



Palazzo di Giustizia - Piazza Cavour - 00193 Roma - Italia

EAJ Working Group on the Situation of Member Associations
Meeting of the EAJ in Athens, June 1st to June 3rd 2023

Progress Report June to September 2023

1 Introduction

The last report of the WG covered the period from September 2022 to June 2023. This report covers the period from June to September 2023. During the period under review, the WG dealt with

- Statement On Judicial Pensions in **Romania**, Statement respecting the Remuneration of Judges in **Lithuania**, Statement respecting the Remuneration of Judges in **Croatia**, Resolution on the situation in **France**, Statement on current issues affecting judicial independence in the **Republic of Armenia**.
- Hungary

2 Statements, Resolutions made during the meeting of the EAJ in Athens (June 2023)¹

2.1 Romania

A recent draft law on the modification of service pensions dramatically changes the procedure, the conditions of granting and the amount of the service pension of judges: it raises the retirement age, calculates the pension based on the average income of 25 years of work, imposes over-taxation of judges' pensions and recalculates all pensions currently in payment. The Romanian delegation asked for the adoption resolution. There are clear principles in the Universal Charter and clear principles at the European level that also relate to social security and pensions. The Working Group prepared a draft and the Assembly unanimously approved the resolution on judicial pensions in Romania.

2.2 Lithuania

Judges were facing salary problems similar to those of the colleagues in Croatia, i.e., a system based on coefficient, the long-lasting freezing of the salaries, the different approach applied towards other public employees and the consequences in terms of attractiveness of the profession of judge. The Assembly unanimously approved the resolution on remuneration of judges and the underfunding of courts in Lithuania drafted by the WG.

¹ Cf. also the minutes of the EAJ meeting (appendix 1) and the resolutions/statements mentioned (appendix 2).

2.3 Croatia

Judges' salaries in his country are made of a base figure to which is applied a coefficient depending on the position of the concerned judge in the judiciary. The base figure is now lower than ten years ago. Moreover, the salaries of civil servants have been regularly increased following negotiations between the government and civil servant's trade unions and, as a consequence, it may happen that a judge sitting at first instance earns less than the court officials. These circumstances are discouraging people from joining the judiciary and the remedies envisaged by the Government, with a little raise in the salaries, are not enough to solve the problem. The WG drafted a resolution prepared, before the Athen's meeting for this case and the Assembly unanimously approved the resolution on the remuneration of judges in Croatia.

2.4 France

In France the USM (*Union syndicale des magistrats*) was heard by the Venice Commission on the composition of the French High Council and the status of the judiciary since in France the present composition of the Council is not equal and does not correspond to European standards. Disciplinary proceedings are now foreseen according to which anyone who is not happy with a judgement rendered in his/her case may obtain that disciplinary proceedings are initiated against the judge. Moreover, if the commission charged to evaluate the case states that the person's grievance does not deserve attention, the file will be sent to the Minister of Justice who can initiate administrative proceedings on his own initiative. There is a serious risk of judges being destabilized in their daily work. The French Association is not against the pursuit when there is a serious problem but this is not the case. The Assembly unanimously approved the resolution on the draft law on judge's accountability in France, drafted, again, by the WG.

2.5 Armenia

In Armenia it can be noted that there is a lack of transparency and of merit criteria in the appointment of the five non-judicial members of the Supreme Judicial Council and about the fact that the Minister of Justice has the power to start disciplinary proceedings against judges. Moreover, the Armenian delegation stressed the issue of the limitations to the restriction of freedom of expression of judges realized by the establishment of a "network of speakers", authorized to speak on behalf of the judiciary. The Assembly unanimously approved the resolution on current issues affecting judicial independence in Armenia, drafted by the WG.

3 Hungary

At the Athens meeting Ms. Halasz of the Hungarian Association of judges reported about the process of adopting the Hungarian judicial reform package, after the EU Commission requested 27 conditions to be fulfilled and related legislation to be amended in order to access European funds, and its anomalies. She also reported on some unresolved issues, such as the appointment and the duration of the mandate of the President of the Curia. The Hungarian Association was asking the EAJ-Assembly to authorize the President of the EAJ to address a note to the EU Commission, which the Assembly unanimously approved. The WG was commissioned to prepare a draft, which it did on 14th June 2023. Subsequently, the President of the EAJ sent the letter to the President of the EU-Commission (see appendix 3).

In its letter, the EAJ expressed the hope that its information would be useful for the considerations of the EU-Commission and that the EAJ would be "taken on board" when

deciding on the next steps. The EAJ also expressed its hopes that not only the amended legal framework but also its application would further be followed by the European Commission. The EAJ then recommended: „Accordingly, the EAJ contends that the legislation should provide that the President and the Vice President of the National Judicial Council must be elected members of the Council. This rule would prevent the President and the Vice President of the Curia from also being President and Vice-President of the NJC (in order to avoid a concentration of power). Moreover, since the NJC also supervises the administrative activities of the President of the Curia in some fields, it would be a untenable situation were the president of the Council and the Curia to be one and the same person...Further more, the basic principle that no judicial leader who is subject to the power of appointment of the President of the National Office for the Judiciary may also be a member of the Council should apply. A system whereby an NJC member appointed and controlled by the President of the Office controls the activities of his superior, the President of the NJO, is again not tenable.” Finally, the EAJ expressed its hopes that not only the amended legal framework but also its application will be further continued by the European Commission.” (For full text of the letter see appendix 2).

4 Concluding remarks concerning the Work of the WG

Judge Frantisek, president of the Slovak Association of Judges said that thanks to the EAJ statement, prepared by the WG, the most problematic part of the law (transfer without notice) was abolished and today a transfer can only be made with the consent of the concerned judge and, if this is lacking, only for reasons of strict necessity.

