



Strasbourg, 9 March 2026

CDL-AD(2026)010

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

SLOVAK REPUBLIC

**JOINT OPINION OF THE VENICE COMMISSION AND THE
DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW
(DGI) OF THE COUNCIL OF EUROPE**

ON

**THE DRAFT LEGISLATIVE AMENDMENTS REGARDING THE
CRIMINAL OFFENCE OF ABUSE OF LAW**

**Adopted by the Venice Commission
at its 146th Plenary Session
(Venice, 6-7 March 2026)**

On the basis of comments by

Ms Nina BETETTO (Member, Slovenia)
Mr Jørgen Steen SØRENSEN (Member, Denmark)
**Ms Hanna SUCHOCKA (Honorary President of the Venice
Commission)**
Mr Gerhard REISSNER (expert DGI)

Table of Contents

I.	Introduction	3
II.	Background.....	3
III.	Analysis.....	6
A.	The criminal offence of abuse of law in the light of European standards	6
B.	The revised offence of abuse of law	9
C.	The revised role of the Judicial Council	10
1.	The extension of the Judicial Council's competence	10
2.	The timing of the Judicial Council's intervention	13
3.	The applicable scope and standard of review	13
IV.	Conclusion	14

I. Introduction

1. By letter of 22 October 2025, Mr Boris Susko, Minister of Justice of the Slovak Republic, requested an opinion of the Venice Commission of the Council of Europe on the draft legislative amendments to the criminal offence of abuse of law (hereinafter “the draft amendments”, [CDL-REF\(2026\)002](#)). This Opinion was prepared jointly with the Directorate General Human Rights and Rule of Law (hereinafter, “DGI”).

2. Ms Hanna Suchocka, Ms Nina Betetto and Mr Jørgen Steen Sørensen acted as rapporteurs on behalf of the Venice Commission. Mr Gerhard Reissner was appointed as an expert for DGI and provided comments on its behalf.

3. On 29–30 January 2026, a delegation composed of Ms Hanna Suchocka, Ms Nina Betetto, Mr Jørgen Steen Sørensen and Mr Gerhard Reissner, accompanied by Mr Taras Pashuk and Mr Salvador Luz from the Secretariat of the Venice Commission, conducted a visit to Bratislava, during which it held meetings with the Minister and other representatives of the Ministry of Justice, and with representatives of the Supreme Court, the Specialised Criminal Court, the Parliament, the Judicial Council, and the Office of the Prosecutor General. The delegation also met with representatives of civil society organisations, international partners, and the European Commission Representation to the Slovak Republic. The Venice Commission and DGI are grateful to the authorities of the Slovak Republic for the excellent organisation of the country visit.

4. This opinion was prepared in reliance on the English translation of the draft amendments. The translation may not accurately reflect the original text in all respects.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the above-mentioned meetings held in Bratislava on 29-30 January 2026. The draft opinion was examined at the joint meeting of the Sub-Commission on the judiciary, on the rule of law and on Latin America on 5 March 2026. Following an exchange of views with Mr Milan Hodás, State Secretary of the Ministry of Justice of the Slovak Republic, it was adopted by the Venice Commission at its 146th Plenary Session (Venice, 6-7 March 2026).

II. Background

6. In January 2021, as part of a general effort to combat corruption, strengthen the integrity of judges, and enhance public trust in the justice system,¹ Article 326a was introduced into the Slovak Criminal Code, establishing the criminal offence of abuse of law, specifically aimed at judges.² Under this provision, “*a judge, associate judge or arbitrator who arbitrarily applies the law in their decision-making and thereby causes damage or bestows a favour on another person shall be punished by imprisonment for one to five years*”. The introduction of a criminal offence covering situations in which “judges abuse laws” also constituted a milestone under the “Judicial Reform” Component of Slovakia’s National Recovery and Resilience Plan, submitted to the European Commission and approved by the Council of the European Union on 13 July 2021.³

¹ According to the [country chapter](#) on Slovakia of the European Commission’s 2025 Rule of Law Report, “the level of perceived judicial independence in Slovakia continues to be low among both the general public and companies”.

² The criminal offence of abuse of law was added to the Slovak [Criminal Code](#) by [Act No. 312/2020, of 21 October 2020](#), on Forfeiture of Assets and Management of Seized Property and Amendments to Certain Acts, with effect from 1 January 2021. It is noted that in various legal texts, this criminal offence is also translated into English as either “bending the law” or “perversion of law.”

³ See [Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Slovakia](#), p. 135. Under Component 15 of the plan, concerning “Judicial Reform”, and as an element of “Reform 2: Fighting corruption and strengthening the integrity and independence

7. In parallel with the amendment to the Criminal Code, Article 148(4) of the Slovak Constitution, governing judicial immunity, was also revised. Prior to this revision, judges enjoyed immunity from criminal prosecution for legal opinions expressed in judicial decisions. From January 2021, following the entry into force of the constitutional amendment, this immunity remained in place with the exception of “cases where a criminal offence has been committed”.⁴

8. Against this background, there are a number of procedural safeguards in place. Under the Criminal Procedure Code, any indictment against a judge must be issued by a prosecutor of the Prosecutor General’s Office, and judges may lodge a complaint with the Prosecutor General in respect of such indictments.⁵ Furthermore, once indicted for abuse of law, judges have 60 days to refer the matter to the Judicial Council, which may oppose the continuation of the criminal proceedings by means of a reasoned decision adopted by a majority vote.⁶

