CRCE Briefing Paper

***How Communist is the Judiciary in Slovenia?***

**A Survey**

**By**

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The Constitution of the CRCE requires that its Trustees and Advisers dissociate themselves from the analysis contained in its publications, but it is hoped that readers will find this study of value and interest.

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INTRODUCTION

The survey initiated by the Centre for Research into Post-Communist Economies was intended to be a pilot scheme for collection of data across the region.

There have been indications that the judiciary has not transformed as quickly as expected and this is a blow to democracy and the rule of law. The drive during the transition of former communist states was focussed on constitutional matters, institutional development, and economic changes.

The rule of law is very important to both foci and quicker and better success could only have been achieved if this had been at the forefront.

Independence of judges is vital to the process and it appears that weeding out of judges who not only took part in but subscribed to totalitarian regimes should have been more vigorous.

It may be noted that the EBRD (European Bank for Reconstruction and Development) in a working paper in 1999 stated that ‘it is a priori not clear whether legislative reforms produce the desired effect in the absence of far-reaching reforms to legal institutions and the judicial process’. Additionally The World Bank made similar comments in its 2005 report *Judicial Systems in Transition Economies* and says that organisational changes to make courts work well were not included in reform efforts.

Also Alan Uzelac of Zagreb University and Harvard University in his article ‘*Survival of the Third Legal Tradition’, (Supreme Court Law Review (2010)* draws attention to continuing negative practices.

Transparency is also important in the transition and transformation process and therefore it is necessary for the public in a democratic society to know the background of its judges. It was from this position that the survey commenced.

***Curricula vitae and initial appointment of Slovenian judges***

A survey commissioned by the CRCE shows that the judiciary system of Slovenia is, to a great extent, unreformed in its communist structures and mentality. Many justices in the country’s Supreme Court, and the data suggests the same for many other senior judges, have been in office since the days of communist Yugoslavia. They were initially appointed under the previous constitutional order when permanent judicial tenure was not granted. Reconstruction of the biographies of Slovenian judges leads us to believe that at least one judge at the Supreme Court, one at the Higher Court in Ljubljana, and another at the County Court of Kočevje are former members of the Communist Party. Furthermore, at least four other judges in Ljubljana’s Higher Court were initially appointed with the blessing of a communist-run organisation, the SZDL (*Socialistična Zveza Delovnega Ljudstva*, the Socialist Alliance of Working People).

For several reasons, this raises concerns for the independence and professional competence of Slovenian judges. It demonstrates that a comprehensive transition has failed to take place in the justice administration, despite the legal requirement that judges who violated human rights during communism should not be reappointed.

What is more, the fundamental pillars of democratic and free Slovenia still rest on a closed mentality and secretive exercise of public office.

When asked for information of their professional career and public activities, senior judges dismissed the request for publishing their curricula vitae, citing privacy concerns. However, the silver lining, of efforts to delve into the judicial history, is that short curricula have recently been uploaded to the Supreme Court website for presidents of various sections of the Court. The CRCE also sent questionnaires to attorneys across Slovenia in order to sample the legal professionals' take on judicial performance. This method of evaluating the quality of the justice system had little success. The questionnaires could be completed anonymously.

**Transition without lustration**

During democratisation, many post-communist or post-authoritarian states, such as Iraq, adopted legislation aiming to disqualify former state officials implicated in human rights abuses, i.e. lustration. Lustration can have different objectives and employ several policy tools with a varying degree of severity. Among the various approaches taken by countries in transition with regards to *inherited personnel*, Roman David classifies complete bans on certain groups can be classified as a form of 'exclusive systems', which are “based on preventing persons associated with the past regime from holding certain positions in the state apparatus of the new regime”. (see: David, 2011, 'Lustration And Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland').

Slovenia, an ex-Yugoslav republic, did not see the sweeping anti-communist reforms as adopted in Czech Republic or Poland during transition. People active in the previous communist system were allowed to continue their political careers in the newly independent Republic of Slovenia. No laws were enacted to prevent Communist Party members or the secret service UDBA (*Upravadržavnebezbednosti*, State Security Administration) from seeking public office either through election or appointment. No government official or civil servant active in communist Yugoslavia has ever been prosecuted for human rights abuses.

