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**2021 Rule of Law Report
Country Chapter on the rule of law situation in Slovakia**

Accompanying the

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PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

Important efforts to improve the independence, integrity, quality and efficiency of the Slovak justice system, already noted in the 2020 Rule of Law Report, have continued. In December 2020, the Parliament adopted an extensive reform of the Constitution and implementing legislation regarding the justice system, in particular the Constitutional Court and the Judicial Council. Authorities have also stepped-up efforts to address corruption in the judiciary. A reform of the judicial map is under preparation, involving the Council of Europe, which has generated a number of comments from stakeholders. A Supreme Administrative Court has been established. A new Prosecutor General and a Special Prosecutor were elected through a new transparent procedure. These reforms reflect efforts to improve the justice system and it is important that their implementation takes into account the relevant European standards to safeguard judicial independence. This is also important considering that the level of perceived independence of the judiciary, although it has improved among companies, remains very low among the general public.

Slovakia's efforts to repress corruption have significantly increased and show effect with a number of high-level corruption cases being investigated and prosecuted. Leading officials were also selected and appointed, including the Head of the new Whistleblower Protection Office, that will take up its functions as of 1 September 2021. The capacity to detect and investigate corruption offences can still be strengthened by investments in specialisation, dedicated analytical expertise and integrity trainings for the National Crime Agency. There is slow progress in preventing corruption. Several attempts to regulate lobbying have so far failed. However, draft legislation on lobbying, 'revolving doors', asset declarations, conflicts of interest of members of Parliament and public procurement are planned or at the initial stage.

Slovakia's Constitution and secondary legislation provide the legal framework for the protection of freedom of expression, the right to access public information, media pluralism and press rights. A draft law under discussion and scheduled for adoption in September 2021 is expected to introduce a framework to ensure media ownership transparency. The government plans to propose legislation aimed at securing a more favorable environment for journalists have been postponed. The distribution of state advertising remains unregulated. A number of convictions were pronounced with regard to individuals involved in the assassination of investigative journalist Ján Kuciak and his fiancée in 2018. The acquittals of the alleged masterminds of the murder were annulled by the Supreme Court, which returned the case to the Specialised Criminal Court. One conviction was confirmed. No news media support scheme was introduced to counter the impact of the COVID-19 pandemic.

As concerns the system of checks and balances, the need remains to improve the legislative process by strengthening the involvement of stakeholders and civil society, as already noted in the 2020 Rule of Law Report. The Constitutional reform of December 2020 explicitly excludes the competence for the Constitutional Court to review Constitutional laws, which triggered the review by the Constitutional Court of this provision. The state of emergency related to the COVID-19 pandemic lasted for most of 2020 and ended in May 2021, following a change of legislation in December 2020 to allow its extension. The Public Defender of Rights and the National Centre for Human Rights took an active role in defending fundamental rights during the pandemic. Concerns grow over financing of certain NGOs, in particular limitations for NGOs working in the field of gender-equality.

I. JUSTICE SYSTEM

The court system of the Slovak Republic consists of 54 District Courts, 8 Regional Courts, the Specialised Criminal Court, the Supreme Court, the Supreme Administrative Court and the Slovak Constitutional Court¹. The Regional Courts function as the courts of appeal in civil, commercial and criminal cases and at the same time function as the courts of first instance in administrative matters. The Specialised Criminal Court is competent to judge serious criminal matters as enumerated in the relevant provision of the Code of Criminal Procedure². The Judicial Council plays a central role in the self-administration of the judiciary and in the appointment, suspension and dismissal of judges, as well as in maintaining judicial ethics. Half of its members (9 out of 18) are judges elected by their peers. Other members of the Judicial Council are appointed by the Slovak President, the Parliament and the Government³. The public prosecution service of Slovakia is an independent state authority headed by the Prosecutor General⁴. Slovakia participates in the European Public Prosecutor's Office. The Slovak Bar Association is an independent self-administrative professional organisation⁵.

Independence

The perceived level of independence of the judiciary has improved among companies but remains low, and very low among the general public. 30% of companies perceive the level of judicial independence as 'fairly or very good', which is a considerable improvement compared to 2020 (15%)⁶. Conversely, there has been no such improvement in the perceptions of independence of courts and judges among the general public, with 28% perceiving judicial independence as 'fairly or very good' and 65% as 'fairly or very bad'⁷, in line with the long-term trend, noted already in the 2020 Rule of Law Report⁸. The reasons most often invoked for the perceived lack of independence are related almost equally to interference or pressure from the Government and politicians and interference or pressure from economic or other specific interests.⁹

Authorities have taken steps to address allegations of corruption and abuse of office in the judiciary. Following high-profile police operations referred to in the 2020 Rule of Law Report¹⁰, further operations were launched. Currently, 20 judges¹¹ and other representatives of justice and law enforcement¹² are subject to criminal proceedings linked to serious

¹ For a description of the judicial structure, see e.g. the Annual study for the European Commission carried out by the Council of Europe Commission for the Efficiency of Justice (CEPEJ).

² Slovak Code of Criminal Procedure, para. 14 (e.g. premeditated murder, corruption, terrorism, organised crime, severe economic crimes, damaging the financial interests of the EU etc.).

³ Art. 141a of the Slovak Constitution.

⁴ Arts. 149-151 of the Slovak Constitution; Act No. 153/2001 Coll. on Public Prosecution Service.

⁵ Parliamentary Act No. 586/2003 Coll. on the Legal Profession and on Amending Act No. 455/1991 Coll. on the Business and Self-employment Services (Business Licensing Act) of 4 December 2003.

⁶ Figure 50 of the 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁷ Figure 49 of the 2021 EU Justice Scoreboard.

⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, pp. 2-3.

⁹ Figures 49 and 51 of the 2021 EU Justice Scoreboard.

¹⁰ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 2

¹¹ As of May 2021. Information provided by the Slovak Judicial Council.

¹² Prosecutors, police officers and lawyers, including high-ranking officials such as a former police president, Prosecutor General, Special Prosecutor or a former state secretary at the Ministry of Justice.

allegations of corruption and abuse of office, in a stepped-up effort by public authorities to reduce corruption in the justice system. One judge has been convicted. As a result of the criminal prosecution, several judges resigned from their office or were temporarily suspended from their function¹³. The need to continue addressing specific concerns on the overall integrity of the justice system has also been raised in the context of the European Semester, and Slovakia has received a country specific recommendation to this end¹⁴.

A comprehensive judicial reform has been adopted, consisting of amendments to the Constitution and implementing legislation. This follows the announcement made by the Government to proceed to a reform with the aim to increase public trust in the rule of law¹⁵, as explained in the 2020 Rule of Law Report¹⁶. In December 2020, the amendment of the Constitution and implementing legislation has been adopted, which notably established a Supreme Administrative Court, introduced changes¹⁷ to the selection and appointment of judges of the Constitutional Court and amended several provisions regarding the Judicial Council. Stakeholders noted that the reform reflects efforts to improve the justice system and strengthen its independence¹⁸, although some parts of the reform met with opposition (see below).

While some features of the reform concerning the Judicial Council were welcomed, concerns have been raised regarding the regime for the dismissal of its members. The Constitutional reform introduced changes to the method of appointment of the members of the Judicial Council, extended the Council's powers and amended the provision regarding the dismissal of its members¹⁹. The reform has introduced a rule according to which judge-members of the Council would be elected in several electoral districts²⁰. According to the Government, the aim of the change is to increase the legitimacy of the Council by ensuring a more diverse representation of judges. This objective is consistent with Council of Europe recommendations²¹. The reform also extends the powers of the Judicial Council²². Furthermore, the reform explicitly provides that members of the Judicial Council, including its President and Vice-President, may be dismissed at any point by the authority which appointed them²³. According to the Explanatory memorandum²⁴, this implies that such a

¹³ Information provided by the SK authorities.

¹⁴ Council Recommendation of 20 May 2020 on the 2020 National Reform Programme of Slovakia and delivering a Council opinion on the 2020 Stability Programme of Slovakia, COM(2020) 525 final.

¹⁵ Program Statement of the Government of the Slovak Republic for 2020 – 2024 of 19 April 2020, p. 8.

¹⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 3.

¹⁷ Contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 3; Information received in the context of country visit to Slovakia.

¹⁸ Contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 3; Information received in the context of country visit to Slovakia.

¹⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 4.

²⁰ The Council is composed of 18 Members, half of which are judges elected by their peers. The Government, the Parliament and the President of the Republic each choose three members as well. Such composition is consistent with Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-27.

²¹ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27.

²² Notably, the Amendment confers on the Judicial Council the power to assess asset declarations of judges.

