

Funding of the Judiciary

Summary of international
and ENCJ sources

Annex I
to the ENCJ Report
2015-2016



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ENCJ PROJECT
FINANCING THE JUDICIARY

*The following is a summary of the international sources relating to financing the judiciary prepared for the consideration of the project group.**

ENCJ Reports

1. ENCJ Report 2013-2014 *Independence and Accountability of the Judiciary*
2. ENCJ Report 2012-2013 *Distillation of ENCJ Guidelines, Recommendations and Principles*
3. ENCJ Report 2011-2012 *Judicial Reform in Europe*
4. ENCJ Report 2010-2011 *Development of Minimum Judicial Standards Report*
5. ENCJ Report 2010-2011 *Councils for the Judiciary*
6. ENCJ Vilnius Declaration on *Challenges and Opportunities for the Judiciary in the Current Economic Climate* (2011)
7. ENCJ Budapest Declaration on *Self Governance for the Judiciary: Balancing Independence and Accountability* (2008)
8. Final Report ENCJ Working Group on Courts Funding and Accountability 2006-2007

Other International Sources

9. CDL-PI(2015)001, Compilation of Venice Commission Opinions and Reports concerning Courts and Judges
10. CDL-AD(2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)
11. CDL-AD(2013)005, Opinion on Draft amendments to Laws on the Judiciary of Serbia, adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)

* Prepared by Ms. Rachel Hanly, Judicial Assistant, under the supervision of Mr. Justice Hedigan.

- 12.** CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)
- 13.** CDL-AD(2010)004, Report on the Independence of the Judicial System. Part I: The Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)
- 14.** Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, submitted in accordance with resolution 17/2 of the Human Rights Council. UN General Assembly, 67th Session, 13 August, 2012, A/67/305
- 15.** Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, submitted in accordance with resolution 8/6 of the Human Rights Council. UN General Assembly, 65th Session, 10 August, 2010, A/65/274
- 16.** Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, UN General Assembly, 11th session of the Human Rights Council, 2009, 24 March, 2009, A/HRC/11/41
- 17.** Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, UN General Assembly, Sixtieth session of the Commission on Human Rights, 31 December, 2003, E/CN.4/2004/60
- 18.** Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities
- 19.** The UN Basic Principles on the Independence of the Judiciary (1985)
- 20.** Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, ECOSOC Resolution 1989/60 of 24 May 1989
- 21.** The Universal Declaration on the Independence of Justice (The Singhvi Declaration) (1989)
- 22.** The Universal Charter of the Judge (1999)
- 23.** Consultative Council of European Judges (CCJE) Opinion No. 1 for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges (2001)

- 24.** Consultative Council of European Judges (CCJE) Opinion No. 2 (2001) for the Attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention on Human Rights
- 25.** Consultative Council of European Judges (CCJE) Opinion No. 11 (2008) to the Attention of the Committee of Ministers of the Council of Europe on the Quality of Judicial Decisions
- 26.** Consultative Council of European Judges (CCJE) Opinion No. 10 to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society (2007)
- 27.** Consultative Council of European Judges (CCJE) Magna Carta of Judges (Fundamental Principles) (2010)
- 28.** European Charter on the Statute for Judges (1998)
- 29.** The Judges' Charter on the Statute for Judges from the European Association of Judges (1997)
- 30.** OSCE Office for Democratic Institutions and Human Rights Kyiv Recommendations on Judicial Independence in eastern Europe, South Caucasus and Central Asia (2010)
- 31.** Draft Principles on the Independence of the Judiciary (Siracusa Principles) (1981)
- 32.** Universal Declaration on Judicial Independence (Montreal Declaration) (1983)
- 33.** Mount Scopus International Standards of Judicial Independence (2008)
- 34.** Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (2010)

The following principles may be drawn from the international sources:

- 1.** The independence of the Judiciary and of every single judge is to be preserved as a prerequisite for the delivery of fair and impartial justice in protecting human rights and fundamental freedoms. No necessity for cost cutting can be allowed to undermine judicial independence. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.
- 2.** Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges to work efficiently. This includes physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.
- 3.** Courts should not be financed on the basis of discretionary decisions of official bodies but in a stable way on the basis of objective and transparent criteria. Funding of courts should not be subject to political fluctuations.
- 4.** The financing of the judiciary, the administration of courts and the training of judges should be wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies. If a Council does not exist, judges can still have a decisive influence on decisions with respect to the responsibilities outlined.
- 5.** A Council for the Judiciary shall control its own finances and activities independently of both the legislative and executive branches of government. Councils for the Judiciary must have adequate financial and administrative resources to properly carry out their function. The Council must have the power and capacity to negotiate and organise its own budget effectively.
- 6.** To ensure and strengthen the separation of powers, the judiciary, or a body in which the judiciary is represented and has an effective role, should be closely involved at all stages in the budgetary process and should have an opportunity to express its views about the proposed budget to parliament.
- 7.** The Judiciary should be responsible for the financial management of the courts individually and as a whole, within the budgets allocated to them. If judges are given

responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task.

8. The remuneration of judges must remain at all times commensurate with their professional responsibilities, public duties and the dignity of their office. Judges' remuneration should be sufficient to shield them from inducements aimed at influencing their decisions. Remuneration must be entrenched constitutionally or guaranteed in law so as to preserve judicial independence and impartiality. All discussions and negotiations relating to judicial remuneration should involve the judiciary.

9. The salaries of the judiciary should not be altered to their disadvantage after their appointment. An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of public service salaries and members of the judiciary are treated equally.

10. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses and non-financial benefits which include an element of discretion should be excluded.

11. There should be provisions for the periodic review of judges' remuneration to overcome or minimise the effect of inflation.

12. Judges should receive pensions after their retirement, which shall be adequate and should be in a reasonable relationship to their level of remuneration when working. Judges' remuneration should provide appropriately for illness, maternity or paternity leave.

13. High quality training must be available throughout a judge's professional career. Proper training promotes high quality and prompt judicial decisions, which themselves strengthen predictability and legal certainty. The body responsible for judicial training, if not the Council for the Judiciary itself, should be autonomous and have its own budget. The body responsible for judicial training should work in conjunction with the judiciary. It should be supervised by and/or bound by guidelines promoted by the Council for the Judiciary. Funding for judicial training should be provided by the State.

14. Investment in administration of justice and modern technologies and the strengthening of human resources in courts should be encouraged in order to make the judiciary more resilient to future challenges.

ENCJ Reports

1 ENCJ Report 2013-2014 *Independence and Accountability of the Judiciary*

http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_2014_disclaimer.pdf

The ENCJ Report on the Independence and Accountability emphasised that a key component of the objective independence of the judiciary as a whole is adequate funding of the judiciary. Even in recessionary times, there must always be adequate funding for the volume of cases that the Judiciary is required to handle. “Adequacy” must in this context allow for the timely disposal of the case-load.

The Council of the Judiciary should have the right to propose a budget and to address Parliament if its budget is rejected or amended.

Once a budget has been agreed, the Council should be free to allocate the funds to individual courts, and the courts should be free to use the funds allocated, always subject to the overall supervision of the Council.

Indicators of the Independence of the Judiciary

The Report developed a set of real indicators for the evaluation of the independence and accountability of a Judiciary and a state’s judicial system. The indicators of the objective independence of the Judiciary as a whole fall into the following categories: 1) Legal basis of independence; 2) Organisational autonomy of the Judiciary; 3) Funding of the Judiciary; 4) Management of the court system.

1) Legal Basis of Independence

The legal basis for independence comprises a number of sub-indicators concerning the formal protections for independence that are in place which includes, *inter alia*, formal methods for the determination of judges' salaries and formal mechanisms for the adjustment of judges' salaries.

Formal methods for the determination of judges' salaries

The independence of the Judiciary can be undermined if the salaries of judges are controlled by the executive, and if the executive is not bound by formal controls relating to fixing these salaries. Punitive salary cuts are totally unacceptable. But arbitrary executive control of judicial salaries exposes judges to the risk of inappropriate pressures and corruption. Formal protection for judges' salaries is, therefore, of great importance. Again, the strongest protection is a constitutional safeguard. A legal safeguard that can be changed by a majority in the legislature is a weaker protection. Customs preventing interference in judicial salaries offers some, though often a weaker protection.

