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United Nations

The Special Rapporteur on the independence of judges and lawyers to Mr Stefano Sensi

Concerns: Submission to the report on national judicial councils

Dear Mr Stefano Sensi

Please find the Slovenian response to your questionnaire as follows.

1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country.

Selection and appointment of judges

The key authorities in the selection and appointment process of judges in Slovenia are the Judicial Council and the National Assembly. The competence for the selection of the candidates lies exclusively within the Judicial Council, whereas the competence for the appointment is divided between the Judicial Council and the National Assembly. If the Judicial Council selects a candidate who has never been elected to the judicial office it is obliged to propose such a candidate to the National Assembly for the election. The National Assembly can then decide not to appoint a proposed candidate, but cannot choose any other candidate apart from the one submitted by the Judicial Council. If the Judicial Council selects a candidate who has already been elected to the judicial office (i.e. is already a judge, applying for another judicial post), than the Council itself makes the decision on the appointment.

Promotion

The system of promotion of judges is tied to the assessment (individual evaluation) of judge`s work. The competence for the assessment of the judicial service are with the personnel councils at higher courts and the Supreme Court. However, if the assessment finds that a judge is „not adequate for the judicial service“ (negative/unfavourable evaluation), the assessment must be confirmed/validated by the Judicial Council.

The competence to make decisions on promotion of judges, on the basis of the assessment of their work, is divided among presidents of the courts and the Judicial Council. The president of the court takes decisions on the so-called regular promotion cases (i. e. the promotion in the next higher pay

grade), whereas the Judicial Council makes decisions on accelerate and exceptional promotion cases (promotion for two wage grades; promotion to the position of a councillor/senior judge; promotion in higher judicial title).

Transferring

The competence to transfer a judge without his consent is divided between the Judicial Council, Disciplinary Court and the President of the Supreme Court (see the answer to the question no 3).

Suspending / removing

The judge can be removed from the judicial post in the following cases:

- as a result of an unfavourable (negative) evaluation of his work
 - Judge`s judicial position ceases if his/hers judicial service is not positively evaluated by a Personnel Council. In this case the judicial function ceases when Judicial Council validates/approves/confirms the negative evaluation.
- as a result of a disciplinary offence
 - The competence for disciplinary procedure is with the Disciplinary Court, established within the Judicial Council.
- as a result of a criminal offence
 - The competence to dismiss a judge is with the National Assembly on the proposal of the Judicial Council.
- as a result of an incompatibility
 - The competence to decide on a incompatibility and subsequent termination of the judicial mandate is with Judicial Council.

What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?

The Judicial Council is a constitutional organ in Slovenia. The legal base for its establishment is in constitutional provisions (Article 131 of the Constitution), that are further specified in ordinary law (The Judicial Council Act – hereinafter referred to as JCA).

The Disciplinary Court is an organ of one instance and is (by the law - JCA) established within the Judicial Council.

2. Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).

The Judicial Council is composed of eleven members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number. Members of the Judicial Council are elected for the period of six years and may not be immediately

re-elected after the expiration of this term. Every three years the National Assembly alternately elects either two or three members to the Judicial Council, and also the judges holding permanent judicial office elect three members.

The professional and administrative tasks for the Judicial Council and its organs (Disciplinary Court and Ethics and Integrity Commission) are performed by the professional service of the Judicial Council. Currently there are 10 people working in a professional service of the Judicial Council (a secretary general; an analyst - computer expert; an accountant; a personnel clerk; two administrators; two professional assistants; and two district court judges, seconded to Judicial Council for the period of three years). At the moment there is also a tender process planned for three more vacancies (one administrator; one seconded judge and a financier).

Annual budget of the Judicial Council is 500.000,00 EUR.

3. Please provide detailed information on the legislation and practice existing in your country in relation to:

- (a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);
- (b) Condition of service and security of tenure of judges;
- (c) Promotion of judges;
- (d) Transfer of judges;
- (e) Disciplinary proceedings against judges.

What is the role played by the national organ or mechanism with regard to the issues referred to above?

(a) The selection and appointment process of judges

The selection and appointment process of judges is regulated in a Constitution (Article 130) in the Judicial Service Act (hereinafter referred to as JSA) and in the JCA.

As already stated above the key authorities in the selection and appointment process of judges are the Judicial Council and the National Assembly. The competence for the selection of the candidates lies exclusively within the Judicial Council, whereas the competence for the appointment is divided between the Judicial Council and the National Assembly. If the Judicial Council selects a candidate who has never been elected to the judicial office it is obliged to propose such a candidate to the National Assembly for the election. The National Assembly can then decide not to appoint a proposed candidate, but cannot choose any other candidate apart from the one submitted by the Judicial Council. If the Judicial Council selects a candidate who has already been elected to the judicial office (i.e. is already a judge, applying for another judicial post), then the Council itself makes the decision on the appointment.

