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**SUMMARY OF DOCTORAL THESIS**

**CONTENT OF JUDICIAL INDEPENDENCE**

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## Relevance of the Topic

One of the most visible aspects of the development of a modern democratic state governed by the rule of law is the growing political, social and economic influence of the judiciary. The role of the court and the judge is evolving, and various challenges arise in this context. The judiciary must be able to fulfil its basic function and tasks today, when war and crises affect both the internal and global processes of each country, and the digital age makes borders transparent. Only an independent court has the power to maintain balance and protect democracy in the face of political populism and crises, and to ensure peace and stability. Promoting judicial independence contributes to the economic and legal sustainability of a country, as the prosperity and stability of a country is directly linked to the independence of the judiciary.<sup>1</sup>

Today, different countries face greater or lesser challenges to their judiciary and its independence.<sup>2</sup> The judicial independence is also a topical issue in democratic countries governed by the rule of law. The search for the best solutions to improve the quality of justice is ongoing. This includes issues of court administration, procedural regulation, judicial qualification, accountability and other issues related to the functioning of the courts. Each of these needs to be addressed while ensuring judicial independence. The requirement of judicial independence is therefore "invoked" both to justify and to oppose the proposed developments. Judicial independence is used as an argument by the legislature, the executive and the judiciary itself.

The European Union's (hereinafter "EU") annual Justice Scoreboards point to problems with judicial independence. The EU Justice Scoreboard analyses, *inter alia*, the efficiency and quality of the justice system and judicial independence. Since 2013, it has been comparing justice systems in all EU Member States, monitoring justice reforms and assessing trends in the field of justice, thereby identifying problems and contributing to their resolution based on national best practices. The report updates information on judicial independence (e.g. the 2023 report includes information on judges' remuneration, the appointment of court presidents, etc.) and therefore identifies new challenges in this regard.<sup>3</sup>

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<sup>1</sup> Satversmes tiesa (Constitutional Court of the Republic of Latvia). Case 2016-31-01; Separate Opinion of Judge Ineta Ziemele, p. 5. Obtained 20.08.2021.: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/12/2016-31-01\\_Atseviskas\\_domas\\_Ziemele.pdf#search=](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/12/2016-31-01_Atseviskas_domas_Ziemele.pdf#search=)

<sup>2</sup> International Association of Judicial Independence and World Peace. (2008). Mount Scopus International Standards of Judicial Independence (consolidated 2015), p. 42. Obtained 24.12.2021.: <https://www.jiwp.org/mt-scopus-standards>

The document points to problems in countries such as Turkey, Israel, Hungary, Poland, the US and Venezuela.

<sup>3</sup> European Commission (2023). 2023 EU Justice Scoreboard. Obtained 26.02.2024.: [2023 EU Justice Scoreboard | European Commission \(europa.eu\)](https://european-commission.europa.eu)

Information from Eurobarometer surveys on public and business perceptions of judicial independence in each Member State. Obtained 26.02.2024.: [Perceived independence of the national justice systems in the EU among the general public - June 2023 - - Eurobarometer survey \(europa.eu\)](https://european-commission.europa.eu)

A number of issues related to judicial independence are still pending before the European Court of Human Rights and the Court of Justice of the European Union. While many cases in recent years have been brought against Poland and Hungary, problems in ensuring judicial independence have also been identified in other countries.<sup>4</sup>

The Council of Europe's Commission for Democracy through Law (hereinafter "the Venice Commission") regularly provides opinions both on new draft laws and on amendments to laws and regulations governing the judiciary, pointing out problems and shortcomings in ensuring judicial independence.<sup>5</sup> The Venice Commission is increasingly called upon by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe to give its opinion on the legal framework of the judiciary in the member states. For example, in 2023, the Venice Commission identified problems in ensuring judicial independence in both France<sup>6</sup> and the Netherlands.<sup>7</sup>

Judicial reforms are also taking place in democratic countries governed by the rule of law today. In Bosnia and Herzegovina, a new law on courts has been drafted, bringing changes in the judicial system.<sup>8</sup> In Montenegro, extensive amendments to the laws and regulations governing the judiciary have been drafted. One of the objectives of the draft laws is to strengthen judicial

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<sup>4</sup> Court of Justice of the European Union. Case C-157/21; 16.02.2022. Judgment of the Court (Full Court); Court of Justice of the European Union. Case C-156/21; 16.02.2022. Judgment of the Court (Full Court); European Court of Human Rights. Case 21181/19, 51751/20 Tuleya v. Poland; 06.10.2023. Judgment; European Court of Human Rights. Case 39650/18 Żurek v. Poland; 16.06.2022. Judgment.

<sup>5</sup> European Commission for Democracy through Law (Venice Commission) (2023). Montenegro Follow-up Opinion on the Opinion on the Draft Amendments to the Law on the Judicial Council and Judges. CDL-AD(2023)011. Opinion. Strasbourg: Council of Europe, 13.03.2023. Obtained 25.02.2024.: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)011-e);

European Commission for Democracy through Law (Venice Commission) (2023). Bosnia and Herzegovina Opinion on the Draft Law on Courts of Bosnia and Herzegovina. CDL-AD(2023)003. Opinion. Strasbourg: Council of Europe, 14.03.2023. Obtained 25.02.2024.: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)003-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)003-e)

<sup>6</sup> France reformed its judicial system in 2008 and 2013, gradually reducing the influence of the executive over the judiciary and strengthening the judicial independence. The judiciary is also currently undergoing reforms. The Venice Commission has highlighted the need for improvements to ensure the independence of judges.

European Commission for Democracy through Law (Venice Commission) (2023). On the Superior Council of Magistracy and the Status of the Judiciary as Regards Nominations, Mutations, Promotions and Disciplinary Procedures. CDL-AD(2023)015. Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe. Strasbourg: Council of Europe, 13.06.2023. Obtained 25.02.2024.: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)015-e)

<sup>7</sup> In the Netherlands, the Venice Commission's evaluation of the Law on the Organisation of the Judiciary pointed to a number of shortcomings, stressing in particular that informal traditions to ensure the independence of judges are welcome, but that certain requirements need to be regulated in the law.

European Commission for Democracy through Law (Venice Commission) (2023). On Legal Safeguards of the Independence of the Judiciary from the Executive Power. CDL-AD(2023)029. Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe. Strasbourg: Council of Europe, 11.10.2023. Obtained 25.02.2024.: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)029-e)

<sup>8</sup> European Commission for Democracy through Law (Venice Commission) (2023). Bosnia and Herzegovina Opinion on the Draft Law on Courts of Bosnia and Herzegovina. CDL-AD(2023)003. Opinion. Strasbourg: Council of Europe, 14.03.2023.

independence and accountability.<sup>9</sup> In Romania, work on judicial reform started already in 2020, with three laws adopted by the end of 2022. Both the Venice Commission and the Romanian Constitutional Court expressed their opinions in this respect, in accordance with their respective competences.<sup>10</sup> The Court of Justice of the European Union has also assessed the judicial reforms. Reforms and improvements aimed at strengthening judicial independence are still ongoing in Latvia.<sup>11</sup> Strategy of the Judicial Council 2021-2025 sets out its overarching objective, *inter alia*, to ensure the independence, quality, development and accountability of the judiciary.<sup>12</sup> Recently, political influence in the judicial appointment procedure was experienced.<sup>13</sup> The general public's opinion of the level of independence of the Latvian judiciary remains average, while it has become very low among businesses.<sup>14</sup> This is influenced by both experience in the courts and a lack of understanding of the function and role of the courts. Moreover, this also applies to lawyers and even judges.

The case-law of the Constitutional Courts shows that various aspects of judicial independence remain relevant.<sup>15</sup> The Constitutional Court of the Republic of Latvia (hereinafter *Satversmes tiesa*) has also examined and continues to examine issues related to judicial

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<sup>9</sup> European Commission for Democracy through Law (Venice Commission) (2023). Montenegro Follow-up Opinion on the Opinion on the Draft Amendments to the Law on the Judicial Council and Judges. CDL-AD(2023)011. Opinion. Strasbourg: Council of Europe, 13.03.2023.

<sup>10</sup> The Law on the Superior Council of Magistracy, the Law on the Judicial Organisation, and the Law on the Status of Judges and Prosecutors.

European Commission for Democracy through Law (Venice Commission) (2022). On Three Laws Concerning the Justice System. CDL-AD(2022)045. Urgent Opinion. Strasbourg: Council of Europe, 19.12.2022. Obtained 20.05.2021. : [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)045-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)045-e)

<sup>11</sup> European Commission (2022). 2022 Rule of Law Report, Country Chapter on the Rule of Law Situation in Latvia. SWD(2022)514, 13.07.2022., p. 4. Obtained 25.02.2024.: [https://www.at.gov.lv/files/uploads/files/9\\_Tieslietu\\_padome/Dokumenti/2022\\_EK\\_Zinojums\\_par\\_tiesiskumu\\_lv.pdf](https://www.at.gov.lv/files/uploads/files/9_Tieslietu_padome/Dokumenti/2022_EK_Zinojums_par_tiesiskumu_lv.pdf)

<sup>12</sup> Judicial Council of the Republic of Latvia (2021). Strategy of the Judicial Council 2021–2025. Decision No. 16, 12.03.2021. Obtained 26.02.2024.: <https://www.at.gov.lv/lv/tieslietu-padome/darbibas-pamats>

<sup>13</sup> European Commission (2022). 2022 Rule of Law Report, Country Chapter on the Rule of Law Situation in Latvia. SWD(2022)514, 13.07.2022., p. 4; Supreme Court of the Republic of Latvia. Plenary Decision No 2 “On the relationship between the legislature and the judiciary and the independence of judges”, 18.02.2022. Obtained 25.02.2024.: <https://www.at.gov.lv/lv/par-augstako-tiesu/plenuma/plenuma-lemumi>

<sup>14</sup> European Commission (2022). 2022 Rule of Law Report, Country Chapter on the Rule of Law Situation in Latvia. SWD(2022)514, 13.07.2022., p. 3.

<sup>15</sup> Constitutional Court of the Republic of Lithuania. Cases KT45-N3/2022, 1/2021-6/2021-20/2021; 15.04.2022. Obtained 25.02.2024.: <https://lrkt.lt/en/court-acts/search/170/ta2663/summary>; Constitutional Court of the Republic of Bosnia and Herzegovina. Case U 7/21; 23.09.2021. Obtained 27.02.2024.: <https://codices.coe.int/codices/results/fulltext/2FF8FA6E-E2AD-4746-4783-08DC225DC81B>; Constitutional Court of the Republic of Bulgaria. Case 1/22; 08.02.2022. Obtained 27.02.2024.: <https://codices.coe.int/codices/results/precis/281C6E17-0E5A-4069-415B-08DC225DC81B>; Supreme Court of Estonia. Case 5-20-7; 16.03.2021. Obtained 27.02.2024.: <https://codices.coe.int/codices/results/fulltext/AF62E12E-054A-4550-4C4E-08DC225DC81B>; French Constitutional Council. Case 2021-829 DC; 17.12.2021. Obtained 27.02.2024.: <https://codices.coe.int/codices/results/precis/D0ABE312-E8F3-46D8-39E9-08DC225DC81B>; German Federal Constitutional Court. Case 2 BvR 1473/20; 11.11.2021. Obtained 27.02.2024.: <https://codices.coe.int/codices/results/precis/97C470FA-4D82-4DBA-3CD0-08DC225DC81B>

independence.<sup>16</sup> *Satversmes tiesa* regularly reiterates the legislator of the principles that must be implemented to ensure the judicial independence. For example, *Satversmes tiesa*'s rulings have in fact been the basis for seven years of discussions on judicial independence in the context of the judicial remuneration system.

