



AEAJ Advisory Group – Paper n° 1

Study on the adequate remuneration of judges

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Adequate Remuneration of Judges

Expertise of the Advisory Group of the Association of European Judges - AEAJ

by Holger Böhm

1. Introduction

The member associations of the AEAJ several times in various contexts have raised the issue of adequate remuneration of judges. The Board has been addressed to support the efforts of members in their negotiations and discussions with the relevant national institutions such as parliaments, governments and judicial councils. Hence, the advisory group of AEAJ was asked by the Board/decided to draft a consistent line of argumentation to support activities of the Board based on an assessment of the International and European standards and legal requirements as well as on criteria developed in European and national jurisprudence.

When approached on the appropriateness of judge's remuneration, national institutions regularly argue that remuneration is adequate to the importance of the judicial office and the role of the judge, to the salaries of other public sectors, e.g. public servants, there are no financial means for an increase of salaries or at least cannot be justified. Such an argumentation can only be countered by displaying the role and the importance of the judiciary as one of the equal state powers and as acknowledge by international standards. A significant weight must be given to specific requirements for this state power such as a guarantee for judicial independence in its financial dimension, a main element of the rule of law.

An argumentation is weak if it is reduced to subjective perception, such as referring to the importance of oneself compared to someone else's. Appropriateness of remuneration can only be assessed against objective criteria. Consequently, the aim of this report is also to determine such criteria as developed in the jurisprudence of national and European courts.

2. Requirements under International and European Law

a. Standards under soft law

According to the **European Network of Councils for the Judiciary** - ENCJ, 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. 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. 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. Funding of judiciary is a

vulnerable aspect in the relations between the three state powers. Indicators for this relation with respect to funding of the judiciary are to which degree the Judiciary is involved in the determination of budgets and the degree to which the actual budgets are sufficient for the judiciary to fulfil its responsibilities. 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. 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. 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. 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. 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. There should be provisions for the periodic review of judges' remuneration to overcome or minimise the effect of inflation. 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 leave¹. Remuneration of judges must remain at all times commensurate with their professional responsibilities and public duties; and be constitutionally guaranteed in law so as to preserve judicial independence and impartiality. All discussions and negotiations relating to judicial remuneration should involve the judiciary².

Judicial independence is a central pillar of any constitutional system. It is fundamental in any democracy that individual judges and the judiciary as a whole are independent of all external pressures and improper influence from the other branches of government, including funding bodies. The minimum conditions for judicial independence include financial security, i.e. the right to a salary and a pension. In order to retain and attract the highest quality judges and maintain judicial independence, judicial remuneration must at all times be commensurate with their professional responsibilities, public duties and the dignity of their office. The remuneration must be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Judicial remuneration includes salary, sickness pay, paid maternity/paternity leave and pensions. The remuneration of judges must be constitutionally guaranteed in law and not altered to the disadvantage of judges after their appointment. Save in times of economic emergency, when there is a general reduction in comparable public service salaries and judges are treated no less favourably than others paid from the public purse, there should be no reduction in judicial remuneration. There should be an independent body established to make informed recommendations to the government in relation to judicial remuneration, which governments should accept and

¹ Annex I to ENCJ Report 2015-2016, Funding of the Judiciary, Summary of international and ENCJ sources, https://www.encj.eu/images/stories/pdf/GA/Warsaw/encj_report_funding_annex_i_international_sources.pdf, pages 5-11 with further references

² ENCJ Report 2012-2013, Recommendations and Principles: Principle 23

implement. Where such recommendations are not followed, the reasons should be clearly and publicly explained by the government³.

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 excluded⁴.

The **UN Human Rights Council** recognizes that 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. Low salaries and salary arrears critical factors contributing to corruption within judicial systems. Dissatisfaction regarding the level of remuneration has been expressed on different occasions. Salaries of judges and prosecutors must be commensurate with their position, experience, professional development and responsibilities, throughout the entirety of their tenure. Fair pensions are also important, as fear of the future can lead to judges and prosecutors modifying their conduct in order to gain reassurance for the future⁵.

