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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Opinion of the CCPE Bureau

following a letter of the Deputy Prosecutor General and Temporary Head of the State Prosecutor's Office of Slovenia, acting on behalf of the Slovenian Prosecutor's Office and Slovenian Association of State Prosecutors, concerning the failure to enforce a decision of the Constitutional Court of Slovenia aimed at remedying the identified unconstitutionality regarding significant disproportions between the salary grades of judges' positions compared to the salary grades of executive and legislative branch functions

INTRODUCTION

1. On 4 January 2024, Ms Mirjam Kline, Deputy Prosecutor General and Temporary Head of the State Prosecutor's Office of Slovenia, acting on behalf of the Slovenian Prosecutor's Office and Slovenian Association of State Prosecutors, sent a letter to Ms Jana Zezulova, President of the CCPE, concerning the failure to enforce a decision of the Constitutional Court of Slovenia.¹
2. As it is mentioned in the letter, the Constitutional Court ruled that Public Sector Salary System Act is unconstitutional, insofar as it refers to the harmonisation of judges' salaries (compensation), which had significantly lost their real value over the past ten years, and that it breaches the constitutional principle of judicial independence.
3. As part of the assessment of the compliance of the regulation of judges' compensation with the principle of separation of powers, the Constitutional Court ruled that the three branches of government must also be equal in terms of the material status of their officials. If significant disproportion appears among the salary grades of judges' positions compared to the salary grades of executive and legislative branch functions, it can breach the principle of separation of powers under Article 3 of the Constitution of Slovenia.
4. The Constitutional Court set a six-month deadline (ending on 3 January 2024) for the legislator to eliminate the identified unconstitutionality, considering that the legislative branch and the Government had been familiar with the issue in question for a long time.
5. As is also mentioned in the letter, the State Prosecutor's Act stipulates that prosecutors' remuneration is determined on an equal basis, including the same bonuses and pursuant to the same methodology, with the remuneration of judges of the corresponding rank. Therefore, all that is stated above regarding judges also applies to state prosecutors in Slovenia.
6. Having examined the letter and the information provided in the light of European standards, including the Council of Europe Committee of Ministers' Recommendations, the CCPE and Opinions of the European Commission for the Democracy through Law (Venice Commission), instruments of the European Commission for the Efficiency of Justice (CEPEJ) as well as other relevant standards, the CCPE Bureau issues the below Opinion.

OPINION

Binding effect and enforcement of judicial decisions

7. First of all, as regards the alleged failure to enforce a decision of the Constitutional Court of Slovenia, the CCPE Bureau would like to join the recent Opinion of the Bureau of the

¹ Decision of the Constitutional Court of Slovenia, number: U-I-772/21, 1 June 2023.

Consultative Council of European Judges (CCJE)² on the same subject where an exhaustive analysis is provided concerning the binding effect and enforcement of judicial decisions in general and those of constitutional courts in particular, regardless of the subject matter.

8. While the CCPE Bureau refers to the detail of the aforementioned opinion of the CCJE Bureau, it nonetheless wishes to briefly reiterate and stress the following:
 - all final judicial decisions are binding and must be executed in due time. The effective enforcement of a judicial decision, resulting from its binding effect, is a fundamental element of the rule of law and of the concept of an independent tribunal set out in Article 6 of the European Convention on Human Rights;³
 - failing to enforce judgments of constitutional courts in particular is tantamount to disregarding those judgments and hence the constitution. When refusing to execute the judgment of a constitutional court, a public official violates the constitution, including the principles of the rule of law, separation of powers and loyal co-operation of state organs.⁴
9. Therefore, the CCPE Bureau fully endorses the conclusion of the CCJE Bureau that the very fact of the alleged failure to enforce a decision of the Constitutional Court of Slovenia, regardless of its subject matter, undermines the above-mentioned principles and represents a danger to democratic stability.

Importance of prosecutors' mission and the dignity of their office

10. In addition to the alleged failure to enforce a decision of the Constitutional Court of Slovenia, the CCPE Bureau considers it necessary to point out several important aspects related directly to the subject matter of that decision.
11. First of all, the CCPE Bureau considers it a very positive fact in itself that, as mentioned in the letter sent for its attention, the State Prosecutor's Act provides that prosecutors' salaries are to be determined on an equal basis, including the same bonuses and pursuant to the same methodology, with the salaries of judges.
12. The CCPE Bureau welcomes the determination on an equal basis of salaries of both prosecutors and judges in Slovenia. As the CCPE Bureau underlined recently, based on the numerous advisory opinions and instruments, the level of remuneration of prosecutors must be analogous or at least comparable to that of judges, since both

² Opinion of the CCJE Bureau of 16 February 2024 following a Protest Declaration of the Slovenian Association of Judges concerning the failure to enforce a decision of the Constitutional Court of Slovenia aimed at remedying the established unconstitutionality regarding substantial differences between the salaries of judges and other public officials.

