

INDEPENDENCE OF THE JUDICIARY AS A PATH AND A GOAL – THE VOICE OF THE PROFESSION

ABSTRACT: The views and experiences of the judges are important for the performance of their duties, as well as for the improvement of their social and professional position. Therefore, the topic of this paper is the suggestions for improving the independence of the judiciary, which come from the representatives of the judicial profession. The paper is based on the results of extensive empirical research of the judges from all courts of general jurisdiction in Serbia. For the interpretation of the respondents' answers (N=599), thematic analysis was used, allowing us to further categorize the received statements by the perspectives of the respondents. The conclusion is that judges see the greatest space for improvement in the area of institutional guarantees of independence, while they are significantly less oriented towards guarantees of personal independence. Apart from the theoretical contribution, the paper primarily has a practical goal in advocating social change, i.e. a normative framework based on the guidelines that come from those to whom the regulations refer.

Keywords: *judiciary, judges, guarantees of judicial independence, thematic analysis, Serbia.*

* PhD, Teaching Assistant holding a doctorate, University of Belgrade, Faculty of Law, Belgrade, Serbia, e-mail: valerija.dabetic@ius.bg.ac.rs



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1. Introduction

The always ever-present issue of judicial independence gains particular in developing countries where various systems for its implementation are still being “tested”. Therefore, the subject matter of this paper is suggestions for improving the independence of the judiciary and solving existing problems originating from the judges i.e. employees themselves. Divided into two parts, the paper first provides an overview of the specific social context in which the legal framework of judicial independence is developed, and then it provides an analysis of the theoretical grounds. The second part of the paper presents the perspectives of the judges, obtained through qualitative research, regarding the challenges they face in performing their duties, as well as the profession’s proposals for solving these problems.

2. Social context, normative framework of judicial independence, and research objective

The example of the transformation of the social order of Serbia, shows us that various attempts at radical systemic changes have on several occasions failed the expectations of citizens, as well as judges. During the period of blocked transformation (1991-2000), Serbia was going through an economic crisis, a state of civil (pre)war and the international community’s sanctions, which is why the improvement of the position of judges was certainly not high on the list priorities (Lazić, 2014, pp. 9-33). The ruling state apparatus largely controlled the economic, political and cultural changes, and consequently, Serbian judges were faced with various types of direct and indirect pressures, illegal dismissals, salary decreases, corrupt practices, etc. Following the democratic changes of the 2000s and the creation of greater political and cultural pluralism, international support (and pressure, if necessary) encouraged the reform of the normative framework in the field of the judiciary (International Commission of Jurists [ICJ], 2016, pp. 4-5).

As in the other Western Balkans countries, this reform was aimed at harmonizing domestic regulations with the European *acquis*. However, many problems are not recent ones, so the accelerated normative change was slowly followed by the substantive *de facto* implementation of the new regulations (Lazić, 2014, pp. 9-33). As for the normative politicization of the judiciary, it was evident in the example of the judicial budget which is divided between the High Court Council and the Ministry responsible for the judiciary. Also, the process of selection of judges, where the appointment is made by the

High Court Council, as an expert body, composition of which now formally guarantees a greater degree of judicial independence (Nikolić, 2021, pp. 121-125). What remains a problem and opens room for concern is the role of the parliament, i.e. “a possible way of politicization of appointments” in case of abuse of entrusted powers for the selection of one part of the High Court Council members (Škero, 2022).

This change in the legal framework, i.e. mainly institutional guarantees of independence (*de jure*), guided and monitored by international partners, failed to bring about the changes judges hoped for (Dabetić, 2023).¹ The great economic dissatisfaction is evidenced by several surveys showing that as many as 89% of judges in Serbia believe that the current amount of salary is not in accordance with the dignity of the judge (Trifunović & Petković, 2017, pp. 8-9, 26). The presence of inappropriate political influence that many judges (almost every second judge (44%)) also reported as an obstacle to the impartial and independent performance of their duties (Judges’ Association of Serbia, 2017, p. 47). Career uncertainty, i.e. the selective application of the principle of meritocratic selection should not be disregarded either (as many as 72% of judges believe that the performance of judges is inadequately evaluated, while 59% of them believe that the selection and career development of judges is not transparent), which is why judges in Serbia face serious obstacles to improving its independence (Judges’ Association of Serbia, 2017, p. 20, 24).

