

Input for Rule of Law report – Stakeholder Consultation Input The Supreme Court of the Republic of Slovenia

Ref. n. Su SRSU 55/2023
24 January 2024

2. Appointment and selection of judges⁴, prosecutors and court presidents (incl. judicial review)

The Supreme Court has been involved in the debate on the amendment of the Constitution since April 2023 and supports amendments to the Constitution that emphasize the judiciary as one of the branches of power, therefore it supported the envisaged amendments to the Constitution, which provided for the withdrawal of the election of judges from the National Assembly. However, the Supreme Court considers that the subsequently proposed additional amendments to Article 131 of the Constitution, i.e. a change in the composition and method of composition of the Judicial Council, especially by changing the method of election of members of the Judicial Council who are not judges, is not necessary (see also response to Q44).

In November 2023, the Supreme Court sent to the Ministry of Justice an extensive set of comments regarding the proposed changes to the judicial legislation (draft of the new Courts Act and the Judicial Service Act). In the latest proposal of the new Judicial Service Act, the aforementioned change in the appointment of judges are not included (the procedure in the proposal remained the same as in the current regulation).

In the proposal of the new Courts Act, the President of the Supreme Court is appointed by the Judicial Council (an expert body; according to the current regulation by the National Assembly - a political body) based on the preliminary opinions of the plenary session of the Supreme Court and the minister responsible for justice (for the latter, the Supreme Court considers that it is inconsistent with the principle of separation of powers).

3. Irremovability of judges; including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

In the current regulation, there is an adequate basis for the transfer of judges, both with and without his consent. To ensure the efficient judiciary and timely resolution of cases throughout the whole judicial map a mobility (of judges and cases) should be encouraged by all stakeholders. Court management on all levels of judiciary should utilize appropriate measures to equalize the caseload of courts. The Supreme Court points out that in concrete transfers of judge, especially in the scope of changing the legal field, it is necessary to consistently ensure the weighing of rights, i.e. not only the rights of individual judges but also the right to judicial protection (in regard to the measures of judicial management to ensure effective resolution of cases).

7. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

The Supreme Court points out that the criteria for evaluating the judicial service and the disciplinary responsibility of judges should be further defined as to exclude overlapping of the two. Likewise, the findings of some bodies that exercise certain specific powers in the judicial system (e.g. the findings of the Service for Supervision of the Organization of Court Operations at the Ministry of Justice or the Ethics Commission at the Judicial Council) should not be the basis for the disciplinary responsibility of a judge, since they refer to the organization of the work of the court or are principled in nature.

8. Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

In the area of the issue of remuneration or salaries for judges, despite the decision of the Constitutional Court, in the year 2023 no legal solutions were adopted.

On 1 June 2023, the Constitutional Court of the Republic of Slovenia, on a proposal of the Judicial Council of the Republic of Slovenia, adopted Decision U-I-772/21 on the (un)constitutionality of judges' salaries in Slovenia. It found that the regulation of basic salaries of judges in Slovenia is incompatible with the constitutional principle of judicial independence, due to the failure to comply with the constitutional requirement of stability of judges' salaries. The Constitutional Court issued a declaratory decision and set the legislator a deadline of six months to remedy the unconstitutionality found, taking into account that the legislator and the Government had been aware of the issue for a long time. The deadline for the abolition of the unconstitutional situation expires on 3 January 2024. Legislative changes are not even prepared, much less adopted.