Formal mechanisms for the adjustment of judges' salaries

This indicator addresses whether a formal mechanism exists to adjust salaries to keep pace with the average development of salaries in the country and/or with inflation. In the absence of such a mechanism the salaries of judges would be arbitrarily determined, making formal protections ineffective.

2) Organisational Autonomy of the Judiciary

The Report states that this indicator is a particularly important support for the legal independence of the judiciary and is crucial in times of political tension. A Council for the Judiciary is the preferred way for a judiciary to govern its own affairs in a transparent manner. Organisational autonomy comprises a number of sub-indicators, taking into account whether or not a Council for the Judiciary exists, as follows:

If a Council for the Judiciary exists:

- Formal position of the Council for the Judiciary;
- Formal relationship between the Council and the Judiciary;
- Compliance with ENCJ guidelines;
- Responsibilities of the Council.

The responsibilities of the Council for the Judiciary are particularly relevant in terms of the ambit of this Project and include the financing of the judiciary, the administration of courts and the training of judges and magistrates.

If a Council does not exist, the relevant sub-indicator relates to the influence of judges on decisions concerning the Judiciary. Where there is no Council for the Judiciary, judges can still have a decisive influence on decisions with respect to the responsibilities enumerated above.

3) Funding of the Judiciary

The Report recognises that the funding of the Judiciary is a vulnerable aspect in the relations between state powers.

Two aspects are covered by the indicators:

- (i) Institutional arrangements: the degree to which the Judiciary is involved in the determination of budgets, the way budgets are constructed and the degree of freedom for the Judiciary to allocate budgets once these have been determined.
- (ii) Even more important is the degree to which the actual budgets that are the outcome of the budget process are sufficient for the Judiciary to fulfil its responsibilities.

The funding of the Judiciary comprises a number of sub-indicators as follows:

- Budgetary arrangements

The involvement of the Judiciary in the budget process is determined by its role in the subsequent phases of this process. These phases are: a) preparation of the budget to

be allocated to the courts; b) formal proposal on the budget to be allocated to the courts; c) adoption of the budget allocated to courts; d) management of the budget allocated to courts; e) evaluation / audit of the budget allocated to courts.

The position of the Judiciary is stronger, the more often it has the lead in these phases.

- Funding system

The indicator describes whether or not the funding of the Judiciary is based upon transparent, objective criteria. Possibilities are among others: actual costs (e.g. number of judges and court staff), the workload of courts and a fixed percentage of government expenditure or GDP. In the long run budgets should match the workload of the courts, while in the short run its actual costs must be covered, also in case the caseload declines. If such an objective system is in place, the issue is whether or not it can be changed easily. A system that is fixed by law offers more safeguards than a common practice.

- Occurrence of conflicts about budgets

The indicator counts the number of conflicts between the Judiciary and government about the budget of the Judiciary in the last five years.

- Resolution of conflicts about budgets;

An important issue is how conflicts between the Judiciary and government about the budget are handled. The indicator describes whether or not the Judiciary has the right to address Parliament, where it is convinced that the government does not allocate sufficient funds.

- Sufficiency of actual budgets.

The formal arrangements need to guarantee that actual budgets are sufficient. The indicator deals with the sufficiency of budgets by distinguishing key activities that must receive adequate funding. These are: a) handling of caseload; b) engaging experts, translators etc. where necessary and when fees are paid by the court; c)

keeping the knowledge and skills of judges and staff up to date; d) facilitating judges and other personnel in matters of IT systems, buildings etc.

4) Management of the Court System

The practice of court management lying with the Minister of Justice or with court services under the authority of the Minister of Justice poses a risk for the independence of the Judiciary, as matters of court management such as housing and IT affect the functioning of the Judiciary.

The Report states that the degree of responsibility of the Judiciary itself for court management is captured by an indicator that describes whether or not the Judiciary is in charge of the following tasks: a) General management of a court; b) Appointment of court staff (other than judges); c) Other human resource management decisions in relation to court staff; d) Decisions regarding the implementation and use of IT in courts; e) Decisions regarding court buildings; f) Decisions regarding court security; g) Decisions regarding outreach activities.

Risks Threatening the Independence of the Judiciary

Risks identified to the objective independence of the judiciary include inadequate investment in the Judiciary, courts and judicial structures. One of the risks identified to the objective independence of the individual judge is the reduction in judicial pay and pensions and adverse changes to judicial conditions.

A main current risk to the independence of the Judiciary identified by the Report is the risks created by the actions of populist politicians and Governments. It was established that in countries where judicial pay and pensions have been adversely affected, these changes create a reduction in judicial quality. The risk of corruption is increased, and judges become amenable to influence, and also have the incentive to take inappropriate alternative jobs, lowering standards of judicial decision-making.

2 ENCJ Report 2012-2013 *Distillation of ENCJ Guidelines, Recommendations and Principles*

http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_distillation_approved.pdf

This report encapsulated the principles and recommendations of the ENCJ's reports and papers since its inception in 2004.

The main principles and recommendations on Councils for the Judiciary are covered in Theme 2 of the Report. The ENCJ has recommended that the performance management of the judiciary, the administration of courts, the financing of the judiciary, proposing legislation concerning the courts and the judiciary and the training of judges should be wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies. (Principle 8)

Principle 9 provides that a Council for the Judiciary shall control its own finances and activities independently of both the legislative and executive branches of government.

Theme 5 deals with the remuneration of judges. Principle 23 states that the remuneration of judges must:

- (1) remain at all times commensurate with their professional responsibilities and public duties; and
- (2) be constitutionally guaranteed in law so as to preserve judicial independence and impartiality.

All discussions and negotiations relating to judicial remuneration should involve the judiciary (Principle 24).

In relation to the provision of judicial training, which should be of high quality and available throughout a judge's professional career, principle 26 provides that the body responsible for judicial training, if not the Council for the Judiciary itself, should be autonomous and have its own budget. It should be supervised by and/or bound by guidelines promoted by the Council for the Judiciary.

Theme 10 deals with judicial performance and management. Principle 38 provides that the distribution of responsibilities within a court system should, so far as possible, allow judges to concentrate on their core task of judging.

Judges must be provided with all necessary support, including properly qualified staff (Principle 39).

In relation to court funding, the Report provides that the judiciary should be closely involved in the budgetary process and should be responsible for financial management within the budgets allocated to them.

Principle 48 provides that the allocation of funds should (1) be agreed with the judiciary; (2) be based on transparent, objective and cost-effective criteria; and (3) be sufficient to allow the courts to manage their caseload effectively.

Financial reports relating to court funding should be drawn up and independently audited (Principle 49).

3 ENCJ Report 2011-2012 *Judicial Reform in Europe*

http://www.ency.eu/images/stories/pdf/GA/Dublin/ency_report_judicial_reform_def.pdf

The ENCJ Report made recommendations on judicial reform in Europe having regard to efforts made to improve the functioning of judiciaries in the countries that participated in the work of the Project Team and also in light of significant budgetary cuts and financial constraints arising from the economic crisis.

The Report emphasised that the objective of a judicial reform process should be to improve the quality of justice and the efficacy of the judiciary, while strengthening and protecting the independence of the judiciary, accompanied by measures to make more effective its responsibility and accountability.

In relation to the reduction of judicial salaries, the ENCJ Report recommended:

- (i) The remuneration of judges and magistrates must remain commensurate with their professional responsibility and high public duty.
- (ii) The remuneration of judges and prosecutors should be constitutionally guaranteed in law, so as to preserve judicial independence and impartiality. All discussions and negotiations on remuneration should involve the judiciary.

