



Association of Judges of Slovakia  
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## **Standpoint**

Presidium of the Association of Judges of Slovakia on the letter of the President of the Judicial Council of the Slovak Republic Ján Mazák dated 15 December 2020 sent to the President of the Advisory Council of European Judges (CCJE)

In that letter, the President of the Judicial Council expressed his dissatisfaction with the opinion of the CCJE Bureau of 9.12.2020 (CCJE - Bu (2020) 3) adopted in connection with the reform of the judiciary in Slovakia approved at the request of CCJE member František Mózner (Slovak representative) that the request of this member contains many inaccurate and partly distorted facts.

He stated that the exclusion of the possibility of the Constitutional Court to assess the conformity of constitutional laws with the Constitution is the result of a long-running discussion that arose between many members of the academic community and former judges of the Constitutional Court.

This implies the existence of an agreement between part of the academic community and politicians (representatives of the current government coalition) to change the constitution in this part.

This argument points to a violation of the legal regulation on the creation of legal regulations (Act No. 400/2015 Coll.), which obligatorily requires the mandatory publication of the text of the proposal in the comment procedure.

It is undeniable that in the comment procedure the Ministry of Justice did not publish (did not make available to the public) a proposal to allege a restriction of the powers of the Constitutional Court, as this was supplemented at the government meeting after the comment procedure.

As a result of the above in the legislative procedure, there was no discussion of such a proposal (omitted by the judiciary).

In this context, it is necessary to emphasize that within the academic community, prominent personalities of legal theory have clearly rejected the deprivation of the constitutional court's competence to assess possible incompatibility of constitutional law with the constitution, as it meets the criteria for admissibility of unacceptable constitutional intervention in the implied material core of the constitution, rule of law, also based on inspiring decisions of the constitutional courts of Germany, the Czech Republic, Austria (eg P. Holländer, A. Brörtl, V. Orosz, J. Drgonec).

The legislator approved the said change in this part of the constitution (Article 125 para. 4 of the constitution).

The amendment to the Constitution enshrined the dismissal of all members of the Judicial Council at any time and in accordance with the explanatory memorandum, even without stating reasons (Article 141a para. 3 of the Constitution).

The claim of the President of the Judicial Council that in our constitutional order we have a fundamental right to good administration, so that every decision of a public authority must be reasoned, which is a guarantee against arbitrary decision, is a model denial (ignoring) of the constitutional court's binding constant case law (false information).

The argument about the right to good administration (reasoning of the decision) in personnel decisions by public authorities was rejected by the Constitutional Court also in proceedings III. ÚS 588/2016 (Prof. Mazák's complaint rejected).

The content of J. Mazák also contains his consent to the transfer of a judge to a lower court when changing the system of courts even without the consent of the judge (Article 148 (1), second sentence of the Constitution).

This ignores the constant case law on the inadmissibility of interference with the constitutional principle of legal certainty and the preservation of legally acquired rights, which means that such rights cannot be revoked, i. also the status of a judge of a higher court obtained according to the valid legal criteria (eg PL ÚS 16/95, PL ÚS 6/04). A different procedure is an interference with one of the constitutional guarantees of the independence of a judge.

His defense of the narrowing of the scope of criminal (functional) immunity of judges of the general judiciary, as opposed to constitutionally equivalent judges of the Constitutional Court and members of parliament, and the introduction of the crime of "bending the law" demonstrates in its entirety the uncritical support of the current coalition constitutional majority (political power), although it is an interference with one of the basic

guarantees of the independence of the judge and thus the independence of the judiciary in accordance with ECtHR case law in interpreting Art. 6 para. 1 of the Convention.

We strongly reject the claim that some members of the Slovak judiciary are trying to block reform steps that pursue the goal of cleansing and curing the judicial system.

This argument demonstrates the failure to respect the constitutional right of every citizen to freedom of expression, which guarantees respect for pluralism in society, as an integral part of a democratic state.

The dissenting arguments of judges (from the opinions of the President of the Judicial Council) clearly demonstrate their interest in judicial reform that will undoubtedly ensure the realization of an inalienable, irrevocable and non-expiring constitutional right of a citizen to judicial protection only by independent judges and the judiciary (Article 12 (1)); Article 46 (1), Article 48 of the Constitution).

The idea of the President of the Judicial Council that only his opinion, which is in line with the opinion of the politicians of the governing coalition, will ensure the correct reform of the judiciary, has significant elements of the expression of arrogance of power.

We unequivocally appreciate the factually substantiated critical opinion of the CCJE presidency, which is based exclusively on truthful information reported by member František Mózner. It is clear from the opinion that the security of the term of office of the members of the Judicial Council is not in line with the international standards of the EU states (which will lead to its politicization) emphasizing the need to respect the principle of non-translatability of judges (a key element of independence) and stating that limiting the functional immunity of judges significantly reduces the guarantee of judicial independence and leads to greater (even political) pressure on judges, as the fight against corruption should not undermine the independence of the judiciary.

The substantive disagreement of the President of the Judicial Council with the above-mentioned opinion of the CCJE Presidency clearly indicates that he overlooks the existence of the constitutional obligation of the Slovak Republic enshrined in Art. 1 para. 2 of the Constitution, on the basis of which (as stated by the Constitutional Court and the Court of Justice of the EU) the recommendations of the CCJE also have a reasonable degree of legal relevance (legal effect).

We strongly protest (condemn) František Mózner's personal assault (defamation) with unsubstantiated allegations of alleged suspicion of attempting to cooperate with persons prosecuted for particularly serious crimes.

Such a slide to unsubstantiated personal attacks (finger-pointing) for truthfully informing the CCJE bodies of the intentions to change the constitution, which has already been approved by the parliament, significantly reveals the level of moral integrity of the President of the Judicial Council.

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