

Chapter 7 : Other Countries and Jurisdictions

7.01 Having reviewed above the relevant experience of the countries discussed in the Mason Report, we will now move on to examine briefly a number of other countries or jurisdictions that are not covered in the Mason Report but which may be significant from a comparative or global perspective. They include –

- (1) Commonwealth countries;
- (2) civil law countries (selected examples);
- (3) other countries (selected examples); and
- (4) our neighbouring jurisdictions of Macau, mainland China and Taiwan.

Commonwealth countries

7.02 For the purpose of this study, the constitutions¹ of 46 countries (excluding the United Kingdom itself) of the British Commonwealth listed in Sir William Dale's treatise on *The Modern Commonwealth*² have been surveyed. Before setting out the results, the works of two leading authorities on Commonwealth constitutional law will first be referred to by way of introduction.

7.03 Referring to the constitutions enacted in Britain for colonies in preparation for their self-government and eventual independence, Professor S.A. de Smith wrote –

The constitution will lay down the conditions under which money may be withdrawn from public funds; it will prescribe the legislative procedure for the authorisation of public expenditure, providing for votes on the estimates, the appropriation of supply, and unforeseen contingencies; it will charge upon the public revenues the salaries of officers whom it is important to screen from political pressure – superior judges, members of the service commissions, the D.P.P. [Director of Public Prosecutions] and so on – and perhaps provide that their emoluments shall not be reduced during their tenure of office. Among those whose salary will be thus protected will be an independent Auditor-General or Director of Audit, who may, like the D.P.P., be appointed by the Public Service Commission but removable only on prescribed grounds

¹ The texts of most of the constitutions referred to in this chapter are those provided by A P Blaustein and G H Flanz (eds), *Constitutions of the Countries of the World* (Dobbs Ferry, NY: Oceana Publications, loose-leaf edition).

² William Dale, *The Modern Commonwealth* (London: Butterworths, 1983).

after due inquiry.³ ... Under all the constitutions the salaries of judges are a charge on the Consolidated Fund, so that they cannot become the subject of debate on the annual estimates; and it is further provided that a judge's salary and terms of office cannot be altered to his disadvantage during the tenure of his appointment.⁴

7.04 On the issue of judicial remuneration, Sir Kenneth Roberts-Wray also pointed out –

In some [Commonwealth] countries, conditions of service are safeguarded. The Judge's remuneration may be charged on Government funds, and thereby removed from the arena of debate on annual estimates. Disadvantageous alteration of a Judge's remuneration or other terms of service may be prohibited during his tenure of office.⁵

7.05 To what extent it is a common practice in constitutions of Commonwealth countries (and thus common law jurisdictions) to provide that judicial remuneration may not be reduced during the judge's tenure of office? From the survey of 46 Commonwealth countries mentioned above, the answer is as follows –

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|---|------|
| No. of countries with unqualified provisions prohibiting reduction ⁶ | : 19 |
| No. of countries with qualified provisions prohibiting reduction ⁷ | : 4 |
| No. of countries with no provisions prohibiting reduction ⁸ | : 22 |
| Special case (India) | : 1 |

³ S A de Smith, *The New Commonwealth and its Constitutions* (London: Stevens & Sons, 1964), p 75.

⁴ Ibid, p 139.

⁵ Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (London: Stevens & Sons, 1966), p 477.

⁶ The countries are, in alphabetical order: Australia, Bangladesh, Barbados, Belize, Fiji, Gambia, Ghana, Jamaica, Malaysia, Malta, New Zealand, Seychelles, Sierra Leone, Singapore, Sri Lanka, Swaziland, Tonga, Uganda, Zimbabwe.

⁷ The countries are: Malawi, Samoa, Solomon Islands, Tuvalu.

⁸ The countries are, in alphabetical order: Antigua and Barbuda, Bahamas, Botswana, Canada, Cyprus, Dominica, Grenada, Guyana, Kenya, Kiribati, Lesotho, Maldives, Mauritius, Nauru, Nigeria, Papua New Guinea, St Lucia, St Vincent, Tanzania, Trinidad and Tobago, Vanuatu, Zambia.

