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Expert review of the draft legislative amendments with a view to creating the category of "guest judge" in the Slovak judicial system

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Introduction

The present expert opinion was drawn up as part of the Project "Strengthening the efficiency and quality of the Slovak judicial system" (hereinafter referred to as "the Project") which aims at supporting the efforts with a view to continuing the reforms of the justice sector, targeting to improve the efficiency and quality of Slovak courts.

A team of experts[2] was tasked to prepare a joint assessment paper reviewing the draft legislative amendments drawn up by the Slovak Ministry of Justice and aimed at introducing the concept of "visiting/guest judge" in Slovakia. The present expert opinion makes reference to the most relevant Council of Europe (CoE) standards and recommendations on the topic.

The draft amendments under examination represent the Draft Law "amending and supplementing Act No 385/2000 on Judges and on Lay Judges" as well as other related regulations and Acts (hereinafter referred to as "the Draft Law"). The main part of the Draft Law concerns the creation of the category of "guest judge" in the Slovak judicial system, a category of judges whose purpose is to respond to problems arising from the absence of a judge from his/her post in certain situations. In the same vein, the Draft Law brings further changes to the norms about the terms and conditions for the temporary assignment of a judge to another court. Lastly, a few amendments concern other aspects of the judges' status and related regulation in the Slovak system, not necessarily being connected either to the category of "guest judge" or to the temporary assignment of judges.

The first part of the opinion examines the newly proposed tools to tackle organisational problems and increase the efficiency of the judicial systems: after a succinct description of the main provisions of the Draft Law introducing the "guest judge" category, the opinion provides an evaluation of its compliance with the most relevant European standards and principles regarding the status of the judge. The analysis then continues from the perspective of the efficiency of justice. Throughout the analysis, references are made to noteworthy aspects of the three relevant national models of Italy, France and the Netherlands.

The second part of the opinion briefly examines other amendments included in the Draft Law, highlighting a few provisions out of the articles dealing with miscellaneous amendments.

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I. TOOLS TO TACKLE ORGANISATIONAL PROBLEMS AND INCREASE THE EFFICIENCY OF THE JUDICIAL SYSTEMS.

A) The guest judge

1. Description of the relevant provision of the Draft Law

The Draft Law amending and supplementing the Act no. 385/2000 on Judges and on Lay Judges and on the Amendment and Supplementation of Certain Acts, as amended by further regulations, mainly aims at introducing a new category of judges in the Slovak judiciary system – the "guest judge". Although in a rather inconsistent drafting style, the various articles of the Draft Law define the category of "guest judge", describing the situations when they can serve as judges, as well as the types of courts where they can be appointed. The Draft Law also includes specific provisions as to the tasks and types of cases the "guest judges" can examine and related limitations. Other aspects related to their status – selection, career developments/promotions, time limits, personnel and remuneration – are equally dealt with in various articles of the Draft law.

Definition of the new category of "guest judge"

According to Article I §5 and §11a, a "guest judge" is a judge who has consented to his/her assignment to a vacant post of "guest judge" for a regional court area, more specifically, is a judge who, unlike a "normal" or "traditional" judge, will not be appointed to a predetermined district court, but can be appointed to any of the district courts situated in the area of competence of a regional court.

Exceptionally, a "guest judge" could also be appointed to a higher level court, but only as a temporary assignment (an hypothesis for transferring a judge, already existing in the Slovak legislation for the purpose of securing the proper running of the justice system, hereby amended in Article I §12, category which seems to somehow overlap with the category of "guest judges" – see hereunder Section B).

This new category of judges is intended to supplement traditional judges in specific situations: maternity and parental leave, sickness exceeding six weeks, secondments to International/European institutions, study leaves, suspension of the traditional judge or vacancy of the post for specific reasons of rescission (as detailed in Article I §24).

Selection and appointment of "guest judges"

As it transpires from Article I §11, §28, §28a and §28d, candidates aspiring to become a "guest judge" must successfully pass a mass selection procedure organised for occupying posts in this category of judges in the area of competence of a given regional court. In the selection procedure, several authorities are involved: the Minister of Justice, which determines the number of vacant posts open for selection, the President of the Judicial Council who promulgates the selection procedure and, finally, the Ministry of Justice (MoJ) who creates a dedicated database, where the successful candidates shall be listed in order of the results of the selection procedure.