In many ways, communism, communist symbols, and communist nostalgia are still acceptable in Slovenian public life. There were many former communists amongst the post-independence lawmakers; the last president of the Socialist Republic of Slovenia, Milan Kučan, was elected as first president of democratic Slovenia, and the long term prime minister of Slovenia, Janez Drnovšek (he was in power for ten years after democratisation), was the former president of the Yugoslav presidency.

The transition from communism to democracy, therefore, did not make much impact on the political class as there had been no formal or actual lustration.

It seems, however, it was not the lack of legislation but of political will that almost no judge appointed in communist Yugoslavia was barred from entering the Slovenian justice system.

This is despite the legislation on the judiciary, amended in 1998 at the behest of JožePučnik, then an MP, who had been a prominent dissident and organiser of the Slovenian democracy movement. He, himself a former prisoner of conscience, argued that judges who had participated in court proceedings or investigations where basic human rights were violated cannot be allowed reappointment in the new democratic state when their appointments ended. In the communist system, judges were not appointed permanently but only for the period of eight years after which their work was revised. That is, their work continued within the political interests of the communist autocracy. There was no separation of powers in the Yugoslav system, and no checks and balances under the one-party rule. For this reason the Slovenian constitution of 1991 grants permanent judicial tenure as a breach with the old system where judges had been subject to political whims.

It was also necessary to make sure the 'old' judges who might had been complicit in human rights violations did not acquire automatically permanent tenure. For that purpose, the 'Pučnik amendment' was made law by the Slovenian Parliament (*Državnizbor*) and became what is now Article 8 of the Judicial Service Act (*Zakon o sodniškislužbi*). This was to provide legal grounds for precluding such judges from re-entering the justice system.

A well intended rule, Article 8 was nevertheless almost never used. Most judges who held prominent positions in the Yugoslav system were rumoured to having abandoned their plans of appointment to the new Slovenian judiciary, for fear their work would be scrutinised. The institution tasked with spotting the – potential – human rights violators is the Judicial Council (*Sodnisvet*), which under the Constitution nominates judicial candidates to the Parliament. If it found that a candidate was tainted by his or her past actions, it would withhold its consent to his or her candidature.

**Aim and scope of the research**

An obvious conclusion when studying the Slovenian transition is that almost all remaining communist judges were automatically granted permanent tenure. It is hard to imagine that only judges without prior working experience filled the judicial ranks after 1991 whilst all former judges retired. The exact number, and current position, of those former communist judges was unknown and this has been a point of political and ideological contention ever since. Most especially with the controversies surrounding the “Patria” case where former Prime Minister Janez Janša was charged with corruption, found guilty and jailed during the election campaign, only for his criminal conviction to be overturned by the constitutional court. Supporters of Janša, a political prisoner in the late 80s, saw the prosecution as a rerun of communist repression in Yugoslavia and they protested against the “red judiciary”. But counting 'communist' judges is not a goal in itself – it should help understand the application and limits of judicial independence in Slovenia.

A number of comparisons and reports deals with the quality of Slovenian justice, and more particularly with the rule of law. Most notably: the EU Justice scoreboard by the European Commission (which draws heavily on information from the Council of Europe's CEPEJ), the Doing Business report by the World Bank, the Global Competitiveness Report by the World Economic Forum, the Human Rights Report by the US Department of State and the Rule of Law Index by the World Justice Project. These benchmarks give a precious, albeit limited, insight into the independence of judges by measuring judiciary corruption, the general public's perception of judiciary independence, etc. There are also studies on the democratic reforms of the judiciary and development of judicial independence in Slovenia. Examples include those by Dallara, 2010, or Zajc, 2014, which state that the problems related to judicial independence have a historical background (Dallara) and are related to the absence of political competition (Zajc), implying influence of the previous one-party system.

But it was not possible to find any research focusing on the career qualifications of the judicial personnel and the role they played in the transformation of the country’s justice system.

To **understand the role**, played by the rule of law during transition, and more specifically by judicial independence, we conducted a research into the **past professional and public lives of senior Slovenian judges**. The data was to be voluntarily supplied by judges in the form of curriculum vitae, drafted after the curricula vitae of judges at the European Court of Human Rights.