In addressing the issues of an efficient court, special attention should be paid to all aspects of judicial independence. Moreover, it should be borne in mind that the principle of judicial independence has developed dynamically at both national and international level.<sup>17</sup> For example, ensuring modern court communication the right balance must be struck with the various requirements of the principle of judicial independence. Judicial independence must be ensured when carrying out judicial reforms and amending the law. Moreover, as Aharon Barak has pointed out, only if all aspects of judicial independence are ensured, a judge is able to properly fulfil his role in a democracy.<sup>18</sup> This requires to identify the content of judicial independence, i.e. identifying all the core elements that it entails. In order to implement it, it is necessary to identify the content of the independence of judges, that is, to establish all the requirements arising from it.

A detailed and precise examination of the requirements arising from the principle of judicial independence is also necessary in order to ensure a convincing and effective response to threats to judicial independence. Moreover, there is only a relatively high level of general agreement in different countries on what judicial independence means, and there are different understandings of the details of the content of independence.<sup>19</sup> As indicated in the legal literature, even the same jurisprudence does not mean the same understanding of judicial independence.<sup>20</sup>

It is important to be aware of the full scope of judicial independence in order to be able to protect judicial impartiality. As the Supreme Court of Canada has pointed out, breaches of independence are easier to identify and therefore easier to prove bias in a judge's treatment.<sup>21</sup>

Both in legal science and case law, the opinion has been expressed that the issue of judicial independence is closely linked to the understanding of the role and importance of the court in the constitutional system.<sup>22</sup> However, the correlation between the content of judicial independence

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<sup>16</sup> The latest Constitutional Court judgement related to the independence of judges: *Satversmes tiesa* (Constitutional Court of the Republic of Latvia). Case 2021-41-01; 15.12.2022. Judgment. Published in: *Latvijas Vēstnesis*, 244, 16.12.2022.

<sup>17</sup> Shetreet, S. (2014). *The Culture of Judicial Independence. Rule of Law and World Peace*. Leiden. Boston: Brill Nijhoff, Preface, p. XXXIV.

<sup>18</sup> Barak, A. (2002). *A Judge on Judging: The Role of a Supreme Court in a Democracy. Faculty Scholarship Series. Paper 3692*, p. 55. Obtained 19.12.2021.: [http://digitalcommons.law.yale.edu/fss\\_papers/3692](http://digitalcommons.law.yale.edu/fss_papers/3692)

<sup>19</sup> Gee, G., Hazell, R. Malleson, K. (2015). *The Politics of Judicial Independence in the UK's Changing Constitution*. Cambridge University Press, p. 4.

<sup>20</sup> Adenitire, J. (2015). *Judicial Independence in Europe: the Swedish, Italian and German perspectives*, Intern, *Judicial Independence Project*, p. 27.

<sup>21</sup> Supreme Court of Canada. Case *R. v. Lippé* 2 SCR 114, No 22072, Gonthier; 05.12.1990. Judgment.

<sup>22</sup> Scheppele, K.L. (2002). *Declarations of Independence. Judicial Reactions to Political Pressure*. Burbank, S.D., Friedman B. (Eds.). *Judicial Independence at the Crossroads. An Interdisciplinary Approach*. New York: Sage Publications Inc, p. 269.

and the role of the court, i.e. how the content of independence changes as society evolves and the role of the court changes, has not been analysed so far.

### Scientific Novelty and Significance of the Topic

Judicial independence is a topic studied in a somewhat fragmentary way in Latvian legal science. Latvian legal scholars have not devoted systematic studies and monographs to this theme. Similarly, the case-law of the *Satversmes tiesa* on issues related to judicial independence has not been scientifically systematised and generalised.

Recognising the importance of judicial independence for the rule of law and economic growth, scholars are increasingly trying to define and measure judicial independence.<sup>23</sup> In legal doctrine, the concept of judicial independence does not have a coherent general definition, as the explanation of judicial independence usually refers to its objectives, meaning and role in a democratic state governed by the rule of law. This is also the case in the documents of international institutions and case-law. The most common formulations are related to the rule of law, the separation of powers and human rights, e.g. judicial independence is central to democracy, judicial independence is essential for the separation of powers, the rule of law and human rights,<sup>24</sup> judicial independence is a key value of the judicial system in a democracy,<sup>25</sup> judicial independence is an essential element of the right to a fair trial.<sup>26</sup> The *Satversmes tiesa* has also indicated that the independence of the courts and judges is not an end in itself, but a means of ensuring and strengthening democracy and the rule of law, as well as an indispensable precondition for the implementation of the right to a fair trial.<sup>27</sup> Consequently, the concept of "judicial independence" is poorly defined<sup>28</sup> and the essential parameters of the core of judicial independence are still debated.

There is no common theoretical framework for the concretisation of the core of the principle of judicial independence.<sup>29</sup> Attempts have been made to provide explanations of judicial independence at national, regional and international levels.

Currently, no international treaty contains a definition of judicial independence. International law does not fully disclose the content of judicial independence. Most often, treaty texts include the requirement that courts must be independent and impartial and guarantee the right to a fair trial. The main source of common understanding is the case law and the documents

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<sup>23</sup>Rios-Figueroa, J., Jeffrey K. Staton, J.K. (2014). An Evaluation of Cross-National Measures of Judicial Independence. *Journal of Law, Economics, and Organization* Advance Access, Vol 30, Issue 1, p. 129.

<sup>24</sup> Barak, A. (2006). *The Judge in a Democracy*. Princeton, New Jersey: Princeton University Press, p. 76.

<sup>25</sup> Shetreet, S. (2014). *Judicial Independence, Liberty, Democracy and International Economy*. Shetreet, S. (Ed.). *The Culture of Judicial Independence. Rule of Law and World Peace*. Leiden. Boston: Brill Nijhoff, p. 21.

<sup>26</sup> Scheinin, M., Krunke, H., Aksenova, M (Eds.). *Judges as Guardians of Constitutionalism and Human Rights*. UK, USA, Edward Elgar Publishing Ltd, p. 4.

<sup>27</sup> *Satversmes tiesa*. Case 2009-11-01; 18.01.2010. Judgment. Published: *Latvijas Vēstnesis*, 10, 20.01.2010., p. 7.

<sup>28</sup> Melton, J., Ginsburg, T. (2014). Does De Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence. University of Chicago Law School, Coase-Sandor Institute for Law & Economics Working Paper No. 612, p. 193. Obtained 18.12.2020.: <https://chicagounbound.uchicago.edu>

<sup>29</sup> Adenitire, J. (2015). *Judicial Independence in Europe: the Swedish, Italian and German perspectives*, Intern, *Judicial Independence Project*, p. 3.



produced by international and European institutions<sup>30</sup> (hereinafter “documents of international organisations”) dealing with aspects of judicial independence. Unfortunately, case law does not provide answers to all relevant questions, as the court usually deals only with those issues that have been applied for and brought before it in accordance with the procedure laid down by law. The above-mentioned documents of international organisations, on the other hand, provide information in varying degrees of detail, attempting to apply the theoretical requirements to all legal systems and all situations. These documents are too general, vague and only partially reveal the content of judicial independence. The legal literature also indicates that there is a lack of clarity on the content of judicial independence.<sup>31</sup> Thus, many theoretical issues of judicial independence have not been addressed and analysed in legal science.

In the author’s assessment, research on the theory and case law of judicial independence has so far been focused on the principle of judicial independence and its links with the rule of law, separation of powers and the protection of human rights. This often does not help to specify the core elements of the content of the principle to the extent that it would be useful for understanding the legal relations related to the independence of judges.

The above-mentioned challenges prove that the analysis of the specific requirements of judicial independence and the study of the overall content is relevant. It is undeniable that the concept of judicial independence is constantly in dynamic motion and development. Therefore, the development and study of the theory of judicial independence, *inter alia* by precisely defining the concept and revealing its content, makes it possible to ensure the independence of judges at any time, in any state and under any circumstances.

The theoretical value and novelty of the work is in the development of a theory of judicial independence, as well as in the research and discovery of the content of judicial independence. The novelty in the theoretical aspect is expressed in the conclusions drawn by the author. The theoretical understanding, in turn, leads to practical solutions for strengthening judicial independence, which may be expressed in normative and administrative solutions.

### **Practical Value**

In practical terms, the novelty of the study is that the author has examined considerable amount of case law and drawn conclusions which can serve as a basis for strengthening judicial independence. This is important because judicial independence affects the effective functioning of the courts, the rule of law and the safeguarding of human rights, as well as any area covered by

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<sup>30</sup> *Soft-law*.

<sup>31</sup> Guarneri, C., Piana, D. (2012). *Judicial Independence and the Rule of Law: Exploring the European Experience*. Shetreet, S., Forsyth, C. (Eds.). *The Culture of Judicial Independence. Conceptual Foundations and Practical Challenges*. Leiden. Boston: Martinus Nijhoff Publishers, p. 114.

judicial decisions. The precise content of judicial independence would help to identify what, in any given case, may pose a threat to independence and what are the permissible limits on the influence on judicial independence.

The proposals made in the study can be applied when carrying out reforms in judicial systems, amending laws and regulations relating to the functioning of courts, taking decisions within the framework of the principle of separation of powers, evaluating the work of courts, increasing the competence of judges, ensuring the accountability of courts and judges, improving judicial communication, evaluating ethical issues and deciding on the disciplinary responsibility of judges, thereby contributing to the welfare, stability, economic and legal sustainability of the state.

### **Research Aim, Tasks, Hypothesis, Object and Subject**

**Research Object:** Relationships that are formed when the court, as an independent branch of state power, exercises its power.

**Research Subject:** The principle of judicial independence in a democratic state governed by the rule of law

**The aim** of the dissertation is to develop a common understanding of the content of judicial independence and thus to create a theory of the concretisation and application of the principle of judicial independence.

In order to achieve this objective, a number of **tasks** have been set:

- 1) to explore the transformation of the role of the judiciary and to identify its different dimensions in a democratic state governed by the rule of law;
- 2) to analyse the concept of judicial independence clarifying its main content and scope and identifying its characteristics;
- 3) to explore the different subjects and different types of influence on judicial independence;
- 4) to identify and analyse the types of independence distinguished in the legal literature, in documents of international institutions and in case-law, and to evaluate their role in identifying and assessing content;
- 5) to clarify the scope of judicial independence and to examine which requirements related to the functioning of the judiciary, the administration of justice and the performance of judicial duties fall outside the scope of judicial independence;
- 6) to clarify the way in which the requirements falling within the scope of judicial independence can be identified;

7) to clarify how to distinguish between fixed or mandatory requirements and variable requirements which may be provided in different ways;

8) identify which parameters of judicial independence are mandatory, i.e. essential and mandatory to ensure judicial independence, and critically assess their role.

