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JUDICIAL INDEPENDENCE AS A GUARANTEE OF CONFIDENCE IN THE JUDICIARY: ADEQUATE REMUNERATION OF JUDGES AS A PREVENTION OF CORRUPTION

ABSTRACT

Judicial independence, which is inherent in the task of adjudication, is inseparable from judicial practice and integral to the task of judicial decision-making. Mentioning judicial independence notions like institutional, procedural and personal guarantees of it usually come to mind. Hundreds and even thousands of studies talk about the rules of the appointment and promotion of judges, their immovability, the order of distribution of cases, the right to a legal judge, political, economic and official conflicts of interest, etc. At the same time, in scientific literature, little is said about the remuneration and financial independence of judges even though these are also essential parts of judicial independence. An efficient and timely functioning justice system, which greatly helps society's sense of security, economic growth and guarantees clean and predictable legal relations, can only be achieved by having a court that is independent in all respects, literally. This study argues that it is crucial for the Member States, here I put my focus on the European Union and its' Member States, to recognize the responsibility of judges with adequate remuneration. If judges' salaries do not conform to the dignity and responsibility of the profession, then the public's confidence in the judiciary weakens, because it undermines judicial independence and as a possible side-effect economic crime, especially corruption can appear, grow and flourish. Therefore, the main question is whether a judge can be independent without appropriate remuneration or not.

Keywords: *judicial independence, confidence in the judiciary, remuneration of judges, corruption*

1. INTRODUCTION

The judiciary plays an essential role as the third branch of powers in a democratic state governed by the Rule of Law.¹ The role of the judiciary is to decide cases brought before the court by parties, and to do so impartially and dispassionately, by applying law to fact.² Its main function is the resolution of legal disputes during which courts make binding decisions for the parties. Its mission is to guarantee the very existence of the Rule of Law, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.³ Judicial independence is one of the fundamental values include: procedural fairness, efficiency, accessibility, public confidence in the courts, and the value of constitutionality, in the sense of the constitutional protection of the judiciary.⁴ Judicial independence and impartiality are essential prerequisites for the operation of justice,⁵ and is a requirement in EU law stemming from the principle of effective judicial protection referred to in Article 19 Treaty on the European Union (hereinafter: TEU), and from the right to an effective remedy before a court or tribunal enshrined in Article 47 of the Charter of Fundamental Rights of the EU⁶ (hereinafter: Charter). Furthermore, it forms part of the essence of the fundamental right to a fair trial.⁷ When judicial independence is mentioned, notions like institutional, procedural and personal guarantees usually come to mind. Hundreds and even thousands of studies talk about the rules of the appointment and promotion of judges, their immovability, the order of distribution of cases, the right to a legal judge, political, economic and official conflicts of interest, etc. At the same time, in scientific literature, little is said about the remuneration and financial independence of judges even though these are also essential parts of judicial independence. An efficient and timely functioning justice system, which greatly helps society's sense of security,

¹ Consultative Council of European Judges (hereinafter: CCEJ) Opinion No. 24. (2021): The evolution of the councils for the judiciary and their role in independent and impartial judicial systems, para 1., See also CCEJ Opinion No. 18 (2015): "The position of the judiciary and its relation with the other powers of state in a modern democracy", CCJE(2015)4, London, 16 October 2015.

² Mack, K., The Judiciary and the Public: Judicial Perceptions, *Adelaide Law Review*, Vol. 39., No. 1., 2018, p. 4.

³ CCEJ: Magna Carta of Judges (Fundamental Principles), CCJE(2010)3 Final, Strasbourg, 17 November 2010 (hereinafter: Magna Carta of Judges), para 1.

⁴ Shetreet, S. (ed.), *The Culture of Judicial Independence*, Martinus Nijhoff Publishers, Leiden-Boston, 2012., p. 1.

⁵ Magna Carta of Judges, para 2.

⁶ The 2024 EU Justice Scoreboard, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, COM(2024) 950 (hereinafter: The 2024 EU Justice Scoreboard), p. 44.

⁷ Court of Justice, Judgement of 20 April 2021, *Repubblika v. Il-Prim Ministru* case C-896/19, ECLI:EU:C:2021:311, para 51.

economic growth and guarantees clean and predictable legal relations, can only be achieved with a court that is independent in all respects. Therefore, the main question is whether a judge can be independent without appropriate remuneration or not.

My research is based on case-law-study methodology during which I collected, analyzed and compared the settled case-law of the Court of Justice of the European Union (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR) on the subject matter of requirements and remuneration of judges. My primary objective was to get an in-depth understanding as well as analysis of the European and international legal documents. The reminder of this study is organized as follows. Section 2 demonstrates the importance of judicial independence and the difference between the external and internal dimensions of it. Section 3 contains the reasons why the financial independence of judges is important with which I would like to point out that the remuneration and financial independence of judges is also an essential part of judicial independence, moreover it is just as important in terms of ensuring the general principle of judicial independence as any other guarantee elements. Section 4 presents the European and international expectations regarding judges' salaries, which basic requirements are uniformly defined in European and international legal documents. Section 5 discusses the role of judicial independence, the effective functioning judiciary and legitimacy of judicial authority in public confidence in the judiciary, which can be undermined by corruption. Section 6 concludes that it is crucial for the Member States to recognize the responsibility of judges with adequate remuneration.

2. THE IMPORTANCE OF JUDICIAL INDEPENDENCE AND ITS ASPECTS

In general, under a system of good governance the courts are expected to be impartial and fair institutions. In this regard, the judicial system is intended to be apolitical. Such a judicial system can uphold the Rule of Law and protect human rights. While the organization of courts may vary from country to country, this is the basic premise upon which societies seek to construct their judicial systems. To guarantee this judicial system, judicial independence is necessary.⁸

⁸ Dakolias, M.; Thachuk, K., *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, Wisconsin International Law Journal, Vol. 18., No. 2., 2000, p. 353.

