

EU 2020: DEMANDING ON DEMOCRACY

*Country & Trend Reports on Democratic
Records by Civil Liberties Organisations
Across the European Union*

SLOVAKIA



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Slovakia // *Via Iuris*



Key concerns

- Recent reform reflects efforts to improve the justice system, strengthen independence and restore confidence in the judiciary, although some concerns remain also against the background of COVID-19
- New rules introduced to enhance judges' accountability, as prominent corruption cases are being investigated
- While progress is registered as regards the regulatory framework, civil society organisations are confronted with smear campaigns, access to funding issues and limited opportunities of participation in decision-making

Justice system

Reform of the justice system

At the end of 2020, a large amendment to the Constitution was adopted (Constitutional Act No. 422/2020 Coll.). This amendment concerns the Constitutional Court, the Judicial

Council, rules regulating general issues concerning judges and the justice system and the establishment of the new Supreme Administrative Court. It was issued as the first phase of the judiciary reform (see below) launched by the new Minister of Justice, who has been in office since 21 March 2020.

As part of this reform, changes to the composition of the Constitutional Court of the Slovak Republic were approved, which include:

- re-formulated conditions for the appointment of a judge of the Constitutional Court (integrity, moral credit, legal practice),
- an increase in the quorum for the election of a candidate for a judge of the Constitutional Court, (a 3/5 majority of all deputies will be required for election. If this majority does not elect the required number of candidates, an absolute majority of all members will suffice)
- public voting on candidates for judges of the Constitutional Court.

The law also regulates the possible passivity of the parliament in the non-election of candidates for constitutional judges. The President will be able to appoint new judges of the Constitutional Court even in a situation where the deputies do not elect the necessary number, i.e. twice the number of candidates for the position of judge of the Constitutional Court, within the specified time limits. If Parliament does not elect the required number of candidates within two months of the end of the term

of office of a judge of the Constitutional Court or within six months of the term of office of a judge of the Constitutional Court for another reason (eg dismissal, resignation, death, etc.), the President will be able to choose and appoint judges of the Constitutional Court candidates who have already been elected by the required majority in parliament and have therefore been nominated by the eligible petitioners and at the same time heard by the Constitutional and Legal Affairs Committee in Parliament.¹

To ensure the continuous replacement of judges and to prevent one governmental party or coalition from being able to nominate a majority of judges in this court as its nominees for judges of the Constitutional Court, different lengths of terms of judges of the Constitutional Court have been appointed.

The possibility of the so-called procedural rejection of the motion to initiate proceedings before the Constitutional Court of the Slovak Republic, i.e. the possibility of “agreeing to disagree” to prevent cases of denial of justice, has been introduced. It will always be the duty of the Constitutional Court of the Slovak Republic in plenary to find an agreement and a quorum for a positive or negative decision on a given proposal.

Another major development concerns the creation of the Supreme Administrative Court of the Slovak Republic. Included in the system of

courts, the Supreme Administrative Court will have an equivalent position in the hierarchy of general courts with the Supreme Court of the Slovak Republic. The Court shall serve as an appellate administrative court (as a court of cassation) which shall review the first instance administrative judgements, which was up to now exercised by the administrative college of the Supreme Court. In addition to the general jurisdiction of the Supreme Administrative Court in the area of administrative justice, the Supreme Administrative Court is also to act as a disciplinary court for judges, prosecutors and, to the extent provided by law, for other legal professions. It will also review certain general election results. Competences from the Constitutional Court in deciding on the unconstitutionality and illegality of elections to local self-government bodies should also be transferred to it. A person who is not a judge may also apply for the position of the President of the Supreme Administrative Court; non-judges with relevant experience may also become judges of this court. The Supreme Administrative Court will start its activities at the earliest in August 2021.

Furthermore, in 2020, a proposal for a new court map was presented. One of the basic goals of the new court map is the specialization of judges. The specialization of judges is presumed for criminal, civil, family and commercial agenda in general courts and administrative agenda in a separate administrative

1 <https://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=3060>

judiciary. Currently, the draft court map is in the inter-ministerial comment procedure, where comments on its content are evaluated. As early as 2020, it was clear that opinions on the court map differed, with judges in particular refusing to accept it (see also below).

