

EAJ Working Group on Judicial Salaries and Pensions

Overview of current practice regarding the procedure for establishing/modifying the remuneration scheme for judges and the involvement of the judiciary

At the meeting of the European Association of Judges in Yerevan (May 9th, 2025), the Working Group on Judicial Salaries and Pensions submitted for discussion and adoption the Statement on the Material Independence of Judges, a document representing the outcome of the group's work, based on the responses of 30-member associations to the questionnaire on the material independence of judges and also based on the case law of the CJEU and the ECHR, as well as on national case law.

The General Assembly unanimously adopted the Statement containing 22 minimum standards of material independence of judges, supported by an explanatory memorandum.

The purpose of the present document is to provide an overview of how judges' remuneration is regulated. A distinction can be made between the remuneration scheme (i.e., what are the different categories of remuneration that exist and how they are allocated to different judges) and the decisions on the evolution of remuneration (increase or decrease) within the existing scheme, e.g., in line with inflation or other developments.

This paper is not concerned with the detailed description of the scheme or the concrete development of the level of remuneration, etc., but aims to provide an overview of current practice in different countries. The overview is based on the responses of 21-member associations to the second questionnaire of the Working Group on Judicial Salaries and Pensions. Consequently, the footnotes refer to the country/countries to which each situation relates, as indicated in the replies received by the Working Group.

Responses to the second questionnaire were received from the following (in alphabetical order): 1) Austria; 2) Cyprus; 3) Estonia; 4) Finland; 5) France; 6) Germany; 7) Hungary; 8) Italy; 9) Latvia; 10) Lithuania; 11) Luxemburg; 12) Moldova; 13) Netherlands; 14) Norway; 15) Poland; 16) Portugal; 17) Romania; 19) Slovenia; 29) Sweden; 21) Ukraine.

This document aims to provide the basis for each member association to identify good practices in their country, enabling the Working Group to draft and present a document of general applicability on good practices in accordance with the minimum standards contained in the Statement on the Material Independence of Judges.

1. The level at which the procedure for creating/correcting and modifying (increasing and decreasing) the remuneration scheme is regulated

There are two systems governing the remuneration scheme for judges: by law or by negotiation. The setting of judges' salaries should take into account an analysis of the complexity of their various duties in order to ensure that the consistency of the remuneration system can be assessed¹.

When the remuneration system is regulated by law, the level or method of regulation varies and may be provided for in the Constitution² and/or in a common law for all civil servants³ or in a separate law for

¹ *Finland; Romania*

² *Cyprus, Ukraine*

³ *France: decree of the Council of State*

the judiciary⁴. There are cases where the remuneration of judges in a country is provided for in different levels of legislation at the same time⁵ or in legislation of the same level, i.e., in legislation common to all civil servants and also in legislation specific to the judiciary.

When determined through negotiation, judges' remuneration is not regulated by law or by any higher legal document, but is set individually⁶, with the procedure being regulated by an agreement⁷. It is also possible for judges' remuneration to be established in a mixed system, through the law on the legal status of judicial officials and specified in a general ministerial measure. The law may provide for the need for an agreement between the minister and a specific judicial association on issues related to the legal status of magistrates⁸. The remuneration of judges can also be implemented both as legal salaries and through collective agreements. The system for regulating the terms of employment is governed by a collective agreement act. Additionally, the negotiation procedure has been agreed upon in the main state agreement that complements the collective agreement legislation⁹.

2. The involvement of the judiciary in the procedure to create/fix and amending (increasing and decreasing) the scheme of remuneration

(a) Non-involvement of the judiciary

Judiciary is not directly involved in issues related to salaries, as salaries are set by law¹⁰. Where Parliament requests the opinion of the judiciary, the Chief Registrar shall attend any relevant meeting, but his involvement shall not be decisive or mandatory¹¹.

Courts and judicial representatives do not participate in the negotiation of the national collective agreement. Although the method for calculating judges' salaries is laid down by law, salary increases do not depend on objective criteria (such as inflation, GDP growth, or changes in the average wage), but

Luxembourg: the remuneration of judges is determined by law, which is the same law that regulates the salaries of public servants.

Romania: Law on the remuneration of personnel paid from public funds;

Slovenia: Act on the Common Foundations of the Public Sector Salary System (known as Salary Act).

⁴ *Austria:* Judicial and Prosecutorial Service Act

Estonia: Salaries of Higher State Servants Act;

Germany: remunerations of judges are regulated by law, separately on the federal level and the level of the federal states.

The relevant legislation has though to comply with the requirement set by the federal constitution;

Latvia: Law on Remuneration of Officials and Employees of State and Local Government Authorities;

Lithuania: Law on Judges' Remuneration;

Poland: Act on the System of the Common Courts;

Portugal: the Statute of the Judicial Magistrates, which can only be amended by a law passed by the National Parliament;

Serbia: Judges' salaries are regulated by law (Law on Judges) and determined once a year, when adopting the budget for the following year, by the National Assembly (Parliament);

Hungary: Act on the Legal Status and Remuneration of Judges.

⁵ *Moldova:* Law on the Status of Judges and Law on the Public Sector Salary System;

Romania: the procedure for creating, fixing, and amending remuneration schemes is primarily regulated by law (Law on the remuneration of personnel paid from public funds), statutory act adopted by Parliament and, to a significant extent, by Government Emergency Ordinances;

Ukraine: the procedure for establishing and amending the judicial remuneration scheme is set out in the Constitution of Ukraine and the Ukrainian Law on the Judiciary and the Status of Judges;

⁶ *Sweden*

⁷ *Norway:* The 1999 agreement was formally concluded between the main trade union organizations and the Ministry of Labour and the Ministry of Labour and Government Administration (renamed the Ministry of Digitalisation and Public Governance).