The research included the top judicial echelons in Slovenia: all the judges of the Higher Courts (*višjasodišča*) in Ljubljana, Maribor, Koper, and Celje; of the Higher Labour and Social Court in Ljubljana (*Višjedelovno in socialnosodišče*); of the Administrative Court (*Upravnosodišče*); and of the Supreme Court of Slovenia (*Vrhovnosodišče*).

In Slovenia, courts are divided into courts of general and specialised jurisdiction. General jurisdiction courts are first instance courts (Local and District Courts – *okrajna in okrožnasodišča*), second instance or appellate courts (Higher Courts), and the Supreme Court. Specialised jurisdiction courts of first instance are the Labour and Social Court in Ljubljana and three other Labour Courts; on the second instance there is the Higher Labour and Social Court in Ljubljana; the Administrative Court is also a court of specialised jurisdiction.Judges at first instance courts were not included in the research.

Roughly 200 questionnaires were sent in Slovenian to the judges' official email addresses in early 2016. Categories requested in the CV form were: date of birth; previous judicial positions, legal practice, or business activity; membership in political parties; public offices held previously; publications; education; the judges' activity in the domain of human rights.

Additionally and due to the unwillingness of judges to cooperate in the research, a **questionnaire was formulated for Slovenian law firms** which could illustrate the popular opinion of those dealing professionally with the courts. In the absence of the judicial curricula, it would serve as a back-channel to evaluate the professional competence and independence of judges. Ten questionnaires in English were sent by post from Britain to medium and large law firms and more prominent lawyers in central Slovenia (Ljubljana region), Maribor, and Koper. The questionnaires were to be answered anonymously and returned by post from Slovenia. They inquired about the lawyers' field of work and which court instance they mostly deal with; their opinions on the progress of and trust in the Slovenian justice; on the independence and professionalism of the judges; on the trend in length of proceedings; on how much judges in their work follow the provisions of the Slovenian constitution, of EU law, and of the European Convention on Human Rights; on how much there is respect for human rights among judges; are there inconsistencies in case law; what is the accountability of judges; the ease of influencing judges, whether judges are taking instructions for their work, and whether Slovenian judges are corrupt and in which courts.

**Results: authoritarian secrecy prevails over judicial qualifications**

At first, there was virtually no response to the emails. Only one judge, Vladimir **Balažic**, complied with the request and returned the questionnaire with all the answers. Ironically, he is also the only judge to reveal his membership in the Communist Party. Another judge responded immediately saying he would not participate in the research. One judge wished to have more information about the nature of the research and warned that the questions concern data, which are protected by privacy laws.

A repeated request was made by email to the judges and then also to the presidents of courts. This also did not bear any fruit, except in some cases the presidents explained that the judges received the email with the questionnaire. One of the Higher Courts decided to refer the matter to the Supreme Court which has the authority to instruct lower courts in some matters, including communication with the public.

As the Supreme Court also remained silent, an official request to obtain data on Supreme Court justices was made pursuant to Access to Public Information Act (*Zakon o dostopu do informacijjavnegaznačaja*). Public institutions, including state bodies, must disclose public information which is to be found in a form of document in their possession. Even if they do not hold any such documents, they must reply to the claimant in the legally prescribed period.

The Supreme Court eventually decided to grant limited access to the information requested, claiming it either did not have the information or that it was protected personal data.

Mandatory **bar exam certificates**, **graduate education**, and in some cases post-graduate education of Supreme Court justices was made public, as well as **previous positions in the judiciary** (albeit not all).

The review of the documents obtained, considering the beginning of judicial work, makes it safe to conclude that at least ten Supreme Court judges had been appointed in communist Yugoslavia: Vladimir **Balažic**, Brigita **Domjan Pavlin**, Miodrag **Đorđević**, Anton **Frantar**, Vladimir **Horvat**, Branko **Masleša**, Marko **Šorli** (in the meantime appointed as judge of the Constitutional Court) Janez **Vlaj**, Borut **Vuković**, and Vesna **Žalik**.