During the year 2020, there were also many personnel changes in leading judiciary positions. These positions included the President of the Judicial Council (plus six new members, out of whom three were appointed by the new government and three were elected by the Parliament), the Public Prosecutor General (elected by the Parliament and appointed by the President of the Slovak Republic), the President of the Supreme Court (elected by the Judicial Council and appointed by the President). Since there were general elections in the end of February 2020, a new Minister of Justice was appointed.

Judicial independence

Appointment and selection of judges and prosecutors

As part of the above mentioned reforms, new legislation was adopted that changed the preconditions (requirements) for the appointment as a judge. The preconditions of the original legislation, which are the moral standard and integrity of judges for the proper and responsible performance of their function, have been retained. A new addition to the preconditions was that the judge may not have business, property or financial relations with persons connected to organized crime.

Regarding the selection procedure of prosecutors and prosecutor trainees in 2020, a working group that proposed changes for a more transparent and better selection of prosecutor trainees and prosecutors to the system of Prosecution was set up. The members of this expert group were representatives of the executive, the judiciary, the prosecutor's office and the third sector, who worked together to amend the Act on Prosecution. The government refused to deal further with the conclusions of the working group as regards possible changes in the process of selection procedures of prosecutor trainees and prosecutors to the system of Prosecution. There were therefore no legislative changes proposed in this area.

Transfers, dismissals and retirement regime for judges

In September 2020, the Judicial Council of the Slovak Republic adopted Resolution No. 252/2020 to discuss personnel issues of judges according to § 18 par. 2 b) of Act No 385/2000 Coll. on Judges and Lay Judges. According to this provision, as amended by the Act on Judges and Associates at these time, the President could, on the proposal of the Judicial Council of the Slovak Republic, dismiss a judge if he reached the age of 65.

Therefore, in September 2020, the Judicial Council of the Slovak Republic filed a motion to dismiss eighty-two judges who have reached the age of 65 to the President of the Slovak Republic.

The President of the Slovak Republic, Zuzana Čaputová, decided to dismiss 63 judges based

on this proposal of the Judicial Council of the Slovak Republic and assessed other proposals individually. As a result of this decision, staffing problems have deepened in the judiciary. Many courts have long been understaffed.

In 2020, an amendment to the Constitution of the Slovak Republic was adopted, which also affected the termination of the position of judge. According to Art. 146, para. 2 of the Constitution of the Slovak Republic, a function of judge expires on the last day of the month in which the judge has reached the age of 67. For judges of the Constitutional Court, this limit is set at 72 years.² According to the legislation previously in force, the President of the Slovak republic could, on the proposal of the Judicial Council of the Slovak Republic, dismiss a judge if he reached the age of 65 – i.e., the position of the judge did not expire directly upon reaching the set age threshold. In addition, there was no age limit for the termination of the position of judges of the Constitutional Court.

There was also a change in the possibility of transferring judges to another court. Under the previous legislation, a judge could be transferred to another court only with his consent or based on a decision of the Disciplinary Board. According to Art. 148, para. 1 of the Constitution of the Slovak Republic does not require the judge's consent to the transfer

when changing the system of courts if this is necessary to ensure the proper performance of the judiciary.

Reform of the Judicial Council

Art 141a, para. 1 of the Constitution of the Slovak Republic in Art. 141a, para. 1, establishes the Judicial Council of the Slovak Republic (hereinafter referred to as the Judicial Council) as a constitutional body of judicial legitimacy.

The members of the Judicial Council elect not only the President of the Judicial Council but also the vice-President of the Judicial Council. The performance of the functions of President and vice-President of the Judicial Council is not compatible with the performance of the function of judge.

Members of the Judicial Council who are elected and appointed by the President of the Slovak Republic, the Government of the Slovak Republic and the Parliament (a total of nine members out of all eighteen members of Judicial Council), may include persons who are not judges.³ This new rule ensures a balance between judges and non-judges in the Judicial Council.

A rule has been introduced that the President, vice-President and a member of the Judicial

2 Constitution of the Slovak Republic <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20210101>

3 Art 141a, para. 3 of the Constitution of the Slovak Republic <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20210101.html>

Council may be recalled at any time before the expiry of their term of office.⁴

The competence of the Judicial Council has also changed. The Council was given competence to supervise and act on matters concerning the patrimonial situation of a judge.

On the contrary, the Judicial Council was deprived of its competence of electing and recalling members and chairs of disciplinary senates (the disciplinary judiciary is transferred to the newly established Supreme Administrative Court of the Slovak Republic).

