Association of Judges of Slovakia

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In Košice on 14.10.2020

VEC: Information for Members of the National Council of the Slovak Republic

Dear Members of the National Council of the Slovak Republic,

in the near future, you will decide on the approval of the government's proposal to amend the constitution in the field of justice and related laws within the program for the purification of justice.

We announce that we identify with some of the proposed legislative changes, i. introduction of the regional principle of election of members of the Judicial Council by judges, introduction of inspections of property relations of judges and judicial competence, adjustment of certain rules of proceedings before the Constitutional Court, introduction of an age census for the termination of a judge and establishment of the Supreme Administrative Court.

For some of these amendments, we have minor reservations to a lesser extent, as they meet the criteria of their possible unconstitutionality.

We fundamentally disagree with the far-reaching changes, which do not lead to the purification of the judiciary, but to the inadmissible subordination of the judiciary to the legislature and the executive, as the principle of separation of powers legal certainty (protection of legally acquired rights) and the constitutionally guaranteed right of access to a public office only under the same conditions.

Our reservations stem from the fundamental fact that the government's proposed legislative changes in the mentioned parts are in direct conflict with the case law of the Constitutional Court (key parts of the reasoning of decisions), which represent binding limits for future legislative activity,

which also demonstrates violations of the rule of law. rule of law under Article 1 (1) of the Constitution) and thus fulfills the criteria for violation of the constitutional principle of the prohibition of arbitrariness in the activities of all public authorities, with the exception of parliament.

We have a dissenting opinion (fundamental reservations, which we also pointed out in the comment procedure) to the following legislative changes:

1. addition of the text of Art. 125 par. 4 of the Constitution, which liquidates the right of the Constitutional Court to universal (nationwide) protection of constitutionality by restricting the right to review the possible unconstitutionality of constitutional law with the Constitution.

It is not respected that our constitution is also valuable (it is not value neutral) and therefore it is inadmissible (forbidden) to violate (endanger) the material core of the constitution, which is formed by fundamental rights and freedoms of citizens (which are inalienable and irrevocable). paragraph 1) and at the same time the constitutional principles of the rule of law, which are, for example, included in the decision of the Constitutional Court on the unconstitutionality of the so-called Mečiar amnesties (15 principles).

In these proceedings, the Constitutional Court assessed whether the resolution of the National Council (based on Article 86 letter i / of the Constitution) on the annulment of the President's amnesty decision, which is adopted under similar conditions as the Constitutional Act (at least 3/5 majority of all deputies) in accordance with the Constitution, on the basis of the provisions of Art. 129a of the Constitution (the competence of the Constitutional Court to review the constitutionality of such a resolution of the Parliament).

The necessity of protection of the material core of the constitution by the Constitutional Court even before the constitutional laws results from several decisions of the Constitutional Court (eg PL.ÚS 16/95, PL.ÚS 21/2014, PL.ÚS 24/2014).

These decisions strictly respect the fundamental fact that in today's democratic Europe there is a high degree of consensus on the concept of the material core of the constitution and its protection by the constitutional courts. At the same time, the opinions of several authorities of legal theory (eg P. Holländer, A. Bröstl, J. Drgonec, L. Orosz, T. Majerčák) and inspiring professional arguments of several constitutional courts (eg Germany, the Czech Republic, Austria, Hungary).

It is ignored that the proposed amendment abolishes both the exclusive constitutional authority and the obligation of judges of the Constitutional Court to protect the inviolability of natural and civil rights and the rule of law (Article 134 para. 4 of the Constitution - a constitutional promise fundamentally different from other constitutional actors).

Any restriction of the competences of the Constitutional Court to the universal protection of constitutionality pursuant to the provisions of Art. 124 of the Constitution meets the criteria of inadmissible interference with the independence of the Constitutional Court from the legislative and executive power and thus the constitutional principle of division of power, which means unconstitutional interference with the material core of the Constitution, which is not permissible by constitutional law (PL.ÚS 21/2014).

The principle of separation of powers is an essential condition for the protection of freedom and a democratic state, and in a state governed by the rule of law it is particularly strictly applied in

relation to the judiciary with legislative and executive powers (PL.ÚS 16/95, PL.ÚS 25/00, PL.ÚS 115/2011 ).

The approval of the amendment will create a constitutional power for any constitutional majority to limit, even arbitrarily (unlimited) the inalienable and irrevocable fundamental rights and freedoms of citizens (second sentence of Article 12 (1) of the Constitution), ignoring the fundamental legal fact that the constitutional system is an individual and his freedom, which cannot be arbitrarily interfered with (PL.ÚS 10/04, PL.ÚS 19/09) and at the same time the constitutional principles of the material rule of law.

The principle applies that a constitutional law may be inconsistent only with certain norms of the constitution, i. with those who form its material core, because between the norms of constitutional law (constitution, constitutional laws) there is a significant material difference in their legal force, therefore at the center of this hierarchical system are the constitutional norms that form the material core of the constitution.