The requirement of independent courts and tribunals is inherent in the task of adjudication.⁹ Judicial independence is integral to the task of judicial decision-making,¹⁰ it is inseparable from judicial practice, and it is an imperative feature of any justice system.¹¹ Independence is a basic pillar of administration of justice which operates efficiently and in accordance with the Rule of Law. Well-functioning, efficient and fully independent justice systems are crucial for the application and enforcement of EU and national law and upholding the Rule of Law.¹² It is vital for ensuring the fairness of judicial proceedings and the trust of the public and businesses in the legal system,¹³ it is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU will be safeguarded.¹⁴ In the absence of an independent and impartial judiciary, the enforcement of individual's fundamental rights might be violated, and may ultimately become impossible. Judicial independence is the key element to ensure that judgments are free from influence and bias, consequently the reliability of the courts and tribunals is the first basic condition for the existence of a democratic state. Only independent judges and courts can ensure the fairness of court proceedings and the protection of individual rights and are key to ensure that justice is delivered to the benefit of citizens and businesses. Judicial independence is also essential for judicial cooperation within the EU¹⁵, which is a vital objective in an area based on freedom, security and the Rule of Law.

In a democratic state an independent judicial body is essential. Having said that, the court, as such, is not only the guardian and protector of public property and

⁹ Court of Justice, Judgement of 15 July 2021, *European Commission v. Republic of Poland* case C-791/19, ECLI:EU:C:2021:596, para 58.; Judgement of 21 December 2023, *L.G. v. Krajowa Rada Sądownictwa* case C-718/21, ECLI:EU:C:2023:1015, para 61.; Judgement of 24 June 2019, *European Commission v. Republic of Poland* case C-619/18, ECLI:EU:C:2019:531, para 58.; Judgement of 5 June 2023, *European Commission v. Republic of Poland* case C-204/21, ECLI:EU:C:2023:442, para 354.; Judgement of 7 February 2018, *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* case C-64/16, ECLI:EU:C:2018:117, para 42.; Judgement of 7 February 2019, *Carlos Escribano Vindel v. Ministerio de Justicia* case C-49/18, ECLI:EU:C:2019:106, para 65.

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2024 Rule of Law Report, The rule of law situation in the European Union, Brussels, 24.7.2024. COM(2024) 800 final (hereinafter: 2024 Rule of Law Report), p. 10., point 3.1.

¹¹ Dakolias, M. et al., p. 361.

¹² 2024 Rule of Law Report, p. 10., point 3.1.

¹³ The 2024 EU Justice Scoreboard, p. 60.

¹⁴ Court of Justice, Judgement of 24 June 2019, *European Commission v. Republic of Poland* case C-619/18, ECLI:EU:C:2019:531, para 58.; Judgement of 5 June 2023, *European Commission v. Republic of Poland* case C-204/21, ECLI:EU:C:2023:442, para 354.

¹⁵ Court of Justice, Judgement of 27 February 2018, *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* case C-64/16, ECLI:EU:C:2018:117, para 43.

individual freedom, but also one of the most difficult-to-access bulwarks of a country's Constitution. The majority of civilized, developed, democratic states expressly guarantee judicial independence in law or Constitutions, and it is also declared and protected by several European and international legal documents.¹⁶ Article 6 of the European Convention on Human Rights (hereinafter: ECHR) – which is perhaps the most frequently referred to at the ECtHR – and Article 47 of the Charter formulate the basic principle of an independent and impartial court with almost verbatim content, that is to say literally, its basic essence that everyone has the right to have their case heard and judged fairly, publicly and within a reasonable time by an independent and impartial court established by law. However, neither the EU legal norms, nor the international legal provisions *expressis verbis* define exactly what “independent court” means, and what those criterias are, which existence make a court to be considered as independent. But from European and international legal documents we can draw the conclusion that judicial independence means that judges are subject only to the law and they cannot be instructed in their judicial activity.¹⁷

The CJEU and the ECtHR have already explained their opinion in their settled case law about judicial independence formulating basic expectations and criterias. The two courts require rules which dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it, such as the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members.¹⁸

¹⁶ E.g. European Convention on Human Rights (1950), European Charter on the Statute of Judges (1998), Charter of Fundamental Rights of the European Union (2000/2009), Recommendation of the Council of Europe CM/Rec(2010)12 Judges: independence, efficiency and responsibilities (2010), Magna Carta of Judges (2010), Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966/1976), International Bar Association (IBA): Code of Minimum Standards of Judicial Independence (1982), Montreal Universal Declaration on the Independence of Justice (1983), Basic Principles of the United Nations on the Independence of the Judiciary (1985), The Bangalore Principles of Judicial Conduct (2006), Mount Scopus International Standards of Judicial Independence (2008), Bologna and Milan Global Code of Judicial Ethics (2015).

¹⁷ Point 1.c) of the Minimum Standards of Judicial Independence (1982) published by the IBA states similarly when it declares that “in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience”.

¹⁸ Comp. Human Rights Court, *De Cubber v. Belgium* (no. 9186/80) Judgement of 26 October 1984, para 24.; *Anželika Šimaitienė v. Lithuania* (no. 36093/13) Judgement of 21 April 2020, para 78.; *Haarde v. Ireland* (no. 66847/12), Judgement of 23 November 2017, para 103.; *Findlay v. the United Kingdom* (no. 22107/93) Judgement of 25 February 1997, para 73.; *Bryan v. the United Kingdom* (no. 19178/91) Judgment of 22 November 1995, para. 37.; Court of Justice, Judgement of 8 May 2024, Asociația “Forumul Judecătorilor din România” and Asociația “Mișcarea pentru Apărarea Statutului Procurorilor” v. Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României case C-

