

Brussels, 14 February 2025

To: the Judicial Council of the Slovak Republic

The International Commission of Jurists (ICJ) acknowledges receipt of the **Statement of the Judicial Council of the Slovak Republic (NJC)**, dated 20 January 2025, **in connection with the conference organized by the ICJ on 15 January 2025**. In its statement, the NJC objects to certain remarks made at the conference, which address “*concerns over judicial independence, politicization of institutions, and recent changes affecting the composition and role of the Judicial Council of the Slovak Republic.*”

The ICJ appreciates the interest of the NJC in the ICJ event at the European Parliament on 15 January 2025 – *Slovakia, Hungary and Poland: How can strategic litigation protect Judicial Independence?* and values the opportunity to engage in this dialogue on upholding the rule of law and the independence of the judiciary in Slovakia.

The ICJ is an organization of judges and lawyers committed to safeguarding and promoting judicial independence and upholding the rule of law, consistent with international law and standards. Among other activities, we work with other judges, lawyers and prosecutors in securing their objectives to be independent, impartial, and free to carry out their professional duties.

Bearing these objectives and purposes in mind, we would like to address just a few of the important issues you have raised in your letter, and raise with you a few questions for further discussion.

## Judicial independence

In framing our questions, the ICJ would recall certain core precepts that the Judicial Council is of course already well aware of. Judicial independence is fundamental for the rule of law, ensuring that courts operate free from undue influence, pressure, or interference from the executive, legislature, or other external actors.<sup>1</sup> This ensures that judges can make impartial decisions without fear of retribution or external manipulation. An independent judiciary is essential for upholding human rights including guaranteeing the right to a fair trial, and maintaining public confidence in the legal system. When the judiciary is free from external control, it acts as a safeguard against the abuse of power and protects individuals’ rights.

The requirement of independence of the judiciary inherent in the right to a fair trial refers not only to actual freedom from political and other external interference, but also to “the procedure and qualifications for the appointment of judges, and guarantees relating to their security of

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<sup>1</sup> Human Rights Committee, General Comment no. 32, para. 19. See also: checklists for judicial independence provided in Venice Commission, Rule of Law Checklist, March 2016, CDL-AD(2016)007, p. 20, 22. See also: ICJ, Human Rights in Practice, *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*, January 2025.

tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions.”<sup>2</sup> The judiciary itself should be responsible for and play the primary role in its own governance. In this regard, the Committee of Ministers of the Council of Europe considers that judicial councils should be independent bodies established by law to safeguard judicial independence and promote efficient judicial systems.<sup>3</sup> The Consultative Council of European Judges (CCJE) has, regarding Judicial Councils, emphasized that: “[b]eyond its management and administrative role vis-à-vis the judiciary, the Council for the Judiciary should also embody the autonomous government of the judicial power, enabling individual judges to exercise their functions outside any control of the executive and the legislature, and without improper pressure from within the judiciary.”<sup>4</sup>

Furthermore, judicial councils and similar bodies should be composed exclusively or predominantly of members of the judiciary to ensure that decisions regarding appointments, promotions, discipline, and removal are free from external influence.<sup>5</sup> However, even where a judicial council has a mixed composition, it must remain entirely independent from parliamentary and executive influence to uphold the fundamental principles of justice.<sup>6</sup>

*Bearing in mind these standards and the concerns raised regarding possible undue interference by the executive in the work of the NJC, we would appreciate further clarification on how the independence of the NJC is ensured given its mixed composition.*

*How does the NJC square the fact that judges are not in the majority of the composition of the NJC in Slovakia, and that nine members are directly elected by the parliamentary and executive bodies with the principle of independence with reference to these standards?*

## **Constitutional changes allowing for the dismissal of Judicial Council Members**

International law and standards on the independence of the judiciary, including those contained in the UN Basic Principles on the Independence of the Judiciary<sup>7</sup> and clarified and detailed by the Venice Commission<sup>8</sup> affirm the fundamental principle that judicial bodies be protected from political interference or undue influence. Recommendations by the OSCE on Judicial Independence and Accountability explicitly state that “[m]embers of judicial councils should not be dismissed by the executive or legislature before the end of their terms unless found liable of serious disciplinary or criminal offences.”<sup>9</sup>

Participants at the ICJ event considered concerns about the gap in the current legal framework,<sup>10</sup> particularly the 2020 amendments, that allow the government to replace the nine non-judicial

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<sup>2</sup> Human Rights Committee, General Comment No. 32, article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

<sup>3</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies (Council of Europe Recommendation on judges), para. 26.

