



EUROPEAN ASSOCIATION OF JUDGES
RESOLUTION
adopted on September 2nd 2021
concerning legislative changes in Slovakia

At the request of the Association of Judges of Slovakia (Zdruzenie sudcov Slovenska - ZZS) the European Association of Judges (EAJ) has considered certain aspects of recent changes to the legislation concerning the judiciary and the rule of law brought about by the amendments to the Constitution of the Slovak Republic (Constitutional Act No. 422/2020 Coll.) and Act no. 423/2020 Z.z. (in connection with the reform of the judiciary), which entered into force on 1 January 2021. The EAJ was also informed about the legislative proposal for a new judicial map of the Slovak Republic.

While appreciating that the changes were part of a reform package adopted with a view to improving the standing of the judicial system in the view of the public in Slovakia, the EAJ regrets that the following particular changes give rise to serious concerns:

(a) Premature removal from office of members of the Judicial Council

In its amended form, article 141a (5) of the Constitution now provides that the „Chairman, Vice-chairman and members of the Judicial Council of the Slovak Republic may be removed at any time before the expiry of their term of office“.

The introduction of such a power is contrary to European standards on the independence of the

judiciary and judicial councils. The necessary independence of members of the council requires that their tenure of office is secure and not subject to arbitrary termination. Only in the case of serious misconduct or neglect of duty may a member be dismissed; and for that situation the law should provide precise grounds, procedure and competences.

Moreover, the EAJ is disturbed to note that paragraph 17 of the explanatory memorandum accompanying publication of the amendments no longer describes the Judicial Council as „the independent constitutional body of the judiciary“ but rather as the „autonomous body complementing judicial policy of the Government and Parliament“. This formulation, which invites the Judicial Council to be seen as an instrument of executive policy, may lead to a failure to maintain due separation of power between the legislature, the government and the judiciary, in contradiction of international standards.

(b) Criminal liability of judges in the exercise of judicial functions

While a judge should not, of course, enjoy immunity from prosecution for any criminal acts committed in the judge's private capacity, it is of cardinal importance to judicial independence that in giving judgment and carrying out other judicial functions a judge should have immunity from civil and criminal liability. The possibility or threat of prosecution carries the dangers of inhibiting the judge from freely exercising his or her functions and may be readily misused to bring improper pressure or influence on a judge.

The EAJ therefore notes with considerable concern that the amended article 148 (4) of the Constitution provides for immunity for „the legal opinion expressed on the decision, *unless a criminal offence has been committed*“ [emphasis added]. This implies that the act of giving a judicial decision may constitute a crime and it is of equal or greater concern to the EAJ to learn that with effect from 1 January 2021 the Criminal Code was amended¹ to create, in sec. 326(a), an offence for any judge to issue „an arbitrary decision causing damage to or bestowing a favour on another person“. Taken together, these provisions readily render judges in Slovakia open to criminal prosecution, or the threat or fear of prosecution, in respect of their judgments and thus pose serious dangers to the independence of the Slovakian judicial office holders. The concept of

¹ By Act No. 312/2020 on forfeiture of assets and management of seized property and amendments to certain acts.

an arbitrary decision is very wide and ill-defined. In the view of the EAJ, the loose and widely cast provisions brought into force in Slovakia on 1 January 2021 manifestly fail to restrict criminal liability for the professional activity of the judge to the narrow, closely defined limits required to meet the basic standards required by European and other international instruments dealing with this topic.

(c) Abolition of safeguards on pre-trial detention of judges

As set out above, it is necessary that judges are protected against undue prosecution since the existence of a potential liability to prosecution may exercise heavy pressure on a judge and influence the judge's work. Therefore, the prosecution of judges needs special safeguards. Previously the Slovak Constitution provided that pre-trial detention of judges required the assent of the Constitutional Court. This has now been abolished (new Article 136 (3) of the Constitution). In the member states of the Council of Europe different models exist to prevent an undue impact on the judiciary as a result of detention or similar investigative measures connected with a prosecution. The consent of the Constitutional Court, another Court or in most cases of the Judicial Council is necessary in order to safeguard the independence of the judiciary. The absence of any such safeguard thus weakens the protection of the independence of the judiciary.

(d) Transfer to another court without consent

Under clear European standards on the independence of the judiciary a judge may not be transferred to another court without the consent of the judge other than in the exceptional cases of either a disciplinary process against the judge or a change in the structure of the court system. In the latter case it is necessary that the criteria for such a transfer and the procedure are established by law; that there is no impact from outside the judiciary on the decision to transfer; and that the judges affected should in any event not suffer any loss or diminution of remuneration or social benefits. Moreover, any such transfer should be avoided unless there is no alternative.

(e) New Judicial Map

EAJ is not in the position to comment on the concrete plans for a new judicial map. However, it should be pointed out that in any event such important reforms of the justice system call for an intense and substantial involvement on the part of the judiciary. Such involvement is in itself part of the European standards. Reforms of that nature should not be implemented hastily but require extensive and close examination. They should increase efficiency and improve the access to justice, and not the opposite. They should not be seen as a means of dismantling corruption networks that have been discovered – such criminals within the judiciary should be eliminated with existing anti-corruption tools.

Conclusion

The EAJ regrets that the reforms of the judicial system in Slovakia include these particular features, which are steps backwards in the process of creating conditions which protect the judiciary from undue influence and safeguard its independence. The EAJ also notes that its concerns are largely shared by the Consultative Council of European Judges which examined the Constitutional amendments in draft and issued its assessment on 9 December 2020 in Opinion CCJE-BU(2020)3. The EAJ endorses that Opinion.

EAJ therefore urges the Slovak authorities:

- to take appropriate measures in accordance with European standards, and in the interests of their citizens, to restore all the above mentioned guarantees of the independence of the judiciary; and

- to involve fully the representatives of the judiciary, including the Association of Judges of Slovakia, in ongoing or future reform projects.