The purpose of independence, as laid down in Article 6 of ECHR, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.¹⁹ Therefore the independence of individual judges is a guarantee that every person's case is decided only in accordance with the law, based on the facts and evidences without any influence. If judges are not independent, they will be subject to influence that could distort the outcomes of cases, skew the development of substantive law, and detract from public confidence in the judicial system.²⁰ The independence of judges is not a prerogative or privilege granted in judges' own interest, but in the interest of the Rule of Law and people seeking and expecting impartial justice. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.²¹ As Shetreet articulates, independence must be established with the impartiality of the judge towards public opinion in general, towards himself, towards the parties and their lawyers, and acquire a degree of insulation from the press and the rest of the media.²²

That is to say that judicial independence primarily means that judicial activity is free not just from political, but of any other (for example economic) influence. Its basic requirement is that judges adjudicate their decisions free of any outside or inside influence, exclusively in accordance with the laws in force, based on their inner convictions. According to the abovementioned, two aspects of judicial independence are usually distinguished: 1) external, or in other words institutional independence, meaning the independence of the court, tribunal itself, and 2) internal, or professional independence, meaning the personal or professional independence of individual judges. The first is related to the principle of separation of powers, while the second is related to impartiality.

2.1. External judicial independence

Regarding the external aspect of judicial independence, the CJEU explained that "The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any

53/23, ECLI:EU:C:2024:388, para 51.; Judgement of 19 November 2019, A.K. and Others v. Sąd Najwyższy case C-619/18, ECLI:EU:C:2019:53, para 74.; Judgement of 19 September 2006, Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg case C-506/04, ECLI:EU:C:2006:587, para 53.

¹⁹ Recommendation CM/Rec(2010)12 and explanatory memorandum of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, 17 November 2010, [hereinafter: CM/Rec(2010)12], Appendix point 3.

²⁰ Miller, G. P., *Bad Judges*, Texas Law Review, December 2004, Vol. 83., No. 2., p. 457.

²¹ CM/Rec(2010)12, Appendix point 11.

²² Shetreet, S. (ed.), *op. cit.*, p. 3.

hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions.”²³ Furthermore, it recorded that “it is necessary that judges should be protected from external intervention or pressure liable to jeopardise their independence”.²⁴ According to the jurisprudence of the ECtHR, – which is in line with the jurisprudence of the CJEU – Article 6 of the ECHR requires independence not only from the executive and the parties but also from the legislator,²⁵ the latter which follows from the principle of separation of powers.

The principle of separation of powers is one of the basic constitutional principles of liberal democracies,²⁶ states governed by the Rule of Law. It means that the powers must not accumulate in one hand, and they should be divided among the three main pillars of the state, i.e., executive, legislative and judicial.²⁷ Since the writings of Locke and Montesquieu, separation of the Legislator, the Executive, and the Judiciary is deemed essential to avoid usurpation and tyranny by the holder of these powers.²⁸ We know the fact that if the powers of a state are not divided among different institutions, then the power shall be concentrated in one hand which shall lead to abuse of power, which can be dangerous not only for the citizens, but also for the integrity of the state. This misuse of power can be prevented by adopting the concept of separation of powers in its true sense.²⁹ The major purpose of the principle of separation of powers is the betterment of mutual relations among the three branches so that democracy remains intact, and no institution should perform the functions of the other. So, the separation of powers is not meant to create a completely independent system. Although the branches are separate, they must work together to ensure that the system functions effectively.³⁰

²³ Court of Justice, Judgement of 27 February 2018, *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* case C-64/16, ECLI:EU:C:2018:117, para 44.; Judgement of 25 February 2025, *XL v. Sąd Rejonowy w Białymstoku* Joined Cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 49.

²⁴ Court of Justice, Judgement of 20 April 2021, *Repubblika v. Il-Prim Ministru* case C-896/19, ECLI:EU:C:2021:311, para 55.; Judgement of 2 March 2021, *A.B. and Others v. Krajowa Rada Sądownictwa* case C-824/18, ECLI:EU:C:2021:153, para 119.

²⁵ Human Rights Court, *Ninn-Hansen v. Denmark* (no. 28972/95) Judgement of 18 May 1999.

²⁶ Persson, T. et al., *Separation of Powers and Political Accountability*, The Quarterly Journal of Economics, November 1997, p. 1164.

²⁷ Abdullah, A., *Declassifying Theory of Separation of Powers and its Inherent System of Checks and Balances: A Comparative Study*, Zakariya Journal of Social Sciences, Vol. 2., No. 1., 2023, p. 31.

²⁸ Persson, T. et al., *op. cit.*, p. 1164.

²⁹ Abdullah, A., *op. cit.*, p. 31-32.

³⁰ Abdullah, A., *op. cit.*, p. 36.

Neither Article 2 TEU, nor the second subparagraph of Article 19(1) TEU, nor any other provision of EU law requires Member States to adopt a particular constitutional model governing the relationships and interaction between the various branches of the State, in particular as regards the definition and delimitation of their competences.³¹ In view of this, every country has its own way of implementing the doctrine of separation of powers. But as a general rule we can say that the legislative branch is responsible for creating laws and making policies; the executive branch is responsible for enforcing the laws and policies created by the legislative branch; while the judicial branch is responsible for interpreting and applying the law.³² The separation of powers principle holds that these respective tasks have, each of them, an integrity of their own, which is contaminated when executive or judicial considerations affect the way in which legislation is carried out, which is contaminated when legislative and executive considerations affect the way the judicial function is performed, and which is contaminated when the tasks specific to the executive are tangled up with the tasks of law-making and adjudication.³³ This is the so-called system of checks and balances.

