

**Slovenia, Constitutional Court of the Republic of Slovenia,
Decision U-I-82/21-17, constitutional, 24 April 2024,
ECLI:SI:USRS:2024:U.I.82.21**

Member State

 Slovenia

Topic

Independence, impartiality

Sector

Judicial Self-Government (Judicial Council, Court Presidents)

Deciding Court Original Language

Ustavno sodišče Republike Slovenije

Deciding Court English translation

Constitutional Court of the Republic of Slovenia

Registration N

U-I-82/21-17

Date Decision

24 April 2024

ECLI (if available)

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National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Charter of Fundamental Rights of the European Union, Article 47 (paragraph 2)

Treaty on European Union, Article 2, 4 (first subparagraph of paragraph 3), 19 (second subparagraph of paragraph 1)

Recommendation No. R (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges

European Charter on the Statute for judges

Recommendation CM/Rec(2010)12

Magna Carta of judges

Opinion No. 1 of the Consultative Council of European Judges

Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012–2013

Judges' Charter in Europe of 4 November 1997

C-619/18, Commission v Poland, 24 June 2019, para. 45, 58, 79

C-216/18 PPU, Minister for Justice and Equality (Deficiencies in the system of justice) - LM, 25 July 2018, para. 48, 53

C-64/16, ASJP, 27 February 2018, para. 41, 96

C-192/18, Commission v Poland, 5 November 2019, para. 115

C-487/19, W.?, 6 October 2021, para. 109, 110, 114, 115, 117, 118, 119, 130

ECtHR Jurisprudence

European Convention on Human Rights, Article 6 (paragraph 1)

Baka v. Hungary, Application no. 20261/12, 23 June 2016, para. 172

Bilgen v. Turkey, Application no. 1571/07, 9 March 2021, para. 63

Oluji? v. Croatia, Application no. 22330/05, 5 February 2009, para. 41, 42

Fey v. Austria, Application no. 14396/88, 24 February 1993, para. 28, 30

Ferrantelli and Santangelo v. Italy, Application no. 19874/92, 7 August 1996, para. 58

Švarc and Kavnik v. Slovenia, Application no. 75617/01, 8 February 2007, para. 39

Pullar v. The United Kingdom, Application No. 22399/93, 10 June 1996, para. 32

Mitrinovski v. the former Yugoslav Republic of Macedonia, Application No. 6899/12, 30 April 2015, para. 36

Subject Matter

The Constitutional Court reviewed the constitutionality of Article 71 of the Courts Act concerning judicial reassignments without consent of the judge concerned. It found parts of the Article unconstitutional for breaching judicial independence and irremovability and ordered amendments within one year.

Legal issue(s)

The Constitutional Court had to determine whether the power of court presidents under Article 71 of the Courts Act to transfer judges to different areas of law, judicial positions or courts without obtaining their consent violates the fundamental constitutional principle of judicial independence. The transfer is made on the basis of the annual assignment (annual working schedule), which is meant to allow for some flexibility in the management of the courts in cases of increased needs in a given area of law or court. The Court also examined the constitutionality of provisions stating that a judge has no possibility to appeal with suspensive effect against the annual assignment and that the appeal is decided by the Personnel Council rather than the Judicial Council. In this context, the Court had to determine whether the legal remedy of appeal is effective and whether the body deciding on it is adequate to ensure impartiality and the safeguarding of judicial independence.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Constitution, Articles 2, 3, 22, 23, 25, 125, 129, 130, 132, 133, 134

Courts Act, Articles 7, 14, 30 (paragraph 1), 31, 32 (paragraph 2), 33 (paragraph 4), 36, 60.a, 61, 62.a, 71, 99, 101, 114, 115 (paragraph 2)

Court Rules, Articles 153, 154 (paragraph 3), 155, Title III

Judicial Service Act, Articles 9, 10, 28, 66, 67, 68 (paragraphs 1 and 2), 70.a, 80 (paragraph 1), 81 (paragraphs 1 and 2), 82 (paragraph 1, point 4), 83 (paragraph 4)

Judicial Council Act, Articles 38, 36, 43

Annex 3 of the Public Sector Wage System Act

Criminal Procedure Act, Articles 25, 311, 39 (paragraph 1, point 5)

Civil Procedure Act, Articles 30, 32, 302, 70 (paragraph 1, point 5)

Constitutional Court Act, Article 48

General Administrative Procedure Act, Article 35 (paragraph 1, point 4)

Constitutional Court decisions:

Up-979/15 of 21 June 2018, para. 7

U-I-159/19 of 23 February 2023, para. 8, 10, 11, 12

U-I-83/94 of 14 July 1994

U-I-224/96 of 22 May 1997, para. 16

U-I-225/16 of 6 December 2017, para. 6

U-I-246/19 of 7 January 2021, para. 66, 90

U-I-772/21 of 1 June 2023, para. 50, 53, 54, 64

U-I-60/06, U-I-214/06, U-I-228/06 of 7 December 2006, para. 55, 62, 63

U-I-219/03 of 1 December 2005, para. 28

Up-258/03, U-I-74/05 of 22 September 2005, para. 8

Up-353/02 of 20 May 2004, para. 6 and U-I-74/14 of 17 June 2015

U-I-339/98 of 21 January 1999, para. 5; U-I-115/14, Up-218/14 of 21 January 2016, para. 55, 56, 57 and Up-991/17, U-I-304/20 of 17 December 2020, para. 13, 17