⁸ *Netherlands:* The law regarding the legal position of judicial officers determines that the Minister and the Dutch Association for the Judiciary should reach agreement on the topics relating to the legal positions of judicial officers.

⁹ *Finland:* The Constitutional Law Committee specified (in opinion PeVL 19/200) that in the Constitution, the terms of employment refer to aspects such as judges' salaries and other essential conditions of their employment.

¹⁰ *Estonia*

¹¹ *Cyprus*

rather on agreements between the Government and national trade unions, of which judges are not members¹².

(b) Involvement of the judiciary in the procedure

The council of the judiciary is constitutionally mandated to safeguard the independence of the judiciary, which includes giving opinions on draft legislation affecting judges' status, including judicial remuneration. To this end, the council may convene general meetings of judges from all courts in order to obtain the judges' views, which will be used in formulating the council's opinion on the draft legislation¹³. The opinion of the judicial council must be sought on all draft legislation concerning the organization and functioning of the courts, the legal status of judges, their appointment, promotion, rights, and obligations, including amendments to the law on judges' remuneration¹⁴. Usually, representatives of the judicial council, the supreme court and the judges' association are invited to a joint meeting where coordination takes place. Usually, informal consultation takes place already in the phase of preparing the proposal, but only at the level of the supreme court and the ministry of justice and/or the government¹⁵.

The judicial council submits proposals for the financing of the judiciary, which are considered when the state budget is being formed¹⁶. All budget proposals submitted by the courts of appeal are centralized at the two main authorizing officers (the ministry of justice and the supreme court), which must obtain the assent of the judicial council on the courts' budget proposals¹⁷.

The judicial council prepares the budget proposal for the following year and submits it to the ministry of finance. If there are no objections, the proposal is included in the draft budget law, which is submitted to the National Assembly for adoption. If the minister of finance has objections, consultations are held with the judicial council. If no agreement is reached, the proposal is included in the draft budget law only if it falls within the defined scope of expenditures, i.e., within the funds determined by the ministry of finance. If not, the ministry of finance itself determines the funds, including those for judges' salaries¹⁸.

The president of the council of the judiciary has the right to make proposals for the draft annual budget law and those proposals must be submitted to parliament without amendment¹⁹.

The president of the supreme court may issue opinions and participate in consultations, but does not directly decide judicial remuneration. He / she, however, plays a key role in proposing budget drafts and salary schemes applicable to judicial staff and judges, subject to the council of the judiciary consultation. The chief justice ensures the participation of the highest judicial authority in the process of formulating proposals for the judiciary's financing²⁰.

Associations of judges can express their observations in the parliamentary process²¹. A representative of the association of judges also may participate in a meeting of the parliamentary legal committee²². Professional associations of judges can express positions and propose amendments to remuneration-

¹² *Lithuania;*

Norway: The Ministry of Digitalisation and Public Governance makes an annual decision regarding the salary level for judges.

¹³ *Romania*

¹⁴ *Hungary; Slovenia*

¹⁵ *Slovenia*

¹⁶ *Ukraine* – High Council for Justice

¹⁷ *Romania:* In Decision No. 227/October 15, 2019, of the Superior Council of Magistracy it was held that material independence is part of the constitutional concept of judicial independence.

¹⁸ *Serbia*

¹⁹ *Hungary*

²⁰ *Romania; Ukraine*

²¹ *Germany*

²² *Latvia*

related laws²³. Changes in remuneration are the result of negotiations between the minister for justice and the association of judges²⁴. The association of judges is not an official party to the agreement on the procedure for setting judges' salaries, but participates in its conclusion²⁵. However, even though it is the ministry that makes an annual decision on the level of judges' salaries, the judges' association sends an annual letter before the ministry's decision, and the court administration also provides information to the ministry²⁶.

Associations of judges advocate for salary rights in accordance with the principle of material independence of judges and can participate in parliamentary debates²⁷, but do not directly influence decision-making.

All concerned actors may deliver an opinion in the frame of the legislative process (spontaneously, without being asked to do so). This opinion will be published and will be accessible to the members of parliament and everyone else. Depending on the exact objective of the projected reform, the government / minister of justice will actively request an opinion from one or several specific actors (sometimes even before the issuing the draft law)²⁸.

As a rule, these entities issue opinions, but their position is not binding on the legislative or executive power²⁹. The involvement of the judiciary is only at an advisory level, but hearing the opinion of the judicial power within the meaning of the division of power means that, in case this opinion is not taken into account or is only partially taken into account, the legislator has a duty to provide justification for its action to such extent that, if the court had to evaluate the compliance of the action of the legislator (the decision taken) with the Constitution, this justification would provide all the information necessary for the inspection of commensurability³⁰.

The council of the judiciary submits proposals on the financing of the judiciary, which are binding and must be taken into account when drafting the state budget³¹. Failure to request the opinion of the judicial council results in a violation of the Constitution. When a legal provision establishes the obligation to request the opinion of a public authority for the adoption of a normative act, the parliament or the government, as the case may be, has the obligation to request it, regardless of whether the opinion is consultative or mandatory³².

