



SÚDNA RADA
SLOVENSKEJ REPUBLIKY

Ján Mazák

President of the Judicial Council
of the Slovak Republic

Bratislava, 15th December 2020

Dear Ms President,

I have received your Opinion of the CCJE Bureau following a request by the CCJE member in respect of Slovakia Mr František Mozner as regards the reform of the judiciary in Slovakia.

This CCJE member in a letter dated 4 November 2020 has reproached the draft of the Constitutional Act amending and supplementing the Constitution of the Slovak Republic by claiming that:

- without any prior consultations with representatives of the Slovak judiciary and without any public discussion, the possibility of the Constitutional Court to assess the compliance of constitutional laws with the Constitution will be explicitly excluded;*
- an explicit possibility shall be introduced to remove the President, the Vice-President, and a member of the Judicial Council of the Slovak republic, at any time before the expiry of their term of office;*
- a possibility shall be introduced to transfer judges to a lower court without consent when changing the system of courts;*
- functional immunity, which is currently the same for judges of general courts, judges of the Constitutional Court and representatives of Parliament, is to be limited only in relation to judges of general courts, while introducing a new crime of ‘bending the law’, which can be committed only by a judge, lay judge or arbitrator and which, in view of the vague wording ‘arbitrarily applies the law’, already in itself creates room for an inadmissible interference by the executive into the independence of the judiciary, represented by judges of the general courts, in the form of their unjustified/purposeful prosecution.*

On the basis of this letter the CCJE has elaborated its Opinion.

I have to admit that after reading it I was unpleasantly surprised. There are three reasons for my feelings. Firstly, the Judicial Council of the Slovak Republic who had nominated Mr Mozner as the Member of the CCJE had no information on his request. Therefore I have to observe that it was his pure private initiative. Secondly, the CCJE has released its Opinion without consulting us the facts submitted to it by Mr Mozner. Finally, I am obliged to inform you that the demand of Mr Mozner contains a lot of unprecise and partly distorted facts.

Allow me to come to the point. I will proceed according to the reproaches made by Mr Mozner.

*The possibility of the Constitutional Court of the Slovak republic to assess the compliance of constitutional laws with the Constitution is explicitly excluded as a result of **long lasting discussion**. It had arisen among plenty of members of academia, former judges of the Constitutional Court and practising lawyers immediately after issuing the finding in which the Court for the first time had concluded that the part of the Constitution was ad odds with the same Constitution.*

I can offer as a small piece of evidence my short treatise published in Poland on that topic.

*An explicit possibility to **remove the President, the Vice-President, and a member of the Judicial Council of the Slovak republic**, at any time before the expiry of their term of office is introduced.*

Indeed, this is the exact wording of the amendment to the Constitution but in the Slovak constitutional order we have the fundamental right to good administration under which every decision of an organ of public power has to be reasoned including the decisions of removal of a member of the Judicial Council. It is an implicit safeguard against an arbitrary decision on the removal. On top of that, every decision on dismissal of a member of Judicial Council falls under competence of the Constitutional Court or the Supreme Administrative Court. In simple terms, every such a decision comes under strict judicial scrutiny.

***Transferring judges to a lower court without consent** has been introduced temporarily because of changing the system of courts in Slovakia is a vital public interest. In our small country we have 54 district courts, 8*

regional courts and the Specialized Criminal Court as a regional court. Such an atomisation of the judicial map had been created in 1997 as an effort of Mečiar's regime to run the country also through the seizure of judicial branch. It has called for the long time for a reduction and rationalization of the system of judiciary.

I have to add that if transfer of a judge to a lower court occurs then it will be compensated by preserving all the benefits for a judge concerned.

*Introducing a **new crime of 'bending the law'** follows the German paradigm. There is no problem with that crime because for accomplishing its wording is in the hand of an independent judiciary. Therefore there is no room for an inadmissible interference by the executive into the independence of the judiciary, represented by judges of the general courts, in the form of their unjustified/purposeful prosecution.*

Dear Ms President,

As you probably know, the Slovak judiciary lives in very hard time of its existence. We have to resolve a lot of problems regarding corruption and distortion of justice caused by the judges themselves. Several judges are in the custody and some of them have admitted commission of severe crimes. In this really sensitive time we have to cope with the effort of some of members of Slovak judiciary to block all the reform steps which pursue cleansing and healing of the judicial system.

I consider the letter of Mr Mozner as an attempt to turn away your attention from the real problem of Slovak judiciary by claiming an attack against independence and impartiality of Slovak judges. There is no threat to them.

His move is indeed very strange. He is still under the real suspicions of an attempt to collaborate with those who are in custody for murdering Ján Kuciak and Martina Kušnírová. If you want I will provide you with details of those suspicions presenting in the Threema conversations by Monika Jankovská and Marián Kočner who is suspected to be a main coordinator of the murder of Ján Kuciak.

Dear Ms President,

For the future I would appreciate strongly if the CCJE could before releasing its opinion take into considerations all information available on the topic. It would strengthens our mutual trust and cooperation.

Yours sincerely

Ján Mazák

Ms Nina Betetto

President

Consultative Council of European Judges

Council of Europe

