Association of Judges of Slovakia

Initiative

To file a petition to initiate proceedings on the compliance of Act No. 150/2022 Coll. with the Constitution of the Slovak republic and the Convention for the Protection of Human Rights and Fundamental Freedoms

The Association of Judges of Slovakia (hereinafter referred to as the 'Association'), as the largest professional organization of judges in the Slovak Republic, hereby submits this initiative to selected entities authorized to initiate proceedings pursuant to Art. 125 of the Constitution of the Slovak Republic (hereinafter referred to as the 'Constitution') to submit to the Constitutional Court of the Slovak Republic (hereinafter referred to as the 'Constitutional Court') a proposal to initiate proceedings on compliance with Act No. 150/2022 Coll. on the amendments and additions of certain acts in connection with the new seats and districts of the district courts with Art. 1 para. 1, Art. 141 para. 1, Art. 141a, Art. 144 para. 1, Art. 148 para. 1, Art. 46 para. 1 and Art. 48 para. 1 of the Constitution and Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'Convention').

I. Relevant factual circumstances

(1) The Government of the Slovak Republic has submitted to the National Council of the Slovak Republic (hereinafter referred to as the 'National Council') proposals for several laws that represent changes to the system of courts of the Slovak Republic. On 17 February 2022, the National Council rejected three of these bills (prints 847, 848 and 850) already in the first reading (hereinafter referred to as 'rejected bills') by failing to approve the resolution on the discussion of these bills in the second reading in accordance with Art. 73 of Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic (hereinafter referred to as the 'Act on the Rules of Procedure').

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(2) Subsequently, a political agreement was reached on a partial change of the content of the rejected bills, while the thus changed content of the rejected bills, despite the absence of any comment procedure and the deliberations of the committees of the National Council, was submitted in the form of an amendment proposal by MP Michal Luciak to the draft law on the amendments and additions of certain laws in connection with the new seats and districts of the district courts (print 849). The amendment in question was approved by the National Council and became part of the bill approved in the third reading [Act No. 150/2022 Coll. on the amendments and additions of certain acts in connection with the new seats and districts of the district courts (hereinafter referred to as 'Act No. 150/2022 Coll.')].

II. Legal assessment – Breach of the recognition standard

II.1. Background

(3) Just the scope of this amendment (almost thirty pages and dozens of amendment points, amending several pieces of legislation) indicates extraordinary contempt for the basic rules of the legislative process. An accompanying feature that is directly related to this method of rule-making is the minimalist, merely formal justification of individual changes and the absence of any real discussion about them – real in the sense that it is also available to civil and professional 'stakeholders', who will be directly affected by the consequences of the adopted changes. Such a discussion was replaced by a traditional confrontation conducted exclusively along the coalition-opposition axis and, by the nature of the matter, ignoring those very consequences.

(4) In short, the final version of the so-called Judicial Map became the subject of negotiation and approval in a form in which it significantly differed from previous versions, to which the Judicial Council of the Slovak Republic (hereinafter referred to as the 'Judicial Council') had at least a basic opportunity to comment. Several of these differences were not only parametric in nature, but compared to previous versions, they changed the arrangement in its essential elements.

(5) The Association is aware that not every violation of the rules of the legislative process has a constitutional dimension and that the Constitutional Court tends to consider this type of defects as constitutionally relevant only if they reach a certain intensity, namely if they indicate a gross arbitrariness resulting in an interference with one of the basic rules of the legislative process or if they refer to its explicit constitutional regulation.

II.2. Constitutional dimension

(6) In the given matter, this relationship and this direct connection with the constitutional provisions is given by several elements:

(i) the special and constitutionally enshrined status of the Judicial Council;

(ii) the content of its authority according to Art. 4 para. 1 letters f) and g) of Act No. 185/2002 Coll. on the Judicial Council of the Slovak Republic and on amendments and additions to certain laws in connection with Art. 141a para. 6 letter k) of the Constitution;

(iii) the nature of the subject-matter to which the contested procedure relates.

(7) Although the power, which can be described in short as the power belonging to an irreplaceable and indispensable commenting body, is regulated in detail 'only' in the law, due to the explicit delegation in Art. 141a para. 6 letter k) of the Constitution and on the constitutional definition of the Judicial Council as a constitutional body of judicial legitimacy (Art. 141a para. 1 of the Constitution), this power goes beyond the legal framework in its meaning.