The government accepts to negotiate with the judges' association in view of a future legislative reform concerning judges' remuneration. The outcome of these negotiations will be implemented by the upcoming legislative reform³³. Judges and public prosecutors constitute a small group within trade union for the public sector. The competent representation within the trade union works closely with the association of judges. The union conducts salary negotiations with the government, the result must be

²³ *Moldova*

²⁴ *Netherlands*

²⁵ *Norway*: This refers to the 1999 agreement. *See supra*, 7

²⁶ *id*

²⁷ *Romania*

²⁸ *Luxembourg*

²⁹ *Hungary*: Since the judicial salary base determining judges' salaries is not set by the law on the legal status of judges but by the law on the budget, the National Judicial Council is not entitled to comment on this law.

Portugal: The parties involved are the Superior Council of the Judiciary and the Portuguese Judges' Union Association;

Serbia: There is no legal possibility for the judicial council to veto the decision of the Minister of Justice or the Government;

Slovenia: The Judicial Council and the Supreme Court of the Republic of Slovenia can only participate in the Committee on Justice of the National Assembly (Parliament), and never in the plenary session that discusses the law and ultimately adopts it.

Moldova; Norway; Romania

³⁰ *Latvia*, Judgment of the Constitutional Court of 18 January 2010 in Case No. 2009-11-01, para 11.5

³¹ *Romania; Ukraine*

³² *Romania*, Constitutional Court Decision No. 221/2020, para. 54

³³ *Luxembourg*

approved by parliament. The outcome of the negotiations is implemented through corresponding legislative amendments³⁴.

The draft decrees concerning, on the one hand, the pay scales for magistrates and, on the other hand, the levels of bonuses paid are submitted for review to the trade unions representing magistrates, which discuss the draft before bodies composed of representatives of the ministry and the unions. The administrative section of the Council of State verifies that decrees comply with higher-level texts (Constitution, organic laws, etc.)³⁵.

Larger unions occasionally support judicial staff in broader public sector negotiations. They may support the wage demands of judicial staff (clerks), but their opinions are advisory and have no formal impact on laws specific to the judiciary³⁶.

In systems where negotiation plays an important role, the remuneration of judges upon appointment is decided by courts administration authority after hearing the judge and the chief judge at the concerned court. Chief judges' remuneration at appointment is decided by courts administration authority after negotiations with the judge³⁷. The law determines that the minister and the association for the judiciary should reach agreement on the topics relating to the legal positions of judicial officers³⁸.

General trade union is involved in the negotiations and also represents the association for judges. The involvement is foreseen binding, but all activities and negotiations are conducted by the union. Judges' salaries are based on universally applicable collective agreements. Individual judges are not involved in negotiations concerning their salaries, but are represented by the union³⁹.

Judges may participate individually in the procedure concerning the evolution of their salaries. Throughout the entire evaluation process, on which the evolution of their salaries depends, judges have the right to be heard and informed. In addition to the obligation to submit a report on their activities over a four-year period to the judicial council responsible for their evaluation, the system also provides that, at their request, judges may be heard by both the judicial council and the Superior Council of Magistracy (CSM). Furthermore, it is expressly provided that they must be heard in any case, both when new functions are assigned following an initial negative assessment and subsequently during the second assessment. It can therefore be concluded that judges participate in the career advancement process⁴⁰.

3. Right to strike

(a) Prohibition of the right to strike

The strike of judges is prohibited by the law⁴¹. Of course, it did not stop judges from protesting in any ways against the threats towards the rule of law, including the material independence of judges⁴². Every citizen has the right to freedom of assembly, regardless of their profession. Judges can also take part in demonstrations, as already happened⁴³.

³⁴ *Austria*

³⁵ *France*

³⁶ *Romania*

³⁷ *Sweden*

³⁸ *Netherlands*: The law regarding the legal position of judicial officers determines that the Minister and the Dutch Association for the Judiciary should reach agreement on the topics relating to the legal positions of judicial officers.

³⁹ *Finland*: Negotiations take place every four years.

⁴⁰ *Italy*

⁴¹ *Estonia; Germany; Latvia; Luxembourg; Norway; Ukraine*

⁴² *Poland*: The March of 1000 Robes, chains of lights etc.

⁴³ *Hungary*: Judges took part in demonstrations on February 22, 2025, in Budapest; "In defense of judicial independence." Approximately 5,000 to 7,000 people including supporters and sympathizers participated in the demonstration.

There have been various protests by judges over the years, particularly against government decrees perceived as threats to judicial independence. Judges went on protest primarily in response to the government's salary cuts and austerity measures. Also, the president of the high court requested the allocation of budgetary resources both for the full payment of monthly salaries at the level set by his order and for the payment of salary arrears from previous years, but the minister of finance refused to approve the budget increase. The situation was likely to affect the principle of material independence of judges and prosecutors, the status of judicial authority and the separation of powers in the state. Therefore, the situation created by the executive led the vast majority of courts to adopt a form of protest. The decision to initiate protest action was taken at general meetings of judges from every court involved and was endorsed at national level by the council of the judiciary⁴⁴.

This issue has already been discussed, with some considering that judges do not have this right. However, in practice, judges have gone on strike several times. These strikes were called by the judges' association⁴⁵. The legislation does not explicitly prohibit judges from striking. However, provisions of the Code of Judicial Ethics may be interpreted as prohibiting judges from striking⁴⁶.

