Answers from The Slovenian Association of Judges

1) Does your country’s judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

The Slovenian judiciary does not include prosecutors. Prosecutors have their own organisation and do not benefit from the same guarantees of judicial independence as judges. In their professional activity they should be independent, but otherwise they have to protect the State's (executive arm's) interests.

2) How would you define „judicial independence“ in the context of the political and social system of your country today?

From the professional point of view, each judge must act in accordance with the position of a holder of state authority and in a manner that is expected of the most citizens. He/she fulfills his/her (hereinafter he) professional mission with carefulness, conscientiousness, commitment and professional attentiveness. At the same time, through irreproachable conduct, which he ensures with controlled behaviour, uprightness and by protecting everyone's personal dignity, he ensures respect for personal ethical rules. A judge's professional and personal reputation is a guarantee of public confidence in an independent judiciary.

A judge must be capable of exercising the judicial function independent of social, economic, political or other external pressures and, at the same time, must also be independent from other judges and members of the judicial and legal administration. A judge may not allow any encroachment on independence, thus including those that threaten his status or position (status independence).

A judge must be independent from any kind of direct or indirect instructions, influences, incitements, threats, pressures or interference in the process of a judge's decision making irrespective of from where or for what reasons such impermissible encroachments derive. The procedural nature of relations between higher and lower courts, which can appear in the opinions or instructions of higher courts adopted on the basis of suitable legal means, do not threaten a judge's functional independence.

The functional independence of the judiciary is restricted by the principles of constitutionality and legality. This means that the judiciary does not determine its own competencies and that judges, in reaching decisions, must respect the valid constitutional and legal provisions and generally recognised legal principles such as the principles of justice and humanity. Compulsory normative boundaries that each judge must respect are thus determined.
The principle of a judge's internal independence also must be protected in such a way that in the process of reaching a decision, a judge uses legal standards on the basis his own conviction, which means that he interprets law in a manner which respects the prevailing understanding of law, legal tradition and established understandings of legal science. However, the principle of a judge's internal independence may not be understood in such a way that a judge may, by distorted use of law, inappropriately deal with participants in court proceedings or base decision which unfairly benefit, harm or give them advantage in proceedings.

3) **Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?**

1. Security of tenure as judge for lifetime (or until certain age), guaranteed by Constitution.
2. Constitutional guarantee/other constitutional provision to ensure that the executive or other organs of the state cannot interfere with a judge's work or decision and/or any trials.
3. Having a body independent from other organs of state (e.g. Judicial Council) for: a) deciding on appointment to judicial office; b) giving opinion on budget for the judiciary and opinions about law proposals, concerning judges and courts, unfortunately opinions are not binding for the Parliament; c) deciding on promotion; d) considering ethical/disciplinary problems and procedures; e) judicial training – Judicial training centre was established but as a directorate within the Ministry of Justice (JC has one member in the deciding board).
4. Budget for court/judicial administration that is free from interference by the executive/legislature: should be -is a great wish, not reality.
5. Administration of the courts/judges that is run by judges or a service that is independent of executive/legislature: should be, but in the amended Law on Courts is foreseen that the court directors (court clerks in the USA) would be nominated by the minister of justice.
6. Laws ensuring judges have freedom of expression and association.
7. Independent bodies (such as Council of Europe, UNO) regard the judges/legal system in a country as independent and or free from corruption. (They have criteria and assess and compare almost all countries).

4) **Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why?**

1. Public opinion/the media/the legislature regards the judges/legal system in its country as independent and/or free from corruption.
2. Non governmental organisations (NGO) – international (Amnesty international, Helsinki monitor, Human rights watch...) or national (Association for repair a wrong,...).
3. Ombudsman's yearly report to the Parliament (?)
5) If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

The three most important criteria for indicating judicial independence in the Republic of Slovenia are:

1. The tenure of a judge until the age of 70, guaranteed by the Constitution.
2. Having a body independent from other organs of state – Judicial Council, deciding on appointment, promotion and other rights or disciplinary problems and on dismissal of judicial service.
3. Judge's remuneration should be guaranteed by law or even by the Constitution and commensurate with the dignity of their profession and burden of their responsibilities.

These are the most important criteria to safeguard judicial independence on one side and to ensure a fair trial in reasonable time for each person, appearing in front of the court on the other side.

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