According to the **Council of Europe** 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 judges⁶. In this context, the CCJE Bureau concludes, inter alia, that the non-alignment of judicial salaries for a long time in any member state with the prevailing rates of inflation and declining purchasing power may amount to so-called "passive" reduction

³ Funding of the Judiciary, Summary of international and ENCJ sources Annex I to the ENCJ Report 2015-2016,

https://www.ency.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf, recommendation 10

⁴ 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), Remuneration of Judges, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e), paras. 44-51

⁵ Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knäul, submitted in accordance with resolution 17/2 of the Human Rights Council. UN General Assembly, 67th Session, 13 August, 2012, A/67/305, <https://documents.un.org/doc/undoc/gen/n12/461/84/pdf/n1246184.pdf?token=mmeZaOjk4c1EMYjaNc&fe=true>, paras. 55 f.

⁶ Judges: independence, efficiency and responsibilities, Recommendation CM/Rec(2010)12 and explanatory memorandum, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809foo7d>, Recs. 53-57

in remuneration impacting specifically judges. This is especially true when in the same member state, the salaries of other public officials have been raised and not those of judges⁷.

The **Consultative Council of European Judges** of the Council of Europe 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 living⁸. 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 law⁹. It also calls upon the competent authorities to always provide the judicial branch with adequate salaries, retirement pensions and other social benefits. It is also worth noting in this context that a court system is only as strong and robust as its pillars. Therefore, adequate salaries, social benefits and equipment for non-judge court staff are as vital for a corruption-free judiciary as proper working conditions for the judges themselves¹⁰.

The **Universal Charter of the Judge** (1999) foresees that 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 judge¹¹.

From the **European Charter on the Statute for Judges** (1998) follows that 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. 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. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death. 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 judge¹².

In the same line the **Judge's Charter on the Statute for the Statute for Judges** from the European Association of Judges (1997) states that in relation to the remuneration of judges,

⁷ Opinion of the CCJE Bureau of 16.02.2024 following a Protest Declaration of the Slovenian Association of Judges concerning the failure to enforce a decision of the Constitutional Court of Slovenia aimed at remedying the established unconstitutionality regarding substantial differences between the salaries of judges and other public officials, CCJE-BU(2024)1, <https://rm.coe.int/ccje-bureau-opinion-on-slovenia-february-2024-/1680ae8e5c>, page 4

⁸ 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://rm.coe.int/1680747492>, paras. 61 f.

⁹ CCJE, Magna Carta of Judges (Fundamental Principles) (2010), <https://rm.coe.int/16807482c6>, principle 7

¹⁰ CCJE Opinion No. 21 (2018) preventing corruption amongst judges, <https://rm.coe.int/ccje-2018-3e-avis-21-ccje-2018-prevent-corruption-amongst-judges/native/16808fd8dd>, para. 19

¹¹ International Association of Judges IAJ, The Universal Charter of the Judge, adopted by the IAJ Central Council in Taiwan on November 17th, 1999, link to the 1999 Edition, updated in Santiago de Chile on November 14th, 2017, https://www.unodc.org/res/ji/import/international_standards/the_universal_charter_of_the_judge/universal_charter_2017_english.pdf, art. 13

¹² European Charter on the statute for judges (1998), <https://rm.coe.int/16807473ef>, principle 6

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 service¹³.

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 equally¹⁴.

The **Mount Scopus International Standards of Judicial Independence** (2008) promulgate that judicial salaries, pensions and benefits cannot be decreased during judges' service except as a coherent part of an overall public economic measure. 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 arrangements¹⁵.

The standards of the **Group of States against Corruption** (GRECO) also stress the importance of adequate judicial remuneration. For example, it recommended that adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions. It accordingly invited the authorities to support those improvements by making the necessary changes which fall within their competence¹⁶.

The **UN Basic Principles on the Independence of the Judiciary** underline that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law¹⁷. The UN Special Rapporteur on the independence of judges and lawyers also stresses that international and regional standards require that the remuneration of judges be guaranteed by law. The UN Special Rapporteur note the low level of judicial salaries, in some instances constituting remuneration well below the average national income or not even providing for a decent livelihood. The Special Rapporteur also highlights the problem that, despite the existence of pertinent legal provisions, salaries effectively paid to the judges are not adequate¹⁸. The **Human Rights Committee** (HRC), which is a treaty body of independent experts that monitors the implementation of the UN International Covenant on Civil and Political Rights (ICCPR) by its State Parties, issued a number of relevant recommendations as regards the judicial independence. In this context, it mentioned several times the issue of remuneration for the judiciary. According to the HRC, states should take specific measures establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion,

¹³ <https://www.icj.org/wp-content/uploads/2014/10/Judges-charter-in-europe.pdf>

¹⁴ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, International Commission of Jurists, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

¹⁵ https://www.jiwp.org/files/ugd/a1a798_917f6e8adb9247do189613bcd3705b4.pdf, Standard 2.20

¹⁶ GRECO Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Austria, adopted by GRECO at its 94th plenary meeting (Strasbourg, 5-9 June 2023), para 51

¹⁷ UN Basic Principles on the Independence of the Judiciary adopted on 6 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, para 11.