In the selection process the Judicial Council (under the Article 18 of the JSA) may perform tests with candidates or/and conduct interviews with them in order to establish which candidate has the best professional skills and personal qualities for the judicial service. In practice, the Judicial Council regularly conducts interviews with the candidates, through which professional knowledge, skills and personal qualities of candidates are being investigated.

The criteria for the selection of candidates, to which the Judicial Council is bound to, are set in the JSA (Article 28) and then further defined in Standards, adopted by the Judicial Council. The criteria are:

- working skills and expertise
- personality suitability
- social skills, in particular communication skills and skill of managing conflict situations, and
- ability to carry out managerial tasks, if the judge is appointed to such a position at a court.

The decision on which candidate will be appointed or proposed for the election to the National Assembly must be adopted by a two-thirds majority of all members of the Judicial Council.

When Judicial Council selects a candidate - irrespective of whether the chosen candidate has not yet been elected and must be proposed for the election to the National Assembly, or the candidate has already been elected to the judicial office and is then appointed by the Council itself- the Council must provide reasons for its choice. Such decision of the Judicial Council can be challenged in an administrative dispute at the Supreme Court, but only the legality of the nominating procedure and decision on meeting the requests, set by law, can be challenged.

(b) Condition of service and security of tenure of judges

Under the Article 129 of the Constitution and in the connection with the paragraph 2 of the Article 74 of the JSA, the tenure of judges is guaranteed until a mandatory retirement age (age of 70).

During the mandate the judge can be dismissed from the office only in the cases provided for by law (Article 132 of the Constitution). The reasons for the dismissal of a judge, provided for in the JSA, are:

- Unfavourable (negative) evaluation of judge`s work
 - Judge`s judicial position ceases if his/hers judicial service is not positively evaluated by a Personnel Council (i. e. he/she has not successfully carried out a judicial function in an evaluating period). In this case the judicial function ceases when the Judicial Council validates/approves the negative evaluation. The decision of the Judicial Council can be challenged in an administrative dispute at the Supreme Court.
- Disciplinary offence
 - The termination of the judicial function can be issued, if a judge is unfit to perform the judicial function due to a severe discipline breach. The competence for disciplinary procedure is with the Disciplinary Court established within the Judicial Council. The decision of the Disciplinary Court can be challenged in an administrative dispute at the Supreme Court.
- Criminal offence
 - In case a judge intentionally commits a criminal activity by abusing the judicial function, the final court decision must be sent to the Judicial Council. The Judicial Council must immediately inform the National Assembly to dismiss the judge.
 - In case a judge is convicted to the prison sentence, the final court decision must be sent to the Judicial Council. The Judicial Council informs the National Assembly and proposes to dismiss the judge, if the prison sentence exceeds 6 months or the judge is unfit to perform the judicial function due to the nature of the crime

committed.

- Incompatibility
 - The issue of incompatibility has a basis in Article 133 of the Constitution, and is further regulated in the JSA (Articles 40 to 43).
 - A judge may not perform any functions or activities deemed to be incompatible with judicial office pursuant to the Constitution or the law (Article 3 of the JSA). Judicial office is not compatible with office in other state authorities, in local self-government authorities or in bodies of political parties (Article 133 of the Constitution). A judge may not perform lawyers' or notaries public's transactions or any commercial or other profit-making activities. A judge may not perform managerial transactions and may not be a member of the board of directors or supervisory board of any company or other legal person involved in profit-making activities (Article 41 of the JSA). A judge may not undertake any employment or work that might interfere with the performance of his service, that might harm the reputation of the judicial service or that might convey the impression that he lacks impartiality in the performance of his duties. He is, however, allowed to perform pedagogical, scientific, journalistic, research or other similar activities within the legal profession if this does not hinder the performance of his judicial service and provided that he notifies the president of the court in writing and in advance thereof. A judge may not enter into an employment relationship in order to perform the activities specified in the previous paragraph or other activities that judges may perform in addition to the duties of judicial office (Articles 42 and 43 of the JSA).
 - The judge must inform the president of the court of his/her intention to start with external activities beforehand. If the court president considers that the proposed activities are not compatible with judicial service, he/she requests the Judicial Council to decide on the matter. The Council may prohibit the activity to a judge. If the judge violates such prohibition, his mandate ceases by operation of law. Besides, the violation of the incompatibility provisions is also defined as a disciplinary offence in a JSA.
 - The decision of the Judicial Council on the incompatibility can be challenged in an administrative dispute at the Supreme Court.
- Illness
 - The term of the office also ceases by operation of law if a competent authority finds that the judge lost the legal and contractual capacity or medical ability to perform the judicial service (Article 74 of the JSA).
- Not taking an oath
 - Judges enter the judicial service on the day they take an oath before the president of the National Assembly. If a judge does not take an oath, no later than 60 days from the date of the election, his/hers position ceases by operation of law (Article 74 of the JSA).
- Loss of citizenship
 - Judge's judicial position ceases by operation of law if he/she is no longer a citizen of the Republic of Slovenia (i. e. he/she loses a citizenship - Article 74 of the JSA).

Judges enjoy substantive and procedural immunity in the performance of their judicial office to the extent, defined by the Article 134 of the Constitution:

- The judicial immunity extends only to opinions, stated in judicial procedures.
- In cases, where a judge is a suspect of criminal activity while performing the judicial

function, the competence on waiving judicial immunity (as well as to allow an apprehension of the suspect) is within the National Assembly.

Under the Constitution and the JSA judges also enjoy freedom of any instructions in making judicial decisions. This is guaranteed by Article 125 of the Constitution and provided for in several Articles of the JSA, which stipulates that, in exercising their judicial office, judges are bound only by the Constitution and the law, the general principles of international law, and ratified and published treaties. Accordingly, no one (not even the superiors within the judiciary) may interfere with the independent position of a judge in making decisions in cases assigned to him. The substantive independence of a judge is therefore subject only to the principles of constitutionality and legality.

Remuneration of judges is determined by law.

(c) Promotion of judges

In accordance to the Article 24 of the JSA judges enjoy the right to a promotion under the conditions provided for by law. The basis for the promotion is, by law, the assessment (evaluation) of a judge's work.

The competence for the assessment of the judicial service are with the Personnel Councils at higher courts and the Supreme Court. The decision of a Personnel Council can be challenged at the Personnel Council of the Supreme Court. However, as already mentioned above, if the assessment finds that a judge is „not adequate for the judicial service“ (negative or unfavourable evaluation), the assessment must be confirmed/validated by the Judicial Council.

The competence to make decisions on promotion of judges, on the basis of the assessment of their work, is divided among presidents of the courts and the Judicial Council. The president of the court takes decisions on the so-called regular promotion cases (i. e. the promotion in the next higher pay grade), whereas the Judicial Council makes decisions on accelerate and exceptional promotion cases (promotion for the two wage grades; promotion to the position of a councillor/senior judge; promotion in higher judicial title). The decisions of the Judicial Council as well as the decisions of the presidents of the courts on the promotion can be at first step challenged with an appeal on which the Judicial Council decides with a qualified absolute majority of all members. Against the latter decision, however, the administrative dispute is possible.

(d) Transfer of judges

According to the law (Articles 66 to 68 of the JSA) there are three situations when a judge can be ordered to work at another court of the same or lower instance without his/hers consent:

- For organisational reasons – A judge can be **involuntarily transferred by the decision of the Judicial Council** if the court where the judge performs judicial service closes; if the volume of work at the court where the judge performs judicial service decreases significantly for an extended period; if the organisation of the courts is changed; if so required in order to eliminate backlogs in the court's work;.
- For disciplinary reasons - A judge can be **involuntarily transferred by the decision of a Disciplinary Court** as a result of an imposed disciplinary sanction.
- For ensuring the effective work - A judge can be **involuntarily seconded to** another court of the same or lower instance **by the decision of the President of the Supreme Court** in order

to ensure the effective resolution of court cases in a particular court - this form of transfer can be *only temporary*.

The decision of the Judicial Council and the Disciplinary Court can be challenged in an administrative dispute at the Supreme Court. The decision of the President of the Supreme Court can be challenged before the Judicial Council, which is obliged to decide on an appeal within 15 days.

(e) Disciplinary proceedings against judges

The judge who with intent or through gross negligence violates judicial duties, prescribed by law, can be imposed disciplinary sanction (Article 81 of the JSA).

The disciplinary proceedings and disciplinary sanctions are prescribed by law (Articles 80 to 84 of the JSA and Articles 37 to 48 of the JCA).

By the law the Disciplinary Court of one instance is established within the Judicial Council. Judges of the Disciplinary Court are appointed from among judges and from among members of the Council, therefore the senat in each case can be comprised of judges and non judges (other legal professionals).

The decisions of the Disciplinary Court can be challenged in an administrative dispute at the Supreme Court.

4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for: N/A

- (a) Judicial selection and appointment;
- (b) Transfer and promotion of judges;
- (c) Disciplinary proceedings against judges

Kind regards

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Seconded to the Judicial Council of the Republic of Slovenia