



Fifth opinion, of 5 April 2019, of the Ibero-American Committee for Judicial Ethics on the ethical implications of debt levels and retirement of judiciary staff. Rapporteur: Luis Porfirio Sánchez Rodríguez

I. Introduction

1. Independence is an essential component associated with the office of the judge. It is a principle reflected in every Code of Ethics, as a prerequisite of the task of judges in a democratic society. Financial independence is quite simply an essential manifestation of that principle.
2. Two very contemporary problems may be observed, associated with the economic independence of judges: debt and insufficient financial resources during retirement.
3. On the one hand, over recent years Ibero-American countries and their citizens have endured an increase in levels of debt. This is the picture presented by the World Bank and the International Monetary Fund for the world as a whole and for our region in particular. Family debt also affects those who work in the Judiciaries of Ibero-America, and should be a focus of attention for this Committee, which should contribute as far as possible to efforts that seek to bring about a change in the culture and financial

education of those who work in the judiciary and those who also sit upon the bench.¹

4. Personal decisions that are detrimental to financial health, reflected in economic commitments to maintain a “social standard” by following patterns of life that are not sustainable over time and are not consistent with reality and one’s own financial resources, added to the widely recognised difficulty of regaining solvency, - *including high interest rates on loans and pressure from creditors* -, represent a heightened risk of vulnerability for the independence and transparency of any judicial system. Specific examples of such risks are: unduly favouring or expediting ongoing cases in exchange for gifts.
5. In these times when life expectancy is increasing in our countries, it is of vital importance to develop social welfare systems on the basis of objective criteria. This consideration is particularly relevant in the case of the people responsible for the administration of justice. As each country has its own Social Security system, the rules that apply to the retirement of judiciary staff are very varied, which may have an impact on the professional performance of judges if they depend on economic forecasts that are less than favourable.
6. Constitutional charters that safeguard the budgetary autonomy of the judiciary are undoubtedly a guarantee of independence, since they prevent the insufficient allocation of resources by other branches of government from transforming ultimately into the inefficient and ineffective administration of justice.

¹ Llena Miralles, R. and Preciado Doménech, C.H., [La jubilación de jueces/as y magistrad@s](#) [retirement of judges], Comisión Sindical de Jueces para la Democracia [Trade Union Committee of Judges for Democracy], Madrid, 2011.

7. The Committee intends to examine, on a forward-looking basis, these problems of debt among judges, judiciary staff in general and retirement from the perspective of the principle of financial independence, in order to explore the ethical implications thereof. Furthermore, the report concludes with a set of recommendations that aim to strengthen the position of judges and ensure the impartial performance of judicial duties.

II. Financial independence and debt levels of judges and judicial staff.

8. The Ibero-American Code of Judicial Ethics establishes in Article 5: *“Judges may claim recognition of their rights and demand to be provided with the means to enable or facilitate their independence”*.

9. Likewise Article 82 of the Code sets out: *“Judges should take the necessary steps to prevent reasonable doubts arising as regards the legitimacy of their income and assets”*.

10. Despite having the institutional and budgetary framework necessary to perform public service, many people may be exposed to potential acts of corruption or conflicts of interest, due at times to basic family needs caused by their level of debt. This is particularly serious when it arises in the administration of justice. The worst problems occur when people in a critical financial situation come to see their standard of living as something normal or commonplace. In other words, their salary is no longer reason enough for them to do their job; instead they ask for gifts to help overcome difficulties encountered in judicial offices.

11. The Human Resources Management Department of the Costa Rica Judiciary recently carried out a study to determine the level of debt among

judiciary staff which provides input to implement a prevention programme that began in late 2018, called “*Healthy Finances*”, which entails a process of financial education and restructuring of debts with soft interest rates, coordinated with banks and associations, with voluntary participation by any civil servants who find it necessary. This therefore becomes an institutional measure that helps to manage the risk of corruption that may be caused by high levels of debt among judiciary personnel. This programme also envisages the possibility of carrying out a damage repair process if disciplinary proceedings are underway due to debt default by the civil servant,² with the obligation to take courses on financial management and avoid taking on new debts.

