

Will the Slovenian judges ever have ‘a happy end’?

“I promise you a happy end” were the words of the Slovenian Prime Minister, Robert Golob, in the beginning of January 2023. With this, he promised all paid judicial officers 600 euros of supplemental pay per month.¹ However, the government withdrew the legislative proposal only a month later.² A situation in which the judiciary is left to the mercy of the arbitrary judgment of the legislature and the government, with regard to material independence, is completely unacceptable in a democratic political system.³

Under Art. 23 of the Constitution of the Republic of Slovenia (Constitution)⁴ only a judge has the power to rule in a dispute if the citizens themselves cannot peacefully resolve it. Being a judge is a duty which every judge must carry out diligently, conscientiously, with professional care, uprightly and with respect for the personal dignity of every person. Therefore, in the exercise of judicial office, they must be independent of all social, economic, political and other external pressures. A judge must be an autonomous, independent, highly educated person of an open mind who shares and creates law and justice.⁵

Adequate remuneration of the judiciary is one of the fundamental conditions for the functioning of the judiciary, for the exercise of other human rights and for ensuring impartial decision-making, independent of political authority.⁶ European Court of Human Rights (ECtHR) pointed out in *Kubát and Others v. Czech Republic*⁷ that failure to ensure that judges are remunerated is a circumstance, which may hinder the performance of judicial functions with the needed dedication.⁸ This is also confirmed by the Committee of Ministers of the Council of Europe,⁹ which states that the State must compensate the position and remuneration with the dignity of the judiciary and the burden of its responsibilities.

Disrespectful wages undervalue the judicial profession. They undermine the authority of the judiciary, which is reflected in the disrespectful and contemptuous attitude of citizens towards the judiciary. The legislative and executive branches are unaware that by doing so they begin to undermine the foundations of the rule of law.¹⁰ Remuneration for a judicial service that does not meet the required comparability criterion may have a number of negative political consequences in terms of undermining the balance of power between the three branches of government.¹¹ The independence of judges, especially from the executive branch

1 M. Felc, *Golob sodnikom obljubil srečen konec*, <<https://www.delo.si/novice/slovenija/golob-sodnikom-obljubil-srecen-konec/>> (date of access: 20. 5. 2024).

2 R. Šavel, *Zakaj je vlada umaknila "happy end" in kako bi z njim lahko tudi plača šefa soboškega sodišča preseгла Golobovo*, <<https://vestnik.svet24.si/clanek/aktualno/zakaj-je-vlada-umaknila-happy-end-in-kako-bi-z-njim-lahko-placa-sefa-soboskega-sodisca-celo-presegla-golobovo-1024836>> (date of access: 20. 5. 2024).

3 J. Spruk, *Pravna država in delitev oblasti: primer sodniških plač*, 2024, p. 6.

4 Official Gazette of the RS, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a.

5 J. Roblek, *Sodniške plače*, 2008, p. 3.

6 *Ibid.*

7 *Kubát and Others v. the Czech Republic* - 61721/19, 5496/20, 21318/20 et al., 22. 6. 2023.

8 L. Vlačić, *Ex tunc, ex nunc in sodniške plače*, 2023, p. 34.

9 Recommendation No. R(94) 12 of the Committee of Ministers to Member states on the Independence, Efficiency and Role of Judges, Committee of Ministers of the Council of Europe, 13. 10. 1994.

10 J. Roblek, *Sodniške plače*, 2008, p. 3.

11 J. Spruk, *Pravna država in delitev oblasti: primer sodniških plač*, 2024, p. 6.

of the government, is an instrumental value because it prevents any interference with the impartiality of judicial decision-making.¹²

First decision of the Constitutional Court of Slovenia (Constitutional Court)¹³ regarding judicial salaries from 2006, warns that the economic independence of judges is one of the fundamental guarantees of judicial independence and the requirement for the balance of three branches of government. There should have been a comparable remuneration according to the status of comparable officials of different branches of government.¹⁴

Moreover, the Constitutional Court found out that judicial remuneration was not fully regulated by law, as it was partly left to regulation by an act of the national assembly and an act of the government. As well as the regulation of the salaries did not contain safeguards against lowering them.¹⁵

The legislature responded to the decision by adopting amendments to the Public Sector Salary System Act (ZSPJS-G)¹⁶ and the Judicial Service Act (ZSS-H),¹⁷ however the Constitutional Court in 2008 decided¹⁸ that even after the adoption of the amendments to the ZSPJS-G and ZSS-H, the regulation of judges' salaries continued to be inconsistent with the second paragraph of Art. 3 of the Constitution and Art. 125 of the Constitution, since (i) judges' salaries continued to be too low in relation to the salaries of representatives of the legislative and executive branches of power, (ii) the current regulation of judges' salaries still did not contain safeguards against a decrease in salaries (the legal regulation prevented only a decrease in the basic salary of judges), and (iii) the legislature did not provide for a mechanism in the ZSPJS-G and ZSS-H that would prevent a significant decrease in the real value of judges' salaries in the future.¹⁹

The legislature responded to this decision by adopting amendments to the Public Sector Salary System Act (ZSPJS-L)²⁰ and the Judicial Service Act (ZSS-I).²¹ The Constitutional Court in 2009 decided²² that the legislature, by adopting those amendments, abolished the identified unconstitutionality. Due to the financial crisis, the legislature then temporarily postponed the latter classification of judges' salaries by the Intervention Measures Act (ZIU),²³ as provided for by the amendment to the ZSPJS-L.²⁴ The Constitutional Court

12 J. Roblek, *Sodniške plače – drugi krog*, 2007, p. 3.

13 Constitutional Court of Slovenia, U-I-60/06, 7. 12. 2006.

14 J. Roblek, *Sodniške plače*, 2008, p. 3; see also: K. Krapež, *Korak naprej za sodniške plače*, 2009, p. 32.

15 *Pravna mreža za varstvo demokracije, Kronologija odločb Ustavnega sodišča o (ne)ustavnosti sodniških plač*, <<https://pravna-mreza.si/kronologija-odlocb-ustavnega-sodisca-o-neustavnosti-sodniskih-plac/>> (date of access: 20. 5. 2024).

16 Official Gazette of the RS, No. 57/2007.

17 *Ibid.*

18 Constitutional Court of Slovenia, U-I-159/08, 11. 12. 2008.

19 *Pravna mreža za varstvo demokracije, Kronologija odločb Ustavnega sodišča o (ne)ustavnosti sodniških plač*, <<https://pravna-mreza.si/kronologija-odlocb-ustavnega-sodisca-o-neustavnosti-sodniskih-plac/>> (date of access: 20. 5. 2024).

20 Official Gazette of the RS, No. 91/2009.

21 Official Gazette of the RS, No. 57/2007 – the official consolidated version, 91/2009.

22 Constitutional Court of Slovenia, U-II-2/09, 9. 11. 2009.

23 Official Gazette of the RS, No. 94/10, 110/11 – ZDIU12, 40/12 – ZUJF in 3/22 – Zdeb.

24 *Pravna mreža za varstvo demokracije, Kronologija odločb Ustavnega sodišča o (ne)ustavnosti sodniških plač*, <<https://pravna-mreza.si/kronologija-odlocb-ustavnega-sodisca-o-neustavnosti-sodniskih-plac/>> (date of access: 20. 5. 2024).

decided²⁵ that such postponement was constitutionally admissible and did not constitute a violation of the second paragraph of Art. 3 and Art. 125 of the Constitution.

In 2023, the Judicial Council submitted a request to the Constitutional Court to review the constitutionality of the regulation of judges' salaries in Public Sector Salary System Act (ZSPJS-AA).²⁶ The Applicant states²⁷ that (i) the challenged regulation on the classification of judges' salary is inconsistent with the principle of separation of powers, and (ii) complains of inconsistency with the principle of judicial independence.