According to the amendment to Act No 185/2002 Coll. on the Judicial Council of the Slovak Republic the Judicial Council may decide to express disagreement with the criminal prosecution of a judge for the new crime of „Bending the law“, according to Section 326a of the Criminal Code (see also below).⁵

A monthly remuneration (in the amount of 1.5 multiple of the average nominal monthly wage of an employee in the national economy of the Slovak Republic for the previous calendar year) was introduced for a member of the Judicial Council who is not a judge, except for the President and vice-President of the Judicial Council. A member of the Judicial Council

who is a judge has an adjusted workload of the judge.

As part of the reform of the composition of the Judicial Council, a regional principle has been introduced in the election of its members as judges to increase its representativeness. One member of the Judicial Council is elected by the judges of the Supreme Court and the Supreme Administrative Court from among themselves, and the other eight members of the Judicial Council are elected by judges of other general courts in three constituencies with a comparable number of judges.

Accountability, liability and disciplinary regime of judges

As mentioned above, the Supreme Administrative Court of the Slovak Republic has been included in the general system of courts. The Supreme Administrative Court has an equal position in the hierarchy of general courts as the Supreme Court of the Slovak Republic. In addition to the general jurisdiction of the Supreme Administrative Court in the area of administrative justice, the Supreme Administrative Court is also to act as a disciplinary court for judges, prosecutors and, to the extent provided by law, for other professions.

4 Art 141a, para. 5 of the Constitution of the Slovak Republic <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20210101.html>

5 § 4 par. 1 Act No 185/2002 Coll. on the Judicial Council of the Slovak Republic <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/185/20210101>

The Supreme Administrative Court is due to start operations in August 2021.

The decision-making immunity of judges has been adjusted. The decision-making immunity of a judge will only concern the legal opinion expressed in the application of a case, provided that the judge formulates his conclusion based on due consideration of the arguments and explains it properly. This principle is intended to protect society from arbitrary decisions by judges. According to Art. 148, para. 4 of the Constitution of the Slovak Republic, judges may not be prosecuted for their decision-making, even after the termination of their tenure, except in cases where a criminal offence would be committed; the disciplinary liability of the judge is not affected. The previous legislation precluded any prosecution of judges for decision-making.

A new crime, Bending the Law, was introduced into the Criminal Code. According to § 326a Criminal Code:

„(1) Whoever, as a judge, lay judge or arbitrator of the arbitral tribunal, arbitrarily exercises the law in his/her decision and thereby harms or favours another person, shall be punished by imprisonment for one to five years.

(2) The offender shall be punished by imprisonment for three or up to eight years if he/she commits the crime referred to in paragraph 1

a) against a protected person, or

b) for a special motive.

A possibility for the Judicial Council to decide on the temporary suspension of the post of a judge was introduced by the new rules. A judge who is being prosecuted for an intentional criminal offence or against whom disciplinary proceedings are being conducted for an act for which he may be dismissed as a judge may be temporarily suspended until the lawful termination of the prosecution, disciplinary proceedings or decision of the President to dismiss from the position of judge. A judge who has reasonable grounds for doubting that he or she qualifies as a judge may also be temporarily suspended if the credibility of the judiciary or the reputation of the judiciary may be seriously jeopardized. In this case, the temporary suspension of the post of a judge is decided by the Judicial Council on the proposal of the President of the Judicial Council or the Minister of Justice, in the case of judges of the Supreme Court on the proposal of the President of the Supreme Court and the case of judges of the Supreme Administrative Court on the proposal of the President of the Supreme Administrative Court. The judge has the right to comment on the motion to temporarily suspend the judge at the meeting of the Judicial Council, to which he will be invited by the President of the Judicial Council.

The consent of the Constitutional Court of the Slovak Republic to the detention of judges and the General Prosecutor of the Slovak Republic has been cancelled. The detention of a judge or General prosecutor is thus decided by the court that has jurisdiction to act and decide in the preparatory proceedings, i. district court or specialized criminal court.

Independence and autonomy of the prosecution service

The legislative definition of the prosecutor's office as an institution in the legal system has not changed.

In July 2020, the Parliament approved a ground-breaking amendment of the laws concerning the election and dismissal of the General Prosecutor and the Special Prosecutor. The amendment introduced several positive measures to increase transparency and accountability of the two highest prosecutor's offices and to improve the performance of their functions.

