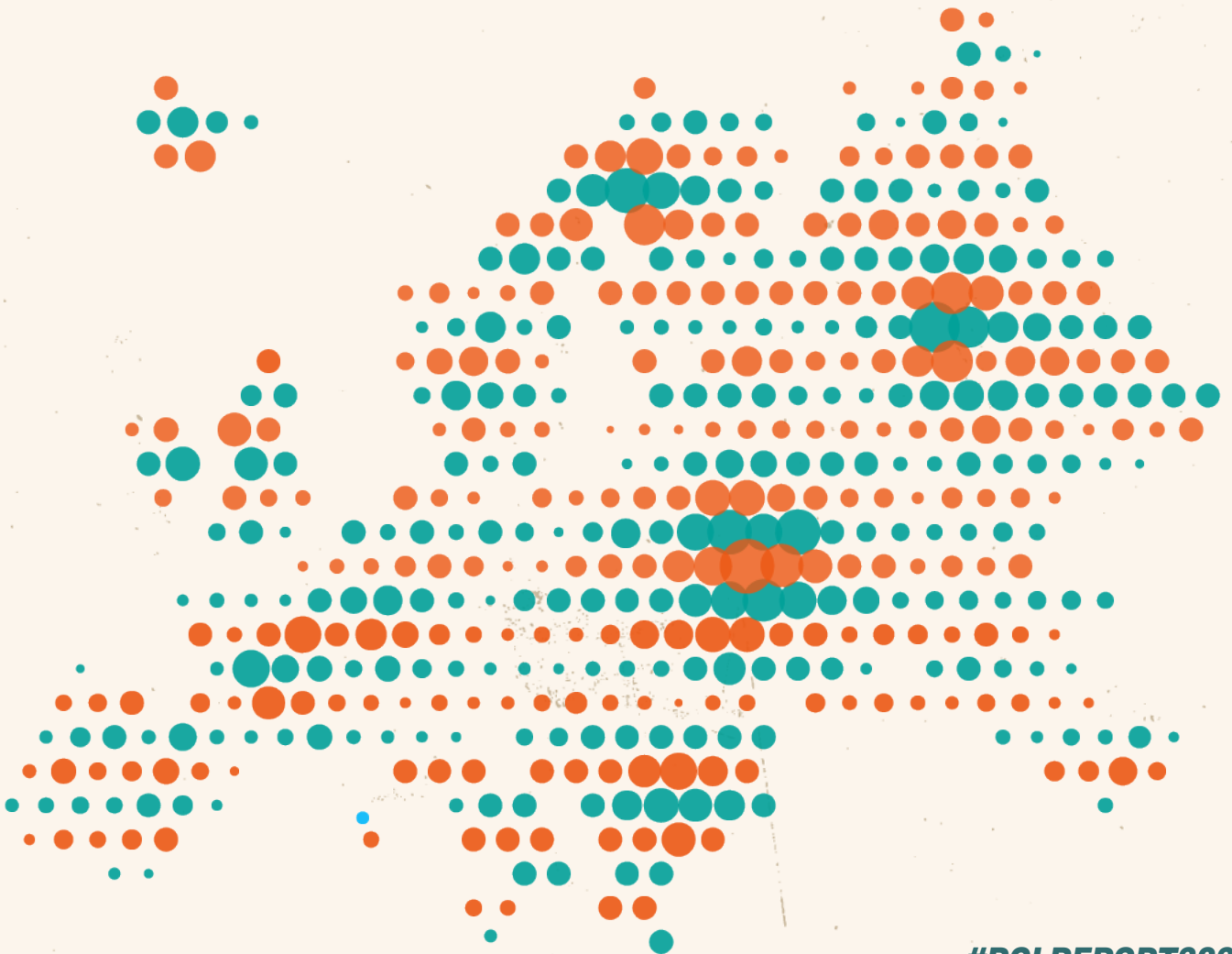


LIBERTIES RULE OF LAW REPORT 2023

SLOVAKIA



#ROLREPORT2023

FOREWORD

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

[Download the full Liberties Rule of Law Report 2023 here](#)

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SLOVAKIA

About the authors



VIA IURIS is a non-partisan, not-for-profit organisation, which has been officially registered in Slovakia as a civic association since 1993. It is a national organisation whose head office is in Banská Bystrica in Central Slovakia, although it has a regional office in the capital city Bratislava. Our mission is to use the law as an instrument of justice, to bring systematic solutions to rule of law issues, and to promote the equal application of law for all.

Key concerns

The biggest challenges facing the judiciary in 2022 were the unclear and unpredictable application of Section 363 of the Criminal Procedure Code by the Prosecutor General. This resulted in major setbacks in serious corruption cases in Slovakia. The Prosecutor General did not clearly communicate important issues and showed no willingness to debate them, which undermined public trust in the prosecution and the judiciary as a whole.

No legislation on restricting the Prosecutor General's power to annul prosecutorial decisions (Section 363 of the Criminal Procedure

Code) reached a second reading, and the Prosecutor General refused to enter debate with other stakeholders. No changes that would guarantee the independence of members of the Judicial Council were reached. Concerning the crime of "abuse of law", the Ministry of Justice proposed an amendment to the legislation, although this is yet to be approved.

Investigations and trials in major corruption cases went ahead, but were slowed down by dubious procedural obstructions. These included the application of the Section 363 of the Criminal Procedure Code, filing of inadmissible motions, motions of the Constitutional Court without clear merits and objections of bias. A number of criminal charges against high public figures were dropped and no rules on preventing corruption or conflicts of interest, or to improve the transparency of tendering procedures, asset declaration and lobbying activities were adopted.

The adoption of the new Media Acts is positive, although the practical application of some provisions remains questionable. The fact that Radio and Television of Slovakia (RTVS) receives the majority of its funding from the state budget means it is not independent, which poses a serious threat.

No changes were made to improve the physical safety and working environment of journalists, and in fact this issue has not even been

the subject of public debate. Amendments to the Criminal Code may affect rules on defamation, but this has not been approved yet and its future is unclear, considering that the government resigned in December 2022. The legislative environment regulating public service media has worsened with the approval of a law annulling concession fees and introducing contributions from the state budget as the main income of RTVS. However, the Slovak president vetoed the law towards the end of the year and it is unclear whether parliament will approve it again.

No previous governments have managed to circumvent the rules on legislative procedure to the extent that the current government has. Approving laws in fast-track procedures has ceased to be an exception to the rule. The government is now submitting draft laws through coalition MPs in order to avoid standard legislative procedures, in which all relevant stakeholders (including the public) can submit their comments and amendments. The legislative procedure is even being circumvented in the National Council, by introducing parliamentary amendments in the second reading, which changes the basis of the original proposal. Moreover, even when the public has not been fully closed out of the legislative procedure,

their participation has been purely a formality in many cases.

The current government has treated civil society as an irrelevance, and is trying to minimise or circumvent its participation in public processes to formal rights only. The public funding of civil society is close to rock bottom.

The entire society was shaken by the brutal murder of two LGBTI+ people on 13 October 2022. Despite this, no legislation providing at least minimal rights to the LGBTI+ community has been enacted. On the contrary, society is becoming more polarised and attacks like this are becoming commonplace.¹ In addition, many politicians, including from the ex-governing coalition,² are adding fuel to the fire, using hate speech in order to gain political popularity. There have been various forms of public action across Slovakia, such as petitions,³ marches, public festivals and educational events, but these have not led to change. On the contrary, many LGBTI+ people are more fearful for their safety and lives than ever before.

1 See: d-v-skalicei/?ref=list.

2 As the snap elections are approaching, the former prime minister and minister of finances is now leading a campaign against trans-gender people. See: <https://domov.sme.sk/c/23106243/matovic-statusy-facebook-lgbt-trans.html>.

3 E. g. petition addressed to the government and the National Council with more than 32,000 signatures – available at: <https://www.mojapeticia.sk/campaign/ide-nam-o-zivot--vyzva-vlade-a-parlamentu/62f1a870-3cd3-460d-8d5b-118ae3781f23>

State of play

- ↓ Justice system
- Anti-corruption framework
- Media environment and freedom of expression and of information
- Checks and balances
- Enabling framework for civil society
- ↓ Systemic human rights issues

Legend (versus 2022)

- ↓ Regression
- No progress
- ↑ Progress

- Further clarification of the competence and activities of the Judicial Council.

Judicial independence

Appointment and selection of judges and prosecutors

Announcing the selection process for the position of judge is the responsibility of the Ministry of Justice, and the process is regulated in Ministry of Justice Decree No. 160/2017 Coll. which establishes the details of the selection procedure.⁴ The selection procedure consists of two parts. The first part is written, with a case study, a translation from a foreign language, the preparation of a court decision and a psychological assessment. The second part is oral, during which a candidate answers questions from the selection committee. The necessity of the professional knowledge part of the procedure is questionable, as candidates undergo several proficiency tests before they reach this point. Furthermore, the evaluation criteria of the written and oral parts of the selection procedure are often unclear and there are ambiguities concerning the documents and materials required from applicants.