The scant information revealed by the Supreme Court and the general refusal of judges to cooperate in the research does not paint an attractive picture of the openness and democratic legitimacy, as viewed by the Slovenian judicial branch. The request to publish their CVs seemed to have been met with a wall, if not conspiracy of silence. It is hard to imagine there was any serious and professional reason for over 200 emails resulting in less than a handful of responses, nearly all of them without substance. The author of this research, then a student of the Ljubljana Faculty of Law, was even contacted by the Faculty’s vice dean saying that judges had asked her to provide more information on the research, since the researcher presented himself as Ljubljana-based law student. So instead of cooperating frankly they decided to equip themselves with more knowledge about the person doing the research and its goals. As if in Slovenia, the individual’s identity and his potentially concealed intentions play a stronger role than the demands of transparency for holders of public office, placed by the constitution at the top of state power. It demonstrates that in-group professional solidarity of judges is of more value than their judicial service.

If judges were more transparent about their career achievements and qualifications, the research could have produced an interesting analysis of educational and professional credentials of the Slovenian judiciary. Such analysis could be useful to policy-makers in the Ministry of Justice for putting special emphasis on certain areas of judicial training, such as making international comparisons.

The muted response, however, provided a powerful impetus to supplement the research with internet queries on judges’ curricula. It soon became obvious that the only thing worth focusing on was the date of their first judicial appointment – judges' CVs are almost never published on the internet, except in some rare instances when the Judicial Council incorporated the candidate's CV into its proposal to the Parliament for judicial elections.

Usually, only the post-independence date of a judge's appointment by parliament can be found online if one googles the judge's name and surname and “odlok o izvolitvi v sodniškofunkcijo” (decision on judicial appointment). But in some cases, it was also possible to discern their pre-1991 appointment, education, and even the extent of the politically-ideological examination they were subject to when appointed.

**Counting communist judges**

* **Supreme Court**

Already from the response obtained by the Supreme Court we can see that a significant number of justices were appointed pre-1991:

Further below are listed justices whose were also appointed in Yugoslavia.

Perhaps in response to the inquiry, the Supreme Court has lately refreshed its website and published short curricula of the justices-presidents of various sections of the Court (opomba). Surprisingly, a more detailed description of the presiding justice, Damijan **Florjančič**, is lacking but his CV was presented by the Ministry of Justice upon his appointment for president of the Supreme Court in 2017 where it is stated that he was originally appointed as judge as early as 1987 to the Basic Court in Koper (Slovenian: Temeljnosodišče v Kopru – designation used in the Yugoslavian system).

He was not the only one to run for presidency of the Court; his counter-candidate Rudi **Štrovs** received media attention and was reported by the daily newspaper *Delo* as having graduated in 1977 and started at the court in Koper a year later which makes it highly probable that he had been initially appointed in Yugoslavia.

That another justice, Nina **Betetto**, was also originally appointed in Yugoslavia can be noted from information on the website of the Slovenian Mediators' Association (*DruštvomediatorjevSlovenije*), where she is listed as trainer. She graduated in 1989 and was appointed judge the same year.

Jan **Zobec**, previously on the Constitutional Court now Supreme Court justice, was appointed in 1981, per the website of the Constitutional Court.

Marjana**Lubinič** passed her bar exam in 1989, and has since worked as 'non-professional' judge and president of the judicial senate at the Court of Associated Labour of Ljubljana (Slovenian: Sodiščezdruženegadela) until 1993.

Janko**Marinko** was appointed as investigative judge in 1989.

Marijan**Debelak** graduated in 1981 but the date of his judicial appointment is not given – generally it does not take ten years for a law school-graduate to become a judge.

Kristina **Ožbolt** was appointed prosecutor in 1978.

Another set of judges are those whose career in the Yugoslav justice system can be assumed by their birth dates. By searching on the internet, a very common pattern appeared regarding the names of judges and their birth dates. From decisions on appointing members of election committees – general elections (judges are obviously highly sought as election committee members) as well as judicial elections for members of court personnel councils (*personalnisvetisodišč*) the name and the birth date of a judge can be reliable connected. Thus we conclude that Supreme Court justice Franc **Seljak** was born in 1960 and Mile **Dolenc** in 1951 which makes it quite probable that they were trained and began their service as judges in Yugoslavia.