²³ For further information on appointment, see footnote 20. According to the Explanatory memorandum to the Constitutional Act No. 422/20, p. 20, this possibility have previously existed in the Constitution and the Amendment expressly confirms its existence. However, the Constitutional Court in the unifying opinion of 19 September 2018 PLZ. ÚS 2/2018 ruled to the contrary.

²⁴ Explanatory memorandum to the Constitutional Act No. 422/20, p. 24.

proposal for dismissal is not required to be based on any legally prescribed criteria²⁵ and, instead, may be motivated by a lack of trust²⁶. Stakeholders have expressed concerns that this aspect of the reform may have an adverse impact on the independence of the Judicial Council²⁷. These concerns have also been reflected in an opinion of the Bureau of the Consultative Council of European Judges (CCJE) of 9 December 2020²⁸. A dismissed member may contest the decision of dismissal in front of the Constitutional Court lodging a constitutional complaint²⁹. It is important that the Judicial Council be subject to sufficient guarantees as regards its independence in relation to the legislature and the executive including as regards the way its Members can be dismissed³⁰.

A retirement age of judges has been introduced to provide certainty³¹. Following amendments to the Constitution, judges retire upon reaching the age of 67³². As the reform eliminated the Judicial Council's discretionary power to propose a retirement of a judge over the age of 65, the amendment enhances legal certainty and stability for judges.

The criminal liability regime of judges has been amended. In October 2020, an amendment of the Criminal Code was adopted³³, followed by an amendment of the Constitutional provision on immunity of judges. According to the reforms, judges³⁴ may not be held accountable for an opinion expressed during their decision-making, unless the decision-making of a judge can be qualified as a crime³⁵. In that respect, a new crime of

²⁵ As explained by representatives of the Slovak government, in accordance with established case law of the Constitutional Court, the dismissal must not be discriminatory or arbitrary; Information received in the context of a follow-up meeting to the 2020 Rule of Law Report.

²⁶ Information received in the context of a follow-up meeting to the 2020 Rule of Law Report.

²⁷ Open call of Slovak lawyers, accessible at <https://pravnystat.eu/en/> and submitted as a contribution into the stakeholder consultation for the 2021 Rule of Law Report. The provision has been challenged before the Constitutional Court, where it remains pending, file No. 414/2021.

²⁸ According to the Opinion of the Bureau of Consultative Council of European Judges (CCJE) of 9 December 2020, CCJE-BU(2020)3, following a request by the CCJE member in respect of Slovakia as regards the reform of the judiciary in Slovakia, pp. 2-3, Members of the Judicial Council should enjoy guarantees of independence and protection from external pressure, including in particular by being appointed for a fixed term of office. See also Opinion no.10 (2007) of the CCJE, 36; Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia, CDL-AD(2013)007-e, para. 71 '*The Venice Commission is of the opinion that when using its legislative power to design the future organisation and functioning of the judiciary, Parliament should refrain from adopting measures which would jeopardise the continuity in membership of the High Judicial Council*'. The Slovak Constitutional Court has reached similar conclusions in the judgment of 19 September 2018 PLz. ÚS 2/2018, para. 12.

²⁹ It is not clear to what extent the Constitutional Court could assess the dismissal decision from the perspective of judicial independence. Information received in the context of a follow-up meeting to the 2020 Rule of Law Report.

³⁰ The Court of Justice has recalled, as regards the process for appointing members of the judiciary, for a Council of the Judiciary to contribute to rendering that process more objective, it is necessary that such a body should itself be sufficiently independent of the legislature, the executive and the authority to which it is required to submit an opinion on the assessment of candidates for a judicial post. See judgment of the CJEU of 20 April 2021, *Repubblika*, Case C-896/19, para. 66.

³¹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 4.

³² A transitional provision stipulated that judges who had reached the age of 67 at the entry into effect of the Constitutional Amendment (1 January 2021) were to retire by 1 February 2021. The Slovak authorities confirmed that there was no such judge and the provision was therefore not applied.

³³ Act No. 312/2020 on Forfeiture of Assets and Management of Seized Property and Amendments to Certain Acts, effective from 1 January 2021.

³⁴ The provision also applies to lay magistrates.

³⁵ Art. 148(4) of the Constitution.

‘abuse of law’ was introduced into the Criminal Code³⁶. According to this provision, judges³⁷ may be prosecuted for any arbitrary decision causing damage to or bestowing a favour on another person³⁸. The provision is envisaged to be used only in cases of manifestly arbitrary and incorrect decisions³⁹. Criminal proceedings are led by the Special Prosecutor and a Specialised Criminal Court. A judge accused of this crime is entitled to request the Judicial Council to express its disagreement to the continuation of the criminal prosecution, which, if granted, is tantamount to the termination of the proceedings⁴⁰. The prosecuted judge may be temporarily suspended only by a decision of a disciplinary court⁴¹. Whereas European standards provide that subjecting judges to liability for their decision making may occur in exceptional cases of malice and gross negligence, any regime governing liability of judges must provide clearly and precisely the necessary guarantees to prevent any risk of it being used as instrument of pressure on judicial activity or a system of political control of the content of judicial decisions⁴². It is important that when applying these new provisions in practice, these safeguards are duly observed in line with European standards. Certain stakeholders have expressed concerns about the constitutional amendment on the immunity of judges, noting that its broad and vague wording could entail a potential risk of abuse⁴³.

The recent constitutional reform amended the regime of transfer of judges without their consent. The recent constitutional reform provided that judges may be transferred, without their consent, in case of a change of the judicial map, if such transfer is necessary to secure the proper functioning of the judiciary⁴⁴. Pursuant to European standards, it is possible, in exceptional cases, to transfer judges without their consent, provided that sufficient safeguards are in place. These safeguards include a requirement that the judge may not be transferred to a court of a lower instance and that he or she has recourse to judicial review⁴⁵. It will be

³⁶ Sec. 326a of the Criminal Code.

³⁷ The provision also applies to lay magistrates and arbitrators.

³⁸ For further information see the contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 8.

³⁹ Explanatory memorandum to Act No. 312/2020, p. 40; Information received in the context of a follow-up meeting to the 2020 Rule of Law Report.

⁴⁰ However, it appears that this safeguard is only in place until 2024, Act 423/2020, Arts. III, XXX.

⁴¹ Sec. 22 of the Act 385/2000 on Courts. According to Sec. 22a, a judge may also be temporarily suspended by a decision of the Judicial Council if there are justified doubts as to whether he or she fulfills the requirements to qualify as a judge, or if the credibility of the judiciary or the reputation of the judiciary may be seriously jeopardized. Following the adoption of the Constitutional amendment in December 2021, the agreement of the Constitutional Court is no longer necessary for taking a judge in detention. For further information see the contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 8.

⁴² Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 68; see by analogy in case of disciplinary proceedings against judges: judgment of the CJEU of 19 November 2019, *LM*, C-216/18, para. 67, as regards liability of judges see also judgment of the CJEU of 18 May 2021 in joint cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, paras. 228-239.

⁴³ According to the Opinion of the CCJE Bureau of 9 December 2020, in relation to the Constitution (CCJE-BU(2020)3, p. 5), the new wording of the Constitution is vague and entails a potential risk of abuse; open call of Slovak lawyers, accessible at <https://pravnystat.eu/en/> and submitted as a contribution into the stakeholder consultation for the 2021 Rule of Law Report.

⁴⁴ Previously, it was only possible to transfer judges without their consent as a result of judicial proceedings. Art. 148(1) of the Constitution.

⁴⁵ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 52; European Charter of the Stature of Judges, Arts. 1.4., 3.4.; report of the European Network of Councils for the Judiciary, on Minimum standards for the evaluation of professional performance and the irremovability of members of the judiciary, proposal 4.21; judgment of the European Court of Human Rights of 9 March 2021, *Bilgen v Turkey*, 1571/07, para. 96.

important that the implementing law⁴⁶ provides sufficient safeguards taking into account European standards.

A draft reform of the judicial map is being prepared. Following recommendations from a report from the Council of Europe Commission for the Efficiency of Justice (CEPEJ)⁴⁷ to, among others, reflect on enhancing specialisation of judges and on a change of the judicial map, in particular on decreasing the number of district courts⁴⁸, the Ministry of Justice has organised working groups, composed among others of judges, to prepare a draft reform of the judicial map⁴⁹. The aim of the reform is to increase public trust in the judiciary and improve its efficiency and quality⁵⁰. The draft map is based on the need for a sufficient size of courts in order to allow for greater specialisation of judges at each court, for respect for cultural and regional identities and for accessibility of justice⁵¹. Based on data regarding the workload of current courts, as well as infrastructure and courts' accessibility, the draft reform proposed to decrease the number of district and regional courts from 54 to 30 and from 8 to 3⁵² respectively. Judges, judicial staff and cases from the dissolved courts would be moved to remaining successor courts⁵³. From September to December 2020, the draft reform was presented to judges and other stakeholders; discussions continued in January and February 2021⁵⁴. The Ministry of Justice is now evaluating the comments submitted in the public consultation, which took place from mid-December 2020 until the beginning of March 2021⁵⁵. The draft reform was met with criticism from several stakeholders, who reported among others on a lack of involvement during the drafting process and expressed concerns

⁴⁶ According to Art. 148(1) of the Constitution, transfer in case of a change of judicial map will be further specified by an implementing law.