This change will not (is not) a purification of the judiciary at all, but a subordination of an independent constitutional body for the protection of constitutionality to the absolute arbitrariness of the executive and legislative power (the current constitutional parliamentary majority), which is not in accordance with Art. 1 par. 1, with Art. 2 par. 2, Art. 124 of the Constitution.

2. deletion of the original text Art. 136 par. 3 of the Constitution, as amended by "the Constitutional Court consents to the detention of a judge and a prosecutor general".

It is the abolition (liquidation) of the competence of the Constitutional Court (Defender of Constitutionality), which is perceived by constitutionalism as part of guarantees to protect the independence of the judiciary from attempts by unconstitutional interference, to divide power rights by other branches of state power (PL.ÚS 4/2020, PL.ÚS 6/2020).

In terms of content, this ensures respect for the functional (criminal) immunity of judges for decision-making, which is one of the so-called personal guarantees of the independence of the judge, the violation of which is also, according to the case law of the European Court of Human Rights (ECtHR), a threat to the independence of the judiciary (interpretation of the binding Article 6 § 1 of the Convention).

This is the exclusive power of the Constitutional Court to assess the above constitutionally emphasized fact, in contrast to the general courts, which have the given criteria in their decision-making within the meaning of Art. 17 par. 5 of the Constitution on the restriction of personal liberty of the citizen, so they are not entitled to assess the observance or threat to the independence of judges. Other citizens within the competence of the Constitutional Court to consent to the detention of a judge as a constitutional official (as well as the Attorney General) are not discriminated against in a different way (ie only by a general court decision) because the constitutional official and an ordinary citizen are not in the same legal situation and is therefore inadmissible discriminatory) to treat unequal ones in the same way (PL.ÚS 17/08, PL.ÚS 11/02 ÚS ČR).

At the same time, the Constitutional Court is entitled to assess whether the constitutional criteria for interfering in the personal liberty of a judge whose position is unparalleled in the private or public sphere are met and, unlike other constitutional officials (ministers, members of parliament), the

constitution guarantees his independence, in the case of an act the essence of which lies in the decision of the judge.

The first guarantee of judicial control in the interference with the personal liberty of constitutional officials (independent judges and the Attorney General, as the Venice Commission broadly perceives the prosecution as part of the judiciary) effectively (effectively) guarantees the fulfillment of constitutional criteria exclusively) the body for the protection of constitutionality (Article 124 of the Constitution).

At the same time, it is obvious that if the Constitutional Court does not consent to the detention of these constitutional officials, this does not liquidate the right to criminal punishment.

3. enshrining the constitutional definition in Art. 141a par. 1 of the Constitution on the status of the Judicial Council (the constitutional body of judicial legitimacy) only as an autonomous and not an independent constitutional body (in the sense of the explanatory memorandum), because it is to fulfill the judicial policy of the government and parliament. This means clearly subordinating the activities of the Judicial Council (a body placed under the judiciary) to the political ideas (intentions) of the current political majority (governmental and parliamentary).

This is a return to the period of Mečiar-ism, when the EU's pre-accession negotiations with Slovakia were suspended and when it was decided that if Slovakia did not meet the pre-accession requirement to remove the strong dependence of the judiciary on executive and legislative power and establish an independent constitutional body of judicial self-government (see point 78 of the Explanatory Memorandum to Constitutional Act No. 99/2001, by which the Judicial Council was established), Slovakia will not be admitted to the EU.

For the above reasons, the Constitutional Act in question enshrined that the strengthening of the institutional independence of the judiciary from other public authorities included in VII. of the Constitution, is a real fulfillment of the constitutional principle of independence and the constitutional principle of the division of power, which guarantees the constitutional balance of the three state powers and their equal status (see the above-mentioned explanatory memorandum).

The proposed change clearly does not respect the constitutional principle of the independence of the judiciary and the division of power, which is a violation of the material core of the constitution, which is not permissible by constitutional law, as is ensured by many constitutional courts of democratic states.

At the same time, several international documents (recommendations) are violated (ignored), which are not only of a recommendatory nature, but a reasonable degree of legal relevance (legal effect) within the meaning of Art. 1 par. 2 of the Constitution, which represents the constitutional obligation of the Slovak Republic (eg PL.ÚS 7/2017, PL.ÚS 27/2015).

All international instruments require the establishment of a Judicial Council, independent of the legislative and executive powers and ensuring the independence of the judiciary and judges (Recommendation of the Committee of Ministers of the Council of Europe CM / Rec (2010) 12 of 17.10.2010, European Charter of the Statute for Judges of 1998, Advisory Committee of European

Judges - CCJE (2010) 3, 2010, Venice Commission in the Report on the Independence of the Judiciary of March 2010).

It is therefore indisputable that in carrying out the positive intention of defining the constitutional position of the Judicial Council in the Constitution, the word "independent" must necessarily be used in the text. It is clear that only that body is independent, to which the legislator attributes it in the Constitution (PL.ÚS 17/96).