The circle of petitioners for candidates for General Prosecutor and Special Prosecutor has significantly expanded and the selection process has fundamentally changed. Rules governing the appointment of the highest prosecutors are now stricter on the requires moral qualities and integrity, and the application process is now much more demanding (eg, they must submit a letter of motivation, the General Prosecutor even a vision of prosecutor's management and development, and candidates must attend a public hearing in the Constitutional and Legal Affairs Committee of Parliament, where, in addition to deputies, a representative of the President may also attend and participate).

A non-prosecutor, i.e. a judge, lawyer or lawyer with relevant experience, who meets other

requirements can also run for the position of General Prosecutor and Special Prosecutor. A general requirement has been set for the candidate's experience as Prosecutor General or Special Prosecutor (15 years of legal experience, at least part of which where the candidate acted as a prosecutor, judge or lawyer).

The last election of the new Attorney General in 2020 took place according to the new legislative rules.

Independence of the bar

In connection with the newly established Supreme Administrative Court, it was originally considered to transfer the disciplinary judiciary of lawyers to this court. These efforts have been interrupted for the time being. The Slovak Bar Association objected to the disciplinary proceedings of lawyers being dealt with by the Supreme Administrative Court. According to the Slovak Bar Association, "the essential support for the independence of a lawyer is the self-regulation of the profession in the form of a bar association, the key feature of which is to be independence. The Slovak Bar Association has a functionally and efficiently set up system of disciplinary proceedings."⁶ Both the Slovak Bar Association and the Minister of Justice plan to turn to the Venice Commission for an opinion on this matter.

6 See https://www.sak.sk/web/sk/cms/news/form/list/form/row/380565/_event

Public perception of the independence of the judiciary

In 2020, there were cases of prosecution of judges due to their corrupt behaviour, or their connection to a person from a criminal environment. Many high-ranking judges are now being prosecuted. Some of them cooperate with the police. These cases are under investigation, and no accusation has been brought in these cases.

In 2020, a new President of the Supreme Court of the Slovak Republic, a new President of the Judicial Council of the Slovak Republic, and a new General Prosecutor were elected, and an election for a new Special Prosecutor was being prepared for early 2021. The public also had the opportunity to watch all these elections live online.

In 2020, the new Minister of Justice of the Slovak Republic, Mária Kolíková, enforced a reform of the judiciary and also presented a proposal for a new court map. This is a clear signal to the public that the current government cares about this area and the restoration of confidence in the judiciary, although this process is only at its beginning.

Quality of justice

Legal aid

The Slovak Centre for Legal Aid, which offers free legal aid to people in need, launched eight new consultancy offices in order to make its

services more accessible to people in smaller and remote towns.

Training of justice professionals

No new or exceptional initiatives have been noticed, which might have been caused also by the COVID-19 pandemic outbreak.

Digitalisation of the justice system

This field has faced tremendous changes caused by the COVID-19 pandemic outbreak since most of the planned meetings, trainings, workshops or conferences had to be held only in online format. This includes the meetings of the Judicial Council, which have been streamed online; audio recordings of them are available on its website. This change of practice was undertaken in May 2020 by the Act No. 106/2020 Coll, which amended the Judicial Council Act.

Where the general public was excluded from the court hearings due to the COVID-19 pandemic, audio recording had to be made and anyone could request it (Act No. 62/2020 Coll).

Some of the court hearings of great public attention were streamed for journalists who were seated in a separate room in the courthouse. This includes the well-known trials involving Kuciak and Kusnirova murder suspects, and the trial of Marián Kotleba - the leader of the Slovak ultra-right political party.

Use of assessment tools and standards

We are not aware of any such specific initiative, which would have a significant impact.

“Judicial map”: geographical distribution and number of courts and their specialisation

The first phase of the judiciary reform launched by the Minister of Justice was adopted in the Parliament and signed by the President at the end of the year 2020. This concerns amendment to the Slovak Constitution by the Constitution Act no. 422/2020 Coll. and amendment to several other laws in the field of justice and judiciary by the Act no. 423/2020 Coll. Among significant changes there is establishment of a new court - the Supreme Administrative Court, which shall consist of 30 judges.