7.06 Some representative samples of unqualified provisions prohibiting reduction of judicial remuneration may be set out here, starting from the simplest and moving on to the more elaborate –

The salary of a Judge of the High Court shall not be reduced during the continuance of the Judge's commission. (s. 24, Constitution Act 1986, New Zealand)

The remuneration of judges must not be reduced during their terms of office. (s. 136, Constitution (1997), Fiji)

The salary payable to, and the pension entitlement of, a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after his appointment. (s. 108(2), Constitution (1978), Sri Lanka)

The salary and allowances payable to [the Chief Justice, a judge of the Supreme Court, Judge President of the High Court or a judge of the High Court] shall not be reduced during the period he holds the office concerned or acts as holder thereof. (s. 88(2), Constitution (1979), Zimbabwe)

The remuneration and other terms of office (including pension rights) of a judge of the Federal Court shall not be altered to his disadvantage after his appointment. (art. 125(7), Constitution (1957), Malaysia)⁹

The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies [which includes Supreme Court judges] and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment. (s. 118(3), Constitution (1981), Belize)

The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Supreme Court or any judicial officer or other persons exercising judicial power, shall not be varied to his disadvantage. (s. 127(5), Constitution (1993), Ghana)

⁹ The relevant provision in Singapore's Constitution (1965) is identical (see art. 98(8)).

Subject to article 134 [on the removal of judges from office], the salary, allowances or gratuity payable to and the term and other conditions of service of a Justice of Appeal or Judge shall not be altered to the disadvantage of the Justice of Appeal or Judge after appointment. (art. 133(2), Constitution (1993), Seychelles)

7.07 The existence of these “unqualified” provisions prohibiting the reduction of judicial remuneration and unfavourable alterations of terms of service does not necessarily mean that in practice judicial salaries are never reduced. The incidents of voluntary reductions in Australia have been mentioned in chapter 6. And, as mentioned in the Mason Report, in October 2001 judges in Singapore also agreed to a salary reduction that was line with salary reductions in the public sector despite the relevant provision in the Singaporean Constitution.¹⁰

7.08 We now turn to the “qualified” provisions on reduction of judicial remuneration. In one case, the qualification concerns the consent of the judges. In the other three cases, the qualification concerns a salary reduction applicable not only to judges but also to other holders of public office designated by the Constitution. The provisions are as follows –

The salary and any allowance of a holder of judicial office shall not without his or her consent be reduced during his or her period of office and shall be increased at intervals so as to retain its original value and shall be a charge upon the Consolidated Fund. (s. 114(2), Constitution (1994), Malawi)

The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage¹¹ after his appointment except as part of any alteration generally applicable to holders of offices specified in this section [which include the offices of Governor-General, any judge of the High Court or the Court of Appeal, Speaker, Ombudsman, Director of Public Prosecutions, Public Solicitor, Auditor-General, Commissioner of Police, and member of any Commission established by this

¹⁰ Mason Report, para 4.102. See also the case of Japan discussed below.

¹¹ See also subsection (4) of this section, which provides that “Where a person’s remuneration or other terms of service depend upon his option, the remuneration or terms for which he opts shall ... be deemed to be more advantageous to him than any others for which he might have opted.”

Constitution]. (s. 107(3), Constitution (1978), Solomon Islands)¹²

7.09 India is classified above as a special case because the Constitution only provides that “neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment”.¹³ The Constitution does not expressly provide for non-reduction of judicial salaries, but instead provides that such salaries will be determined by Parliament by law.¹⁴ It also expressly provides that during a financial emergency proclaimed in accordance with the Constitution, the President may “issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts”.¹⁵

Civil law countries (selected examples)

7.10 As observed above, constitutional provisions on non-reduction of judicial remuneration is indeed fairly widespread, albeit far from universal, among common law jurisdictions. On the other hand, such provisions do not exist in the major legal systems of the civil law family. European countries in which such provisions are absent include, for example, France, Germany, Italy, Austria, the Netherlands, Belgium, Spain, Portugal, Sweden, Norway and Finland. There is also no provision on the non-reduction of salaries in the case of the judges of the Court of Justice of the European Communities,¹⁶ nor, as discussed in chapter 2 above, in the European Charter on the Statute for Judges (1998).

