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Development of Justice and Transformation of Judicial Authorities in Slovakia after 1989

Keywords: justice, judiciary, court, the judicial council, legislation, prosecutor office

Słowa kluczowe: wymiar sprawiedliwości, sądownictwo, sąd, rada sądowa, ustawodawstwo, prokuratura

Abstract

In this article, the author tries to point out the problems of the legal system and democratic society after 1989 in the condition of Slovak Republic and ultimately almost in all the countries of post-Communist period. The aim of this work is to point out the development of justice and judicial authorities in Slovakia since 1989 and its current state. The result should be the naming of all elements influencing the judiciary, decision-making activity of court in the context of the directive and the rules of the European Community. The next point is the description of the independence and connection of the judiciary and its offices to state power and related issues. Also, the autor describes to the establishment of the Judicial Council of the Slovak Republic as the highest office of the judiciary in the Slovak Republic, its competences, powers and functioning. In the same way there are listed other offices without which the judiciary as such could not function like Prosecutor's Office of the Slovak Republic, Slovak Bar Association, Notary Chamber of the Slovak Republic and Slovak Chamber of Executors. At the end of the article the author evaluates the development of justice in the context of an ever-evolving democratic society.

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Streszczenie**Rozwój wymiaru sprawiedliwości i transformacja wymiaru
sprawiedliwości na Słowacji po 1989 roku**

W tym artykule autor zwraca uwagę na problemy systemu prawnego i społeczeństwa demokratycznego po 1989 r. w sytuacji Republiki Słowackiej i ostatecznie prawie we wszystkich krajach okresu postkomunistycznego. Celem tej pracy jest wskazanie rozwoju wymiaru sprawiedliwości i organów sądowych na Słowacji od 1989 r. i jej obecnego stanu. Rezultatem jest nazywanie wszystkich elementów wpływających na sądownictwo, działalność decyzyjna sądu w kontekście dyrektywy i przepisów Wspólnoty Europejskiej. Następnym punktem jest analiza niezależności i powiązania sądownictwa i jego urzędów z władzą państwową i związanymi z tym kwestiami. Również autor opisuje ustanowienie Rady Sądownictwa Republiki Słowackiej jako najwyższego urzędu sądowniczego w Republice Słowackiej, jej kompetencji, uprawnień i funkcjonowania. W ten sam sposób zostają wymienione inne urzędy, bez których sądownictwo jako takie nie mogłoby funkcjonować, jak prokuratura Republiki Słowackiej, Słowacka Izba Adwokacka, Izba Notarialna Republiki Słowackiej i Słowacka Izba Wykonawców. Na końcu artykułu autor ocenia rozwój wymiaru sprawiedliwości w kontekście ciągłego ewoluującego społeczeństwa demokratycznego.

I. Introduction

Since November 1989 many countries of Central and Eastern Europe, including Slovakia, have witnessed significant political, economic and social changes. These changes influenced almost every area of social life and the sphere of justice was no exception. It must be admitted though, the global social changes as such were initially of optical nature because their transformation into everyday lives of the population seemed to be problematic or almost impossible in many aspects and it appears to continue in this line to the present day. However, certain processes connected with the change of the political system were carried out very slowly or not at all. The sphere of justice, i.e. the judiciary, may serve as one such example².

² W. Sadurski, *Decommunization, Lustration and Constitutional Continuity: Dilemmas of Transitional Justice in Central Europe*, "EUI Working Paper Law" 2003, No. 15.

Justice, or alternatively the judicial authorities as such, has a significant impact on all areas of social life; their basic function, the protection of the system of government and legality of the state, cannot be properly exercised without the support of the general public (not only of the community of experts). Thus, the primary interest of the state should be to create all necessary conditions aimed at its positive development and direction.

It is evident that at present the general public has no confidence in the judiciary and in its all related authorities. This development can be considered as a very negative factor and is viewed as the outcome of the functioning of the state.