The proposed definition, which definitively eliminates the necessary constitutional requirement for the independence of the judicial council (the highest body of judicial self-government) does not ensure the proclaimed cleansing of the judiciary, but is an unconstitutional subordination of this constitutional body to other constitutionally equivalent branches of state power (parliament and government).

It is a clear disrespect for the principle of the division of power and thus for the material core of the constitution, which cannot be violated even by constitutional law.

4. addition to Art. 141a par. 3 second sentence, which excludes the president, government and parliament to appoint a judge as a member of the Judicial Council of the Slovak Republic (they can only appoint a person who is not a judge).

This text destroys the fundamental right of every citizen guaranteed by Art. 30 par. 4 of the Constitution, which according to Art. 12 par. 1, the second sentence of the Constitution is an inalienable and irrevocable right and belongs to the basic constitutional principles of the substantive rule of law (PL.ÚS 7/2017).

It is clear from the constant and binding case law of the Constitutional Court that according to Art. 30 par. 4, everyone has the right to access a public office only under the same conditions, which means that legislation of any legal force cannot prefer or discriminate against certain groups of citizens over other groups in terms of access to public office (II.ÚS 48/97, I.ÚS 76/2011, I.ÚS 397/14).

When accessing a public office, the constitutional obligation of the body to protect the said fundamental right of a citizen is thus enshrined in the subject of which every citizen applying for the office is a member.

The Constitution lays down the legal criteria for appointment to the said constitutional function of a member of the Judicial Council (Article 141a (1) of the Constitution).

Every judge who meets the above legal criteria (as well as other lawyers) must therefore be guaranteed the right to run for the said position.

The proposed text undoubtedly discriminates (disadvantages) judges who are in the same legal situation (they meet the legal criteria, as well as other lawyers), although the criteria under Art. 30 par. 4 of the Constitution and which have a universal character (therefore they cannot be restricted by law) are an obstacle to the creation of any restrictions on access to other public functions (PL.ÚS 19/98).

In a substantive legal state, the prohibition of discrimination is an order addressed by the legislator to the state as its positive obligation and is a constitutional principle.

The purpose pursued by the proposal is admissible to be solved exclusively in the manner stated by the Constitutional Court in the judgment PL.ÚS 2/2012 that an agreement should be reached on the introduction of appropriate constitutional practice in appointing members based on their decisions.

In other words, if these bodies consider it appropriate to appoint only non-judges, the current constitution allows them to do so, but it is not permissible to enshrine in the constitution a ban on judges being appointed as members of the Judicial Council by a decision of the executive and legislature.

It is clear that the proclaimed cleansing of the judiciary is not permissible to be carried out in a democratic state by exemplary violation of several constitutional rights (access to another public office under the same conditions, prohibition of discrimination).

5. amendment of Art. 141a par. 5 third sentence on the establishment of the power to dismiss the President, Vice-President and members of the Judicial Council at any time before the expiry of their term of office.

It follows from the case-law that the Constitution provides that citizens have access to public office only under the same conditions, and that this right includes the right to perform elected and other public functions without interruption, including the right to protection against unlawful removal from office.

The purpose of this provision (Article 30 (4)) is to enable citizens to manage public affairs, so a body performing a public function (including a member of a judicial council) must be provided with protection against the will of the state, which could prevent it from exercising that constitutional function. Thus, if a member of the Judicial Council is arbitrarily deprived of this function by a state body, there is a violation of the right to undisturbed performance of the function pursuant to Art. 30 par. 1, 4 of the Constitution (III.ÚS 62/2011, PLz.ÚS 2/2018, II.ÚS 53/04 - ÚS ČR).

In a state governed by the rule of law, the irreplaceable role of the legislature is to provide adequate safeguards which are capable of preventing the exercise of arbitrariness in the exercise of official authority, since the prohibition of arbitrariness forms an integral part of the general principle of the rule of law. It is unacceptable that the law does not contain any safeguards against arbitrariness, as the decision on appeal constitutes an authoritative decision against a person serving in public office and must therefore be predictable, convincing, specific and certain at least in the light of the reasons for exercising power. (The appeal was based on one of the specific grounds). In a state governed by the rule of law, the law is obliged to define the framework of the competent authority's discretion and the manner in which it is exercised clearly enough to provide the individual with adequate protection against arbitrariness (PL.ÚS 102/2011, ECtHR Malove v. United Kingdom - 1984).

The jurisdiction of the Judicial Council to the judiciary (Title VII of the Constitution) includes both institutional and individual independence, so that in the right of political authorities to dismiss its appointed member at any time it not only violates individual independence but J. Drgonec - Constitution of the Slovak Republic, Beck, 2015, pp. 1058-1510).

In the case of members of the Judicial Council (constitutional officials of the judiciary), an appeal without the obligation to specify the grounds of appeal enshrines an unconstitutional regulation

prohibiting arbitrariness in the activities of public authorities, as well as the principle of public control of public power (principle of transparency).

Violation of these constitutional principles, which are also part of the material core of the constitution, is therefore not permissible by constitutional law either.

