



COUNTRY REPORT: SLOVAKIA

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I. How has parliamentary law-making practice changed during the pandemic in the state you are studying?

- **Briefly describe the new practices.**
- **Evaluate these practices. In your opinion, do these practices empower, disempower or not change anything regarding parliamentary law-making powers and practice**

During the first wave of the pandemic, Slovakia was one of the first countries to enact widespread restrictions and was generally considered to be managing the situation very well. It was not only due to the low infection and mortality rate but also due to the smooth change of government after the 2020 elections. Since March, the country was governed by a new coalition- Obyčajní ľudia a Nezávislé Osobnosti (OĽaNO, Ordinary People and Independent Personalities), Sloboda a Solidarita (SaS, Freedom and Solidarity), Sme Rodina (We are Family) and Za ľudí (For the People) which enjoyed a constitutional majority. Yet, that coalition was internally heterogeneous (frequent disputes between parties), disunited (when the most prominent party, OĽaNO, functioned only as an "umbrella" for various factions and small parties that reached parliament on her candidate list) (e.g., Clark, Meijers, Mustillo 2021), and composed of many newcomers lacking political or parliamentary experience. As a result, the work of the parliament was more chaotic than ever. Due to these factors it is difficult to establish which trends observed after 2020 can be attributed to the pandemic or the specificity of the coalition.

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The pandemic had an impact on law-making practice in the National Council of the Slovak Republic mostly by catalysing the already existing informal practices. Like in Hungary, plenary sessions continued in person with no possibility of online or hybrid meetings. Only in February 2021 the proposal to amend the rules of procedure was submitted, which was approved in July of the same year. The amendment introduced hybrid meetings via video conferences while, unlike other countries, only in a minimal form and under specific circumstances. Hybrid sessions are only possible for proceedings of committees and commissions. The chairman of the committee decides on holding a hybrid committee meeting no later than 48 hours before the start of the meeting, or it takes place upon the request of one-third of the committee members. In case of the commission, only the chairman of the commission decides on the committee meeting. At the same time, this option is strictly limited to meetings during a state of emergency or extraordinary situation. It is explicitly mentioned that part of deputies must be present in person (Zákony pre ľudí 2022).

The pandemic also led to problems in the everyday functioning of the parliament and required introduction of special measures to secure its ability to fulfil its function. A high number of covid-positive members of parliament, covid restrictions merged with the impossibility of online meetings, resulted in a situation when the parliament lacked a quorum. According to the Slovak constitution the parliament can be dissolved by the President if it does not have a quorum for more than three months. It was also impossible to reduce the quorum of deputies in the National Council since this number is explicitly mentioned in the Constitution (Pravda 2020b). At the end of the year 2020 (December 28th) and at the peak of the pandemic, the state of emergency could not be prolonged without amending the Constitution. Due to this, Chief Public Health Officer revised his decree and allowed covid-positive but symptom-free deputies to participate in the plenary sessions. These MPs were required to use special protective measures such as respirators, masks, gloves and disinfection. A separate entrance was reserved for covid-negative members of the parliament, who were separated in the plenary from covid-positive by foil (HNOnline 2020). However, these emergency measures have upset the public, who disapproved of special rules for the "chosen ones" but also the opposition, which united with the opponents of anti-pandemic measures.

The amendment of the Constitution allowed to prolong the state of emergency for another 40 days, which required parliamentary approval within 20 days after the

extension of the state of emergency. Before the amendment, the state of emergency could be introduced for 90 days with no possibility of extension. During the period of the study, the state of emergency was enacted three times: March 16th- June 13th, 2020, October 1st, 2020- May 14th, 2021, from November 25th, 2021 (Minv 2022). The second state of emergency was the most interesting case. Firstly, it was not enacted for the full 90 days, but for 45 days and later for another 45 days. After the amendment, the state of emergency was extended immediately in December, February, and April. During this period, National Council continued working except situations when the Members of Parliaments could not attend. Members of Parliament had to follow the same rules for indoor activities as citizens, so mouth-and-nose masks were mandatory. Some opposition MPs were not willing to comply with the measures. During the sessions, several MPs who refused to wear protective equipment were expelled from the room. Former Prime minister Robert Fico used transparent plastic shield (e.g., Startitup 2020). An MPs from the extremist party LSNS (Ludová Strana Naše Slovensko, People Party: Our Slovakia) gave a speech in a gasmask (e.g., Plus Jeden deň 2021) in order to protest against the measures. All such incidents increased tension and discord among politicians and the public.