The public pressure, as a response to the existence of confidence in the judiciary, should be the driving force for the state for a better and more resolute approach to ensure the material, social and personal conditions in this sphere.

It is an undeniable fact that since 1989 legislation has undergone significant changes, although the initial modifications of the early 1990s were not as radical as regards the “spirit” of these laws which resided in the obligation of the court to seek the material truth. These changes frequently resulted in undue delays in court proceedings and controversial judicial decision-making. Probably, at this point the confidence in the judiciary rapidly decreased and this state has persisted to the present day.

II. The Judicial System in Slovakia after 1989

The Velvet revolution was to a large extent “gentle” (non-violent) in the sphere of justice as well. The majority of then active judges still remained in their offices. Many of those who had resigned, later switched to private law practice and this way became a part of the wider judicial system. After the creation of our republic, the position of the judiciary was regulated by the Constitution and legislation passed in the beginning of the 1990s³. The judges were initially elected by the National Council of the Slovak republic upon the recommendation of the government for a period of four years. After the expiration of the four-year period in a judicial office, the judge was eligible for re-elec-

³ Act No. 460/1992 Collection of Acts – The Constitution of the Slovak republic.

tion without any limitation of time which was realized upon the recommendation of the government⁴.

In the beginning of the 1990s, the number cases to be decided by the judges rapidly increased. This period brought about a number of restitution disputes, commercial and property settlement cases in courts accrued rapidly as a result of the newly-organized society.

It should be noted, in the first place, that the system of the Slovak judiciary has not been reformed since the political changes in 1989 with the exception of several minor modifications, and its responses to the problems and processes connected with the change of the political system have been too slow, too late or none. The political configurations of the past and also of the present have repeatedly attempted to build a modern and trustful judiciary, however, these attempts have frequently attracted only lack of willingness, mistrust and apathy on the part of the community of experts⁵.

It can be said that in the span of twenty-seven years, in the conditions of the Slovak republic no complex vision of the system how the judiciary should look like and function has been elaborated. We are bearing the brunt of lack of independence of the judicial power from the legislative and the executive powers. At issue here is one of the most significant principles typical of all democratic forms of government. It is a paradox and a major problem at the same time that such a fundamental principle is still so detached from our political system which is parliamentary democracy⁶. It is apparent that all information portals refer to the Slovak republic as a parliamentary democracy, however, with regards to the principle of separation of powers it is different in reality. Naturally, the concept of democracy as such is not questioned here, because its existence in all spheres of social life after 1989 cannot be doubted at all.

The independence of the judiciary is undoubtedly the basic presumption of its proper and smooth functioning. The independence of the judiciary is

⁴ N. Nedelsky, *Divergent responses to a common past: Transitional justice in the Czech Republic and Slovakia*, "Theory and Society" 2004, vol. 33, No. 1, pp. 65–115.

⁵ Act No. 757/2004 Collection of Acts – Act on courts (§1, §2 Collection).

⁶ M. Bujňáková, *Dodržiavanie princípov právneho štátu (Observance of the principles of the rule of law)*, "Právny obzor" 1997, vol. 80, No. 3.

underpinned not only by national legislation but also by many international agreements which the Slovak republic is bound to observe⁷.

We maintain, however, that the real separation of powers, despite being declared as it is, has not been achieved to the present day. There are several reasons justifying this negative phenomenon. These include, for example, financial dependence of the judicial power, politicizing of the judicial power on the part of the legislative and executive powers, and, last but not least, also the dissemination of negative information in the media⁸.

The independence of the judicial power in the Slovak republic is mainly jeopardized by the financial control over the functioning of the judiciary exercised by the Ministry of Finance. The courts of the Slovak republic do not, in principle, have their own separate budget – their budget is dependent on the budget of the Ministry of Justice – which fails to ensure the independence⁹.

Thus, it seems evident that in case the Ministry of Finance continues to provide (or allocate) the finances for the judicial authorities, the independence as such cannot be guaranteed. The respective powers in the state are meant to exercise control one over another and not to be dependent one on another – when control and system of checks and balances is confused with control and dependence, as the case is in our country, the system cannot function properly.