In law concerning all governmental employees it is regulated that the right to strike does not apply to governmental functions of great or crucial necessity. It has never been tried, but one could presume that judges would be considered belonging to that group⁴⁷.

(b) Judges are allowed to strike

Strikes and participation in strikes are protected under constitutional law, as Article 11 of the European Convention on Human Rights (ECHR) guarantees the right to form and join trade unions. This so-called freedom to strike also includes the right to take industrial action in important cases. The association of judges (union) would be the one to call the strike⁴⁸.

Judges are not excluded from the general right to strike⁴⁹. The association for the judiciary issued an official warning for indefinite actions (not excluding a strike) during negotiations. There have been private discussions with the judicial council and the general prosecutor's office regarding the conditions for continuing all essential judicial functions. The way in which the judicial system operated during the first round of restrictions during the Covid pandemic served as a model⁵⁰.

Judges officially have the right to strike. In a situation without a contract, judges can go on strike like other civil servants. The judges' trade union would handle the practical arrangements and organization of the strike. The right to strike actions is one of the important principles of the public sector collective agreement system⁵¹.

The status of magistrates prohibits "any concerted action likely to halt or impede the functioning of the courts", provisions which must be combined with the principle of protection of the right to strike both by the Constitution and by international treaties (United Nations Covenant on Economic and Social

⁴⁴ *Romania*: In June 2023 and in December 2023, the vast majority of courts went on protest. Around 3,000 Romanian judges went on protest. Previously, protests involving most of the country's courts—80% or more—took place in 2009, 2015, and 2019.

⁴⁵ *Portugal*: Portuguese judges have gone on strike 4 times since 1974 (1988, 1993, 2005, 2018-2019). These strikes were called by the Portuguese Judges Association.

⁴⁶ *Lithuania*: Code of Judicial Ethics: "In accordance with the principle of independence, a judge must refrain from activities that would impede the proper performance of judicial duties or restrict his or her conduct as a judge" and "In accordance with the principle of duty, a judge must perform duties impeccably, in a timely, professional, and competent manner".

⁴⁷ *Sweden*

⁴⁸ *Austria*

⁴⁹ *Cyprus*: There has been only one case where judges went on a work stoppage for a couple of hours that was called by the judges' association.

⁵⁰ *Netherlands*: It is about the 2022 negotiations.

⁵¹ *Finland*

Rights, European Social Charter). In principle, as the right to strike is constitutionally guaranteed, any prohibition of this right must be expressly provided for in a text⁵².

Neither the Constitution, nor judicial laws or even the law on strikes explicitly prohibit strike in the judiciary. It can therefore be interpreted that strikes are allowed, subject to the minimum organization of the work process. Nevertheless, there is a widespread opinion among lawyers that judges do not have the right to strike. Only a trade union or a majority of employees may call a strike. Since there is no union of judges, but only a union of judicial system employees, the decision to call a strike would be difficult to adopt and implement from a legal standpoint⁵³.

No regulation prohibits judges from striking, despite numerous concerns that judges are striking against themselves. However, the right to strike is severely limited by law, as all urgent matters must be completed. The strike is announced by the strike committee, which is appointed by the general assembly of the judges' association as judges do not have a trade union⁵⁴.

4. The possibility of a judicial review regarding the scheme of judges' remuneration. Remedy of individual judges, if they do not receive the remuneration they should. Enforcement of court decisions in such cases

The remuneration has to be appropriate in light of the office of the judge or public official, the qualification he or she is required to have and the responsibility he or she has in the office⁵⁵. The Constitution provides that the remuneration and other conditions of service of each judge shall not be altered to his / her disadvantage after his / her appointment⁵⁶.

The amount of remuneration of judges having equivalent judicial positions is differentiated by the length of service or functions performed⁵⁷. The benchmark for determining a judge's basic salary is set out in general legal provisions applicable for several years or in specific provisions. For example, the benchmark for determining the base salary in a given year is the average salary of the previous year. The basic salary of a judge is determined in rates, the amount of which is determined with the use of multipliers of the basis for determining the basic salary. The rates of basic salary for particular judicial posts and multipliers, used for determining the amount of basic salary of judges in particular rates, are determined⁵⁸.

Another method is to recalculate the base amount every two years⁵⁹.

In connection with the function performed, a judge is entitled to a function allowance. No social security contributions shall be paid on the remuneration of judges⁶⁰.

The law introduced, in favour of judges, a special allowance known as the "judicial allowance" established to compensate for the particular burdens that characterize judicial activity, which is performed without specific time limits. The mechanism which entails the withholding of the allowance in all cases of absence from service— even those arising from situations specifically protected under the Constitution, such as illness and parental leave—has led part of the case law to question the

⁵² *France*: However, the exercise of the right to strike must ensure the continuity of public justice services.

⁵³ *Serbia*

⁵⁴ *Slovenia*: Judges have so far gone on strike twice, the first time during the judicial reform and salary reform in 2008, which lasted almost a year as a so-called white strike, and the second time last year (2024) for only 14 days, when a 14-day warning strike was organized due to the non-implementation of the Constitutional Court's decision.

⁵⁵ *Germany; Romania*

⁵⁶ *Cyprus*

⁵⁷ *Poland; Romania; Ukraine*

⁵⁸ *Poland*: If the average salary is lower than the average salary announced for the second quarter of the preceding year - the basis for determining the basic salary of the judge in the previous amount is adopted.