Checks and balances within governmental institutions are necessary to constrain the government from abusing its power.³⁴ The three branches of government are interdependent and rely on each other to function effectively. Its characteristic is the mutual control and balancing of the functioning of the constitutional institutions. The enforcement of the doctrine checks and balances ensures that no single branch can become too powerful, but it also means that each branch is dependent on the others.³⁵ It also means that along with a separation of powers, one branch of government cannot act unilaterally without the agreement of another.³⁶ The system works to enforce constitutional rules through a separation of power, so that no single elite group can act without the cooperation of others.³⁷

From the above two principles (namely the principle of separation of powers and the doctrine of checks and balances) follows the judicial monopoly of the court, which is ultimately embodied in the exclusivity of judicial activity. The peculiarity of judicial power is that it is permanent and neutral compared to the other two

³¹ Court of Justice, Judgement of 22 February 2022, *RS case C-430/21*, ECLI:EU:C:2022:99, para 43; Judgement of 25 February 2025, *XL v. Sąd Rejonowy w Białymstoku* Joined Cases C-146/23, C-347/23, ECLI:EU:C:2025:109, para 45.

³² Abdullah, A., *op. cit.*, p. 35-36.

³³ Waldron, J., *Separation of Powers in Thought and Practice*, Boston College Law Review, Vol. 54., No. 2., 2013, p. 460.

³⁴ Holcomb, R. G., *Checks and Balances: Enforcing Constitutional Constraints*, Economics, 2018, 6, 57; doi:10.3390/economics6040057, p. 1.

³⁵ Abdullah, A., *op. cit.*, p. 36.

³⁶ Holcomb, R. G., *op. cit.*, p. 7.

³⁷ Holcomb, R. G., *op. cit.*, p. 12.

“political” branches of power. Thus – in my point of view – external independence means the independence of the court as an institution, as an organization and as one of the three branches of power, according to which the other two branches of power cannot exert influence or pressure on it, and whose role is to protect judicial decision-making from every kind of improper influence outside the proceedings. It is vital for the well-functioning of the judicial system in any democratic state that the judiciary is truly independent. Whenever there is a lasting structural imbalance/impairment between the three branches of power and where checks and balances are weak or ignored, there is a serious threat to the independence, impartiality and integrity of the judicial system.³⁸ The separation of powers is a fundamental guarantee of the independence of the judiciary whatever is the legal tradition of a Member States.³⁹ Therefore, in accordance with the principle of the separation of powers, which characterizes the operation of the Rule of Law, the independence of the judiciary must be ensured in relation to the legislature and the executive.⁴⁰

2.2. The internal dimension of judicial independence

Internal independence – according to the CJEU – means that “an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the Rule of Law”.⁴¹ The CJEU took the position that national rules laying down the guarantees of independence and impartiality must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned.⁴² Internal

³⁸ CCJE Opinion No. 21. (2018) Preventing corruption among judges, para 12.

³⁹ CM/Rec(2010)12, Explanatory Memorandum, para 13.

⁴⁰ Court of Justice, Judgement of 19 November 2019, A. K. and Others Joined cases C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982, para 124.; Judgement of 20 April 2021, Repubblica case C-896/19, ECLI:EU:C:2021:311, para 54.; Judgement of 22 February 2022, RS case C-430/21, ECLI:EU:C:2022:99, para 42.; Judgement of 25 February 2023, XL v. Sąd Rejonowy w Białymstoku Joined cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 50.

⁴¹ Court of Justice, Judgement of 25 July 2018, L. M. case C-216/18, ECLI:EU:C:2018:586, para 65.; Judgement of 24 June 2019, European Commission v. Republic of Poland case C-619/18, ECLI:EU:C:2019:531, para 73.; Judgement of 19 September 2006, Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg case C-506/04, ECLI:EU:C:2006:587, para 52.; Judgement of 5 November 2019, European Commission v. Republic of Poland case C-192/18, ECLI:EU:C:2019:92, para 110.

⁴² Court of Justice, Judgement of 20 April 2021, Repubblica v. Il-Prim Ministru case C-896/19, ECLI:EU:C:2021:311, para 55.

independence presupposes the personal independence of individual judges, according to which neither other judges nor court leaders can influence their judicial activity thereby are protected from undue internal pressure within the judiciary. According to Miller, the expression of judicial independence has gone beyond the concept that the judicial branch must be protected against intrusions by the political branches. In practical implementation, it entails granting trial courts substantial autonomy even from oversight and control within the judicial branch.⁴³ And as Shetreet notes, internal independence of the judiciary is the independence of a judge from his judicial superiors and colleagues.⁴⁴

Hence, internal independence goes beyond the fact that judges are subject only to the law and cannot be instructed, and means the absence of undue influence, because the essence of impartiality is that the judge cannot be biased. This is what the CJEU's statement means that an equal distance is maintained from the parties to the proceedings and their respective interests. Impartiality is one of the basic requirement of the correct and well-founded judgments, because it guarantees that the judges has no conflicts of interest or association with the parties, or with the subject of the trial, that might be perceived to compromise objectivity.⁴⁵ In their decision-making judges should be able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary.⁴⁶ Shetreet phrased this as "substantive independence", which – according to him – refers to the neutrality of mind of a judge, to that judge's impartiality and total freedom from irrelevant pressure in judicial decision making.⁴⁷

From my perspective, a judge can be and remain objective if he/she is able to exclude himself/herself from the case, if he/she is able to put his/her own human qualities, emotions, thoughts and interests into the background during his/her judicial activity, if he/she is able to step out of his/her own framework and look at the case from a top-down approach. It is not a mere coincidence that the eyes of the symbol of justice, the Goddess Iustitia, are covered by a cloth in artistic representations.

The ECtHR reiterated in its more recent judgment that Article 6 of the ECHR requires the court to be impartial. The ECtHR has also held that as regards the requirement of impartiality, the tribunal must be subjectively free of personal prejudice or bias and must also be impartial from an objective viewpoint, in that it

⁴³ Miller, G. P., *op. cit.*, p. 457.

⁴⁴ Shetreet, S. (ed.), *op. cit.*, p. 2.

⁴⁵ CM/Rec(2010)12, Explanatory Memorandum, para 19.

⁴⁶ CM/Rec(2010)12, Appendix, para 22.