Despite many challenges, some of which have lasted for decades, unfortunately, professional opinion was generally not respected to a sufficient extent, even in the judicial system reforms, which is why judges often felt like observers of this process. This resulted in feelings of helplessness, dissatisfaction and disappointment, which often led to personal or group withdrawal from any social change process (Golubović, 2007, p. 9). As a result, this paper has special practical importance as its main goal is to restart the political dialogue for the improvement of the guarantees of an independent judiciary and encourage the change of the normative framework in accordance with the recommendations of the representatives of the judicial profession.

¹ A more detailed analysis of the constitutional amendments and their influence on the independence of the judiciary in the process of European integration was tackled in one of the previous papers, therefore, only the basic findings will be presented here (Dabetić, 2023).

3. Theoretical framework

Many different definitions of an independent judiciary may be found in literature, some of them being "...the ultimate legal and political tool for achieving the rule of law" (Đorđević, 2020, p. 373), "... the absence of political and other pressures on this authority, but not the creation of an autonomous system, without any cooperation with other political authorities" (Petrov, 2013, p. 5), "... to perform (judges and courts) duties free of influence or control by other actors, whether governmental or private" (Law, 2023) etc. Although there is no universal and generally accepted definition, it is generally agreed that there are two basic forms of independence: the personal and institutional one. They are inseparable, permeate one another, and can hardly be realized without the other. In other words, selected individuals must obtain certain knowledge and skills, as well as virtues, qualifying them to be a judge. Despite high professional and moral criteria, judges, like other people, are to a greater or lesser extent subject to external influences. Therefore, the guarantees (such as fact-finding procedures, institutional organization of the court, selection procedure, competence of judges etc.) are those that protect judges, while additionally binding them (Fleiner, 2009, p. 94). The experiences of other post-communist countries show that internal socio-economic factors also play an important role in the achievement of an independent judiciary, including successful privatization, transition, protection of property rights, as well as external political factors such as the EU accession process, harmonization of regulations etc. (International Monetary Fund, 2017, 39-96).

If we step aside from this legal definition for a moment, with no intention of neglecting the general social importance of an independent judiciary, we can also consider judges as employees. They cannot completely be defined as "ordinary" i.e. any other employed bureaucratic officer, whose performance is measured by the number of completed submissions, calls made, texts published, deadlines met, etc. In the case of judges, in addition to the number of adjudicated cases, the so-called achieved monthly performance norms, the behaviour of judges is also evaluated, both in the professional and private domain (Posner, 2010, pp. 130-131). Nevertheless, judges share certain common features with other employees in terms that "the correct treatment is reflected in correct actions" and that fair treatment of employees, as well as a productive and dignified work environment has positive effects on performance, as well as vice versa (Dessler, 2007, p. 252). How employees perceive the attitude of their superiors towards them affects work organization, the degree of commitment, the degree of motivation, the sense of belonging,

etc. (Dessler, 2007, p. 252). Altogether, this reflects the organizational culture of the judiciary as an institution, where judges as employees may or may not be satisfied with the existing set of shared values.

4. Empirical framework

4.1. Sample

The analysed data represents part of an extensive empirical research with the participation of 620 judges from all courts of general jurisdiction in Serbia (basic, higher and appellate courts). The quantitative part of the research was conducted during the second half of 2022, by distributing the questionnaire electronically and by mail to all courts in Serbia (a total of 95 courts). The aim was to enable the participation of each of the 1890 judges, as many as there were on the day when the research started.² The close-ended questions predominated in the questionnaire, still the topic of this paper is the following open-ended question: “What needs to be done to make the judiciary independent of external/internal influences?”