⁴⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 4.

⁴⁸ CEPEJ (November 2017), Efficiency and quality of the Slovak judicial system, Assessment and recommendations on the basis of CEPEJ tools, CEPEJ-COOP(2017)14, pp. 20-28.

⁴⁹ The drafting process had several stages. In the first stage a working group of almost 50 members (majority of which were judges, including presidents of first and second instance courts, and members of the Judicial Council, including its president) agreed on key features of the reform. In the second stage in the first half of 2020, a new, smaller working group of approximately 10 members (4 of which were judges) drafted the reform based on the recommendations from the first working group. However, stakeholders question the extent to which the recommendations were reflected. The minutes and present sheets from meetings of the working group in the first stage are available at <http://web.ac-mssr.sk/sudna-mapa-otazky-a-odpovede/>. Information received in the context of the country visit to Slovakia; Information published by the Ministry of Justice published at a web page on the new court map, <http://web.ac-mssr.sk/sudna-mapa-otazky-a-odpovede/>; Analytical Center of the Ministry of Justice (December 2020), Recommendations for preparation of a new judicial map, pp. 15-17.

⁵⁰ Analytical Center of the Ministry of Justice (November 2020), Reform of the Judicial map, p. 4.

⁵¹ Analytical Center of the Ministry of Justice (November 2020), Reform of the Judicial map, pp. 20-21. Explanation of the assessment of these criteria for each district is provided in Analytical Center of the Ministry of Justice (November 2020), Odporúčania pre tvorbu novej súdnej mapy, http://web.ac-mssr.sk/wp-content/uploads/2020/sudna_mapa/nova_sudna_mapa_3_0_final.pdf.

⁵² The aim of the working group was to create districts that, based on the average number of incoming cases for each of the current courts, will have enough cases for at least 3 specialised judges / 3 specialised senates for each agenda. The draft reform also proposed to create separate administrative courts (see below). Analytical Center of the Ministry of Justice (November 2020), Reform of the Judicial map, pp. 20-21; Analytical Center of the Ministry of Justice (November 2020), Odporúčania pre tvorbu novej súdnej mapy, pp. 20-21, 34, 43.

⁵³ Draft Act on seats and territorial jurisdiction of courts, Sec. 10(2) and 11(2), available at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/587>.

⁵⁴ Ministry of Justice, Timeline of the drafting process, available at http://web.ac-mssr.sk/wp-content/uploads/2020/sudna_mapa/20210223_Casov%C3%A1_os_Sudna_mapa_v.2.pdf.

⁵⁵ Information portal Slov-Lex, <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/587>.

regarding the accessibility of courts⁵⁶. Following the criticism, the Ministry of Justice decided to continue consultations with judges until September 2021, after which a redrafted proposal for a reform of the judicial map will again be subject to a public consultation procedure⁵⁷. As the reform will involve transfer of judges⁵⁸, it should be noted that according to European standards, judges who would be transferred in the course of the reform without their consent should benefit from procedural safeguards in order to ensure that their independence is not jeopardised (see above). A CEPEJ review of the draft reform concluded that the methodology used is in line with its guidelines and its assessment report and highlighted the evidence-based approach adopted by Slovak authorities⁵⁹. It also issued further recommendations, such as reflecting on a postponement of its implementation⁶⁰.

A Supreme Administrative Court has been established and administrative courts are envisaged⁶¹. The new system of administrative courts is expected to consist of three administrative courts, the establishment of which is proposed by the draft reform of the judicial map, and a Supreme Administrative Court, which has been created by the recent Constitutional reform and is expected to become operational in August 2021⁶². The President of the Supreme Administrative Court was appointed⁶³ in May 2020 and the process of selection of the judges is ongoing. Judges of the Court will be selected by the Judicial Council⁶⁴. The draft reform of the judicial map (see above) foresees the creation of three separate administrative courts. It is envisaged⁶⁵ that the presidents of these new administrative courts will be selected by a committee of five members, which should be chosen by the Minister of Justice, two of which from candidates nominated by the Judicial Council⁶⁶. As regards the selection of judges to the administrative courts, it is proposed⁶⁷ that

⁵⁶ Contribution from the Communication platform of Slovak judges Sudnamoc.sk and the Association of Slovak judges for the 2021 Rule of Law Report; Information received in the context of country visit to Slovakia. Also the draft contains different options for selections of court presidents, which raises questions as regards the discretion given to the executive power, Art. XVI, point 35 of the Draft Act on seats and territorial jurisdiction of courts, adding Sec. 101f(4) to Act No. 757/2004, on Courts.

⁵⁷ Information received from Slovak authorities.

⁵⁸ It is noted that the draft reform proposes to move judges by the means of universal succession without the use of provision on transfer of judges as stipulated in Sec. 14, Act 385/2000, on Courts. European standards regarding transfer apply regardless.

⁵⁹ CEPEJ (14 December 2020), CEPEJ Experts' review of the Judicial Map Reform in the Slovak Republic, pp. 8-9.

⁶⁰ CEPEJ (14 December 2020), CEPEJ Experts' review of the Judicial Map Reform in the Slovak Republic, pp. 10-11.

⁶¹ The Supreme Administrative Court will be, among others, a second instance administrative court. Administrative cases of first instance are currently handled by administrative senates at regional courts and will be transferred on the new administrative courts after their establishment.

⁶² On 2 June 2021, the Ministry of Justice has requested the opinion of the Venice Commission about a possible competence of the Supreme Administrative Court to serve as an appellate body reviewing disciplinary decisions regarding lawyers of the Slovak Bar Association and about the position and status of attorneys in the Slovak legal system. No legislation to grant the Court such power is currently being prepared, but it is suggested in the Explanatory memorandum to the Constitutional Act No. 422/20, p. 28.

⁶³ The President of the Supreme Court was appointed by the President of the Republic based on a proposal from the Judicial Council based on the transitional provision 154g(7) of the Constitution.

⁶⁴ Sec. 151zf, Act 385/2000, on Courts.

⁶⁵ Art. XVI, point 35 of the Draft Act on seats and territorial jurisdiction of courts, adding Sec. 101f(1) to Act No. 757/2004, on Courts.

⁶⁶ In the standard process of appointment of court presidents as stipulated in Secs. 36 and 37 of Act 750/2004, on Courts, four members of the selection committee are chosen by the Minister of Justice from a list of candidates so that one of the members was nominated to the list by the Judicial Council and three by the Minister. One member of the selection committee is elected by the council of judges at the respective court.

the Minister of Justice⁶⁸ determines which posts will be filled by a transfer of judges⁶⁹ and which through a selection procedure⁷⁰. It will be important that the setting up of these courts and the regime applicable to them take into account European standards⁷¹.

A Prosecutor General and a Special Prosecutor were elected through a new procedure.

In September 2020, the Parliament adopted a law⁷² which introduced several changes to the process of election of the Prosecutor General and Special Prosecutor⁷³. The law expanded the list of persons with the right to propose a candidate for the office of Prosecutor General⁷⁴, opened the candidacy to this office also to non-prosecutors, and introduced a requirement that candidates for both the Prosecutor General and the Special Prosecutor undergo a public hearing in Parliament⁷⁵. The new rules were applied in December 2020 and February 2021 during the election of the candidates for Prosecutor General and Special Prosecutor. Both elections were closely followed by the media and stakeholders noted the increase of transparency of the process⁷⁶.

Quality

Efforts to advance digitalisation are showing results but weaknesses appear in practice.

Active engagement to advance the digitalisation of the justice system from the past years⁷⁷ has started showing results. Slovakia is well equipped in terms of procedural rules allowing digital technology in courts⁷⁸, as well as a range of tools and infrastructure allowing distance communication and secure remote access to the workplace⁷⁹, secure electronic communication between courts services and legal professionals and institutions⁸⁰ or possibilities for users to initiate and follow proceedings in civil, commercial and administrative cases⁸¹. Gaps appear in particular as regards the prosecution service⁸² and

The list of candidates is published at the website of the Ministry of Justice <https://www.justice.gov.sk/Stranky/Sudy/Vyberove-konania-na-sudoch/Kandidati-na-clenov-vyberovych-komisii-na-vyber-predsedov-sudov.aspx>.