9. Despite the existence of such safeguards,⁷ the provision in question has been criticised both domestically⁸ and internationally. In its 2025 Rule of Law Report,⁹ the European Commission expressed concerns regarding the adequacy of the existing safeguards, the lack of clarity of the provision, its potential chilling effect on independent judicial reasoning, and the high number of frivolous criminal complaints based on Article 326a of the Criminal Code:

“The vast majority of crime reports filed against judges have so far been dismissed at early stages of proceedings. Besides creating administrative workload, in the absence of clarity and of sufficient safeguards, the provision is prone to potential misuse, creating a chilling effect on the independent exercise of the judges’ decision-making. The existence of criminal proceedings against a judge is also relevant for the vetting procedure. The need for further safeguards was also raised by the stakeholders. The Slovak authorities are engaged in dialogue with the European Commission and the Council of Europe to address this issue and showed openness for further revising the law to either abolish the criminal offence of ‘abuse of law’ or to introduce safeguards. However, as a legislative proposal is still in the consultation process, only limited progress has been made on this recommendation.”

10. In a similar vein, in its Ad hoc Report on the Slovak Republic of 28 August 2025, GRECO expressed concern about the criminalisation of arbitrary judicial decisions, considering that

of the judiciary”, the following milestone was set: “To detect and prosecute corruption: new criminal offences shall be introduced if judges abuse laws and if public servants ask for or promise undue advantages.”

⁴ The amendment to Article 148 of the [Slovak Constitution](#) was part of the [Constitutional Act No. 422/2020, of 9 December 2020](#), which introduced a range of constitutional changes, with effect from 1 January 2021. Currently, Article 148 (4) of the Constitution reads as follows: “Neither a judge nor an associate judge from among citizens may be prosecuted for a legal opinion expressed in a decision, even after the termination of their office, except in cases where a criminal offence has been committed; the disciplinary liability of the judge is not affected.” Before 1 January 2021, Article 148 (4) [read as follows](#): “Neither a judge nor an associate judge from among the citizens may be prosecuted for their decisions, even after the termination of their office.”

⁵ As per paragraphs (1) and (2) of Article 207a of the [Criminal Procedure Code](#).

⁶ As per Articles 9(2) and 207a(3) of the [Criminal Procedure Code](#), Articles 4(1)(l) and 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic, and Article 141a(7) of the [Slovak Constitution](#).

⁷ The current version of these procedural safeguards results from [Act No. 40/2024, of 8 February 2024](#), following criticism by the European Commission expressed in the country chapters on Slovakia in its [2021](#), [2022](#), and [2023](#) Rule of Law Reports.

⁸ During the country visit, representatives from the Ministry of Justice, the Office of the Prosecutor General, the Supreme Court, the Specialised Criminal Court, the Judicial Council, the Parliament and civil society expressed the view that Article 326a of the Criminal Code was overly vague, prone to abuse, and unnecessary within the Slovak legal system, indicating a preference for its repeal.

⁹ See European Commission Rule of Law Report 2025, [country-chapter Slovakia](#), p.7

the vague wording and broad scope of the provision could undermine judicial independence and give rise to overbroad interpretation and abuse. GRECO thus recommended either “(i) repealing Article 326a of the Criminal Code in its entirety or, (ii) if retained: (1) introducing additional timely and effective safeguards in law to protect judges accused of bending the law under Article 326a of the Criminal Code, namely limiting the scope of its application strictly to cases of malice and deliberate intent, and providing an automatic stay of prosecution until the Judicial Council has made a determination; and (2) strengthening the Judicial Council’s independence and capacity to enforce these safeguards [...]”¹⁰

11. The Explanatory Memorandum indicates that the draft amendments resulted from internal discussions within the Ministry of Justice, criticism expressed by the Judicial Council,¹¹ and exchanges with GRECO and the European Commission. The Memorandum further notes that the common thread underlying these reservations concerns the insufficiency of the existing safeguards against the potential misuse of this criminal offence in respect of judges.¹² In light of these concerns, the Slovak Government initially considered repealing the criminal offence. However, since the offence is linked to a specific milestone under Slovakia’s National Recovery and Resilience Plan, the Government ultimately opted to propose the draft amendments presently under consideration.¹³

12. According to the Explanatory Memorandum,¹⁴ the draft amendments intend to clarify the criminal offence of abuse of law and to strengthen procedural safeguards in order to prevent the potential abuse of criminal proceedings against judges:

a) Article 326a of the Criminal Code will be amended as follows:

“A judge, associate judge or arbitrator who, with the intention to harm or favour another, arbitrarily makes a decision in manifest contravention of the law, without any basis in law or consciously ignoring the wording of the legal provisions, their purpose or established case law, and the arbitrariness of such a decision has been pronounced in a final decision of a superior court or the Constitutional Court of the Slovak Republic shall be punished by imprisonment for one to five years.”

b) In addition, the following procedural changes are introduced: instead of the current competence of the Judicial Council to oppose the criminal prosecution of a judge for the criminal offence of abuse of law based on the request of the judge concerned,¹⁵ the Judicial Council will be given a general mandatory competence to consent to any criminal prosecution of judges.¹⁶ This means that before indicting a judge for any

¹⁰ See [Ad hoc Report on the Slovak Republic \(Rule 34\), 28 August 2025](#), adopted by GRECO at its 100th Plenary Meeting, and the corresponding [news item](#).

