Ana S. Knežević Bojović*
Jovana M. Misailović**

Original scientific paper
UDK: 347.958.8
doi: https://doi.org/10.56461/SPZ_22403KJ

JUDGES' ASSOCIATIONS AND TRADE UNIONS – INTERNATIONAL STANDARDS AND SELECTED NATIONAL PRACTICES***

Abstract

The aim of the paper is to present international standards and their implementation in the national legislations in European countries regarding judges' right to association with special regard to judges' right to unionise.

Authors hypothesise that although not strictly envisaged in any of the hard law sources, there is a plethora of soft-law instruments to assert this right. Consequently, the authors conclude that there is nothing in the relevant international standards that a priori prevents judges from unionising. Additionally, they posit that judges benefit from collective workers' rights generally linked to the trade unions through activities of judges' association, even in cases where judges are explicitly prohibited from joining and forming trade unions. The latter assertion is supported by a comparative overview of practices in selected European countries.

Keywords: *judges, freedom of association, trade unions, judicial independence.*

1. Introduction

Judicial independence is the staple of the rule of law (Venice Commission, 2011; Venice Commission, 2016). It is commonly understood to imply independence from external and internal influence, which is reflected, *inter alia* in merit-based appointment and promotion, clear and fair disciplinary proceedings,

* PhD, Senior Research Fellow, Institute of Comparative Law, Belgrade, Serbia
E-mail: *a.bojovic@iup.rs*
ORCID: *https://orcid.org/0000-0002-3746-5747*

** MA, Research Assistant, Institute of Comparative Law, Belgrade, Serbia
E-mail: j.*misailovic@up.rs*

*** This paper is a result of the research conducted by the Institute of Comparative Law financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia under the Contract on realisation and financing of scientific research of SRO in 2022 registered under no. 451-03-68/2022-14/200049.

and sufficient resources being allocated to the courts to guarantee a fair trial. Judges are not only allowed, but encouraged to actively address phenomena that may affect their institutional or individual independence from undue influences (*Baka v. Hungary*, Application no. 20261/12, para. 168). In doing so, judges not only enjoy the freedom of expression (*Baka v. Hungary* 20261/12; *Harabin v. Slovakia*, Judgment no. 62584/00; *Wille v. Liechtenstein*, Judgment no. 28396/95; *Kudeshkina v. Russia*, Judgment no. 29492/05), but are free to form and join associations and utilise them in advancing their collective and, by extension, individual rights (Garoupa & Ginsburg, 2016, p. 2). Advocating for the improvement of such rights with regard to workers is traditionally the role of trade unions. Judges, however, are not typical workers. They are a third branch of power, public servants (Zherobkina, Maletov & Sevruk *et. al*., 2020) or agents of society (Garoupa & Ginsburg, 2016, p. 2), even though they can invoke certain rights attributable primarily to workers (*UX v. Governo della Repubblica Italiana*, para. 22); in some national systems, they are deemed to be employed by the state (Apelacioni sud u Beogradu, 2015, para. 9) or effectively have the position of civil servants (Amadeus Wolff, 2011, p. 2). Given their specific position, their right to associate and unionize needs to be explored in more detail. The issue came into a particular spotlight when an association of Portuguese judges, having the term "syndicate" in their name (see *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, para. 117) sought a preliminary reference from the Court of Justice of the European Union, resulting in a seminal decision sustaining that organisation of the national judiciaries is an obligation pursuant to primary EU law.

Freedom of association of judges is recognised in numerous documents developed by the United Nations (UN) and Council of Europe (CoE) bodies, along with a general observation that judges utilise such associations to improve their independence and status, but also foster rule of law.

However, the relation between the freedom of association and the right of judges to form or be members of trade unions is only laconically addressed in supranational standard-setting documents, and mostly left to be regulated within the frameworks of legal traditions in each state. The phenomenon is rather under-researched (Castillo Ortiz, 2017, p. 319), and is commonly seen through the prism of the entire judicial system (see Bell, 2006) or other topical issues *e.g.* judicial councils or activism of judges in defense of the rule of law (see Matthes, 2021). Similarly, academic papers dedicated to the participation of judges in trade unions are limited to the works coming from countries with constitutional and legal traditions that generally allow (Robert, 2016; de Maillard, 2016; Tappert, 2019) or strictly prohibit judge's participation in trade unions (Verzelloni, 2016).

In 2020 the Consultative Council of European Judges issued an Opinion on the role of associations of judges in supporting judicial independence, attempting *inter alia* to formulate standards concerning the relationship between judicial associations and trade unions. The Opinion was informed by answers to a dedicated questionnaire, where one question was precisely devoted to the said issue. While the answers are sometimes rather laconic, they do provide valuable insight into the different approaches employed by various European countries with regard to the legal framework and practice of judges' forming or being members of trade unions.

The present paper posits that associations of judges fulfill a role that is traditionally attributed to trade unions, even though their purpose is primarily focused on fostering judicial independence and the rule of law, and that such a role is not precluded by national legal frameworks that prohibit the unionisation of judges. Further, it suggests that the participation of judges in trade unions is not *per se* contrary to the standards of judicial ethics. These assertions will be supported by relying on relevant international standards regarding the judge's freedom of association and the general right to form trade unions. Subsequent to that, the paper will provide an overview of paradigmatic examples of national legal frameworks and practices concerning judges' participation in associations and/or trade unions in Europe, illustrating also the (in)effectiveness of the prohibition of unionisation for judges. In doing so, the authors will not go into a detailed examination of the status of judges in national legal frameworks, nor the national rules under which associations of judges or their trade unions register and function, but will rather focus on examining their role vis-à-vis issues that are traditionally exercised by trade unions with regards to the rights of workers. Finally, the paper will provide conclusions addressing the relevance of the topic.

2. International Standards on Judges' Right to Association

There are no hard law sources on the international and European level which specifically address the freedom of association of judges in the context of their role as holders of a public office. Nevertheless, their right to associate can be derived from the general rules on the freedom of association. Additionally, a number of soft law instruments which specifically address judicial independence, judicial conduct, or other aspects relevant to insuring citizens' rights to fair trial do establish specific freedom of association for judges and put it clearly in the context of the protection of their professional interest. One of them even expressly addresses the right of judges to unionise. Below, the authors provide a bird's eye

view of both hard and soft law documents containing standards related to freedom of association and freedom to form trade unions relevant in the European context.

