The Rule of Law and the Fight Against Corruption in Slovakia: A Review of the Decade from 2012 to 2023

The concept of the rule of law is a fundamental pillar in any democratic society, ensuring fairness, justice, and accountability. In the past decade (2012-2023), Slovakia has been faced with significant challenges to upholding the rule of law, particularly in the fight against corruption. As the country experienced political and societal changes during this period, addressing corruption became a pressing issue that required sustained efforts and reforms.

This paper looks at the evolution of the rule of law in Slovakia from 2012 to 2023, with a specific focus on the country's struggle against corruption. It explores the key legislative developments, institutional mechanisms, and anti-corruption initiatives implemented during this period. By examining the successes, failures, and ongoing challenges, the paper aims to shed light on the state of the rule of law and the fight against corruption in Slovakia.

The timeline considered is crucial, as it covers a period in which Slovakia went through significant political transitions, economic fluctuations, and social changes. Throughout this time, the country underwent critical moments that affected the integrity of its public institutions and raised questions about their effectiveness to combat corruption.

Perception of corruption in Slovakia

The Corruption Perceptions Index (CPI) ranks countries and territories based on the perceived level of corruption within their public sectors. A country or territory's score indicates the extent of public sector corruption, ranging from 0 (highly corrupt) to 100 (very clean).

Between 2012 and 2022, Slovakia saw significant changes in its CPI score, reflecting shifts in its anti-corruption efforts, governance practices, and the overall perception of corruption within the nation. In 2012, Slovakia received a CPI score of 46 and was ranked 62nd out of 180 countries worldwide, lagging behind countries such as Botswana, Namibia, and Oman. Over the course of a decade, Slovakia has implemented various measures to combat corruption and strengthen its institutions, including legislative reforms, and has promoted transparency and accountability. Consequently, the index and ranking have seen a slight improvement. In 2022, Slovakia received a score of 53 and was ranked 49th out of 180

countries.

Table 1: CPI score changes 2012-2022



Source: Slovakia Corruption Index – 2023 Data – 2024 Forecast – 1998-2022 Historical – Chart (tradingeconomics.com)

Institutional mechanisms for fighting corruption in Slovakia

Slovakia has established a range of institutional mechanisms dedicated to combating corruption and promoting transparency and accountability within its governance structures. These mechanisms are pivotal in upholding the nation's commitment to ethical governance.

In the realm of combating corruption, the responsibilities for prevention, detection, and prosecution are allocated to various specialized authorities. One of these key entities are the specialized anti-corruption units. They belong to the **National Crime Agency** of the Presidium of the Police Force and are tasked with detecting and investigating corruption offences, except for those involving corruption by police members and specific law enforcement agencies, which fall under the responsibility of the **Bureau of Inspection Service**.

Another cornerstone of Slovakia's anti-corruption efforts is the **Special Prosecutor's Office**, an independent institution responsible for handling sensitive criminal cases, including those associated with corruption. This office was established to strengthen the impartiality and effectiveness of investigations and prosecutions, especially when high-

ranking officials and influential individuals are involved.

Furthermore, the Department for the Prevention of Corruption within the **Office of the Government of the Slovak Republic** plays a vital role in coordinating anti-corruption endeavors. Led by the Prime Minister, the Government Council for the Coordination of the Fight against Corruption oversees the implementation of Slovakia's National Anti-Corruption Strategy, collaborating with various stakeholders to ensure a comprehensive and well-coordinated approach to tackling corruption. Additionally, the Government Office of the Slovak Republic is tasked with ensuring that government institutions adhere to transparency standards, which includes providing access to information and obliging public officials to regularly declare their assets in order to maintain transparency with regard to financial interests.

Beyond these aspects, Slovakia has also introduced essential measures to bolster its anti-corruption framework. These include **whistleblower protection**, with the Act on the Protection of Whistleblowers establishing procedures for reporting, safeguarding anonymity, and shielding whistleblowers from retaliation. Furthermore, the **Ombudsman**, known as the Public Defender of Rights, serves as an independent institution responsible for safeguarding citizens' rights and addressing grievances against the public administration, thereby indirectly contributing to the exposure of corruption and the promotion of transparency and accountability in public institutions.