<sup>4</sup> CCJE, Opinion No. 10 (2007) on the Council for the Judiciary in the service of society, para. 12.

<sup>5</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/38/38 (2 May 2018), para. 66.

<sup>6</sup> CCJE, Opinion No. 10 (2007) on the Council for the Judiciary in the service of society, para. 19.

<sup>7</sup> UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, principle 2.

<sup>8</sup> the Council of Europe's European Commission for Democracy through Law (Venice Commission), see for instance the CDL-AD(2016)007-e, Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e).

<sup>9</sup> Recommendations on Judicial Independence and Accountability (Warsaw Recommendations) 2023, Recommendation 12.

<sup>10</sup> Zákon č. 757/2004 Z. z. Zákon o súdoch a o zmene a doplnení niektorých zákonov, as amended.

members of the NJC without any justification and at any time. In 2024, following the election, the government in fact replaced nine of the NJC members without providing any justifications for it. The NJC Statement challenges the assertion that these recent dismissals of government-nominated members of the NJC constituted an undue politicization of the judiciary.

In light of these concerns, particularly that the government is able to arbitrarily replace members without an articulated reason or procedure for challenging the dismissal, we would appreciate clarification on how, in the NJC's view, this legislation ensures judicial independence and whether plans exist to further strengthen safeguards against undue political influence including possible amendments to the legislation.

In addition, the Judicial Council notes that *“one of the dismissed members of the Judicial Council – Andrej Majerník is a long-standing member of the VIA IURIS Board.”* Given that the NJC members often hold various professional roles, this should not be considered particularly problematic, unless the government or NJC can show a particularized conflict of interest between that specific role and the NJC function. Attempts to frame this as significant could be seen as an unjustified attempt to undermine a civil society organization.

The dismissal of Judicial Council members, regardless of whether they hold positions in civil society organizations, raises serious concerns about judicial independence. The key issue is not their affiliations but rather the absence of objective, legitimate and reasonable substantive criteria and procedural safeguards governing their removal. The ability of the executive to dismiss members without any justification creates an environment where judicial oversight bodies may be subject to political interference or influence, undermining their role as guarantors of judicial independence. International standards require that judicial councils operate free from such external pressures. The arbitrary removal of members weakens the credibility and autonomy of the Judicial Council and risks eroding public trust in the independence of the judiciary.

*What measures does the NJC consider necessary or appropriate to ensure that the dismissal of its members does not undermine judicial independence? How does the NJC justify the removal of members without clear legitimate, reasonable and objective criteria, given the risk of political influence or interference? What procedural safeguards should be in place to challenge allegedly arbitrary dismissals? Are there any plans to introduce safeguards to protect against arbitrary dismissals and reinforce public confidence in the judiciary's independence?*

### **The role of civil society and access to information**


The ICJ is committed to fostering dialogue at the international, EU and national levels, that, in accordance with the principle of democratic participation, must include civil society organisations. The ICJ cannot accept the allegation that the issues that the representative of Via Iuris has raised, *“discredit and politicise in the European area not only the Judicial Council of the Slovak Republic as a constitutional body of judicial legitimacy, but also Slovak judges who have elected nine of their representatives to the Judicial Council, which is half of the members of the Judicial Council.”*

In this regard, the United Nations framework, which of course applies to Slovakia, establishes many standards relevant to the rule of law and judicial independence. The UN Human Rights Council set out the basic element of the rule of law in its 2012 Resolution 19/36 on “Human

Rights, Democracy, and Rule of Law”. The Resolution establishes benchmark standards for the work of the Council, including at periodic forums on the rule of law, democracy and human rights. Among the efforts that States are called upon to make to strengthen the rule of law are: (a) Upholding the separation of powers by taking appropriate constitutional, legislative, judicial and other institutional measures; (b) Upholding the independence and the integrity of the judiciary; (...) (e) Engaging with civil society organizations and institutions and enabling them to participate in the public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law and of any other relevant decisions; or (f) Ensuring increased public access to information in a manner that can be understood by people and groups in society regarding the exercise of their rights; (...).

The ICJ therefore welcomes the NJC’s engagement in dialogue with civil society. Open discussion of issues related to the rule of law and judicial independence is essential in any democratic society.

Sincerely,



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