http://dx.doi.org/10.12775/CLR.2022.010

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FAST-TRACK LEGISLATIVE PROCEDURE DURING THE COVID–19 PANDEMIC IN SLOVAK PARLIAMENTARISM

Abstract

The Covid–19 pandemic has fundamentally changed the way we live and work. Even today, although the pandemic seems to be over, our lives are not the same as before. This has also had an impact on the functioning of constitutional bodies. We are of the opinion that adherence to the principles of democracy and the rule of law is particularly important to ensure the stability of the system in exceptional situations, such as in the case of the Covid–19 pandemic. The institution of fast-track legislative procedure (FTP) is an exceptional instrument for dealing with exceptional situations. Its purpose is to enable the Government and Parliament to take quick decisions. However, it must not be abused as this may lead to the violation of a considerable number of constitutional rules and principles. A number of tools can be used to defend against such action, such as Parliament's rejection of the Government's FTP proposal, the President's intervention through his relative veto power, but above all, the Constitutional Court's decision that a law is incompatible with the Constitution because of a breach of the rules of the legislative process.

Keywords

fast-track legislative procedure – law-making – parliamentarism – covid pandemic

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Introduction

The everyday life of society is linked to the law and to the legal regulation of the life situations and relationships in which people find themselves. The quality of legal regulation therefore fundamentally affects the quality of people's lives. Law-making is a rational, purposeful, and conscious activity of competent authorities, which is directed in a programmatic and thoughtful manner towards the comprehensive creation of a stable legal order. The role of law is to express formally, precisely, clearly, simply, and unambiguously the rights and obligations of the parties to legal relations. The stability of the legal order is a *conditio sine qua non*, but it cannot be an obstacle to its ability to respond flexibly to developments in society, science, and technology or to exceptional situations which bring about a change in circumstances and may present legislative challenges.

Legislation can be likened to an art or craft.[1] "*Ius est ars boni et aequi*" says Celsus at the beginning of the Digesta Iustiniani. Art means the use of certain intellectual qualities as well as manual skills in the execution of a work to make the world more beautiful and better. This should also be the aim of legislation. Legislation also needs the use of spiritual (intellectual) qualities as well as manual skills (craftsmanship) by its creator in the creation of the work – the legislation. Just like art, law evokes emotions in people. It can be a positive emotion, joy at the creative activity and abilities of the creator of the legislation, which creates new rights for its addressee, makes life easier, better, or more pleasant, or a negative emotion, anger, disgust, or incomprehension if it creates, for example, new, stricter obligations. Finally, law is also an expression of certain values on which a democratic society is built.

The issue of law-making has received only marginal attention in Slovak legal scholarship, especially from the perspective of judicial law-making (filling gaps in laws by judges while ensuring the principle of the prohibition of denial of justice), instability of the legal order (legislative hyperactivity and acceleration of the legislative process), amendment of laws by means of unrelated legislation (so-called *prílepky* or

[1] B. Balog, *Umenie tvoriť zákony. Schvaľovanie zákonov v Slovenskej republike*, Wolters Kluwer, 2019, p. 18.

stickers) and combining of substantively unrelated agendas into a single law, or the overuse of the institution of the shortened legislative procedure – FTP.

I. The Legislative Process and Fast-Track Procedure

The stability and dynamism of the legal order are its defining features. Neither can prevail over the other, but they must be in perfect balance. Legislation, however, is not a sunshine-only activity. It is precisely in times of emergency, which have befallen us several times in the last 15 years in the form of the financial and economic crisis, the subsequent energy crisis, the migration crisis, the pandemic of the uncontrolled spread of an infectious human disease, or the war conflict beyond our borders, that it is necessary to be able to react flexibly and take swift decisions. However, such steps should be taken only exceptionally and never as a matter of policy.

The adoption of laws in the form of an accelerated legislative procedure has long been a debated topic in Slovak parliamentarianism. Before addressing the issue of this specific form of legislative procedure, it is necessary to emphasise the following facts:

- the Slovak Republic (unlike Poland, the Czech Republic, or Austria) has a unicameral parliament, a fact which has a major impact on the course of the legislative process,
- the basic law of the state – the Constitution of the Slovak Republic (unlike the Constitution of Poland or the Czech Republic) regulates the legislative process only to a limited extent,
- the right of legislative initiative in the Slovak Republic is vested only in a deputy (one or a group of deputies), a Committee of the National Council, and the Government.

1. Material and Formal Prerequisites for FTP

The accelerated legislative procedure can be defined as an institution which allows a law to be adopted without observing the time limits for the legislative process laid down by the Constitution or by law. Differ-

ent terms are used to refer to the same institution – accelerated procedure, speeded up procedure, fast-track procedure, urgent motion, state of legal emergency, etc. The translation of the Act on the Rules of Procedure of the National Council of the Slovak Republic, published on its official website, uses the term fast-track procedure, and therefore we will use it in the following text too.

