

# Resisting Self-Fulfilling Prophecies around the Efforts to Amend Slovakia's Constitution

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[Max Steuer](#)

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## Haunted by Text

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In mid-2025, Slovak PM Fico [renewed](#) his [attempts](#) to amend Slovakia's Constitution. The most controversial provisions are a "national identity safeguard" limiting the effect of international and supranational law, and a definition of sex as strictly binary. After securing backing from some opposition members, his cabinet has submitted the [amendment](#) to parliament for debate and a vote.

Fico's attempts to [amend](#) the Constitution in ways that undermine the principles of sovereignty, democracy, and the rule of law – all enshrined in its Article 1 – are likely to fail as long as these principles remain upheld by Slovakia's formally powerful Constitutional Court. While public mobilisation against the proposed amendment proposal is important, legal scholars and NGOs should avoid using language that might reinforce the perception that the Court lacks the authority to strike down or reinterpret such changes in line with constitutional values.

## **Domestic mobilisation against the changes**

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Slovakia's Constitution formally allows amendments to be passed by 90 deputies, that is, three-fifths of the unicameral legislature. Given its standing as "higher law", it is understandable that attempts to change it – especially when [initiated and spearheaded](#) by the executive and likely to secure enough votes – will gather attention. Fico knows this well. At the start of 2025, when facing difficulties with managing his coalition, he revived discussions over amending the Constitution. His ambition was to strengthen "national identity", [especially](#) in regard to what he terms "cultural-ethical issues" and the defence of "traditional values". In the Slovak discourse, such concepts have come to symbolise a shortcut to restrictions on LGBTIQ+ rights. This connection has also become evident in the proposed amendment, which prescribes that some legal actions, such as adopting children, may only be performed by a man and a woman and define sex as strictly binary.

As Fico is riding the rhetorical "traditional values" wave, parts of Slovakian academia and civil society have begun to mobilise against the amendment. They have highlighted both the undesirability of the amendment, and criticised the naiveté of the opposition partisans who have decided to endorse them. In particular, they warned that the proposed amendment – empowering the government to object to or disregard EU law on grounds of "national identity" – threatens to erode the primacy of EU law within Slovakia's constitutional order. Also, the proposed constitutionalisation of the mandatory alignment of the state educational program with the Constitution sparked concerns about potential illiberal manipulation of educational content, given that the Constitution already defines marriage as exclusively a union between a man and a woman. And last but not least, the amendment was criticised for disregarding concerns for LGBTIQ+ rights, contrary to Slovakia's fundamental rights commitments.

Yet another set of concerns pertained to the process of deliberation and the amendment. Due to Fico's attempts to receive the necessary votes from the opposition – particularly the Christian Democrats and a few self-proclaimed Catholic activists from another opposition party – the exact wording of the changes remained in flux over the course of the parliamentary process. The absence of transparency in how the exact formulations

emerge and the lack of space for public and expert assessment of the nuances stands at odds with the very idea of a constitution as embodying more stable, long-term principles and standards with the capacity to guide day-to-day institutional action.

## 90 MPs cannot change everything

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These public and expert statements are certainly a welcome antidote to passivity in the face of changes to Slovakia's most cherished "law of the land". It is not clear, however, why the shortcut of framing the amendment as an endorsement of "traditional values" is so widely accepted – even among its critics. This framing precludes an alternative reading of "traditional values" as those foundational principles articulated in the Constitution's first article.

From a historical perspective, the "dark traditions" of authoritarian regimes from before the fall of state socialism in 1989 can indeed make terms such as "democracy" or the "rule of law" seem like a mere façade to pursue partisan interests. In Slovakia's case, sovereignty and neutrality both have troubling connotations. The former recalls the period of Hitler's puppet state, established through the decisions of key Slovak elites who chose to collaborate with the Nazi regime shortly before the outbreak of World War II. Here, Slovak elites made a sovereign choice (be it under [emergency conditions](#)) to give up sovereignty and constitutionalism with it. The latter principle, state neutrality, is complicated by the disproportionately cordial legal relations with the Catholic Church that can serve as a resource to resist any constitutional practice that is not also endorsed by the Catholic Church.

It is certainly important to acknowledge and remember the preceding authoritarian experience. Still, there is no reason to read the 1992 Constitution as embracing that experience for contemporary constitutional decision making. The pronouncements enshrined in its Article 1 as well as the fundamental rights guarantees in its second heading emerged under broadly democratic, albeit [hasty](#) and scarcely deliberative circumstances. The Constitution contains ideational resources that can be tapped into, including the combination of the commitment to state sovereignty and the recognition of EU law as authoritative in Slovakia. Some ideas can even be traced back to the democratic components of the First Czechoslovak Republic, an advanced state that existed during the 20th century in the interwar period.

In fact, if the preference is to have a text that embraces the unconditional primacy of EU law as a self-standing legal order, the Constitution [does not satisfy](#) the preference even without the protracted amendment. On the contrary, by confining the primacy of legally binding acts of the EU to apply over legislation, but not necessarily the Constitution (Art. 7 sec. 2), there is room for the Constitution to enshrine higher standards of fundamental rights protection of vulnerable and historically subjugated groups than the standards granted by EU law. In this way, the Constitution could even [facilitate](#) a "race to the top" in EU fundamental rights protection, encouraging EU lawmakers to follow suit with enacting higher standards of rights rather than perpetuating [a race to the their bottom](#) (for instance, in [refugee rights](#)).