(8) From a formalistic point of view, the power of the Judicial Council to take opinions on drafts of generally binding legislation and conceptual documents is subject to statutory regulation. However, in a perspective that respects the specifics of the constitutional role of the Judicial Council in the rule-making process concerning the organization of the judiciary and the status of judges, it is clear that this power reflects the substantive definition of the specific role and special status of the Judicial Council, which has a constitutional dimension.

(9) **The Judicial Council is simply not a regular subject of interdepartmental comment proceedings in matters of the organization of the judiciary. Its position in this process has a constitutional pedigree, a separate statutory regulation, and also from the point of view of the constitutional system of separation of powers, it is the performance of a specific task in the fulfilment of which the Judicial Council is irreplaceable.**

(10) According to the established domestic and Strasbourg jurisprudence, protection can be considered sufficient only if it guarantees real and effective rights, not illusory rights. By analogy, it also applies that the powers of the constitutional body are satisfied only if this

power can be exercised in a realistic and effective manner. If the competence of the Judicial Council in relation to bills and conceptual documents related to the judiciary – nota bene in the case of such a fundamental reorganization as the change of the court system – should not only have an ornamental nature, but should establish the real participation of the constitutional body of judicial legitimacy in the relevant law-making and regulatory processes, then it is not admissible to empty this competence and deprive it of real meaning by a classic political trick consisting in bypassing the comment procedure through the amendment proposals of the Members of Parliament.

(11) In this regard, the Association points to the fact that the recognition standard, as a norm that establishes the criteria for the validity of all other legal norms, is not only made up of rules explicitly regulated in the Constitution, but is made up of 'a set of rules that regulate the conditions for adopting, changing and cancelling legal standards... which have different legal force, are found in several legal acts and regulate the requirements of a different nature. It affects both the procedure for adopting legal norms and the result of this procedure.' (Procházka, R., Káčer, M. Teória práva. Bratislava: C. H. Beck, 2013, 1st ed., p. 151). Legal theory as an example of a requirement regulated by the recognition standard also mentions 'the observance of deadlines, legislative technical procedures and other procedural technicalities' (*ibid.*, p. 152). In short, the legal theory, when interpreting the recognition standard and its impact on the constitutionality of the normative procedure, prefers the so-called functional interpretation, which is, after all, a common part of the jurisprudence of both the European Court of Human Rights (hereinafter referred to as the 'ECtHR') and the Court of Justice of the European Union (hereinafter referred to as the 'CJEU'). In the light of this interpretation, it is not the legal force of the rule forming part of the recognition norm that is relevant, but its significance in relation to parliamentary rule-making in a democratic state governed by the rule of law.

(12) Violation of any of the requirements regulated by the recognition standard may or may not establish the reason for its non-compliance with the Constitution. The result of such an assessment depends on the type of requirement that has not been complied with, on the intensity of the violation and on the seriousness of the matter to which the legislator's procedural error related. In the given case, the situation is one in which the legislator has enforced the matter directly affecting the exercise of rights according to the seventh section of the second chapter of the Constitution (the right to judicial and other legal protection) without

respecting the constitutional and statutory powers of the Judicial Council and in a manner that cannot be assessed otherwise than as gross arbitrariness.

II.3. Gross arbitrariness

(13) In the present case, the inadmissibility of the contested procedure is further highlighted by the fact that it also infringed other rules of the legislative process, such as the six-month time-limit rule laid down in Art. 96 para. 3 of the Act on Rules of Procedure.

(14) The bill, which was – in a significantly changed form and without the opportunity for the Judicial Council to exercise its powers – approved on the basis of an extensive amendment, submitted after the second reading committee deliberations, had been the subject of bills that the National Council had not approved in the first reading shortly before (prints 847, 848 and 850). The amendment in question also bypassed the six-month time-limit rule for resubmission of a bill regulating the identical subject matter.

(15) To accept the argument that this rule applies only to bills, not to amendments to bills, would mean that a statutory limitation, which has its own obvious purpose, can be circumvented by the simplest of tricks – by introducing a modification in the form of an amendment, namely even at the same or immediately following session.