7.11 In the case of Belgium, a constitutional amendment was passed in 1981 to reduce pensions for judges in the context of general economic measures to cope with an economic crisis.¹⁷

¹² There are similar provisions in art. 69 of the Constitution of Samoa (1962) and s. 169(4) and (5), Constitution of Tuvalu (1986).

¹³ See articles 125(2) and 221(2) of the Indian Constitution (1949), applicable to judges of the Supreme Court and the High Courts respectively.

¹⁴ Ibid, arts. 125(1) and 221(1). The salaries of Supreme Court and High Court judges are set out in part D of the Second Schedule to the Constitution. In 1986 the Schedule was amended to give effect to salary increases.

¹⁵ Art. 360(4)(b) of the Constitution. So far no financial emergency has been declared. See Mahendra P Singh, *V N Shukla's Constitution of India* (Lucknow: Eastern Book Co, 10th ed 2001, 2003 reprint), pp 417, 866-7; M P Singh, “Securing the Independence of the Judiciary – The Indian Experience” (2000) 10 *Indiana International & Comparative Law Review* 245.

¹⁶ Simone Rozes, “Independence of Judges of the Court of Justice of the European Communities”, in Shimon Shetreet and Jules Deschenes (eds), *Judicial Independence: The Contemporary Debate* (Dordrecht: Martinus Nijhoff, 1985), chapter 46 (p 501) at p 505.

¹⁷ Marcel Storme, “Belgium”, *ibid*, chapter 5 (p 43), at p 43.

7.12 In Germany, judicial salaries are adjusted in accordance with the annual rate of inflation, as is the case for civil servants. There were instances in which civil servants' salaries were reduced together with those of judges because of budgetary stringency.¹⁸ "Quite generally, the Federal Constitutional Court has been adhering to the principle that, although a proper relation should be maintained between the judges' salaries and those of other civil servants, this does not affect the independence of the judges."¹⁹

7.13 As regards Italy, there is available in English a case study of the politics of judicial remuneration.²⁰ In Italy, judges' associations are active in fighting for better judicial salaries; issues of judicial remuneration have also been litigated before the courts themselves. As pointed out by Professor Francesca Zannotti –²¹

To obtain raises, the associations of the various categories of magistrates, behaving like a real pressure group in Parliament, have traditionally adopted two different strategies, shifting from one to the other. The first consisted of taking advantage of the civil servants' trade union's negotiations, since the trade unions represented so many more people; this allowed them to protect their image of independence by avoiding awkward direct negotiations with the executive and the Parliament. The second strategy consisted of separating themselves from the higher civil servants, claiming their uniqueness and the superiority of their functions. This occurred especially in negative economic circumstances, when it was much easier for a body composed of a relatively limited number of members (approximately 8,000) to be dealt with separately.

7.14 There are now two principal mechanisms of adjustment of judicial salaries (apart from career progression during an individual's judicial career, which is important because in a civil law system senior judges are not, as in the case of common law jurisdictions, recruited directly from the Bar but are promoted from lower ranking positions where law graduates begin their careers as judges) which operate simultaneously. First, like other civil servants, judges are entitled to cost-of-living allowances which are based on the inflation rate.

¹⁸ Peter Schlosser and Walther Habscheid, "Federal Republic of Germany", *ibid*, chapter 10 (p 78) at p 88.

¹⁹ *Loc cit*.

²⁰ Francesca Zannotti, "The Judicialization of Judicial Salary Policy in Italy and the United States", in C Neal Tate and Torbjorn Vallinder (eds), *The Global Expansion of Judicial Power* (New York: New York University Press, 1995), chapter 11 (p 181), which the following discussion draws on. See also A. Pizzorusso, "Italy", in Shetreet and Deschenes (n 16 above), chapter 17 (p 196).

