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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Opinion of the CCJE Bureau

**following a Protest Declaration of the Slovenian Association of Judges
concerning the failure to enforce a decision of the Constitutional Court
of Slovenia aimed at remedying the established unconstitutionality
regarding substantial differences
between the salaries of judges and other public officials**

INTRODUCTION

1. On 4 January 2024, the Slovenian Association of Judges, acting on behalf of Slovenian judges, issued a Protest Declaration concerning the failure to enforce a decision of the Constitutional Court of Slovenia¹ aimed at remedying the established unconstitutionality regarding substantial differences between the salaries of judges and other public officials. This Protest Declaration was sent for information and action as appropriate to the CCJE as well as the Council of Europe Commissioner for Human Rights, International Association of Judges (IAJ), and the United Nations Special Rapporteur on the Independence of Judges and Lawyers.²
2. In particular, the Slovenian Association of Judges pointed out that the Constitutional Court of Slovenia ruled in June 2023 that the regulations governing the salaries of judges violated the Constitution because these salaries were so low that they violated the principles of judicial independence and separation of powers. The Constitutional Court accordingly set a six-month deadline to remedy the unconstitutionality, taking into account that the legislator and the government had been aware of the problem in question for a long time.
3. The Slovenian Association of Judges underlined in its Protest Declaration that this deadline had passed without the necessary steps being taken and protested against the Government and the National Assembly ignoring the Decision of the Constitutional Court. The Slovenian Association of Judges demanded that the said Decision be enforced without delay with a view to establishing appropriate material conditions for the independent work of judges, and thus putting an end to the violation of the principles of independence of the judiciary and separation of powers in a democratic society.
4. Having examined the Protest Declaration of the Slovenian Association of Judges in the light of European standards, including the Council of Europe Committee of Ministers' Recommendations, the CCJE and the Venice Commission Opinions as well as other relevant standards, the CCJE Bureau issues the below Opinion.

O P I N I O N

Binding effect and enforcement of judicial decisions

5. In the Opinion of the CCJE Bureau, there are several interconnected, yet distinct, issues in the present case. First of all, there is the alleged failure to enforce a decision of the Constitutional Court of Slovenia, regardless of the subject matter.

¹ Decision of the Constitutional Court of Slovenia, number: U-I-772/21, 1 June 2023.

² The list of recipients of the Declaration could be longer since only recipients included in the same communication are known.

6. The CCJE Bureau emphasises in this regard that any judicial decisions are binding and must be executed in due time. The effective enforcement of a judicial decision, resulting from its binding effect, is a fundamental element of the rule of law. The very concept of an independent tribunal set out in Article 6 of the European Convention on Human Rights (hereafter, the Convention) implies the power of that tribunal to adopt a binding decision, which is not subject to any change, approval or ratification by a non-judicial authority.³ The right to an effective remedy, guaranteed by the Convention, also depends on the enforcement of judicial decisions.
7. The CCJE Bureau fully agrees with the European Commission for Democracy through Law (hereafter, the Venice Commission) that the right to a fair trial and the rule of law in general would be devoid of any substance if judicial decisions were not executed⁴ and further reiterates that judicial independence will also be in vain in such cases.⁵ Public entities are above all bound to respect judicial decisions, and to implement them in a rapid way “ex officio”. The very idea of a state body refusing to obey a court decision undermines the concept of primacy of the law.⁶
8. In fact, there is a causal-consequential relationship between the binding effect of any judicial decision and its enforcement: the latter is the result and consequence of the former. The Committee of Ministers of the Council of Europe emphasised in one of its recommendations that member states have a duty to ensure that all persons who receive a final and binding court judgment have the right to its enforcement.⁷
9. Furthermore, as regards the enforcement of judgments of the Constitutional Courts in particular, the Venice Commission stressed that their final and binding character is a corollary of the supremacy of the Constitution. They have to be respected by all public bodies and individuals. Disregarding a judgment of a Constitutional Court is disregarding the Constitution. When a public official refuses to execute a judgment of the Constitutional Court, he or she violates the Constitution, including the principles of the rule of law, separation of power and loyal cooperation of state organs.⁸
10. Therefore, the CCPE Bureau underlines that the very fact of the alleged failure to enforce a decision of the Constitutional Court of Slovenia, regardless of its subject matter, undermines all the above-mentioned principles and represents a danger to the rule of law and democratic stability.