(16) It is a well-known fact that the approved wording of the challenged regulations was the result of political agreements, concluded so to speak at the last moment, in a cabinet manner and for reasons that had nothing to do with substantive argumentation, professional assessment and the real needs of the judiciary. The result of this process, in the form of approved processes, does not take into account the original intention of the Ministry, nor the justification of this intention, nor the comments of the professional public, nor the opinions of professional organizations, nor the comments of the Judicial Council. It takes into account only the current need for an intra-coalition agreement.

(17) Such a process is to some extent natural or at least typical for parliamentary law-making. At the same time, it is true that not every case of lack of transparency and consideration of professional opinions establishes non-compliance with the constitutionally framed rules of the legislative process. **However, in the present case, on the one hand, the confusion, expediency and opacity of the process exceeded the tolerable level, and on the**

other hand, this process did not concern a peripheral but absolutely fundamental regulatory issue with a constitutional dimension, in the resolution of which the Judicial Council has an irreplaceable and indispensable position.

(18) It is therefore not a question of the usual adaptation of the legislative process to the current needs of political operation, but of the replacement of its pillar elements with chaotic, unclear and unpredictable rule-making, from the participation of which the subject was realistically omitted, whose participation the Constitution presupposes and makes obligatory at least implicitly, or – taking into account the purpose and systematics of Art. 141a of the Constitution – even explicitly.

(19) In short, the procedure of the National Council included a combination of several violations of the basic rules of the legislative process, while this combination reached the intensity of gross arbitrariness, when it completely deprived of any practical effect not only the specific competence of the Judicial Council, but also the specific rules regulated by the Act on the Rules of Procedure. The eventual affirmation of such a procedure as constitutionally compliant would give the legislator a blank check for any manipulation or ignoring of the rules of the legislative process and would further weaken the predictability, transparency and discursive nature of parliamentary rule-making.

(20) These requirements have a constitutional dimension, and if their protection is not to remain merely academic, the very procedure of the legislator, which is opposed by the Association, is an opportunity to define comprehensible criteria. The Association is aware that the judicial review of constitutionality does not serve the moral and political evaluation of the legislative process, but in this case all the necessary conditions for its application are met, as the contested defects clearly have a constitutional and legal dimension and the required severity. **In the present case, an extremely extensive and complex regulation, directly and fundamentally related to the right to judicial protection and the principles of the rule of law, was approved in a way that prioritized gross expediency and manipulation over all formal and material requirements. In this regard, the contested procedure, both in terms of its effects and its intensity, is clearly different from previous cases in which the Constitutional Court has preferred restraint when assessing the constitutional relevance of the procedural failures of the legislator.**

III. Legal assessment – Principle of non-transferability of a judge

III.1. Background

(21) The constitutional principle of non-transferability of a judge without his/her consent (Art. 148, para. 1 of the Constitution) is subject to two exceptions:

(i) the transfer is the result of a disciplinary sanction, and

(ii) the transfer is necessary to ensure the proper administration of justice when changing the system of courts, with the law establishing the details.

(22) In this context, the Association objects to the absence of legal regulation of details, in such a way that this regulation should create sufficient guarantees against the influence of non-judicial authorities and at the same time grant the judges concerned adequate guarantees to protect them.

(23) According to Art. 2 of Act No. 371/2004 Coll. on the seats and districts of the courts of the Slovak Republic and on the amendment of Act No. 99/1963 Coll. Civil Procedure Code, as amended, effective from 1January 2023 [Art. VIII point 1 of Act No. 150/2022 Coll. (hereinafter referred to as the 'Act on Seats and Districts of Courts')] the seats, districts and workplaces of district courts are established. The legal effect of this amendment is the abolition of several district courts, the transformation of other district courts into so-called 'residential courts' including the districts of abolished district courts, the determination of workplaces of district courts and potential (but assumed) transfer of district court judges to another workplace.

(24) Pursuant to Art. 51b of Act No. 757/2004 on courts and on the amendment and additions of certain acts in the version effective from 1 January 2023 (hereinafter referred to as the 'Act on Courts'), a special mechanism for creating a work schedule is created for those courts that have a workplace established by law in their district, i.e. it will be the so-called common work schedule for the 'residential court' and workplaces of this 'residential court'.

