



Marcela Kosová
President
Judicial Council
of the Slovak Republic

January 20, 2025, Bratislava

Ladies and gentlemen,

Allow me to convey to you the reaction of the Judicial Council of the Slovak Republic (hereinafter also referred to as the "Judicial Council") to some information presented at the conference organized by the International Commission of Jurists on 15 January 2025 by Mr. Petr Čuroš, a lawyer at VIA IURIS, and to some allegations of VIA IURIS against the Judicial Council of the Slovak Republic as a constitutional body of judicial legitimacy.

To begin with, I would like to remind you that at its meeting on 14 January 2025, the Judicial Council of the Slovak Republic adopted a resolution¹ responding to the forthcoming theme of the conference, as the Judicial Council was holding a public meeting on 14 and 15 January.

The Judicial Council strongly objects to some of the statements by Mr. Čuroš presented in his contribution and with deep regret it observes that the statements of this representative of a non-governmental organisation, the name of which means "By the Path of the Law," discredit and politicise in the European area not only the Judicial Council of the Slovak Republic as a constitutional body of judicial legitimacy, but also Slovak judges who have elected nine of their representatives to the Judicial Council, which is half of the members of the Judicial Council.

In his contribution, Mr. Čuroš pointed to the low rating of the rule of law, identifying that this was because in the last period in Slovakia there have emerged, among other phenomena, the politicization of institutions and attacks on the judiciary not only by the government but also from within the judiciary itself. In his statement, he also referred to the response of the Judicial Council and the government to the EC Rule of Law Report 2024, describing it as the same/identical. He suggested that it was as if the Judicial Council and the Ministry of Justice of the Slovak Republic

¹ <https://zasadnutia.sudnarada.sk/medzinarodna-komisja-pravnikov-nezavislost-sudnictva-a-strategicke-spory-v-eu/>

were cooperating/coordinating and the Judicial Council was on the side of the Government. Mr. Čuroš stated that after the new Government took office in 2023, all the representatives of the Judicial Council nominated by the Government, Parliament and the President were replaced without giving any reason. Mr. Čuroš sees these steps as an insidious interference in the independence of the Judicial Council and the independence of the judiciary itself.

In September 2024, after the Judicial Council adopted the Opinion on the Rule of Law Report 2024, VIA IURIS published on Facebook a collage of photographs showing the faces of the Prime Minister of the Slovak Republic, Róbert Fico, and the President of the Judicial Council of the Slovak Republic, Marcela Kosová, with the caption "*Find the difference*".² This happened only four months after the attempted assassination of the Prime Minister Róbert Fico.

We would like to remind that ³at its public meeting held on 14 September 2024, the Judicial Council adopted an opinion responding substantively and professionally to the Rule of Law 2024 Report. The Opinion of the Judicial Council contains expert arguments with references to the relevant legislation or decisions of the Constitutional Court of the Slovak Republic. The Judicial Council therefore objects to the claim of the VIA IURIS representative that it stands "on the side of the Government" and that it coordinates its opinions and actions with the Government of the Slovak Republic, or stands by its side. In its Opinion, the Judicial Council critically points to those parts of the Report in which the European Commission presents information contrary to codified law and reality. This can be seen in the Opinion that we also sent to the then European Commissioner for Justice, Didier Reynders. At the same time, we also invited the Commissioner to a public meeting of the Judicial Council, which did not happen, as the EC has been claiming for almost three weeks that the invitation and the Report were not delivered to them. Their position changed only after the President of the Judicial Council publicly demonstrated that both the invitation and the report were served electronically and by mail.