The author will prove **the hypothesis** that the transformation of the role of the judiciary affects the content of judicial independence, so that the content includes not only the guarantees and rights of the judge, but also the duties and responsibilities of the judge, not only the administrative independence of the court, but also the court's competence, discretion and enforcement of the court's decisions.

### **Limitations of the Thesis**

There is no single model for ensuring judicial independence in all legal systems, so its content may vary. The content of judicial independence also changes and evolves over time and under different circumstances. All the necessary and sufficient elements for judicial independence, i.e. the core of the principle of judicial independence can be identified and their scope and content revealed only in a specific place (state, legal system) and at a specific time.

However, it is possible to identify two levels of judicial independence requirements. First, the **fixed** (immutable) **components** – the general requirements that ensure judicial independence and that are essential and mandatory in any legal system for the impartial and fair administration of justice. These components do not change, but the balance between the components, their importance and emphasis may change. Second, each of these general components is made up of certain more detailed requirements – **the variable elements** which usually have certain common principles and whose observance ensures judicial independence. Each variable element may be implemented differently in different legal systems and under different circumstances. Given the “responsive” character of judicial independence and the influence of culture and history, what may be considered an impermissible interference with judicial independence in one country may be an acceptable and common practice in another. Therefore, the thesis does not explore the variable elements of judicial independence, i.e. the extent, regulation and interpretation in which each of the mandatory requirements is able to protect a court or a judge from undue influence, or the role of each of the mandatory requirements in the exercise of a judicial function and the achievement of the goal of judicial independence, because such an assessment can only be made using judicial independence theory at a specific time and in a particular state, taking into account a particular judicial system and other relevant circumstances.

The work reveals only the fixed (immutable) content of judicial independence, i.e. the components of judicial independence mandatory to ensure the ability of a court to judge impartially and ensure a right to a fair trial, in any legal system and under any circumstances.

### **Scientific Research Methods**

The dissertation was elaborated using the methods of scientific research customary in legal science. First, literature studies were used. Based on the information obtained in the literature studies, it was possible to identify the theory on the research topic and to carry out a comparative analysis in connection with various aspects of judicial independence.

The analytical method has been applied by studying, analysing and critically evaluating the decisions of the constitutional courts and supreme courts of different states, the judgments of the European Court of Human Rights and the Court of Justice of the European Union, as well as other sources of law. The analysis is the basis for the conclusions and assessments made.

The comparative method is used. In the field of public law, the use of the comparative method is quite problematic, as the different legal, social, political, historical and systemic contexts<sup>32</sup> must always be taken into account and it can be difficult to find common elements that unite the topic under study. The national legal framework and case law on the topic under study are inextricably linked to the national judicial framework. It is therefore only possible to compare the functions of a particular legal institution in different legal systems to a limited extent. However, irrespective of the existing legislation and institutional framework, research on judicial independence shows that the main provisions of its content are very similar in different countries, there are common problems and challenges to judicial independence which are of a supranational nature, and this justifies a comparative approach.

The comparative method is used in several aspects in the thesis. First, it has been used to analyse the content of individual requirements of judicial independence in different countries. Secondly, it has been used to draw conclusions based on the similarity of certain aspects of judicial independence in different countries. Thirdly, it has also been used to assess the views expressed by different authors on judicial independence.

The thesis also applies inductive and deductive research methods. The inductive method allows to derive generalised conclusions and common principles from the analysis of individual cases, while the deductive method draws analytical conclusions about individual aspects from theoretical insights and generalisations. The inductive method has been used to analyse the findings of judicial decisions and legal doctrine, on the basis of which the current understanding of judicial independence and its content has been assessed, and, *inter alia*, a methodology has been

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<sup>32</sup> Satversmes tiesa. Case 2007-01-01; 08.06.2007. Judgment. Published: Latvijas Vēstnesis, 95, 14.06.2007, 24.1. p.

developed both for examining the content of judicial independence and for distinguishing between permissible and impermissible influence. The conclusions drawn from the analysis of court decisions are further generalised using the deductive method.

## Bibliography

In relation to literature and legal sources used in the dissertation, it should be noted that in Latvia the theoretical aspects of judicial independence have been dealt with exclusively in the decisions of the *Satversmes tiesa*, as well as in the scientific commentaries on the Constitution of the Republic of Latvia (hereinafter “Satversme”). Therefore, a substantial analysis of foreign doctrine and case law has also been carried out, international treaties, documents of international organisations, legislation and case law have been studied.

Since there are no extensive studies on the theory of judicial independence and its content in Latvia, the author has mainly polemicized with authors and scholars from other countries. The author has studied the works of Professor Shimon Shetreet, one of the leading legal scholars on judicial independence. Various theoretical findings have been developed based on Aharon Barak’s works on the judiciary. The author has widely used the collection of articles published by Stephen Burbank and Barry Friedman devoted to various aspects of judicial independence.<sup>33</sup> Professor Giuseppe Di Federico has analysed the content of judicial independence in Italy,<sup>34</sup> Professor Murray Rankin in Canada,<sup>35</sup> and Anja Seibert-Fohr's research provides valuable data on the judiciary and judicial independence in Germany.<sup>36</sup> The content of judicial independence is revealed to varying degrees in the studies of Bernd Hayo and Stefan Voigt,<sup>37</sup> Linda Camp Keith,

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<sup>33</sup> Burbank, S.B., Friedman, B. (2002). *Judicial Independence at the Crossroads. An Interdisciplinary Approach*. New York: Sage Publications Inc, 554 p.

<sup>34</sup> Di Federico, G. (2012). *Judicial Accountability and Conduct: An Overview*. Seibert-Fohr, A. (Ed.). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, pp. 87-118; Di Federico, G. (2012). *Judicial Independence in Italy*. Seibert-Fohr, A. (Ed.). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, pp. 357-401.

<sup>35</sup> Rankin, M.B. (2012). *Access to Justice and the Institutional Limits of Independent Courts*. *Windsor Yearbook on Access to Justice*, Vol 30(1), pp. 101-137.

<sup>36</sup> Seibert-Fohr, A. (2010). *European Comparatives Perspective on the Rule of Law and Independent Courts*. 14 p. Obtained 7.03.2021.: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1652598](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1652598); Seibert-Fohr, A. (2012). *Judicial Independence in Germany*. Seibert-Fohr, A. (Ed.). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, pp. 447-519; Seibert-Fohr, A. (2019). *The Independence of Judges and their Freedom of Expression: An Ambivalent Relationship*, 12 p. Obtained 29.01.2021.: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3375038](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375038); Seibert-Fohr, A. (2020). *Judicial Independence and Democratic Accountability: The Function and Legitimacy of the German Federal Constitutional Court*. Ballin, E.H., Schyff, G., Stremmler, M. (Eds.). *European Yearbook of Constitutional Law 2019. Judicial Power: Safeguards and Limits in a Democratic Society*. T.M.C. Asser Press, 1st ed. 2020 edition, pp. 41-66.

<sup>37</sup> Hayo, B., Voigt, S. (2021). *Judicial Independence: Why Does De Facto Diverge from De Jure?* 24 p. Obtained 20.12.2020.: [file:///C:/Users/laila/Downloads/SSRN-id3897343%20\(1\).pdf](file:///C:/Users/laila/Downloads/SSRN-id3897343%20(1).pdf); Hayo, B., Voigt, S. (2014). *Mapping Constitutionally Safeguarded Judicial Independence – A Global Survey*. *Journal of Empirical Legal Studies*, Vol. 11, Issue 1, pp. 159-195. Obtained 18.12.2020.: <https://booksc.org/book/32936235/f366fe>; Hayo, B., Voigt, S. (2007). *Explaining De Facto Judicial Independence*. *International Review of Law and Economics*, Vol. 27(3), pp. 269–290. Obtained 20.12.2020.: [file:///C:/Users/ljucena/Downloads/SSRN-id900336%20\(1\).pdf](file:///C:/Users/ljucena/Downloads/SSRN-id900336%20(1).pdf)

Chester Neal Tate, Steven Poe<sup>38</sup> and Julio Rios-Figueroa.<sup>39</sup> Taking into account Frans Van Dijk's experience in drafting judicial independence-related documents for the European Network of Councils for the Judiciary (hereinafter "ENCJ") the author has used his publications to reveal the content of judicial independence.<sup>40</sup> Peter Howard Russell's studies have been used to analyse the concept of judicial independence and its goal.<sup>41</sup> The articles and studies published by Ineta Ziemele,<sup>42</sup> Marta Cartabia<sup>43</sup> and Vicki C. Jackson<sup>44</sup> have been used to reveal the role of judges and its transformation.

For more comprehensive research and higher quality dissertation work, the author studied legal issues related to the doctoral thesis at the Max Planck Institute for Comparative Public and International Law in Heidelberg, Germany, in 2016.

The analysis of the case law of different states as well as the European case law is of great importance for the understanding of the research subject. The thesis systematizes theoretical findings from the decisions of the Supreme Courts of the USA, Australia and Israel, the Constitutional Courts of Lithuania, the Czech Republic, Bosnia and Herzegovina, Bulgaria, South Africa, Italy and other countries. The insights expressed in the decisions of the Supreme Court of Canada are especially widely used. These court decisions have been obtained both from the respective court portals and from the Venice Commission's CODICES database. The analysis of

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<sup>38</sup> Camp Keith, L, Neal Tate, C., Poe, S.C. (2009). Is the Law a Mere Parchment Barrier to Human Rights Abuse? *Journal of Politics*, Vol. 71, No. 2, pp. 644–660. Obtained 17.01.2021.: <file:///C:/Users/ljurgena/Downloads/30218976.pdf>

<sup>39</sup> Rios-Figueroa, J. (2011). Institutions for Constitutional Justice in Latin America. Helmke, G., Rios-Figueroa, J. (Eds.). *Courts in Latin America*. New York: Cambridge University Press, pp. 27–54. Obtained 18.12.2020.: <https://ilib.eu/book/2565309/c24d9f>; Ríos-Figueroa, J. (2019). Judicial review and democratic resilience: Afterword to the Foreword by Doreen Lustig and J. H. H. Weiler, *International Journal of Constitutional Law*, Vol. 17, Issue 1, pp. 17-23. Obtained 19.12.2021.: <https://doi.org/10.1093/icon/moz025>; Rios-Figueroa, J., Staton, J.K. (2009). Unpacking the Rule of Law: A Review of Judicial Independence Measures, 48 p. Obtained 7.03.2019.: <http://ssrn.com/abstract=1434234>; Rios-Figueroa, J., Jeffrey K. Staton, J.K. (2014). An Evaluation of Cross-National Measures of Judicial Independence. *Journal of Law, Economics, and Organization Advance Access*, Vol 30, Issue 1, pp. 104-137.

