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TOWARDS MODERN CHALLENGES IN FINANCING THE JUDICIARY: BETWEEN INDEPENDENCE AND AUTONOMY*

Kondratova Iryna
Judge, Ukraine

Korotenko Tetiana
Assistant Judge, Ukraine

Summary: 1. Introduction – 2. Legitimacy of Reducing a Judge's Reward Under Conditions of Quarantine. – 3. Financial Independence of the Judiciary or Judges Only? – 4. Concluding Remarks.

An independent judiciary is the guarantor of a democratic state governed by the rule of law, which we strive to build in Ukraine. This independence is ensured, among other things, by a

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stable and sufficient funding of the national courts, which has become a significant challenge. The resolution of such issues has been sought in recent decades, but the problem of court financing has become especially acute in the context of the economic crisis and the coronavirus pandemic, which occurred in 2020. This has led to somewhat hopeless feelings about the chosen way of forming the policy of Ukrainian courts financing and its implementation.

Our study attempts to analyze certain aspects of the existing mechanism of financing the judiciary in Ukraine, in particular, through the prism of financial support for judges and assistant judges during the coronavirus pandemic. The functions which they perform can be attributed to the main ones during the administration of justice. The authors propose the analysis of the case on the protection of the right of assistant judges to a decent salary, which lasted for years in all courts of the state. In connection with the coronavirus pandemic in Ukraine, a law was passed reducing the salaries of judges, which is also analyzed in the article.

The search for a new, more modern approach to resolving the issue of a stable financial independence of the judiciary will help to solve urgent problems and ensure a real rule of law in Ukraine. In particular, our proposed approach to the formation of financial autonomy of the judiciary in Ukraine is suggested in this study.

Key words: *judiciary, access to justice during pandemic, COVID Justice, financing of the judiciary, independence of the judiciary, financial autonomy of the courts.*

1. INTRODUCTION

The independence of the judiciary is one of the main principles of its formation and functioning; it is what allows the court to act objectively and impartially in the consideration and resolution of cases. Ensuring the independence of the judiciary is the goal that is sought to be achieved in a modern democratic state governed by the rule of law. The struggle for funding is eternal, but modern challenges set even greater tasks to legislators and the judiciary, namely how to ensure the financial independence of the judiciary in a total crisis and pandemic that depletes the country's economy.

In our study we have analyzed several aspects of the financing of courts in Ukraine, through the example of which it is possible to clearly illustrate the inefficient model of the existing mechanism of financing the judiciary.

The crisis of the judiciary financing in Ukraine has been exacerbated by the coronavirus pandemic, which has been used as an excuse for reducing judges' salaries through legislative changes. Can this ensure the equality of rights between different branches of state power? Can judges feel financially independent in such conditions? This issue has become the subject of the analysis in this article.

The financing of the judiciary is viewed mainly through the prism of determining the salaries of judges, while they are definitely not the only element in the judiciary that provides justice.

There are 1,632 assistant judges in Ukraine,¹ who provide an integral part of the court's activities. At the same time, their financial dependence has not yet been the subject of attention by either legislators or scholars. The example of a case to protect the right to a decent wage, which has lasted for years in all courts of the state, shows that the existing approach is ineffective and needs to be radically changed.

The introduction of a new, more current and adaptive approach to resolving the issue of the stable financial independence of the judiciary would solve urgent problems and ensure the real rule of law in Ukraine, as is proposed in the conclusions.

2. LEGITIMACY OF REDUCING A JUDGE'S REWARD UNDER CONDITIONS OF QUARANTINE

What fairness is there in a system under which the plaintiff in the case (a governmental agency) pronounces the applicable policy, prosecutes the case, and then decides the case to which it is itself a party?

Stanley N Ohlbaum, 'Toward an Independent Judiciary' (1977)

The concept of the independence of the judiciary is multi-layered, but decisive. The court cannot remain in the hands of the legislative or executive branches of power, as this disrupts the balance of power in the state, as well as the general concept of a democratic state governed by the rule of law. 'No liberty, if the power of judging be not separated from legislative and executive powers.'²

There have been repeated warnings around the world to ensure the financial independence of the courts. However, even within one judicial system, there is no uniform approach to the financing of different types of courts. In France, for example, the Constitutional Court and administrative courts are financed autonomously as opposed to ordinary courts, which do not have a direct link with the Ministry of Justice and the Ministry of Finance.³ But the shortcomings of the influence of the legislative and the executive branches on the work of the courts are innumerable, in particular, the ones aptly described by S. N. Ohlbaum have been chosen by us as an epigraph to this part of the study⁴.

