

Slovakia 2001: Is it a Law-Governed State?

INTRODUCTION

On 16th August, 2000 the National Council (Parliament) in Slovakia began to debate the removal of Stefan Harabin, President of the Supreme Court on the recommendation of the country's Justice Minister, Jan Carnogursky. Dr. Harabin contested the move as being politically motivated and appealed to international human rights bodies, including the UN Commission on Human Rights, which took up the case. Parliament eventually rejected the motion on 19th December by 62 to 60 votes (there were 15 abstentions). Dr. Harabin is still in office, but the incident highlighted the weak status of judicial independence in the Slovak Republic.

BHHRG has visited Slovakia on several occasions in the last ten years. The Group's last report, [Witch Hunts in Slovakia](#), appeared exactly two years ago. Many of the issues tackled in that report are still unresolved and basic principles that form the bed rock of a law-governed state are ignored. Slovakia is a signatory to all the main international documents that cover the rule of law and independence of the judiciary; it is also a member of the Council of Europe while its own constitution gives full rights and protection against executive excess.

However, the politicization of all areas of Slovak life makes compliance with international norms as far away as ever. The demonization of the former government of Vladimir Meciar and his party, the Movement for a Democratic Slovakia (HZDS) has meant that the international community is prepared to turn a blind eye to well-documented attempts by the executive to interfere in the running of the country's justice system. Such insouciance is alarming for it sets a dangerous precedent for other countries including those with a proud history of judicial independence based on separation of powers.

THE POLITICAL SCENE IN TODAY'S SLOVAKIA

Without a short overview of politics in today's Slovakia it is impossible to understand the circumstances surrounding Dr. Harabin's case and the other problems that will be raised in this report.

After the last parliamentary election held in September 1998 a coalition government of right, centre and left parties was formed. Despite the fact that it had received the highest number of votes in that election, the HZDS immediately accepted its role as the leading opposition party as it knew that it would be unable to attract enough support from elsewhere to form a government. The only other party that might have cooperated with the HZDS, the Slovak National Party (SNS), only received 9% of the vote -- not enough to help form a coalition.

The international community was well-satisfied with this result as Slovakia had become a pariah under prime minister Meciar's term in office, (1994-8). Despite the fact that the HZDS-led government had cooperated with the West over all manner of issues and was in the process of preparing to apply for accession to the EU, it seemed that it could do nothing to improve its image. Slovakia's large and well-funded opposition media pursued Meciar and his team with a litany of scandals and, despite the fact that the country had performed remarkably well for a transition economy, the good news was never allowed

to filter through to the outside world. It was suggested that Meciar's own reluctance to sell the country's utilities -- gas, oil, telecommunications -- to foreign buyers was behind the hostility from the Western-sponsored media. Whatever the reason, the long winter of the HZDS's dominance of politics seemed to be over in the autumn of 1998.

In its desire to accommodate the demands of EU entry Meciar's government had set about restructuring the Slovak economy. This meant that unemployment rose during the 1990s and ordinary Slovaks saw their standard of living fall. In the 1998 poll the SDK, the leading opposition party (in fact, it was a coalition of smaller parties) promised voters that it would change all that: its platform included not only the creation of thousands of jobs and the doubling of wages but also the construction of homes and increases in the level of student grants. Needless to say, none of this has come to pass.

As this report is written, Slovakia's level of unemployment is c. 20%. In some areas it is much higher: 37% in some parts of Eastern Slovakia and, according to the Slovak Trade Unions (KOZ), interviewed by BHHRG in March 2001, as much as 95% in some villages where agriculture has collapsed. This is partly due to weak protection for the domestic market, according to Eugen Škultety, of KOZ. As in other post-Communist countries where reform has taken hold (Bulgaria, Romania, for example) it is only the possibility provided by a basically rural society for people to pursue some kind of subsistence

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farming that makes life tolerable. Little new housing units have been built and, as soon as it came to power, the new government dealt a blow to the country's construction industry by stopping major road building programmes.

