

Revenge in the Big Village

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Slovakia's Illiberalization and the Perils of Isolated Doctrine

The European Commission's 2024 Rule of Law report is yet another indicator of the deterioration of constitutional standards in Slovakia. Next to outlining selected key developments of Slovakia's illiberalization in 2024, this post underscores how the small jurisdiction's size in combination with its relatively isolated doctrinal legal academia could hamper the development of robust democratic constitutional discourse and thus legal academics' contribution to democracy. This is exacerbated by the intricate connection between public law and the Communist Party before 1989 and the legacies thereof on segments of doctrinal legal thinking.

The Slovak Malaise: Data, Evidence, and Expertise as the Chief Adversary

In many European countries, the (Northern) summer is time for rest, vacations and a "break from politics". Not in Slovakia in 2024. After halting opposition protests against the attempt at centralizing power by the post-2023 illiberal executive exacerbated by the assassination attempt on PM Robert Fico by a lone wolf in May, they were resumed in mid-August despite the summer heats.

Culture was the immediate trigger for the new round of protests. The Minister of Culture was elected on the list of the Slovak National Party, the smallest coalition member which, in June 2024, scored below the five percent threshold necessary to enter the parliament. Disproportionately to this electoral support, she has engaged in the crackdown of cultural institutions, by dismissing heads of several of them selected in professional competitive processes, and replacing them with government loyalists, as well as by advancing the subordination of the public television and radio channels to the governmental preferences.

Less readily visible, but equally if not more consequential have been the changes in the justice system. On 6 August, large portions of the changes to the criminal legal regulation have entered into effect, via the publication, in the official Collection of Laws, of the decision of the Slovak Constitutional Court that had deemed most of them to not violate the Constitution. Already in spring, the Special Prosecution Office was dismantled as the Constitutional Court did not find a constitutional obstacle to do so.

Changes took place in the organization of the police as well, most visibly the dismantling of the National Criminal Agency charged for investigating particularly grievous crimes in early September. Moreover, several investigators and prosecutors who did not shy away from scrutinizing robust evidence-based suspicions of high-level political corruption have themselves been suspended from duty or even under criminal charges for alleged abuse of public power. While it is premature to state that all this is a form of revenge for PM Fico and his closest collaborators having been placed under criminal law scrutiny, revenge would not look different than the present reality.

The Judicial Council as the institution of judicial self-governance has also undergone significant changes. The President, the Parliament and the cabinet appoint three members each, half of its 18 members in total. The previous government has allowed these to be removed before the expiration of their tenure without any justification. The Slovak Constitutional Court did not take issue with this practice when deciding on the individual complaints of some of the prematurely dismissed Judicial Council members (III. ÚS 298/2024).

The President of this institution since 2020, former ECJ Advocate General Ján Mazák, was a nominee of the National Council, and the post-2023 majority has recalled him alongside another member, experienced senior advocate Andrej Majerník. Furthermore, new President Peter Pellegrini, who remained the honorary chairperson of one of the coalition parties, recalled two appointees of his predecessor, academics Lucia Berdisová and Tomáš Gábriš (the mandate of the third appointee, respected former Constitutional Court Justice Lajos Mészáros, expired in June). Some of these positions were since then filled with publicly less known figures, while others remain empty at the time of writing.

In addition to these changes in the justice system, the government showed notable hostility to independent expertise in most portfolios, by altogether dismantling or seriously reducing the operation of several analytical units responsible for enhancing data-driven decision-making of public authorities. The Analytical Centre of the Ministry of Justice, which was tasked to contribute to improved efficiency of the judicial system and law enforcement in Slovakia, keeping in mind the effective use of public funds, was dismantled as of August 2024 (its website no longer works).

The Rule of Law Report Misconstrued

The European Commission's Rule of Law Report highlighted some of these shortcomings as well. While legitimately criticized for, among others, limited engagement with academic experts, the report is based on credible evidence and captures a wide range of issues, not only targeting those that emerged in the aftermath of the 2023 general elections.

Besides openly partisan criticism by PM Robert Fico and other coalition leaders, a more sophisticated attempt came by the state secretary of the Ministry of Justice, who also serves as associate professor of constitutional law, in an interview by the in-house podcast of the ministry that serves as a promotional mechanism. The secretary criticized the report, with the exception of the need to address the hampered independence of Judicial Council members, a modification implemented by the 2020-2022 cabinet.

He argued against the methodology of the report and decried its allegedly low informational value. In doing so, he omitted the more overarching criticism of the criminal legal amendments, namely that they had been enacted via accelerated legislative procedure, excluding formalized public debate and preventing legal officials from properly familiarizing themselves with important amendments before they entered into effect. He was also silent on the centralization of control over the public television, even though he judged the report in its entirety, rather than only those segments strictly pertaining to the justice system.

