



Paris, July 13th, 2015

To the Minister of Justice
Mr. Orsat Miljenic
ministar@pravosudje.hr

Dear Sir,

The European Association of Judges – a branch of the International Association of judges- has been informed by the Association of Croatian Judges (UDRUGA HRVATSKIH SUDACA) about a draft law regarding the appointment and promotion of judges.

The main point in the amendments to the *State Judiciary Council Act* (SJCA) which so far have been approved by Croatian Government and which are now introduced in Parliament is the involvement of Secret Service Agencies in the process of appointing judges.

As we understand the new draft amendments the Government of Croatia is proposing to change Article 55a of the SJCA in a way that:

- A candidate for the judiciary, when applying for the appointment, will be obliged to give in advance his/her consent to be checked by the Secret Service Agency. If he/she does not agree the application will not be considered as formally complete.
- If the candidate complies with all the other criteria, to the phase to be appointed, the Secret Service Agency will perform a “ Security check-up” according to rules which are regulating acts and procedures of the Secret Service Agencies with all confidentiality guidelines which have to be applied,
- If the Secret Service Agency findings will result in a negative conclusion regarding a candidate’s security clearance, the SJC has to take another candidate into consideration (but not before this candidate will also be subject to a security check-up).
-

Especially the last point seems give to the Security Service Agency, which is part of executive branch of Government, a decisive role in the decision on the appointment of a judge.

Moreover all procedures and findings of the Secret Service Agency are defined by law as official secret and findings are confidential even to the candidate. The outcome of such a rule is that the State Judicial Council in its decision on appointment is not allowed to give full reasons why a particular candidate was not appointed even if he/she should be appointed by all other objective criteria. Thus the candidate is not in a position to challenge the Secret Service Agency’s findings and conclusions in administrative or court proceedings.

According to European international legal standards on appointment and promotion of judges, such as the Council of Ministers of the Council of Europe’s **Recommendation 2010(12)**, the planned amendments of the SJCA are contrary to the principles particularly stated in paragraphs 44. and 46 of the Recommendation 2010(12):

“ 44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity...”

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers...”

In our opinion, above explained changes are in direct contrary to the principles particularly stated in paragraphs 44. and 46 of the Recommendation 2010(12).

The above mentioned amendments to the SJCA may also infringe the Croatian Constitution where in Article 124 the State Judiciary Council is defined as an autonomous and independent body, consisting of seven judges, two professors of law and two members of the parliament with exclusive authority to appoint and dismiss judges and presidents of courts and to decide on their disciplinary responsibility.

The European Association of Judges has already expressed its concern of using secret service institutions in assessment/evaluation procedures in Slovakia. In its Resolution of November 13th 2014 it states:

“As a rule it is inappropriate that material gathered by secret service institutions be used in procedures to decide if judges fulfil the necessary requirements established by clearly laid down laws. Any attempt to use against judges material which is gathered in the usual manner in which secret service institutions do so is likely seriously to infringe the independence of the judiciary. The influence of a secret service, which is part of the executive power of the state, on judges' performance and career will conflict with the principles of separation of powers”.

Taking into consideration all these points the EAJ expresses its deep and serious concerns about the planned amendments and would like to bring them to the attention of the Croatian authorities and urge them to act upon these concerns. EAJ will follow the development as it always does in similar situations.

Yours sincerely

Christophe REGNARD
First IAJ Vice-President
EAJ President

A handwritten signature in blue ink, appearing to read 'Christophe Regnard', enclosed within a large, loopy, hand-drawn oval or scribble.