The number of vacant posts for "guest judges" is limited by the Draft Law in Article III §71 and cannot exceed 4% of the total number of Slovak judges.

After completion of the mandatory initial training, a "guest judge" shall be appointed from the dedicated database, in the order of the results of the selection procedure, upon granting his/her

consent to the written invitation received from the President of the Judicial Council to attend the session of the Judicial Council which will decide on the submission of a proposal for appointment as "guest judge" (according to the provisions of Article II, §27fa of the Draft law).

According to the Draft Law, a "guest judge" has the possibility to refuse twice to give his/her consent to a written invitation with a view to an appointment, after which he/she shall be excluded from the database.

Tasks and limitations

A "guest judge" shall generally fulfil his/her judicial tasks in the same manner as a traditional judge, examining cases from the agendas in all areas of law for which the respective district court is competent. However, Article III §51 of the Draft Law foresees two exceptions:

- in the criminal law agenda, a "guest judge" can only be assigned cases of preparatory proceedings;
- in cases to be decided by a sole judge, at the end of the term for which the "guest judge" substitutes the traditional judge, the case shall return to the latter (this limitation shall also apply to temporarily assigned judges, as envisaged under Article I §12, category which might overlap with the category of "guest judges").

Except for this last provision, the Draft Law does not contain any details on a fade-in/fade-out phase, in order to secure a continuous examination of certain cases.

Career developments/promotions, time limits

With regards to the duration of an appointment as "guest judge" the Draft Law (Article I §11a (4)) refers only to the moment when the substituted judge resumes office as the moment when the appointment shall end. The Draft Law does not establish any minimal or maximal duration of appointments. However, the Draft Law (Article I §11a (5)) envisages a time limit to the role of "guest judge", aimed at offering "guest judges" a facilitated path for the appointment to a vacant position as a traditional judge: after five years as a "guest judge", the concerned person may be transferred at his/her own request to a vacant judge's post at a district court or, following a selection procedure, at a regional court.

Human resources/personnel and remuneration aspects

The Draft Law provides that "guest judges" shall refer to the Personnel Department of the Regional Court in whose area of competence they are appointed (Article I§25 (4)).

With regard to financial aspects, Article I §66 (3) provides for the inclusion of "guest judges" in pay group I together with district court judges. Furthermore, Article I §71a provides for a financial incentive for "guest judges" serving at a district court, who shall, therefore, be entitled to an extra allowance amounting to 20 % of the monthly basic salary. The draft law does not seem to have any specific provisions regarding "guest judges" at higher level courts.

Besides the main provisions described hereinabove, the Draft Law harmonises several other articles of the amended laws by including the "guest judge" category.

2. Evaluation in the light of the principles related to judicial independence

2.1. International and European standards

Only an independent and impartial judiciary can provide the basis for the fair and just resolution of legal disputes, particularly those between the individual and the State. It is of primordial importance that judicial independence and impartiality exists in fact and is secured by law.

These principles are of paramount importance and have been continuously recalled in various texts at the European level – by the Committee of Ministers of the Council of Europe in its recommendations to member States; by the European Court of Human Rights (ECtHR, or the Court) in its case-law, by the Consultative Council of European Judges (CCJE) in its opinions, as well as by other consultative European bodies.

In this context, it is recalled that all CoE member States have undertaken, under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to guarantee access to independent and impartial tribunals established by law, whenever civil rights and obligations or criminal charges are to be determined. The case-law of the ECtHR highlights four elements of judicial independence: manner of appointment of the judges, term of office, the existence of guarantees against outside pressure - including in budgetary matters - and whether the judiciary appears as independent and impartial[3].

A selection of the most relevant texts shall be further presented, in the view of assessing/analysing the compatibility of the provisions of the Slovak Draft Law on "guest judges" with the principles of judicial independence, impartiality and irremovability of judges.

- *Judicial independence and impartiality*

According to the Magna Carta of Judges judicial independence and impartiality are essential prerequisites for the operation of justice. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary[4].

- *Internal independence*

In its Recommendation to member States on judges: independence, efficiency and responsibilities the Committee of Ministers dedicated Chapter III to the question of internal independence of judges, which requires that, in their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence[5].

[3] See the "Rule of Law checklist", adopted by the Venice Commission on 18 March 2016, p. 75.

[4] CCJE (2010)3 Magna carta of Judges, adopted by the Consultative Council of European Judges on 17 November 2010, paras. 2, 3 and 4.

