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## **EAJ Working Group *On the Situation of National Member Associations*** **Meeting of the EAJ in Warszawa, April 25<sup>th</sup> to April 27<sup>th</sup> 2024**

### **Progress Report September 2023 to April 2024**

#### **1 Introduction**

The last report of the WG covered the period from June to September 2023. The present report covers the period from October 2023 to April 2024. During the period under review, the WG dealt with

- Statements/Resolutions at the Taipei meeting (October 2023)
- European Commission Rule of Law Report 2024
- Further requests (to be dealt with at the meeting in Warszawa)

#### **1 Statements, Resolutions made during the meeting of the EAJ in Taipei (September 17<sup>th</sup> 2023)<sup>1</sup>**

In its meeting in Taipei the working party drafted a resolution on the envisaged pre-vetting procedure in **Moldova**, which was subsequently adopted by the EAJ General Assembly. In this resolution the EAJ not only emphasised its fundamental reservations against a preliminary review procedure ("vetting procedure") but also formulated minimum conditions for those cases in which a preliminary vetting procedure is envisaged due to exceptional circumstances.

The Working Group also drafted a statement regarding the criminal investigations, which had been started by Russia against **Lithuanian** judges. Those judges had previously sentenced high-ranking Russians involved in the occupation of the TZV- tower in Vilnius in 1990. This statement was also adopted by the EAJ General Assembly. The statement unequivocally condemns the Russian criminal proceedings and considers them an abuse of the criminal justice system and international law enforcement. These criminal proceedings constitute pressure and interference in the constitutional order of a sovereign state.

Furthermore, the General Assembly of the EAJ instructed the WG to prepare a motion to the Central Council of the IAJ concerning the **abuse of disciplinary measures** against judges and the **politically motivated exertion of influence on the judiciary** and the Central Council. Previous statements and letters from the EAJ have not brought about any change in this matter. Therefore, the Working Group elaborated a draft for a **resolution of the IAJ** with an explanatory note and a motion to the Central Council for adoption of this draft resolution. Both were adopted by the EAJ Assembly and subsequently also approved by the IAJ Central Council.

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<sup>1</sup> Cf. also the minutes of the EAJ meeting (**appendix 1**) and the resolutions/statements mentioned (**appendix 2**).

## **2 RESPONSES to the CONSULTATION QUESTIONNAIRE by the EU COMMISSION for the preparation of the REPORT on the RULE OF LAW 2024**

The working party has drafted the response (of the EAJ) to the consultation questionnaire of the EU-Commission (as it did in the last four years). In the overview of the situation in EU jurisdictions, the report concludes that, in general, after the pandemic had had a major impact on the functioning of the judiciary during the previous two years, the immediate effects largely faded away during the year 2022. The reports notes that most member states “resumed applying fully any procedural provisions which had been changed or suspended during the time of the pandemic. Member states which had adopted a regime of emergency laws revoked those extraordinary measures and returned to their normal rules and procedures.”

However, there were exceptions to this: “Hungary replaced the covid emergency provisions, which provided the government with extreme powers, by introducing another state of emergency under the pretext of the war in Ukraine.”

However, the following should be seen as positive:

- “During the covid pandemic judicial review in the Constitutional Courts proved effective in many member states, where laws and regulations and executive orders, which had been adopted in view of the pandemic were either upheld or quashed (Germany, Luxembourg, Slovenia).”
- In almost all member states the use of IT in court proceedings increased and most of the new rules or practices have remained in place even after the restrictions were lifted. Many member states took large steps forward in digitalisation, but often the hasty transformation was incomplete, with deficiencies or gaps in the systems.
- Thanks to the jurisprudence of both European Courts, the common European values as laid down in the basic principles of Article 2 TEU and Article 6 ECHR are becoming ever clearer. This helps to safeguard a common understanding which preserves the possibilities of a common space of freedom and security based on mutual trust.”

Weighing up all the advantages and disadvantages, the report comes to a rather sobering conclusion:

“Overall, however, developments in Europe remain disappointing. This shows that the adoption of the Conditionality Regulation<sup>2</sup> was necessary, and its consequent application is needed. A central element of the monitoring conducted under the Regulation must be that judgments of the Court of Justice and of the European Court of Human Rights are fully implemented by the states concerned. Unfortunately, there are still large deficits in some countries such as Poland and Hungary.”