¹⁸ Report of the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, paras 73-74.

suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them¹⁹.

b. Hard law

The European Union is based on the value of the rule of law²⁰, which is addressed to the Union itself as well as to the Member States, where the latter have procedural autonomy e.g. in the organisation of the court system and court procedure²¹. This principle contains the imperative of an effective remedy²², which requires independent courts²³. In the view of the Court of Justice of the European Union (**CJEU**), the concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions²⁴. The personal dimension of the independence of the judiciary refers to the members of the courts, e.g. judges, and contains guarantees against removal from office²⁵. Like the protection against removal from office of the members of the body concerned, the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence²⁶.

According to the **CJEU**, it is apparent both from the title of Council Directive 2000/78/EC of 27.10.2000 establishing a general framework for equal treatment in employment and occupation²⁷, its preamble and from its content and purpose that that directive seeks to lay down a general framework in order to guarantee equal treatment 'in employment and occupation' to all persons, by offering them effective protection against discrimination on one of the grounds covered by Article 1. In addition, it is apparent from Article 3(1)(c) of that directive that it is to apply, within the limits of the areas of competence conferred on the European Union, 'to all persons, as regards both the public and private sectors, including public bodies', in relation, in particular, to 'employment and working conditions, including dismissals and pay'²⁸.

The **CJEU recalls** that judges' remuneration, which is one of the guarantees of judicial independence, must be commensurate with the importance of judges' functions. The determination of that remuneration must have a legal basis and meet the criteria of objectivity, foreseeability, stability and transparency. The level of remuneration of judges must be

¹⁹ Human Rights Committee, consideration of reports submitted by States Parties under Article 40 of the Covenant, concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), para 18.

²⁰ Art. 2 sent. 1 TEU

²¹ CJEU, judgment of 05.06.2023 - C-204/21, (COM/Poland), para 63

²² Art. 19 para 1 subpara 2 TEU

²³ Art. 47 para 2 sent 1 FRC

²⁴ CJEU, judgments of 19.09.2006 - C-506/04 (Wilson), para 51, and of 16.02.2017 - C-503/15, (Margarit Panicello), para 37 and the case-law cited.

²⁵ CJEU, judgment of 05.11.2019 - C-192/18, (COM/Poland), para 112

²⁶ CJEU, judgments of 27.02.2018 - C-64/16 (Associação Sindical dos Juizes Portugueses), para 45 and of 07.02.2019 - C-49/18 (Escribano Vindel), para 66

²⁷ OJ 2000 L 303, p. 16

²⁸ CJEU, judgment of 20.04.2023 - C-52/22, paras 41 f.

sufficiently high, in the light of the socio-economic context of the Member State concerned, in particular with regard to the average salary. However, judicial independence does not preclude their remuneration from being established at a level lower than that of the average remuneration of other legal professionals. Any derogation from the method for determining the remuneration must be justified by an objective of general interest, such as the elimination of an excessive government deficit. Such derogations, which must not be specifically aimed at judges, must be necessary, proportionate and temporary. They may not undermine the commensurate nature of judges' remuneration with their functions. The way in which judges' remuneration is determined, as well as the measures derogating from it, must be capable of being subject to effective judicial review before a national court. It is for the national courts to verify whether those requirements have been complied with²⁹.

In its **EU Justice Scoreboard**³⁰, with a reference to CJEU jurisprudence, the Commission sees the salaries of judicial and prosecutorial expert staff as an indicator of the independence of justice. Sufficient resources, including well qualified, trained and adequately paid staff of all kinds, are necessary for the justice system to work properly³¹.

