

SLOVAK LEGISLATION OF THE PUBLIC PROCUREMENT DE LEGE LATA ¹

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DOI: <https://doi.org/10.59505/IRHNS.22352007.2024.2.06>

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Abstract:

It is in the hands of every democratic state, or its government, to ensure that the legal environment is genuinely good. It is essentially a matter of determining 'harmless' obligations and 'sound' rules contained and published in laws. In so doing, the legal environment is influenced by the reflection of moral values accepted by the majority of society. Hence, it also shapes the development of a coherent state policy to be implemented by the organs of the state within the scope of their competence. They are specifically commanded by law what activities they will carry out and nothing beyond them. It is the individual ministries and other central government bodies that are responsible for the proper administration of the law in the various spheres of the life of the state, as is clear from the Law on the Organisation of Government Activities and the Organisation of the Central State Administration (Slovak Act No. 575/2001, Art. 37). It means

¹ The article represents a partial outcome of the solved scientific-research task VEIGA Nr. 3/2023 *Moderná spoločnosť 21. storočia ako mnohovýrovňový a mnohostranný problém* (*Modern society of the 21st century as multilayered and multilateral problem*) commissioned and funded by 2000 EUR by the Faculty of Law of Janko Jesenský of Danubius College in Sládkovičovo by the principal researcher, professor JUDr. Jozef Králik, CSc., MBA of Danubius College and LtCol. assoc. professor JUDr. Ing. PhDr. Kristína Králiková, PhD., MBA of the Academy of Police Forces in Bratislava

that they also take care of the good state of the legal environment in the field of public procurement, i.e. primarily the Ministry of Investment, Regional Development and Informatization of the Slovak Republic and the Office for Public Procurement.

Key words: legal environment, state policy, public procurement, creation of law

Introduction

Good laws are a prerequisite for the emergence and good functioning of social relations. The success of society as a whole, as well as its individual components, depends on their quality. Its development, but also its stagnation or decadence, is therefore determined by the set of rules by which a particular community behaves. It is therefore very important that the legislative bodies, as well as the bodies with legislative powers, adopt the most perfect legislation, constitutional laws, statutes and sub-legislative regulations (government regulations, decrees, ordinances etc.) in the interest of society as a whole. In the interests of the optimal functioning of the legislative organs of the state, certain procedural rules are therefore laid down to enable the creation of quality legislation, which are generally referred to as legislative rules. Their social and legal, as well as ideological, significance is also emphasized by establishing the strength of their legal regulation, the result of which is the enshrinement and formulation of binding methodological and procedural processes of the legislative bodies in the creation of law in the form of an act. The stability of law determines the collective legal consciousness of society. It is therefore essential that not only the principles but the entire legislative process is strictly observed by the relevant bodies. Deformations of its legal provisions, manifested especially after 2020 in legislative practice, are directly detrimental to the existence of Slovak statehood.

I. Legislative process

The Ministry of Investment, Regional Development and Informatization of the Slovak Republic (hereinafter referred to as “MIRDI SR”) and the Public Procurement Office (hereinafter referred to as “PPO”) are legally required to take primary care of the appropriate legal regulation of matters related to public procurement that fall within their competence (Slovak Act No. 575/2001, § 10 and § 31).

Thus, they prepare, for example, act drafts and other generally binding regulations within the intent of the relevant resolution of the National Council of the Slovak Republic (hereinafter referred to as the “NCSR”); the issue is elaborated in more detail in the Act on the Rules of Procedure of the NCSR or also in the Regulation of the NCSR on the Draft Legislative Rules for the Drafting of Acts, which sets out the legislative rules for the drafting of generally binding legislation adopted by the plenary session of the NCSR (Kováčechová, Žilinčík, 1999).

They are also published and submitted to the Government of the Slovak Republic (hereinafter referred to as the “SR”) after discussion in the comment procedure. In the creation of drafts, with regard to other approval processes, they are to be careful to respect the principle of legality in this area. They also have a duty to systematically monitor the effectiveness of individual pieces of legislation in practice. Equally important is the evaluation of the monitoring of the effectiveness of individual norms in the context of the basic conceptual objectives of development in the field of public procurement, also in accordance with the overall social and socio-economic development caused by the political developments in the state (Králíková et al., 2018).

As example possible changes in society both at the national level and at the European or international level could be mentioned (Funta, Golovko, Juriš, 2020).

The legislative process is in fact the process of the birth of a new piece of legislation. It involves several stages of development. Basically, these stages are:

1. Pre-preparatory period of the act draft
2. Preparation of the act draft - comments
3. Submission of the act draft - legislative initiative
4. Reading of the act draft in Parliament - Debate on the act draft
5. Vote on the act draft – approval of the act draft
6. Signing of the act draft
7. Publication of the act in the Collection of Laws – the act becomes valid and enters into force (Act No. 400/2015)

Pre-preparation period for the act draft

In some situations, before the drafting of a act begins, the so-called preliminary information on the draft is published on the relevant portal of the potential act submitter well in advance. It is usually one page long. This preliminary information relates to the intention of the submitter to inform the public and

public authorities of this intention. The submitter shall briefly state the reasons for the drafting of the new law, its main objectives and the main ideas of the act draft, the current state of the law, the possibilities for public participation in the drafting of the act draft itself, as well as the expected date for the start of the comment procedure. Preliminary information shall be published, if no government-approved legislative plan is being prepared. Some acts must have a “legislative intent” drawn up before they are drafted. This usually precedes the actual drafting of the act. It is in fact the binding basis for the drafting of the act. The drafting is decided by the Government of the Slovak Republic or by the act’s submitter, or by a ministry or other central government body. Its content is primarily the expected economic impact of the proposal or its impact on the state budget. It shall assess the *de lege lata* legislation and, on the basis of the government’s stated objectives, implement the objectives in *de lege ferenda* legislation. Other ministries and other state bodies, not excluding the PPO and other institutions, will then comment on the legislative intent. It is also assessed by the Institute for the Approximation of Law of the Government Office of the Slovak Republic in terms of its compatibility with European Union (hereinafter referred to as ‘EU’) law. The EU legal environment has become a dominant feature of the Slovak legal order and it has become a part of it (Funta, Golovko, Juriš, 2020).

Preparation of the act draft

Since the right to submit the act draft is exclusively vested in a Member of the National Council of Slovak republic or the Government of the Slovak Republic, we distinguish between the two types of act drafts:

1. a governmental act draft
2. a parliamentary act draft

The Governmental act draft is prepared by the Government of the Slovak Republic in connection with the so-called Government Legislative Task Plan, which is based mainly on the task plans of individual ministries and other central government bodies, including the PPO. The plan is being prepared and adopted by the Government every year (www.vlada.gov.sk/share/RVPL/plan_2022.pdf).

The reason for this frequency of planning is that the plan should comply with the current social situation in the state and the need for new laws in application practice. The plan identifies the specific responsible entity and the primary reason for preparing such an act. For example, in connection with the 2022 Plan, the

Public Procurement Office, as the responsible entity, has prepared an amendment to the Public Procurement Act, which should include the implementation of a mandatory EU Regulation related to this field (Executive Regulation of the Commission (EU) 2019/1780), stating that as of 25 October 2023 the full implementation of this Executive Regulation is mandatory throughout the EU. However, in specific e.g. crisis situations in the state, a government act draft may arise and be filed outside the government's legislative task plan. The Government act draft is a proposal approved by the Government of the Slovak Republic. It also includes an explanatory memorandum. The explanatory memorandum consists of a general part and a specific part. The general part assesses the current state of the issue and the need for new legislation, its impact on the state budget, etc. It discusses the issues necessary for the assessment of the act draft. The specific part contains, in each section of the proposed text of the act, a justification of its individual provisions. The act draft shall be signed by the Prime Minister and the relevant minister or head of a central government body.

A parliamentary act draft is being prepared by the committees of the National Council or by members of the National Council. The committees of the National Council of the SR have an important position in the organisational structure of the National Council of the SR. Their existence is primarily related to their main task, which is the detailed discussion of the act draft. The members of the committees of the NCSR are exclusively Members of Parliament, with an average of 12 Members per committee. A Member may be a member of no more than two committees. The committees of the NCSR are both initiating and control bodies of the National Council. Thus, in addition to drafting acts, they are also responsible for debating any acts assigned to them by the NCSR. The NCSR assigns a draft act to two or three committees of the NCSR for discussion and designates one of them as the rapporteur. The committee responsible shall select one member of the committee to be the joint rapporteur of the committees of the NCSR. The latter shall inform the NCSR of the joint opinions of the committees on the act draft or on the proposal to amend or supplement it. The Committee on Economic Affairs of the NCSR is particularly relevant for act drafts and other legislation relating to public procurement. Its remit thus includes, among others, legislation relating to competition or public procurement (Králíková et al., 2018). This committee covers all three sectors of the national economy of the Slovak Republic. The sector producing basic raw materials and materials, the manufacturing and construction sector and the service sector. The Committee is involved in the creation of certain bodies and officials, including the chairman of the Office of the President. Within the scope of its competences, or in scope of the competences listed in Article 61 of the Slovak Rules of Procedure, the Committee has set up four committees as advisory and consultative bodies. These prepare

answers to questions and draft opinions on the subjects within its competence (<https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=157>).

The act must be drafted in accordance with the standardized so-called *legislative rules of the Slovak government*. The rules are approved by a government resolution. They set out a uniform legislative technique for the drafting of legislation and specify legislative-technical guidelines (https://www.vlada.gov.sk/data/files/7528_uplne-znenie-legpravvlady-sr-v-zneni-uzn-vlsr-z-29-maja-2019-c-242.pdf?csrt=10833539431765279637).

They determine e.g. legal language (its terminological precision), stylistic and linguistic correctness in accordance to the rules of Slovak spelling, the meaning of terms (the use should be uniform and the same for the designation of the same legal institutes), the use of the reporting mode, the present tense and the singular (according to the context of the legislation), recommends the use of certain expressions only in necessary cases due to their rather loose interpretation (e.g. the use of abbreviations in the text, the use of legislative abbreviations, the division of the legislation (to be clear, to have internal coherence, correct sequence, etc.), the identification of the annexes to the legislation, the title of the legislation (to be concise, possibly to be used at the end of the title, a brief designation of the act in brackets), the introductory sentence of the act, headings within the legislation, references, footnotes, etc. From the perspective of the issue of frequent changes in the Public Procurement Act, we will approach the problem related to the amendment of legislation, which is also stated in the Government's Legislative Rules. Specifically, amendments to the Act will be made where they are minor in nature for the sake of clarity and readability. Also where the legislation in question is a piece of law that has not been amended several times. In the context of the Public Procurement Act, we can thus conclude that this legislative rule is regularly violated, as can be seen from an analysis of individual amendments to the Act (e.g. the Public Procurement Act of 2015 has already been amended 28 times).

The act draft is being discussed with the relevant authorities and institutions in a so-called comment procedure. A distinction is made between internal and inter-ministerial comment procedures. In the framework of the internal comment procedure, the act draft is forwarded to the sections or departments of the relevant ministry. Once the act draft has been approved in the Ministerial meeting, the submitter (the relevant ministry, other central government body) publishes the act draft for commenting on the website (internet). At the same time, the Minister or the head of the central government body shall send a written and electronic notice of the publication of the act draft on the internet for comments to the Prime Minister, ministries, other central government bodies,

including the PPO, other bodies and institutions as per a special list. These would be bodies and institutions that are assigned tasks in the act draft or are professionally concerned with the issue (Klierová, Kútik, 2013).