[5] CM/Rec(2010)12 Recommendation of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities adopted on 17 November 2010, Chapter III, para. 22.

On this point, the CCJE noted the potential threat to judicial independence that might arise from an internal judicial hierarchy. In its opinion on Standards concerning the independence of the judiciary and the irremovability of judges, the CCJE recognised that judicial independence depends not only on freedom from undue external influence, but also freedom from undue influence which might in some situations come from the attitude of other judges[6].

The same concept has equally been emphasized by the ECtHR, which stated that:

"[…] judicial independence and impartiality, as viewed from an objective perspective, demand that individual judges be free from undue influence – not only from outside the judiciary, but also from within. This internal judicial independence requires that judges be free from directives or pressures from fellow judges or those who have administrative responsibilities in a court such as, for example, the president of the court. The absence of sufficient safeguards ensuring the independence of judges within the judiciary and, in particular, vis-à-vis their judicial superiors, may lead the Court to conclude that an applicant's doubts as to the independence and impartiality of a court may be said to have been objectively justified […]"[7].

- *Judicial irremovability*

The importance of judicial irremovability in connection with the principle of judicial independence has been recognised in international instruments such as the UN Basic Principles on the Independence of the Judiciary, adopted in 1985, the Recommendation No. R (94)12 of the Committee of Ministers of the Council of Europe to Member States on the independence, efficiency and role of judges, and the European Charter on the Statute for Judges.

The latter, provides that: "*3.4. A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof."*[8]

In its opinion on Standards concerning the independence of the judiciary and the irremovability of judges, the CCJE reminded that, as a fundamental tenet of judicial independence, it is important that tenure is guaranteed until a mandatory retirement age or the expiry of a fixed term of office. This principle extends to appointment or assignment to a different office or location without consent (other than in case of court reorganisation or temporarily), but transfer to other duties may be ordered by way of disciplinary sanction[9].

Consistent with Opinion No 1 (2001) of the CCJE, the European Network of Councils for the Judiciary (ENCJ) in the Report on Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary shares the view that "irremovability of judges is an ingredient of the principle of judicial independence and should be enshrined at the highest level in the domestic legislation". Furthermore, the ENCJ is of the opinion that "there are acceptable exceptions to this general rule when a mandatory transfer of a judge to other duties, court or location has been ordered under specific circumstances as determined by law or otherwise established in a general, abstract manner, including by way of disciplinary sanction or in

[6] CCJE (2001)1 Opinion on Standards concerning the independence of the judiciary and the irremovability of judges, adopted by the Consultative Council of European Judges on 23 November 2001, para. 66.
[7] ECtHR, Agrokompleks v. Ukraine, no. 23465/03, § 137, 6 October 2011 and the other references quoted therein.
[8] DAJ/DOC (98) 23 European Charter on the Statute for Judges adopted by the Council of Europe on 8-10 July 1998.
[9] CCJE (2001) 1, op. cit., para. 57.

cases of ascertained inability to perform the judicial functions at the current post in an adequate, independent and impartial manner. This could result, for instance, from disciplinary proceedings that establish improper and unlawful conduct by said judge in that post. It could also result from the presence of objective non-unlawful circumstances that raise questions about the impartiality in the exercise of the judicial function in the office (e.g., personal relationships or kinship with lawyers or other judges who deal with the same cases).

The irremovability rule may therefore be outweighed by important reasons connected to the best functioning of the judicial offices as a public interest. In other words, judicial irremovability should be understood and applied in accordance with the public interest or the public service of justice, the aims of professional evaluation, and the human resource policy regarding the judiciary. In any case the principle of irremovability renders it imperative that the grounds for transfer of judges be clearly established and that a mandatory transfer be decided by means of transparent proceedings conducted by an independent body or authority without any external influences and whose decisions are subject to challenge or review. This helps prevent the authorities from having the power to transfer a judge against his/her will as a means of threatening judicial autonomy and decision-making independence"[10].

2.2. Relevant national terms of comparison and evaluation of the Slovak Draft Law

In order to assess the consistency of the proposed "guest judge" figure with the aforementioned standards, it seems useful to briefly present and indicate the relevant key guarantees concerning similar types of judges in some CoE member State. These national experiences might, indeed, constitute a useful example on how different national regulations have taken into account and tried to comply with the above described European standards and principles.

