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The European Association of Judges at the meeting in Istanbul on September 4<sup>th</sup> 2011 unanimously adopted the following

**Resolution**

**Concerning the conformity with international standards of Judicial Independence of the amendments / proposed amendments to the status of judges in the legislation of the Slovak Republic**

1. The European Association of Judges is requested by the Association of Slovak Judges (ZSS / Zdrusenia Sudov Slovenska) to consider recent developments in the legislation concerning the judiciary and the proposals of the government for further amendments in this respect. The Slovakian Association expresses serious concerns that the independence of the judiciary is thereby endangered.
2. The European Association of Judges put these concerns to the Slovak authorities. The minister of justice gave an explanation arguing that all these amendments are necessary to re-gain the trust of the population in the judiciary; more control and transparency was necessary.
3. The European Association of Judges analyzed the legal modifications effected, and the further legal modifications planned, by the Slovak government regarding:
  - The appointment, nomination and promotion of judges
  - The composition of the Judicial Council
  - Disciplinary proceedings
  - Unjustified criticism of the judiciary.
4. The European Association of Judges stresses that the European authorities have, for many years, established fundamental rules in order to preserve the independence and the impartiality of justice.
5. In this regard the European Association of Judges refers to:
  - The Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities,
  - the CCJE Opinion n° 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges,
  - the Opinion n° 3 (2002) on the principles and rules governing judges' professional conduct in particular Ethics, incompatible behaviour and impartiality,
  - the Opinion n°10 (2007) on "Council for the Judiciary in the service of society", as well as other international documents.
  - the CCJE (2010)3 Magna Charta of Judges (fundamental principles),
  - the European Charter on Statute for Judges,
  - the ENCJ Resolution of Budapest on Self-Governance for the Judiciary: Balancing Independence and Accountability - May 2008.

6. The European Association of Judges also stresses that these standards have not been enacted for the benefit of judges or their corporate interest, but as the central means of ensuring the necessary independence of Justice within a democratic society.
7. The European Association of Judges underlines once again that independence has to be accompanied by accountability. Under the pretext of accountability, however, this should never result in the other powers of the state gaining undue influence on the judiciary. Transparency of procedures and proper reasoning of decisions are a means of guaranteeing accountability and increasing trust in the judiciary.
8. The European Association of Judges expresses its grave concern that several of the amendments under examination are used to increase the overall influence of the government on the judiciary:

- **The Appointment, nomination and promotion of judges** - most members of the selection committees, i.e. 3 out of 5 are nominated by the Minister of Justice, and only two by the judges themselves (one by the Judicial Council and one by the president of the particular court).

While the final decision to nominate the candidate for appointment lies with the Judicial Council, the selection committee yet plays a decisive role, which means that the provisions of international documents relevant to the Judicial Council are also applicable to these committees. In this context it is evident that the proposed amendments to alter the composition of the Judicial Council, whereby half of its members will be appointed by the Minister, are a step in the wrong direction and against the current tendency of all international standards. The EAJ refers to para. 18 and 42 of the CCJE Opinion No 10(2007) and Art 5 and 13 of the Magna Charta of Judges (fundamental principles) according to which such a council should contain a substantial majority of judges elected by their peers. Art. 46 of the Recommendation CM / Rec (2010) 12 also requires that at least half of the members should be judges chosen by their peers.

- **Disciplinary proceedings** - the initiative for disciplinary proceedings against a member of the Judiciary is exclusively placed at the Minister of Justice.

Disciplinary proceedings, or importantly, the threat of such proceedings, must not risk being misused by placing improper pressures on the judge concerned. Accordingly international documents not only place the jurisdiction to hold disciplinary procedures on a court or an independent body, but also promote the establishment of an independent body or person to initiate such procedures. (Art. 69 of the Recommendation CM / Rec (2010)12, para 68, 69 and 77 ii and iii CCJE Opinion 3 (2002) and Art. 6 of the Magna Charta of Judges (fundamental principle). To place the power to commence proceedings with a member of the government infringes the balance of powers. Such an arrangement does not help to increase trust in the judiciary and may increase the suspicion of political interference. What is necessary are quick and fair proceedings before a disciplinary court.

- **Unjustified criticism of the Judiciary** - inappropriate criticism of the court decisions, specific comments expressing unfounded doubts about the correctness of judicial decisions, as well as the making of offensive statements by representatives of the executive and legislative addressed to judges and the judiciary as a whole.

Abstaining from such practices is the most effective way to increase trust in the judiciary. The EAJ recalls Art 18 of the Recommendation CM/Rec (2010) 12, which states “If commenting on judges decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary.” Otherwise such criticism not only forms a means of exerting improper pressure on members of Judiciary, but may undermine the trust and

respect which citizens have for their legal system. The EAJ urges all branches of the executive to give proper heed to the dangers for judicial independence of inappropriate criticisms of judicial decisions.

9. Having closely watched the developments in Slovakia for many years, the EAJ has followed positive developments, at least in the institutional framework of judicial independence. The European Association of Judges urges the competent Slovak authorities to ensure universally recognised standards of judicial independence, to uphold them at all times, and to take no measures which might compromise them. The EAJ is willing to assist in finding a balanced way to increase public trust in the judiciary without infringing its independence.
10. The Slovak Association of Judges (ZSS / Zdrusenia Sudov Slovenska) has also expressed concerns over reductions in judicial salaries, benefits and other rights. In that regard the European Association of Judges draws attention to the resolution on the remuneration of judges which it adopted on 16 May 2009 at its meeting in Cracow, a copy of which is appended to this resolution.

Istanbul 4 September 2011