

Information on the rule of law for the European Commission.

The Association of Judges of Slovakia / ZSS /, as a member of the European Association of Judges / EAJ /, is the largest non-political voluntary professional organization of judges / 607 members - professional judges and judges emeritus /, whose activities are based on the constitutional regulation Art. 29 par. 1 of the Constitution / the right to freely associate /, which is identical to Art. 11 par. 1 of the Convention and Art. 22 par. 1 of the International Covenant on Civil and Political Rights, which is part of our legal order / Art. 154 c par. 1 constitution.

In accordance with international documents / recommendations /, which according to the case law of the Constitutional Court have an adequate degree of legal relevance according to Art. 1 par. 2 of our constitution / enshrined a positive commitment of the Slovak Republic to abide by international obligations / is the goal of the professional organization to ensure the independence of the judiciary and judges, to defend their interests and to uphold the rule of law.

In fulfilling the above authorization and at the same time also obligations, we consider it necessary to duly inform you about fundamental legislative changes in the field of justice effective from 1.1.2021 / Constitutional Act no. 422/2020 Coll., Act no. 423/2020 in connection with the reform of the judiciary /, which in some parts meet the criteria of non-respect of the basic constitutional right of a citizen to judicial protection only by an independent and impartial court / irrevocable and non-expiring right of a citizen / independence of the judiciary and judges.

Our opinion / which will be presented below / is based on the constant case law of the Constitutional Court of the Slovak Republic, which in these areas is also based on inspiring decisions of several constitutional courts of EU countries / Germany, Czech Republic, Hungary - see PL.ÚS 21/2014 /

A fundamental intervention in the principle of separation of powers and independence of the judiciary is the restriction of the Constitutional Court's authority in ensuring its essential function of universal protection of constitutionality by enshrining the inadmissibility of assessing possible unconstitutionality of constitutional law with the Constitution / Art. 125 par. 4 constitutions / i.e. with the principles of a democratic and rule of law as well as the fundamental rights and freedoms of citizens / so-called material core of the constitution - eternity clause.

The principle of the separation of powers is an essential condition for the protection of the freedom and democratic nature of the state and is particularly strictly applied in the rule of law in relation to the judiciary, which is the most sensitive of other powers – legislative and executive. Therefore, the independence of the judiciary needs to be carefully guarded against immediate as well as indirect interventions, as in a parliamentary democracy the individual powers are autonomous and interconnected only by the links of constitutional control and cooperation /e.g. PL.US 16/95, PL.US 25/00, PL.US 115/2011, I. US 54/01 /.

The change enshrined in its consequences means that constitutional law will allow arbitrary interference / violation, threatening / into any fundamental rights and freedoms of citizens as well as any constitutional principle of the substantive rule of law by the current constitutional majority of members of the National Council and thus the establishment / creation / of real and unavoidable conditions, to erosion / decay / democracy and the start of totalitarianism or even dictatorship.

The above-mentioned amendment to the Constitution was not proposed in a regular comment procedure, but was only approved / supplemented / by the government after its completion, thus precluding any transparent discussion on the part of the professional and civil public.

At the same time, a significant reduction in the functional immunity of judges of general courts was enshrined / Art. 148 par. 4 of the Constitution / also the abolition of the power of the Constitutional Court to give its consent to the prosecution of a judge of the General Court / deletion of Art. 136 par. 3 constitutions / in contrast to equivalent constitutional officials in the rule of law / members of the National Council and judges of the Constitutional Court / which really allows the creation of space for mobbing of uncomfortable judges if they do not decide according to wishes expressed or indicated by executive / political power / i. replacement of an independent legal judge by a judge dependent / influenced / also on the social atmosphere created by politicians and some media.

According to publicly available information, the European Commission is conducting proceedings against Hungary and Poland for breaches of the rule of law and for interference with the principles of independence of the judiciary and judges.

In our opinion, these principles are being violated by the above-mentioned legislative changes in the Slovak Republic as well.

We would therefore like to inform you in more detail about our legal arguments, which are based on key parts of the reasons for decisions of the Constitutional Court issued in proceedings pursuant to Art. 128, Art. 125 of the Constitution, which are binding on the legislator in the legislative process, as it implies a commitment for the executive, legislative and any other power in the state, regardless of its level, to respect and comply with court decisions even if they do not agree with them, because respecting the powers courts is a necessary condition for public confidence in the judiciary and, more broadly, for trust in the rule of law /e.g. PL.US 17/96, PL.US 27/2015, PL.US 7/2017, I. US 575/2017, ECtHR decision- complaint no. 23465/03 item 136 /.

Substantiated reservations on part of the legislative changes are also stated in the opinion of the Bureau of Consultative Council of European Judges of 9.12. 2020 / CCJE-BU / 2020/3 /. It unequivocally criticized the interference with the security of the term of office of the members of the Judicial Council of the Slovak Republic / politicization of its activities /, the interference with the security of the term and non-translation of a judge without his consent to change the court system and limiting the functional immunity of judges, as this leads to greater political pressure on judges.

