

## **Slovenia, Judicial Council of the Republic of Slovenia, Decision Su 293/2022, instance: ordinary, 27 October 2022**

### Member State

 Slovenia

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### Topic

Independence, accountability, impartiality, freedom of expression

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### Sector

Judicial Self-Government; Freedom of Expression and Association; Disciplinary proceedings; Judicial Ethics

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### Deciding Court Original Language

Sodni svet Republike Slovenije

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### Deciding Court English translation

Judicial Council of the Republic of Slovenia

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### Registration N

Su 293/2022

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### Date Decision

27 October 2022

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### ECLI (if available)

N/A

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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### ECtHR Jurisprudence

N/A

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### Subject Matter

The Judicial Council of the Republic of Slovenia (the JC); complaint of a judge, who argued that his independence was violated; president of the court; conditioning attendance and costs of an international conference for legal professionals upon submission of the content of presentation.

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### Legal issue(s)

The case raises the following legal issue:

Did the president of the court violate individual independence of a judge, when he refused to allow a judge to attend and to reimburse his costs of attendance of an international conference for legal professionals, without prior submission and approval of the content of the presentation by the judge in question?

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### Request for expedited/PPU procedures

NO

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### Interim Relief

NO

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### National Law Sources

Judicial Service Act, Article 4(2):

Not mentioned, but relevant:

Article 125 of the Constitution (judicial independence)

Article 39 of the Constitution (freedom of expression)

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### Facts of the case

A judge complained to the Judicial Council (the JC) because the president of the court required him to disclose the content of his speech, which he would give at a professional conference. Without such prior disclosure, the president of the court refused to allow the judge to attend the conference and to cover the cost and expenses.

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

The JC decided, hearing the case at two sessions first issued an more abstract principled opinion that conditioning the grant a request for training and travel expenses for a judge at an international conference on the submission of a summary of the lecture or paper to the President of the Court may constitute an interference with the judge's independence. At the later session, the JC ruled in the concrete case, declaring that the court president is not allowed to condition the attendance of an international conference for legal professionals with his prior consent and approval of the content of the presentation. The reasoning of the JC is not publicly available. However, there is a short dissenting opinion of the only member of the JC, who voted against the decision adopted by 10 votes to one. He argued that a violation of judicial independence would occur only when the actions of the president of the court would directly or indirectly affect the judge in his adjudication. He argued that limiting judicial training could be regarded as an indirect pressure, only if it was unreasonable or unjustified, or if the judge was discriminated. He further opined that the case at hand cannot be characterised as an interference with judicial independence or a form of censorship, as argued by the affected judge. He also pointed out that the judge would give a

presentation not in his personal capacity, but in the capacity of the representative of the court, which seems to justify the requirements of the court president. He added that the case primarily concerns freedom of expression and only indirectly judicial independence.

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Relation of the case to the EU Charter

N/A

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Relation between the EU Charter and ECHR

N/A

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Use of Judicial Interaction technique(s)

N/A

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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Impact on Legislation / Policy

For now, there was no impact on legislation or policy. The case is nevertheless important as it shows how freedom of expression of judges is linked with judicial independence. It is also an example of a covert pressure on freedom of expression of judges, which arguably occurs far more often than instances of more direct interferences. It raises the issue of whether such pressures can create a legally relevant limitation of freedom of expression of the judge at hand. It seems that for 10 members of the JC, the answer is affirmative. Unfortunately, the reasoning of the JC is not publicly available.

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Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

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Did the national court take into account national case law on fundamental rights?

N/A

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

See Judicial Council of the Republic of Slovenia, Decision Su 12/2023-13 of 11 May 2023  
– <https://cjc.eui.eu/data/data/data?idPermanent=635&trial=1>

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Other

N/A

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(Link to) full text

[https://www.sodni-svet.si/doc/Zapisnik\\_26\\_seja\\_2022.pdf](https://www.sodni-svet.si/doc/Zapisnik_26_seja_2022.pdf)

[https://www.sodni-svet.si/doc/Zapisnik\\_27\\_seja\\_2022.pdf](https://www.sodni-svet.si/doc/Zapisnik_27_seja_2022.pdf)

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

1. Judicial Council of the Republic of Slovenia, Decision Su 293/2022 of 27 October 2022
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