(25) According to Art. 50 para. 1 and Art. 52 of the Act on Courts, the work schedule is an act of management of the President of the Court, during the creation of which the President of the Court is not obliged to accept any comments and reservations of the judges concerned, nor the opinion of the council of judges.

(26) According to Art. 4 and Art. 5 of the Decree of the Ministry of Justice of the Slovak Republic No. 118/2005 Coll. on the particulars of the work schedule as amended (hereinafter referred to as the 'Decree'), the work schedule regulates or indicates, *inter alia*, the staffing of court departments, hearing days or hearing rooms.

(27) According to Art. 2 of the Act on Seats and Districts of Courts, the seat of the District Court of Banská Bystrica is the city of Banská Bystrica and its workplace is in the city of Brezno (Art. 2, para. 6); the seat of the District Court of Bardejov is the city of Bardejov and its workplace is in the city of Svidník (Art. 2, para. 7); the seat of the District Court of Liptovský Mikuláš is the city of Liptovský Mikuláš and its workplace is in the city of Ružomberok (Art. 2, para. 13); the seat of the District Court of Lučenec is the city of Lučenec and its workplace is in the city of Veľký Krtíš (Art. 2 para. 14); the seat of the District Court of Námestovo is the city of Námestovo and its workplace is in the city of Dolný Kubín (Art. 2 para. 18); the seat of the District Court of Nitra is the city of Nitra and its workplace is in the city of Topoľčany (Art. 2 para. 19); the seat of the District Court of Poprad is the city of Poprad and its workplace is in the city of Kežmarok (Art. 2 para. 22); the seat of the District Court of Prievidza is the city of Prievidza and it has workplaces in the city of Bánovce nad Bebravou and in the city of Partizánske (Art. 2 para. 24); the seat of the District Court of Rimavská Sobota is the city of Rimavská Sobota and its workplace is in the city of Revúca (Art. 2, para. 25); the seat of the District Court of Senica is the city of Senica and its workplace is in the city of Skalica (Art. 2 para. 27); the seat of the District Court of Trenčín is the city of Trenčín and its workplace is in the city of Nové Mesto nad Váhom (Art. 2 para. 31); the seat of the District Court of Trnava is the city of Trnava and its workplace is in the city of Piešťany (Art. 2 para. 32); the seat of the District Court of Žilina is the city of Žilina and it has workplaces in the city of Čadca and in the city of Považská Bystrica (Art. 2 para. 36).

(28) As a result of the aforementioned statutory (and by-law) provisions, such procedure is possible and at the same time expected, as a result of which judges serving as lawful judges on the so-called 'residential district courts' and their workplaces will be transferred to another workplace without their consent, and only on the basis of the work schedule as an act of management of the President of the Court.

(29) For example, a judge serving as a lawful judge at the District Court of Považská Bystrica will be able to be transferred without his/her consent, for example, to the workplace of the District Court of Žilina in the city of Čadca (distance approx. 62 km), a judge serving at the District Court of Námestovo will be able to be transferred without his/her consent to the workplace in Dolný Kubín, a judge serving at the District Court of Trenčín will be able to be transferred to the workplace in Nové Mesto nad Váhom, and so on. From a strictly formalist point of view, it will not be a *stricto sensu* transfer. Undoubtedly, in such a case, it will be a *de facto* transfer, not between instance levels, but between other workplaces.

(30) It is notorious that a change of workplace has, or it can have a relatively substantial impact on the person it affects. The need to travel at least several tens of kilometres to a new workplace has financial implications, significant is the interference with those aspects of the person concerned life that are directly relevant to his/her private and family life (relevant circumstances may be, for example, ownership of a personal vehicle, the availability of public transport, the care for school-aged children, the care for another dependent family member, social ties, and so on). It is not expedient to discuss these aspects in detail, as they have an individualized nature and may affect the concerned persons in different ways and with different intensity. However, there is no doubt that the obligation to work in a place far from the place of residence has a non-negligible impact and that is also why it is a constitutional rule to bind any change to the approval of the judge concerned.

(31) The above applies all the more because the President of the Court is not obliged to accept the reservations of the judges concerned, or the opinion of the council of judges, while the deadline for publishing the work schedule for the following calendar year is set for December 15 of the previous year (Art. 52 para. 4 of the Act on Courts). In practice, this will mean that a judge of the District Court of Žilina, for example, can find out about his/her *de facto* transfer to the workplace in Čadca two weeks before he/she has to organize some of the basic elements of his/her private, family and social life in a relatively fundamental way.