However, events during the last year also show that permanent vigilance is necessary in all member states. There are member states other than Hungary and Poland to which attention should also be directed.

For the full EAJ Rule of Law Report see **appendix 3**.<sup>3</sup>

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<sup>2</sup> Regulation 2020/2092

<sup>3</sup> As the Duch report did not come in in time – by misunderstanding- we have added to this report its very interesting recommendation chapter in **appendix 4**.

#### **4 Further requests**

There are further requests to the EAJ-WG. They will be dealt with at the next annual EAJ-meeting in Warszawa:

##### **a) Hungary**

The Hungarian Association of Judges (MABIE), as a member of the International Association of Judges (IAJ) and the European Association of Judges (EAJ) is turning to the EAJ to assist the Hungarian judges in their efforts **to increase their salaries** and at the same time to ensure the independence of the judiciary.

The Hungarian Association of Judges (MABIE) asks the EAJ to support MABIE in its bid to restore the balance of power between the branches of government in Hungary by correcting the significant salary erosion of the courts -which also affects their functioning. Therefore, the Hungarian Association of Judges asks for the adoption of a **resolution** stating the need for an increase in the salaries of judges and to **inform the Hungarian authorities** of its conclusions by a letter (see Appendix 5).

##### **b) Slovenia**

Slovenia asks for a resolution in which the EAJ “urges the Slovenian Government and National Assembly to immediately implement the decision of the Constitutional Court of Slovenia and provide **appropriate material conditions** for the independent work of judges, thus putting an end to the violation of the principles of independence of the judiciary and separation of powers in a democratic society.” The Slovenian Association presents a draft resolution text (see Appendix 5).

##### **c) Spain**

The Professional Association of the Judiciary (Spain) is requesting the adoption of an “institutional declaration expressing the need and urgency of resolving the problems in the Spanish judiciary (see the proposal in Appendix 5).

##### **d) Italy**

The Italian delegation of the National Association of Magistrates reiterates the grave concern for the current situation in Italy, warns against the risks for the independence of the judiciary stemming from the constitutional reform proposals, and formulates the following motion for a resolution (see Appendix 5).

Binningen/Basel, Switzerland, 05- 04-2024

**Stephan Gass**

*Chair EAJ-WG On the Situation of Member Associations*

## **Appendix 1: Minutes of the EAJ meeting in Taipei of October 2023**



Minutes EAJ  
meeting Taipei 2023

## **Appendix 2: Resolutions/Statements of the EAJ Taipei meeting 2023**



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## **Appendix 3: EAJ Rule-of- Law Report 2024**



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## **Appendix 4: Dutch Rule-of-Law report concerning the Recommendation**



Recommendation  
23.2023 (publication

## **Appendix 5: Draft EAJ – Resolutions and Declarations**

### **a) Hungary**

MABIE requests that the EAJ by a resolution and by sending a letter takes “action to ensure that judges in Hungary receive at least the same level of wage increases as decision-makers in other branches of power, and that wages in Hungary are immediately increased by more than the rate of inflation as in other branches of power.

## b) Slovenia

### EAJ-RESOLUTION on INDEPENDENCE OF JUDGES IN SLOVENIA

1. At its meeting in Warsaw on 26 April 2024 the European Association of Judges (EAJ) noted with concern the current situation in the Republic of Slovenia regarding the violation of the basic principles of judicial independence and the separation of powers.
2. The EAJ was informed by the Slovenian Association of Judges (SAJ) that according to the decision of the Constitutional Court of Slovenia from June 2023 (U-I 772/2021) *the regulations governing the salaries of judges violated the Constitution because these salaries are so low that they violate the principles of judicial independence and separation of powers*. The Constitutional Court accordingly set a six-month deadline to remedy the unconstitutionality, taking into account that the legislator and the government had been aware of the problem in question for a long time. This deadline had passed on the 3<sup>rd</sup> of January 2024 without any steps being taken and the Government and the National Assembly continue to ignore the decision of the Constitutional Court.
3. The EAJ emphasizes that the effective enforcement of a judicial decision, resulting from its binding effect, is a fundamental element of the rule of law. The very concept of an independent tribunal set out in Article 6 of the European Convention on Human Rights implies the power of that tribunal to adopt a binding decision, which is not subject to any change, approval or ratification by a non-judicial authority. As regards the enforcement of judgments of the Constitutional Courts in particular, their final and binding character is a corollary of the supremacy of the Constitution.<sup>4</sup> They have to be respected by all public bodies and individuals. Disregarding a judgment of a Constitutional Court is disregarding the Constitution.
4. Furthermore, the EAJ points out that proper remuneration for judges is an essential element of an independent judiciary and the rule of law. The remuneration of judges *should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions*.<sup>5</sup> These principles are recognized by several other standard setting documents<sup>6</sup> and are contained in settled case law of the Court of Justice of the European Union and therefore binding for all European Union's member states.<sup>7</sup>
5. As declared by the Constitutional Court of Slovenia, the unbalanced and insufficient state of remuneration of judges in Slovenia does not meet the mentioned principles and requirements. The EAJ further emphasizes that there is an obligation on the State to adequately staff the judiciary with the necessary resources.<sup>8</sup>
6. The EAJ therefore urges the Slovenian Government and National Assembly to immediately implement the decision of the Constitutional Court of Slovenia and provide appropriate material conditions for the independent work of judges, thus putting an end to the violation of the principles of independence of the judiciary and separation of powers in a democratic society.

