



LET'S JUDGE THE JUDGES

HOW SLOVAKIA OPENED ITS JUDICIARY TO UNPRECEDENTED PUBLIC CONTROL

Samuel Spáč
Matej Šimalčík
Gabriel Šípoš



TRANSPARENCY
INTERNATIONAL
SLOVAKIA

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Authors: Samuel Spáč, Matej Šimalčík, Gabriel Šípoš

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Bratislava 2018

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EXECUTIVE SUMMARY

Perceptions about a lack of justice have been a strong contributor to the rise of populism and extremism in modern democracies. In half of all EU countries, fewer than half of the citizens trust the justice and legal system (European Commission, 2017). Slovakia was tackling one of the highest levels of distrust in its judiciary in early 2010s, and has embraced unique transparency reforms as a major part of the solution in 2011.

The crux of the changes included publishing judicial decisions online, as well as judges' performance data, their CVs, information about their family ties in the judiciary and exam scores. This study shows there is a fairly strong consensus, both politically and expert-led, that these reforms have increased public accountability of judges. Based on new data, a several studies brought more light to sources of inefficiencies and clientelism in the system.

Newly provided online information attracts as many as 1.5 million visits each year. In a 2016 poll almost 4 percent of the adult population claimed to have viewed at least one judicial decision online in the past year. This represents as many as 177 thousand Slovaks.

However, given the complexity of factors that influence public trust in the judiciary as well as quality of judges' work itself, it is very hard to evaluate whether transparency has improved the judiciary. On the positive side, the speed of decision-making increased by 7 percent and the ratio of lower-court decisions confirmed by higher courts increased by 10 percent in the first years after the introduction of reforms. Still, the public trust in the judiciary has not increased. Also, the share of new judges with family ties in judiciary has not declined with more open selection procedures.

Better implementation of these reforms might bear more fruit. Information published is sometimes erroneous, hard to analyze or incomplete. Our estimates suggest, as many as one sixth of all decisions go unpublished despite the law. More investment into the administrative capacity of courts to handle transparency requirements would also help. Only a few analysts in Slovakia pay attention to newly published data, which are incomprehensible to a lay person.

While more research into the impact of opening the judiciary is needed, we find that transparency and accountability are becoming more accepted, even among judges. The Ministry of Justice is setting up its own analytical unit to use newly released data. With strong public demand, transparency in the judiciary is likely to become as common as it once was rare.

INTRODUCTION

Slovak judiciary at the beginning of 2010s

Since 2011 the Slovak judiciary has operated under a regime of unprecedented transparency. The reforms introduced by Minister of Justice Lucia Žitňanská aimed to increase public control of the judicial system through the publication of judicial decisions issued by ordinary courts and detailed information about judges and their performance. These reforms were part of a greater initiative by Iveta Radičová's government (2010 – 2012) towards transparency in the public sector, headlined by mandatory online publication of public contracts (Šípoš, Spáč, & Kollárik, 2015). This study aims to analyze impact of reforms in the judiciary, sketch major discussions which accompanied their introduction, and discuss their costs and benefits from the perspective of the most crucial stakeholder groups – judges, attorneys, politicians, journalists and non-governmental organization (NGO) representatives.

Increasing the transparency of the Slovak judiciary was a response to perceived low levels of accountability, widespread corruption and generally poor performance. This contributed to growing distrust towards the justice system and toward democratic institutions in Slovakia in general. General dissatisfaction was very visible in a variety of surveys. Only one quarter of Slovaks trusted the general courts, according to a poll in 2012 (Inštitút pre verejné otázky, 2012). As many as half of all citizens viewed courts as corrupt in late 2009, according to a Transparency International Slovakia poll

(Transparency International Slovensko, 2009). The World Economic Forum's Global Competitiveness Report ranked Slovakia at 116 out of 142 countries in terms of 'judicial independence'. According to the European Commission for Efficiency of Justice, in 2012 Slovakia had the third worst performing judiciary in its ability to handle incoming cases. Slovak courts were able to resolve only 91 percent cases arriving that year. In civil and commercial cases, only 81 percent of cases were resolved. The average disposition time in these types of cases was 437 days, with only Croatia, Greece, Italy and Malta performing worse in the European Union area.

Judges close to Harabin enjoyed promotions to higher courts and court presidencies, while his critics were subject to disciplinary procedures and punishments.

Much of negative performance and perceptions arose while the judiciary was largely under the control of Štefan Harabin. He was the Minister of Justice from 2006 to 2009. During this period, he was also elected as head the Supreme Court as well as the Judicial Council, a self-governing body of judiciary. In this period, judges close to Harabin enjoyed promotions to higher courts and court presidencies, while his critics were subject to disciplinary procedures and punishments (Kosař, 2016;

Bojarski & Stemker Köster, 2012). This led to an internally divided judiciary and gave the public the general impression that independence of the judicial institutions served to protect the interests of judges at the expense of society. For instance, there were many suspicions of nepotism or favoritism in the selection of judges. This was supported in 2012 with our analysis of family connections in the judiciary which showed almost a fifth of judges had a family member working in the judiciary (Šípoš, Spáč, & Klátik, 2013).

This study looks at judiciary reforms without the Constitutional Court, whose decisions have been published online since the early 2000s in a separate procedure. The Slovak judiciary consists of 54 district courts, 8 regional courts, the Specialized Criminal Court and the Supreme Court. District courts generally serve as first instance courts for a majority of civil, commercial and criminal cases. Between 2012 and 2015 as many as 1.3 million cases per year were filed to district courts. Regional courts serve mainly as appellate courts, but in administrative cases they decide in the first instance. The Specialized Criminal Court is at the same level of judicial hierarchy, but always decides as a first instance court in cases for especially serious crimes – such as organized crime, corruption, premeditated murder and extremism cases. At the top of the hierarchy is the Supreme Court, which regularly serves as an appellate court, court of cassation and a court of last resort for all the cases decided within the judiciary. Sixty-four lower level courts suggest a very parceled court administration, which is one factor that needs to be addressed when analyzing the impact of transparency reforms.

Transparency as a tool for public accountability

Over the last few decades transparency has become one of the most popular tools in the fight against corruption and to create good governance (Heald & Hood, 2006). The reason is straightforward. As the US Supreme Court Justice Louis Brandeis famously said more than hundred years ago: “sunlight is said to be the best of disinfectants” (Brandeis, 1913). To be a successful ‘disinfectant’ transparency should not only mean visibility of information, but the information should also be inferable (Michener & Bersch, 2013). It should allow citizens to draw accurate conclusions about workings of a system. If these conditions are met, transparency should improve our understanding of a system and lead to more trust towards transparent institutions (Meijer, 2009). If not, it should prompt accountability of those in power (e.g. Northrup and Thorson 2003, Fox 2007). On the other hand, transparency can have negative consequences as well. First, transparency of huge volumes of data may obscure as much as it uncovers, which can in long run decrease trust towards democratic institutions and affect their legitimacy (Krastev, 2013; De Fine Licht, Naurin, Esaiasson, & Gilljam, 2012). Second, transparency is in inherent conflict with privacy rights of individuals. This can have negative consequences for the overall relationship of individuals and governmental institutions (Cohen, 2008; Feinberg, 2009).

Transparency as a tool for increase in public control has mainly developed around topics other than the judiciary. Judicial decision-making, the internal workings of courts and court administration have

remained somewhat hidden from transparency reforms. With the rise of information and communications technology (ICT) the costs of openness of judicial systems decreased considerably and judicial systems became a new arena where transparency policies could be applied (Voermans, 2007; LoPucki, 2009;

Marković, Gostojić, Sladic, & Milosavljević, 2016). In Slovakia, the reforms at the center of this study allowed us, Transparency International Slovakia, to launch a project called Open Courts (Otvorené súdy), which heavily relies on data that are not only made public and, to a large extent, can be processed automatically (Spáč, 2013).

KEY ASPECTS OF THE REFORM

The transparency requirements for the judiciary were passed by the National Council of the Slovak Republic in the form of amendments to the Judges and Assessors Act and Courts Act in February and November 2010 respectively. The majority of these reforms became law on May 1, 2011 with further additions on January 1, 2012.

The reform focused predominantly on courts and judges, leaving the office of the prosecutor largely untouched. While the whole dossier of the reforms focuses on a range of issues, this study focuses on the reforms which aimed to achieve two goals:

- ensuring quality and effectiveness in adjudication;
- providing for transparency in judicial careers.

These two goals were to be promoted using four tools:

- the publication of court judgments;
- the open and transparent selection procedures for new judges;
- the declaration of family ties within the judiciary;
- the annual statistics on individual judges' performance.

Court decision publication

The main goals of the mandatory publication of judicial decisions were to increase the accountability of judges, to promote the harmonization and predictability of judgments and limit the potential for corruption. Court proceedings

have been open to public in Slovakia since the 1990s, yet few people visit them. The publication of decisions online was expected to increase public oversight of how judges decide their cases.

From 2012 the Slovak courts are obliged to publish the following types of court decisions:

- valid meritorious judgements,
- decisions ceasing the procedure,
- temporary orders,
- decisions postponing the enforceability of administrative decisions.

Together with the valid meritorious decisions and procedure-ceasing decisions, the courts must also publish all the decisions affected by the decisions of the court of appeal (Courts Act, § 82a(1)). Decisions must be published at the website of the Ministry of Justice within 15 days of their validity.

Two types of judgements are not proactively published. The first category includes decisions in proceedings from which the public was excluded (such as those dealing with national security or intimate personal affairs). From 2017, the second type was added. The orders for payment, a simplified form of decision awarding pecuniary performance and lacking any reasoning, need not be published, given its large number and little informational value. Nevertheless, the public can still access them through the Freedom of Information Act.

Súd: Okresný súd Rožňava
Spisová značka: 1T/132/2017
Identifikačné číslo súdneho spisu: 7817011001
Dátum vydania rozhodnutia: 18. 12. 2017
Meno a priezvisko sudcu, VSÚ: JUDr. Ján Gallo
ECLI: ECLI:SK:OSRV:2017:7817011001.1

Court decision metadata:

- court
- case and docket no.
- date of issuing
- name of judge
- European case law identifier

ROZSUDOK V MENE SLOVENSKEJ REPUBLIKY

Okresný súd Rožňava - samosudca JUDr. Ján Gallo, na hlavnom pojednávaní konanom dňa 18.12.2017,
v trestnej veci obžalovaného ml. A. T., takto

r o z h o d o l :

Obžalovaný ml. A. T., U.. XX.XX.XXXX H. A., F. R. N.,
E. XXX/XXX, t.č. v Reedukačnom centre Košice,
Bankov 15,

je vinný,

že dňa 01.08.2017 vo večerných hodinách, v čase okolo 20.00 hod v meste Dobšiná, okres Rožňava, na ul. SNP č. 561 pri pohostinstve Baník, vnikol do uzavretého podchodu prináležiaceho k pohostinstvu, kde sa nachádza obchod s lahôdkami tým spôsobom, že preliezol cez uzamknutú kovovú bránu o výške 2 metrov, odkiaľ spred priestoru pred obchodom s lahôdkami odcudzil plastové vrece, v ktorom sa nachádzalo 20 párov obnosenej dámskej športovej obuvi rôznych značiek, čím spôsobil odcudzením vecí pre poškodenú K. M. škodu vo výške najmenej 20,- Eur

t e d a

prisvojil si cudziu vec tým, že sa jej zmocnil a čin spáchal vlámaním

č i m s p á c h a l

prečin krádeže podľa § 212 ods.2 písm.a) Trestného zákona č. 300/2005 Z.z. v znení zákona č. 316/2016 Z.z.

a súd mu za to

u k l a d á :

Podľa § 212 ods.2 Trestného zákona s použitím § 117 ods.1, § 38 ods.2,3, § 36 písm.l) Trestného zákona trest odňatia slobody v trvaní 2 (dvoch) mesiacov.