Among the neighbouring countries, only the Constitution of the Republic of Poland refers to the possibility of adopting a law in an accelerated legislative procedure.[2] The constitutions of Slovakia, the Czech Republic, Austria, and Hungary do not mention this possibility and their provisions, if any, on the legislative process are very limited. The manner in which a law is to be adopted by accelerated procedure is usually set out in the rules of procedure of the individual parliaments. These generally set out the entities, as holders of the right of legislative initiative which may propose it, the material prerequisites for its promulgation, as well as the time limits which may be curtailed or not applied in the legislative process.

The legal regulation of the fast-track legislative procedure in the Slovak Republic is not enshrined in the Constitution, but in Act No. 350/1996 Coll. On the Rules of Procedure of the National Council of the Slovak Republic as amended, and almost identical to the regulation in the Czech Republic with one major deviation. According to the Czech Act no. 90/1995 Coll. on the Rules of Procedure of the Chamber of Deputies the President of the Chamber of Deputies shall – at the Government's request – declare a state of legislative emergency for a definite

[2] According to article 123 of the Constitution of the Republic of Poland, only the Council of Ministers may classify a bill adopted by itself as urgent. Not all bills adopted by the Council of Ministers are entitled to pass accelerated procedure in the two chambers of the Polish parliament. The exception applies to tax bills, bills governing elections to the Presidency of the Republic of Poland, to the Sejm, to the Senate, and to organs of local self-government bodies, as well as bills governing the structure and jurisdiction of public authorities, and also drafts of law codes. The Constitution of Republic of Poland also defines time periods for the consideration of urgent bills. A bill classified as urgent shall be considered by the Senate within a period of 14 days and the period for its signature by the President of the Republic shall be 7 days. The Rules of procedure of the Sejm and the Rules of procedure of the Senate define the modifications in the legislative procedure when a bill has been classified as urgent.

period of time.[3] In the Slovak Republic, there is no condition for declaring a state of legislative emergency. However, as in the Czech Republic, along with the procedural (proposal submitted by the Government), the substantive or material prerequisites must also be fulfilled.

"Under extraordinary circumstances, when fundamental human rights and freedoms, or national security is in jeopardy, or when there is a threat that the state could suffer considerable economic damage, the National Council may, at the request of the Government, resolve to consider a bill under the fast-track legislative procedure".[4]

Not every state´s legislation defines such material requirements.[5] Let us take a closer look at individual provisions.

The first condition that must be met is the existence of an extraordinary circumstance. An extraordinary circumstance can be understood as a situation that arose suddenly and could not have been foreseen. It may be the result of natural disasters (earthquakes, floods, etc.), a sudden economic event (e.g., a crash on financial markets), armed conflicts (uprisings, coups, wars), migration crises, etc. The second condition is that the extraordinary circumstance may result in a threat to fundamental human rights and freedoms, or security. A causal nexus is required

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[3] A state of legislative emergency may be cancelled, or its duration may be reduced by deputies of the Chamber. When a state of legislative emergency has been declared, the President of the Chamber of Deputies may – at the Government's request – decide to conduct summary consideration of any bill presented by the Government. During the state of legislative emergency, the Chamber of Deputies shall review whether the conditions of summary consideration persist before considering every governmental bill. Should it come to a conclusion that there is no reason for summary consideration, it shall not apply it.

[4] Section 89 of the Act No. 350/1996 Coll. On the Rules of Procedure of the National Council of the Slovak Republic.

[5] In the Czech Republic, the material prerequisites for the adoption of the law in the abridged legislative procedure are identical. In the Republic of Poland, under article 79 of The Rules of Procedures of the Sejm "in the event that the reasons given for such a bill are insufficient, the Marshal of the Sejm, after seeking an opinion of the Presidium of the Sejm, may return it to the Council of Ministers for correction". In Hungary, according to Standing Order No. 46 of the Resolution 46/1994 (IX.30.) OGY on the Standing Orders of the Parliament of the republic of Hungary, "(...) The proposer may give reasons for the motion for urgency in a speech not longer than two minutes on the week following the week of submission (...)". However, neither the Polish nor the Hungarian Rules of Procedure provide specific material conditions for the proposal for an abridged legislative procedure.

between the extraordinary circumstance and the threat to fundamental human rights and freedoms or security. The phrase "fundamental human rights" has led some authors to a restrictive interpretation of this provision with which we cannot agree.[6] Another reason is the threat of significant economic damage to the State. The only body that can ask Parliament for an accelerated legislative procedure is the Government of the Slovak Republic. It does not have to be a government bill. The Government may also ask Parliament to adopt a parliamentary bill of individual MP (or a bill submitted by a committee) in a fast-track procedure, provided that the substantive conditions for a shortened procedure are met.