⁴⁷ Shetreet, S. (ed.), *op. cit.*, p. 2.

must offer sufficient guarantees to exclude any legitimate doubt in this respect.⁴⁸ I agree with the standpoint of the CJEU that impartiality requires objectivity. From my point of view objectivity requires the judge to pay full attention to the given legal problem itself and should not be misfocused by questions that are not in any way connected to the given legal case. That is why it is essential that a judge is not distracted by, for example, working conditions, or by personal/private life issues (for instance financial problems just to mention one).

3. THE IMPORTANCE OF FINANCIAL INDEPENDENCE OF JUDGES

Adequate remuneration of judges is essential for several reasons. On the one hand, because a judge has specific and extreme responsibilities in the field of the administration of justice, a sphere in which states exercise sovereign powers. Consequently, a judge participates directly in the exercise of powers conferred by public law and performs duties designed to safeguard the general interests of the state.⁴⁹ The task of a judge is multifaceted and difficult. People place their trust in the justice system and expect their legal disputes to be adjudicated by a professionally qualified, prepared, wise, impartial, unbiased and uninfluenced judge. A judge's duty is to protect, in all cases, the rights and freedoms of individuals equally, while respecting their dignity in the conduct of court proceedings.⁵⁰ It is also a requirement that judges should manage each case with due diligence and within a reasonable time, should give clear reasoning for their judgments in a language which is clear and comprehensible. Furthermore, judges should regularly update and develop their proficiency.⁵¹

I think it is not necessary to prove that courts operate with heavy workloads worldwide, and there is a lot of pressure and stress on judges. The task of a judge, which involves extreme responsibility and extraordinary amount of workload can

⁴⁸ Human Rights Court, Anželika Šimaitienė v. Lithuania (no. 36093/13) Judgement of 21 April 2020, para 79.; Haarde v. Iceland (no. 66847/12) Judgement of 23 February 2018, para 103.; Khoniakina v. Georgia (no. 17767/08) Judgement of 19 November 2012, para 52.; Kyprianou v. Cyprus [GC], (no. 73797/01), Judgement of 15 December 2005, para 118.; Grieves v. the United Kingdom [GC] (no. 57067/00) Judgement of 16 December 2003, para 69.; Castillo Algar v. Spain (no. 79/1997/863/1074) Judgment of 28 October 1998, para 45.; Ferrantelli and Santangelo v. Italy (no. 19874/92) Judgment of 7 August 1996, para 58.; Wettstein v. Switzerland (no. 33958/96) Judgement of 21 December 2000, para 44.

⁴⁹ Human Rights Court, Zubko and Others v. Ukraine (no. 3955/04, 5622/04, 8538/04 and 11418/04) Judgement of 26 April 2006, para 53.

⁵⁰ CM/Rec(2010)12, Explanatory Memorandum, para 61.

⁵¹ CM/Rec(2010)12, Appendix para 59., 62-63., 65.

consume even the strongest organism. To meet the expectations of society and the challenges of our age and continuous changes in legislation, judges must learn and expand their professional knowledge a lot. That large and difficult task that usually falls to the courts can only be solved by a judiciary that is morally and financially independent, thus, free from all influence and from the burden of financial problems, both institutionally and personally. Accordingly, the independence of judges from all perspectives is the most important, since only qualified and independent judges can form a strong judiciary and only such a court can bear the full weight of responsibility.

Inadequate payment can undermine a judge's motivation to work, owing to the fact that if a judge is unable to live according to his position, he/she will not become a self-confident, strongly motivated judge and will not perform his/her office with full dedication. If judges' remuneration is so small that it does not provide e.g. professional training, recreation and cover only the minimum, first-order necessities of life, or it does not enable judges to achieve long-term life goals, start a family, raise their children decently, then the judicial career will not develop into respectable and reliable judges, but instead will create an army of humble clerks who either recede into the background of society or are supported by debts beyond their salaries. The independence, reliability, professionalism and diligence of judges, and thus the correct administration of justice, can only be ensured if judges receive such a salary that they can live without financial problems. From my perspective, it is impossible to imagine a well-functioning justice system with an embittered judiciary burdened by financial problems. In a democratic state governed by the Rule of Law, judges cannot struggle with financial problems at the end of the day, since financial problems could spill over into working time and distract attention from independent and uninfluenced judicial function.

On the other hand, inadequate payment can cause the judges to leave the judicial field since – in my opinion – highly qualified, excellent professionals look for other career opportunities if their work is not financially appreciated. As a result of the low salary the judicial career will not be attractive to the best lawyers, and not the most qualified ones will apply to be a judge. However, to the judicial profession truly be the pinnacle of the legal profession, it is necessary that the most qualified and experienced professionals fill these positions, otherwise – without a properly trained judiciary – the state could be in trouble, since it could endanger the judicial system and the quality of justice. To make the judicial career attract talents and judges themselves be able to live in the judicial profession wholeheartedly, it is necessary to be respected as a person and to be recognized both financially and morally. Finally, the low salary can also cause the belief in reliable and incorruptible judges will not take root in society and justice will

become more and more uncertain. If a judge finds himself/herself in such an unfavorable situation in terms of wealth and income that he/she does not even see the sustenance of himself/herself and his/her family secured, this endangers the judge's spiritual independence.

An adequate level of remuneration is a key element in the fight against corruption of judges and aims at shielding them from any such attempts.⁵² Corrupt judges constitute a threat to judicial independence and to judicial integrity.⁵³ Poor working conditions, which include along with poor infrastructure and equipment, insufficient salaries and social benefits can motivate a judge to accept an improperly offered favor more easily.⁵⁴ Therefore, adequate salaries, social benefits and equipment for the judicial staff are as vital for a corruption-free judiciary as proper working conditions for the judges themselves.⁵⁵ An income commensurate with the importance and difficulty of the task judges perform, the magnitude of the responsibility falling on judges, and the dignity of the position they hold, which also ensures moral integrity, can contribute to improve the quality of the administration of justice. If judges can spend money on books, further training, learning, etc., then their knowledge will expand, which can be utilized in the courtroom. Adequate salaries ensure that judges will not get into a vulnerable position and can make their decisions independently. Adequate wages are not only important from the point of view of individual income and the financial appreciation of judges, but also from the point of view of the stability of the legal system, social trust, economic growth and the efficiency of the judiciary. It is an important political interest that judges are able to devote themselves exclusively to solve their difficult judicial tasks with complete objectivity and calmness without financial worries, since only those who are truly educated and not burdened with tasks contrary to their profession and remunerated in a way worthy of the position can be independent and reliable and only such a judge is strong enough to bear the burden of responsibility that falls on him/her.