<sup>40</sup> Van Dijk, F., Tulder, F., Lugten, Y. (2016). Independence of Judges: Judicial Perceptions and Formal Safeguards. Netherlands Council for the judiciary. 31. p. Obtained 24.12.2023.: <https://www.rechtspraak.nl/SiteCollectionDocuments/Paper-independence-of-judges-160111.pdf#search=working%20paper>; Van Dijk, F., Vos, G. (2018). A Method for Assessment of the Independence and Accountability of the Judiciary. *International Journal For Court Administration*. Vol. 9, No. 3. pp. 1-22. Obtained 18.12.2021.: <https://www.iacajournal.org/articles/abstract/10.18352/ijca.276/>

<sup>41</sup> Russell, P.G. (2001). Toward a General Theory of Judicial Independence. Russell P.H., O'Brien D.M. (Eds.). *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World*. Charlottesville & London: University of Virginia Press, pp. 1-23.

<sup>42</sup> Ziemele, I. (2021). Cilvēktiesības pasaulē un Latvijā. Inetas Ziemeles zinātniskajā redakcijā. Otrais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 524. lpp.

<sup>43</sup> Cartabia, M. (2018). Separation of Powers and Judicial Independence: Current Challenges. Seminar, European Court of Human Rights, The Authority of the Judiciary, Strasbourg, France, 26.01.2018., 11 p. Obtained 21.12.2021.: [https://www.cortecostituzionale.it/documenti/news/cartabia\\_3.pdf](https://www.cortecostituzionale.it/documenti/news/cartabia_3.pdf)

<sup>44</sup> Jackson, V.C. (2008). Packages of Judicial Independence: Implications for Reform Proposals on the Selection & Tenure of Article III Judges. *Daedalus*, Vol 137, No. 4, pp. 48-63; Jackson, V.C. (2012). Judicial Independence: Structure, Context, Attitude. Seibert-Fohr, A. (Ed.). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, pp. 19-86.

these judgments has made it possible to specify the content of specific requirements of judicial independence and to reveal the content of other concepts related to judicial independence.

A number of conclusions have been drawn using the extensive information on judicial independence contained in the documents of international institutions developed over more than 35 years. The opinions of the Venice Commission and the reports of the Special Rapporteur on the Independence of Judges and Lawyers are of great importance in the study of the researched subject.

### **Scope, Structure and Concise Presentation of the Content of the Thesis by Chapters**

The thesis is 190 pages long and divided into five chapters

#### **Chapter One. The Role of the Court as Demanded by Society and Developed by the Court.**

In order to establish the interaction and the reciprocal impact between the role of the court in a democratic state governed by the rule of law and the content of judicial independence, the Chapter One analyses the role of the court in a democratic state governed by the rule of law, as demanded by society and shaped by the court. In order to reveal the role of the court, its transformation in the 21st century is examined, and taking into account the processes and areas affected by the court, the following dimensions of the court's role are analysed – constitutional, legal, political, economic and social.

As a representative of the judiciary, a judge has a special status, a special role and a special responsibility, and it is therefore reasonable to consider that judges are empowered and constrained and their decisions are influenced not only by law, but also by their special role in the constitutional system.<sup>45</sup> The role of the court is linked to judicial independence both in the legal literature<sup>46</sup> and in case law.<sup>47</sup> As the role of the court in modern democracy transforms, there are changes in the understanding of the principle of judicial independence.<sup>48</sup> In the author's view, the role of the court not only justifies the requirement for the court to be independent, accountable and efficient, it not only determines the degree of judicial activism and the understanding of the principle of independence, but also affects the content of judicial independence, i.e. the requirements that ensure judicial independence and that are essential for every individual to be able to rely on a truly independent court.

In order to understand the role of the court and to identify what affects it, the author precisely separates the following concepts in this Chapter:: 1) judicial function, 2) tasks of the

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<sup>45</sup> Braman, E. (2009). *Law, Politics & Perception: How Policy Preferences Influence Legal Reasoning*. p. 26.

<sup>46</sup> Seibert-Foht, A. (2012). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, p. 4.

<sup>47</sup> Supreme Court of Canada. Case *Beauregard v. Canada* 2 SCR 56, No 17884; 16.09.1986., p. 30.

<sup>48</sup> Shetreet, S. (1985). The Emerging Transnational Jurisprudence on Judicial Independence: IBA Standards and Montreal Declaration. Shetreet, S., Deschenes, J. (Eds.). *Judicial Independence: The Contemporary Debate*. Dordrecht, Boston, Lancaster: Martinus Nijhoff Publishers, p. 393.

court and the judge exercising judicial function, 3) jurisdiction (competence) of the court and 4) the role of the court, that is, its influence.

In order to reveal the role of the court, Subchapter 1.2.1 examines its transformation in the 21st century, namely, how the judiciary has evolved<sup>49</sup> from the "weakest" branch of power (as Montesquieu<sup>50</sup> and later Hamilton<sup>51</sup> considered it) into one of the most important players in the constitutional system.<sup>52</sup> Unlike the court of the 20th century, when it communicated only through judgments, today's courts work at the next level of quality, involving a completely different way of communication with the public.<sup>53</sup> Judges are becoming increasingly visible in the public debate. They make statements through the media, they act as experts on issues where it is difficult to distinguish between the legal and the political.<sup>54</sup> One of the most visible aspects of the development of a modern democratic state is the growing importance of the judiciary.<sup>55</sup> The role of the judiciary is increasing as a result of the development of democracy. The transformation of the role or influence of the judiciary is an inevitable result of ensuring democratic balance.<sup>56</sup>

Although the role of the court is evaluated differently in different states (to demonstrate this, the role of the court in Italy, Sweden and Israel is compared),<sup>57</sup> it is possible to identify a number of reasons why the role of the court is increasing. The special and fundamental role of the judiciary as an independent branch of state power, in accordance with the principles of the separation of powers and the rule of law, is recognised within the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "the European Convention on Human Rights") both explicitly and implicitly.<sup>58</sup> The role of the court – to protect constitutionalism and fundamental rights – is linked to challenges of our time: the fight against terrorism, ubiquitous control and surveillance, the transformation of democracy, the changing role

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<sup>49</sup> Cartabia, M. (2018). Separation of Powers and Judicial Independence: Current Challenges. Seminar, European Court of Human Rights, The Authority of the Judiciary, Strasbourg, France, 26.01.2018., p. 3.

<sup>50</sup> Montesquieu (1748). The Spirit of Laws. The Online Library of Liberty, p. 218. Obtained 20.04.2024.: [https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/837/Montesquieu\\_0171-01\\_EBk\\_v6.0.pdf](https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/837/Montesquieu_0171-01_EBk_v6.0.pdf)

<sup>51</sup> Madison, J., Hamilton, A., Jay, J., J. (1961). 78th Federalist. The federalist papers. New York: New American Library.

<sup>52</sup> Cartabia, M. (2018). Separation of Powers and Judicial Independence: Current Challenges. Seminar, European Court of Human Rights, The Authority of the Judiciary, Strasbourg, France, 26.01.2018., p. 6.

<sup>53</sup> Ziemele, I. (2018). Mums jāveido 21. gadsimta tiesa. Ir, 09.02.2018. Obtained 26.02.2023.: <https://ir.lv/2018/02/09/ziemele-mums-javeido-21-gadsimta-tiesa/>

<sup>54</sup> Cartabia, M. (2018). Separation of Powers and Judicial Independence: Current Challenges. Seminar, European Court of Human Rights, The Authority of the Judiciary, Strasbourg, France, 26.01.2018., p. 7.

<sup>55</sup> Di Federico, G. (2012). Judicial Accountability and Conduct: An Overview. Seibert-Foht, A. (Ed.). *Judicial Independence in Transition*. Berlin, Heidelberg: Springer, p. 87.

<sup>56</sup> Barak, A. (2016). On judging. Scheinin, M., Krunke, H., Aksenova, M (Eds.). *Judges as Guardians of Constitutionalism and Human Rights*. UK, USA, Edward Elgar Publishing Ltd, pp. 32-33.

<sup>57</sup> Kosar, D. (2012). Policing Separation of Powers: A New Role for the European Court of Human Rights? *European Constitutional Law Review*, Vol. 8, Issue 1, p. 59.

<sup>58</sup> International Commission of Jurists. Opinion in ECHR case Baka v. Hungary [GC]; 23.06.2016, p. 98.



of the nation state.<sup>59</sup> The role of the court increases in the context of political populism, as well as due to the policy implemented by the legislature, giving the court more power.<sup>60</sup> It must preserve a balance and protect the democratic state.<sup>61</sup> The author has analysed the factors identified by Professor M. Cartabia, former President of the Italian Constitutional Court, which are behind the transformation in the role of the Court and the fact that its role has become so important.<sup>62</sup>

The supranational role and influence of the courts are particularly emphasised in the legal literature today, where the judicial function, usually endowed with sovereign prerogative, no longer stops at the borders of a single state.<sup>63</sup> Courts today ensure the constitutionality of national law and its compatibility with international law, and guarantee the constitutional validity of international law.<sup>64</sup>

The thesis concludes that the special role of the court is revealed when the court exercises one of the powers of the state, the role is influenced by the court's competence specified in the legislation, the role is implemented by exercising the only judicial function – adjudicating within the scope of competence specified in the legislation and within the limits of the court's discretion, and this role is revealed at a particular time and at a particular stage of development of society by the content of specific judgments.

The basic function of the court and role of the court have a reciprocal effect. The role of the court is revealed in the exercise of judicial function. At the same time, the role of the court must be taken into account when exercising judicial function, as a judge must take into account the impact of his decisions not only on the individual litigants of a specific case, but also the long term impact on the society.

In Subchapter 1.2.2 the author identifies the following dimensions of the court's role: constitutional, legal, political, economic and social.

The constitutional dimension is revealed in the protection of the constitution and constitutional values. The legal dimension is revealed by interpreting and applying the law, assessing and discovering the content of a legal provision at a specific time, giving general and detailed, explicit and implicit guidance to the legislator. The political dimension is revealed, first, in judicial decisions, when the court's decision influences the actions of the legislature or the

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<sup>59</sup> Scheinin M., Krunke H., Aksenova M. (2016). *Judges as Guardians of Constitutionalism and Human Rights*. Edward Elgar Publishing Ltd., DOI 10.4337/9781785365867, p. 1.

<sup>60</sup> Supreme Court of Canada. Case Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I. 3 SCR 3, No 24508, 24778; 18.09.1997., p. 129.

<sup>61</sup> Lurie, G., Shany, Y. (2021). *The Institutional Role of the Judiciary in Israel's Constitutional Democracy*. Barak, A., Medina, B., Roznai, Y. (Eds.). *Oxford Handbook on the Israeli Constitution* (Forthcoming).

<sup>62</sup> Cartabia, M. (2018). *Separation of Powers and Judicial Independence: Current Challenges*. Seminar, European Court of Human Rights, The Authority of the Judiciary, Strasbourg, France, 26.01.2018., pp. 3-6.

<sup>63</sup> Ziemele, I. (2019). *Moderns tiesiskums Eiropas pilsonim*.

<sup>64</sup> Versteeg, M. (2019). *Understanding the third wave of judicial review: Afterword to the Foreword by Doreen Lustig and J. H. H. Weiler*, *International Journal of Constitutional Law*, Vol 17, Issue 1, p. 11.

executive, when the court deals with politically sensitive or difficult-to-separate from political questions of law, when the court limits political power in specific cases, when it deals with controversial issues that politicians have deliberately referred to the court and, second, when judges participate in discussions and act as experts. The economic dimension is revealed by ensuring the rule of law as a prerequisite for economic development and by protecting the economic interests and rights of individuals. The social dimension is revealed by ensuring the rule of law and protecting the individual within specific cases.