Judges are then appointed by the president of the Slovak Republic, on the basis of a recommendation from the Judicial Council of the Slovak Republic, which assesses whether a

Justice system ↓

Key recommendations

- Revision of Section 363 of Act No. 301/2005 Coll. Criminal Procedure Code and consideration of comprehensive reform of the prosecutor's office (including regulation of internal relations, competences, external and internal independence, the relationship between the General Prosecutor's Office and the Special Prosecutor's Office, training and appointment of future prosecutors).
- Full and timely implementation of the new judicial map.

4 Available in Slovak at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/160/20170925>

candidate meets the prerequisites of “judicial qualification”.

The recommendations of the Judicial Council are provided after the candidates are interviewed in public hearings. From the beginning of the pandemic until spring 2022 these were livestreamed, although they are now happening in person again. The judicial council still publishes audio recordings of these meetings on its website within 24 hours of a meeting. Even though the hearing process is relatively transparent, besides a constitutional complaint, there is no ordinary remedy against the resolution of the Judicial Council, or against the decision of the president to appoint a candidate.

Moreover, based on our monitoring of the Judicial Council’s activities, it is clear that its members have divergent perceptions of the content and criteria for evaluating judicial competence, including the factual content of the legal terms as “moral standard”, “integrity of a judge”, “business, property or financial relations with persons from the environment of organised crime”. In addition, some members have also questioned the need for psychological assessments during the selection procedure.

The public has very little say in the selection procedure for prosecutors. There are still lots of applicants for the position of trainee prosecutor since the completion of preparatory practice and passing the bar exam is often seen as purely a formality.⁵ Also, even though the official length of the preparatory practice for trainee prosecutors is three years, a prosecutor general can grant exceptions and shorten this to as little as 18 months, and in fact these exceptions are usually granted. Towards the end of 2022, an amendment⁶ to the Act on prosecutors⁷ was approved, which equalised the conditions when applying for prosecutor at the Special Prosecutor’s Office and changed the recognition of the professional practice trainee prosecutors have obtained in other legal positions.

Minutes of the selection procedures for the prosecutor trainees provide rather general information and the selection procedure itself is not public. The selection committee consists only of prosecutors. Even though the judicial examination after finishing the professional training is public, it only verifies the professional prerequisites and it does not include any form of psychological assessment.

5 “If a legal trainee at the prosecutor’s office completed a preparatory practice and then successfully passed the bar exam, the Prosecutor General will appoint him to the position of prosecutor from the first day of the month following the month in which he successfully passed the professional bar exam.” (Article 248 of Act No. 154/2001 Coll. on prosecutors and legal assistants of the prosecutor’s office).

6 Act No. 11/2023 Coll. which amends Act No. 154/2001 Coll. on prosecutors and legal assistants of the prosecutor’s office, as amended.

7 Act No. 154/2001 Coll. on prosecutors and legal assistants of the prosecutor’s office, as amended.

Judges cannot be removed from post or forced to transfer

Judges' requests for transfer are discussed at public sessions of the Judicial Council, so the course of the discussion is captured not only in the minutes but also on an audio recording. The transfer of a judge is a subject of the resolution of the members of the Judicial Council, ruling by simple majority of votes.

Independence and powers of the body tasked with safeguarding the independence of the judiciary

In 2022, the Judicial Council elected its vice-chairman⁸ and five new members⁹ (members of the Judicial Council elected by judges), thus reaching the constitutionally established number. Public sessions of the Judicial Council were still quite transparent, even though the Judicial Council stopped livestreaming public sessions after pandemic restrictions were eased. The audio recordings (with accompanying documentation) have remained however, and are published within 24 hours of the session. Closed meetings are more problematic, as they do not have clear codes of conduct.

As open questions on the constitutional status of the Judicial Council remain unclear, the questions of its independence, and the scope of its competence and activities also remain open. For example, some of its activities appear to be rather formal and are dealt with only to a limited extent (some mandatory documents are merely 'noted', including reports on the results of the courts review and reports on the implementation of appropriations).

The rules on deciding on the preconditions of judicial competence in the appointment of judges are also unclear, as is the scope of the competence of supervising judges' term in office, specifically whether the supervision should be exercised ex officio. The rules on the examination of judges' declarations of assets are also not totally clear.

Further discussion is required on how members of the Judicial Council communicate, given the increasing presence of blogs, social media posts, open letters, and media articles that contain messages addressed to various constitutional officials (e. g. the president of the Slovak Republic,¹⁰ the former ministry of justice¹¹ and the chairman of the Judicial

8 Press release available at: <https://www.sudnarada.gov.sk/7894-sk/sudna-rada-si-zvolila-svojho-podpredsedu/?cs-rt=171734673461512747>.

9 Press release available at: <https://www.sudnarada.gov.sk/sudna-rada-slovenskej-republiky-pozna-svojich-piatich-novych-clenov/>.

10 See: <https://ereport.sk/otvorenemu-listu-sudcu-stevika-prezidentke-sa-bude-venovat-sudna-rada-mal-pravo-sa-vyjadrit/>.

11 The case regarded the refusal to provide information on initiatives for disciplinary proceedings of judges delivered to the Ministry of Justice (within the framework of free access to information), in this case a member of the judicial council also proclaimed filing a lawsuit. See: <https://www.trend.sk/pravo/kolikovej-rozhodnutie-ce-li-zalobe-pre-netransparentnost>.

Council¹²⁾ and even NGOs.¹³ Moreover, some of these personal contributions are reshared directly on the official web page of the Judicial Council.¹⁴

No changes have been made in relation to ensuring that the process of removing members of the Judicial Council is independent and non-partisan, although no members of the Judicial Council has been dismissed during this period.

Accountability of judges and prosecutors, including the disciplinary regime and bodies, ethical rules, judicial immunity, and the criminal liability of judges

In December 2015, the Judicial Council approved the new Principles of Judicial Ethics.¹⁵ We monitored the disciplinary proceedings against judges between 2015 and 2021, in order to ascertain how the rules of judicial ethics were being applied. Our findings show that during this period there were only a few references to the Principles of Judicial Ethics, although they gradually increased. Some decisions even contained interpretative provisions

on certain concepts and provided some short explanations on the individual ethics rules.

However, the disciplinary chambers did not use the opportunity to expand on these ethical rules in depth, so the ethical rules remain largely abstract. Moreover, the adoption of the new Principles of Judicial Ethics should have been accompanied by the adoption of the interpretative rules for the Principles, yet these are still missing.

In August 2021, the Supreme Administrative Court of the Slovak Republic took over the agenda of disciplinary justice. There were several shortcomings with this, such as the lack of legislation on disciplinary rules and competence disputes. However, the fluency of disciplinary justice improved in 2022. In January 2022, the Judicial Council elected the presiding judges of the Disciplinary Chambers of the Supreme Administrative Court. The process was quite transparent, with the candidates' hearings being broadcast online. The disciplinary chambers subsequently heard and decided cases quite smoothly in 2022. The publication of disciplinary decisions on the

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- 12 See: <http://www.pravnelisty.sk/clanky/a1105-otvoreny-list-predsedomi-sudnej-rady-sr-reagujuci-na-jeho-nepravdivé-vyjadrenia>.
- 13 VIA IURIS became also the centre of questionably assessed facts by one of the members, claiming that our organisation deceived the European Commission with the information provided in our contribution to the 2021 EC Rule of Law Report. This was also taken over by some standard opinion shaping media, unfortunately without any additional context or confronting opinion. See our [article](#) about the topic and the former [blogpost](#) of the member of the Judicial Council.
- 14 See: <https://www.sudnarada.gov.sk/nazory-prispevky-a-vystupenia-v-mediach-cleniek-a-clenov-sudnej-rady-slovenskej-republiky/?csrt=4724989383903578693>.
- 15 Available in English at: <https://www.sudnarada.gov.sk/data/files/697.pdf?csrt=4724989383903578693>.

website of the Supreme Administrative Court has also improved.¹⁶

With regard to the need to ensure that sufficient safeguards are in place and duly observed when subjecting judges to criminal liability for the abuse of law, according to Section 326a of Criminal Code, as recommended in the 2022 Rule of Law Report,¹⁷ no legislation or any other proposals / activities were conducted in 2022 and there was no mention of this in the September 2022 Criminal law recodification either, even though in April 2022 the Ministry of Justice declared its interest in introducing changes.¹⁸

Independence of the Bar

The former president of the Slovak Bar Association recently became the minister of justice. Since then, closer cooperation between the Bar and the ministry has been clear, although there is yet to be any sign of a conflict of interest. The Bar still refrains from proactively publishing all its disciplinary decisions. Only selected decisions are available on its website (and in older book compilations). However, the chamber is obliged to make

decisions available upon request, based on the Act on Free Access to Information.¹⁹

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Criminal proceedings in several corruption cases, including against judges, prosecutors and attorneys in key positions, proceeded:

- In May 2022 the former special prosecutor Dušan Kováčik (in office 2004-2020) was sentenced by a final and binding judgement for accepting a bribe of EUR 50,000 and for leaking information from the prosecutor's office (the so-called case of "God's mills"). An action has also been filed against him in another case for accepting a bribe for removing two cases from the supervising prosecutor (these proceedings were later terminated because the offence allegedly did not happen. This is known as the Goliath case).
- The procedures of some judges and prosecutors currently in office are also questionable. One of the biggest cases, known as "Purgatory" concerns Dušan Kováčik

16 The database of decisions available at: <https://www.nssud.sk/sk/rozhodovacia-cinnost/rozhodovacia-cinnost-vo-veciach-disciplinarnych/>.