12. It is important to take on this institutional programme not merely as a question of prevention. Moreover, it aims to promote awareness and social welfare among judiciary staff, seeking a culture shift in the way income is administered, an essential step towards achieving peace of mind and personal and family stability, but it also aspires to be a solution for people with major debt problems who are caught up in situations that have led to disciplinary action, as an alternative to a possible sanction that may worsen their financial situation or even end in dismissal.

13. When we talk about Ethics we mean “*thinking before you act*” and “*achieving goals*”, both personally and professionally. We should all perform constant exercises of conscience and critically assess our way of life, evaluating our actions in each decision we make in the light of its personal and professional implications. For those of us who work in the judiciary, this exercise in self-criticism should be compulsory.

² Article 192.9 of the Costa Rica Organic Law on the Judiciary sets out: “*The following are considered serious misdemeanours: (...) 9. Unjustified non-payment of a credit obligation, which they must satisfy as the principal debtor and which is being recovered via judicial proceedings.*”

III. Financial independence and retirement of judges

14. The Basic Principles on the Independence of the Judiciary, adopted by the UN General Assembly in November 1985, in reference to the conditions of service and tenure of judges, impose on States the obligation that the term of office of judges, their independence, security and “adequate remuneration, conditions of service, pensions and the age of retirement” shall be adequately secured by law.

15. In the Council of Europe, the European Charter on the Statute for Judges, drawn up in Strasbourg on 8 July 1998, establishes, inter alia, in point 6.4: “... the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge”. In the Magna Carta of European Judges, approved by the Consultative Council of European Judges, principle 7 is enshrined, according to which: “Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law”.³

16. The Universal Charter of the Judge, adopted at the meeting of the International Association of Judges Central Council in Taipei, Taiwan in November 1999, recognises the need to provide judges with appropriate remuneration and guarantee them a good retirement scheme, by setting out in Article 13: “The judge must receive sufficient remuneration to secure

³ CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE), [Magna Carta of European Judges \(Fundamental Principles\)](#), 17 November 2010, Council of Europe, Strasbourg.

*true economic independence. The remuneration must not depend on the results of the judge's work and must not be reduced during his or her judicial service. The judge has a right to retirement with an annuity or pension in accordance with his or her professional category. After retirement a judge must not be prevented from exercising another legal profession solely because he or she has been a judge".*⁴

17. The European Court of Human Rights, in reference to delays and non-payment of salaries and retirement pensions to four Ukrainian judges, stated in 2006 that *"the failure of the State to provide judicial benefits to judges in a timely manner is incompatible with the need to ensure their ability to exercise their judicial functions independently and impartially, in order to be shielded from outside pressures aimed at influencing their decisions and behaviour"*⁵.

18. Moreover, in 2018 and 2019 the Court of Justice of the European Union reiterated the importance of judges' financial independence. In two judgments of considerable importance, it ruled on the challenges brought by the Trade Union of Portuguese Judges and a Spanish judge, against the significant cuts in judges' salaries introduced as a result of the economic crisis in 2011 in Spain and in 2014 in Portugal.⁶ To this end, the Court of Justice stressed on the one hand that *"The guarantee of independence... is inherent in the task of adjudication"*; and, on the other hand, it insists that: *"the receipt by those members [judges] of a level of*

⁴ <http://www.iaj-uim.org/universal-charter-of-the-judges/>

⁵ European Court of Human Rights, judgment of 26 April 2016, Zubko and others v. Ukraine, applications nos. 3955/04, 5622/04, 8538/04 and 11418/04 § 68.