2.1. Hard-Law Sources

The most important documents guaranteeing human rights applicable in Europe are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Humans Rights (ECHR). All of them promulgate citizens' right to associate, and also the right to form a trade union (UDHR, Art. 23; ICCPR, Art. 22(1); ECHR, Art. 11(1)). As the case is with other rights, freedom of association and freedom to unionize are subject to legitimate restrictions. In order to be justified, the limitations have to be prescribed by law, to have a legitimate aim, meaning that they can be imposed only when it is needed to secure others to enjoy their rights as well as in order to fulfill requirements of morality, public order and the general welfare in a democratic society (UDHR, Art. 19, 20, 29(2); ICCPR, Art. 22(2)). Three cited human rights treaties impose the said restrictions in relation to specific occupations such as members of the armed forces, police, or of the administration of the State (ECHR, Art. 11(2)). Judges are not explicitly referred to in this context, and generally enjoy the freedom of association on par with other citizens. It is important to note that the European Court of Human Rights (ECtHR) was presented with a rather limited number of cases concerning the freedom of association of judges. However, they addressed the issue of the judge's membership in other, non-judicial associations. ECtHR did find the judge's freedom of association to have been violated, but has dealt with the issue on formal rather than substantive terms, and thus provides little insight into this court's position on what would be legitimate restrictions to judges' freedom of association. (see *N.F. v. Italy* & *Maestri v. Italy*)

The Convention of the International Labour Organisation Convention No. 87, on Freedom of Association and Protection of the Right to Organise, as the core document of international labour law (see Misailović, 2019, p. 116) is instrumental in guaranteeing the right to form and join trade of workers. In Article 2, the ILO lays down the right of both workers and employers to establish their organizations "without previous authorization" by the state. This is crucial for ensuring that trade unions are independent in performing their role in the labour market as the guardians of labour rights. As opposed to the previously presented documents where the right to associate is guaranteed to citizens, the ILO is the sole example where the right to association is precisely guaranteed as a workers' right.

Consequently, this document can also constitute grounds for enabling judges to enjoy the freedom of association and the freedom to unionize. This assertion is supported by the activity of the ILO Committee on Freedom of Association, which on two occasions expressly proclaimed that provisions of national laws which deny the right to set up trade unions to judges (and public prosecutors) are contrary to the principles of freedom of association as guaranteed by relevant ILO Conventions (ILO, 2014, para. 933; ILO, 2016, para. 210). While the following paragraphs will show that some countries nevertheless impose express prohibitions on the right of judges to form trade unions, it is safe to say that international standards in the field of labour law support the right of judges, like all other workers, to freedom of association also in the context of labour law.

2.2. Soft-Law Sources

Unlike hard-law sources, which do not address the freedom of judges specifically, numerous soft-law instruments addressing the various facets of judicial independence promulgate judges' right to form professional associations, including trade unions. However, mindful of the specificities of judicial office, they also frame the said two rights in the context of special duties imposed on judges precisely by virtue of their office. Below, the paper will provide an overview of how the key documents adopted on the UN and European level address these issues.

Notably, the UN Basic Principles on the Independence of the Judiciary (UN Principles) stipulate that members of the judiciary are entitled to freedom of expression, belief, association, and assembly, like other citizens. Furthermore, the UN Principles underline that, unlike others, while exercising these rights, judges need to always preserve the dignity of their office and the impartiality and independence of the judiciary. Further, they allow judges to form and join associations of judges or other organizations, in order to represent their interests, promote their professional training, and protect their judicial independence (United Nations Basic Principles on the Independence of the Judiciary, paras. 8-9). However, this document fails to provide judges with an *explicit* right to form trade unions. The last principle, while not juxtaposing the freedom of association and forming a trade union with judicial dignity and the demand for judicial impartiality, can raise some practical issues with respect to the manner in which the two said rights are exercised. It is important to note that the UN Principles are addressed to member states, aiming to assist them in securing and promoting the independence of the judiciary; in the context of trade unions, there is nothing in the UN Principles that could support an *a priori* prohibition of unionisation of judges. This position can be further supported by the express assertion made

by the Special Rapporteur on the independence of judges and lawyers (Human Rights Council, 2019, para. 60) that a judge may be a member of a trade union or non-profit organization. Conversely, point 7.6 of MT Scopus International Standards of Judicial Independence envisages that judges may be organised in associations designed for judges for furthering their rights and interests as judges. This somewhat limits the scope and reach of judges' right to associate if only narrow and linguistic interpretation is employed, which was not necessarily the underlying intention. The currently ongoing development of ELI Mount Scopus European Standards of Judicial Independence and of related comments may provide some much-needed guidance in that respect (see Towards ELI-Mount Scopus European Standards of Judicial Independence).

Another relevant soft law instrument adopted at the UN level is the Bangalore Principles of Judicial Conduct (Bangalore Principles). Unlike the UN Principles, which are addressed to states, the Bangalore principles are directed towards judges, aiming to offer them a framework for regulating judicial conduct (see Mirić, 2013, pp. 327-342). The Bangalore Principles affirm the right of judges to form or join associations of judges or participate in other organizations representing the interests of judges (Art. 4.6). This principle is further elaborated in the Commentary to the Bangalore Principles, stating that judges may form with other judges, or join a trade union or professional association which are organised in order to protect and advance the conditions of service and salaries of judges (Commentary on the Bangalore Principles of Judicial Conduct, 2007, p. 116). Additionally, Commentary underlines that, having in mind the constitutional and public character of the judge's service, restrictions may be placed on the right to strike. The fact that the judges' right to unionise is in the key document governing ethical standards for judges clearly shows that this right is not *per se* contrary to ethical standards. This is of particular relevance, since an informative academic paper examining, *inter alia*, the organisation of judges in trade unions (Fauconnier, Husson & Roux d'Anzi, 2016) underlines that even in the absence of explicit restrictions to forming trade unions, judges do not perceive unionism as a solid tool to protect or advance the position of the judiciary. This, somewhat negative attitude seems to be rooted in the consideration that unionism is not in accordance with the high position of the judge and hence may be in contravention of the principles of judicial ethics. Such a concern can be arguably perceived as legitimate, given that the activity of trade unions is often linked to the political engagement of the members of the trade unions, which may impinge on the duty of impartiality and independence. Gaboriau (2016, p. 36) for instance, indicates that at one point in time in France, there were calls for restricting trade unionism within the judiciary, based on the concerns that trade unions are likely to be

politically engaged, which is contrary to the principle of judicial independence. The issue of collective activities of judges' associations, regardless of whether through associations or trade unions, is particularly relevant in authoritarian societies where public criticism of the reforms in this sphere of judiciary sponsored by the executive and legislative is often perceived as inherently political, and is hence sanctioned (*Miroslava Todorov v. Bulgaria*), or where any affiliation of a judge in an association is implicitly or explicitly incorporated in criteria of judicial appointments (Ford, 2020; Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland, 2019; *Dolinska-Ficek and Ozinek v. Poland*) or where the political activity of judges is prohibited in very general terms (Serbian Constitution, 2007, Art. 148(4)).