Up-217/15 of 7 July 2016, para. 16, 17 and Up-1094/18 of 21 February 2019, para. 8, 9

U-I-445/18 of 14 October 2021, para. 17, 21

Up-52/99 of 21 November 2002, para. 5 and Up-679/06, U-I-20/07 of 10 October 2007, para. 47

U-I-149/99 of 3 April 2003, para. 7

Up-185/14, U-I-51/16 of 28 September 2016, para. 10

Up-799/13 of 22 January 2015, para. 9

Supreme Court decision:

X Ips 48/2019 of 18 January 2021, para. 12

Facts of the case

The case concerns the constitutional review of Article 71 of the Courts Act, which governs the involuntary assignment of judges to different legal areas, judicial positions and courts based on an annual schedule determined by the court president. The initiative for the constitutional review was brought by the Judicial Council, which claimed that the provisions allowing for judicial assignments without consent infringe the fundamental constitutional principle of judicial independence. The Judicial Council argued that Article 71 facilitates arbitrary reassignment of judges and that the existing appeal mechanisms are ineffective, as they do not permit suspensive appeals against reassignments. Additionally, the appeal process is handled by the Personnel Council, rather than Judicial Council, which raises concerns about impartiality, since in some cases court presidents who issued the annual working schedule and thus reassigned the judge in question, are at the same time members of the Personnel Council, hearing the appeals against such decisions.

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

In this decision, the Constitutional Court reviewed the constitutionality of Article 71 of the Courts Act, focusing on judicial independence. The Court emphasised that judicial independence is a fundamental aspect of the rule of law and that the principle of irremovability is one of its key components. This principle ensures that judges cannot be appointed or assigned to another court, region or in certain cases, to a lower position without their consent, except in exceptional circumstances that must be predetermined by law. This way their impartiality and independence are preserved.

The Court referred to the position of the Court of Justice of the European Union (CJEU), which has established that

judicial independence is essential for the right to effective judicial protection and the fundamental right to a fair trial and is therefore an essential prerequisite for the realization of all other rights. The CJEU ruled that principle of irremovability of judges is inseparable from judicial independence, hence any exception to this principle must be justified by a legitimate objective, be proportionate, and not create reasonable doubts among legal subjects regarding the independence and impartiality of the judiciary. The Court also took into account a range of documents from EU and international bodies, referencing these sources to substantiate the elements of the principle of judicial independence and irremovability. This includes reference to Article 47 of the EU Charter of Fundamental Rights, which guarantees the right to an effective remedy and a fair trial, and Article 6 of the European Convention on Human Rights, which safeguards the right to a fair trial. When assessing the constitutionality of Article 71, the Court limited its review to cases where judges were reassigned to different judicial positions, other courts. It found that annual reassignments to a different legal area by the court president do not affect a principle of irremovability, as judges remain in the same court for which they applied. The district court president establishes the annual schedule for judges within the district court and its organizational units, which does not constitute a reassignment to another court. The Court noted that while district judges can be reassigned to lower courts, this does not inherently violate their irremovability. The Court highlighted the need to examine circumstances that might undermine judicial independence. A district judge reassigned to an inferior court retains their title and salary and assignments are made by the district court president, appointed by the independent Judicial Council, which safeguards the judiciary from executive influence. Therefore, the Court concluded that the provisions of Article 71 regarding annual assignments of judges are in accordance with the Constitution, as they do not violate the principle of irremovability or undermine judicial independence, with judges retaining their titles and salaries and remaining within the same court. Furthermore, the Court emphasized that cases where a judge is transferred without consent,

represent a highly sensitive issue from the perspective of judicial independence. Therefore, the judge must have the right to appeal to an independent body that can assess the legality of the reassignment. The current provisions, which do not allow for suspensive appeals and entrust the appeals process to the Personnel Council, were scrutinized for their adequacy in safeguarding judicial independence. The provision stating that appeals do not suspend the execution of the reassignment undermines the effectiveness of the judge's right to appeal, as it is not possible to restore the situation to what it was before the judge's reassignment (cases assigned to the judge at hand are reassigned to his or her colleagues). This lack of a suspensive effect conflicts with the criteria set out in the first paragraph of Article 25 of the Constitution (the right to appeal) and, as a result, violates Article 125 (judicial independence).