The first aspect of this impact concerns the reduction of judges' remuneration in the context of quarantine imposed to prevent the coronavirus pandemic in Ukraine.

1 V Kolishnyi, 'Suddi mozhut zalyshytysja bez pracivnykiv aparatu ta ohoronciv, a kompjutery, mebli ta marky prydbavatymut vlasnym koshtom' ['Judges may be left without staff and security guards, and computers, furniture and stamps will be purchased at their own expense'] (2019) 37/1439 Zakon i biznes <https://zib.com.ua/ua/139293-suddi_mozhut_zalishitsya_bez_pracivnikiv_aparatu_ta_ohoronc.html> accessed 17 July 2020.

2 Ronald M George, 'Challenges Facing an Independent Judiciary' (2005) 80 NYU L Rev 1345 P. 1346-1347.

3 Caroline Expert-Foulquier, 'The Financial Independence of the Judiciary in France' (2020) 11 IJCA 1.

4 Stanley N Ohlbaum, 'Toward an Independent Judiciary' (1977) 16 Judges J 29.

The adopted Law of Ukraine № 294-IX ‘On the State Budget of Ukraine for 2020’ of 14 November 2019,⁵ the Law of Ukraine № 553-IX ‘On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020”’ of 13 April 2020⁶ and other laws provide for a significant reduction in judicial fees which are established by the Constitution of Ukraine (hereinafter – CU), in particular, part one of Art. 126.⁷

Art. 8 of the CU⁸ stipulates that the principle of the rule of law is recognized and in force in Ukraine. The CU has the highest legal force. Laws and other normative legal acts are adopted on the basis of the CU and must comply with it.

Part 2 of Art. 52 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’⁹ stipulates that judges in Ukraine have a single status regardless of the place of the court in the judiciary or the administrative position that the judge holds in court.

The material support of judges, in particular, judicial remuneration, is an integral part of their status, as well as a guarantee of the implementation of the principle of independence of the judiciary. Thus, the actual and legal delegation by the Parliament of powers, the exercise of which has a decisive influence on the issue of material support of judges, to the executive body is unconstitutional. This legal position is based on the fact that despite the fact that the level of judges’ remuneration has been reduced by law, the probable restoration of its state-guaranteed level is legally dependent on the actions of the Cabinet of Ministers of Ukraine.¹⁰

Based on the analysis of the provisions of Law № 553-IX, the size of the material security reduction does not depend on the actual amount of wages received by representatives of the budget sphere before the introduction of such a restriction. However, in this context, attention should be paid to a certain disproportion of this reduction in relation to judges and other representatives of the budget sphere, as this may be evidence of an encroachment on the independence of judges.¹¹

Judges experience the most significant reduction in the level of material support in connection with the adoption of Law № 553-IX, while the level of material support of representatives of the legislative and supreme executive bodies does not change significantly and most employees of budgetary institutions and public authorities do not experience negative consequences in matters of material security in connection with the adoption of Law № 553-IX.¹²

5 The Law of Ukraine ‘On the state budget for 2020’ [2020] Vidomosti Verkhovnoi Rady 5/31 <<https://zakon.rada.gov.ua/laws/show/294-20#Text>> accessed 27 July 2020.

6 The Law of Ukraine ‘On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020”’ [2020] Vidomosti Verkhovnoi Rady 19/126 < <https://zakon.rada.gov.ua/laws/show/553-20#Text>> accessed 27 July 2020.

7 The Constitution of Ukraine [1996] Vidomosti Verkhovnoi Rady 30/141 <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>> accessed 27 July 2020.

8 Constitution (n 7).

9 The Law of Ukraine ‘On the Judiciary and Status of Judges’ [2016] Vidomosti of the Verkhovna Rada 31/545 <<https://zakon.rada.gov.ua/laws/show/1402-19#Text>> accessed 22 July 2020.

10 Resolution of the Plenum of the Supreme Court №7 of 29 May 2020 http://www.ccu.gov.ua/sites/default/files/4_230_2020.pdf accessed 27 July 2020.