²¹ Zannotti (n 20 above), pp 187-8.

Secondly, there is another mechanism for automatic adjustment which operates every three years “on the basis of the average percentage increase achieved cumulatively by all categories of civil servants in the previous three years. From 1981 to 1991 this mechanism led to a 105% real increase in the magistrates’ salaries.”²²

Other countries (selected examples)

7.15 We now move on to consider several other countries that are of special interest. They include a few countries influenced by the Anglo-American common law tradition which have not yet been included in the discussion above, and several “new democracies” or “transitional countries” which are in the process of transition from authoritarianism to liberal constitutional democracy.

Ireland: The Irish Constitution (1937) provides that “The remuneration of a judge shall not be reduced during his continuance in office”. (art. 35(5))

South Africa: The new South African Constitution (1996) provides that “The salaries, allowances and benefits of judges may not be reduced.” (art. 176(3))

Israel: Israel does not have a single written constitution; its constitution consists of several basic laws. Section 10 of the Basic Law on the Judicature (1984) provides that judicial salaries shall be prescribed by law or by the decision of the Knesset (Parliament) or of a Knesset committee empowered by the Knesset, and “No decision shall be passed reducing the salaries of judges alone.” (s. 10(b)) This is a qualified prohibition on the reduction of judicial salaries, and means that “judges’ pay may only be cut if the wages of another sector of officers or workers are also reduced”²³ or if there is “an across-the-board pay cut of civil service employees”.²⁴

Japan: The Japanese Constitution (1947) provides that judges “shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their term of office”.²⁵ It should be noted that, as in the case of Singapore (where there was a voluntary reduction in October 2001 despite a constitutional provision on non-reduction), a 2.1% reduction in judicial salaries was enacted by the Diet (Parliament) in November 2002. This was the first such reduction

²² Ibid, p 188.

²³ Shimon Shetreet, “The Critical Challenge of Judicial Independence in Israel”, in Peter H Russell and David M O’Brien (eds), *Judicial Independence in the Age of Democracy* (Charlottesville: University Press of Virginia, 2001), chapter 12 (p 233) at p 246.

²⁴ Ibid, p 243. The provision has been criticised as “it leaves open the possibility of reducing judges’ pay for reasons that have nothing to do with economics, provided that another group is also subjected to a wage reduction” (ibid, pp 246-7).

²⁵ Arts. 79 (with regard to judges of the Supreme Court) and 80 (with regard to judges of the inferior courts).

since the Constitution came into force in 1947. Salary cuts were also applied to prosecutors, national government employees and members of the Diet. It was reported that “justices of the Supreme Court backed the pay-cut proposal despite clauses in the Constitution prohibiting such a move, saying it would not undermine the independence of the judiciary or endanger the livelihood of judges”.²⁶

South Korea: The South Korean Constitution (1988) provides that “No judge shall be removed from office except by impeachment or a sentence of imprisonment or heavier punishment, nor shall he be suspended from office, have his salary reduced or suffer any other unfavorable treatment except by disciplinary action” (art. 106(1)). It appears that the principle that the salary of an individual judge may be reduced as a sanction imposed in disciplinary proceedings is generally accepted in civil law systems.²⁷

The Philippines: The Constitution (1986) of the Republic of the Philippines provides that “The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.” (art. VIII, s. 10)

Thailand: No relevant provision in the Constitution of 1991.

Cambodia: No relevant provision in the Constitution of 1993.

East Timor: No relevant provision in the Constitution of 2002.

Russia: The Russian Constitution (1993) does not contain any provision on the non-reduction of judicial remuneration. However, the Judges’ Status Law (1992) provides that judicial salaries cannot be diminished “by any other act” (section 8, article 4).²⁸

The Czech Republic: The Constitution (1992) does not contain any provision on the non-reduction of judicial remuneration. In 1995, the Act on Remuneration of Constitutional Functionaries was passed. “The judges’ salaries not only grew, but were also directly related to the salaries of other constitutional functionaries, for example members of the Chamber of Deputies, and this interrelatedness

²⁶ “Diet enacts pay-cut law revisions”, The Japan Times, 21 November 2002; “Judges, prosecutors face pay cut”, The Japan Times, 20 November 2002 (both available at www.japantimes.co.jp).