The second phase of the reform entitled as “the new judicial map” was presented by the Minister of Justice and consultations with legal professionals were launched in 2020. The aim of the new judicial map is to completely redesign geographical distribution of general courts in Slovakia. The first draft of the reform which was presented to the public in 2020 has seen creation of new district courts (in the end there should be less of them compared to the recent state) and new courts of appeal (again less in overall number) and specialised courts of first instance for commercial and administrative agenda. According to the Ministry of Justice, it should bring deeper specialisation of judges, faster proceedings, higher efficiency of judges and more transparency of judicial proceedings. This reform is subject to wide debate

among legal professionals with very critical feedback, therefore it might be modified in 2021.

Fairness and efficiency of the justice system

The major development in the field is the new judicial reform, which has been presented only as a draft (with the exception of Acts no. 422 and 423/2020 Coll, which have been described above).

Also, new criteria for State Prosecutor General were adopted that have opened the position also for other lawyers, non-prosecutors.

Resources of the judiciary

In October 2020, the President of the Slovak Republic, Zuzana Čaputová, decided, based on a proposal of the Judicial Council of the Slovak Republic, to dismiss 63 judges who had reached the age of 65. As a result of this decision, staffing problems have deepened in the judiciary. Many courts have been understaffed for a long time. This step also weakened the evaluation commissions, which carry out evaluations of judges, as they were also staffed by judges over the age of 65 to a relevant extent. In practice, this was reflected that for a time no selection procedures for judges or their promotion to a higher court were carried out. Legislatively, the possibility of participation of judges emeritus in evaluation commissions had to be regulated. The Judicial Council of the Slovak Republic is gradually creating these new commissions.

In 2020, an unsuccessful mass selection of candidates to fill judges' positions had been carried out. In March 2020, the Judicial Council of the Slovak Republic announced a "mass selection" procedure for an undefined number of vacancies for district court judges and visiting judges. A total of 145 candidates for the position of the judge were to be selected, but only 15 applicants were successful.

Respect for fair trial standards including in the context of pre-trial detention

During 2020, repeated police actions took place, revealing serious criminal activities that also included judges and other legal professionals. Many of them have been detained in custody, which has sparked criticism for abusing the institution of detention.

Moreover, at the very end of 2020 the former Police President, Milan Lučanský, committed suicide. This act raised even more questions concerning abuse of pre-trial detention and the living conditions in detention.

Rules on withdrawal and recusal of judges and their application in practice

The first phase of judicial reform also brought changes to the rules of removal of judges. When a judge reaches the age of 67 (72 years in case of the Constitutional Court judges), his/her term in the office expires. The main reason is to set up clear and predictable rules for the retirement of judges. However, the age

census concerning the constitutional judges is disputed among judiciary professionals.

Corruption of the judiciary

There were repeated police actions detecting corruption and other serious crimes during 2020. Many judges and other legal professionals were accused and taken to pre-trial custody. None of them was sentenced yet, but a few of them (including judges) are cooperating with the investigators and confirming some of the allegations. These investigations reveal the corruption schemes that the public suspected.

The first phase of the judiciary reform also introduced new rules regarding the property declarations of judges. They are supposed to be reviewed by the Judicial Council.

Enabling framework for civil society

Freedom of association

The Slovak Constitution and laws provide for freedoms of associations⁷ and the legal framework for civil society organisations (CSOs) remains generally favourable. CSOs may choose to register as civic associations, non-investment funds, non-profit organizations providing public benefit services, or foundations. Each legal form has its own

7 <https://www.legislationline.org/legislation/section/legislation/country/4/topic/1>

registration process. The laws regulating registration are generally enabling, and the process of registration is relatively simple.

In 2020, CSOs did not face any restrictive legislative proposal which might have negatively affected the freedom of association. Despite the pandemic and the state of emergency redeclared in October 2020, CSOs and their representatives are free to operate in compliance with the laws. While CSOs may openly express criticism, taking part in public protests has been restricted due to the state of emergency. Additionally, CSOs have the same legal right as other entities to challenge government decisions. The Slovak government may dissolve or restrict CSOs only for specific reasons stated in the law.⁸

In December, the new Register of Non-Governmental Non-profit Organizations was finally put into operation. The register was established by Act No. 346/2018 on the Register of Non-Governmental Non-profit Organizations,⁹ which came into force as of January 2019, and represents a single reliable, up-to-date public register of all CSOs operating in Slovakia. The act extends the information that CSOs must provide at the

time of registration and requires previously registered CSOs to update their information in the register. Those CSOs which do not provide full information (e.g. about a statutory body) are not eligible for public funding. The rule is expected to improve transparency as it encourages CSOs to submit full registration data.