¹¹ In its [Resolution No. 464/2024](#) of 20 November 2024, the Judicial Council presented two amendment alternatives to the Minister of Justice, both providing for the repeal of Article 326a. Under the first alternative, the provision would be repealed, and a broader mechanism would be established enabling judges to request the Judicial Council to oppose their prosecution for any offence. Under the second alternative, the provision would likewise be repealed, and the Judicial Council’s role in validating or preventing the prosecution of judges would be abolished altogether.

¹² See Explanatory Memorandum ([CDL-REF\(2026\)002](#)), p. 5.

¹³ *Ibid.*, p. 6.

¹⁴ *Ibid.*, p. 5.

¹⁵ Articles 9(2) and 207a(3) of the [Criminal Procedure Code](#) would be repealed.

¹⁶ This new competence would be provided in Articles 4(1)(l) and 27hi of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic, and in Article 29(a)(2) of [Act No. 385/2000, of 5 October 2000](#), on judges and lay judges.

criminal offence, public prosecutors must first obtain from the Judicial Council a reasoned decision granting its consent to the prosecution.¹⁷

III. Analysis

A. The criminal offence of abuse of law in the light of European standards

13. Judicial independence is an integral part of the fundamental democratic principles of the separation of powers and the rule of law.¹⁸ While it is neither an end in itself nor a personal privilege of judges, judicial independence is justified by the need to enable judges to fulfil their role as guardians of the rights and freedoms of individuals.¹⁹ While judicial independence in the exercise of judicial functions is of fundamental importance, it should not preclude the accountability of judges.

14. The Venice Commission has, over the years argued in favour of functional immunity for judges.²⁰ A careful balance needs to be struck between immunity as a means to protect the judge against undue pressure and abuse from state powers or individuals (immunity), on the one hand, and the fact that a judge is not above the law (accountability), on the other. In this respect, the Venice Commission has consistently underlined that judges should not be granted general immunity, but functional immunity for acts performed in the exercise of their judicial functions. Nevertheless, a judge should only benefit from functional immunity in the exercise of his or her lawful functions.²¹ Accordingly, where a judge commits a criminal offence in the exercise of his or her office, a procedure for lifting such functional immunity should apply.

15. While acknowledging that European standards permit judges to be held criminally liable for acts committed in the exercise of their judicial functions, the Venice Commission has emphasised that the applicable threshold is exceptionally high and that the fault must be clearly intentional.²²

16. The Venice Commission has also clarified that judges should not be held liable merely for differences in the interpretation of the law.²³ Consequently, they should not incur liability for

¹⁷ This new procedure would be set out in 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

¹⁸ Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, § 102; [CDL-AD\(2023\)027](#), Ukraine – Joint Follow-up Opinion to the Joint Opinion on the Draft Amendments to the Law “On the Judiciary and the Status of Judges” and Certain Laws on the Activities of the Supreme Court and Judicial Authorities (CDL-AD(2020)022), § 42; Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, [CM/Rec\(2010\)12](#), Article 4.

¹⁹ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, § 6.

²⁰ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, §§ 60 and 61.

²¹ Venice Commission, [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, §§ 17, 53-54; [CDL-AD\(2014\)018](#), Kyrgyz Republic – Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges, § 41.

²² Venice Commission, [CDL-AD\(2019\)028](#), Republic of Moldova - *Amicus Curiae* Brief on the Criminal Liability of Constitutional Court Judges, § 26; [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, § 19; [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, § 61.

²³ Venice Commission, [CDL-AD\(2019\)028](#), Republic of Moldova - *Amicus Curiae* Brief on the Criminal Liability of Constitutional Court Judges, § 25; [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, § 27.

judicial decisions that may be disputed by another court,²⁴ or for departing from well-established case-law on a particular issue.²⁵ In this regard, it should be recalled that, under the European Union principle of the primacy of European Union law – applicable to Slovakia as a Member State of the European Union - domestic courts are obliged to disapply national case-law that is incompatible with a directly effective provision of European Union law.²⁶ In addition, judges should not be held liable for judicial errors that do not involve bad faith. The principal remedy for such errors is the appellate procedure.²⁷

17. In light of these standards, the Venice Commission and DGI consider the criminal offence of abuse of law to be of concern, as its scope may encompass judicial decisions adopted in good faith but reflecting a marginal legal interpretation, diverging from prevailing views, or seeking to develop the case-law by departing from settled case-law. In this context, criminalising judicial decision-making through the notion of “arbitrariness” – which itself is open to broad interpretation - inherently risks undermining judicial independence, as judicial decisions perceived as “arbitrary” could give rise to criminal complaints by individuals and to subsequent assessments by criminal investigators and prosecutors.

18. Notwithstanding the abovementioned procedural safeguards - namely that indictments against judges must be issued by a prosecutor of the Prosecutor General’s Office and are subject to challenge before the Prosecutor General²⁸ - and the newly proposed safeguards - requiring the Judicial Council to provide consent prior to the criminal prosecution of a judge and final confirmation of the element of arbitrariness by a court of last-instance²⁹ - the Venice Commission and DGI consider that the risk of vexatious complaints and prosecutorial abuse persists, with the inevitable consequence that judges may exercise undue restraint and self-censorship in their decision-making.