As regards improving the funding system, the following recommendations were made:

- (i) The funding system of the judiciary should reflect its needs to be able to manage its caseload properly. Only in this way can timely justice be guaranteed.
- (ii) While it is recognised that funding based on output requires the measurement of output and processing times (workload measurement), such measurement systems need to remain simple and the outcome should be used with caution to safeguard judicial independence. For instance, workload measurement norms should not be applied mechanically to individual cases.
- (iii) To ensure and strengthen the separation of powers, the judiciary should be closely involved at all stages in the budgetary process and should be responsible for the financial management of the courts individually and as a whole, within the budgets allocated to them.

On court management and optimisation of the workload, the Report recommended, *inter alia*:

Redistribution of tasks within courts to allow judges to concentrate on their core judicial tasks is an important goal in itself, apart from the cost savings that may be reached this way. To be effective, judges must be provided with all necessary support. They must be able to rely on their staff and this requires highly qualified staff.

4 ENCJ Report 2010-2011 *Development of Minimum Judicial Standards Report*

http://encj.eu/images/stories/pdf/workinggroups/encj_report_project_team_minimum_standards.pdf

Standard 3

The ENCJ Report on the Development of Minimum Judicial Standards recognised that, irrespective of differences in the national judicial training systems in Europe, high quality judicial training both initial and continuing throughout each judge's professional career must be conducted in a manner that is appropriate to a high standard of quality, in order to uphold the independence of the judiciary.

Government responsibility for judicial training should be restricted to the provision of adequate resources to ensure that appropriate judicial training can be provided.

Judicial training should be under the supervision of the judiciary of the relevant country. Overall responsibility for judicial training should rest with the head of the judiciary or the appropriate national Council for the Judiciary.

Responsibility for the content and delivery of judicial training may be assigned to an autonomous national judicial training school or national judicial studies body ("Judicial School", "College" or "Academy") composed of experienced judges from relevant levels or groups of the judiciary and other scholars or members of the legal professions, which develops its activities in close cooperation with the relevant Council for the Judiciary or Ministry of Justice.

In relation to initial judicial training in the process of the selection/appointment of members of the judiciary (standard 3.1), the Report stated that this training must be fully funded by the State. Standard 3.1 further provides:

- Initial training should be provided mainly by members of the judiciary as well as by qualified external professionals or experts in order to ensure a holistic approach.
- Trainers should be carefully selected from among the best in their profession by the body responsible for judicial training, taking into

account not only their knowledge of the different subjects but also their teaching skills.

- The judiciary should play a major role in the organisation and supervision of initial judicial training.
- These responsibilities could be entrusted to a national institution (“Judicial School”, “College” or “Academy”), an autonomous body run by judges for judges which develops its activities in close cooperation with the respective Council for the Judiciary or Ministry of Justice.

Standard 3.2 provided that continuing training at all levels of the judiciary should be promoted and the culture of continuing training should be disseminated among members of the judiciary, making available to judges the financial resources, the time and other means necessary for continuing training.

5 ENCJ Report 2010-2011 *Councils for the Judiciary*

http://encj.eu/images/stories/pdf/workinggroups/report_project_team_councils_for_the_judiciary_2010_2011.pdf

The Report considered that the fundamental role of the Council of the Judiciary is to safeguard the independence of the judiciary.

The Report stated that one of the principal ways in which the independence of the judiciary can be guaranteed is through the judiciary’s control and maintenance of high quality training for each and every judge.

In relation to the role of the Council in regard to judicial training and the funding of same, the Report states at para. 3.7:

...The Council must play an active role with regard to judicial training and ensure that adequate funding is provided for such high quality training through regular and extensive negotiation with budget holders. While there is an emerging consensus that authority for judicial training should be entrusted by

the Council for the Judiciary to an autonomous body with its own budget, this body should be bound by guidelines promoted by the Council for the Judiciary, with the Council retaining a supervisory role in the general conduct of judicial training but devolving operational responsibility to the autonomous body.

In relation to management of financial resources for the administration of justice, the Report provides, at para. 3.14, that Councils for the Judiciary must have adequate financial and administrative resources to properly carry out their function.

The Council must have the power and capacity to negotiate and organise its own budget effectively and in this regard, to participate in consultation or representation procedures at local and national level as well as the right to engage in formal dialogue with the legislative and the executive in relation to the allocation of resources necessary for the administration of justice.

The Report stated that transparency is ensured and shortfalls in Council financing are avoided where the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account the opinions of the judiciary.

Extending the Council's powers in the area of financial management will imply "its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public." (Para 3.15)

6 ENCJ Vilnius Declaration on *Challenges and Opportunities for the Judiciary in the Current Economic Climate* (2011)

http://www.encj.eu/images/stories/pdf/GA/Vilnius/encj_vilnius_declaration.pdf

Having regard to the economic crisis, limited financial resources, spending cuts and the impact of such on the judiciary, the ENCJ made a number of recommendations which include, *inter alia*:

Special measures should be considered to prevent and reduce the impact of the economic crisis on courts workload by the redistribution of human resources, the transitory reinforcement of the most affected courts and organisational remedies.

In light of the new economic landscape, the ENCJ recommended that it is necessary to design and implement long term policies for the Judiciary adequate to this emerging situation.

Measures should be undertaken aimed at improving the efficiency of the Courts, to introduce and reform the procedures and the internal organisation of the courts and the integration of the innovative information and communication technologies which are essential features to increase this efficiency of the court system.

Investment in administration of justice and modern technologies and the strengthening of human resources in courts should be encouraged in order to make judiciary more resilient to future challenges.

Judiciaries and judges should be involved in the necessary reforms.

Councils for the Judiciary or autonomous Courts' Administrations should assume a significant role always taking into account and respecting the competences of the other powers of State.

The independence of the Judiciary and of every single judge is to be preserved as a prerequisite for the delivery of a fair and impartial justice in protecting human rights and fundamental freedoms. No necessity for cost cutting can be allowed to undermine

judicial independence. It is the essential task of Councils for the Judiciary to maintain and strengthen the independence of the judiciary.

7 ENCJ Budapest Resolution *Self Governance for the Judiciary: Balancing Independence and Accountability* (2008)

<http://encj.eu/images/stories/pdf/resolutionbudapestfinal.pdf>

The Budapest Resolution provides that all or part of the tasks involving, *inter alia*, the finances of the judiciary, the training and the administration of the courts should fall under the authority of a Council for the Judiciary or one of one or more independence and autonomous bodies.

The Council for the Judiciary must manage its budget independently of the executive power.

8 Final Report ENCJ Working Group on Courts Funding and Accountability 2006-2007

http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_on_courts_funding_and_accountability_2006_2007.pdf

In 2006-2007 the ENCJ studied the various ways that the judiciary is funded in the EU. The Report gives a broad overview of the systems in place in the Member States of the EU.

Other International Sources

9 CDL-PI(2015)001, Compilation of Venice Commission Opinions and Reports concerning Courts and Judges

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)001-e)

The current compilation contains all opinions and reports/studies adopted up to and including the Venice Commission's 101st Plenary Session (12-13 December 2014).

[1] Para 2.7 of the Compilation (pages 49-51) speaks about judges' remuneration. There are excerpts from other Venice Commission documents about the judges' remuneration.

[2] Para 3.3 "Budgetary and Staff Autonomy" (pages 68-70) contains the information about the budget of the judiciary – references to other Venice Commission documents.

[3] In Para 3.1.1 (page 54) there is some useful info:

"The Venice Commission [...] consider that the appropriate body to make the ultimate assessment on the number of Supreme Court judges and of the need for more judges is usually the legislator or the High Council of Justice, given that the choice depends, inter alia, on the available budgetary means, which cannot be determined by the Supreme Court judges. It is nevertheless highly recommended that the legislator takes into consideration the opinion of the Supreme Court in the legislative process [...]."

CDL-AD(2014)031, Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, §19

[4] In Para 4.1 (page 73) there is also some useful info:

“In order to ensure that the funds allocated to the judiciary are sufficient, it would be advisable to ensure that the views of the judiciary are taken into consideration in budgetary procedures. The High Judicial Council could represent the judiciary in this regard and have some influence on budgetary decisions regarding the needs of the judiciary. This influence could be exercised by preparing a draft budget or by commenting on a draft received from a competent ministry. Against this background, it is recommended that the Constitutional Law be amended by adding certain provisions on the budgeting process that would envisage a role for the High Judicial Council.”

