

SVK-2014-2-002

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 11-12-2013 / e) PL. ÚS 99/11 / f) Judges' remuneration IV / g) *Zbierka zákonov Slovenskej Republiky* (Official Gazette); *Zbierka nálezov a uznesení Ústavného súdu Slovenskej Republiky* (Official Digest) / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

[04.07.04.06](#) Institutions - Judicial bodies - Organisation - **Budget**.

[05.03.13.14](#) Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - **Independence**.

Keywords of the alphabetical index:

[Judge, remuneration, change](#) / [Independence, judiciary](#) / [Austerity measures, economic crisis](#).

Headnotes:

The acceptance that judges may be penalised because of the government's economic policy or the legislation responsible for budget management incorporates an arbitrary and non-foreseeable component into their remuneration. This is contrary to the principle of judicial independence and the principle of rule of law. «Penalising» for the situation of public finances must be distinguished from an acceptable temporary freeze of remuneration.

Summary:

I. Against the background of austerity measures due to the global economic crisis, the Parliament adopted a law which made as much as 15 % of the remuneration of constitutional authorities directly dependant on the amount of the budget deficit, to motivate the authorities to implement reasonable policy. Judges' remuneration was also calculated this way. This was challenged both by a group of opposition Members of Parliament and the Prosecutor General (not by the judges themselves).

They argued that the amendment was out of line with the principle of judicial independence (Article 144.1 of the Constitution), with the independence of judges themselves (Article 141.1 of the Constitution) and the principle of a state governed by the rule of law. At the beginning of the case the Court suspended the relevant provision to prevent reduction of remuneration.

II. The Court began by observing that since the 1990's, judges' remuneration has been a lively topic for debate, in constitutional case-law and for legislation and academia, and not only in post-transition countries. It is the task of social scientists to answer questions about how this relates to the economic situation, to solidarity in society on the one hand and to judicialization and the emancipation of the judiciary on the other.

It then cited numerous UN and Council of Europe-based recommendation documents which suggest stability in the realm of judges' remunerations (such as the Magna Carta of Judges and the draft *amicus curiae* brief for the Constitutional Court of «the Former Yugoslav Republic of Macedonia» ' CDL(2010)114-e). It emphasised, however, that its reference norm was the Slovak Constitution; these documents were at most «soft law».

In the comparative part citing the US Constitution, the Court stated that in the Slovak Constitution there is no explicit guarantee of judges' remuneration. It then cited Czech case-law based on a slightly more explicit constitutional guarantee. Although the Polish Constitution has a more explicit guarantee in Article 178.2 than the Slovak Constitution, its Court has accepted modifications of judges' remuneration (K 12/03, K 1/12, K 13/94, P 8/00). Finally the Court cited criticism of the Canadian decision *Provincial Judges Reference* [1] [1997] 3 S.C.R. 3 by Canadian academics.

The Court went on to summarise its previous case-law which originally stated that judges' remuneration is a sub-constitutional, not a constitutional matter (PL. ÚS 52/99). Later the Court included it within the scope of judicial independence (PL. ÚS 12/05), whereby on the one hand it accepted a temporary freeze on remuneration because of austerity measures, but on the other hand it did not accept arbitrary repeated postponing of the so-called 14th salary. It cited pre-war case-law from the first Czechoslovak Republic, highlighting the sensitivity of this topic.

The Court commented that from the comparative perspective Slovak judges have solid remuneration (CEPEJ report). However the acceptance that judges may be «punished» because of the government's economic policy or the legislation responsible for budget management incorporates an arbitrary and non-foreseeable component into their remuneration, and this is contrary to the principle of judicial independence (Article 144.1 of the Constitution) in connection with the principle of rule of law (Article 1.1 of the Constitution). (Thus, the unconstitutional part is not the amount of remuneration itself, but the idea of the Law. It is exactly the opposite situation to that in the nurses' salary case – PL. ÚS 13/2012, *Bulletin* 2014/1 [[SVK-2014-1-001](#)]). Besides, the Court considered judges' remuneration as a part of objective, institutional constitutional law, not as their subjective right.

III. The President of the Court (sharply) dissented from the decision. In addition to criticising formal aspects of the decision, the President stated that the Court should have decided that both single and repeated salary freezing is also unconstitutional. Judges' remuneration should be considered as a guarantee of individual independence, including legal certainty, not just part of institutional, objective guarantees. One judge based the dissent on historical truths on Federalist Paper 9. Another judge put the accent on the rule of law principle and also criticised the acceptance of salary freezing. One judge expressed a concurring opinion, arguing that overriding of old 1990s case-law should have been clearly declared and new rules for legislation outlined.

Cross-references:

- no. 24846, 18.09.1997, *Bulletin* 1997/3 [[CAN-1997-3-005](#)];
- no. PL. ÚS 13/2012, 19.06.2013, *Bulletin* 2014/1 [[SVK-2014-1-001](#)].