Fast-track Democratic Backsliding in Slovakia

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06.09.2024 doi: 10.59704/ba21c612d20c370a

Four Key Strategies of the Fico IV Government

Over the past ten months, the Fico IV government in Slovakia has intensified its assault on democratic principles, revealing deep vulnerabilities in our legal system. This article examines the government's four key strategies to consolidate power and weaken civil society: undermining judicial independence, expediting the legislative process, attacking civil society organizations, and exerting political control over independent institutions, particularly the public broadcaster RTVS.

Interference with Judicial Independence

In March 2024, PM Fico verbally intimidated the Slovak Constitutional Court after the plenum of 12 judges decided to suspend amendments to the Penal Code and Criminal Procedure Code until the decision *in rem*. The amendments introduced reduced penalties, shortened the statutes of limitations, and simultaneously rewrote the classification of criminal damage. Moreover, the amendments reopened previously approved plea bargains and enabled the usage of illegally obtained evidence in a criminal proceeding only in favour of the accused.

PM Fico verbally attacked the Chief Justice for allegedly leaking the decision to the media before the Constitutional Court officially published it on its website. Moreover, he publicly demanded that Chief Justice Fiačan step down or the next elected Slovak President would dismiss him. PM Fico thus effectively intimidated the Constitutional Court. Accordingly, in the decision PL.ÚS 3/2024 *in rem* on the said changes of criminal law, on 3 July 2024, the Court stated: "Constitutional Court evaluates the decision of the National Council, however, the Court honours the reluctance towards the legislator." Consequently, the Court approved most of the controversial amendments to the Penal Code as compliant with the Slovak Constitution.

Furthermore, the Fico IV government is verbally intimidating ordinary courts, the Specialized Criminal Court, and Supreme Court judges. Over the past few months, attacks on judicial independence have reached critical points. First, the Minister of the Interior, Šutaj-Eštok, directly threatened disciplinary proceedings against the judge of the Bratislava Municipal Court. Later, the Vice-Chairman of the Slovak Parliament Ľuboš Blaha verbally attacked a judge of the Specialized Criminal Court, questioning her independence. PM Fico accused the Slovak Constitutional Court of coordinating its decisions with the Presidential Palace. Finally, PM Fico addressed the Supreme Court judge Juraj Kliment, who was deciding on cases concerning prosecuting individuals connected with the previous SMER-SD governments. PM Fico stated, "Being Mr. Kliment, I would pack today. But he probably wants to go through all the legal procedures our legal system requires."

These verbal attacks on Supreme Court judges have accelerated recently. In July, Justice Minister Boris Susko issued disciplinary proceedings against Kliment following a European Court of Human Rights decision that found rights violations by Kliment's panel. The ECtHR ruled that the rights of detained judge Denisa Cviková were violated in 2020. Cviková has been implicated in a major corruption case. Still, her complaint about her detention conditions was upheld in Strasbourg, eliciting criticism from government officials demanding compensation of EUR 19,500 from Judge Kliment himself. There is strong suspicion that disciplinary proceedings are political revenge fuelled by Marek Para, Fico's advisor, who was in detention based on the decision of Kliment's panel. The Supreme Administrative Court will hear of Susko's disciplinary motion in the following weeks.

Furthermore, the Minister of Justice instructed the Supreme Court and Specialized Criminal Court to examine the random allocation of individual cases. While the Supreme Court refused to make the entire database of files available to the Ministry of Justice, the Specialized Criminal Court handed over a copy of the system since 2005. Due to political pressure, the Specialized Criminal Court President stepped down a few days after the incident. Chief Justice of the Supreme Court, Ján Šikuta, explained that the inspectionby the Ministry of Justice required all files from 2001. Such interference from executive power with judicial power is unprecedented and is one of the strongest attacks on the judiciary. Despite the severity of the interference in the judiciary, the Slovak Council for the Judiciary indefinitely postponed discussing this incident. This passivity reflects the Council's new approach to interfering with courts led by judges with opposing opinions, such as the current Supreme Court and the former Specialized Criminal Court president.

Finally, there is interference with the Council for the Judiciary. Since the parliamentary election in September 2023, half of the Council's members have been dismissed. Nine members of the Council changed over the past nine months, primarily influenced by governmental and presidential nominations. The new government dismissed Eva Mišíková, Katarína Javorčíková, and Ľudovít Bradáč before even gaining parliamentary support; the Parliament removed Ján Mazák from his position as president of the Council and immediately dismissed another member of the Council, Andrej Majerník, leaving their seats vacant. Tomáš Gábriš, together with Lucia Berdisová, were recently dismissed by the President of Slovakia, Peter Pellegrini. Lajos Mészáros completed his term in June, and Alena Svetlovská resigned in December 2023. The dismissal of Ján Mazák, who was the Chair of the Council, was particularly disturbing. First, the judicial members allied with newly appointed representatives of the government to dismiss the chairman, and subsequently, the majority in the National Council dismissed him from the Council as a regular member. This was a strategic step since the dismissal of the chairman of the Council by the National Council would be much more controversial in the eyes of the European Commission.