It should be noted that even the political activity of judges in the Bangalore Principles is not addressed through a strict prohibition, but rather through the principle of restraint (Commentary on the Bangalore Principles of Judicial Conduct, 2007, p. 95, para. 35; Human Rights Council, 2019, paras. 65/75). Consequently, the concerns related to unionisation being in principle in contravention of high ethical standards that come from judges themselves are not supported by the wording of either the Bangalore Principles or their Commentary. They, however, do impose a duty of restraint, which seems to be more related to the exercise of such rights *in concreto*.

An important set of soft-law instruments relevant to the European context is adopted by the Consultative Council of European Judges (CCJE), CoE Committee of Ministers, and the Venice Commission, which will be presented chronologically.

European Charter on the Statute for Judges (para. 1.7) (Charter) envisages that judges may be members of professional organizations. The Explanatory Memorandum further underlines the significance of judges' organisations being consulted while proposing a change in their statute or any other change regarding the way they are remunerated, their social welfare, including their retirement pension. With specific restrictions connected to some occupations in public service, these activities are usually reserved for trade unions. However, this should ensure that judges are not left out of the decision-making process in these fields, although not having a trade union. (Explanatory Memorandum to the European Charter on the Statute for Judges, 1998, p. 23)

CCJE Opinion No. 3 stipulates that judges should have the right to participate in certain debates concerning national judicial policy. Additionally, it stipulates that judges should be consulted and actively involved in the preparation of legislation concerning their statute and generally the functioning of the judicial

system (para. 34). It is recognised in the opinion that this assertion raises the question of whether judges should be allowed to join trade unions; fortunately, the Opinion provides an affirmative answer, underscoring that judges can join trade unions based on their right to freedom of association. However, Opinion No. 3 acknowledges that this right may be limited through the prohibition from enjoying the right to strike as one of the basic rights associated with trade unions.

Council of Europe Recommendation CM/Rec (2010)12 on judges: independence, efficiency, and responsibilities (para. 25) further supports judges in their right to form and join professional organisations. It frames the activity of professional associations of judges in the context of allowing judges to be able to defend their independence and interests.

Magna Carta of Judges (Art. 12) provides judges with the right to be members of national or international associations of judges, entrusted with the defence of the mission of the judiciary in society.

Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, adopted in 2014 (paras. 144-146), address the freedom of association of state officials and law enforcement personnel. In doing so, they underline that the relevant international treaties, most notably the ICCPR and the ECHR, do recognise that freedom of association may be restricted with regard to some public officials. Nevertheless, the Guidelines underline that such restrictions can affect only limited categories of public officials and, if imposed, must still be subject to the principle of proportionality. Consequently, it would be difficult to argue that every *a priori* prohibition of a particular type of association, such as a trade union, for judges, can be deemed proportionate.

In 2020 CCJE adopted Opinion No. 23 regarding the role of associations of judges in supporting judicial independence. This is a seminal document synthesising the relevant international standards on the issue. Notably, it recognises (para. 17) that the objective for an association of judges of establishing and defending independence encompasses, among others: defending judges and the judiciary against any infringements of independence, claiming sufficient resources and satisfactory working conditions, aiming for adequate remuneration and social security, rejecting unfair criticism and attacks against the judiciary and individual judges, establishing, promoting and implementing ethical standards, and safeguarding non-discrimination and gender balance. Moreover, in it, the CCJE undoubtedly expressed the opinion that associations of judges, although not organisations that represent civil society, should be included at all levels in judicial reforms and hence, consulted by the executive power in projects including budgetary issues and the allocation of resources and all aspects of the status of judges (paras. 38, 40, 41). This statement is based on the stance that the

association of judges represents the experience and opinion of judges. Therefore, it is not surprising that this document reiterates the assertion made in the Commentary to the Bangalore Principles by underlining that judges should be allowed to form and join trade unions but also that specific issues such as judges' working conditions, their remuneration, pension, and security, are of highest importance for judges' associations as well. It is clear that CCJE Opinion No. 23 draws similarities between the aims of judges' associations and aims set by the trade unions when striving to protect and improve their status vis-a-vis their employers (paras. 66-68). Relying on this, Opinion No. 23 unequivocally clarifies that activities performed by the associations of judges which are usually carried out by the trade unions should be valued as of the same significance by the state.

3. Trade Unions and Judges' Associations – Selected Examples of National Frameworks

National-level operationalisation of relevant international standards concerning the freedom of judges to associate and form trade unions is very heterogeneous. The answers to the questionnaire used in the preparation of CCJE Opinion No. 23, as well as the national practices cited in the 2019 Report of the UN Special Rapporteur on the independence of judges and lawyers testify to the diversity of approaches to how judges' associations are formed, how they communicate with state bodies and authorities (including judicial self-governance bodies), how they operate in order to protect and improve judicial independence and whether, in doing so, they also form trade unions. Provided below is a birds-eye view of selected European legal frameworks and practices.

3.1. France – judges unionise

Although the idea of an active union of judges might be perplexing to those familiar only with jurisdictions where judges are supposed not to interfere with or be active in political issues, (de Haan, Silvis & Thomas, 1989, p. 477), France provides a good example of a solution where professional trade unions are formally established within the judiciary. What is more, in France unionisation of judges is considered an appropriate tool for the renewal of judicial ethics, through actions in favour of the rule of law and analysis of court practice.

Generally, the process of unionisation in France, which was allowed after the end of the Second Empire, became legally regulated by law in 1884. This law was considered liberal, as it gave employees the right to form and join a trade union or

choose not to do so, without imposing on them any specific type of union according to category - workers, employers, or industry (Le Crom, 2019, p. 105).

The unionisation of judges, however, came almost a century later. The process of unionization in France is said to be partially attributed to the social diversification of the magistrates, due to an altered process of recruitment of judges, which rendered the judiciary more heterogeneous (Fauconnier, Husson, Roux d'Anzi, 2016). Unsurprisingly, veteran judges were more conservative and attached to the traditional acceptance of judicial restraint, expressing their disagreement with unionisation. Conversely, prevailingly young judges, striving for a better position, formed the first professional syndicate of judges (SM) in 1968 (Mounier, 1986, p. 28). This push for unionisation eventually, in the mid-1970s, brought about the transformation of an association of judges - *Union Fédérale des Magistrats* into a trade union - *Union syndicale des Magistrats* (USm) (Cristóbal, 2008, p. 122). The unionisation was not only prompted by a strong opinion that a union structure west best suited to defend professional interests, but was also supported by a number of pronouncements made by the *Conseil d'État* in which it was recognized that union activities were not likely to constitute an offense against the "duty of reserve" imposed on magistrates.

One of the wider benefits of allowing judges to unionise in France is seen to be in fostering a perception of judges as humans who are able to integrate into society. One former president of the SM reportedly underscored that promoting a more humanised vision of judges as figures that are integrated into society would help the judge to accept his or her subjectivity and thus be conscious of potential biases, asserting that surpassing judicial restraint can thus strengthen judicial ethics as well as the rule of law (Fauconnier, Husson, Roux d'Anzi, 2016).

It is interesting to note that the French legal framework does not have specific rules authorizing trade unionism in the judiciary, which, in practice, made it very difficult to define its limits in the context of the politicization of trade union activity (De Mallard, 2016, p. 447). In terms of the mission set out by judicial trade unions as compared to the ones commonly promulgated by associations of judges, it is interesting to see that a leading judicial trade union in France declares its statutory mission in the context of insuring judicial independence, defending the moral and material interests of judges, especially in cases of recruitment, training, and promotion, and to contribute to the advancement of laws in judicial institutions, which is highly resemblant of the missions usually assumed by judges associations. The legal advantage of unionisation for the judges in France as compared to professional organisations of judges can perhaps be better perceived by outlining the rights granted to trade unions in France by the Code du travail (Labour Act). Judges' trade unions have the same legal status as any

other professional trade union in France, and as such, they are given rights by the labour law – *Code du travail* (Fr.). The importance of having the right to form trade unions in relation to professional associations is in the legal status that trade unions enjoy, given that professional trade unions have as their exclusive goal the defence of the rights, as well as the moral and material interests, both collective and individual, of the persons specified in their statutes (Code du travail, L2131-1). Trade unions also have exclusive competence to negotiate collective agreements and thus enable a wider scope of rights compared to the ones set by law (Code du travail, L2131-2 - L2131-4). Further, trade unions have the right to take legal action in court and to exercise all the rights reserved for civil law parties in relation to facts that cause direct or indirect damage to the collective interests of the profession they represent (Code du travail, L2132-3).

Generally, the high rates of unionization within the French judiciary are seen to foster a high level of protection for judges (Lemennicier & Wenzel, 2018, pp. 33-34).

3.2. Spain – Judges Cannot Unionise but Go on Strike

Spanish legislation is an example that can arguably be deemed to be contrary to relevant international standards when it comes to the enjoyment of judges of the benefit to form trade unions. Namely, Spanish Constitution, specifically Art. 127 (Constitución Española, BOE núm. 311, de 29/12/1978) expressly prescribes that judges and public prosecutors, whilst actively in office, may not be members of political parties or of trade unions. This prohibition is reiterated in the Organic Law of the Judiciary (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, BOE» núm. 157, de 02 de julio de 1985 esp.), in Art. 395, para. 1 where it is further elaborated that judges are also prohibited from attending any public acts or meetings that are not judicial in nature, except when so authorized by the General Council of the Judiciary. Their voting rights are also restricted to a passive voting right (Art. 395, para. 2). The strict prohibition of judicial (and prosecutorial) unionisation was debated at the time of the adoption of the Spanish Constitution and was accepted as a prevailing opinion, based on the perceptions that trade union activity is contrary to the dignity of the judicial office; additionally, their membership in trade unions was seen as a tool for jeopardising judicial independence (Sanz Llorente, 1992). Further, unionisation was deemed likely to induce a lack of trust in the judiciary within the society, and would necessarily lead to a politicisation of judges (Fauconnier, Husson & Roux d'Anzi, 2016, p. 5).

Nevertheless, the Spanish Constitution in Art. 127 also envisages that the system and modalities for the professional association of judges shall be prescribed

in more detail by the law. In this way, the Constitution went in line with the relevant international standards, allowing judges to form their associations.

The purposefulness of the Spanish prohibition of unionisation of judges was, however, challenged in 2009, when judges in February, went on strike for the first time, demanding a better legal position - including higher salaries and greater penalties for judges who had not followed the rules properly, as well as adjustment of workloads. The action was condemned as illegal by the government in the context of the constitutional prohibition of judges' right to unionise, and by extension, to strike, and was the subject of a heated debate on its legality (Villarejo, 2009).[1] The strike also revealed the divide within the judicial profession - the majority of the judges supported the claims raised, but differ on the legitimacy of the right to strike and the call to strike. The President of the Superior Court in Madrid said that judges who went on strike had had the 'legitimacy', while also calling for 'prudence' among those taking action. The President of the Barcelona Audiencia (Court), claimed that judges were not allowed to strike because they were an agency of the state. This opinion was supported by in the Progressive Prosecutors' Union which had claimed that resorting to strike action was an 'inadequate' and 'disturbing' way for judges to highlight their demands (Villarejo, 2009). Finally, the General Council of the Judiciary, the highest judicial self-governance body in Spain, declared that there was no legal basis for or against the strike, or for the council to intervene (Villarejo, 2009).