6. amendment of Art. 148 par. 1, second sentence of the Constitution on not requiring the consent of a judge when transferring to another court when changing the system of courts, if this is necessary to ensure the proper performance of justice.

One of the so-called personal guarantees of the independence of the judge is the principle of non-translatability without his consent, except for disciplinary action (PL.ÚS 52/99).

Violation of the principle of non-translatability means violation of the fundamental right of a citizen to judicial protection by an independent and impartial court and of a legal judge.

The change of the districts of the courts, where there is only a change of local jurisdiction, is not an interference with the constitutional principle of non-translatability (PL.ÚS 12/04).

However, the proposed text really allows for the transfer of a judge not only in the context of a change of territorial jurisdiction (to a court of the same instance), but also the transfer of a higher instance judge to a lower court (change of jurisdiction).

Such a procedure meets the criteria for breach of the principle of legal certainty, interference with the public subjective rights of constitutional officials, because the principle of legal certainty is closely linked to the requirement to preserve legally acquired rights, which means that no one can be deprived of his or her properly acquired rights under a later law. (eg PL.ÚS 16/95, PL.ÚS 35/97, PL.ÚS 6/04).

Thus, there is a real possibility to intervene in legally acquired rights to a higher judicial position (regional court, supreme court) in the system of courts by transferring without the consent of a judge to a lower judicial position, i. to a lower court.

Thus, the principle of non-translatability of a judge without his consent would not be violated only if he is transferred when changing the system of courts exclusively to another court of the same level of courts (retention of substantive jurisdiction).

Violation of the principle of legal certainty and the principle of non-translatability, in principle without its consent, is also an interference with the material core of the Constitution, which is not permissible even by constitutional law.

7. change of the text of Art. 148 par. 4 of the Constitution, which regulated that a judge cannot be prosecuted for decision-making, even after the termination of his function by narrowing to the inadmissibility of prosecuting a judge only for the legal opinion expressed during the decision-making is unacceptable.

The original text of Art. 148 par. 4 of the Constitution corresponded (was identical) to the constitutional concept of parliamentary immunity (Article 78 para. 1, 2) and the immunity of a judge of the Constitutional Court (Article 136 para. 1 of the Constitution), who is also a representative of the judiciary.

From the point of view of the constitutional regulation of the equivalence of these constitutional factors, different treatment of judges of the general judiciary is not admissible, i. their disadvantage,

as there is no difference between them of a kind and seriousness that would justify unequal treatment, so that there is unacceptable discrimination (PL.ÚS 36/11, PL.ÚS 12/2014).

Judge's immunity is a special right considered to be one of the basic guarantees of judicial independence, which is fully in line with the division of state power into legislative, executive and judicial, it is one of the so-called personal guarantees of the independence of a judge, the violation of which also means a violation of the independence of the judiciary according to the binding case law of the ECtHR in the interpretation of the binding art. 6 par. 1 of the Convention (PL.ÚS 52/99, II.ÚS 23/03).

It is a thorough protection of his immunity in the exercise of office, especially in decision-making and its purpose is to protect the constitutional function from abuse of the right to prosecute crimes by using coercion by means of criminal proceedings, personal protection in the exercise of this public power is guaranteed in particular, the freedom of decision, which is externally manifested by voting in the Senate and is granted to an unlimited extent and for an unlimited period of time (PL.ÚS 4/06, PL.ÚS 24/03, PL.ÚS 19/02).

It should be noted that after the commencement of criminal proceedings, the institute of temporary suspension of judges until the decision of the court in criminal proceedings is immediately implemented for judges, which does not apply to deputies who exercise parliamentary mandate until the guilty verdict is valid (consistently accepted constitutional principle of presumption innocence).

The assertion of the explanatory memorandum that functional immunity is an unacceptable obstacle to the application of liability for an arbitrary decision of a judge is in private conflict with the long-term legal regulation of disciplinary liability of a judge for arbitrary decision, which is contrary to law (§§ 116. 117 Act No. 385 / 2000 Coll. On judges and associates). It is a serious disciplinary offense, the repetition of which (recidivism) is a serious disciplinary offense incompatible with the performance of the function of a judge and obligatorily always results only in the imposition of a disciplinary measure and dismissal from the position of a judge (termination of judicial office).

At the same time, the Constitutional Court has unequivocally ruled that such an arrangement of disciplinary liability of judges, which excludes criminal liability for arbitrary decisions, is in accordance with the Constitution, as the rule of law must have safeguards against arbitrary decisions by any branch of power, which is effective only if it contains the possibility sanction (PL.ÚS 10/05 of 21.4.2010).

In this context, it should be noted that for other branches of state power, this protection mechanism is not enshrined in the sanction for arbitrary decisions (for representatives of the legislative and executive powers).

It is therefore obvious that the petitioner's argument that the current Art. 148 par. 4 of the Constitution unreasonably excludes judges from possible liability for their decision and therefore must relate only to the legal opinion.

The submitter also inadmissibly searches (ignores) international documents that have a reasonable degree of legal relevance (effectiveness) in the sense of Art. 1 par. 2 of the Constitution, which is a constitutional obligation in the Slovak Republic.