⁵⁹ *Lithuania*

⁶⁰ *Poland*

constitutional legitimacy of this legal provision. The Constitutional Court has consistently ruled out any conflict with the Constitution, on the grounds that the latter requires only that, in certain circumstances (e.g., illness), the worker retains his or her employment and has means adequate to meet living needs. In the case of judges, these are fully guaranteed by the recognition of the "basic" remuneration⁶¹.

In certain cases, the base salary is calculated by multiplying the relevant salary coefficient by the base amount, the coefficient being provided by law and varying depending on the level of the court⁶², the position held and the seniority of the judge⁶³. The basis for judicial remuneration is the base salary. The amount of the base salary is determined by the annual budget law⁶⁴. Salaries are determined in the form of salary grades, and the value of each salary grade is also determined⁶⁵.

Another method of calculation is based on state budget laws that establish a separate subsistence minimum for able-bodied persons, used to determine a judge's base salary⁶⁶.

Raises in salary is decided on a yearly basis. The central parties of labour unions and the agency for government employers negotiate on the general raise and eventually agree on a percentage applicable for all government employees. This percentage will then be used to calculate which total amount each court has to distribute for raises of judges' salaries. The distribution of raises among the judges at a specific court is decided by the chief judge after negotiations with each judge. It is not allowed for the chief judge to consider how a specific judge has decided in different cases. Instead, the differentiation of raises should be based on how the specific judge has contributed to the court operations in other aspects and for example the risk of the judge leaving the appointment for another job. What aspects should be considered is however not defined in any legal document. The remuneration of judges always includes social insurance but does not any more benefits than what is included in public social welfare⁶⁷.

The salary progression of judges is based on the mechanism of "professional evaluations" carried out every four years, that is, on a system of periodic assessments aimed at verifying the professional skills of judges throughout their service. Successful completion of these evaluations determines career advancement. Judges' salaries shall be adjusted by operation of law every three years. There appear to be no delays in the payment of salaries, although delays may occur in the payment of salary arrears connected with changes in pay grade⁶⁸.

Every judge may bring to court any change in his or her individual legal position that occurs as a result of change in general applicable rules⁶⁹. Judges can individually⁷⁰ or through the judges' association appeal to the courts to have their rights recognized. Court decisions are generally enforced by the bodies responsible for processing salaries⁷¹.

⁶¹ *Italy*: Article 3 of Law no. 27/1981: Constitutional Court, judgment no. 287 of 14 July 2006; Constitutional Court, orders no. 290/2006; no. 302/2006; no. 137/2008; and no. 346/2008.

⁶² *Lithuania*: Law on Judges' Remuneration;

Latvia: Law on Remuneration of Officials and Employees of State and Local Government Authorities (The monthly salary of a judge is determined by applying a coefficient to the basic monthly salary, which varies depending on the court.)

Romania: Law on the remuneration of personnel paid from public funds

Serbia: The National Assembly determines the salary base by the Law on the Budget System, while the coefficients are fixed and vary depending on the level of the court, as determined by the Law on Judges.

⁶³ *France*: Remuneration is based on an index that varies according to the position held and seniority of the judge.

⁶⁴ *Hungary*: The annual central budget law stipulates that it cannot be lower than the previous year's amount.

Romania: As judges advance in the court hierarchy (from district courts to county courts, courts of appeal, and the high court), their salaries increase in accordance with the court coefficients provided for by law. There are also differences in remuneration between executive and management positions.

⁶⁵ *Slovenia*

⁶⁶ *Ukraine*

⁶⁷ *Sweden*

⁶⁸ *Italy*

⁶⁹ *Netherlands*

⁷⁰ *Norway*

⁷¹ *Portugal*

A judge can apply to the Constitutional Court regarding the compliance of the legal provisions regulating the remuneration of judges with the Constitution. There are no mechanisms for enforcing the Constitutional Court's ruling. There is planned to determine the responsible institution by law in the future, possibly the state chancellery.⁷²

The remuneration of judges and public officials and its constitutionality is subject to judicial review. This compensates in the eye of the constitutional court the lack of collective bargaining and the prohibition of strike. However, the competence to declare a law and therefore also the law on remuneration of judges and public officials unconstitutional and void is exclusively vested in the Federal Constitutional Court. There is no possibility of a direct motion to that court. An applicant has to file a complaint in the administrative court of first instance. If this court is convinced the law is unconstitutional it presents the case directly to the Federal Constitutional Court. Otherwise, the applicant can if there is no other appeal possible bring a constitutional complaint to the Federal Constitutional Court. In this system only individual judges and public officials but not their associations or unions or any other institution has standing to bring the scheme of remuneration before any court. Due to the limits in standing and the lengthy and costly court procedures, this system is considered to be highly inefficient to guarantee adequate remunerations. It is therefore proposed to amend procedural law aiming to give standing also to associations and unions of judges and public officials, to shorten legal process and to facilitate decision-making by the Federal Constitutional Court. If this Court declares a law on remuneration unconstitutional and void it obliges parliament to pass a new legislation in line with the constitution and to apply it retroactively (only) to those judges and public officials who applied to the court. There is no further remedy, not even interest on the final sum⁷³.