⁶ Court of Justice of the European Union, judgment (Grand Chamber) of 27 February 2018, Associação Sindical dos Juizes Portugueses, C-64/16, EU:C:2018:117, paragraph 42; and judgment of 7 February 2019, Carlos Escribano Vindel / Ministerio de Justicia C-49/18, EU:C:2019:106, paragraph 65. See also the reference to the Council of Europe in the Opinion of Advocate General Henrik Saugmandsgaard Øe, delivered in case C64/16 on 18 May 2017, paragraphs 75 and 76.

remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence”.

19. The Basic Principles on the Independence of the Judiciary, adopted by the UN General Assembly in November 1985, in reference to the conditions of service and tenure of judges, imposes on States the obligation that the term of office of judges, their independence, security and “*adequate remuneration, conditions of service, pensions and the age of retirement*” shall be adequately secured by law.⁷

20. At the Ibero-American level, the Statute of the Ibero-American Judge, adopted at the Sixth Ibero-American Summit of Supreme Courts of Justice, held at Santa Cruz de Tenerife, Canary Islands, Spain in May 2001, makes reference in the preamble to the need to identify not only ethical values and principles, but also the “*minimum resources necessary to ensure that judicial duties are discharged independently*”.⁸

21. Specifically regarding the salary and social security status of judicial personnel, the Statute of the Judge seeks to provide the necessary economic stability to ensure that staff are retained and that they perform properly, averting risks that may arise from a potential debt. As such, it sets out in Article 32: “*Remuneration. Judges must receive adequate remuneration that cannot be reduced and is appropriate to the importance of the duties they discharge and to the demands and responsibilities entailed therein*”. And Article 33 adds: “*Social Security. The State must provide judges with access to a social security system and ensure that at*

⁷ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

⁸ <https://www.icj.org/wp-content/uploads/2014/10/Statute-Iberoamerican-Judge.pdf>

the end of their service due to retirement, illness or other legally stipulated contingencies or in the event of personal, family or material damage arising from the discharge of their duties, they will receive a decent pension or appropriate compensation. It is advisable, to the extent permitted by the prevailing economic situation, to establish a security system for judges that includes multiple risk insurance".⁹

22. Independence has several facets including, as means of attaining it: irremovability, incompatibilities and prohibitions, immunity from legal process and financial independence. The retirement of judges, far from merely being a question of remuneration or a professional issue, constitutes an element that deeply influences the independence of those who exercise jurisdiction.

23. In regard to financial independence and social security, it is important to take account of important constitutional mandates that provide an example of protection for judges in retirement. Article 50 of the Spanish Constitution instructs public authorities to guarantee sufficient financial resources for senior citizens. This requirement, related to Article 402 of the Organic Law on the Judiciary, mandates the State to ensure the financial independence of judges by means of a Social Security system that protects them and their families during judges' retirement.

24. Other important aspects in this sphere are the age of retirement, which is debated around 65 and 72, the way pensions are calculated when final years' contributions are included and caps on these pensions. These aspects are fundamental to plan a decent retirement in order to ensure that

⁹ IBID 4.

judicial duties are discharged effectively and independently, in isolation from contexts of authority other than the Constitution and the Law, and, as such, with the assurance of independence in rulings.

25. Similarly, in certain countries the problem is more acute because access to the highest courts is limited to a period established by the constitution, at the end of which judges cease their service and no longer belong to the Judiciary. Constitutional and legal regulation of the end of judges' tenures in Supreme Courts varies considerably and reflects a great diversity of historical evolutionary paths. In this case, the judges in question may be particularly young and unable to retire and, because of constitutional and legal rules, they might have already left the judiciary, where they attained the highest levels of professional prestige, and may be many years away from retirement, which could compromise their independence during the discharge of their duties as Supreme Court judges.

26. In countries such as Spain, an attempt has been made to respond to these situations, either from the perspective of current legislation (in this case no problems arise as regards the judicial career of anyone appointed to any high judicial office in Spain or the European Union) or from the standpoint of a number of legislative proposals (to overcome the significant problem of statutory limitations on the maximum retirement pension).