³ CCJE Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions, Section VII(B).

⁴ 2016 Rule of Law Checklist of the European Commission for Democracy through Law (Venice Commission), para 107, page 48.

⁵ CCJE Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions, Section VII(A).

⁶ CCJE Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions, Section VII(A).

⁷ See Recommendation CM/Rec(2003)17 of the Committee of Ministers of the Council of Europe to member States on enforcement, Preamble.

⁸ Venice Commission Opinion on the Law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court of Spain, adopted by the Venice Commission at its 110th plenary session (Venice, 10-11 March 2017), para 8.

Importance of judges' mission and the dignity of their office

11. The CCJE Bureau, further to the *ipso facto* danger of non-fulfilment of any judicial decision, to say nothing about the non-execution of a decision of the highest constitutional instance, also wishes to stress several important aspects related directly to the subject matter of the decision of the Constitutional Court of Slovenia at stake. In particular, what should be taken into account in this respect is the importance of judges' mission and the dignity of their office.

Standards of the Committee of Ministers of the Council of Europe

12. The CCJE Bureau recalls that the Committee of Ministers of the Council of Europe underlined that judges' remuneration should be commensurate with their profession and responsibilities and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.⁹
13. In this context, the CCJE Bureau concludes, *inter alia*, that the non-alignment of judicial salaries for a long time in any member state with the prevailing rates of inflation and declining purchasing power may amount to so-called "passive" reduction in remuneration impacting specifically judges. This is especially true when in the same member state, the salaries of other public officials have been raised and not those of judges.

Standards of the CCJE

14. The CCJE also mentioned sufficient remuneration of judges among basic safeguards of judicial independence.¹⁰ Moreover, adequate salaries, retirement pensions and other social benefits, a manageable workload, a proper working infrastructure and job security for both judges and court staff are vital for the legitimacy and good reputation of a judicial system. These are also important safeguards against corruption in the judiciary.¹¹
15. Furthermore, the CCJE considered that it was generally important to make specific legal provision guaranteeing judicial salaries against reduction and to ensure at least *de facto* provision for salary increases in line with the cost of living.¹²

⁹ Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, para 54.

¹⁰ CCJE Opinion No. 18 (2015) on the position of the judiciary and its relations with the other powers of state in a modern democracy, para 36.

¹¹ CCJE Opinion No. 21 (2018) on preventing corruption among judges, Chapter V. Conclusions and recommendations, clause (g).

¹² CCJE Opinion No. 1 (2001) on the standards concerning the independence of the judiciary and the irremovability of judges, para 61.

16. It was emphasised in the CCJE Bordeaux Declaration¹³ that adequate organisational, financial, material and human resources should be put at the disposal of justice.¹⁴ The proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration.¹⁵
17. As regards the funding of courts, the CCJE agreed that although it is part of the state budget presented to the legislator by the executive power, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.¹⁶

Standards of the European Charter on the Statute for Judges

18. The European Charter on the Statute for Judges also stressed that judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.¹⁷
19. The Charter also provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death. In particular, it ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.¹⁸

¹³ In 2009, the CCJE and the Consultative Council of European Prosecutors (CCPE) adopted their Joint Opinion (No. 12 (2009) for the CCJE and No. 4 (2009) for the CCPE) on relations between judges and prosecutors in a democratic society. This Opinion included the Bordeaux Declaration and an Explanatory Note.

¹⁴ Joint Opinion of the CCJE and the CCPE (No. 12 (2009) for the CCJE and No. 4 (2009) for the CCPE) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Section 4.

¹⁵ Joint Opinion of the CCJE and the CCPE (No. 12 (2009) for the CCJE and No. 4 (2009) for the CCPE) on relations between judges and prosecutors in a democratic society, Explanatory Note, para 37.

¹⁶ CCJE Opinion No. 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights, para 5.