²⁷ See eg F. Grivart de Kerstrat, “France”, in Shetreet and Deschenes (n 16 above), chapter 8 (p 62), p 66: “a reduction of salary or retirement rights may be obtained only through disciplinary proceedings”.

²⁸ The text of the Law is available at www.supcourt.ru/EN/jstatus.htm. See also Todd Foglesong, “The Dynamics of Judicial (In)dependence in Russia”, Russell and O’Brien (n 23 above), chapter 4 (p 62), p 67.

created an institutional guarantee against their manipulation by Parliament.”²⁹ Since 1997, the Parliament has on several occasions passed legislation taking away the “fourteenth salary”³⁰ for the year concerned from constitutional functionaries, including judges. The Constitutional Court declared the relevant law unconstitutional in 1999, but upheld a similar law in 2000. The two decisions are inconsistent with each other.³¹

Slovakia (the Slovak Republic): The Constitution (1992) does not contain any provision on the non-reduction of judicial remuneration. In 2000, the Constitutional Court heard a case in which a law effectively freezing judicial salaries from April to December 1999 was challenged (by 34 members of Parliament) for violating the principles of the rule of law and judicial independence enshrined in the Constitution. The challenge was dismissed by the Constitutional Court.³² While affirming the importance of judicial independence, the Court held that the “Constitution does not exclude the possibility that salaries of the judiciary may reflect the economic and budgetary policy of the state”; “the Constitution of the Slovak Republic does not prevent the interdependence of judicial salaries and economic circumstances, neither precluding a decrease in judicial salaries once in office, nor providing any other constitutional guarantee securing judicial salaries”.³³ During the subsequent discussion on the amendment of the Constitution, a proposal to provide in the Constitution for the non-reduction of judicial remuneration was raised but rejected as other amendments were adopted in 2001.³⁴

Bulgaria: The Constitution (1991) does not contain any provision on the non-reduction of judicial remuneration. The only recent case which I have been able to discover in the present study in which there was an attack on the judiciary in the form of reduction of judicial remuneration is provided by the Bulgarian experience in the 1990’s. The incident was recounted by Professor Dick Howard as follows –

... [the legislators’] attack on the regular judiciary seemed to shift to the Constitutional Court. As is often the case, rather than removal, the external pressure exerted on the Constitutional Court concerned its budget. The ruling

²⁹ Eliska Wagnerova, “Position of Judges in the Czech Republic”, in Jiri Priban, Pauline Roberts and James Young (eds), *Systems of Justice in Transition: Central European Experiences since 1989*, chapter 10 (p 163), p 170.

³⁰ The constitutional functionaries were originally entitled to 14 payments of salary every year, including 12 monthly payments and 2 extra payments before the summer and before Christmas respectively. The 14th salary was the pre-Christmas payment. See *ibid*, p 170.

³¹ *Ibid*, p 171.

³² Alexander Brostl, “At the Crossroads on the Way to an Independent Slovak Judiciary”, *ibid*, chapter 9 (p 141), p 151.

³³ *Ibid*, p 151.

³⁴ *Ibid*, p 152.

majority in Bulgaria first attempted to amend the Act on the Constitutional Court to cut justices' salaries and abolish their right to retire with pensions. Later, in response to the court's refusal to dismiss a case against the Communist Party, the executive branch reduced the court's budget allocations by cutting benefits and compensating investigative magistrates from the budget of the Ministry of Justice rather than from that of the Ministry of the Interior. In addition, the prime minister attempted to evict the court from its office building. Contrary to their intentions, these blatant attacks on the judiciary actually seemed to solidify the court's position in Bulgaria. In ruling these various attempts unconstitutional, the court's public stature was enhanced, as it was seen as the "last bulwark against an ominous, large-scale campaign of re-communization."³⁵