CDL-AD(2011)012, Joint Opinion on the constitutional law on the judicial system and status of judges of Kazakhstan, §25

“The [High Judicial and Prosecutorial Council] has broad competences [...]: it appoints judges and prosecutors [...], decides on the suspension of judges, determines criteria for the assessment of judges and prosecutors, decides on the appeals in disciplinary proceedings, gives its views on the annual budget for courts and prosecutors’ offices, gives its opinions on draft laws and regulations concerning the judiciary etc. [...]. Article 24 of the draft Law gives the HJPC power to require courts, prosecutors’ offices and state authorities, as well as judges and prosecutors to provide it with information, documents and other materials in connection with the exercise of its competencies. It can also have access to all premises of courts and prosecutors’ offices and their records. Such competences confirm that the HJPC is the central organ within the judiciary. Under Article 25 of the draft Law, the HJPC prepares a draft annual budget, which is then submitted, through the Ministry of Justice, to the Ministry of Finance and Treasury of BiH for approval. Under Article 23.2 of the draft Law, the HJPC may also make recommendations relating to the annual budgets of courts and prosecutors’ offices. The system of financing the judiciary remains, however, highly fragmented, with the budgets determined at several different levels (BiH, the Entities, the FBiH cantons, the District

Brčko). The extent of the competences seems to be in line with European standards, with the exception of the reservations made under Sections D, E and F above.”

CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§65-68

10 CDL-AD(2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)015-e)

79. According to Article 48(2), the HJPC delivers a budget proposal to the Ministry of Justice. However, the draft Law contains no further details regarding the role of the Ministry of Justice after it receives the budget proposal. The draft Law should clearly define the powers of the Ministry of Justice in the Courts’ budget drafting process. If the Ministry simply accepts the draft as it is, then this should be clearly reflected in the draft Law. If, however, this provision also implies that the Ministry has the power to comment and/or negotiate the budget, then the draft Law should explicitly define the division of competences between the Ministry and the HJPC, without compromising the principle of the independence of the judiciary.

80. It should be mentioned that, for certain cases, this draft Law assigns the Ministry of Justice an extensive role in the process of administrative decision-making. This may be due to the fact that the Ministry of Justice has to play a pivotal role in the reform of the judiciary, however, the drafters should be careful to avoid an excessive involvement of the Ministry of Justice in the work of the Courts. Moreover, once the budget is allocated, its implementation should be left to the Courts and/or the HJPC. It is important that the highest possible standards of transparency for budgetary expenditures by the Courts be followed.

11 CDL-AD(2013)005, Opinion on Draft amendments to Laws on the Judiciary of Serbia Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)005-e)

119. It is also not clear why the Ministry of Justice and Public Administration should be in charge of “issuing approval for court rules on internal organisation” or “proposing of part of budget for expenses for court staff”, etc. It should also be clarified how the “oversight of financial and material operations of courts and of the High Judicial Council” is conducted. Legislation should either avoid granting executive authorities the power to supervise or monitor operations of the judiciary, or at least provide unambiguous and clearly defined procedures for such an authority.

122. [...] The budget of the courts should be prepared/drafted by the judiciary or, at least, in consultation and with the approval of the judicial institutions, on the basis of the availability of financial resources.

12 CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)001-e)

77. [...] If the President of the NJO transfers a judge to an inferior court, the judge shall retain his or her former salary and shall be entitled to use the title referring to his or her previous position as a judge.

**13 CDL-AD(2010)004, Report on the Independence of the Judicial System. Part I:
The Independence of Judges adopted by the Venice Commission at its 82nd
Plenary Session (Venice, 12-13 March 2010)**

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)

Remuneration of Judges

Paras. 44-51

The Venice Commission considers 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.

The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants.

The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses which include an element of discretion should be excluded.

In relation to non-financial benefits such as apartments and cars, the Venice Commission observed this practice mainly in post-socialist countries. The Venice Commission acknowledged that the allocation of property is a source of concern but also found that this was not easy to resolve in light of the problem of providing the judiciary with an appropriate standard of living.

Overall, while acknowledging the argument that non-financial allocations can be attributed to individual need whereas salaries are at a set amount without the possibility of taking account of the special need of an individual judge, the Venice Commission determined that the assessment of social need and the differentiation between judges would be open to abuse and the application of subjective criteria. Even if such benefits are defined by law, there will always be scope for discretion when distributing them.

Thus, the Venice Commission recommended the phasing out of such benefits and replacing them with an adequate level of financial remuneration.

In summary, the Venice Commission recommended that for judges a level of remuneration should be guaranteed by law in conformity with the dignity of their office and the scope of their duties. Bonuses and non-financial benefits, the distribution of which involves a discretionary element, should be phased out.

Budget of the Judiciary

Paras. 52-55

In order to maintain the independence of the court system in the long and short run, it will be necessary to provide the courts with resources appropriate to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and in national constitutions and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law.

The adequacy of the financing accordingly should be considered in the broad context of all resources of which the judicial system should be possessed in order to meet these requirements and merit recognition as a separate state power.

It is the duty of the state to provide adequate financial resources for the judicial system. Even in times of crisis, the proper functioning and the independence of the Judiciary must not be endangered.

Courts should not be financed on the basis of discretionary decisions of official bodies but in a stable way on the basis of objective and transparent criteria.

Decisions on the allocation of funds to courts must be taken with the strictest respect for the principle of judicial independence and the judiciary should have an opportunity

to express its views about the proposed budget to parliament, possibly through the judicial council.

14 Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, submitted in accordance with resolution 17/2 of the Human Rights Council. UN General Assembly, 67th Session, 13 August, 2012, A/67/305

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/461/84/PDF/N1246184.pdf?OpenElement>

Paras. 42, 55, 57, 58, 59-65 and 113 “VI. Recommendations”

Judicial independence

42. Strengthening the judiciary from within, as well as providing all the safeguards for its independence vis-à-vis other public officials and private actors, is essential in combating and preventing instances of judicial corruption. A judiciary that is not independent can easily be corrupted or co-opted by interests other than those of applying the law in a fair and impartial manner. In order to combat corruption, judicial independence needs to be firmly institutionalized. Further, in order to prevent corruption, both financial and functional independence are necessary, as is constitutional or legal independence.

[..]

Working conditions and status

55. Remuneration is often perceived as an important factor influencing the corruptibility of the judiciary, including prosecutors. In the Convention against Corruption, it is recommended that States take measures to promote the adequate remuneration of public officials (article 7 (c)). Low salaries and salary arrears are

[..]

57. Prosecutors operate at the entry of the criminal justice system and corruption or misbehaviour on their part would adversely affect the rest of the justice system and proceedings. In the Guidelines on the Role of Prosecutors, it is expressly stipulated that prosecutors should enjoy reasonable conditions of service, including tenure, when appropriate, remuneration and pension, commensurate with the crucial role they play in the administration of justice (see A/HRC/20/19, para. 66).

[..]

58. The organization of courts and prosecution services, including workload, adequate staffing and remuneration, also contributes to the attractiveness of these professions and can have some effect on the corruptibility of members.

Institutional management and resources

59. When court procedures and judicial proceedings, whether in the criminal or other justice systems, are bureaucratic, complicated, unclear and inefficient, the door is open to all types of corruption. Such acts would have a great impact on the delivery of justice, deterring or even negating the ability of victims to access the justice system. Operational efficiency and transparency are essential in order to prevent corrupt behaviours by court personnel and other actors in the judicial system, including lawyers, prosecutors and judges.

60. Good governance within the judiciary is of critical importance. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to meet their needs; they should also have the power to manage such resources autonomously, independent of any external interference. The Special Rapporteur is concerned that many Member States do not give priority to the judiciary in terms of the percentage of the gross domestic product allocated to such institutions, especially to the lower jurisdictions.