The Judicial Council of the Slovak Republic is extremely concerned that a representative of an organization, and the organization itself, which states on its website that "*We use law as an instrument of justice. We are bringing systemic solutions and advocating that the laws apply equally to all*" communicate facts

² <https://www.facebook.com/viaiuris/posts/n%C3%A1jdite-rozdiel-%EF%B8%8F%C3%BAdna-rada-%C3%BAstavn%C3%BD-org%C3%A1n-sudcovskej-legitimity-dnes-hodnotila-s/936320775208889/>

³ <https://zasadnutia.sudnarada.sk/prerokovanie-spravy-o-pravnom-state-2024/>
<https://www.sudnarada.gov.sk/24612-sk/sprava-europskej-komisie-o-pravnom-state/>
<https://www.sudnarada.gov.sk/the-judicial-council-of-the-slovak-republic-reacts-to-the-report-on-the-rule-of-law-2024/>

that are neither true nor supported by any evidence whatsoever, not only in Slovakia but also in Europe. Above all, however, they are at odds with reality, demonstrably applying double standards according to what suits them politically. We consider this to be a gross interference with the independence of the judiciary.

We would like to mention a few other examples of discrediting the Judicial Council of the Slovak Republic by VIA IURIS or its representatives:

1/ In April 2024, the Judicial Council dismissed Ján Mazák, its then President. Besides other reasons, he was dismissed for having interfered with the independence of the judiciary by lustrating judges unlawfully. VIA IURIS did not criticize Ján Mazák's actions after his dismissal on Facebook. On the contrary, she said *“The following voted in favour of the dismissal of Ján Mazák: Marcela Kosová, Ayše Pružinec Eren, Dana Jelinková Dudzíková, Peter Šamko, Peter Farkaš, Ľuboš Kunay, Marián Fečík, as well as the new nominees of the government of Robert Fico, Magdaléna Hromcová, Martin Bezák and Ľudmila Joanidesová. Two other members of the Judicial Council voted against, four did not vote and Ján Mazák himself left the meeting during the discussion of this item.”* They also stated that *“The process of dismissing the President of the Judicial Council was undignified and had nothing to do with a fair and quality debate of the constitutional body of judicial legitimacy. Not only Ján Mazák did not have adequate time to prepare his defence, but the petitioners did not even bother to question him before the vote.”* Yet none of this is true.

No member of the Judicial Council voted against the dismissal of Ján Mazák ⁵including no representative of the Parliament elected in 2020 and the representative of Zuzana Čaputová, the President of the Slovak Republic.

Regarding the defamatory and slanderous claim of VIA IURIS about the process of Ján Mazák's dismissal from the post of the President of the Judicial Council, we refer to the decision of the Constitutional Court of the Slovak Republic III. ÚS 255/2024-26 of 13 May 2024, rejecting the constitutional complaint by Ján Mazák. The latter sought a declaration of infringement of the fundamental right of access to elected and other public office under equal terms pursuant to Art. 30, par. 4 of the Constitution of the Slovak Republic in conjunction with the fundamental rights to judicial and other legal protection pursuant to Art. 46, par. 1 of the Constitution, legal aid under Art. 47, par. 2 of the Constitution and to comment on all evidence taken pursuant to Art. 48, par. 2 of the Constitution by means of a resolution of the Judicial Council of the Slovak Republic (hereinafter the “Judicial Council”), by which he was dismissed from the office of its President. He asked for the order to be cancelled and the case to be returned to the Judicial Council for further consideration, with financial compensation of EUR 50 000 for him. Pending the decision on the constitutional complaint, he sought an order requiring the Judicial Council to refrain from implementing the impugned resolution and the power to elect the President of the Judicial Council, which is scheduled to the next meeting on 14 May 2024.

In its decision, the Constitutional Court also commented on the dismissal process, as follows: *“Therefore, it cannot be concluded that preparation of the complainant's*

⁴ <https://www.facebook.com/viaiuris/posts/súdna-rada-včera-odvolala-svojho-predsedu-jána-mazáka-návrh-siedmich-členov-a-čl/839223088251992/>