The Venice Commission stated that judges must be protected from undue external influences and, to that end, have functional immunity, i. immunity from prosecution for acts performed by them, with the exception of an intentional criminal offense such as taking bribes.

It is also clear from this that immunity to the legal opinion of a judge is not reduced.

The Committee of Ministers of the Council of Europe stated in its 2010 recommendation that "the interpretation of the law, the assessment of the facts and the assessment of the evidence must not lead to criminal liability", so it is clear that it is not just a legal opinion (interpretation of the law).

The Magna Charter of Judges - CCJE from 2010 states a similar content.

The narrowing of the scope of immunity of judges of general courts compared to the original regulation of functional immunity, i. the substantively substantiated text is the liquidation of the necessary functional immunity, which violates the constitutional balance of the three equal powers in the rule of law, which follows from the constitutional principle of separation of powers and is evident from the internal structure of the constitution and the general principle of the rule of law. It is an intervention in the so-called personal guarantee of the independence of the judge and thus of the independence of the judiciary, which clearly jeopardizes (violated) the inalienable and irrevocable right of the citizen to judicial protection only by an independent and impartial court (Article 46 para. 1 of the Constitution).

Thus, there is an inadmissible interference with the material core of the constitution, which cannot be implemented even by the constitutional law (IV.ÚS 75/09, PL.ÚS 102/2011, PL.ÚS 21/2014 and PL.ÚS 24/2014).

8. modification of Art. 154g par. 1, 4 of the Constitution on the premature termination of the constitutional function of a member of the Judicial Council elected only by judges before the end of their election period (there is no termination of membership of others who have been nominated by political power).

It follows from the case law that the inadmissibility (prohibition) of true retroactivity in a state governed by the rule of law and only the exceptional regulation of false retroactivity in the transition from a valid and effective legal regime to a new legal regime. However, in the case of false retroactivity, it is essential to prove serious reasons of general interest which may result in the termination of the claim (eg PL.ÚS 3/00, PL.ÚS 28/00, PL.ÚS 25/05, PL.ÚS 11/08 ).

In the event of a loss of protection of legitimate expectations (legal certainty) and the public interest, a proportionality test is carried out, which contains criteria of suitability, necessity, seriousness and minimization of interference with acquired rights.

In the key comments of 31 July 2020 (in the comment procedure), the Judicial Council of the Slovak Republic stated that there was no criterion of seriousness about the need to shorten the term of office of the members of the Judicial Council elected by the judges.

The right of access to a public office under Art. 30 par. 4 (fundamental right, which is irrevocable and irrevocable according to Art. 12 par. 1) also includes the right to remain in this constitutional function for the chosen period (PL.ÚS 12/2015, PLz.ÚS 2/2018, II.ÚS 53 / 04 - ÚS ČR).

The proposed regulation eliminates this fundamental right without demonstrating any overriding reason in the general interest, so that it does not meet the criteria of exceptional admissibility of false retroactivity and at the same time discriminates these members (elected by judges) from other members, even though they are all in the same factual and legal situation.

Changes in laws related to the amendment of the constitution

1. Act on the Judicial Council

A / Modification of § 3 par. 2 on the appointment of only non-judges as members of the Judicial Council is unacceptable, given the arguments stated in the objections to the amendment to the Constitution Art. 141a par. 2 of the Constitution.

B / § 27ha par. 3 letter d /, § 27ha par. 6, which regulate some details in determining the property of judges.

When controlling the property relations of property gains of adult family members of a judge, their privacy is enjoyed, which enjoys constitutional protection.

It is therefore not permissible to enshrine the elements ensuring the methods of the police state (PL.ÚS 29/05, ECtHR - Kvasnica v. SR - judgment of 9.6.2003).

The enshrinement of the judge's obligation to clarify the property relations and the origin of the sources of property of adult children means (according to the explanatory memorandum) that the burden of proof in this obligation will be on the judge.

It clearly does not correspond (circumvents) with the constitutional regulation of Art. 20 par. 5 of the Constitution (Constitutional Act No. 100/2010 Coll.), Where the Constitutional Court stated that the burden of proof is disproportionately shifted from public authorities to natural and legal persons, while violating the principle of presumption of innocence, which is not limited to criminal proceedings (PL.ÚS 29/05, I.ÚS 54/2011),

The adjustment of the office of the Judicial Council to ascertain the movement of the judge's accounts in banks for the previous period (at least 60 months before the law came into force) is a true retroactivity, which is inadmissible (unconstitutional) in the legal state because it regulates already legally concluded factual and legal relations, ie rights and obligations from the past (eg PL.ÚS 38/99, PL.ÚS 3/00, PL.ÚS 6/04, PL.ÚS 11/08).

That regulation assesses the judge's actions on deposits and withdrawals in his accounts, which took place before the effectiveness of the proposed legal change (in the past).