Podľa § 49 ods.1 písm.a) Trestného zákona mu výkon trestu p o d m i e n e č n e odkladá.

Figure 1: Example of a court decision from 2017 published online, source: otvorenesudy.sk¹

¹ <https://otvorenesudy.sk/decrees/2854271?l=sk>

Selection procedures

To increase the quality and transparency of the selection of new judges, the selection rules underwent a complete overhaul. Aside from the selection committee's voting, the entire procedure became open to the public (Judges and Assessors Act, § 28(5)). Under the new rules once a court vacancy appears its president announces a selection procedure to which all eligible candidates may apply (law degree, age over 30 and legal practice are only requirements). Previously the preferred way of filling vacant positions was through so-called judicial aspirants (*justiční čakatelia*), who served at courts and were given preference in case an open judicial position appeared (Palúš, 2015). Once candidates apply, their CVs, declaration of their family ties in the judiciary as well as their motivation letters are published online a month ahead of the selection.

Selection is carried out by a five-member committee whose membership is not limited to judges. Originally, the committees were composed by one member nominated by the National Council of Slovak Republic, one member nominated by the Judicial Council, two members nominated by the Justice Ministry, and one nominated by the judicial board of the court where the vacancy is being filled (Judges and Assessors Act, § 29(1) as of 1 May 2011). Such a composition was declared to be unconstitutional by the Constitutional Court,² and in 2014 the composition of the committees was changed so the Judicial

Council gained an extra member at the expense of the Justice Ministry (Judges and Assessors Act, § 29(1) as of 1 December 2014).

Candidates need to pass a written examination consisting of a knowledge test, case study, translation from a foreign language, and writing two meritorious judgements (one in civil and one in criminal case). Candidates who pass each portion of the written exam move on to the next part, the psychological assessment. A court psychologist examines the candidate's personal traits to determine whether he or she is suitable to become a judge. In the last, oral portion of the examination candidates answer questions from the selection committee. Aside from the committee's votes and the results of psychological exams, the entire procedure is open to the public (Regulation 483/2011 Coll.). The minutes from the selection must be published on the Justice Ministry website within 24 hours of the exams (Judges and Assessors Act, § 28(8)).

Transparency of the selection procedures further increased in 2014, when courts became obliged to make voice recordings of the selection procedures' oral exam, and make them available online with the rest of the published documents (Act 322/2014 Coll., Art. II(3)).

In 2017 the process became a regional rather than district court level affair, to further speed up the selection of judges (Act 152/2017 Coll., Art. I(24)). Public access to selection documents remained intact.

² Constitutional Court deemed the composition of the selection committees where majority of members were nominated by political branches of government (National Council and the Minister of

Justice) as unconstitutional due to the breach of the principle of separation of powers (Ruling of the Constitutional Court of Slovakia, Pl. ÚS 102/2011-212).

Detail výberového konania

Organizácia: Okresný súd Poprad
Pozícia: Sudca
Útvár/popis: Okresný súd Poprad, Štefánikova 100, 058 52 Poprad
Miesto výkonu práce: Okresný súd Poprad, Štefánikova 100, 058 52 Poprad
Dátum uzávierky: 30.06.2017
Stav: Ukončené výberové konanie
Vyhlasenie konania:
 [PDF] Vyhlásenie výberového konania na 1 miesto sudcu pre Okresný súd Poprad [..pdf, 1,47 MB]
Zápisnica konania:
 [PDF] Zápisnica z výberového konania na obsadenie jedného voľného miesta sudcu Okresného súdu Poprad [..pdf, 1,30 MB]
Zvukový záznam konania: OSPP_0006611_1_VK_OS_PP_JUDr. František Krasňan.MP3
 OSPP_0006611_2_VK_OS_PP_JUDr. Lucia Baštová.MP3
 OSPP_0006611_3_VK_OS_PP_Mgr. Jana Radačovská.MP3
 OSPP_0006611_4_VK_OS_PP_Mgr. Iveta Tarhajová.MP3
 OSPP_0006611_5_VK_OS_PP_JUDr. Gabriela Lukáčová.MP3
Zloženie komisie:
 JUDr. Anna Kovaľová JUDr. Karol Kučera JUDr. Daniela Šikutová JUDr. Andrej Bartakovič JUDr. Markéta Marečková – zvolená Sudcovskou radou OS Poprad
Termín konania: 25.09.2017
Miesto konania: Okresný súd Poprad, Štefánikova 100, 058 52 Poprad
Priebeh konania:

Basic information about the selection procedure:

- court
- position
- deadline
- status of procedure

Downloadable minutes and oral part recordings

Names of the selection committee members

KONTAKT NA PRÍSLUŠNÝ SÚD

Ulica, číslo ulice: Štefánikova 100
PSČ: 058 52
Obec: Poprad
Tel. číslo: 0528887111

PREHEAD PRIHLÁSENÝCH UCHÁDZAČOV:

Meno	Spĺnenie predpokladov pre VK	Výsledok (počet bodov)	Výsledok (poradie)
Alžbeta Mitriková	Áno		
Jana Macalová	Áno		
Lukáš Beňák	Áno		
Peter Dudič	Áno		
Kristína Hoholíkova	Áno		
Igor Laurenčík	Áno		
Lenka Kúkelčíková	Áno		
František Krasňan	Áno	218	1
Iveta Tarhajová	Áno	188	4
Barbora Kovalíková	Áno		
Lucia Baštová	Áno	204	3
Jana Radačovská	Áno	186	5
Pavol Mihaľ	Áno		
Gabriela Lukáčová	Áno	212	2
Petra Vysaniková	Áno		
Silvia Hrnčiariková	Áno		
Ján Kanás	Áno		
Dušan Miškovčík	Áno		
Pavol Barabas	Áno		
Slavomír Podhorský	Áno		
Emília Mišenkova	Áno		
Johana Bertová	Áno		
Antónia Svičinová	Áno		
Jarmila Zvarová	Áno		
Andrea Daráková	Áno		
Karol Fil	Áno		
Martin Špak	Áno		
Zuzana Vráblová	Áno		
Martin Ľudevít			
Fafalák			
Lucia Rusiňáková			
Dušana Husárová			
Vladimír Bela			
Vojtech Markovič			
Tomáš Tomčovčík			

Information about candidates:

- names of all candidates
- fulfillment of basic requirements
- points received
- ranking of successful candidates

Clicking the arrow next to candidate's name opens their profile with downloadable CV, motivation letter and family tie declaration

Figure 2: Details of a selection procedure in judiciary, source: Ministry of Justice³

³ <https://www.justice.gov.sk/Stranky/Ministerstvo/Vyberove-konania-v-rezorte/Detail-vyberoveho-konania.aspx?lc=5627>

Family ties in the judiciary

The third analyzed aspect of the reform is the declaration of family ties by judges. The goal was to decrease nepotism in the selection of new judges. The reform has created an annual obligation for the judges to declare if any 'close persons' are employees of the courts or the Ministry of Justice, including any affiliated organizations such as prisons (Judges and Assessors Act, § 31(1)(c)). 'Close persons' are direct relatives such as a sibling, spouse, or any other person whose harm would be reasonably perceived as harm to one's own person (Civil Code, § 116). These declarations are submitted each year as part of the judges' property declarations. If a judge breaches their duty to declare family ties in the judiciary, they can be tried for committing a disciplinary offense (Judges and Assessors Act, § 116(1)(g)). repeated failure to comply is grounds for impeachment (Judges and Assessors Act, §§ 116(2)(h), 116(3)(b), 117(7)). This responsibility is overlooked by the Judicial Council of the Slovak republic, a body representing the judicial branch. There have been no recorded cases where a judge was proven guilty of any such misconduct.

Annual statistics

The last tool introduced was the publication of annual statistics on the judge's performance. This was meant to increase judges' accountability and efficiency. Each year each court assembles a statistical report for each judge. This contains data on his or her performance (e.g. number of new cases, adjudicated cases, resolved and

unresolved cases, number of decisions of the Constitutional Court on the delays in proceedings of the judge's case) (Judges and Assessors Act, § 27).

The reports are also published online on the Ministry of Justice website.⁴ The report must be compiled by the end of March each year and published by the end of April of that year (Judges and Assessors Act, §§ 27(1), 27(6)). However, data on higher court judges is limited as they mostly make decisions in senates and their individual votes are not revealed. Hence, individual record of a higher court judge cannot be easily assessed.

The annual statistical reports represent a quantitative evaluation of judges' performance. Besides the annual report, qualitative assessment of the judges' work exists as well. The qualitative evaluation underwent a significant change in 2017. Under the new evaluation regime, evaluations are carried out at least once every five years by a panel of three judges. For every judicial region the panel is composed from judges from outside the region. The panel can give a judge excellent, good, or unsatisfactory mark. If the judge is deemed unsatisfactory, they have to undergo another round of evaluation the following year (Judges and Assessors Act, §§ 27a-27e). Unsatisfactory mark is considered a disciplinary offence, with three consecutive unsatisfactory marks resulting in the judge's expulsion from the office (Judges and Assessors Act, §§ 116-117). The evaluations are also published on the Ministry website (Judges and Assessors Act, § 27h).

⁴ <https://www.justice.gov.sk/rsvs/>.

Sanctions

Aside from breaching their duty to declare family ties in the judiciary, other obligations stemming from the transparency reform have no accompanying sanctions for judges. However, with regard to the selection procedure, there are still consequences for misconduct. After the selection procedure, the successful candidate has to go through a hearing at the Judicial Council which will later propose the candidate to the President for appointment and swearing in. If any of the two institutions finds that the selection procedure may have been tampered with despite the heightened level of transparency, they can block the candidate's appointment. Such was the case in 2014 when President Kiska refused to appoint a judge due to the suspicion that her family and professional ties to the court

where she was to be appointed affected the selection procedure (SITA, 2014). In another case the Judicial Council refused to endorse a candidate who was caught cheating on the written exam in early 2017 (Prušová, 2017).

