

Slovenia

Memorandum to Member Associations on the Discussion Topic for 2009:

“Ways to identify and classify criteria, objective and subjective, by reference to which the independence of the judiciary may be assessed.”

(1) Does your country's judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

The Slovenian Judiciary does not include prosecutors. Prosecutors have their own organisation and do not benefit from the same guarantees of judicial independence as judges. In their professional/technical activity they should be independent, but otherwise they have to protect the State's (executive arm's) interests.

(2.) How would you define “judicial independence” in the context of the political and social system of your country today?

Judicial independence in The Republic of Slovenia is assured by the Constitution (Article 125 – judicial independence, also Article 2 – rule of law, Art. 3 – separation of powers) and more specified by Law on the Courts and Law on the Judicial Service. All signed or/and ratified international Conventions and Declarations, among them Universal Declaration of Human Rights and European Convention on Human Rights, are directly applicable. Slovenian Association of Judges adopted Code of Judicial Ethics, where the principle of judicial independence is the most important one.

I would define „judicial independence“ as follows:

From the professional point of view, each judge must act in accordance with the position of a holder of state authority and in a manner that is expected of the most responsible citizens. He fulfils his professional mission with carefulness, conscientiousness, commitment and professional attentiveness. At the same time, through irreproachable conduct, which he ensures with controlled behaviour, uprightness and by protecting everyone's personal dignity, he ensures respect for personal ethical rules. A judge's

professional and personal reputation is a guarantee of public confidence in an independent judiciary.

A judge must be capable of exercising the judicial function independent of social, economic, political or other external pressures and, at the same time, must also be independent from other judges and members of the judicial and legal administration. A judge may not allow any encroachment on independence, thus including those that threaten his status or position (status independence).

Within the context of the principle of independence, the importance of a judge's material or functional independence is very high. This is independence from any kind of direct or indirect instructions, influences, incitements, threats, pressures or interference in the process of a judge's decision making irrespective of from where or for what reasons such impermissible encroachments derive. The procedural nature of relations between higher and lower courts, which can appear in the opinions or instructions of higher courts adopted on the basis of suitable legal means, do not threaten a judge's functional independence.

The functional independence of the judiciary is restricted by the principles of constitutionality and legality. This means that the judiciary does not determine its own competencies and that judges, in reaching decisions, must respect the valid constitutional and legal provisions and generally recognised legal principles such as the principles of justice and humanity. Compulsory normative boundaries that each judge must respect are thus determined.

The principle of a judge's internal independence also must be protected in such a way that in the process of reaching a decision, a judge uses legal standards on the basis his own conviction, which means that he interprets law in a manner which respects the prevailing understanding of law, legal tradition and established understandings of legal science. However, the principle of a judge's internal independence may not be understood in such a way that a judge may, by distorted use of law, inappropriately deal with participants in court proceedings or base decisions which unfairly benefit, harm or give them advantage in proceedings.

How very important the principle of the judicial independence is, Slovenian judiciary has been emphasizing during the remuneration reform struggle, which is not yet finished. Only the judge can give judgement in a dispute and assures legal certainty for citizens. In order to perform judicial service and assure citizens' their rights, arising from conventions and from the constitution, the judge must be independent and cannot allow anyone to interfere with his/her independence, especially them, who can jeopardize his/her (economic or material or functional) status. The assurance of judicial (economic) independence is an essential precondition for the protection of human rights and not a prerogative of a certain legal profession. Therefore is worth to mentioned again some international documents, particularly The UN Basic Principles on the Independence of the Judiciary, Universal and European Judicial Charter, Opinion no. 1 of the Consultative Council of European Judges and Recommendation of the Committee of Ministers of the Council of Europe No. R (94) 12 on Independence, Efficiency and Role of Judges, that provide, that "judges remuneration should be guaranteed by law and commensurate with the dignity of their profession and burden of their responsibilities". The

Constitutional Court of the Republic of Slovenia applied in its both decisions in 2006 and 2008 (both in favour of Judges and the Association) Documents and Principles, mentioned above.

(3) Which *objective* criteria would you identify as indicating that the judiciary of your country is independent and why?

1. Security of tenure as judge for lifetime or until the age e.g. of 70, guaranteed by Constitution.
2. Constitutional guarantee/other constitutional provision to ensure that the executive or other organs of the state cannot interfere with a judge's work or decision and/or any trials.
3. Having a body independent from other organs of state (Judicial Council) for: (a) deciding on appointment to judicial office; (b) giving opinion on budget for the Judiciary and opinions about law proposals, concerning judges and courts, including judicial salaries, but unfortunately the Parliament is not binding on this opinions; (c) deciding on promotion; (d) considering ethical/disciplinary problems and procedures; (e) judicial training – Judicial training centre was established but as a organ within the Ministry of Justice.
4. Laws ensuring judges have freedom of expression and association.
5. Budget for court/judicial administration that is free from interference by the executive/legislature.
6. Administration of the courts/judges that is run by judges or a service that is independent of the executive/legislature : should be, but the amendments of the Law on Courts foresee, that the court directors(court clerks) would be nominated by the minister of Justice .
7. Independent bodies (such as Council of Europe, UNO) regard the judges/judicial system in a country as independent and/or free from corruption.
8. Public opinion/the media/the legislature regards the judges/legal system in its country as independent and/or free from corruption.

(4) Which *subjective* criteria would you identify as indicating that the judiciary of your country is independent and why?

The only subjective criteria I would identify the judge's own power, knowledge and confession to decide in each case, to be bound only on the Constitution and the laws/statutes, without any influence from the executive state arm, media, public opinion,

other judges or court administration, etc.

(5) If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

The three most important criteria for indicating judicial independence in the Republic of Slovenia are:

- a. The tenure of a judge until the age of 70, guaranteed by the Constitution.
- b. Having a body independent from other organs of state -Judicial Council, deciding on appointment, promotion and other rights or disciplinary problems and on dismissal of judicial service.
- c. Judges remuneration should be guaranteed by law or even by the constitution and commensurate with the dignity of their profession and burden of their responsibilities.

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