Turning to the first point of a request, the Judicial Council believes that the material position of the judge must be appropriate or such that the judge is protected from pressure that could influence their decision-making. Moreover, remuneration must be commensurate with the dignity of the profession and the extent of the judge's responsibility. The Applicant refers to the Court of Justice of the European Union (CJEU) case²⁸ in which it has been decided that judicial remuneration must correspond to the importance of the judicial office, since it is inherent in the independence of judges.²⁹

At that time, remuneration did not correspond to the nature and responsibilities of the function they perform, having regard to the social, economic and financial situation of the country. According to the Applicant, judges should also be paid in accordance with their specialisation, master's degree, doctorate, mentorship, incompatibility of functions and risk allowance, as all mentioned allowances are known to other professions.

Turning to the second point of a request, the Applicant further states that there are systemic breaches in Slovenia, regarding the remuneration of judges and, consequently, the requirements of the EU law are not met. Therefore the Applicant proposes the inclusion of judges in a special salary system, as this would ensure the independence of salary setting from the government and public sector. The Applicant also pays particular attention to the Opinion of the Consultative Council of European Judges on the prevention of corruption among judges,³⁰ according to which salaries, pensions and other social benefits, manageable workload, properly functioning infrastructure and job security are important guarantees for both judges and courtstaff in the fight against corruption.³¹

Firstly, the Constitutional Court examined the aspect of compliance with the principle of judicial independence, enshrined in Art. 125 of the Constitution. This stipulates that judges are independent in the performance of their judicial office and bound only by the Constitution and the law. The independence of judges as a human right is also required by the first paragraph of Art. 23 of the Constitution, which stipulates, *inter alia*, that the court deciding on the rights and obligations of individuals and on the charges against them must be independent.

25 Constitutional Court of Slovenia, U-I-15/14, 26. 3. 2015.

26 Official Gazette of the RS, No. 108/09 – the official consolidated version, 13/10, 59/10, 85/10, 107/10, 35/11 – ORZSPJS49a, 27/12 – odl. US, 40/12 – ZUJF, 46/13, 25/14 – ZFU, 50/14, 95/14 – ZUPPJS15, 82/15, 23/17 – ZDOdv, 67/17, 84/18, 204/21 and 139/22.

27 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, §§ 2-10.

28 C-64/16, *Associação dos Juizes Portugueses v. Tribunal de Contas*, 27. 2. 2018.

29 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, § 16.

30 CCJE Opinion No. 21 (2018), Preventing Corruption Among Judges, 9. 11. 2018.

31 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, §§ 18-28.

Moreover, the CJEU declared³² that the requirement of judicial independence is part of the essential content of the right to effective judicial protection and of the fundamental right to a fair trial.³³ The principle of the material independence of judges is substantially guided by standards developed in case law and at international level, and mandates that (i) judges' salaries must be determined by law and not by a lower act, (ii) judges must be involved in the adoption of the act regulating their salaries, (iii) the level of remuneration must ensure the economic independence of the judges and protect them from pressures designed to influence their decision-making, and finally, (iv) it must correspond to the dignity and complexity of the judicial profession and to the general economic and social standard of the country.³⁴

Secondly, the Constitutional Court has assessed the aspect of compliance with the principle of separation of powers. The second paragraph of Art. 3 of the Constitution stipulates that in the Republic of Slovenia power shall be vested in the people. Citizens exercise it directly and through elections, according to the principle of the separation of powers into legislative, executive and judicial branches.³⁵

The relationship between the three branches of the government must not threaten the relative independence and integrity of each branch of government in the exercise of its functions and neither can gain dominance over the other two (a system of checks and balances). The division of state power into the legislative, executive and judicial branches is not a relationship of superiority or subordination, but a relationship of restraint and cooperation between equivalent branches of government, each acting within the framework of its own position and competence.³⁶ The judiciary is a prerequisite for the effective functioning of the state as a constitutional democracy and plays the role of the so called backbone of the legal system. If it does not function, or does not function impartially and effectively, the functioning of the separation of powers and of society as a whole is compromised.³⁷

Thirdly, the Constitutional Court challenged the problem of compensation of salaries. Under the current regulations, the level of salary adjustment for officials, and thus for judges, is determined after prior consultation with the officials. This indicates a greater involvement of officials in this process, thus removing the unconstitutionality found in Decision No. U-I-159/08.³⁸