First of all, **the Netherlands'** model of "flying brigades" should be quoted, given its confirmed effectiveness. At the same time, it has to be recalled that Dutch arrangements rely to a high degree on good faith and a historically consolidated culture of respect for judicial independence. Differences in history, legal and political culture may explain why the Dutch judicial organisation is rather pragmatic when compared to other countries.

In the Netherlands a "flying brigade" was created, in the early 2000's, to help the courts to reduce the number of cases in stock at the civil law sections and the municipal court sections. Courts were sending their cases to a centrally located unit, based in The Hague District Court and composed of 30 court clerks and 6 judges. Court clerks, under the supervision of judges, were in charge of preparing draft-judgements and then sending the cases back to the courts where they originated, where the judgments were formally delivered. Even if this practice had a remarkable success in reducing courts' backlog[11], several doubts concerning its compliance with Article 6 ECHR may be casted. Furthermore, despite the similarities evoked by the name ("flying brigade"), this model seems substantially different from the proposed "guest judge" and, therefore, cannot really be used as a term of comparison.

However, for the aforementioned purpose, reference should rather be made to a more recent (and a more "genuine") type of "flying judge", which has been recently introduced in the Netherlands: all the judges[12] of a given district court are *ex officio* judges in all the other 10 district

[10] ENCJ 2012-2013 Report on Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, pp. 19-20.

[11] In 5 years, till 2007, the unit have drafted around 7,500 judgements.

[12] With the exclusion of "deputy judges", that is to say honorary judges (quite often: law professors or retired judges) who can occasionally be called to decide cases as members of a three judge panel.

courts of the Dutch court system (Article 40 Judiciary Organisation Act); all judges[13] of a given court of appeal are *ex officio* judges in all other 3 courts of appeals (Article 58 Judiciary Organisation Act).

The *ex officio* appointment in other courts has been introduced in order to make the system more flexible: for instance, a judge from the Court of Appeal of Amsterdam can take part in court hearings in the courts of Appeal of The Hague, 's-Hertogenbosch or Arnhem-Leeuwarden. This system is based on the agreement between courts and the consent of the judge required to "fly in". The need for the consent of the concerned judge might be sufficient to dispel doubts of compliance with the principle of irremovability, as explained above. Nevertheless, it has to be recalled that the mobility of judges is also an advantage for the court of origin (where the judge is regularly appointed), given that courts in the Netherlands are financed on the basis of the output, in case of a temporarily or sudden drop of incoming cases, a problem arises because the court cannot meet budget arrangements and risks a lower budget next year.

In this regard, one could question if Dutch judges aren't subjected to some kind of pressure in accepting the mobility which is needed for budget purposes of the court where they are regularly appointed. Once again, the specific Dutch context (the consolidated culture of judicial independence) can help ensuring the effective compliance of this flexibility with the respect for the aforementioned standards.

Secondly, the Slovak category of "guest judge" could be compared with the category of "*magistrat placé*" (a French expression which can be translated as "guest judge"), which is a judge member of the French judiciary according to Article 1, para. 2, of the French Act on the Status of Magistrates. Its status is fully regulated in a detailed manner by Article 3-1 of the same act. The French Constitutional Court has considered that this regulation respects, among others, the principle of judicial independence insofar as: a) the law provides for a limitative list of conditions for mobility; b) the administrative order of mobility indicates the reasons and fixes the duration; c) there is a maximum duration of the office of "guest judge".

Thirdly, a similar typology of judges is offered by the Italian "*magistrato distrettuale*", regulated by the Law n° 48 of 2001 (Articles 5 to 8) and by the Supreme Council of the Judiciary Directive on various legal tools aiming at tackling organisational problems in the judicial work, adopted on 20 June 2018. The Italian regulation provides for an exhaustive list of reasons of mobility, sets a detailed decision making procedure of the order of mobility, which has to be motivated, and prescribes that the order should set the duration of the mobility. As for the other positions in the Italian judiciary, a magistrate can be "*magistrato distrettuale*" for no more than ten years.

The Draft Law under examination, aiming at introducing the Slovak "guest judge", contains several safeguards similar to those included in the French and the Italian regulations, described above. The Draft Law provides, indeed, for the specific situations when a "guest judge" can be appointed to substitute a traditional judge (the conditions for the mobility), it envisages the prerequisite of the consent of the "guest judge", and it requires a formal procedure of appointment by an independent authority – the Judicial Council.