61. A lack of internal capacity to carry out such tasks, including both material and human resources, would have a negative effect on the delivery of justice and might

provide opportunities for internal and external actors to seek to channel the system to their advantage. Strengthening the human and material resources of judiciaries and prosecution services would be a significant factor in delivering fair and timely justice.

62. The Special Rapporteur has observed that widespread case delays fuel corruption and create the perception of corruption. Such delays may be accountable for a wide range of deficits related to courts' infrastructure, management and resources, which can hamper the smooth functioning of the judiciary. These include lack of staff, lack of or inadequate infrastructure, lengthiness or opacity of proceedings, disorganized filing systems or lack of electronic filing, lack of mechanisms to control delays and lack of documentation centres and libraries.

63. The use of information technology in filing cases and ensuring an adequate number of well-trained and well-paid staff would improve efficiency and minimize the opportunities for bribes to be paid.

64. The judiciary could also consider installing a system of court administrators whereby judges and prosecutors would be freed from the bureaucracy of administrative functions, which would enable them to focus more closely on their respective judicial functions. The concept of court administrators allows for the continuity of institutional management and greater administrative competence and independence, since such positions would be filled by qualified professionals. Such administrators could also play an important role in promoting dialogue¹² among judges, courts and prosecutors, lawyers, other branches of the State and society. As a consequence, their work could contribute to a more specialized court management system.

65. The Special Rapporteur has observed that a non-transparent and subjective case-assignment system is vulnerable to manipulation and corruption. The same applies to prosecutors. In some countries, the court president has sole discretion on assignment (including the possibility of retaining a case), which provides avenues for corruption

and greater opportunities for external interference.¹³ In order to avoid such a situation, there should be a clear, objective and preferably random electronic system, which is continuously reassessed (see A/HRC/11/41, para. 47, and A/HRC/20/19, para. 80). Information on the system of case assignments should be clearly available to the public in order to counter suspicions of malpractice and corruption in the assignment of cases and provide greater transparency.

113. The following recommendations should be considered in conjunction with, and bearing in mind, previous recommendations of the Special Rapporteur with regard to the independence of the judiciary, prosecutors and the legal profession (A/HRC/11/41, A/HRC/20/19, and A/64/181):

General recommendations

[..]

(m) The terms and conditions of service of both the judiciary and prosecution services, including job security, adequate remuneration, promotion, working conditions and status, should be safeguarded by law;

(n) Good governance and the rule of law within the judiciary should be promoted. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to discharge their functions and be empowered to manage their own budgets autonomously and independently of any external interference;

15 Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, submitted in accordance with resolution 8/6 of the Human Rights Council. UN General Assembly, 65th Session, 10 August, 2010, A/65/274

[http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/480/55/PDF/N1048055.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N10/480/55/PDF/N1048055.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/480/55/PDF/N1048055.pdf?OpenElement)

Paras. 27-29, 45

3. Material resources

27. The Basic Principles on the Independence of the Judiciary and applicable regional standards require that States must provide adequate resources to enable the judiciary to properly perform its functions (para. 7). Often the judiciary receives a negligible share of the national budget as compared to other public institutions. States must take measures to ensure that the judiciary is adequately funded and that there is sufficient infrastructure to allow the justice system to function properly.

28. The problem of insufficient funding for the judiciary has been of concern to the previous Special Rapporteur, who underlined the importance of adequate material resources for the proper functioning of the justice system (A/HRC/11/41, paras. 76-77). In certain countries, court premises are dilapidated (A/HRC/8/4/Add.2, para. 33) or there are insufficient courtrooms to conduct hearings, inadequate office space and a lack of basic material resources, including furniture and basic office equipment such as computers, communication technology and photocopiers. A lack of resources can de-motivate judges as they discharge their functions, and constrain the capacity of the judiciary to adjudicate cases in a timely manner, consequently contributing to undermining the system. The Human Rights Committee has observed that where delays in adjudication are caused by a lack of resources and chronic underfunding, supplementary budgetary resources should be allocated to the administration of justice to the extent possible (CCPR/C/GC/32, para. 27).

29. The Special Rapporteur is aware that some States, especially those in transition, are financially constrained. However, funding for the judiciary should be prioritized. The failure of a State to fund the judiciary adequately undermines the concept that those who are responsible for human rights violations must be brought to justice,³⁶ and implies perpetuating a culture of impunity.

[..]

Corruption

[..]

45. To counter judicial corruption, concrete measures will have to be adopted, such as the disclosure of personal assets by judicial officials and other persons with significant responsibility in the criminal justice system; control mechanisms at the institutional level to ensure the transparency of operations; the establishment of internal oversight bodies and confidential complaint mechanisms; and the regular and systematic publication of activity reports. Additionally, efforts should be made to improve the salaries of judges, magistrates and judicial staff to reduce susceptibility to corruption.

16 Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, UN General Assembly, 11th session of the Human Rights Council, 2009, 24 March, 2009, A/HRC/11/41

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/125/63/PDF/G0912563.pdf?OpenElement>

Paras. 37-43

5. Judicial budget

37. The Basic Principles and some regional standards state that it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions (See also Principles and Guidelines in Africa (footnote 8), A (4) (v); Beijing Statement (footnote 8), principle 41; Statute of the Ibero American Judge, art. 6). Furthermore, the Beijing Statement stipulates explicitly that executive powers affecting judges in their resources must not be used so as to threaten or bring pressure upon a particular judge or judges (Principle 38; see also Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence, Guideline 2). The Special Rapporteur, following several country visits, recommended that the respective Member States revisit the budget allocated to the judiciary with a view to progressively increasing it. He advocated that a fixed percentage of the GDP be established (A/HRC/4/25/Add.2, para. 77). In one of his reports, he indicated a base line of 2 to 6 per cent of the national budget to be allocated to the judiciary (A/HRC/8/4/Add.2, para. 76. 45 For example, Costa Rica and El Salvador were able to achieve a 6 per cent fixed amount). In this connection, the

Special Rapporteur points to Principle 42 of the Beijing Statement, which stipulates that, under important domestic economic constraints, the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources. The Special Rapporteur would like to point to good practices by some Member States that dispose either of a constitutional provision guaranteeing a fixed minimum percentage of the annual national budget to be allocated to the judiciary or who have otherwise achieved a decision in this regard (For example, Costa Rica and El Salvador were able to achieve a 6 per cent fixed amount.)

38. With regard to ensuring the independence of the judiciary, two different issues deserve analysis in relation to the judicial budget. First, the question is how to ensure that the allocation of funds to the courts be taken with the strictest respect for judicial independence. A second question arises with respect to the administration of funds allocated to the judiciary.

39. With respect to the former, the Special Rapporteur consistently insisted that the judiciary needs to be effectively involved in the drafting of its budget (See also Principles and Guidelines in Africa (footnote 8), A (4) (v) (2)). He notes that there exist different traditions and practices in this connection. In some Member States, the judiciary proposes its draft budget directly to the executive body in charge of finances; in other cases the budgetary allocations are submitted indirectly through the executive body in charge of judicial affairs. In other States, the courts make their proposals directly. The Special Rapporteur highlights that, where it exists, the independent body responsible for the judiciary (See above paras. 27-30) should be vested with the role of receiving proposals from the courts, preparing a consolidated draft for the judicial budget and presenting it to the legislature.

40. The Special Rapporteur commends those Member States which have established a further safeguard for the active involvement of the judiciary: the right of the judiciary to participate in the deliberations of the budget in the legislature.

41. Furthermore, the Special Rapporteur attaches great importance to safeguards established to ensure that the amount of the budget resources allocated to fund the courts in the current fiscal year or subject to be allocated for the next financial year may be reduced solely with the consent of the judiciary or a body representing it (A/HRC/11/41/Add.2, para. 81). He underlines that a reduction of the courts' budget significantly hampers the administration of justice. As a result, unjustified long delays occur in the appointment of judges and some Member States resort to the appointment of provisional judges (This is currently the case in Argentina).