The sample on which qualitative data processing was performed on this specific question consisted of 457 respondents. Of these, 451 persons declared their gender, with a noticeably higher number of women (Table 1), which is almost double the number of male judges. The largest number of respondents belongs to the group of middle-aged (from 36 to 65 years of age, taking those three categories together), while the sample includes the least number of oldest respondents over 65 years of age. Table 1 also shows that the largest number of respondents come from large and medium-sized cities (from 25,000 to 100,000 inhabitants), then a regional centre (cities up to 500,000 inhabitants), small towns (up to 25,000 inhabitants), Belgrade, and finally villages (below 5,000 inhabitants).

² The research started in 2021 and ended in 2023. It was conducted in four stages, and apart from the quantitative part, it also included a qualitative part, in the form of semi-structured interviews (N=52) and focused group discussions (N=3). This paper will deal with one open question from the questionnaire only, the analysis of which was not the subject of any previous papers. More details about the research process and the method of data collection. (Dabetić, 2023).

Table 1. – The structure of respondents in the sample according to gender, age and place of residence

Variable		Number of respondents	%
Gender	Female	307	61.8 %
	Male	144	31.9 %
Years of age	Below 35 YoA	21	4.7 %
	From 36 to 45 YoA	130	29.0 %
	From 46 to 55 YoA	145	32.4 %
	From 56 to 65 YoA	150	33.5 %
	Over 65 YoA	2	0.4 %
Place of residence	Belgrade	71	15.6 %
	Regional centre	94	20.7 %
	Larger and medium-sized cities	181	39.8 %
	Small towns	95	20.9 %
	Villages	14	3.1 %

Source: Author's research

As shown in Table 2, the largest number of respondents stated that they work in a basic court, followed by a higher court, and then the Court of Appeal, mainly in the area of civil proceedings, followed by criminal proceedings, non-contentious proceedings and, finally, in the area of enforcement. Also, the largest number of respondents have been performing their judicial office from 1 to 5 years, followed by the group of oldest respondents who have been employed for over 25 years, while the least number of judges have been performing their judicial office from 6 to 10 years.

In a large number of cases, respondents presented several suggestions in one answer, which is why the content of each answer was analysed in detail. Therefore, the number of answers that were the subject of the final analysis (N = 599) exceeds the number of respondents whose answers were the subject of this particular analysis. We also note that non-informative answers (“*no comment*” = 115 and “*I don't know*” = 5) were previously excluded from the qualitative processing, as well as all answers that related to some personal introspection and emotions of the respondents (“*other*” = 58). The obtained data were primarily interpreted inductively, i.e. from the bottom-up, which, after several repeated readings of the received statements, allowed us to form 9 categories that were further grouped into two broader topics.

Table 2. – The respondents' structure in the sample in relation to employment

Variable		Number of respondents	%
Place of work	Basic court	333	73.3 %
	Higher court	83	18.2 %
	Court of Appeal	38	8.3 %
Duration of office	From 1 to 5 years	132	28.9 %
	From 6 to 10 years	37	8.1 %
	From 11 to 20 years	97	21.3 %
	From 21 to 25 years	80	17.5 %
	Over 25 years	108	23.6 %
Trial area	Civil proceedings	289	63.2 %
	Criminal proceedings	161	35.2 %
	Non-contentious proceeding	66	14.4 %
	Execution	53	11.6 %

Source: Author's research

Thematic analysis is a frequently used method in qualitative research that primarily aims to systematically identify, organize, and provide insight into patterns of meaning within a specific set of data. By focusing on meaning across a set of data, thematic analysis enables researchers to recognize and interpret collective or shared meanings and experiences (Braun & Clarke, 2012, p. 57-71). However, each research method has its advantages and disadvantages, therefore, we faced various challenges when applying the thematic analysis. In the first place, it was certainly a search for repetitions and patterns in the respondents' answers (Vesić, Vujačić & Joksimović, 2018, p. 151). Some statements were already clear at first reading, while others required deeper interpretation and repeated reading. A special problem were ambiguous answers that could be classified into several different categories. The third difficulty resulting from this challenge was the creation of categories within which the obtained statements should be classified (Vesić et al., 2018, p. 151). The mentioned difficulties were overcome by the instrumentalisation of the theoretical framework, i.e. by categorization within general topics, i.e. institutional and personal independence of the judiciary, which enabled us to better understand all the statements received. In other words, the categories are formulated inductively, while the themes are the result of a deductive approach.