On the other hand, in my opinion, it is absolutely unacceptable that the courts as regards their maintenance and staffing be in such a poor condition as they can be found at present. Lack of basic material needs only reflects the current state-of-the-art of the judiciary. Similarly, insufficient staffing in the courts is a negative phenomenon significantly contributing to undue delays in court proceedings.

Remarkable progress in the formation of the judicial system has been achieved when the Judicial Council of the Slovak republic was set up. The Constitution stipulates that the Judicial Council of the Slovak republic is a judicial authority within the judicial power of the Slovak republic. The competences of the Judicial Council of the Slovak republic reside especially in administra-

⁷ Treaty on the Functioning of the European Union – Lisbon Treaty (Lisbon 13.12.2007 (Ú.v.EÚ C 306, 17.12.2007, pp. 1–271).

⁸ Act on the State Budget which is adopted annually for every calendar year.

⁹ P. Rajňák, *Justice Revue*, www.pravnelisty.sk (17.12.2015).

tion and limited regulation of the judiciary. The formation, competences and functioning of the Judicial Council of the Slovak republic are governed by the Act No. 185/2002 Z. z. (Collection of Acts) on the Judicial Council of the Slovak republic as amended. It is difficult to understand, though, why such important authority representing the whole judicial power started to operate as late as in 2002.

The Judicial Council assumed several fundamental responsibilities of the executive power and Parliament regarding the appointment of judges, allocating of judges to courts and career development of judges. The Judicial Council makes recommendations for the appointment of judges to the President and makes decisions concerning the allocation of judges to respective courts. The Judicial Council may transfer the judge to a different court only with the consent of the judge.

In the course of the operation of the Judicial Council certain deficiencies have been detected which more or less interfere with the “life” of the judiciary. For instance, the Judicial Council acting as the ultimate body of our self-governance cannot decide on the use of finances based on the current needs of the judiciary¹⁰.

Such limitation is reflected at every level of the judicial system, since every act or procedure of the president of the court requires the consent of the superior authority; when granting the finances, the superior authority is, ultimately, limited by the amount of finances which were allocated to the judicial system by the executive power, it means, by the Ministry of Finance. Another problematic aspect in relation to the independence of the Slovak judiciary is the negligible range of competences of the presidents of district and regional courts. Although they are accountable for the operation of the courts, in reality however, they cannot influence the number of employees working for the court, their selection or any technical and economic environment of the respective court¹¹.

Despite the fact that the legislation itself confers various competences and powers on the Judicial Council and it as the most important judicial author-

¹⁰ Act on the Judicial Council No. 185/2002 Z.z. (Collection of Acts) (§3a Ensuring the exercise of public control of judiciary).

¹¹ Act No. 757/2004 Z.z. (Collection of Acts) on courts (§11-§31 Organization of courts).

ity decides on the organization and relations with administrative bodies of the judiciary and bodies of judicial self-governance, I maintain that the existing material and financial dependence on the executive power still casts doubt on its real independence.

It is reasonable to launch a debate over a separate budget for the courts with the Judicial Council having supervisory function over the budget and power to make more autonomous decisions on the use of finances.

In spite of the fact that this, in my opinion, negative factor to a certain extent endangers the independence of the judiciary in general, it appears important to note that the independence of courts concerning the adjudication is given and indisputable¹².

The real independence of the courts resides in the fact that when the judges are appointed or elected, they are selected for indefinite period of time. Judges are subject to removal from the office only if the reasons stipulated in the Constitution justify it. The Constitution of the Slovak republic in the Art. 141 unequivocally declares the independence and impartiality of the courts.

