

The threat to the stability of democracy and the rule of law in Slovakia

Dear European Commission, Honourable Members of the LIBE Committee of the European Parliament,

The European Union and its Member States are founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union. However, as a result of the actions of the Government of the Slovak Republic under the leadership of Robert Fico, we have serious concerns as to whether it is and will be possible in the future to say that we still share these values in Slovakia.

On behalf of civil society in Slovakia, we would like to draw your attention to the actions of the Government of the Slovak Republic concerning the rule of law and institutions in a democratic society, which, although not individually, but in the context of each other and the context of the media statements of the SMER-SD party, Robert Fico or other government parties, before the elections and after the formation of the Government of the Slovak Republic, significantly threaten the stability of democracy and the rule of law in Slovakia.

We therefore call on the European Commission to perceive the actions of the Government of the Slovak Republic as threatening the stability of democracy and the rule of law in Slovakia, particularly about

- threatening the independence of institutions such as the Office for the Protection of Whistleblowers, the Office for Health Care Supervision and other authorities
- the threat to the investigation and prosecution of a several of corruption cases and the activities of the prosecutor's office and the Specialised Criminal Court
- violation of the rule of law by adopting significant changes in the functioning of institutions in an abbreviated legislative procedure without public participation and expert debate
- violation of the principles of transparency in selection procedures for managerial posts in the public administration

The Government of the Slovak Republic and its ministers, who were appointed to their posts only on 25.10.2023, have managed to implement or announce several significant changes:

1. The method of dismissal of the President and Vice-Presidents of the Slovak Police Force
2. The status of off-duty NAKA investigators
3. Replacement of the Director of the Police Inspection
4. Replacement of three members of the Judicial Council of the SR
5. Threatening a judge of the Bratislava IV Municipal Court.
6. Proposal to abolish the Special Prosecution Office

7. Changes in the competencies of the Specialised Criminal Court
8. Modification of the Competence Act so that the Government of the Slovak Republic can more easily replace the heads of controlling bodies such as the Health Care Surveillance Authority or the Statistical Office of the Slovak Republic
9. Proposal to change the functioning of the Whistleblower Protection Office
10. Adoption of substantial changes to laws in the field of justice through shortened legislative procedures without public comment
11. Changes to the Criminal Code that will substantially affect both the level of sentences and the length of limitation periods, as well as the decision on the seizure of property and the enforcement of such sentences in proceedings already pending.

AD 1. Method of dismissal of the President and Vice-Presidents of the Police Force of the Slovak Republic - Under to Article 6(3) of Act No. 171/1993 Coll. on the Police Force, as amended, the President of the Police Force is appointed and dismissed by the Minister. Thus, it is entirely within the competence of the Minister of the Interior of the Slovak Republic to decide on the dismissal of the President of the Police Force. The fact that the former President of the Police, Štefan Hamran, was dismissed two days before his employment, which he himself had asked to be terminated, ended and was reassigned for two days to a post 300 km away from his place of residence is not contrary to the law. Still, it is a manifestation of the arrogance of power. The Minister of the Interior does not have the power to dismiss vice presidents, similarly to the President of the Police Force without giving a reason. In their case, their reassignment to another position must be carried out following Act No 73/1998 Coll. on the civil service of members of the Police Corps, the Slovak Information Service, the Prison and Judicial Guard Corps of the Slovak Republic and the Railway Police as amended. In addition, one of the vice presidents of the Police Corps had the status of a protected whistleblower under Act No. 54/2019 Coll. on the Protection of Whistleblowers of Anti-Social Activity and on Amendments and Additions to Certain Acts as amended. When adopting a personnel order about this vice-president, the Minister of Interior should have requested prior approval of the employment measures from the Whistleblower Protection Office. For this reason, Branko Kišš, the former Vice-President of the Police Corps, applied to the court for an interim decision to suspend the application of this personnel decision and to allow him to continue to perform his duties as 1st Vice-President of the Police Corps Presidium. The court of first instance granted this interim decision in his favor. Whether the Minister of the Interior's action violated the law will be decided by the courts at a later stage. Still, it is clear from this decision that the court considered the action of the Minister of the Interior to be a severe interference justifying the interim decision. Similarly, in the case of the 1st Vice President of the Presidency of the Police Corps, the Minister of the Interior decided by a personnel order to assign him to a workplace 200 km away from his residence and to a completely different job description. We will not assess the legality or illegality of the action of the Minister of the Interior about the Vice-Presidents of the Police Corps Presidium; that is a matter for the independent courts to decide, but the manner in which they were dismissed, the specific procedure followed and the other circumstances of the case raise questions.