17 European Commission. 2022 Rule of Law Report. Country Chapter on the rule of law situation in Slovakia. 13 July 2022.

18 See: <https://www.aktuality.sk/clanok/0LfEIrK/podla-riaditelky-via-iuris-je-ohybanie-prava-vyuzivane-ako-nastroj-natlaku/>.

19 Act. No. 211/2000 Coll. Act on Free Access to Information and Amendments of Some Acts (The Freedom of Information Act).

and the former president of the police Tibor Gašpar. The judge hearing the case interrupted the proceedings and submitted a petition to the Constitutional Court, in which he objected to the independence of the special prosecutor's office (even though the special prosecutor's office has exclusive jurisdiction in the matter). His petition asserting prosecutorial bias (lack of impartiality of the prosecution) has already been rejected three times by the general prosecutor. The proceedings are therefore suspended until the matter has been decided by the Constitutional Court.

- The court hearing of probably the biggest case regarding the number of accused judges and attorneys, known as "Storm" and "Windstorm" started in 2022. This is a criminal case against at least 12 current and former judges. Charges against the former president of the Bratislava district court, David Lindtner, were brought for accepting a bribe and interfering with the independence of the courts. The former vice-president of the Supreme Court, Jarmila Urbancová, was indicted for bending the law, bribery and indirect corruption. Disciplinary proceedings were initiated in connection with these cases against several judges too, yet some of them were, in the meantime, terminated due to expiration of the limitation period. This is in part because many disciplinary senates were not functioning fully during 2021 and

2022, due to the transfer of the agenda of disciplinary justice from the Supreme Court to the Supreme Administrative Court.

- In the so-called "Weed II" case, former president of the Regional Court in Žilina, Eva Kyselová, and former judge Mária Urbanová were accused of accepting bribes. Eva Kyselová was eventually acquitted. The case will be decided by the Supreme Court of the Slovak Republic.

- Several attorneys were also subject to criminal proceedings. In the Caiaphas case, attorney Marek Para (acting as the advocate of Marián Kočner) was accused of cooperating with a criminal group and discrediting the supervising prosecutor (the case returned to the pre-trial stage). Attorney Svetozár Chabada, representing the former prime minister Robert Fico, was accused of abusing public office when, as a former prosecutor, he deliberately failed to act in several cases.²⁰

Other

Between 20 and 27 June 2022, a representative public opinion survey on the public's perception of the prosecutor's office was conducted on our behalf. The survey was conducted using the f2f method (omnibus) among respondents over 18 years of age. Data collection was conducted by the FOCUS s.r.o. agency in

20 For more structural information on the biggest Slovak criminal cases – see the overview of the Stop Corruption Foundation: <https://kauzy.sk/> or one of the leading independent media outlet Aktuality yearly overview of Slovak most prominent cases: https://issuu.com/aktuality.sk/docs/kauzy_2022_-_k09.

Slovakia, followed by data analysis by a sociologist using the SPSS statistical program. The key findings are as follows:

- The competence of prosecution:

- Many people have no clear knowledge about the prosecutor's competences. Although more than three quarters of the respondents were able to spontaneously name the basic competences of the prosecutor's office (namely the supervision of an investigation or overseeing compliance with the law), the results were significantly worse when asking for further knowledge about the prosecutor office's work.
- As many as 56% of respondents are wrongly convinced that the prosecutor decides on the guilt / innocence of an accused, while 45% of respondents mistakenly stated that a prosecutor represents people in court proceedings and 37% thought that prosecutors provide people legal advice.
- As little as 2.5% of respondents were able to correctly state all the prosecutor's competencies.

- How prosecutors communicate:

- Respondents mostly wanted prosecutors to publicly explain their decisions in specific cases (65%), to answer

journalists' questions (62%) and to provide information on the progress of the investigation (62%).

- Respondents were least interested in information about the private life of prosecutors; only 8% of people strongly agreed with this type of communication and the majority of respondents thought that prosecutors should not communicate with the public via social media.
- The public is also not interested in prosecutors' comments on the current social and political situation (only 13% of respondents strongly agreed with this type of communication).

- Internal relations:

- As many as 53% of people think that the prosecutor's office is disjointed, which, in our opinion, may be the result of ongoing disputes between the top representatives of the prosecutor's office, who often send messages to each other through the media.

- Only a small proportion of respondents had any direct personal experience with the prosecutor's office. Most of them have formed their opinion about the institution indirectly, primarily based on the decisions of prosecutors as well as on the basis

of communications and the behaviour of high-ranking prosecutors.²¹

Quality of justice

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

A positive development in e-justice is the amendment to Act No. 513/1991 Coll. Commercial Code, which came into effect on 1 January 2023,²² according to which it will be possible to establish a company through an electronic memorandum of association (to be published on the website of the Ministry of Justice in both Slovak and English).

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialisations

In April 2022, after almost 16 months parliament finally approved the judicial map. The first version of the new judicial map was submitted into inter-ministerial comment procedure in December 2020, but was later changed significantly. The first proposal was a result of the long-term analysis of the Analytical Centre of the Ministry of Justice and the CEPEJ's Report on the efficiency and quality of the Slovak judicial system. The approval

of the new judicial map was also a condition for Slovakia drawing funding from the EU Recovery and Resilience Plan. The aim of the map itself is to deepen the specialisation of the general courts, diminish corruption in the judiciary and create new judicial districts in view of the real caseload of the courts.

A necessary part of the change of judicial districts was to close down courts in some cities. However, there was no political consensus for this and it was used as a tool to gain political popularity and led to some public protests. Moreover, several judges disagreed with the reform, through protests, open letters and calls, saying they had not been consulted properly.

The former proposal was then revised several times and discussed, although this had nothing to do with the former analytical basis. The legislative process had several shortcomings:

- Significant changes were incorporated into the draft law at the last minute.
- Extensive amendments proposed by the deputies were not published by the deadline.
- The last changes in the judicial map took place without adequate public discussion and control.

21 See our full communication about the topic. Available at: <https://viaiuris.sk/aktuality/prokuratura-ma-vysvetlovat-rozhodnutia-a-komunikovat-s-novinarmi-mysli-si-verejnost/>.

22 Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8910>.

With regards to the form of the judicial map itself, according to the previous draft, the number of regional courts was supposed to be reduced from eight to three. In the approved version, the number of regional courts remained the same, with specialisation supposedly being ensured by concentrating the agenda in selected regional courts. Moreover, the regional courts should no longer be in charge of the administrative agenda, which will be taken over by three newly established administrative courts (which complemented the Supreme Administrative court established in August 2021). The number of district courts was reduced from 54 to 36 (in 33 districts), and two municipal (city) courts were established in the two largest cities (Bratislava and Košice), created by the unification of all the district courts in these cities. Each of the municipal courts was supposed to have its own specialisation and agenda. The reform was supposed to take effect on 1 January 2023.

In September 2022, the former Minister of Justice, Mária Kolíková, under whose leadership the reform was prepared, resigned (as a result of the ongoing government crisis) and was replaced by the former chairman of the Slovak Bar Association, Vladimír Karas. Shortly after entering office, he announced

that the effectiveness of the reform would be postponed until 1 June 2023. The only real reason he gave for this was a lack of judges for the new administrative courts,²³ even though the creation of the administrative courts is only a part of the whole reform. The Minister declared that the ministry had previously failed to prepare the implementation of the judicial map and therefore it was under the crisis supervision of the Recovery and Resiliency Plan. However, he said that the future drawdown of payments should not be threatened by the postponement. The elimination of background checks for judges transferring to the new administrative courts also appears problematic.

Fairness and efficiency of the justice system

Length of proceedings

The Analytics Centre of the Ministry of Justice conducts a long-term month-to-month analysis of the length of cases. VIA IURIS does not conduct any kind of complex observation of this kind.²⁴

23 See: <https://domov.sme.sk/c/23029552/posunutim-ucinnosti-nedojde-podla-karasa-k-zmenam-vo-vecnych-otazkach-sudnej-mapy.html>

24 The web page of the Analytics Centre of the Ministry of Justice: <https://web.ac-mssr.sk/> Yearly overview for the 2020 has not been published yet, monthly analysis are accessible at <https://web.ac-mssr.sk/mesacny-obeh-veci-ks/> for the regional courts, <https://web.ac-mssr.sk/mesacny-obeh-veci-os/> for the district courts, <https://web.ac-mssr.sk/mesacny-obeh-veci-sts/> for the specialised criminal court, <https://web.ac-mssr.sk/mesacny-obeh-veci-or/> for the commercial register.

Quality and accessibility of court decisions

As regards the publicly accessible (web) database of court decisions, the complexity of the published decisions is not guaranteed and the interface is not user friendly, meaning that most legal professionals prefer to pay for access to commercial legal databases.

Other

Probably the biggest challenge to the law in 2022 in Slovakia was the questionable and unpredictable usage of an extraordinary legal remedy belonging exclusively to the Prosecutor General. According to Section 363 of Act No. 301/2005 Coll. the Criminal Procedure Code (hereinafter referred only as the “Criminal Procedure Code”), the Prosecutor General may revoke any valid decision in preliminary proceedings before the case reaches court.

