Association of Judges of Slovakia
Štúrova 29, 041 78 Košice
IČO: 31932169

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Ref:Comments on the draft law on the seats and districts of the courts of the Slovak Republic and on the amendment of certain acts (hereinafter referred to as the "draft law") within the legislative process no. LP / 2020/587

A. General comment on the bill as a whole - fundamental comment

The new judicial map as proposed, not only is not capable of fully fulfilling the objective of judicial reform declared by the petitioner - to increase the credibility, performance and quality of the judiciary while ensuring better working conditions and decision-making for judges and court staff - but in certain respects relation to the proposed abolition of courts of appeal) can actually cause a significant deterioration (distortion) of the conditions of the judiciary. The material submitted for comment lacks a relevant analysis which would justify the reform of the judicial map to the extent proposed and which would assess:

- number of judges in relation to the optimal idea per judge,
- a comparison of the state of speed, the quality of court proceedings, their effectiveness before 1996 in relation to the present, which is by no means the applicant's alleged return to the situation until 1996, according to which 4 courts of appeal should be maintained (based in Bratislava, Banská Bystrica and Košice) and 42 district courts,
- a comparison of the relationship between the size of a territorial district or a court and the quality and speed of court proceedings,
- development of future investments, resp. development of the region,
- the financial impact for residents and entrepreneurs in the territorial districts of the adjudicated courts, especially in relation to the abolition of the courts of appeal in Bratislava and Košice, ie in the cities with the highest concentration of population and business entities,
- personnel and financial implications in relation to the administrative apparatus of the courts,

- a proposal for a new court map, in particular as regards the dissolution of the courts of appeal, also with regard to its costs, which are estimated at around EUR 320 million, and the reality of the intention to finance it from the resources of the European Union - the Recovery Fund, in terms of whether taxpayers' money will actually be spent as best as possible to achieve the set goals.

The draft law in several ways does not respect the conclusions of the report "Efficiency and quality of the Slovak judicial system. Evaluations and recommendations based on CEPEJ instruments "of November 2017, prepared by the European Commission for Effective Justice (hereinafter" CEPEJ ").

The specialization of judges states that it is necessary to determine a minimum number of judges, calculated on the basis of several factors, in order to guarantee quality and efficient decision-making and the random allocation of cases within each legal sector. It is emphasized that the specialization of judges should lead not only to a narrower category of cases, but also to narrower legal sectors, for example, in order to avoid over-specialization which could jeopardize the wider knowledge spectrum of judges and the possible transfer of judges between legal sectors. The grounds of the present application are based on the condition that there will be three specialized judges / chambers in each court. However, the required information on the basis of which several factors were enforced in the stated number of judges is absent. The mandatory appointment of at least two judges is probably sufficient for random selection, which also corresponds in substance to the 2010 Venice Commission Recommendation.
It is further stated that, in line with the findings on human resources and in the context of specialization and the judicial map, it is recommended to allocate human resources to the courts on the basis of objective and transparent criteria relating to the circulation of things (workload, specialization, etc.). The number of judges and court clerks assigned to the courts should therefore be based on clear and objective criteria based on an analysis of the idea, the administrative workload and estimates of the average time needed to perform the various judicial and administrative functions of the court. In structuring the idea of cases (2013-2016), the CEPEJ noted that the indicators identified for the period for cases per judge and cases per court staff point to the need for an in-depth analysis of the criteria applied in the allocation of staff and to review them based on the results. analysis of ideas, as reliable data necessary for analyzes prepared by courts and analytical center of the Ministry of Justice of the Slovak

Republic (hereinafter "Ministry of Justice") is a necessary condition (conditio sine qua non) for the purposes of designing, planning and implementing any management policy.

Based on the CEPEJ's recommendation to take into account the special context of the functioning of courts and the need to carry out an analysis, a research project "Case Weighing" was launched at the Ministry of Justice. CEPEJ experts were also involved in the preparatory phase of the project (from June 2019). The aim of this project is to increase the efficiency and transparency of the allocation of human resources and related financial resources to regional and district courts, as well as to achieve an equal workload for these courts and their judges in the execution. The basic axiom (principle) of the research is the application of measuring case weighting in the conditions of the Slovak Republic according to the Israeli model, the mathematical essence of which is multiplying the average value of judging time devoted to individual judicial activities (data on hearings - 11 items, data on decisions - 33 items). The project in question is to be implemented by the end of 2021. It is therefore clear that only on the basis of the evaluation of the obtained data (their in-depth analysis) is it objectively possible to meet the fundamental condition of substantive validity (transparency) of the proposal the real state of the conditions for the administration of justice (material, personnel, financial) and at the same time the achieved level of quality, timeliness and quantity of the performance of justice in all district and regional courts. Without an evaluation of the project in question, it is impossible to responsibly assess the question of whether and which courts should be cancelled, or to be general courts of appeal (their seats), what is the scope of specialization and on the basis of what criteria will be the availability of courts, which must exclude a significant burden or denial of a citizen's fundamental right of access to a court (Article 46-1 of the Constitution).