Actors such as individual judges, associations of judges, the supreme court, parliamentarians, the ombudsman and others can challenge the judges' remuneration law before the Constitutional Court. The supreme court holds a special role, as it can initiate such a challenge even before the law is promulgated, ensuring that judicial independence and other constitutional rights are protected. Judges have the right to challenge the constitutionality of laws relating to their remuneration in ordinary court proceedings if they consider that these laws violate their constitutional rights, such as judicial independence or equality before the law. If the request meets the legal requirements, the court refers the matter to the Constitutional Court for a ruling on its constitutionality. There have been cases where legal provisions or even entire legislative acts have been declared unconstitutional because they disregarded the principles that such legal provisions must comply with, in relation to international and national regulations on the status of judges and prosecutors⁷⁴.

The council of judiciary, as well as a relevant court, any state body or at least 25 deputies in the National Assembly, may institute proceedings for assessing the constitutionality of a law that impacts judicial salaries. In such cases, it would be up to the Constitutional Court to decide whether to initiate formal proceedings. If not, the constitutional appeal would be rejected. If a judge's salary is reduced, he or she is entitled to file a lawsuit before a court for compensation. Court decisions in such cases are enforced⁷⁵.

The council of the judiciary first filed a request for the assessment of the constitutionality of the law⁷⁶ and, since the decision, which was in favour of the judges and established the unconstitutionality of the law in the part determining the salaries of judges, was not complied with by the deadline⁷⁷, the council of the judiciary also filed a request for the enforcement of this constitutional decision. Within 8 days of receiving the salary and pay slip (which constitutes an administrative decision), the judge may request the president of the court where he or she serves as a judge to issue a new decision and pay that is

⁷² *Latvia*: In practice, the application has been submitted by a group of judges or the judicial council.

⁷³ *Germany*

⁷⁴ *Romania*

⁷⁵ *Serbia*

⁷⁶ *Slovenia*: the Act on the Common Foundations of the Public Sector Salary System, known as the Salary Act.

⁷⁷ Deadline was January 3, 2024

constitutionally compliant. The president of the court cannot grant such a judge's request because he or she is bound by the law. The judge may request a pay that is constitutionally compliant before the labour court within the next 30 days, but this request will also be rejected or the court may suspend the proceedings and request an assessment of the constitutionality of the law. A court decision cannot be enforced without a change in the law.

Individual judges may initiate legal proceedings in the administrative courts to challenge non-payment or incorrect calculation of their salary. Judicial decisions in such cases are binding and enforceable. If the decision is in favour of the judge, the ministry of finance or responsible public body must comply. Enforcement is carried out via the national system of enforcement officers⁷⁸.

Judges can file a civil lawsuit against the state before the ordinary civil courts, requesting payment of the outstanding salary rights, plus any applicable penalties such as interest for late payment. If the court rules in favour of the judge, the decision becomes enforceable once it is final. In practice, though: even if state authorities are generally obligated to comply with court decisions, the enforcement has always been delayed normally by 5 years, but recently by different sessions of 5 years, due to budgetary constraints and administrative hurdles; in some cases, if voluntary payment is not made, judges may initiate enforcement proceedings through a bailiff to force the state to pay. Moreover, if enforcement is excessively delayed, judges may further appeal to courts or, ultimately, to the European Court of Human Rights (ECtHR), claiming a violation of their right to a fair trial and effective remedy (Article 6 §1 and Article 13 ECHR). For more than 20 years, given that the provisions on remuneration have been either inadequate or incorrectly applied, judges and prosecutors have obtained numerous final judgments (in the thousands) or generally binding decisions that have not been transposed immediately and in full or have been subject to deferral and rescheduling procedures on the basis of government ordinances adopted annually⁷⁹.

Courts may refer questions to the Constitutional Court when examining specific cases on judges' remuneration. Judges have repeatedly brought actions concerning reduced salaries or other social guarantees, leading courts to refer these matters to the Constitutional Court. Judges, the Judicial Council, or associations representing judges are not entitled to directly apply to the Constitutional Court⁸⁰. The association of judges may not have direct standing to bring such a motion, but may submit *amicus curiae* briefs or support stakeholders who do have standing⁸¹.

Judges have the right to appeal against the actions or inaction of the bodies responsible for calculating or paying judicial remuneration to the district administrative court at the location of the defendant. If a judge believes that a law or a particular provision thereof which forms the basis for a reduction or non-payment of remuneration, violates their constitutional rights, the judge may file a constitutional complaint with the Constitutional Court. This court emphasized that "Proper material and social security for judges administering justice and retired judges is one of the guarantees of their independence, and should ensure the administration of fair, independent and impartial justice. The guarantees of a judge's independence, including measures for their material and social security, apply to all judges and cannot be cancelled or reduced by other regulatory acts"⁸². All judges should have the same guarantees, including remuneration, regardless of how they were appointed or how courts were reorganised⁸³. Judgments in favour of judges regarding reinstatement or additional remuneration payments are generally enforced. However, delays are often caused by a lack of budgetary funding, necessitating repeated appeals to the executive service or the court regarding the bailiff's inaction.

Judges may initiate service court proceedings in cases of disputes concerning remuneration. Disputes concerning their remuneration (unless they fall exclusively within the jurisdiction of the service court)

⁷⁸ *Moldova*

⁷⁹ *Romania*

⁸⁰ *Lithuania*

⁸¹ *Moldova*

⁸² *Ukraine*: Constitutional Court Decision No. 2-p(II)/15 April 2020

⁸³ *id.*, Constitutional Court Decision No. 3-p(II)/26 March 2024

may also be brought before the ordinary courts. If there is a violation of fundamental rights, judges may submit a constitutional complaint. The decisions of the service court are not public, so there is no data on whether judges have appealed to the service court in connection with their salaries. There is also no data on whether judges have initiated labour litigation or filed constitutional complaints, so no data on enforcement is available⁸⁴.