19. The Venice Commission and DGI maintain that, where the parties to judicial proceedings disagree with the content of a judicial decision, the appropriate and primary avenue of recourse should be through ordinary appellate review.³⁰ Furthermore, in cases involving intent, wilful default or serious and inexcusable professional misconduct, where a judge grossly or repeatedly departs from the standards of proper judicial reasoning and interpretation, disciplinary proceedings should be initiated and should generally suffice.³¹

²⁴ Venice Commission, [CDL-AD\(2018\)017](#), Romania – Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004, on the Superior Council for Magistracy, § 115.

²⁵ Compare Venice Commission, [CDL-AD\(2013\)005](#), Serbia - Opinion on Draft Amendments to the Laws on the Judiciary of Serbia, § 22.

²⁶ Court of Justice of the European Union, Judgment of the Court (Grand Chamber) of 22 February 2022, [Case C-430/21](#), §§ 75-76, 87.

²⁷ Venice Commission, [CDL-AD\(2019\)028](#), Republic of Moldova - *Amicus Curiae* Brief on the Criminal Liability of Constitutional Court Judges, § 25; [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, §§ 53.

²⁸ See paragraph 8 above.

²⁹ See paragraph 12 above.

³⁰ [CCJE \(2015\)4](#), CCJE Opinion No. 18 – The position of the judiciary and its relation with the other powers of state in modern democracy, § 23; Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, [CM/Rec\(2010\)12](#), Article 16. See also, [CCJE-BU\(2020\)3](#), Opinion of the CCJE Bureau following a request by the CCJE member in respect of Slovakia as regards the reform of the judiciary in Slovakia, p. 5.

³¹ [CCJE\(2024\)5](#), CCJE Opinion No. 27 on the disciplinary liability of judges §§ 25-28; [CCJE\(2018\)3Rev.](#), CCJE Opinion No. 21 – Preventing corruption among judges, § 30; [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, §§ 18-19; [CDL-AD\(2011\)012](#), Kazakhstan – Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges, § 60; Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, [CM/Rec\(2010\)12](#), Article 69.

20. Under the regime governing the disciplinary liability of judges, as set out in Law No. 385/2000 on judges and lay judges, several forms of serious judicial misconduct are subject to sanction. These include the issuance of an “arbitrary decision by a judge that clearly has no basis in law, if by such a decision the judge causes significant damage or other particularly serious consequence” (Article 116(2)(e)), the “deliberate breach of a judge’s duty to decide impartially and without bias” (Article 116(2)(a)) and the “breach of the obligation to meet the requirements for judicial competence throughout the entire term of office as a judge” (Article 116(2)(i)). The applicable sanctions include transfer to a lower court, a reduction of the functional salary by up to 70% for a period of up to one year, and removal from office.³²

21. In this regard, under the applicable legal framework, disciplinary proceedings may already be instituted against judges who render decisions lacking a clear legal basis and causing significant harm or particularly serious consequences.³³ Accordingly, the Venice Commission and DGI maintain that disciplinary liability constitutes, as a very general rule, the appropriate accountability mechanism for the type of professional misconduct targeted by the offence of abuse of law.

22. Despite the foregoing, it should also be emphasised that the offence of abuse of law appears to be superfluous in the criminal sphere, insofar as it overlaps with existing offences. Although the criminal offence of abuse of law was introduced in 2021 with the stated aim of enhancing the accountability of judges, various interlocutors explained that the pre-existing offence of *abuse of power by a public official*, provided in Article 326 of the Criminal Code³⁴ would, in any event, be applicable to judges, in the absence of the offence of abuse of law. Under this provision, a judge incurs criminal liability where, with the intent to cause harm to another or to obtain an unauthorised benefit for himself or herself, or for a third party, he or she deliberately renders a decision contrary to the law, exceeds his or her judicial authority, or fails to fulfil an obligation arising from that authority.

23. According to the information conveyed to the delegation, the criminal offence of abuse of power by a public official already encompasses several instances of judicial misconduct, and contains more clearly defined constituent elements, which are less prone to misinterpretation or abuse and supported by restrictive case-law. Therefore, even if the offence of abuse of law were to be repealed, judges would remain subject to the offence of abuse of power by a public official. In addition, other criminal offences, including corruption and bribery, would likewise continue to apply to judges in the exercise of their judicial functions. The repeal of the offence of abuse of law would therefore not preclude the possibility of holding judges criminally liable, where appropriate, in the exercise of their functions.

24. In addition, it is important to emphasise that the offence of abuse of law – unlike the offence of abuse of power by a public official – is specifically directed at judges. As such, it is liable to produce a pronounced chilling effect, notably in relation to judicial decisions adopted in good faith that may be politically inconvenient or controversial, depart from established case-law or reflect a less conventional interpretation of the relevant legal provisions. It should also be pointed out that the sanctions provided for the offence of abuse of law are lower than those applicable to the general offence of abuse of power by a public official. This inconsistency further weakens the rationale for maintaining a separate criminal offence specifically directed at judges.

32 According to Article 117(3)(a) and (b) and (5) of [Law No. 385/2000, on judges and lay judges](#).

³³ According to Article 116(2)(e) of [Law No. 385/2000, on judges and lay judges](#): “[a] serious disciplinary offence is an arbitrary decision by a judge that clearly has no basis in law, if by such a decision the judge causes significant damage or other particularly serious consequence.”