4. THE “UNIVERSAL” STANDARD OF REMUNERATION OF JUDGES

Judicial independence has a central place not only in national law, but also in international law. The norms and standards of judicial independence in each one

⁵² CM/Rec(2010)12, Explanatory Memorandum, para 57.

⁵³ CCJE Opinion No. 21. (2018): Preventing corruption among judges, para 11.

⁵⁴ CCJE Opinion No. 21. (2018): Preventing corruption among judges, para 14.

⁵⁵ Ibid. para 19.

sphere affect the norms and standards of the other.⁵⁶ As I mentioned in the Introduction Section of my study, there are several European and international legal documents on judicial independence, which also set expectations as far as remuneration of judges is concerned. Thus, the Magna Carta of Judges declares that “the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law”.⁵⁷ The Recommendation of the Committee of Ministers of the Council of Europe pronounces that judges’ remuneration should be commensurate with their profession and responsibilities and be sufficient to shield them from inducements aimed at influencing their decisions. Moreover, it holds that specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.⁵⁸ The Venice Commission’s Report on the independence of the judicial system also declares that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference.⁵⁹ The Consultative Council of European Judges expressed that it is necessary to ensure at least *de facto* provision for salary increases in line with the cost of living.⁶⁰

The CJEU first expressed its position regarding judicial remuneration in the case of *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas* according to which „Like the protection against removal from office of the members of the body concerned, the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence.”.⁶¹ ⁶² Therefore, national rules on

⁵⁶ Shretreet, S. (ed.), *op. cit.*, p. 6.

⁵⁷ Magna Carta of Judges, para 7.

⁵⁸ CM/Rec(2010)12, Appendix para 54.

⁵⁹ European Commission for Democracy Through Law (Venice Commission) Report on the independence of the Judicial System, Part I: The independence of judges, Strasbourg, 16 March 2010, Study No. 494/2008, CDL-AD(2010)004, para 46.

⁶⁰ CCEJ Opinion No. 1 (2001) on Standards concerning the independence of the judiciary and the irremovability of judges, para 62.

⁶¹ Court of Justice, Judgement of 27 February 2018 *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas* case C-64/16, ECLI:EU:C:2018:117, para 45.; Judgement of 7 February 2019, *Escribano Vindel* case C-49/18, ECLI:EU:C:2019:106, para 66.; Judgement of 25 February 2025, *XL v. Sąd Rejonowy w Białymstoku* Joined Cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 49.

⁶² In this case, the Portuguese legislator, by means of a law, periodically reduced the amount of the salary of several officials, persons performing tasks in the public sector, including representatives of the legislature, the executive and the judicial bodies (e.g. judges). This general salary-reduction measures were justified by the requirement to eliminate an excessive budget deficit. Since this salary-reduction measure did not exclusively affect judges, the CJEU did not consider it contrary to the principle of judicial independence,

judges' remuneration must not give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them.⁶³ The settled case law of the ECtHR deals with the issue of judicial independence under the title of the right to a fair trial referred to in Article 6 of the ECHR and in connection with the right to property referred to in Article 1 of Protocol No. 1. Thus, the substance of the case of *Zubko and Others* was that the Ukrainian State – referred to the lack of budgetary resources – for a long time did not implement the final judgments that obliged it to pay the arrears of salaries and other benefits of the applicant judges. The ECtHR held that the failure of the State to provide judicial benefits to judges in a timely manner is incompatible with the need to ensure their ability to exercise their judicial functions independently and impartially, in order to be shielded from outside pressures aimed at influencing their decisions and behavior. Furthermore, the ECtHR explained that the failure to ensure adequate and timely payment of the remuneration of domestic court judges upsets the fair balance that must be struck between the demands of the public interest and the need to protect the applicants' right to the peaceful enjoyment of their possessions. According to the ECtHR's opinion, if judges do not receive the benefits which they were entitled by law for a longer time due to the procedure of the national authorities (in the mentioned case: the non-enforcement of final judgments), this may impede the exercise of their judicial functions with the necessary dedication. In this case, the ECtHR found that the Ukrainian State violated the right to the peaceful enjoyment of judges' possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1.⁶⁴

The CJEU declared in its most recent case that the principle of judicial independence, read in conjunction with the principle of legal certainty, requires that the detailed rules for determining judges' remuneration be objective, foreseeable, stable and transparent, so as to exclude any arbitrary intervention by the legislature and the executive of the Member State concerned. It also explained that "the level of remuneration of judges must be sufficiently high, in the light of the socio-economic context of the Member State concerned, in order to confer on them a certain economic independence to protect them against any external interference or pressure that might undermine the neutrality of the judicial

because these were general measures aimed at ensuring that all members of the national civil service take part in mandatory requirements aimed at reducing the excessive budget deficit of the Portuguese State. In other respects, the CJEU took the same position in the case of *Carlos Escribano Vindel v. Ministerio de Justicia* (C-49/18), the facts of which are eerily similar to the facts of the previous case.

⁶³ Court of Justice Judgement of 25 February 2025, *XL v. Sąd Rejonowy w Białymstoku* Joined Cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 52.