The act draft may also be commented on by the public. The comment period is usually 15 days, but may not be shorter than 5 working days. Once a quality act which is intended to become a functional part of a balanced, transparent and stable legal environment has been drafted and is in line with EU law and the international legal obligations of the Slovak Republic, it is submitted directly to the President of the National Council in the proper number and form. Acts are now drafted through an electronic lawmaking system (Králíková, 2019).

Submission of the act draft – legislative initiative

The legislative initiative, or the right to submit an act draft, is exclusively within the competence and authority of:

1. a Member of the National Council of the SR
2. the Government of the SR

The Government of the SR is a collective body, therefore the legislative initiative is vested in the Government as a whole and not in its individual members, the MPs. Members of the NCSR have the possibility of submitting an act draft individually or collectively. i.e. by a single MP, or a group of MPs or a committee of the NCSR. Since a citizen does not have a legislative initiative, a Member of the National Council may submit an act draft on behalf of a citizen or a civic organization. An act draft submitted to the President of the National Council must be in writing. Currently, the electronic form of the act draft is being used. It must comply with the legislative rules of the Government of the Slovak Republic and contain an explanatory memorandum, the so-called compatibility clause. If an executive regulation enters into force together with the proposed law, the submission must also contain a draft of this executive regulation. The law allows for a public debate to precede the submission of the act draft. However, the law does not provide for the procedure for its announcement or its conduct, despite the fact that the public debate is an important element of democracy or of citizens' active participation in it. The submitter of the act draft is obliged to include an evaluation of such a public debate. If the act draft has been submitted by a Member of the National Council and the submission contains the relevant elements, the President of the National Council shall request the opinion of the Government of the Slovak Republic on the act draft. Such an act draft shall be

discussed in the Legislative Council of the Government of the Slovak Republic.

Within the framework of its competences, the National Council of the Slovak Republic uses the recommendations of its advisory bodies in its decision-making activities. These include, for example, the so-called Council of Advisors to the Prime Minister of the Slovak Republic, expert councils and expert committees. At the top of the Council of Advisors to the Prime Minister of the Slovak Republic is its chairman and vice-chairman. It also consists of a secretary and members for individual issues. Among others, the Prime Minister's Adviser on European Structural and Investment Funds, the Prime Minister's Adviser on Informatization of Public Administration, the Prime Minister's Adviser on Regional Development, the Prime Minister's Adviser on Public Administration and Regional Development, the Prime Minister's Adviser on the Green Economy and the Recovery Plan, etc., are in charge of public procurement issues. The Legislative Council of the Government is a permanent advisory body. The Legislative Council is an advisory and coordinating body to the Government of the Slovak Republic on issues related to legislative tasks and legislative activity. The Chairman of the Legislative Council is the Deputy Prime Minister. The Vice-Chairman shall be appointed by the Government of the Slovak Republic on the proposal of the Chairman of the Council, as well as its members. The Secretary shall be the Director-General of the Government Legislation Section of the Office of the Government of the SR. For example, the Council of the Government of the Slovak Republic for the Recovery and Resilience Plan has been established for issues including public procurement. This Council, among other things, adopts opinions in the form of resolutions, proposes recommendations and draws attention to risks related to the performance or implementation of a specific activity. It ensures a partnership dialogue with the National Implementation and Coordination Authority. The National Implementation and Coordination Authority is the national coordinator for the implementation of the Recovery Plan and the single point of contact for communication with the European Commission for the Recovery Plan. It operates under the Office of the Government of the Slovak Republic. The Council of the Government of the Slovak Republic may further establish working groups on the basis of more effective achievement of the objectives defined in the priorities of the Recovery Plan. The Council is chaired by the Prime Minister, the Deputy Prime Minister is the Head of the Office of the Government of the Slovak Republic, and the members are the Deputy Prime Ministers and Ministers and, among others, the President of the PPO. The Secretary of the Council is the Director General of the Recovery Plan Section of the Office of the Government of the Slovak Republic. The act draft with the incorporated comments, or the act draft with the contradictions, shall be submitted by the submitter through the office of the NCSR to the President

of the of NCSR. The so-called contradiction procedure or conciliation procedure will arise if the drafter and the commenting body do not agree on the relevant comment to the draft law. The comment becomes the subject of a disagreement, which is resolved by negotiations between the statutory representatives of the institutions concerned or only at a negotiation procedure of the Government of the Slovak Republic. The President of the National Council of the Slovak Republic submits the act draft to the Government of the Slovak Republic or to the Legislative Council of the Government of the Slovak Republic. On the basis of the Council's recommendation, the Government of the SR shall take a position on the draft law within 30 days as a rule. The opinion of the Government of the SR shall be of a recommendatory nature only. The draft law may be discussed in the National Council of the SR even without this opinion.

A government act draft shall be deemed to have been tabled if it is received by the President of the NCSR through the Registry of the Office of the NCSR in written paragraph form, also in electronic form with a cover letter from the Prime Minister and a government resolution. The cover letter shall indicate the person(s) responsible for the justification of the Government act draft in the National Council and in the committees.

Discussion of the act draft in the National Council of Slovak republic – reading of the act draft

The course of the legislative process for the discussion of the act draft in the National Council of the Slovak Republic consists of stages. The Slovak Republic is one of the countries that have a practice of several readings of an act draft in the process of its adoption. In particular, it consists of three readings in the National Council. The first reading of the act draft is carried out in the plenary of the National Council of the Slovak Republic. In the second reading, the act draft is dealt with by the committee(s) of the National Council of the Slovak Republic. The third reading takes place again in the plenary of the National Council of the Slovak Republic, where the act draft is put to the vote. However, the third reading is included in the next stage of the legislative process. The system of multiple readings that has been adopted means that the position of the committees of the National Council of the Slovak Republic in the legislative process has been strengthened. Indeed, this reading is the most important part of the process, as the details of the act draft are scrutinised in detail.