³⁴ The criminal offence of abuse of power by a public official is set out in Article 326 of the Slovak [Criminal Code](#). According to Article 128(1) of the Criminal Code “(...) a public official shall mean (...) a judge (...)”

25. Furthermore, five years after its entry into force, the offence of abuse of law appears to have had a limited application. During the country visit, the delegation was informed that, despite the high number of criminal complaints filed, only five indictments have been issued, and no final convictions have been secured. This points to a significant number of frivolous or vexatious complaints, which inevitably place an additional burden on the law enforcement system.³⁵

26. Given that disciplinary proceedings³⁶ may be initiated against judges who depart from the standards of proper judicial decision-making, and that the Criminal Code already provides for a range of offences covering different forms of judicial misconduct, it remains unclear why these existing mechanisms, taken together, would not be sufficient to address potential instances of lack of integrity within the judiciary, or why it was deemed necessary to introduce the offence of abuse of law.³⁷ These considerations were echoed by several interlocutors during the country visit, who expressed the view that this offence was overly vague, prone to abuse and unnecessary within the Slovak legal system.

27. In view of the above, the Venice Commission and DGI recommend repealing the criminal offence of abuse of law.

28. The Venice Commission and DGI will further review the draft amendments concerning the clarification of the offence of abuse of law and the proposed procedural safeguards, should the Slovak authorities – despite the above recommendation - decide to retain this offence in the Criminal Code.

B. The revised offence of abuse of law

29. The draft amendments aim to further specify the constituent elements of the criminal offence of abuse of law. To this end, the *actus reus* is further defined in Article 326a of the Criminal Code and an explicit reference to specific intent is introduced.

30. However, the inclusion of the expression “consciously ignoring (...) established case-law” appears problematic, given that, as noted above in paragraph 16, judges acting in good faith should not be liable for judicial decisions which depart from settled case-law. Such departures may arise in the normal course of judicial decision-making in light of evolving circumstances, and judges should not be discouraged from triggering the development of case-law, provided

³⁵ According to the [2022 Report on the Activities of the Special Prosecutor's Office](#), pp. 19-20, 114 criminal complaints related to the offence of abuse of law were recorded in 2022, with only one indictment brought. According to the report “(...) the absolute majority of criminal complaints for the crime of bending the law (...) had no real basis and were based solely on the subjective feeling of the complainants that, since they were unsuccessful in court proceedings, the judge must have committed the crime of bending the law. (...) The introduction of the criminal offence of bending the law (...) therefore resulted in practice in 2022 in an excessive burden on law enforcement authorities due to the large number of unfounded criminal complaints and did not contribute to the prosecution of arbitrary and unlawful decisions by judges or arbitrators.”

³⁶ In addition to Article 116(2)(e) of [Law No. 385/2000, on judges and lay judges](#), which sanctions the issuance of an “arbitrary decision by a judge that clearly has no basis in law, if by such a decision the judge causes significant damage or other particularly serious consequence”, other disciplinary offences may also apply to judicial misconduct. These include, *inter alia*, “a deliberate breach of a judge’s duty to decide impartially and without bias” (Article 116(2)(a) of [Law No. 385/2000, on judges and lay judges](#)), and the “breach of the obligation to meet the requirements for judicial competence throughout the entire term of office as a judge” (Article 116(2)(i) of [Law No. 385/2000, on judges and lay judges](#)).

³⁷ Compare Venice Commission, [CDL-AD\(2023\)027](#), Ukraine - Joint Follow-up Opinion to the Joint Opinion on the Draft Amendments to the Law “On the Judiciary and the Status of Judges” and Certain Laws on the Activities of the Supreme Court and Judicial Authorities (CDL-AD(2020)022), § 41. During the country visit, several interlocutors expressed the view that the criminal offence of abuse of law was unsystematic, overly vague, prone to abuse and unnecessary within the Slovak legal system.

they give reasons to do so.³⁸ Thus, even where case-law on a particular issue is well-established, it may be subject to further review and a judge should not be held personally liable for wilfully choosing not to follow it.³⁹ Moreover, as observed above, under European Union law, domestic courts are required to disapply domestic case-law in certain situations.⁴⁰ Against this background, it would be appropriate to remove this expression from the provision.

31. The draft amendments further require that the element of arbitrariness be confirmed by a court of last instance, namely by the Supreme Court or the Constitutional Court. Based on the wording of the draft amendments, however, the procedure through which this would be achieved remains unclear. During the country visit, multiple interlocutors expressed the view that such procedure raises multiple questions and would ultimately prove impracticable. First, it is unclear which kind of appeal mechanism⁴¹ would be appropriate for this purpose, and whether the claim of arbitrariness would constitute a stand-alone ground for appeal or would need to be invoked alongside other grounds. Second, since the lodging of appeals depends on the parties' initiative, it is possible that, even in the presence of a manifestly arbitrary decision, none of the parties would submit an appeal. In such circumstances, the offence would risk assuming a quasi-private character, in that its effective activation would depend on the initiative of the parties concerned. This would be difficult to reconcile with the inherently public-interest nature of the offence, which is intrinsically linked to the proper administration of justice. Third, a conflation of roles would appear to arise during appellate review, as the appellate judge's assessment of arbitrariness would become a necessary condition for the prosecution to proceed. Finally, the proposed system appears to create a gap, in that judges of courts of last instance would, in practice, be exempt from this offence, as their decisions are not subject to appeal. This aspect would result in an inequality in the legal status of judges. Although this requirement introduces a certain procedural threshold, it lacks clarity and creates additional difficulties in the application of this provision. It should therefore be removed.