¹⁷ The European Charter on the Statute for Judges was adopted by participants from European countries and two judges' international associations meeting in Strasbourg on 8-10 July 1998, supported by the meeting of the Presidents of the Supreme Courts of Central and Eastern European countries in Kyiv on 12-14 October 1998, and again by judges and representatives from Ministries of Justice from 25 European countries meeting in Lisbon on 8-10 April 1999. See para 6.1.

¹⁸ The European Charter on the Statute for Judges, paras 6.3 and 6.4.

Standards of the European Commission for Democracy through Law (Venice Commission)

20. The Venice Commission also emphasised that the remuneration of judges should be guaranteed by law in conformity with the dignity of their office and the scope of their duties¹⁹ and that adequate remuneration is indispensable to protect judges from undue outside interference. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria.²⁰ The Venice Commission also extends this principle to the guaranteed sickness pay and retirement pension for judges.²¹
21. Thus, the Venice Commission not only pointed out to the adequate remuneration of judges corresponding to the dignity of their profession, but directly stressed that it should be comparable to the level of remuneration of high-level civil servants. The CCJE Bureau fully supports this position of the Venice Commission and considers it applicable to the situation in Slovenia.
22. The Venice Commission also made reference and quoted in its report the Opinion No. 1 (2001) of the CCJE referring to the importance of specific legal provisions guaranteeing judicial salaries against reduction and ensuring salary increases in line with the cost of living.²²
23. Furthermore, the Venice Commission indicated that, in order to maintain the independence of the court system in the long and short run, it will be necessary to provide the courts with resources appropriate to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and in national constitutions and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law.²³ In this respect, the Venice Commission also endorsed and reflected the position taken earlier by the CCJE in its Opinion No. 2 (2001).

Standards of the European Commission for the Efficiency of Justice (CEPEJ)

24. The CEPEJ referred to the Council of Europe's Committee of Ministers standards²⁴ and underlined that the issue of judges' remuneration requires a comprehensive approach

¹⁹ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 51.

²⁰ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 46.

²¹ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 44.

²² Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 45.

²³ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 52.

²⁴ Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, paras 53-54.

which, beyond the purely economic aspect, takes account of the impact that it can have on the efficiency of justice as well as on its independence in connection with the fight against corruption within and outside the judicial system.²⁵

25. The CEPEJ also provided relevant information on the salaries of judges in Europe²⁶ and mentioned that there was no general trend showing that judges' and prosecutors' salaries had increased compared to the average salaries. In a considerable number of states, the ratio of judges' and/or prosecutors' salaries to average income had actually decreased. This was often not due to a decrease in the gross salary of judges or prosecutors, but to the fact that average incomes had increased more than judges' or prosecutors' salaries. The development of average salaries must therefore be carefully monitored if one wants to ensure that the salaries of judges and prosecutors do not fall behind.²⁷
26. In particular as regards Slovenia, it is worth noting that, according to the CEPEJ, the salaries of judges at the beginning of their career, as well as of judges at the highest instance, were among the lowest ones in Europe based on the level of ratio between these gross salaries and the national average gross salary in Slovenia.²⁸

Standards of the Group of States against Corruption (GRECO)

27. GRECO also stressed the importance of adequate judicial remuneration. For example, it recommended that adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions. It accordingly invited the authorities to support those improvements by making the necessary changes which fall within their competence.²⁹

Standards of the Court of Justice of the European Union (CJEU)

28. The CCJE Bureau also takes note of the fact that the Court of Justice of the European Union (CJEU) mentioned, *inter alia*, that the protection against removal from office of

²⁵ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 79.

²⁶ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 80.

²⁷ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 83.

²⁸ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 80, table "What is the salary of judges in Europe?" (Figure 3.46 Average gross salary of judges in relation to the national average gross salary in 2020 (beginning of a career / Supreme Court)).