⁵ <https://zasadnutia.sudnarada.sk/156406-sk/4-zasadnutie-sudnej-rady-sr/>

response to the Judicial Council members' motion required more time than the period between the delivery of the motion to the complainant and the commencement of the Judicial Council meeting, either at the originally scheduled date or at the later date proposed by the Judicial Council member. Indeed, we cannot agree with the complainant's argument that the petitioners realized the lack of time as a possible procedural defect and only for that reason proposed a new date, namely 23 April 2024. The Judicial Council meeting made it clear that this was a constructive response by the petitioners to the complainant's arguments resulting from the improper analogy of the time needed to prepare the statement with the periods of time formally established in the various judicial processes. However, instead of responding constructively, the complainant responded by saying that he couldn't guarantee that he could prepare a statement in such a short time. This, however, is quite contrary to the clear legal position that the complainant states in his constitutional complaint delivered to the Constitutional Court on 23 April 2024, i.e. on the day on which, according to the petitioners, the Judicial Council could have held a meeting on their motion for dismissal. Four or five working days were not sufficient for the complainant to express his position on the motion for his dismissal, however they were sufficient to file the constitutional complaint. This implies that, following the submission of the motion by seven members of the Judicial Council to dismiss him from the office of the President of the Judicial Council, the complainant voluntarily decided not to present his arguments to the Judicial Council as the body which is to decide on the motion for his dismissal, but to present them in his constitutional complaint. The complainant could have exercised the components of the judicial fundamental rights in the decision-making process on the complainant's retention in the public office of President of the Judicial Council at a meeting of the Judicial Council. At the meeting of the Judicial Council, he could publicly state what he had stated in his constitutional complaint on the published motion for his dismissal. This would comply with the requirements of publicity, a discussion in the presence of the complainant and the complainant's right to comment on the background to the decision. The fact that this did not happen is not a consequence of the decisions of the Judicial Council, but a consequence of the actions of the complainant."

2/ In January 2025, after the meeting of the Judicial Council, in an article about the resolution of the Judicial Council, by which the Judicial Council rejected the attacks on judges by Štefan Harabin, VIA IURIS, ⁶ manipulates and misleads the public by the subtitle "*The Fifth column is worse than the attacks by the Minister?*". It gives the impression that the Judicial Council was not bothered by the attack by the Minister of the Interior on a particular judge in November 2023, which again suggests that the Judicial Council is going along with the Government of Róbert Fico. We would like to remind you that at the meeting of the Judicial Council held on 14-16 November 2023, the members of the Judicial Council elected by the judges – Marcela Kosová, Ayşe Pružinec Eren, Dana Jelinková Dudzíková and Peter Šamko – submitted promptly an agenda item dealing with attacks on a particular judge, including by the Minister of the Interior. The submitted resolution was not supported by a sufficient number of votes, however, we would like to emphasise that the members of the Judicial Council elected by the judges as well

⁶ <https://www.sudnarada.gov.sk/the-judicial-council-rejected-attacks-on-judges-of-the-regional-court-in-bratislava/>

as the members of the Judicial Council appointed by the (new) government voted in favour of the resolution. The resolution was opposed by Jan Mazák, who had several reservations about other people attacking the judges⁷.

3/ VIA IURIS claims in its Facebook status ⁸ that the judges referred to female members of the Judicial Council as the fifth column, which is not true. This is how Ján Mazák, the dismissed President of the Judicial Council, who had been elected to the Judicial Council in 2020 by the National Council of the Slovak Republic and who has never been elected to the Judicial Council by the judges, commented on the elected representatives of the judges on the Judicial Council ⁹. In this status, VIA IURIS even allegedly quotes from the discussion at the Judicial Council meeting as follows: *"Yes, he criticized him for his decision-making activities, but he did not say that he was a member of the fifth column (...) what the judges dared to say (about the three female members of the Judicial Council),"* Judicial Council member Ayşe Pružinec Eren said in the debate". In fact, the following was said in the debate: *"Let us recall the statement of the former President of the Constitutional Court and the former President of the Judicial Council, who referred to the three of us as representatives of the fifth column"*.