A significantly more severe problem was the overuse of the fast-tracked legislation process. It can be used only by the governmental proposal, and parliament has to approve it. In the Slovak case, the fast-track legislation procedure allows to discuss the draft law immediately after its approval by the government. There is no need to comply with the deadlines set for the traditional legislative process. Fast-track legislation can only be used in situations of an imminent threat to human rights and fundamental freedoms, a threat to the state's security, or when the state is threatened with significant economic damage (Via Iuris 2021). An extensive use of fast-track legislation process was also a problem in the past, however, after 2020 it has become widely used. While in 2019 there were 11 fast-track legislative projects, in 2020 there were already 60. It became a standard procedure used by the government not only for proposals related to the pandemic but also for non-related ones, such as the attempt to remove the Commissioner for Children and the Commissioner for persons with disabilities (Trend 2021). Fast-track legislation was used not only to enforce laws unrelated to the pandemic, but it was also employed to revise the Constitution, the most prominent example being the extension of the state of emergency or the Constitutional Court reform concerning its composition and appointment of election prosecutors. The

Constitution was thus revised via amendments and practically without discussion. The whole process took place within 24 hours. Some coalition members (Sme Rodina) conditioned support for a fast-tracked judicial reform in exchange for support for their own constitutional amendment about pensions (e.g., Pravda 2020). Such approach exemplified the major problem of the legislative process during the pandemic period: a constitutional amendment that was not necessary to fight the pandemic, was proposed and accepted in fast-track procedure, without a discussion and in the course of a blackmail of coalition partners. Given the necessity of the reform, the President did not veto it. The fact that the parliament's decisions on fast-tracked legislation proceedings were not even formally correct was also problematic. Not in a single case did the parliament's resolution approve the usage of fast-tracked legislation, and this conclusion could only be revealed from the vote (Staroňová et al., 2022).

The Slovak Parliament, especially during the term of SMER-SD, functioned primarily as a "voting machine" for approving governmental proposals. Parliamentary bills were frequent but with limited success. Between 2016 and 2019, out of 1005 proposals, only 127 were approved, of which 66 were approved in 2019 (see NRSR 2020). The arrival of the new government, however, led to several changes. Firstly, there was a decrease in the number of proposals from members of the parliament, but on the other hand, they were more successful. While in 2019, only 19% of parliamentary bills were passed, in 2020, it was already 45%, and in 2021 36.5%. It might imply that the parliament's position in the legislative process has been strengthened, but the answer is not so clear-cut. As already mentioned, the strongest government party, Ordinary People and Independent Personalities (OLaNO), is not a homogeneous program party with a unified ideology. Members include not only various liberal politicians but also ultra-conservative ones. The OLaNO parliamentary club often changed between elections. In the 2020 elections, OLaNO won more than 25% of the votes and occupied 53 mandates (Sme 2020), leading to the arrival of many politically inexperienced deputies. At the same time, even in the past, with a significantly smaller number of members, the OLaNO parliamentary club used to fall apart. Thus, the government coalition introduced a provision in its coalition agreement that obliged all coalition members of parliament to present their proposals to the Coalition council (the informal meeting of chairpersons of the coalition parties) before formally proposing them, (Kyseľ, 2021). Since the coalition had a constitutional majority, all parliamentary proposals had to be approved by party chairpersons, and a large number of political

newcomers were present in the parliament, it is easier to explain the lower total number of proposals (since in the past, they were very often from the opposition, so from parties that were in coalitions during the review period), as well as higher success thanks to the consent of coalition partners. On the other hand, the coalition agreement resulted in a closer link between the parliament and the executive since the admissibility of parliamentary proposals of coalition deputies is decided by party chairpersons, who are also members of the executive. *The pandemic somehow led to the centralization of power in the hands of the government at the expense of the parliament. (...) Excessive use of fast-track procedure may undermine the separation of powers, as it allows the parliament to pass a bill on the day of approval by the government, and hence reduces the role of parliament in scrutinizing legislation.* (BTI 2022)

The new government, together with the arrival of the pandemic and the overuse of fast-track legislative proceedings, led, especially in the first year of government (2020), to a significant decrease in proposed and approved laws, to a rapid decrease in the total number of submitted oral questions (within the so-called "question hour," when questions are drawn by lottery), as well as to a decrease in written questions (interpellations of members of the government). In all these categories, there was an increase in the following year, but nowhere near the level of 2019. Even though in 2021, the number of laws adopted in the shortened legislative procedure fell by half, it was still more than double compared to 2019. Furthermore, on the contrary, the number of government decisions increased, mainly for two reasons. Until the summer of 2021, Slovakia was one of the countries worst affected by the successive waves of the pandemic. At the same time, the constitutional majority in the parliament and government began to fall apart. Despite enjoying the majority, the government was unsure whether it would get enough support in the parliament for its laws.