The first reading begins when the act draft is placed on the agenda of the next session of the National Council (Act No. 350/1996, § 71 - § 74).

The President of the National Council shall ensure that the act draft is delivered to all Members of the National Council at least 15 days before the meeting of the National Council at which its first reading is scheduled. At the same time, he/she shall propose to the NCSR the assignment of the act draft to the Constitutional Law Committee or other committees according to their subject matter competence. At the same time, the President of the NCSR shall also propose the committee which will become the committee responsible for the act draft.

The act draft shall be introduced before the plenary of the NCSR by its submitter. The presenter appointed by the rapporteur shall take the floor after him. The act draft is then debated in what is known as the general debate. The *general debate* concerns the substantive parts of the act draft, so it is not yet possible to submit the amendments to the act draft. The National Council thus discusses and votes on the act draft as a whole. The result of the first reading is a resolution of the National Council which states that:

1. the act draft is returned to the submitter by the NCSR for further elaboration
2. the act draft is rejected by the NCSR and the debate on the act draft is not resumed
3. the act draft proceeds to the second reading in the NCSR

If the act draft passes to the second reading, the National Council will also decide on the proposal of the President of the National Council on the assignment of the act draft to specific committees and will also designate a rapporteur. The act draft is always assigned to the Constitutional Law Committee.

The *second reading* is an important part of the legislative process because of the possibility of advocating comments and suggestions to change the wording of the proposed law (Act No. 350/1996, § 75 - § 83).

Not only by the committees, its members, experts, etc., but also by the public. Meetings of the committees of the National Council of the Slovak Republic are open to the public, except for the meetings of the Mandate and Immunity Committee of the National Council of the Slovak Republic and special control committees (Králik, Kútik, 2013).

Thus, the public can be informed through the secretary of the committee about the discussion of an act draft in the committee and participate in it until the capacity of seats in the meeting room is full. Citizens can make their own comments and suggestions on the act draft, as long as the committee agrees. The second reading is specific to the deliberations in the committees of the National Council from the substantive point of view, decided by the plenary of

the National Council on the proposal of the President of the National Council. However, the act draft is always assigned to the Constitutional Law Committee of the National Council for the purpose of assessing its compliance with the Constitution, constitutional laws, international treaties to which the SR is bound and EU law.

For the purposes of the discussion of the act draft, the committee shall appoint a rapporteur from among its members, on a proposal from the chairman of the committee. The rapporteur shall be responsible for informing the committee about the act draft, comments on the act draft, opinions, information from experts, scientific institutes, etc. The committee may also request further expert opinions or opinions necessary for the discussion of the act draft. It may also invite an expert in a particular field to attend a meeting of the Committee. The committee deliberations thus bring about a joint resolution on amendments or additions to the act draft by drawing up a written opinion. The committee has a 30-day period to deliberate. In the event of a conflict of views, the committee responsible may convene a joint committee meeting to consolidate its views on the act draft. The committee responsible shall draw up a joint written report on the outcome of the meeting by means of a resolution setting out its proposals and its opinion on whether or not it recommends that the act draft to be approved. The joint report of the committees shall be forwarded to all Members of the National Council. The committee responsible shall also designate a joint committee rapporteur. The second reading of the act draft shall then proceed before the plenary of the National Council, but there must be a two-day interval after the joint report has been delivered to the Members. This period may be shortened by the NCSR in justified cases. The joint rapporteur shall inform the NCSR of the outcome of the committee deliberations. He shall also justify the opinion of the committee responsible.

The act draft is being debated by the National Council in the second reading, where at least 15 MPs may submit further amendments or supplementary proposals to the act draft. They must be sent to all Members and the joint rapporteur will take a position on them. A discussion or debate would follow. The following day, the motions submitted by Members and the motions from the joint report shall be put to the vote.

The outcome of the second reading of the SR can be:

1. a vote on the act draft
2. to refer the proposed act draft back to the submitter for elaboration
3. to postpone consideration of the act draft
4. not to proceed with consideration of the act draft

If the National Council rejects the act draft in the second reading, a new act draft on the same matter can be submitted at the earliest 6 months later.

Voting on the act draft– Adoption process of the act draft

The *third reading* is carried out again in the plenary of the National Council of the Slovak Republic (Act No. 350/1996, § 84-86). The act draft is voted on as a whole. I.e. it focuses only on the specific provisions of the act draft to which amendments or supplementary proposals were adopted in the second reading. At this stage of the legislative process, a Member of the National Council may only propose corrections relating to legislative and technical errors and linguistic shortcomings. More complex amendments, e.g. amendments to other errors or a motion for a second reading, must be tabled by at least 30 Members of the NCSR. If corrections or amendments are approved at the third reading, the vote may be postponed, on a proposal from the committee responsible to be decided by the NCSR, until the proposals have been submitted in writing to the NCSR Members. At the third reading, the submitter may withdraw the act draft (so-called withdrawal of the act draft), but only with the consent of the NCSR. However, if no corrections, amendments or amendments have been approved at the third reading, the act draft as a whole is put to the vote. The result of the vote at third reading shall be:

1. final adoption of the act draft
2. rejection of the act draft

Also in the third reading there is an opportunity for active public participation in the approval of the act draft. This is about using the opportunity to communicate with Members and to get 30 of them to propose a repeated second reading.

The return of an act draft by the President of the Slovak Republic is possible after the approval of the act draft by the National Council (Act No. 350/1996, Article 90).

