

CASESTUDY ON THE GREY AREAS OF THE INDEPENDENCE OF JUDGES AND PROSECUTORS AND THE RULE OF LAW - SANNAH HÜBEL 2025 - TRIER

Judge Bumblebee holds office in the District Court of a particular city in the southern part of a Member State of the European Union. He hears a variety of cases, mostly civil law cases and now and then he is the judge in competition law cases. He is very familiar with EU law, the principle of effective judicial protection and always up-to-date in a judicial sense: he has a keen knowledge of the case law of the Court of Justice of the European Union and the European Court of Human Rights. Furthermore, he is an active member of the National European Law Association (hereafter: NELA) of his Member State, he likes to do yoga and is involved as a vice-president of the Participation Council of the primary school of his four children. Being a respectable and independent judge is his goal in life. He truly serves justice above all. However, life is not always easy for judge Bumblebee, and he faces many challenges in his everyday legal practice and private life. From spring 2022 onwards, he will be confronted with a chain of events he has to deal with and respond to.

- a) The topic of the spring meeting of NELA covers recent developments in national competition law cases. The public will consist of Members of NELA (e.g. jurists, public servants, lawyers, judges etc.) The Board of NELA invites Judge Bumblebee to give a lecture on recent judgments, including cases in which he was involved as a judge.

WOULD YOU DO THIS?

- b) A particular case of Judge Bumblebee concerns a legal action against his Member State. Judge Bumblebee has held a hearing in the case and he is now in the process of drafting the judgment. Because of the sensitive nature of the case, the President of the District Court has asked judge Bumblebee to read the draft judgment and (just) talk about it.

WOULD YOU AGREE?

- c) In his judgment in a sensitive case mentioned judge Bumblebee refused to implement suggestions of the President of the District Court. After the President discovers this, she decides that the salary of judge Bumblebee will be reduced with 25% for underperformance.

IS HIS JUDICIAL INDEPENDENCE THREATENED?

- d) The President believes that judge Bumblebee shouldn't complain, because male judges and prosecutors earn on average 30% more than female judges and prosecutors and judge Bumblebee is no exception.

IS THE INDEPENDENCE OF THE JUDGES AND PROSECUTORS THREATENED?

- e) Due to a sudden increase of criminal cases, the President of the District Court assigns judge Bumblebee to sit mainly in criminal cases, effective immediately. However, this field of law is completely new for judge Bumblebee. Judge Bumblebee protests heavily against the switch to sit in criminal cases. He never became judge to become a criminal law judge. The President of the District Court disagrees: each judge needs to do her or his part of the new case load. A judicial dispute is born and escalates. As a result, the National Council for the Judiciary decides to relocate judge Bumblebee from the southern part of the country to the northern part of the country.

IS HIS JUDICIAL INDEPENDENCE THREATENED?

- f) When the covid pandemic revisits his Member State in 2022, the government takes several restrictive measures on public health grounds, also with regard to the judiciary. Access to court buildings is temporarily prohibited. Until further notice hearings must be held online. The President of the District Court decides to broadcast the online hearings. The President explains to judge Bumblebee that he can only participate as a judge in sexual assault-cases, if the other two judges (of the Chamber of three judges) are women. The President assumes that the public will appreciate this.

IS IT OK TO ALLOCATE CASES BASED ON GENDER?

- g) Judge Bumblebee is getting depressed because he feels that his President doesn't protect his judicial independence. He is contacted by a journalist to give an interview about this President. Judge Bumblebee considers to use this interview to talk about the crucial role of the judiciary in society and the importance of judicial independence as a necessary precondition to judges and to criticise his President in this respect.

WOULD YOU DO THAT?

- h) Prosecutor Wasp watched the interview. Although it was heated, Prosecutor Wasp was of the opinion that Judge Bumblebee remained professional. After the interview, Prosecutor Wasp is instructed by the Minister of Justice to prosecute Judge Bumblebee for defamation.

WOULD YOU PROSECUTE?

- i) Prosecutor Wasp enjoys social media a lot. She was already very active on LinkedIn with weekly contributions, but now starts a public Twitter account, called 'Wakanda 4ever'. She has an (open) Instagram account and regularly posts Snapchat-pictures from work, and produces short Tik Tok movies. She gains an online reputation and large group of followers. Some months later Prosecutor Wasp applies for a position of Senior Prosecutor. The National Selection Committee asks her to:

- i) stop all social media usage,

IS THIS FAIR TO ASK?

- ii) terminate her current membership of a political party,

IS THIS FAIR TO ASK?

- iii) agree to never ask a court to refer cases to Luxembourg.

IS THIS FAIR TO ASK?

- j) Back at work, Prosecutor Wasp is assigned to a number of cases for the following weeks. Prosecutor Wasp raises her eyebrows, and asks herself the question: is it really possible for her to be the prosecutor in a case where it involves a person, she knows as the current chair of the police department she used to work with (she does not know him).

WHAT DO YOU THINK?

- k) Prosecutor Wasp decided not to take on the case of the current chair of the police department.

Because of that, she got other cases assigned to her. She notices that she is often assigned media-sensitive cases who were first assigned to a colleague. She does not know whether her feeling is correct since there is no transparent system for assigning cases.

IS THAT A PROBLEM?

*Sannah Hübel, Judge, Appeal Court of Amsterdam
Trier, 15 October 2025*



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