4.2. Results

By analysing the answers obtained and coding their content, we initially came up with 10 categories, which we managed to finally group into 9 categories that were further united into two basic, broader topics: institutional (N = 518) and personal (N = 81) independence. In Table 3, the categories are sorted according to the frequency of the respondents' answers, and explained in more detail below, with accompanying examples of the respondents' narratives.

1) The most represented suggestion and perhaps the key institutional problem pointed out by the respondents refers to **the improvement of the financial position and working conditions**. It has several dimensions, the first being a) *the budget of the judiciary*. When we say "budget", we often have in mind only the judges' salaries, and perhaps the fee for maintaining the court infrastructure, or even more vaguely, the "court operation and functioning". Judge Škero exposes this layman's, somewhat naive view, reminding us that hearings in Serbia are postponed due to a lack of paper; that the parties in the proceedings and lawyers have to bring their own paper for the trials to take place, thereby damaging the court's reputation; that due to unpaid bills, judges do not have access to the Internet and cannot use telephones; that the duration of the trial is further delayed, because the costs of experts and lawyers were not paid in a timely manner; that roofs in some courts leak, that judges do not have enough chairs and offices, etc.³ These and similar problems were pointed out by our respondents in some of the following statements:

Form a separate judicial budget to allow for independent judiciary... A separate budget needs to be set aside. At the moment, when using annual leave, 1,500 dinars per day are deducted from our pay. In case of a malignant disease, an associate receives 100% of his/her salary (salary compensation/paid leave benefit). The salary of an assistant ranges from 120,000-150,000 dinars, and in case a judge falls ill with a malignant disease, he/she receives 65% of his/her salary (salary compensation).

³ Vida Petrović Škero, Sudski budžet – Zašto sudije moraju da učestvuju u pisanju budžeta za sudove, <https://www.emins.org/sudski-budzet-zasto-sudije-moraju-da-uestvuju-u-pisanju-budzeta-za-sudove/>, accessed on 11 August 2023.

Table 3 – Suggestions for improving the position of the judiciary coming from the holders of judicial office

Topics	Categories	Frequency of answer (f)	Typical statements
Institutional independence of the judiciary (<i>de jure</i>) (N = 518)	Improvement of financial position and working conditions	211	<i>Strengthen the economic position and status of judges, adequate number of cases, judicial assistants, and technical equipment.</i>
	Reducing undue political influence	98	<i>Remove the influence of politics, nepotism and cronyism, and executive power interference... politicians should not comment on (predict) court proceedings at all.</i>
	Apply clear and transparent selection and promotion criteria	97	<i>Ensure the conditions for the election of judges which must be independent and impartial with expertise and worthiness as the exclusive criteria that should be complied with... depoliticize the election of judges.</i>
	Changes in and adherence to the legal framework	87	<i>Improve legal solutions in the existing set of judicial laws... effective law enforcement... compliance with norms without exceptions.</i>
	Reduce the negative influence of the media on the work of the judiciary	25	<i>Suppress the negative influence of the media and improve reporting objectivity... react to any indirect and direct influence on the court's work ... provide the public with insight into all court decisions, while protecting the privacy of the parties.</i>
Personal independence of the judiciary (<i>de facto</i>) (N = 81)	Introduce training and education as a principle of lifelong learning	45	<i>An independent judiciary is an educated judiciary... Enable continuous professional training for all judicial office holders, not just a few.</i>
	Strengthen the integrity of judges as individuals	19	<i>To build personal and professional identity (as) a relief from external and internal influences... Primarily: conscientious, professional, up-to-date, and responsible work of a judge.</i>
	Raise citizens' awareness of the importance of an independent judiciary	11	<i>Raise people's awareness and knowledge about the functioning of the system, citizens' trust... about the necessity of an independent judiciary as the foundation of a democratic society.</i>
	Associate professionally to strengthen judges as a professional community	6	<i>Stronger engagement of professional associations and notification of individual cases of attempts to influence judges.</i>