Under the same Section 89 of the Rules of Procedure of the National Council of the Slovak republic, the deputies may resolve to use the fast-track legislative procedure also when a resolution of the United Nations Security Council on actions safeguarding the international peace and security adopted under Section 41 of the Charter of the United Nations requires a law to be passed immediately.

To sum up, the material and formal prerequisites for the adoption of the fast-track procedure, which must be fulfilled cumulatively, are:

1. the existence of extraordinary circumstances and
2. fundamental human rights and freedoms, or the national security are in jeopardy or there is a threat that the state could suffer considerable economic damage; and
3. the request of the Government.

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[6] On the basis of the Constitution of the Slovak Republic, they argue that the provision on the abbreviated legislative procedure applies only to those rights that are listed in the second section of the second title of the Constitution, entitled "fundamental human rights and freedoms". The second section of the second title of the Constitution protects rights relating to the physical and mental integrity of the person. However, it does not include, for example, the right to the protection of health. To assume that the enactment of a fast-track law is permissible when the state is threatened with significant economic harm, but not when its residents are not threatened with death (protected by the right to life) but "only" with, for example, permanent impairment of their health, is an absurdly formalistic interpretation with potentially serious negative consequences. See B. Balog, *supra* note 2, p.137, B. Balog, "Ochrana základných práv v skrátenom legislatívnom konaní", in: *Constitutional Bodies and Constitutional Protection of Fundamental Rights During Special Situations*, Comenius University in Bratislava, 2021, p. 10.

2. Consequences of the Approval of the FTP

The Government's bill has a life of its own before it reaches the Parliament. The rules for its drafting are included in the Legislative Rules of the Government (LRG), which does not have the force of law, only a government resolution with a recommendatory character for its members and other central government bodies. The Legislative Rules emphasize that the aim of the legislative work is to prepare, *with public participation*, and approve, a draft law that will become a functional part of a balanced, transparent, and stable legal order of the Slovak Republic compatible with the law of the European Union and the international legal obligations of the Slovak Republic.

The fast-track procedure on the governmental level of the legislative process (before the bill reaches the Parliament) means that whoever presents the bill to the Government for approval (minister or head of central state administration body) is not required to take all the steps that are required in the case of regular legislative procedures according to the Legislative Rules of the Government.[7] The material conditions remain the same as for the Parliament. Pursuant to Article 15 of the

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[7] The regular legislative procedure in the phase of creating a bill on governmental level presupposes the publication of *the preliminary information* and possibly also of *the legislative intention*. These two documents are published on the official Slovlex portal and are intended to inform the public about the preliminary plan to adopt new legislation. The public has the right to comment within a specified period. The competent authority then drafts the bill itself, which is submitted to intra-ministerial and then inter-departmental comment procedure. The interdepartmental commenting procedure is a very important part of the legislative process. This is the space where experts, scholars, NGOs, think tanks, trade unions, public society, and even individuals can raise their ordinary or essential comments which the proposer should consider and if there is the case to discuss a conflict with a particular subject aim to resolve it. After this procedure the bill is submitted to the Government for approval. However, in accordance with Article 27 of Act No. 400/2015 on Legislative Drafting and the Collection of Laws and on Amendments to Certain Acts and Article 15 of the Legislative Rules of the Government, "if there are extraordinary circumstances, in particular a threat to human rights and fundamental freedoms or security, if there is a threat of significant economic damage to the State, in the event of a declared state of emergency or measures to resolve an emergency situation", the proposer does not have to publish either the preliminary information or the draft law itself on the portal for comment. The proposal goes straight from the Ministry to the Government. At the cabinet meeting when the bill is approved, the

Legislative Rules of the Government, fast-track procedure can be placed only "where there are exceptional circumstances, in particular a threat to human rights and fundamental freedoms or to security, where there is a threat of significant economic damage to the State, where a state of emergency has been declared, or where measures have been taken to deal with an emergency situation (...)". What otherwise takes weeks or months can be completed in one day by applying the shortened legislative procedure.[8] Once approved, the Government bill goes to the National Council of the Slovak Republic.