During the course of the research, an interesting document turned up on the internet that indicated how the justice system was regulated in Yugoslavia. In the online archived issue of “Javnatribuna”, established originally as “Občinskirazgledi” in 1961 by the SZDL, the decision for appointing two judges of the Basic Court in Ljubljana in 1985 (*Temeljnosodišče v Ljubljani*) is explained under the title “Kadrovskezadeve”, meaning Staffing. One of them was Miodrag**Đorđević**, now justice of the Supreme Court. The appointment was to be decided by the following bodies: the coordination committee for human resources (staffing?) of the municipal board of the SZDL in the area of the Basic Court in Ljubljana, the coordination committee for human resources of the inter-municipal council of the SZDL in the Ljubljana region, and the Basic Court in Ljubljana itself. There were two posts available at the Court for which two candidates applied and a position was taken that both candidates met the requirements with regards to the needs and tasks in the Court.

What does this tell us? To understand the judicial appointment procedure in Yugoslavia, the role and nature of the SZDL has to be explained. SZDL - “Socialistična Zveza Delovnega Ljudstva” meaning Socialist Alliance of Working People, was the communist government's institutionalised vision of the civil society. In it, all social interests were supposed to be represented, including political ones, as long as they agreed with the dominant socialist social order. It was in charge of coordinating the nomination procedures and despite its prominent role in 'coordinating social interests', it is obvious that the most important staffing decisions were taken at the top, i.e. the communist establishment: “it was creating an illusion of democracy, an impression that the people and “political subjects” are creating the staffing policy. In fact, with its committees, councils, and staffing coordination it was concealing the fact that essential matters, including public offices, were decided by a narrow circle of leading politicians at the top of the Party. It assisted in blurring the question of direct responsibility or diffusing it onto numerous bodies which were discussing the matter.

Now, with a clearer picture of the role of SZDL, the 'Javnatribuna' document provides a firm basis to claim that candidates were vetted and had to be politically approved by the various bodies of the SZDL. Argumentum a contrario suggests that the candidates were unlikely to get appointed as judges if they held unfavourable views of the communist-led SZDL or if their actions were contrary to the aims and goals of SZDL.

* **Higher Court in Ljubljana**

Anton **Panjan** was elected in 1990, according to an article in the daily Dnevnik. He is also the only judge at the Higher Court in Ljubljana whose pre-1991 appointment information is available online.

Then there are the judges whose birth date suggest their pre-1991 judicial career.

According to the decision on appointing members of the election committee from 31.2. 2004, Karmen **Ceranja** was born in 1965.

For judge Tanja **Kumer**, the same conclusion applies as in the case of Supreme Court justice Đorđević as they were both appointed at the same in 1985, with the blessing of the SZDL. Judges Magda **Gombač Gluhak** and Vera **Vatovec** were similarly vetted and appointed in 1985: their nominations were approved by the same bodies as in the case of justice Đorđević and judge Kumer. Tadeja **Dobrovnik Zima** (remarried, now Tadeja Zima-Jenull) was born in 1958 and appointed in 1984, also in coordination with the SZDL.

Martina **Erzin** was born in 1966. Polonca **Marjetič Zemljič**, born in 1962.

According to “Našakomuna – delegatskapriloga” (“Our commune - representatives' paper”) where the assembly of the Ljubljana Vič-Rudnik municipality in November 1981 judge Mitja **Šinkovec**has been a member of the Communist Party since May 1980,

and was to be appointed as judge by the representatives assembled. The commission for elections of the municipality concluded that he and another candidate complied with the specifications tendered and were “morally-politically and personally suitable to perform the work and tasks of the Basic Court in Ljubljana”. Again, the nomination procedure was to be decided by the staffing committees of the inter-municipal council of SZDL Ljubljana and in cooperation with all municipal conferences of the SZDL and the Basic Court of Ljubljana.