Smear campaigns and other measures capable of affecting the public perception of civil society organisations

Following the last parliamentary elections in February, Slovakia has perhaps the most conservative parliament in the country's modern history, and consequently, liberals do not have adequate representation in the Parliament. This political environment was perceivable during the first wave of the pandemic when some of the ruling government members criticized human rights organizations and activists for their assessment of the government's measures for the lockdown of several Roma settlements.¹⁰ This issue was noticeable also in relation to several drafts of legislation of a stricter abortion law proposed by a group

8 See The 2019 CSO Sustainability Index for Slovakia, pp.207: <https://www.fhi360.org/sites/default/files/media/documents/resource-csosi-2019-report-europe-eurasia.pdf>

9 <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/346/20210101>

10 <https://spectator.sme.sk/c/22384400/ngos-criticise-government-for-steps-taken-in-roma-settlements.html>

of opposition MPs and the strongest ruling party's MPs.¹¹

Although attacks on COSs occurred in public discourse also during 2020, they were less virulent, especially in conspiracy media. CSOs, however, faced persistent attacks from extremists and anti-system activists. As indicated above, public authorities took over the rhetoric used by conspirators and extremists, and much often verbally attacked activists and CSOs, especially those from the opposite ideological spectrum. This negatively affected public opinion on CSOs and activists. At the same time, on a positive note, in June 2020, the President expressed significant support to CSOs actively engaged in fighting the spread of COVID-19 in the Presidential state of the republic.¹²

Besides that, CSOs and activists faced the negative attitude of the current government towards gender equality, which also limits the financial and personal capacity of feminist CSOs and negatively affects their work. The Minister of Labour, Social Affairs and Family responsible for the gender equality area particularly rejects the concept of gender equality in general. Consequently, the funding

scheme by the Ministry supposed to support CSOs working in the field of gender equality has been used to support conservative pro-life organisations, which do not generally focus on gender equality issues. As a result, no feminist CSO has received any support. At the same time, project proposals of pro-life organisation were not rated as the best ones. This implies that the committee did not take into account the expert assessment of the project proposals in any way, raising suspicion that the Ministry intentionally favoured the pro-life organizations.¹³

Access and participation to decision-making

The legal framework, which enables CSOs to participate in the legislative process, remains unchanged. Similarly to the public, CSOs are eligible to enter the legislative process during the Interdepartmental Comments Procedure to submit their comments on proposed materials. The CSOs may also participate in expert working groups established by ministries or other public authorities to propose draft bills. Besides that, the participation of the CSOs in public policies is supported by the

11 See the list of recent legal proposals to restrict abortions on pp. 16-17 of the report of Policy Department for Citizens' Rights and Constitutional Affairs for the European Parliament: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659922/IPOL_IDA\(2020\)659922_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659922/IPOL_IDA(2020)659922_EN.pdf)

12 <https://www.prezident.sk/article/sprava-prezidentky-o-stave-republiky/>

13 <https://domov.sme.sk/c/22573564/dotacie-na-rodovu-rovnost-ziskali-organizacie-ktore-v-bodovom-hodnote-ni-vyrazne-zaostavali.html>

institutional framework, which includes the Governmental Council for Non-profit Non-governmental Organizations and the Office of the Governmental Plenipotentiary for the Development of Civil Society.

The Government declared, in its political manifesto,¹⁴ its will to maintain and further develop its partnership with civil society, and to simplify public participation. Despite the existing mechanism of umbrellas gathering CSOs across the sector and enabling cross-sectoral cooperation, there are multiple issues and barriers in practice. According to a recent research on the current state of civil society in Slovakia,¹⁵ both the state administration and local governments still have not considered the CSO experts to be ‘partners for discussion’ in terms of preparing and implementing public policies, strategic documents and action plans. It is a result of the weak understanding and awareness of the function of CSOs and their contribution to policy-making. This implies a low interest of state administration to cooperate with CSOs. At the same time, CSOs often struggle with a lack of personal and financial capacities to further professionalize both their internal organization and activities.