32. The expression "intention to harm or favour another" appears overly broad, given that, in the normal course of judicial proceedings, the natural outcome is that one party "wins" and the other "loses" the case. As the outcome of most judicial proceedings may be interpreted as conferring an advantage or disadvantage on the parties concerned, it would be important to qualify this expression by inserting the term "unlawfully" before "intention to harm or favour another".

33. In view of these considerations, the Venice Commission and DGI reiterate the recommendation set out in paragraph 27 above: the preferable course of action remains the repeal of Article 326a of the Criminal Code, given that the additional specifications and qualifications introduced by the draft amendments under consideration create further legal complications.

C. The revised role of the Judicial Council

1. The extension of the Judicial Council's competence

34. The draft amendments also aim to establish a system requiring the general prior consent of the Judicial Council for any criminal prosecution of judges. As a result, public prosecutors would be required to obtain a prior decision from the Judicial Council consenting to a given prosecution before indicting a judge of any crime. This would constitute a change from the

³⁸ Compare [CCJE \(2017\)4](#), CCJE Opinion No. 20 - The role of courts with respect to the uniform application of the law, § 39.

³⁹ Compare Venice Commission, [CDL-AD\(2013\)005](#), Serbia - Opinion on Draft Amendments to the Laws on the Judiciary of Serbia, §22.

⁴⁰ See paragraph 16 above.

⁴¹ During the country visit, the delegation was informed that, in general, the available mechanisms in this regard would consist of ordinary appeal and extraordinary review proceedings.

current system, under which the Judicial Council is involved only in cases under Article 326a of Criminal Code. Moreover, under the current regulation, the involvement of the Judicial Council is triggered by the judge concerned once he or she has been notified of the indictment.⁴² Furthermore, whereas under the current system, ten affirmative votes⁴³ of the members of the Judicial Council are required to discontinue the criminal prosecution of a judge,⁴⁴ under the proposed amendment, ten affirmative votes would be required for an indictment to be issued against a judge.⁴⁵

35. The Venice Commission and DGI consider that the procedural changes envisaged by the draft amendments enhance the protection of judges against external pressure and interference, including frivolous criminal complaints and potential prosecutorial abuse. These changes replace a system of *ex post facto* opposition to prosecution with one requiring *ex ante* consent, whereby the Judicial Council is seized *ex officio* whenever the prosecuting authorities intend to indict a judge. Accordingly, a system requiring the Judicial Council to adopt a majority decision to indict a judge is undoubtedly more protective than one requiring a majority decision to discontinue criminal proceedings.

36. As observed above, regardless of whether the offence of abuse of law is repealed, other criminal offences may still be used to prosecute judges in relation to their judicial decisions.⁴⁶ It is therefore important to ensure that procedural safeguards are in place to prevent the misuse of criminal proceedings against judges.⁴⁷ Hence, extending the Judicial Council's prior consent competence to cover such offences is acceptable, in that it provides an additional safeguard against improper interference in the judicial function. However, this prior consent competence should not extend to criminal offences unrelated to the judicial function. As noted above, judges should not be granted *general immunity*, but *functional immunity* for acts performed in the exercise of their judicial functions.⁴⁸ The prior consent competence of the Judicial Council should therefore be limited solely to cases concerning the exercise of judicial functions by judges.

37. Moreover, it is relevant to note that, during the country visit, several interlocutors expressed concern that the Judicial Council lacked sufficient guarantees of independence. In particular, it was frequently observed that Article 141a(5) of the Slovak Constitution permits the removal of Council members at any time before the expiry of their term, without requiring specific grounds.⁴⁹ Over the years, in its Rule of Law Reports, the European Commission has likewise

⁴² As per Articles 9(2) and 207a(3) of the [Criminal Procedure Code](#), and Articles 4(1)(l) and 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁴³ Under Article 141a(7) of the [Slovak Constitution](#), the adoption of decisions by the Judicial Council requires the consent of a majority of its members. Under Article 141a(2), the Judicial Council is composed of 18 members.

⁴⁴ As per Articles 9(2) and 207a(3) of the [Criminal Procedure Code](#) and Articles 4(1)(l) and 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁴⁵ This new procedure would be set out in 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁴⁶ See paragraphs 22-23 above.

⁴⁷ See paragraph 14 above.

⁴⁸ Venice Commission, [CDL-AD\(2017\)002](#), Republic of Moldova – *Amicus Curiae* for the Constitutional Court on the Criminal Liability of Judges, § 17; [CDL-AD\(2015\)013](#), Ukraine – Opinion on Draft Constitutional Amendments on the Immunity of Members of Parliament and Judges, § 25.

