



RESOLUTION

on the Constitutional Act of 4 June 2014
Amending and Supplementing the Constitution of the Slovak Republic

1. At its meeting in Brazil, Foz do Iguacu on 13 November 2014 the European Association of Judges (EAJ) considered the request from the Slovak Association of Judges *Združenie sudcov Slovenska* for an opinion on the Constitutional Act adopted by the National Council of the Slovak Republic on the 4 June 2014.
2. The meeting noted that the effects of the amendments made by the Constitutional Act were summarized by the Consultative Council of European Judges (CCJE) in the comments which it published on 1 July 2014 as:
 - In order to become a judge a new criterion is explicitly introduced that (in the wording of the translation provided) "...to meet the conditions on judge competence guaranteeing the office of judge will be performed properly".
 - This criterion is enshrined as a constitutional requirement. Further, the precise definition of how this criterion is to be checked as well as the possibility of establishing other criteria is entrusted to the legislator.
 - This criterion will apply not only to new appointees but also to all judges who have already been appointed and in the case of existing judges they will have to undergo an examination.
 - The constitutional provision stipulates, in mandatory form, that the basis for this examination will be documentation from the state authority that performs the role of safeguarding classified information and, in addition, a statement from the judge who is being examined. The decision will be taken by the Judicial Council. A challenge to this decision is possible. If a final decision proposes the judge's dismissal, the President of the Republic has to "recall" that judge (Article 147 para 1 "shall recall").
3. The EAJ also notes, and for its part wholly endorses and adopts the conclusions expressed by the CCJE, namely:
 - The tenure of judges, which is an essential element of their independence is unduly questioned and endangered if, without concrete and reasonable suspicion, examinations of judges can be initiated.
 - The lustration of all judges with tenure is not in line with international standards. The Slovak Republic has, for many years, been a state committed to the rule of law and, at the present time there is no post-revolutionary change from a totalitarian regime to a democratic state, which is the situation when, exceptionally, such means may be acceptable.

- As a rule it is inappropriate that material gathered by secret service institutions be used in procedures to decide if judges fulfill the necessary requirements established by clearly laid down laws. Any attempt to use against judges material which is gathered in the usual manner in which secret service institutions do so is likely seriously to infringe the independence of the judiciary. The influence of a secret service, which is part of the executive power of the state, on judges' performance and career will conflict with the principles of separation of powers.
4. The EAJ brings these serious concerns to the attention of the Slovak authorities and urges those authorities to act upon these concerns.