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<sup>4</sup>Venice Commission Opinion on the Law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court of Spain, adopted by the Venice Commission at its 110th plenary session (Venice, 10-11 March 2017), para 8.

<sup>5</sup>Council of Europe: Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities para 54.

<sup>6</sup>CCJE Magna Carta of Judges, principle 7; CCJE Opinion No.1 para 61; Universal Charter of the Judge Article 8 et alt.

<sup>7</sup>The Grand Chamber in its landmark decisions in the case Associação Sindical dos Juizes Portugueses stated: "Like the protection against removal from office of the members of the body concerned (...), the receipt by those members of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence." Judgment of 27 February 2018 in Case C-64/16 Associação Sindical dos Juizes Portugueses, paras 44 and 45; see also: Judgment of 7 February 2019 in Case C-49/18 Carlos Escribano Vindel, para 66.

<sup>8</sup>Council of Europe: Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para 33, 35.

## **c) Spain**

### **DECLARATION OF THE EUROPEAN ASSOCIATION OF JUDGES ON THE SITUATION OF JUDICIAL INDEPENDENCE IN SPAIN**

The European Association of Judges is concerned about the current situation of the judiciary in Spain. The lack of renewal of the General Council of the Judiciary, with its operational powers having been limited for years, diminishes the capacity of this body to preserve judicial independence.

That is why the EAJ therefore urges the political forces, with a joint vision of strengthening the rule of law, to immediately resolve this interim situation and to ensure that the appointment of judicial members of the General Council of the Judiciary is made by the judges themselves, as has been repeatedly recalled by various European bodies and in Article 2-3 of the Universal Charter of the Judge approved by the International Association of Judges.

We also consider it incompatible with judicial independence for judges to be singled out with accusations of "lawfare" or to be required to account for their jurisdictional actions before other branches of government since there are mechanisms for holding them accountable by disciplinary proceedings or through the General Council of the Judiciary itself or even the Criminal Code, as the case may be. Public accusations by politicians against judges must be made within the sphere of moderation and institutional respect, and under no circumstances can appearances before parliamentary investigation committees be admitted for jurisdictional actions, as such a course of action would be a violation of judicial independence

## **d) Italy**

### **EAJ-Resolution**

In relation to the constitutional reform proposals currently under discussion before the Italian Parliament, which aim to separate the professional careers of judges and public prosecutors, and regarding the contents of the related forthcoming governmental initiatives, as outlined by media sources, the European Association of Judges shares the concerns expressed by the Italian delegation of the National Association of Magistrates.

The lines of reform envisaged in the various legislative proposals are, due to their content, likely to strongly affect the system of self-government of the Italian Judiciary, as well as the guarantees of independence for judges and prosecutors: the reforms are affectedly displayed as a means to secure the impartiality of judges and to enforce the adversarial process within the criminal trial, but actually aim to widely expand the scope of influence that politics exerts on jurisdiction, and to weaken the essential prerogatives of autonomy and independence of the Judiciary, which both qualify as indispensable prerequisites for the rightful exercise of the judicial function in rule of law.

The EAJ hopes that the Italian Association of Magistrates will have the opportunity to further illustrate, in institutional venues and before all the media, the major critical issues related to the proposals of constitutional reform and their possible severe repercussions on the civil rights and liberties of citizen.”