Moreover, the parliamentary majority's arguments for his dismissal were arbitrary and vague. The parliamentary majority referred to the decisions of the Constitutional Court (PL. US 8/2022 and PL.US 12/2022), however, these decisions do not address any of the arguments raised. Current legislation makes it impossible to speak of illegal steps. However, the Constitutional Court, the European Union, and other international organizations focusing on the independence of the judiciary within the Council of Europe have all condemned these steps as a threat to the independence of the judiciary.

Regardless of these developments, the Council for the Judiciary has not categorically condemned them and demanded respect for judicial independence. One explanation might be that most judicial representatives in the Council are associated with the only association of judges in Slovakia, which uses political attacks on its opponents within the judiciary for its own benefit.

Deterioration of the Democratic Legislation Process

Most legislative proposals are approved without the necessary cooperation between the respective departments and without meaningful parliamentary discussion. The current situation is even worse than during the COVID-19 pandemic since the fourth government of PM Fico has passed nearly 60% of laws through fast-track legislative proceedings with no apparent justification. This significant increase in expedited proceedings indicates the government's lack of respect for the democratic law-making process, prioritizing reaching decisions over the quality of expert debate. The rush to pass laws often leads to significant errors, necessitating corrections through fast-track procedures, which creates a vicious circle of adopting legislative changes without public engagement, reducing the cooperation of legal experts, organizations, and the public to provide input, thus lessening the legislation's quality, clarity, and comprehensibility. One example is the controversial amendment to the Penal Code. The Slovak Parliament must have held an extraordinary

session to correct errors in the Penal Code amendment since without passing the amendment to the amendment, Slovakia would lose EU funds. This marked the third significant correction for the Penal Code amendment since March.

Another example of abusing the rules of the lawful process is the nomination of the Chief of the Secret Service by the previous President of Slovakia, Zuzana Čaputová. Several weeks after Fico IV came to power, it sent several signals to the public about its intention to propose Tibor Gašpar as the Chief of the Secret Service. Tibor Gašpar, an indicted former police president, has been facing criminal charges. Then President Zuzana Čaputová publicly proclaimed she could not appoint a person under criminal charges. Amidst this controversy, the Fico IV administration put forward a new candidate, Pavol Gašpar, the son of Tibor Gašpar. However, this move only added fuel to the fire, as Pavol Gašpar himself was charged with giving a false statement and lying under oath. He was also suspected of providing a EUR 60,000 bribe to police officers. Then President Čaputová, in a clear stance, declared that she would defer the decision of appointing Pavol Gašpar to the next president, who would assume office in June 2024. Fico IV administration amended the Statute on the Slovak Secret Service, which shifted significant powers from the Chief to the Chief Deputy, which Pavol Gašpar held. However, the extent of Gašpar's authority remains a mystery as the Statute on the Slovak Secret Service is confidential. This secrecy breeds uncertainty and erodes domestic and international trust in the actions of the Fico IV administration.

Restrictions on Civil Society and NGOs

After the government's initial announcement to categorize "worthy" and "unworthy" NGOs, the next step in haunting civil society became a limitation of the private funding of the NGOs by tax assignation. The Fico IV government is signalling that they will return to the idea of suffocating critical civil society organizations. In November 2023, the first proposal by the Minister of Labour, Erik Tomáš, was abandoned after solid resistance from civil society organizations. Due to the unsuccessful consolidation of public finances, the government raised the question of the assignation again. An NGO, the Institute of Social Democracy, affiliated with the coalition party HLAS-SD, proposed a radical limitation of tax assignation by legal entities, currently at 2%. The taxpayers can assign up to 2% of their tax revenues to any civil society. Limiting this system would inevitably impact citizens since the third sector currently supports and often replaces the state through various services. Accordingly, the society would lose EUR 37-62 million in public-benefit activities.

Moreover, the Parliament approved the proposal to amend the Non-Profit Organizations Act, the Foundations Act, and the Act on Non-investment Funds, and sent it to the second reading.

The amendment widens the possibility of abolishing non-profit organizations, foundations, or non-investment funds. The proposal also sets new obligations to disclose the organizations' donors, contributors, and creditors. The amendment introduces a new label – "organization with foreign support–which applies to all types of NGOs, including foundations, non-profit organizations, non-investment funds, civil associations, and organizations with international elements. These NGOs must use this label "for all actions within the association's activity" if they receive financial or other material support exceeding EUR 5,000 from a foreign individual, legal person, or domestic entity labelled as "organization with foreign support." The registration authority will add this label to the organization's name, and the organization will be obliged to use this name in all its communications, thereby increasing the transparency of its funding sources.