42. The second issue, as mentioned above, is the management and administration of the budget allocated to the courts. The Special Rapporteur notes that in some Member States this task is entrusted to the judiciary or an independent authority responsible for the judiciary, while in others it is undertaken by a governmental body. Mixed systems also exist, in which budgets of higher or highest level courts are administered by themselves and the budget for the remaining courts by a special department of the executive (E/CN.4/2006/52/Add.3, para. 19).

43. The Special Rapporteur would like to emphasize that, in his opinion, entrusting the administration of funds directly to the judiciary or an independent body responsible for the judiciary is much more likely to reinforce the independence of the judiciary (E/CN.4/2005/60/Add.2, para. 26; E/CN.4/2006/52/Add.3, para. 82; E/CN.4/2006/52/Add.4, para. 90), particularly in times of transition and/or tensions between the judicial and executive branches. Hence, he has issued recommendations in this regard to some Member States (E/CN.4/2006/52/Add.4, para. 92). However, the judiciary or the above-mentioned independent body remain, as all other public authorities, accountable to independent and external oversight.

(b) Human and material resources

76. The Basic Principles on the Independence of the Judiciary and regional standards require that Member States provide adequate resources to enable the judiciary to properly perform its functions. The Human Rights Committee deplored that the lack of

human and material resources is an aspect which may undermine the independence of the judiciary (CCPR/CO/75/VNM, para. 9; CCPR/CO/83/KEN, para. 20). Recommendation No. R (94) 12 gives specific examples for proper working conditions (Principle III).

77. The Special Rapporteur, in his country mission reports, underlined the importance of adequate human and material resources to the proper functioning of justice. He noted that in some countries there is a negligible share of the budget allocated to the judicial authority, which causes a shortage of judges and courts, low salaries and unacceptable material conditions (A/HRC/8/4/Add.2, para. 35). As a consequence, he actively recommended that a higher percentage of the national budget be allocated to improving human and material resources of the judicial system (A/HRC/8/4/Add.2, para. 35). In some countries,

101. As regards the judicial budget, he recommends that:

- A minimum fixed percentage of gross domestic product (GDP) be allocated to the judiciary by the Constitution or by law. Under important domestic economic constraints, the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.
- The judiciary be given active involvement in the preparation of its budget.
- The administration of funds allocated to the court system be entrusted directly to the judiciary or an independent body responsible for the judiciary.

17 Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, UN General Assembly, Sixtieth session of the Commission on human Rights, 31 December, 2003, E/CN.4/2004/60

[http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/100/26/PDF/G0410026.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G04/100/26/PDF/G0410026.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/100/26/PDF/G0410026.pdf?OpenElement)

Para. 32

3. Financial independence and liability of the judiciary

32. It is self-evident that, in order to be able to function efficiently and independently, the judiciary must have a sufficient operating budget and financial autonomy vis-à-vis the executive and legislative powers. If this is not the case, corruption and other similar practices, such as patronage, are liable to develop. This budgetary independence must be accompanied by an effective external audit. The Special Rapporteur intends to be attentive to these issues (see chapter III, section A.8, on corruption).

18 Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities

<https://wcd.coe.int/ViewDoc.jsp?id=1707137>

The Recommendation of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Resources emphasises that the efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 of the Convention, legal certainty and public confidence in the rule of law.

The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality (Rec. 32).

In relation to the provision of resources, the Recommendation provides as follows:

33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.

34. Judges should be provided with the information they require to enable them to take pertinent procedural decisions where such decisions have financial implications. The power of a judge to make a decision in a particular

case should not be solely limited by a requirement to make the most efficient use of resources.

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly encouraged.

Councils for the judiciary, where existing, or other independent authorities with responsibility for the administration of courts, the courts themselves and/or judges' professional organisations may be consulted when the judicial system's budget is being prepared (Rec. 40).

The Recommendation also provides that judges should be encouraged to be involved in courts' administration (Rec. 41).

Chapter VI of the Recommendation deals with the status of the judge and considers, *inter alia*, remuneration (Recs. 53-55) and training (Recs. 56-57).

The principal rules of the system of remuneration for professional judges should be laid down by law.

Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions.

Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working.

Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.

Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.

19 The UN Basic Principles on the Independence of the Judiciary (1985)

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

Principle 11 of the UN Basic Principles provides that adequate remuneration, conditions of service and pensions shall be adequately secured by law.

For the purposes of procedure 5 of the procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary set out below, Principle 8 of the UN Basic Principles provides:

“In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights,

judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”

Principle 12 provides:

“Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”

20 Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, ECOSOC Resolution 1989/60 of 24 May 1989

https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-60.pdf

The Economic and Social Council adopted the procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution;

The procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary include the following:

Procedure 1

All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice.

Procedure 2

No judge shall be appointed or elected for purposes, or be required to perform services, that are inconsistent with the Basic Principles. No judge shall accept judicial office on the basis of an appointment or election, or perform services, that are inconsistent with the Basic Principles.

Procedure 3

The Basic Principles shall apply to all judges, including, as appropriate, lay judges, where they exist.

Procedure 4

States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of the respective country. Judges, lawyers, members of the executive, the legislature, and the public in general, shall be informed in the most appropriate manner of the content and the importance of the Basic Principles so that they may promote their application within the framework of the justice system. In particular, States shall make the text of the Basic Principles available to all members of the judiciary.

Procedure 5

In implementing principles 8 and 12 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to case-loads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.

Procedure 6

States shall promote or encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its independence.

21 The Universal Declaration on the Independence of Justice (The Singhvi Declaration) (1989)

<http://www.cristidanilet.ro/docs/Shingvi%20Declaration.pdf>

The Draft Universal Declaration on the Independence of Justice, also known as the Singhvi Declaration, set out the following principles in relation to funding of the judiciary.

As regards remuneration of judges during their tenure, the Singhvi Declaration provides:

Adequate remuneration and conditions of service shall be secured by law and shall not be altered to their disadvantage (Principle 16).

During their terms of office, judges shall receive salaries and after retirement, they shall receive pensions (Principle 18(a)).

The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and shall be periodically reviewed to overcome or minimise the effect of inflation (Principle 18(b)).

In relation to court administration, the Singhvi Declaration emphasises the role of the judiciary in court administration and in the process of setting the budget of the courts, and the requirement for the State to provide adequate resources to allow for the due administration of justice. The Declaration provides:

The main responsibility for court administration including supervision and disciplinary control of administration personnel and support staff shall vest in the judiciary, or in a body in which the judiciary is represented and has an effective role (Principle 32).

It shall be a priority of the highest order for the State to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and

efficiency; judicial and administrative personnel; and operating budgets (Principle 33).

The budget of the courts shall be prepared by the competent authority in collaboration with the judiciary having regard to the needs and requirements of judicial administration (Principle 34).

22 The Universal Charter of the Judge (1999)

<https://www.domstol.dk/om/otherlanguages/english/publications/Publications/The%20universal%20charter%20of%20the%20judge.pdf>

Article 13 of the Charter deals with the remuneration and retirement of the judge.

The judge must receive sufficient remuneration to secure true economic independence.

The remuneration must not depend on the results of the judge's work and must not be reduced during his or her judicial service.

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement a judge must not be prevented from exercising another legal profession solely because he or she has been a judge.

Article 14 of the Charter concerns the provision of support to the judiciary. The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function. The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to this matter.

23 Consultative Council of European Judges (CCJE) Opinion No. 1 (2001) for the Attention of the Committee of Ministers of the Council of Europe on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2001\)OP1&Sector=secDGHL&Language=la nEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2001)OP1&Sector=secDGHL&Language=la nEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

The CCJE examined international sources and fully approved the European Charter's statement recognising the role of adequate remuneration in shielding "from pressures aimed at influencing their decisions and more generally their behaviour ...", and of the importance of guaranteed sickness pay and adequate retirement pensions (paragraph 6).

The CCJE concluded that judges' remuneration should be commensurate with their role and responsibilities and should provide appropriately for sickness pay and retirement pay. It should be guaranteed by specific legal provision against reduction and there should be provision for increases in line with the cost of living (paras. 61-62).