The general lack of sanctions for courts' publication duties is in stark contrast to another similarly extensive publication regime, the publication of public procurement contracts. Unlike court decisions, a public tender contract will not come to effect until it has been published online, and will become void if not published within three months of its conclusion (Civil Code, § 47(a); further discussion in Šípoš, Spáček, & Kollárik, 2015). Such a solution would not be suitable to court decisions, however, as this would jeopardize the right to court access.

ROČNÝ ŠTATISTICKÝ VÝKAZ SUDCU ZA ROK 2016

1. Sudca: Berthotyová Elena JUDr.		2. Súd: Najvyšší súd		3. Zaradenie v senáte: predseda senátu									
4. Priradené a prerozdelené veci:													
agenda	Asan	Nds	SZa	SZak	SZa	SZak	SZi	SZk	SZo	SZr	SZrk	XCdo	
priradené	2	3	13	11	18	1	2	5	34	60	1	88	
prerozdelené	0	0	0	0	0	0	0	0	0	0	0	0	
agenda	XCoE	XECdo										spolu:	
priradené	1	1										240	
prerozdelené	0	0										0	
5. Rozhodnuté veci:													
agenda	Nds	So	So	SZa	SZak	SZa	SZak	SZi	SZk	SZo	SZr	SZrk	
počet	3	46	46	15	8	24	2	2	1	100	7	1	
meritórne	3	46	46	13	7	23	1	2	0	95	6	0	
procesné	0	0	0	2	1	1	1	0	1	5	1	1	
verejne prejednané	0	0	0	0	0	0	0	0	0	0	0	0	
agenda	XCdo	XCoE	XECdo									spolu:	
počet	99	1	1									310	
meritórne	87	1	1									285	
procesné	12	0	0									25	
verejne prejednané	0	0	0									0	
6. Vybavené veci:													
agenda	Nds	So	So	SZa	SZak	SZa	SZak	SZi	SZk	SZo	SZr	SZrk	
počet	3	46	46	15	8	24	2	2	1	100	7	1	
agenda	XCdo	XCoE	XECdo									spolu:	
počet	99	1	1									310	
7. Nevybavené veci:													
agenda	začiatok roka	koniec roka											
	Asan	SZak	SZa	SZk	SZo	SZr	XCdo						
počet	168	2	3	4	4	28	53	4					
režimné	28	0	1	0	0	5	0	0					
predloženie súdu VS	0	0	0	0	0	0	0	0					
prerušenie konanie	0	0	0	0	0	0	0	0					
koniec roka													
agenda												spolu:	
počet												98	
režimné												6	
predloženie súdu VS												0	
prerušenie konanie												0	
8. Spôsob rozhodnutia odvolacieho (dovolačného) súdu:													
agenda	So	So											
potvrdené	0	0											
zmenené	0	0											
zrušené	0	0											
odmietnuté	0	0											
agenda												spolu:	
potvrdené												0	
zmenené												0	
zrušené												0	
odmietnuté												0	
9. Priemerná výkonnosť (súd, SR)													
agenda	Nds	So	SZa	SZa	SZi	SZo	SZr	XCdo	XCoE	XECdo			
priradené	4 / 4	119 / 119	8 / 8	11 / 11	3 / 3	122 / 122	58 / 58	172 / 172	5 / 5	9 / 9			
rozhodnuté	3 / 3	51 / 51	8 / 8	8 / 8	2 / 2	79 / 79	21 / 21	114 / 114	3 / 3	5 / 5			
verejne prejednané	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0			
vybavené	3 / 3	51 / 51	8 / 8	8 / 8	2 / 2	79 / 79	21 / 21	114 / 114	3 / 3	5 / 5			
nevybavené	1 / 1	68 / 68	0 / 0	3 / 3	1 / 1	43 / 43	37 / 37	58 / 58	2 / 2	4 / 4			
agenda													
priradené													
rozhodnuté													
verejne prejednané													
vybavené													
nevybavené													
10. Počet odpracovaných dní: 196													
11. Počet pojednávacích dní: 28													
12. Z toho využitých: 28													
13. Rozhodnutia Ústavného súdu Slovenskej republiky:													
Vydané o													
priestahy pred priradením vecí o													
14. Dôvody zníženia nápadu:													
15. Účasť sudcu na vzdelávacích aktivitách:													
Zasadnutie kolokvia Najvyššieho správneho súdu Českej republiky a rokovania Valného zhromaždenia ACA- Europe v Prahe v dňoch 29.-31.5.2016. Spoločné zasadnutie správneho kolegia Najvyššieho súdu Slovenskej republiky a Najvyššieho správneho súdu Českej republiky v septembri 2016.													
16. Odôvodnenie (poznámky):													
Členka Súdnej rady Slovenskej republiky, činnosť podľa čl. VII Rozvrhu práce NSSR na rok 2016 v správnom kolegiu. Celkovo sa ako predsedníčka senátu alebo členka senátu podieľala na rozhodnutí 967 vecí.													
17. Informácia o opatreniach predsedu súdu:													
18. Dátum vyhotovenia: 24. 1. 2017													
19. Vyhotovil: v.2. JUDr. Jarmila Urbanová													

judge name; court;
position at the courtno. of assigned
cases per agendano. of decided
cases per agendano. of closed
cases per agendano. of unresolved
cases per agenda

appellate decisions

average efficiency
(court/country)work/hearing days
constitutional court
decisionseducational
activities attendedfurther notes of the
court presidentFigure 3: Example of a judge's statistical report, source: Ministry of Justice⁵⁵ <https://www.justice.gov.sk/rsvs/ukazhtm.aspx?DocId=EEFCCEDD-FD0E-4B3A-89BF-F026C0C68B38&z=z3>

POLITICAL CONTEXT OF REFORMS

Political make-up of the government

The transparency reforms of the judiciary were passed in 2011 during the short-lived center-right government of Iveta Radičová (2010-2012). While winning elections in 2010, the then Prime Minister Robert Fico of the center-left SMER-SD party was unable to form a coalition. His four years' rule were rich in corruption scandals and poor on reforms. The politicization of the judiciary reached its peak in 2009 when the serving Justice Minister Štefan Harabin became the head of both the Supreme Court and Judicial Council at the same time.

Recognizing these shortcomings and the need to strengthen the rule of law in Slovakia, Radičová's government pledged to reform the Slovak judiciary. In its Program Statement 2010-2014, the government pledged to improve transparency in the courts, publish all court decisions online, reform the selection procedures of the new judges, and make the evaluation of judges open to the public (Government of Slovakia, 2010).

The ministry responsible for the implementation of these pledges was the Ministry of Justice, led by Lucia Žitňanská from SDKU-DS, the party of the Prime Minister.⁶ In October 2011, the government collapsed due to coalition parties' disagreement how to handle the Greek bailout. In March 2012, Robert Fico's SMER

returned to power.

Passing the laws – political and public debates

The process of passing the transparency reform of judiciary was not straight forward. As part of a broader package of legislative reforms on the judiciary, the pro-transparency measures had to endure a fierce debate in the National Council as well as two Presidential vetoes.

The reform was split into two bills. The first bill⁷ introduced the publication of judgements, selection procedures for judges, and declarations of family ties. The publication of annual performance reports was proposed in the second bill.⁸

According to Žitňanská, the judiciary, prior to the passing of the reform, was not independent.

Both bills were introduced to the National Council by the Minister of Justice Lucia Žitňanská as government legislation. Jana Dubovcová, Žitňanská's fellow party Member of Parliament (MP) as well as a former judge and a winner of the Transparency International Integrity Award in 2002 for anti-corruption work in the

⁶ Žitňanská served as Justice Ministers on three different occasions - in 2006, 2011-2012, and since 2016 (during the term commenced in 2016 she served as a minister for the Most-Híd party).

⁷

<http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=5&CPT=107>

⁸

<http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=5&CPT=454>

judiciary, acted as a rapporteur for both bills.

According to Žitňanská the judiciary was not independent prior to the passing of the reform. Not only were the judiciary's customers (the people involved in lawsuits) unable to count on an impartial decision making by judges, but the selection of new judges was manipulated, with the whole judiciary controlled by the 'inner circle' of a few judges. Žitňanská said her measures would contribute to fight the internal corruption of the judiciary.

Publishing judgements online was meant to enable public control as well as increase the predictability of judges' decision making. Putting all relevant documents online (minutes, CVs, motivation letters of candidates) as part of the selection procedure for new judges was to allow for an *ex post* control of the selection procedure. Žitňanská argued that publishing these documents allows the general public to review the selection procedure and check whether the winning candidate fulfilled all the required criteria and was really the best candidate for the position. The transparency of the procedure was also to prevent undue influence by the candidates' family members or acquaintances. Publishing annual statistical reports was expected to shield judges from abuses of power by the executive branch, such as starting disciplinary procedures against critics of the Justice Minister, which was a common practice during the tenure of Štefan Harabin as Justice Minister in the late 2000s.

Robert Madej (SMER-SD party) was the

most prominent critic of the bills in the parliament. His major objections on the selection procedures did not lie with the transparency measures but rather with the creation of the selection committees. Prior to the reform, four of the five selection-committee members came from within the judiciary and only one of them was nominated by the Justice Minister (Judges and Assessors Act, § 29(1) as of 1 January 2009). Reformers, unhappy with lack of accountability, made a majority of the committee nominees of politicians (Judges and Assessors Act, § 29(1) as of 1 May 2011). In this Madej saw a breach of the constitutional principle of division of powers among the three branches of government as the political branches (legislative and executive) had majority in the selection committees, enabling them to outvote the judiciary's representatives on the selection of new judges. Even the European Association of Judges disagreed with the reforms for fear of politicians undermining courts' independence (European Association of Judges, 2011).

This aspect of the reform was later declared unconstitutional by the Constitutional Court. The reform was amended in 2014 and the nomination process was changed again so the majority of selection committee members were appointed by judges (Ruling of the Constitutional Court of Slovakia, Pl. ÚS 102/2011-212).

Madej's objections were echoed by Štefan Harabin, the head of the Supreme Court. Harabin compared the selection part of the reform to the state the judiciary from 1950s, known for serving the authoritarian communist regime.⁹ He also criticized the

⁹ During the period approximately 71,000 people

were tried and convicted on trumped-up charges by

publication of decisions by repeatedly bringing up a recent verdict on a rape case. He erroneously argued that the details of the case would now be published for everybody to see online. He labeled it a double punishment for the victim, once for crime and again for its publication online (Jesenský, 2011). He failed to mention that the victim's name was always going to be redacted according to the draft bill.