4/ In December 2024, following the meeting of the Judicial Council, VIA IURIS published a public call ¹⁰ entitled: *"Statement of Lawyers: Criticism of court decisions also belongs to freedom of expression"*. This is in response to an item in which the Judicial Council defended a judge who was attacked by Denník N daily and linked to fascism for a particular decision. ¹¹ The aim of the VIA IURIS call is to

⁷ <https://zasadnutia.sudnarada.sk/a-nepripustne-zasahy-politikov-a-advokatov-proti-konkretnym-sudcom-ako-reprezentantom-jednej-z-troch-moci-v-state/>

<https://zasadnutia.sudnarada.sk/data/att/14756.pdf>

⁸ https://www.facebook.com/photo/?fbid=1021108693396763&set=a.501039412070363&locale=sk_SK

⁹ <https://www.pravnelisty.sk/clanky/a1345-reakcia-na-vyjadrenia-jana-mazaka-o-desivom-mlcani-statocnych-sudcov-alebo-ked-sa-clen-piatej-kolony-tvari-ako-filip-rawlings>

¹⁰ https://www.mojapeticia.sk/campaign/vyhlasenie-pravnikov:-aj-kritika-sudnych-rozhodnuti-je-sucastou-slobody-prejavu/1df0e52e-0e45-46ca-b87f-b7ada9efac1?fbclid=IwZXh0bgNhZW0CMTEAAR25J3TSDc-SsWUO978p5K94iBj4HgwYoO7eqhe1BfvUF2VAj_ir9mL6rA_aem_fXJ6aeFf7jJgluHMBPOfQ

¹¹ <https://zasadnutia.sudnarada.sk/stanovisko-sudnej-rady-slovenskej-republiky-k-medialnym-utokom-na-sudkynu-vieru-hadrbulcovu/>

<https://www.sudnarada.gov.sk/stanovisko-sudnej-rady-slovenskej-republiky-k-medialnym-utokom-na-sudkynu/>

<https://www.sudnarada.gov.sk/the-statement-of-the-judicial-council-of-the-slovak-republic-on-media-attacks-against-the-judge/>

obtain at least 1,000 signatures, which they have not managed as of the date of writing the response. A quarter of the signatures obtained so far are anonymous, while Denník N daily attacked a particular judge and stated her full name. However, it is significant that the adopted resolution of the Judicial Council also states that *"the Judicial Council of the Slovak Republic publicly calls on the media in particular to reasonable restraint, which allows for professional and factual criticism of court decisions, but in no case does it allow any conduct capable of endangering the judges and their relatives"*.

5/ Mr. Čuroš referred to the fact that after the 2023 elections, the Government, the Parliament in May 2024 and after the 2024 presidential elections, the President dismissed their representatives in the Judicial Council as an insidious interference in the independence of the Judicial Council. However, he has withheld a number of important facts in this regard.

The idea to change the Constitution of the Slovak Republic in 2020 so that the members of the Judicial Council could be dismissed at any time came from Ján Mazák, the dismissed president of the Judicial Council¹², one month before the Parliament elected him as a member of the Judicial Council in 2020. This was not the first time that representatives of the Government, Parliament or the President were dismissed from the Judicial Council. This was also done in the past, for example, by the Government of Iveta Radičová or the former President Andrej Kiska just one week after taking his office, which VIA IURIS did not label as politicization of the judiciary.

After the 2020 general election, before the government had been appointed and before appointed the Minister of Justice, Maria Kolíková telephoned all the members of the Judicial Council on behalf of the Government and the Parliament and informed them that they did not have the confidence of the Government. She urged them to resign from the Judicial Council and asked them not to attend any further Judicial Council meetings¹³. Shortly thereafter, in the express legislative procedure, the legislation was changed so that the mandate of a member of the Judicial Council expires on the second day after the resignation instead of two months, as originally established in legislation. Thanks to this change, the new Government and the Parliament could appoint and elect new members of the Judicial Council as early as in April 2020. Even then VIA IURIS remained silent.

¹² <https://www.postoj.sk/52911/ustavny-sud-brani-odvolaniu-clenov-sudnej-rady-v-rozpore-s-ustavou>

¹³ <https://www.sudnarada.gov.sk/clenstva-v-sudnej-rade-sa-vzdalo-pat-jej-clenov/>

However, in November 2023, they issued a press release¹⁴, stating that the dismissal of members of the Judicial Council is politicization of the judiciary.

However, above all, Mr. Čuroš forgot to mention an important disclaimer which, in the eyes of the public, has a fundamental impact on the assessment of the criticism by VIA IURIS on the dismissal of the members of the Judicial Council, which, unlike in the past, they are now presenting. One of the dismissed members of the Judicial Council – Andrej Majerník is a long-standing member of the VIA IURIS Board. At the same time, it seems to have escaped the attention of VIA IURIS that the Constitutional Court of the Slovak Republic rejected the complaints of all the dismissed former members of the Judicial Council of the Slovak Republic, namely Ján Mazák, Eva Mišíková, Katarína Javorčíková and Ľudovít Bradáč, who filed the complaints.¹⁵

We would also like to remind that the Constitutional Court of the Slovak Republic, in the context of its curtailed competences due to constitutional change in 2020, has stated ¹⁶ that it considers *“as unjustified the concern based on the claim that by strengthening the power to dismiss members of the Judicial Council at any time during their term of office, the constitutional legislator introduces an unacceptable intervention of both the executive and the legislature in the operation of the independent judiciary, even in view of the fact that half of the members of the Judicial Council, consisting of judges, could only be dismissed from their offices (e.g. due to loss of confidence) by judges, i.e. the influence of the legislative and executive bodies on the functioning of the Judicial Council is not increased in any way by the contested provision of the second sentence of Art. 141a, par. 5.”*

In this regard, the Judicial Council reminds that the only way to change this is to amend the Constitution with a constitutional majority in Parliament so that members of the Judicial Council cannot be dismissed at any time. By no one, not even the politicians related to VIA IURIS. However, unlike VIA IURIS, the Judicial Council has been consistent in this position.

Ladies and gentlemen, We believe that this information clearly demonstrates that the Judicial Council of the Slovak Republic is a constitutional body of judicial legitimacy without any connection to politicians or politics, and that any contrary and in particular false information presented at the Conference in January 2025 have the sole purpose to attack the Judicial Council in an unacceptable manner

¹⁴ <https://viaiuris.sk/aktuality/smer-sd-v-roku-2021-odvolanie-clenov-sudnej-rady-pred-uplynutim-funkcneho-obdobia-je-politizacia-justice/>

¹⁵ <https://www.teraz.sk/slovensko/us-odmietol-staznosti-byvalych-cle/799404-clanok.html>

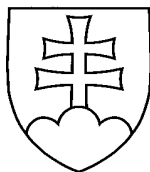
¹⁶ Resolution of the Constitutional Court of the Slovak Republic from the preliminary hearing PL. ÚS 12/2022, paragraphs 66-67

without any relevant supporting documents and to create an unacceptable impression among the public in Slovakia and in the European area of some kind of collaboration between the Judicial Council and the executive, including by ad hominem attacks. The Judicial Council of the Slovak Republic is well established in the context of the three branches of power, it belongs to the judiciary, and will not allow any false information to the contrary to be presented to the public by individuals or by institutions.

We would like to note that we will also inform the European Network of Councils for the Judiciary (ENCJ), of which the Judicial Council of the Slovak Republic is a member, of these facts.

Bratislava, 20 January 2025

THE JUDICIAL COUNCIL OF THE SLOVAK REPUBLIC



No. 28/2025

RESOLUTION OF THE JUDICIAL COUNCIL OF THE SLOVAK REPUBLIC

of January 14, 2025

on the international conference entitled
Judicial Independence and Strategic litigation in the EU,

the Judicial Council of the Slovak Republic

A. e n d o r s e s

the statement annexed to this resolution;

B. o b l i g e s

the President of the Judicial Council of the Slovak Republic to submit the statement annexed to this resolution to the International Commission of Jurists as well as to the President of the European Network of Councils for the Judiciary.

