

The Conception of the changes in judiciary

The Slovak republic, as democratic and legal state (Article 1 paragraph 1 of the Constitution of the Slovak republic), has transformed the regime of the international treaties on human rights and fundamental freedoms into the constitutional law, it has established the right for an independent and impartial trial, the right for a fair trial and the right for the hearing of a case without and undue delay.

Within the regulation of the right to judicial protection, a particular importance is due to a justice that has to be carried out without a delay and the violation of this principle could threaten constitutional right mentioned above and could possibly threaten the effectivity and confidence in justice that is considerably low.

Therefore it is proposed to continue in changing of the conditions of justice. The aim of such changing is to secure the adoption of effective measures which would enable the timely administration of justice (within a reasonable time) by an independent and impartial court regarding the interests of citizens, legal persons and State.

The criticism of the judiciary because of the problems with the enforceability of law which causes the lack of public confidence in judiciary is well-known fact.

The judges are pointing out at the fact that the reasons which are causing the impediment of the administration of the justice have not yet been eliminated. This situation has an major impact on the effectivity of the functioning of courts in protecting the citizens' fundamental rights and freedoms.

The Constitution of the Slovak republic establishes for litigants a constitutional right to hear the case without and undue delay by an independent and impartial court (Article 46 and 48 of the Constitution). By this regulation the Constitution establishes the responsibility of the state, that means all branches of the state power (legislative, executive, judicial) to ensure the conditions for the implementation of these constitutional privileges.

At the moment longstanding deficiencies are still persisting in the conditions of a proper administration of justice. These deficiencies are undersizing of a staff at courts, insufficient space conditions of particular courts and immense workload that goes hand in hand with a huge backlog at particular courts. **The current state of play of the Slovak judiciary is stated in the resolution of the Judicial Council of the Slovak republic No. 502 issued on the 24th of June 2015** „on the Analysis of the number of courts and on the state of play of the individual agendas at courts“ (increasing of the incoming cases of more than one third – in 2010 the number of incoming cases was 1 206 224, in 2014 it was 1 386 622 cases). **The constitutional responsibility of the state for an effective administration of justice is undoubtful and the effective remedy is possible only by a realization of a cooperation of three state powers (the legislative, executive and judicial power).**

The remedy of these persisting deficiencies requires mainly: quick determination of a functional model of a judicial department; taking into account the specifics during the process of a recruitment at particular courts; the elimination of the insufficient space conditions of

particular courts; the changing of the legislature in that part that stipulates the obligatory extinction of the function of a judge when reaching a specified age; the regulation by a law further competences of the Judicial Council of the Slovak republic; the analysis of the effectiveness of the judges' accountability; the legislative changes in the form of so-called diversions of particular matters from the courts and the last remedy would be partly legislative changes in the status law – the Act on judges, and in the Act on courts.

The effective instruction how to eliminate the deficiencies in the Slovak judiciary (problems that have been accumulated for a long time) results also from the international documents that concern the conditions which are necessary for an administration of the justice in the states of the European Union. It is absolutely impossible to solve problems with the efficiency and the quality of justice without those instructions.

Recommendation CM/Rec (2010)12 adopted by the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibility (adopted on the 17th November 2010) when dealing with the issue on the sources necessary for the administration of an independent judiciary states: **„Each state should allocate adequate resources, facilities and equipment to the courts** to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently... **A sufficient number of judges and appropriately qualified support staff should be allocated to the courts“** (Articles 33, 35 of the Rec.).

The European Network of the Councils for the Judiciary (ENCJ) at the General Assemblies (the main organ of the organization) **approved several declarations:** on promoting effective justice systems (The Hague declaration, June 2015), on judicial independence and accountability (The Sofia declaration, June 2013), on challenges and opportunities for the judiciary in the current economic climate (The Vilnius declaration, June 2011) and at the same time the ENCJ approved several reports: „Report on timeliness 2010-2011“; „Report on judicial reform in Europe 2011-2012“; „Report on financing of the courts and accountability (2006-2007)“ and „Report on Quality and the Access to justice 2009-2010“.