The cabinet followed with a 37-page official reaction on 20 August 2024. In this document, which includes extensive references to the July 2024 Constitutional Court judgment (pp. 12-17), the objections towards the accelerated legislative proceedings receive a single paragraph on the final page, mentioning that Slovak regulations allow it. The reaction also contains several curiosities, such as when it simultaneously argues that the National Criminal Agency is effective in "objective and independent investigation of crimes of large-scale corruption" (p. 37) while also defending its "reorganization" for the purpose of "improving the effectiveness of police activities, specialization [...] and professionalization of its personnel" (p. 36).

In contrast, the reaction upfront (pp. 1-2) decries the limited engagement of the Commission with Slovak academic experts and law faculties. To the extent that the prominent placement of this criticism is not to be read as just opportunistically tapping into concerns by recognized voices, it indicates the belief of the cabinet that, had (Slovak?) academics been listened to, the Commission's conclusions would have been different. The assumption that the views of academia in Slovakia differ from that of the Commission, while overblown, is not entirely baseless, especially when assessed through the prism of Slovak legal academic elites.

Legal Education as Training for Autocracy?

Despite the long list of inconclusive or outright detrimental legislative changes, notably absent from the list are modifications pertaining to educational and research institutions. The Ministry of Education has generally not been part of measures evoking concerns about Slovakia's democratic constitutional standards. In fact, an official of the Ministry of Culture, a conspiracy theorist known for defending the legitimacy of discussing about whether the Earth is flat in the public broadcaster, advocates reforming education for "media literacy", but so far without any declared consent or collaboration with the Education Ministry.

Some academic leaders also voiced concerns about the deteriorating quality of the public discourse due to the actions of some partisan elites. These developments could indicate that academia remains without major risk in Slovakia and is even an unequivocally positive pillar for democracy protection. Yet, a deeper look into the contours of *legal* academia of a small jurisdiction questions that.

Consider the current Minister of Justice, Boris Susko, who is among the chief faces of the transformation of Slovakia's justice system. In early August 2024, Susko used extraordinary competence to order the release from prison of the former Special Prosecutor, who was convicted for corruption and awaited the resolution of his extraordinary appeal by the Slovak Supreme Court. (Since then, on 3 September, he was convicted in the first instance in another case.) The Minister argued that this was an exceptional case that warranted such a step but did not offer any empirical evidence. The former Special Prosecutor is commonly perceived as one of the symbols of the corrupt practices that created the environment, in which an investigative journalist and his fiancée were murdered in 2018. The opposition parties have initiated a recall vote on the minister in the parliament, which, however, has little prospect of success.

Susko, besides a career in government and private practice, also ventured into academia, working as Assistant Professor at the Faculty of Law of the Comenius University (the largest and oldest law faculty in the country), where he completed a doctorate, and as vice dean of the "Janko Jesenský Faculty of Law" of the "Danubius University", a poorly ranked Slovak private university that has become known for questionable academic standards and abysmal research reputation. For the latter, even a recording of a "faculty anthem" can be found online, presenting the "great school in a small town", with Susko prominently displayed among the photos on the album as an institutional representative.

Susko's profile illustrates the linkage of many government elites to a few law faculties. The high representation of law graduates among the political leadership is (at least historically) known from several countries such as the US or India. The influence of

Slovak law faculties may, however, be even larger, as, in a small jurisdiction, it is more difficult to sever personal links and combination of academic positions with roles in other public or private institutions.

In principle, such linkages could be positive, encouraging mutual informal accountability for representing the state through occupying important positions in the government. This may be the case with some segments of Slovak civil society, who argue that Slovakia is like a “big village” where informal appeals to societal responsibility by neighbours and acquaintances might help slow down the erosion of democracy.

Even if one were to subscribe to this strength, such a village-like character hardly benefits Slovak legal academia, because of the iron cage of history and context. Duncan Kennedy, writing in the US context in the 1980s, highlighted how legal education may entrench a reproduction of dominant societal hierarchies. While systematic research on this question in Slovakia is missing, in comparison to the US the tradition of corporate law firms is a less entrenched phenomenon than that of adherence to the ruling partisan elite. After all, until 1989, constitutional (or, as it was called back then, state) law and the Communist Party were married to each other.

Breaking free from this marriage was(is) not an easy task. The affinities between the former spouses still remain in non-negligible segments of Slovak doctrinal thinking. For example, the amicus curiae briefs submitted in a highly consequential case to the Slovak Constitutional Court from several law faculties demonstrated deep ideational divisions among them. The Court, in the end, endorsed most ideas from the brief of the Comenius University Law Faculty, which also is the alma mater of Susko, PM Fico himself and other governing elites – not least because it operated continuously before and after the Velvet Revolution, and its convenient location in the country’s capital. The ideas endorsed by the Comenius Law Faculty leadership supported the constitutionality of legislation that, at least in terms of the procedure of its enactment, is a notable symbol of rising autocratic legalism in Slovakia.

While there is no predestined fate for Slovakia in terms of consolidation of the illiberal regime (a glimpse at Slovakia’s regional neighbours Hungary and Poland indicates how different initially similar trajectories can end up being), a medium to long-term entrenchment of democratic constitutionalism has little prospects without legal academia training for such values. In short, attention is needed towards constitutional literacy and education for constitutional values.

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