⁶⁴ Human Rights Court, *Zubko and Others v. Ukraine* (no. 3955/04, 5622/04, 8538/04 and 11418/04) Judgement of 26 April 2006, para 68-70.

decisions they must take. Thus, the level of that remuneration must be such as to protect judges against the risk of corruption.”⁶⁵

Based on the above, a certain conclusion can be drawn from European and international legal documents along with the settled case law of the CJEU and the ECtHR as far as judges’ remuneration is concerned and as a summary, it can be stated that it is expected, both at the European and international level, that the salaries of judges should be in line with the dignity of the office they hold, the size and weight of the responsibility they bear, be proportionate to the complexity and difficulty of the task they perform, and be sufficient to protect them from outside or inside improper interference influencing their decisions and behavior.

5. JUDGES WHO ARE NOT PAID CAN BE BOUGHT: PUBLIC CONFIDENCE IN THE JUDICIARY

As is clear from the above 4 Sections of this study, the justice system plays an important role in democracies. In many countries, judiciary is the final instance when it comes to controversial issues, which are very often of high political as well as societal relevance.⁶⁶ Public confidence is seen as essential to the effective functioning and even the legitimacy of judicial authority.⁶⁷ The trust of the public in the justice system and its truthfulness depends on many factors, e.g. the level and age of the established democratic system of a state; the wealth of a country, the level of financial autonomy of the judiciary; the population size of a country; historic traditions of a country; the influence of the media on individuals; gender, age and education of the individuals; personal experience of individuals with courts; citizens’ level of awareness and knowledge about the political system and institutions of a country; the political orientations and interests of citizens; the level of personal life satisfaction; the performance and quality of the judiciary; etc.⁶⁸

⁶⁵ Court of Justice Judgement of 25 February 2025, XL v. Sąd Rejonowy w Białymstoku Joined Cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 56., 58.

⁶⁶ Bühlmann, M.; Kunz, R., *Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems*, West European Politics, 2011., 34:2, p. 317., DOI: 10.1080/01402382.2011.546576.

⁶⁷ Mack, K. et al., *op. cit.*, p. 33.

⁶⁸ See more about this in Çakır, A. A.; Sekercioglu, E., *Public confidence in the judiciary: the interaction between political awareness and level of democracy*, Democratization, 2016., 23:4, pp. 634-656, DOI: 10.1080/13510347.2014.1000874; Bühlmann, M.; Kunz, R., *op. cit.*, pp. 317-345, DOI: 10.1080/01402382.2011.546576.

But how does confidence develop? One of the important characteristics of a judiciary is that its opinions be consistent and predictable.⁶⁹ Confidence is rooted in the public's belief that the judicial institution is generally trustworthy, that a specific decision or judgement is correct and legal full, when the public thinks it should be obeyed.⁷⁰ The fairness and impartiality of the justice system foster confidence in it. Bühlmann and Kunz, for instance, believe that the higher the degree of independence of a judiciary in a country, the higher the probability that an individual has confidence in the justice system of this country.⁷¹ However, there is a very important thing that can undermine the trust of the public in democratic institutions, and that is corruption, which can have a multitude of tangible negative effects on judicial independence.⁷² Corruption and perceptions of corruption in the judiciary not only undermine the courts' credibility as corruption fighters. More generally, it erodes trust in the courts' impartiality, harming all the core judicial functions, such as dispute resolution, law enforcement, protection of property rights and contract enforcement. In addition, it harms the broader accountability function that the judiciary is entrusted with in democratic systems – upholding citizens' rights, securing the integrity of the political rules of the game, and sanctioning representatives of other branches when they act in contravention of the law.⁷³

All in all, corruption among judges weakens public trust in the justice system as a whole, because a judge does not represent him or herself in the courtroom, but the state, and therefore his/her activities affect the entire judiciary. Therefore, national, transnational, regional, and international law prohibits corruption and requires that countries take affirmative steps to prevent and prosecute it.⁷⁴

Judicial system corruption is a diverse phenomenon, which takes many forms, and knows no boundaries.⁷⁵ According to Pahis, judicial corruption can be understood as the selling and purchasing of legal decisions,⁷⁶ while Dakolias and Thachuk think that one of the more comprehensive definitions of corruption is the use of public office for private gain.⁷⁷ Corruption among judges includes all forms of

⁶⁹ Dakolias, M. et al., *op. cit.*, p. 364.

⁷⁰ Bühlmann, M.; Kunz, R., *op. cit.*, p. 320.

⁷¹ Bühlmann, M.; Kunz, R., *op. cit.*, p. 323-324.

⁷² Shretreet, S. (ed.), *op. cit.*, p. 3.

⁷³ Gloppen, S., *Courts, corruption and judicial independence*, In Søreide, T., Williams, A. (ed.), *Corruption, Grabbing and Development Real World Challenges*, Edward Elgar Publishing Limited, 2014., p. 68.

⁷⁴ Chodosh, H. E., *Corruption and judicial Independence*, In Shretreet, S. (ed.), *op. cit.*, p. 154.

⁷⁵ Dakolias, M. et al., *op. cit.*, p. 355.

⁷⁶ Stratos, P., *Corruption in Our Courts: What It Looks like and Where It is Hidden*, Yale Law Journal, Vol. 118, No. 8, June 2009, p. 1906.