Given that the above-mentioned shortcomings cannot be eliminated by modifying the submitted text, we propose to withdraw the draft law as a whole from the comment procedure and prepare a new legislative proposal, which will be based on the above analyzes and conclusions of the project "Weighing cases" and on its preparation. will have the opportunity to participate all stakeholders - representatives of judges representing the territorial districts of all regional courts, prosecutors, the Ministry of Interior of the Slovak Republic, trade unions, local government, etc., and given the estimated costs associated with changing the court map, its effectiveness should be opinion is also assessed by the Value for Money Department of the Ministry of Finance of the Slovak Republic.

B. Specific comments on Art. I

B.1. § 2 Seats and districts of district courts - fundamental remark

For the reasons stated in the general comment, we propose to re-evaluate the new seats and districts of the district courts so that, on the basis of all relevant input data, only those district courts are canceled for which it is not possible, even when exercising causal jurisdiction, e.g. in relation to the business agenda, to ensure the required specialization, while maintaining adequate geographical accessibility of courts for the population and businesses. With regard to transport infrastructure, the explanatory memorandum is based on the possibility of a travel connection only between the current seats of the district courts to be abolished and the new seats. However, it no longer takes into account the possibilities of transport connections from towns and municipalities in the districts of the annulled courts to the seats of their successor courts.

As an example of an unjustified abolition of the District Court in our opinion, we point to the proposed abolition of the Topoľčany District Court based only on dialect criteria which is even not correct in this base (the identification of dialect of Topoľčany area is not correctly mentioned in the draft law argument report). In addition, it is the Topoľčany District Court that is causally competent for the district of the entire Regional Court in Nitra to deal with a specific labor law agenda, which also gives it the required specialization.

B.2. § 3 Seats and districts of regional courts (Courts of Appeal)- fundamental remark

We propose to maintain the current number of regional courts, which, with a responsible personnel policy, can ensure sufficient specialization in all major agendas (in some cases with the application of causal jurisdiction) and thus the required quality and speed of decision-making. At the same time, we are of the opinion that the judicial districts at the level of courts of appeal should, as far as possible, copy the existing administrative division of the Slovak Republic, as otherwise the court map for participants, event. parties to the proceedings are non-transparent. In this context, we point out in particular that according to Article VII of the draft law and its Annex No. 1, executor districts do not copy the newly created districts of 3 regional courts, but are based on the 8 existing districts of regional courts and the existing seats of district courts. This will also create multi-track (one line of districts for courts, another for executors

and a third for state administration and local government bodies) and opacity in the system of functioning of the judiciary.

In addition, we consider it necessary to emphasize that, in line with the CEPEJ's recommendations, the relevant criteria justifying a change in the court map include population density, court size, case design, workload, geographical location, infrastructure and transport, digitization, court facilities, workload, alternative dispute resolution, availability of legal advice and recruitment of judges and other court staff and cooperation with external systems (prisons, prosecutors, police). The current number and constituencies of the courts of appeal meet these criteria, and in view of the stated goals, we see no rational reason to change them on the basis of regional, cultural and dialect criteria, not even with regard to the applicant's declared effort to break corruption ties. Only on the basis of the ongoing criminal prosecutions of several judges, without underestimating in any way the seriousness of this situation from the point of view of the credibility of the judiciary as a whole, the general conclusion presented by the Ministry of Justice cannot be accepted that corruption relations will not be formed in "larger" courts, or that they will be to a lesser extent than in smaller courts.

We consider it absolutely unacceptable to abolish the courts of appeal in Bratislava and Košice, which not only will not be able to meet the objectives pursued by the draft law, but given the population density in these cities, concentration of business entities as well as state bodies, including top ones, may actually jeopardize proper performance for the reasons set out below.

B.3. § 6 Seats and districts of administrative courts - fundamental remark

With regard to the already mentioned requirement of clarity of the court map from the point of view of its end user (residents and entrepreneurs), we propose that the competence of administrative courts of first instance be exercised by 4 regional courts on the basis of causal jurisdiction. This will, if necessary, e.g. with regard to the development of the trend of the idea of things in individual agendas, it will also create space for a flexible redistribution of personnel capacities by transferring judges between individual regional courts.

B.4. § 8 - comment

In legislative practice, the model of publishing maps is not used directly in law. I therefore propose deleting this provision, including the annexes.

B.5. § 9 - fundamental remark

We propose to amend the wording of this provision in accordance with the fundamental comment on § 6 of the draft law (point B.3.).

In addition, we consider the proposed wording of paragraph 4 to be clearly discriminatory when it creates different groups of judges of administrative colleges of regional courts (those who will become judges of administrative courts automatically and those who will be able to become them by 30 March 2020 after a previous public hearing in the Judicial Council and verification of the preconditions for judicial competence), depending on which regional court and at what time they were assigned.

