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Financing Activities of Supreme Courts in European States

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Contents

Opening Remarks	3
Preparing and Passing of Supreme Court Budget Bill	7
Draft Budget Preparation	7
Negotiations and Arrangements	10
Presenting Budget Bill to Parliament	10
Financing of the Supreme Court in the United Kingdom	11
Financing Remuneration of Judges, Judicial Activities, Building Maintenance, Staff Costs	11
Remuneration of Judges	11
Other Expenditures	14
Management of Budgetary Resources in Supreme Court	14
Conclusions	16
APPENDIX.....	19
General Data: Population, National Budget, Average Annual Salary	20
Expenditures for the Judiciary.....	21

Opening Remarks

The right to a fair, open consideration of one's case conducted with no unjustified delays by an appropriate, independent, impartial and sovereign tribunal is one of the fundamental rights guaranteed by constitutions of democratic countries. "The right to fair trial" understood in such a way constitutes one of the most significant Human Rights. It was in particular provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950.

Conscientious implementation of this right requires a sophisticated system of solutions of structural, procedural and economic character, as well as a fitting selection of judges representing high level of professional knowledge, integrity and resistance to all types of influence coming from other "powers" (executive, legislative), their own peer group, public opinion or any other sources¹.

In order to ensure judicial sovereignty, in some countries there function judicial service commissions² (they are known by a various names, for example, 'Consejo General del Poder Judicial' in Spain, 'Conseil Supérieur de la Magistrature' in France, 'Krajowa Rada Sądownictwa' in Poland). As a matter of principle, a judicial service commission is an institution free from the influence of legislative and executive branches. In its structure, numeric majority is held by judges, although other representatives also include members of parliament, individuals appointed by the president, as well as – ex officio for instance, the minister of justice or the president of the supreme court³. Judicial service commission may be treated as an independent, leading body of national authority connected on the functional level with judicial branch, although not being its organ *sensu stricto*⁴.

In many countries there exist various types of connections between courts (including supreme court) and authorities of executive branch– especially the ministry of justice⁵. However, these

1 See in Polish literature, e.g. J. Gudowski: Urząd sędziego w prawie o ustroju sądów powszechnych, PS No 11-12 from 1994., pages 16-34 as well as the literature referred to there, K. Jaśkowski: Kilka uwag o niezawisłości sędziowskiej [w] Państwo prawa. Administracja. Sądownictwo. Prace dedykowane prof. dr hab. Januszowi Łętowskiemu, Warszawa 1999, p. 296.

² Judicial service commissions function, among others, in Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Spain, the Netherlands, Malta, Poland, Portugal, Romania, Slovenia, Slovakia, Hungary, Italy.

³ The role of judicial service commission was the subject of an international conference held in Madrid on 9-11 November 1993, organized by the Council of Europe and Consejo General del Poder Judicial. See report on the conference by J. Jasiński, PiP No 1 from 1994 ., p. 106-107.

⁴ See in Polish literature T. Ereciński: Rola rady sądownictwa w państwie demokratycznym, PS No 5 from 1994 r., p. 15.

⁵ For example, in Belgium the Ministry of Justice provides the judicial branch with material assistance (buildings, equipment, personnel). These issues are particularly dealt with by the General Directorate in the Ministry. The Court of Cassation which is entrusted with the task of co-ordinating the judicial branch in its various aspects, maintains close contacts with these organs and conducts actual arrangements in the area of numerous administrative matters for its own needs, as well as the needs of other organs of the judicial branch. On Cyprus the only relation that exists between the Supreme Court and the Ministry of Justice is based on the fact that the latter of the two is responsible for presenting to the Council of Ministers and the House of Representatives administrative and structural requirements of the Supreme Court. There do not exist any other organizational or substantial connection between the Supreme Court and the Ministry of Justice. In Denmark, in existence since 1999 is the Court Administration (Domstolsstyrelsen) created on the basis of a separate

connections do not have to exclude independence of courts

In democratic countries, guarantees of upholding the Montesquieu principle of separation of power into three branches (which at present does not exclude the creation of the above mentioned judicial service commission), position of courts, as well as the special role of the supreme court are defined by constitutions.

Constitutions usually define position of the supreme court, as well as the procedure for appointing judges and first president of the court (chief justice) which is connected with the form of government in a given country⁶. However, as a rule they do not include, more detailed resolutions especially concerning the way of financing activities of the court, remuneration of judges and relations with the executive branch.

Authentic, financial independence based, at the very least, on an unhindered access by an institution to the overall resources allocated in an appropriate amount to ensure sufficient funding allowing it to function properly, constitutes a very important guarantee of independence of courts of all levels.

The above also holds true for the court commonly referred to as “the highest” in the hierarchy

legislation on court administration (Act No 401 of 26 June 1998). Until that moment the administration of courts had remained among the competences of the Ministry of Justice. As part of the 1998 reform, it was formally separated from the executive branch. The Court Administration is an independent State institution, headed by a Board of Governors composed of one Supreme Court judge, two high court judges, two city court judges, one deputy judge, two representatives of the administrative staff, one practising lawyer and two members with special management experience. The members are appointed by the Minister of Justice upon recommendations from the judiciary and relevant organisations. The Board of Governors is responsible for the administrative aspects of judicial functions. As a result, the Government does not have the right to execute supervision over the Board. The government may neither influence the decisions of the Court Administration nor supervise actions taken by it.

⁶ For instance, in a monarchy, which is the case in Belgium, in accordance with the Constitution, the judges of the Court of Cassation are appointed by the King on the basis of regulations specified in legislative acts. The King also appoints the First President of the Court of Cassation. The appointment takes place on motion accompanied by foundations, presented by an appropriate personnel commission with a two-thirds majority, in accordance with the regulations presented in the act, on the basis of merit and ability to carry out judicial duties. The candidacy presented by the commission may be rejected only on the basis of procedures defined in the acts, and the decision must have reasonable grounds. In the case of appointing the judges of the Court of Cassation, it is the General Assembly of the Court that issues opinion accompanied by foundations, in accordance with the procedures defined by the act prior to presenting the candidacy. The Constitution of Denmark guarantees the independence of the judicial branch from the executive and legislative branches of the government. Article 64 of the Constitution states that in fulfilling their duties the judges are guided solely by legal regulations (functional sovereignty). The judges may not be removed or transferred against their will, unless such transfer is a part of a general jurisdictional restructuring process, e.g., in case of reducing the number of jurisdictional districts. Article 123 of the Spanish Constitution states that the Supreme Court whose jurisdiction covers the entire country of Spain, is the highest judicial organ in the entire legal system. The President of the Supreme Court is appointed by the King, on the motion of the Supreme Judicial Council, in a form defined by law. Similarly, for example, the Constitution of Estonia states in Article 149, Points 3 and 4 that the Supreme Court is the highest tribunal in the country and that it carries out judicial reviews of court decisions through cassation procedures. The Supreme Court is also the Constitutional Tribunal. Regulations dealing with court administration and court procedures are defined by law. In accordance with Article 150, Points 1 and 2 of the Constitution of Estonia, the President of the Supreme Court is appointed by the Parliament on the motion of Prime Minister of the Republic; the Supreme Court Judges are appointed by the Parliament on the motion of the President of the Supreme Court. In France, title VIII (art. 64 - 66) of the Constitution of V Republic of 4th October 1958 is dedicated to the judicial branch, art. 65 concerns the Supreme Judicial Council, art. 66 states that the judicial branch is the guardian of individual freedom. Thus in the text of the Constitution, no regulation refers to the Court of Cassation.

of courts of a given country. The authority which this court enjoys results in its activities, as well as knowledge and moral standing of its judges being regarded as examples to follow and reference points for country's entire judicial system.

In those countries where judicial service commissions are active, their financial independence is of equal importance. As a rule, financial independence of courts occurs in the countries in which judicial service commissions enjoy such independence.⁷ However, there are exceptions to such "parallel" relationship with position of the commission. For instance, in Belgium financial resources necessary for the functioning of the Judicial Commission are accounted for in the subsidy budget (art. 259. bis-22 § 2 Judicial Code). As a result, the National Judicial Council is financially independent. On the other hand, the Court of Cassation is seen as not being financially independent. In the Netherlands, for example, the Judicial Council being a superior organ in relation to all district courts and courts of appeal (with exception of the Supreme Court) is financially independent from the executive branch, while the Supreme Court is financially independent "to a degree"⁸. The Judicial Council of the Netherlands prepares a common budget for all the courts (except the Supreme Court) on the basis of a 5 year plan, which is subject to annual negotiations with the Ministry of Justice and approval by the Government and the Parliament. The Judicial Council assigns administrative staff and financial resources to particular courts.