⁶⁷ Art. IX, point 17 of the Draft Act on seats and territorial jurisdiction of courts, adding Sec. 151zg to Act No. 385/2000, on judges.

⁶⁸ After discussion with the Judicial Council.

⁶⁹ Transfer of judges is conducted by the Judicial Council either on the request of a judge, or with his or her consent, or based on a disciplinary decision, Sec. 14, Act 385/2000, on Courts.

⁷⁰ Selection procedure will be conducted by a selection committee composed of two members nominated by the Minister of Justice and three members nominated by the Judicial Council, Sec. 29, Act 385/2000, on Courts.

⁷¹ Consultative Council of European Judges (2016), Opinion No.19, The role of court presidents, para 53.

⁷² Act 241/2020.

⁷³ According to Art. 150 of the Constitution, the Prosecutor General is appointed by the President of the Republic on the proposal of the Parliament. The Special Prosecutor is elected by the Parliament, Sec. 24a, Act No. 154/2001, on Prosecutors.

⁷⁴ Candidates may be nominated by a Member of Parliament, the Minister of Justice, the Ombudsperson, the Council of Prosecutors, a professional organisation of lawyers, a law faculty and the Academy of Sciences. Previously, only Members of Parliament had the right to propose a candidate, Sec. 7(4), Act No. 153/2001, on Public Prosecution.

⁷⁵ Sec. 125(2), Act No. 153/2001, on Public Prosecution.

⁷⁶ Contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 9; Information received in the context of the country visit to Slovakia.

⁷⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 5.

⁷⁸ Figure 41, 2021 EU Justice Scoreboard.

⁷⁹ Figure 42, 2021 EU Justice Scoreboard.

⁸⁰ Figure 43, 2021 EU Justice Scoreboard.

⁸¹ Figure 45, 2021 EU Justice Scoreboard.

digital solutions for court proceedings in criminal cases⁸³. However, there are signs that while tools and infrastructures are in place, their use in practice might be hindered, including by obstacles such as low user-friendliness, incompatibility of different information systems used or lack of skills of users⁸⁴. While the COVID-19 pandemic has overall contributed to the momentum in the digitalisation process, it has also revealed some of these practical shortcomings⁸⁵. Several projects to address the needs of the justice system are ongoing under the lead of a new IT department in the Ministry of Justice, including the development of a new Case Management System and a new commercial register, which were also included in the Slovak Recovery and Resilience Plan⁸⁶.

Although the pandemic had a notable impact on the judicial system, overall courts and lawyers were able to continue their work. The number of hearings conducted by district and regional courts decreased. When taking place, hearings were held via videoconference or, if necessary, in person observing safety measures. The Supreme Court has been less affected, including because most of its proceedings are written⁸⁷. Lawyers were also affected by the pandemic, but reported no major obstacles in exercise of their work⁸⁸. The Judicial Council has been closely monitoring the situation at courts. The Ministry of Justice has published guidelines and information regarding the restrictions, which has been appreciated by the courts⁸⁹.

Efficiency

Efficiency of proceedings in administrative cases has further deteriorated. Being comparably lengthy in EU perspective, the trend of the growing length of proceedings in administrative cases continued in 2019, reaching 518 days compared to 157 days in 2018⁹⁰. At the same time, the clearance rate has also continued to fall, down to 81.4 % in 2019 (compared to 96.1 % in 2018)⁹¹. This suggests that the system does not manage to deal efficiently with the workload in administrative cases. As regards civil and commercial cases, the estimated length of proceedings in litigious civil and commercial cases increased in 2019 compared to 2018, reaching 170 days (compared to 157 in 2018)⁹². Several groups of cases concerning excessive length of civil proceedings have been examined by the Council of Europe⁹³.

⁸² Figure 44, 2021 EU Justice Scoreboard.

⁸³ Figure 46, 2021 EU Justice Scoreboard.

⁸⁴ Contribution from the Slovak Bar Association for the 2021 Rule of Law Report.

⁸⁵ Another example revealed in the wake of the COVID-19 pandemic is the need for digitalization in detention procedures to allow secure digital communication between lawyers and their clients in detention. Contribution from the Slovak Bar Association for the 2021 Rule of Law Report. See also press release of the Slovak Bar Association of 23 March 2021, Predseda SAK navštívil nového generálneho riaditeľa Zboru väzenskej a justičnej stráže.

⁸⁶ Input from Slovakia for the 2021 Rule of Law Report, p. 12; the Slovak Recovery and Resilience Plan plans investments into digitalization and analytical capacities for the justice system, Component 15 of the Slovak Recovery and Resilience plan.

⁸⁷ Information received in the context of country visit to Slovakia.

⁸⁸ Information received in the context of country visit to Slovakia.

⁸⁹ Information received in the context of country visit to Slovakia.

⁹⁰ Figure 10, 2021 EU Justice Scoreboard.

⁹¹ Figure 13, 2021 EU Justice Scoreboard.

⁹² Figure 7, 2021 EU Justice Scoreboard.

⁹³ These groups of cases concern excessive length of civil proceedings, excessive length of proceedings concerning a compensation claim of the aggrieved party attached to criminal proceedings, effectiveness of

II. ANTI-CORRUPTION FRAMEWORK

In Slovakia, the competences for the prevention, detection and prosecution of corruption are shared between several authorities. The Office of the Government is the central body for the coordination of the prevention of corruption, reporting directly to the Prime Minister's Office. The National Crime Agency of the Presidium of the Police Force is in charge of the detection and investigation of corruption offences with the exception of corruption crimes committed by members of the police itself and certain law enforcement agencies falling under the remit of the Bureau of Inspection Service⁹⁴. The Special Prosecutor's Office⁹⁵ has exclusive jurisdiction over the investigation of criminal offences under the substantive jurisdiction of the Specialised Criminal Court, including corruption offences⁹⁶.

The perception among experts and business executives is that the level of corruption in the public sector remains high. In the 2020 Corruption Perceptions Index by Transparency International, Slovakia scores 49/100 and ranks 17th in the European Union and 60th globally⁹⁷. This perception has been relatively stable⁹⁸ over the past five years⁹⁹.

The strategic framework for anti-corruption is provided by the Anti-Corruption Policy for 2019-2023. The Policy¹⁰⁰ focuses mostly on prevention through soft measures and is accompanied by an action plan, the National Anti-Corruption Programme¹⁰¹, and several sectoral programmes¹⁰². Being essentially identical to the policy document, the current action plan does not put forward concrete operational steps to facilitate the implementation of the policy priorities. The National Anti-Corruption Programme is currently in the process of

the remedy for excessively lengthy civil proceedings and excessive length of restitution-of-land proceedings (two-tier proceedings consisting of administrative phase before a Land Office and judicial phase on appeal) and lack of effective remedies, respectively. Decisions on these cases were delivered by the European Court of Human Rights and the execution of these judgments by Slovak authorities is ongoing and monitored by the Council of Europe under the standard procedure. See statuses of execution of the judgments of the European Court of Human Rights of 24 July 2012, *Maxian and Maxianova*, 44482/09, of 15 September 2015 *Javor and Javorova*, 42360/10, of 27 June 2017, *Ivan*, 57405/15, of 31 August 2018, *Balogh and others*, 35142/15.

⁹⁴ Cf. Article 4(3) of Act No. 171/1993 Coll. on the Police Force.

⁹⁵ Act of the National Council of the Slovak Republic No. 458/2003 Coll. on the establishment of the Special Court and the Office of Special Prosecutor's Office.

⁹⁶ Act No. 291/2009 Coll. on the Specialized Criminal Court.

⁹⁷ Transparency International, *Corruption Perceptions Index 2020* (2021) pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁹⁸ In 2015, the score was 51, while, in 2020, the score is 49. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁹⁹ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

¹⁰⁰ Government of the Slovak Republic, *Anti-Corruption Policy of the Slovak Republic for 2019-2023* (2018).

¹⁰¹ Government of the Slovak Republic, *National Anti-Corruption Program of the Slovak Republic* (2019).

¹⁰² Sectoral programmes were adopted by the ministries and other institutions, including the Ministry of Justice, of Economy, of the Interior, of Transport and Construction, of Environment, of Finance Sector, of Foreign and European Affairs, of Health, and of Labour among others. The adopted action plans contain primarily preventive elements, including on awareness-raising, anti-corruption education and corruption risk-management.

being updated¹⁰³. The Corruption Prevention Department of the Government Office oversees the implementation of the policy and action plan. Oversight over the implementation of the sectoral programmes is the competence of the relevant central state administration bodies¹⁰⁴.