Furthermore, the Slovak legislator also conceived the category of "guest judge" to be limited in time, taking into account the career development of "guest judges", by giving them the possibility to become traditional judges after having served as "guest judge" for 5 years (reasonably shorter than the French and Italian categories, which are limited to 8 and, respectively, 10 years). However, if in the French and Italian systems it is not possible to continue sitting as a "guest judge" beyond the 8-year, respectively, beyond the 10-year timeframe, the Slovak Draft law does

[13] Once again, with the exclusion of "deputy judges".

not seem to prohibit a "guest judge" to continue occupying such posts, if he/she does not ask to be "transferred at his/her own request to a vacant judge's post at a district court" (Article I §11a (5) of the Draft law).

The Slovak regulation, similar to the French one, sets a maximum threshold of "guest judges" in the judiciary: "The number of vacant posts of guest judges shall not exceed 4% of the total number of judges" (see Article III §71(3) of the Draft law). In this respect, given that the resort to "guest judges" might differ considerably from one region to another, it could be suggested that the maximal percentage relate to the number of judges on a regional basis, rather than on a national basis.

Both the French and the Slovak system contain specific provisions aimed at giving stability to the "*magistrat placé*" and to the "guest judge". Both systems offer a sort of priority to be appointed to a traditional judge's post, as soon as there is a vacant one, after a certain period of time : after 2 years of service as a "*magistrat placé*"[14], respectively after 5 years of service as a "guest judge" (Article I §11a (5) of the Draft law).

It must be highlighted that, unlike the situation of "guest judges" in Italy and France (which are regular judges having expressed their choice to become "flying judges" at a given moment in their career), the Slovak "guest judge" will actually choose to become a judge of this category from the beginning, having to successfully pass a specific competition to this end. From this point of view, the Slovak Draft law offers a clear career perspective to (and entails a well-thought-out choice from) the candidates intending to occupy the function of a "guest judge".

On the other hand, however, the Slovak Draft law does not regulate certain aspects which could be seen as safeguards of the European standards presented hereinabove.

Article II 27fa of the Draft Law seems to describe the procedure and the formal steps for the appointment of a "guest judge", indicating some of the information that the written invitation should include. Thus, the formal act of the mobility (to which the candidate "guest judge" shall give his/her consent) does not seem to be required to include information regarding the duration of the mobility.

It also transpires from the Draft Law that the Slovak legislator did not envisage establishing certain limits: neither of the duration of an appointment (minimal and maximal), nor of the number of appointments (maximal) as a "guest judge". If in certain situations (for instance maternity leave), these can be predicted or estimated, in others (such as in case of sickness or even secondment to a body of the European Union) such an estimation is not so obvious and it could be the case that the "guest judge" would be needed for substitution just for a few months.

This aspect, together with the absence of minimal provisions for a fading-out phase at the end of the appointment of the "guest judge", might not fully comply with the principle of irremovability of judges (exposing them to multiple transfers for very short periods of time), as it might not serve the purpose of efficiency of justice, in the absence of a certain continuity in the examination of cases.

Moreover, the principle of irremovability of judges might not be fully respected in the absence of legal provisions for the situation in which a "guest judge" who has completed an appointment is not immediately appointed to another mission as "guest judge", to substitute another traditional judge in one of the situations described in Article I §11a (2) letters a) to g). If the interpretation of the draft text under examination shall be that "guest judges" are to continue serving as judges also

[14] Article 3-1 of Ordonnance n. 58-1270 of 22 December 1958 of the French Act on the Status of Magistrates, as modified by Law n. 2016-1090 of 8 August 2016.

when they are not called to substitute a traditional judge absent for one of the reasons listed in Article I §11a (2) letters a) to g) (thus, not as a sort of "interim staff" hired only when needed), it is highly recommended that the Draft Law includes an explicit clarification of this situation.

For instance, in the Italian system, the main role of the *magistrato distrettuale* is to substitute a judge from one of the courts in the district, who is absent mainly because of a maternity leave or a long sickness leave. When a *magistrato distrettuale* is not substituting a judge, he/she shall be placed on a temporary assignment (*applicazione*) at a court of the district, in order to boost the human resources of that court (as per Article 7 of the Law n° 48 of 2001). As soon as the need to substitute a judge absent for one of the reasons provided for in Article 5 of the Law n° 48 of 2001 arises, the temporary assignment (*l'applicazione*) of the *magistrato distrettuale* shall be immediately revoked and he/she shall ensure the replacement of the absent judge[15].