It is, therefore, not possible to conclude whether the parliament's position has strengthened or weakened, but it is possible to say that it has changed. Shortened legislative procedure weakens the parliament's position, but at the same time, the parliament approved it. MPs had to consult their proposals with party leaders, but sometimes they ignored the procedure (Aktuality: 2021). In many ways, the coalition tried to centralize power and weaken the parliament, but, at the same time, internal disunity allowed involvement of more and more parties and MPs, whether opposition

or non-aligned. The internal heterogeneity of OĽaNO led to conservative members acting against the coalition's liberal colleagues and seeking support across the political spectrum, thereby dragging extremist parties into parliamentary activity. In the past, even if coalition parties had disputes with each other, the strongest government party in parliament was usually just a gear lever between the government and parliament, and the core of decision-making lay outside the parliament, in the executive. The major problem of former coalitions was how the coalition would agree among themselves and whether they would have a sufficient number of coalition MPs present at the vote. As of 2020, although the core of decision-making still lies in government meetings, the government, despite its constitutional majority (which gradually broke apart), is not sure that its laws will be approved in the proposed form. This questionable support stood out the most during the opposition's attempt to recall ministers, whose fate was thus uncertain until the last moment.

Looking at formal changes and the practice of law-making in the state you are studying, has respect for the rule of law increased, decreased or not changed at all during the pandemic? Please elaborate on the question.

The rise of the new government generated hopes for increased respect for the rule of law. After almost ten years, the SMER-SD government, associated with corruption, violation of laws, and, in the extreme case, associated with the murder of a journalist, ended. Although the new government described itself as reformist and achieved success in several areas (such as the investigation of corruption, the public selection of judges, or the effort to reform the justice system), in terms of law-making during the pandemic, it is not possible to talk about a clear improvement. The new government disrespected the legislative process to extremes and often worked against the laws. Even coalition MPs criticized how the opposition was initially dealt with, recalling that the coalition forgot when it was in the opposition and that a similar approach creates a precedent that may return to them in the future (Denník N 2021).

Problems with legality arose from the beginning of the governmental period. All residents arriving in the country were sent to mandatory state quarantine. This practice was illegal. Only people who refuse to comply with home quarantine measures can be sent to state quarantine, but in this case, all arriving were sent to state quarantine (outside their residence) for several weeks. At the same time, those who tested positive

were often placed in the same room with people who were sent to quarantine as a precaution. The Office of Public Health introduced this quarantine without the regulation appearing in the Collection of Laws, and this decision took several weeks. The arbitrariness of the state came up with a procedure that was against the law and did not even legally inform it that a similar procedure would be applied. In addition, the state refused to publish based on which documents it makes decisions, even in response to direct questions from the public and journalists. Trust in the government, institutions, and the state decreased also due to disrespect of the legislative process, when, for example, significant changes were submitted by members of the government who did not have the authority to do so or by extending the state of emergency while anti-pandemic measures were being released at the same time. It led to further confusion, and the state of emergency served as an aid to the government rather than a necessary tool. Nor did the deployment of the army to isolate five marginalized Roma communities neither measure allowing seniors to shop only during certain hours demonstrated respect for the rule of law (Verfassungsblog 2020). Chaotic governance, contradictions within the coalition, an uncontrolled second wave of the pandemic generated protest in the public and among the opponents of the measures polarising the society. The opposition (but also part of the coalition) joined the opponents and challenged their measures aiming at resolving the situation. The rule of law was not respected by the former prime minister and later the minister of finance Igor Matovič, who, bypassing the parliament and the rest of the government, arranged the purchase of the Sputnik vaccine from Russia or launched nationwide testing projects (e.g., Nový čas 2021, Pravda 2021)

In the period under review, it was not the parliament but the Constitutional Court and the President who protected the rule of law. The President vetoed laws adopted in the course of a fast-track procedure or vetoed omnibus laws. During the period under study, there were 23 laws vetoed by the President (11, 6, and 6 per year) (compare NRSR 2020; NRSR 2022), but only one time per year, the veto was not broken. At the same time, the President tried to act as a mediator between the members of the coalition, as well as to appeal to residents and politicians. The presidential role was valued not only when she tried to appeal to the responsibility of politicians and the public as well (e.g., Pravda 2021b) but especially during the governmental cabinet reshuffle in 2021 when the Prime minister and Minister of Finance switched positions

as an attempt to continue to rule and solved deep distrust toward former Prime minister Matovič.