The government proposal for a fast-track legislative procedure is debated separately in the National Council of the Slovak Republic before the debate on the bill itself begins. In the debate, Members of Parliament comment only on the reasons for the accelerated procedure, i.e., whether the material conditions for its adoption are met. Parliament takes a decision on the proposal by a resolution. If Parliament agrees to the FTP, some of the rules and time limits of the ordinary legislative process do not apply. E.g., under ordinary procedure, the bill must be delivered to Members of Parliament at least fifteen days prior to the session of the National Council during which the bill is to be presented for the first reading. Under fast-track procedure it can be delivered the same day as the discussion begins. The reason is that first MPs hold a discussion only on the purpose of fast-track procedure and not on the matter of the bill. Secondly, under ordinary procedure, the National Council fixes the time limit during which the bill will be considered in the committees to which it has been referred and this time limit will be not less than thirty days after the day of its referral to committees. In the fast-track procedure the time limit does not apply, and it is very common for com-

submitter may also propose that the bill be discussed in an abbreviated legislative procedure in parliament.

[8] As an example, we can use the submission report on the draft law amending Act No 461/2003 Coll. On Social Insurance, as amended, and amending and supplementing certain acts, submitted to the Government on 12 February 2020. "In accordance with Article 15 of the Legislative Rules of the Government of the Slovak Republic, the draft law is submitted to the Government of the Slovak Republic without prior discussion of the draft law with the relevant bodies and institutions in the comment procedure. The reason for this is to strengthen the right to adequate material security in old age, incapacity for work, and loss of breadwinner by introducing a new pension benefit, the so-called thirteenth pension".

mittees to meet immediately. In the second reading, the bill may be considered by the National Council no sooner than 48 hours following the delivery of the committees' joint report, in fact, during FTP, the second and third reading follow immediately within few hours after first reading. Under FTP the debate on the bill in Parliament, which usually takes up to three months, can be cut to one day.[9]

II. Constitutional Risks of the Fast-Track Procedure

The fact that the form of accelerated legislative procedure is regulated by the legal orders of all the neighbouring countries, whether through their constitutions or parliamentary rules of procedure, is proof that the fast-track legislative procedure has its justification. The State must be able to take rapid decisions in exceptional situations to protect the rights of its citizens. The speed and flexibility of decision-making is of the greatest benefit in this case, but it carries a number of risks. The simplified process of adopting a law through fast-track procedure with the exclusion of the public may be too great a temptation for those in power, whether they sit in Government or in Parliament. Also, in order to avoid arbitrariness, there are strict material conditions that must be met in the case of a shortened legislative procedure. These are set out, for example, in the Rules of Procedure of both the Slovak and the Czech parliaments.[10]

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[9] This is also the case with the above-mentioned bill amending Act No 461/2003 Coll. on Social Insurance, as amended, and amending and supplementing certain acts. Although the bill was submitted to the National Council as early as 12 February 2020, owing to the holidays and the peak of the election campaign, the debate on the abbreviated legislative procedure did not take place until 21 February 2020. As a result of the lack of a quorum on that day (parliamentary obstruction by the opposition), the vote on the abridged legislative procedure was postponed until 25 February 2020, when the coalition majority was able to secure the necessary number of MPs. On that day, the Government's proposal for an abridged legislative procedure was approved, the committees met, all three readings took place, and the Government's bill was approved.

[10] The legal regulation in the Republic of Hungary is particularly interesting. Articles 44 and 45 of the Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure (of the National Assembly) provide for two forms of summary legislative procedure – *discussion with urgency* and *exceptional procedure*. Although it does not say what

One of the risks of the shortened legislative procedure is the fact that owing to the time pressure and the speed of legislative work, a legal norm will be adopted which will be imperfect and which will not contribute to the balance, clarity, and stability of the legal order of the Slovak Republic. The balance of the legal order presupposes the harmonization of all its components. This harmonization presupposes that the law is so consistent with the legal order that the achievement of the objectives pursued by one law does not hinder or impede the achievement of the objectives pursued by another law. In enacting laws, the legislator has a duty to third parties, in particular the duty to protect the addressees of the laws and to regulate their rights and impose obligations on them by means of constitutionally consistent and internally consistent laws that are not contradictory.[11] The speed with which a legal rule is adopted may be detrimental to its quality and lead to a failure to realise the consequences of its adoption. Compliance with legislative rules ensures the internal consistency and coherence of the legal order by setting out the actions, their qualitative requirements, and the sequence to be followed in the legislative process. Their circumvention, non-compliance or mere formal observance will not allow the fulfilment of their purpose and meaning, which is precisely to identify possible shortcomings of the proposed legislation. This is precisely the purpose of the comments made by stakeholders before the bill is presented to the Parliament, as well as the debate at second reading. In the exercise of its legislative power, the legislative authority has certain tasks or duties relating to the quality of the legislation it adopts. It must, first and foremost, behave as a rational legislator who is careful, attentive, and prudent when adopting legislation. At the same time, the rational legislator is mindful in the process of making the law of the possibility of harm by the very enactment of the law. The doctrine of the rational legislator

material conditions must be met, it sets out other restrictions – *discussion with urgency* may be ordered not more than six times in a half-year, and *exceptional procedure* not more than 4 times in the same period. In addition, *exceptional procedure* shall not be requested for discussing a motion for the adoption or the amendment of the Fundamental Law, an Act containing an international treaty, a provision of the Rules of Procedure, the Act on the central budget, etc.