## **Chapter Two. The Concept and Definition of Judicial Independence**

The chapter explores the concept of judicial independence. First, it examines the attempts to define judicial independence in the legal literature, international documents and case-law. The study reflects the characteristic features of the concept presented in various sources. The definitions available in the various sources are then analysed. In order to define judicial independence, the goals of judicial independence are analysed, the different subjects and different types of influence are examined, the need to distinguish between permissible and impermissible influence is justified, and the essential features of the definition are selected. The chapter concludes by defining the concept of judicial independence according to the information analyzed in this chapter.

In Subchapter 2.1 the author describes the concept of judicial independence, identifying the characteristic features of the concept of judicial independence, on the basis of which the content of judicial independence is assessed in Chapters Four and Five.

The concept of judicial independence is considered to be difficult to define, as it is more complex than it first appears,<sup>65</sup> it is a broad concept and different perceptions may exist in different legal cultures and at different times.<sup>66</sup> Judicial independence is an "instrumental concept", i.e. it is not an end in itself, but a means to achieve and ensure the goal – the impartiality of the judge. Judicial independence is a "relational concept", i.e. it is revealed in the relationship between the judiciary and judges as representatives of the judiciary with the other branches of power, institutions and officials, as well as in the mutual relations of judges within the judiciary. The concept of judicial independence is, on the one hand, negative, as it includes the ability to avoid influence; on the other hand, it is positive, as it includes the ability of a judge to follow his own

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<sup>65</sup> Fiss, O.M. (1993). The Limits of Judicial Independence. *The University of Miami Inter-American Law Review*, Vol. 25, No. 1, p. 57.

<sup>66</sup> Daly, P. (2020). Judicial Independence and Accountability in the British Constitution. Ballin, E.H., Schyff, G., Stremmer, M. (Eds.). *European Yearbook of Constitutional Law 2019. Judicial Power: Safeguards and Limits in a Democratic Society*. T.M.C. Asser Press, 1st ed. 2020 edition, p. 146.

perception of what is desirable – what is true, good, just and lawful.<sup>67</sup> The paper analyses the "discussion" existing in legal science on whether judicial independence is a relative or absolute concept. The author argues that by recognising two aspects that define the scope of independence and mark its limits – firstly, the connection of judicial independence to the judicial function and, secondly, the goal of judicial independence – to ensure an impartial court, it is possible to speak of judicial independence as an absolute value. A judge does not pretend to be more independent than it is necessary for the exercise of the judicial function and to ensure the only goal of an independent court – to provide an impartial and fair trial. There is therefore no reason to speak of any limited or relative scope for this concept. If the scope of judicial independence were incomplete, there would be a risk of undue influence on the judge and there would be grounds to doubt whether the judge is capable of providing an impartial trial. Accordingly, if the scope of judicial independence were too broad – broader than necessary for the performance of the function and ensuring the goal – it would create a risk that the court could use its power irresponsibly, or at least create the impression of doing so, which would undermine confidence in the judiciary. Too little judicial independence can undermine the separation of powers, while too much judicial independence can undermine the democratic basis of a political order.<sup>68</sup> Judicial independence is not intended to be unlimited. The aim is to enable judges, by ensuring an appropriate degree of independence, to examine on cases in a fair and impartial manner and free from undue control and influence.<sup>69</sup> Only a judge who has a certain amount of independence can judge impartially.

The concept "independence" in this case is relative, but the "judicial independence" is the degree of independence that ensures the fair and impartial trial. It is therefore an absolute value, which includes not only guarantees and rights, but also obligations, limitations, responsibility, accountability, etc. Its only determinant is the ability to judge impartially.

Subchapter 2.2 analyses the definitions available in different sources.

In order to define judicial independence, Subchapter 2.3 analyses the goals of judicial independence identified in various sources, examines the different subjects and the different types of influence, and selects the essential features included in the definition.

The thesis concludes that judicial independence is ensured by separating the court and the judge from the other branches of state power, by "the state" in this case meaning any person or institution that can exert pressure on the judiciary through state power (including, for example, the

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<sup>67</sup> Karlan, P.S. (1999). Two Concepts of judicial Independence, p. 2. Obtained 01.05.2017.: <http://www.usc.edu/dept/law/symposia/judicial/pdf/karlan.pdf>

<sup>68</sup> Scheppele, K.L. (2002). Declarations of Independence. Judicial Reactions to Political Pressure. Burbank, S.D., Friedman B. (Eds.). *Judicial Independence at the Crossroads. An Interdisciplinary Approach*. New York: Sage Publications Inc, p. 230.

<sup>69</sup> Sifris, R. (2008). Weighing Judicial Independence against Judicial Accountability: Do the Scales of the International Criminal Court Balance? *Chicago-Kent Journal of International and Comparative Law*, Vol. 8, p. 96.

Judicial Council and the president of the court).<sup>70</sup> An important role is also played by independence from the participants in the case, which is ensured to some extent by the requirement of judicial immunity, as well as separation from both political and powerful social interests and public expectations.<sup>71</sup> The thesis justifies the need to separate the court from interest groups, individuals and other judges,<sup>72</sup> as well as from the influence of the participants in the case, media and society.<sup>73</sup>

Judicial independence means that a judge, in the performance of his official duties, is free from undue (improper) influence; where undue (improper) influence is unlawful influence and impermissible influence exerted in any other way and for any reason,<sup>74</sup> both direct and indirect, real and apparent.<sup>75</sup> The author has therefore distinguished between permissible and impermissible influence, concluding that permissible influence includes, for example, the influence of litigants with legal arguments, the influence of judgments of other judges (of a higher court or another national or international court), the influence of a judge's beliefs, political, moral and ethical principles on a court's decision.<sup>76</sup> Some influence by the political branches is also permissible, provided that they act within the scope of their competence (e.g. appointment of a judge).

Although the content of judicial independence is defined differently in different states, as well as in different documents of international organisations, and no single definition of judicial independence can be found in legal scholarship, the author defines judicial independence as follows, taking into account the goal of judicial independence, the role of the court and the findings expressed in case-law and the theory of constitutional law:

"Judicial independence is the concretisation of a more general principle of a democratic state governed by the rule of law, i.e. a principle that ensures that the court is able to fulfil (perform) its constitutional function of adjudicating free from direct, indirect or even the appearance of undue influence, guaranteeing everyone the right to a fair and impartial trial. This exercise of power is ensured by the minimum (necessary and sufficient) requirements (core elements) that make up the content of judicial independence."

The author has pointed out that by revealing the content of judicial independence, it is possible to clarify the second sentence of the definition, i.e. to identify the main content of judicial

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<sup>70</sup> Supreme Court of Canada. Case R. v. Lippé 2 SCR 114, No 22072, Gonthier; 05.12.1990. Judgment.

<sup>71</sup> Larkins, C.M. (1996). Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, *American Journal of Comparative Law*, 44(4), p. 611.

<sup>72</sup> Supreme Court of Canada. Case R. v. Lippé 2 SCR 114, No 22072, Gonthier; 05.12.1990. Judgment; Ramseyer, J. M., Rasmusen, E.B. (2003). *Measuring Judicial Independence: The Political Economy of Judging in Japan*. Chicago: University of Chicago Press, pp. 122-168.

<sup>73</sup> Supreme Court of Canada. Case Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I. 3 SCR 3, No 24508, 24778; 18.09.1997. Judgment. p. 130.

<sup>74</sup> UN Office of Drugs and Crime (2007). *Commentary on the Bangalore Principles of Judicial Conduct*. p. 42.

<sup>75</sup> Supreme Court of India. Case S.P. Gupta v. Union of India, AIR 1982 SC 149, 1981 (Supp) SCC 87, 1982 2 SCR; 30.12.1981. Judgment, p. 27.

<sup>76</sup> Kornhauser, L.A. (2002). Is Judicial Independence a Useful Concept? Burbank, S.B., Friedman, B. (Eds.). *Judicial Independence at the Crossroads. An Interdisciplinary Approach*. New York: Sage Publications Inc, p. 48.

independence and to delineate as precisely as possible the scope of judicial independence. Consequently, in Chapter Five, the definition is clarified by adding the minimum (necessary and sufficient) requirements for the content of judicial independence. The author concludes that the *de facto* limits of judicial independence are to be identified and verified, the content of judicial independence is to be disclosed, and the permissible influence are to be distinguished from the impermissible one by examining, on a case-by-case basis, whether the objective of judicial independence – a fair and impartial trial – is being ensured.

### **Chapter Three. Types of Judicial Independence**

It is argued that to reveal the content of judicial independence – to identify specific elements – it is necessary to distinguish between types of judicial independence.<sup>77</sup> In order to determine whether and how the distinction between types of independence helps to reveal the content of judicial independence, the chapter examines the types of independence that can be identified in the legal literature, in documents of international institutions and in case law, and analyses the interrelationship and impact of the types of independence.

Depending on the regulated relationship (individual or institutional)<sup>78</sup> and the legal subject to whom independence is granted, a distinction is made between individual and institutional independence. Institutional independence arises out of the position of the courts as organs and protectors “of the Constitution and the fundamental values embodied in it — rule of law, fundamental justice, equality, preservation of the democratic process [..]”.<sup>79</sup> Institutional independence is linked to the court's status as an institution and is therefore closely related to the constitutional theory of separation of powers. The paper analyses the administrative independence of the judiciary as an important “yardstick” for assessing institutional independence.<sup>80</sup> Individual independence, on the other hand, relates to the ability of an individual judge to perform the judicial function free from undue influence. The thesis examines both the personal and the substantive or functional independence of the judge.

The thesis analyses objective and subjective independence. Objective or formal independence consists of the formal requirements laid down in the legislation (which may be, for example, guarantees, restrictions or obligations) that protect the judge and the judiciary from any

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<sup>77</sup> Rosenn, K.S. (1987). The Protection of Judicial Independence in Latin America. *19 U. Miami Inter-Am. L. Rev*, 1, pp. 13-23.

<sup>78</sup> Supreme Court of Canada. Case Valente v. The Queen 2 SCR 673, No 17583; 19.12.1985. Judgment, p. 20.

<sup>79</sup> Supreme Court of Canada. Case Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I. 3 SCR 3, No 24508, 24778, 13.02.1992., p. 123.

<sup>80</sup> Shetreet, S. (1985). Judicial Independence: New Conceptual Dimensions and Contemporary Challenges. Shetreet, S., Deschenes, J. (Eds.). *Judicial Independence: The Contemporary Debate*. Dordrecht, Boston, Lancaster: Martinus Nijhoff Publishers, p. 644.

undue influence and interference in the performance of the judicial function.<sup>81</sup> Two levels of independence – individual and institutional – are distinguished only for the formal, that is, the objective judicial independence. Subjective or perceived independence, on the other hand, consists of the impression of the public, litigants, politicians, judges themselves and anyone observing and assessing the court, i.e. how the independence of judges is perceived. It is made up of opinions, interpretations, assumptions, thoughts and beliefs. Looking at subjective independence as an aspect of judicial independence in the decisions of both the European Court of Human Rights and national courts, the author has analysed public confidence in the courts as one of the sources of judicial legitimacy.