The European Court of Human Rights (**ECtHR**) is of the opinion that the failure to ensure adequate and timely payment of the remuneration of domestic court judges, and the uncertainty in which they were left, upset the fair balance that has to be struck between the demands of the public interest and the need to protect the applicants' right to the peaceful enjoyment of their possessions (Art. 1 of Protocol No. 1). Consequently, by failing to comply with the judgments given in favour of the applicants, the national authorities for a considerable period prevented them from receiving in full the judicial benefits to which they were entitled by law, a circumstance liable to impede the exercise of their judicial functions with the necessary dedication³². The Court established that according to the 2014 and 2016 reports issued by the European Commission for the Efficiency of Justice (CEPEJ) on European judicial systems (which indicated both the gross annual salary of judges in each country and the ratio of that salary to the average gross annual salary of employees working in the national economy), in 2012 and 2014 the gross annual salary for all Council of Europe countries in those years had been, respectively, 2.3 and 2.4 times the average national salary³³.

3. Objective criteria

The **German Federal Constitutional Court** (FCC) recalled the objective criteria established in its previous jurisprudence, called parameters, when it decided that the salary regulations of the state of Berlin are incompatible with the principle of maintenance guaranteed by art. 33, para. 5 of the Basic Law (BL, Grundgesetz), insofar as they concern the salaries of judges and public prosecutors in salary groups R 1 and R 2 between 2009 and 2015 and salary group R 3 in 2015³⁴. Although the FCC deduced the parameters from the mentioned

²⁹ CJEU, judgment of 25.02.2025 in joined cases C-146/23 and C-374/23

³⁰ The 2024 EU Justice Scoreboard, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-f6e04a7d2dd6_en?filename=2024%20EU%20Justice%20Scoreboard.pdf

³¹ See above 3.2.2.

³² ECtHR, decision of 26.04.2006 - applications nos. 3955/04, 5622/04, 8538/04 and 11418/04, Zubko and others v. Ukraine, para 69

³³ ECtHR, judgment of 06.11.2023, no. 61721/19, Kubat and others vs. Czech Republic

³⁴ Decision of 4 May 2020 - 2 BvL 4/18, ECLI:DE:BVerfG:2020:ls20200504.2bvl000418, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/ls20200504_2bvl000418.html; The plaintiffs in the original proceedings are a presiding judge at the regional court

national constitutional requirement, the parameters are valid for the assessment of the appropriateness of remuneration in the sense of objective criteria in general.

According to the decision, an overall view of the parameters used to determine the level of salary shows that the salary granted was evidently inadequate. It is not sufficient to enable judges and public prosecutors to earn a living appropriate to the responsibility associated with their office. The legislature of the state of Berlin must make constitutional regulations with effect from July 1, 2021 at the latest.

Key consideration of the FCC was the principle of maintenance, which is one of the traditional principles of the professional civil service, obliges the employer to provide judges and civil servants and their families with a lifelong living that is appropriate to their rank and the responsibility associated with their office and corresponds to the development of the general standard of living. This establishes the link between the remuneration and the income and expenditure situation of the population as a whole and the state of public finances. This guarantee of a legally and economically secure position forms the prerequisite and internal justification for the lifelong duty of loyalty and the ban on strikes. The legislator for remuneration has a wide scope for decision-making. This corresponds to a cautious constitutional court review. Whether the remuneration is evidently inadequate must be examined on the basis of an overall view of various criteria. This is done in several steps:

At the *first level of the review*, a framework for a fundamentally constitutional design of the maintenance structure and maintenance level is determined using five parameters (comparison of the salary development with the development of the collective wage agreement in the public sector, the nominal wage index and the consumer price index, internal system salary comparison and cross-comparison with the salaries of the federal government and other states). When comparing salaries within the system, in addition to the change in the distances to other salary groups, it is important to look at whether the required minimum distance to the basic security level is maintained in the lowest salary group. A violation of this affects the entire salary structure insofar as the starting point for the salary scale set by the legislature itself turns out to be incorrect.

At the *second level of the review*, the results of the first level are to be combined with the other maintenance-relevant criteria as part of an overall assessment. If at least three parameters of the first stage of the review are met, there is a presumption of unconstitutional underpayment. Conversely, if all parameters fall below the threshold values, appropriate pay is presumed. If one or two parameters are met, the results of the first stage, in particular the extent to which the parameters were exceeded or not met, must be assessed in detail together with the criteria evaluated at the second stage as part of the overall assessment. If the overall assessment shows that the salary under review is to be classified as unconstitutional underpayment, the third stage must examine whether this can be justified in exceptional cases.