³ CCJE Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions, Section VII(B).

⁴ Venice Commission Opinion on the Law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court of Spain, adopted by the Venice Commission at its 110th plenary session (Venice, 10-11 March 2017), para 8.

professional groups are key actors in any justice system and they both contribute essentially and extensively to the rule of law.⁵

13. In addition, as the CCPE Bureau also underlined on the same occasion and based on the same numerous advisory opinions and instruments, the conditions of service of prosecutors, including their remuneration, should reflect the importance of their mission and dignity of their office, and be at a proper level.⁶
14. Therefore, having a significant disproportion between the salaries of prosecutors (as well as judges) and those of executive and legislative officials, as mentioned in the decision of the Constitutional Court of Slovenia, raises serious questions.
15. In considering this important issue, the CCPE Bureau took into account the CCPE's Opinions (including a Joint Opinion with the CCJE), as well as relevant instruments of the Committee of Ministers of the Council of Europe, European Commission for Democracy through Law (Venice Commission), European Commission for the Efficiency of Justice (CEPEJ), Group of States against Corruption (GRECO), United Nations (UN), Human Rights Committee (treaty body under the UN International Covenant on Civil and Political Rights (ICCPR)), European Network of the Councils for the Judiciary (ENCJ), International Association of Prosecutors (IAP) and Organisation for Economic Co-operation and Development (OECD).

Standards of the CCPE (including a Joint Opinion with the CCJE)

16. In 2009, the CCPE and the CCJE adopted a Joint Opinion⁷ on relations between judges and prosecutors in a democratic society, which included the Bordeaux Declaration and an Explanatory Note.
17. It was emphasised in the Bordeaux Declaration that for an independent status of public prosecutors, some minimal requirements are necessary, in particular that their recruitment, career development, security of tenure as well as remuneration be safeguarded through guarantees provided by law.⁸
18. The same Opinion went on to underline that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration.⁹

⁵ Opinion of the CCPE Bureau of 1 August 2024 following a letter of the Prosecutor General of Lithuania concerning legislative developments resulting in a disproportionately large gap in the remuneration of prosecutors and judges, para 22.

⁶ Opinion of the CCPE Bureau of 1 August 2024 following a letter of the Prosecutor General of Lithuania concerning legislative developments resulting in a disproportionately large gap in the remuneration of prosecutors and judges, para 22.

⁷ Opinion No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE.

⁸ Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Section 8.

⁹ Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Explanatory Note, para 37.

19. The CCPE went on to further stress in its Opinion No. 9 (2014) on European norms and principles concerning prosecutors, including the Rome Charter, that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary,¹⁰ and that states should take measures to ensure that prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement.¹¹
20. Moreover, the conditions of service should reflect the importance and dignity of the prosecution office, and respect attached to it. The appropriate remuneration of prosecutors also implies recognition of their important function and role, and can also reduce the risk of corruption.¹²
21. The CCPE also emphasised this issue in its Opinion No. 13 (2018) on independence, accountability and ethics of prosecutors, where it outlined the main aspects of the prosecutorial independence. It mentioned the issue of proper remuneration of prosecutors several times in the text of this Opinion and finally specified it in the set of Recommendations provided at the end of the Opinion. It recommended that the status, remuneration and treatment of prosecutors as well as the provision of financial, human and other resources for prosecution services should correspond, in a way comparable to those of judges, to the eminent nature of the mission and the particular duties of prosecutors.¹³
22. Finally, the CCPE emphasised the issue of prosecutorial remuneration in its Opinion No. 16 (2021) on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. In this respect, it reiterated the standards and Recommendations contained in above-mentioned Opinion No. 13 (2018).¹⁴

Standards of the Committee of Ministers of the Council of Europe

23. The Committee of Ministers of the Council of Europe underlined that member states should take measures to ensure that public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law.¹⁵

¹⁰ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Section IV.

¹¹ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 75.

¹² Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 76.

¹³ Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, Recommendation XI.

¹⁴ Opinion No. 16 (2021) of the CCPE on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, Conclusions, Section A(1).

