Career safeguards and judicial governance

Duro Sessa
Judge of Supreme Court of Republic of Croatia
Member to CCJE
IAJ Honorary President

Introduction

- The protective mechanisms for judicial independence do not exist for the benefit of the judges themselves, but rather to protect the rights of citizens and ensure the rule of law. Judicial independence is not a personal privilege of judges, but a fundamental guarantee of a fair and impartial trial for the public.

- The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts. / Recommendation 2010/12, para 11./
- Two way street- State establish guarantees of independence for benefit of citizens.
- Newer ending story- How much independence State realy wants, and do citizens understand enough concept of independence!

CONSTITUTIONAL AND STATUTORY REGULATION

- The basic principles ensuring the independence of the judiciary should be set out in the Constitution or equivalent texts.
- CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §22
- See also CDL-AD(2016)015, Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Right of Recourse by the State against Judges, §§48-49.

Independence and impartiality - definition

- Independence means independence from the executive and the parties. Courts should also be independent from the legislature except in so far as they are bound to apply laws emanating from the legislative body.
- While ‘independence’ primarily is a question of absence or presence of organic links between the judiciary and the other poles of public power, ‘impartiality’ is something normally decided in light of the circumstances of a particular case.
- Lack of independence may create impresion of lack of impartiality

- The European Court of Human Rights highlights four elements of judicial independence:
- manner of appointment,
- term of office,
- the existence of guarantees against outside pressure - including in budgetary matters - and
- whether the judiciary appears as independent and impartial
- (Campbell and Fell v. the United Kingdom, 28 June 2014, 7819/77 and 7878/77, § 78.)

Manner of appointment

Decisions concerning the selection and career of judges should be based on objective criteria pre established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

No discrimination!!

Authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers

At least half of the members of the authority should be judges chosen by their peers.

Term of office

- Security of tenure and irremovability are key elements of the independence of judges.
- Guaranteed tenure until a mandatory retirement age.
- Early retirement should be possible only at the request of the judge concerned or on medical grounds.
- Probationary period ???
- No transfer to another judicial office without consenting to it, except in cases of disciplinary sanctions????
- or reform of the organisation of the judicial system

Guarantees against outside pressure - including in budgetary matters

- Judicial activities are only subject to the supervision of higher courts through the appeal framework ,
- Law guarantees the right to a competent judge (“natural judge pre-established by law”)-/Zand v. Austria, 7360/76, 16 May 1977, D.R. 8, p. 167; ECtHR Fruni v. Slovakia, 8014/07, 21 June 2011, § 134ff/
- Law clearly determines which court is competent and sets rules to solve any conflicts of competence?
- iv.Random allocation of cases /CM/Rec(2010)12, § 24/
- Withdrawal of a judge from a case is excluded other than in case a recusal by one of the parties or by the judge him/herself

Budgetary matters

- Is the financial autonomy of the judiciary guaranteed?
- In particular, are sufficient resources allocated to the courts, and is there a specific article in the budget relating to the judiciary, excluding the possibility of reductions by the executive, except if this is done through a general remuneration measure?69
- Does the judiciary or the judicial council have input into the budgetary process?
- Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions.

Does judciary appears as independent and impartial

- Justice must not only be done, it must also be seen to be done
- / Lord Chief Justice Lord Hewart in the 1924 English case R v Sussex Justices, ex parte McCarthy., De Cubber v. Belgium, 9186/80, 26 October 1984, § 26: Micallef v. Malta, 17056/06, 15 October 2009, § 98; Oleksandr Volkov v. Ukraine, 21722/11, 9 January 2013, § 106. /
- If there is no independence, there isno fair trial, and if there is no fair trial, there is no justice. /Türkmen v. Turkey, no. 43124/98, §62, ECHR, 2006./
- Measures to fight corruption
- Declaration of assets and interest
- Ethical Standards

Judicial Governance

Judicial governance refers to the set of rules, decisions, and institutions that regulate and oversee the functioning of the judicial system, with the aim of ensuring its independence, efficiency, and accountability.

Unlike judicial administration (which deals with the day-to-day internal management and technical organization of courts), judicial governance encompasses the broader political and institutional framework for the exercise of authority within the judiciary.

Key aspects and functions of judicial administration

Management of judicial careers: Determining the processes for the appointment, promotion, and advancement of judges within the system.

- Judicial accountability: Conducting disciplinary proceedings and imposing sanctions on judges in the event of a breach of duty.
- Funding and resources: Making decisions regarding the judiciary's budget, the allocation of resources, and the management of infrastructure.
- Safeguarding independence: Protecting the judiciary from political influence by the executive and legislative branches.

By Whom

Judges
Presidents of Courts
Judicial Councils
Association of judges
Executive and legislative branch of power through system of checks and balances
Media?
Public?
NGO?