Formerly, the institute was supposed to create the possibility for the Prosecutor General to annul any unlawful decisions made by investigators or prosecutors, or if the proceedings that

preceded it were violated to such a degree that it could influence the decision. Section 363(1) of the Criminal Procedure Code provides the Prosecutor General with too many powers to intervene in pre-trial proceedings. It also creates a space to potentially circumvent the prohibition of so-called negative instructions.²⁵ This results from the absence of a regulation which would specify which decisions, issued by prosecutors and police officers, of the Section 363 could be applied. Details of the annulment procedure of valid decisions in preliminary proceedings are regulated by the Prosecutor General himself through an order on the procedure of prosecutors in criminal proceedings on extraordinary remedies.²⁶ Therefore, the Prosecutor General is solely responsible for applying this extraordinary remedy, and for deciding in which cases to do so. The order in question contains a demonstrative list of decisions that can be applied under Section 363. The most problematic is an annulment of an indictment order, which was added to the list only at a later stage.²⁷ The Constitutional Court expressed its concerns about the application of this extraordinary remedy in connection to

25 Note: The application of this institute in preliminary proceedings is excluded in case of a valid decision issued by a judge for preliminary proceedings.

26 Order of the Attorney General on the procedure of prosecutors in criminal proceedings on extraordinary remedies (IV/1 Spr 661/22/1000) – available at: <https://www.genpro.gov.sk/legislativa/zbierka-sluzobnych-predpisov-generalneho-prokuratora-308f.html?a=download&id=1920>.

27 Order no. 3/2012 Order of the Prosecutor General of the Slovak Republic dated 29 February 2012, amending the order of the Prosecutor General of the Slovak Republic, Lt. no. 4/2006 of 31 January 2006 on the procedure of prosecutors in criminal proceedings on extraordinary remedies – available at: <https://www.genpro.gov.sk/legislativa/zbierka-sluzobnych-predpisov-generalneho-prokuratora-308f.html?r=2012>.

procedural decisions.^{28,29} Nevertheless, Section 363 of the Criminal Procedure Code was used in several criminal cases, with high public interest, including in the criminal proceedings involving the former Prime Minister Robert Fico and former Minister of the Interior Robert Kaliňák (both SMER-SD party) in November 2022 (the so-called Twilight case), the governor of the National Bank of Slovakia and ex-minister of finances Peter Kažimír (SMER-SD party) and the influencer Zuzana Plačková.

The main issue is that the current application of Section 363 is not transparent. The Prosecutor General, however, refuses to debate more transparent legislation, even after VIA IURIS, together with the Stop Corruption Foundation, submitted a petition with 24,780 signatures³⁰ and led several professional debates with other high legal

representatives.³¹ In 2021, he also refused to communicate with journalists on a number of occasions.³² Yet, rather than explaining his decisions, he recently published a statistic suggesting that the number of cases in which Section 363 had been applied was lower than in previous years, although this analysis lacked any qualitative evaluation of the cases in question. Paradoxically, Maroš Žilinka had the opposite attitude during the hearing for the post of General Prosecutor, during which he stated that the use of the Section 363 should be re-evaluated.³³

Despite the fact that in the government's 2021-2024³⁴ programme stated (translated from Slovak) that "*The Government of the Slovak Republic will consistently insist on observing the prohibition of negative instructions and, among other things, in this context will examine the narrowing of the legal regulation of § 363 of the*

28 Resolution of the Constitutional Court of the Slovak Republic, II. ÚS 494/2014 of 22 August 2014).

29 The decision was issued back then when Section 363 could be used only in case of procedural decision, however, the Constitutional Court cites the decision up until today.

30 Petition available at: <https://www.mojapeticia.sk/campaign/vyzva-na-upravu-ss363-trestneho-poriadku/f6df5411-913b-49cf-855c-34fa396be-e4c>

31 The audio-visual recording of the discussion available at: <https://www.facebook.com/events/1128733104716053>.

32 e.g., in September 2021 he allowed the entry of only selected media – available at: <https://www.aktuality.sk/clanok/bln9kyq/zilinku-sa-chcu-na-medialnom-vybore-pytat-na-selekciu-novinarov/> or answers the questions of only selected media – available at: <https://www.aktuality.sk/clanok/bln9kyq/zilinku-sa-chcu-na-medialnom-vybore-pytat-na-selekciu-novinarov/>.

33 Translated from Slovak language: "It is needed to deal with it, and it is also in the program statement of the government, the authorization of the general prosecutor to annul valid decisions in preliminary proceedings, since this seems as a problem for all of us, especially at the Special Prosecutor Office lately..." – video recording of Maroš Žilinka's hearing for the post of general prosecutor available at: <https://www.youtube.com/watch?v=dc4b-bu3nIbU>

34 Available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=494677>.

Criminal Code so that it corresponds to its original meaning”, none of the three legislative parliamentary initiatives passed to a second reading.³⁵ In addition, in September 2022, former minister Mária Kolíková submitted a recodification of Act No. 300/2005 Coll. The Criminal Code³⁶ and a recodification of the Criminal Procedure Code³⁷ (hereinafter referred to as the “September 2022 criminal law recodification”). The proposals were submitted shortly after she handed in her resignation³⁸ due to the Freedom and Solidarity party leaving the government coalition. The Criminal Procedure Code also contained the changes on Section 363, and the proposals can be seen as a positive change.³⁹ A relatively long period of time was granted for commenting on the regulations in the inter-ministerial comment procedure (until the end of November 2022). However, in December, a vote of no-confidence was passed against the

government, which is a lame duck, meaning that legislative progress is unlikely.

In 2022, the miscommunications between the Prosecutor General and the Special Prosecutor continued via traditional media and social media.

In September 2022, the Russian embassy spread false information regarding the alleged desecration of graves in Lodomirová, near Svidník, by the mayor of the municipality. Even after this was debunked by the police and historians, the Prosecutor General insisted that the case be investigated and foreign interests be protected.⁴⁰ However, the prosecutor of the Svidník District annulled the decision of the police investigator, arguing that no crime had been committed at the cemetery and ordered the investigations to proceed.

35 For information on the application of Section 363 of Act No. 301/2005 Coll. the Criminal Procedure Code. See our legal analysis from 2019: <https://viaiuris.sk/wp-content/uploads/2021/09/363-VIA-IURIS.pdf>.

36 Legislative procedure no.: LP/2022/511.

37 Legislative procedure no.: LP/2022/513

38 See: <https://dennikn.sk/minuta/2997102/>.

39 The illegality of the decision would need to reach a qualified level – infringement of the law in essential circumstances or existence of essential defects in the procedure preceding that decision. Moreover, a Prosecutor General would not be able to annul an order of indictment already decided by the court. The proposal also reduced the time period for filing a motion from three months to 10 working days since the decision became final and narrowed the range of persons entitled to file a motion. In addition, those entitled persons would be entitled to file it only after they exercised all the possible remedies or if the superior authority has reversed the first instance decision and ruled against them without their presence.

40 For more information see the official statement of the Police of the Slovak Republic on its [Facebook page](#).

Shortly before the start of the Russia-Ukraine war, Maroš Žilinka also attended the celebrations of the anniversary of the Russian Prosecutor General's Office⁴¹⁴² where he signed the treaty on the Cooperation program between the General Prosecutor's Office of the Slovak Republic and the General Prosecutor's Office of the Russian Federation for 2022.⁴³⁴⁴

After the Russian invasion of Ukraine in February, when confronted about this, he only declared that the agreement would not be implemented⁴⁵ (even though Russia listed Slovakia as an "unfriendly country" on 8 March 2022⁴⁶). Similarly, questions were raised regarding Žilinka's communication on Facebook, as it was unclear whether the profile used was the official page of the Prosecutor General or his private page, as he had posted private pictures and statements unrelated

to his role.⁴⁷ Regardless,⁴⁸ towards the end of December 2022 he published an order according to which any further communication by the Prosecutor's Office through social networks would be subject to approval by the General Prosecutor's Office.

Anti-corruption framework –

Key recommendations

- Conducting a transparent investigation into and closing major Slovak corruption cases.

41 For more information, see e. g.: <https://domov.sme.sk/c/22815369/zilinka-sa-chysta-na-oslavy-do-ruska-seliga-ho-vyzyva-aby-tam-nesiel.html>.

42 Followed by several public messages between the Prosecutor General and other public figures, e. g. former minister of foreign affairs – the statement available at: <https://www.topky.sk/cl/10/2247411/Korcok-o-Zilinkovej-ceste-do-Ruska-nevedel--Dam-mu-cislo--nech-sa-poradi--TVR-DA-reakcia-sefa-GP>, The reaction of Maroš Žilinka available at: <https://www.facebook.com/104581384898700/photos/a.110190917671080/323832962973540/?type=3>.

43 For more information see: <https://domov.sme.sk/c/22820803/zilinka-v-moskve-podpisal-program-spoluprace-s-generalnou-prokuraturou-ruska.html>.

44 Note, after the start of the Russian invasion on Ukraine territory, Žilinka announced that the General Prosecutor's Office of the Slovak Republic will not fulfil the program in question – see Žilinka's statement on [his Facebook profile](#).

