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**MEETING OF THE EUROPEAN ASSOCIATION OF JUDGES**  
(zoom, September 11<sup>th</sup>, 2021, 5 p.m.)

The meeting started at 17.00 Italian time.

In attendance were:

- the IAJ President, Mr. José Manuel Igreja Matos;
- the IAJ Vice Presidents Ms. Sabine Matejka, Mr. Đuro Sessa and Mr. Mikael Sjöberg;
- the Honorary Presidents, Mr. Christophe Régnard, Mr. José Maria Bento Company, Mr. Antonio Mura, Mrs. Maja Tratnik, Mr. Gerhard Reissner and Mr. Günter Woratsch;
- the Secretary General, Mr. Giacomo Oberto, and the Deputy Secretaries General, Mr. Lucio Aschettino, Mr. Galileo D'Agostino and Mr. Raffaele Gargiulo;
- the delegates of the following associations, which are members of the International Association of Judges and of the European Association of Judges:

ARMENIA	LATVIA
AUSTRIA	LIECHTENSTEIN
AZERBAIJAN	LUXEMBURG (PROXY TO FRANCE)
BELGIUM (PROXY TO FRANCE)	MALTA
BOSNIA HERZEGOVINA (PROXY TO CROATIA)	MOLDOVA
BULGARIA	MONTENEGRO
CROATIA	(THE) NETHERLANDS
CYPRUS	NORTH MACEDONIA
CZECH REPUBLIC	NORWAY
DENMARK	POLAND
ESTONIA	PORTUGAL
FINLAND	ROMANIA
FRANCE	SERBIA
GEORGIA	SLOVAKIA
GERMANY	SLOVENIA
GREECE	SPAIN
HUNGARY	SWEDEN
ICELAND	SWITZERLAND
IRELAND	TURKEY
ISRAEL	UKRAINE
ITALY	UNITED KINGDOM

The IAJ President Mr. José Igreja Matos thanked the EAJ Assembly for the support shown during his mandate as EAJ President.

He wished best success to the European Vice-Presidents of the IAJ and felicitated in particular Ms. Matejka for her election.

He then gave the floor to Vice-President Mikael Sjöberg who thanked the delegates for his election proposed the Assembly to elect Mr. Sessa as EAJ President.

Vice-President Sabine Matejka also thanked the Assembly for her election as IAJ Vice-President and expressed her support to the election of Mr. Sessa as EAJ President.

Mr. Sessa thanked President Mr. José Igreja Matos for his important legacy to the Group and asked the support of all the associations and of the two permanent working groups for his duty as President of the EAJ in front of the challenges to independence faced by all members in the continent.

President Sessa then passed to the examination of the two draft-resolutions on Poland and Slovakia, that were circulated among EAJ members via email prior to the meeting and received no objections. He called for an open vote on both documents and there were no contrary votes nor abstentions. President Sessa stated them as approved.

President Sessa closed the meeting at 17.20.

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The EAJ President  
Duro Sessa

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the IAJ Secretary-General  
Giacomo Oberto

Enclosures:

- resolution on Poland
- resolution on Slovakia



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Palazzo di Giustizia - Piazza Cavour - 00193 Roma - Italia

RESOLUTION

adopted on 10 September 2021

regarding

The Republic of Poland

The European Association of Judges (EAJ) welcomes the Judgment given by the Court of Justice of the European Union on 15 July 2021 in Case 791/19 *European Commission v Poland* and the Order for interim measures made by that court in Case 204/21R *European Commission v Poland* on 14 July 2021. Both decisions clearly confirm the assessment of the EAJ that the Disciplinary Chamber of the Supreme Court of Poland does not meet the requirements of an independent judicial body; that several provisions of the disciplinary procedure contradict European standards; and that a disciplinary prosecution of a judge for exercising a judge's right to ask the Court of Justice for a preliminary ruling infringes Article 267 TFEU - all of which constitute breaches by Poland of its obligations under the Treaty on European Union (TEU).

However, the EAJ also considers that the last-minute reaction of the Polish government on 16 August 2021 is totally inadequate. The preliminary suspension of the activities of the Disciplinary Chamber by the chair of the court and the vague notice given by the government that the legal provisions will be improved are combined in the same announcement with a reference to a judgment of the Polish Constitutional Court which denies the priority of European Union Law over national law and which in itself is another infringement of the TEU. The Polish government thus clearly shows its reluctance to depart from its course of demolishing the independent judiciary in Poland.

Further, the EAJ reiterates that there remain in place several other matters damaging to the rule of law, particularly regarding the independence of the judiciary. These include among others the election procedure for the members of the Judicial Council; the arbitrariness of the appointing of judges, especially Supreme Court judges; the appointment of some of the members of the Constitutional Court; and the position and jurisdiction of the Minister of Justice.

As regards the election of the members of the Judicial Council for instance, the concerns of the EAJ include the apparent misuse by the governing party of state institutions, such as the Speaker of the Parliament (Sejm), in order to prevent Polish citizens from learning details of the candidates for the NCJ. Access to public information is guaranteed by art. 61 of the Constitution and, as the Supreme Administrative Court of Poland has pointed out, such access may be restricted only where that is necessary for "the protection of rights specified in legal acts of persons and business entities, protection of public order and safety or an important economic interest of a state" none of which circumstances applies in the case of election to the NJC. Further, since at least one member of the NCJ has not been nominated lawfully, the validity of its decisions is open to question and in other respects the NCJ may not meet European standards

The EAJ therefore urges the European Commission to intensify its efforts to bring the Polish authorities to abide by relevant European standards and by their obligations owed under the TEU and, in particular, to ensure that the abovementioned decisions of the Court of Justice are respected and that implementation of the measures necessary to give effect to the decisions is not further delayed. Such measures include declaring that the decisions which this unlawful Disciplinary Chamber has issued are null and void.



**EUROPEAN ASSOCIATION OF JUDGES  
RESOLUTION  
adopted on September 2<sup>nd</sup> 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 amended<sup>1</sup> 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 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

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

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.