Another no less problematic aspect of the Slovak judiciary is its frequent and abundant politicizing. The competences and powers of the Ministry of Justice, which is managed by the political nominee of the ruling political party, are disproportionate to those of the courts – starting with the mentioned allocation of finances through staffing policy, which is almost completely with certain minor exceptions left at the discretion of the ministry, ending with the political appointment of the presidents of district and regional courts. Moreover, the Minister of Justice is relieved of any political responsibility for the operation of the judiciary, although he manages all the processes in the resort. It appears appropriate to take under serious consideration the transfer of competences in relation to the courts of the Slovak republic from the Ministry of Justice to the Judicial Council.

The politicizing of the judicial power can be viewed negatively from another perspective. Almost every politician in Slovakia takes the liberty of commenting the decisions of courts, whilst many international recommendations advise the politicians to refrain from any comments. I consider it inappropriate for politicians to give any opinions or comments on the decisions of the

¹² Constitution of the Slovak republic (An Art. 141–148 Act No. 460/1992 Zb.).

courts. Their obligation (just like of any other citizen) is to respect the court's decision, because they are frequently not acquainted with the facts and relevant information in the commented matters. I must note that their frequent uninformed behavior sets a bad example for the general public, which, in turn, following their negative example, with lack of knowledge in the matter express their opinions on many famous legal cases. Such famous legal cases almost always attract inadequate reactions of the public, comments and statements of politicians. With a few exceptions, a debate on the state-of-the-art of the judiciary is missing¹³.

Further, not less problematic appears to be the situation in the legal environment in which the Slovak judiciary operates. Constant changes in the fundamental legal regulations of the state hinder the proper exercise of the judicial power. Instability of the legal order of the Slovak republic after 1989 directly puts legal certainty of the citizens in jeopardy.

Indirect amendments constitute another serious problem since they make the legislative picture even more blurred. It must be pinpointed here that the Czech Republic has declared indirect amendments to be unconstitutional. I want to express my doubt whether the new civil procedural rules can guarantee speedy and effective court proceedings in Slovakia. The rules were adopted very quickly and without proper discussion in the community of lawyers. As the processes in the Slovak judiciary currently stand, the length and efficiency of court proceedings can be expected to decline in the following years. The disorganization may also result from the fact that new rules shall apply only to matters which the courts receive after these codes enter into effect¹⁴.

Several amendments to the "main" law codes through other legal regulations must be considered undesirable. To provide an example, the amendments to the Penal Code and Code of Criminal Procedure which were altered by applying the effect of other laws (Act of Parliament No. 91/2016 on criminal liability of legal entities). Such frequent amendments hinder the transparency in legal rules.

From my point of view as a practicing lawyer, I would like to draw attention to the practice of the European Court of Justice and the European Court

¹³ Najprávo, P. Rajňák, *op.cit.*

¹⁴ Act No. 160/2015 Z.z. (Collection of Acts) Civil Contentious Code of Procedure, Act No. 161/2015 Civil Non-Contentious Code of Procedure.

of Human Rights. The latter in its decision-making often causes “confusion”, because its decisions in several cases have led to sudden reversals in already final decisions of national courts. Under no circumstances I dare to question the activity and existence of this authority. By contrast, in 2012 the European Court of Human Rights delivered 21 decisions ruling against the Slovak republic.

The fact that the Slovak republic is a member state of the European structures has predominantly had a positive effect, because the judiciary (as well as other spheres of social life) is directly and indirectly connected with and influenced by the European trends in law. One such institution is the European Commission for democracy through the law (better known under the name of “Venice Commission”). It was founded in 1990 by the Committee of Ministers of the Council of Europe and it is its advisory body in constitutional matters. The role of the Venice Commission is to provide legal advice to member states and especially help the states bring their legislation in line with the European and international standards in the field of democracy, human rights and the rule of law. The Venice Commission has gradually become internationally recognized independent advisory body in constitutional matters.

The Venice Commission is composed of independent experts and professionals who gained international professional recognition based on the activities they carried out in democratic institutions and their achievements which significantly contributed to the development of legal and political sciences. These are prominent members of the academia, experts in the branch of constitutional and international law, constitutional judges or senior judges, members of national parliaments and high-ranking public officials.