The French system could also provide for suggestions of a good practice which has been already used: according to Article 3-1 of the French Act on the Status of Magistrates, when the "placed judges" are not substituting a judge or being temporarily appointed to another court, they shall perform their duties at their respective hierarchical level, in the court of first instance of a general jurisdiction (*tribunal de grande instance*) situated in the same city where the court of appeal has its seat or in the most important court of first instance of a general jurisdiction of the department where the court of appeal is seated.

One might argue that the intention of the Slovak authors of the Draft Law is that in such a case the "guest judge" would be temporary assigned to one of the courts of his/her district which need support in dealing with incoming cases or its backlog, for the purpose of securing the proper running of the justice system (see Article I § 12). In this regard, the Draft Law should regulate in more clear terms the relation between this kind of temporary assignment (regulated by Article I §12) and the other conditions for the mobility set forth in Article I §11a(2), avoiding the ambiguous reciprocal reference of one text to the other (see also Section B hereunder).

Lastly, from the point of view of the principle of independence of the judiciary from the executive, a few critical remarks might be made as regards such guarantees related to the decision of assignment of the "guest judge" to a given district court, under Article I § 11a(2). More precisely, it would be advisable to replace the involvement of the Minister of Justice in such a decision, with that of the Judicial Council[16]. Above all, given that more "guest judges" could be available for the same mobility (for instance: to replace the judge of a district court who is on maternity leave), additional criteria (besides the order of results obtained in the recruitment competition) should be fixed in advance for the choice of the President of the Regional Court, which should be motivated and take also into account the opinion of the concerned judge(s).

[15] See Supreme Council of Judiciary Directive on various legal tools aiming at tackling organisational problems in the judicial work, adopted on 20th June 2018, Article 142.

[16] As it is provided, *mutatis mutandis*, by Italian Supreme Council of Judiciary Directive on various legal tools aiming at tackling organisational problems in the judicial work, adopted on 20th June 2018, Articles 142-143.

3. Evaluation from the standpoint of the requirement for efficiency of justice

The Slovak Draft Law introducing the category of "guest judges" provides for an enhanced use of "guest judges", aimed at tackling various situations affecting the proper functioning and the efficiency of courts, which are likely to have a positive impact on the efficiency of the Slovak judiciary.

For instance, the Draft Law contemplates the use of "guest judges" for all levels of courts of "general jurisdiction", including the Supreme Court, unlike the Italian and the French systems which exclude this category of judges from the respective Supreme Courts.

Furthermore, similar to the French law, the Slovak Draft Law sets forth clear financial benefits for "guest judges" appointed to district courts, in order to render such a position attractive. However, it is not clear whether such financial incentive also applies to "guest judges" appointed to higher level courts. It is advisable to include a similar provision also in case of appointment to higher level courts, in compliance with the principle of equal treatment/non discrimination of judges.

Nevertheless, the functioning of the future category of "guest judge", as envisaged by the Draft Law, raises a few critical points when attempting to forecast its impact on the efficiency of justice.

In order to be of concrete help for the receiving courts, the "guest judge" should be able to deal in a proper manner with several types of proceedings (besides the legal knowledge and skills, also appropriate time and tools should be considered). Even if, according to the Draft Law, "guest judges" are to examine only civil cases and conduct only the preparatory proceedings in criminal matter (unlike their counterparts in Italy, France and the Netherlands, who examine also criminal cases), still they should be able to treat a variety of proceedings and legal matters of different levels of complexity involved in each case. Therefore, the "guest judge" would need to have enough experience and should be able to spend a reasonable period of time in a given court in order to examine in an efficient manner the assigned cases, especially the cases that are already at different phases of advancement of the proceedings.

Read from this perspective, the Slovak Draft Law doesn't reflect this concern for efficiency, as it reserves this role to newly recruited judges, thus, to judges without previous experience who can also be appointed to higher level courts, even to the Supreme Court. On this point, the French example seems to be more efficiency-oriented, as the role of "*magistrat placé*" can also be fulfilled by an experienced judge in search of acquiring experience in another field of law, wishing to be promoted more quickly to a higher level, or even to relocate to another region. In the Italian system, a four-year judicial experience is required to apply for the position of "*magistrato distrettuale*". It could be suggested to the Slovak counterpart to consider the appointment of "guest judges" to higher level courts only after having reached a professional experience of at least two to three years.