11 Resolution (n 10).

12 Resolution (n 10).

Monitoring the salaries of employees in various fields gives grounds to conclude that Law № 294-IX provides for a disproportionate reduction of judges' remuneration in relation to the material support of other employees of budgetary institutions, which in turn, violates the principle of judicial independence. This conclusion applies both to the quantitative ratio of judges who have been restricted compared to other civil servants and to the proportionality of the restriction: most civil servants' material security is reduced from 5% to 30% and in some cases up to 50%, while all judges suffer a reduction from 50 to 85%.¹³

In this case, in accordance with established international standards for ensuring the status of judges, which are formulated in the conclusions of the Venice Commission and the practice of constitutional courts of other states, remuneration for judges may be reduced, but with a certain set of conditions: 1) it is caused by an emergency; 2) reduction of this level applies to all public sector employees; 3) reduction of the level of judges' remuneration is carried out last (in case of budgetary difficulties, judges' remuneration should be especially protected). That is, the reduction in the level of remuneration cannot be disproportionate and discriminatory.¹⁴

Throughout the quarantine period, the courts of Ukraine have not stopped performing their jobs.¹⁵ Judicial authorities have been and are considering cases, including those related to violations of quarantine rules, sanitary, hygienic and anti-epidemic rules and regulations provided by the Law of Ukraine 'On Protection of the Population from Infectious Diseases'¹⁶ and other acts of the current legislation, as well as cases of urgent nature, criminal proceedings, complaints and petitions, which are referred to investigating judges.¹⁷

At the same time, the organization of the work of courts in today's conditions is burdened by the lack of sufficient logistics and necessary funding, as the courts have not received the required number of personal protective equipment against infectious diseases.¹⁸ In the vast majority of cases, these supplies for preventing the spread of infectious diseases for judges and court employees are purchased at their own expense.¹⁹

Thus, as a result of the legislative changes, the remuneration of all judges, regardless of instance, was significantly reduced, which led to a decrease in the achieved level of guarantees of judges' independence and, consequently, to another violation by

13 Resolution (n 10).

14 Resolution (n 10).

15 Rada Suddiv Ukrainy, 'Rada suddiv Ukraïny zvernulasja do kerivnytva derzhavy utrymatys' vid rishen' shhodo obmezhenja suddivs'koi' vynagorody' ['The Council of Judges of Ukraine appealed to the state leadership to refrain from decisions on limiting judges' remuneration'] 2 April 2020 <<http://rsu.gov.ua/ua/news/rada-suddiv-ukraini-zvernulasja-do-kerivnytva-derzavi-utrimatis-vid-risen-so-peredbacaut-obmezenna-suddivskoi-vinagorodi>> accessed 27 July 2020.

16 The Law of Ukraine 'On protection of the population from infectious diseases' [2000] Vidomosti of the Verkhovna Rada 29/228 <<https://zakon.rada.gov.ua/laws/main/1645-14#Text>> accessed 22 July 2020.

17 Appeal of the Council of Judges (n 15).

18 Appeal of the Council of Judges (n 15).

19 During the preparation of this article for publication, there was an unprecedented disconnection of courts from the Internet (see N Mamchenko, 'V sudah problemy z internetom cherez borgy DSA pered Ukrtelekomom' ['Courts have significant problems with the Internet due to debts before Ukrtelecom'] <<https://sud.ua/ru/news/publication/174407-niyakogo-vidklyuchennya-ne-vidbudetsya-yak-u-dsailshili-sudi-bez-internetu>> accessed 27 July 2020), while the Commercial Court of Kyiv considers the claim of the public joint-stock company 'Ukrtelecom' to the State enterprise 'Information judicial systems' for recovery of UAH 7,262,712.91. In fact, it is a question of means which is owed for the corresponding services the State judicial administration of Ukraine.

the legislator of Art. 126 of the Constitution and disregard of legal positions of the Constitutional Court of Ukraine.²⁰

In particular, the Decision of the Constitutional Court of Ukraine of 4 December 2018 № 11-r/2018²¹ clearly states that the reduction of the salary of a judge by the legislature leads to a reduction in the amount of judicial remuneration, which, in turn, endangers the guarantee of judicial independence in the form of material support and is a prerequisite for influencing both the judge and the judiciary as a whole.

In its decision of 3 June 2013 № 3-rp/2013, the Constitutional Court of Ukraine²² stated that any reduction in the level of guarantees for the independence of judges contradicts the constitutional requirement of strict provision of independent justice and the right of every human and citizens to the protection of their human rights and freedoms, because it limits the possibilities of exercising this constitutional right.

In the Decision of 11 March 2020 № 4-r/2020, the Constitutional Court of Ukraine²³ stated that the legislator cannot arbitrarily set or change the amount of a judge's remuneration, using his powers as an instrument of influencing the judiciary.