27. Regarding the first matter, in Spain membership of the judiciary grants access to national Supreme Courts, in particular the Supreme Court and Constitutional Court, but also to European courts, such that once judges complete their established term of office in the Constitutional Court or in European Courts, they return to their post as a judge or as a Supreme Court judge. As such, it is clearly justified to guarantee special service

leave when a judge is appointed to the Constitutional Court or a European Court from the perspective of ensuring the financial independence of Spanish judges when they are assigned to the Constitutional Court or supranational European courts.

28. For example, Article 38 of the Finance Law for 2018 set the maximum annual amount for state pensions at 36,121.82 euros, which represents about 50% of a retiring judge's annual salary and approximately less than a third of the salary of a Supreme Court or Constitutional Court judge¹⁰.

29. As regards financial considerations for people working in the judiciary, there is insufficient data to determine whether this affects people's integrity when making decisions or not. As such, it is important to be aware of the effect of "ethical dilemmas", aspects that may cast doubt on people's most rational decisions depending on their family, economic, social, security or life status. It is therefore essential to have recourse to people of proven integrity in the Judiciary and to safeguard their "family, financial and social welfare", so that their integrity is not undermined by any elements of financial pressure that may affect their ethical judgement.

30. The Code of Ethics for the judiciary, adopted by the Spanish General Council of the Judiciary under the title Principles of judicial ethics on 22 December 2016, contains a list of provisions regarding the independence of judges. In particular, the Spanish Code refers to "*independence, which delineates a space for judicial decision-making that is free from undue influence*". Indeed, the principle of independence is considered in nine of the thirty-five ethical rules of the Spanish Code.

¹⁰ Law 6/2018 of 3 July, Finance Law for 2018, (*Official State Gazette* no. 161 of 04 July 2018); see the proposals in MARTÍNEZ MOYA, Juan, and M^a C. SÁEZ RODRÍGUEZ (eds.), *La protección social de la carrera judicial* [Social protection in the judiciary], Ediciones BOE, Madrid, 2018, pp. 364-365.

31. With regard to financial independence, the Spanish Code reflects and paraphrases the provisions of the Ibero-American Code. Paragraph 4 of the Code therefore reads as follows: *“It is the duty of judges to demand that, in order to perform their functions independently, public authorities should facilitate objectively appropriate working conditions and consequently provide human and material resources”*. Paragraph 5 of the Spanish code of judicial ethics reiterates this idea: *“It is the duty of judges to demand any legal improvements that may further judicial independence as a safeguard for citizens”*.

IV. Recommendations

32. The Ibero-American Committee for Judicial Ethics calls on the Ibero-American Judicial Summit to implement effective processes for prevention and financial education in each of the Judicial Bodies in which we serve, given that initiatives of this type inevitably require support from institutional hierarchies. This willingness on the part of the judicial authorities is essential to secure strategic allies to help achieve the objective of sound finances among judiciary staff, given that improved financial health will lessen vulnerability and the risk of perpetrating acts of corruption in the administration of justice and will promote family welfare and peace of mind, along with a reduction in disciplinary action in the civil service where it is envisaged in accordance with the corresponding internal rules.

33. The Ibero-American Committee for Judicial Ethics considers it equally crucial to secure decent retirement conditions for people who work in the Judiciary and to promote affirmative action, at times in the face of other branches of government with such a propensity, given that the international economic crisis has led to the review and reduction of said benefits, directly impacting those responsible for the administration of justice, without

considering the consequences thereof on decision-making in challenging financial circumstances, with the future before them and without the support of a retirement pension that discourages unlawful practices in the discharge of judicial duties.

34. The Ibero-American Committee for Judicial Ethics recommends the establishment and promotion of rules to ensure the financial stability of judges in the highest Courts who are not of retirement age at the end of their time in office, allowing them to return to their judicial posts or, if impracticable, awarding them an interim pension or another measure, when the necessary contributions have been made and the only unfulfilled requirement is that they must be of retirement age.