7.16 *Other new democracies or transitional countries:* In order to understand more about financial security as an element of judicial independence in "new democracies" or "transitional countries", I have also consulted several reports on judicial independence and judicial reforms in developing countries in the course of the present study.³⁶ None of the reports raises the issue of reduction or threatened reduction of judicial remuneration for the purpose of putting pressure on the judiciary as an important concern in the new democracies or transitional countries. Instead, the main issues relating to financial security for judges concern the adequacy of their remuneration, the importance of increasing it, attracting suitable candidates to the bench and preventing corruption among judges.

7.17 *Macau, Mainland China and Taiwan*

Macau: As in the case of Hong Kong, there is nothing in the Basic Law of the Macau Special Administrative Region which prohibits the reduction of judicial remuneration as a general rule. However, article 93 of the Hong Kong Basic

³⁵ A E Dick Howard, "Judicial Independence in Post-Communist Central and Eastern Europe", *ibid*, chapter 5 (p 89), p 97 (footnotes in the original text not reproduced).

³⁶ The reports are: Office of Democracy and Governance, U.S. Agency for International Development, *Guidance for Promoting Judicial Independence and Impartiality* (revised edition, January 2002, PN-ACM-007), www.ifes.org/rule_of_law/judicial_independence.pdf, or www.usaid.gov/democracy; Luu Tien Dung, *Judicial Independence in Transitional Countries* (Oslo Governance Centre, United Nations Development Programme, January 2003), www.undp.org/oslocentre; Mark K Dietrich, *Legal and Judicial Reform in Central Europe and the Former Soviet Union: Voices from Five Countries* (Washington, DC: The World Bank, 2000), www4.worldbank.org/legal; Keith Henderson and Violaine Autheman, *A Model State of the Judiciary Report: A Strategic Tool for Promoting, Monitoring and Reporting on Judicial Integrity Reforms* (IFES, summer 2003 (revised)), www.ifes.org/rule_of_law (IFES, originally known as the International Foundation for Election Systems, is an international NGO which supports the building of democratic societies).

Law ensures that the pay, allowances, benefits and conditions of service of Hong Kong judges will be “no less favourable than before” the establishment of the Hong Kong SAR. There is no corresponding provision in the Macau Basic Law.

The Judicial Officers Law³⁷ enacted by the legislature of the Macau SAR in 1999 provides that the salaries of judicial officers (which include judges as well as prosecutors) shall be determined by law. The relevant law is the Law on the Salary System of Judicial Officers³⁸ enacted in 2000. The Law stipulates the salaries of judicial officers at various levels as particular percentages of the salary of the Chief Executive of the Macau SAR.³⁹ For example, the salaries of the Chief Justice of the Court of Final Appeal and the Chief Judge of the Intermediate Court are respectively 80% and 70% of the salary of the Chief Executive. The salary of a judge of the Court of Final Appeal (other than the Chief Justice) is 75% of the Chief Executive’s salary.

Mainland China: There is no provision on the non-reduction of judicial remuneration in the Constitution of the People’s Republic of China. The Law on Judges provides for the rights and obligations of judges and the conditions of their work. It is provided that judges have the right to remuneration for their work.⁴⁰ The system and criteria of judicial salaries are to be determined by the State in accordance with the characteristics of adjudication work.⁴¹ A system of periodic wage increase is applicable to judges.⁴²

Taiwan: The Constitution of the Republic of China (1947) provides for the security of tenure of judges by stipulating the grounds for removal from office.⁴³ It also stipulates that no judge shall be suspended, transferred or have his or her salary reduced except in accordance with law.⁴⁴ The Regulations on Judicial Officers (1989) refer to reduction of salary as a disciplinary sanction.⁴⁵ This seems to be consistent with the practice in civil law countries mentioned above

³⁷ Law No 10/1999. See art. 34 of the Law. The laws of Macau referred to here are available in *Collection of the Laws of the Macau Special Administrative Region* (澳門特別行政區法律匯編), vol 2 (Beijing: Chinese Social Science Press, 2000), pp 3141 ff (in Chinese).