45 See [Maroš Žilinka's statement](#).

46 See: <https://www.euractiv.com/section/global-europe/news/russia-adopts-list-of-enemy-countries-to-which-it-will-pay-its-debts-in-rubles/>.

47 His Facebook profile is available at: <https://www.facebook.com/profile.php?id=100064021966129>.

48 Order of the Prosecutor General of the Slovak Republic, No. 15/2022 of 23 December 2022 on the method of informing the public about the activities of the prosecutor's office through mass media, website and social networks (I/1 Spr 62/22/1000).

- Improving the transparency of public procurement procedures and encouraging active public participation.
- Making use of soft-law mechanisms to prevent corruption and building a corruption free transparent culture, even at the highest level. Ensuring more transparent selection procedures for the appointment of high state officials.

Framework for preventing corruption

General transparency in public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

In November 2022, the amendment to Act No. 211 / 2000 Coll. on Free Access to Information, was approved. However, the process was lengthy and chaotic (it started in August 2021 and in a wider sense in 2017). During this time, VIA IURIS took part in several working groups. The only result of the lengthy negotiations from winter 2021-2022 was the approval of the amendments on the extent of the implementation of the Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast). On 6 April 2022, the European Commission issued a reasoned opinion for not implementing the stated EU legislation (INFR(2021)0512). In response, the Ministry

of Justice stated that the amendment would be approved only in the scope of the Directive, in a fast-track legislative procedure, not giving any extra time for negotiations on the rest of the proposal (even though the interdepartmental comment procedure had been finished and the proposal was heading to the National Council). In August 2022, the discussions about the rest of the proposal were renewed. VIA IURIS, Transparency International Slovakia and Fair Play Alliance submitted comments in the interdepartmental comment procedure. At the same time, two MPs from the government coalition submitted their own amendment proposal, which was later approved by the National Council.

Even though the public was able to submit its comments, the proceedings differed from the standard legislative procedure, when comments to the government proposals are officially evaluated by the state authorities.

The approved amendments brought some long-awaited improvements, but also some set-backs. Among the positive contributions are:

- An obligation for majority state-owned entities to provide information (the former legislation imposed the obligation to provide information only to legal entities established by public entities, regardless of their ownership share).
- An explicit establishment of the right to further disseminate information.
- A more precise definition of information.

- Where a reason to restrict access to information exists, the applicant must be provided with all the information, to which the restriction does not apply.
- A more precise regulation of remedies.
- Broader obligation to publish documents accompanying the obligatory published contracts.
- Obligatory publication of annexes and subcontracts following the obligatory published contracts.
- Publication of obligatory published contracts for a longer period of time.

One set-back is the restriction of access to information in the case of possible damage to economic competitiveness, or exemption from further dissemination of information in the event that it contains the personal data of a third party. However, whether the law is enforceable in practice remains a key problem, with long-term lawsuits often resulting in such cases.

Rules on preventing conflicts of interests in the public sector

The legislation on conflict of interests in Slovakia is minimal and is complemented by soft law in many cases. The only legal sources are Constitutional Act No. 357/2004

Coll. on the Protection of Public Interest in the Performance of the Functions of Public Officials and Act No. 55/2017 Coll. on Civil Service and on amendments to certain laws. By law, they are complemented by Decree of the Government Office of the Slovak Republic No. 400/2019 Coll. of 21 November 2019, issuing the Civil Servant's Code of Ethics and the Commentary on the Civil Servant's Code of Ethics.⁴⁹

In March 2022, following a long-standing criticism and an open letter from NGOs criticising the lack of transparency in the selection procedures for high level state officials, the Prime Minister Eduard Heger created a working group consisting of state and NGO representatives. As part of this working group, VIA IURIS submitted an analysis and proposals to the Government Office in August 2022, although since then the matter has not moved forward.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

A draft amendment to Act No. 54/2019 Coll. on the protection of whistle-blowers notifying activities undermining the functioning of society and the amendment of certain other acts has been under legislative review for more than a year. The draft amendment was mainly an implementation of Directive (EU) 2019/1937 of the European Parliament and

49 Available at: <https://radaprestatnuszbu.vlada.gov.sk/eticky-kodex-statneho-zamestnanca-publikovany-v-zbi-erke-zakonov/>.

of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, but it was also supposed to clarify and supplement some provisions in view of the issues arising from the practical application of the law. The proposal was submitted to the interdepartmental comment procedure by the Government Office of the Slovak Republic in November 2021⁵⁰ and approved by the government on 25 May.⁵¹ However, it has not yet reached the first reading at the National Council.⁵²

Any other relevant measures to prevent corruption in the public and private sector

In the 2021 Rule of Law Report, the European Commission recommended introducing proposals to strengthen the legislation on asset declarations. In 2021, a coalition MP and the Head of the Constitutional Law Committee, Milan Vetrák, set up a working group on this matter, inviting several civil society representatives. In September 2021, the working group prepared a new detailed form, which was supposed to be discussed at the government session, although there are as yet no developments on the issue.

As regards the September 2022 Criminal law recodification, the changes that were

introduced were rather minimal. They included introducing the offence of “passive corruption” (requesting bribes) and a more precise definition of electoral corruption (Section 336a of the Criminal Code), including an increase in the penalties for this offence.

Two amendments to the Act on Public Procurement were approved in 2022. Act No. 64/2022 Coll.⁵³ introduced an exemption from the obligation of a public tender in case of feed purchase for breeding and rehabilitation stations and 50% forfeiture of the bail if the party’s objections are upheld only partly. Act No. 86/2022 Z. z. Coll.⁵⁴ introduced a further restriction on participation in public procurement from third countries, which was set out in a Ministry regulation (in connection to the Ukraine invasion).

Investigation and prosecution of corruption

The effectiveness of investigation and the application of sanctions for corruption (including for legal persons and high level corruption cases) and their transparency

A proposal to amend Act No. 300/2005 Coll. the Criminal Code⁵⁵ submitted by MP Tomáš Taraba (a former MP of the extremist ĽSNS

50 Legislative procedure no. LP/2021/637. Available at: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/637>

51 <https://lrv.rokovania.sk/200962022-/?csrt=228523497987649315>.

52 <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9003>.

53 Act No. 64/2022 Coll. amending Act no. 343/2015 Coll. on Public Procurement

54 Act No. 86/2022 Z. z. Coll. Act amending Act No. 343/2015 Coll. on Public Procurement

55 See: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8933>.

party) is currently before parliament. The amendment proposes a significant reduction in prison sentences for economic criminality, narrows the scope for imposing financial penalties, and shortens the statute of limitations for the most serious crimes. The proposal has seen support from the current Head of Government Boris Kollár, who brought discussions about the proposal up during Coalition Council sessions.⁵⁶

Media environment and freedom of expression and of information –

Key recommendations

- To open discussion about legal protection of journalists, providing safeguards not only for their physical safety but also the protection of their honour and dignity.
- To ensure effective and fully working mechanisms to prevent the dissemination of false content or hate speech on social networks.

- To prevent Radio and Television of Slovakia (RTVS) becoming fully dependent on the state budget without proper safeguards ensuring editorial independence.

Media and telecommunications authorities and bodies

Independence and enforcement powers of media and telecommunication authorities and bodies

In June 2022, new Media Acts⁵⁷ were approved, which came into effect in August. This led to the replacement of the Council for Broadcasting and Retransmission by the Council for Media Services. The structure of the bodies de facto remained the same (until November 2022), but the scope of supervision and the portfolio of competences widened. In addition to controlling television and radio broadcasters, the new regulatory authority is responsible for supervising the activities of both video sharing platforms and on-demand audiovisual providers. In cases defined by law, such as cases of child pornography, extremist material or incitement to terrorist offences, the

56 Interview with Boris Kollár about the topic available at: https://dennikn.sk/3108752/boris-kollar-mame-drakonicke-tresty-19-rokov-je-vela-pre-kohokolvek-aj-pre-kocnera/?ref=inm&_ga=2.193443886.2058047771.1673105954-464326563.1633617064.

57 Act No. 264/2022 Coll. on Media Services and on Amendments to Certain Laws (Act on Media Services) and Act No. 265/2022 Coll. on Publishers of Publications and on the Register in the Field of Media and Audiovisual and on Amendments to Certain Laws (Publications Act) – replacing Act No. 167/2008 Coll. on periodical press and agency reporting and on the amendment of and amendments to certain acts (Press Act) and Act No. 212/1997 Coll. on compulsory copies of periodical publications, non-periodical publications and reproductions of audiovisual works.

Council will be able to apply mechanisms to prevent the dissemination of such content on platforms.

The authority will also have the competency to assess the property connection and personal connection of the content service provider in order to examine whether there is an obvious risk of misusing the media service for illegal purposes.

Existence and functions of media councils or other co- and self-regulatory bodies

Questions were raised after the departure of Ľuboš Kuklíš from the position of director of the Council for Media Services, after 16 years as director of the media regulator. The reason for this departure was allegedly divergent opinions between the former director and chairwoman and some members of the Council.

Pluralism and concentration

Levels of market concentration

In 2022 there were signs of greater regional market integration in the commercial TV sector. The TV channel Markíza launched a joint streaming service with Czech TV Nova. Both belong to the Czech-owned Central European Media Enterprises. The platform, called Voyo, had 300,000 subscribers by January 2022. In the same month, local multimillionaire Ivan Kmotřík sold rolling news channel TA3 to the

owner of the Czech news website Parlamentní listy (Parliament papers).