This indicates that Law № 294-IX in terms of reducing judges' remuneration once again reflects the actions of the legislative branch to reduce the level of judicial guarantees and guarantees of judicial independence in general, and therefore contradicts part one of Art. 126 of the Constitution of Ukraine. The Constitution of Ukraine prohibits discrimination because citizens have equal constitutional rights and freedoms and are equal before the law (Art. 24).²⁴

In addition, Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that the enjoyment of the rights and freedoms recognized in this Convention must be ensured without discrimination on any grounds, such as sex, race, color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth or other grounds. According to Art. 23 of the Universal Declaration of Human Rights²⁵, everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

In accordance with paragraph 2 of Part 1 of Art. 1 of the Law of Ukraine 'On Principles of Preventing and Combating Discrimination in Ukraine'²⁶ (hereinafter – the Law

20 Resolution (n 10).

21 Case №11-r/2018 (the Constitutional Court of Ukraine, 4 December 2018) <<https://zakon.rada.gov.ua/laws/show/v011p710-18#Text>> accessed 27 July 2020.

22 Case №3-rp/2013 (the Constitutional Court of Ukraine, 3 June 2013) <<https://zakon.rada.gov.ua/laws/show/v003p710-13#Text>> accessed 27 July 2020.

23 Case № 4-r/2020 (the Constitutional Court of Ukraine, 11 March 2020) <<https://zakon.rada.gov.ua/laws/show/v004p710-20#Text>> accessed 27 July 2020.

24 Resolution (n 10).

25 United Nations, *Universal Declaration of Human Rights* (10 December 1948) <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 22 July 2020.

26 The Law of Ukraine 'On the principles of preventing and combating discrimination in Ukraine' [2013] Vidomosti Verkhovnoi Rady 32/412 < <https://zakon.rada.gov.ua/laws/show/5207-17>> accessed 27 July 2020.

on Discrimination), discrimination is a situation in which a person and/or group of persons on the grounds of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, nationality, marital and property status, place of residence, linguistic or other characteristics that were, are and may be valid or presumed, is restricted in the recognition, exercise or realization of rights and freedoms in any form established by this Law, except in cases when such a restriction has a legitimate, objectively justified purpose, the ways to achieve which are appropriate and necessary.

Art. 4 of the Law on Discrimination applies to relations between legal entities of public and private law, whose location is registered in the territory of Ukraine, as well as individuals residing in the territory of Ukraine. This Law applies, in particular, to the following areas of public relations: justice; labour relations, including the application of the principle of reasonable accommodation by the employer.

Given the above, we conclude that the reduction of judges' remuneration in the conditions of quarantine imposed on the territory of Ukraine is a manifestation of discrimination in the field of labour.

In this regard, the Plenum of the Supreme Court by its resolution №7 of 29.05.2020²⁷ appealed to the Constitutional Court of Ukraine with a constitutional petition to verify the constitutionality of laws and regulations, which reduced the judge's remuneration during quarantine. The epigraph we have chosen for this article is useful for further research about the question of the fairness of our justice system and the democratic rule of law that we are building.

3. FINANCIAL INDEPENDENCE OF THE JUDICIARY OR JUDGES ONLY?

The primary duty of the judiciary to uphold the rule of law is well understood, therefore, the precondition for the ability to do it, namely the independence of each judge, is mandatory.²⁸ But the principle of judicial independence, of course, applies to all judges in the state, not just to judges of higher courts or judges who hear criminal cases.²⁹ In Canada, this principle also applies to judicial justices of the peace. In our opinion, this example makes it possible to extend this principle to court assistants, who perform an important function, so guarantees of their independence, including the financial, ensure the proper administration of justice.

Pursuant to part one of Art. 157 of the Law of Ukraine 'On the Judiciary and the Status of Judges',³⁰ each judge has an assistant (assistants), the status and conditions of whom are determined by this Law and the Regulation on the Assistants of Judges, approved

27 Resolution (n 10).

28 Jack Beatson, 'Judicial Independence and Accountability: Pressures and Opportunities' (2008) 17 Nottingham LJ 1.

29 Fabien Gelinas and Jonathan Brosseau, 'Judicial Justices of the Peace and Judicial Independence in Canada' (2016) 20 Rev Const Stud 213.

30 Law (n 9).

by the Council of Judges of Ukraine³¹ (hereinafter – Regulation). The legal status and the conditions of activity of assistant judges are determined by the Law of Ukraine ‘On the Judiciary and the Status of Judges’³² and Art. 92 of the Law of Ukraine ‘On Civil Service’,³³ regulations on remuneration of patronage services and this Provision.

The positions of assistant judges belong to the positions of patronage service, which are not covered by the Law of Ukraine ‘On Civil Service’,³⁴ except for Art. 92.