The criminal legal framework has been complemented with the entering into force of a new law on asset seizure. Among others, the law on asset seizure¹⁰⁵, which entered into force in January 2021, prevents the legalisation of criminal assets through transfers to third persons and amends the criminal code introducing new offences, such as the crime of accepting or offering unjustified benefits or undue advantages, and the crime of indirect corruption¹⁰⁶. In addition, the act introduces a definition of proceeds of crime. Notably, the act establishes a new Office for the Management of Seized Property¹⁰⁷. Legislative shortcomings exist with regard to the police's authorisation to request financial information of suspects from banks at the investigatory stage of these crimes¹⁰⁸, as well as with regard to the criminalisation of trading of supposed influence¹⁰⁹.

Measures to increase the resources of the Special Prosecutor's Office with a view to strengthening its capacities are being implemented. On 10 February 2021, the Government approved a proposal to increase the resources and number of specialised staff for the Special Prosecutor's office¹¹⁰. Overall the number of prosecutors increased from 35 to 38 in 2021. With the aim to address concerns about limited resources and capacities to prosecute high-level corruption¹¹¹, the division dealing specifically with corruption and corruption-related crimes has doubled its staff increasing from five to now ten prosecutors in the Special

¹⁰³ The new National Anti-Corruption Programme is at a preparatory stage. Public consultations have already taken place, according to the Slovak Government. Additional input from Slovakia for the 2021 Rule of Law Report, p. 7.

¹⁰⁴ The role of the Corruption Prevention Department of the Office of the Government is limited to checking whether the relevant ministry has prepared the programme but it does not evaluate its content. However, the Corruption Prevention Department cooperates with the anti-corruption coordinators with the Council of Anti-Corruption Coordinators. Information received in the context of the country visit to Slovakia.

¹⁰⁵ Act No. 312/2020 on Forfeiture of Assets and Management of Seized Property and Amendments to Certain Acts, effective from 1 January 2021.

¹⁰⁶ The law also redefined the term laundering of proceeds from criminal activity and introduced a new crime of bending the law, see above in Section I. All forms of active, passive, direct and indirect corruption had already been criminalized prior to this in Slovakia.

¹⁰⁷ Selection procedures to institute a director were ongoing at the time of the drafting of this report, according to the Input from Slovakia for the 2021 Rule of Law Report, p. 22. Several other corruption-related amendments were introduced, including Act No. 279/2020 amending and supplementing act No. 297/2008 on protection against money laundering and on terrorist financing (September 2020).

¹⁰⁸ Input from Slovakia for the 2021 Rule of Law Report, p. 24, with reference to section 29(a) para. 4 of Act No. 171/1993 Coll. on the Police Force, despite the fact that police is authorised to obtain such information in the case of other criminal offences, such as tax evasion, illegal financial operations, or the legalisation of the proceeds of crime. Notably, a draft law on the Central Registry of Bank Accounts is expected to address these deficiencies as of 1 December 2021.

¹⁰⁹ UNCAC Implementation Review - 1st cycle (2010-2015), Country Review Report of Slovak Republic, p. 22. The trading of influence is criminalised under section 336 of the Criminal Code but does not cover cases where an individual offered or gave a bribe to another person who did not in reality have the influence in relation to which the bribe was given, as required by the UNCAC Convention.

¹¹⁰ Decision No. UV-1860/2021. Cf. also Government of the Slovak Republic, Proposal to increase the number of persons designated to perform the tasks of the Office of the Special Prosecutor's Office of the General Prosecutor's Office of the Slovak Republic and their functional classification.

¹¹¹ Input from Slovakia for the 2021 Rule of Law Report, p. 15. Concerns were raised by the Special Prosecution Office indicating that on average, each prosecutor is in charge of approximately 80 cases at a time, which raises questions in relation to the effective supervision of investigations. Cf. Rule of Law report (2020), p. 7.

Prosecutor's Office¹¹². The reorganisation took place in the course of 2021¹¹³. A significant increase in budgetary resources for the Special Prosecutor's Office was also agreed¹¹⁴. Concerns remain regarding the level of trust in, as well as the specialisation and the digitalisation of, the police, affecting the cooperation of the Prosecution Service with the police and the detection of corruption and corruption-related crimes¹¹⁵. In particular, as stated in the 2020 Rule of Law Report, strengthened forensic and analytical capacities of the National Crime Agency would contribute to more effective financial investigations¹¹⁶. A comprehensive police reform is planned to modernise the police in this regard by June 2022¹¹⁷.

Efforts to fight high-level corruption have significantly increased in Slovakia in the course of the reporting period. The ability to investigate and prosecute high-level corruption has considerably improved following the public mass demonstrations against the perceived impunity for high-level corruption based on revelations made in the context of the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová in 2018. As of October 2020, a number of former high-ranking representatives from the police, the prosecution service and the judiciary as well as from the private sector have been charged with corruption and corruption-related offences¹¹⁸. In 2020, the National Crime Agency initiated proceedings in 158 cases of corruption¹¹⁹. The number of individuals convicted for corruption offences more than doubled from 2019 (62 convictions) to 2020 (128 convictions)¹²⁰. More recently, in May 2021, the National Crime Agency also detained several high-ranking officials of the Land Fund¹²¹ allegedly involved in corruption schemes between 2016 and 2020¹²². In this context, the European Anti-Fraud Office (OLAF) had already raised concerns in 2020 following three administrative investigations into agriculture payments about shortcomings in the Land Fund with regard to transparency, equal treatment of lease applicants and legal

¹¹² The current division of the Department of General Crime of the Special Prosecutor's Office consists of one head prosecutor and of 9 prosecutors, according to the Input from Slovakia for the 2021 Rule of Law Report, p. 16.

¹¹³ The current division of the Department of General Crime of the Special Prosecutor's Office consists of one head prosecutor and of 9 prosecutors, according to the Input from Slovakia for the 2021 Rule of Law Report, p. 16.

¹¹⁴ The Office will receive an additional EUR 1.3 million to realise the reform.

¹¹⁵ Cf. GRECO, Fifth Evaluation Round – Evaluation Report Slovak Republic (2019), pp. 37-57.

¹¹⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 7.

¹¹⁷ Cf. the Recovery and Resilience Plan of the Slovak Republic.

¹¹⁸ Information received in the context of the country visit to Slovakia. See also Section I.

¹¹⁹ Of the 158 corruption cases initiated, 73 cases were based on giving a bribe, 71 on accepting a bribe, 8 on indirect corruption, 5 on corruption in elections, and 1 case on match-fixing in sports, according to information received in the context of the country visit to Slovakia.

¹²⁰ Crimes included in the statistics are passive corruption (section 328), passive corruption – procurement of items of general interest (section 329), active corruption (section 332), active corruption – procurement of items of general interest (section 333), trading in influence (section 336), electoral bribery (section 336a), sports corruption (section (336b). Additional input from Slovakia for the 2021 Rule of Law Report, available at http://web.ac-mssr.sk/wp-content/uploads/2020/rocenka2019/I.-Trestn%C3%A1-agenda_2019_pdf.pdf. Furthermore, corruption statistics are available in the annual reports of the National Crime Agency on the number of criminal investigations and prosecutions and the number of individuals charged with corruption offences. Also the Ministry of Interior publishes monthly crime statistics online.

¹²¹ The Slovak Land Fund is in charge of the management of agricultural land under State ownership or land without a known private owner. These parcels cover approximately 20% of all agricultural land in Slovakia and are in majority eligible for EU direct payments grants.

¹²² Aktuality.sk (19 March 2021), NAKA again detained financier Kvietik and several people from the Slovak Land Fund.

certainty in internal procedures¹²³. However, cooperation between the National Crime Agency, the National Security Office, the Supreme Audit Office and the Financial Intelligence Unit could still improve and become closer in order to better detect and document corruption¹²⁴. The effective enforcement of foreign bribery also remains a concern¹²⁵.

Slovakia's Parliament has appointed the Head of Office for the Protection of Whistleblowers in February 2021. Following this appointment¹²⁶, the Office will become operational and take up its functions within six months¹²⁷. The term of office of the Head of Office is seven years. The Office is independent from any other department¹²⁸. The Office's mandate will focus on breaches of law and the protection against retaliatory measures undertaken by the notified entity based on the principles of confidentiality and anonymity¹²⁹. The role of the Office is to provide advice, training, methodological guidance and public awareness-raising on whistleblowing, including on corruption cases. The Office is accountable to the Parliament and will provide an annual report. The target audience for the Office is both the public and the private sector.

Slovakia committed to submit a draft law on lobbying in November 2021. The process led by the Government Office¹³⁰ is in the initial preparatory stage¹³¹. There have been several attempts to adopt legislation but so far lobbying remains unregulated in Slovakia¹³². As a result, there are no legal definitions of lobbyists, lobbying activities and lobbying targets, nor effective sanctions for undue lobbying or a legislative footprint in place¹³³. However, related

¹²³ Press Release of the European Anti-Fraud Office (21 January 2021), OLAF closes cases on EU agricultural funds in Slovakia.