²⁹ GRECO Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Austria, adopted by GRECO at its 94th plenary meeting (Strasbourg, 5-9 June 2023), para 51.

judges and the receipt by them of a level of remuneration commensurate with the importance of their functions constitute guarantees essential to judicial independence.³⁰

Standards of the European Network of the Councils for the Judiciary (ENCJ)

29. The CCJE Bureau takes due note of the Statement by the Executive Board of the ENCJ³¹ on financial security in the context of judicial independence where it referred to the situation with judicial remuneration in Slovenia.
30. The ENCJ underlined in this respect that independent judiciary in each member state is crucial for ensuring the fundamental values of Article 2 of the Treaty on European Union. Financial security is an important component of judicial independence. The CJEU has already stated that the remuneration of judges is directly linked to judicial independence, therefore close co-operation of all state powers in this realm is vital. According to the Board, judicial independence should include protection against interference with the financial security of the court as an institution. Judicial remuneration should be adequate and preclude exposing judges to the risk of inappropriate pressures and corruption.³²

Standards of the United Nations (UN)

31. The UN Basic Principles on the Independence of the Judiciary underlined that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law³³.
32. The UN Special Rapporteur on the independence of judges and lawyers also stressed that international and regional standards require that the remuneration of judges be guaranteed by law. The UN Special Rapporteur found that reality on the ground was far from being consistent with this principle. In this connection, the Special Rapporteur, in several of his country mission reports, noted the low level of judicial salaries, in some instances constituting remuneration well below the average national income or not even providing for a decent livelihood. The Special Rapporteur also highlighted the problem that, despite the existence of pertinent legal provisions, salaries effectively paid to the judges are not adequate.³⁴

³⁰ Court of Justice of the European Union (CJEU), judgment of 27 February 2018, C-64/16, Associação Sindical dos Juizes Portugueses, para 45.

³¹ ENCJ is one of the observers to the CCJE.

³² Statement by the Executive Board of the ENCJ on financial security in the context of judicial independence, Brussels, 25 May 2023.

³³ UN Basic Principles on the Independence of the Judiciary 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, para 11.

³⁴ Report of the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, paras 73-74.

33. Both the Special Rapporteur and the Human Rights Committee³⁵ further raised in several instances the concern of significant delay in the payment of salaries. The Special Rapporteur expressed concern that low salaries and salary arrears are a major factor contributing to the endemic corruption within several judicial systems. He therefore called for judges to be remunerated with due regard for the responsibilities and the nature of their office, as also recommended by the Human Rights Committee.³⁶

**Standards of the Human Rights Committee
(treaty body under the UN International Covenant
on Civil and Political Rights (ICCPR))**

34. The Human Rights Committee (HRC) which is a treaty body of independent experts that monitors the implementation of the UN International Covenant on Civil and Political Rights (ICCPR)³⁷ by its State Parties, issued a number of relevant recommendations as regards the judicial independence. In this context, it mentioned several times the issue of remuneration for the judiciary. According to the HRC, states should take specific measures establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.³⁸

CONCLUSIONS AND RECOMMENDATIONS

35. In the light of the above and taking note in particular of the fundamental principles of binding character and enforceability of judicial decisions, the CCJE Bureau agrees with the concerns expressed by the Slovenian Association of Judges.
36. In accordance with those principles, the CCJE Bureau recommends that the relevant authorities in Slovenia take all necessary steps and measures for the full and prompt implementation of the decision of the Constitutional Court of Slovenia aimed at remedying the established unconstitutionality regarding substantial differences between the salaries of judges and other public officials.
37. The CCJE Bureau wishes to join and bring forward in particular the clarification contained in this decision whereby remedying these unconstitutionality requires complex consideration of the regulation on judges' salaries and the salaries of other officials and, last but not least, of all other employees who receive salaries from public funds, which, in principle, must be carried out by the competent authorities. This includes the determination of a regulation ensuring the harmonisation of judges' salaries.

³⁵ Treaty body under the UN International Covenant on Civil and Political Rights (ICCPR).

³⁶ Report of the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para 75.

³⁷ To which Slovenia became party as of 6 July 1992.

³⁸ Human Rights Committee, consideration of reports submitted by States Parties under Article 40 of the Covenant, concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), para 18.

38. In this respect, while recognising that member states have a margin of appreciation while establishing remuneration levels for various professional groups, the CCJE Bureau wishes nevertheless to draw the attention of the relevant authorities of Slovenia to take into account, in line with the international advisory instruments cited in the present Opinion, the importance of judges' mission and the dignity of their office while considering the levels of their remuneration. The CCJE Bureau fully endorses, in particular, the above-mentioned position of the Venice Commission whereby the level of remuneration of judges should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants.