

D e c l a r a t i o n

General Assembly of the Association of judges of the Slovak republic

The Association of judges of the Slovak republic, the largest voluntary non – political professional organization of judges of the Slovak republic, to fulfill the substance of the right to freedom of association under the article no. 29 paragraph 1, 4 of the Constitution of the Slovak republic and article no. 11 paragraph 1 of the European Convention and in order to ensure the realization of citizens' right to a fair trial before an independent and impartial court without undue delay approves at the meeting of its supreme organ the following statement:

I.

States, that the ongoing problems in law enforcement and problems with the lack of public confidence in judiciary are necessary to be urgently solved, while the effective administration of justice requires **immediately the determination of the optimal requirements of justice.**

II.

Expresses its full support to „The conception of changes in judiciary“ approved by the **resolution of the Council of the Slovak republic no. 659 from 21st March 2016**, that contains effective instructions in accordance with the international documents how to introduce the systemic measures in these domains in priority: personnel of judiciary, material and technical equipment of courts and necessary legislative changes.

III.

Agrees just with that part of the government's declaration on judiciary, which declares that the enforcement of the law is the issue of all state powers and with the government's intention to adopt the measures to revise the scope of the decision-making activities of courts, to revise the decision-making activities between the judges and higher court officers, to continue the electronisation of the delivery of courts' documents, to support the alternative dispute resolution, to stabilize the number of the court staff mainly at the courts that suffer from the workload, to add staff at courts, to prepare a draft of an Act on so called judicial civil service, to stop sharing of the Supreme court's and Ministry of Justice of Slovak republic, to evaluate the impact of the new procedural rules and finally to go on in recodification of the private law.

IV.

The essential shortcoming in the government's declaration is the **lack of the specifications** of means how to fulfill **the constitutional obligation of the government and the parliament** to create for judges and all court staff such conditions in judiciary so the judging would be carry out within reasonable time by an independent and impartial tribunal for all citizens.

The professional organization of judges considers **as the essential priorities** those that would effectively ensure the elimination of the shortcomings in Slovak judiciary. The measures would be as follows:

- A. **The regulation of the judicial department by law**, which means that this regulation would provide a qualified higher court officer for each judge (an authorized employee under the Article no. 142 paragraph 2 of the Constitution) and at least one administrative officer for the Chamber.
- B. **The regulation of the criteria for the obligatory recruitment of judges by law** so that they would respect the statutory legal obligations of judges who perform various tasks outside the administration of justice (e.g. the management of the court, internal reviews, self - government, the managing division at district or regional court and so on...).
- C. **The adoption of the Act on judicial civil service** which would establish the permanent appointment as civil servants for those employees who participate in the administration of justice.
- D. **The regulation of the constitutional competences of the Judicial Council of the Slovak republic by law.** That competences should be in these areas: a public control of the judiciary, a creation of the budget for the judiciary, a supervision over the activities of the disciplinary panels and organizational coordination of their activities, an obligatory coordination with the Minister of Justice in dealing with the development of human resources in judiciary and coordination in equalizing the status of the President of the Judicial Council of Slovak republic with the other constitutional officials of Slovak republic during the sessions of the National Council of Slovak republic (parliament).
- E. **The immediate removal** of the shortage of premises of the District court Bratislava I. and one of the four courts in Košice which are currently in the premises of the Regional court in Košice (the analogy of the situation of Ministry of Justice nad the Supreme Court of Slovak republic that share one building).

V.

We refuse the government's intention to exclude those judges, who are appointed by government and the parliament as the **members of the Judicial Council**, because we think this intention is unconstitutional in its content. The government's argument for this intention is the fact that those judges could be connected with the political power. But we think that this argument is built on purpose and is groundless because the similar principle is used in the nomination of judges in disciplinary panels and even the Constitutional court of Slovak republic declares that the principle complies with the Constitution.

The participation of a half of political nominees, who are at the same time „non-judges“, in Judicial Council's decision-making process is not a public control of the judiciary but such participation will cause the subordination of the Council, as the highest judicial authority of judiciary and its legitimacy, to the legislative and executive political power. This will enable the promoting of interests of political powers and will eliminate the major impact of the Judicial Council in questions on the legitimacy of the judiciary as required by the Constitutional Court for the preserving of the principle of separation of powers in the rule of law.

That's why we suggest to delete a sentence about the subordination of the President of the Judicial Council to the Minister of Justice from the text because it is an obvious error and unconstitutional sentence as well.

VI.

We accept the need to increase the control of judiciary, but we **refuse proposed measures** that deal about a **participation of the half of political nominees, who are out of judiciary** (so called **judicial laymen**), **in dealing** with a fundamental question on professional and moral competences of candidates for judges because this will cause **a politicization of justice**. These measures **deny the essence of a control, which consists of** supervision and reviews and not in equivalent decision-making process of the representatives of the judiciary (professionals) and nominees of the political power (laymen) who could be called of without a reason.

VII.

The European Convention on Human Rights and Freedoms, which is a part of our legal system under the Article no. 154c of the Slovak Constitution, includes **the freedom of speech as one of the fundamental freedoms** and at the same time it **limits this freedom** according to Article no.10 paragraph 2 of the Convention by a legitimate goal that is based on

the necessity of preserving the authority and impartiality of the judiciary – a guarantee of the justice.

If courts should have public confidence than the rule of law requires judicial protection before groundless attacks .

We state that groundless attack are often statements of politicians to address judicial decisions.

In order to remain the respecting if the principle of the authority and impartiality of the judicial power in the rule of law, **we call on the Government of the Slovak republic and the National Council of the Slovak republic to approve the Code of ethics for the representatives of executive and legislative power** that will provide the freedom of speech in judicial decision, that will effectively prevent unacceptable discredit of the Slovak judiciary and that will protect the reputation of judges.

VIII.

In order to guarantee citizens a right to a fair trial (Article no. 46 paragraph 1, Article no. 48, paragraph 2 of the Slovak Constitution and Article no. 6 paragraph 1 of the European Convention on Human rights) **we call on** the representatives of the legislative and executive power to include into the implementation of the government's declaration the measures that we adopted by the resolution no. 659 of the Judicial Council of the Slovak republic on the 21st of March 2016.

IX.

We suggest to create a **real conditions** and **espace for the possible participation** of our professional organization when solving the problems in the Slovak judiciary, because our organization is willing to open and professional discussion with the representatives of the executive and legislative power and with the media.

at Štrbské Pleso, the 22nd of April 2016