Marjeta **Švab Širok**, born in 1964.Igor **Mokorel**, born in 1953.Alijana **Ravnik**, born 1955.Silvana**Vrebac** (later married **Arifin**), born in 1962. Milojka **Fatur Jesenko**, born in 1960. Renata **Horvat**, born in 1963. Maja **Jurak** (Godec), born 1967. Lidija **Leskošek Nikolič**, born in 1958.Nevenka **Rihar**, born in 1959.Magda **Teppey**, born in 1962. While searching for information on judge Stanko **Rape**, it was also revealed how other parts of the Yugoslav judicial system operated, notably in prosecution. Prior to becoming a judge, Rape was a prosecutor and had been a member of the SZDL youth organisation, the ZSMS –*ZvezasocialističnemladineSlovenije* (Alliance of Socialist Youth of Slovenia) and later of the SZDL, according to Javnatribuna – delegatskapriloga, July 1980 (št.19). On 30th May 1980, Rape was appointed deputy-prosecutor in Ljubljana based on Ljubljana's prosecutor decision, having special regard to the fact that Rape meets the legally prescribed professional conditions and is also “morally-politically and personally suitable for becoming deputy prosecutor” He was appointed by the Assembly of the Ljubljana Šiškamunicipality and his nomination was approved by the relevant political entity – the inter-municipal council of Ljubljana region SZDL.

* **Higher Court Maribor**

At the Higher Court in Maribor, only one judge can be identified from publicly available information as having been appointed pre-1991. According to minutes of the 43.session of the Assembly of municipalities of the Socialist Republic of Slovenia (“*ZborobčinskupščineSocialističneRepublikeSlovenije*”), published in July 1989, Boris **Štampar** was elected judge to the Higher Court in Maribor in 1989. It is recorded that the Assembly's commission for elections consulted the inter-municipal and city conference of the SZDL, the higher courts, the Supreme Court of Socialist Republic of Slovenia, the republic's ministry for justice (“*republiškisekretariatzapravosodje*”), and the coordinating committee for staff matters at the presidency of the republic conference of the Socialist Alliance of Slovenia (“*koordinacijskiodborzakadrovskavprašanjapripredsedstvuRepubliške conference SocialističnezvezeSlovenije*”). It proposed that the Assembly elect the candidates as they were deemed to be in compliance with the conditions of the public office.

Judge Breda **Cerjak Firbas**, was born in 1957. Aleksander **Karakaš** was born in 1965.

Miroslav **Pliberšek**, born 1964. Danica **Šantl Feguš**, born 1964.

Branko **Reisman**, born 1956. Milena **Šteharnik**, born 1965.Karolina **Peserl**, born 1964.

* **Higher court Celje**

Judge Zinka **Strašek** was already head of the court in 1991, so it very likely that she was appointed after the new constitution was adopted. Furthermore, a 2015 article in the magazine *Reporter* claims she has more than '30 years of judicial experience'.

Jožica **Arh Petkovič**, born 1963. Branko **Aubreht** was born in 1965. Marija **Bovha**, born in 1958. Nataša **Gregorič**, born in 1963.Irena **Leskovšek Jurjec**, born in 1958.Branko **Vitez**, born in 1952.Zdenka **Pešec**, born 1954.

* **Higher Court in Koper**

Aleš **Arh**, born in 1961.Nataša **Butina Mrakič**, born in 1958. Jana **Petrič**, born in 1963. Nada **Škrjanec Milotič**, born in 1954.

* **Higher Labour and Social Court**

Silva **Donko**, born in 1956. Biserka**Kogej Dmitrovič**, born in 1958. Sonja **Pucko Furman** (previously Kristl Pucko) born in 1960. Samo **Puppis**, born in 1962.Elizabeta **Šajn Dolenc**, born in 1952.

* **Administrative Court**

Judge Miriam **Temlin Krivic** was probably for the first time appointed alongside judges Gombač Gluhak, Vatovec, and Kumer, in 1985, also with the blessings of the SZDL and undergoing the same procedure. Darinka **Dekleva Marguč**was born in 1959, according to a decision for appointing ad hoc judges from Slovenia to the European Court of Human Rights.

Damjan **Gantar** was likely born in 1965, as is attested by a decision on appointing prosecutors. Andrej **Orel**, was likely born in 1952. Boštjan **Zalar**, born in 1965.Violeta **Tručl** was born in 1966.

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| --- | --- | --- | --- | --- |
|  | Supreme Court | Higher Courts | Higher Labour and Social Court | Administrative Court |
| members of the Communist Party | 1 | 1 |  |  |
| appointed with the approval of the communist-led SZDL | 1 | 6 |  | 1 |
| appointed in Yugoslavia, anywhere in the justice system (prosecution) | 14 | 2 |  |  |
| probably graduated and appointed in Yugoslavia, according to their birth dates | 3 | 31 | 5 | 6 |