The Constitutional Court had to deal several times with the President's and the opposition's proposals, who challenged the constitutionality of several governmental legislative projects. For the Constitutional Court was period under study was difficult. Due to the pandemic and the measures that have limited constitutional and human rights' freedoms, the number of cases for the Constitutional Court in 2020 increased by 600 (Ústavný súd 2021) and in 2021, decreased by 300 in an annual comparison (Ústavný súd 2022). However, the role of the Constitutional Court was not only to oversight the law in the country but, in some cases, to protect the legitimacy of the governmental and parliamentary decisions. The Court (among others) decided and confirmed the constitutionality of a declared state of emergency and its extension as well as the entitlement of the Office of public health to issue decrees. The Court also confirmed the unconstitutionality of the (already mentioned) application of state quarantine.

The most significant reform of the Constitutional Court concerned appointments (designation of judges), and the right to control constitutional changes by the Constitutional Court. At the end of the government of SMER-SD, opinion polls reported low trust in justice and the rule of law in Slovakia. Former governments politicized courts that were stuffed by judges close to the politicians, and there were doubts about the independence of judicial decision-making, especially in politically exposed cases or cases with people related to governing parties. A new government after the 2020 election came with complex juridical reform. The amendment introduced a public selection and a hearing for candidates for constitutional judges. Impeccability (integrity) has been identified as a new requirement, next to moral credit and legal experience. New constitutional judges are appointed by 3/5 parliamentary majority (in the first round). In the second round, unanimity is requested. The Constitutional Court will no longer be able to reject a motion to initiate proceedings procedurally. The most controversial change was the reduction of control authority because the Constitutional Court cannot review Constitutional amendments (Právne noviny 2020).

Even though this possibility was not implicitly given to the Constitutional Court in the past and was derived by the Constitutional Court itself based on the decision, the

amendment led to criticism from judges and lawyers. They raised concerns over weakening oversight concerning the protection of human rights or the possibility of indirect amendments to the Constitution, which will lead to competence and application disputes in the future. The concern was also about how this part of the amendment became part of the Constitution. It is a result of a proposal from a member of parliament during the second reading. It also led to the absence of discussion and consideration of consequences (e.g., Ľalík 2021, SAK 2020). Despite these statements, the amendment was approved by a constitutional majority of 91 members of parliament, signed by the President, and enacted. In its yearbook, the Constitutional Court declared that justified constitutional changes triggered by objective circumstances were necessary to preserve its viability. It welcomes changes to the Constitution that will strengthen the rule of law and increase the judiciary's credibility. However, it also warned against frequent constitutional changes and called for a thorough assessment of the merits (Ústavný súd 2021).

However, even when the coalition (especially OĽaNO) preferred centralization of power, this case was more about changes and necessary reforms after the rule of the previous government which was marked by corruption. In other words, the context is necessary- similar reform in countries such as Poland or Hungary could be viewed as an attack on the integrity of courts; in the Slovak case, the process was the opposite, from judiciary connected with the politicians (e.g., constitutional judges close to the former governing party SMER-SD) to more independent bodies. It is possible to say that the government untied the hands of procurators, courts, and corruption investigators. Even when these changes came during the pandemic, there were not its result or attempt to take advantage of the pandemic, but a result of changing political environment.

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Table 1: Formal changes

Country_Name	Name_legal act	Name_Chamber concerned	Short description	year
Slovakia	Návrh skupiny poslancov Národnej rady Slovenskej republiky na vydanie zákona, ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 350/1996 Z. z. o rokovacom poriadku Národnej rady Slovenskej republiky v znení neskorších predpisov	Národná rada Slovenskej republiky	Introduction of hybrid form of commission or committee meetings during declared emergency state or extraordinary situation	2021

Source: Own

Table 2: Law-making practice

Country_Name	Chamber	Year	Number of ALL legislative bills	Number of resolutions/decisions/statements (various non-legislative measures)	Number of fast-tracked legislation (debate limited and/or shortened legislative process, including omnibus laws)	Most common forms of fast-track measures	Number of decree laws/gov decisions (no parliamentary consent)	Number of working days (parliamentary plenary sessions)	Number of oral questions to the government	Number of written questions
Slovakia	Národná rada	2019	450 (165 accepted)	288	11	Shortened legislative procedure	52	68	830 (159 answered)	148
		2020	182 (125 accepted)	533	60	Shortened legislative procedure	99	74	189 (106 answered)	43
		2021	287 (168 accepted)	422	27	Shortened legislative procedure	144	98	441 (161 answered)	53

Source: Own