A presidential veto is possible within 15 days of the approval of the law along with specific comments. The National Council of the Slovak Republic will then discuss these comments in the second and third readings. The President of the National Council shall set a time limit for the second reading. At the third reading, a majority of all the members of the National Council is required for the law to be approved.

Signing of the act draft

The draft of the approved act of the National Council of the Slovak Republic in the intent of the wording of the Constitution shall be signed by the President of the National Council of the Slovak Republic. He shall send it to the Prime Minister and the President of the Slovak Republic. Their signatures thus declare the consent of the highest constitutional officials of the Slovak Republic that the new legislation has been adopted in the manner prescribed by law. Their signature also confirms their commitment to exercise their influence in putting the new legislation into practice.

Publication in the Collection of laws – validity and effectivity

The Collection of Laws of the Slovak Republic contains the basic legislation. In it, general binding legal regulations and other legal acts of the SR are promulgated by publication. The binding form of the Collection of Laws of the SR is in paper form and, since 2016, also in electronic form. The Ministry of Justice of the SR is responsible for its publication. It is also responsible for the deadline for the publication of acts and other legal acts in the Collection of Laws of the SR within 15 days of their submission. The Collection of Laws of the SR is published in both printed and electronic form. In the event of discrepancies between these forms, the printed text shall take precedence.

The approved and signed act shall be sent by the President of the National Council of the Slovak Republic to the National Council for publication in the Collection of Laws of the Slovak Republic no later than 21 days after its approval in the National Council of the Slovak Republic. In the case of an act vetoed by the President, the time limit shall be reduced to 14 days from the date of its approval. From the date of publication of the law in the Collection of Laws of the Slovak Republic, an irrebuttable legal presumption of knowledge of the law shall apply. On the date of publication of the law in the Collection of laws, the law shall become valid. However, this does not mean that it automatically becomes effective. The act shall enter into force on the 15th day after its publication in the Collection of laws or the act shall contain the date of commencement of the law's entry into force.

II. Specific legislation proceedings

In addition to the general provisions of the Act, specific provisions of the Act may apply to the consideration of certain Act drafts. In this respect, we distinguish two main groups of special legislative proceedings:

1. legislative proceedings in which the first reading of an act draft is omitted
2. legislative proceedings in which certain procedural deadlines are shortened or omitted

Legislation proceedings with the omission of the first reading of the act draft

State budget deliberations fall under a special legislative procedure (Act No. 350/1996, Art. 87). The state budget is adopted by a special law for the calendar year in question. Its submission is a compulsory obligation of the Government of the Slovak Republic. The Government of the Slovak Republic submits this act draft to the National Council of the Slovak Republic within the time limit set by law, i.e. by 15th of November of the calendar year concerned, unless the National Council of the Slovak Republic agrees on a different date. Since the State Budget Act covers virtually all areas of the subject-matter competence of the committees of the National Council, this act draft is assigned to all committees of the National Council, with the exception of the Committee on Mandates and Immunities and the Committee on the Incompatibility of Functions. The time limit for the discussion of the act draft in the committees shall be set by the President of the National Council. The proposal shall therefore be discussed only at the second and third readings of the NCSR.

The deliberation of an international treaty also belongs to the special legislative procedure, where the draft is discussed only in the second and third readings of the National Council of the Slovak Republic (Act No. 350/1996, § 88). In fact, international treaties usually need the consent of the National Council of the Slovak Republic before they can be ratified. During the second reading, the committee responsible recommends to the NCSR whether or not to give its consent to a particular international treaty. In the third reading, the plenary of the NCSR decides whether or not to give its consent to the international treaty. The NCSR may also decide to postpone its consent to an international treaty.

Legislation proceedings with shortened or omitted process periods

The *shortened legislative procedure* is a special legislative procedure which is used exclusively in exceptional circumstances where fundamental human rights and freedoms, security or security may be threatened or where significant economic damage to the SR is imminent (Act No. 350/1996, § 89). The adoption of the act in a shortened procedure may also be decided by the National Council of the Slovak Republic due to an existing decision of the United Nations Security Council on actions to ensure international peace and security. This legislative procedure is specific in speeding up the whole legislative process or in deleting some procedural deadlines. For example, the commencement of the hearing may be deleted, the act draft does not have to be published on the website of the National Council at least 15 days before the session of the National Council, before its first reading, the deadline for the discussion of the act draft in the committees of the National Council in the second reading does not apply, nor does the deadline of 48 hours from the delivery of the joint report of the committees to the deputies, nor 48 hours from the submission of amendments and changes before the vote on the proposal, nor does the deadline for the commencement of the third reading apply. The vote on the act draft shall not be postponed until the proposal has been circulated to Members in written form. The shortened legislative procedure shall be decided by the National Council on a proposal from the Government of the Slovak Republic.

III. Some risks of the destruction of the legal state by legislation

The destruction of the rule of law can occur if there is a change of government that changes the wording of laws to suit their direction. Often, however, this may be a direction bordering on legality (Králíková, Králik, 2021, p. 20 a. n.).

Even the adjustment of incorrect wording of provisions of individual laws can often be accompanied by unprofessionalism, unprofessional interventions in the content and form of the text of individual norms of law, and therefore, in the shortest possible time, there should be convalidation, correction, and especially on the part of not only the state authorities but also the relevant initiative of the members of the supreme representative body. The application of incomplete, unclear, ambiguous or multi-significant texts of laws, including the inappropriate use of foreign language terminology, is dangerous for the rule of law, its operation and, in particular, for the citizens. Such distortions of the legislative process must be avoided and it is not only needed it is a must. If such distorted wording of

the provisions of laws and subordinate legislation occurs deliberately or through negligence or incompetence of the personnel of a particular legislative unit, there is a high risk that such a law may be, or inevitably is, subsequently misapplied. This causes significant damage to the legal consciousness of the population, which also distorts the relevant social relations and contributes to the disintegration of interpersonal relations. At the same time, another undesirable phenomenon may occur, namely the so-called dissent, i.e. the emergence of different legal opinions on the interpretation of such distorted legal norms. At the same time, such a relation between legislation and legal practice may lead to significant differences in the application of these legal norms to social relations.