Finally, Slovakia enforces **asset declarations** for all public officials, including politicians and civil servants. Mandated by Article 114 of Act No 55/2017, these declarations are required regularly to prevent conflicts of interest and detect potential corruption. They are held at the Central Registry of Asset Declarations, which ensures transparency with regard to the financial interests of public officials.

Collectively, these institutional mechanisms constitute a robust institutional framework for the fight against corruption in Slovakia. Their effectiveness, however, depends on factors such as independence, adequate funding, and political support and/or interference, which emphasizes that an ongoing commitment is needed to uphold these anti-corruption initiatives.

Introduction of new anti-corruption legislation between 2012 and 2023

Between 2012 and 2023, Slovakia witnessed notable developments in its anti-corruption legislation, with six key acts and one resolution shaping the nation's approach to combating corruption.

One pivotal piece of legislation, Act No. 343/2015, is dedicated to **public procurement**. This act primarily focuses on enhancing transparency, reducing corruption risks, and promoting fair competition within public procurement procedures. It covers many aspects, including the allocation of contracts for goods, execution of works, service provision contracts, competitive bidding, awards of concessions for works and services, and the overall management of public procurement procedures.

Act No. 91/2016 addresses the **criminal liability of legal persons.** This legislation is instrumental in holding corporate entities accountable for criminal actions, outlining applicable penalties, their imposition, and the procedures for prosecuting legal entities for criminal offences. Importantly, this act lists corruption offences such as bribery among the offences for which legal entities can be held liable.

Another significant piece of legislation is Act No. 315/2016 Coll., commonly known as the **Anti-kickback Act**. This law plays a crucial role in enhancing transparency in the relations between the public and the private sector by requiring verification and disclosure of the beneficial owners of entities engaged in business with the state. It establishes a register of public sector partners, compelling companies to reveal their ownership structure down to the level of the final recipient of the companies' profits, which prevents awarding contracts to shell companies.

Act No 55/2017 Coll. focuses on the **civil service**, bringing about reforms to how civil servants operate and interact with each other. Emphasizing values such as political neutrality, transparent hiring, effective management, fairness, and equal treatment, this law promotes high ethical standards and professionalism. It has also led to the establishment of the Civil Service Council, an independent body in charge of safeguarding civil service principles and overseeing compliance with the Code of Conduct for civil servants.

Resolution number 585/2018 outlines the **anti-corruption program** of the Slovak Republic for the years from 2019 to 2023, and is designed to proactively combat corruption, enhance transparency, and bolster the effectiveness of the law enforcement agencies. A recent update has added new responsibilities related to corruption prevention within the Government Office, with significant measures aimed at creating an anti-corruption environment.

Act No 54/2019 on the **protection of whistleblowers** acknowledges the vital role of whistleblowers in exposing corruption. This legislation aims to protect individuals who report corruption and wrongdoing, offering safeguards against retaliation and encouraging whistleblowers to come forward with valuable information. It establishes an independent

body responsible for providing protection to whistleblowers and considering reward applications.

These new pieces of legislation represent significant progress in the fight against corruption in Slovakia. However, they also highlight ongoing challenges, including the need for stronger enforcement, addressing political interference, fostering a culture of integrity in the public and the private sector, and building public trust in the institutions.

State capture: an important issue between 2012 and 2020

Despite having an institutional framework in place and making continuous legislative improvements in the fight against corruption, most of the time period discussed in this paper was dominated by a phenomenon known as "state capture." This occurred during the extended leadership of Prime Minister Robert Fico, who represented the political party SMER-SSD (translated as Direction-Social Democracy) in Slovakia from 2006 to 2020, with a brief interruption between 2010 and 2012. Throughout this period, even though various anti-corruption measures were introduced after 2012, there were serious corruption allegations involving individuals connected to the SMER-SSD. These allegations appeared to receive insufficient attention from law enforcement agencies and prosecution authorities.

During this time, the head of the Special Prosecution Office (SPO) was Dusan Kovacik. He occupied this position from the SPO's establishment in 2012 until his resignation in April 2020. Kovacik´s leadership faced criticism, with allegations of mishandling high-profile corruption cases and showing leniency towards influential individuals implicated in corruption scandals. Critics argued that under Kovacik's direction, the SPO failed to adequately investigate and prosecute cases involving prominent politicians and business figures associated with the SMER-SSD. This perceived lack of accountability further exacerbated concerns about state capture and the potential manipulation of the justice system.

