



Združenie sudcov Slovenska

Information for the European Association of Judges

Dear ladies and gentlemen, colleagues of the European Association of Judges,

Let me present you a brief information with a request to consider or include Slovakia among the countries which are to be discussed in today's session in the view of protection of the independence.

In the spring of 2014, another political and media campaign against judges unleashed in Slovakia, labelled as an effort to improve the functioning of the judiciary. Part of the public, but judges as well perceived the attacks as a threat to judicial independence, or as an election campaign respectively. But the fact is that during its course the judiciary was seriously dishonoured.

Such draft of the constitutional law was presented, which interferes, according to the judges as well as political public, with the independence of the judiciary, while the interference lies in political clearances of judges by the National Security Authority, which negative conclusion should have been subject to decision-making of the Judicial Council with the result of possible termination of the judicial office.

The current legal regulation stipulates two ways of termination of the judicial office:

1. as a result of the final judgement for intentional crime
2. as a result of the final decision of the disciplinary panel for the act incompatible with the performance of the judicial office

At present, with the involvement of judges and representatives of the Judicial Council, the political spectrum is negotiating on modified drafts of the constitutional law, which still contains so-called clearances of judges who are active in their office, while the clearance should be, so far, based on undefined foundations and scope. We consider especially this fact for a gross interference in the independence of the judiciary, in particular the way of presenting these measures by the media, but also a real need for these measures presented by the politicians.

The National Security Authority is part of the executive power, which means that the executive should not interfere in such a way in the judicial power, in the exercise of active office of a judge, and based on the findings of past deeds of a judge makes a conclusion as mentioned above.

In accordance with the international recommendations, the internal issues of the judiciary should be dealt with within the political level in a discreet manner.

Media campaign, which lasted about two months and considerably disrupted the public confidence in the judiciary, is indeed difficult to repair, but the Slovak judges would greatly appreciate if the International Association of Judges included this information in its reports or its conclusions in the context of the agenda of the European Association of Judges meeting held in Cyprus on 15 to 18 May 2014.

Part of the debate of politicians is also making accessible the initiation of prosecution and pre-trial detention of a judge also by an investigator or law enforcement bodies. Under the current constitutional and statutory provisions, the judge can be taken into custody or be subject to the initiation of criminal proceedings only after this fact had been examined by the Constitutional Court, which shall decide on its admissibility or rejection. Reasons of the prosecution can lie and be associated either with the performance of judicial duties or with another deed.

According to the current legislation a judge in Slovakia enjoys so-called functional immunity, which means he/she cannot be prosecuted for acts that do not relate to his decision-making. However, overall a judge in Slovakia is subject to criminal liability as any other citizen, excepting the above mentioned functional immunity for his/her decisions.

What is positive is the fact that by means of the constitutional law the office of the President of the Supreme Court of the Slovak Republic should be separated from the office of the President of the Judicial Council of the Slovak Republic. According to the current legal regulation, i.e. the Constitution of the Slovak Republic and Act No. 185/2002 Coll. on the Judicial Council of the Slovak Republic as amended; the President of the Supreme Court of the Slovak Republic shall be elected by

the Judicial Council of the Slovak Republic. President of the Supreme Court concurrently becomes the President of the Judicial Council as well.

Positive contribution is the proposed wording of powers of the Judicial Council, which should be extended, some of them in positive way, for example when it comes to special powers of the Judicial Council in relation to the budget, in relation to the submission of proposals to the Constitutional Court in matters of judiciary and in relation to the National Council of the Slovak Republic (Parliament) as regards the possibility of the President of the Judicial Council to have a speech in the Parliament. The Slovak Association of Judges was involved in the negotiations with politicians who are not able to reach an agreement particularly on the issue of clearances of judges and the method of creating the Judicial Council. Change of creating the Judicial Council was proposed. The original proposal considered a model, where the President of the Republic would be the President of the Judicial Council, and in this respect he was denied the opportunity to nominate three representatives to the Judicial Council, as it was previously under the current legislation. The later version of the Constitutional Act modified the composition of the Judicial Council so that eight members shall be elected from judges by their peers, four candidates shall be appointed by the government and four elected by the Parliament.

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