Source: Author's research

- b) The second dimension concerns the *amount of salaries*, i.e. increase in monetary income originating from the limited possibilities of judges to possibly earn additional money through other activities related to their basic job. Due to these normative constraints, there is great dissatisfaction with the amount of salary, which is often subject to reductions, since until recently, it was a part of the state budget planning outside the competence of the judiciary (Law on the Organization of Courts, 2023). It should be noted that the amount of salary should correlate with the degree of responsibility imposed by a certain occupation, that is, it should match the level of expertise required for its performance and the scope of work. In the case of judges, it is particularly important, since this is a profession of general social importance requiring a special way of conduct from its representatives, not only in the line of duty, but also in private life.

Unlike other professions and branches of government, judges are not allowed to engage in any other work that could contribute to their financial position, which in my opinion is justified. However, if they do not have such a possibility, the salaries of judges should be increased by that ban... Judges should be granted reduced service years and paid a salary that would be a reward for their work and compensation for any sacrifice.

- c) *The number of court staff* is the third important dimension of improving the financial independence of judges as pointed out by the participants. On the one hand, a large number of cases leads to a significant workload for a judge, and additionally, each case requires a large number of administrative actions. It is not that the judges cannot perform all these activities themselves, but they need not undertake all procedural activities independently. The trial is a special process which requires not only expertise but also reasoning as a special mental process from the single trial judge, which is why the respondents appeal to hire more incumbents to assist them in this:

Reduce the workload of judges with a large number of cases and administration, each judge should have a judicial assistant, improve the economic position, conditions for retirement, technical equipment of the courts... Enable better organization of judges, i.e. relief from a large number of cases by greater involvement of associates in work on less difficult cases.

2) The second most represented suggestion of the respondents refers to the **reduction of undue political influence**. In the current system of division of power in our country, the judiciary is defined as the third branch of government, therefore, it will always be in some relationship with the other two branches of government. The respondents' answers showed dissatisfaction with the implementation method of this system of division and balance, which is why the negative political influence is noticeable in different segments of the judiciary.

To stop the undue influence of the other two branches of government on the judiciary, which is achieved by establishing mechanisms that ensure the division and balance of power... Remove political influence from every segment of the judiciary... non-interference of the executive branch in the selection of judges and leave it exclusively to the profession.

3) **Clear and transparent selection and promotion criteria** are third-ranked on the list of problems the representatives of the judicial office are facing. The prevailing opinion is that a) the *selection of judges* is not the result of expertise, competence, worthiness and other moral qualities that every judge should have, but the product of negotiations and interests, with inconsistently applied selection criteria often with a political note, etc. The general conclusion of the respondents is that such an unfair method of selection opens the door to inadequate human resources who will not have the capacity to fight for judicial independence.

The first step is selecting honourable and professional people for judges, and not "suitable" people with the "best" connection... Choosing candidates/judges with both theoretical and especially practical knowledge and skills for performing the judicial function, with a strong awareness of the social responsibility of the judicial function, i.e. profession of a judge... Choose the optimal number of judges so that the judicial function is exercised in a truly professional manner (so that quantity does not come at the expense of quality).

- b) With reference to the *performance evaluation method*, a qualitative criterion is used in some countries, and a quantitative one in others, sometimes even a combination of the two, while in some countries the work of judges is not evaluated at all. In the USA and Canada, qualitative criteria are not used at all, while quantitative data on the number of

resolved cases are used as useful inputs for the possible hiring of additional staff, reducing the workload of single trial judges, etc. In Ireland, Great Britain, and Northern Europe (Denmark, Finland, Sweden) the individual work of judges is not evaluated, but the work of the courts is measured qualitatively and quantitatively (Judges' Association of Serbia, 2005/2007, p. 5-6). This issue is not adequately regulated in Serbia, so previous surveys show that 86% of judges are not satisfied with the current, regular method of evaluation, which is predominantly oriented towards quantitatively measurable results, i.e. the so-called "monthly performance norm" (Trifunović & Petković, 2017, p. 8-9, 26). This attitude also correlates with our results:

Ensure career development according to the results that judges achieve... Fair promotion... define criteria for assessment of judge's expertise... ensure that only fellow judges should decide on judges... that the members of the High Court Council are only from among judges... Introduce the adoption of a written decision on selection and promotion with the right to appeal, since it is the only sector where the selection is made without a reasoned written decision on the selection and promotion.