2. Act on Judges and Adjudicators, and Act on Prosecutors (Act No. 385/2000 Coll., Act No. 154/2001 Coll.)

A /

Deletion of § 78a and new regulation of § 93 par. 3 of the Judges Act concerns the abolition of the institute of optional remuneration of judges and the adjustment of the supplement to the compensation of income and sickness benefit for a limited period of up to 60 days (compared to the current regulation).

The same applies to the cancellation and adjustment of the same claims for prosecutors (§ 8 para. 3, § 93 para. 1, § 103 para. 5, § 115, § 131 of Act No. 154/2001 Coll.).

The above provisions of the draft law on judges abolish (liquidate) some of the material guarantees of the judge's independence (the original regulation of the payment of sickness benefits up to the amount of functional salary during the entire period of incapacity for work and payment of remuneration as an optional benefit). personal guarantees of the independence of the judge (PL.ÚS 52/99).

Extensive case law has addressed in a binding manner the issue of admissibility (constitutionality) of the legislator's intervention in the material security of judges and thus also the form of pressure on judges' decisions (PL.ÚS 52/99, PL.ÚS 12/05, PL.ÚS 99/2011, PL.ÚS 27 / 2015).

It follows from these decisions of the Constitutional Court that the key parts of the reasoning of the decision of the Constitutional Court in proceedings pursuant to Art. 128, Art. 125 par. 1 of the Constitution (interpretation of the Constitution, constitutional law and deciding on the conformity of the law with the Constitution) represent binding limits for future legislative activity of the National Council, so if they are clearly disregarded power, not excluding parliament (eg PL.ÚS 1/04, PL.ÚS 49/03).

Legal guarantees of judicial and judicial independence therefore also include the remuneration and economic security of judges commensurate with the nature and importance of their activities, while the independence of judges in a broader sense must also be understood as their material independence.

The obligation of the state to ensure the independence of judges and the judiciary enshrined in Art. 141 par. 1, Art. 144 par. 1 of the Constitution is reflected in the legal regulation of the text of § 4 par. 2 of the Judges Act, which concretizes the principle of independence in such a way that “the state ensures the independence of judges also by their material security” (i.e. not only by salary ratios).

The law in question addresses the complex position of judges, within which it also regulates salaries and social security, so that these issues can be considered from a broader perspective as additional conditions for the performance of the function.

Salary conditions together with social security thus form an inseparable part of their material (material) security.

Interventions of the legislator in the area of material security of judges, i. not only in terms of salaries, but also in other parts of it, undermine the legal certainty of judges as constitutional actors, to whom the Constitution, unlike the representatives of the executive and legislative power, guarantees independence (Article 144 para. 1 of the Constitution).

The inadmissibility of interference with legal certainty and the resulting legitimate expectations of judges (by a sudden change in the rules on which the addressees of legal norms relied - PL.ÚS 6/04) can be considered a breach of the principle of legal certainty, which is accentuated by the fact judges of the general courts, to whom the Constitution guarantees independence. As a result, taking into

account the principle of independence of judges and the principle of separation of powers, there is a different margin of discretion on restrictions imposed on judges by comparison with the margin of discretion in relation to legislature and executive, where restrictive interventions are in principle tolerable (unlike from judges).

Therefore, the same applies to interventions in the social security of judges (i.e. also sickness benefits) as in the case of salary conditions, that it should also be a stable and unmanipulatable quantity and should not be a factor with which it can calculate the current government group.

This also clearly follows from international documents, which have an adequate degree of legal guarantee (effectiveness) in the sense of Art. 1 par. 2 of the Constitution, which enshrines the constitutional obligation of the Slovak Republic.

In the case law of PL.ÚS 27/2015, these documents also include the Recommendation of the Committee of Ministers of the Council of Europe of 2010 and the European Charter of the Statute of Judges of 1998.

The European Charter states that the aim of the Statute for Judges is to ensure professional competence, independence and impartiality and therefore the Charter consists of provisions which are the best guarantee for the achievement of these objectives.

One of these provisions is Art. 6, which contains a common regulation of remuneration and social security of judges. It clearly states that the statute guarantees judges protection against risky social circumstances such as illness, maternity, invalidity, old age and death, so that judges must be covered by social security in the event of these exceptional social risks.

In terms of content, this is also enshrined in the above-mentioned recommendation of the Committee of Ministers that there must be guarantees that the judge's adequate remuneration will be maintained even in the event of his illness.

Unconstitutional (inadmissible) interventions in the constitutional principle of the independence of judges are given, in the area of material security, if they significantly endanger the standard of living standard of judges commensurate with their annual income.

It is clear that a significant reduction in the period of providing the sickness supplement to the amount of the functional salary (maximum to 60 days a year) will significantly jeopardize the standard of living of a judge.

The above-mentioned method of payment of the sickness supplement is not discriminatory in relation to ordinary employees. The constitutional status of the judiciary, who must legitimately meet demanding legal and moral criteria throughout the period, which is unparalleled in the private or public spheres, are banned from several basic human rights and freedoms (business, strike, political engagement) clearly show that they are in a significantly different legal status (legal situation) than a regular employee.