In the Slovak Republic, the Supreme Court is financially independent. In 2004 the Judicial Council of the Slovak Republic was created, which was to have at its disposal a separate budget. As a result of budgetary cuts, which were introduced on 1st January 2005, a number of budgetary structure positions, including the Office of Judicial Council were eliminated. This part was moved to the budget of the Supreme Court of the Slovak Republic, within which the Judicial Council has at its disposal financial resources for the funding of its activities on the basis of budgetary allocation.

In Italy, the Judicial Council is financially independent since it has its own budget within the overall national budget. The Supreme Court is tied to the Ministry of Justice in the area of financial resources. It does not have its own budget within the overall national budget,

⁷ For example, in Bulgaria financial independence of the Supreme Court of Cassation is guaranteed as part of the judicial system, which in accordance with the Constitution has an autonomic budget. The Supreme Court of Cassation, just as any other court, is an independent legal entity and has its own budget within the general judicial budget. The Judicial Council also has its own budget. Simultaneously, the Judicial Council assigns budgets to courts within the scope of accepted national budget. However, the budget of the Judicial Council, as well as the budget of the Supreme Administrative Court is separated from the budgets of other courts. The judiciary budget is passed by the National Assembly as an element of the national budget. In Poland the earnings and expenditures of the Supreme Court, as well as of the National Judicial Council constitute separate parts in the national budget. These institutions are financially independent from the government. Similar independence of these institutions exists also in Portugal, Romania, and Slovenia – among others. On the other hand, for example, in Spain both of the above mentioned institutions are not financially independent. Similar situation occurs in Scotland where the expenditures of the highest court are covered from the funds given to the disposal of the Scottish Court Service and the Scottish Justice Department. In Scotland it is the Court of Session that fills the role of the supreme court for civil cases. The Court was established by the College of Justice Act of 1532. The existence of the court was guaranteed "for all time coming" by the Union with England Act of 1707. Judges of the Court of Session are also, by appointment, judges of the High Court of Justiciary, the supreme court in criminal cases. Informal judicial commission does not have a separate budget and is not financially independent.

⁸ General Manager prepares on an annual basis a budget proposal which is usually accepted by the Ministry of Justice. The budget constitutes part of the overall budget of the Ministry of Justice, which is passed by the Parliament.

managing only the resources assigned to it by the Ministry of Justice which within its own budget reserves certain funds for the functioning of various courts, the Supreme Court being among them.

The observations presented in this paper were prepared mostly on the basis of answers to the questionnaire entitled “Relations between the Supreme Court and the Executive Branch” directed to members of the Network of the Presidents of the Supreme Judicial Courts of the European Union.

There is no doubt that equivalent or very similar legislative contents may be interpreted differently in various countries. Due to this fact, the questions included in the questionnaire were evaluated by the respondents from the perspective of legal solutions and applications, as well as organizational structures within a given country. The degree of detail being provided by the respondents also varied. Just the term “financial independence” of supreme court (as well as of judicial commission - in applicable countries) was also interpreted in a number of ways.

For this reason, signalling right at the beginning the degree of independence of supreme courts, the evaluations provided by their representatives should and were considered as being the most illustrative.

In accordance with such evaluation, determined as being financially independent were the supreme courts of Bulgaria, Cyprus, Estonia, France, Ireland, Latvia, Poland, Portugal, Slovakia, Slovenia and Hungary.

Absence of supreme courts’ financial independence was established as being the case in Austria, Belgium, the Czech Republic, Finland, Greece, Spain, Luxembourg, Malta, Germany, Scotland and Italy.

Mr Verougstaete, the President of the Belgian Cassation Court, communicated during the discussion that the court in Belgium has rejected proposal of budget autonomy submitted by the minister of justice. Had the offer been accepted, a representative of the ministry would hold an office at the Cassation Court to control its ongoing administrative activities.

Less unequivocal opinions (lack of complete independence, “certain degree” of independence) were expressed regarding the supreme courts of Denmark, the Netherlands, Norway and Sweden.

It should also be noted that in the initial version of the United Kingdom’s response to the questionnaire, the issues connected with the financing of the courts which might be considered as being the equivalent of continental supreme courts were omitted. It was explained that in the United Kingdom it is not the function of judicial office to be involved in the managing or negotiating of budgetary issues. This is done by Department of Constitutional Affairs (governmental department) with the Treasury – and – « the administration of justice has nothing to do with it ».

Preparing and Passing of Supreme Court Budget Bill

Draft Budget Preparation

Supreme court's budget is usually prepared in the form of a parliamentary act, as a separate position of national budget or as a budget element of the department of justice. Regardless of what "position" it eventually takes, it is necessary to define the needs and expenditures of this court and prepare initial budgetary proposal, which depending on detailed solutions employed within a given country may be either subject to negotiations and arrangements (of single or multiple-tier character) or be forwarded directly to the parliament.

I. In the largest number of countries, during the initial stage, supreme court's draft budget is prepared by the court in question (with participation of appropriate organizational units functioning within internal structure of the supreme court). Such solutions function in the fourteen countries presented below.

Cyprus. For each financial year, the Chief Legal Executive prepares draft budget which is then usually approved within the budget presented to the House of Representatives – the authority responsible for reviewing and passing of appropriate legislative act.

Denmark. The administrative head and the President of the Supreme Court prepare draft budget within the limits assigned to the Supreme Court by the Court Administration. The draft budget is presented to the local works committee (samarbejdsudvalg) for consultation. The committee is composed of representatives of various staff groups and meets regularly to discuss matters of interest to the judicial and non-judicial personnel.

Mr. Melchior, the President of the Danish Supreme Court is convinced that the key issue the Supreme Court now faces is obtaining sufficient resources for its activities. It is a matter of political decision of the government and the parliament, as judicial authorities have no sufficient political power to enforce allocation of adequate resources to the courts.

Estonia. In the Supreme Court its director and accountants prepare draft budget for next year, as well as financial strategy for the forthcoming three year period. When prepared, the documents are once again reviewed by the Board which can introduce changes, presenting them for discussion with all the judges. Once agreement is reached in the Supreme Court, its President presents the draft budget accompanied by an explanatory memorandum, as well as an operational and investment plan to the Minister of Finance.

Finland. Draft budget of the Supreme Court is prepared by the administrative division of the Court and passed during a plenary session. Works on the budget commence every year at the moment of submitting by individual ministries to the Ministry of Finance of operational and financial plans, as well as plans of expenditures. The Government accepts expenditure limits of central administration in March. Based on the limits of expenditures and the guidelines of the Ministry of Finance, budgetary works are carried out in individual ministries, which form their own budgetary guidelines for their subordinate units. In the spring these units prepare their own budgetary drafts. The judicial system has its own budgetary line. Within the framework of the budgetary process, the Supreme Court submits its prepared proposal of budget to the Minister of Justice.

France. Budget application is prepared by the Court of Cassation and then submitted to the Ministry of Justice (Judiciary Directorate) which prepares the Court budget depending on the amount of funds allocated to the department of justice in the budgetary act.

As indicated by President Canivet, the French Cassation Court demands the ultimate autonomy and direct budget negotiations with the parliament.

The Netherlands. The Supreme Court created a special commission headed by the President of the Court. The commission reaches agreement on financial issues with the General Manager who is in charge of the department responsible for financial aspects of the Supreme Court's operations. The department is accountable to the Ministry of Justice.

The Supreme Court presents draft annual budget which is usually incorporated into the state budget by the minister of justice. Mr. David, the President of the Dutch Supreme Court argues that the postulate for exclusion of the legislative and executive authorities from the budgeting process is unrealistic.

Latvia. Budget of the Supreme Court is prepared, taking into account the guidelines set by the President of the Court and the Administrative Head, by the Administration – i.e., organizational unit within the structure of the Court.

Germany. Draft budget prepared by a specialized budgetary and finance section functioning within the organizational structure of the Supreme Court is signed by the President of the Supreme Court. Head of the administration of the Supreme Court is responsible for the budget of the Court.

Norway. Manager of the Supreme Court prepares its budget. Prior to presenting the budget for approval by the Assembly of Judges, the Manager conducts discussions on the draft budget with the President of the Supreme Court. The Manager signs the draft budget, presents it to the Court Administration and participates in all further negotiations.

Poland. Draft budget is passed by the Supreme Court College.

Romania. The Supreme Court College presents draft budget which is approved by the General Assembly of the Supreme Court Judges.

Slovenia. Works on the budget are conducted and co-ordinated by the Supreme Court which has at its disposal a specialized financial-accounting unit.

Slovakia. Draft budget is prepared independently by the Supreme Court. The Chief Justice is responsible for the budget while the Administrative Manager along with the Budgetary Section of the Administrative Department prepare the draft of the document. The National Court Commission reviews the draft budget during its preparation.