4) The fourth most common suggestion is **changes in and adherence to the legal framework**, showing dissatisfaction with the level of legal culture of the authorities and the current way of law enforcement, but it also confirms the lack of two-way communication between authorities. This type of communication is a key feature of any democratic system, and apart from enabling cooperation between government officials, it gives judges as employees the feeling that they are working in a fair working environment. Therefore, the need for judges to be actively involved in the processes of changes in legal framework is understandable as it directly concerns them, and so is the need to explain to them why certain decisions were made and to know in advance on what principle these decisions will be made (Dessler, 2007, p. 262).

Changes to the legal framework contributing to the preservation and protection of the judge's integrity and reputation in society (reduced service years, financial position, sanctioning of any behaviour that, under the circumstances, is aimed at disrespecting judges and the judicial profession)... Applying applicable law without exception which is quite enough for achievement of an expected goal... To establish European standards for judicial functions.

4.3. Discussion

The thematic analysis of 599 responses provided by judges of basic, higher, and appellate courts resulted in a total of nine categories or factors that can improve the independence of the judiciary. Due to the limited scope of the work, but with no intention of ignoring the importance of each category of suggestions, only the most frequent suggestions within institutional independence (N=518) will be the subject of scientific discussion. A very large disparity in the representation of suggestions within one topic shows that the vast majority of judges see the improvement of judicial independence primarily through *de jure* changes.

As for the first and most represented category, *improvement of financial position* (N=211), the fact that judges raise the question on the autonomous court budget, salary amount, the number of court staff and pensions is largely in line with the current unsatisfactory situation and solutions. Like all employees, judges also need external and internal equality which is a key variable in determining the price of work (Dessler, 2007, p. 217). The first type of equality refers to the price of work in other similar organizations, i.e. the price of work in a court must be similar and appropriate in comparison with the salaries of other state authorities, for the judicial office to attract and retain professional and qualified individuals (Dessler, 2007, p. 217). If we take into account the specificity of the judicial duty, which requires moral qualities and worthiness among other things from its holder, we believe that it should be higher than the other bureaucratic officials. On the other hand, internal equality refers to the level of compensation of other employees in the same organization, which is represented in the legal system of Serbia through salary grades, implying that all judges of the same rank receive the same salary. The problem is the lack of clear standards for promotion, therefore, judges can hardly plan and develop their careers.

Such a solution leads us to the second category for improving the position of judges in Serbia, that is, *reducing undue political influence* (N=98), and the third category, *selection and promotion based on an objective assessment of performance* (N=97). Unfortunately, the political influence in the selection of judges in Serbia is not an isolated case, because politicians usually have a similar *modus operandi*. History, as well as examples of other countries (e.g., political factors play an important role during the election of presidents and senators in the USA), confirm that the selection of future judges is not based solely on the objective qualifications and abilities of the proposed candidates. When we take into account that the main goal of politicians is

to stay in power as long as possible, this kind of behaviour is completely understandable and anything to the contrary would defy logic (Peretti, 2002, p. 109). Moreover, unclear and non-transparent selection criteria, waiting too long for promotion, or fear of rejection can lead to a greater degree of meeting the expectations of those in power, be it the minister of justice, hierarchical superiors, or even a “self-governing” body (Fiket, Pavlović, & Pudar, 2017, p. 53, 77; Guarnieri, 2003, p. 226). Therefore, the desire of the respondents to fundamentally change the selection process is completely understandable and justified.