In 2021, the financial group Penta sold its stake in Petit Press, which publishes the daily newspaper and leading online site SME. Penta's entry had provoked a staff walk-out in 2014, when the former editor-in-chief and around 30 journalists left to found Denník N. SME marked Penta's departure with a front-page displaying the hashtag #neustupiliSME (WE stood our ground). Penta, whose co-owner Jaroslav Haščák was arrested in December 2020 on suspicion of political corruption, before the charges were dropped last year, remains a dominant force in Slovak publishing through its subsidiary News and Media Holding, which owns Trend, Plus 7 dní, and Plus 1 Deň.⁵⁸

Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)

The new Media Acts have, in some ways, changed the regulator's decision-making: the nine-member plenary board will from now on decide only on the allocation of radio frequencies, on major property and personnel changes of broadcasters and on some appeals. Complaints on the content of broadcasting will be considered by three-member panels set up by the Council. Some decisions of an administrative and technical nature, such as authorisations of programme services and their changes, will be transferred to the

58 <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/slovakia>

council's office. The details should be specified in the new statute and rules of procedure of the council.

Transparency of media ownership

Rules governing transparency of media ownership and public availability of media ownership information, and their application

The new Media Acts have increased media transparency because all media outlets now have to be registered in the Register of Public Sector Partners (RPSP) regardless of whether they trade with public entities. This allows the public to find out who is really behind specific media outlets. Outlets may receive a warning or a fine of up to EUR 20,000 for non-compliance.

At the same time, editorial offices are obliged to publish a list of all investors and donors who provided contributions of more than EUR 2,000 during the year or else risk a fine of up to EUR 100,000.

The Ministry of Culture is also supposed to create and administer a new media and audio-visual register within 30 months of the adoption of the Acts. The aim is to create a publicly accessible data source of information about providers, services and products in the media and audio-visual field. This register should contain data on publishers of periodical publications, web portal operators, retransmission operators and distributors of audio-visual works. Moreover, the Ministry will have the right to remove any outlet (both offline and

online) from the register if it is financed by someone who appears on EU or UN sanctions lists.

The new Media Acts also revised the “right of reply” for politicians which was introduced by the previous government. What is now called the “right of a statement” will allow not only responses to statements of fact published in media but also to subjective judgements stemming from those. In the original draft media laws, it was only possible to deny, clarify or explain statements of fact. The right of reply will also now apply to news websites.

On the other hand, the new Media Acts have strengthened the protection of minors, improved access to audio-visual content for people with disabilities by increasing quotas for multimodal access, and now specifically promotes broadcasting for national minorities and ethnic groups in public service broadcasting.

The new legislation also creates more room for media self-regulation which means that the regulator will have the competence to issue implementing regulations in particular areas or content service. The Council will supervise the delegated competencies and if the self-regulatory body would not deal with the disputed content, the power of council to act remains. The Council will also keep a register of self-regulatory bodies and assess their codes of conduct.

Public service media

Independence of public service media from governmental interference

Currently, the biggest threat in this area seems to be the cancellation of the concession fees en masse, which was approved by the National Council in December 2022. Concession fees were used to finance RTVS and were paid by both households and employers that employ at least three people. Based on the new legislation, the main income of RTVS would be a claimable contribution from the state budget. However, the legislative Act that included this cancellation was vetoed by the president towards the end of the year. In order to break the presidential veto, it will now be necessary to have second and third readings of the bill and have it approved by a supermajority of MPs.

The fact that the director and members of a supervisory board of RTVS are elected by the National Council based on political agreements also remains problematic. If the cancellation of the concession fees does eventually pass, politicians will have even more influence over the funding of the public service media.

Editorial standards (including diversity and non-discrimination)

In 2022, the tendentious supply of information to the public about current events has led to the dismissal of several leading functionaries of RTVS news. On 22 February, RTVS reported on the tensions in Ukraine in “News and commentaries”, in which

pro-Russian statements made by the former Head of Government and Minister of Justice, Ján Čarnogurský, were allowed to air unopposed and without counter-statements or a factual basis. After an immediate wave of criticism, on 24 February the former director of the news and journalism section of RTVS, Vahram Chuguryan, resigned. Subsequently, on 24 February, the day the Russian invasion began, RTVS did not immediately report on the attacks. The morning news was broadcast without mentioning the attacks and RTVS proceeded with its regular TV program, with the first non-scheduled news being broadcast only at 10 a.m.

However, on 28 February RTVS launched a temporary 24-hour news service on the war, which has been acting as a rolling news channel ever since.

A similar situation also occurred on 18 November when the director of the news section of RTVS and three other functionaries had to leave after RTVS broadcast an hour-long speech by the former Prime Minister Robert Fico, which was delivered at the party congress Smer-SD. The speech was broadcast on the Struggle for Freedom and Democracy Day (17 November), without adding any context or reaction from experts or any opposing opinions.

Online media

Impact on the media of online content regulation rules (including content removal obligations, liability rules)

One of the key changes of the new Media Acts is that the new legislation will now apply also to the online environment; namely electronic periodical publications, web portals and video sharing platforms. However, the latter raises uncertainties regarding the added condition that the platforms have to “maintain a stable and effective connection with the economy of the Slovak Republic”. As the scope of the Acts widened to online areas, it also therefore broadened the right to protect the confidentiality of sources also to journalists from online media (in the past this was guaranteed only for broadcast and print media journalists).

Public trust in media

According to the 2022 Globsec Trends,⁵⁹ only 37% of respondents trust the standard opinion shaping media in Slovakia. On the other hand 61% responded that they distrust the standard media. GLOBSEC also stated that in Slovakia, the phenomenon of an attempt to control the media and the presence of attacks against journalists even intensified during the COVID pandemic.

According to another study conducted by Reuters Institute for the Study of Journalism in June 2022,⁶⁰ only 26% of Slovaks trust the standard opinion shaping media in Slovakia, which was the lowest figure of the 46 countries analysed. Only 16% of respondents think that Slovak media is free of political influence and only 15% think that it is free of business influence. Only 14% are willing to pay for online news, even though internet penetration in Slovakia is as high as 85%. The number of people using Slovak news providers declined, as did brand trust scores (with the exception of local and regional newspapers, trust in which held steady). On the other hand, the use of social media as the main source of news increased (Facebook and Youtube being dominant, with Instagram rivalling them in the 18-24 age group). 35% of respondents stated that they share news via social media, messaging or email.

Safety and protection of journalists and other media activists

According to the World Press Freedom Index compiled by Reporters Without Borders, which measures the press freedom of journalists and media, in 2022 Slovakia was ranked 27th out of 180 countries, scoring 78.37 points (marked as satisfactory). There was no remarkable change in comparison to 2021 in terms of

59 Available at: <https://www.globsec.org/sites/default/files/2022-05/GLOBSEC-Trends-2022.pdf>.

60 Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/slovakia>.

points (76.98), although Slovakia improved on its ranking of 35 in 2021).⁶¹

Frequency of verbal and physical attacks

Igor Matovič, a former prime minister and finance minister, often harshly attacks journalists, associating them with so-called progressive fascism⁶² and corruption.⁶³ In September 2022 the editors-in-chief of Slovak media outlets⁶⁴ criticised this, as did a joint statement from several international journalists' organisations (including Reporters Without Borders) from October 2022.⁶⁵ Independent media is also commonly associated with disinformation about George Soros.⁶⁶

Rules and practices guaranteeing the independence and safety of journalists

In terms of establishing legislative and other safeguards to improve the physical safety and working environment of journalists, as recommended by the European Commission in the

previous Rule of Law Report, no changes, initiatives, or any activities were conducted in this matter. The issue has not been discussed at all. Moreover, verbal insults by some politicians aimed towards journalists have continued.

Concerning the criminal offence of defamation based on Section 373 of Criminal Code,⁶⁷ the proposal for a legislative amendment was part of the September 2022 Criminal law recodification, which proposed an offence of deliberate intent to cause actual damage to reputation, as a condition for assessing the conduct as criminal. At the same time, a non-custodial sentence was proposed for this offence.

Freedom of expression and of information

Abuse of criminalisation of speech

In September, the Ministry of Justice, as a part of the proposal for the recodification of

61 For more information about Slovakia's ranking, see: <https://rsf.org/en/country/slovakia>, for methodology of World Press Freedom Index: https://rsf.org/en/index-methodologie-2022?year=2022&data_type=general

62 During a parliamentary session on 28 September, he said (translated from the Slovak language): "*What has been going on here for two and a half years in the media is a form of modern fascism,*" and thus described himself as a 21st-century Jew. See: <https://dennikn.sk/minuta/3030138>.

63 See the interview confronting Matovič regarding statement (translated from the Slovak language): "*You can hire a journalist for five hundred for a month today, who will write well about you,*" - Available at: https://www.youtube.com/watch?v=jaDEG_CCGbE.

64 Available at: <https://komentare.sme.sk/c/23021637/novinari-odmietaju-matovicove-utoky.html>.

65 Available at: <https://rsf.org/en/slovakia-deputy-pm-s-attacks-undermined-government-s-broader-eforts-strengthen-press-freedom>.