¹²⁴ Input from Slovakia for the 2021 Rule of Law Report, p. 25.

¹²⁵ In the period from 2016-2019, Slovakia opened an unknown number of investigations, commenced no cases and concluded no cases, according to Transparency International, *Exporting Corruption* (2020), p. 102. National provisions on foreign bribery offences have been amended following the recommendations of the OECD, *Implementing the OECD Anti-Bribery Convention, Phase 3: Slovak Republic* (2012), and the OECD, *Follow-Up to the Phase 3 Report and Recommendation: Slovak Republic* (2014). For the liability of legal persons with regard to foreign bribery, see OECD, *Phase 1bis Report: Slovak Republic* (2017). In the course of 2025, the Slovak Republic is scheduled to undergo its Phase 4 review on the implementation of the Convention, reviewing the measures taken to address the weaknesses identified in previous evaluations and enforcement efforts.

¹²⁶ Input from Slovakia for the 2021 Rule of Law Report, p. 19; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 8.

¹²⁷ The Office for the Protection of Whistleblowers is established by the legislation Act No. 54/2019 Coll. On Whistleblower Protection in force since March 2019.

¹²⁸ Staffing and running costs will amount to approximately EUR 1.1 million per year.

¹²⁹ Slovakia has a stand-alone whistleblower protection law in place since 2019, Act no. 54/2019 Coll. on Whistleblowers' Protection.

¹³⁰ Government of the Slovak Republic, Plan of Legislative Tasks of the Government of the Slovak Republic for 2021, https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portlet&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&processDetail_WAR_portletsel_fileCoaddr=COO.2145.1000.3.4201465&processDetail_WAR_portletsel_file=pl%C3%A1n-2021.pdf&processDetail_WAR_portletsel_action=getFile.

¹³¹ Information received from the Government in the context of the country visit to Slovakia.

¹³² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 8.

¹³³ Cf. GRECO, Fourth Evaluation Round, Slovak Republic - Addendum to the Second Compliance Report (2019), para. 8, and GRECO, Fourth Evaluation Round – Evaluation Report Slovak Republic (2013), para. 25 (with regard to members of the parliament); GRECO, Fifth Evaluation Round – Evaluation Report, Slovak Republic (2019), para. 89 (with regard to the central government/ top executive functions); GRECO, Fourth Evaluation Round (2019), Addendum to the Second Compliance Report, Slovak Republic.

legislation and tools allow for the tracking of stakeholder comments and of the extent to which they found entry into a legislative draft¹³⁴. A Code of Ethics for members of Parliament¹³⁵ and the introduction of a legislative regulation on post-employment rules ('revolving doors') is also planned for 2021¹³⁶. Amendments to the Law on the Protection of the Public Interest have entered into force providing for the obligation to declare gifts or other benefits and the use of movable or immovable property¹³⁷.

The Government intends to create a new, centralised office for the monitoring and verification of assets, including of top executive officials. The Government Office in cooperation with the Parliament is at an initial stage in the conceptualisation of a legislative proposal to establish a unified office¹³⁸. So far, the system of asset declarations for members of Parliament, judges, prosecutors, public officials and civil servants is decentralised. At the outset of 2021, major delays were reported in the publication of the 2019 asset declarations of members of Parliament due in August 2020, for reasons related to the COVID-19 pandemic and ongoing processes to impose fines for non-compliance¹³⁹.

Political party finances are transparent, yet oversight could be strengthened. The main law regulating the financing of political parties in Slovakia is the Act on Political Parties and Movements¹⁴⁰. Donations to political parties are limited to EUR 5,000 in cash per calendar year, while no such limit exists during election periods. Donations from foreign entities and anonymous donors are banned. Failure to comply can result in a fine by the State Commission on Election and Control of the Financing of Political Parties in the amount of double the income from the donation or the gratuitous service. Parties are required to report on their finances annually to the State Commission. Financial reports are made publicly available. The reports are overseen by the National Council of the Slovak Republic and must reveal financial information in relation to election campaigns and the identity of donors¹⁴¹. The human capacities of oversight bodies are limited and concerns have been raised as to

¹³⁴ These include among others the strong Freedom of Information Act and the Constitutional Law on Conflicts of Interests No 357/2004 Coll.

¹³⁵ The Code of Ethics for members of Parliament will be part of the draft law on lobbying of the Government Office. For state employees, the 2019 legislative amendments to the Civil Service Act included a state employee Code of Ethics and a system to assess compliance, Decree no. 400/2019 on State Employee Code of Ethics. On the introduction of a Code of Conduct for parliamentarians, see also GRECO, Fourth Evaluation Round, Second Addendum to the Second Compliance Report – Slovak Republic (2021).

¹³⁶ Input from Slovakia for the 2021 Rule of Law Report, p. 19 and information received from the Corruption Prevention Department of the Government in the context of the country visit to Slovakia. So far post-employment rules are included in the Act of Conflict of Interest applying to public officials of executive functions or member of a collective decision-making body but have been found to be limited in scope. Cf. GRECO, Fifth Evaluation Round – Evaluation Report Slovak Republic (2019), paras. 127-128.

¹³⁷ Constitutional Act on the Protection of Public Interest in the Performance of Offices by Public Officials No. 357/2004, as amended by Constitutional Act No. 545/2005. Notably, further comprehensive amendments to this law and, specifically gifts for parliamentarians, are foreseen in the current government programme to address the remaining concern of thresholds vis-à-vis minimum wages. Cf. GRECO, Fourth Evaluation Round: Second Addendum to the Second Compliance Report – Slovak Republic (2021), para. 20-21. See also GRECO, Slovakia: GRECO regrets slow progress in prevention corruption of parliamentarians, judges and prosecutors (2021).

¹³⁸ Information received in the context of the country visit to Slovakia. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, pp. 8-9.

¹³⁹ Information received in the context of the country visit to Slovakia. A quarter of parliamentarians (381) had not submitted their asset declarations to the parliamentary committee by January 2021.

¹⁴⁰ Law No. 85 on Political Parties and Movements, 2005 (as amended in 2019).

¹⁴¹ Section 22(5) of the Law No. 85 on Political Parties and Movements of 2005 (as amended in 2019).

political nominations within them¹⁴². A bill adopted within two days tightening the campaign financing rules for the 2020 elections by limiting donations¹⁴³ has affected newly established parties in particular and therefore raised concerns among new parties, civil society and media as to the fair competition between parties.

The COVID-19 pandemic had reportedly no specific impact on corruption occurrence, detection of corruption or on the efforts to combat corruption in Slovakia, according to the Prosecution Service. Some trials have been postponed due to the COVID-19 pandemic contributing to a backlog of cases¹⁴⁴. High-risk sectors that were prone to corruption before the pandemic largely remained prone to corruption during the pandemic, including public procurement and the health care sector, with an increased risk and occurrence of pandemic-related subsidy fraud schemes in the latter sector¹⁴⁵. Under the sectoral anti-corruption programme of the Ministry of Health¹⁴⁶, a specific working group was created to assess corruption risks in the context of the COVID-19 pandemic, finding two risk areas relating to ineligible cost requests and duplication of reimbursement requests¹⁴⁷. In an effort to reduce the period needed for procuring goods, services and construction work during the pandemic, the Government prepared a legislative proposal¹⁴⁸ amending its public procurement law. However, the proposal was revised in May 2021 following a public petition and criticism for excluding the Office for Public Procurement from the initially envisaged review procedure and thus excluding public control over high-value commissions¹⁴⁹. According to civil society, the revised legislative proposal addresses the concerns raised in the petition increasing transparency and public control and thus reducing corruption risks¹⁵⁰.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Slovak Constitution enshrines the right to express opinions in words, print, image or by other means, the right to search for, receive and disseminate ideas and information as well as the right of access to information. The right to access information finds legal expression in the Freedom of Information Act¹⁵¹. The Broadcasting and Retransmission Act¹⁵² is aimed at

¹⁴² Information received in the context of the country visit to Slovakia.

¹⁴³ Law No. 85 on Political Parties and Movements of 2005 (as amended 2019). The bill limited parties' income from donations and loans to EUR 3.5 million for a four year term and capped annual donations from party members at EUR 10,000 each.

¹⁴⁴ Information received in the context of the country visit to Slovakia. See also Section I.

¹⁴⁵ Information received in the context of the country visit to Slovakia.

¹⁴⁶ The program is available at <https://www.health.gov.sk/Zdroje/?dokumenty/mzsr/rezortny-protikorupcny-program.rtf>.

¹⁴⁷ Information received in the context of the country visit to Slovakia.