The following facts concerning the conditions for an administration of the justice emerge from the documents of the ENCJ mentioned: „**The judges and the judicial councils should be closely involved in the creation and in the realization of the judicial reforms and reforms of the judicial system...** an independent and accountable judiciary are necessary part of a good, effective and efficient judicial systems and such judicial systems are **prerequisite for a good functioning justice in the European Union** ... financial stability, certainty of a term of office and administrative independence are essential guarantees of an independent and impartial judiciary.... it requires **an adoption of measures to increase the efficiency of the courts** – the review of a judicial map, **introduction and reformation of processes and internal organization of the courts**, integration of an innovative information and communication technologies.... promoting the investment in the administration of justice and the modern technologies and the strengthening of human resources in the courts... timeliness must be in balance towards the other aspects of the judges' performance and the quality of the decision-making activities of the judge

should be a priority... **to achieve timeliness in the administration of justice**, the necessary thing is **the cooperation among the executive and legislative power**, judicial councils, court management, judges and the court staff... **judicial councils** should achieve timeliness through **analysis of the problems in their judicial systems** and councils should identify the remedies... setting up of the capacity management system in order to find a balance between the judges' workload and the capacity, enlarging of the courts and the reallocation of the judges, **judges should be given all necessary support including qualified court staff...** in the financing of courts, judiciaries should be closely involved in the budget process.

In the assessment of judges, it is recommended:

Where judicial authorities have established systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court. With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities. **(CM/Rec (2010)12 – Article 42, 58).**

When assessing the performance of a judge, **the independence of the judiciary must be guaranteed and judicial review of judges' decisions can't be a part of the assessment...** the quality of the judiciary is primary and must be qualified and assessed in relation to all judges' activities **(The ENCJ Quality management report 2007-2008).**

The Venice Commission (The European Commission for Democracy through Law – the Consultative body of the Council of Europe) in its Report on the independence of the judicial system – the independence of judges (March 2010) states that „ In order to maintain the independence of the court system in the long and short run, **it will be necessary to provide the courts with resources appropriate to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and in national constitutions** and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law. The adequacy of the financing accordingly should be considered in the broad context of all resources of which the judicial system should be possessed in order to meet these requirements and merit recognition as a separate state power. **It is the duty of the state to provide adequate financial resources for the judicial system. Even in times of crisis, the proper functioning and the independence of the Judiciary must not be endangered.** Courts should not be financed on the basis of discretionary decisions of official bodies but **in a stable way on the basis of objective and transparent criteria. Decisions on the allocation of funds to courts must be taken with the strictest respect for the principle of judicial independence and the judiciary should have an opportunity to express its views about the proposed budget to parliament, possibly through the judicial council** (part III Article 7 – The budget of courts – points 52, 53, Part IV Conclusions – point 9).

The competences of the Judicial Council of the Slovak republic have afforded since the **constitutional amendment (adopted on the 1st of september 2014).** The strengthening of the

Judicial Council results from the purpose of this constitutional amendment as follows: „it is suggested that the conceptual change of the constitutional competences of the council will strengthen the position of the council as the supreme body of the judicial legitimacy and it will emphasize the council’s responsibility for the management of the judiciary.... The extension of the scope of the Judicial council of the Slovak republic will help to solve the problems that have been accumulated in the Slovak judiciary for a long time and it will improve the efficiency and the quality of the justice“ (**a general part of the explanatory statement, a special part of the explanatory statement – Article 8 of an amendment of the Constitution**).

The Constitutional Court of the Slovak republic then has specified the position of the Judicial Council of the Slovak republic in this definition:. „ **The Judicial Council of the Slovak republic** is an special independent judicial constitutional body which guarantees an independent status of the judiciary and the judges’ legitimacy and which is responsible for the administering of the judiciary and the management of the judicial power and judiciary as well as the transparency of the judiciary so it should be a full partner for the legislative and the executive power“ (**the Finding of the Constitutional Court No. 2/2012 issued on 18th of November 2015**).

The contemporary situation of the Slovak judiciary, which is reflected mainly in difficult enforcement of law and very low public confidence in judiciary, requires systemic measures in these areas:

1. The personal status

- a) **when deciding about the recruitment (personal completing) of the courts** to clearly define how many cases could be solved by a judge or tribunal of judges without a risk of undue delays or loss of the quality of the decision-making. **It is necessary to prioritize the recruitment of judges at the courts which suffer from an immense workload** – The District courts Košice I, II, The Regional court in Bratislava, in Košice followed by another regional courts and district courts in towns, where the regional courts seat;
- b) **to eliminate the personal undersizing by the optimalization of the number of judges**; it is necessary **to take into account the fact** that part of the judges is required reduce their main tasks in the administration of justice, we mean rendering the decisions, because they are performing various tasks outside the administration of justice (tasks that resulted from the law, e.g. the management of the courts, self-governing bodies, the review departments at courts, the disciplinary senates);
- c) to regulate the **obligatory mechanism of the judges’ recruitment by a law** at every court in the case when the number of judges at that courts lowers for whatever reason, except for the situation when there is a huge decrease of incoming cases or backlog; ,
- d) **to establish a basic organizational structure of the judicial department by a law** (to establish an obligatory composition of the judicial department at the district court – it should be composed of one judge, one qualified higher court officer and one clerk) and to leave current provisions on the organization of other judicial departments; every judge at appellate courts and at the Supreme court should have one qualified higher court officer and one clerk for a tribunal of judges.