In September 2020, the Ministry of Finance (MF) proposed a draft bill amending the tax

legislative act,¹⁶ which included modification of the tax designation mechanism (see in the next section). It was proposed without broader discussion in the presence of respective stakeholders of the civic sector or above mentioned advisory bodies. Such an absence of proper participation was strongly criticized by several CSOs. Compared to previous practice, that is a negative shift, since CSOs used to be consulted when proposing any legislative proposal addressing the CSOs.

As regards positive developments, CSOs were involved in the preparation and consultation on the Partnership Agreement 2021-2027 (PA) extensively. That was a qualitative shift compared to the previous programming period. The process was ensured and coordinated by the central coordination body of the Ministry of Investment, Regional Development and Informatization (MIRRI) in close cooperation with the Office of the Governmental Plenipotentiary. From a procedural perspective, the consultation of the PA was very well organized, with high levels of participation. Subsequently, during November and in the first half of December 2020, even the public was involved in this process through online consultation, for the first time.

14 Political Manifesto, pp. 16- 17: <https://www.teraz.sk/download/135/programove-vyhlasenie-vlady.pdf>

15 https://www.minv.sk/swift_data/source/rozvoj_obcianskej_spolocnosti/vyskum_neziskoveho_sektora_a_obcianskej_spolocnosti/2020/ANALYZA_NP%20VYSKUM_17.12.2020_FINAL.pdf

16 <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7896>

On the contrary, the process of preparation of the National Recovery and Resilience Plan (NRRP) has struggled with low transparency and poor participation of CSOs and their experts from the very outset. Although the Prime minister promised broad policy dialogue through an open discussion with the citizens and experts of any background, any proper participatory process did not take place. The Government did not respond adequately to the European Commission's appeal to involve civil society in preparations of national recovery and resilience plans (NRRP) and ensure a proper participatory process while using existing mechanisms.¹⁷ The MF responsible for the NRRP, however, chose a strategy to prepare the draft 'behind closed doors' and engaged a limited number of experts selected beforehand. The exception was an online discussion in December 2020, during which the main objectives of the NRRP were presented. Last but not least, the Ministry sent the first draft to the European Commission at the end of the year without publishing its full version.

Access to funding

The Government, in its political manifesto,¹⁸ announced that it intends to create a system for the financing of CSOs and support organisations dealing with the protection and promotion of human rights, building democratic citizenship, eliminating all forms of discrimination and detecting corruption, among

others. However, the Government has not introduced any measure to specifically reinforce the access of CSOs to financial opportunities so far. CSOs were not either explicitly mentioned in immediate response measures, introduced in April 2020 (also known as a 'first-aid' package of economic measures). These measures covered only businesses, the self-employed and employees affected by the coronavirus pandemics.

The economic decline will most likely negatively affect private contributions to the sector and a final amount of tax designation in 2021, which is an important source of finance for several of CSOs. Several CSOs also experienced being cut off from local subsidies (initially awarded to CSOs), as several local governments transferred these resources to fight the spread of COVID-19.

The state subsidies for CSOs have not been cut. Due to unfavourable conditions, however, CSOs called for amending administrative rules to allow these subsidies to be repurposed or extended. The extension of ongoing projects was allowed just within the grants supported by the European Structural and Investment Funds.

Until August 2020, CSOs were left out of any financial support or first aid mechanism addressing the impact of the pandemic.

17 See also the official answer on the EC on parliamentary question: https://www.europarl.europa.eu/doceo/document/E-9-2020-005831-ASW_EN.html

18 Political Manifesto, pp. 16- 17: <https://www.teraz.sk/download/135/programove-vyhlasenie-vlady.pdf>

Finally, In August 2020, a measure was introduced to specifically support CSOs, through a 1.1 million EUR scheme launched by the MIRRI,¹⁹ addressing particular CSOs.²⁰ According to this scheme, corresponding CSOs could refinance their costs related to activities addressing the pandemic situation. Despite the effort of the MIRRI, this funding scheme was not as effective as was expected. First, the scheme was limited to support CSOs since it was announced under the 'Act on supporting regional development'.²¹ Consequently, only specific legal forms of CSOs were eligible beneficiaries within the proposed call, while foundations or civic associations were excluded. Secondly, the grants were too big for small regional organizations.²²

In October 2020, the Ministry of Culture announced financial support for individuals working in the culture and creative business. The Ministry declared that such financial resources will be eligible also for CSOs operating in the creative business, but in the second round after individuals.