Trade unions may appeal against laws and decrees before the administrative courts (litigation section of the Council of State) to have them annulled in the event of formal irregularity or violation of a higher norm (law, Constitution) or for abuse of power (deviating from the intended purpose, contrary to the public interest) or manifest error of assessment (e.g., a measure that would impose remuneration or working conditions that bear no reasonable relation to the public interest objective pursued)⁸⁵. An individual judge cannot challenge a decree relating to the remuneration of all magistrates. However, a judge can challenge an individual decision concerning them that would result in a reduction in their remuneration, for whatever reason, before the administrative courts. There have already been appeals against decisions on index-based reclassification (a judge who has had a previous career and whose seniority is not correctly taken into account, resulting in remuneration lower than that to which he or she is entitled), or to challenge individual decisions relating to the application of bonuses, e.g., a decision to reduce the variable bonus (set each year by the head of the court of appeal based on the "performance" of each magistrate)⁸⁶.

The law providing the remuneration scheme is, as every other law, subject to a conformity check with higher standards, such as those set in the Constitution or European/International texts (EU Charter of Fundamental Rights, European Convention on Human Rights, etc.). There has been a constitutional review by exception through a preliminary ruling. A judge who doesn't get paid his legal remuneration may file a claim before the administrative courts. As the case may be, he / she may also file a suit (claim for damages) against the state before the civil courts⁸⁷.

Lawsuits regarding judges' salaries can be processed either in a general court or, if it is a dispute concerning the interpretation of a collective agreement, in the labour court. If a judge doesn't get the salary they deserve, they can ask the court administration/ministry of justice for it and, as a last resort, take the case to an administrative court⁸⁸.

Certain members of the judiciary referred specific cases to the Court of Justice of the European Union on the grounds that EU law was incompatible with domestic law in relation to remuneration⁸⁹.

5. Recommendations or warnings regarding the topic of the procedure of the scheme of judges' remuneration, the height of remuneration and the involvement of the judiciary

(a) Recommendations

The economy of a state should guarantee judges a sufficient and substantial salary increase every year⁹⁰.

⁸⁴ *Hungary*: It is not known whether a constitutional court motion has been filed in relation to the remuneration system for judges, but there is concern that this would be interpreted as a budgetary issue, as such issues cannot be challenged before the Constitutional Court.

⁸⁵ *France*: The appeal must be lodged within two months of the publication of the text.

⁸⁶ *id.*

⁸⁷ *Luxembourg*

⁸⁸ *Finland*

⁸⁹ *Hungary; Romania*

Norway: There is no procedure for judicial review of the determination of judges' salary levels. In a hypothetical situation, however, it is possible to imagine that the judges' association could bring a lawsuit before the ordinary courts, claiming that the ministry's salary determination is invalid (for example, if the salary determination were in conflict with the ECHR or the EEA Agreement (Norway's agreement with the EU)).

⁹⁰ *Poland*

The determination of judges' salaries and related matters should be regulated by law, and that the authority to set salary levels should be transferred from the ministry to the parliament, which would make decisions after the matter has been reviewed by an independent commission⁹¹. The legal regulation of matters related to judges' remuneration should include mandatory consultation of judges' associations. There should also be an explicit prohibition on reducing remuneration as a safeguard for judicial independence and the principle of the separation of powers. Furthermore, legal and constitutional norms should be established to ensure that judges' remuneration is fundamental to safeguarding the principle of judicial independence⁹².

Stable, autonomous, predictable, remuneration system: Judges' salaries should be regulated by law, through clear, objective, and transparent criteria, not left to discretionary decisions by the executive or ad hoc political changes. Stability protects judicial independence⁹³.

Involvement of judicial bodies: The judiciary (through judicial council, supreme court and representative judicial associations) should be consulted in any reforms or decisions about their remuneration. Their opinions should be seriously considered, even formally binding in some circumstances⁹⁴.

Possible correlation of remuneration with objective indicators in order to automatically adjust it in line with inflation and economic conditions, thereby reducing political manipulation⁹⁵. Courts should be placed on an equal position with other branches of government in terms of remuneration. In other words, increases in judges' salaries should be determined in line with other branches of power, based on an automatic mechanism⁹⁶.

Constitutional or statutory safeguards: Ideally, constitutional provisions or strong statutory rules should forbid reducing judges' salaries during their terms (except for severe economic emergencies) to prevent pressure on the judiciary. Also, there should be a strong legal prohibition on consecutively modifying the remuneration and work conditions of the judges during a 5-year period. There should be stability of remuneration and work conditions for the judges, who should never fall below the level of protection existing at the beginning of their employment⁹⁷.

Effective legal remedies: Ensure judges can access transparent, fast, and independent judicial remedies if their remuneration rights are infringed, without fear of retaliation⁹⁸.

Implementation of mechanisms to protect judges' right to adequate remuneration: the right to appeal against the actions or inaction of the bodies responsible for calculating or paying judicial remuneration to the court⁹⁹.

