

**Slovenia, Constitutional Court, U-I-42/12-15, constitutional, 7 February 2013,
ECLI:SI:USRS:2013:U.I.42.12**

Member State

 Slovenia

Topic

Rule of law:

- Prevention of abuse of powers

Impartiality:

- Autonomy and control of the prosecution services
-

Deciding Court Original Language

Ustavno sodišče Republike Slovenije

Deciding Court English translation

The Constitutional Court of Republic of Slovenia

Registration N

U-I-42/12-15

Date Decision

7 February 2013

ECLI (if available)

ECLI:SI:USRS:2013:U.I.42.12

EU legal sources and CJEU jurisprudence

Article 2 TEU and Article 19 TEU (not directly invoked)

Subject Matter

Transfer of state prosecution services from the ministry of justice to the ministry of interior affairs

Legal issue(s)

Is the legislator allowed transfer the state prosecutors' offices from the ministry of justice to the ministry of interior affairs or does this constitute a violation of Article 135 of the constitution (the autonomy of the state prosecutors)?

National Law Sources

Articles 3(2), 135, 136 of the Constitution

The Constitutional Court, Decision U-I-60/06, U-I-214/06, U-I-228/06 of 7 December 2006

Facts of the case

In 2012, the newly elected government decided to transfer the state prosecutors' offices from the ministry of justice under the ministry of interior affairs. A group of deputies of the national assembly (the NA) decided to refer the case to the CC.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The CC held that the state prosecutors do not pertain to the judicial branch, as they do not exercise judicial power, but to the executive branch of power, despite the fact that they form the judiciary ("pravosodje") in lato sensu and the fact that their role (submitting and representing indictments) is of paramount importance for the judicial system and functioning of the courts, since judges cannot judge and prosecute at the same time. As the state prosecutors are a part of the executive branch, transferral of state prosecution offices from one ministry to another (within the executive branch) cannot in itself lead to an interference with the principle of separation of powers. Independence, flowing from the principle of separation of powers, protects the state prosecutors against undue pressure from the judicial or legislative branch, whereas the principle of autonomy (Article 135) shields them from interference by the executive branch. (para. 28)

The state prosecutors enjoy special protection of the constitution. First, the state prosecution service must be organized as an autonomous state body and not as a part of government or public service. Second, the state prosecutors must be autonomous in the performance of their duties. This means that they (and only them) can exercise their function, without any pressure or instructions; they are only bound by the Constitution, the law and the policy of prosecution. The legislation, which would subject the state prosecutors to any kind of instructions in individual cases or would enable to put the prosecutor under undue pressure, is thus contrary to the Constitution.

Turning to the facts of the case, the CC did not find a violation of the Constitution, because all

other guaranties of autonomy remained intact. The sole difference was that the transfer of state prosecution service from one ministry to another. The CC also rejected the argument that the transferal raised doubts as to the impartiality of the state prosecutors as they could be regarded as an instrument of the police. Without assessing whether or to what degree the so-called doctrine of the appearance of independence and impartiality, which is generally applicable to judges, also applies to state prosecutors, the CC held that the transferal itself cannot affect such appearance. The same argument was used to reject the allegation, that the impugned legislation is unconstitutional since it concentrates the power over the police and the state prosecutors in one person: minister of the interior; and the claim that this could lead to systemic deficiencies in the conduct of independent investigations of criminal acts, committed by the police.

[Connected national caselaw / templates](#)

Constitutional Court, Decision U-I-60/06, U-I-214/06, U-I-228/06 of 7 December 2006; U-I-94/20-2 of 14 May 2020

[Other](#)

The applicants referred to a few cases of the ECHR and to Bordeaux declaration, so there was room for the CC to apply these instruments, but the CC explicitly invoked only constitution. It is the fundamental decision of the CC with respect to the state prosecutors, so it might nevertheless be interesting.

[\(Link to\) full text](#)

Decision: <https://www.us-rs.si/decision/?lang=en&q=u-i-42-12&df=&dt=&af=&at=&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=111447>

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[History of the case: \(please note the chronological order of the summarised/referred national judgments.\)](#)

1.U-I-42/12-15 of 7 February 2013