The Court also highlighted that judges must not be connected to a party or matter in a way that raises reasonable doubts about their ability to decide objectively and impartially, as maintaining the appearance of impartiality is crucial; otherwise, public confidence in the fairness of judicial proceedings may be jeopardized. The Personnel Council that decides on the appeals related to judicial reassignments, is therefore required to uphold the appearance of impartiality to comply with the principle of irremovability, as an aspect of judicial independence. However, after analysing the applicable provisions the Court found that the inclusion of the Supreme Court president in the Personnel Council raises concerns about impartiality, as they would participate in both the assignment and the appeal process. Consequently, the Court concluded that the challenged provision assigning the authority of the Personnel Councils to decide on appeals against annual judicial assignments is not in accordance with the principle of judicial independence under Article 125 of the Constitution. The Court declared the second and third sentences of the sixth paragraph of Article 71 unconstitutional, finding that they failed to provide sufficient protection for the irremovability and independence of judges. It ordered the legislature to amend the law within one year to rectify these issues and ensure that the judicial reassignment process includes effective legal remedies and is handled by an impartial and independent body.

Relation of the case to the EU Charter

The EU Charter was used to support the reasoning and provide additional argument to emphasize the significance of judicial independence, particularly as it relates to ensuring effective legal protection under EU law. The Constitutional Court relied on the second paragraph of Article 47 of the EU Charter, which guarantees the right to an independent and impartial tribunal as part of the right to an effective remedy. This way, the Court underlined that judicial independence is an essential element of the right to effective judicial protection, a core principle of EU law.

Relation between the EU Charter and ECHR

Both the EU Charter and the European Convention on Human Rights (ECHR) were cited to support and reinforce the importance of judicial independence. The reference to the ECHR, specifically Article 6 (right to a fair trial) served to bolster the reasoning by highlighting established principles of judicial independence and to show consistency between European and international human rights frameworks.

Use of Judicial Interaction technique(s)

Consistent interpretation, comparative reasoning with foreign legislation or foreign case law

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

foreign courts)

The Constitutional Court, as the highest court in the country, conducted a constitutional review of the Courts Act. In its decision, the Court extensively cited several of its own prior rulings to substantiate its arguments and reinforce the legal framework surrounding judicial independence and irremovability.

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

The Constitutional Court engaged in vertical judicial interaction by referencing several decisions from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) that emphasize the principles of judicial independence and the right to effective judicial protection.

In particular, in case C-192/18, the CJEU highlighted that judicial irremovability is essential to judicial independence, and any exceptions must be justified and proportionate to ensure that judges are not arbitrarily removed. The Court also cited the CJEU's decision in case C-619/18, as well as in case C-216/18, which similarly emphasize the importance of judicial independence and assert that the irremovability of judges is essential for ensuring the right to effective judicial protection and a fair trial. Both rulings highlight that these principles are vital for safeguarding all rights under EU law. By referencing case C-64/16, the Court further emphasized that EU member states must ensure the provision of legal remedies to uphold the right to effective judicial protection in areas governed by EU law, in accordance with the principle of loyal cooperation. The Court also referred to several ECHR judgments. In *Baka v. Hungary*, the ECHR ruled that the premature dismissal of a Supreme Court president, even though he remained in the position of a judge, violated judicial independence. The case of *Bilgen v. Turkey* similarly emphasized the importance of transparent procedures for the transfer or removal of judges, arguing that arbitrary actions undermine judicial independence. According to the ECHR, the principle of irremovability of judges is therefore a key element in maintaining the independence of the judiciary. In *Fey v. Austria*, ECHR emphasised that judicial impartiality relies on both subjective and objective criteria. Additionally, it emphasized the importance of the appearance of impartiality to maintain public trust in the judiciary within a democratic society. In assessing whether there is doubt about the appearance of impartiality, it is crucial to determine whether this concern is objectively justified (*Ferrantelli and Santangelo v. Italy* and similarly *Švarc and Kavnik v. Slovenia*).

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

By citing the case law of foreign courts, specifically the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR), the Court filled in the content of the principle of judicial independence, particularly because the Constitution does not precisely define this principle. This references also enriched various reasoning aspects of the Court's analysis, providing additional support for its arguments.

Impact on Legislation / Policy

The Constitutional Court found that the second and third sentences of the sixth paragraph of Article 71 of the Courts Act were unconstitutional. Given that the annulment of these provisions was not feasible, the Court issued a declaratory judgment requiring the legislator to address the identified unconstitutionality within one year of the decision's publication in the Official Gazette of the Republic of Slovenia. As of now, the legislator has not enacted any amendments to the law. To ensure constitutional compliance in the interim, the Court implemented a provisional measure whereby the presidents of the courts may not participate in the Personnel Councils during the

appeals process related to annual judicial assignments and any appeals against these assignments shall have suspensive effect.

Notes on the national implementation of the preliminary ruling by the referring court
N/A

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

Connected national caselaw / templates
N/A

(Link to) full text

[us-rs.si](#) (in Slovenian). Not available in English.

Request for the review of constitutionality filled by the Judicial Council of the Republic of Slovenia:
[sodni-svet.si](#)

The trigger for the Judicial Council to request the review of constitutionality was a case of a district court judge, who has been transferred from the Ljubljana District Court to a to the Local Court in Kamnik (See Judicial Council, Su 385/2020, order no. 11 of 10 March 2021: [sodni-svet.si](#))

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

1. Constitutional Court, decision no. U-I-82/21-17 of 24 April 2024