Sweden. Administrative Department of the Supreme Court prepares draft budget for the Supreme Court. Following the approval of the draft budget by the Chief Justice, it is forwarded to the National Office of Court Administration.

II. In a number of countries, supreme court's draft budget is prepared by specialized, financially independent organs which do not belong to the organizational structure of the

court. The following countries may be included in this group:

Ireland. Preparation of annual draft budget for covering costs of administration and providing for activities of all courts is the responsibility of the Court Administration Office⁹.

Malta. Budget of the Supreme Court (as well as of other courts) is prepared by the Courts of Justice Division, directed by the General Manager, regarded as the equivalent of “administrative office” – an organ of the executive branch.

Portugal. Draft budget is prepared by the management of administrative and financial services. It is subject to approval by the Administrative Council.

Scotland. Draft budget of the Supreme Court is prepared by the Scottish Court Service¹⁰.

III. In **Bulgaria** and **Hungary** draft budgets of the judicial branch (including budgets of supreme court) are prepared by judicial commissions. In Hungary President of the Supreme Court also holds the function of the Chairperson of the National Judicial Council.

The budget is negotiated directly with the parliament which also monitors its performance.

IV. In some countries (Austria, Belgium, Luxembourg, Italy) it is the **ministry of justice** that can be recognized as the “author” of supreme court’s draft budget.

It should be noted that in many other countries supreme court’s draft budget – despite having the “initial version” prepared by another entity (e.g., the supreme court itself) finds its way to the ministry of justice. In connection with the above, this classification can be considered as a subject open to discussion. Certain shifts of accent or deeper knowledge of practical details of activities during the initial stage of draft budget preparation in individual countries could possibly provide the grounds for a different type of classification, especially since in some countries supreme courts formally do not have their own budgets and even the need to discuss the issue of “supreme court budget” is questioned.¹¹

⁹ The Court Administration Office is an independent organ with its own Statute. Presidents of the courts of four levels fill the function of members of the Board along with one judge selected by the judges from individual judiciary districts. Other members – one member appointed by the Minister of Justice, a representative of staff, two members appointed by legal community, and two members out of which one represents the interests of trade unions while the other represents business community and citizens, are nominated by the Minister of Justice. Additionally, the Chief Justice appoints to sit on the Board one more judge, The Chief justice fills the role of the President of the Board whose members are mostly judges. The Board submits annual reports on its activities to the Minister of Justice who remains the person bearing the final responsibility before the Parliament for the effectiveness of the functioning of the judicial system (aside from its purely jurisdictional activities)

¹⁰ The Scottish Court Service is responsible for the management and administrative issues connected with the functioning of the Supreme Court. It carries out administrative supervision over all aspects of Court’s functioning, including court buildings, as well as being responsible for providing the staff necessary for its servicing. It is subordinated to the Minister of Justice.

¹¹ Such as is the case, e.g., in the Belgian questionnaire [Expenditures essential to the functioning of the Court of Cassation are approved every year through budgetary credit(..)], the Italian questionnaire [Supreme Court only manages the funds allotted to it on the condition of presenting appropriate financial report].

Negotiations and Arrangements

It seems to be the case only in Poland and Romania that discussions over supreme court's draft budget take place at the relatively late point of conducting parliamentary works- when the president of the supreme court is invited to participate in sessions of appropriate parliamentary commissions.

In majority of countries the supreme court draft bill, prior to being submitted to parliament, is negotiated and arranged. Most frequently the negotiations on the scale of planned expenditures are conducted in the ministry of justice, ministry of finance or in both of these ministries.

Thus – budgetary consultations are carried out by the president of the supreme court (or other qualified entity representing supreme court) with the ministry of justice in Finland, France, the Netherlands, Ireland and Portugal, and with the ministry of finance (at the minimum regarding the setting of upper limit for supreme court's expenditures) in Bulgaria, Estonia, Slovenia and the Slovak Republic.

Arrangements and negotiations regarding supreme court budget are also conducted by the ministry of justice with the ministry of finance in Austria, Belgium (in this case talks regarding earnings are conducted with the minister of finance, regarding expenditures with the minister of budget), Finland and Malta. In Malta's case the Ministry of Internal Affairs also participates in the negotiations (budget of the Department of Courts is part of the budget of the Ministry of Justice and the Ministry of Internal Affairs).

In Bulgaria and Spain negotiations concerning the supreme courts budgets are conducted with the participation of the judicial commissions.

In a number of countries there exist various solutions concerning arrangements and negotiations leading to creation of the final version of supreme court draft budget.

In Bulgaria arrangements are made by the representatives of the Court, the Ministry of Finance and Budgetary Commissions of the Supreme Judicial Commission. In Denmark, the Head of administration and the President of the Supreme Court may apply to the Department of Court Administration for the granting of additional funding. In Spain, the President of the Supreme Court and its Management Department settle on the financing of the Supreme Court with the Ministry of Justice and the Supreme Judicial Commission. In Luxembourg, the General Prosecutor and the Ministry of Justice participate in the negotiations. In Norway, the Director of the Supreme Court may negotiate Superior Court's draft budget with the Court Administration (this body does not belong to the structure of the Ministry of Justice), and then the draft budget is presented to the Minister of Justice, while in Scotland The Lord President can negotiate with the Justice Department changes in the complement of judges required to serve in the Supreme Courts. In Sweden, within the scope of works of the National Courts Administration – which prepares draft budgets for all courts (including the Supreme Court), there is a possibility for negotiations to be conducted by the Head of the Administrative Department of the Supreme Court.

Presenting Budget Bill to Parliament

In the predominant majority of the countries supreme court's budget bill is presented by the

council of ministers, either as an autonomous bill or fragment of judicial finances bill (or budget bill of the entire department of justice) Such solution occurs in the following countries: Belgium (in the King's name), Bulgaria, Estonia, Finland, France, Ireland, Germany, Norway, Poland, Slovenia, Slovakia.

Budgets of supreme courts (judiciary) are presented by ministries of justice in the Czech Republic, Greece, Scotland, Sweden, by ministries of finance in Denmark, Latvia, Malta, Portugal, by the Ministry of Justice and the Ministry of Finance in Austria, by the National Judicial Commission in Hungary.

Financing of the Supreme Court in the United Kingdom

Specific situation in the United Kingdom results in the fact that the country's legal-financial solutions concerning courts of the highest instance require separate comments.

The Supreme Court of the United Kingdom will be established in 2009. The House of Lords remains the final authority of appeal. Works on organizing the funding of the Supreme Court have not been concluded yet. At the present time, the United Kingdom is divided into three different judicial districts which have been shaped by the history of the country and its people. The legally defined districts are: England and Wales (England), Scotland and Northern Ireland. Each district has its own judicial system, own distinct legal professions and own legal regulations, despite the fact that some legal acts are common, extending in their power over all three of the judicial districts.

The Department of Constitutional Affairs (DCA) is the "parent" department responsible for obtaining the funding for all areas of its activities. One of these areas consists of the courts of England and Wales, financed by Her Majesty's Court Service (HMCS). The HMCS is responsible for budgetary allotment and conducts negotiations without engaging the administration of justice. The Government ensures funding for three-year periods, on equal footing with other departments, allowing the HMCS to plan its priorities in accordance with the availability of funding. Civil servants in Royal Courts prepare "business plans" taking into account current workload of the courts and the priorities presented by the HMCS. The judicature is not financed from the budget. The budget is intended only for the operation and administration of courts.

Financing Remuneration of Judges, Judicial Activities, Building Maintenance, Staff Costs

Remuneration of Judges

In the Recommendation No R (94) 12 approved on 13th November 1994 by the Committee of Ministers of the Council of Europe regarding independence of judges, it was recommended to the member states that remuneration of judges should be guaranteed by law while at the same time being, within providing for appropriate working conditions for the judges, proportional to dignity of their office and burden of undertaken responsibility ("status and remuneration of judges is commensurate with dignity of their profession and burden of responsibilities"). As early as 1985, the Spanish Judiciary Act in Article 402, Point 1 stated

that the state guarantees economic independence of judges on a level adequate to their dignity and jurisdictional function¹².

The status of a judge and appropriate remuneration are strongly connected with the sovereignty of judges, having at the very least a supportive function to the aspect of independence. In its adjudications from the mid 1990s the Polish Constitutional Tribunal had consequently expressed the opinion that there is no direct co-relation between the principle of independence and the material status of judges (adjudication of 11th September 1995 r., P 1/95) while the Polish National Judicial Committee expressed the opinion that the status and remuneration of a judge constitute the essence of judicial sovereignty¹³.