The thesis justifies the distinction between *de facto* and *de iure* independence. *De iure* – the level of judicial independence formally ensured and guaranteed by the legislation,<sup>82</sup> while *de facto* – the level actually existing, that is the actual behaviour of the judge in performing the judicial function.<sup>83</sup> It is considered that *de iure* independence is one of the preconditions for *de facto* independence,<sup>84</sup> one of the determining factors of *de facto* independence.<sup>85</sup> The author concludes that if *de iure* judicial independence is ensured at both the institutional and individual levels, and if it includes not only guarantees but also obligations, restrictions and other minimum requirements of judicial independence, then it acts as an effective precondition for *de facto* independence. In such a case, the absence of *de facto* independence can only be an exceptional case linked to a particular judge, his behaviour, reaction to undue outside influence, possible violation of the law or ethical norms. However, in such cases, the legal framework must, and in a democratic state governed by the rule of law usually does contain a framework that allows for the assessment of the case and an appropriate response to it.

A distinction is made between internal and external independence, depending on the source of the possible influence. If this influence comes from the judiciary itself, it is a question of ensuring internal independence. On the other hand, any influence from persons and institutions outside the judiciary is associated with the requirement of external independence.

The thesis concludes that distinguishing the types of judicial independence helps to identify the potential forms of influence and to find the most effective solution for controlling and regulating them. The theoretical separation of the types of independence does not imply that they are completely separate. It does not matter whether one type of independence complements or

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<sup>81</sup> This type of independence is also known as *de iure* independence. See Subchapter 2.3.

<sup>82</sup> *De iure* independence is objective independence.

<sup>83</sup> Hayo, B., Voigt, S. (2021). Judicial Independence: Why Does De Facto Diverge from De Jure? p. 2.

<sup>84</sup> Hayo, B., Voigt, S. (2007). Explaining De Facto Judicial Independence. *International Review of Law and Economics*, Vol. 27(3), p. 271.

<sup>85</sup> Hayo, B., Voigt, S. (2014). Mapping Constitutionally Safeguarded Judicial Independence – A Global Survey. *Journal of Empirical Legal Studies*, Vol. 11, Issue 1, pp. 159-195; Hayo, B., Voigt, S. (2007). Explaining De Facto Judicial Independence. *International Review of Law and Economics*, Vol. 27(3), pp. 269–290.

facilitates the other, or whether they clash on some issue. The independent exercise of judicial function requires judicial independence that encompasses all aspects of independence, therefore it is not necessary to distinguish between types of independence in order to identify the content of judicial independence.

#### **Chapter Four. Identification of the Content of Judicial Independence**

The chapter identifies the scope of judicial independence and develops a test for identifying and verifying the content of judicial independence.

In order to identify the two-level division of judicial independence requirements, that is to distinguish between variable (non-mandatory) and mandatory requirements of judicial independence, the chapter analyses why the content of judicial independence changes and examines the reasons for the differences in the content of judicial independence. The study concludes that when the role of the court changes, when the court faces new challenges, when the culture of judicial independence develops, the content of judicial independence also changes: by looking for solutions to ensure judicial independence, the content of judicial independence is created, which at a given time is most effectively able to limit and prevent opportunities to unduly influence judicial proceedings. The chapter establishes that the content of judicial independence varies from state to state (in different legal systems) and is influenced by the constitutional order, the historical development of the legal system, the structure and characteristics of the judicial system, the historical, political, social, legal, cultural and also economic context, traditions, as well as changes taking place in the state or any other specific circumstances.

This has made it possible to establish the extent to which the content may vary and differ, that is differences in the content of judicial independence at different times and in different places (states and legal systems) can be identified at a more detailed level, both in the choice of, for example, specific guarantees, obligations or the content of their provision, and in the regulatory framework and its application. It is therefore possible to distinguish two levels of judicial independence requirements. First, the fixed components – general requirements that ensure the independence of judges and which are essential and indispensable in any legal system in order to be able to administer justice impartially and fairly. These components do not change, but the balance between the components, the main emphases and their importance may change. Second, each of these general components is supported by specific variable elements, which usually have certain common principles and whose observance ensures independence, but it is not possible to determine one specific and precise way in which each of these elements should be implemented in different legal systems, or whether it is necessary at all.

The author has examined several approaches to identifying the content of judicial independence, as well as the content of judicial independence as revealed in case law,<sup>86</sup> legal literature and documents of international institutions. These documents reveal two levels of judicial independence requirements and demonstrate different approaches to structuring the content of judicial independence. The amendments made to the documents confirm the author's conclusion that the content of judicial independence changes over time. The changes in the documents make it possible to identify the current issues related to the independence of judges, the objectives for clarifying the content, as well as the reasons for the changes in the content. These reasons are: (1) the increasing role of the court, (2) challenges to judicial systems, democracy and the rule of law in different states, (3) the impact of the court on economic growth, (4) the need to adequately protect human rights and address challenges in the context of an efficient market economy and challenges in an era of globalisation, as well as societal, political and economic change, (5) the need to respond to the lack of transparency in the decision-making process, the inappropriate use of new technologies and social media, challenges related to recent developments in judicial administration, the inefficiency of judicial institutions, the poor responsiveness of courts to social needs, still widespread judicial corruption, the impact of the difficult economic situation on court budgets, judicial remuneration and workload. The objectives of the amendments are: (1) to provide greater guarantees to protect judicial independence, (2) to be able to respond more effectively to the threats to the judiciary and the targeting of judges in many states, to strengthen the independence of judges and to contribute to the development of a common culture of justice, (3) to promote judicial efficiency, accountability of the judiciary and judges, access to justice and confidence in the courts, (4) to strengthen both the role and the independence of judiciary, (5) to respond to challenges such as influencing the independence of judges, failure to ensure the principle of separation of powers and lack of accountability.

In order to determine the scope of judicial independence and to identify which requirements related to the functioning of the judiciary, the administration of justice and the performance of judicial duties are outside the scope of judicial independence, although they are related to it and are essential for the performance of the basic judicial function, the most frequently discussed core values related to judicial functioning – judicial accountability, impartiality, confidence in the courts, judicial efficiency, judicial competence and judicial quality – have been analysed.

The thesis finds that the goal of judicial independence – to ensure the ability of the court to judge impartially and to achieve a fair result<sup>87</sup> – makes it possible to distinguish between

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<sup>86</sup> The case law of the European Court of Human Rights, the Court of Justice of the European Union, the Inter-American Court of Human Rights, the Constitutional Courts and the Supreme Courts of various countries is examined.

<sup>87</sup> The author has identified the goal of judicial independence in Chapter 2.



permissible and impermissible influence, to identify the limits of the concept (to establish its scope), and to reveal the content of judicial independence.

The author has developed a test for identifying and verifying the content of judicial independence. According to this test, the content of judicial independence consists of any requirement (1) related to the core function of the court in its broadest sense, taking into account all the duties of the judge necessary for the independent and impartial administration of justice, (2) in the exercise of which a relationship can be identified in which the court or a judge may be unduly influenced, (3) which are relevant to the goal of judicial independence (impartial administration of justice with fair results), but only to the extent and in the interpretation in which each requirement is relevant to (a) the exercise of the core judicial function, (b) the mitigation of undue influence and (c) the achievement of the goal of independence.

In analysing the relationship between the principle of judicial independence and the judicial function, the thesis concludes that only an independent judge within an independent judiciary can adjudicate independently and impartially, and therefore the duties of a judge include not only adjudicating cases (the core judicial function in the narrow sense), but also duties that enable the court to provide an impartial and fair trial (the core judicial function in the broad sense). Consequently, the requirements of judicial independence also apply to the duties of a judge outside the adjudication of cases.

### **Chapter Five. Components of Judicial Independence.**

The chapter argues why each of the fixed components of judicial independence, i.e. the duties, guarantees, accountability, rights, freedoms and their limitations, as well as competence of a court (jurisdiction), court's margin of appreciation (discretion), administrative independence and enforcement of judgments, are indispensable, i.e. essential for the core of judicial independence.

In analysing the fixed components of judicial independence, the author has identified, *inter alia*, the conditions that are essential to ensure certain requirements.

For example, when analysing the duties and requirements for a judge, it has been established that the requirement of a judge's impeccable reputation must always be assessed in conjunction with the norms of judicial conduct, ethical requirements and restrictions for a person to be a candidate for judicial office laid down in the legislation, as well as taking into account the purpose of the requirements of an impeccable reputation and the rules of conduct and ethics – to ensure a judge's ability to judge impartially and to create impression of this, thereby increasing confidence in the court. The thesis concludes that competence (knowledge) of a judge and the obligation to maintain and continuously develop it are prerequisites for ensuring the impartiality of the court, i.e. it is necessary for a judge to make a decision on the basis of his or her own

reasoning and to be able to dissociate himself from any bias, real or perceived, in making the decision. In analysing the judge's duties in the exercise of his core function, the author has concluded, *inter alia*, that reasoned and motivated judgments are important not only for the authority of the court, but also for its legitimacy and impartiality. First, the reasoning in the ruling reflects how the judge has ensured compliance with legal norms and the principles of a democratic state governed by the rule of law. These legal norms, in turn, determine, *inter alia*, the competence of the court and the procedures within which the judge exercises his or her authority, i.e. both legitimise and limit the court (normative legitimacy). Secondly, the judge's obligation to give clear and public reasons for the court's decision is linked to the permissible control over the court's decision. It ensures an opportunity to assess, based on the reasoning contained in the ruling, the court's decision and, therefore, the independence and impartiality of the court and the judge. The reasoning contained in the decision of the court is essential to ensure that the ruling is based solely on the law. The reasoning thus demonstrates the impartiality of the judge in deciding a particular case.

In analysing the accountability of a judge, it has been found that the accountability of a judge includes, first, the legal responsibility of the judge for his actions, namely civil, criminal and disciplinary responsibility, and, second, the responsibility of the judge, the court and the judiciary for the exercise of power, which includes the duty of public officials to explain, justify and legitimise the exercise of power in the performance of their public duties. This means that an accountable judge accepts the responsibility to act within the limits of the court's statutory competence and the discretion necessary to ensure justice, in accordance with the applicable standards of conduct, and is ready for punishment if he fails to do so or violates them. Moreover, the judge not only acts properly, but also provides the public with the opportunity to see that he does so. The elements of accountability not only provide an opportunity to check whether the court or judge does not exceed the limits of judicial independence, but also deter and, where necessary, react to the improper exercise of any requirement of judicial independence.

With regard to the administrative independence of the court, it is concluded that administrative independence stems from the constitutional requirement to depoliticize the relationship between the judiciary and political branches of state. However, judicial independence not only does not exclude, but even requires judges to maintain constructive working relations with institutions and officials from other branches whose functions are related to the work of the courts, in order to promote, as far as possible, the efficient functioning of the courts. The choice of a model of judicial administration must take into account the history and traditions of the state and ensure the most efficient functioning of the court, and must exclude any undue influence or even the appearance of influence on the independence of the court and judges.