The constitutional principle of equality must be understood in a material sense, which means that "the same may not be treated arbitrarily unequally, but at the same time unequal must not be regulated arbitrarily in the same way" (eg ÚS ČR - PL.ÚS 11/02).

It is therefore clear that the proposed regulation meets all the legal criteria for discrimination against judges compared to ordinary employees by enshrining a substantively identical regulation of the provision of sickness benefits.

From the above-mentioned binding opinions of the Constitutional Court, it is clear that the petitioner's unconstitutional (arbitrary) opinion that the supplement to sickness judges has nothing to do with salary evaluation and cannot be linked to the principle of independence of the judiciary.

Sick pay is undoubtedly an inseparable part of the complex of material (material) security of judges (salaries and social security), by which the state ensures independence by legal regulation in § 4 par. 2 of the Status Act and which also belong to the so-called personal guarantees of the independence of judges (remuneration and economic security of judges commensurate with the nature and importance of their work).

The inadmissibility of equally negative regulation is also given to prosecutors.

It follows from the constitutional concept of the Prosecutor's Office of the Slovak Republic that the constitution guarantees its autonomous position, power and functional separation from other powers in the state and exclusive constitutional enshrinement on protection of rights and legally protected interests

The Prosecutor's Office therefore has a special and irreplaceable position in the control system of the rule of law. It supervises in the criminal area, where it has a superior position, and in the non-criminal area it ensures the detection of deficiencies in the activities of public administration bodies that may cause undesirable consequences, so it helps to eliminate them (PL.ÚS 17/96, II.ÚS 360/2014).

In the area of the administration of justice, there is also an extensive activity of the prosecutor's office in the criminal area and in the civil area (dispute, non-dispute, administrative proceedings).

At the same time, the legal relevance of the opinion of the Venice Commission (according to Article 1 para. 2 of the Constitution - the constitutional commitment of the Slovak Republic) that the prosecutor's office is considered in a broader sense performing their duties in good faith.

From the above facts follows the necessary requirement to maintain the current regulation also for prosecutors, as otherwise it is an inadmissible interference with the principle of legal certainty and legitimate expectations of representatives of the autonomous constitutional body, which has an irreplaceable control role in the rule of law.

B /

The cancellation of the right to remuneration (optional benefit), the criteria of which are enshrined in Section 78a of the Status Act, is factually unfounded.

The award of remuneration is not decided exclusively by the president of the court, but only in co-operation with judicial self-government bodies (judicial councils), which have the constitutional

authority to co-operate with court management and administration bodies (Article 143 para. 3 of the Constitution). Remuneration may be provided exclusively to a judge only for activities that assist court administration bodies in the performance of their duties in the field of personnel, organizational, professional activities, supervision and reaching the age of 50, which, according to the Constitutional Court, precludes interference in judges' decision-making, so it cannot conflict with the independence of courts and judges (PL.ÚS 10/05).

The inadmissibility of the possible payment of remuneration for reaching the age of 50 is also discriminatory towards judges, as it is permissible in the whole area of civil and public service (unequal treatment).

The current legislation ensures (§ 78a) that under no circumstances will rewards allow the decision-making of a judge to be effectively influenced by an optional benefit, as it is not granted only to judicial authorities subject to the executive, criticized by the Venice Commission. It is obvious that the criteria of the PL.ÚS 12/05 finding, when rewards are inadmissible, are not met.

According to the valid Act on Judges, which regulates the salaries of judges (§ 65 - salary of a judge), the judge is entitled to basic salary, bonuses, salary for overtime, additional salary, salary adjustment and remuneration.

The criteria for the possibility of awarding remuneration and the procedure for awarding remuneration are regulated by Section 78a (obligatory cooperation of bodies of administration and self-government of the judiciary and exhaustively established criteria for awarding remuneration).

It is clear from this concept of the legislator (salary ratios) that the judge's salary also includes remuneration, which represents an optional benefit.

The binding case law, which addressed the issue of the constitutionality (unconstitutionality) of the intervention of the legislature in the salaries of judges in a way that interferes with their independence, also shows that the legislator's principles in the area of material security of judges, which can be considered denied violates the legal certainty of judges (PL.ÚS 52/99, PL.ÚS 12/05, PL.ÚS 27/2015).

Restrictive intervention in the salaries of judges is not acceptable if it is not sufficiently justified by the existing situation and needs of the economy, does not meet the condition of temporaryity and is marked by elements of arbitrariness. The judiciary, as an independent part of the constitutional mechanism, cannot pay for the populism and purposeful calculations of the actors of the political struggle, so the salary of a judge should be a stable and unmanageable quantity.

The Constitutional Court also drew a conclusion on the constitutional (not legal) guarantee of the independence of judges in a direct causal connection with their salary conditions (Article 144 para. 1).