AD 2. Off-duty status of NAKA investigators - Just two days after his appointment, the Minister of the Interior placed six investigators of the National Criminal Agency of the Slovak Police Force (NAKA) off duty, who were also involved in the detection and investigation of corruption and other criminal cases, of which several representatives of the SMER-SD party or former high-ranking officials in the police force or the courts are accused or indicted. These investigators have been indicted and are under investigation for allegedly manipulating the investigation of these corruption cases based on recordings from their office. This was why the Minister of the Interior officially put them out of service, claiming that he had to do so because they were being prosecuted. Legally, however, the provision of Article 46(1)(b) of Act No 73/1998 Coll. provides for the possibility that even criminally prosecuted members of the police force may continue to perform their duties if their activities do not jeopardize an essential interest of the civil service or the course of clarification of their actions, if they are reasonably suspected of having committed a criminal offense. In this case, the police officers decided by the Minister of the Interior have applied to the court for an interim measure, some of whom have succeeded at first instance and others not, so that some are back on duty. Also critical are the unlawful circumstances reported by their lawyer on the social network, whereby NAKA officers who are off duty have to stay at home and are subject to random checks by their superiors, while police officers who have returned to work are under the supervision of their superiors and, just after taking up their duties, could not even move freely around the building in which they work. It is also necessary to take into account the fact that all 6 NAKA investigators had the status of whistleblowers, in which case the Minister of the Interior should have first contacted the Office for the Protection of Whistleblowers of Anti-Social Activities and requested its opinion before taking a personnel decision against these investigators.

We are not assessing the legality of the Minister of the Interior's action, which the courts should judge. Still, in this case, too, it was an extremely quick decision without any apparent reasons, and the suspension of these investigators was also announced publicly by the politicians of the ruling coalition before the elections.

AD 3. Replacement of the Director of the Inspection Service of the Police Corps - The Government of the Slovak Republic appointed Branislav Zurian as the new Director of the Inspection Service of the Police Corps even before submitting its program declaration and before the vote of confidence in the Parliament. During the hearings in the parliamentary committee, it became clear that he had not studied the fundamental documents related to the functioning of the inspection service. He had previously been the head of NAKA. He later faced a number of allegations regarding the performance of his work, mainly in connection with the leaking of information and cooperation with the Inspection Service at a time when it was conducting an investigation against the NAKA officers from the previous point. In the last administration, he sought asylum in several countries, eventually finding it in Belarus. A person with this profile is certainly a dubious nomination by this government.

AD 4. Replacement of three members of the Judicial Council of the Slovak Republic - before the submission of the program declaration and before the vote of confidence in the Parliament, the Government replaced three members of the Judicial Council of the Slovak Republic nominated by the Government according to the Constitution. Based on the current legislation, it is impossible to speak of an illegal step, but the way the government proceeded is substandard. The replacement took place at the very first cabinet meeting, without the

original members of the Judicial Council having been informed of their dismissal or the reasons for which they had been dismissed. They only found out about their dismissal from the Government's decision published in the media. The Judicial Council is also an essential body for the judiciary, with broad powers of control and influence over the selection of judges, but also with disciplinary powers of suggestion.

AD 5. Threats by the Minister of the Interior to a judge of the Bratislava IV Municipal Court - after the first urgent measure was issued, on the basis of which the First Vice President of the Presidium of the Police Corps of the Slovak Republic was to return to his original position (see point 1), the Minister of the Interior Matúš Šutaj-Eštok publicly threatened the judge who issued this decision with both disciplinary and criminal sanctions for this very decision. He later apologized, but only after the judge had been publicly defended by the Judicial Council of the Bratislava IV Municipal Court, which described these statements by the Minister of the Interior as gross intimidation of judges and described them as unacceptable on the part of a representative of the executive branch of power, who exerted pressure and threatened this and other judges with criminal and disciplinary prosecution.

AD 6. Proposal to abolish the Office of the Special Prosecutor's Office - The Government of the Slovak Republic approved a draft amendment to Act No. 153/2001 Coll. on the Public Prosecutor's Office as amended, which aims to abolish the Special Prosecution Office, whereby prosecutors from this prosecution office are to be transferred to the General Prosecutor's Office. Still, the files and cases handled by this office will be transferred to regional prosecutor's offices competent according to where the crime occurred or where it came to light. The abolition of the Special Prosecution Office is to take place by 15 January 2024, only three weeks after the approval of this bill. Moreover, it must be approved in an abbreviated legislative procedure without meeting the legal prerequisites. The obvious aim of the change is to take the cases previously handled by the Special Prosecution Office away from the prosecutors who supervised them in the preparatory proceedings or represented them in the court proceedings and to allocate them to other prosecutors, without increasing the number of regional prosecutors and in the middle of the criminal proceedings. It is a fact that such a body as the Special Prosecution Office doesn't need to exist in the system of law enforcement agencies, but to propose its abolition at such short notice, without sufficient opportunity to continue prosecutions initiated under the current prosecutors, will have the effect of stalling or slowing down investigations and criminal proceedings in several cases, not only those that will be transferred from the Special Prosecution Office but also those now handled by county prosecutors due to the increase in their workload in the short term, without adequate preparation at the institutional level. Moreover, adopting such a significant change concerning a law enforcement body requires a public debate with experts from outside the ministries and with the involvement of the public (both professional and lay) with the opportunity to comment on such a change.