The analysis of the scale of remuneration of judges in Europe, conducted in Poland¹⁴ on the basis of a questionnaire distributed through the IV Section of the Department of Justice of the Council of Europe in the first half of the 1990s showed three types of legal basis for judge salaries. They were included in:

acts on civil service, in special regulations referring to judges (Austria, Finland, France, the Netherlands, Luxembourg, Lithuania, Germany, Switzerland, the United Kingdom – regarding judges of higher courts);

acts on the status of judges or the organizing of courts (in Belgium – the Judicial Code) and laws connected with it (Albania, Belgium, Byelorussia, Bulgaria, Cyprus, Estonia, Greece, Spain, Ireland, Latvia, Russia, Romania, Slovenia, Ukraine, Italy, the United Kingdom – regarding judges of lower courts);

acts concerning the remuneration of judges (the Czech Republic, the Slovak Republic, Hungary).

It appeared that the most beneficial remuneration was provided for in the first of the above mentioned systems.

Findings of the European Commission on the Efficiency of Justice (Commission européenne pour l'efficacité de la justice, CEPEJ) showed that the highest level of remuneration is obtained by judges in Anglo-Saxon countries and Switzerland.

According to these findings, in 2002 the highest average annual salary was obtained by the judges of supreme courts in England and Wales (266 thousand Euro), Scotland (247.2 thousand Euro), Switzerland (200 thousand Euro), Ireland (188.4 thousand Euro) – the lowest in Bulgaria (7.2 thousand Euro).

¹² Such postulates were put forward earlier during the World Conference on the Independence of Justice (Montreal 1983), as well as being written down in the United Nations Basic Principles on the Independence of the Judiciary of 1985. Compare: J. R. Kubiak: Wynagrodzenie proporcjonalne do godności urzędu sędziowskiego i ciężaru jego odpowiedzialności (przegląd europejski), PS No 11-12 from 1996., p. 26–31. See also by the same author: Zasady wynagrodzeń sędziowskich w niektórych państwach Europy zachodniej i w USA, PS No 1 from 1997.

¹³ J. R. Kubiak, op. cit., p. 26.

¹⁴ J. R. Kubiak: Wynagrodzenie proporcjonalne do godności urzędu sędziowskiego i ciężaru jego odpowiedzialności (przegląd europejski), PS No. 11-12 from 1996 r., p. 25-51.

In relation to average national salaries, the highest compensation for their work is obtained by supreme courts judges in Portugal (9.7 times the average), Ukraine (9.2 times the average), the Czech Republic (7.9 times the average), the lowest in Latvia (1.9 times the average)¹⁵.

In prevailing majority of the countries, funds assigned for the remuneration of supreme court judges constitute a separate position in court budgets. In Sweden, for example, remunerations constitute 90% of budgetary expenditures and are, just as other budgetary expenses, separated into individual positions. In some countries expenditures for judicial salaries are placed in the group of expenditures for remuneration of all staff (e.g., Finland, Latvia, Portugal, Slovakia).

Certain countries employ other solutions. In the United Kingdom, for example, salaries of judges are paid by the United Kingdom Consolidated Fund. Judiciary activities which include, for example, foreign visits or exchanges of judges, are financed by the Department of Constitutional Affairs from the Treasury as part of the budget. All current expenses or expenditures concerning staff are covered from the budget of the HMCS. In Scotland, remuneration of judges is completely out of the hands of the Scottish Court Service, being disbursed by the Department of Justice. Similarly in Ireland, judge salaries are completely separated from other budgetary positions. The Court Administration does not have authorization in this area.

In Denmark costs connected with salaries and judicial activities are covered by the Court Administration. In Estonia there exists a separate budget assigned for remuneration of judges.

In France, the budget being at the disposal of the First President of the Court of Cassation includes funds allocated for remuneration of judges, prosecutors and civil servants assigned to the Court, as well as resources needed to support current operations of the Court.

The size of remuneration of judges in some of the countries is defined by legislation and is not subject to periodic verification. In Ireland, for example, judges' salaries, along with those of ministers, senior public servants and chief executives of semi-state bodies are periodically reviewed by a special commission - the Pay Review Body. During the review of remunerations, the judges submit directly to the commission proposals of salary increases. Following the termination of control by the Pay Review Body, its conclusions are presented to the Government along with recommendations for a given sector. The Government may accept the recommendations fully or in part, or spread out their implementation into phases. In Scotland, the size of remuneration of judges is defined for similar judicial positions. In England and Wales it is done with participation of the Senior Salaries Review Body.

In Estonia, depending on the level of court in which a given judge is employed, the remuneration is four to six times the size of the average national salary. Salaries of judges are subject to corrections at the beginning of each year, salary increase being dependant on economic situation. According to statistics, during the period of 2001-2005 the amount allotted to judge salaries in court budget increased from 31% to 40%.

In Slovakia, the cost of remuneration of judges is accounted for in the regulations of the act

¹⁵ Compare graphs placed in the Appendix originating from the paper by the Instytutu Wymiaru Sprawiedliwości (Institute of Justice) (A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów, Warszawa 2006)

on the remuneration of constitutional civil servants with the salary size defined in the act on remuneration of judges. Calculation of the overall sum of remuneration of judges, contained in the draft of national budget, is conducted on the basis of the last composition of the Supreme Court. The salaries of administrative workers of the Supreme Court are defined in a similar manner.

Another form of protecting remuneration of judges is to prohibit spending of the funds allotted for it on other needs of the court (for example, in the Slovak Republic).

Other Expenditures

Other expenditures aside from the remuneration of judges are as a rule foreseen in separate positions of supreme court's budget. In some countries, one may observe certain simplifications regarding fixed expenditures which should be beneficial to the proper functioning of the judiciary.¹⁶

Costs of maintaining court buildings are provide for in certain countries in supreme court's budget, in other countries these costs are financed separately. In Bulgaria, Cyprus and Portugal, for example, these costs are included in the budget. In Denmark the Supreme Court building is property of the state. The Court pays annual rental fee for the use of the building, defined on the basis of its real estate market value. Costs connected with rental fees constitute a fixed position in resources allotted by the Court Administration. In Slovenia, the Supreme Court building is financed by the Ministry of Justice. The Head of the Scottish Court Service is responsible for Court buildings and for the providing of staff necessary for the functioning of the Court, as well as for granting necessary support to the Supreme Court Judges as needed. In Italy, the maintenance of Court buildings is managed directly by the ministry through a commission which is headquartered in the Supreme Court building and is composed of representatives of all offices and institutions housed in the Court building.

Management of Budgetary Resources in Supreme Court

Management of budgetary resources is shaped in individual countries according to various models, and in particular as:

superior court's own task;

task of the department of justice;

shared task of the court and appointed organ (e.g., judicial commission);

¹⁶ In Belgium, for example, the procedure leading to the payment of, in particular, salaries of judges and prosecutors, legal executives and administrative personnel is simplified because art.41 of the co-ordinated acts on the accountancy of the State released these expenditures from the requirement of obtaining prior approval of the Courts of Auditors. Additionally, in accordance with art.382 of the Judicial Code, the Minister of Justice grants for the disposal of, among others, first presidents and presidents of courts and tribunals financial resources in the amount specified by himself, assigned for the covering of small expenditures of the units subordinated to the Minister of Justice (e.g., purchase of registers, press, collections of legal documents, juridical books, office materials, small articles of daily use necessary for official purposes. These expenditures amount to € 39.600, being a multiple of what was assigned to the courts involved in examining merits of cases).

task of a specialized organizational unit which does not belong to the organizational structure of the supreme court or the ministry of justice but whose character is of an executive branch entity.

In the situation when it is **supreme court's own task**, there exist in its structure organizational units which conduct actual management of financial resources. However, frequently the head president or deputy president of the court is formally responsible for meeting the budget. Although, usually the direct responsibility for meeting the budget rests with the head of court administration - referred to by a variety of names in different countries.

In order to illustrate this model, one may give a number of examples of its functioning.

In **Austria** the President of the Court manages the budget aided by the head administrator of the Supreme Court's office (equivalent of Financial Director).

In **the Czech Republic** the President of the Supreme Court appoints administrative manager of the Court, as well as grants to one of the deputies the authority to manage economic matters of the Court. It is this Deputy President of the Supreme Court who supervises the work of the administrative manager within the scope of granted authority. The administrative manager co-operates with a budgetary inspector appointed by the Deputy President of the Supreme Court.

In **Estonia** the budget is managed by the Director of Supreme Court appointed by the President of the Supreme Court who co-operates with the accounting manager and personnel.