(32) With regard to the statutory foreseen (and commonly used) possibility of adjusting the work schedule even during the calendar year, it is also not possible to rule out that the decisions of the President of the Court on the 'transfers' of judges between different workplaces (in the case of some districts there are up to three various places) will serve to informally sanction the judges concerned. Although the Constitution does not expressly or *a*

priori prohibit such a mechanism, its constitutional conformity is conditioned by the observance of several conditions, which are also constantly applied by the ECtHR (point III.2. of the Initiative). At the same time, the contested regulation does not meet these conditions even to a minimum extent (point III.3. of the Initiative).

(33) The contested regulation leaves the decision on the *de facto* transfer of a judge to the discretion of the President of the Court, without limiting that discretion by detailed criteria and providing any procedural protection against it. It thus creates space for arbitrary or even manipulative interventions by the body, which in this sphere of its competence is traditionally (also in the relevant jurisprudence) considered to be the body of the state administration of the courts, i.e. the body of executive power *sui generis*. In addition, it is a body whose appointment is under the competence of the Minister of Justice, i.e. an entity with a direct political pedigree.

(34) All these circumstances call into question the compliance of the contested regulation not only with the Constitution, but also with the Convention, as regards the provisions guaranteeing not only the independence of courts and judges, but also the fundamental right of everyone to an independent court – Art. 141 para. 1, Art. 144 para. 1, Art. 148 para. 1, Art. 46 para. 1 and Art. 48 para. 1 of the Constitution and Art. 6 para. 1 of the Convention.

III.2. The European-legal dimension of the principle of non-transferability of a judge

(35) The ECtHR also considers statutory non-binding instruments of the bodies of the Council of Europe and other institutions of judicial legitimacy as part of the normative background when assessing issues related to the protection of the functional, institutional and status independence of judges, and refers to these instruments, builds on them and considers them relevant (for recent examples see, for example, the judgments of the ECtHR in the case of Gumenyuk v. Ukraine, para. 53, or in the case of Bilgen v. Turkey, para. 62). The same applies to the same extent to the principles of international law and the common values of the Council of Europe (ECtHR judgment in the case of Bilgen v. Turkey, para. 62)

(36) From these instruments, which the ECtHR has repeatedly explicitly referred to as reference, legally significant norms, the following results.

(37) The European Commission for the Efficiency of Justice (hereinafter referred to as the 'CEPEJ') in its report on European judicial systems from 9 October 2014 stated the following: 'The principle that a judge cannot be transferred to another court without his/her consent follows from the basic principle of non-transferability. However, under certain circumstances and subject to the condition that the person concerned has legal protection guarantees, this principle can be reconciled with the need for effective administration of justice and with modern management methods applied in order to fulfil such a need.' The Venice Commission emphasizes that **'procedural guarantees for any judge or prosecutor who is subject to forced transfer should be regulated by law, while the criteria for transfer must be clearly regulated, together with the possibility of the judge or prosecutor concerned to comment on the measure directed against him/her and, secondly, to challenge any decision on the transfer with an appeal'**.

(38) The CEPEJ report in question also states that even in those jurisdictions in which a judge can be transferred without his/her consent for organizational reasons, protection guarantees are regulated either directly by law or provided by the Judicial Council or are given the possibility to file an appeal against such a decision.

(39) The report of the UN Special Rapporteur on the independence of judges and lawyers, submitted after the mission in Turkey, requires that the system of transfers and rotations of judges meet 'guarantees of fairness, transparency and coherence in order to prevent possible abuse'. The transfer process should be public and based on objective criteria, otherwise it can be used as a tool to reward or punish judges.