As mentioned hereinabove, it seems that the Slovak legislator did not envisage establishing legal limits (or at least certain criteria to determine the limits) for the duration of an appointment (minimal and maximal) and for the number of appointments (maximal) of the "guest judge". This critical aspect, together with the absence of provisions for a fade-out phase at the end of the appointment of the "guest judge", could raise doubts as to the efficiency of certain appointments. Not only the period of time of appointment in a given court might be too short to even allow the newly recruited "guest judge" to adjust to the working methods of the court and become accustomed with the assigned cases (which may be in an advanced degree of the proceedings), but an abrupt departure of the "guest judge", without a gradual hand-over at the end of his/her appointment, might be counter-productive for the work of the substituted judge. Furthermore, the lack of continuity in the examination of certain cases and finalisation of proceedings might

undermine the efficiency of justice. It is not suggested that such detailed aspects be regulated by the Draft Law, but, in light of these issues, it is advisable to consider including the duration of the appointment as a formal requirement of the mobility order, as well as to consider establishing minimal and maximal time limits for certain appointments.

As to an assessment of the efficiency of the implementation of similar categories of judges in the national examples presented above, it is regrettable that the Italian system of "*magistrate distrettuale*" did not prove to be very successful because of the lack of financial incentives and the high level of skills and commitment such a position requires from the candidates: they have to be eager to travel, they need to adapt to different kinds of working environments, to deal efficiently with different proceedings at different stages. Since vacant positions as "*magistrato distrettuale*" have usually remained unfilled, in 2017 their total number has been considerably reduced from 103 to 54 (28 judges and 26 prosecutors)[17].

As regards the French experience of "*juge place*", it has been a system in force since 1980 and it is generally used to fill-in vacant posts by newly recruited judges (young magistrates who just graduated from ENM) or by judges who wish to be promoted more quickly or to relocate in another region.

Furthermore, one should bear in mind that justice systems that suffer from a chronic excessive length of judicial proceedings may not benefit from solutions such as the "flying squads" or "visiting judge" due to their limited term of service[18].

It could be worth mentioning that, for the needs of temporary replacement, an alternative system might be adopted: each traditional judge appointed at a given district court could be considered from his/her very first appointment a possible replacing judge in another district court of the same region. In this way, in case of need for a replacement in one of the scenarios set forth by Article I §11a (2), any district court judge of the same region could be temporarily appointed (part time or full time) for the replacement of the absent judge. Such a system may be accompanied with the guarantee of a necessary previous consent from the replacing judge and a "compensatory" framework (additional holidays, coverage of travel expenses, an allowance etc.).

[17] See the Decree of the Italian Minister of Justice approved on 2nd of August 2017.

[18] Efficiency and Quality of the Slovak Judicial System. Assessment and Recommendation on the Basis of CEPEJ Tool, CEPEJ-COOP(2017)14, Concluding remarks on court management and efficiency, page 122, Point 24.

B. Temporary assignment

1. *Description of the relevant provisions of the Draft law*

According to Article I §12 of the draft law, if the proper running of the justice system cannot be secured through the assignment or transfer of a judge or guest judge, a judge may be temporarily assigned with his/her consent to another court. The reasons for the temporary assignment are set forth in subsection (2) of the same Article I §12, according to which: "A judge may be temporarily assigned only for the purposes of securing the proper running of the justice system for reasons as under § 11a (2)". In fact, this is a referral provision to the previous article of the Draft Law, regulating the situations in which a "guest judge" shall substitute a traditional judge.

Furthermore, subsection (3) provides that "the Judicial Council shall decide on the temporary assignment of a judge at the proposal of the president of the court to which he/she is to be temporarily assigned and after obtaining the opinion of the president of the court where the judge is currently in post and if a guest judge is involved and if it relates to the assignment of a guest judge to the Supreme Court, after obtaining the opinion of the president of the Regional Court".

Such a temporary assignment is limited to one year within a three-year period (subsection (4)) and for the duration of a temporary assignment, the assigned judge shall be a member of the plenum of the court to which he/she is temporarily assigned, but shall not be entitled to election to the judicial self-governance bodies of that court; however, he/she will continue to hold the elected post at the court from which he/she was transferred (subsection (5)).