¹⁴⁸ Deputy Prime Minister of the Slovak Republic, Draft law amending Act no. 343/2015 Coll. on Public Procurement and on Amendments to Certain Acts, as amended, https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portlet&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&_processDetail_WAR_portlet&file=03_vlastny_material_zvo_final.docx&_processDetail_WAR_portlet&action=getFile.

¹⁴⁹ According to the proposal, the review of the public procurement process would instead be subject to direct court investigation. Objections, for example, to tender conditions would have no suspensory effect, if made in court and contracts could be signed before any court ruling be rendered.

¹⁵⁰ Transparency International-Slovakia, Information received in the context of the country visit to Slovakia.

¹⁵¹ Act 211/2000 Coll., Freedom of Information Act.

¹⁵² Act 308/2000 Coll., Broadcasting and Retransmission Act.

ensuring plurality of information, while the Press Act¹⁵³ establishes rules relating to the press and to journalists¹⁵⁴. Legislation is pending to align the Broadcasting and Retransmission Act with the AVMS Directive¹⁵⁵.

The Council for Broadcasting and Retransmission operates autonomously¹⁵⁶. Given that the Broadcasting Council disposes of its own budget, resources allotted are considered adequate for the accomplishment of its tasks¹⁵⁷ and clear rules on appointment and dismissal of the Council's members are established by law¹⁵⁸, the Media Pluralism Monitor 2021¹⁵⁹ confirms that the independence of the Council is overall guaranteed, though occasional political nominations remain an issue.

A bill amending the Broadcasting and Retransmission Act is expected to introduce a framework to ensure transparency of media ownership. While awaiting enactment of that bill, scheduled for adoption by the end of 2021¹⁶⁰, which is expected to introduce provisions on transparency of ownership structure and beneficial ownership as foreseen in the AVMS Directive, the MPM 2021 once more¹⁶¹ considers that the lack of regulation means that this remains an area of high risk¹⁶². The Broadcasting and Retransmission Act includes ceilings and limitations to prevent a high degree of horizontal ownership concentration in the television and radio markets. However a lack of data with regard to revenues and audience market shares makes the assessment of the actual situation difficult¹⁶³.

A number of convictions were handed down to individuals involved in the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová in 2018. Three individuals were convicted and sentenced to between 15 and 25 years imprisonment by the Specialised Criminal Court. One of the judgments has been appealed by the accused. The public prosecutor appealed the acquittals of the alleged masterminds of the assassination by the court of first instance¹⁶⁴. On 15 June 2021 the Supreme Court annulled the first instance acquittals of the Specialised Criminal Court and returned the case to this latter court. The Supreme Court also confirmed the 25-year prison sentence handed down to another of the accused¹⁶⁵.

There have been reports of verbal attacks against journalists and media outlets by both government and opposition politicians. Journalists have been accused of 'spite' and of

¹⁵³ Act 167/2008 Coll., Press Act.

¹⁵⁴ Slovakia dropped two places in the Reporters Without Borders World Press Freedom Index, now registering at 35th position worldwide and 17th within the EU. This is largely due to politicians' verbal attacks on journalists and media outlets.

¹⁵⁵ Directive (EU) 2018/1808 of 14 November 2018.

¹⁵⁶ For further information see the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 9.

¹⁵⁷ Information received in the context of the country visit to Slovakia.

¹⁵⁸ The Council has nine members, who are elected and removed by the National Council of the Slovak Republic (the Parliament).

¹⁵⁹ 2021 Media Pluralism Monitor, report on Slovakia, p. 10.

¹⁶⁰ Input from Slovakia for the 2021 Rule of Law Report, p. 26; information received in the context of the country visit to Slovakia.

¹⁶¹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 9.

¹⁶² 2021 Media Pluralism Monitor, report on Slovakia, pp. 11-12.

¹⁶³ 2021 Media Pluralism Monitor, report on Slovakia, p. 12.

¹⁶⁴ The Media Freedom Rapid Response Platform called the acquittal a travesty of justice and welcomed the public prosecutor's decision to appeal the case.

¹⁶⁵ Information received from Slovak authorities.

undermining the work of the Government during the COVID-19 pandemic. Since September 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published one alert for Slovakia¹⁶⁶ which concerned the surveillance of a newspaper journalist by unidentified individuals¹⁶⁷. Proposed legislation aimed at strengthening the protection of journalists has been postponed due to the COVID-19 pandemic¹⁶⁸. The proposals include a definition of the status of journalists, the protection of journalistic sources as well as enhanced access to information. Furthermore, the Government is preparing amendments to Slovakia's currently strict criminal defamation laws in order to provide safeguards for journalists. No news media support scheme was introduced to counter the impact of the COVID-19 pandemic¹⁶⁹.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Slovakia is a parliamentary republic where the National Council (the Parliament) is the sole constitutional and legislative body¹⁷⁰. The right to introduce legislation belongs to the Committees of the Parliament, individual members of the Parliament, and the Government¹⁷¹. The Constitutional Court decides on the compliance of laws with the Constitution, constitutional acts and international agreements, and ensures respect for fundamental and constitutional rights. Independent authorities also play a role in safeguarding fundamental rights.

Concerns have been raised about the inclusiveness of the law making process. The recent Constitutional reform (see Section I) was announced in the governmental Program Statement of April 2020 and, following a presentation to several stakeholders¹⁷² and a written public consultation in July 2020, was submitted to Parliament at the beginning of October 2020 and approved in December 2020. Stakeholders raised concerns about the absence of an extensive and informed debate on the main features of the reform, as well as a lack of consultation of the Venice Commission, given the scope and significance of the reform¹⁷³. Stakeholders have underscored the importance that constitutional changes follow an open and timely public discussion, which involves stakeholders and civil society, in line with European standards¹⁷⁴. Stakeholders have also expressed concerns about their lack of involvement in other

¹⁶⁶ Council of Europe, Platform to promote the protection of journalism and safety of journalists.

¹⁶⁷ Slovakia replied to this alert stating that a police investigation had been promptly opened into the case.

¹⁶⁸ Scheduled for adoption by the end of 2021. Information provided during the country visit, 22 April 2021.

¹⁶⁹ According to the Slovak authorities, journalists were eligible to apply for financial support under the existing scheme geared at the cultural and the creative sectors.

¹⁷⁰ Article 72 of the Slovak Constitution.

¹⁷¹ Article 87 of the Slovak Constitution.

¹⁷² The draft reform was presented to the President of the Judicial Council, President of the Supreme Court, President of the Constitutional Court, the General Prosecutor's Office, the Ombudsman, and representatives of legal organisations.

¹⁷³ Stakeholders were given the opportunity to comment on the draft in the course of written public consultations lasted 15 working days during summer holiday. The length and timing of the public consultation was also subject to criticism from stakeholders. See comments submitted in the course of public consultation from the Public Prosecutor's Office, La Faculty of the Comenius University in Bratislava, the Slovak Bar Association, the Judicial Council, available at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2020/267>; Open call of Slovak lawyers, accessible at <https://pravnystat.eu/en/> and submitted as a contribution into the stakeholder consultation for the 2021 Rule of Law Report.

¹⁷⁴ Venice Commission (19 January 2010), Report on Constitutional Amendment, CDL-AD(2010)001, para. 205; Venice Commission, Second interim opinion on constitutional reforms in the Republic of Armenia, CDL-AD(2005)016, para. 31.

legislative processes¹⁷⁵ and about the use of fast-track procedures in Parliament, which was also followed for legislation that was not strictly related to the pandemic¹⁷⁶.

Plans announced in 2020 for improving the law-making process and strengthening transparency, efficiency and accountability of the public administration have not yet materialised¹⁷⁷. The new Government in place as of April 2021 included into its Programme Statement the commitments of its preceding Government¹⁷⁸ to improve the process for preparing and enacting law, strengthen the transparency, efficiency and accountability of the public administration, expand the access to information and broaden the application of open government. It has also taken over the commitment to strengthen the competences of the Supreme Audit Office¹⁷⁹. Proposals to these ends have not yet been presented or stakeholder consultations launched. An amendment to the Act on Free Access to Information is in the preparatory phase in the Government¹⁸⁰.

The Constitutional reform expressly stipulates that the Constitutional Court does not have the competence to review Constitutional laws. In the past, the Constitutional Court has asserted the power to assess the constitutionality of constitutional laws, which it used once to protect judicial independence¹⁸¹. The recent Constitutional reform (see Section I) has changed the wording of the Constitution so as to expressly prohibit the Court from reviewing the constitutionality of such laws. The change has been criticised by stakeholders¹⁸². The constitutionality of this amendment has been challenged before the Constitutional Court, where it is still pending¹⁸³.