However, privatization to foreign buyers took off -- of banks, insurance companies and major utilities. In 2000 the country's

largest steel mill was sold to an American company, US Steel. At the same time Slovakia, now the darling of Western governments, leapfrogged into the groups of those countries promised early accession to the EU. It also actively pursued entry into Nato.

But success vis-à-vis the outside world does not necessarily ensure popularity with the voters at home. The high level of both unemployment and the cost of living has not endeared the government to voters. Even allowing for a certain amount of unreliability, opinion polls still put the HZDS in the lead. As these polls are often connected to Western agencies with whom people are reluctant to reveal their real voting intentions the fear is that such percentages may, in reality, be much higher. Therefore, it is necessary to discredit the opposition -- including the SNS -- in the eyes of the public before the next parliamentary elections due to be held next year.

The government's likely unpopularity was anticipated early on. In 1999, Robert Fico a member of the governing coalition Party of the Democratic Left (SDL) jumped ship and set up his own party, Smer (direction). Fico is seen as being young and dynamic and he has repeated many of the opposition's criticisms of the government. However, there is no likelihood of him cooperating with the HZDS. According to Fico himself (quoted in the newspaper Sme) "I wasn't born yesterday and I know very well what foreign countries are expecting of us". Asked what that was, he replied "No Meciar".

BHHRG tried to discover the extent of Fico's support in Slovakia. Opinion polls put Smer as the second most popular party in the country with 19% support. However, as it is, as yet, untested at the polls and appears to have only a vestigial organizational network

around the country, this seems implausible. More likely is the probability that Fico and Smer were created to "fill the space" occupied by HZDS. In other words, the party is likely a bogus construct, a simulacrum of the front parties used to fake pluralism during the early post 1945 period of Communism. Its (supposed) second place in the polls anticipates its success at forthcoming elections when it will take votes away from the HZDS, or can be presented as having done so.

There are also grumbles from within the HZDS itself. A small group of discontents centred around the former ambassador to the United Nations, Olga Keltosova, have expressed their desire for change including the need to distance the party from Mr. Meciar. Even if the HZDS was to split, it is hard to believe that Ms. Keltosova and fellow sympathisers, like Vojtech Tkac, will energize the voters more.

CRIMINALIZATION OF THE HDZS

As already indicated, those who seek to undermine the credentials of politicians and their parties have learnt that unpopularity abroad does not always translate into rejection by the domestic electorate. The best way to inflict harm -- as can be seen from the Philippines to Peru -- is to level charges of financial impropriety and corruption. People may be bewildered and disengaged from abstruse arguments about this or that EU acquis or Nato procurement, but things are very different when it comes to stealing money or being spied upon at home.

Since the present government took power in 1998 a whole slew of prosecutions have been instigated against officials from the former regime -- all are members of the HZDS -- and businessmen associated with the party.

Former head of the Slovak Intelligence Services, Ivan Lexa, is wanted for a variety of alleged crimes, including the kidnapping of former president Kovac's son, Michal, in 1995 and conspiracy to sabotage central European countries' entry into Nato. Lexa fled the country sometime in 2000 and, according to the Slovak constitution, cannot be formally charged in absentia. However, he is subject to an international arrest warrant.

Gustav Krajci, former Minister of the Interior, was under investigation for allegedly sabotaging a referendum on Nato entry in 1998. Both Lexa and Krajci were the subject of amnesties granted by Vladimir Meciar during the short period when he was the country's acting president in the summer of 1998. Despite having his parliamentary immunity removed, attempts by the present government to have these amnesties overturned have been overruled by the constitutional court and this charge against Krajci has been nullified. However, that is not the end of the matter. Two more charges are being brought against Mr. Krajci: that he took kickbacks for obtaining trading licenses and, in another case, bribes for selling cars impounded by the police. On 26th March his parliamentary immunity was, again, removed for these investigations to proceed.

Meciar himself is under investigation. In April 2000 special forces entered the former prime minister's house, dynamiting his front door and then taking him away for questioning over charges connected with the illegal payment of bonuses to parliamentarians while he was prime minister. On 8th February 2001 the district prosecutor in Bratislava recommended that the charges be dropped. However, this

proposal was rejected by the Prosecutor General. It is also rumoured that Mr. Meciar is to be investigated for tax evasion.