13. Resources of the judiciary (human/financial/material)

The adopted budget for 2024 for all courts in the Republic of Slovenia amounts to EUR 226.1 million and is EUR 2.5 million higher than the adopted budget rebalance for 2023 or by EUR 4.3 million higher than the estimated realization for 2023. The bulk of higher spending in 2024 compared to the previous year is planned for the salaries of judges (10%) and civil servants. On June 1, 2023, the Constitutional Court of the Republic of Slovenia issued a decision in which it concluded that judges' salaries are inconsistent with the Constitution of the Republic of Slovenia. Due to the Decision U-I-772/21 of the Constitutional Court of the Republic of Slovenia, it was envisaged that the payment of the supplement for the incompatibility of the judicial function would start from 1 January 2024. A possible legal basis for the payouts still does not exist. It is also envisaged that the salaries of judges and civil servants will be adjusted to the increase in the prices of consumer goods. Also, a possible legal basis for these payments does not yet exist. Nevertheless we estimate that the adopted budget for 2024 will not be sufficient to cover all the obligations of the courts in the following year. The deficit is estimated on the items for the costs of court proceedings and free legal aid in the total amount of EUR 20.3 million, namely mainly due to the enactment of the Law on Amendments and Supplements to the Law on Advocacy (Zodv-G), with which the lawyer's tariff for payment of cases ex offio and the issue of free legal aid increases from 50% to 100% from 4th April 2023 onwards.

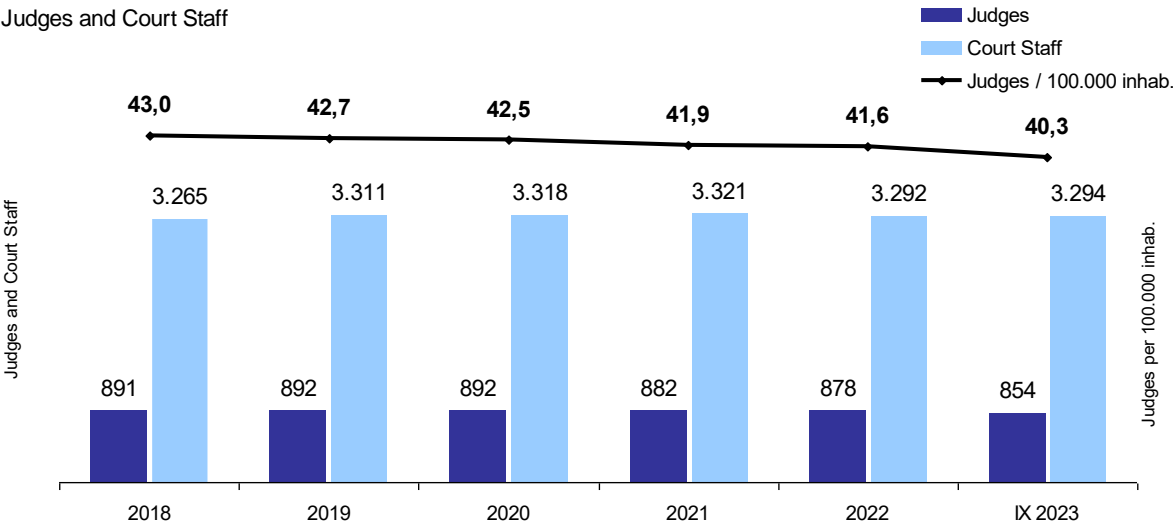
The District Court in Ljubljana performs its judicial powers on seven (7) locations in Ljubljana and the Local Court in Ljubljana performs its judicial powers on six (6) locations in Ljubljana. There is a great need for a new court building in Ljubljana for over twenty years, but the financial resources are still not found. The execution of major criminal cases on District Court in Ljubljana (with more than 25 accused in one case) is at risk. There are at least five such criminal procedures in progress in Ljubljana (these are trials against criminal gangs referring to drug crimes, human trafficking etc). There are no premises for such trials. The legal authority to provide premises rests with the Ministry of Justice.

Executive authority (Ministry of Justice) withdrew from the project of a new court building in Ljubljana. Funding was secured for the renovation of the old court building in Novo mesto (EUR 8,5 million). The court buildings Jesenice and Kranj were renovated. Financial resources for the new premises of the court in Ptuj were provided (EUR 0,5 milion).

