



Brussels, 7 June 2023

Dear President of the European Commission, Ms Ursula von der Leyen,

**We, the undersigned Members of the European Parliament, would like to draw your attention to the recent ruling of the Constitutional Court of the Republic of Slovenia. By a vote of 4 to 1, the court overturned the decision on the temporary partial suspension of the amendment to the RTV Slovenia Act. It is worth noting a separate opinion from one constitutional judge that highlights alarming political interference with the court and certain judges' imposition of an unconstitutional, arbitrary, and politically motivated decision. This decision breaches the constitutional rights of petitioners who submitted the law for constitutional review, specifically the members of the current programming council of RTV Slovenia.**

The proposed amendment to the RTV Slovenia Act by the current Slovenian Government, led by Robert Golob, would significantly alter the structure of the Programming council of the Slovenian public broadcaster RTV Slovenia. This amendment would grant the ruling party and its proxies unchecked ideological control over the public broadcaster and its programming content. Several prominent Slovenian legal experts have deemed the law unconstitutional, and its constitutionality is currently under review at the Constitutional Court of the Republic of Slovenia. The severity of its unconstitutionality led the Constitutional Court to suspend the law in February 2023 until a final decision is reached, as it would terminate the mandates of the petitioners (programming council members) immediately upon implementation.

Since February, the constitutional court judges have faced severe political pressure from the current government and ruling coalition parliament members to "make the right decision." Unfortunately, this pressure resulted in a legally bewildering and unprecedented ruling that revoked the suspension and put the law into effect without the judges reaching a final decision on its constitutionality. The court claimed to be at a stalemate and incapable of making a conclusive ruling, leading to the revocation of the suspension and the termination of the mandates of the current programming council members of RTV Slovenia.

**Today, a separate opinion from one constitutional judge has shed light on the entire proceedings, revealing that the ruling was based on falsehoods and that individual constitutional judges orchestrated a complex scheme to steer the proceedings in favor of allowing the obviously unconstitutional law to take effect.**

The claims made by the constitutional judge in question warrant a thorough investigation by EU institutions and the international community. If these claims are true, they undermine not only the fundamental principles of the rule of law but also the principles of democracy.

According to Constitutional Judge Rok Svetlič, the main reason behind the decision to revoke the suspension is the false claim that obtaining five votes for a substantive decision was unattainable with the current composition of the court. However, just three days before the decision, one version of the compromise draft received support from five judges, and another version even garnered support from six judges. These versions were still under consideration on the day of the vote. Despite the absence of one judge, an unusual opinion emerged that



deemed all compromise versions unworkable and any further pursuit of a substantive solution pointless. One judge, with unwavering determination to lift the suspension, demanded an immediate vote on the lifting of the temporary suspension.

Prior to the vote, there was no discussion, and the rapporteur did not present the draft decision upon which the judges decided. The vote took place abruptly. Consequently, Constitutional Judge Rok Svetlič requested, in accordance with the Rules of Procedure of the Constitutional Court, that the following text be included in the minutes, which he read before the decision-making process:

"Constitutional Judge Rok Svetlič, before voting, I would like to remind my respected colleagues of the following:

1. The Constitution, Constitutional Court Act, or any other law does not provide a basis for this decision. Nor has there been an established judgment of the Constitutional Court that would allow it. While a single case of lifting a temporary suspension occurred in favor of the petitioners, countless other cases of temporary suspension were not subject to ex officio intervention by the Constitutional Court. This demonstrates the opposite established judgment of the Constitutional Court: that interference with the decision on suspension is not permissible.
2. By revoking the temporary suspension of petitioners whose term of office has expired ex lege, the Constitutional Court renders judicial protection impossible, which is a constitutional right.
3. By revoking the temporary suspension at this stage of the proceedings, the Constitutional Court violates the petitioners' right to make a statement, which is a constitutional right.
4. The duty of the judicial branch of government is to control and limit the executive and legislative branches of government."

Despite this plea, the voting proceeded. Immediately after the decision was voted upon, the Constitutional Court publicly communicated it, deviating from the norm. This haste prevented the simultaneous publication of dissenting opinions, which are an integral part of the Constitutional Court's message. The judges also lacked time for deliberation, including the potential revocation of the decision. Dissenting opinions primarily serve as an appeal to the remaining judges to reconsider the arguments of the minority judge.

After the publication of the decision by four constitutional judges, who overturned the decision made in February by five constitutional judges to postpone political changes within the entire management of RTV Slovenia until the constitutionality of the changes was judged, four of them hurriedly disregarded the dissenting judges' arguments in a separate opinion.

Furthermore, Judge Svetlič emphasizes that the petitioners' right to judicial protection was severely violated. Their mandates expired without an individual decision, denying them the opportunity to seek legal protection in regular courts. Moreover, the challenged amendment to the RTV Slovenia Act does not allow for any legal remedies. The petitioners had no means of judicial protection other than the limited protection available before the Constitutional Court. The adoption of this decision has deprived them of their constitutionally guaranteed judicial protection.



Additionally, the judge highlights the political pressures that the judges faced since the initial suspension of the Act. Just before the session on February 15, 2023, the Government proposed a delayed public hearing to facilitate the final formation of the new RTV bodies in the following days, thus circumventing a possible temporary suspension, which the Constitutional Court had previously decided. This maneuver would have achieved the same result as the lifting of the temporary suspension. Furthermore, both the Government and the National Assembly engaged in tactics to eliminate judges, a situation that had never occurred before. Numerous offensive statements were made about the Constitutional Court, and assurances were given that the authorities would achieve their goals by any means necessary. The toxic effect of this attitude toward the Constitutional Court was evidenced by the celebration of some pro-Government RTV employees when the suspension was lifted. Public speeches expressed enthusiastic "victory" in a difficult "battle" and gratitude to all those who "helped" achieve this victory. Such rhetoric is deeply troubling. They celebrated the implementation of a law whose constitutionality had not been determined and may never be, as the judges claim to be perpetually deadlocked. How can anyone overlook the fact that court decisions are not a "fight," and the success of one party does not equate to "victory"? This is not about anyone's victory but about the erosion of democratic institutions, concludes Svetlič.

The claims made by the constitutional judge are severe and clearly indicate the politicization of the highest levels of the judiciary branch and an apparent infiltration of the executive branch of the government into judicial matters. I am deeply concerned that the fundamental principles of the rule of law in Slovenia are at serious risk. I urge the European authorities to initiate a thorough investigation into the Slovenian Government, both the executive and judicial branches, and to address these concerns in the next edition of the European Commission's Rule of Law report.

Sincerely,

Romana Tomc MEP  
dr. Milan Zver MEP  
Franc Bogovič MEP