Most recently, Ivan Lexa's deputy in the SIS, Rudolf Ziak was also charged with complicity in the Nato sabotage cases. Again, these charges were thrown out but are likely to be reinstated. On arrival in Bratislava on the night of 25th March, BHHRG watched the evening news on Slovak TV. The first item showed Ladislav Pittner, the Minister of the Interior, announcing that Rudolf Ziak was, again, under investigation.

BHHRG cannot say whether or not any or all of these allegations are true. However, the procedures adopted in dealing with the various cases highlight the shortcomings of Slovakia's legal system and its overall politicization. For example, suspects often learn that proceedings are going to be started against them from government press conferences.

Perhaps it is not entirely surprising that only one such 'political' case has been cleared up since the present government came to power. As soon as the procuracy or court dismisses this or that charge another one is produced. The process is therefore ongoing;

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-Ladislav Pittner, Slovak Minister of Interior

constantly bringing to the public's attention the lawlessness of the previous regime -- whenever Mr. Krajci or other former government officials are discussed Pittner -- and the tame Slovak press will always add that such and such "is a member of the HDZS" thus discrediting the party along the way. In December 2000, Mr. Pittner

announced that he wanted to shut the party down altogether. Culture Minister, Milan Knažko, had already gone on record calling the party a "mafia-type and para-terrorist organization".

Politicians regularly criticize judges for not reaching the 'correct' decision. For example, when the regional prosecutor in Bratislava, Stefan Svaby annulled the charges of sabotage against Ziak in March 2001 the chairman of the parliamentary Defence and Security Committee, Vladimir Palko, wrote to the prosecutor-general, Milan Hanzel to complain and said that he "expected" the prosecutor-general to adopt the "necessary measures" a direct interference by the executive into the workings of the judiciary.

The most flagrant breach of generally accepted legal principles is the complete disregard for the presumption of innocence. Ladislav Pittner regularly 'goes public' to announce this or that suspect's guilt, often before charges have been laid. His weekly press conferences are filled with such charges. However, he is not without a sense of humour: In an interview with The Slovak Spectator (29th January, 2001) he says: "unlike during communism, we are to a certain extent limited by the fact that we have to follow democratic principles[it] makes our work more time-consuming, even though the public would like to see these people in jail now".

According to the Slovak news agency SITA (16th February 2001) "Pittner has often disseminated information on criminal cases even before the police were able to conclude them or obtain crucial evidence" ... "Most recently, [he] revealed information on the alleged gangland plans to assassinate former Interior Minister Krajci because he had promised something to the underworld but did not keep the promise".

There have been three opposition-sponsored motions of no confidence against Pittner in the Slovak parliament. All have failed. However the precariousness of his position is best demonstrated by the intervention of President Schuster himself who said on 14th February: "... airing matters in the media beforehand and saying that a particular misdemeanour or criminal offence is about to take place, cannot be justified ..."

THE MEDIA

The Slovak media is complicit in this game. With weak libel laws and no effective law on contempt of court, outlets like Radio Twist, newspapers like Sme and all television stations regularly publish material that goes against all accepted rules on the presumption of innocence. It is sad to see that the only English language newspaper in Slovakia, The Slovak Spectator, run by Americans (who should, presumably, know better) joins in the beat ups. It, too, seems to have no understanding of the doctrine of the separation of the powers even though the 'founding fathers' got into contortions to ensure that each branch of the US government was independent. In an article "Prosecution of Meciar-era suspects ends with a whimper" [19th-26th March, 2001] the authors announce that the government (sic) is failing abysmally in its attempt to punish people like Ziak". And later in the same article "the Dzurinda government launched a high-profile campaign in 1998 to examine, and ideally prosecute people who had been involved in illegal privatizations".

