A Failed Attempt to Dissolve a Political Party in Slovakia

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On 29 April 2019 the Supreme Court of the Slovak Republic (SCSR) refused to dissolve the political party *Kotleba – Ľudová strana Naše Slovensko* (People's Party Our Slovakia). A five-judge administrative senate essentially found insufficient evidence to ban the party and in a press release pointed the finger at the plaintiff, the General Prosecutor's office, for mishaps in how the case was argued.

Kotleba already had one party dissolved in Slovakia: in 2006 the SCSR dissolved the more overtly fascist Slovak Brotherhood. His lawyers were more careful in the drafting of the party statutes of Our Slovakia, and there is little doubt that the party has moved towards the political mainstream in the intervening period in order to capture larger voter segments, as any successful extremist party would. Military uniforms and torches were replaced by the more benign green shirts, making the brown layer somewhat less visible.

The most recent case was brought in May 2017 by the General Prosecutor's office and can be seen as part of a broader albeit lukewarm attempt of the establishment to resist the rise of the far-right in Slovakia. The prosecution argued that Our Slovakia threatens democracy and must for this reason be dissolved. Although the full judgment is not yet available to the public, the SCSR published a press statement in which it highlighted seven key reasons for its judgment. Here is an (over-)simplified summary:

1. The dissolution of a political party is the most intrusive interference with the freedom of assembly in a democratic society. This appears to be a concern about proportionality with the SCSR listing criminal prosecution of individual members as potentially more suitable to achieve the objectives eyed by the prosecution.
2. Party bans are rare in countries that are members of the Council of Europe, showing that the measure must be approached cautiously.
3. The SCSR was acting here as an administrative court, not a criminal one. It was therefore not in a position to rule on whether Kotleba and other party members committed criminal offences. The SCSR highlighted at length that the alleged criminal conduct was a key argument of the prosecution but presumption of innocence in the circumstances applied.
4. It was common ground among the litigants that the party wants Slovakia to exit NATO and potentially hold a referendum on EU membership. According to the Court, these positions, in and of themselves, are not sufficient to dissolve Our Slovakia. So far it has not been shown that the party has pursued its aims through illegal means.
5. "(...) it is not the competence of the Supreme Court to substitute the role of the plaintiff and search for evidence for their statements. (...) *in dubio pro libertate*".
6. The SCSR in general accepts the concept of a "democracy capable of defending itself" and points to societal and political developments such as the fact that Our Slovakia lost regional power in 2017.
7. The Court can rule only within the scope of the claim and given the evidence put forward. The prosecution failed to prove their claim that the party threatens democracy in Slovakia.

We will have to wait for the full judgment for a deeper analysis but the press release is worded as a thinly veiled indictment of the prosecution's efforts in this case. The SCSR was plainly not satisfied with the crim-

inal elements of the case, nor with the overall fulfilment of the burden of proof.

The case, as many others concerning party bans, raises the question whether these types of actions are in fact democratically desirable. Most reactions to the judgment pointed to the need of defeating Kotleba through elections with an enforced dissolution having the possible unintended effect of strengthening his popular support. Our Slovakia already had a new party lined up in case the verdict went against them.

However, the judgment will be seen by some as a tacit endorsement of the kind of politics conducted by Kotleba's party. What is arguably much more problematic here than pledging to leave NATO and the EU is whipping up anti-minority sentiments. It is currently questionable whether the latter are pursued adequately by the state enforcement apparatus. Prosecutor's offices in particular are notoriously opaque, but this botched attempt to ban an extremist party will hopefully place their actions under more scrutiny, especially in relation to far right activities in the country.

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