In **Denmark** these functions are carried out by the head of administration who answers directly to the President of the Supreme Court and who is also in charge of managing administrative staff and officials. It is the head of administration that authorizes expenditures. When such need arises, the head of administration presents them for approval to the President of the Supreme Court.

In Finland meeting the budget is the formal responsibility of the President of the Supreme Court. The President co-operates in this area with the administrative and financial director.

In **France**, which may be included in this model of budget management, the situation is somewhat more complicated. The First President of the Court of Cassation is responsible for the budget known as the «programme's operational budget». The First President prepares plan of expenditures and implementation of the operational budget: splitting the budget into authorizations for using the funds, resources assigned for expenditures within a given period of time, expenditure limit for remuneration of the personnel of the Court of Cassation - calculated on the basis of complete job posts, as well as overall. This task is carried out by the First President using an administrative-budgetary cell employing appointed and contractual civil servants under the management of judge responsible for the budget who reports to the President. Submitted budgetary applications are agreed on with the Judiciary Directorate whose manager is responsible for the «general courts» budgetary programme. Managing property and human resources is done locally on the level of the Court of Cassation with the First President holding the function of secondary level disposer. The budget remaining at the disposal of the First President of the Court of Cassation consists of funding for the remuneration of judges, prosecutors and civil servants assigned to the Court, as well as the funds necessary for daily operations of the Court (e.g., meeting structural expenses, activities,

equipment).

In **the Netherlands** budget is managed by the General Director who authorizes all expenditures except personal budget of the President of the Supreme Court for official travel, formal entertainment etc.

Supreme court's budget management is conducted according to this model also in Ireland, Luxembourg, Latvia, Germany, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden¹⁷, Hungary and Italy.

Managing the budget as a **joint task of the court and judicial commission** occurs in Bulgaria. The Judicial Commission represents the first level spending unit while the Supreme Court of Cassation the second level spending unit. Implementation of the budget of the Supreme Court of Cassation is done by financial services which remain in contact with appropriate administrative section of the Judicial Commission. The President of the Supreme Court of Cassation holds a managing function in respect to the financial services of the court. Budget of the Supreme Court of Cassation is managed by the chief accountant acting as the Manager of Financial Services, and the appointed for this task Deputy President. Approval of expenditures requires the signatures of both of them.

Management of supreme court budget as a **task of the department of justice** is the case, for example, in **Spain**. Within the framework of the Ministry of Justice, the management is carried out by the Central Administration. Based on the Decree of the Management Division, the daily administration of financial needs of the court was entrusted to the Technical Chamber of the Court. The President of the Supreme Court has on numerous occasions addressed the Ministry of Justice pointing to the need for budgetary autonomy of the Supreme Court but so far with no results.

The final model of implementing supreme court's budget takes place in Anglo-Saxon countries.

The Scottish Court Service has overall responsibility for the management and administrative issues in all areas of activity of the Supreme Court other than the budget for judicial salaries. It conducts general administrative supervision over all the aspects of Court's functions, including Court buildings and is responsible for providing the staff necessary for its operation. The Scottish Court Service is subordinated to the Minister of Justice.

Conclusions

The analysis of legal solutions of financing operations of supreme courts in European states, conducted from the point of view of court independence and sovereignty of its judges, leads to the following general observations and conclusions.

1. The very term 'financial independence of courts' stirs controversy. There is also lack

¹⁷ The Supreme Court of Sweden has an administrative department, which is responsible for the managing of economic aspects of Court's functions. In contrast to other countries, the department is headed by a judge, who is neither a Justice nor Judge Referee, but holds his office for a few years and then is promoted to permanent position as a judge in a district court or a court of appeal.

of uniform criteria, according to which those evaluating the situation could determine presence or absence of financial independence of supreme court in their own countries. Certain answers to the questionnaire even gave rise to the opinion that since it is the parliament (be it in the form of a legislative act) which decides on the supreme court's budget, this very fact excludes the ultimate financial independence on part of the court. Most common position, however, was that supreme court independence is maintained when its budget is a separated, forming an autonomous position in national budget. However, there is no such autonomy (or it is seriously threatened) when the supreme court's operations are financed by the ministry of justice.

2. Assessment of responses to the questionnaire point out that the number of countries in the group where the position of supreme court was judged as financially independent is quite close to number of countries in the group where the position of supreme court was evaluated as being dependent or at the very least dependent to some degree (especially to the department of the administration of justice).
3. In the prevailing majority of the countries supreme court's draft budget during the initial stage of its construction is created in supreme court but then it becomes a subject of negotiations or further arrangements. The negotiations are either of a single-tier (as a rule consisting of arrangements with the ministry of justice or the ministry of finance) or a two-tier character (initial negotiations are conducted with the ministry of justice and the obtained arrangements become the subjects of negotiations in the ministry of finance).
4. Final version of supreme court's draft budget – as the budget for just this court (or as a fragment of the entire budget of the judiciary department) constitutes an element of the budgetary bill. The bill is most frequently presented to the parliament by the government. During parliamentary works on the budget (mostly by its specialized commissions) it is still possible to introduce certain changes to the court's budget. The changes are sometimes consulted with the president of the supreme court, or at the very least, the president is invited to attend sessions of the commissions.
5. In the prevailing majority of the countries, there exists – within the organizational structure of supreme court – a separated unit whose tasks include both preparation of the initial supreme court draft budget and management of allotted funding. Management bodies of supreme court (boards, colleges) and in some countries all judges of the court (general assembly of judges) have influence on the shape of the initial draft budget. The organizational unit in the structure of supreme court (or at the very least its management) is subject to supervision by the first president of the court or one of deputy presidents.
6. Tasks in the area of financing operations of supreme court are in all cases separated from the court's judiciary functions. In some of the countries there exist particular solutions regarding the rights to court buildings and covering of the cost of building maintenance.
7. Among the expenditures connected with the functioning of supreme courts, particular position is occupied by the remuneration of judges. The prohibition of shifting the funds assigned for the remuneration of judges to financing other expenditures of the supreme court may be regarded as a rule. Actions are being taken to ensure that judges receive remuneration appropriate to the dignity of their profession. Judicial salaries in all the countries are multiples of national average salaries. The highest salaries are found in Anglo-Saxon countries and in Switzerland. In relation to national average salaries, supreme court judges earn the least in Latvia (twice the amount of average annual salary), the most in Portugal and Ukraine (over nine times the average), as well as in the Czech Republic and Lithuania (nearly eight times the average national

salary). In relation to the average national salary the earnings of Polish Supreme Court Judges are on the level similar to that of Germany and France. There exist significant differences between the salaries of judges in courts of the highest and lowest levels. It can be concluded that neither in Europe nor in the European Union itself there exists a single, uniform model of determining the salaries of judges. Against the background of other European Union member states, the remuneration of Polish judges (including the Supreme Court) can be considered as being quite modest.

APPENDIX

Table 1**General Data: Population, National Budget, Average Annual Salary**

	Population	National Budget in Euro	Average Annual Salary in Euro
England and Wales	52 041 916	621 000 000 000	36 166
Austria	8 067 300	61 818 000 000	21 424
Belgium	10 309 725	no data	no data
Bulgaria	7 845 841	3 860 580 000	1 585
Croatia	4 437 460	10 085 241 000	8 800
The Czech Rep.	10 201 000	28 705 000 000	5 950
Denmark	5 368 364	112 000 000 000	no data
Estonia	1 356 045	2 519 151 107	4 915
Finland	5 171 000	37 065 000 000	28 800
France	60 186 184	278 000 000 000	21 000
Greece	10 600 000	no data	no data
Spain	41 837 894	no data	17 104
The Netherlands	16 000 000	125 688 000 000	37 300
Ireland	3 917 203	39 345 000 000	26 405
Northern Ireland	1 685 267	no data	no data
Lithuania	3 462 600	3 146 868 628	4 198
Latvia	2 319 100	2 326 193 766	5 041
Malta	382 525	no data	no data
Germany	82 600 000	529 584 000 000	25 500
Norway	4 525 000	9 506 768 300	42 039
Poland	38 230 000	37 181 347 150	6 631
Portugal	10 407 500	47 169 627 222	8 005
Romania	21 733 556	7 206 995 325	2 304
Slovakia	5 379 161	5 885 000 000	4 236
Slovenia	1 964 036	6 037 000 000	12 780
Scotland	5 062 011	152 100 000 000	36 166
Switzerland	7 317 873	82 271 000 000	51 480
Sweden	8 940 788	77 625 180 000	22 282
Turkey	70 173 00	52 634 350 560	4 200
Ukraine	47 809 700	12 233 845 360	1 223
Hungary	10 142 000	34 000 000 000	5 820
Italy	57 321 070	434 386 100 000	no data

