

## Rule of Law in Slovakia

In 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. After a heated debate and involvement of the UN Commission on Human Rights parliament rejected the motion on ..December by 67 to 62 votes. 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 since 1992. 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; 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 has been prepared to turn a blind eye to egregious 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 country's including those with a proud history of judicial independence based on separation of powers.

### The political scene 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 without a short overview of politics in today's Slovakia.

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 other parties to form a government. The other leading opposition party, the Slovak National Party (SNS) received of the vote.

The international community was well satisfied with this result as Slovakia had become a pariah under the previous Meciar regime (1994-8). Although 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 amenities – gas, oil, telecommunications- to foreign buyers was behind the hostility. Whatever the reason, the long winter of HZDS 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 Slovak industry. Unemployment had risen during the 1990s and ordinary Slovaks had seen their standard of living fall. In the 1998 poll the SDK the leading opposition party (in fact, a coalition of smaller parties) promised voters that it would change all that: its platform included not only the creation of ..jobs but also the construction of ...homes. Needless to say, none of this has come to pass.

As this report is written, Slovakia has ..unemployed. In some areas it is much higher: 35% in Eastern Slovakia and according to the Slovak Unions (interviewed by BHHRG) as much as

95% in some villages where agriculture has collapsed. As in other post-Communist countries where reform has taken hold (Bulgaria, Romania, for example) it is only the widespread possibility in a basically rural society for people to indulge in some kind of subsistence farming that makes life tolerable. Few of the ..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, privatisation 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 the fear is that such percentages may, in reality, be much higher. Therefore, it is necessary to discredit the opposition in the eyes of the public – including the SNS, although to a much lesser extent – 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 repeated many of the opposition's criticisms of the government. However, there was no likelihood of him joining the HZDS – that, according to Fico himself, would be suicide because of “foreign” objections to the party.

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. However, as it is as yet untested at the polls and appears to have only 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 plurality during Communism. It's (supposed) second place in the polls anticipates it's success at forthcoming elections when (surprisingly) it will take votes away from the HZDS.

### **Criminalization of the HDZS**

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. The accusations relate to their time as members of that government.

Former head of the Slovak Intelligence Services, Ivan Lexa, is wanted for a variety of alleged crimes. Lexa fled the country in ...and, according to the Slovak constitution, cannot be charged in absentia. The last charge against him was thrown out by the ..court in ...

Gustav Krajci, former Minister of the Interior, was under investigation for 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 bribes for selling cars and ... On .. immunity was, again, removed for these investigations to proceed.

Meciar himself has been under investigation for the illegal payment of bonuses to parliamentarians. In April 2000 special forces entered the former prime minister's house by dynamiting the door and taking him away to be charged. The case was thrown out by ..but could be reinstated. It is also rumoured that he will be investigated for tax evasion.

Most recently, Lexa's deputy in the SIS, Rudolf Ziak was charged for complicity in a conspiracy to sabotage entry into Nato by several Central European countries. Again, these charges were thrown out but are likely to be reinstated.

BHHRG cannot say whether or not any or all of these allegations are true. However, the procedures adopted in dealing with their various cases highlight the shortcomings of Slovakia's legal system and its overall politicisation.

For example, 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. The Interior Minister Ladislav Pittner regularly 'goes public' to announce this or that suspect's guilt often before charges have been laid. His weekly press conferences are legion. According to the Slovak news agency SITA (16<sup>th</sup> February 2001) He [Pittner] "has often disseminated information on criminal cases even before the police were able to conclude them or obtain crucial evidence" ... "Most recently, Pittner 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 14<sup>th</sup> February: "... airing matters in the media beforehand and saying that a particular misdemeanour or criminal offence is about to take place, cannot be justified ..."

This does not seem to have put a stop to Pittner's egregious behaviour. On arriving in Bratislava on the night of 25<sup>th</sup> March, BHHRG watched the evening news on Slovak TV. The first item showed Mr. Pittner announcing that Rudolf Ziak was, again, under investigation.

The Slovak media is complicit in this game. With weak libel laws and no effective laws on contempt of court outlets like Radio Twist, all television stations and newspapers like *Sme* regularly publish material that goes against all accepted rules on the presumption of innocence. It is sad to see that the 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 themselves into contortions to make sure that each branch of the US government was seen to be independent.

It is, therefore, not entirely surprising that only one such 'political' case has been cleared up since the present government came to power. As soon as the procurator or court dismisses this or that charge another one is produced. The process is therefore ongoing; 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 his lackeys in the Slovak press will always add that such and such "is a member of the HDZS" thus discrediting the party along the way. Of course, Pittner announced in ..that he wanted to shut the party down altogether.

But while the failure to yet bring any of the above-mentioned prosecutions to a successful conclusion serves the purposes described the seeming intransigence of the legal profession has caused anxiety. See ... and ... It is against this background that the case of Dr. Harabin should be judged.

### **The case of Stefan Harabin**

Dr. Harabin was appointed president of the supreme court of Slovakia in 1998. 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. There are ...judges at present. The court is situated in a building which not only houses it but also the offices of the ministry of justice and the procuracy. There is also some accommodation for the justices.

BHHRG interviewed Dr. Harabin and some of his colleagues in Bratislava on 26<sup>th</sup> March. Although parliament had voted to keep him in office on ..December 2000 Dr. Harabin felt understandably aggrieved by the experience he had been through and the allegations that he was not morally fit 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 regional 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 from his lodgings in the court building.

This unseemly dispute ended with the police sealing the entrance to the apartment to which the judge Dr, Josef Stefanko, allegedly broke back in. 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 alleging that he had taken an axe to break back into his flat. Television pictures showed pictures of the flat with an axe in the door and Dr. Stefanko's photograph superimposed.

Dr. Stefanko himself had been a thorn in the side of the Ministry of Justice for, allegedly, failing to successfully bring to a conclusion a case involving the privatisation 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. It was with this ...that Dr. Carnogursky set about asking parliament to dismiss the chief justice from his post as president of the supreme court. On 16<sup>th</sup> August the matter came before the Slovak parliament which voted for the dismissal. No disciplinary proceedings had taken place.

In September 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 Gunter Verheugen regularly opine on the internal affairs of future member states.

Luckily for Dr. Harabin, the case before the UN commission was dealt with someone outside the loop of Western political influence. The special rapporteur on the independence of judges and lawyers, Dato Param Kumaraswamy, 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 all international agreements entered into by the Slovak state to dismiss judges during their legal term of office unless proper disciplinary proceedings have taken place. 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 position is breathtaking.

Perhaps the most revealing aspect of the report is Dr. Carnogursky's contempt for the UN mission. When he was asked to postpone introducing the matter to parliament until the report was finished – an anticipated matter of weeks – he refused saying ...It came as no surprise to BHHRG to learn that many leading lights in Bratislava regarded Dr. Curamaswamy as "unimportant" – no doubt because he didn't come from the magic circle of human rights' NGOs who have regularly ignored the kinds of issues covered in this report. Last year's US Department of State's human rights report for Slovakia fails to mention the Harabin case at all proves the accuracy of their response.

It is hoped that the introduction of a new Judicial Council will prevent cases like this happening again. A law passed in January 2001 puts the appointment of judges into the hands of the president 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 ,... who runs the Association of Slovak Judges is obviously the favoured candidate .