In Case C-78/18, *Commission v Hungary*, the CJEU already ruled on labelling organizations as "foreign-supported organizations", assessing the compliance of the Hungarian Law on the Transparency of Organizations that are recipients of foreign aid (the so-called "Hungarian Law on NGOs") with EU law and the EU Charter of Fundamental Rights. The CJEU decided that such labelling does not comply with EU law because it

restricts the free movement of capital and violates the right to freedom of association.

Furthermore, the government ceased the dialogue with the third sector. The Minister of the Interior removed plenipotentiary and significant civil society representatives from the Council for the NGOs. Fico IV government does not approve of open governance. Hence, it aims to eliminate citizen participation at all levels, limit financial resources for the non-governmental sector, and indiscriminately and systematically attack civil societies. In addition, in July 2024, the Fico IV government approved a significant change in selecting representatives for committees overseeing EU funds, shifting this responsibility from NGOs to the government's plenipotentiary for civil society development. NGO representatives argued that this decision undermined the partnership principle outlined in Slovakia's Partnership Agreement with the European Commission. Historically, selecting NGO representatives was a collaborative process, ensuring diverse inputs, but recent changes marked a radical shift in this practice. The new process excludes the NGO chamber.

Finally, following the assassination attempt on PM Fico on 15 May 2024, the government approved the Assassination Law (Lex atentát), which was fast-tracked through the Parliament with limited scrutiny. The Law restricts public gatherings near crucial governmental institutions and introduces new benefits for government officials, including a lifetime pension for Fico. Moreover, protests near designated officials' residences are limited to maintaining order and preventing disruption. Municipalities are legally responsible for incidents in the assemblies they allow.

In addition, the Ministry of the Interior proposed the Critical Infrastructure Law, which indirectly amended the Protection of Classified Information Law. The Proposal introduces a new term called "limited information." State authorities can classify any information as "limited information," thereby bypassing the Free Access to Information Act and effectively restricting citizens' right to access information. The term's broad definition allows for arbitrary interpretation and thus considerably limits the fundamental right to information. Moreover, the Slovak National Party proposed a fee to request information requiring an extensive search. This proposal creates a paywall for information.

Subordination of the Public Broadcaster RTVS and Other Independent Institutions

In my analysis of the first hundred days of the Fico IV Administration at Verfassungsblog, I have already illuminated the initial steps of the political takeover of independent institutions in Slovakia. The pressures were targeting the Health Care Surveillance Authority, the Statistical Office, the Antimonopoly Office, and the abolishment of the Special Prosecutor's Office.

The described trajectory continued with the Minister of Interior sending a clear signal of suppressing all dissent in the Police Force when he dismissed former Police President Štefan Hamran and put off duty six investigators of the National Criminal Agency of the Slovak Police Force (NAKA), who had been awarded a protected status from the Office for the Protection of Whistleblowers of Anti-Social Activities. All were protected because of the threat of retaliation for investigating the corruption of former public officials before 2020, many of whom were party members of the ruling SMER-SSD. Moreover, the Minister of Interior abolished NAKA on 1 September and transferred the cases to new departments. Accordingly, many investigations will be shut down.

In the last five months, the subordination of independent institutions continues in the area of culture. The Parliament approved a controversial amendment regarding the Slovak Arts Fund (FPU), shifting decision-making from independent experts to a board influenced by the SNS-controlled Ministry of Culture. Moreover, the public broadcaster RTVS has been politically conquered. The Parliament approved a controversial reform to replace the public broadcaster RTVS with a new entity controlled by the government. The new broadcaster, Slovak Television and Radio (STVR), will be governed by a board of directors directly appointed by the government. International organizations, including the European Federation of Journalists, are alarmed over the potential politicization and

loss of media independence. The Minister of Culture, Martina Šimkovičová, dismissed the Director of the Slovak National Theater, Matej Drlička, and the Director of the Slovak National Gallery, Alexandra Kusá. These two dismissals raised tremendous disapproval in the cultural community and started public protests calling for the Minister of Culture to resign.

Conclusion

Slovakia's near future seems gloomy. Fico IV's announced ambitions are to turn the country towards illiberalism, like in Orbán's Hungary. The fragility of the Slovak institutions and the centralization of their administration are visible. The government uses various tools, such as legislation, personnel replacements, public intimidation, administrative controls, and audits. Unlike in neighbouring countries, such as Poland, between 2015-2023 and Hungary since 2010, the Slovak backsliding is happening quickly and on all fronts. While the governing coalition seems stable, the only hope will be resistance.

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SUGGESTED CITATION

Čuroš, Peter: Fast-track Democratic Backsliding in Slovakia, Verfassungsblog, 06.09.2024, doi: 10.59704/ba21c612d20c370a.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20240907-020745-0.