66 See: <https://dennikn.sk/minuta/2834909/>.

67 Legislation procedure no. LP/2022/511.

the Criminal Code. The response of professionals and the general public to the proposal was quite varied, even though the second draft proposal outlined stricter conditions for criminalising disinformation. Strong criticism eventually resulted in the Ministry cutting out the draft offence in question from the whole draft amendment, as it was already a few days into the inter-ministerial comment procedure.

Censorship and self-censorship, including online

Soon after the outbreak of the war in Ukraine, Slovakia amended its cybersecurity law,⁶⁸ empowering the National Security Office (hereinafter referred to as “NBÚ”) to block websites publishing harmful content. Despite the operational efficiency of the legislation, the NBÚ’s ability to block disinformation websites was problematic, as it did not have sufficiently clear rules and processes for deciding whether to block them. In addition, definitions of some key terms were lacking. Moreover, after the sites were blocked, the reasons were unknown or explained, even to the operators of the affected sites. Shortly after the amendment was approved, the NBÚ clarified the rules through a decree, but at the time the first website had already been blocked, and the decree was only to be submitted to the interdepartmental comment procedure. The amendment was supposed to be only temporary, until 30 June 2022, with the blocking of websites being

limited to this date. On 15 June 2022, the effect of the amendment was extended by the parliament until 30 September (at that point, four well-known websites had been blocked). Yet, even in June 2022, the blocking rules under which the NBÚ proceeded had not been published, even though the March amendment to the law imposed such an obligation to the NBÚ.

In November 2022, the government approved new rules, according to which the NBÚ could only block content that could threaten the security, foreign policy or economic interests of Slovakia and which constitutes a hybrid threat. Moreover, NBÚ would be able to block not only websites, but also accounts on social networks or communication platforms. The Bureau would, on the other hand, be able to act on only the basis of a “reasoned proposal” from the state’s security forces, e. g. the police, the Slovak Information Service or military intelligence. Blocking would require the approval of the Supreme Administrative Court of the Slovak republic, which would have to make a decision within 15 days and blocking could last a maximum of nine months. The NBÚ would publish all blocking decisions on its website. The proposal is now to be approved by the National Council,⁶⁹ with the proposed effectiveness from 1 April 2023.

68 Act No. 69/2018 Coll. on Cybersecurity

69 Proposal available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=8&CPT=1289>.

Checks and balances –

Key recommendations

- To ensure full compliance with the rules of the legislative process in each legislative procedure (minimising fast-track legislative procedures, circumvention of the standard legislative process with parliamentary motions and parliamentary amendments, avoiding indirect amendments).
- To ensure the precision of the constitutional process and the protection of the constitution amending procedure.
- To ensure full public participation in the legislative processes.
- To limit the use of expedited legislative procedures only to situations stated in the Rules of Procedure of the National Council.

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of the judiciary on judicial reforms), and trans-

parency and quality of the the legislative process

The public has a legal right to participate in legislative proceedings on government draft proposals. When draft laws are introduced by members of parliament, there are no public consultations, unless decided otherwise and recently, the government has tended to submit draft laws through individual MPs rather than as government draft bills. Although this may be perceived as circumventing the rules of legislative procedures and public participation, the procedure in question is not unlawful.

Rules and use of fast-track procedures and emergency procedures

During its analytical work⁷⁰ VIA IURIS found that among all functional governments, the last one (in office since 2020) used fact-track legislative procedures the most frequently. By October 2022, the current government had adopted a total of 403 laws, 97 (24.07%) of which were adopted through fast-track procedures. We acknowledge that this high number is partly a consequence of the pandemic; in 2020, almost half (47.58%) of the adopted laws (59 out of 124) were approved in expedited procedures. This means the current executive circumvented the standard legislative procedure up to five times more often than during the two previous governmental terms. Between 2012 and 2016, 5.27% of all laws were adopted in expedited legislative

70 [Press release, VIA IURIS, 11 November 2022.](#)

71 [Data from November 2022.](#)

procedures, and between 2016 and 2020 this figure was 5.80%.

The rules of expedited legislative procedures are set down in law (Section 89 of Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic), which explains that expedited legislative procedures should be used only in extraordinary circumstances and only at the request of the government or MPs.

However, it seems that politicians have managed to claim that all kinds of legislative proposals are taking place under extraordinary circumstances. The most serious violation of the rules on legislative procedure in 2022 was a series of draft laws known as the “anti-inflation package”, which was submitted by the Minister of Finance. Even though the laws in question would affect the state budget by more than a billion euros, no public debate on the proposals was conducted. Experts, state organisations and local governments were deprived of a space to comment on the proposal in any way. It took only three days from the submission of the proposal in parliament to the law being passed. This legislation was later put before the Constitutional Court of the Slovak Republic, which in December 2022 decided unequivocally that a violation of the rules of legislative procedure may be a reason to deem a law unconstitutional.⁷²

Indirect amendments also remain a long-term problem. These are also known as legislative “stickers” – a submission of an amendment proposal to the draft law, which adds an amendment to a completely different law, unrelated to the legislative draft. Even though this technique is forbidden by law,⁷³ it is quite common even among MPs belonging to the government coalition (even though the parties of the government coalition frequently criticised this technique and the misuse of the expedited legislative procedure when they were in opposition).

The regular submission of legislative proposals by MPs belonging to the government coalition can also be perceived as a circumvention of the rules of the legislative process. If a proposal is submitted by the government, the proposal is subject to an interdepartmental comment procedure, during which all state institutions (including expert state bodies such as the Value for Money Department (UHP), etc.), as well as the public, may submit their comments, reservations and suggestions for improving the proposal. However, if the proposal is submitted by an MP, the proposal proceeds directly to a first reading in parliament, without the public being able to comment on it. It is very rare for MPs to submit proposals to the interdepartmental commenting procedure. A number of very important laws, including some that had a significant effect on the state budget, were submitted by coalition MPs and

72 The [press release](#) of the Constitutional Court of the Slovak Republic from 13 December 2022.

73 Section 94 (3) of the Act. No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic as amended.

some of them were even approved in an accelerated procedure. At the same time, during the second reading MPs often approve amending proposals which completely change the former draft law (this may also happen in the case of government proposals, after having gone through the whole interdepartmental comment procedure). However, even though MPs and the government frequently violate the rules of legislative procedure, no legal sanctions are imposed, only the possibility of a presidential veto and the possibility of a declaration of unconstitutionality by the Constitutional Court. This happened for just the first time in 2022, and the Constitutional Court itself declared that the declaration of unconstitutionality of an act, in case of violation of legislative procedure rules, is permissible only if the violation reaches an unacceptable level. All of the mentioned issues as well the constitutional process, including the number of proposals to amend the Constitution submitted by MPs, have increased exponentially in the past two election periods (1992-2002: 16 proposals; 2003-2012: 42 proposals; 2013-2022: 116 proposals; September 1992 – September 2022: 174 proposals overall; note: a proposal to amend the Constitution may be submitted by a lone MP) and despite the fact that only a small proportion of these proposals have been approved, several provisions of an unconstitutional character have made their way into the Constitution. Although there is no unanimous opinion among legal professionals about the

appropriate frequency of amendments to the Constitution, it is a fact that since the approval of the Constitution on 1 September 1993, it has been directly amended 20 times.

In March 2022, VIA IURIS held a conference on the rules for amending the Constitution, which was attended by judicial and academy representatives. The conference agreed on the following main recommendations:

- To exclude the possibility of expedited legislative procedure when adopting changes to the Constitution.
- To prohibit the possibility of shortening deadlines in between the readings in parliament when constitutional changes are being adopted.
- To allow professionals and the general public to comment on proposals for changes to the Constitution, even if the proposal comes from an MP.
- To make the constitutional process part of the Constitution itself.⁷⁴

Independent authorities

For more than seven months, the post of Ombudsman (Public Defender of Rights) was vacant due to repeated failures to reach an agreement in parliament (the ombudsman

⁷⁴ For more information, see our analysis on rules and procedure of constitutional amendments in Slovakia and the output of the March conference - available at: <https://viaiuris.sk/pravny-stat/pravidla-a-proces-zmeny-ustavy-na-slovensku-zbornik-z-konferencie/>

is elected by the National Council). During this period, none of the submissions could be closed, as all of them are being signed by the Public Defender of Rights. The increasing number of pending submissions was repeatedly pointed out both by the office's employees and by non-governmental organisations. During this period, approximately 600 proposals were collected and were awaiting final assessment.⁷⁵ The term of office of the previous ombudswoman Mária Patakyová ended on 29 March 2022, the new ombudsman Róbert Dobrovodský was elected on 9 November 2022.

Enabling framework for civil society –

Key recommendations

- Strengthening the structural funding of the civil society and lowering the administrative burden in connection with funding schemes.
- Enabling full public participation in public processes, perceiving civil society as an equal partner.
- Providing more protection against hate speech from politicians.

Regulatory framework

Financing framework, including tax regulations

The lack of institutional financing leads to only small state grants for short-term projects, with limited availability. Most of the time these also come hand in hand with a heavy administrative burden. Civil society is not being recognized as a relevant partner to the current government, even after supplementing governmental activities during the spring migration crisis at the start of the war in Ukraine.