The Parliament amended legislation regarding the state of emergency to allow prolongation beyond 90 days. The Parliament continued its operation during the state of emergency without major disruptions¹⁸⁴. The state of emergency allows the Government to adopt ordinances that limit certain rights and freedoms, such as freedom of movement¹⁸⁵. The state of emergency may be declared by the Government for no longer than 90 days, under

¹⁷⁵ Contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, p. 19; contribution from the ENNHRI for the 2021 Rule of Law Report, p. 293.

¹⁷⁶ Contribution from the ENNHRI for the 2021 Rule of Law Report, p. 298; Contribution from the Slovak Bar Association for the 2021 Rule of Law Report, p. 3; information received in the context of country visit to Slovakia.

¹⁷⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, pp. 11-13.

¹⁷⁸ Program Statement of the Government of the Slovak Republic for 2020-2024 of 19 April 2020.

¹⁷⁹ Program Statement of the Government of the Slovak Republic for 2021 – 2024, pp. 13-17.

¹⁸⁰ Bill No. PI/2020/146 amending Act no. 211/2000 Coll. on Free Access to Information and on Amendments to Certain Acts (Freedom of Information Act), as amended, and Amending Certain Acts.

¹⁸¹ See the judgment of 30 January 2019 in case PI ÚS 21/2014-96. The change is a reaction to this judgment, information received in the context of a follow-up meeting to the 2020 Rule of Law Report.

¹⁸² Open call of Slovak lawyers, accessible at <https://pravnystat.eu/en/> and submitted as a contribution into the stakeholder consultation for the 2021 Rule of Law Report, para. 1; see also the statement of the President of the Constitutional Court of 3 December 2020 in the Parliament, in which he expressed concerns about the change and asked the Members of the Parliament to further reflect on this point, available at <https://tv.nrsr.sk/videokanal/osoba/8/Ivan.Fiakan?id=233541>.

¹⁸³ File No. 2879/2020.

¹⁸⁴ Members of the Parliament were allowed to attend sessions in person, except for members who were obliged to self-isolate pursuant to COVID-19 related measures. Some meetings took place in a hybrid form, firm several Members of the Parliament present in person and some via videoconference. Input from Slovakia for the 2021 Rule of Law Report, p. 37.

¹⁸⁵ Art. 5(3) of the Act 227/2002 on the Security of the State.

conditions stipulated by a Constitutional law¹⁸⁶. Following the application of the state of emergency from 16 March 2020 to 13 June 2020¹⁸⁷, the Government declared a new state of emergency as of 1 October 2020. In December 2020, the Parliament amended the relevant legislation to allow for the repeated extension of the state of emergency by the Government by 40 days with a requirement of subsequent approval by Parliament¹⁸⁸. The state of emergency ended on 15 May 2021. The Constitutional Court has the competence to review the constitutionality of a declaration and extension of the state of emergency¹⁸⁹. However, stakeholders have noted that the time limits for such review are short¹⁹⁰. The Constitutional Court was petitioned to review the constitutionality of the declaration and one of the extensions, and on both occasions pronounced its conformity with the relevant legislation¹⁹¹. The Constitutional Court has also reviewed several measures adopted in the context of the pandemic and clarified questions regarding the competence of ordinary courts to adjudicate on such measures. However, following subsequent changes of legislation¹⁹², concerns were raised that the right to judicial review of certain measures may not be sufficiently guaranteed¹⁹³.

The Public Defender of Rights and the National Centre for Human Rights took an active role to defend citizens' rights during the pandemic. The Public Defender of Rights is an independent body tasked with protection of the fundamental rights and freedoms in proceedings before the public administration and other public bodies, while the Slovak National Centre for Human Rights is the competent National Human Rights Institution as well as the equality body in Slovakia¹⁹⁴. During the COVID-19 pandemic, the Public Defender of Rights experienced an increase of almost 50% in complaints, as well as an increase of requests from the public for guidance regarding pandemic related measures¹⁹⁵. The workload of the National Centre for Human Rights was comparable to that of last years, but the content of complaints changed, with a majority concerning the pandemic related measures¹⁹⁶. The institutions have found violations in several areas, such as regarding state mandated quarantine of persons returning from abroad, isolation of certain Roma settlements as a whole, and restrictions of access to health care and the right to education¹⁹⁷.

¹⁸⁶ Art. 5(1) of the Act 227/2002 on the Security of the State.

¹⁸⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 12.

¹⁸⁸ Art. 5(2) of the Act 227/2002 on the Security of the State. The Parliament must approve the extension within 20 days from its entry into effect, otherwise the stay of emergency ceases to exist. The extension is only allowed if the state of emergency has been declared in the context of a pandemic. See also the contribution from the ENNHRI for the 2021 Rule of Law Report, pp. 296-297.

¹⁸⁹ Art. 129(6) of the Constitution.

¹⁹⁰ The petition must be filed within five days from the declaration / extension and the Court must decide within 10 days from the initiation of the proceedings. Secs. 193 and 195 of Act 314/2002 on the Constitutional court. Information received in the context of country visit to Slovakia.

¹⁹¹ Judgment of the Constitutional Court of 14 October 2020 PI ÚS 22/2020, Judgment of the Constitutional Court of 31 March 2021 PI ÚS 2/2021.

¹⁹² Amendment of Act 355/2007.

¹⁹³ Submission by the Public Defender of Rights to the Constitutional Court of 10 February 2021, file No. 268/2021, pp. 26-35.

¹⁹⁴ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, pp. 12-13.

¹⁹⁵ Information received in the context of the country visit to Slovakia.

¹⁹⁶ Information received in the context of the country visit to Slovakia.

¹⁹⁷ Annual report on the activities of the Public Defender of Rights (2020), the Report was subject to a discussion and voting in the Parliament on 7 May 2021, which resulted in non-acknowledgement of the Report; information received in the context of country visit to Slovakia; Annual report on compliance with

An enabling legal framework for civil society organisations remains in place but concerns emerged over the limitation of financing of certain NGOs ¹⁹⁸. The commitment to further strengthen civil society has been taken over by the new Government¹⁹⁹. A new Register of Non-Governmental Non-profit Organisations²⁰⁰ was launched in December 2020. It represents a single public register of all organisations defined by the respective Act operating in Slovakia and aims to further improve transparency. Concerns have been reported by stakeholders regarding verbal attacks from public authorities and politicians on activists and civil society organisations²⁰¹ and the deliberate limitation of public funds for organisations that promote gender-equality²⁰². Moreover, the COVID-19 pandemic has put the operations of a number of civil society organisations under strain and stakeholders expressed particular concerns as regards general repercussions of the pandemic on the financial situation of NGOs²⁰³.

human rights of the Slovak National Center for Human Rights; contribution from the ENNHRI for the 2021 Rule of Law Report, pp. 309-312.

¹⁹⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 14.

¹⁹⁹ Program Statement of the Government of the Slovak Republic for 2021 – 2024, pp. 16-17.

²⁰⁰ Established by Act No. 346/2018 on the Register of Non-Governmental Non-profit Organisations; the register is available at <https://ives.minv.sk/rmno/?lang=sk>.

²⁰¹ Contribution from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report and contribution, pp. 13-14 and contribution from the ENNHRI for the 2021 Rule of Law Report, p. 294.

²⁰² This refers to the process of redistribution of subsidies for the promotion of gender equality by the Ministry of Labour, Social Affairs and Family in 2020 to support conservative pro-life organisations, which do not generally focus on gender equality issues. In addition, following the adoption of act of 17 December 2020 amending Act no. 544/2010 Coll. on subsidies, instead of gender equality, equal employment opportunities and organisations promoting marriage and family values will be supported. See contributions for the 2021 Rule of Law Report provided by the European Network of National Human Rights Institutions, p. 294, Civil Liberties Union for Europe, p.14, and ENNHRI, pp. 294-295.

²⁰³ Despite effort by the government that provided additional support of 1.1 million EUR to support NGOs activities that are mitigating the impact of COVID-19, press release of the Ministry for Regional Development of 12 August 2020, Vice-Premier Remišová: 1.1 mil EUR for help to non-governmental organisation with fights against COVID-19; Information received in the context of the country visit to Slovakia. See also contributions from Via Iuris (Civil Liberties Union) for the 2021 Rule of Law Report, pp. 15-17.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.*

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Annex II: Country visit to Slovakia

The Commission services held virtual meetings in April 2021 with:

- Association of Judges
- Government Office - Corruption Prevention Department
- Judges For Open Judiciary
- Judicial Council
- League of Human Rights
- Ministry of Culture
- Ministry of Health
- Ministry of Interior
- Ministry of Justice
- National Centre for Human Rights
- Police National Crime Agency
- Open Government Partnership
- Prosecutor General's Office
- Public Defender of Rights
- Slovak Bar Association
- Slovak Council for Broadcasting
- Special Prosecutor's Office
- Supreme Court
- Transparency International
- Via Iuris

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee

- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU