice is its **free nature** . It is in fact the State which pays the magistrates.

However, litigants must bear the **costs of the proceedings.** These are linked to the costs of the proceedings and lawyers' fees.

People without resources, or whose resources are modest, can be **exempted** from legal fees and apply for legal aid . It is then the State which covers the legal costs, in whole or in part.

The winning party in the case may also ask its opponent to **reimburse** its legal costs.

Finally,Certain **procedures** are not subject to the payment of legal fees. These include procedures brought before the juvenile court judge or the guardianship judge.

**3. Advertising**

Publicity is the third principle of operation of Justice. Hearings must be **held in public and be accessible to all** . This principle goes hand in hand with those of permanence and fixity.

With some exceptions (particularly for minors), trials must take place **in public** . In practice, this means that the courtrooms are accessible to everyone. Journalists have free access to the courtrooms but cannot record the proceedings except with special permission. Judgments are written. Magistrates must explain the reasons that led them to make their decision. This is the **motivation for the decision.**

**II. rules of fairness;**

 **the proper conduct of a trial is subject to compliance with certain rules of fairness such as**

1. **The right to appeal**

The right to appeal court decisions allows the litigant to **request a re-examination of his or her case** . In this case, judges other than those from the first trial, sitting in another court or another court of justice, take up the case. They issue a second court decision, which annuls the first.

1. **The right to a fair trial**

The organization of a trial is also conditional on compliance with certain **rules of fairness** : having access to an independent and impartial tribunal, ruling according to an adversarial procedure and within a reasonable time; having the right to a public trial, respecting equality of arms and the rights of the defense.

All citizens must therefore **be able to benefit from the same rights** .

There are several such as: the presumption of innocence, the adversarial principle and the right to appeal a court decision.

**3. The presumption of innocence**

The presumption of innocence means that an individual **cannot be declared guilty until he has been finally tried** .

In concrete terms, for example, it is forbidden to broadcast images of a handcuffed individual if the latter has not given his or her consent. Any person presented as guilty in the press can also obtain a public correction.

**4. The principle of adversarial proceedings**

The adversarial principle means that any party can only be **judged after having been heard or called** , and that any element produced in court must have been **communicated in advance to the opponent** .

It guarantees each party the right to consult the files that concern them and thus prepare their defense with their lawyer.

The judge is also required to respect the principle of adversarial proceedings. He cannot invoke a new argument without having informed the parties and allowing them to explain themselves.