According to the Constitutional Court's assessment, however, the statutory regulation on the coordination of judges' salaries remained inconsistent with Art. 125 of the Constitution, which stipulates that judges' salaries are harmonised once a year. This does not guarantee that, in the event of a significant fall in the real value of judges' salaries, their harmonisation will actually take place, the Constitutional Court warned. Accordingly, this would mean that the constitutional requirement that the legislature must provide mechanisms to prevent a significant fall in the real value of judges' salaries will not be met.³⁹

32 C-619/18, *European Commission v. Poland*, 24. 6. 2019, § 58 and C-216/18, *Minister for Justice and Equality*, 25. 7. 2018, § 48.

33 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, § 52.

34 U-I-772/21-38, Affirmative separate opinion of constitutional judge Neža Kogovšek Šalamon, 29. 6. 2023, § 1.

35 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, § 86.

36 *Ibid.*, § 51.

37 *Ibid.*, § 58.

38 *Ibid.*, § 97.

39 *Ibid.*, § 113.

The Constitutional Court issued a decision on the 1. 6. 2023, establishing that the provisions of Art. 4, Art. 5, Art. 6 and Art. 10 of the Public Sector Salary System Act (ZSPJS-AA), relating to judges' salaries are contrary to the Constitution,⁴⁰ as (i) the increase in salaries of judges in the period from June 2012 to May 2023 was very much behind the inflation rate in that period and judges' salaries were unchanged from June 2012 to September 2022, (ii) it does not ensure that the real value of judges' salaries is in line with the increase in the cost of living and (iii) because judges' salaries are significantly behind the level of Member States' salaries.⁴¹

The decision of the Constitutional Court in the case at hand, means that the challenged salary regulations will have to continue to apply until the issuance of new salary regulations by which the legislature will have to eliminate the identified unconstitutionality. The Constitutional Court did not decide to determine the manner of execution of the decision, pursuant to the second paragraph of Art. 40 of the Constitutional Court Act,⁴² by which it would itself regulate issues relating to the regulation of judges' salaries for the period up to the elimination of the found unconstitutionality. The reason for this is that the elimination of the unconstitutionality requires a complex consideration of the regulation of judges' salaries, salaries of other civil servants and salaries of all the other employees receiving salaries from public funds. Such decision must therefore be carried out by the competent authorities, which also includes the establishment of arrangements to ensure the harmonisation of judges' salaries.⁴³

In order for the established unconstitutional situation to be solved as soon as possible, the Constitutional Court has set the legislature the shortest possible time limit within which the legislature will be able to eliminate the established unconstitutionality with certainty. It was declared that the unconstitutionalised legislature must be changed within six months. There taken into account the fact that the legislature and the government have been familiar with the issues under consideration for a long time, as a result of which less time was needed for the preparation and adoption of the new regulation.⁴⁴

The Consultative group for improving the salary situation of judges, which includes representatives of the Slovenian Judicial Association, the Judicial Council and the courts, welcomed the decision of the Constitutional Court that the salaries of judges are too low.⁴⁵

The government failed to eliminate the unconstitutionalised provisions by the deadline of the 3. 1. 2024. Officials in the judiciary have stepped up the protests. The Ombudsman pointed out that non-execution of the Constitutional Court's judgments is a systemic problem and represents a major violation of the rule of law.⁴⁶

40 *Ibid.*, § 135.

41 *Ustavno sodišče: Ureditev sodniških plač je neustavna, plače so prenizke*, <<https://www.rtv slo.si/slovenija/ustavno-sodisce-ureditev-sodniskih-plac-je-neustavna-place-so-prenizke/673655>> (date of access: 20. 5. 2024).

42 Official Gazette of the RS, No. 64/2007 – the official consolidated version, 109/12, 23/20 in 92/21.

43 Constitutional Court of Slovenia, U-I-772/21, 1. 6. 2023, § 138.

44 *Ibid.*, § 139.