[11] B. Balog, "Legislatívne pravidlá a ich ochrana", *Právny obzor*, 103, 2020, č. 5, p. 346.

is based on the maxim of internal consistency and consistency of the legal order.[12]

As we have already mentioned above, the use of abbreviated legislative procedure has been a long-standing topic of discussion in Slovak parliamentarism. This is mainly due to the fact that the shortened legislative procedure is, in certain borderline situations, capable of violating selected principles of democracy and the rule of law, which are the basic building blocks of our constitutionalism. These are, for example, the principle of legality, the principle of legal certainty, the principle of the sovereignty of the Constitution and laws, the principle of democratic legitimacy and the rule of a limited majority, the principle of the prohibition of arbitrariness and abuse of power, the principle of transparency and public scrutiny of the exercise of public authority, the principle of pluralism and the protection of free competition between political forces in a democratic society, and the principle of the adversarial nature of legislative proceedings, etc.

Law-making in a substantive rule of law must respect the principle of legality and the principle of legal certainty. The principle of legality is based on the conviction that public authorities are also bound by the Constitution and the law in the exercise of their competences. The role of the National Council is to safeguard constitutionality, not only by ensuring that the content of the law itself complies with the Constitution, constitutional laws, and international treaties to which the National Council has consented, and which have been ratified and promulgated in the manner laid down by law. The National Council must further protect constitutionality by respecting the rules arising from the principles of democracy and the rule of law in the process of debating and approving the draft law. It is linked not only to the requirement of the general validity (generality), durability, stability, rationality, and fairness of the content of legal norms and their accessibility to citizens (publish ability), but also to the requirement of the predictability of the actions of public authorities (legal certainty). The principle of legal certainty binds not only the executive and the judiciary, but also the legislature. The principle of legal certainty also includes citizens' confidence in the legal

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[12] M. Hodás, "Odstraňovanie kontradiktórnosti noriem v aplikačnej praxi a doktrína racionálneho zákonodarcu", *Právny obzor*, 94, 2011, č. 4, p. 372.

order and in the actors involved in standard-setting. This confidence is built at the law-making stage by ensuring that the public is informed of the intended legislative activity, that the processes for adopting legislative acts are open, accessible, and transparent, and that the outcome of legislative activity is predictable. Despite the undisputed power of Parliament to enact any legislation that is consistent with the Constitution, the outcome of legislative activity cannot be unexpected and surprising to its addressees.

The principle of legal certainty flows seamlessly into the principle of transparency and public scrutiny of the exercise of public authority. Irrespective of whether the material conditions for the adoption of a fast-track legislative procedure are met, there is always a certain limitation on the public in this process, as well as on the elected representatives of the citizens representing the parliamentary minority, to properly familiarise themselves with the draft law and to carry out the standard expert opposition to it in the form of a comment procedure.

A democratic state governed by the rule of law is a state in which the law, in the form of the Constitution and laws, binds not only its addressees and implementers, but also its maker. No one, not even Parliament as the representative of the sovereign, is exempt from the obligation to comply with the Constitution and the law in its activities. Although it has the power to amend them by a procedure consistent with the Constitution and the laws, until it does so, it must respect them. The principle of the sovereignty of the Constitution and the laws is violated when the legislature, by its own action, exempts itself from the Constitution and the law without first changing their valid and effective wording through due process consistent with the Constitution and the law.

The principle of democratic legitimacy and the prohibition of arbitrariness and abuse of power are violated when the fast-track legislative procedure is adopted without the substantive conditions being met which were laid down in Article 89 of the Rules of Procedure Act. If the adoption of a law by the fast-track procedure is not sufficiently and adequately justified in the government proposal, it is an expression of arbitrariness on the part of the parliamentary majority and a suppression of the constitutional rights of the parliamentary minority – the Opposition.

The principle of pluralism and the protection of the free competition of political forces in a democratic society may be jeopardised by the fact that, by abandoning the ordinary legislative process (especially if this is done in contravention of the law), the parliamentary majority prevents the representatives of the parliamentary minority from fully exercising their constitutional rights arising from their office as Members of Parliament, which they could have exercised in the course of the ordinary legislative process (e.g. by respecting the time space between the first and second readings for familiarisation with the bill, its discussion in committees, space for amendments, etc.). The parliamentary majority will impose its will in the case of an fast-track procedure because it has the majority to do so. By contrast, the parliamentary minority remains unheard because the shortened legislative procedure does not provide sufficient space for it to be heard and for its rights to be exercised.