On 26th March BHHRG were given a copy of a new book, Unos demokracie: zo zakulisia slovenskej tajnej sluzby (The Kidnapping of Democracy: from behind the scenes at the Slovak Secret Services) by Luba Lesna. The book comprises a series of short paragraphs dealing with the 'crimes' of Lexa and co. It helpfully rehearses all the scandals that took place during the Meciar years accompanied by the well-worn allegations. Publication of such a work in the UK would be impossible with criminal proceedings in progress. The book is a joint publication with the Bratislava-based Institute for Public Affairs (IVO) a highly-regarded political think-tank. However, it should come as no surprise that standards of academic impartiality do not stop the members of the Institute from giving their views on issues like the presumption of innocence to sympathetic forums.: "It is urgent" says IVO's Michal Vašeeka " to The Slovak Spectator " to get some of these cases finished off and finally find people guilty of these things which quite frankly everyone knows they're guilty of".

It is against this background that the case of Dr. Harabin should be considered.

THE CASE OF STEFAN HARABIN

Dr. Harabin was appointed president of the Supreme Court of Slovakia in 1998 for an initial 5 year term. The Supreme Court is the highest court in the country, apart from the Constitutional Court. It does not adjudicate on matters of first instance itself but acts as the highest appeal court in the country. 81 judges sit in the court at the present time. The court is situated in a building which also houses the offices of the Ministry of Justice and the Procuracy. There is also some accommodation available for the justices.

BHHRG interviewed Dr. Harabin and some of his colleagues in Bratislava on 26th March. Although parliament had voted to keep him in office on 19th December, 2000 Dr. Harabin felt understandably aggrieved by the experience he had been through and the allegations that he was morally unfit to hold the office of president of the court..

It seems that the Slovak Minister of Justice, Jan Carnogursky, and Dr. Harabin had crossed swords on a number of occasions. For example, Harabin had refused to sack certain judges the minister deemed incompetent. There had been arguments about the ownership of the building in which all parties were (uncomfortably) housed together but the causa causans of the minister's displeasure had been the chief justice's refusal to evict a senior judge, Josef Stefanko, from his lodgings in the court building.

This unseemly dispute ended with the police sealing the entrance to the apartment into which Dr. Stefanko, allegedly later effected re-entry. On the one hand, it was said that there was no legal justification (court order etc.) for the police to break into the judge's apartment on the other, the authorities went so far as to suggest that Dr. Stefanko -- who is 60 years old -- had taken an axe to force his way back into his flat. Television pictures showed pictures of the flat with an axe in the door with Dr. Stefanko's photograph suggestively superimposed.

Dr. Stefanko himself had been a thorn in the side of the Ministry of Justice for, allegedly, failing to bring to a successful conclusion a case involving the privatization of a Slovak spa. He had been dismissed by the parliament although he has since lodged a case with the European Court of Human Rights. Relying on this precedent, Dr. Carnogursky then approached the Slovak parliament with a request for it to dismiss Dr. Harabin from his post as President of the Supreme Court. On 16th August parliament voted to instigate the procedure for the dismissal even though no disciplinary proceedings against the judge had taken place.

In September 2000 Dr. Harabin appealed to various international bodies to investigate the case, including the United Nations Commission on Human Rights. His approaches to the European Union had been met with the response that this was an "internal matter" despite the fact that Slovakia is obliged to meet a variety of human rights criteria for entry and that EU officials like the EU's commissioner for integration, Gunter Verheugen, regularly opine on the internal affairs of future member states.¹

Luckily for Dr. Harabin, the case before the UN commission was dealt with by someone outside the loop of Western political influence. The special rapporteur on the independence of judges and lawyers, Dato Param Cumaraswamy, is a citizen of Malaysia. His visit to Bratislava in November 2000 and the report filed in January 2001 is a devastating attack on the behaviour of Dr. Carnogursky and his ministry.

In it he concludes that the executive authorities have no powers either under the Slovak constitution or under international agreements to dismiss judges during their legal term of office in the absence of proper disciplinary proceedings. He also questioned the logic of the Minister's actions -- Carnogursky wanted to sack Dr. Harabin as president of the court for his 'moral' omissions, not as a judge. How, asked Curamaswamy, can someone who is considered morally incapable of running a court still be morally competent to be a judge? The illogicality of the Justice Minister's position is obvious. The conclusion can only be that the attack on Dr. Harabin's bona fides was political rather than professional.