In the absence of clear rules, the judge's strike also caused an extensive academic debate, where opposing opinions on the judge's right to strike were presented, relying not only on the texts of the Constitution and the Organic Law, but also on civil service and labour legislation (see Sánchez, 2010, pp. 573-586). While the issue of whether judges have the right to strike remains normatively unresolved, in Spain the practice of judges going on strike in order to defend their working conditions and the independence of their profession in this country has evolved, with nationwide strikes organised in 2013 (Europa Press, 2013; Ceberio Belaza, 2013) and in 2018 (Perez, 2018; Recuero, 2018).

The said practice lends itself well to a conclusion that the strict prohibition of unionisation of judges in Spain has not prevented them from protecting their rights through collective action, including that which is commonly assumed by trade unions – strikes. It demonstrates the futility of an *explicit* prohibition of the right of judges to form trade unions, while also testifying to the assumption that judge's associations can take on the roles traditionally played by trade unions.

[1] The paper will not go into a detailed elaboration of the causes of the strike. For more, see Villarejo, 2009.

3.3. To Unionise or not to Unionise – Approaches in Selected European Countries

In addition to the above-presented opposing examples of prohibition of judicial unionisation and its widespread acceptance in the judicial corps, there are other examples found in different European countries that can support the claim that judicial associations often take up the role of trade unions despite the lack of express legislative recognition of the right of judges to unionise or even in spite of a clear prohibition.

A particularly relevant practice is identified in Germany, a country with a long tradition of unionism. In Germany, judges have the status of public servants[2] (which can be different depending on their function as a professional judge or lay judge) and generally enjoy the freedom of association, which is guaranteed to all German citizens with no restriction linked to any occupation specifically (Grundgesetz für die Bundesrepublik Deutschland, Art. 9). Surprisingly, trade unions of judges are not customary (at this point it is worth recalling that in Germany in some cases trade unions of public servants nominate their members as candidates for judicial office (see Corby, Burgess & Höland, 2021, pp. 232 and more)). An important facet of trade unions in Germany lies in the fact that different political and ideological wings are united in one association, and that they are organized on an industry or branch basis. This means that a union is open to all employees in the industry concerned, no matter which trade or occupation they are engaged in, so there is only one union for all employees of the branch or industry (Weiss, 2004, p. 74).

Due to a lack of formal unionisation of judges in Germany, their professional association play a significant role in improving the position of judges. The main and most powerful judges' professional association in Germany is the *Deutcher Richerbund* (Ger.) which was established in late 1909, during the reign of William II (Böttcher, 2016, p. 499). This association is presumed independent of any political party and as a consequence, has an important and specific role in representing the entire body of the judiciary (Cristóbal, 2008, p. 122). The aims set by *Deutcher Richerbund*, resonate with those commonly taken up by trade unions, namely the promotion of legislation, the administration of justice and jurisprudence, maintaining judicial independence and impartial administration of justice, promotion of the professional, economic and social interests of judges and public prosecutors, especially in the areas of personnel, material resources, salaries, pensions, promotion of the exchange of information and experience and further training (*Deutscher Richterbund*, 2018). The legitimacy of this association

[2] German judiciary system is often criticized for the lack of self-administration within judiciary, based on the fact that judges are usually appointed by the government (Riedel, 2020, p. 1).

goes even beyond representing judges, resulting in it being consulted by the line minister on any changes in legislation that could have an impact on the judiciary. It seems evident that the *Deutscher Richterbund* carries out activities similar to that of a trade union.

Similarly, in Luxembourg, judicial associations reportedly act as judge's union even though they are not registered as such (Louxembourg-Questionnaire pour la préparation de l'Avis No. 23 du CCJE, 2020, para. 24), while in Greece, judicial associations self-identify as trade unions (Greece-Questionnaire for the preparation of the CCJE Opinion No. 23, 2020, para. 24)).

In a similar vein, at one point in time, the Polish Judges Association *Iustitia* focused its activities on improving judges' salaries and working conditions (Matthes, 2022, p. 473). In Romania, the dominant Association of Romanian magistrates during the 2000s and early 2010s reportedly focused on matters such as salaries and workload of judges (Beers, 2012, p. 57). However, in 2016 they were instrumental in preventing an ill-designed transplant, having the potential to undermine judicial independence, from being implemented in Romania (see Knežević Bojović, Matijević & Glintić, 2021, pp. 163-184).

During the 1960s in Italy judges formed unions, demanding better conditions and freedom from constraints imposed by higher levels of the judiciary (Garupa & Ginsburg, 2015, p. 121).

An interesting example can be found in Belgium, where associations of judges are clearly excluded from the scope of the law governing the dialogue between relevant public authorities and their corresponding syndicates. Nevertheless, the Belgian legal system has developed a dedicated forum enabling structured dialogue between relevant authorities and judicial associations. This is done in the form of a consultative council of judges (*Conseil consultatif de la magistrature* Fr.) established by a 1999 dedicated law (Loi instaurant un Conseil consultatif de la magistrature). What is more, judicial associations are qualified to participate in the work of this body provided they have at least 75 members. This requirement does not fully coincide with the concept of representativeness applicable to trade unions in various contexts but does indicate the need for the judicial association to channel the voice of a significant number of judges in order to have a say within this body. Likewise, the Bulgarian legal system recognizes a consultative body (*Съвета за партньорство към Висшия съдебен съвет* Blg.) (Наредба No. 8 от 8.11.2018 г. за организацията и дейността на Съвета за партньорство към Висшия съдебен съвет) comprising representatives of judicial council on the one hand and of judges' and prosecutors' associations on the other. Only associations representing at least 5 percent of judicial prosecutorial corps are qualified to take part in such consultations (Bulgaria-Questionnaire for

the preparation of the CCJE Opinion No. 23, 2020, para. 24). Again, this is resemblant of the principle of representativeness.

In Serbia, the Judges Association of Serbia had a prominent role in protecting the interests of its members during the infamous judicial reform (Rakić Vodinelić, Knežević Bojović & Reljanović, 2012, pp. 102, 119, 206-214); its trade-union-like activity is perhaps best illustrated by a recently developed policy paper in an attempt to fortify and improve judges' remuneration and pension schemes (Društvo sudija Srbije, 2022).

4. Conclusion

Judges, given their instrumental role in the system of separation of powers and in protecting human rights, hold a special role in the constitutional and legal system of each individual country and are bound by high legal and ethical standards. Just like other citizens, judges have the right to associate in order to advance their independence and their professional status. While judge's right to associate is not explicitly guaranteed in international hard-law instruments, it is elaborated in detail in numerous soft-law instruments adopted by the UN and CoE and their bodies. Given that freedom of professional association is closely linked to the freedom of forming trade unions, the question of whether this right is granted to judges is particularly interesting. The interpretation of the key labour-law supranational instruments asserts the right of judges to unionise. However, the operationalization of these international standards is rather heterogenous on the national level. In a seeming contravention of the cited international standards, some countries, such as Spain, formally prohibit judges' membership in trade unions, relying mostly on the concern that this could lead to the politicization of the judiciary, thus impinging on judicial independence, or considering that unionization is contrary to the dignity of judicial office or judicial ethics.

In light of the realistic possibility of trade union activity being politicized, the question of whether judges are allowed to form trade unions naturally raises the question of whether judges are allowed to partake in political activities. The analysis presented in this paper shows that there is nothing in international standards on judicial independence and judicial ethics that would *a priori* prevent the unionisation of judges. The duty of restraint and the virtue of prudence, however, need to be employed *in concreto*, with due care being taken to ensure that the judges' freedom of expression or the duty to speak up are duly observed, regardless of whether the freedom of association and freedom of expression are exercised in the context of judicial trade unions or judges' associations. The last two

considerations are particularly relevant in the context of authoritarian regimes which persistently impinge on judicial independence.

Judiciaries in some countries, such as France, have taken a different path, and following a sound tradition of unionization, have formed strong and active judicial unions which largely contribute to advancing the judiciary. Evidence from comparative practice also shows that in some countries judicial associations that take up the roles otherwise commonly assumed by trade unions, fight, *inter alia*, for the improvement of judges' working conditions, including salaries, workload, and pensions. The Spanish example of nationwide strikes of judges organized by associations of judges – an action for which only trade unions are legitimized - testifies to the futility of a strict prohibition of judicial unionization.

The analysis lends itself to the conclusion on the need for the possibility of unionisation within the judiciary to be clearly regulated. Further development of unambiguous international standards on judicial unionisation would help clarify some of the blurry lines and guide national legislators and judicial professionals alike. At the same time, numerous good practice examples show that in the absence of clear rules, judges' associations successfully assume the roles traditionally attributed to trade unions, implying *de facto* unionisation and their active role in protecting the collective interests of judges.

References

Amadeus Wolff, H. 2011. The Civil Service in Germany Annual Report. *Ius Publicum Network Review*. Available at: http://www.ius-publicum.com/repository/uploads/07_01_2022_10_04_08b_Wolff.pdf (13. 11. 2022).

Beers, D. J. 2012. Judicial Self-Governance and the Rule of Law. *Problems of Post-Communism*, (59)5, pp. 50-67, https://doi.org/10.2753/PPC1075-8216590504.

Bell, J. 2006. Judiciaries within Europe: A Comparative Review. New York: Cambridge University Press.

Böttcher, H.E. 2016. Le syndicalisme judiciaire en Allemagne: du monolithisme au pluralisme. *Les Cahiers de la Justice*, 3(3), pp. 497-508, https://doi.org/10.3917/cdlj.1603.0497.

Castillo Ortiz, P. J. 2017. Councils of the Judiciary and Judges' Perceptions of Respect to Their Independence in Europe. *The Hague Journal of the Rule Law*, 9, pp. 315–336, https://doi.org/10.1007/s40803-017-0061-2.

Corby, S., Burgess, P. & Höland, A. 2021. Employees as Judges in European Labour Courts: A Conflict of Interests? *European Journal of Industrial Relations*, 27(3), pp. 231-247, https://doi.org/10.1177/0959680120906631.

Cristóbal, R.S., 2008. El Derecho de Asociación de los Jueces: Asociacionismo profesional y asociación del juez a asociaciones no profesionales. *Revista Española de Derecho Constitucional*, (83), pp. 115-145.

de Haan, W., Silvis, J., & Thomas, P. A. 1989. Radical French Judges: Syndicat de la magistrature. *Journal of Law and Society*, 16(4), pp. 477-482, https://doi.org/10.2307/1410332.

de Maillard, J. 2016. Syndicalisme et justice: vieille lune ou idée neuve?. *Les Cahiers de la Justice*, 3(3), pp. 441-455, https://doi.org/10.3917/cdlj.1603.0441.

Fauconnier, G., Husson, A. & Roux d'Anzi, C. 2016. Collective Organizations of Judges and Professional Conduct: A Revived Approach to Judicial Ethics. European Judicial Training Network Themis Competition Semi-Final D. Omšenie, Slovakia, 26–30 June.

Garoupa, N. & Ginsburg, T. 2015. Judicial Reputation: A Comparative Theory. Chicago: University of Chicago Press, https://doi.org/10.7208/chicago/9780226290621.001.0001.

Knežević Bojović, A., Matijević, M. & Glintić, M. 2021. *International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation*. In: Balkan Yearbook of European and International Law. Springer, Cham, pp. 163-184, https://doi.org/10.1007/978-3-030-97431-2_8.

Le Crom, J.P. 2017. Trade unions and labour law in France during the Second World War. Sindacati e diritto del lavoro tra dittature e democrazie nell'Europa mediterranea e latina del XX secolo. Attidel convegno Firenze, 23-24 novembre, pp.103-121.

Lemennicier, B. & Wenzel, N.G. 2018. The Judge and His Hangman: Judicial Selection and the Accountability of Judges. *ICL Journal-Vienna Journal on International Constitutional Law*, 12 (3), pp. 239-256.

Matthes, C.Y. 2022. Judges as Activists: How Polish Judges Mobilize to Defend the Rule of Law", East European Politics, (38)3, pp. 468-487, https://doi.org/10.1080/21599165.2022.2092843.

Misailović, J. 2019. Collective Bargaining with Special Reference to the Law of Germany and Republic of Serbia. Strani pravni život, 63(4), pp. 115-124. DOI: 10.5937/spz63-24186, https://doi.org/10.5937/spz63-24186.

Mirić, R. 2013. Bangalorski principi - doprinos razvoju sudijske etike, Strani pravni život, 57(3), pp. 327-342.