Rules on lobbying

Despite the fact that information about the initiation of the first phase of the legislative procedure on the draft law on lobbying was published back in November 2021,⁷⁶ no comprehensive material has been published since (the estimated date for the start of the inter-ministerial comment procedure was scheduled for January 2022). The regulation on lobbying was pencilled in as a legislative task for the government for the June-December 2021 period.

Travel restrictions / visa bans

On 6 April 2022, the decree of the Public Health Authority of the Slovak Republic regulating the border regime was repealed. This means the obligations to register when

⁷⁵ See: <https://vop.gov.sk/robert-dobrovodsky-zlozil-slub-a-ujal-sa-funkcie-ombudsmana/>.

⁷⁶ Available at: <https://www.slov-lex.sk/legislativne-procesy/SK/PI/2021/264>.

entering the territory of Slovakia and mandatory quarantine for unvaccinated persons were abolished. However, during September 2022, the Czech Republic and Austria renewed border checks at their borders with Slovakia due to an increase in illegal migration.

Slovakia has not changed its visa policy in relation to Russians fleeing military mobilisation (Slovak legal orders do not recognise humanitarian visas). Each case is to be assessed individually, as it was before. However, the processing of visa applications in Russia has become lengthier after Russia decided to reduce the number of staff at its Slovak embassies.

Unsafe environment

Access to and participation in decision-making processes, including rules and practices on civil dialogue, rules on access to and participation in consultations and decision-making

Even though the public can participate in legislative procedures initiated by the government, in many cases this is treated as purely a formality to fulfil a legal requirement. For example, the public can submit a collective comment on a bill (with more than 500 signatures) that is formally

discussed, although such comments are not actually taken into account. Similarly, the public is involved in the processes within the Recovery Plan as a part of some bodies or councils, but play only an advisory role and lack any executive powers. In general, the current government does not perceive the public as a relevant or equal partner.

Public participation in processes, as such, was also threatened by the new legislation on construction and EIA introduced this year:

The government's first draft of the new Construction Acts was introduced in 2021. Due to a large number of comments and public pressure, it was withdrawn and resubmitted in 2022. Even in the new draft, there were still broad restrictions on public participation in siting and construction proceedings (albeit to a lesser extent than in the original proposal). During the legislative procedure, public comments were taken into account to some extent. In both proposals, we submitted the collective comments on the bill (with 11,664 signatures in 2021⁷⁷ and 5,633 signatures in 2022⁷⁸). However, the wording approved in April 2022⁷⁹ included a draft amendment significantly limiting public participation. This was submitted by MPs from the government coalition.⁸⁰ If the proposal were to be approved, a unilateral decision by

77 <https://www.mojapeticia.sk/campaign/hromadna-pripomienka-k-navrhom-zakonov-v-oblasti-uzemneho-planovania-a-vystavby/ed0ec26b-cb5a-4940-8cb6-599f8109a648>.

78 <https://www.mojapeticia.sk/campaign/hromadna-pripomienka-k-navrhom-zakonov-o-uzemnom-planovani-a-vystavbe/26f67472-d9ef-4678-b2ca-d5e1e4b19dc2>.

79 Act No. 200/2022 Coll. the Spatial Planning and Act No. 201/2022 Coll. the Construction Act.

80 Proposal by members of the National Council of the Slovak Republic Miloš Svrček, Jozef Lukáč and Petra Hajšelova to issue a law amending and supplementing Act No. 50/1976 Coll. on spatial planning and building

the municipality would be sufficient to permit construction (the draft amendment is currently in the first reading of the parliament). In addition to the limitation of public participation, the proposal has several other shortcomings: To issue a territorial decision, it would be sufficient if the municipality confirms that the planned construction is in accordance with a territorial plan of the municipality. However, approximately half of all municipalities do not have an approved territorial plan. Moreover, a unilateral territorial decision of the municipality would be sufficient for the confirmation of a land expropriation. Last but not least, a concentration of decision-making in municipal authorities would also lead to increased corruption.

Similar issues occurred in relation to the draft amendment to Act No. 24/2006 Coll. on environmental impact assessment (the EIA Act)⁸¹ which was also submitted by coalition MPs. In the second reading in the National Council, through the MPs' amendments, the previous wording of the proposal was completely left out and provisions were submitted into the draft bill that had been the subject of an earlier parliamentary proposal that eventually had to be withdrawn due to sharp public criticism (the former proposal limited the rights of a public in favour of developers, contradicted both the EIA Directive and the Aarhus Convention, limited submissions of the expert state bodies during the

EIA process, etc.). The approved act was finally vetoed by the president in December 2022, who described the process of adopting the amendment as unclear and chaotic, citing limits on professional discussion and that the approved law had nothing in common with the draft that had originally been submitted. He also mentioned that important stages of the legislative process had been completely bypassed.⁸² The draft law must now be discussed again and approved by a majority of all deputies.

Access to justice, including rules on legal standing, capacity to represent collective interests in court, and access to legal aid

The public has legal rights in only a fraction of proceedings in the Slovak legal system. An example of this is that it is possible for the public to participate in administrative proceedings in environmental matters, according to Section 42 of Act No. 162/2015 Coll. of the Administrative Court Proceedings Code (implementing the obligations arising from Article 9 of the Aarhus Convention). In a formalised civil society (e. g. as a civil association) members of the public should have full legal standing.

Attacks and harassment

In January 2022, former prime minister and minister of finances, Igor Matovič accused NGOs of

regulations (Building Act) as amended and which amends Act No. 282/2015 Coll. on the expropriation of land and buildings and on the forced limitation of the ownership right to them and on the amendment of certain laws. Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8913>.

81 Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9040>.

82 The statement of the President of the Slovak Republic available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=522927>.

stealing hundreds of millions of euros intended for work with the Roma community.⁸³ NGOs are also commonly victims of disinformation campaigns and are associated with George Soros. For example, former prime minister Robert Fico accused NGOs of taking advantage of the murder of the journalist Ján Kuciak.⁸⁴

Moreover, the key role of NGOs in the Ukraine crisis (both in Ukraine and at the SK-UA borders and Slovak territory overall) has for a long time been widely overlooked. Everyone mentioned the work of volunteers but no one talked about NGOs.

Disregard of human rights obligations and other systemic issues affecting the rule of law framework ⬇️

Key recommendations

- Regulation of at least elementary rights of the LGBTI+ minority, providing higher level of safety:⁸⁵

- Adding sexual orientation and gender identity to the grounds of hatred in Section 423 and gender identity in Sections 140 and 424 of the Criminal Code.

- Strengthening the specialisation, staff capacity and technical equipment of law enforcement agencies dedicated to countering extremism to enable them to effectively monitor, detect and clarify extremist crimes, including those motivated by hatred of LGBTI+ people in the online environment.

- Improving exchange of information between the different components of the Slovak Republic security system so that potential indicators of radicalisation of individuals in the online environment can be identified in a timely manner and adequate measures can be taken against them.

- Ensuring a functional and effective system of monitoring and removing unlawful extremist content and content inciting hatred against LGBTI+ people on the internet.

83 Igor Matovič (translated from Slovak): “Their sole aim was plundering of the funds intended to help the most deprived people”. See: <https://dennikn.sk/minuta/2697982/>.

84 See: <https://www.webnoviny.sk/fico-vrazda-kuciaka-bola-zneuzita-na-politicke-ciele-a-sorosove-mimovladky-sa-isli-roztrhnut-od-aktivity/>

85 See link for the recommendation of initiative Ide nám o život (freely translated as “It is our life in question”; led by the initiative Inakosť) who also organised the above-mentioned petition. See the following websites of the organisers: <https://idenamozivot.sk/vyzva/>; <https://inakost.sk/>.

◦ Adopting a Code of Ethics for members of the National Council, which would introduce disciplinary liability for statements inciting hatred on the grounds of race, nationality, ethnicity, religion, sexual orientation and gender identity.

it was the first case from Slovakia submitted to the CRC. Otherwise, Slovakia has had no migration related CJEU judgments. However, the study suggests that the biggest issue in the field of judicial decision-making regarding migration is the non-implementation of domestic judgments.

Systemic human rights violations

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

VIA IURIS is not conducting any analysis or research on how CJEU and EHRC decisions are implemented. However, the Hungarian Helsinki Committee together with the Human Rights League and other NGOs conducted a joint study on the level of implementation of judgments in the field of asylum and migration in Czechia, Hungary, Poland, Slovakia and Slovenia (October 2022).⁸⁶ The study showed that Slovakia did not respect the interim measure ordered by the ECtHR in the Labsi case which was the first and only time that the Slovak government did not comply with an interim measure of the ECtHR. Slovakia did not respect an interim measure ordered by the Committee of the Rights of the Child (CRC) either (case concerning an Afghan national and mother of four minors, CRC/C/90/D/93/2019, 9 June 2022). However,

86 Available at: <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Implementing-judgments-in-the-field-of-asylum-and-migration-on-odd-days.pdf>.

Contacts

Via Iuris

VIA IURIS is one of the oldest civil society organizations in Slovakia. Since its foundation in 1993, VIA IURIS's mission is to make Slovakia a country where people are not powerless against the powerful and before the law, we are equal. Within its mission, VIA IURIS promotes rule of law, supports civil society and defends civic rights.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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