Justifying the competence of a court as one of the components of judicial independence, it is concluded that the court and the judge can be separated from undue influence, an impartial administration of justice can be ensured only if the issues of court competence are resolved in accordance with the requirements arising from judicial independence. If the court is not empowered, i.e. if it is not given the power (jurisdiction) to deal with certain issues or if this power is very narrow, then, despite the impartiality and separation of the court, judicial independence means nothing, because the role of the court is not being fulfilled.

The thesis finds that judicial discretion is an indispensable component of judicial independence because, first, it is necessary, alongside judicial independence, for the creative exercise of the judicial function within the framework of the basic norm; second, it is related to the relationship in which the court or the judge can be influenced; and third, it is necessary for the impartial and fair administration of justice, but is permissible only to the extent necessary for the proper exercise of judicial function.

Enforcement of judicial decisions is an indispensable component of judicial independence because, first, it involves a relationship in which judicial independence can be influenced; second, only by actually resolving the dispute can it be ensured that the court acts as a truly impartial arbiter and ensures a fair result; and, third, judicial independence is rendered meaningless if the court's decision is not enforced. This implies, *inter alia*, that the funding necessary to ensure judicial independence covers not only the court's budget and judges' salaries, social guarantees and pensions, but also the funds necessary to enforce judicial decisions.

Using the content of judicial independence revealed in this chapter, the definition of judicial independence has been clarified: "Judicial independence is (a) the concretisation of a more general principle of a democratic state governed by the rule of law, i.e. the principle that ensures that the court is able to fulfil its constitutional function of adjudicating free from direct, indirect or even the appearance of undue influence, guaranteeing everyone the right to a fair and impartial trial. This exercise of power is ensured by (1) the duties, requirements, guarantees, accountability, rights and freedoms of the judge, and (2) enforcement of judicial decisions, the competence, discretion and administrative independence of the court."

### **Approbation of the Thesis**

The results of the research have been validated both in scientific publications and in international scientific conferences where the thesis topic has been reported. The author has published scientific articles on the topic of the research from 2011 to 2024 in internationally reviewed journals, as well as in the collections of scientific conferences:

Jurcena, L. (2024). Judicial Immunity – a Guarantee of Independence and an Element of Accountability. Riga: SIA “Biznesa augstskola Turība”, Journal of Turība University Acta Prosperitatis No. 14.

Jurcēna, L. (2024). The Need of Modern Society: Independent, Efficient and Qualified Judge. XXV International Scientific Conference of Turība University. The Age of Insecurity: from Risks to Growth.

Jurcēna, L. (2023). An Independent Court – a Provider of a Legal and Secure Environment. The Role of the Court in the 21st Century. XXIV Turība University Conference. Change – the Basis of Sustainable Society. "Biznesa augstskola Turība", Riga, pp. 71-90. ISSN 1691-6069. <https://www.turiba.lv/storage/files/konference-2023.pdf>

Jurcēna, L. (2022). The Institutional Independence of the Court: How to Find a Balance with Other Branches of Power. *Jurista Vārds*, 30.08.2022., 35(1249)

Ziemele, I., Spale, A., Jurcēna, L. (2020). The Constitutional Court of the Republic of Latvia. Constitutional Adjudication. Volume III (Eds. Armin von Bogdandy, Peter M. Huber, Christoph Grabenwarter). Oxford University Press, pp. 505-565. ISBN 978-0-19-872641-8.

Jurcena, L., Spale, A. (2020). Commentary to Article 28 of the Satversme. Commentaries to the Constitution of the Republic of Latvia. Chapter II. Saeima. *Latvijas Vēstnesis*, Riga, pp. 430-447. ISBN 978-9984-840-65-9.

Jurcēna, L. (2019). Rulings of Constitutional Review Bodies as a Guarantee of Constitutional Regulation. (Решения органов конституционного правосудия как гарантия конституционно-правового регулирования). Materials of the scientific-practical conference "The principle of proportionality in constitutional justice: the practice of limiting human and civil rights and freedoms". Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic No. 1 (9) / 2019, B.: PrintHouse, 2020.

Jurtsena, L. (2019). Judge's Financial Security and Public Opinion. Courts and Media Communication. The Influence of Public Opinion and the Media on a Fair Trial. *Latvijas Vēstnesis*, Riga, 2019, pp. 230-248. ISBN 978-9984-840-64-2. This topic was also reported at the scientific conference "The Influence of Public Opinion on Judges and the Judicial System in General", Riga, 26 January 2018.

Jurcēna, L. (2017). Commentary to Article 54 of the Satversme. Commentaries to the Constitution of the Republic of Latvia. Chapter III. The President of the State. Chapter IV. Cabinet of Ministers. *Latvijas Vēstnesis*, Riga, pp. 450-469. ISBN 978-9984-840-50-5.

Jurcēna, L. (2015). Judicial Systems of Central Asia. A Comparative Overview. Edited by G. Dikov. Moscow, Jurisprudence, ISBN 978-5-9516-0753-9. Within the framework of the project "Supporting Constitutional Justice, Access to Justice and Electoral Reform in the Countries

of Central Asia" funded by the European Union and the Ministry of Foreign Affairs of Finland and implemented by the Venice Commission in May-September 2015.

Jurcēna, L., Kārklīņa, A. (2013). Commentary to Article 84 of the Satversme. Commentaries to the Constitution of the Republic of Latvia. Chapter VI. Courts. Chapter VII. State Audit Office, pp. 69-118. Latvijas Vēstnesis, Riga. ISBN 978-9984-840-24-6.

Jurcēna, L. (2013). Guarantees of Judicial Independence Enshrined in Article 84 of the Satversme. Materials of the 54th International Scientific Conference of Daugavpils University. Daugavpils. Academic Publishing House "Saule" of Daugavpils University; pp. 385-390, ISBN 978-9984-14-613-3.

[http://www.dukonference.lv/files/proceedings\\_of\\_conf/54konf\\_proceedings.pdf](http://www.dukonference.lv/files/proceedings_of_conf/54konf_proceedings.pdf)

Jurcēna, L., Kūtris, G. (2011). Principle of Judicial Independence in the Case-Law of the Constitutional Court: Modern Trends. "Конституционное правосудие", 3(53)2011, Armenia. Centre of Constitutional Rights of the Republic of Armenia. ISSN 18290125.

Jurtsena, L., Kutris, G. (2011). Principle of Judicial Independence in the Case-Law of the Constitutional Court: Modern Trends. Bulgaria, Sofia, International Conference "Classical and Modern Trends in Constitutional Review".

Jurcēna, L. (2011). Separation of Powers and Independence of the Constitutional Court of the Republic of Latvia. Rio de Janeiro, Brazil, 2nd Congress of the World Conference on Constitutional Justice. [http://www.venice.coe.int/WCCJ/Rio/Papers/LAT\\_Jurcena\\_E.pdf](http://www.venice.coe.int/WCCJ/Rio/Papers/LAT_Jurcena_E.pdf)

The author has presented the following papers at conferences on the topic of the dissertation from 2011 to 2022:

Jurcēna, L. (2022). Institutional Independence of the Court: How to Strike a Balance with Other Branches of Power. Annual Conference of Latvian Judges, Riga, 20.05.2022.

Jurcēna, L. (2018). Judges' Financial Security and Public Opinion. Scientific Conference of the University of Latvia "The Influence of Public Opinion on Judges and the Judicial System", Riga, 26.01.2018.

Jurcēna, L. (2016). Interpretation and Application of the European Convention on Human Rights in Constitutional Courts: Cooperation or Competition? Kosovo, Pristina, Conference "Interpretation and Implementation of the ECHR by Constitutional Courts of the Western Balkans" organized by the Council of Europe together with the Constitutional Court of Kosovo.

Jurcēna, L. (2012). Guarantees of Judicial Independence Enshrined in Article 84 of the Satversme. 54th International Scientific Conference of Daugavpils University. Daugavpils, 18.04.2012.

L. Jurcena. (2011). Independent Court as a Guarantor of the Right to Social Security. France, Strasbourg, Seminar on Recent Case-law of Constitutional Courts in the Field of Social Security. Council of Europe.

Jurcena, L. (2011). Criticism of the Courts. Latvia, Birini. Annual Constitutional Policy Forum.

At the same time, it should be noted that the conclusions drawn in the study are largely based on the author's almost 15 years of practical experience working at the Constitutional Court, the Council of the Judiciary and representing Latvia in various international organisations formed by judicial institutions and related to the courts.

At the request of the Judicial Council, the author has carried out the following studies related to judicial independence and prepared opinions the results of which have been used to draw conclusions and formulate proposals in this dissertation:

Jurcēna, L. (2014). Opinion. Remuneration of Judges and Court Employees. The Existing Regulatory Framework and Necessary Amendments.

Jurcena, L. (2013). Opinion. Approval of Judges and the Career Issues. Existing Regulatory Framework and Necessary Amendments. <http://at.gov.lv/en/the-board-of-justice/documents/>

Jurcena, L. (2012). Ensuring Judicial Independence in the Normative Acts. Development of Theoretical Justification for Necessary Amendments. <https://www.tieslietupadome.lv/lv/petijumi-un-prezentacijas>

Representing the European Commission for Democracy through Law or the Venice Commission of the Council of Europe, the author has prepared and published the following papers related to judicial independence, presented them in seminars. The results of those papers have been used in drawing conclusions and formulating proposals in this dissertation:

Jurcēna, L. (2015). Judicial Systems of Central Asia. A Comparative Overview. Kyrgyzstan. Edited by G. Dikov. Moscow, Jurisprudence, ISBN 978-5-9516-0753-9. Project "Supporting Constitutional Justice, Access to Justice and Electoral Reform in the Countries of Central Asia" funded by the European Union and the Ministry of Foreign Affairs of Finland and implemented by the Venice Commission in May-September 2015.

Jurcena, L. (2014). External and International Relations of the Constitutional Court. Report at the training seminar for the staff of the Constitutional Court of Jordan. 10-11 December 2014, Amman, Jordan. Organised by the Venice Commission of the Council of Europe. CLD-JU(2014)021, Strasbourg 23 December 2014. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2014\)021-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2014)021-e)

Jurcena, L. (2012). Criticism of the Judiciary versus Authority and Independence of the Judiciary. 2012, Armenia, Yerevan, 5th Conference of Secretaries General of Constitutional

Courts or Courts with Equivalent Jurisdiction. Venice Commission.  
[http://www.venice.coe.int/webforms/documents/?pdf=CDL-JU\(2012\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-JU(2012)007-e)

Representing the Judicial Council in the European Network of Councils for the Judiciary, the author has participated in working groups drafting the following documents related to judicial independence:

ENCJ (2016). ENCJ project on the Funding of the Judiciary. Report "Funding of the Judiciary". Warsaw.

ENCJ (2015). ENCJ project on Independence and Accountability of the Judiciary. Report "Independence and Accountability of the Judiciary. Part II". The Hague.

ENCJ (2014). ENCJ project on Independence and Accountability of the Judiciary. Report "Independence and Accountability of the Judiciary". Rome.

ENCJ (2013). ENCJ project on Judicial Reform. Report "Judicial Reform in Europe - Part II". Sofia.

ENCJ (2012). ENCJ project on Judicial Reform. Report "Judicial Reform in Europe - Part I". Dublin.

