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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.*

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

One of the guarantees of judicial independence is the stability of conditions of judges' remuneration. Likewise any guarantee of judicial independence, the mentioned guarantee is not an end in itself: it pursues the aim to ensure proper, qualified and impartial administration of justice, realization of the right to fair trial. The protection of judges against the reduction of their salary is not absolute and, conditioned with the social-economic nature of the mentioned guarantee, situations dictated by the economic conditions are possible in a rule of law and social state, when the temporary derogations from the guarantee of stability of judges' remuneration become necessary. In case of economic crisis, the reduction of the judges' salaries on the basis law may not be qualified in itself as a violation of the constitutional principle of independence of judges. The issue is that fair balance must be ensured between the stability of conditions of judges' remuneration and a principle of social justice - one of the essential values in rule of law and social state. This idea is particularly expressed in the decision of the Constitutional Court of the Republic of Latvia of 18 January, 2010, in the decision of the Constitutional Court of the Republic of Lithuania of 15 January, 2009 and in the decision by the Constitutional Court of Slovenia of 11 December, 2009.

From the perspective of the criteria of assessment of fair balance, the Committee of Ministers' Recommendation (94) 12 of 13 October, 1994 On Independence, Efficiency and Role of Judges, Principle III, Point 1.b is worthy to mention according to which the remuneration of the judges shall be commensurate with the dignity of the profession of a judge and the burden of the judge's responsibilities. Similar approach is enshrined in the Constitution of the Republic of Poland¹. The adequacy of remuneration of a judge has not only quantitative (expressed in money), but also a qualitative aspect expressed in resolutions emphasizing the dignity of the judge, the stability of his office and the independence of his judgments². Consequently, in the process of reduction of the judges' salaries dictated by the economic crisis, a proper attention shall be paid to the fact whether a remuneration commensurate with the dignity of a judge's profession and burden of responsibility continues to be ensured. If the reduction does not take into account and does not comply with the mentioned requirement of adequacy of remuneration, the essence of the guarantee of the stability of conditions of judge's remuneration is deteriorated to a degree, that the basic aim, pursued by the stipulation of that guarantee, i. e. proper, qualified and impartial administration of justice, realization of right to fair trial, may be endangered, even up to the danger of corruption, as it has been mentioned by Professor Marisol Pena Torres's amicus curiae opinion.

From the perspective of the criteria of assessment of fair balance, the Report on the Independence of the Judiciary, Part I, Chapter 6, Point 46 is worthy also to mention according to which the level of the remuneration should be determined in the light of social conditions in the country and compared to the level of remuneration of higher civil servants. In accordance with this approach, while assessing fair balance in each concrete case it shall also be taken into consideration whether the reduced remuneration corresponds to the social conditions and whether the reductions dictated by the economic crisis have occurred in all other branches of power likewise.

Hence, in case of emergency economic conditions, the possibility of reduction of the judges' salary may be permissible, if:

- it is justified by the principle of social justice, and a fair balance exists between the reduction of salaries and the principle of social justice,

1 Article 195, Paragraph 2 of the Republic of Poland: "Judges of the Constitutional Tribunal shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of the office and the scope of their duties".

2 Decision of the Constitutional Tribunal of the Republic of Poland of 4 October, 2000. CODICES-POL-200-021

- the reduction is exclusively directed by the purpose to overcome the situation caused by economic emergency,
- the reduction is made by law, and legitimacy of the reduction is reasoned from the view point of ensuring the solution of the economic problem,
- the requirement, pursuant to which the remuneration shall be commensurate with the dignity of the judge's profession and the burden of responsibilities, is nevertheless followed,
- the reductions of salaries conditioned with the economic crisis have occurred in all other branches of power likewise,
- the given process is conducted under the control of the constitutional review body and the assessment of fair balance is conducted by this body.

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

All the above-mentioned positions are relevant also to the judges of constitutional courts.