Experts were largely supportive of opening up the judiciary to public control. The publication of judicial decisions earned most praise from NGO activists and company managers. Transparency International Slovakia found the judiciary reform was the most important anti-corruption policy adopted by the Radičová government, based on the poll of 13 key Slovak NGO representatives (Transparency International Slovensko, 2012). Róbert Kičina, the spokesman for the Business Alliance of Slovakia, one of the three business lobby organizations in the country, praised the efforts and said he expects the policy would strengthen the rule of law and "predictability of the legal system, which is a key issue for the companies" (TA3, 2011).

Voting on both bills was split along the party lines, with coalition being supportive and opposition voting against. After the vote, both bills were vetoed by then President, Ivan Gašparovič. President raised an issue with the publicity of the selection procedures for new judges. According to the President, publishing the candidates' CVs, motivation letters, and family ties within the judiciary is not in line with the

candidates' right to privacy as provided for in the Slovak constitution. Moreover, he said the whole idea of having public hearings and examinations for judicial candidates to be undignified (Presidential Decision no. 3297-2010-BA, 2010).

Nevertheless, both bills passed again when the coalition MPs broke the President's veto in February and November 2011, respectively. An absolute majority of MPs (76 out of 150) is required to pass a bill vetoed by the president as compared to a simple majority only from all present MPs necessary in other cases.

Consensus reached, selection amended

Even though early elections in March 2012 brought to power the opposition, who opposed the laws introducing more judiciary transparency, the reforms remained untouched. Marek Maďarič, one of the opposition leaders, claimed not to oppose continuation of the policy even after the elections (TA3, 2012). The new Minister of Justice Tomáš Borec even pledged to make searching within judicial decisions more user friendly. From December 2015, the official website received an upgrade, in many ways mimicking the setup of otvorenesudy.sk, the Transparency International website (Prušová, 2012).

Most courts were lukewarm to the idea of publishing their decisions online, citing additional administrative burden. However, the new head of the Highest Court, Daniela Švecová praised the policy in early 2016, saying: "I believe that having courts decisions published on the internet could

kangaroo courts loyal to the Communist regime.
See: <http://www.upn.gov.sk/sk/perzekucie-a->

procesy-50--a-60--rokov/

improve the quality of judicial decision-making and hence the trust in courts” (Petková, 2016).

After March 2016 elections, the reforms’ primary author Lucia Žitňanská became the

Justice Minister once again. In June 2017 she promised to make the publication of decisions a precondition for administratively closing the case, given doubts over courts’ compliance with the policy (see Implementation chapter below).

IMPLEMENTATION

Success of the reforms' implementation depended on two key factors: upgrading the equipment needed to publish all required documents, and increasing personnel capacity of courts and the Judicial Council to ensure publication. While the selection of new judges, and publication of judges' performance proved to be relatively straightforward, the publication of judicial decisions proved to be the biggest challenge.

This policy placed most of the burden on district courts. In almost six years since the law changed as many as 2.5 million decisions were published on the Ministry of Justice website. This amounts to 1,650 decisions published by all Slovak courts every working day.

The requirement to publish the decision falls on the first-instance court. This is usually a district court. This applies to all cases, even those where a regional court or the Supreme Court heard the case in the appellate process. There seem to be two main reasons for such an arrangement. First, lowest courts are responsible for 'judicial statistics.' They collect all information about a particular case and are supposed to follow it across the judicial hierarchy. Second, the Supreme Court lies to a large extent outside of the Ministry of Justice oversight. The Supreme Court is an independent budgetary item in the annual budget of the Slovak Republic and the Ministry virtually cannot interfere with it. It was a reasonable choice by the legislator to assign this task to courts over which the Ministry has oversight.

The publication of judicial decisions takes

place through an IT system called 'Court Management' that was implemented in all Slovak courts in the early 2000s (Staroňová, 2008). In this system judges and court personnel can reach the information regarding individual cases and actions taken by courts. This system has not been changed in the face of increased transparency, but was rather altered by the Ministry's in-house programmers to include new necessary features. The Supreme Court has published its decisions since 2006 in its own regime and was not directly affected by these changes.

The act of publication of valid decisions is carried out by court administrative personnel. It proceeds as follows: after judge or a law clerk issues a decision it is delivered to all parties involved in the case. If none of them takes any follow-up action, such as appeal to a higher court, the decision becomes lawful in a specific period, depending on the type of the case. Courts are supposed to publish all 'material' decisions in a given case within 15 days of the moment the decision becomes lawful, hence final. However, before the publication an administrative clerk of a court needs to anonymize all of these decisions so they will not contain any personal information – neither in the decision, nor in the reasoning. In general, decisions should be left as readable and complete as possible, yet not identifiable with any individual. Programmers at the Ministry of Justice developed a tool that searches for strings of text which resemble usual personal information (such as names, addresses or identification numbers) which should help

administrative staff to search more efficiently for information that needs to be redacted. In addition, all decisions should be published with meta-data, such as information about the judge who issued the decision, the name of court, the identification number of the case and the type of decision or legal provisions used in the decision. This will help public to search for cases of their interest.

The process is demanding and places a lot of responsibility on poorly-paid administrative workers in the judiciary.¹⁰ If publishing each document takes five minutes and the monthly cost of labor of court administrative workers averages 1,000 euros, the total cost of publication of a single decision would be approximately 50 cents. For judiciary as a whole this would amount to 200 hundred thousand euros per year.

The greatest problems in implementation are that not all decisions that are supposed to be published are published and that the Ministry of Justice has not developed any tools aimed at effective oversight of the

publication requirements. Since the launch of the OpenCourts portal, a Transparency International analytical site of the Slovak judiciary, we have received dozens of inquiries from citizens and lawyers about missing judicial decisions.

One way to estimate how many decisions might be missing is to compare the publication records of courts with similar case-load (see table below). The assumption is that similar courts should have similar ratios between resolved and published cases. However, in practice there are large differences. The Trenčín district court resolved almost 157 thousand cases in between 2012-2016 period, while the first-instance court in Žilina did more than 202 thousand in the same time. Yet, in Trenčín they published almost 56 thousand decisions, while in Žilina only 42 thousand. Similarly, smaller courts in Skalica and in Nové Mesto nad Váhom in the same period published almost the same number of decisions – little more than 15,500. However, Skalica resolved only about half as many cases as its neighbor.

Type of court (by case load)	Total resolved (2012-2016)	Total published (2012-2016)	Best 5-year average	Worst 5-year average	Published if all courts achieved best average in all years
Registry courts (8 courts)	1,495,430	424,283	36.06 (OS Trenčín)	20.64 (OS Žilina)	539,250
More than 25,000 (12 courts)	1,487,888	517,609	40.98 (OS Galanta)	27.37 (OS Bratislava III)	609,770
13,000 – 24,999 (16 courts)	1,170,967	414,542	41.61 (OS Lučenec)	21.86 (OS Pezinok)	487,291
Less than 13,000 (18 courts)	725,029	277,755	43.91 (OS Bardejov)	31.84 (OS Čadca)	318,337
TOTAL (54 courts)	4,879,314	1,634,189			1,954,684 (320,459 missing)

Table 1: Assessing success in publication of judicial decisions in Slovakia (2012-2016)

¹⁰ The salary of administrative workers at courts is between one-third and one-fourth of judges'

salaries and approximately 20% lower than average salary in the country.

If we assume there are courts which fulfill their duty of publication perfectly, there might be more than 300 hundred thousand decisions missing in the last five years, 16 percent of the total.

We identified several problems connected to publication of judicial decisions. District courts often fail to publish decisions that are later decided on appeal by the Supreme Court. While the latter published 35 thousand decisions since 2012, lower courts did only one third such decisions, meaning their own decisions in these cases are not available to public.

Missing or false information about legal provisions used in decisions in another frequent problem

Also, meta-data on individual decisions are sometimes missing or seem to be false. There are several decisions published with unrealistic dates, or dates in the future making it more difficult to properly identify when the given decision was in fact published. Missing or false information about legal provisions used in decisions in another frequent problem. Moreover, when courts decide in senates – which applies basically to all decisions of higher courts – information about the composition of senates are missing. Usually decisions are either assigned to chairman of the given senate or to a judge who served as a rapporteur. Finally, anonymization of judicial decisions has been far from perfect. In our work, we came across information about medical records, addresses or

personal identification numbers left unredacted.

To deal with the problem of inadequate compliance, the Ministry of Justice cancelled the obligation to publish one common type of decision - orders for payment as of 1 January 2017 (Courts Act, § 82(a) as of 1 January 2017). However, despite the change in the scope of obligatorily published decisions, almost 23,000 orders for payment were published between January – September 2017. Further, Minister Žitňanská mentioned in an interview in June 2017 that the Ministry is looking to develop new functions within the Court Management system which would allow to check whether all the decisions that should be published are indeed uploaded online. According to the Minister, this could be ensured by giving the system a function which would not allow the judge (or a member of his staff) to report a case as closed without the judgment being published online.

The publication of other mandatory documents is quite straightforward and inexpensive. Documents from the selection of new judges are scanned by courts and submitted to the Ministry for publication within 24 hours of the final decision. Heads of courts submit annual statistical data on judges' performance to the Ministry of Justice which then publishes them on its website each March as pdf files. Unfortunately, there is no unique format to the forms which makes comparison of judges difficult. The space for personal evaluation of a judge by the head of the court is often left blank, unfortunately.

Declarations of family ties in judiciary are a part of annual asset declarations. They are submitted by every judge each year by end

of March to the Judicial Council, which publishes them online in late June.¹¹ The Ministry and the Council pay an external IT company 1,800 euros per month to maintain the IT systems. Unfortunately, they are also published only in pdf formats. Moreover, the Council refuses to submit data in database format, claiming it is owned by a supplier firm which manages the database. There have not been any sanctions for submitting incomplete or wrong information on families, however. The Council launches an investigation of

declarations only if they see an annual change in assets in extent of 50 thousand euros (GRECO, 2017).

Overall, the reforms led to unprecedented transparency of judiciary. However, some gaps remain to be filled in, such as when some documents are not even published (as many as sixth of judicial decisions) and others are put online in formats that make further analytical work difficult (selections documents, annual statistics, asset declarations).

¹¹ <http://www.sudnarada.gov.sk/mps-2011/>

IMPACT OF THE REFORM

Measuring the impact of transparency reforms is notoriously difficult since the key channel is the change of behavior due to higher public oversight. We use three distinct indicators:

- hard data on demand and use for newly published data;
- hard data indicating the scale of problem that transparency should have helped tackle;
- qualitative data on impact collected from interviews with several groups of stakeholders.

Public & experts are interested

The first question to ask about impact is look at the usage of data. If there is nobody using the data, we can hardly expect any impact. Judicial decisions, performance data as well as judge selection documents are all of technical nature. Is there demand for such information?

In our opinion poll from March 2017, 38 percent of Slovaks knew about the legal obligation for courts to publish their decisions. In total, 3.5 percent of citizens claim to have looked up a decision online at least once in the past year (Transparency International Slovensko, 2017). This is roughly a third of the number who looked at public contracts of the Slovak government in the same period. Almost half of users claim to check decisions at least once a month.

Unfortunately, The Ministry of Justice started to collect data about traffic on its court webpages only in December 2017. In January 2018 (1 – 28 January), the court decisions published on the Ministry's website attracted 95,660 visits. Information about court hearing attracted further 95,045 visits, and selection procedures another 28,334 visits.¹² Based on this data we estimate that the Ministry's website dedicated to publishing information about

HOW JOURNALISTS USE ONLINE DECISIONS

In May 2013, Ján Slota, the former head of the coalition Slovak National Party, and one of the most powerful politicians in late 2000s, was caught driving while intoxicated in northern Slovakia. He failed to stop at first and was caught a while later by the police. He refused to carry out the alcohol breath test and after six hours in custody he was released by police. Matúš Burčík (2013) from SME daily noted that similar cases ended with quick punishment within a day or two, as police would bring the drivers directly to court without release. The journalist wondered what accounted for special treatment for the politician. Two policemen in charge of release were later punished by the regional police chief. Slota was sentenced four months later to a 5 thousand euro fine and 16 month-long ban from driving (Vražda, 2013).

¹² Data obtained from the Ministry of Justice in

response to a Freedom of Information Act request.

courts and judges attracts between 1 and 1.5 million visits annually. Transparency International Slovakia's specialized court data portal (see box on page 25) attracts further half a million sessions annually.

From among the analysts, the most common users are NGOs. Transparency International Slovakia has been at the forefront of research based on newly available data. We published three studies comparing corruption sentencing in Slovakia. We also mapped family ties among judges. We analyzed the performance of judges in two separate studies, creating "rankings" of best and worst performing judges. Finally, we collected newly released data on candidates competing to become judges and researched factors which influence the selection, such as family or work ties. Via Iuris, another prominent NGO, looked at newly selected judges as well (Prušová, 2016).

Fair-Play Alliance, another anti-corruption NGO, inspected the accountability of police and prosecutors by looking at recently published decisions detailing tax fraud. It found a decision from 2013 which was based on the complaint from a certain company suing the tax office for withholding tax refund. The court ruled that tax inspectors were right not to pay the refund as it was based on fraud. However, nobody

ever filed a criminal motion against company for attempting this fraud. The Alliance did file a criminal motion and observed delays at every step (the police brought charges eventually) (Kunder, 2017).

As of autumn 2017 a new analytical unit at the Ministry of Justice was being created. One of their goals would be to make use of the new data in preparation of policy at the Ministry.

Trust in judiciary changed little

Broader impact can be measured through a change in the judiciary indicators that signaled the problem in the first place. This includes overall trust to judiciary, outcomes of the selection process under new conditions, as well as current performance data. We need to take in account that these indicators may measure the impact of other changes affecting the judiciary apart from transparency changes, such as a change in leadership in the judiciary and the government.

Public confidence in the justice and legal system as measured by the European Commission Eurobarometer poll did not seem to change. Consistently two thirds of citizens show a lack of trust in the past eight years (see table below). Nor did public perception of the judiciary change much.

In 2010 as many as 64 percent of Slovaks

Trust level	2010	2011	2012	2013	2014	2015	2016	2017
Tend to trust	29	32	-	-	25	26	29	29
Tend to not trust	67	65	-	-	68	68	66	66

Table 2: Public trust in the Slovak judiciary (2010-2017, % of respondents), source: Eurobarometer

claimed to distrust courts (IVO, 2010). While distrust slightly dropped to 60 percent in 2016, it cannot be attributed to reforms, given that in 2015 there were still 74 percent of citizens not trusting the judiciary (Via Iuris, 2016).

Judicial independence as perceived by business managers did not improve either. In 2017, the World Economic Forum ranking placed Slovakia at 119th out of 137 countries, slightly below its 116th place in 2010 (World Economic Forum, 2017, p. 265). Moreover, as many as 62 percent of citizens viewed courts and prosecutors as highly corrupt, an increase against 42 percent in 2009, according to public opinion poll by Transparency International Slovakia (Transparency International Slovensko, 2015).

There are signs of improvements in the quality and efficiency of Slovak courts in recent years, but we cannot easily link it to increased public accountability. The rate of confirmation of lower court decisions increased from 61 percent in 2013 to 67 percent in 2015. In criminal cases alone, the confirmation rate increased by 12 percentage points to 64 percent. The average length of proceedings was shortened by 7 percent in the same period (Šimalčík, 2017). Given the change in methodology of The European Commission for the Efficiency of Justice (CEPEJ) evaluation, it is not possible to evaluate progress in the Slovak judiciary on wider quality indicators, however.

As for the ratio of judges with family ties, it has remained between 25 to 30 percent throughout the last five years. Thanks to

dismal numbers on family ties having been made public more changes to selection and evaluation process of judges have been made in 2017 in order to decrease impact of family and social connections even further (see chapter 3 for details).

Stakeholders find many benefits, few costs

To get a better understanding of the impact transparency reforms had, we interviewed different stakeholder groups, from judges and attorneys to politicians, NGOs and journalists. A total of 17 people were interviewed during 2017, over five years since reforms were introduced (see table 3 below). When it came to selecting politicians, the sample contains interviews with both members of current coalition and opposition, as well as one former MP. We also contacted members of the opposition at the time of the reform's adoption, however none of them responded to our requests for interview.

Stakeholder cluster	No. of respondents
judges	6
journalists	4
politicians	3
attorneys	3
NGO	3

Table 3: Semi-structured interview respondents¹³

While all interviewees agreed the judiciary became more transparent, judges who tended to see themselves as very

¹³ For the list of respondents see the Annex at the end of this publication. Two politicians also work as

attorneys, similarly, other two attorneys work prominently for NGOs.

transparent. Others appreciated the changes, but still saw problems, such as insufficient quality of published data and a lack of communication of judges with the

public. Many journalists thought judges should hold press conferences and answer questions about the cases with high public interest.

OPEN COURTS

The Open Courts portal (www.otvorenesudy.sk) was launched by Transparency International Slovakia together with Samuel Molnár and Pavol Zbell, two IT students at the Slovak Technical University, in July 2013. With 1.9 million sessions and over 13 million page views in 4.5 years of operation the site has become the most visited source of court decisions as well as judicial performance data online in the country.

The portal collects, combines and provides analytical tools on judicial information from the Ministry of Justice, Judicial Council and courts webpages. Originally, the portal only re-published court decisions, information about scheduled hearings and basic information about courts and judges available at official websites. However, it offered much easier and faster search in the documents.

Over the years, there were several analytical features added. First, connecting information about proceedings with court decisions, the portal allows to check how long proceedings take and at what stage any proceeding is. Also, it ranks district court judges based on their performance indicators in two categories – quality and efficiency using indicators such as reversal rate against judge's decisions at the appellate level or estimated disposition time (see chapter 7 for research based on this data).

The site's annual traffic increased by a quarter since the first year of its operation to 496 thousand sessions in the year to November 2017. Regular viewership as well as steep declines in visits over weekends and bank holidays suggest that the portal is used mainly by professionals working in the field – primarily attorneys, possibly by judges, prosecutors, academics and law students.

On average, a visitor spends four and a half minutes on the site, looking at 7 different pages. As many as 13 percent of visitors spend at least ten minutes on the portal. A tenths of sessions results in perusing at least 17 different pages of the site. Almost 90 percent of visits comes from Slovakia. Users most commonly search within decisions, followed by court hearings. Fraud, divorce, and usucaption are the most searched for phrases, along with several names of perpetrators.

In 2016 the official ministerial website has adopted many of the features of the Open Courts site. Additionally, the portal inspired similar projects in other post-communist countries, such as Lithuania and Romania.

Publication of court decisions online

The very idea that court decisions should be available to the general public and not just the parties to the proceedings received a positive feedback from all the interviewed stakeholders. However, there was a difference in the perceived benefits of having court decisions available online, as well as in the perceived flaws of the current publication regime.

Judges perceived as a major benefit of having court decisions online its positive contribution to the overall quality of court decisions. The perceived increase in quality was supposedly caused by two distinct dynamics. First, the increased transparency was supposed to contribute to judicial self-regulation. This means those judges who had lower quality judgments prior to the reform might now push themselves to do better, be it consciously or unconsciously. Second, online publication of decisions also made unified decision making across courts easier as both judges and lawyers can now easily obtain decisions on similar matters and use it in their argumentation. This contributes to the legal certainty in the country as a whole.

Most attorneys noted higher quality in court decisions since the reform was put to place, and half of them said the published court decisions benefit their own practice. Both judges and attorneys identified the poor search engine on the Ministry of Justice website as a major flaw as it does not allow for effective filtering of decisions.

Journalists prefer to access decisions via the Freedom of Information Act, as it gives them faster access than after the 15 days which law allows courts for online publication. This also shows the difference between practitioners and journalists as the former use it for systematic analysis, hence do not necessarily need only the 'freshest' decisions, while the latter cannot afford to wait too long when reporting on particular cases, and do not necessarily need to put them in any broader context of previous court decisions.

As for the costs, it was judges who repeatedly mentioned high administrative costs of the publication as a drawback. Since every court decision has to be anonymized prior to its publication, the workload of the administrative staff at the courts has increased.¹⁴ Several judges suggested to lower these costs by dropping the obligation to publish some types of decisions, such as orders for payment or procedural decisions (in the meantime, this idea has been adopted, see the chapter on implementation).

Fewer than half of respondents raised the issue of privacy. They said decisions should be thoroughly anonymized, including names of parties to the proceedings.¹⁵ They cited the "our culture of privacy" as a reason.

The majority of interviewed stakeholders thought (in varying degrees) there is no need to anonymize the court decisions. They cited the constitutional principle of

¹⁴ For further discussion on the impact the publication of court decisions had on workload and costs see Chapter 5 herein.

¹⁵ This debate deals with only natural persons, as

legal persons do not possess personal data, and thus it is not necessary to anonymize the names of companies and other legal persons.

public court hearings as the main argument. In their view it was unnecessary to anonymize court decisions when anyone is allowed to go and see the court proceedings in person and even make recordings of them.¹⁶ Moreover, these respondents thought that not having to anonymize the decisions would alleviate the workload of the courts' administrative staff. Some of the respondents even argued all cases should be published, including those cases dealing with intimate aspects of the person's life such as social welfare cases, rape, divorce and child custody proceedings.

Open selection procedures and declarations of family ties

Our respondents agreed that publishing background information on candidates for the position of a judge is beneficial. This was especially praised by journalists, who said this proactive publication was a good source of information for their work.