## Democratic national identity

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“National identity” or “constitutional identity” [need not be](#) orphaned concepts left for [capture](#) by illiberal actors. Rather, they can become independent sources of self-reflection on how constitutionalism from and in Slovakia can [help](#) increase inclusion in Europe and help its political communities stand up against authoritarian governmental practices visible both within some EU member states and beyond.

The new provision proposed in June 2025 would have enshrined the “sovereignty” of Slovakia “primarily” in matters of national identity. This wording alone strangely appears to endorse giving up on sovereignty in matters not presented as those of “national identity” or as otherwise falling under the proposed clause. Yet – however one decides to classify – there is no authorisation to constitutionally endorse readings that would facilitate the undermining of democracy and the rule of law in Slovakia. Sovereignty, a principle that is encompassed alongside democracy and the rule of law in Article 1 of the Constitution, is approximated precisely by Slovakia’s commitment to upholding and cherishing democracy and the rule of law, as well as [the respect](#) for “all human beings [as] ‘free and equal’” with “fundamental rights and freedoms [that] are sanctioned, inalienable, imprescriptible and irreversible” (Article 12). Vice versa, undermining democracy and the rule of law – including by lowering standards of fundamental rights in Slovakia as compared to standards guaranteed by EU law or international law – also violates Slovakia’s sovereignty in light of the international repercussions and the [harm to the country’s performance](#) that such policies [cause](#).

Nonetheless, even irrespective of the “national identity” provision, the proposed amendment still contains exclusionary changes: the conditioning of the adoption of children by couples of different sexes, and the definition of sex in a binary manner that makes intersexual identification impossible. At the same time, these in no way change the interpretive authority of the Slovak Constitutional Court. The role of this Court is central for interpreting and adjudicating constitutional amendments in Slovakia, and the current changes make no difference in this respect.

## Back to the fundamentals

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Indeed, the proposed amendment once again stirs deeper disagreements over the current role of the Slovak Constitutional Court. One concern might arise in relation to the provision, paradoxically inserted into the Constitution by Fico’s opponents in 2020, stipulating that the Constitutional Court is not to review the compatibility of constitutional acts with the Constitution (Art. 125 sec. 4). The most severe of such constitutional acts are those enshrining direct amendments to the text.

This provision certainly does not ease the work of the Constitutional Court if it were to adjudicate petitions demanding to invalidate, for example, the provision that enshrines the (factually untrue) claim of there being only two sexes. However, when reviewing the constitutionality of the constitutional amendment ban, the Court already retained a narrow pathway to invalidate amendments to the Constitution. It need not even go so far, as it

could still invalidate legislation that undermines human dignity of LGBTIQ+ persons due to its conflict with constitutional values, while simultaneously recognising the need for protection of all, regardless of sex or gender identity.

If the proposed changes are interpreted by Slovak epistemic authorities overwhelmingly as constraining the scope of action of the Constitutional Court, these well-intentioned interpretations have the potential to be more dangerous than the changes themselves. This is because they will remain in the public domain if the changes are enacted by the MPs, and the Constitutional Court will face pressure to deal with them to justify its potential involvement. At that point, a deferential approach by the Court – one that could cause tangible harm to minorities targeted by the amendment – would become significantly easier for the judges to adopt, precisely because it would be supported by references to Slovak epistemic authorities, such as prominent legal scholars and NGO leaders.

## Preventing concept capture

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Of course, there is no guarantee that constitutional judges would at any point in history be willing to stand up for Slovakia's core constitutional commitments in terms of its embeddedness in the EU, or standards of minority protection. However, if epistemic authorities keep presenting the constitutional amendment as capable of constraining them, it will become easier for the judges to claim not to be responsible for the violations and, consequently, the decline of constitutionalism in Slovakia.

Being overly haunted by text – and especially only a selection of its parts, rather than its spirit – appears an ill-suited interpretive method for various illiberal onslaughts. Instead, illiberal interpretations should be open to constitutional challenge before Slovakia's Constitutional Court, even when they entail changes to the text of the Constitution, which rests on principles aligned with European and global democratic norms.

In mid-June 2025, the coalition decided to postpone the vote on the amendment on the amendment until after the summer recess, having secured only 89 guaranteed votes out of the 90 needed. While this means that the coalition parties could not claim victory in the vote, allows them to keep the amendment's bricolage of themes alive over the summer, sustaining the mobilisation of voters with illiberal leanings. Of course, this post does not suggest that democratic actors should remain silent in the face of such practices. However, it is time to avoid fostering self-fulfilling prophecies in the realm of constitutional interpretation. A few strategies to counter that risk include exposing procedural flaws, criticising the poor quality of justifications, and highlighting the collision that (some of) the proposed changes create with central provisions of Slovakia's Constitution – as well as with its ethics, traditions and identity. Democratic actors can begin to reclaim some of the very concepts [often](#) co-opted by illiberal rhetoric.

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