¹⁵ Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, para 5(d).

24. Moreover, the Committee of Ministers pointed out that the status of public prosecutors and their rates of remuneration and pension must take account of the need to maintain a certain balance between members of the judiciary and the prosecution service, as both - despite the different nature of their duties - play a part in the criminal justice system. The material conditions of service should also reflect the importance and dignity of the office. Lastly, improving the situation of public prosecutors in certain member states, particularly in central and eastern Europe, should curb the tendency for them to desert to private sector posts.¹⁶

Standards of the European Commission for Democracy through Law (Venice Commission)

25. The Venice Commission stressed that in relation to prosecutors, similarly to judges, remuneration in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors.¹⁷
26. In this respect, the CCPE Bureau wishes to underline what the Venice Commission said specifically about the remuneration of judges, since it is also relevant for prosecutors as explained above. As also underlined by the CCJE Bureau in its above-mentioned Opinion, the remuneration of judges, according to the Venice Commission, should be guaranteed by law in conformity with the dignity of their office and the scope of their duties¹⁸ and adequate remuneration is indispensable to protect judges from undue outside interference. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants.
27. Therefore, the CCPE Bureau supports this position of the Venice Commission and considers it applicable to the situation in Slovenia, in particular considering that the remuneration of judges should be comparable to the level of remuneration of high-level civil servants. This argument, in the opinion of the CCPE Bureau, is fully applicable to the remuneration of prosecutors as well, as developed above.

Standards of the European Commission for the Efficiency of Justice (CEPEJ)

28. The CEPEJ referred to the Committee of Ministers' standards¹⁹ and underlined that the issue of judges' remuneration requires a comprehensive approach which, beyond the purely economic aspect, takes account of the impact that it can have on the efficiency of justice as well as on its independence in connection with the fight against corruption

¹⁶ Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, Commentaries on individual recommendations, para 5.

¹⁷ Venice Commission Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 69.

¹⁸ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 51.

¹⁹ Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, paras 53-54.

within and outside the judicial system. Justice policies should also consider the salaries of other legal professions in order to make the judicial profession attractive to highly qualified legal practitioners.²⁰

29. The CEPEJ also provided relevant information on the salaries of both judges²¹ and prosecutors²² in Europe and mentioned that there was no general trend showing that judges' and prosecutors' salaries had increased comparably to the average salaries. In a considerable number of states, the ratio of judges' and/or prosecutors' salaries to average income had actually decreased. This was often not due to a decrease in the gross salary of judges or prosecutors, but to the fact that average incomes had increased more than judges' or prosecutors' salaries. The development of average salaries must therefore be carefully monitored if one wants to ensure that the salaries of judges and prosecutors do not fall behind.²³
30. In particular as regards Slovenia, it is also worth noting that, according to the CEPEJ, the salaries of prosecutors at the beginning of their career, as well as of prosecutors at the highest instance, were among the lower ones in Europe, based on the level of ratio between these gross salaries and the national average gross salary in Slovenia.²⁴

Standards of the Group of States against Corruption (GRECO)

31. GRECO stressed the importance of adequate remuneration for prosecutors by encouraging that such remuneration be based on transparent and objective criteria.²⁵ As regards the judicial remuneration, it recommended that adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions. It accordingly invited the authorities to support those improvements by making the necessary changes which fall within their competence.²⁶

²⁰ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 79.

²¹ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 80.

²² CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 82.

²³ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 83.

²⁴ CEPEJ Evaluation Report of European judicial systems, 2022 evaluation cycle (2020 data), Part 1: tables, graphs and analyses, page 82, table "What is the salary of public prosecutors in Europe?" (Figure 3.47 Average gross salary of prosecutors in relation to the national average gross salary in 2020 (beginning of a career / Supreme Court)).

²⁵ GRECO's Fourth Evaluation Round: Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors, Evaluation Report concerning Estonia adopted by GRECO at its 58th plenary meeting (Strasbourg, 3-7 December 2012), para 172.

²⁶ GRECO Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Austria, adopted by GRECO at its 94th plenary meeting (Strasbourg, 5-9 June 2023), para 51.

32. As the CCPE has emphasised on several occasions (see above) that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration, the CCPE Bureau is of the opinion that the above-mentioned GRECO's reference to the remuneration of judges may apply also to prosecutors.