2. *Technical equipment*

To solve problems with the insufficient premises at particular courts:

- **The Supreme court of the Slovak republic** – the supreme authority of the administration of justice (e.g. to give the Ministry of the Justice another suitable),
- **The District court Bratislava I,**
- **four courts that have premises where the regional court of Košice seats,**
- the necessity of quick solutions results from the documents adopted by the judicial council, the reports made by review departments at courts, the opinions of the management bodies at courts and the other project documentation.

3. *Legislative changes*

- a) **The constitution of the Slovak republic** (establish the extinction of the function of the judge at the age of 67-70)
- b) **The constitutional Act No. 120/1993 Coll.** on remuneration of the constitutional functionaries (to equalize the salary of the President and Vice – President of the Supreme Court of the Slovak republic and the General Prosecutor with the salary of the President of the Judicial Council)
- c) **The Act No. 350/1996 Coll. on the rules of procedure at the National Council of the Slovak republic (Slovak parliament)** to establish the authority of the President of the judicial council to participate in the discussions of the parliamentary bodies as it is usual when talking about the participation of the President of the Supreme Court and the General prosecutor.
- d) **To pass a bill on so called judicial civil service**, which would establish the permanent appointment as civil servants for those employees who participate in the administration of justice. This will provide the stabilization of the qualified court's staff.

It is necessary **to take into account the constitutional regulation, Article no. 142 paragraph 2 of the Constitution and simultaneously we can't allow the salary discrimination of court's staff** in relation to administrative staff in the bodies of the legislative and executive power (e.g. The Office of the National Council of the Slovak republic, The Office of the President of the Slovak republic, The Office of the Constitutional court of the Slovak republic, The Office of the Government of the Slovak republic)

The performance of the staff working in the judiciary has own specifics. These specifics are necessary to be reflected in the specific legislation. This specific legislation then will allow the professional level of the administration of justice. (e.g. conditions for performance, promoting, liability of staff, social security, non-discriminatory remuneration a so on).

- e) **The Act No. 757/2004 Coll. on courts**

1. **to establish a definition of the judicial department** (its composition) – i. e.:

- at district court: one judge, one higher court officer, 1 clerk,
 - for the tribunal at regional court: three higher court officers and 1 clerk,
 - at the Supreme court: several clerks for one judge.
- to leave current provisions on the organization of other judicial departments

2. **to regulate the provisions on the working schedules of courts** (in order to timely respond to the workload of courts and judges, while safeguarding citizens' right to a fair and timely trial); to eliminate random reallocation of the cases by the technical devices in the situation when cases are pending and all legal conditions are met.
3. **to establish an obligatory mechanism of the judges' recruitment by a law** at every court in the case when the number of judges at that court lowers for whatever reason (when there is a vacancy), except for the situation when there is a huge decrease of incoming cases or backlog. With the adoption of this regulation it must be ensured that the president of a particular court can launch a selection process 9 months before the vacancy at court.

**f) The Act No. 185/2002 Coll. on The Judicial council of the Slovak republic
The amendment of the Constitution (with effect from 1st of September 2014)
requires another modification of the council's competences (under the Article no. 141a paragraph 11 of the Constitution)**

1. **The modification of the legal criteria, i. e. conditions of the council's decision** when securing the public control tasks under the **Article no. 141a paragraph 5 letter a/ of the Constitution**, that will establish the council's competence to propose Slovak government and the National Council of the Slovak republic (parliament) solutions of the legislative, personal and material conditions for the administration of the justice;
2. **to adjust the criteria** of the council's competence to comment the budget's proposal for judiciary (**to submit council's statement to government**) and to apply the criteria which stipulated in the Act on the state budget when submitting the council's statement on the budget proposal (the constitutional competence under the **Article no. 141a paragraph 5 letter h/ of the Constitution**);
3. **to adjust** the council's **competence** under the Article no. § 4 paragraph 1 letter i/ in the sense that council will discuss the issues on human resources with the Ministry of the Justice (**prior the changes** in human resources);
4. to establish the council's competence for the **legislative initiation in judiciary** (the same competence is entrusted to the prosecution);
5. to establish the council's competence **to control the activities of the disciplinary panels**. The conditions for constant control should be established in order to ensure the continuity of the disciplinary proceedings;
6. to establish the council's competence **organizationally and technically ensure the work of disciplinary panels**. It is necessary to do this by a complex legal regulation of particular range of council's activities and to ensure the council's impact on the legitimacy of the judiciary. This competence must be entrusted to council and not to the Supreme court as it is now (because the Supreme court is the body of the administration of justice). The decision-making about the disciplinary responsibility of the constitutional authorities is not an administration of justice and the disciplinary panel is not a part of the system of courts. According to the jurisprudence of the Constitutional court of the Slovak republic, the disciplinary

panel is the type of a judicial body which represents a kind of self-governing judicial body;