24 Consultative Council of European Judges (CCJE) Opinion No. 2 (2001) for the Attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention on Human Rights

<https://wcd.coe.int/ViewDoc.jsp?id=1046365&Site=COE>

The CCJE recognised that the funding of courts is closely linked to the issue of the independence of judges in that it determines the conditions in which the courts perform their functions.

Moreover, the CCJE acknowledged the link between the funding and management of courts and access to justice and the right to fair proceedings, which are not properly

guaranteed if a case cannot be considered within a reasonable time by a court that has appropriate funds and resources at its disposal in order to perform efficiently.

All the general principles and standards of the Council of Europe on the funding and management of courts place a duty on states to make financial resources available that match the needs of the different judicial systems.

The CCJE agreed that although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations.

Care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget.

Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.

The extent to which the court system is considered to be adequately funded is not always related to the extent to which formal procedures exist for proposals by or consultation with the judiciary, although more direct judicial input was still regarded as an important need.

The CCJE considered that the development of appropriate funding for courts requires greater involvement by the courts themselves in the process of drawing up the budget. The CCJE agreed that it was therefore important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.

For example, the independent authority responsible for managing the judiciary, in countries where such an authority exists, could be given a co-ordinating role in

preparing requests for court funding, and to make this body Parliament's direct contact for evaluating the needs of the courts. The CCJE deemed it desirable for a body representing all the courts to be responsible for submitting budget requests to Parliament or one of its special committees.

Management of the budget allocated to the courts is an increasingly extensive responsibility requiring professional attention. The CCJE discussions showed that there is a broad distinction between, on the one hand, systems in which management is undertaken by the judiciary or persons or a body answerable to the judiciary, or by the independent authority with appropriate administrative support answerable to it and, on the other, those in which management is entirely the responsibility of a government department or service. The former approach has been adopted in some new democracies, as well as other countries because of its perceived advantages in ensuring judicial independence and in ensuring the judiciary's ability to perform its functions.

If judges are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task. In any event, it is important that judges are responsible for all administrative decisions which directly affect performance of the courts' functions.

In conclusion, the CCJE considered that States should reconsider existing arrangements for the funding and management of courts in the light of this opinion. The CCJE in particular further draws attention to the need to allocate sufficient resources to courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights.

25 Consultative Council of European Judges (CCJE) Opinion No. 11 to the Attention of the Committee of Ministers of the Council of Europe on the Quality of Judicial Decisions (2008)

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

The quality of a judicial decision depends not only on the individual judge involved, but also on a number of variables external to the process of administering justice such as the quality of legislation, the adequacy of the resources provided to the judicial system and the quality of legal training.

The CCJE observed that the quality of a judicial decision is directly conditioned by the funding made available to the judicial system. Courts cannot operate efficiently with inadequate human and material resources.

Adequate judicial remuneration is necessary to shield from pressures aimed at influencing judges' decisions and more generally their behaviour and to ensure that the best candidates enter the judiciary.

The CCJE recognises the importance of a qualified staff of clerks and judicial assistants, to the improvement of the quality of decisions delivered by a court. If such resources are lacking, effective functioning of the judicial system to achieve a high quality product will be impossible.

In summary, the CCJE concluded:

- (a) The quality of decision making depends on the allocation of adequate human, financial and material resources to each judicial system as well as the maintenance of financial security for each judge within that system.
- (b) The quality of legal education and training of judges and other legal professionals are of paramount importance in ensuring a judicial decision of high quality.

(c) It is also important to provide training of judges in non legal matters and to train court staff in order to relieve judges of administrative and technical duties and allow them to focus on the intellectual aspect of decision making.

26 Consultative Council of European Judges (CCJE) Opinion No. 10 (2007) to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

Budget and Staff of the Council for the Judiciary (Paras. 37-38)

The CCJE stressed the importance of ensuring that the Council for the Judiciary is financed in such a way that it is enabled to function properly. It should have appropriate means to operate independently and autonomously as well as power and capacity to negotiate and organise its own budget effectively.

The Council for the Judiciary should have its own premises, a secretariat, computing resources and freedom to organise itself, without being answerable for its activities to any political or other authority.

The Council for the Judiciary should have its own staff according to its needs, and each member should have staff in accordance with the tasks assigned to him or her.

Responsibilities of the Council for the Judiciary (Paras. 41-47)

In terms of the responsibilities of the Council for the Judiciary, the CCJE recommends, at para. 42, that the Council for the Judiciary ensures that tasks, including the control and management of a separate budget, the administration and management of courts and the training of judges, be performed preferably by the Council itself, or in cooperation with other bodies, and are fulfilled in an independent manner:

Training of Judges (Paras. 65-72)

The responsibility for organising and supervising judicial training should in each country be entrusted not to the ministry of justice or any other authority answerable to the legislature or the executive, but to the judiciary itself or preferably to the Council for the Judiciary; judges' associations can also play a valuable role in that respect.

Furthermore, the conception of training programmes and their implementation should be entrusted, under the authority of the judiciary or preferably the Council for the Judiciary, to a special autonomous body (e.g. a training academy) with its own budget and which should work in consultation with judges. A clear division of functions should be encouraged between the Council for the Judiciary and the training academy, when it exists.

Budget of the Judiciary (Paras. 73-75)

Funding of courts should not be subject to political fluctuations.

Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.

The arrangements for parliamentary adoption of the judicial budget should include a procedure that takes into account the opinions of the judiciary.

If the Council for the Judiciary does not have a role of administration and management of the courts, it should at least be in a position to issue opinions regarding the allocation of the minimal budget which is necessary for the operation of justice, and to clarify its needs in order to justify its amount.

The CCJE is of the opinion that the courts can only be properly independent if they are provided with a separate budget and administered by a body independent of the executive and legislature, whether it is a Council for the Judiciary or an independent agency.

Although it is advocated by some States that the ministry of justice is better placed to negotiate the court budget vis-à-vis other powers, especially the ministry of finances, the CCJE is of the opinion that a system in which the Council for the Judiciary has extended financial competences requires serious consideration in those countries where such is not the case at present. It must be stressed that extended financial powers for the Council for the Judiciary imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public.

Court Administration and Management (Paras. 76-79)

The CCJE considers that the Council for the Judiciary should have competence in the determination of the conditions for the allocation of the budget to the various courts and the decision as to the body which should examine and report on the efficiency of the courts

The CCJE is of the opinion that the Council for the Judiciary can make a positive contribution to the promotion of quality of justice. Sufficient funding of the courts shall be provided to enable them to fulfil their obligations in this respect.

In summary:

On the functioning of the Council for the Judiciary, the Council for the Judiciary should manage its own budget and be financed to allow an optimum and independent functioning.

On the powers of the Council for the Judiciary, the Council for the Judiciary may be entrusted with organising and supervising the training but the conception and the implementation of training programmes remain the responsibility of a training centre, with which it should cooperate to guarantee the quality of initial and in-service training;

The Council for the Judiciary may have extended financial competences to negotiate and manage the budget allocated to Justice as well as competences in relation to the administration and management of the various courts for a better quality of justice.

27 Consultative Council of European Judges (CCJE) Magna Carta of Judges (Fundamental Principles) (2010)

<https://wcd.coe.int/ViewDoc.jsp?id=1707925>

The CCJE Magna Carta of Judges, which summarises and codifies the main conclusions of the CCJE Opinions adopted to 2010, provides that judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.

Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of, *inter alia*, remuneration, financing and training of the judiciary.

One of the fundamental principles for the guarantee of independence is provided by principle 7 which states that:

“Following consultation with the judiciary, 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.”

Principle 8 emphasises the importance of training to safeguard the independence of judges as well as the quality and efficiency of the judicial system. It provides that initial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary.

Principle 9 states that the judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation).

28 European Charter on the Statute for Judges (1998)

https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/European-Charter-on-Statute-of-Judges_EN.pdf

Principle 2.3 of the Charter ensures, by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties.

It is for an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers to ensure the appropriateness of training programmes and of the organisation which implements them.