Verifier: Peter Farkaš

Marcela Kosová
P r e s i d e n t
the Judicial Council of the Slovak Republic

Annex to the Resolution no. 28/2025 of the Judicial Council of the Slovak Republic

I. National means of protecting the independence of the judiciary

Protection against interference with the independence of the judicial power and the independence of judges at the national level in the Slovak Republic is ensured by effective and functional instruments and mechanisms, which will be briefly referred to below:

The Constitutional Court of the Slovak Republic (hereinafter referred to as the "Constitutional Court") **ruled** on the proposal of a group of 32 members of the National Council of the Slovak Republic to initiate proceedings under Article 125 par. 1 letter a) of the Constitution of the Slovak Republic on the compliance of the provisions of the Constitutional Act No. 422/2020 Coll., amending the Constitution of the Slovak Republic, as amended (hereinafter referred to as the „judicial amendment to the Constitution“), and Act No. 423/2020 Coll. on amending certain acts in connection with the reform of the judiciary (hereinafter referred to as the „law on judicial reform“) with the indicated provisions of the Constitution, the UN International Convention on Civil and Political Rights, the European Convention on Human Rights and its Protocols **in decision under case No. PL. ÚS 12/2022-244 of December 20, 2023, that** provision VIII of the Act No. 423/2020 Coll. on amending certain acts in connection with the reform of the judiciary amending Act No 385/2000 Coll. on Judges and Judges Advocates and on Amendments and Additions to Certain Acts, as amended, in part of point 49, which added a new paragraph 3 to section 93 of that Act **is not** in compliance with the Article 1 par. 1 and with Article 141 par. 1 and Article 144 par. 1 of the Constitution of the Slovak Republic. A statutory amendment adopted in the process of the so-called "reform of the judiciary" limited the period of entitlement to income supplement and sickness benefit for judges from the original period of one year to a period of 60 days.

In its decision under case No. PL. ÚS 12/05 of November 28, 2007, the Constitutional Court ruled that *„The independence of judges in the broad sense of the term must also be understood as their material independence" and, in a follow-up to this, he stressed that "certain interventions, including interventions in judges' salaries, may affect the constitutional principle of the independence of judges, but only when they reach a certain quantitative dimension, in this case only when they appreciably jeopardise the judges' otherwise standard of living, commensurate with their annual salary."* In the case law of the Constitutional Court, there has long been a controversy as to whether the right of judges to decent and adequate material security corresponding to their legal status is guaranteed in the Slovak legal order **only at the statutory level or also at the constitutional level. This controversy was clearly concluded by the Constitutional Court in the ruling (decision) issued in the proceedings under case No. PL. ÚS 27/2015, in which** it explicitly stated that the fact that the Constitution of the Slovak Republic (unlike the constitutions of some other states) does not contain a provision that explicitly regulates (guarantees) the salary ratios of judges, or the principle of irreducibility of their salaries, does not at all mean that constitutional limits for the regulation of the salaries of judges are not (implicitly) "present" in its content.

They can be quite clearly derived from constitutional principles and other values protected by the Constitution (e.g. the principle of separation of powers, of which the principle of the balance of powers is an integral part, the aforementioned principle of the independence of judges and courts, the principle of proportionality of interference with the salary of judges and other constitutional officials, etc.).

The Constitutional Court in decision under case No. **PL. ÚS 12/2022-244** stated that, legislator **did not justify** its restrictive intervention into the material security of judges **in any way, while it clearly did not respect the previous starting points of the relevant jurisprudence of the Constitutional Court** (in particular, the conditionality of restrictive interventions into the material security of judges by the unfavourable economic situation of the state, as well as their temporary nature), and **therefore, in the opinion of the Constitutional Court, it also contains elements of arbitrariness**, which makes sufficient grounds for the Constitutional Court to declare that the contested provision is constitutionally unacceptable on the grounds of **its incompatibility** with the principles derivable from Article 1 par. 1 of the Constitution as well as with **the principles of judicial and judicial independence**, which are enshrined in Article [141 par. 1](#) and Article [144 par. 1 of the Constitution](#).

The Judicial Council of the Slovak Republic (hereinafter referred to as the „Judicial Council“) The Judicial Council, as the constitutional body of judicial legitimacy, in the exercise of its constitutional and statutory competences, has issued several resolutions in response to attempts to interfere with the independence of the judiciary or to initiatives on the above-mentioned subject.