The assistant of a judge is an employee of the patronage service in the court, which ensures the execution of the judge’s powers to administer justice.³⁵

In addition, Art. 66 of the CPC of Ukraine³⁶ defines the procedural status of an assistant of a judge and his/her responsibilities, in particular, the assistant of a judge provides the preparation and organizational support of the trial. The assistant of a judge: 1) participates in the registration of court cases, prepares draft requests letters and other materials related to the consideration of a particular case, executive documents on behalf of the judge; 2) draws up copies of court decisions to be sent to the parties to the case and other participants in the case in accordance with the requirements of procedural law, controls the timeliness of sending copies of court decisions; 3) executes other instructions of the judge related to the organization of court proceedings.

The decision of the Council of Judges of Ukraine №21 of 18 May 2018 approved *the Regulation on the Assistants of Judges*,³⁷ which determines the uniform principles and conditions of activity and the legal status of a person holding the position of assistant judge.

Section III of the above regulation defines the Tasks, Rights and Duties of the Assistant of a Judge. An assistant of a judge has the right to enjoy the rights and freedoms guaranteed to the citizens of Ukraine by the Constitution and laws of Ukraine:

- to receive documents and information necessary to perform their duties of court administration at the place of work;
- to use information databases, telecommunication networks of the relevant court in the prescribed manner;
- to make proposals to the judge on the organization of their work;
- to participate in conferences, seminars, round tables, forums, other scientific and practical events in agreement with the judge, and to undergo internships in the relevant departments of government agencies;
- to take part in meetings, staff meetings and other similar events of the relevant court;

31 Regulation on the Assistants of Judges [2018] <<https://zakon.rada.gov.ua/rada/show/vr021414-18#Text>> accessed 27 July 2020.

32 Law (n 9).

33 The Law of Ukraine ‘On Civil Service’ [2016] Vidomosti Verkhovnoi Rady 4/43 <<https://zakon.rada.gov.ua/laws/show/889-19>> accessed 27 July 2020.

34 Law (n 33).

35 Regulation (n 31).

36 Civil Procedure Code of Ukraine of 18 March 2004 № 1618-IV (with changes and additions) <<https://zakon.rada.gov.ua/laws/show/1618-15>> accessed 27 July 2020.

37 Regulation (n 31).

- to improve their professional level in the system of training and advanced training of court staff;
- respect for personal dignity, fair and respectful attitude towards themselves by managers, employees and citizens;
- for remuneration in accordance with current legislation;
- for social and legal protection in accordance with their status.

The assistant of a judge plays an important role in the administration of justice, in particular, he/she selects the acts of law and case law that are necessary for the consideration of a particular case; participates in the preliminary preparation of court cases for consideration, in the registration of court cases, prepares draft court decisions, inquiries, letters, other materials related to the consideration of a particular case on behalf of the judge; makes copies of court decisions for sending to the parties in the case and other participants in the case in accordance with the requirements of procedural law, controls the timeliness of sending copies of court decisions; monitors the timely conduct of expert institutions appointed in cases of expert research, the timely implementation of internal affairs decisions of the judge on coercive cause, and in case of non-compliance with such decisions - prepares drafts of relevant reminders, etc.; prepares draft court orders on the execution by courts of other states of certain procedural actions on the service of court documents in civil, commercial, administrative, criminal cases, on the extradition of offenders to the territory of Ukraine; promotes the execution of orders of foreign courts in accordance with the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, other international legal agreements of Ukraine on legal assistance, ratified by the Verkhovna Rada (Parliament) of Ukraine; carries out other instructions of the judge concerning the organization of consideration of court cases.

The issue of drafting court decisions and many other functions of judicial assistants on behalf of a judge is quite controversial from the point of view of both the Recommendations³⁸ and the practice of national courts in Ukraine.³⁹

It is worth noting that for a long time assistants of judges did not have any procedural status and performed a lot of the above functions without proper regulation. At the same time, it is difficult to deny the provisions set out in the Recommendations that the role of assistant of a judge derives from the role of judge and assistants of judges must support rather than replace judges in the performance of their functions.

According to the Regulations, an assistant of a judge may, on behalf of a judge, exercise the powers of the secretary of the court session in his/her absence in case of impossibility to replace him/her with another secretary; coordinate the work of the secretary of the court session and provide him/her with methodological and practical assistance, including ensuring the recording of the trial by technical means; control the receipt and attachment of relevant materials to court proceedings; check the timeliness of drawing

38 Council of Europe, 'Opinion No. 22 on the role of judicial assistants' 2019 (6) CCJE <<https://zib.com.ua/files/Opinion-22CCJE-Uk.pdf>> accessed 27 July 2020.