A functional judiciary and a functional prosecutor's office in a state governed by the rule of law can to some extent eliminate the negative impact of the distortions of the legal situation caused by legislation. However, such a fact can be considered as not very effective and socially beneficial. We are of the opinion that the qualitative parameters of the adopted legal norms should be guaranteed by the relevant legislative bodies. However, a condition for such a state of affairs is the creation of a qualified personnel substrate of the legislative bodies, but also of the personnel base of the relevant representative body. This implies that, in particular, the public administration staff, in whose competence is the drafting of legislation, requires training of the staff, their continuous and compulsory education during the performance of their activities. In this process, the education that the collective of authors writes about is very important (Czarkovski, Bursová, Dolinská, Šimek, Porubčanová, 2023). We consider not only education but also the motivation to learn to be important (Gawrych, 2022). Historical experience, including the Czech-Slovak experience, proves that in the professional part of the personnel substrate of public administration bodies it is necessary to accept the principle of apoliticality (Králíková, Králik, 2021a).

This means that in order to ensure a high professional level and efficiency of the apparatus, the possibility of promoting the political orientation of this professional apparatus and its individual members must be removed from the premises of the personnel base of the public administration, i.e. the bureaucratic apparatus. This means differentiating and excluding from each other the personal political orientation of the civil servant from his professional activity. In this case, priority must be given to professionalism based on apolitical behaviour and action on the part of the bureaucrat. In this context, it is also necessary to draw attention to the unacceptability of promoting so-called political correctness in the activities of the apparatus of these institutions (Králíková, Králik, 2021b).

In order to ensure the elimination of the potential possibility, it is necessary to politically guarantee an immediate solution to the problem of one-sided biased

decision-making through an independent state control apparatus, which should be created in the form of ad hoc parliamentary commissions (Králík, Kútik, 2013).

The impetus for the action of such control commissions established for individual ministries should be accepted even if it comes from citizen sources. I.e. individual citizens of the state and their associations. The commencement of the activity of such commissions should be obligatory, immediately after the receipt of an initiative from authorized entities, especially citizens. The so-called codes of ethics adopted to determine the conduct of the relevant state employees are not generally legally binding. Consideration could therefore be given to changing this status quo and enshrining them in the State's legal order in the form of generally binding legislation, which would also be a precondition for recruitment to the civil service or the public service. We see this requirement as a necessity, as the current moral binding force of such codes appears to be ineffective. e.g. a legally convicted special prosecutor selected and continuing in office in spite of this fact; a person under investigation by law enforcement authorities in the capacity of President of a State; a disciplinary action against a late Minister of the Interior; an unpunished criminal offender due to the expiry of the statute of limitations in the capacity of Prime Minister of a State; members of the Government of the State and members of its representative body convicted of plagiarism; unlawfully qualified university assistant professors and professors appointed on the basis of false evaluation reports; shredding of otherwise ineligible qualifying papers, plagiarised papers and compilations of public functionaries in order not to tarnish their public reputation, etc.

As long as the enforceability of the law proves to be a problem, it is not possible to speak of the rule of law, but of a pseudo-state, or a formal-legal state. It is important that there is a constitutional obligation to forfeit the property of the perpetrator, persons close to the perpetrator and persons to whom such property has been purposely transferred. This is because it is essential that the perpetrator of such anti-social activity does not acquire a sense of the "usefulness" of his actions for himself and his loved ones, in the hope that the property acquired by his criminal activity will remain with him. Such penalties could effectively contribute to deterring perpetrators from this extremely dangerous anti-social activity. This need can also be seen as a necessity on the basis of the ongoing investigations by the EU's highest authorities.

Amendments to laws are potentially abused by state power. In case of such purposeful abuse of the law, society can reach a stage that is referred to in legal theory as a police state. A police state is the opposite of the rule of law. The executive has a dominant position. Particularly in an authoritarian or totalitarian state, public power in the state relies on the state police and other security forces.

It uses them to maintain absolute power. Citizens have their freedoms restricted, they are both openly and covertly followed and monitored by state institutions. There is thus absolute control of individuals and civil communities and thus an open abuse of state power. This form of governance is based, for example, on the introduction of information and technical means, the so-called ITPs, used to monitor the level of opinion and 'uncomfortable' behaviour of the population, or de facto control of every citizen by means of these technical means. The new legislation is thus being purposefully modified and abused to the detriment of citizens. It can also create a false legitimacy for state power. I.e. abuse of wiretapping or "legally" obtained information leading to so-called judicial murders, media coverage of fabricated cases, limitation of effective legal remedies (the lawyer has limited possibilities in protecting his client), accusation of a citizen without actual proof, absence of presumption of innocence, censorship of "inappropriate" information, etc.

Given the importance of public procurement for the efficient and rational management of the state, it is necessary to consider the strict compliance with legislative rules as an existential necessity (Půček, Zamišková, 2015).

In case of its abuse, public procurement is one of the channels that abundantly drain resources from public budgets and their spillover to private funds managed often directly by criminal and organized underworld connected to international structures (Panevski, Peráček, Rentková, 2021).

Underestimating the legislation creating public procurement can therefore lead directly to the destruction of socio-economic relations, which are the backbone of statehood. Ensuring strict compliance with the laws regulating public procurement and preventing circumvention of their provisions for whatever reasons must become a daily concern of intelligence services, the Police Force, law enforcement agencies as well as individual citizens and their associations (Kútík, Králík, 2015).