In a representative democracy, parliamentary decision-making is similar to judicial decision-making. Both are governed by the adversarial principle. Parliamentary decision-making, unlike judicial proceedings, is concerned with general interests and thus must allow debate and confrontation between political parties representing the various interests of civil society. The law is the result of a compromise which reflects the interests of society as a whole. Therefore, the National Council, like any other public authority whose decision-making intervenes in the lives of individuals, must respect procedural rules designed to guarantee democratic legal principles, the legitimacy of the legislator, the rationality of laws, procedural fairness, and free political competition in the State. The procedural rules for the adoption of laws are also a reflection of a democratic pluralist system in which the opposition has the opportunity to express itself and thus promote the interests of the minority. Corresponding to this is the obligation of the majority to respect the protection of minorities in political decision-making; in this case, the minority is represented by the parliamentary opposition. At the same time, the parliamentary opposition's control over the coalition is thus exercised.

III. Fast-Track Procedure During the 8th Parliamentary Term

The last parliamentary elections in the Slovak Republic were held on 29 February 2020, at the time of the beginning of the first wave of the coronavirus pandemic. President Z. Čaputová appointed a new Government on 21 March 2020 and Parliament gave her a vote of confidence on 30 April 2020. At the beginning of the term, the governing coalition had 95 MPs in Parliament and therefore a constitutional majority (three-fifths). The 8th term thus replicates the period of an emergency situation of the spread of a dangerous infectious human disease, which required immediate decisions to be taken.

The fast-track legislative procedure is an instrument that should be used only rarely when an exceptional circumstance exists. Comparing the last four electoral periods since 2006, we find that it was during the last electoral period, that is, during the Government of the last coalition and at the time of the pandemic, that the Slovak Republic experienced a "fast track boom". The number of government proposals tabled for the fast-track legislative procedure was as follows:

4th Parliamentary term	2006–2010	4 years	55 FTP proposals
5th Parliamentary term	2010–2012	2 years	27 FTP proposals
6th Parliamentary term	2012–2016	4 years	28 FTP proposals
7th Parliamentary term	2016–2020	4 years	31 FTP proposals
8th Parliamentary term	2020–today	2 years	90 FTP proposals.[13]

The 6th and 7th parliamentary terms are particularly relevant to our study, and we can see that, in the 4 years term the proposals submitted for the shortened legislative procedure were of the same scale. Subsequently, in the 8th parliamentary term we observe an immense and rapid increase in the use of the FTP when in the period of only two years 90 proposals were presented to the National Council of the Slovak republic, of which 89 were approved.

Clearly at the time of a pandemic of a spreading infectious human disease, the Government and Parliament must be able to take swift deci-

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[13] Národná rada Slovenskej republiky, *Návrhy predložené do Národnej rady Slovenskej republiky*, available at: https://www.nrsr.sk/web/?sid=zakony/prehlad/predlozene [last accessed 15.4.2022].

sions and thus protect people's lives, health, or property. It was the pandemic of Covid–19 that ultimately confirmed the need to have the institution of a shortened legislative procedure in the legal order and thus to be able to react flexibly to all the changes and challenges that might occur. However, it remains important that this institution shall not be abused or misused under the cover of a pandemic. "Because of covid" cannot be a universally acceptable reason for passing laws in fast-track legislative procedure.

The material conditions for the use of FTP are regulated by the Rules of Procedure of the National Council of the Slovak Republic. It must be stressed and underlined that the essential requirement is the existence of extraordinary circumstances. It is the obligation of the Government to bring a motion before Parliament that sufficiently and relevantly justifies the use of FTP and demonstrates the existence of an emergency beyond reasonable doubt. Most of the proposals for FTP within last 24 months contained relevant reasons, in particular the pandemic of Covid–19. This involved the introduction of some emergency measures in connection with the spread of a dangerous infectious human disease, but also, for example, school laws providing distance learning and strengthening the competences of directors of schools, changes in the Labour Code and the Social Insurance Act, which responded and must adapt to the new labour market situation etc.

However, the Government failed to resist the temptation not to table the proposal for an shortened legislative procedure in Parliament, despite the fact that the conditions set out in the Rules of Procedure of the National Council were not met. An example is the amendment to the Vignette Act, which, "because of the Covid–19 pandemic", restored the possibility of imposing a fine for a violation of the obligation to buy a vignette from 6 months to 2 years. Or the amendment to the Law on Judges and Lay Judges (Jurors), which dealt with the composition of evaluation commissions, although in this case it was merely a dereliction of duty by the Ministry of Justice of the Slovak Republic to deal with this issue in the proper legislative process. And the final example was the amendment to the Aliens Act, which made last-minute changes to the conditions of residence for UK citizens in the context of Brexit after the end of the transition period (after 1 January 2021), where there was obvi-

ously no urgency or existence of unpredictable situation because we had known about this obligation since 2019.