The Supreme Court points out that in financial terms, the judiciary is not entirely independent, as the budget of the courts mainly consists of funds for salaries and costs of court proceedings, while investments (e.g. in court buildings) are the responsibility of the Ministry of Justice. The available funds for the costs of court proceedings are impacted by the increase in the lawyer's tariff for ex officio representation and free legal aid, as the legislator changed the normative regulation, but did not increase the budget for the judiciary accordingly.

Total human resources on the 30th October 2023:

	Secretary General, directors	Senior judicial advisors	Judicial Assistants	Registrars	Typists	Other Court Staff
2012	21	481	502	557	1.079	677
2013	20	541	500	554	998	664
2014	20	534	494	550	976	671
2015	20	517	502	534	947	657
2016	19	543	538	504	947,5	649,5
2017	19	549	539	499	943,5	653,5
2018	19	575	573	495	934	669,0
2019	20	592	588	505	935,5	670,5
2020	18	596	593	499	929,5	682,5
2021	18	624	595	500	892,5	690,5
2022	16	611	591	500	884,5	689,5
IX 2023	15	616	581	490	883	709



14. Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees).

The Judicial Training Centre, which operates within the Ministry of Justice, takes care of the training of judges and court staff. The most important are the judicial schools, which are run by the Supreme Court Judges. In addition, the High Courts and the Supreme Court organize consultations for judges of the lower courts.

15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)⁷

Civil enforcement on the basis of an authentic document is an informatised procedure where claims can be filed online, with the support of a specific legislative framework. The possibility of e-communication (electronic filing, electronic service) is provided to enforcement agents, notaries, lawyers, bankruptcy agents, as well as parties and other participants in court proceedings via the courts' web portal eSodstvo (a digital certificate is required) in civil enforcement cases, land registry cases, insolvency cases and in family cases.

The laws prescribe that certain types of documents must be submitted to court in electronic form only (i.e. in the land registry, insolvency cases, court registry cases and in family matters for social work centres). On 15th January 2024, e-communication in family matters and inheritance matters

will become possible for all participants in court proceedings. Full transition to e-communication in administrative, civil and commercial cases for all courts and participants in court proceedings is planned until June 2024. In criminal cases, e-communication between courts, parties and lawyers is foreseen for mid-2024; the prosecutors' office integration with judicial system depends on securing funds to prosecutors' office to upgrade their CMS.

Information system for centralised, long-term storage of digital content (including digitalised documents) in compliance with archiving regulation (Archeia) was additionally certified in 2023. In 2023, the system was test connected to the CMS for civil enforcement cases. In 2023, activities were carried out in the direction of connecting the system with the CMS systems for misdemeanor, insolvency and criminal cases.

The use of the eVa application (horizontal solution for uniform validation of incoming submissions) in all civil cases for all courts is planned in June 2024.

In 2022, a central information solution was developed for recording and managing financial obligations. Currently, information support is provided for criminal proceedings (imposed fine, property benefit, costs of criminal proceedings and court fees), from the creation of the financial obligation (issuance or finality of the decision) until its conclusion in the form of financial or non-financial closure. In 2023, the application was tested by pilot courts and a public procurement procedure was published for an additional upgrade of the system with the goal of production use of the application in criminal cases in 2024. In 2024, a public procurement for an additional upgrade of the system and its use in all other court proceedings will be published and upgrade implemented.

Within "Effective Justice" framework, the data warehouse was expanded with additional data and new content based exclusively on external source records. The quality of data in the data warehouse is improved and the system for business intelligence is being upgraded in accordance with innovations in information systems for managing court cases, additional content and court performance indicators

New digital proceedings and new functionalities of existed digitalized proceedings in the land registry IT system (e-ZK) were developed 2023.

Furthermore, the eSpis application for viewing and studying electronic court cases is currently in limited production (selected courts only) in insolvency cases, while the use in civil and criminal procedure is currently being tested, pending production in 2024.

In the scope of the Slovenia's recovery and resilience plan, investments in new functionalities of the knowledge base, central digitization distribution center and central access point to court IT system for participants and to all other information about court proceedings and judiciary in general (eSodišče) have been proposed. In 2023, the Supreme Court began with the preparation of investment documentation for the realisation of aforementioned investments (planned to start in 2024).