Several major corruption scandals emerged, exposing widespread corrupt practices within the ruling party's circles. One such example was the notorious "Basternak" scandal, involving a businessman closely linked to the SMER-SSD, who faced accusations of tax fraud and questionable financial transaction.Upon receiving a file from the investigator, the Special Prosecutor did not see a reason to initiate a case against Basternak. These revelations, however, caused widespread public outrage and ignited massive anti-corruption protests across Slovakia. Citizens demanded accountability, transparency, and a thorough investigation of the alleged wrongdoings, which led to his case being investigated and him receiving a five-year prison sentence in 2019.

Although Basternak received a prison sentence, other corruption scandals were only investigated to a limited extent. Investigative journalists uncovered multiple scandals, for which Special Prosecutor Kovacik did not see a reason to prosecute. For instance, in a case regarding the stripping of military assets, it was the intelligence officers pointing out the asset stripping who ended up being prosecuted, not those who were suspected of doing so. In other scandals, such as the investigation of a tape on which former Prime Minister Fico bragged that he had secured 40 million euros for the SMER-SSD party from oligarchs, the Special Prosecutor did not even start an investigation that would have allowed the experts to evaluate the tapes.

However, the Special Prosecution Office was not the only institution obstructing high-profile cases against corruption. Once the rule of the SMER-SSD´s had come to an end, the police opened an investigation into a criminal group headed by the Nitra oligarch Norbert Bodor, who was supposed to operate within the police. This criminal group had investigated or, on the contrary, swept cases under the carpet upon request or in exchange for bribes. Important positions had been systematically filled only with people loyal to the system. Bodor´s contact in the police was Tibor Gaspar, then police president and currently the SMER-SSD candidate for the parliamentary elections. Ordinary police officers were ordered and paid tens or hundreds of euros to follow and monitor opposition politicians and political rivals of the then-ruling party, the SMER-SSD.

The tipping point: Kuciak's murder

The murder of Jan Kuciak, an investigative journalist, became a symbol of the prevailing corruption and impunity and the tipping point that shook the foundations of Slovakia. His and his fiancée Martina Kusnirova's tragic fate in February 2018 sent shockwaves through the country and triggered a nationwide outcry. Kuciak's journalistic work, focused on investigating corruption, financial fraud, and the ties between politicians and influential figures, had unveiled intricate webs of corruption that extended to the highest echelons of power, implicating figures within the ruling party, the SMER-SSD, and other political circles. After the event, Marian Kocner, the businessman accused of ordering the murder, offered help to his allies and the SMER-SSD and wrote in one of the intercepted messages that "because if SMER-SSD loses power, we're all going to jail".

The heinous assassination of Jan Kuciak and Martina Kusnirova exposed alarming links between organized crime and the political elites, leading to a profound political crisis. The case motivated thousands of citizens to take to the streets, demanding justice and an end to corruption. The nationwide protests ultimately led to the resignation of Prime Minister Robert Fico and his government, marking a turning point in Slovak politics.

In the aftermath of the protests, the SMER-SSD, once a dominant political force, was relegated to the opposition after the elections in 2020. The change in government brought a renewed focus on combating corruption. According to Transparency International Slovakia, the number of corruption cases prosecuted increased throughout 2020 by more than one-third, and corruption charges by more than 50 percent compared with the previous decade. Numerous cases that had stalled before were revisited, including criminal investigations targeting individuals with connections to the SMER-SSD, such as the former Special Prosecutor Dusan Kovacik. Notably, Kovacik, who supposedly belonged to a secret group within the police and judiciary controlled by Bodor that influenced or stopped investigations of crimes committed by "their people", has been sentenced by the courts to eight years in prison for corruption and ordered to pay €100,000 , marking a significant turn of events.

In April 2023, Governor Peter Kazimir of the National Bank of Slovakia, who was finance minister from 2012 to 2019 under the SMER-SSD, was found guilty of corruption by the Specialized Criminal Court. The judge delivered the judgment in early April, fining Kazimir €100,000 and stating that he would face a two-year prison sentence if the financial fine was not paid. The charges are based on allegations that in 2016, Kazimir paid a bribe of €50,000 to former Financial Administration President Frantisek Imrecze. Several politicians have called for Kazimír's resignation. The trial, in which he could be sentenced to up to five years in prison if convicted, is still to take place.