Principle 6 sets out the principles on remuneration and social welfare, which are as follows:

6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.

6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

6.4. In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

The memo to the principles on remuneration and social welfare stated that the principles only apply to professional judges. In relation to Principle 6.1., the memo stated that it seemed preferable to state that the level of the remuneration paid had to be such as to shield judges from pressures, rather than to provide for this level to be set by reference to the remuneration paid to holders of senior posts in the legislature or the executive, as the holders of such posts are far from being treated on a comparable basis in the different national systems.

29 The Judges' Charter on the Statute for Judges from the European Association of Judges (1997)

<http://www.legislationline.org/documents/id/8556>

In the Judges' Charter in Europe, the European Association of Judges set out fundamental principles which it vows to uphold.

The Charter provides that the other organs of the State have an obligation to give the judiciary all necessary means to perform their function, including adequate manpower and facilities. The judiciary must participate in decisions taken in relation to these matters.

In relation to the remuneration of judges, the Charter states that judicial salaries must be adequate, to ensure that the Judge has true economic independence and must not be cut at any stage of a Judge's service.

30 OSCE Office for Democratic Institutions and Human Rights Kyiv Recommendations on Judicial Independence in eastern Europe, South Caucasus and Central Asia (2010)

<http://www.osce.org/odihr/KyivRec?download=true>

The Kyiv Recommendations on Judicial Independence, at recommendation 2, that in order to avoid excessive concentration of power in one judicial body and perceptions of corporatism, it is recommended to distinguish among and separate different competences, such as promotion and training of judges and budget.

A good option in this regard is to establish different independent bodies competent for specific aspects of judicial administration without subjecting them to the control of a single institution or authority. The composition of these bodies should each reflect their particular task. Their work should be regulated by statutory law rather than executive decree.

Recommendation 6 concerns budgetary advice and provides that it would be advisable for a body representing the interests of the judiciary, such as a Judicial Council, to present to the government the budgetary needs of the justice system in order to facilitate informed decision making. This body should also be heard by parliament in the deliberations on the budget.

Judicial Councils may play a role also in the distribution of the budget within the judiciary.

Recommendation 13 provides that, on a long term basis, bonuses and privileges should be abolished and salaries raised to an adequate level which satisfy the needs of judges for an appropriate standard of living and adequately reflect the responsibility of their profession.

As long as bonuses and privileges exist, they should be awarded on the basis of predetermined criteria and a transparent procedure. Court chairs shall not have a say on bonuses or privileges.

Recommendation 19 provides that where schools for judges are part of the selection procedures, they have to be independent from the executive power. Training programmes should focus on what is needed in the judicial service and complement university education. They should include aspects of ethics, communication skills, the ability to settle disputes, management skills and legal drafting skills.

Where a Judicial Council exists, it may adopt recommendations for the legal education of judges. This includes the specification of relevant skills and advice on the continuing education of judges.

Recommendation 20 states that special training, as set out above, should also be provided for representatives of other legal professions joining the judiciary.

31 Draft Principles on the Independence of the Judiciary (Siracusa Principles) (1981)

<http://crisidanilet.ro/docs/Siracusa%20Principles.pdf>

Article 24 of the Siracusa Principles provides that to ensure its independence, the judiciary should be provided with the means and resources necessary for the proper fulfillment of its judicial functions.

Article 25, which deals with the budget of the judiciary, provides:

- The budget of the judiciary should be established by the competent authority in collaboration with the judiciary.
- The amount allotted should be sufficient to enable each court to function without an excessive workload.

- The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.

A note to the Siracusa Principles on financial provisions emphasises that it is essential for the independence of the judiciary that salary levels should be such that judges are not exposed to the temptation to seek other sources of income.

An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of public service salaries and members of the judiciary are treated equally.

32 Universal Declaration on Judicial Independence (Montreal Declaration) (1983)

<http://www.jiwp.org/#!/montreal-declaration/c1bue>

The Universal Declaration on Judicial Independence, also known as the Montreal Declaration, set out the following principles in relation to the compensation of international judges and in regard to national judges, tenure and court administration:

In relation to the compensation of international judges, Article 1.14 provides that the terms of compensation and pension of judges shall be established and maintained so as to ensure their independence.

The terms shall take into account the recognised limitations upon their professional pursuits both during and after their tenure of office which are defined either by their statute or recognised and accepted in practice.

As regards the remuneration of judges, the Montreal Declaration provides that adequate remuneration shall be secured by law and not altered to their detriment (2.19a)). Principle 2.21 provides:

- a) During their terms of office, judges shall receive salaries and after retirement, they shall receive pensions.
- b) The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and be regularly adjusted to account fully for price increases.
- c) Judicial salaries shall not be decreased during the judges' term of office, except as a coherent part of an overall public economic measure.

As regards court administration, the Montreal Declaration provides that the main responsibility for same shall vest in the judiciary (2.40).

Principle 2.41 states that:

It shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets.

Principle 2.42 provides that the budget of the court shall be prepared by the competent authority in collaboration with the judiciary. The judiciary shall submit their estimate of the budget requirements to the appropriate authority.

33 Mount Scopus International Standards of Judicial Independence (2008)

<http://www.jiwp.org/#!/mt-scopus-standards/c14de>

Article 2 of the Mount Scopus International Standards of Judicial Independence considers the relationship between the Judiciary and the Executive. Standards 2.20-2.22 relate to the remuneration of national judges. The Mount Scopus Standards provide that judicial salaries and pensions shall be adequate at all times, fixed by law, and should be periodically reviewed independently of Executive control.

Standard 2.21 provides that adequate remuneration shall be entrenched constitutionally or secured by law.

Judicial salaries, pensions and benefits cannot be decreased during judges' service except as a coherent part of an overall public economic measure (Standard 2.20).

Part B of the Mount Scopus Standards deals specifically with the minimum standards for the independence of the international judiciary. Article 13 deals with the service and remuneration of international judges. The Mount Scopus Standards provides that judges' essential conditions of service shall be enumerated in legally binding instruments.

No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.

Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court. Conditions of service should include adequate pension arrangements.

As regards the budget for international judges, Article 15 provides:

States, parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

34 Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (2010)

<http://www.summitofhighcourts.com/2013/docs/standarts/UN2.pdf>

Part one of the Implementation Measures describes the measures that are required to be adopted by the judiciary to fully implement the Bangalore Principles of Judicial Conduct.

The Implementation Measures emphasise the importance of judicial training and provides that “[t]o the full extent of its powers, the judiciary itself should organise, conduct or supervise the training of judges.” (Principle 7.1)

In jurisdictions that do not have adequate training facilities, the judiciary should, through the appropriate channels, seek the assistance of appropriate national and international bodies and educational institutions in providing access to such facilities or in developing the local knowledge capacity (Principle 7.2).

Part two of the Implementation Measures describes the institutional arrangements that are required to ensure judicial independence and which are exclusively within the competence of the State. These institutional arrangements include measures for the remuneration of judges and budget for the judiciary.

In relation to the remuneration of judges, principle 14 provides:

14.1 The salaries, conditions of service and pensions of judges should be adequate, commensurate with the status, dignity and responsibilities of their office, and should be periodically reviewed for those purposes.

14.2 The salaries, conditions of service and pensions of judges should be guaranteed by law, and should not be altered to their disadvantage after appointment.”

In regard to the budget of the judiciary, principle 17.1 emphasises the role of the judiciary in setting the budget of the judiciary, providing that the budget of the judiciary “should be established in collaboration with the judiciary, care being taken that neither the executive nor legislature authorities is able to exert any pressure or influence on the judiciary when setting its budget.”

The State should provide the judiciary with sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload. (Principle 17.2)

The State should also provide the judiciary with “the financial and other resources necessary for the organisation and conduct of the training of judges.” (Principle 17.3)

The judiciary should have a role in the administering the budget, either doing so itself or being administered by a body independent of the executive and the legislature and which acts in consultation with the judiciary. Funds voted for the judiciary should be protected from alienation and misuse. (Principle 17.4)