Finally, the frequency of responses i.e. their grouping around the fourth most represented category, *change of the normative framework* (N=87), shows that the research participants are primarily oriented towards the reform of regulations, which they assume would consequently have an impact on different segments of personal independence. In other words, judges are predominantly normatively oriented, i.e. they are very inclined to see the world in which they work (and often live) as a “world of laws”. This finding is understandable, considering their legal education and that representatives of legal professions generally have a higher degree of legal culture than other members of society. What is interesting is that the respondents view the independence of the judiciary primarily through an institutional prism, i.e. rather narrowly, as they do not perceive themselves as agents of social change, but primarily as employees. This view can be a consequence of a great trust in the regulative power of laws. On the other hand, it can also be a mirror of specific cultural and professional practices characteristic for countries with a communist past, where judges were not nurtured to be independent, rather as an “extended arm” of the executive.

5. Conclusion

Everyone has their own vision of an independent judiciary and these are the opinions of a part of Serbian judges that we may or may not agree with. What certainly cannot be denied is that job satisfaction, and especially remuneration, is one of the prerequisites for greater employee motivation, but also a guarantor of good and responsible performance of tasks. Therefore, it is understandable why the issue of improving material guarantees is so highly rated among the respondents. Although we agree that the existing compensation is insufficient for the dignified life of a judge and his/her family in Serbia, which is expressly foreseen by European and domestic legislation, we recall a somewhat controversial question by judge Richard Posner: if

salaries were significantly increased, would the job of a judge attract only those who want to be judges or also those who want to enjoy pecuniary and nonpecuniary benefits (relatively secure government job, independence at work, free time management, etc.) (Posner, 2010, pp. 169-170.)? Posner is primarily referring to the motivation of judges for court work, which should certainly have a dose of altruism and the desire to help others in need. Aware of the risk that for the job of a judge could opt those whose with instrumental and lucrative motives, we believe that increasing salaries in Serbian society as it is today can only contribute to a greater degree of economic independence of judges.

Nevertheless, the question arises: if the problem of an independent judiciary is solved by raising salaries, isn't that the easiest way to solve it? If the budgetary funds are insufficient, as could often be heard in the public political discourse, why don't we then take a loan to improve the judiciary, just as we take out a loan for road construction? Isn't the problem a bit deeper and more complex? We believe that this is the case, since personal and institutional independence are inseparable, and the improvement of normative guarantees would certainly contribute to a better position of judges, however, it would not automatically make judges as individuals absolutely independent. Independence is influenced by many aspects of the judge's personality, as well as the level of legal education and legal culture of a country, i.e. as argued by Fleiner (2009), "the judiciary depends not only on good laws and good legal principles, but also on procedures, the legal system and legal culture, as well as on the position of the court and judges." (p. 119). Which is why both sides of judicial independence needs to be nurtured and improved equally, encouraging judges to adjudicate expertly and live with dignity.

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Dabetić Valerija

Univerzitet u Beogradu, Pravni fakultet, Beograd, Srbija

NEZAVISNOST SUDSTVA KAO PUT I CILJ – REČ STRUKE

APSTRAKT: Mišljenja i iskustva nosilaca sudijske funkcije značajna su za obavljanje njihove dužnosti, kao i za unapređenje društvenog i profesionalnog položaja. Stoga su predmet ovog rada predlozi za unapređenje nezavisnosti sudstva koji dolaze upravo od predstavnika sudijske struke. Rad se bazira na rezultatima opsežnog empirijskog istraživanja u kome su učestvovalе sudije iz svih sudova opšte nadležnosti u Srbiji. Prilikom tumačenja odgovora ispitanika (N=599) korišćena je tematska analiza, koja nam je omogućila da dobijene iskaze dalje kategorizujemo u skladu sa perspektivama ispitanika. Nameće se zaključak da sudije najveći prostor za unapređenje vide u oblasti institucionalnih garancija nezavisnosti, dok su značajno manje orijentisane ka garancijama personalne nezavisnosti. Osim teorijskog doprinosa, rad primarno ima praktičan cilj – zagovaranje društvene promene, odnosno normativnog okvira na osnovu smernica koje dolaze od onih na koje se ovi propisi i odnose.

Ključne reči: sudstvo, sudije, garancije nezavisnosti, tematska analiza, Srbija.

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