There was a strong dichotomy among the respondents in their opinion on whether the open and transparent selection procedures resulted in better quality of incoming new judges. About half of these respondents were of the opinion that new judges, who came into office after the reform came into effect, are delivering higher quality decisions and are able to manage cases more effectively. The other half of these respondents disagreed. In their view, the revamp of selection procedures did not contribute to higher quality of new judges. Those who held this opinion disagreed as to what was the cause of the reform not yielding higher quality of incoming judges.

Many thought the candidates are of lower quality in general. One judge thought that the old system, in which standing judges were responsible for educating judicial candidates contributed to better quality of judges once they were sworn into the office. In this judge's experience the judicial candidates were better prepared for the office compared to the judicial clerks or external candidates when they applied for the office and stood before the selection committee.

Several respondents (spread across the stakeholder groups) suggested that disclosing family ties to the public could be discriminatory. According to one judge, disclosing these ties could negatively influence the public's perception, even if the candidate was objectively the best choice. Another judge noted that we should be wary of potential bias of the selection committee members against a candidate with family ties in the judiciary. However, as one journalist noted, we should presume a level of professionalism of the selection committee members which would prevent them from having a biased judgment. Furthermore, other stakeholders (attorneys and NGO representatives) noted that a robust transparency regime, including publicizing the family ties, was the only way to deal with nepotism in the Slovak judiciary. As the detailed analysis described in Chapter 7 notes, having ties continues to be a strong predictor of success in selection of new judges.

As for the issue of privacy, one judge noted that the results of the candidate's psychological exam should not be made

¹⁶ Unless the public is excluded from the hearing or its part, but in such case the court decisions are not

published online.

available online as it could have adverse effects on the person. Moreover, the risk of breach of privacy was noted in regard to the judges' CVs, as their private telephone numbers, email and home addresses were put online. But as one journalist noted, it was the fault of the judges themselves and not the reform, since the law called for publication of professional CVs, which do not need to include this information.

Annual statistical reports

The publication of the judges' annual statistical reports received the lowest positive review by the interviewed stakeholders, but they supported the policy nevertheless. While the reports were commended for their value for internal management of the courts, academic purposes (source of statistical data), and public communication (the public can make more accurate opinion about the judges' workload), almost all the stakeholders

noted that the data provided an accurate statistical picture only for judges working at the first-instance courts. Also, the interviewed judges noted that in reports, every closed case carries the same weight, regardless of how complicated or difficult the case was.

Way forward

Overall, it can be concluded that the interviewed stakeholders considered the introduction of pro-transparency measures in the Slovak judiciary a positive step in ensuring public oversight. "A good first step that needs polishing" was a common evaluation of the transparency regime. While the legal framework was deemed to be sufficient by the respondents, implementation was the main challenge. Thus it was proposed that the judiciary should receive more funding earmarked for the wages of the administrative personnel.

UTILIZING TRANSPARENCY: BENEFITING FROM THE OPENNESS OF JUDICIAL SYSTEM

In this chapter we showcase three case studies on the Slovak judiciary which involve transparency reforms mentioned in this report. In fact, we are not aware of other studies made public which use the new data in such a systematic way.

The first case-study focuses on corruption cases decided by the Specialized Criminal Court between 2012 and mid-2014. We argue that publishing court decisions can improve our knowledge about the system and can help us set more realistic expectations for these criminal processes. The second case focuses on those who work in the Slovak judiciary relying on data about family connections of judges found in property declarations and in information published for every selection procedure for the position of judges between 2012 and 2015. The last case uses data from annual statistical reports of district court judges including descriptive information on judges' performance. We use this data to identify judges and courts that perform significantly better or worse than their colleagues.

Grand corruption in Slovakia goes unpunished

Starting point

Perception indicators have shown for a long time that corruption is considered a problem in Slovakia by both experts and the general public. In the 2014 Corruption Perception

Index Slovakia was ranked at 54th place scoring better than only five other EU countries – Croatia, Italy, Greece, Romania and Bulgaria. The 2013 Global Corruption Barometer suggests the same. More than a half of respondents perceived corruption in Slovakia as a serious problem, with another 40 percent of respondents claiming it is a problem or a slight problem. On the other hand, as much as 63 percent of respondents saw government actions against corruption as ineffective. At the same time, between 2009 and 2013, more than 140 people were convicted of corruption every year on average, indicating some fight against corruption. Nevertheless, despite numerous cases covered by the media that pointed to corruption among politicians, very few of courts' decisions on corruption attracted media attention. By 2012 all of the courts' final judgments were to be published online, so we used this as an opportunity to explore the decisions of Specialized Criminal Court, the only court with jurisdiction in corruption cases. We had several questions¹⁷:

- what kind of corruption instances can be found before the court?
- how is corruption convicted before the court?
- how successful are indictments which get before the court?

¹⁷ Using the same methodology, we published a follow-up analysis on court decisions in corruption cases delivered from mid-2014 to mid-2017

(Šimalčík, 2017)

Data

We analyzed 239 Specialized Criminal Court decisions on corruption cases published between January 2012 and July 2014 in which 267 people were tried. Decisions were searched at two portals: the official website for the publication of decisions operated by the Ministry of Justice, and the open-data portal Open Courts administered by Transparency International Slovakia. Counting on the possibility of missing decisions, we also requested a list of all decided corruption cases from both Specialized Criminal Court and the Supreme Court, which we used to supplement the sample created through the aforementioned portals.

Methods

Data from all decisions were firstly coded using content analysis, collecting information regarding specific clauses used in the decision. This included information about specific instance of corruption as found in the allegation; information regarding persons involved, both offering and accepting the bribe; type of decision; information about conviction or acquittal; information about eventual punishment; information regarding evidence used in the trial, if available. Further, we were able to identify some indicative cases that were analyzed using qualitative legal analysis.

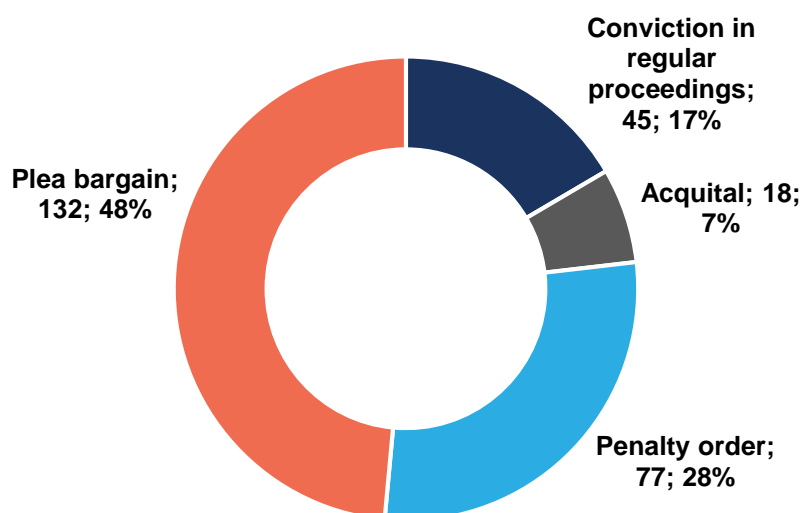
Main findings

Analysis showed that prosecution of corruption in Slovakia mainly targets ordinary citizens, while political and grand corruption remains largely unnoticed. As much as 48 percent of all corruption instances heard before the court were for bribes below 20 euro, while a further 24 percent of cases concerned bribes less

than 100 euro. Only approximately one-tenth of all bribes prosecuted were involved with bribes of at least 1,000 euro, while only 3 percent of prosecuted bribes were larger than 5,000 euro.

There are several consequences of this focus on petty corruption. Among those prosecuted for corruption, less than one-quarter were state employees at the time, while the vast majority of cases involved ordinary citizens. Of all decisions, more than 25 percent involved citizens offering bribes, or being asked to bribe officials when dealing with state agencies. Another quarter involved citizens' interactions with medical professionals, especially related to fake sick leave permits, or issuing of a favorable medical opinion required for disability pensions. On the other hand, as few as 5 percent of decisions related to corruption in politically salient issues such as mismanaging procurement dealing, EU structural funds or election fraud.

Importantly, the study also uncovered a key role of prosecutors in successful conviction of corruption cases, including punishments for the convicted. As can be seen in Figure 4, as many as three-quarters of decisions are in fact decided by prosecutors. In 48 percent of cases the accused used the plea bargain, which on one hand strips judges from considerations of such cases, while on the other, decreases the awarded punishment as admitting guilt is considered as extenuating circumstance. Another quarter of decisions are decided by penalty order, where judges do have power to interfere in awarding punishment. However, this rarely happens, hence leaving decision-making regarding the guilt as well as the



punishment to prosecutors.

Of the remaining 63 cases in which defendants did not plead guilty, the court acquitted the defendant in 18 cases. This suggests that unless a defendant pleads guilty the chances for acquittal are not negligible. On the other hand, given the sentencing guidelines in the Slovak Penal Code, chances for imprisonment rise as well. To illustrate this claim, let us provide you with examples found in the sample. In 2011, a food inspector asked for a bribe in a grocery shop, where he found several items not meeting required standards. As a bribe he received ten kilograms of jasmine rice, two packages of cashew nuts, and several juice bottles. The food inspector did not admit his guilt and was sentenced to five years in prison. Contrarily, officials at the Ministry of Defense who were involved in large scale public procurement corruption with bribes as large as 42,500 euro, who sought guilty plea were awarded only financial sanctions without any prison term. This comparison shows that awarded punishments are not necessarily related to severity of the crime, but rather value defendants' willingness to admit their guilt.

Lessons learned

In order to enable effective public control in the fight against corruption, it is necessary to make prosecution more transparent and accountable. Prosecution appeared to play much more significant role in corruption cases than was expected. The analysis showed that prosecution effectively decided as many as three-quarters of all cases in the sample. Also, almost all of the cases brought to the court resulted in convictions, suggesting that innocence is also usually established before cases can be heard by the court.

Too modest punishments in cases of admission of guilt decrease preventive function of anti-corruption legislation. Out of 249 convicted persons only 12 (less than 5 percent were sentenced to prison, multiple times because of concurrence of criminal offenses. This is caused by at least two factors: the over-representation of petty corruption among all decisions, and the possibility of getting out of imprisonment even for major crimes as long as defendants admit their guilt.

Difficulty of proving corruption encourages us to focus on offenses indicating corruption – such as crimes related to public procurements or misuse of power by public officials. To successfully convict corruption, Slovak authorities need to meet three criteria: a) they need to provide evidence of some exchange (or an offer of it) of goods, b) which is connected to a specific action, c) for which there is no alternative explanation. Among decisions to acquit we found several examples where prosecution failed to tie all three parts together – for instance they failed to reject alternative explanations – leading to the application of the “beyond reasonable doubt” principle. Focusing too much on corruption as a specific criminal offense can at times obscure vision of media or watchdogs making fight for justice ineffective as sometimes it can be useful to focus on less serious crimes, but being able to successfully prosecute them.