39 O Dovidna, 'KRES poradyla trymaty pomichnykiv podali vid rishen ta chastishe yih zvilnjaty' ['The CCJE advised to keep assistants away from decisions and to dismiss them more often'] 2019 50 (1452) *Zakon i biznes* <https://zib.com.ua/ua/140533-pomichnikiv_suddiv_slid_trimati_podali_vid_rishen_ta_chastis.html> accessed 27 July 2020.

up the minutes of court hearings in cases pending before a judge; exercise control over the timely delivery to the court office and/or court archives of court cases considered under the chairmanship of the judge by the court session secretary; carry out the preparation and registration of statistical data; carry out the generalization of judicial practice, generalize about quantity and the state of consideration by the judge of judicial cases of all categories; carry out the analysis of the cancelled and changed decisions of the judge after a review of cases by courts of appellate and cassation instances; sign non-procedural documents of informational and organizational nature; carry out other instructions of the judge concerning the organization of consideration of court cases.

Moreover, the assistant of a judge is obliged to timely and efficiently perform the instructions given to him/her; to adhere to the terms for preparation of documents and execution of orders; to constantly improve their professional level and qualification; to take care of court property; not to allow violations of human and civil rights and freedoms in the performance of their official duties.

Given the above, taking into consideration the importance of the tasks assigned to the assistant of a judge, the role of the assistant of a judge in the administration of justice should not be underestimated.

At the same time, official salary of an assistant of a judge of a local general court in 2020 is UAH 9,921 (321 euros at the official exchange rate of the National Bank of Ukraine, hereinafter – OER NBU ⁴⁰), which is established by the Resolution of the Cabinet of Ministers of Ukraine of 24 December 2019 № 1112 ‘On Terms of Remuneration of Employees of State Bodies Not Covered by the Law of Ukraine “On Civil Service”’.⁴¹

In our opinion, the specified salary of an assistant of a judge is disproportionate to the salary of a local court judge.

The amount of a judge’s remuneration is determined by Art. 135 of the Law of Ukraine of 2 June 2016 ‘On the Judiciary and the Status of Judges’,⁴² according to which the basic amount of a judge’s salary is as follows⁴³:

- 1) For judges of a local court – 30 SMABP;
- 2) Judges of the Court of Appeal, the High Specialized Court – 50 SMABP;
- 3) The salary of judges of the Supreme Court is 55 SMABP. This item is declared unconstitutional according to the Decision of the Constitutional Court of Ukraine №4-r/2020 of 11 March 2020,⁴⁴ and therefore the basic salary of a judge of the Supreme Court is 75 SMABP.

40 National Bank of Ukraine, ‘Official Exchange Rates’ <<https://bank.gov.ua/ua/markets/exchangerates>> accessed 19 July 2020.

41 The Resolution of the Cabinet of Ministers of Ukraine 121112 of 24 December 2019 ‘On the conditions of remuneration of employees of state bodies, which are not covered by the Law of Ukraine “On Civil Service”’ <<https://zakon.rada.gov.ua/laws/show/1112-2019-%D0%BF#Text>> accessed 27 July 2020.

42 Law (n 9).

43 The amount of each subsistence minimums for able-bodied persons is set for 1 January of the calendar year, hereinafter – SMABP.

44 Case №4-r/2020 (Constitutional Court of Ukraine, 11 March 2020) <<https://zakon.rada.gov.ua/laws/show/v004p710-20#Text>> accessed 22 July 2020.

Thus, the absolute salary of a judge of the court of first instance in 2020 is UAH 63,060 (2017 euros at the OER NBU).⁴⁵

In accordance with Part 1 of Art. 144 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’, as of 1 January 2015,⁴⁶ the sizes of salaries of court staff, the State Judicial Administration of Ukraine staff, the High Qualifications Commission of Judges of Ukraine staff, the National School of Judges of Ukraine staff, their level of social protection is established by law and may not be less than the relevant categories of civil servants of the legislative and the executive powers. Thus, the size of the official salary of the employee of the court staff (this position belongs to the sixth category of positions of civil servants) is established at the rate of 30 percent of the official salary of the judge of local court. Salaries of court staff, whose positions are assigned to each subsequent category of position of civil servants, are set at a factor of 1.3 in proportion to the salaries of court staff whose positions are assigned to the previous category of civil servants.

The first part of Art. 144 is supplemented by the second paragraph in accordance with the Law № 1697-VII of 14 October 2014⁴⁷. These provisions of the law entered into force on 26 October 2014.

In this case, it should be noted that in accordance with Part 3 of Art. 129 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’, as amended on 1 January 2015, the salary of a judge of a local court is set at 10 minimum wages specified by law.