At the Athens meeting Justice Picken (UK) was asking the Assembly to express a special thanks to the WG, whose members work in the drafting of resolutions even during the breaks. He exhorted all delegation to be better prepared and to make their request with proper notice, since the drafting of official EAJ statements is a great burden for the entire WG. Even though extraordinary needs may always emerge, it would be preferable to minimize their impact as much as possible.

These statements show two things: First, they show the quite important function of the WG (drafting resolutions, statements, etc.) and their (positive) impact on the situation of the judiciary in the member countries. On the other hand, they also point to a more efficient approach/method of work of the WG, provided that the member associations help with it (early notifications, requests, and suggestions what the EAJ should do).

There are no further requests to the WG so far. If there are more, they will be dealt with at the next annual EAJ-meeting in Taipei – under, hopefully, early communication!

Binningen/Basel, Switzerland, 01-09- 2023

Stephan Gass

Chair EAJ-WG On the Situation of Member Associations

Appendix 1: Minutes of the EAJ meeting in Athens of 2nd June 2023



EAJ minutes Athens
EN[59200079].pdf

Appendix 2: Resolutions/Statements of the EAJ Athens meeting 2023



EAJ resolution on the situation in France
EAJ statement on current issues affecting judicial pensions in salaries of judges
EAJ resolution on remuneration of judges
EAJ resolution on salaries of judges
EAJ resolution on remuneration of judges

Appendix 3: Draft letter to the president of the European Commission concerning the state of the judiciary in Hungary (June 14th 2023)

Dear Madame President,

The European Association of Judges – “EAJ”- understands that the European Commission is currently engaged in examining whether Hungary fulfils the Milestones which were put forward by the Commission as a condition for releasing frozen funds. In the hope that it may be of some assistance the EAJ would like to take this opportunity of offering its assessment in respect of the four milestones which are concerned with the judiciary.

The EAJ believes that the package of legal amendments put forward by the government and adopted by the Parliament on 3 May 2023 contains significant and substantial steps in the right direction. This is especially the case in respect of the enlarged competences of the National Judicial Council (NJC) and the criteria for the appointment of future holders of office as President of the National Judicial Office (NJO) and the President of the Curia. But, at least for a transitional period, there remain some loopholes enabling the exercise of political influence.

As you will be aware, the main problems in recent years were the procedures for the appointment of presidents of courts, where several irregularities allegedly under political influence had been identified, and for the appointment of the President of the Curia. Each of those offices embrace important functions which influence the working conditions and the review or oversight of the work of the other judges of the court in question. The offices also include certain budgetary responsibilities.

The presidents of courts are, and were, appointed by the President of the NJO. The President of the Curia is appointed by the Parliament. However, the NJC has powers of oversight of the President of the NJO and, to a certain degree, of the President of the Curia. This hierarchical arrangement presents the problem that a president of a court, who in that capacity is subordinate to the President of the NJO, may also be a member, or President or Vice-President, of the NJC and thus have powers over the President of the NJO, to whom he or she is otherwise subordinate.

The Consultative Council of European Judges (CCJE) stressed in its Opinion 10(2007) on Councils for the Judiciary at the Service of the Society, para 15 “*The composition of the Council for the Judiciary shall be such as to guarantee its independence and to enable it to carry out its functions effectively.*” It is questionable whether this requirement would be met if presidents and vice-presidents who had been appointed by the President of the NJO may also be members of the NJC.

It is worth remembering that the impetus for the reforms, which radically changed the competences of the Council for the Judiciary and created the NJO, originated in the defective functioning of the Council, in which at that time the court presidents constituted a majority of its members. That majority were in an ongoing conflict of interest between their courts and the judiciary at large.

The EAJ is conscious that in some member states of European Union the President of the Supreme Court is a member *ex officio* of the Council for the Judiciary. Nevertheless, he or she should not chair the Council. In its Opinion 19(2018) on the Role of the Presidents of Courts the CCJE warns, at para 19, that “*In view of the specific tasks of presidents of the Supreme Courts, the CCJE cautions against the risk of excessive accumulation of different powers within their authorities which may have a negative effect on the independence of the judiciary and the confidence of the public in its impartiality*”.

Accordingly, the EAJ contends that the legislation should provide that the President and the Vice President of the National Judicial Council must be elected members of the Council. This rule would prevent the President and the Vice President of the Curia from also being President and Vice-President of the NJC (in order to avoid a concentration of power). Moreover, since the NJC also supervises the administrative activities of the President of the Curia in some fields, it would be an untenable situation were the president of the Council and the Curia to be one and the same person.

Further more, the basic principle that no judicial leader who is subject to the power of appointment of the President of the National Office for the Judiciary may also be a member of the Council should apply. A system whereby an NJC member appointed and controlled by the President of the Office controls the activities of his superior, the President of the NJO, is again not tenable.

On a separate matter the EAJ is also concerned about the position respecting the current President of the Curia. Under the new legislation the current President would no longer be able to hold the post of President. However, the law provides that he may yet remain in his office until his successor is appointed by a two-thirds majority in Parliament. Thus if a successor is not elected when the current president's term of office comes to an end, the rules require the current president to remain in office. This potentially means that as long as the current governing parties have even a one-third representation in parliament, the current president could remain as President of the Curia. In addition, the mandate of the President does not terminate with the general retirement age. Accordingly, the current President can remain in office for the rest of his life. It is therefore necessary to have a provision in the law which excludes the possibility that the current President of the Curia continues in his position after the end of his term of office until a successor has been elected

The EAJ hopes that this information is useful for your considerations and will be taken on board when deciding on the next steps. The EAJ hopes that not only the amended legal framework but also its application will further be followed by the European Commission.

Yours sincerely