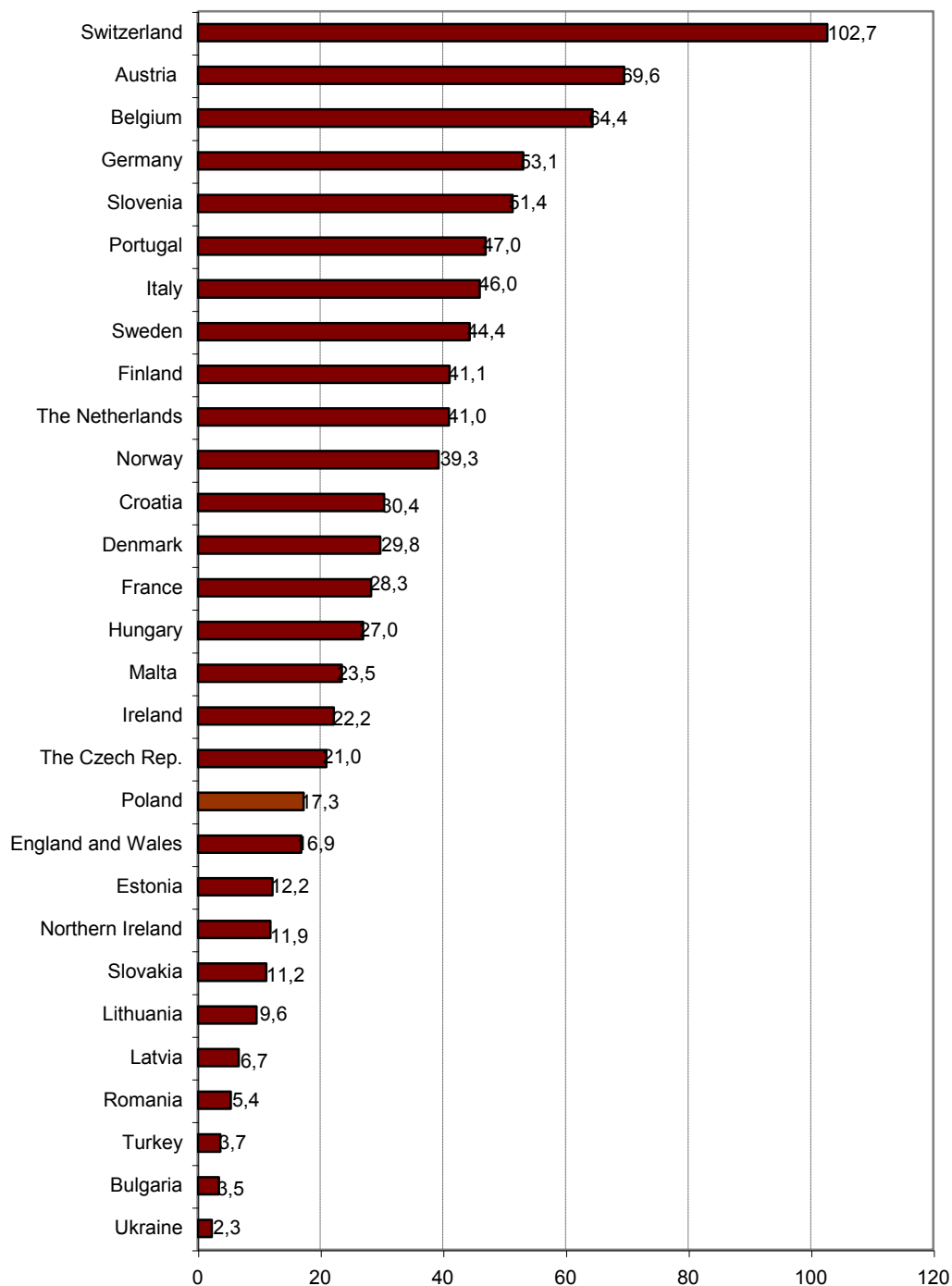
The comparison was prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) and published in the appendix to the book by A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: "Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów" ("Justice in Europe. Poland in Comparison With Selected countries"), Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 82 - Table 1.

Table 2**Expenditures for the Judiciary**

	National Budget (in mln Euro)	Expenditures for the Judiciary (in mln Euro)	Expenditures for the Judiciary (percentage of national budget)
England and Wales	621 000	879	0,14
Austria	61 818	562	0,91
Belgium	no data	664	no data
Bulgaria	3 861	28	0,72
Croatia	10 085	135	1,34
The Czech Rep.	28 705	214	0,75
Denmark	112 000	160	0,14
Estonia	2 519	17	0,66
Finland	37 065	212	0,57
France	278 000	1 706	0,61
Spain	no data	no data	no data
The Netherlands	125 688	656	0,52
Ireland	39 345	87	0,22
Northern Ireland	no data	20	no data
Lithuania	3 147	33	1,06
Latvia	2 326	16	0,67
Malta	no data	9	no data
Germany	529 584	4 390	0,83
Norway	9 507	178	1,87
Poland	37 181	663	1,78
Portugal	47 170	489	1,04
Romania	7 207	117	1,63
Slovakia	5 885	60	1,03
Slovenia	6 037	101	1,67
Scotland	152 100	no data	no data
Switzerland	82 271	751	0,91
Sweden	77 625	397	0,51
Turkey	52 634	257	0,49
Ukraine	12 234	110	0,90
Hungary	34 000	274	0,81
Italy	434 386	2 635	0,61

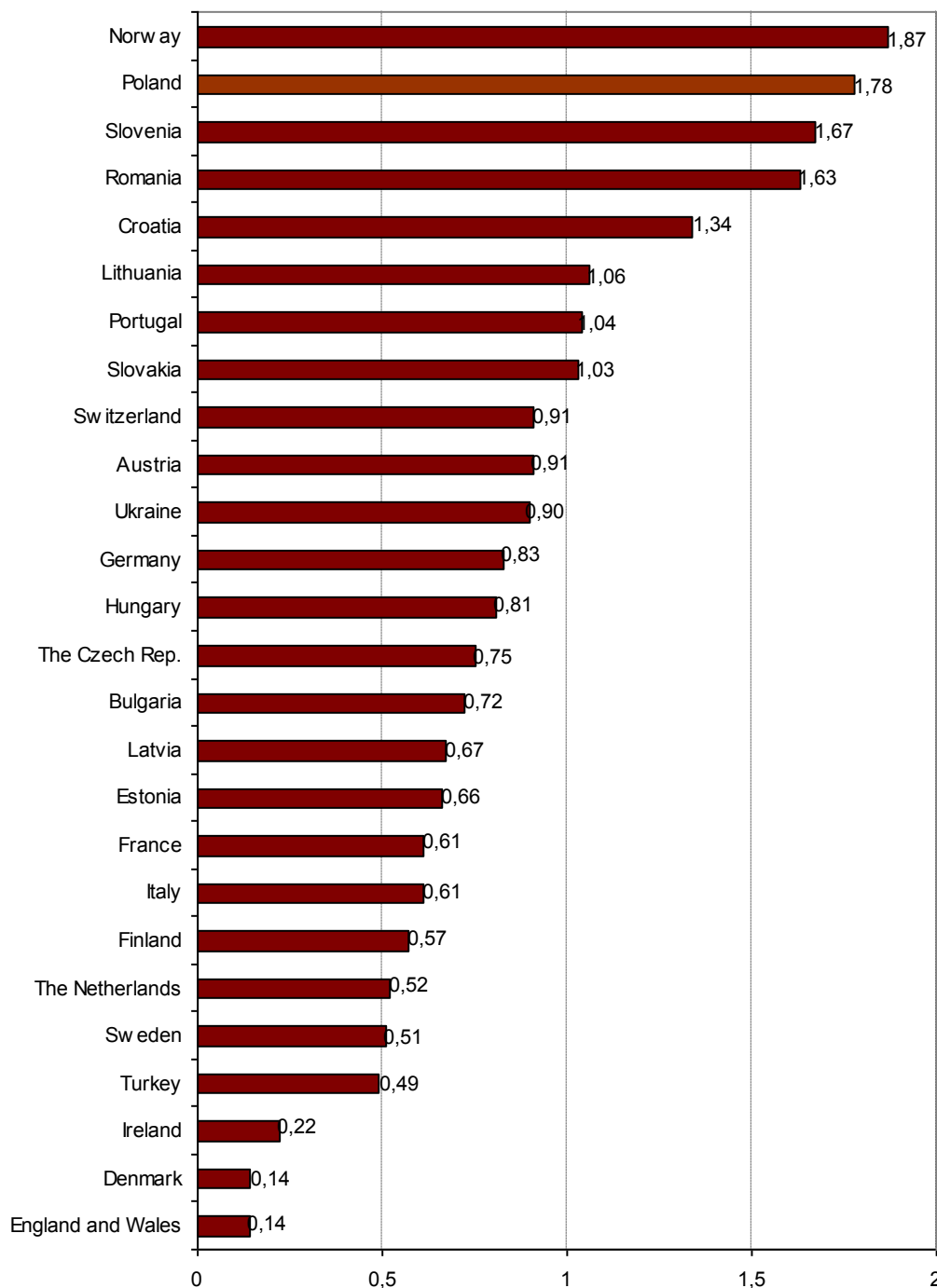
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Graph I
Expenditures for the Judiciary
Coefficient per Inhabitant in Euro