Thus, the amount of the minimum wage set in 2014 was UAH 1,218.00 (equals to 39 euros at the OER NBU), respectively, the size of the salary of a local court judge was UAH 12,180.00 (389 euros at the OER NBU), and accordingly, the amount of the official salary of a court employee classified in the 6th category of a civil servant should be UAH 3,654.00. (116 euros at the OER NBU), and the salary of a court employee classified in the 5th category of civil servant positions should be UAH 4,750.20 (152 euros at the OER NBU it is).

At the same time, as of 12 February 2015, the salary of an assistant of judge, a civil servant of the 5th category, was only UAH 1,218.00 (39 euros at the OER NBU).

Disagreeing with the amount of salary and the illegality of actions of the Cabinet of Ministers of Ukraine, an assistant of a judge filed a lawsuit to the District Administrative Court of Kyiv, where he asked to recognize as illegal the inaction of the Cabinet of Ministers of Ukraine concerning bringing resolution № 268 of 9 March 2006 ‘On Structure and Conditions of Remuneration of Staff of Executive Authorities, Prosecution Office Bodies, Courts and Other Bodies’ in compliance with Part 1 of Art. 144 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’, as amended on 1 January 2015, and in compliance with Part 1 of Art. 147 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’, as amended on 28 March 2015. He also asked to oblige the Cabinet of Ministers of Ukraine to bring the resolution in line with the

45 National Bank of Ukraine, ‘Official Exchange Rates’ <<https://bank.gov.ua/ua/markets/exchangerates>> accessed 19 July 2020.

46 Law (n 9).

47 The Law of Ukraine ‘On the Prosecution Office’ [2015] Vidomosti Verkhovnoi Rady 2-3/12 <<https://zakon.rada.gov.ua/laws/show/1697-18/ed20141014#Text>> accessed 27 July 2020.

Law of Ukraine 'On the Judiciary and the Status of Judges', to oblige recalculation and payment of the salary.

The claims were substantiated by the fact that the Cabinet of Ministers had committed unlawful inaction in failing to comply with the Law of Ukraine 'On the Judiciary and the Status of Judges'.

By the decision of the District Administrative Court of Kyiv of 31 July 2015 and the decision of the Kyiv Administrative Court of Appeal of 24 September 2015, the claim was partially satisfied. The courts found the inaction of the Cabinet of Ministers of Ukraine regarding the failure to bring the resolution in line with the Law illegal and it was obliged to bring the resolution in line with the law, while the rest of the claims were denied.

The previous court decisions in the case were revoked, and the case was sent for a new trial to the District Administrative Court of Kyiv according to the decision of the Supreme Administrative Court of Ukraine of 16 November 2016 № K/800/43643/15, № K/800/43720/15,.

The claims were partially satisfied, namely, the court decided to recognize the illegality of inaction of the Cabinet of Ministers of Ukraine concerning untimely bringing the resolution in line with the Law of Ukraine 'On Judiciary and Status of Judges' according to the decision of the District Administrative Court of Kyiv of 16 January 2018.

The refusal was motivated by the fact that the Government of Ukraine did not make appropriate changes to the Resolution №268, which regulates the remuneration of employees of courts and other bodies, in order to bring it in line with the legislature. Accordingly, at the time of the disputed legal relationship there was no mechanism for implementing the provisions of the Law of Ukraine 'On the Judiciary and the Status of Judges'.

By the decision of the Kyiv Administrative Court of Appeal of 24 April 2018, the said decision of the District Administrative Court of Kyiv of 16 January 2018 was left unchanged.

Only in 2020 the Supreme Court considered the cassation appeals of the parties and ruled that the decision of the District Administrative Court of Kyiv of 16 January 2018 and the decision of the Kyiv Administrative Court of Appeal of 24 April 2018 in case №826/4982/15 should remain unchanged.

The Supreme Court agreed with the conclusions of the courts of previous instances that from 26 October 2014 to 9 September 2015 the Cabinet of Ministers of Ukraine did not amend Resolution № 268 on wage conditions, including salaries of court staff. The Laws of Ukraine 'On State Budget of Ukraine for 2014' and 'On the State Budget of Ukraine for 2015' did not provide for expenditures for the implementation of the provisions of the second paragraph of the first part of Art. 144 of Law № 2453-VI and part one of Art. 147 of the same Law as amended on 28 March 2015. State Court Administration, as the main administrator of budget funds, had no legal grounds for recalculation and payment of salaries to court staff outside the state budget expenditures for such employees in amounts other than those established by the Cabinet of Ministers of Ukraine.