Digitalization of social processes in the field of public procurement could significantly help its transparency and prevent crimes caused in the field of public procurement (Funta, Horváth, 2022).

Reconstructing the laws to their original functional state eliminates the distortion of the legal status quo in the state.

Conclusion

After the fall of the Iron Curtain, the term “public procurement” was first recorded in legislation in 1993 in the first law that comprehensively focused on public procurement. Since then, a total of five new versions of public procurement laws have been adopted. The last law regulating public procurement, from 2015, has been amended 28 times to date, which is a testimony to the dubious quality of the legislative work, which is mostly based on the political interests of the entities currently in power in the state. This is obvious evidence of the instability of law in the Slovak legal space. It is likely that the amendments to this law were determined by expediency, with an attempt to enforce the limited interest of a certain collective at the expense of the public interest, which was confirmed by the circumvention of the legal regulation of public procurement in the crisis period of the so-called Covid 19 pandemic, or in the period of the explosion of immigration from Ukraine from 2022 onwards. This also testifies to the fact that even purposely set legal norms can be circumvented under certain circumstances in order to achieve the goals of such interest groups even more easily. The problem of public contracts has also been highlighted as a current issue through the media coverage of state contracts awarded to persons suspected of serious economic crime but used by law enforcement authorities as ‘penitents’ in the detection of other criminal activities. Organised crime has a strong interest in participating in obtaining contracts through public procurement, which it attempts to interfere with illegally and illegitimately, including through lobbying, in the legislative process. Therefore, the institution of state discipline should once again be strictly enshrined in law and enforced. In particular, the constitutional enshrinement of the personal and property liability of constitutional officials and other public officials, state and local government officials, which could have the effect of creating order and discouraging the unfair practices to which profit-seeking individuals and groups are tempted, could be an effective means of promoting compliance with the law.

The most significant results, which we have reached by using scientific methods, analysis of selected literature and synthesis of the content of its texts, are concentrated in the summary of the most frequently occurring negative phenomena arising in the process of lawmaking. In particular, the following are the most frequently occurring negative phenomena:

- Too frequent amendments to the law creating an untrustworthy system in the eyes of the public, or a dubious quality of the legal standard (see Chapters 1 and 2 of the paper)
- Unclear or imprecise specification of certain concepts (e.g. time limit for

binding proposals, pre-classification, etc.)

- Absence of characterisation of important technical terms (e.g. the term public procurement was absent in some texts of the law, etc.)
- Loopholes in the legislation or circumvention of legal rules (e.g. the so-called 'bulletin board tender')
- Creating the illusion of transparency of the system among the public by using the latest electronic innovations (e.g. central procurement organisation, electronic marketplace, etc.)
- Creating the illusion of grand new changes towards a better public procurement system (Public Procurement Authority Board, accreditation, registers, etc.)
- Constantly changing and emerging procurement methods (e.g. competitive dialogues, PPP projects, etc.)
- Decisions of the Public Procurement Office were often contradictory and not in line with the law (misinterpretation of the law or subjective interpretation of the law)
- Inconsistencies in Slovak courts' decisions against the Office with European case law (e.g. decisions against the Office in the case of restricted tendering)
- Subjective view of so-called experts on public procurement (discrimination of selected participants, subjective interpretation of the law)

Prof. JUDr. Jozef Králik CSc., an expert in financial law and public administration, presents in his publications some conclusions resulting in the following remarks. The State Legislative Office, as a central government body, could, once created, contribute to the adoption of quality legislation. Its competence would cover both statutory and sub-statutory legislation, which would be reviewed by experts in the capacity of staff of the Public Administration working in this office. The outputs of this office would be focused on assessing the quality of legislation adopted by state authorities and public administrations. For example, the National Council would adopt by its resolution a certain text of a piece of legislation, including the comments and amendments of individual members and institutions. Following this procedure, the act thus provisionally approved would be referred to the State Legislative Authority for expert examination, which would assess the legislation and make certain recommendations to the NCSR. Such a proposal would be reconsidered by the National Council and finally approved. This would prevent laymen's legislation from being drafted and approved by non-experts, the majority of whom are members of this supreme legislative body.

In view of the professional legal non-qualification of the Members of the National Council, we consider it necessary to oblige them to compulsory education in the field of law pro futuro. This education could be provided by the

existing Institute for Public Administration of the Slovak Republic, which would also issue a certificate of completion of such a training course to the MPs and of the success rate of its completion by the respective MP. Members of the National Council, as they are accountable to their constituents, could thus contribute to the improvement of the legal consciousness of the public. Members of the National Council should undergo such short-term training every year for the duration of their mandate. It is obvious that this vision should also be applied in the sphere of the representative substrate of higher territorial units, municipalities as well as bodies (boards of directors, supervisory boards), organisations and institutions of which the state is the founder. It is highly probable that this form of reorganisation of the qualification of the personnel substrate of the state authorities could make a significant contribution to the elimination of defects accompanying public procurement procedures. It will be necessary to impose not only criminal but also property-law consequences on responsible officials and employees for breaches of public procurement law, including the forfeiture of their personal and private property, as well as the verification of the legality of the acquisition of their family members' property. Since in practice the principle of non-retroactivity has been de facto abandoned in the Slovak Republic in recent decades, we also admit the possibility of adopting such laws that would retroactively and effectively sanction illegally acquired property in the process of privatisation and public procurement, or corruption.

