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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON AMENDMENTS TO SEVERAL LAWS
RELATING TO THE SYSTEM
OF SALARIES AND REMUNERATIONS
OF ELECTED AND APPOINTED OFFICIALS
(DRAFT AMICUS CURIAE BRIEF
FOR THE CONSTITUTIONAL COURT
OF “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”)**

by

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**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

INTRODUCTION

1. The Constitutional Court of the Former Yugoslav Republic of Macedonia, by letter from its President dated 21 September 2010, requested the Venice Commission to provide an amicus curiae opinion concerning a case initiated by own initiative of Constitutional Court, on the system of salaries and remunerations of elected and appointed officials in the Former Republic of Macedonia, including the judges of the Constitutional Court, as well as officials of the judiciary (judges of ordinary courts, public prosecutors, members of the Judicial Council, and Prosecutors Council).
2. The Constitutional Court submitted the following two questions to the Venice Commission:
 - Whether the rule i.e. prohibition on reduction of judges salaries is valid in times of crisis?
 - If yes, whether this prohibition applies to the judges of the Constitutional Court?

BACKGROUND

3. The Assembly of the Republic of Macedonia adopted the following Laws:
 - Law Ammending and Supplementing the Law on Salaries and other Remunerations of Elected and Appointed persons in the Republic of Macedonia
 - Law Ammending the Law on the Salaries of the Members of the Judicial Council of the Republic of Macedonia
 - Law Ammending the Law on the Salaries of Judges
 - Law Ammending the Law on the Salaries of Public Prosecutors

 - Law Ammending the Law on the Salaries of the Members of the Council of Public Prosecutors of the Republic of Macedonia.
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4. The last four Laws provide that the base on the Salaries of the Members of the Judicial Council, Judges, Public Prosecutors and Members of the Council of Public Prosecutors shall be in the ammount of 25,726.00 denars and shall be implemented with December 2011 inclusive.
5. The Law Ammending and Supplementing the Law on Salaries and other Remunerations of Elected and Appointed Persons in the Republic of Macedonia provide, that Article 2 of that Law shall be changed and reads as follows: "The base set down pursuant to Article 11 of the Law on Salaries and Other Remunerations of Representatives in the Assembly of the Republic of Macedonia, in the amount of 23,153.00 denars dshall be implemented with the payment of the salaries for December 2011 inclusive, and a base in the amount of 25,726.00 denars shall be implemented starting from January 2012."
6. The application of these provisions is a reduction of the base for salary calculation for officials elected by the Assembly of the Republic of Macedonia, including the Judges of the Constitutional Court. The result of that ammendment are reduction of salaries of the Judges of the Constitutional Court for 10%. At the same time, the salaries of Jugdes of the ordinary Courts, Public Prosecutors, Members of the Judicial Council and Council of Prosecutors not reduced and quaranteed until December 2011. The explanation by the legislator is that the salaries of this category of public officials may not be reduced on any ground, because of the quarantee of judicial independence.

Question 1: Whether the rule i.e. prohibition of reduction of judges salaries is valid in time of crises?

7. The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from outside interference [CDL-AD (2010)004].

Likewise, the documents developed by international institutions point out that the independence of judges must be linked with judges remuneration and other material and financial guarantees.

The UN Human Rights Committee in General Comment No 32 has indicated that member states should take specific measures guaranteeing the independence of judges and protecting judges from any form of political influence in their decision-making, inter alia, by establishing judges remuneration. (International Covenant on Civil and Political Rights, Article 14, General Comment No.32, para 19). The Council of Europe Committee of Ministers Recommendations also provides: "Proper conditions should be provided to enable judges to work efficiently and, in particular, by ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities" [Recommendation No.R(94) 12, Principle III, para. 1. b].

Article 13 of The Universal Charter of the Judge provides: "The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on the results of the judge,s work and must not be reduced during his or her judicial service." (Universal Charter of the Judge, para. 13). The analogous provision provides Judges Charter in Europe "judicial salaries must be adequate, to ensure that the Judge has true economic independence and must not be cut at any stage of a Judges service. (Judges Charter in Europe, para. 8)

In some countries the prohibition to decrease the remuneration of judges is expressly set out in the constitution. For example, Article 3, Section I of the United States of America Constitution contains a direct prohibition to diminish a judges remuneration during his term in office.

The Constitutional Courts or other institutions implementing the constitutional supervision, have established that in a situation when a state experiences financial difficulties, the judges salaries must be especially protected against excessive and adverse fluctuations. (Judgement of 18 February, 2004 by the Constitutional Tribunal of Poland). The Constitutional Court of the Republic of Lithuania also noted that any attempt to decrease judges remuneration or social guarantees or decrease the budget for the courts should be interpreted as an infringement upon the independence of the judiciary. (Judgement of 6 December, 1995 by the Constitutional Court of the Republic of Lithuania). The Constitutional Court of the Czech Republic noted that the judge has inalienable rights to unreduced salary. (Judgement of 15 September, 1999 by Constitutional Court of the Czech Republic).

The same time the Constitutional Court of the Republic of Latvia in a Judgement of 18 January, 2010 noted that "Judges are also citizens, and their special status and role does not grant them immunity in situations, when the state, in dealing with a complex situation, passes decisions with regard to its population. ... under special conditions – in a situation

4

of economic recession, when the state is forced to introduce a general decrease of remuneration in the institutions funded by the state budget, it is possible to derogate from the principle prohibiting the decrease of judges remuneration."

Other constitutional courts have also concluded that the prohibition to decrease judges remuneration cannot be absolute. The Constitutional Court of Slovenia has pointed out that "The protection of judges against a reduction of their salaries is namely not absolute; it does entail, however, that the reduction of judges salaries is justified only in truly exceptional instances, on the basis of review of the concrete circumstances in each individual case." (Judgement of 11 December, 2009 by the Constitutional Court of Slovenia.) The Constitutional

Court of Lithuania also indicates that “the decrease of salaries is prohibited, unless exceptional conditions are present.” (Judgement of 15 January, 2009 by the Constitutional Court of the Republic of Lithuania.)

The conclusion, therefore, is that reduction of judges salaries is justified only under special conditions, when every citizen assumes a proportional responsibility for eliminating the harsh consequences of the crisis, but the state officials, including the judges, act in solidarity with the inhabitants of the state.

Question 2: If yes, whether this prohibition applies to the judges of the Constitutional Court?

8. The status of the Constitutional Court of Macedonia regulate Chapter IV.” Constitutional Court of Macedonia “but status of ordinary courts – part IV “ The Judiciary “of the ChapterIII. “The Organs of State Authority”of the Constitution Republic of Macedonia. Some other constitutions also provide separate chapters for constitutional court and ordinary courts (see, for example the Constitution of the Republic of Lithuania and Constitution Republic of Poland).
9. The Article 108 of the Constitution of the Republic of Macedonia provide that “The Constitutional Court of the Republic of Macedonia is a body of the Republic protecting constitutionality and legality.” It,s mean that an institution of state power, which is named as court in the Constitution, may not be considered as anything other than a court or a judicial institution.

The conclusion, therefore, is that if legislator was guided by the principle that salaries of judges and prosecutors may not reduced even in crisis situation, than the same principle must be applied for judges of the Constitutional Court of the Republic of Macedonia.