45 *Ustavno sodišče: Ureditev sodniških plač je neustavna, plače so prenizke*, <<https://www.rtv slo.si/slovenija/ustavno-sodisce-ureditev-sodniskih-plac-je-neustavna-place-so-prenizke/673655>> (date of access: 20. 5. 2024).

46 *Stopnjevanje protesta na obletnico 'srečnega konca', Goloba pozivajo k odstopu*, <<https://www.24ur.com/novice/slovenija/sodniki-in-tozilci-bodo-za-eno-uro-protestno-prekinili-delo.html>> (date of access: 20. 5. 2024).

It was only in April 2024 – three months after the deadline for the removal of unconstitutionality – when the government presented a bill to implement the decision of the Constitutional Court. This equates the classification in the salary grade of a district judge with the classification in the lowest salary grade of a deputy, but the difference between the classification of a supreme judge and the lowest-ranked minister is still one salary grade, and the supreme justice councillor is the same as the lowest-ranked minister. These changes are expected until 3. 1. 2025.⁴⁷

The Consultative group for improving the salary situation of judges believe that the draft law regulating the remuneration of judges is inappropriate and disrespectful, since it does not comply with the implementation of the constitutional decision either in substance or in time.⁴⁸ They also received the support of the European Association of Judges, which called upon the Slovenian Government and the National Assembly to immediately implement the decision of the Constitutional Court and ensure conditions for the independent work of judges, thus putting an end to the current violation of the principles of judicial independence and separation of powers.⁴⁹

Furthermore, even in the case *Zubko and Others v. Ukraine*⁵⁰ the ECtHR considers that the failure of the state to ensure the timely receipt of judicial emoluments for a significant period of time is incompatible with the need to ensure the ability to exercise the judicial functions independently and impartially.

To conclude, judges began to express their dissatisfaction with the failure to implement the decision of the Constitutional Court through protests. If judges have to strike to ensure material independence, this says something about the attitude of the legislator towards the state – precisely, that the current holders of the two branches of government do not understand the structure of the state they run. A democracy needs a robust judiciary that people trust to perform its supervisory role in relation to other branches of government smoothly and in principle.⁵¹

Furthermore, lower salaries can make it difficult for judges to attract and retain talented individuals who are interested in pursuing a career in the judiciary. This can lead to a lack of qualified and experienced judges.

The problem could also lead to seeking a supplementary income through corrupt means, such as accepting bribes or engaging in illegal activity. Corruption of the judiciary is certainly the worst and most fatal form of corruption for the functioning and existence of the legal order. It constitutes a violation of the principle of equality before the law, as well as a definitive misuse of right. Without these two essential elements, there can be no legal system.⁵²

47 *Sodniške plače: vlada bi najprej uredila položaj sodnikov prve stopnje*, <<https://www.24ur.com/novice/slovenija/sodniske-place-vlada-bi-najprej-uredila-položaj-sodnikov-prve-stopnje.html>> (date of access: 20. 5. 2024).

48 *Predlog zakona o ureditvi plačnega položaja sodnikov je neprimeren in nespoštljiv*, <<https://www.sodisce.si/ursr/objave/2024050916485691/>> (date of access: 20. 5. 2024).

49 *Slovensko vlado in državni zbor pozvali k takojšnji ureditvi sodniških plač*, <<https://www.delo.si/novice/slovenija/slovensko-vlado-in-drzavni-zbor-pozvali-k-takojsnji-ureditvi-sodniskih-plac/>> (date of access: 20. 5. 2024).

50 *Zubko and Others v. Ukraine*, 3955/04, 26. 4. 2006, § 68.

51 J. Spruk, *Pravna država in delitev oblasti: primer sodniških plač*, 2024, p. 6.

52 J. Kranjc, *Korupcija in pravo*, 2000, p. 300.

Additionally, it should be a considerable solution to place judges, together with members of parliament, ministers and the president of the republic, in the name of transparency and coordination, in a separate salary system.⁵³ If the government will take into account all the abovementioned conditions, judges can expect 'a happy end', however, the prediction of an exact date is impossible, due to the repeated avoidance of the government to solve this problem.

53 J. Spruk, *Pravna država in delitev oblasti: primer sodniških plač*, 2024, p. 6.

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