⁴⁹ According to Article 141a(5) of the, “[t]he term of office of the members of the Judicial Council of the Slovak Republic shall be five years. The same person may be elected President of the Judicial Council of the Slovak Republic, elected or appointed as a member of the Judicial Council of the Slovak Republic for a maximum of two consecutive terms. The President, Vice-President and members of the Judicial Council of the Slovak Republic may be recalled at any time before the expiry of their term of office.”

expressed concern about the need to ensure that Judicial Council members benefit from sufficient guarantees of independence as regards their dismissal.⁵⁰

38. The Venice Commission has previously stated that judicial councils should benefit from constitutional guarantees regarding their composition, powers and autonomy, and has advocated for a pluralistic composition to reinforce their democratic legitimacy.⁵¹ The Venice Commission has also advocated for the inclusion in the constitution of provisions guaranteeing the independence and impartiality of individual members of judicial councils. It has further affirmed that removal of a member before the expiration of his or her mandate should only be possible for exceptional reasons specified in the law.⁵²

39. In this context, the Venice Commission and DGI consider that a constitutional provision allowing for the premature removal of members of the Council Judicial without specific grounds undermines its independence and renders it susceptible to external influence.⁵³ The authorities are therefore invited to take steps to strengthen the independence of this body and its protection from external influence, namely by enshrining the security of tenure of individual Council members.

40. Efforts should also be directed towards establishing an objective, merit-based appointment procedure for Judicial Council members, whereby judicial members are elected or appointed by their peers through a transparent process governed by general and abstract, formal and equal admissibility criteria,⁵⁴ and lay members are nominated following a public call for applications underpinned by detailed eligibility criteria.⁵⁵

41. Lastly, it is also noted that several interlocutors stressed that, until January 2021, - prior to the entry into force of the 2020 constitutional amendment - the Constitutional Court had the competence to authorise the pre-trial detention of judges and developed substantial case-law in this area. Furthermore, based on the information gathered, the Judicial Council appears to rely in part on reasoning or standards developed by the Constitutional Court when deciding whether to express disagreement with the prosecution of judges.⁵⁶ Against this background, the authorities may envisage an alternative reform path consisting in entrusting the Constitutional Court with the prior consent role currently intended to be attributed to the Judicial Council.

⁵⁰ See the country chapters on Slovakia of the European Commission Rule of Law Reports of [2025](#), [2024](#), and [2023](#).

⁵¹ Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist, § 108; [CDL-AD\(2007\)028](#), Judicial Appointments, § 48-50; [CCJE Opinion No. 10](#), on the Council for the Judiciary at the service of society, §§ 15-19.

⁵² Venice Commission, [CDL-AD\(2014\)026](#), Opinion on the Seven Amendments to the Constitution of the “Former Yugoslav Republic of Macedonia” concerning, in particular, the Judicial Council, the competence of the Constitutional Court and Special Financial Zones, § 77; [CDL-AD\(2005\)003](#), Joint Opinion on a Proposal for a Constitutional Law on Changes and Amendments to the Constitution of Georgia, § 102.

⁵³ In its [Ad hoc Report on the Slovak Republic \(Rule 34\)](#), [28 August 2025](#), §143, GRECO expressed a similar concern: “(...) GRECO recommends (...) introducing robust safeguards to ensure the security of tenure for [Judicial Council] members, including explicitly defined legal grounds for removal that are neither vague, broad nor discretionary, and that are accompanied by appropriate procedural safeguards guaranteeing the right to an appeal and a fair hearing/trial”.

⁵⁴ Venice Commission, [CDL-AD\(2025\)026](#), North Macedonia – Opinion on the Draft Law on the Judicial Council, §39; [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, § 32.

⁵⁵ Venice Commission, [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the draft law on the High Judicial and Prosecutorial Council, §§ 51-52.

⁵⁶ See, in this regard, the reasoning employed by the Judicial Council in [Judicial Council Resolution No. 3/2024](#), of 28 May 2024.

2. The timing of the Judicial Council's intervention

42. Under the draft amendments, the Judicial Council is required to provide its consent at an early stage of criminal proceedings, namely at the pre-indictment stage.⁵⁷ Until that time, and according to the information conveyed to the delegation during the country visit, the possible negative consequences for judges appear to be limited, as preventive measures may only be imposed after the indictment.

43. Under the proposed amendments, once notified by the Office of the Public Prosecutor, the Judicial Council has 30 days to decide whether to grant its consent to the prosecution of a judge.⁵⁸ The delegation was also informed that the Judicial Council meets only once a month. In this context, as a prompt response from the Judicial Council is required, the Venice Commission and DGI recommend establishing stricter time-limits for the Judicial Council's intervention, in the interest of an effective criminal investigation.

3. The applicable scope and standard of review

44. Under the applicable law, the Judicial Council is to decide on the matter at a meeting attended by the judge concerned, his or her defence counsel, and the public prosecutor, but the law is silent as to the applicable scope and standard of review.⁵⁹ During the country visit, the delegation was informed that the Judicial Council's role in expressing disagreement with the prosecution of a judge consisted in assessing whether all constituent elements of the offence of abuse of law were present. In Resolution No. 3/2024, of 28 May 2024,⁶⁰ adopted in a case where the Council was called to express such disagreement, it reasoned that disagreement should be expressed if "it is evident from the factual circumstances attributed to the judge that all the elements of the offence of abuse of law under Section 326a of the Criminal Code could not have been fulfilled". It further interpreted its competence as assessing "whether it is possible to reasonably infer from the facts of the case a reasonable suspicion of the commission of the criminal offence of abuse of law".