Standards of the United Nations (UN)

33. The UN Guidelines on the role of the public prosecutor underlined that prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession. The Guidelines went on to mention that reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.²⁷

Standards of the Human Rights Committee (treaty body under the UN International Covenant on Civil and Political Rights (ICCPR))

34. The Human Rights Committee (HRC), which is a treaty body of independent experts that monitors the implementation of the UN International Covenant on Civil and Political Rights (ICCPR)²⁸ by its State Parties, issued a number of relevant recommendations as regards the judicial and prosecutorial independence. In this context, it mentioned several times the issue of remuneration for the judiciary which may be understood as including prosecutors. According to the HRC, states should take specific measures establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary.²⁹

Standards of the European Network of the Councils for the Judiciary (ENCJ)

35. The European Network of the Councils for the Judiciary (ENCJ) stressed in its Report 2014-2016: Independence and Accountability of the Prosecution that the independence of prosecutors must be protected by compliant recruitment procedures, the incompatibility of appointment with other public or private functions, adequate and protected levels of remuneration and protection in relation to removability and promotion, discipline and dismissal.³⁰

Standards of the International Association of Prosecutors (IAP)

36. The International Association of Prosecutors (IAP) pointed out in its Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors that in order to ensure that prosecutors are able to carry out their

²⁷ UN Guidelines on the Role of Prosecutors adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, paras 3 and 6.

²⁸ To which Slovenia became party as of 6 July 1992.

²⁹ Human Rights Committee, consideration of reports submitted by States Parties under Article 40 of the Covenant, concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), para 18.

³⁰ ENCJ Report 2014-2016: Independence and Accountability of the Prosecution, para 20.

professional responsibilities independently and in accordance with these standards, they should be protected against arbitrary action by governments. In general, they should be entitled, among other guarantees, to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished.³¹

Standards of the Organisation for Economic Co-operation and Development (OECD)

37. The study of the Organisation for Economic Co-operation and Development (OECD) on the Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific (2020) stressed that prosecutors need to be paid adequately, and in line with the essential role they play in the criminal justice system. Their salaries should be comparable to those of judges, especially at the beginning of their career in order to attract the most qualified students and professionals.³²

CONCLUSIONS AND RECOMMENDATIONS

38. Taking into account the above-mentioned standards, the CCPE Bureau agrees with the concerns expressed by the Deputy Prosecutor General and Temporary Head of the State Prosecutor's Office of Slovenia, acting on behalf of the Slovenian Prosecutor's Office and Slovenian Association of State Prosecutors.
39. First of all, the CCPE Bureau considers it necessary that all necessary measures are taken in Slovenia by relevant authorities in order to implement the decision of the Constitutional Court aimed at remedying the identified unconstitutionality regarding the significant disproportion between the salary grades of judges' positions compared to the salary grades of executive and legislative branch functions. The prompt execution of the decision of the Constitutional Court is of utmost importance given the binding character and enforceability of judicial decisions.
40. Secondly, the CCPE Bureau underlines that, as the above-mentioned various advisory opinions and instruments mention, the conditions of service of prosecutors, including their remuneration, should reflect the importance of their mission and dignity of their office, and should be at a proper level. This is important for enabling their real independence and impartiality and also in the context of preventing corruption among them.
41. Moreover, the level of remuneration of prosecutors must be analogous or at least comparable to that of judges, since both professional groups are key actors in any justice system and they both contribute essentially and extensively to the rule of law.
42. In this respect, the CCPE Bureau considers it very positive that, as mentioned in the letter sent for its attention and above, the State Prosecutor's Act provides for prosecutors'

³¹ IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the IAP on 3 April 1999, Article 6(3).

³² OECD study on the Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific (2020), Section 3.3, page 148.

salaries to be determined on an equal basis, including the same bonuses and pursuant to the same methodology, with the salaries of judges.

43. At the same time, however, the benefit of the principle of equal basis for prosecutors will be lost, in the opinion of the CCPE Bureau, if there is significant disproportion between the salary grades of judges (and prosecutors) and those of executive and legislative officials.
44. That is why, while recognising that member states have a margin of appreciation in establishing remuneration levels for various professional groups, the CCPE Bureau joins the position of the CCJE Bureau enunciated in its above-mentioned Opinion and draws the attention of the relevant authorities in Slovenia to the importance of both judges' and prosecutors' mission and the dignity of their office while considering the levels of their remuneration. The CCPE Bureau in particular fully agrees with the above-mentioned position of the Venice Commission whereby the level of remuneration of judges should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants and considers that this applies equally to prosecutors.