Family ties strong in the Slovak Judiciary¹⁸

Starting point

The personal composition of the Slovak judiciary has for a long time raised doubts about the fairness of selection of process. Suspicions of thriving nepotism were at the heart of transparency reforms of the selection procedures. From 2012 each judge was required to disclose all ‘close persons’, mainly family members, working in the judiciary in their annual property declarations. Based on this data from 2012 we mapped all disclosed family connections in the Slovak judiciary. We found 277

connections between little less than 1,400 judges that at the time served at Slovak courts. Every fifth judge has a close relative working in the judiciary. From altogether 64 courts that can be found in the country, only 7 did not have a single employee related to a judge working on any of the courts in Slovakia. The map presented in Figure 5 indicates the volume and density of family connections among courts (note the higher frequency in eastern Slovakia).

Top justices held the view that judicial families are just as normal and expected as family practices in other fields, such as medicine or culture. Our view differed. Judges are, first of all, not operating on a market but serve rather as civil servants; secondly, they do enjoy life tenure with very limited possibilities of their removal (Kosař, 2016); and finally, if there was any preference for people from judicial families, equal access to a civil service position will only be an illusion. For that reason we also looked at the selection procedures for judicial positions in the lowest courts from June 2012 to December 2015 to see if family connections played a role.

Data

Selection procedures for judgeships were administered by a five-member selection committee, consisting of members representing a given court where the procedure is happening, the Ministry of Justice, the parliament and the Judicial Council. While the composition slightly changed in the analyzed period, in all selection procedures it was judges themselves who had a majority in committees. The procedures had four parts:

¹⁸ This case study is a basis of PhD thesis presented at the Department of Political Science at

Faculty of Arts, Comenius University in Bratislava in 2017. For more see: (Spáč, 2017).

a test, written part of the exam (consisting of drafts of civil as well as criminal decisions, a case study, and a translation from foreign language), psychological test and oral exam. Candidates needed to score at least 60 percent of points at each stage in order to proceed to the next round, hence the pool of candidates gradually decreased. Results for all parts, except of the psychological test, were made public on the Ministry of Justice website.

Data from 126 selection procedures were used in which 1,517 candidates participated. In five of them no candidate was successful. As a selection procedure can be open for more than one position at the time, 121 procedures actually produced 150 selected candidates. Information regarding candidates was collected from their CVs and information about their family connections in the judiciary was collected from their declarations. Three groups of explanatory variables were included in the analysis. First, we looked at connections in the selection committee, for example, if the candidate previously worked at same court as at least one member of the selection committee to control for patronage practices. Second, we looked at whether or not a candidate had a family member already working in the judiciary to control for possible nepotism practices (or possible socialization in a 'judicial' environment). Finally, as control variables, we used gender, own experiences in the judiciary and type of education of the candidates.

Methods

The data were analyzed using conditional logit model with binary response variable – selection (1) or no selection (0) and altogether 12 explanatory variables falling into three categories described above. The

main advantage of the model is that it proceeds in two steps – first, looking at any particular selection procedure comparing characteristics of selected candidates to those not selected, and then aggregating them taking into account estimates from all selection procedures together. It basically looks for characteristics that consistently affect candidates' chances for success. The main limitation of such a model is that it assumes all candidates are equal in terms of quality and preparedness, which is not necessarily true, although to expect that no characteristic comes with significantly higher quality can certainly be considered as a fair assumption.

Main findings

First, the predictive power of the model is at 33.67 percent, which is a considerable improvement as compared to predictive power of 9.83 percent of the null model where we consider candidates' chances to be equal. The results of the model hypothetically enable us to correctly predict as much as one-third of selection procedures, suggesting a fairly good model fit. The statistical model substantially advances our understanding of what is happening in selection procedures and what kind of candidates are preferred by selection committees.

Out of 12 explanatory variables three showed significant effect at a 95 percent confidence level. Two variables related to knowing someone in the committee, and having a judge in the family. First, to work at the court where the selection procedure is held, and therefore working at the same court as at least one member of the selection committee, improves candidates' chances by the factor of 3.42. These candidates have more than three times

higher chances for success than their competitors without this experience.

Second, to work at the same court as at least one other member of the committee improves candidates' chances by the factor of 3.12. Finally, if a candidate has a family member who serves as a judge, his or her chances of selection are as much as 3.82 times higher than chances of candidates who do not have this characteristic. This means, that in an average selection procedure such a candidate has almost 30 percent chance of success, while chances of other candidates who are similar to the candidate, except for the 'judge in family' variable, decrease to 7.8 percent.

Lessons learned

Selection committees should include higher share of non-judicial members.

Currently, most of the committees consist of at least four judges, while one non-judicial member is an attorney who often does not show up for selection. There are two reasons for such a claim. First of all, fewer judges in committees would mean lower chances of conflicts of interests. Secondly,

if selection is conducted predominantly by judges it increases chances of reproduction of same attitudes and patterns of behavior among newly selected judges which may lead to detachment of judiciary from the general public.

In order to improve control over who gets in the judiciary it is necessary to make selection of court clerks transparent as well. As the analysis showed, social networks in the judiciary increase candidate's chances for selection. The selection of court clerks is not made public nor any documentation is published. Yet these positions often serve as an inside track for later positions as a judge. More needs to be known how clerks are selected.

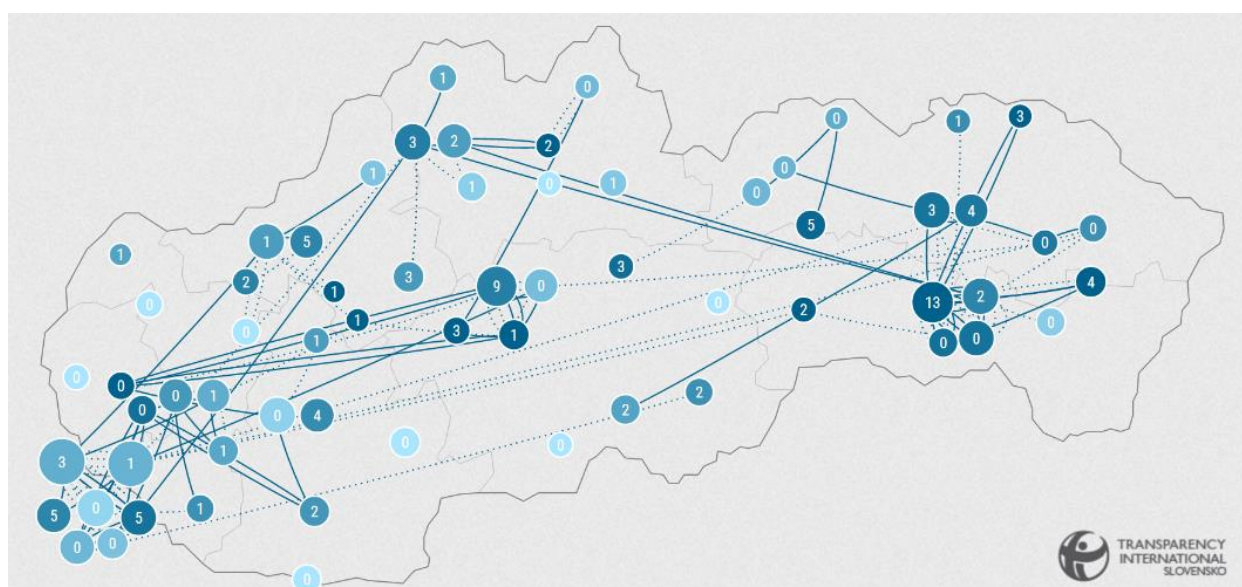


Figure 5: Map of family connections in the Slovak judiciary, TIS, sudy.transparency.sk

Evaluating performance of district court judges¹⁹

Starting point

Over the last couple of years, the Slovak judiciary has scored poorly on both perception and objective indicators. 2014 CEPEJ report showed that Slovakia was one of the five slowest jurisdictions in the EU in civil and commercial cases, with average length of 426 days, as well as one of the worst in its ability to deal with incoming cases. The matter of efficiency of judicial systems is usually understood in relation to the system of courts, their accessibility, their personnel and technical equipment, as well as indicators such as average length of proceedings. This focuses on judiciaries as a whole. In line with this, individual judges are almost exclusively held accountable for very particular actions, not for their overall performance. This case study presents our proposal of how to measure performance of individual district court judges in Slovakia, and how it can inform us about their performance and provide us with more information about the court system.

Data

Data from 4,333 annual statistical reports of 1,012 district court judges from 2011 to 2015 were analyzed. Reports contain descriptive information about a judge's performance in a given year –the number of assigned cases, decided cases, resolved

cases and unresolved cases at the end of the period, as well as information on how appellate courts decided on judges' decisions. Data in these reports, however rich in value, actually tell us very little about one judge's performance without placing them into comparative context.

But how do we measure judges' performance? Shetreet (2011) names five core values of judicial systems: procedural fairness, efficiency, accessibility, public confidence and judicial independence. After discussions with lawyers, judges and politicians in Slovakia the focus was placed on the first two as the rest of values are more of systemic features than the work of individual judges. Procedural fairness refers to dispute resolution that happens "in accordance with fair procedures". As a proxy of procedural fairness the success rate of a given judge at the appellate level was used as an indicator for somewhat similar purposes in the past (e.g. Cross and Lindquist 2009). The assumption holds that if litigants felt that a judge applied the law wrongly or unfairly, they appealed to the higher court which eventually corrected the decision of the first instance judge. Higher courts do not always correct wrongful decision or perhaps come to wrong judgments themselves, however it is assumed they fulfill their function with a reasonable frequency.

The formula for calculation of this procedural fairness indicator for every individual judge then is as follows:

$$\text{success rate at appellate court} = \frac{\text{all affirmed decisions by appellate court}}{\text{all appellate court decisions}}$$

¹⁹ For full version of the research see (Spáč, 2015)

For the measure of efficiency, we used three indicators built on the assumption of the well-known legal maxim “delayed justice is justice denied”, looking at a judge’s ability to deal with incoming cases, the size of their docket relative to their ability to decide cases, and their management of cases that had been on the docket for longer time. Here are the formulas for calculation for efficiency indicators we used:

$$\text{clearance rate} = \frac{\text{total number of decided cases}}{\text{total number of assigned cases}}$$

$$\text{docket management} = \frac{\text{number of cases older than 1 year (6 months for childcare cases)}}{\text{total number of unresolved cases at the end of year}}$$

$$\text{case turnover ratio} = \frac{\text{total number of decided cases}}{\text{total number of unresolved cases at the end of year}}$$

Methods

Indicators were calculated for judges that had at least 20 decided cases, at least 50 assigned cases, and at least 20 unresolved cases. The reason for these arbitrary thresholds was to filter out judges who seem not to have fully worked in a given year, in order to avoid skewing the sample. Subsequently we aggregated all relevant data in six main agendas (out of 49), forming four groups of cases: civil, commercial, child-care and criminal cases. Only these six agendas account each for more than 1 percent of all decided cases by Slovak district courts, and also these are the only agendas where share of appellate court decisions from the total number of decided cases account for more than 5 percent. The remaining agendas are either marginal, or mostly decided on procedural grounds, possibly to a large extent by law clerks.