¹ Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy. Commission on Human Rights, United Nations (E/CN.4/2001/65/Add.3)

Perhaps the most revealing aspect of the report is Dr. Carnogursky's contempt for the UN mission. When Dr. Cumaraswamy asked him to postpone the parliamentary vote until the report was finished -- an anticipated matter of weeks -- he refused, according to the final document, saying there was no need to wait for the Special Rapporteur's report and that the government would not change its position despite the differing views of the Special Rapporteur.

'...last year's US Department of State's human rights report for Slovakia fails to mention the Harabin case at all.'

It came as no surprise to BHHRG to learn that many leading lights in Bratislava regarded Dr. Cumaraswamy as "unimportant" -- no doubt because he didn't come from the magic circle of NGOs which have regularly ignored the kinds of issues covered in this report. For example, last year's US Department of State's human rights report for Slovakia fails to mention the Harabin case at all. The world's lead Human Rights NGO, the US-based Human Rights Watch makes no mention of the assault on the rule of law in Slovakia in its latest yearbook for 2000. In a recent debate in Washington (at which a BHHRG representative contributed), Kenneth Roth of HRW announced that the organization was winding down much of its observation in Central Europe. The names on the plaques in the doorway of the building in central Bratislava that once housed numerous Western and Western -funded NGOs have faded. Their perceived enemy has gone -- and so have they. Few of yesteryear's devotees to Slovak rights show any interest today.

It is hoped that the introduction into Slovak law of a new Judicial Council will prevent cases like this happening again. The new law puts the appointment of judges into the hands of the President acting on the advice of an independent council consisting of 18 members, nine of whom are judges. However, professional life in Slovakia is so polarized that suspicions will still persist that this or that appointment is politically motivated. Dr. Harabin's deputy, Juraj Majchrak, who runs the Association of Slovak Judges is obviously favoured by the government and its faithful media. The Slovak Spectator published a simpering feature (26th February, 2000) portraying him as a man of honour and a cuddly, dog lover. He, too, sails close to the wind when it comes to respect for the presumption of innocence: "I get totally frustrated when I see people like Lexa escape justice" he says. The underlying message is plain: this is the kind of judge who should be in charge at the highest level.

CONCLUSION

The case of Dr. Harabin has put the unsatisfactory state of executive interference in the running of Slovakia's legal system under the microscope -- although the disturbing findings of the Cumaraswamy report have been largely ignored by an international community previously so keen to highlight alleged abuses in the country's domestic affairs.

But will the government clean up its act and respect the rule of law? Will it cease threatening judges with dismissal and demanding that prosecutors change their rulings? Will those ministers responsible for law and order stop blackening people's names in the media before they are brought to trial or even charged?

It is unlikely. As pointed out earlier in this report, the purpose of the continuous drip of accusations and innuendo, of prosecutions that collapse and are then re-started, is to damage the main opposition party, the HZDS, in the eyes of the public. With elections

due next year and the party still topping the opinion polls the witch hunts are likely to intensify rather than die down. The behaviour of the government has also, according to Dr. Harabin, made many younger judges in Slovakia fearful of reaching decisions that might be frowned upon by the government. Defence lawyers risk, too, retribution for taking on unpopular cases.

The country itself is likely to experience more hardship in the near future. Unemployment will continue to rise. The recent, high-profile purchase of the East Slovak Steelworks by a US company could mean -- as a similar purchase has done recently in Romania -- the closing down rather than the regeneration of the company. Thousands would be put out of work. Only a handful of jobs have been created by the much-vaunted foreign investment. The Trade Unions have threatened to cease cooperation with the government, but they are effectively toothless.

However, there is unlikely to be unrest from a disaffected populace. A country which pursues an agenda of politically motivated trials also injects unease into the population at large -- an ill-defined atmosphere of pressure and menace has served politicians in Slovakia well in the past and will continue to do so in the foreseeable future.

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