Literature

- FUNTA, R., GOLOVKO, L., JURIŠ, F. 2020. *Európa a Európske právo*. 2 Ed. Brno: MSD, 2020. 444 p. ISBN 978-80-7392-334-1.
- CZARKOWSKI, J. J., BURSOVÁ, J., DOLINSKÁ, E., ŠIMEK, V., PORUBČANOVÁ, D. (2023). *Personality as a Factor in the Learning Process of Teaching – The Context of the Big Five Theory*. In: AD ALTA: Journal of Interdisciplinary Research. Hradec Králové: Magnanimitas akademické sdružení, 13(1), p. 75–80.
- FUNTA, R., HORVÁTH, M. 2022. *Digital markets as a challenge for competition policy*. 1 Ed. Brno: MSD, 2022. 110 p. ISBN 978-80-7392-377-8.
- GAWRYCH, R. (2022). *Czynniki motywujące uczniów do uczenia się*. Gdańsk–Białystok: Wyższa Szkoła Społeczno-Ekonomiczna w Gdańsku, 2022. ISBN 978-83-7657-440-0.
- KLIEROVÁ, M., KÚTIK, J. 2013. *Verejný sektor*. 1 Ed. Trenčín: FSEV TUAD,

2013, 190 p. ISBN 978-80-8075-597-3.

KOVÁČECHOVÁ, E., ŽILINČÍK, P. 1999. *Ako sa rodí zákon. Legislatívny proces a miesto občana v ňom*. Poniky: Centrum pre podporu miestneho aktivizmu, 1999, 17 p. Bez ISBN.

KRÁLIK, J., KÚTIK, J. 2013. *Kontrolný systém a jeho subsystemy vo verejnej správe – základy teórie*. 1 Ed. Plzeň: Aleš Čeněk, 2013, 216 p. ISBN 978-80-7380-482-4.

KRÁLIKOVÁ, K., KRÁLIK, J. 2021a. *Východiská ekonomickej gramotnosti II*. 1 Ed. Brno: MSD and Vysoká škola Danubius, 2021, 120 p. ISBN 978-80-7392-368-6.

KRÁLIKOVÁ, K., KRÁLIK, J. 2021b. Atmosphere in workplace mirror of society. In: *Sociálno-ekonomická revue: vedecký časopis Fakulty sociálno-ekonomických vzťahov Trenčianskej univerzity Alexandra Dubčeka v Trenčíne*. ISSN 1336-3727. ISSN 1338-2195. - ISSN 2585-9358. 19, No. 1 (2021), p. 25-37.

KRÁLIKOVÁ, K. and alt. 2018. *Základy verejného obstarávania v Slovenskej republike. Učebnica*. 1 Ed. Uherské Hradiště: Akademie krizového řízení a managementu, 2018, 120 p. ISBN 978-80-906993-1-1.

KRÁLIKOVÁ, K. 2019. *E-government a verejné obstarávanie: kapitola 29*. In: Felcan, M. and alt. 2019. *Racionalizácia verejnej správy*. 1 Ed. Hodonín: Európsky ústav práva a súdního inžinýrství, 2019. ISBN 978-80-906601-8-2. p. 270-282.

KÚTIK, J., KARBACH, R. 2011. *Systémy verejnej správy*. 1 Ed. Bratislava: Sprint dva, 2011, 204 p. ISBN 978-80-89393-53-4.

KÚTIK, J., KRÁLIK, J. 2015. *Verejná správa a krízový manažment*. 1 Ed. Bratislava: VEDA, 2015, 230 p. ISBN 978-80-22414-42-5

PANEVSKI D., PERÁČEK T. and RENTKOVÁ K. 2021. Analysis of the Practices of Financial Intelligence Units (FIUs) and Other Anti-money Laundering Agencies Within EU. In: Kryvinska N., Poniszewska-Marańda A. (eds) *Developments in Information & Knowledge Management for Business Applications*. Studies in Systems, Decision and Control, vol 376. Springer, Cham. https://doi.org/10.1007/978-3-030-76632-0_8

PÚČEK, L., ZAMIŠKOVÁ, A. 2015. *Verejné obstarávanie. Podlimitné zákazky v praxi*. 1 Ed. Bratislava: Wolters Kluwer, 2015, 134 p. ISBN 978-80-8168-123-3.

Legal norms

Nariadenie NR SR č. 19/1997 Z. z. č. 519 k návrhu legislatívnych pravidiel tvorby zákonov z 18. decembra 1996

Vykonávacie Nariadenie Komisie (EÚ) 2019/1780 z 23. septembra 2019, ktorým sa ustanovujú štandardné formuláre na uverejňovanie oznámení v oblasti verejného obstarávania a ktorým sa zrušuje vykonávacie nariadenie (EÚ) 2015/1986

Zákon č. 63/1991 Zb. o ochrane hospodárskej súťaže

Zákon NR SR č. 263/1993 Zb. o verejnom obstarávaní tovarov, služieb a verejných prác v z.n.p.

Zákon č. 188/1994 Z. z. o ochrane hospodárskej súťaže

Zákon NR SR č. 350/1996 Z. z. o rokovacom poriadku NR SR v z.n.p.

Zákon č. 263/1999 Z. z. o verejnom obstarávaní v z.n.p.

Zákon č. 136/2001 Z. z. o ochrane hospodárskej súťaže

Zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v z.n.p.

Zákon č. 523/2003 Z. z. o verejnom obstarávaní a o zmene zákona č. 575/2001 Z. z. o organizácii a činnosti vlády a organizácii ústrednej štátnej správy v z.n.p.

Zákon č. 25/2006 Z. z. o verejnom obstarávaní a o zmene a doplnení niektorých zákonov v z.n.p.

Zákon č. 343/2015 Z. z. o verejnom obstarávaní v z.n.p.

Internet sources

<https://www.nrsr.sk/web/Default.aspx?sid=vybory/vybor&ID=157> [13. December 2022]

https://www.vlada.gov.sk/data/files/7528_uplne-znenie-legpravvladysr-v-zneni-uzn-vlsr-z-29-maja-2019-c-242.pdf?csrt=10833539431765279637 [13. December 2022]

https://www.vlada.gov.sk/share/RVLP/plan_2022.pdf [20. December 2022]