After indicators were calculated, all judges in a given year were assigned scores on the scale from 0 to 10 using standardized t-scores based on the average of the sample and standard deviation. All judges whose t-scores were between -0.2 and 0.2 were assigned value of 5, ensuring all those with approximately average results scored half of the points, with those whose t-scores were distanced more than 1.8 standard

deviation from the mean were assigned scores of 0 or 10 depending on the vector of their deviance. The objective of this recoding was to minimize the effect of outliers on the results of analysis, while ensuring scores will be distributed approximately normally in order to be able to observe deviation from the average.

Main findings

There are two main ways in which the scores can be used. First of all, scoring all judges on the same indicators and on the same scale allows for simple, but clear comparisons among judges. Figure 6 showcases a comparison of two judges from the same court, deciding predominantly in the same agenda – civil law cases. As they both work at the same court, District Court Bratislava II, there is no reason to expect their work is considerably



Figure 6: Comparison of two judges on all four indicators presented

different. Descriptive data support the assumption. In 2015 Judge Alena Roštárová was assigned 469 cases, while Jana Štěpáníková was assigned 468 cases. However, Roštárová decided 582 cases, while Štěpáníková only decided 404. Differences are visible also in the number of unresolved cases. Roštárová had 256 cases on her docket, with 98 of them on the docket for longer than a year (38 percent), Štěpáníková had 585 cases on her docket, with 297 being restant (51 percent).

Secondly, pooled data for all individual years in our sample were used for a further statistical analysis using hierarchical modelling, specifically the cumulative link mixed model. Hierarchical models are used in situations where it is reasonable to assume that observations on explanatory variable are clustered and are predicted to correlate. With 54 courts in the Slovak system it is certainly reasonable to assume that judges in one court would be more similar to each other than judges from different courts. Figure 7 shows these court effects on the performance of individual judges, allowing us to identify ten courts

which perform significantly worse – Bratislava I, Piešťany, Pezinok, Malacky, Trnava, Košice I, Košice II, Čadca, Bratislava III and Žilina, and eleven courts that perform significantly better – Rimavská Sobota, Senica, Lučenec, Ružomberok, Považská Bystrica, Dolný Kubín, Veľký Krtíš, Nové Zámky, Banská Bystrica, Martin and Topoľčany. Estimates in Figure 7 show the effect of the court on the scores of its judges. The very first node showing the effect of Bratislava I court suggests that on average judges at this court score almost 2 points lower than average. In the same way we are technically able to identify judges that perform better or worse than their peers, even if we take into account the specific environment they work within.

Lessons learned

Individual judges matter for the overall performance of judiciary. The majority of studies of judiciary performance focus on courts as crucial actors. Our analysis shows that in order to understand the length of proceedings and overall efficiency of judicial systems it is important to account for

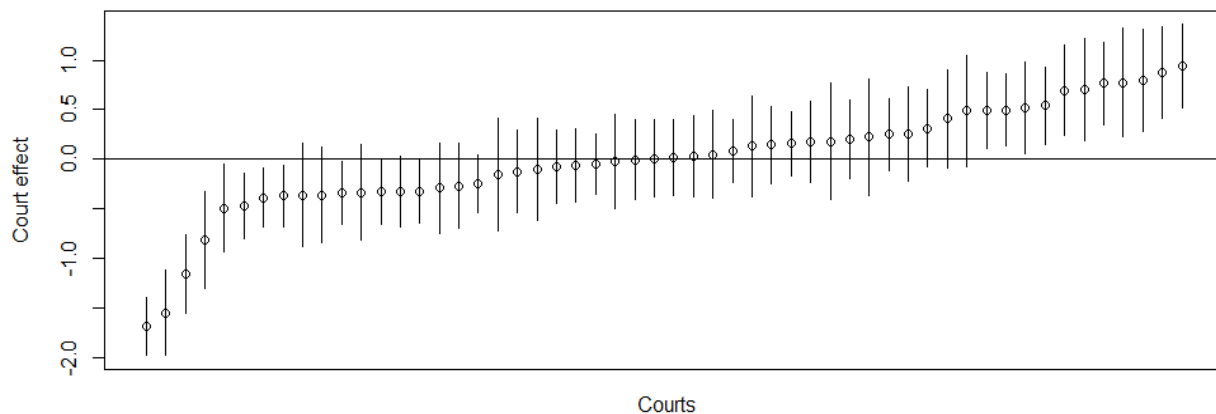


Figure 7: Plotted court effects on efficiency indicators showing estimated random effects with 95% confidence intervals

the effect of individual judges as there are considerable differences between them in the way they manage their dockets.

Ability to identify courts and judges that perform significantly better or worse than the rest may be helpful in court management systems and accountability of individual judges. The analysis identified 10 courts whose judges scored systematically worse on efficiency indicators than the rest. This way we can easily identify which courts need help, and perhaps need more personnel resources in order to be able to tackle their situation, as they struggle with the number of incoming cases, unresolved cases or cases that have been on a docket for a long time. Similarly, the analysis identified 45 judges who systematically under-perform on efficiency indicators and 51 judges who over-perform. This way it is possible to target judges who stand out from the rest in order to examine their work more carefully while using resources for thorough and qualitative evaluation of judges more efficiently.

Conclusion

There are two major conclusions that can be drawn from presented case studies. First, through systematic analysis we can use data to help improve our understanding of a system. The first case study on corruption verdicts showed that more information enables the public to better understand who is responsible for lackluster sentencing of corruption. This information has the potential to improve the work of attorneys and consequently better support their clients. In the long term this can improve decision-making in all courts and other institutions such as prosecutors' offices. The second case study on family ties in the judiciary demonstrated that data can prove to be efficient in identifying problematic areas and practices in the inner workings of the judicial system. This can contribute to more merit-based decision making regarding the professional careers of judges, increase the fairness of the system itself and ultimately ensure that the judiciary will be filled with most qualified candidates. Finally, the third case study on judges' performance showed that providing the data to the public can lead to the

development of tools that can increase personal accountability of individuals by setting their performance in a comparative context.

The second major conclusion is not as positive. Transparency on one hand does allow for the systemic use of data, but this is, in itself, no guarantee that it will happen. Just as LoPucki (2009) observed, for proper

‘translation’ of data to the general public the work of certain mediators is necessary – be it academia, NGOs or the media. With that in mind, if we expect transparency to lead to the rationalization of public discourse it is necessary to have academia, the civil sector and the media able to work analytically with available data. This, alas, is often not the case in Slovakia.

RECOMMENDATIONS

While this study found there is consensus among stakeholders that having made judiciary more transparent was worthwhile, it is not clear to what extent more public accountability improved the quality and integrity of the Slovak judiciary so far.

To some extent, this is not surprising. Unlike other public officials, judges are not subjected to any mechanisms of democratic accountability, hence they have fewer incentives to alter their behavior just because public can oversee their work. Also, the turnover in the judicial branch is much lower than in other branches of power, which may be another reason for

lack of (or perhaps, slower) response in the judiciary. In addition, the Slovak judiciary enjoys quite strong judicial self-governance, including matters addressed by transparency reform, such as the selection of new judges, so the effect of a policy change is dependent on judges' willingness to alter their behavior.

Nevertheless, the study authors believe there is a potential of transparency reforms to improve the state of Slovak judiciary further. Here we offer a few recommendations how to improve both the implementation of the reforms as well as their impact.

- **Focus on compliance.** The impact of the law depends on its implementation. Ensure adequate resources for administrative staff who handle the publication of documents. Short publication period once the decision is made by the court increases the value of putting decisions online. Think through the volumes and, if needed, narrow the scope of publication to the most important documents. Automate anonymization as much as possible through software. Conditioning the official closing of cases on meeting publication requirements might help compliance. Create control mechanisms at a central level (see discussion on publishing decisions in the Implementation chapter).
- **Support analytical capacity.** Especially in smaller countries there will not be many researchers ready to engage with new data. If they do not already exist, create analytical teams at a central level. Support research and public accountability projects with grants. Make sure all information is published in an open data format to support sharing and processing work.
- **Engage public.** Over five years after transparency reforms were introduced in Slovakia, only slightly over a third of citizens knew that they can find judicial decisions online. Be active and promote understanding of new data to the wider public. The more people see the data, the more benefits reforms bring about.
- **Beware the limits of data.** Assessing the quality of judiciary work, or finding nepotism in selection of new judges is a complicated business. Data help make evidence-based decisions, yet they are only as good as comprehensiveness of data and the model of decision-making. Engaging judges themselves in reviewing data-based analyses will increase the strength of their impact and acceptance.

- **Promote open communication of judges with public.** Putting data online does not absolve judges from further communication with the public. The media are an ideal intermediary for explaining court decisions to citizens, thus building trust.
- **Open up data on prosecutors and police.** Higher transparency at the judiciary level might not help if little or no information is available on the work of prosecutors and police. It would make it hard to judge the rule of law as well as sentencing fairness.

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ANNEX: LIST OF RESPONDENTS

The following respondents were interviewed for this study:

no.	Name	Position	Affiliation
1	Kristína Babiaková	NGO; attorney	Via Iuris
2	Jana Bajánková	judge	Supreme Court; Judicial Council
3	Alojz Baránik	politician; attorney	SaS
4	Peter Hanák	journalist	Slovak Radio
5	Ján Hrubala	judge	Specialized Criminal Court
6	Katarína Javorčíková	judge	Regional Court Bratislava
7	Miroslav Kadúč	politician, attorney	OL'ANO; Kaduc & Partners
8	Ľuboš Kostelanský	journalist	News Agency of the Slovak Republic
9	Vladimír Kozáčík	judge	District Court Žilina
10	Pavol Lacko	NGO	Aliancia Fair-Play
11	Andrej Leontiev	attorney	Taylor Wessing
12	Pavel Nechala	NGO; attorney	Transparency International; Nechala & Co.
13	Veronika Prušová	journalist	Denník N
14	Juraj Sopoliga	judge	Regional Court Košice
15	Adam Valček	journalist	SME
16	Nora Vladová	judge	District Court Bratislava II
17	Lucia Žitňanská	politician	Most-Híd; Ministry of Justice

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CONTACTS



Martin Magál
Partner
Tel +421 2 5920 2412
martin.magal@allenoverly.com



Renátus Kollár
Partner
Tel +421 2 5920 2423
renatus.kollar@allenoverly.com



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phone: +421 2 5341 7207

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