7. **when talking about the changing the provisions about the sessions of the council** (Articles 6-8) it is necessary to regulate the restrictions of the right to disseminate information in order to ensure the dignity of its sessions (i. e. do not allow the interference of the ordinary sessions, Article no. 26 paragraph 4 of the Constitution) – it is the same when we are talking about the fundamental right of a judge to ensure the dignity of the trial (Article no. 34 paragraph 4 of the Act no. 385/2000 Coll.) pojednávania (§§ 116-117 O.s.p.); here we must take into account a legal regulation on the strict prohibition of making judge's face public; this prohibitions relate to his relatives, his residence as well. (**Article no. 34 paragprah 7 of the Act no. 385/2000 Coll.**) – see **II. ÚS 28/96, III. ÚS 169/03, II. ÚS 7/00**;
8. to modify **the organizational structure of the Office of the Judicial Council of the Slovak republic similarly** to other Offices of the other constitutional bodies (legislative power, executive power and the constitutional court as well); the current existing material and personal equipment of the Office of the Judicial Council of the Slovak prevents the Judicial Council of the Slovak republic from the effective fulfillment of the tasks (The Office of the Judicial Council is the kind of executive body of the Judicial Council and helps the Council to exercise its competences) – the departments at the Office should be as follows: Department for securing the public control of the judiciary; Department for personal competence realization of the Council; Department for the economics and the budget; Department for the legislation; General department. Employees of the Office should be included in the **Act on the judicial civil service and** to change their salaries in non-discriminatory way (analogically according to salaries in other executive Offices - of the other state powers: e.g. the Office of the National Council, the Office of the Constitutional court, the Office of the Government, ...);
9. the adjustment of the **voting per rollam** during the secret sessions (in less important casesv in order to quick and timely decision-making).

g) The Act No. 385/2000 Coll. on judges and lay-judges

It is necessary to ammend following provisions of the Act:

1. Article no. 12 (**to complete**, that the assesment is carried out during the temporary assignment of a judge),
2. Article no. 14 paragraph 2 (**to leave** psychological examination in case of judge's promotionsudcov),
3. Article no. 21 paragraph 5 (**to specify** the formulation on the discharge benefit of a judge when terminates the performance of the function of judge; it should be clear that judge is not allowed to a discharge benefit only in case if a judge faces the disciplinary proceeding based on the committed act that is in violation of the incompatibility principle) - Article 18 paragraph 1 letter c/,
4. Article no. 27 (**to add another quantitative indicators that relates to the administration of the justice** to the report and to establish that this statistical report only relates to a quantitative aspect of the decision-making proces of judges),

5. Article no. 27c (**to add**, that the assesment of the judge should be mainly based on the results of the decision-making process in difficult cases, i.e. **qualitative aspect of the administration of the justice**; the **Judicial council of the Slovak republic after reaching the consent with the Minister of Justice should define** the diversity of the difficulty of cases in every legal agenda. When defining the difficulty of the cases it is necessary to respect **the criteria of the difficulty of cases when dealing with the constitutional complaints without undue delays** issued by the Constitutional court of the Slovak republic according to **Article. no 48 paragraph 2 of the Constitution**, i.e. legal and factual difficulty of the case (**resolutions of the Constitutional court: II. ÚS 26/95, II. ÚS 41/97, I. ÚS 92/97, III. ÚS 29/02, III. ÚS 118/03**),
6. Article no. 41 paragraph 1 (in case of allowed judge's work in the domestic environment, it is important **to strengthen the position** of the self-government of judges as it was before, i.e. to balance the cooperation between the bodies of the management of courts and the self-government of judges);
7. Article no. 65 and following (salary conditions)
To solve significantly different remuneration among the judges of the Supreme Court of the Slovak republic (a special extra is granted only to a judge of the penal section of the Supreme court who decide on the appeals against the decisions of the Specialized penal court), but all judges at the Supreme court meet the same consitutional and legal criteria for being a judge as those working at the penal section (Article no. 143 of the Constitution).
 Only Supreme court of the Slovak republic has the competence to **ensure the unification of the decision-making of other general courts**. That's why it is necessary to establish **a special extra for this** activity of the Supreme court judges (competence to unify the decision-making) and **to reasonably reduce the special extra for the judges at the penal section who decide over the appeals against the Specialized court** (e.g. suggested 20-30 % instead of the current 66 %). This measure would not require any increase of the financial resources because the lowering of the extra for the penal judges would ensure the saving of the extra money for the other judges at the Supreme court. This measuer will definitely ensure the motivation of the judges at lower courts all over the country to become judges at the Supreme court of the Slovak republic (with this special extra for the unification of the decision-making the Supreme court judges would earn much more money than the other Slovak judges) ;
 Article no. 68 paragraph 6 (**functional extras for the President and the Vice-President of the Supreme Court – to amend the constitutional Act no. 120/1993 Coll. – Article 24 paragraphs 2,3 by determining the amount of the functional extra** from the average salary of a judge – for Vice-President 30 % of the average salary of a judge and for President 35 % of the average salary of a judge;
8. **to leave Article no. 70 which establishes** unacceptable principle of the execution of the function without the salary;
9. Article no. 78a paragraph 1 **to leave the wording** „up to the height of his/her functional salary“. By this way it is always ensured that some extra money could be

