SLOVENSKO SODNIŠKO DRUŠTVO

Slovenian Association of Judges
Republic of Slovenia
EU

European Commission

Report on the situation of judicial independence in the Republic of Slovenia

Questions of the EC:

1. Could you please provide an update on the situation regarding the judicial independence of judges and courts?
2. The 2023 Rule of Law Report addressed to Slovenia a recommendation to "take measures to increase the remuneration of judges and state prosecutors, taking into account European standards on resources and remuneration for the justice system". What is the latest state of play on the negotiations regarding salaries of judges, and the implementation of the recommendation and the related Constitutional Court judgment?
3. What was the position of the Association of Judges regarding the, now delayed, constitutional revisions and amendments to the main justice laws?

Answers to the Q 1 & 2 combined:

The independence of the judiciary and the rule of law are currently being blatantly violated in the Republic of Slovenia.
The Constitutional Court ruled in an expedited and extremely urgent procedure on the request of the Judicial Council to examine the constitutionality of the legal regulation of judges' salaries in June 2023 (No. U-I-772/21 1 June 2023). The Ruling is accessible at *https://www.us-rs.si/decision/?lang=en*
https://www.us-rs.si/decision/?lang=en&id=120683

The essence of the matter is the established incompatibility with the principle of judicial independence, because the remuneration of judges is clearly set too low, taking into account the nature and responsibility of the judicial function, and the incompatibility with the principle of separation of powers, because the salaries of

judges are not regulated in a way that is comparable to the salaries of the representatives of the other two branches of government.

The Constitutional Court stated that the judge's income must be such as to protect him or her from pressures that could influence his or her decision-making; it must be of an appropriate level to ensure the judge's personal or family needs; it must be compatible with the dignity of the judicial profession and commensurate with the judge's role and responsibilities; it must adequately compensate for the severe restrictions imposed on judges in terms of the possibility of obtaining additional sources of income; it must be relatively stable and follow the general economic development of the country or the development of the standard of living in the country.

The Constitutional Court set a six-month deadline for the legislature to remedy the identified unconstitutionalities, as the legislature and the government had long been familiar with the issue in question.

The Slovenian Association of Judges (SSD/SAJ) works closely with the Judicial Council and the Supreme Court of the Republic of Slovenia. The President of the Supreme Court has appointed a special advisory group in which SAJ plays an important role. The group is in constant contact with government representatives, especially with the Minister for the Public Sector. At the General Assembly of SAJ in January 2023, the Prime Minister publicly stated that he was aware of the unacceptable situation regarding judges' salaries and promised a temporary increase of EUR 600 gross as of 1. 1. 2023 as a sign, as he explicitly stated, of a "good intention of this government to solve this problem systemically". However, the bill was later withdrawn for the legislative process, officially due to some concerns expressed by the parliamentary committee, all of which were unfounded.

What followed was an arduous negotiation that ended in early July with a handshake - a new salary scale for judges that would mean a significant increase from 1 January 2024. However, the government cancelled the date from the agreement before signing it.

The deadline for the legislator (and therefore the government) by the Ruling of the Constitutional Court expired unsuccessfully on 3 January 2024. At the end of 2023, there were some indications that the Constitutional Court's judgement could be implemented in time, but then something completely different happened. Government representatives (Prime Minister and Ministers of Finance, the Public Sector and Justice) and the President of Parliament (and representatives of some leading political parties) publicly declared their intention to implement the Constitutional Court's judgement, "but with some delay", namely when an agreement is reached with the entire public sector. In this context, the Minister of Finance and the Minister for the Public Sector even signed the agreement with some trade union representatives that no group of public servants (including officials and judges) will be excluded and

prioritised and that there will be no salary increases before September 2024.

When confronted with the argument that the deadline of the Ruling of the Constitutional Court is binding and not flexible, and has already expired, the government keeps saying the same thing: We will do it, but for the whole public sector at once, which is a double mockery for judges: the Ruling of the Constitutional Court is flagrantly, even blatantly breached and we are nominally put in the same 'box' as civil servants – we are not treated as equals, as a power factor at all.

The latest state of affairs in this matter is the proposal of the Judicial Council (16 Jan. 2024) to the Constitutional Court: due to deliberate ignorance, the Judicial Council has asked the Constitutional Court to set the provisional sloution – temporary increase in judges' salaries - with its new judgement. The court has not yet responded.

Answer to the Q 3

The Slovenian Association of Judges supports the transfer of the election of judges from the National Assembly, i.e. that judges should be appointed by the President of the Republic on the proposal of the Judicial Council. However, we reject the proposed interventions in the election procedure and the composition of the Judicial Council. The proposed constitutional amendments, which provide for a change in the number of members and election procedure for the external (non-judicial) members of the Judicial Council, harbour the risk of political interference in the day-to-day decision-making of the Judicial Council (promotion of judges, appointment of judges to higher positions, appointment of court presidents, disciplinary proceedings, etc.). We assume that politicians who, under the pretext of withdrawing from the procedure for appointing judges, wants to increase his influence on the judiciary through this side door.

The Slovenian Association of Judges have made detailed and constructive comments on the proposal to amend the judicial legislation, even though we are fundamentally opposed to such a comprehensive reform. The aim of the reform of judicial legislation must be to strengthen the independence of the judiciary. This can be threatened in various, even subtle, ways. When reforming the judicial network and abolishing the division of substantive jurisdiction of courts of first instance (introduction the so called single or “uniform” judge), it is necessary to pay attention to the principle of the immovability and independence of the judge and to observe procedural law.

Your sincerely,

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