(40) The Special Rapporteur further states that 'the decision to transfer or assign a judge or prosecutor to another place cannot be based solely on the needs of the performance of the duties; it should be governed by objective criteria and at the same time take into account the family situation of the person concerned, his/her personal wishes and ambitions, as well as the specialization he/she has achieved so far. **In particular, mobility between workplaces cannot be based on arbitrary decisions, and judges and prosecutors should have the right to challenge – including challenging before a court – any decisions modifying either their status or the conditions of their duties.'**

(41) The European Network of Councils for the Judiciary (ENCJ) in its 2012-2013 report on the minimum standards for evaluating the performance of judges and their non-transferability expressed the following conclusions: 'The principle of non-transferability also applies to assignment or transfer to another workplace without the judge's consent. Nevertheless, there are acceptable exceptions to this general rule... **The principle of non-transferability necessarily requires that the reasons for the transfer of a judge be clearly defined and that the forced transfer be decided in a transparent procedure by an independent body that acts without any external influence and whose decisions are open to objections or appeal.'**

(42) The following requirements are derived from the above-mentioned reference standards:
(i) unambiguous and predictable legal regulation of the transfer criteria,
(ii) the objective nature of these criteria,
(iii) decision-making by an independent body, institutionally and functionally protected from external influence,
(iv) the availability of real procedural safeguards.

(43) The ECtHR supplements these starting points with its own conclusions, in the Bilgen judgment, for example, it states that 'with regard to the extremely important role that judges play in ensuring the rights arising from the Convention, it is essential that procedural guarantees operate that ensure that their judicial autonomy is not threatened by disproportionate external or internal influences. In matters concerning their career... the absence of a judicial review of the transfer decision can only be justified by very serious reasons that have not been demonstrated to the Court in this matter' (para. 96).

(44) In the Gumenyuk judgment, the ECtHR – in addition to confirming the relevance of the cited documents of European and international judicial networks and emphasizing the requirement of procedural guarantees – subjected the consequences of the Ukrainian judicial reform not only to aspects of the right to a fair trial, but also to the right to privacy, when it stated that the contested measures 'deprived the applicants of the possibilities... to realize their goals of professional and personal development.'

(45) The CJEU has also taken the above-mentioned ECtHR decision into account in its jurisprudence, when in the judgment of 6 October 2021, W.Ż., C-487/19, it stated, *inter alia*,

that not only the transfer of a judge without his/her consent to another court, but (as was the case in the main proceedings) **also the reassignment of a judge without his consent between two departments of the same court (that is, without changing the judge's workplace), may potentially violate the principles of irrevocability and independence of judges.** Indeed, such reassignments can represent a means of exercising control over the content of court decisions, as they can have an impact not only on the scope of powers of the judges concerned and the processing of cases assigned to them, but also a significant impact on their lives and careers, and thus they can result in consequences analogous to with the consequences of a disciplinary sanction. It also points out that the requirement of independence of judges arising from Art. 19 para. 1 of the second subparagraph of the Treaty on European Union, interpreted with regard to Art. 47 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the 'Charter'), requires that the regime applicable to the reassignment of these judges without their consent provides, as is the case with the rules in the disciplinary area, in particular the guarantees necessary to prevent any risk of this independence being threatened by direct or indirect external interference.

(46) According to the CJEU, it is therefore important that, even if such measures consisting of reassignment without consent, as in the context of the main proceedings, are taken outside the framework of the disciplinary regime by the President of the Court to which the judge belongs to whom these measures apply, it was only possible to decide on the mentioned measures for legitimate reasons related primarily to the redistribution of available resources to guarantee the proper administration of justice, and that such decisions could be appealed to the court in accordance with the procedure fully guaranteeing the rights enshrined in Art. 47 and Art. 48 of the Charter, primarily the right to defence.

(47) The specific circumstances of these and several other cases are not as important as the generalizable principles that emerge from them and are relevant in relation to the contested amendment of the Act on Courts, the Act on Seats and Districts of Courts and the Decree.

III.3. Application of the Convention to the contested regulation

(48) The adjustment of the work schedule according to the cited provisions of the Act on Courts, the Act on Seats and Circuits of Courts and the Decree is not *de iure* a decision on the transfer of a judge. However, in relation to those judges whose will be by the work schedule transferred from their current workplace to another workplace, there will undoubtedly be

measures with a similar or with the same effect as the transfer of the judge. It is indisputable, and as indisputable it is also established in jurisprudence, that measures are not assessed according to their designation or nomenclatural classification, but according to their real content and effects.

(49) Above all, however, the reference standards, cited in point III.2, consider the transfer of a judge to another workplace as a transfer of a judge, regardless of the legal form of the measure by which this happens.