The excessive and unjustified use of the shortened legislative procedure during the Covid–19 pandemic has been pointed out by the opposition, the President, lawyers, academics, NGOs, and the media. The promises of the new Government of a new political culture have not been fulfilled. The Deputy Prime Minister for Legislation and Strategic Planning, Š. Hollý assured President Z. Čaputová at their first meeting back in May 2020 that the Government would use the institute of shortened legislative procedure only in exceptional cases.[14] The Head of State actively intervened in the legislative process and used her right to return a bill to Parliament (suspensive veto) several times on the grounds that the material conditions for the FTP were not met. This power was successfully exercised in the aforementioned amendment to the Vignette Act, which was finally adopted by the parliamentarians in the ordinary legislative process. However, there were several examples of abuse. "For example, the removal of Viera Tomanová as Commissioner for Children. I really do not think that Viera Tomanová's position in any way threatened the state budget, or human rights and civil liberties", pointed out Radoslav Štefančík, a political scientist at the University of Economics in Bratislava.[15]

IV. Options for Limiting the Use of the Fast-Track Procedure

The excessive and unreasonable use of fast-track legislative procedure, which is contrary to law, but very common, is a negative element of the Slovak parliamentarism. We believe that this violates the principles of democracy and the rule of law. The question rising from the experiences

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[14] *Skrátené legislatívne konanie využije vláda len v mimoriadnych prípadoch, tvrdí vicepremiér Holý*. available at: https://www.webnoviny.sk/skratene-legislativne-konanie-vyuzije-vlada-len-v-mimoriadnych-pripadoch-tvrdi-vicepremier-holy/ [last accessed 15.4.2022].

[15] *Expresné schvaľovanie zákonov sa stalo štandardom. Odborníci varujú pred zneužívaním,* available at: https://spravy.rtvs.sk/2022/01/skratene-legislativne-konania-sa-zneuzivaju-upozornuju-odbornici/ [last accessed 15.4.2022].

of the last months and years is how to fight the misuse of FTP and therefore how to protect the legality of the legislative process. We see four possible ways – self-protection of Parliament, disapproval of the President of the Slovak Republic expressed by vetoing the bill, protection by the Constitutional Court of the Slovak republic by declaring a law unconstitutional, or just a simple improvement in political culture.

1. Self-Protection of the National Council of the Slovak Republic

This option is based on a very simple thought construct – if the Government submits a proposal to the National Council for a law to be adopted in a fast-track legislative procedure, and such a proposal is not sufficiently justified on its part, and there are even minimal doubts in Parliament about the legality of the use of the accelerated procedure, i.e. whether there is an extraordinary circumstance and whether fundamental human rights or state security are actually threatened, or whether there is a threat of significant economic damage to the state, Parliament rejects the Government's proposal for an FTP and discusses the law in the ordinary legislative process. Parliament should not be satisfied with a simple statement by the Government that it is proposing an FTP for the reasons given, but the reasons given must be developed. What extraordinary circumstance has arisen, which fundamental human rights and freedoms are at risk and in what way, or how, the security of the state is threatened, or what significant material damage to the state is threatened.

Such a move by Parliament would solve only the part of the problem that arises after the bill reaches the floor of the legislature. The summary approval of the bill at the drafting stage before it is passed in Government can only be prevented by the not acceptance by the Government itself of the process by which the bill was drafted or how the process is justified, and the bill will not be approved by the Government. The drafting of the bill as well as the entire process that takes place before the bill reaches the Government (i.e., the drafting of the preliminary information, its publication on the official Slovlex portal with the possibility of making comments, the publication of the bill itself in the in-

ter-ministerial comment procedure) is at the full disposal of its sponsor, i.e. the relevant minister. It is at his discretion whether to make use of the relevant provisions of the Act No 400/2015 Coll. on the Creation of Legal Acts and on the Collection of Laws of the Slovak Republic and the Government's Legislative Rules, which allow for such a procedure. Since the conditions for shortening the process are identical in the documents in question to those set out in the Rules of Procedure of the National Council of the Slovak Republic for the approval of a bill in the FTP, such a procedure should, however, be duly justified by the relevant Minister at the Government meeting. By approving the draft bill, the Government agrees to its substantive provisions, but also to the process of its drafting, i.e. its procedural aspect. Even collegiality and good relations between the members of the Government should not be sufficient for the submission of a very flagrant statement in the draft bill's presentation report that

> in accordance with Article 27(1) of Act No 400/2015 Coll. on the Creation of Legal Acts and on the Collection of Laws of the Slovak Republic and on the amendment and supplementation of certain Acts and Article 15 of the Legislative Rules of government of the Slovak Republic, the draft bill is submitted to the meeting of the Government of the Slovak Republic without the draft bill having been discussed with the relevant bodies and institutions in the comment procedure.[16]