Mounier, J.P. 1986. Du corps judiciaire à la crise de la magistrature. In: Actes de la recherche en sciences sociales. De quel droit?, 64, pp. 20-29; doi :https://doi.org/10.3406/arss.1986.2333. Available at: https://www.persee.fr/doc/arss_0335-5322_1986_num_64_1_2333, (6. 11. 2022), https://doi.org/10.3406/arss.1986.2333.

Rakić Vodinelić, V., Knežević Bojović, A. & Reljanović, M. 2012. *Judicial Reform in Serbia 2008-2012*. Beograd: Centar za unapređivanje pravnih studija.

Riedel, J. 2020. Judicial Review of Judicial Appointments in Germany. *International Journal for Court Administration*, 11(1), pp. 1-19, https://doi.org/10.36745/ijca.296.

Robert, M. 2016. Le Fait Syndical Dans La Magistrature Française. *Les Cahiers de la Justice*, 3(3), pp. 417-423, https://doi.org/10.3917/cdlj.1603.0417.

Sánchez, L.M. 2010. La huelga en el poder judicial. *Anuario da Facultade de Dereito da Universidade da Coruña*, (14), pp. 573-586.

Sanz Llorente, F. J. (1992). La libertad sindical de jueces, magistrados y fiscales. *Revista de Derecho Político*, (35), https://doi.org/10.5944/rdp.35.1992.8554.

Swepston, L. 1998. Human Rights Law and Freedom of Association: Development through ILO Supervision. *International Labour Review*, 137(2), pp. 169-194.

Tappert, W. 2019. Bewegte Geschichte – 110 Jahre Deutscher Richterbund. *Deutsche Richterzeitung*, (5), pp. 166-167.

Verzelloni, L. 2016. Au-delà des voix plurielles. Les nouvelles transformations du syndicalisme judiciaire en Espagne. *Les Cahiers de la Justice*, 3(3), pp. 489-496, https://doi.org/10.3917/cdlj.1603.0489.

Weiss, M. 2004. Collective Representation in Labour Law in Germany. *Managerial Law*, 46(4/5), pp. 71-103, https://doi.org/10.1108/03090550410771125.

Zherobkina, Y., Maletov, D., Sevruk, Pavlenko, S. & Serbyn, N. 2021. Judge as a Public Servant. *Journal of Law and Political Sciences*, 29(4), pp. 240-260.

Internet Sources

Bangalore Principles of Judicial Conduct. 2002. Available at: https://www.icj.org/wp-content/uploads/2014/03/Bangalore-Principles-of-Judicial-Conduct-instrument-2002-eng.pdf (8. 11. 2022).

Ceberio Belaza, M. 2013. Más de 2.000 jueces y fiscales secundan la huelga contra las reformas de Gallardón. Available at: https://elpais.com/politica/2013/02/19/actualidad/1361305954_647889.html, (9. 11. 2022).

Council of Europe. 2020. Bulgaria-Questionnaire for the preparation of the CCJE Opinion No. 23. Available at: https://rm.coe.int/bulgaria-en-ccje-questionnaire-2020-bulgaria/16809f92e5, (5. 11. 2022).

Council of Europe. 2020. Greece-Questionnaire for the preparation of the CCJE Opinion No. 23. Available at: https://rm.coe.int/greece-en-reply/16809f9331, (5. 11. 2022).

Council of Europe. 2020. Louxembourg-Questionnaire pour la préparation de l'Avis No. 23 du CCJE, 2020. Available at: https://rm.coe.int/luxembourg-fr-reply/16809f965d, (5. 11. 2022).

Deutscher Richterbund. 2018. Available at: Leistungen für Mitglieder - Deutscher Richterbund (DRB), (8. 11. 2022).

European Law Institute. 2021. Towards ELI-Mount Scopus European Standards of Judicial Independence. Available at: https://www.europeanlawinstitute.eu/news-events/news-contd/news/towards-eli-mount-scopus-european-standards-of-judicial-independence/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=235e7141385a529f88a83b657222d747, (9. 11. 2022).

Evropa Press. 2013. Los jueces cifran en un 62% el seguimiento de la huelga. Available at: https://www.expansion.com/2013/02/20/economia/politica/1361348581.html (9. 11. 2022).

International Association of Judicial Independence and World Peace. 2008. Mount Scopus International Standards of Judicial Independence. Available at: https://www.icj.org/wp-content/uploads/2016/02/Mt-Scopus-Standards.pdf, (8. 11. 2022).

Pérez, F.J. 2018. La huelga de jueces y fiscales logra un amplio seguimiento. Available at: La huelga de jueces y fiscales logra un amplio seguimiento | Politica | EL PAÍS (elpais.com), (7. 11. 2022).

Pravna shvatanja, stavovi i zaključci Apelacionog suda u Beogradu / Odeljenje radnih sporova. 2015. Available at: http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pravna-shvatanja-stavovi-i-zakljucci-apelacionog-suda-u-beogradu/odeljenje-radnih-sporova/minuli-rad-za-sudije.html, (13. 11. 2022).

Recuero, M. 2018. Todos los jueces y fiscales acuerdan ir a la huelga el 19 de noviembre contra la gestión de Dolores Delgado. Available at: https://www.elmundo.es/espana/2018/11/05/5be01d21268e3edc7d8b45cf.html, (7. 11. 2022).

Villarejo, E. 2009. Debate on legality of judiciary strike. European Foundation for the Improvement of Living and Working Conditions. Available at: Debate on legality of judiciary strike | Eurofound (europa.eu), (8. 11. 2022).

Ford, M.N. 2020. 'Muzzle Law' Ends Poland's Ability to Call Itself a Democracy. Available at: https://theglobepost.com/2020/01/30/poland-muzzle-law/, (4. 11. 2022).

Legal Sources

Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on 10 December 1948. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights (10. 11. 2022).

International Covenant on Civil and Political Rights (ICCPR), Adopted by General Assembly Resolution 2200A (XXI) on 16 December 1966, Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, (10. 11. 2022).

European Convention on Humans Rights (ECHR), Adopted by Council of Europe in 1950. Available at: https://www.echr.coe.int/documents/convention_eng.pdf, (10. 11. 2022).

Serbian Constitution, *Official Gazette of the Republic of Serbia*, Nos. 98/2006 and 115/2021.

Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 1 des Gesetzes vom 28. Juni 2022 (BGBl. I S. 968) geändert worden ist.

Code du travail. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072050/LEGISCTA000006145393/ (3. 11. 2022).

Constitución Española, BOE núm. 311, de 29/12/1978.

Organic Law of the Judiciary (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, BOE» núm. 157, de 02 de julio de 1985. Ley Orgánica del Poder Judicial Última modificación: 28 de julio de 2022. Available at: https://www.boe.es/biblioteca_juridica/abrir_pdf.php?id=PUB-PB-2022-150. (5. 11. 2022).

Loi Instaurant Un Conseil Consultatif De La Magistrature. - Coordination Officieuse En Langue Allemande. Service Public Federal Interieur 1999. Available at: https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=12-03-05&numac=2012000113, (4. 11. 2022).

Наредба No. 8 от 8.11.2018 г. за организацията и дейността на Съвета за партньорство към Висшия съдебен съвет, Издадена от Висшия съдебен съвет, обн., ДВ, бр. 97 от 23.11.2018 г., изм. и доп., бр. 37 от 7.05.2019 г., доп., бр. 79 от 8.10.2019 г.

Case Law

European Court of Human Rights

Case of Baka v. Hungary, Application no. 20261/12, Judgement from 23 June 2016. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22baka%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-163113%22]}

Case of Harabin v. Slovakia, Application no. 58688/11, Judgement from 20 February 2013. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114666%22]}.

Case of Wille v. Liechtenstein, Application no. 28396/95, Judgement from 28 October 1999. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20WILLE%20v.%20LIECHTENSTEIN.

Case of Kudeshkina v. Russia, Application no. 29492/05, Judgement from 14 September 2009. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22kudeshkina%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-91501%22]}.

Case of N.F. v. Italy, Application no. 37119/97, Judgment from 12 December 2001. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22N.F.%20v%20Italy%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-59622%22]}.

Case of Maestri v. Italy, Application no. 39748/98, Judgment from 17 February 2004. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22N.F.%20v%20Italy%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-61638%22]}.

Case of Miroslava Todorova v. Bulgaria, Application no. 40072/13, Judgment from 19 January 2022. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-212376%22]}.

Case of Dolińska-Ficek and Ozimek v. Poland, Applications nos. 49868/19 and 57511/19, Judgment from 8 February 2022. Available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Dolinska%20Ficek%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-213200%22]}

Court of Justice of the European Union

Case C-64/16, *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, Judgment of the Court (Grand Chamber) of 27 February 2018.

Case C-658/18, *UX v. Governo della Repubblica italiana*, Judgment of the Court (Second Chamber) of 16 July 2020

Other Sources

Consultative Council of European Judge. 2002. Opinion no. 23 on the role of the Associations of Judges in supporting the judicial independence. Strasbourg: Council of Europe.

Consultative Council of European Judge. 2002. Opinion no. 3 on the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality. Strasbourg: Council of Europe.

Consultative Council of European Judges. 2010. Magna Carta of Judges (Fundamental Principles). Strasbourg: Council of Europe.

Council of Europe. 1948. European Charter on the Statute for Judges and Explanatory Memorandum. Strasbourg.

Council of Europe. 2010. Recommendation CM/Rec (2010)12 on judges: independence, efficiency and responsibilities. 2010. Strasbourg: Council of Europe.

Društvo sudija Srbije. 2022. Broj sudija u Srbiji, njihove plate u odnosu na stanje u državama članicama Saveta Evrope i predlozi za uspostavljanje efektivnih materijalnih garancija nezavisnosti sudstva. Beograd: Društvo sudija Srbije.

European Commission for Democracy through Law (Venice Commission). 2011. Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session, (Venice, 25-26) March.

European Commission for Democracy through Law (Venice Commission). 2016. Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12) March.

Human Rights Council. 2019. Report of the Special Rapporteur on the independence of judges and lawyers from the 41st session 24 June–12 July 2019. Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

International Labor Office. 2014. Report of the Committee on Freedom of Association, 320th Session, Geneva, 13–27 March.

International Labor Office. 2016. Report of the Committee on Freedom of Association, 326th Session, Geneva, 10–24 March.

Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association. 2015. Helsinki: Organization for Security and Co-operation in Europe.

Organization for Security and Co-operation in Europe. 2020. Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019).

United Nation Basic Principles on the Independence of the Judiciary. 1985. Adopted on 6 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985.

United Nations Office on Drugs and Crime. 2007. Commentary on the Bangalore Principles of Judicial Conduct.

Ana S. Knežević Bojović
Viši naučni saradnik, Institut za uporedno pravo, Beograd, Srbija
E-mail: *a.bojovic@iup.rs*
ORCID: *https://orcid.org/0000-0002-3746-5747*
Jovana M. Misailović
Master, istraživač saradnik, Institut za uporedno pravo, Beograd, Srbija
E-mail: *j.misailovic@iup.rs*

UDRUŽENJA SUDIJA I SINDIKATI – MEĐUNARODNI STANDARDI I IZABRANE NACIONALNE PRAKSE

Sažetak

Cilj rada je da predstavi međunarodne standarde i njihovu primenu u nacionalnim zakonodavstvima u zemljama Evrope u pogledu prava sudija na udruživanje sa posebnim osvrtom na pravo sudija na sindikalno udruživanje.

Autorke pretpostavljaju da, iako nije striktno predviđeno ni u jednom od izvora tvrdog prava, mnoštvo instrumenata mekog prava jasno potvrđuje da sudije imaju pravo na sindikalno organizovanje. Shodno tome, autorke zaključuju da u relevantnim međunarodnim standardima ne postoji ništa što *a priori* sprečava sudije da se sindikalno udružuju. Pored toga, autorke smatraju da sudije imaju koristi od kolektivnih radnih prava koja se uobičajeno povezuju sa delovanjem sindikata, kroz aktivnosti udruženja sudija, čak i u slučajevima kada je sudijama izričito zabranjeno da se udružuju i osnivaju sindikate. Poslednja tvrdnja je podržana uporednim pregledom prakse u odabranim evropskim zemljama.

Ključne reči: sudije, sloboda udruživanja, sindikati, sudijska nezavisnost.

Primljeno: 15. 11. 2022.
Prihvaćeno: 30. 12. 2022.