As an example, **Resolution No. 498/2024 of December 12, 2024**, by which the Judicial Council, as the constitutional body of judicial legitimacy, strongly rejected media attacks against the person of Judge Viera Hadrbulcova, as well as against any judge for his or her decision-making activities. Any attack on a particular judge as a representative of one of the three powers in the state is an attack on the entire judiciary and a very dangerous phenomenon, capable of seriously jeopardising the independence of the judiciary and at the same time can be a direct threat to the lives of judges and their families. The Judicial Council of the Slovak Republic has publicly called, in particular, on the media to exercise appropriate restraint, within which professional and factual criticism of the decisions of the courts is permissible, but in no case is such conduct permissible which is liable to endanger the persons of judges and their families.

By **Resolution No. 354/2024 of October 15, 2024**, the Judicial Council expressed its opinion on the authorisation of the Ministry of Justice of the Slovak Republic to control the information system which is to ensure the random allocation of cases to individual chambers or judges at the Supreme Court of the Slovak Republic.

By **Resolution No. 103/2024 of April 16, 2024**, the Judicial Council dismissed Ján Mazák from his position as President of the Judicial Council for repeated breaches of his duties and unauthorised searches for information on members of the judiciary.

By Resolution No. 136/2024 of April 17, 2024, the Judicial Council:

- strongly urged the executive, the legislature and other public officials to respect the independence of the judiciary as one of the pillars of the rule of law in their comments on judicial decisions and judges, not to drag the judiciary into political struggles and thus not to undermine public confidence in the judiciary,
- considered unacceptable politically expedient public calls by representatives of the executive and legislative powers for disciplinary or criminal prosecution of judges, or related statements violating the principle of the presumption of innocence in relation to disciplinary or criminal proceedings, or sanctioning of judges,
- fully respected the right to criticise judicial decisions and judges; however, such criticism must be professional, factual, within the limits of elementary decency and must not take the form of intimidation, coercion or any other form of influencing the decision-making activities of judges,
- clearly condemned personal attacks on judges for their decision-making activities as well as for the exercise of their freedom of expression in the public space and activities related to membership in national and international judicial organisations and their criminalisation for the exercise of the rights of association and freedom of expression and, in the context of the judiciary as a whole, by analogy also similar attacks on the Constitutional Court of the Slovak Republic and its judges as well as the Attorney General of the Slovak Republic.

By Resolution No. 36/2023 of February 14, 2023, the Judicial Council reacted to the intervention of the National Criminal Agency at the Bratislava III District Court by stating, inter alia, that the procedure of the judges and the President of the Bratislava III District Court, by which they refused to hand over the investigation file and its classified annex on the basis of a request to hand over the case to a law enforcement authority, while they were not relieved of their confidentiality or the obligation to keep classified information secret, was fully in accordance with the law.

By Resolution No. 122/2023 of April 18, 2023, the Judicial Council strongly objected to the derogatory remarks made about Judge Branislav Harabin, which diminish the professional integrity not only of this particular judge, as they are in stark contradiction to the rule of law and interfere in a relevant way with the independent position of judges, magistrates and courts of the Slovak Republic.

The Judicial Council, as a body involved in the preparation and commenting on legislation, also performs the function of protecting against interference with the independence of the judiciary by exercising the above-mentioned powers.

The Judicial Council is part of the European Network of Councils for the Judiciary, whose task is, among other things, to monitor and detect interference with the independence of the judiciary in the Member States.

The disciplinary judiciary plays an important role in preventing attempts to interfere with the independence of the judiciary (e.g. from chicanery motions brought by the Minister of Justice of the Slovak Republic or other authorized entity). In the Slovak Republic, disciplinary motions brought against judges are heard and decided by the disciplinary chambers of the Supreme Administrative Court of the Slovak Republic, on the basis of a special legal

regulation governing this type of proceedings – the Act No. 432/2021 Coll. on the Disciplinary Rules of the Supreme Administrative Court of the Slovak Republic and on Amendments and Additions to Certain Acts (hereinafter referred to as the „*Disciplinary Court Rules*“).

Judicial self-government (the judges' council), the president of the court within the framework of legal competences, e.g. in the matter of handling complaints for disciplinary prosecution of judges or other types of complaints, also play an important role in protecting the independence of the judiciary and its representatives.