45. It therefore appears that the Judicial Council interprets its safeguarding role as requiring it to verify whether there is a reasonable suspicion that the offence has been committed, by analysing all of its constituent elements. It is important to emphasise that such proceedings should not turn into a quasi-trial of the judge concerned. In this regard, the law should define the scope and standard of review applicable to the Judicial Council in such cases and underline that its role is to protect judges against unfounded or manifestly unsubstantiated allegations.

⁵⁷ As per the proposed revision of Article 27hi(1) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁵⁸ As per the proposed revision of Article 27hi(3) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁵⁹ As per Article 27hi(3) of [Act No. 185/2002, of 11 April 2002](#), on the Judicial Council of the Slovak Republic.

⁶⁰ In [Judicial Council Resolution No. 3/2024](#), of 28 May 2024, the Judicial Council interpreted its role as follows: "[t]he Judicial Council may express its disagreement with the criminal prosecution of a judge for the criminal offence of abuse of rights under § 326a of the Criminal Code only if it is evident from the factual circumstances attributed to the judge that all the elements of the offence of abuse of law under Section 326a of the Criminal Code could not have been fulfilled, i.e. mainly the arbitrary exercise of the law, that is, if it is an unacceptable interference with the judge's power to freely exercise the law." (...) In its decision, the Judicial Council also took into account the requirements set out by the Constitutional Court in its decision-making activity, and its authority to decide on the expression of disagreement with the criminal prosecution of a judge for the criminal offence of abuse of law is interpreted in the sense that that it must be consistently assessed whether it is possible to reasonably infer from the facts of the case a reasonable suspicion of the commission of the criminal offence of abuse of law, i.e., that it is not a matter of sanctioning a judge for expressing a legal opinion that may later prove to be incorrect."

IV. Conclusion

46. At the request of Minister of Justice of the Slovak Republic, Mr Boris Susko, the Venice Commission jointly with the Directorate General of Human Rights and Rule of Law of the Council of Europe (DGI), assessed the draft legislative amendments to the criminal offence of abuse of law.

47. The Venice Commission and DGI welcome the efforts undertaken by the Slovak authorities to tackle corruption, enhance the integrity of judges and strengthen the judicial system. As part of these efforts Article 326a was introduced into the Slovak Criminal Code in January 2021, establishing the criminal offence of abuse of law. This offence is applicable exclusively to judges who render judicial decisions considered arbitrary which cause damage or confer an advantage on another person. The offence is accompanied by certain procedural safeguards for judges, notably the Judicial Council's power to express disagreement with the prosecution of a judge, which results in termination of criminal proceedings.

48. In response to domestic and international criticism, the draft amendments seek to further specify the constituent elements of this criminal offence and increase the procedural safeguards for judges by establishing a system under which the prior consent of the Judicial Council is required before a judge may be prosecuted for any criminal offence.

49. The Venice Commission has previously affirmed that, while judicial independence in the exercise of judicial functions is of fundamental importance, it should not preclude the accountability of judges. In this respect, it has argued in favour of functional immunity. It has thus stressed that criminal liability in relation to judicial decision-making, may arise only in exceptional cases involving intentional misconduct.

50. The Venice Commission has further stated that judges should not be held liable merely on account of differences in the interpretation of the law, nor should they incur liability for decisions that may be disputed by another court, for departing from well-established case-law on a particular issue, or for judicial errors that do not involve bad faith.

51. The Venice Commission and DGI consider the criminal offence of abuse of law to be of concern, as it inherently risks undermining judicial independence. They reiterate that the primary avenue of recourse should be ordinary appellate review.

52. Furthermore, in cases involving intent, wilful default or serious and inexcusable professional misconduct, where a judge grossly or repeatedly departs from the standards of proper judicial reasoning and interpretation, disciplinary proceedings should be instituted. In this respect, the Slovak legal framework governing the disciplinary liability of judges provides for sanctions in respect of several forms of judicial misconduct.

53. Given that disciplinary proceedings may be initiated against judges who depart from the standards of proper judicial decision-making, and that the Criminal Code already provides for a range of offences covering different forms of judicial misconduct, it remains unclear why these existing mechanisms, taken together, would not be sufficient to address potential instances of lack of integrity within the judiciary.

54. The Venice Commission and DGI thus recommend repealing Article 326a of the Criminal Code, as it is deemed unnecessary and prone to abuse.

55. In the event the authorities decide – despite this recommendation - to retain this provision, the draft amendments under consideration should be revised in the following manner:

- a) The criminal offence should not encompass situations in which a judge departs from settled case law.
- b) The requirement that the element of arbitrariness be confirmed by a final decision of a court of higher instance should be eliminated.
- c) The criminal offence should be limited to the act of unlawfully conferring an advantage or disadvantage on a person.

56. Furthermore, the draft amendments should be revised as regards the competences of the Judicial Council, in order to ensure that:

- a) The requirement of prior consent of the Judicial Council is limited to criminal proceedings relating specifically to the exercise of the judicial functions of the judge concerned.
- b) The Judicial Council is required to adopt the relevant prior consent decisions within short time limits.

57. In this context, the Venice Commission and DGI underline that the legislation should ensure adequate safeguards for the independence of the Judicial Council, including the merit-based appointment of its members and the guarantee of their security of tenure.

58. The Venice Commission and DGI remain at the disposal of the Slovak authorities for further assistance in this matter.