In August 2023, the President of the Supreme Court issued a new decree to set the priority tasks in the field of digitization in the period 2023-25 with concrete tasks, responsible persons and deadlines.

16. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

An international (English) version of the website, containing data on the functioning (caseflow, duration of proceedings, age of pending cases, number of judges and court staff) and the organization of Slovenian courts and organization of Slovenian courts (renewed in 2022) was published in 2023 (the original page was completely renewed in 2022). The translation of the website was carried out as a part of the Procedural Justice Project within the Effective Justice Operation, financed from the funds of the European cohesion policy. Link to the website: <https://poslovanje-sodstva.sodisce.si/en>

In the scope of the Slovenia's recovery and resilience plan, an investment in new tools for the support of court management was proposed. In 2023, the Supreme court began with the preparation of investing documentatin for realisation of investment.

17. Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.

In November 2023, the Supreme Court sent to the Ministry of Justice an extensive set of comments regarding the proposed changes to the judicial legislation (draft of the new Courts Act and the Judicial Service Act).

The most important change is the planned introduction of a unified first instance judge (curently: local and distric judges), which, according to the Supreme Court of the Republic of Slovenia, would significantly contribute to equalizing the workload of judges and enable more efficient court operations.

18. Length of proceedings

In 2023, the project group at the Supreme Court continued its work and prepared a proposal for determining the timeframes for additional proceedings, so that now the timeframes are set for the vast majority of court proceedings in all instances. The timeframes for the coming year (2024) will be adopted by the President of the Supreme Court after obtaining the prior consent of the Ministry of Justice as provided by law.

In December 2023, the President of the Supreme Court appointed a new working group to continue the work towards the consideration and implementation of the previously proposed measures, as well as propose and implement additional measures, with the aim of ensuring that the number of resolved cases remains at the level of previous years, or with the aim of reversing the trend in direction of increase in the number of resolved cases

The duration of procedures in the first 11 months of 2023 remained at a similar level as in 2022, both for important and other cases (8.6 and 0.8 months, respectively).

Courts received and resolved 1,2% less cases in the first 11 months of 2023 than in the same period last year. The number of pending cases increased by 1.4% in the first 11 months of 2023.

30. Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible)⁹, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds¹⁰.

Data below includes criminal offences from the list that is regularly reported to the national Commission for the Prevention of Corruption:

- Violation of the free decision of voters (Article 151 of the Criminal Code - KZ-1),
- Accepting bribes in elections (Article 157),
- Unauthorized acceptance of gifts (Article 241),
- Unauthorized giving of gifts (Article 242),
- Taking a bribe (Article 261),
- Giving a bribe (Article 262),
- Acceptance of benefits for illegal mediation (Article 263),
- Giving gifts for illegal mediation (Article 264),
- Abuse of official position or official rights (Article 257),
- Damage to public finances (Article 257.a),
- Unprofessional work at work (Article 258).

The data on final cases in the period from 01/01/2023 to 11/30/2023 with at least one offence from the list above:

- Cases final: 50; of those 7 convictions, 4 acquittals and 39 other decision. Total number of persons convicted: 8 (all of them were sentenced to a suspended prison sentence).

Source: inquiry to the information system for monitoring criminal proceedings (i-K).

44. Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

The Supreme Court has been involved in the debate on amending the Constitution since April 2023. The Supreme Court believes that the current proposal to amend Article 131 of the Constitution regarding the composition of the Judicial Council does not contain sufficient safeguards against politicization. While the recommendation on 2/3 majority vote for the appointment of judges is observed, the other four safeguards envisaged by the Venice Commission are not, namely, firstly: a guarantee that the selection of non-judicial members will be an open and transparent process (also with a clear determination of the proposers), secondly: stipulation that parliament representatives may not be Judicial Council members, thirdly: stipulation that non-judicial members may not be politically active and fourthly, that safeguards in the nomination process are as important as safeguards in the election process of non-judicial members of the Judicial Council. The Supreme Court therefore proposed to the Constitutional Commission to request the Venice Commission's opinion on the appropriateness of the proposed amendments to Article 131. (please refer also to Q2)

45. Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'12/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

In the framework of the Supreme Court a sector for legislation had been established to prepare responses to proposed legislative changes. In November 2023, the Supreme Court sent to the Ministry of Justice an extensive set of comments regarding the proposed changes to the judicial legislation (draft of the new Courts Act and the Judicial Service Act).

The most important change is the planned introduction of a unified first instance judge (currently: local and district judges), which, according to the Supreme Court of the Republic of Slovenia, would significantly contribute to equalizing the workload of judges and enable more efficient court operations.

In 2023, the Supreme Court notes shortcomings in the preparation or coordination of legislative proposals. (Too) short deadlines make it difficult to prepare appropriate substantive responses to proposed solutions, which often involve demanding substantive issues. Also the Supreme Court finds that the proponent of the laws inadequately addresses the financial consequences of the proposed legislative changes. The proposed legal changes related to the operation of the judiciary are not reflected in a corresponding increase in the budget for the judiciary. In terms of content, in 2023 it is possible to point out the tendency of the proposer of the laws to expand the jurisdiction of the judiciary in the administrative field and to omit the instance level in the administrative procedure in phases before review by judiciary (the administrative judiciary is otherwise burdened with unresolved cases or lengthy procedures and was designated as a priority area in the Opening of the Judicial Year 2023).

53. Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

The Slovenian Courts Act regulates only a few procedural rules for any court to request a preliminary ruling from CJEU. It states that any court may issue such a decision, but that the Supreme Court is obliged to do so under the rules of EU Law. In such cases the proceedings are suspended, and there is no legal remedy against such a decision taken by any court. The copies of preliminary questions are to be forwarded to the Supreme Court for its information.

The decision to request a preliminary ruling forms a part on the judicial evaluation of legal questions of the case, meaning that there is no special procedure that would distinguish the issues arising from EU Law from those from the national law. The proposal of the party for the Supreme Court to request a preliminary ruling is therefore evaluated not as a separate procedural request

that has to be decided in a separate decision of the Court, but as one of the legal arguments submitted by the parties. Parties have the possibility to state that the Court should request a preliminary ruling from the CJEU, but other than that there are no differences in the subsequent procedure from the case if the matter was raised ex officio by the Court itself. The only difference is that the Court would give its reasoned arguments about the parties' proposal in the motivation of the Court's final decision (why the case was or was not referred to the CJEU), whereas it would not always disclose all the ex officio questions raised in the proceedings, especially if the matter was not referred to CJEU.

If the request has been raised by a party in appeal or revision or is raised ex officio by the Supreme Court (when deciding on the merits of the case) and if the justice rapporteur is of the opinion that a question should be referred to the CJEU, a first draft of the request is presented to three justices, who decide whether a request shall indeed be made to the CJEU. Under just recently adopted amendment of the Act on Administrative Dispute, the Supreme Court will decide on revision (and whether the request shall be made to the CJEU) in a panel of five judges. In all cases, after the decision is made, the justice rapporteur prepares final formulation of the request for a preliminary ruling. Reasons for rejecting a parties' request for a preliminary ruling are (as mentioned above) given in the final ruling of the case. The decision to make a request is published on the Supreme Court's website. The procedure is slightly different in cases requiring leave to revision when the Supreme Court first has to adopt a decision to grant such leave or not. Decision to grant a leave to revision is taken by three Justices.