Since the remuneration of magistrates is an essential component of the independence of the judiciary, it is important to raise awareness among the other branches of government (executive, legislative) of the need to ensure adequate remuneration for magistrates, to demand compliance with European standards, and to be able to compare the level of remuneration of magistrates with that of professions with a comparable status. In the absence of procedures expressly providing for the involvement of representatives of the judiciary in the determination of remuneration, it is essential that judges take

⁹¹ *Norway*

⁹² *Cyprus; Portugal*

⁹³ *Romania; Moldova*

⁹⁴ *id.*

⁹⁵ *id.*

⁹⁶ *Hungary*

⁹⁷ *id.*

⁹⁸ *id.*

⁹⁹ *Ukraine*

action to at least make proposals and obtain negotiations on this point before losing their purchasing power, credibility, and independence¹⁰⁰.

(b) Warnings

The best solution would be to have a clear regulation by the law. However, experience indicates that laws may be changed if political situation changes¹⁰¹.

The greatest risk to judges' proper social security is the politicisation of their remuneration, temporary budgetary constraints and attempts to 'regulate' their material independence through evaluation mechanisms, disciplinary liability or bylaws¹⁰².

Ensure equal treatment: Creating unjustified differences between judges without objective reasons risks constitutional challenges and promotes division within the judiciary¹⁰³.

Judges should have the option of an institutional approach: Judges who individually request salary increases in courts without an institutional framework (e.g., through the judicial council, courts, or professional organizations) have less chance of success than through collective, institutional action, which is much stronger and more secure¹⁰⁴.

Individually set salaries are incompatible with basic and fundamental principles safeguarding every judge's independence. The outcome (since 2005) is not what the system was believed to ensure when it was created, namely to inspire judges to work harder and contribute more to the courts operations and to facilitate the recruitment of new judges. There are no structured evidence suggesting that judges work harder or better under the system with individually set wages. Normally the differences in yearly raises of salaries are so small that the predominant effect is irritation among judges. Since several years the courts are also suffering from considerable difficulties in recruiting judges. The 'business benefit' of the system is by many considered very low. In addition, the head of the courts administration authority is appointed by the government, which makes the judiciary's representation in these questions very poor. This link between the government and the judiciary is however going to cease in the near future, and the courts administration authority will be controlled fully without governmental representation¹⁰⁵.

Linking judges' salaries too closely to political decisions or annual budget constraints can undermine judicial independence¹⁰⁶.

Delays or arbitrary changes in salary schemes without consultation with the judiciary may affect morale and the integrity of the system¹⁰⁷.

Any change in remuneration requires agreement with the minister of justice. The power of the association of judges is in fact limited to a right of veto. The system does not contain any safeguard that remuneration keeps pace with salaries in the public sector nor the inflation will be compensated for. A system should at least hold substantive rules according to which the remuneration has to be determined. The weakness of the system is that it does not protect against deterioration of salaries in case the minister does not agree to any rise¹⁰⁸.

¹⁰⁰ *France*: Emphasis has been placed on alignment with other magistrates, administrative or financial, but also with other senior civil servants whose responsibilities and constraints are comparable, yet who are often much better paid than judicial magistrates.

¹⁰¹ *Estonia*

¹⁰² *Ukraine*

¹⁰³ *Romania*

¹⁰⁴ *id.*

¹⁰⁵ *Sweden*

¹⁰⁶ *Moldova*

¹⁰⁷ *id.*

¹⁰⁸ *Netherlands*

For decades judges and public officials were satisfied with the current system since parliament observed the general political consent that judges and public officials have to receive an appropriate remuneration. But since the beginning of the century remunerations came under pressure and the general political approach now is to limit them to the lowest possible amount. Remuneration should be in line with European standards. This would include automatic adjustments¹⁰⁹.

Although the law prescribes that a judge has the right to a salary and pension in accordance with the dignity of the judicial function and the judge's responsibility and that the amount of the judge's salary and pension should guarantee independence and financial security, the existing system does not provide for that purpose. In fact, the level of the salaries threatens judicial independence because judges' salaries depend directly on the will of the executive and legislative authorities and are among the lowest in Europe. Worst of all, there is a risk of a shortage of professional staff, as young lawyers, especially the most qualified, do not want to become judges¹¹⁰.

Following the reform (as of 1 July 2023), bonuses for seniority and for increased workload were abolished. Although judges' salaries were set at a higher level than before the reform, they remain significantly lower than the levels were paid in 2008 when adjusted for the cost of living (average wages, GDP, and other economic indicators). There remains a risk that judges' salaries may not be increased in line with objective economic indicators – such as inflation, average wages or GDP growth. Any future increases depend on political will, as judges and their representatives are excluded from the salary review process¹¹¹.

In countries where mutual respect between branches of government and legal tradition and culture do not exist, judges are probably first called upon to use all possible legal remedies. Unfortunately, there is no guarantee that the executive branch will respect court decisions. Therefore, in these countries, in addition to discussions, requests and the envisaged legal channels, judges have also had to resort to extreme measures, such as strike. Another option, again depending on the legal culture in the individual country, is through the public, but only if the level of trust and understanding of the (general) public about the importance of the rule of law is high. Therefore, discussions and coordination are in place first¹¹².

Those entitled to submit constitutional court motions include the President of the Republic, the Government, one quarter of the members of the parliament, judges, the chief prosecutor, and the ombudsman. So far, no leader or representative of the other branches of government has spoken out in favour of the courts¹¹³.

¹⁰⁹ *Germany*

¹¹⁰ *Serbia*

¹¹¹ *Lithuania*

¹¹² *Slovenia*

¹¹³ *Hungary*