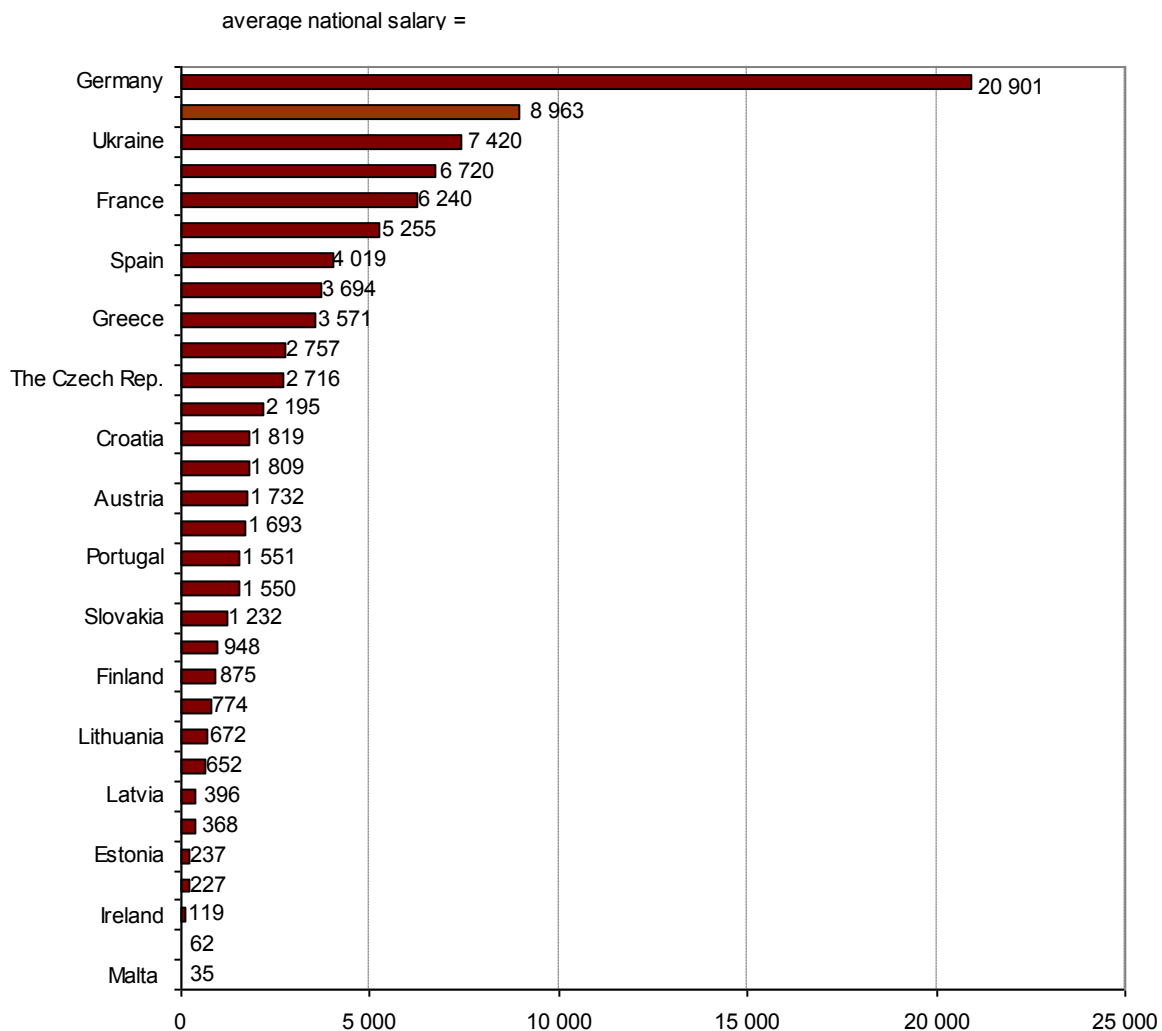
Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów ("Justice in Europe. Poland in Comparison With Selected countries"), published by Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 19 – Graph 1

Graph II
Expenditures for the Judiciary
percentage of national budget



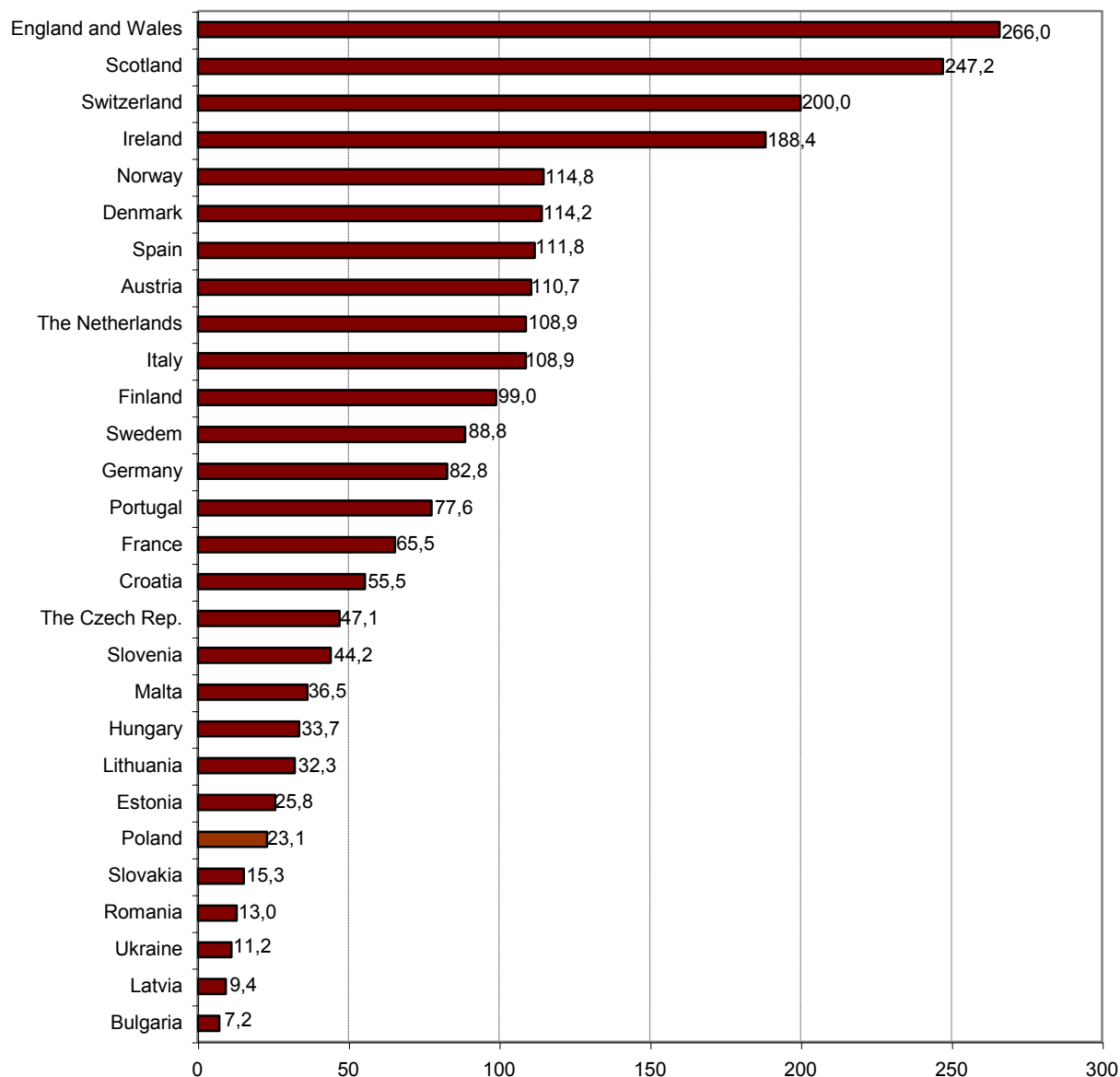
Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów ("Justice in Europe. Poland in Comparison With Selected countries"), published by Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 20 – Graph 2