Judges' professional organisations - the Association of Judges of Slovakia through statements, communication and cooperation with relevant bodies, active participation in the legislative process, as well as by establishing itself in the structures of the European Association of Judges and the International Association of Judges, participates in the function of protecting the independence of the judiciary.

Among the threats facing Slovak judges from 2020 onwards are public attacks on judges for exercising their discretion by public officials, lawyers and other persons interested in the outcome of a particular court case, politicians, as well as some media and media-active organisations. These public attacks, outside the boundaries of substantive constructive criticism of judicial decisions, not only constitute an attack on the reputation of a particular judge and court, but often distort the public's legal awareness by misrepresenting the functioning of the judiciary and procedural institutions, as well as by misinterpreting the legal order.

In Opinion No. 1 (2001) of CCJE on standards concerning the independence of the judiciary and the irremovability of judges states that "The difficulty lies in determining what constitutes undue influence and in striking an appropriate balance between, for example, the need to protect the judicial process from disruption and pressures, whether from the press, politics or others, and the interest in open debate on matters of public interest within the community and in a free press. Judges must accept that they are public officials." The CCJE said there was no need to change the existing principle, but judges from different states would benefit from mutual discussions and exchange of information on specific cases.

In the Slovak Republic, the balance between the need to protect judicial proceedings on the one hand and freedom of the press and open debate on matters of public interest on the other is not preserved, as is also evident from the above-mentioned resolutions of the Judicial Council.

II. The role of the EU institutions in promoting the independence of the judiciary

The European Commission issues a report on the state of the rule of law, based on the information it has gathered and on consultations it has carried out in each Member State. In relation to the Slovak Republic, it would be appropriate for **the European Commission to evaluate information on the judiciary at a qualitatively more consistent level**. This need

arose from the reaction of the Judicial Council to the Rule of Law Report 2024, approved by Resolution No. 324/2024 of September 19, 2024, when it stated that **the report was biased and did not reflect the actual state of the rule of law in Slovakia**. The report ignores the opinion of the members of the Judicial Council of February 2, 2024, provided in the consultation with the European Commission regarding the need to change the criminal policy of the state, the abolition of the Office of the Special Prosecutor of the General Prosecutor's Office of the Slovak Republic, the provisions of § 363 et seq. Criminal Procedure Code, independence of the members of the Judicial Council, problems related to the new judicial map; does not take into account the decisions of the Constitutional Court of the Slovak Republic on the topics that were the subject of the consultation; misinterprets the new legal regulation of the provisions related to the crime of bending the law; ties the fight against corruption to the existence of the Office of the Special Prosecutor of the General Prosecutor's Office of the Slovak Republic and to the limitation of the General Prosecutor's power to annul final decisions in preparatory proceedings, contrary to the legal order of the Slovak Republic; does not reflect the alarming state of the administration of justice after the change of the judicial map; does not include the reasons for the removal of the President of the Judicial Council from the position of the President and the true reasons for the resignation of the President of the Specialised Criminal Court. The Judicial Council has adopted the opinion annexed to the above resolution and published on the Judicial Council's website¹.

The abovementioned opinion of the Judicial Council, after translation into English, was sent and delivered to the European Commission together with the invitation to the Judicial Council meeting. No representative of the European Commission was present at the Judicial Council meeting (even when invited again). The above situation, together with the fact that the Permanent Representation of the European Commission in Slovakia cancelled the discussion on the Rule of Law Report 2024, **raised the need to strengthen the process of feedback on the drafted Rule of Law Report and the need to introduce an institute of correction of the report by the EU Commission, including transparency, accountability for incorporating the response to the Rule of Law Report, and active mutual communication.**

Among the EU institutions, the Court of Justice of the European Union plays an important role, as it is competent to rule on the compatibility with EU law of interference with the rule of law and the independence of the judiciary by national legislation in preliminary rulings. The Judicial Council notes that national legislation and the judiciary do not divide litigation into strategic and non-strategic.

¹ https://www.sudnarada.gov.sk/data/files/2153_stanovisko-sr-sr-k-spra%CC%81ve-o-pravnom-state-2024.pdf