2. *Evaluation in the light of the principles related to judicial independence*

In the light of the principles and European standards related to judicial independence, the provisions regulating the possibility to temporarily assign a judge to a different court does not seem to raise any incompliance points.

More precisely, the specific aspects, such as the limitation of the duration of a temporary assignment in a given period of time, together with the prerequisite of the judge's consent for the temporary assignment as well as the fact that this hypothesis of mobility is circumscribed by certain reasons, are safeguards of the principles of independence and irremovability of the judge.

However, a critical point needs to be raised with regard to the reasons circumscribing the possibility to temporarily assign a judge to another court, as provided in Article I§12 (2), which is actually a referral provision to the previous article of the Draft Law regulating the situations in which a "guest judge" shall substitute a traditional judge (herein under Section B.3.).

Article I § 12 (2) reads as follows: "A judge may be temporarily assigned only for the purposes of securing the proper running of the justice system for reasons as under § 11a(2)." Therefore, this article could be understood in the sense that the temporary assignment of a traditional judge can be used, instead of the assignment of a "guest judge" for the same reasons for which the category of "guest judge" is being created and for the same conditions of mobility of the "guest judge" set forth by Article I § 11a(2). At the same time, letter c) of Article I § 11a(2) mentions temporary assignment as one of the possible conditions for assignment of a guest judge.

Therefore, the meaning of the two combined provisions here quoted, remains obscure. A more consistent style of legal drafting would be needed.

II. MISCELLANEOUS PROVISIONS

The Draft Law also contains several amendments to other existing matters not related either to the category of "guest judge" or to the temporary assignment. In the following section, only those provisions that seem to deserve further clarifications or reflexion shall be briefly mentioned.

The reference made in Article I § 13 (3) to subsection (1) seems to be inaccurate, which renders the meaning of this provision unclear.

Also, the meaning of the last sentence of Article I § 28a (1) is under doubt: it could be understood that, if the president of the court does not launch the selection procedure for the vacant post within 30 days, the allocation of the vacant post in question shall be revoked? The exact meaning of this provisions should be clarified, especially from the perspective of Article I §28 (1) and (4) (the numbering of this last subsection should also be reviewed).

In Article I § 28d, the terms database/databases should be harmonised in order to exclude any misunderstanding with regard to the existence of two separate databases, one for the selection procedure for the office of judge and another one for the selection procedure for "guest judges".

In the light of the principle of judicial independence, the proposed amendment of Article I § 130 is source of a certain concern. One may actually question the need to include the Minister [of Justice] amongst the default recipients of a disciplinary panel's decision concerning a judge against whom disciplinary proceedings were held, without making any difference on whether the Minister initiated/participated in the proceedings.

Moreover, Article I § 151zd contains transitional provisions which actually operate an extension for an additional year of the temporary assignments of judges in course. Not only it is unclear why is there the need for such an extension of temporary assignments to be made in the Draft Law under examination, but also the legality of such a retroactive modification of a temporary assignment would be questionable.

Lastly, Article III § 51 is being amended by adding a new subsection (8) which sets forth the following rule: "If a case is returned to a court for further proceedings and decision-making on merits, it shall be assigned to the judge to whom it was originally assigned as legal judge;". The rule of returning a case to the same judge for an "*error in procedendo*" is not *per se* contrary to the principle of impartiality. However, in the absence of a clear distinction of the reasons for quashing an returning, such an amendment might come into contradiction with the principle of impartiality of judges when the case has been returned as a result of quashing the initial decision by a higher court for a reason other than "*error in procedendo*".

Appendix I: Draft "Act amending and supplementing the Act No 385/2000 on Judges and on Lay Judges and amending and supplementing certain other acts, as amended by further regulations, and amending and supplementing certain other acts" – the draft amendments developed by a working group set up by the Ministry of Justice of the Slovak Republic with a view to developing proposals to create a legal framework for the institution of "guest judge".

Appendix II: Eléments de comparaison entre le statut des magistrats placés en France et le projet de modification du statut des magistrats en Slovaquie aux fins d'accueillir les fonctions de «visiting judge» (French version).

Appendix III: Overall assessment of the draft law introducing the visiting judge concept in Slovakia through the perspectives of relevant experience in the Netherlands (English version).