It should be noted that the President of the Judicial Council of the Slovak Republic Prof. JUDr. Jan Mazak, PhD. by letter of 15.12.2020 he informed the President of the CCJE of his disagreement with the said opinion of the Bureau, while the text of the letter gives the impression that it was the opinion of the Judicial Council, which did not discuss it, and not his personal position. The procedure elected by the chairman of the Judicial Council is in direct conflict / violates / with the constitutional regulation of the decision-making of the Judicial Council / Art. 141 et seq. 6 of the Constitution / that the opinion of the Judicial Council is valid only if at least 10 members out of the total number of 18 members of the Council voted for the opinion.

The Presidium of the Association of Judges of Slovakia responded to the factual unfoundedness of the arguments of the letter from the Chairman of the Judicial Council by an opinion dated 18 December 2020.

Based on the initiative of the Association of Judges of Slovakia, part of the opposition deputies of the National Council / Smer – SD party, Hlas-SD party / submitted proposals to the Constitutional Court to declare the discrepancy of part of the constitutional changes and amendments to the Judicial Reform Act on 18.12.2020 and 25.2.2021.

Reservations to the proposal of the so-called judicial map.

Currently in the legislative process is a proposal for the so-called change of the judicial map / draft law on the seats and districts of the courts of the Slovak Republic /.

We fundamentally disagree with the proposed solution to the changes of the judicial map due to its significant shortcomings, and the judiciary does not reject the need to improve the efficiency of the judiciary, which must only be done through extensive expert discussion otherwise it will not realistically improve the level of law enforcement for citizens and businesses.

An indelible defect of the draft court map is the refusal / ignoring / of the Ministry of Justice to accept the standard criteria of the European Commission for the efficiency of justice / CEPEJ / for finding out / realizing / the current status of the conditions of judicial performance proceedings, decision-making in Slovakia.

At the same time, other EU countries have applied the CEPEJ criteria in solving their problems in order to increase the efficiency of the administration of justice.

According to the same criteria, the project of the Ministry of Justice "Case Weighing" is implemented with the participation of the judiciary, which was to be evaluated / in-depth analysis / in the period from 1.1.2021 to 30.6.2021, which the ministry completely omitted, so it is excluded for Slovakia to address efficiency gains of the judiciary by application of the results obtained according to the standard CEPEJ criteria.

The Ministry did not respond to the factual comments of the staff of the judiciary / plenary of courts, judicial councils, professional administrative apparatus / on real risks / obvious

shortcomings / resulting from the proposed implementation of the court map by professional counter-arguments.

The legislative documents of the draft law on the judicial map state that this issue of the organization of the judiciary is a sovereign internal matter, which is not regulated in European Union law, which is not contained in the case law of the EU Court of Justice, contrary to the legal opinion C-192/18, C-585/18, C-624/18, C-624/18, C-619/18, C-64/16 /, which also follows the case law of the European Court of Human Rights / ECtHR / . The Court has held that, although the organization of the judiciary in the Member States falls within the competence of those States, it is still the case that, in exercising that competence, the Member States are required to comply with their obligations under European Union law, Article 19 (1), second subparagraph, of the Treaty on European Union.

The comments of a significant part of the judges and the professional apparatus are supported / in some issues / by the opinions of the Judicial Council of the Slovak Republic, the Supreme Court of the Slovak Republic, the General Prosecutor's Office of the Slovak Republic, the Slovak Bar Association, Association of towns and municipalities of Slovakia, academics - faculties of law / especially the obvious unfoundedness of the abolition of the courts of appeal in Bratislava and Košice /.

According to the explanatory memorandum, the elimination of the shortcomings of the so-called Mečiar's judicial reform in 1996 / especially the establishment of 8 regional courts /, while not mentioning the essential fact that the establishment of new courts was not a separate project, but an integral part of the reform of the whole territorial division of the Slovak Republic, by which there were established court of appeals in Trnava and Prešov, which are now preferred.

A more detailed factual argument follows from the following comments of the Association of Slovak judges dated 26 February 2021 in the comment procedure.

Conclusion:

We provide the above information to the European Commission with the intention that its competent bodies, within the scope of the delegated competencies, will examine whether, after the approval of the stated legislative changes / Constitutional Act no. 422/2020 Coll., Act no. 423/2020 Z.z. concerning the reform of the judiciary / and the forthcoming proposal for the so-called the judicial map interferes with the principles of democratic and rule of law, independence of the judiciary and judges in the Slovak Republic, for disrespect / threat, circumvention / standards of European Union countries, which result not only from the case law of EU constitutional courts, European Court of Human Rights, Court of Justice EU but also from legally important international documents / e.g. opinions of the so-called Venice Commission, Committee of

Ministers of the Council of Europe, European Network of Judicial Councils - ENCJ, European Association of Judges - EAJ, Consultative Council of European Judges - CCJE /.

S pozdravom,

In Košice, dňa 5.3.2021

JUDr. Juraj Sopoliga

President

Association of Judges of Slovakia