The salary of an assistant of a judge of a local general court in 2019 was UAH 8,320 (266 euros at the OER NBU), however, the salary of a local court judge in 2019 was UAH 60,031 (1920 euros at the OER NBU).

The salary of an assistant judge of a local general court in 2018 was UAH 7,900 (253 euros at the OER NBU), while the salary of a local court judge in 2018 was UAH 44050 (1409 euros at the OER NBU).

Compared to 2018, in 2019 the expenditures for the payment of judges' fees increased by almost UAH 2,369.9 million (75.8 million euros at the OER NBU), or by 90 percent. The increase in expenses for the payment of judges' remuneration is due to an increase in the amount of:

- subsistence level for able-bodied persons from UAH 1,762 to UAH 1,921 (used as a calculated value for determining judges' salaries);
- salaries of judges who have passed the qualification assessment up to 25 SMABP in local courts and up to 40 SMABP in appellate courts (against 20 and 30 respectively the previous year⁴⁸);
- salaries of judges who did not pass the qualification assessment, up to 15 SMABP in local courts and up to 16.5 SMABP in appellate courts (against 10 and 11 last year).⁴⁹

In this regard, the planned expenditures for the payment of salaries of court staff, with a constant number of a staff decreased compared to last year by 1612.7 million UAH (51.6 million euros at the OER NBU), or by 30.2%.

The average monthly salary in 2018 of court staff was UAH 18,542 (593 euros at the OER NBU) while the planned labour costs provide for the average monthly salary of court staff in 2019 at the rate of UAH 13,100 (419 euros at the OER NBU).⁵⁰

Such a disproportion between a judge's remuneration and the assistant of judge's salary has been observed for many years, as exemplified by the case we have analyzed. This indicates the lack of a single approach to determining the financing of salaries of all employees of the judiciary and therefore – lack of a single concept of financial independence of the judiciary in the state.

4. CONCLUDING REMARKS

Both examples, analyzed in parts two and three of our study, show that the funding of the judiciary in Ukraine is inadequate. There is no stability, especially concerning permanent and sufficient financial security of judges, as well as a decent salary for work performed. The amount of remuneration does not correspond to those functions that are performed by court staff to promote the proper administration of justice.

48 Law (n 9) para 24 of Section XII.

49 Decision of the Constitutional Court of Ukraine of 04 December 2018 № 11-p/2018 in case № 1-7/2018 (4065/15) on the constitutional petition of the Supreme Court of Ukraine on compliance of the Constitution of Ukraine (constitutionality) with the provisions of parts three and ten of Art 133 of the Law of Ukraine of 7 July 2010 № 2453-VI 'On the Judiciary and the Status of Judges' as amended by the Law of Ukraine of 12 February, 2015 № 192-VIII); a significant increase in the number of judges who passed the qualification assessment.

50 Clarification of the State Judicial Administration of Ukraine on the procedure of forming the wage fund for 2019 <<http://rsu.gov.ua/ua/news/derzavna-sudova-administracia-ukraini-rozasnila-poradok-formuvanna-fondu-oplati-praci-na-2019-rik>> accessed 27 July 2020.

The example of the reduction of judges' remuneration in the conditions of quarantine imposed on the territory of Ukraine is a clear example of the inadequate guarantees of financial independence of the judiciary in Ukraine. This manifested itself in an unusual situation, which was almost unpredictable, but is likely to happen again in the future. It is an example of the instability and inherent dependence of judicial funding, which influences an access to justice in this state greatly.

At the same time, there has been an imbalance in determining the judge's remuneration and the judge assistant's salary for years, which indicates the existence of a well-established disproportionate approach to the financing of the judiciary. This we may title a consequence of a view, outside judiciary itself.

The different types of financing of the judiciary described by Caroline Expert-Foulquier can be used in Ukraine, in particular, it is about 'a system, that establishes financial autonomy, i.e. the possibility for a court to decide on the resources allocated to its jurisdiction and the courts it administers, and the guarantee of a certain level of resources provided. Participation in financial decision-making is indeed possible.' 'Financial independence can be found in a system where the resources are determined and adopted by the Council for the Judiciary or a court itself.'⁵¹

It is extremely difficult to ensure the balance of powers in the state, but in our opinion, it is possible to keep them from directly influencing each other by introducing the financial autonomy of the judiciary, which will allow it to manage the budget allocated for its operation independently. Within this budget, funds may be distributed as required by the judiciary itself, in particular, to ensure a balance between the salaries of court staff.

51 Caroline Expert-Foulquier, 'The Financial Independence of the Judiciary in France' (2020) 11 IJCA 1.