granted only if some money has been saved (without asking money for extras from the state budget);

10. Article no. 93 and following (**social security measures**)

To establish an opportunity for an early extra money to pension if a judge has performed the function more than 25 years. Practical experiences shows that there is a „burnout“ syndrome of those judges who has been performing their function for several years. That’s why it is necessary **to allow judges to go to retirement (and with that extra money) which complies with the international standards as well (Recommendation CM/Rec (2010)12 adopted by the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibility, Article no.50).** This would enable **the arrival of the new judges** – „natural personal changes“ and it is also economical measure because new judges have significantly lower salaries than the judges who perform their duties for several years and leaving judges will have only lower extra money to their pensions;

11. **Article no. 116 and following. – the disciplinary offence**

a/ to leave the disciplinary offence of the representatives of the management of courts for the violation of his/her duties (**according to a constitutional provision of the Article 147 paragraph 1 of the Constitution** on the termination of the function of a judge by a removal which is based on the committment of an act incompatible with the function of a judge, i.e. not for a violation of the duty outside the office). The performing of the function of a judge is the realization of judge’s duties when administering the justice – the decision-making activities according to Article no. 142 paragraph 1 of the Constitution;

b/ to modify the admissibility of the prosecution of judges for disciplinary offenses only by a decision of the disciplinary panel or the President of the court. The jurisprudence of the Constitutional court of the Slovak republic says that **the admissibility of the prosecution of judge**, as constitutional authority, is possible **only by an authority of judicial type** (that is the disciplinary panel), and not by the administrative authority because the administrative authority **is not independent from the executive power. This sentence is based on the Article no. 6 paragraph 1 of the Convention on Human rights“** (e. g. PL ÚS 12/97, PL ÚS 7/00, PL ÚS 7/02, PL ÚS 10/05);

c/ to realize another regulations on accountability of judges based on the compey analysis of current regulation; this must secure the strict compliance with international standards of the EU and constitutional regulation of the functional imunity of judges (Article no. 148 paragraph 4 of the Constitution),

d/ Article no. 119a paragraph 3 – to leave double number of the candidates

e/ to leave Article no. 119 paragraph 4, which says that the activity of the disciplinary panels is managed by the Supreme court of the Slovak republic. This competence should be granted to the Judicial Council of the Slovak republic a it would correspond to the Constitution.

- h) To prepare the amendment of other procedural and material rules on judiciary to prepare a legislative changes that will deal about so called „detours“ of a particular cases especially those which have lost the character of the dispute and have only the character of the administrative procedure and should be out of the scope of courts, e.g.: a transfer of the Business register agenda on Trade licensing offices, a change in the execution proceedings so that these proceedings will take place only at bailiffs' offices and courts will enter into these proceedings only on indictment, a transfer of the telecommunication arrears cases on the Telecommunication office, an introduction of an obligatory mediation in small claim cases arising from the consumers contract (up to 1 000 €); the official request of the Judicial Council of the Slovak republic based on the Resolution No. 502 issued on 24th of June 2015**

We suggest following time schedule of the adoption of the systemic changes:

- 1. The elimination of personal undersizing – to be done by the 1st of July 2017**
- 2. The remedies in technical equipment (the spacial undersizing of courts mentioned in the text)– to be done by the 31st of December 2017**
- 3. legislative changes – to be done by the 1st of July 2017**