The random allocation of court cases by means of electronic registry can be viewed very positively. This change significantly rules out any chances of manipulation with the assignment of cases to respective judges. On similar grounds, the concept of a three-tier system of the courts tremendously improved the perception of law enforcement. The Special Criminal Court and the Special Prosecutor’s Office were created at the same time as specialized investigating, prosecuting and adjudicating authorities to investigate and prosecute criminal offences of corruption and organized crime.

The technological advancements have had a remarkable transformative impact on the knowledge of our legal environment. Prompt orientation in legal regulations is much simpler and comfortable, especially with regards to the existence of various complex systems. One of these systems is ASPI, the automatized system of legal information. This is by far the most used, modern and complex system allowing the user to search legal regulations quickly. Emphasis is placed on proper relations between various legal regulations and their interconnections with other relevant documents and case-law.

Owing to this system, law-finding in the complex framework of legal regulations is a lot easier and more accessible to the judges and to other employees of the court but also to the citizens without legal qualification.

As with other professions, the judiciary has its professional organizations as well. The association of judges of the Slovak republic is a voluntary non-political professional organization of judges of the Slovak republic which is the biggest professional organization of judges at present. Its objective is to promote the ideas of the annual General Assembly of the Association of Judges of the Slovak republic, to increase confidence in the judiciary, to provide the general public with accurate information related to its organization and functioning¹⁵.

The exercise and functioning of the judicial power are undoubtedly interconnected with the existence of other authorities without which involvement and cooperation the judicial power would be inoperable. The Prosecutor's Office of the Slovak republic, the Slovak Bar Association, The Chamber of Notaries Public of the Slovak republic and the Slovak Chamber of Executors are those institutions which are closely tied to the judicial system. The general public considers these institutions to be the integral part of the judiciary, however, their separate structure, organization, functioning, status and competences point to the contrary. It seems evident that the "life" of the judicial power would be impossible in practice without the mentioned institutions.

III. Conclusions

Justice can be briefly characterized as activity regulated by the law which, on the one hand, aims to adjudicate disputes and to punish the offenders for

¹⁵ K. Šipulová, V. Hloušek, *Different paths of transitional justice in the Czech Republic, Slovakia and Poland*, "World Political Science Review" 2013, No. 9(1).

the commission of criminal offences, on the other hand. Furthermore, it also involves the exercising of rights by special authorities empowered for this purpose. In all democratic states, justice serves as the guarantee of the rule of law, and its application (understand effective application) shall guarantee the rule of law. Justice as such is undoubtedly connected with the judiciary that serves as the instrument for its proper application.

Justice can be understood as the moral principle requiring the respect for the legal rule, the generally recognized rule which is binding upon the society. Justice is viewed as one of the fundamental social values. Its existence in the society is preconditioned by a healthy, fully-valued and strong judiciary. However, the strength of the judiciary cannot be seen only in the context of good or bad decisions. Moreover, with each decision one party to the dispute is usually dissatisfied with the holding which, in turn, results in the perception of the judiciary as „untrustworthy”.

It appears indisputable that without proper functioning of the judiciary (as well as of other branches of government) our society would not exist in a democratic state respecting the rule of law, despite the fact that the synthesis of the rule of law and democracy is not so obvious. This “obviousness” can be achieved, however, it all depends on us, either on the community of experts or on the general public how we decide to approach the challenges the judiciary has been facing since 1989. Although the criticism of the judiciary and of the judicial branch seems justified, without the involvement of the active and positive approach of the legislative and executive powers, without positive reflections and ideas of better-operation and the activities of the concerned, it means, of the citizens, this criticism remains a cliché.

This paper aimed to present my views on the development of the system of the Slovak judiciary after 1989 within the framework of our still-developing democracy. In my opinion, it is a very sensitive and topical issue which despite the presence of societal, political, social and economic problems should not be left unnoticed.

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