The study is continuously being validated and approbated in the professional environment, including the current work on establishment of the Judicial Academy in Latvia, and providing theoretical and practical support to representatives of all branches of power on issues related to judicial independence and the development of the judicial system. Therefore, the dissertation has not only theoretical, but also practical significance.

## **Conclusions and Proposals**

The thesis is based on the hypothesis that changes in the role of the court affect the content of judicial independence, so that the content includes not only the guarantees and rights of a judge, but also the duties and responsibilities of a judge, not only the administrative independence of a court, but also the competence, discretion and enforcement of judicial decisions. The study concludes that, firstly, the core function of the court and the role of the court have a reciprocal impact. The role of the court is revealed in the exercise of the court's core function of adjudication. The role of the court, on the other hand, must be taken into account when exercising judicial function, as a judge must take into account the impact of his decisions not only on specific litigants at the time of a particular dispute, but also on society as a whole and in the long term. Second, as is apparent from the test of the content of judicial independence, the content consists of any requirement which, inter alia, relates to the core function of the court in its broadest sense, taking into account all the duties of the judicial office necessary for the independent and impartial administration of justice, but only to the extent and in the interpretation to which each of them is

relevant to the exercise of judicial function. The role of the court therefore not only is the basis for the requirement that the court be independent, accountable and efficient, it not only determines the degree of judicial activism and the understanding of the principle of independence, but also influences the content of judicial independence, i.e. the requirements that ensure the independence of judges. All the requirements of judicial independence can only be identified if the specific role of the courts in a democratic state governed by the rule of law is understood. Thus, the results obtained during the elaboration of the thesis confirm that the hypothesis put forward in the thesis has been confirmed, therefore, on the basis of the analysis of normative acts, legal doctrine and case-law carried out within the framework of the thesis, the author draws conclusions and puts forward proposals for elimination of the identified shortcomings.` 1



Conclusion 1. Different sources define and reveal the role of the court in different ways, which makes it complicated to assess its transformation and to discover all the areas of its influence.

Proposal: In discovering the areas of the court's influence, the role of the court identified in the thesis should be used. This role is revealed in the exercise of one of the state powers, which is influenced by the competence of the court specified in the normative acts, which is realized in the exercise of the court's basic function – adjudication within the scope of the competence specified in the normative acts and within the limits of its discretion. This role is revealed at a particular time and at a particular stage of development of society by the content of specific judgments.

Conclusion 2. Through its rulings and because of the impact these rulings have on the legislature and the executive, the court is able to have a significant impact – both direct and indirect – on society, politics, law and the development of certain areas of human rights and democratic values. However, a limited understanding of the court's influence and, consequently, of its role in a democratic society has a negative impact not only on the development of the judicial system, including judicial independence, but also on all other processes in the society.

Proposal: The development of the judicial system, ensuring judicial independence and the rule of law must take into account the role of the court in a democratic state governed by the rule of law, as demanded by society and shaped by the court, identifying all dimensions of the court's role – constitutional, political, social, economic and legal – as revealed by the processes and areas affected by the court.

Conclusion 3. In the legal literature there is a discussion about judicial independence as an absolute or non-absolute concept, which does not allow to assess and fully reveal the content of judicial independence.

Proposal: When assessing the content of judicial independence and the compliance of any requirement of independence, judicial independence should be considered as an absolute value – its scope is complete, i.e. no more and no less than is necessary, firstly, for the performance of the judicial function and, secondly, to ensure the only goal of an independent court – to administer justice impartially and fairly.

Conclusion 4. Judicial independence implies the requirement to prevent direct and indirect, real and apparent undue influence by any subject. Different sources indicate different influences which are not admissible in the administration of justice, and it is not always possible to distinguish between permissible and impermissible influence. The lack of definition of the boundaries of impermissible influence makes it impossible to define judicial independence and to discover its content.

Proposal: When examining whether a particular requirement of independence complies with the principle of judicial independence, it should be assessed only in relation to undue influence, using the content of undue (improper) influence identified in the work. The undue influence is considered to be: a) influence exercised in the form of unlawful or unjustified control, restraint, subordination, inducement, order or favour; b) influence exercised through any form of coercion, interference, deception, manipulation, influence, threat, pressure; or c) influence exercised in any other way and for any reason which is likely to impair the ability to give an impartial judgment.

Conclusion 5. In the legal literature, there are different opinions on the impact of the types of judicial independence on the content of judicial independence, different justifications for the distinction between the types of judicial independence, thus it is impossible to fully disclose the content of judicial independence.

Proposal: The distinction between the different types of judicial independence should be made only for the purpose of identifying the potential manifestations of influence and ensuring the most effective means of controlling and regulating them. However, the exercise of an independent judicial function requires the independence of judges to be such as to cover all aspects of independence (no distinction between different types of independence is necessary).

Conclusion 6. Judicial independence is a means to an end. Clarifying and revealing the content of the concept of judicial independence requires to identify its goal. However, different sources refer to different goals of judicial independence, which does not allow to fully reveal the content of judicial independence and to define judicial independence.

Proposal: The goal of judicial independence, as identified in the thesis, should be used to identify the limits and scope of the concept of judicial independence, to reveal the content of judicial independence and to assess specific requirements of independence, as well as to distinguish between permissible and impermissible influences: to ensure the ability of the court to judge impartially and to achieve a fair result.

Conclusion 7. Neither the doctrine nor the case-law has developed a methodology for discovering the content of judicial independence and verifying the requirements contained therein.

Proposal: The test developed in the thesis should be used to discover the content of judicial independence and to verify the requirements contained therein in a specific time, place and circumstance: The content of judicial independence consists of any requirement (1) related to the core function of the court in its broadest sense, taking into account all the duties of the judge necessary for the independent and impartial administration of justice, (2) in the exercise of which a relationship can be identified in which the court or a judge may be unduly influenced, (3) which are relevant to the goal of judicial independence (impartial administration of justice with fair

results), but only to the extent and in the interpretation in which each requirement is relevant to (a) the exercise of the core judicial function, (b) the mitigation of undue influence and (c) the achievement of the goal of independence. Moreover, the requirements of judicial independence also apply to the duties of a judge outside judicial proceedings, since only an independent judge within the framework of an independent judiciary can ensure a fair trial.

Conclusion 8. The content of judicial independence varies over time and differs from state to state, so that the content disclosed in different documents differs and the elements of independence are regulated, applied and interpreted differently in different legal systems, giving the impression that it is impossible to discover the content of judicial independence and develop a theory that is applicable in any legal system.

Proposal: The two-level division of judicial independence requirements developed in the thesis can be used to discover the content of judicial independence in any legal system. This makes it possible, firstly, to provide all the fixed components of independence – the general requirements that ensure judicial independence and which are essential and indispensable in any legal system for the impartial and fair administration of justice – and, secondly, to apply flexibly the variable elements of independence, which usually have certain common principles whose observance ensures independence, but for which it is impossible to prescribe any one specific and precise way in which each of these elements should be implemented in the various legal systems.

Conclusion 9. The concept of judicial accountability does not have a coherent general definition in legal doctrine. At present, no international treaty or document of international institution (*soft law*) contains a definition of the concept of judicial accountability, nor is there a single document that addresses all aspects of judicial accountability, i.e. different documents contain provisions on different elements of judicial accountability. This makes it difficult not only to assess the concept, but also to apply it in practice.

Proposal: The scope and content of judicial accountability as identified in the thesis should be used in assessing judicial accountability and its practical application. In particular, judicial accountability comprises, first, the legal responsibility of the judge for his or her actions, i.e. civil, criminal and disciplinary responsibility, and, second, the responsibility of the judge, the court and the judiciary for the exercise of power, which includes the duty of public officials to explain, justify and legitimise the exercise of power in the performance of their public duties. That means that an accountable judge accepts the responsibility to act within the limits of the court's legal competence and the discretion necessary to ensure justice, in accordance with the applicable standards of conduct, and is prepared to be punished if he fails or violates them. This includes the requirement that the judge not only acts properly, but also provide the public with the opportunity to see that he does so. The elements of accountability not only provide an opportunity to check whether the

court or judge does not exceed the limits of judicial independence, but also deter and, where necessary, react to the improper exercise of any requirement of judicial independence.

Conclusion 10. Insufficient understanding of the goal, content and limits of a judge's legal responsibility prevents the content of judicial independence from being understood and ensured in accordance with the requirements of a democratic state governed by the rule of law.

Proposal: Judicial independence in a democratic state governed by the rule of law should be ensured by applying the legal responsibility of judges in accordance with its goal, content and scope as disclosed in the thesis. Consequently, the rule of law and judicial independence, as well as the protection of the reputation of the judiciary, require the identification of judicial errors, appropriate response, including, where necessary, the holding of judges accountable for their errors.

This includes the possibility, and sometimes even the necessity, to review the court's conduct, if the content of the court's decision reveals it, also outside the statutory avenues of appeal against the court's judgment. The independence of judges in such a case is ensured not by a prohibition on reviewing the court's decision and its content outside the appeal process, but by procedures and guarantees provided by law.

Conclusion 11. Both in the legal literature and case-law, as well as in the documents of international institutions, guarantees of judicial independence have been considered as the main elements of judicial independence. Although other requirements have been identified, such as restrictions on fundamental rights, obligations and various institutional requirements, the full scope of judicial independence has not been defined. This undermines the ability to protect judicial impartiality and limits an effective response to threats to judicial independence.

Proposal: To protect judicial impartiality and respond effectively to threats to judicial independence, the full scope of judicial independence should be ensured. This includes the mandatory and therefore fixed requirements identified in the thesis – the components of judicial independence, consisting of both protective and restrictive requirements, elements specific to the judge and elements related to the judiciary or the court as an institution. That means, the judge's duties, guarantees, accountability, rights, freedoms and their limitations, as well as the court's competence, discretion, administrative independence and enforcement of judicial decisions, as fixed and indispensable components of judicial independence, are necessary to protect the administration of justice from undue influence and to ensure that the court acts as a truly impartial arbiter of disputes and ensures a fair result. In addition, it is necessary to monitor and regularly review possible threats and undue influence on judicial independence and, where necessary, to clarify the content of judicial independence by balancing rights, duties, responsibilities, guarantees

and other independence requirements. The legislative framework should provide for the possibility to respond to undue influence.

Conclusion 12. Currently, no international treaty contains a definition of the concept of judicial independence. The concept of judicial independence does not have a coherent general definition in legal doctrine, in documents of international institutions and in case-law, as usually when explaining the independence of judges, reference is made to its goals, meaning and role in a democratic state governed by the rule of law.

Proposal: The definition of judicial independence developed in the work should be used when drafting documents related to the functioning of the courts:

Using the content of judicial independence revealed in this chapter, the definition of judicial independence has been clarified: "Judicial independence is (a) the concretisation of a more general principle of a democratic state governed by the rule of law, i.e. the principle that ensures that the court is able to fulfil its constitutional function of adjudicating free from direct, indirect or even the appearance of undue influence, guaranteeing everyone the right to a fair and impartial trial. This exercise of power is ensured by (1) the duties, requirements, guarantees, accountability, rights and freedoms of the judge, and (2) enforcement of judicial decisions, the competence, discretion and administrative independence of the court."

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