The constitutional regulation, in view of the binding case law, therefore allows only intervention of a temporary nature, even for the time necessary, and does not allow for the abolition (termination) of the statutory component of salary. At the same time, it must be respected that in interfering with legal certainty and the resulting legitimate expectations of the addressees of the legislation, i. judges of the general courts, as well as a serious breach of their confidence in the legal order, this negative situation is accentuated by the fact that the addressees of legal norms are judges to whom the constitution guarantees independence.

Remuneration of judges belongs to the so-called personal guarantees of their independence.

The abolition (extinction) of the right to remuneration (not a temporary interference with the payment of remuneration for the necessary period) as an integral part of the legal regulation of the judge's salary (salary component) is therefore clearly inadmissible interference with the independence of judges under Art. 144 par. 1 of the Constitution.

From an economic point of view, it should be noted that funds for judges 'remuneration are paid only from judges' salary savings, so they do not burden the state budget in any way.

The bill meets the criteria (in case of cancellation of the right to remuneration - optional benefit, the granting of which excludes any possibility of influencing the decision-making of a judge) on the prohibited method of refusing a statutory component of salary durability and stability of the legal norm (eg PL.ÚS 37/99, PL.ÚS 49/03, I.ÚS 30/99, PL.ÚS 1/04, PL.ÚS 6/04).

C /

In the provision of § 151zf par. 3, 4 establishes a new model (different criteria and different procedural procedure) in the transitional period until 30.6.2021 (after the establishment of the Supreme Administrative Court) for the selection of candidates for judges of this new court of the general judiciary.

The selection procedure consists only of a public hearing in the Judicial Council, which is carried out according to the rules of public hearing of candidates for a judge of the Constitutional Court, where the preconditions for judicial competence are verified (see the explanatory memorandum).

The precondition for judicial competence is the moral standard and integrity of the judge for the proper and responsible performance of his function (§ 5 para. 6 of the Judicial Act).

For the establishment of the position of a judge of the general judiciary on all other courts (district, regional, supreme court), the law regulates significantly more extensive conditions (Section 5 (1) (a) to (i) of the said Act).

The selection procedure verifies the decisive facts (8 criteria), which are expertise, a general overview that must be required taking into account the level of court, ability to think creatively, speed to think, ability to make decisions, verbal expression, personal prerequisites, health status and knowledge of foreign language.

The selection procedure consists of a total of six stages (test, case study, drafting of court decisions, translation from a foreign language, psychological assessment and oral part), which is carried out by a five-member selection committee and lasts for at least three days.

Judges of the Constitutional Court have significantly different legal criteria (to a lesser extent) and attend only a public hearing (i.e. an oral part).

The Constitutional Court underlined the fundamental importance of the fundamental right under Art. 30 par. 4 of the Constitution, as this fundamental right is a key political right related to the character of the Slovak Republic as a democratic and legal state, while the criteria of the article are universal (therefore they can not be restricted by law) and are an obstacle to creating any benefits,

respectively. restrictions on access to elected and other public functions (I.ÚS 397/2014, IV.ÚS 92/2012, PL.ÚS 19/98).

According to Art. 30 par. 4 constitutions citizens have the right to access another public office only (exclusively) under the same conditions. The importance of the same conditions is that the legislation of any legal force or the practice of state authorities cannot favor or discriminate against certain groups of citizens over other groups in terms of access to public office (eg II.ÚS 48/97, I.ÚS 76/2011, I.ÚS 397/14).

This is an unequal approach to the position if some candidates for the position of judge do not have to go through the same selection procedure (with the same conditions) as other candidates for the position of judge, so the constitutional requirement "under the same conditions" under Art. 30 par. 4 of the Constitution.

The Constitutional Court stated that the compliance of the legal regulation with Art. 12 par. 1 of the Constitution (equality of citizens), if in the chosen model he established the same conditions for candidates for the position of judge (legal regulation of preconditions for the appointment of a judge, completion of a selection procedure, etc.) within a selection procedure (PL.ÚS 102/2011).

The proposed provisions are in serious conflict (violate) with the constitutional regulation of Art. 12 par. 1 (non-discrimination) and Art. 30 par. 4 on the unconditional obligation of regulations of any legal force to prevent certain groups of citizens (candidates for judges of the general judiciary) from being preferred or discriminated against.

Applicants for the position of judge of the Supreme Administrative Court are undoubtedly favored (smaller range of criteria, significantly simplified procedural procedure) and other candidates for other courts of general justice (district, regional and supreme court) are exemplary discriminated against (disadvantaged) by more demanding criteria and more demanding procedural procedure.

Violation of this inalienable and irrevocable fundamental right and thus also of the constitutional principle of protection of fundamental rights and freedoms of citizens, as well as the prohibition of discrimination is an inadmissible interference with the material core of the constitution, which is not allowed by constitutional law or less common law.

Dear Members of the National Council of the Slovak Republic,

In the chosen form, I would like to acquaint you in more detail with the essential parts of the key parts of the reasoning of many judgments of the Constitutional Court, especially in order to create appropriate conditions for responsible implementation of your promise to fulfill their obligations in the interests of citizens.

Sincerely

JUDr. Juraj Sopoliga

President of the Association of Judges of Slovakia