In July 2023 former police investigator Marian Kucerko was sentenced to eleven years in prison and the seizure of his assets. Kucerko was found guilty of covering up two cases: In the first case, he was supposed to ensure, in return for a payment of €25,000, that the police would not charge a relative of Petr Ziga (environment minister 2012-2016 and industry minister 2016-2020 under the SMER-SSD). The second case involved tax fraud committed by fuel traders, with the bribe amounting to €200,000.

These cases are only a few examples among many others, with some of them involving former judges and prosecutors facing charges of corruption and bribery and awaiting their court proceedings.

The symbol of a lost chance: Article 363

Slovakia's revival of the fight against corruption and state capture has resulted in the sentencing of several high-ranking individuals involved in corrupt practices. The government's renewed efforts gave rise to some hope that the deep-rooted corruption issues could be addressed. However, the political instability within the governing coalition weakened the momentum of the anti-corruption drive. Ongoing disagreements among the

coalition partners and the departure of some key figures undermined the government's capacity to effectively sustain its anti-corruption initiatives. Furthermore, there is significant concern that individuals suspected of orchestrating corruption networks are able to hold on to their political roles. The SMER-SSD is currently ahead in the opinion polls for the upcoming snap elections scheduled to take place at the end of September 2023.

In addition to the prevailing political instability in Slovakia, another notable impediment to the prosecution of high-ranking politicians accused of corruption is the Prosecutor General ("PG")'s power to invoke Article 363 of the Code of Criminal Procedure ("Article 363"), according to which the PG has the power to annul decisions taken by the police and the prosecution, if they are illegal. The annulment must take place within six months of the disputed decision being taken. Crucially, there is no remedy against the PG's annulment.

On August 31, 2021, PG Maros Zilinka, used Article 363 to dismiss corruption charges against the former director of the Slovak Secret Service (SIS) and four other prominent individuals, who were held in custody. The significance of this action can only be understood from its context. The charges, previously upheld by multiple courts, including the Supreme Court and the Constitutional Court, were brought by the Special Prosecutor, who holds jurisdiction over corruption cases, not the PG. The PG was nominated by the same political party as the indicted former SIS director, who is also related to two members of the party (SME Rodina, "We are Family" in English). The PG resorted to this special remedy to drop the charges shortly before the expiration of this option. He has since then (2022-2023) used Article 363 to stop the investigation and indictment of former Prime Minister Fico (founding member of the SMER-SSD) and Robert Kalinak (interior minister 2006-2010 and 2012-2018).

Several attempts were made to limit the power of the Prosecutor General. As early as 2020, the government announced that it would restrict the use of Article 363, however, the two proposals tabled in Parliament in 2022 did not receive enough votes, because they were not supported by MPs from at least two coalition parties. In June 2023, President Zuzana Caputova and a group of parliamentarians appealed to the Constitutional Court, challenging the constitutionality of Article 363. They argued that the provision, in its current form, contradicted the principle of the triple separation of powers, was unreviewable in its application, and violated the independence of the judiciary. However, the Constitutional Court ruled that Article 363 did not contravene neither the Slovak Constitution, nor the principle of separation of powers, nor the principle of legal certainty.

Civil society organizations argue that the court's assessment focused on the provision's conformity with the constitution rather than its actual application, and that the article

continues to be in need of reform and clarification. They emphasize the ambiguities in its wording, leading to its opaque and unpredictable application, the lack of clarity regarding the types of orders it can modify, and the timeframes they consider too lengthy.

All these factors together have raised serious concerns about the trust in a fair criminal prosecution in Slovakia, irrespective of the current Prosecutor General (PG). The fact that the PG has used this tool for two years has not only shaken the foundations of the rule of law, but also impeded the prosecution of corruption cases linked to former Prime Minister Fico. This situation potentially paves the way for his return to power, which would make Slovakia embark on a trajectory resembling that of Hungary. These developments not only expose a lack of fairness, but also cast doubt on the integrity of the legal system. With public trust diminishing both among experts and the general population, there is a pressing need for action. What is now in jeopardy is the rule of law, which constitutes a cornerstone of fair treatment. It is of the utmost importance to take decisive steps to restore confidence in the criminal prosecution and uphold the rule of law in Slovakia.

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