(50) The Association does not find a reasonable reason to pretend that such an adjustment of the work schedule, which subjects the judge to the obligation to change the workplace of the duties, does not meet the material parameters of the decision on transfer. It meets them in all essential aspects.

(51) In such a case**, however, the content, subject and process of making such a decision must be covered by all the principles that co-create the principle of non-transferability of a judge without his/her consent**, even if it is a transfer on the basis of a constitutional authorization according to Art. 148 para. 1 second sentence of the Constitution. The Constitution does not stipulate that in the event of a change in the court system, a judge may be transferred without further delay, so to speak, i.e. without complying with the norms and principles applicable to the matter in question. This is also confirmed by the fact that the Constitution conditioned such a procedure on the one hand with an explicit material condition ('necessary to ensure the proper administration of justice') and on the other hand with a formal condition in the form of regulation of details by law.

(52) The material condition refers to the legitimacy of the goal itself (proper administration of justice) and the adequacy of its implementation (necessity), the formal condition (legal regulation of details) refers to the legality, legitimacy, and adequacy of the means used to fulfil this goal.

(53) In this perspective, it then applies that **the jurisprudence of the ECtHR and the CJEU correspond to the statutory regulation of details for the transfer of a judge without his/her consent in the event of a change in the court system only if:**

(i) the transfer of a judge is conditioned by the fulfilment of objective criteria that are sufficiently clearly and predictably regulated,
(ii) entrusts the decision on transfer to an independent authority, which is protected from any external influence in its decision-making,
(iii) the decision to transfer is preceded by a transparent process, and
(iv) against the decision, the concerned judge has an effective possibility of protection, the application of which will be decided by the court.

(54) It is obvious that **an arrangement that allows the actual transfer of a judge (transfer to another workplace) by such a measure, (i) which is subject to the discretion of the state court administration body, (ii) which is not subject to clear and predictable objective criteria, (iii) which issuance is not preceded by a transparent process, and (iv) against which no remedy or other means of protection is available, fails to meet these requirements even to a minimal extent.**

(55) At the same time, any errors or systemic deficiencies in the content and/or application of the national regulation on the transfer of judges directly affect the right of the parties to a lawful judge. In this context, it is possible to refer, for example, to the recent decision of the ECtHR in the case of Advance Pharma v. Poland and the jurisprudence cited therein, or to the decisions of the CJEU in the joint cases C-585/18, C-624/18 and C-625/18.

(56) Since both the ECtHR and the CJEU consistently assess the principle of the non-transferability of a judge without his/her consent as part of the right of access to the court and the right to a lawful judge, it is clear that the absence of the required parameters establishes the inconsistency of the contested regulation not only with Art. 148 para. 1, but also with Art. 46 para. 1 and Art. 48 para. 1 of the Constitution and Art. 6 para. 1 of the Convention.

IV. Proposal

(57) In the event that the addressees of the initiative agree with the objections of the Association in relation to the constitutional relevance of the legislator's misconduct in the adoption of Act No. 150/2022 Coll., the Association proposes to object to the incompatibility of the Act as a whole, namely with Art. 1 para. 1 and Art. 141a para. 2 letter k) in connection with Art. 141a par. 1 of the Constitution.

(58) If they also agree with the objections of the Association in relation to the principle of non-transferability of the judge, the Association proposes to object to the inconsistency of Art. VIII point 1 of Act No. 150/2022 Coll. and all other provisions of this Act, which materially follow up on this point of amendment, also with Art. 141 para. 1, Art. 144 para. 1, Art. 148 para. 1, Art. 46 para. 1 and Art. 48 para. 1 of the Constitution and Art. 6 para. 1 of the Convention.

(59) Considering the nature of the contested rules and the potential impact of their application during the proceedings at the Constitutional Court, the Association considers that, with regard to the principle of legal certainty, it is expedient to propose to the Constitutional Court to suspend the effectiveness of the contested provisions, since their application after 1 January 2023 could not only endanger everyone's fundamental right to judicial protection, or to a fair trial (especially with regard to the right to have the matter heard by an independent court), but also the right to a lawful judge, but considerable economic damage could also be caused in connection with the implementation of the change of districts and seats of individual district courts.