The Special Prosecution Office was established by the government of Robert Fico in 2009 precisely to fight organized crime and corruption. At that time, it argued for the need to develop this institution to make investigating and prosecuting this serious crime more effective. The proposal to abolish it comes at a time when this office is dealing with severe crimes of corruption and abuse of power and is also prosecuting representatives of the ruling parties.

AD 7. Proposals for changes in the competencies of the Specialised Criminal Court - according to the published draft amendment to the Criminal Code, the competencies of the Specialised Criminal Court are to be affected as the amount corresponding to minor damages is increased to EUR 700. According to the Criminal Procedure Code, the Specialised Criminal Court has the competence to decide on property and economic crimes where the amount of the damage caused or the property benefit obtained reaches twenty-five thousand times the amount of the minor damage. While the threshold was previously EUR 6.65 million, under the new legislation the threshold will be up to EUR 17.5 million. This means that, as a result, some of the criminal offenses previously decided by the Specialised Criminal Court will be heard in other courts.

AD 8. Changes to the Competence Act - The Government approved an amendment to the Competence Act, which is also to be discussed in an abbreviated legislative procedure at the December session of Parliament. The amendment is intended to facilitate, among other things, the dismissal and appointment of the heads of the Health Care Surveillance Authority, the Statistical Office, and probably the Antimonopoly Office. This will reduce the independence of these institutions and increase their politicization. In the current situation, the President appoints the head of the Health Care Surveillance Authority on a proposal from the government, which Parliament must approve. After the adoption of the amendment, the President would be appointed and dismissed only by the Government on the proposal of the Minister of Health. However, suppose several legitimate bodies have to agree on the choice of a candidate for the chairmanship. In that case, this reduces their influence on the institution, reduces the risk of political nominations and agreements, and increases the transparency of the selection process, thus increasing the institution's independence. The amendment adopted by the Government goes in precisely the opposite direction. This negative impact will also be caused by the addition of another exhaustively listed but very vague reason for the removal of the President of the OHRS - namely, if there are 'serious grounds, in particular, in the case of conduct which raises or is liable to raise doubts about the personal, moral or professional qualifications for the performance of his or her duties.'

AD 9. Proposal to change the functioning of the Whistleblower Protection Office - the Government approved the draft amendment to Act No. 54/2019 Coll. on the Protection of Whistleblowers of Anti-Social Activity and Amendments and Additions to Certain Acts as amended, which proposes to add an exemption from the scope of specific provisions of the Act in relation to the Police Corps and its members, similarly to what is already the case about the Slovak Information Service, the Military Intelligence Service and the National Security Office and their members. At the same time, however, it is proposed that the *ex lege* approval of this amendment will extinguish the legal protection previously granted to members of the Police Force, which can be considered as a retroactive application of the law, which the Constitution prohibits. Moreover, in the explanatory memorandum, the Government states that *"this transitional provision is necessary in view of the fact that the excessive use or abuse of the institution of the protected whistleblower in the current practice may lead to paralysis of the entities concerned or jeopardize their ability and capacity to fulfill, for example, in the case of state bodies, their statutory tasks and obligations."* The legislator makes no secret of the use of retroactivity in this amendment.

AD 10. Adopting significant changes in the abridged legislative procedure - as we have long pointed out, the mere use of the abridged legislative procedure in contravention of the law and its purpose is a violation of the rule of law. Moreover, suppose laws are adopted under the abridged legislative procedure that interferes with the independence of the supervisory bodies or substantially alters the structure and competencies of the law enforcement bodies. In that case, this violation is all the more serious. At the same time, we are currently witnessing that the Government of the Slovak Republic does not publish draft laws even well before their discussion and adoption, making public scrutiny of its activities significantly more difficult. Combined with the fact that it refuses to communicate or answer questions from several media, public scrutiny of the Government is made considerably more difficult. Submitting significant changes to the rule of law in an abbreviated legislative procedure prevents any public debate on them, hampers the work of the bodies themselves, which have to adapt to sudden change at short notice, and effectively jeopardizes the fulfillment of their statutory tasks.

11. The amendment to the Criminal Code, submitted by the Government for approval in the abbreviated legislative procedure, substantially affects the number of damages, the minimum amount of which is set at €700 (currently €266), lowering the criminal rates for corruption offenses, which in turn has an impact on the length of time limitation periods, the extinction of the criminality of certain offenses, and the process for the enforcement of forfeiture of property is also being modified, which will also affect cases that have been finally decided and where the enforcement of forfeiture of property is currently underway. The Code of Criminal Procedure regulates the status of cooperating witnesses, who are granted relief in their criminal case if they testify to other illegal activity. The transitional provisions of this regulation also include the obligation to deliver (incidentally, after the files are transferred from the Office of the Prosecutor to the regional prosecutor's offices) within ten days of the entry into force of the amendment to the Code of Criminal Procedure a list of the benefits granted to a cooperating witness in a given case. The court will then promptly decide whether the indictment meets the requirements under the new wording of the Code of Criminal Procedure. However, this will be very difficult to do in practice, so it may happen that some criminal proceedings will be returned to the pre-trial stage, which will significantly slow down their resolution.

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