Graph III Judges absolute numbers



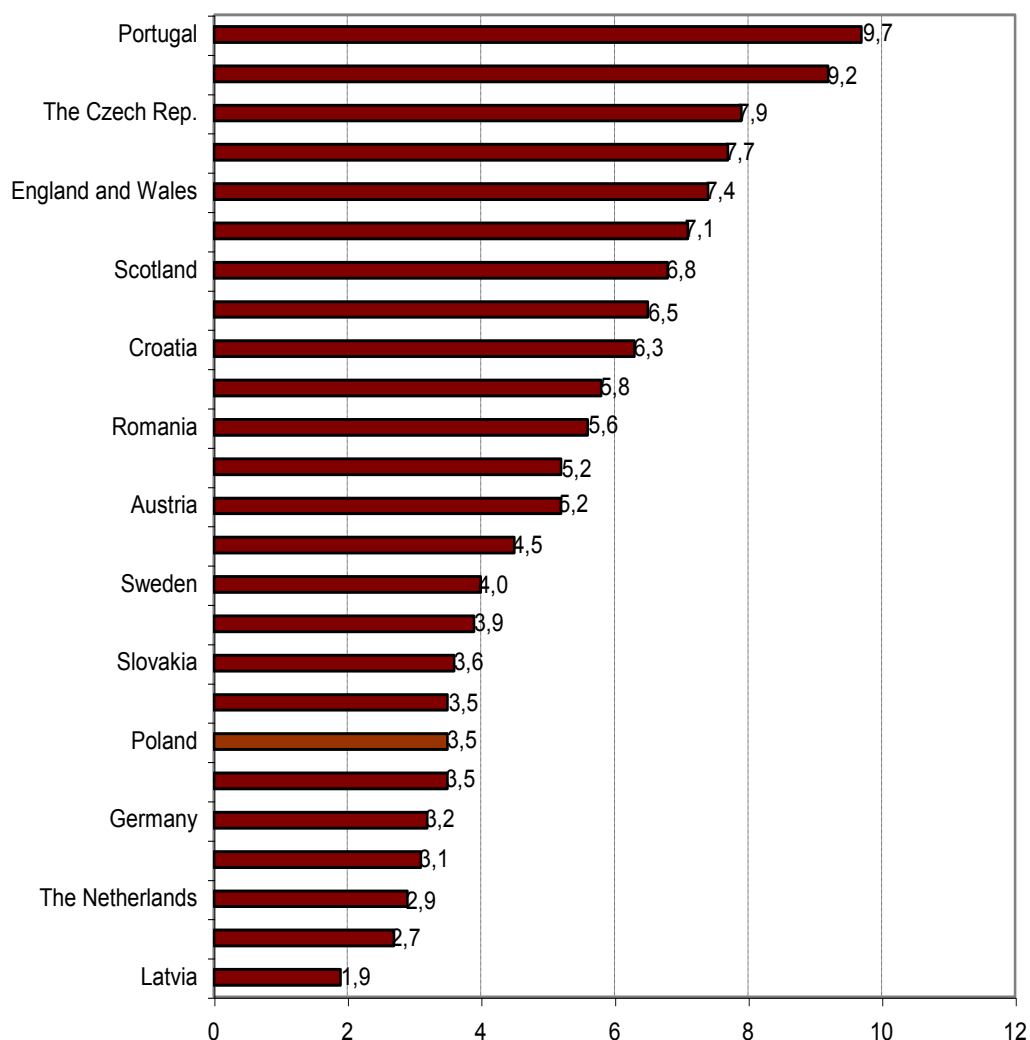
Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 included in the December 2004 Report of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: *Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów* ("Justice in Europe. Poland in Comparison With Selected countries"), published by Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 21 – Graph 3

Graph IV
Average Annual Salary of Supreme Court Level Judge
in thousands of Euro



Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 included in the December 2004 Report of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów ("Justice in Europe. Poland in Comparison With Selected countries"), published by Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 26 – Graph 8

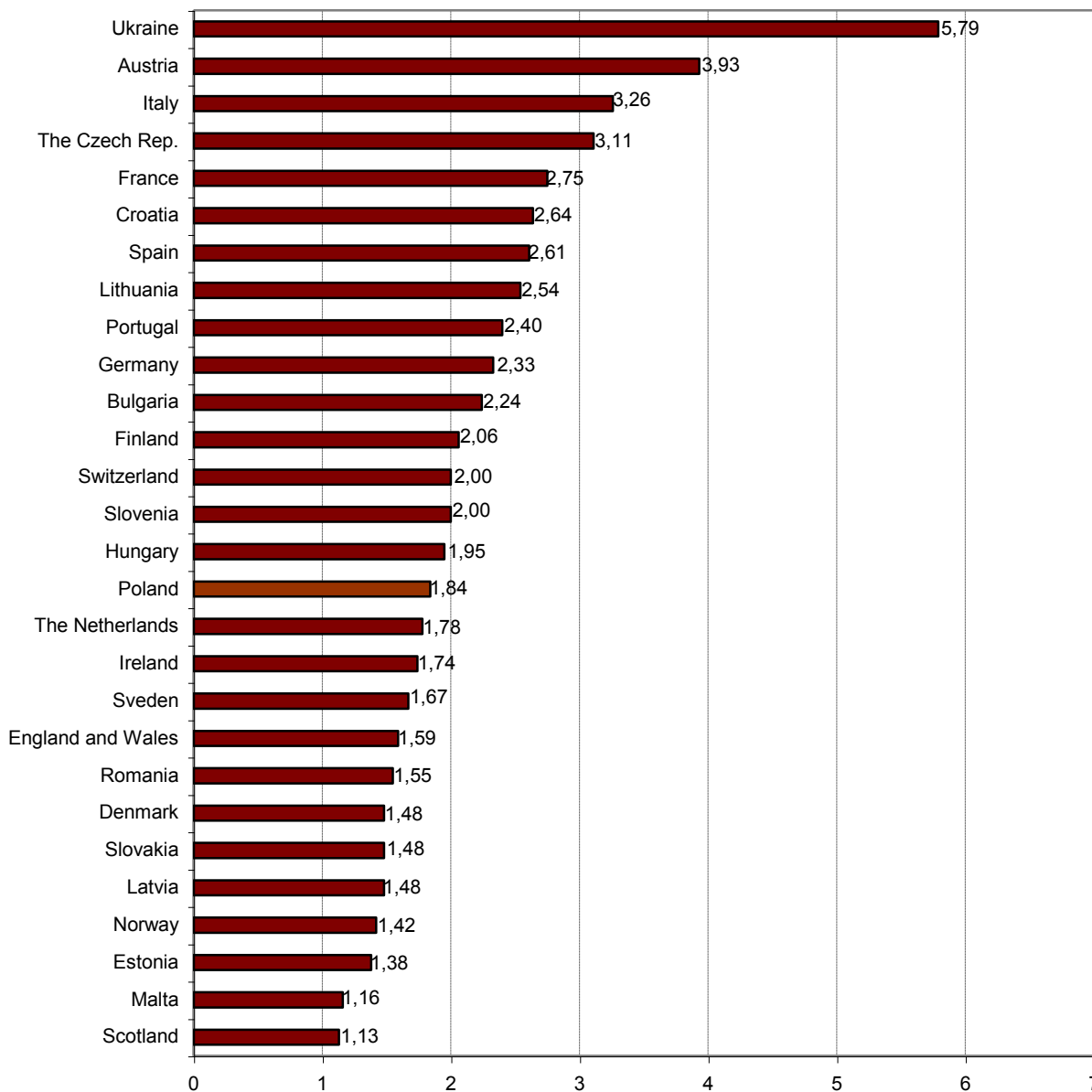
Graph V
Relation of Average National Salary
to Salary of Supreme Court Level Judge



Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 included in the December 2004 Report of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów, published by Instytut Wymiaru Sprawiedliwości ("Justice in Europe. Poland in Comparison With Selected countries"), Warszawa 2006, p. 27 – Graph 9

Graph VI
Salary of Supreme Court Level Judge to the Common Court
Judge Salary Ratio

Salary of the Common Court Judge = 1



Graph prepared in the Institute of Justice (Instytut Wymiaru Sprawiedliwości) on the basis of data from 2002 included in the December 2004 Report of the European Commission for the Efficiency of Justice (Commission européenne pour l'efficacité de la justice CEPEJ), placed in the book by: A. Siemaszko, B. Gruszczyńska, R. Kulma, M. Marczewski, entitled: Wymiar sprawiedliwości w Europie. Polska na tle wybranych krajów, ("Justice in Europe. Poland in Comparison With Selected countries") published by Instytut Wymiaru Sprawiedliwości, Warszawa 2006, p. 28 – Graph 10