B.6. § 10 par. 4, § 11 par. 3 – fundamental remark

From the explanatory memorandum, but also from the proposed change in the provisions of § 248 par. 2 of the Criminal Procedure Code (Article II. Point 9 of the draft law) and § 173 par. 1 of the Civil Procedure Code (Article III point 6 of the draft law) stipulates that even in the case of the establishment of a district or regional court office outside their seat, the distribution of cases will be assigned to individual judges / senates by random selection within the entire territorial district. Such an adjustment, especially with regard to regional courts, will not only increase the administrative burden and costs associated with the administration of justice, but may ultimately be counterproductive in terms of speed and quality of decision-making, for the following reasons, demonstrative example Court of Appeal in Trnava, which undoubtedly also apply to other districts:

- if the electronic filing system is only in the seat of the court, it will mean that all things will have to be submitted first to the Regional Court in Trnava and then distributed to individual workplaces in Bratislava, Nitra and Trenčín, which will undoubtedly complicate not only the circulation of files but also increase associated costs,
- it will not be an exception that the participants, event. the parties to the proceedings residing in Bratislava and its surroundings will have to go on appeal to Trenčín and vice versa, which will undoubtedly increase the costs of the proceedings, which are primarily compensated by the state in the criminal proceedings, without any estimate of their estimate,

– if, on the other hand, judges will travel to the parties of the proceedings (in the case of criminal proceedings also with the recorder), as follows from the above provisions of the Criminal Procedure Code and the Civil Procedure Code, except for undoubtedly increased costs associated with such transfer, this fact must also be taken into account when determining the hearing days and hearing rooms, which will naturally limit their availability. Not to mention that judges will spend part of their working time traveling instead of preparing for decision-making and the decision-making itself, which will certainly not increase the speed and quality of decision-making, and which will not ensure better working conditions and decision-making for judges and court staff, which is one of declared objectives of the new judicial map.

At the same time, in view of the current unfavorable development of the economic situation associated with the COVID-19 pandemic, the uncertain source of funding for this reform from the Recovery Fund, as well as the previous practical experience with the establishment of courts established after 1996, when in some cases the acquisition and reconstruction of buildings took more than ten years, but also the current long-term unfavorable situation concerning of the District Court of Bratislava I, the Košice courts, but also the Supreme Court of the Slovak Republic, we consider it illusory that the conditions for the administration of justice in the seat of the court will be created in the foreseeable future (eg within the term of office of this government). Therefore, although it is clear from the wording of the provisions in question but also from the explanatory memorandum that they should be a temporary provisional solution, there is a real concern that this will be a long-term situation which will not only even worsen in certain directions.

The above risks can be eliminated by simultaneously setting up a court office outside its seat, which would also establish its own territorial district, which we propose in the event of enforcing a reduction in the number of courts of appeal, which we do not agree with for the above reasons. In such a case, however, the Minister of Justice cannot decide on the establishment of a workplace, as this will have an impact on the appointment of a legal judge, but the establishment of such a workplace, including his territorial district, should be regulated by law.

B.7. § 12 - comment

We propose to delete paragraph 1 and delete the reference to paragraph 2, in which we propose to delete the words "and 11" at the same time. We are of the opinion that the administration of state property should be performed by the court that actually uses this property.

C. Specific comments on Art. II

§ 16 et seq. – fundamental remark (points 2 to 8)

If, as a result of the abolition of some district courts, there is an increase in the specialization of criminal judges in the remaining courts, which we do not reject in principle, but demand that such a reduction take place on the basis of relevant data and analyzes. already in the effective wording of § 16 of the Criminal Procedure Code or in its proposed wording, will no longer be necessary in our opinion and therefore we propose to delete it and at the same time adapt other amendments 3 - 8, including abolition of special jurisdiction for proceedings under § 24 par. 4 of the Criminal Procedure Code.

§ 248 - fundamental remark (point 9)

For the reasons set out in the fundamental remark B.6. we propose to delete this amendment point.

§ 518 - fundamental remark (point 11)

For the reasons set out in the fundamental remark B.2. we propose to delete this amendment point.

D. Specific comments on Art. III

§ 173 - fundamental remark (point 6)

For the reasons set out in the main comment B.6. we propose to delete this amendment point.

E. Specific comments on Art. IX

§ 11 par. 1 et seq. - fundamental remark (points 1-6)

For the reasons set out in the fundamental remark B.3. we propose to delete these amendment points.

§ 44a - fundamental remark (point 7.)

The transfer of a judge to a new court as a result of the annulment of the court to which he has been assigned means de facto his transfer without consent. Also having regard to the Opinion of the Bureau of the Consultative Council of European Judges on the Reform of the Judiciary in the Slovak Republic of 9 December 2020, CCJE-BU (2020) 3. the State should bear the increased costs associated with such de facto transfer not only temporarily, but as long as such increased costs actually arise. We therefore propose deleting the time limit for the reimbursement of these expenses.

At the same time, similar reimbursement of increased expenses should be provided in relation to the professional administrative apparatus.

§ 66 et seq. - fundamental remark (points 8-17)

For the reasons set out in the main remark B.3. we propose to delete these amendment points.

F. Specific fundamental remark on Art. XIV

For the reasons set out in the fundamental remark B.2. and B.3. we propose to delete this amending article.

G. Specific fundamental remark on Art. XVI

For the reasons set out in the fundamental remark B.3. We propose to delete amendment points 2, 4 to 12, 114 to 22 and 25 to 35 and amendment points 23 and 24 for the reasons set out in fundamental remark B.6.