Parties are not further involved in the decision-making process in any case. There are no specific time frames proscribed for handling claims to request preliminary rulings. To determine whether there is a need to make a request for a preliminary ruling, the Supreme Court conducts an analysis of the relevant provisions of EU Law and examines the jurisprudence of CJEU in relevant cases (mainly on the Curia website (incl. JNEU), but also in scientific texts, also in other Member States). It is also always examined whether there are already any similar pending cases before CJEU regarding questions for preliminary rulings from other States. Normally, it is not considered to be necessary to specifically examine how (all, many) other States interpret the relevant provisions in order to be able to assess whether the issue is *acte éclairé/acte clair*, but it is common to look at the practice of at least some of other Supreme Courts, if it is accessible.

The way the questions in a request for a preliminary ruling are formulated depends on the given case. The questions are usually formulated as precisely and concisely as possible, but there are always reasons given in the request that describe the wider context of the case and questions submitted, so that CJEU can give a broader answer if it deems necessary.

59. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)

In 2023, additional animations regarding most important court procedures were published online by the Supreme Court. The animations aim to offer the most basic information on these procedures to the general public; they are prepared according to the user-centric approach, in plain language and a friendly tone. The animated series is also subtitled in English, minority languages and sign language and can be viewed on the informative webpage <https://nasodiscu.si/> and Youtube channel of the Supreme Court (<https://www.youtube.com/@SupremeCourtSLO/playlists>). Animations were prepared as a part of the Procedural Justice Project within the Effective Justice Operation, financed from the funds of the European cohesion policy. Individual courts organized open-door-day (the practice was also presented in Good practices in the Judiciary conference in december 2023).

In 2023 the Supreme Court organised the roundtable on threats and opportunities of the use of AI in the judiciary. The debate included the vice-president of the Council of Europe Committee on AI, a criminal judge, head of the Specialised department at the District Court in Ljubljana that has lead the speech-to-text conversion project, a lawyer, specialised in IT and business law and the editor in chief of the Slovenian Press Agency and was lead by the head of the Public Relations Office. The video is publicly available on the web-site of the judiciary: https://www.sodisce.si/sodni_postopki/objave/2023120708593922/na-vrhovnem-sodiscu-o-priloznostih-in-pasteh-uporabe-umetne-inteligence-v-sodstvu/

The Supreme Court plans on organising such roundtables on current issues also in 2024, focusing on relevant and contemporary issues.

The Supreme Court has prepared a guide for courts that wish to organise open days in courts. The guide is available to all courts and has been used successfully. In the District court in Koper in 2023, several open days were organised, including high school students (with almost 400 persons visiting courts). The approach was presented in december 2023 at the yearly Conference of best practices in courts.

Slovenian courts cooperate with all three law faculties in Slovenia. In 2023 the Supreme Court hosted meetings with students from each of the three law faculties with the Supreme Court Judges, and signed an agreement on the further cooperation with one law faculty. Individual students also gain hands-on-legal experience in legal clinics.

Additionally, courts participate in an internationally funded project called Legal walks, where high school students visit different institutions to have a better understanding of legal procedures (e.g. for criminal law they visit a moot court procedure with real judges, prosecutors and attorneys and also a prison).

In 2023 one course of the HELP programme was held, namely »Reasoning in court decisions and human rights«. The introductory seminar took place on 25 April 25 in Ljubljana, was attended by 29 Slovenian judges and prosecutors and approx. 30 Croatian participants.

Recommendation: »...ensure a track record of investigations, prosecutions and final judgments in corruption offences, including in highlevel cases««

In 2023, activities have been undertaken to disburden the District Court of Ljubljana (the largest first instance district court) in criminal area. On the court level:

- preparation of the programme for resolving of older criminal cases,
- organisational measures to equalize the burdening of pending cases between judges on criminal field and between law fields.

On the level of the Supreme Court/judiciary:

- organization of meetings to discuss the problems and possible solutions with courts and the Judicial Council,
- analysis on the caseload and human resources on criminal field for all district courts in order to assess the possibility of redistribution of pending cases to other, less burdened courts,
- approval of additional (8) judicial posts for the court in question,
- readiness of some courts to help with judges, request for additional courts to assess the possibility to help with judges.

See also Q30.