⁷⁷ Dakolias, M. et al., *op. cit.*, p. 355.

inappropriate influence that may damage the impartiality of justice, and may involve any actor within the justice system.⁷⁸ It can appear in different activities like abuse of office or entrusted power for personal gain; pressure from the superior; overstepping of authority; misuse of prestige; lobbying other judges to whom the matter is assigned; allowing their personal financial interests to come into conflict with their official responsibilities; taking bribes, engage in political conduct; etc. Corrupt judges get various rewards for influencing cases: goods; sex; debt relief; cash or the satisfaction of helping family, friend, lovers. Rewards may also take the form of avoiding something undesired, in the form of threats,⁷⁹ or to reach something desired, e.g. higher position. Judges also accept gratuities. Although gifts may not constitute bribery or extortion themselves, they smack of impropriety when offered by lawyers or litigants with cases that may come before the judge.⁸⁰

Low salaries are often blamed for judicial corruption. Not only has the remuneration given to judges and their supporting staff in many countries been historically low, but they have also often been devalued by high inflation rates.⁸¹ Bribery is one of the most pernicious forms of corruption. It can purchase favors in high-stakes cases and does not necessitate any personal or professional relationship between the briber and judge. It would seem, therefore, to be one of the most serious – and difficult to detect – forms of judicial corruption that exists.⁸² Bribes offered by users of the legal system may take many forms, including illegal ‘fees’ that court personnel levy to do what they should do anyway. Court users pay just to get their case through the system, to influence the outcome of a given case, or to delay it. Bribes may be paid to the judge, or to assistant staff or lawyers to remove files or get the case assigned to a particular judge.⁸³ Gloppen calls it “petty corruption”, which is only one part of the problem.

I agree with the opinion that independence depends on resources.⁸⁴ In many countries the judiciary commonly depends on the parliament for budgetary allocations, that is the administration of justice gets its financial source from the state budget. But control over the purse strings gives many governments a stronghold over the courts by enabling them to strategically regulate not only judges’ salaries and benefits, but also the running costs of the judiciary.⁸⁵

⁷⁸ Gloppen, S., *op. cit.*, p. 69.

⁷⁹ Gloppen, S., *op. cit.*, p. 69.

⁸⁰ Miller, G. P., *op. cit.*, 434-435.

⁸¹ Dakolias, M. et al., *op. cit.*, p. 398.

⁸² Stratos, P., *op. cit.*, p. 1905.

⁸³ Gloppen, S., *op. cit.*, p. 70.

⁸⁴ Bühlmann, M.; Kunz, R., *op. cit.*, p. 323.

⁸⁵ Gloppen, S., *op. cit.*, p. 72.

It needs to be taken into consideration that due to the strict conflict-of-interest rules, during their terms of office, judges – in many countries – can only engage in scientific and educational, sports-related activities, artistic, copyright-protected, proofreading, editorial, and creative work as a gainful activity beside their judicial duties, which is a non-negligible circumstance. A judge therefore can earn income from other activities in addition to his work, but this usually requires extra time and energy at the expense of family life. For this reason, judges must support their family and their livelihood from their judicial salary, in contrast with lawyers, whose conflict-of-interest rules are not so strict, so they may even be able to earn income from other legal relationships, thus increasing their monthly income and the amount they can spend on living.⁸⁶ Hence, I share the view that an adequate income for judges and a fixed budget for the judiciary as a whole can help in preventing corruption or the purchase of judicial decisions.⁸⁷ Improvement in material conditions for judicial personnel and support can help prevent corruption because the lack of a living or socially acceptable wage is seen to be a significant driving factor for corruption.⁸⁸

6. CONCLUSION

In my opinion the remuneration of judges is an inseparable part of judicial independence, moreover, is one of the pledges for the enforcement of the principle of judicial independence. Therefore, the financial recognition of judges is of decisive importance in the appropriate quality and uninfluenced judicial activities. Ensuring adequate remuneration is also justified by the strict conflict-of-interest rules for judges.

Based on the principle of loyal cooperation referred to in the first subparagraph of Article 4, paragraph (3) of the TEU, Member States are obliged to ensure the application and respect EU law in their territory, and they are also required to comply with their obligations deriving from EU law and, in particular, from Articles 2 and 19 TEU.⁸⁹ That is the case, in particular, where they lay down the

⁸⁶ However, according to the Court of Justice, lawyers cannot be compared to judges, because other legal professionals, in particular those exercising a liberal profession, such as lawyers, are clearly in a different situation from that of judges. See Judgement of 25 February 2025, XL v. Sąd Rejonowy w Białymstoku Joined Cases C-146/23, C-374/23, ECLI:EU:C:2025:109, para 63.

⁸⁷ Treisman, D., *The Causes of Corruption: A Cross-national Study*, Journal of Public Economics, 2000, 76:3, pp. 399–457.

⁸⁸ Gloppen, S., *op. cit.*, p. 74.

⁸⁹ Court of Justice, Judgement of 22 February 2022 RS case C-430/21, ECLI:EU:C:2022:99, para 38.

detailed rules for determining judges' remuneration.⁹⁰ This all means that the Member States must fully respect the requirements set by EU law and the settled case law of the CJEU, moreover they must also consider the European standards when developing their judicial system,⁹¹ and must take all necessary measures to respect, protect and promote the independence and impartiality of judges.⁹² Therefore – according to the conclusion drawn from the European and international legal documents mentioned in Section 4 of this study – judges' remuneration should be commensurate with their responsibilities; with the importance of the function they carry out and has to correspond to the dignity of the profession. It also should be in line with the social importance of judicial activity, and it should be proportional to the complexity and difficulty of the task judges perform. Countries should give judges that reasonable salary that is sufficient to protect them from undue outside or inside interference aimed at influencing their decisions and behavior. Appropriate remuneration as a core element of judicial independence is not a prerogative or reward of judges, but rather the safeguard of the organizational integrity of the judiciary, and the continuous improvement of the high standard of justice. Salaries of a reasonable lifestyle may remove the temptation of corruption.⁹³ Thus, adequate remuneration is necessary to prevent corruption among judges, which is needed for fostering public confidence in the justice system. All in all, we can say that appropriate remuneration of judges is not the judge's selfish interest, this is the interest of the state and the public.

In view of all this, the answer to the main question can be given that without a level of remuneration receipt by judges commensurate with the importance of the functions they carry out, judicial independence is undermined and as a consequence, social confidence in the justice system weakens.

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⁹¹ 2024 Rule of Law Report, p. 11.

⁹² CM/Rec(2010)12, Appendix point 13.

⁹³ Dakolias, M. et al., *op. cit.*, p. 398.

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