Measured against these standards, the requirements of art. 33 para. 5 BL are not met. An overall assessment of the parameters relevant to determining the level of pay shows that the pay granted in the Federal State in the case in the years and pay groups in question was evidently inadequate. It was not sufficient to enable judges and public prosecutors to earn a living commensurate with the responsibility associated with their office and the importance of

(salary group R 2), a judge at the regional court (salary group R 1) and the widow of a presiding judge at the KG (salary group R 3), who was promoted to this office in 2015 and died shortly afterwards. The plaintiffs' objections to the level of salary, which were first raised in 2009, as well as their subsequent lawsuits before the administrative court, were unsuccessful up to the appeal level. The Federal Administrative Court has suspended the appeal proceedings in order to refer the question to the FCC as to whether the remuneration in the above-mentioned salary groups is compatible with art. 33, para. 5 of the BL.

these offices for the general public, in line with the development of the general economic and financial situation and the general standard of living. When setting the basic salary rates, the attractiveness of the office of a judge or public prosecutor for suitably qualified staff, the reputation of this office in the eyes of society, the training required of judges and public prosecutors, their responsibility and their demands were not sufficiently taken into account.

For all years covered by the proceedings, it can be seen that the salary development in the previous 15 years had lagged behind the development of the collective wages in the public sector and consumer prices by at least 5%. In the years 2010 to 2014, the difference to the collective wage increase was over 10%. The minimum gap requirement in the lower salary groups was also consistently clearly violated. With regard to the development of the nominal wage index and in a cross-comparison with the salaries in the federal and state governments, the relevant threshold values were not exceeded. Because three of the five parameters of the first level are thus met, there is a presumption of unconstitutional under-remuneration.

This is confirmed when the other criteria relevant to remuneration are included in the overall assessment. The office of a judge or public prosecutor is associated with diverse and demanding tasks, which is why high demands are placed on the academic career and qualifications of those holding it. Nevertheless, the Federal State in the case has not only lowered the formal recruitment requirements, but has also hired a significant number of applicants who had not achieved a grade ("fully satisfactory" and better) in both exams. This shows that remuneration has no longer fulfilled its quality assurance function of encouraging consistently above-average employees to enter the higher judicial service in Berlin. Comparisons with comparison groups outside the public service do not lead to a different assessment in the overall assessment. Finally, various cuts in the area of aid and pension law must be taken into account, which have further reduced the income available for current living expenses.

Conflicting constitutional law, which also includes the obligation to consolidate the budget, cannot justify this undercutting of the salary level required by art. 33, para. 5 BL. In particular, the State has not demonstrated that the sometimes drastic decoupling of the salaries of judges and public prosecutors from the general economic development in the state was part of a coherent and comprehensive concept of budget consolidation in which the savings should be achieved in a way that is fair to all, as required by the constitution.

In the same line and with a reference to the German Constitutional Court the **Slovenian Constitutional Court**³⁵, when assessing the conformity of remuneration legislation with the constitutional principles of independence of justice and separation of state powers, compares the financial status of judges with other officials of the two other branches of state power, e.g. the legislative and the executive. In assessing whether judge's salaries in a manifestly inadequate manner and are such inconsistent with the principle of judicial independence, the Constitutional Court cannot, as a rule, rely solely on the amount of a judge's basic salary, but taking into account a number of criteria which, either individually or as a whole, indicate whether the salary of judges complies with the mentioned constitutional principle. The assessment of whether there has been a constitutionally inadmissible decline in the real value of judges' salaries can be based on the comparison of the rate of growth of judges' salaries over a given period and the rate of increase in consumer prices or the rate of inflation over that period. In this context, any increase in the basic salary of judges due to promotion cannot be taken into account³⁶. Further on a comparison between the growth in judges' salaries and the

³⁵ Constitutional Court of the Republic of Slovenia. Decision of 01.06.2023 - U-I-772/21

³⁶ Para 70

growth of the average salary in the state ³⁷ and with the development of the income of employees with comparable qualification to those of judges³⁸, e.g. public servants employed at the courts, can be indicators.

4. Conclusion

Notwithstanding the fact that the international and European standards on adequate remuneration of judges as described under 2.a. were not adopted in the form of internationally legally binding instruments, they serve as interpretive tools. On the other hand the law of the European Union displayed under 2.b. sets binding requirements on the appropriateness of judge's remuneration. It has to be assessed against objective criteria as developed in the jurisprudence of the Constitutional Courts and described under 3. Wherever there is a significant gap in the development of the financial situation of judges and the general development in the mentioned fields, it can be established that remuneration of judges is inadequate.

³⁷ Para 75

³⁸ Para 78