

Increasing the independence of Supreme Judicial Courts through their financial autonomy, August 2018

There can be no rule of law without a guarantee of independence for the Judiciary. Independence of the Judiciary and the supreme courts composing it is a direct consequence of the principle of the separation of powers and a necessary corollary to the legal protection of rights of citizens. The independence of judges and courts is not an end in itself; this is a necessary condition for a democratic state under the rule of law, including protection of human rights and freedoms. It is not a privilege but one of the main duties of a judge and courts, arising from the right of every person who thinks that his rights or freedoms are violated to an independent and impartial arbiter. Without independence, a fully-fledged judicial branch is impossible and cannot exist. Guided by the democratic spirit and respect for the rule of law, the judiciary can fulfil its duty and function to administer justice only when it is autonomous and independent of other state authorities ? legislative and executive. All other state institutions should contribute to consolidating this independence, since it is the quintessence of the office of the judge.

While the independence of courts is traditionally broad over the organic and functional levels, the financial dimension of independence is also indispensable to judicial independence. Protecting the independence of judges and courts in the interest of the administration of justice includes giving them the concrete resources they need to fully perform their judicial duties properly and efficiently, and to consider cases fairly and within a reasonable time as required by Article 6 of the European Convention on Human Rights. The courts must have the assurance from the other two state powers that they will have sufficient operating resources and financial autonomy in the management of these resources. Yet the tendency that appears, in some European Countries, is for insufficient financial resources for the Judiciary, which adversely affects its independence and efficiency.

This goes contrary to the principles of the independence of courts in financial matters, recognized in international documents such as the report on Funding of the Judiciary 2015-2016 from the European Network of Councils of the Judiciary (ENCJ)[1]

, the Rule of Law Index from the Venice Commission (section E.1.a, part x with Explanatory Notes)[2] and Opinion no. 18 (2015) of the Consultative Council of European Judges (CCJE) on The position of the Judiciary and its relation with the other powers of state in a modern democracy[3].

This is why the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union, a framework for discussions on the values and principles of a democratic justice system serving its citizens, and exchanges on best practices to meet these imperatives, took up the question during its discussions.

On the basis of these discussions, the Network makes the following recommendations, which are focused on the position of supreme courts but are also valid for other judicial bodies:

RECOMMENDATIONS

I General requirement for the budget of the supreme courts

An appropriate level of funding must be made available to enable supreme courts to manage their functions properly and efficiently, and to consider cases fairly and within a reasonable time as required by Article 6 of the European Convention on Human Rights.

Calculate the amount of the budget of the court by reference to its real needs and take account of the financial strength of the relevant state, but give the needs of the court a high level of priority

II Budget development

Ensure the real representation of the supreme court in the preparation and alignment of its budget and enable a representative of the supreme court, in the context of a management dialog on shared objectives, to have parliament or/and any other *constitutionally authorized institution* as a direct point of contact for the preparation and discussion of the court's annual budget and have the preparation and parliamentary adoption of the court budget to include a procedure that will take into account the opinion of the court .

III Decision making on the court budget

Make decisions on the allocation of funds to the court with the strictest respect for judicial independence based on objective and transparent criteria.

Establish a protective mechanism for preventing budgetary restrictions.

Create a budgetary mechanism based on certainty over longer-term financial needs.

Do not finance the courts on the basis of discretionary decisions of official bodies, but in a stable way on the basis of objective and transparent criteria.

Where it is compatible with the constitutional order of a particular state, give supreme courts a specific budget program within the budget adopted by the parliament

IV Control

Provide a practical method of financial control, respecting the judicial independence of the court.

(August 2018)

[1] https://www.encj.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf

[1]

[2] [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e) [2]

[3] <https://wcd.coe.int/ViewDoc.jsp?p=&id=2383483&Site=COE&direct=true> [3]

Attached file:

[Increasing the independence of Supreme Judicial Courts through their financial autonomy, August 2018](#)[4]

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Links:

- [1] https://www.encj.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf
- [2] [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)
- [3] <https://wcd.coe.int/ViewDoc.jsp?p=&id=2383483&Site=COE&direct=true>
- [4] https://www.network-presidents.eu/sites/default/files/increasing_the_independence_of_supreme_judicial_courts_through_their_financial_autonomy.pdf