In the last quarter of 2020, as mentioned above (see the fifth part of this section), the Ministry of labour, social affairs and family was strongly criticised with regard to the non-transparent process of granting.

In August 2020, The Ministry of Finance proposed an amendment of the tax legislative act²³ which included modification of the tax designation mechanism and which might have caused the drop-out of income coming from the tax designation for several CSOs. In a nutshell, under such amendment legal persons would be allowed to donate the 2 % of their income tax also in the non-financial form. Since no broader discussion took place with neither CSOs nor the government advisory bodies for civil society, there is no data about how it would have affected CSOs specifically. On the contrary, the Ministry proclaimed that they intend to support the civic sector by the amendment. Afterwards, this amendment was pulled down before the second reading in the National Council of the Slovak Republic.

19 <https://www.mirri.gov.sk/wp-content/uploads/2019/05/P-V%C3%BDzva-2020-II-mvo.pdf?fbclid=IwAR3TTGtB02aQKKHshpHqj2mtQxL0-TbmDeCxxQ-Pdkafsptu1NAwYpdFcBQ>

20 Such as regional development, tourism, preserving and development of social services, creative business or culture.

21 <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/539/>

22 The minimum amount for the submitted project was 10 000 €.

23 <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7896>

In terms of positive developments, the MIRRI has proposed a new architecture of management and programming European Structural and Investment Funds to improve management of structural funds and simplify access to funding (also for CSOs) and eliminate the space for corruption. According to the proposed amendment, there will be just one central body responsible for the management and programming of structural funds, and only one operational programme established compared to the previous programming period.

Impact of COVID-19

Freedom of assembly

Following the coronavirus pandemic outbreak, the Slovak government restricted the exercise of the right to peaceful assembly, except for people living in a common household, between

6th April and 14th June.²⁴ Consequently, from 13th October, a prohibition of assembly of more than six people was applied in Slovakia, with exception for people living in the same household²⁵. These restrictions, imposed due to the worsening of the epidemiologic situation in the country, were adopted during the “state of emergency” proclaimed by the government. During a state of emergency, the government may, in accordance with the law²⁶, restrict fundamental rights and freedoms to the extent and time necessary. The state of emergency can last for 90 days but can be prolonged by a maximum of 40 days. Despite the state of emergency and the prohibition of assembly, in November 2020, thousands of people took to the streets in several Slovak cities to protest against the government and the measures taken in the wake of the coronavirus pandemics²⁷. The person who does not respect the assembly restrictions can be fined up to 1.659 euros²⁸.

24 Resolution of the Government of the Slovak Republic no. 207/2020 (<https://rokovania.gov.sk/RVL/Resolution/18345/1>)

25 Resolution of the Government of the Slovak Republic no. 645/2020 (<https://rokovania.gov.sk/RVL/Resolution/18788/1>)

26 Constitutional Act No. 227/2002 Coll. on State Security at the Time of War, State of War, State of Emergency, and State of Crisis

27 <https://www.teraz.sk/slovensko/sledujeme-protesty-na-slovensku/508408-clanok.html>

28 The Act of the National Council of the Slovak Republic No 42/1994 Coll. on Civil Protection of the Population, as worded in later amendments

Impact on the justice system

Court deadlines were postponed in the spring until 30 April 2020 (during the first wave of the COVID-19 pandemic) by the Act no. 62/2020 Coll.

New less tight rules regarding the postponement of execution of the judgement (during the first wave of the COVID-19 pandemic) were introduced by Act no. 62/2020 Coll. Anyone was entitled to request a postponement if due to the pandemic his or her income has decreased so much that possible execution could have particularly adverse consequences for such a person or his/her family.

In addition, as part of economic measures to combat the pandemic situation, the government abolished the remuneration of judges and prosecutors and also abolished income compensations for temporary incapacity for work and supplementary sickness insurance. According to the Minister of Justice, these are professions in the exercise of public power, where thirteenth and fourteenth salaries are guaranteed and in the case of the above-mentioned remunerations and supplements it was a “regime of above-standard social security”. The judges considered the government’s move to be unmethodical, discriminatory and assessed it as a disproportionate interference with the material guarantees of the independence of the judiciary.