³⁸ Law No 2/2000.

³⁹ The salaries of the Chief Executive and other principal officials are in turn stipulated in the Law on the Salary System for the Chief Executive and Principal Officials of the Macau Special Administrative Region, Law No 1/2000.

⁴⁰ Art. 8(4).

⁴¹ Art. 34.

⁴² Art. 35. The periodic increase refers mainly to increases along the salary scale as an individual judge progresses in his or her career, but can also refer to the periodic increase of the salary level of judges as a class in accordance with rising costs of living: see Zhou Daoluan (ed), *Lectures on the Law on Judges* (法官法講義) (Beijing: People’s Court Press, 1995), pp 227-8.

⁴³ Art. 81.

⁴⁴ Loc cit.

⁴⁵ Art. 37 of the Regulations (司法人員人事條例).

(see the discussion on South Korea) that reduction of salary may be applied to an individual judge in disciplinary proceedings.

7.18 ***Summary of this chapter*** : In drafting constitutions for British colonies on their way to self-government and eventual independence, it has been a fairly common practice to provide for judicial remuneration (as in the case of the salaries of a number of other senior holders of public office) being charged on the consolidated fund, and to provide that a judge's salary and other terms of office cannot be altered to his or her disadvantage during the tenure of his or her office. Among the 46 Commonwealth countries (excluding the UK) surveyed in this chapter, 19 countries have constitutions that contain an unqualified provision on the non-reduction of judicial remuneration; 4 countries have constitutions that contain a qualified provision on the non-reduction of judicial remuneration (the qualification in 3 countries relating to a reduction that is also applicable to certain other senior holders of public office, and that in one country relating to the judges' consent); 22 countries have no constitutional provisions on the non-reduction of judicial remuneration; and one country (India) is a special case in which the Constitution does not expressly prohibit the reduction of judicial salaries, but provides expressly that such reduction may be introduced during a financial emergency declared in accordance with the Constitution.

7.19 As regards civil law countries (e.g. France, Germany, Italy, Austria, the Netherlands, Belgium, Spain, Portugal, Sweden, Norway and Finland as mentioned in this chapter), the general practice is apparently that the constitution does not address the issue of reduction or non-reduction of judicial remuneration. It seems that in some civil law jurisdictions (such as France, South Korea and Taiwan), reduction of the salary of an individual judge may be used as a sanction administered in the course of disciplinary proceedings conducted in accordance with law. In Germany, where there were instances in which civil servants' salaries were reduced together with those of judges because of budgetary stringency, the Federal Constitutional Court has held that the maintenance of a proper relationship between the judicial salaries and those of civil servants does not contravene judicial independence.

7.20 The constitutions of Ireland, South Africa, the Philippines and Japan contain unqualified provisions on the non-reduction of judicial remuneration, although judicial remuneration in Japan was actually reduced by Act of Parliament in 2002 with the judges' consent. (This case is similar to that of Singapore, where a reduction was introduced in 2001 with the judges' consent despite a constitutional provision on non-reduction.) There is no provision on the issue of non-reduction of judicial remuneration in the constitutions of Thailand, Cambodia and East Timor. In Israel, the Basic Law on the judiciary contains a qualified provision on the non-reduction of judicial remuneration. In Russia, the rule on non-reduction of judicial remuneration is not in the Constitution but is in the Judges' Status Law. In the Czech Republic, Slovak Republic and Bulgaria, the constitutions do not provide for non-reduction of judicial remuneration, but issues of judicial remuneration have come before the

constitutional courts in all three jurisdictions. Generally speaking, it does not appear that the issue of reduction of judicial remuneration as a threat to judicial independence (as distinguished from the issue of the adequacy of judicial remuneration and the need to raise it) has been a significant concern in the “new democracies”, “transitional countries” and developing countries. In our neighbouring jurisdictions of mainland China and Macau, there are no express constitutional or legal provisions on the non-reduction of judicial remuneration.