The possibility that Parliament will reject the Government's proposal for an FTP is more theoretical than realistically possible. This is due to the new geometry of power that we are experiencing in parliamentary democracies. The classical doctrine of the separation of powers in the state is based on the traditional division according to Ch. L. Montesquieu into legislative power, executive power, and judicial power. The threefold division of state power in the Slovak Republic is well established and has been confirmed by numerous decisions of the Constitutional Court of the Slovak Republic. In the parliamentary form of government, however, a binary/intersectional division of state power

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[16] *Predkladacia správa k návrhu zákona ktorým sa menia a dopĺňajú niektoré zákony v súvislosti s druhou vlnou pandémie ochorenia COVID–19*, p. 2, available at: https://rokovania.gov.sk/RVL/Material/25643/1 [last accessed 15.4.2022].

is rather applied, since the legislative and executive powers in a certain sense merge into the public policy power, opposite to which stands the power of protection of law – the judicial power. Classical parliamentarism is also characterized by a rather binary division of power (Parliament and its committee "the Cabinet" on the one hand, the judiciary on the other hand) in the conditions of the Slovak Republic, however, this relationship is rather reversed. There is a Government and its approving body, Parliament. As long as the Government relies on a more or less stable majority in parliament, it rarely happens that its proposals do not pass in parliament. Coalition MPs are like voting machines that approve everything that the leaders of the political parties sitting in government put forward. The de facto control of the Government is exercised only by the opposition, whose voice is drowned out by the votes of the coalition MPs in the case of the FTP.[17]

2. Suspensive Veto of the President of the Slovak Republic

Another way how to protect the purity of the legislative process is through the active involvement of the President of the Slovak Republic by vetoing bills sent to her for signature by the President of the National Council. According to Article 102(1)(h) of the Constitution of the Slovak Republic, the President may return a law to the National Council of the Slovak Republic with comments within 15 days of the receipt of the approved law. However, the President's veto is only of a suspensive nature. The returned law shall be debated by Parliament (the debate concerns only the President's comments) and subsequently must be approved by a qualified majority – an absolute majority of all deputies, regardless of whether or not they accept the President's comments.

Although a presidential veto is only of suspensive nature, it cannot be said to be useless. President Z. Čaputová aims to protect the purity of the legislative process after the experience of the end of the 7th parliamentary term. It is precisely this reason that led her to return to the National Council the aforementioned amendment to the Vignette Act of

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[17] M. Čellár, *Aplikácia zásad teórie deľby štátnej moci v politickom systéme Slovenskej republiky*. Univerzita Mateja Bela, 2020, p. 69.

February 2021. In her justification, she states that the fast-track legislative procedure significantly interferes with the constitutional principle of a democratic state and rule of law and the democratic requirements arising therefrom in the process of adopting laws and should therefore only be applied exceptionally and only if the conditions laid down by the relevant law are met. She says

> (...) in order for the fast-track legislative procedure to take place, a basic condition must be met, namely the existence of an extraordinary circumstance (…). An extraordinary circumstance is a circumstance which is not the result of the normal course of events, and which has therefore arisen suddenly, unexpectedly, and could not have been prepared for in advance.

We share the President's view that this condition must be duly substantiated by the draftsman of the law, since it is only in this way that the decision is subsequently reviewable in terms of its lawfulness. It must also confirm that the threat to fundamental human rights and freedoms, the security of the state, or the occurrence of significant material damage is imminent (causal nexus) and, lastly, that the bill can effectively prevent this threat or at least reduce its negative effect. The reasons for the accelerated legislative procedure cited by the Government in its proposal were not considered by the President to be extraordinary circumstances, since the negative effects of the previous amendment to the Act in question had been known since August 2020 and were not resolved by amending the Act in the ordinary legislative process until February 2021.

The fact that the President's veto was not just a formal option to protect the legislative process by the President of the Slovak Republic is evidenced by the fact that the members of the National Council of the Slovak Republic accepted the President's comments, and the law was finally discussed and approved in the ordinary legislative procedure.

3. Ruling of the Constitutional Court on the Incompatibility of a Law with the Constitution on Procedural Grounds

Pursuant to Article 125 of the Constitution of the Slovak Republic the Constitutional Court decides on the compatibility of laws with the Con-

stitution, constitutional laws, and international treaties to which consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law. If the Constitutional Court states by its decision that there is inconsistency between the law and the legal regulations referred to above, the effect of the law, its parts, or its provisions shall terminate. The Members of Parliament are obliged to harmonize the law with the Constitution within six months from promulgation of the decision of the Constitutional Court. If they fail to do so, the validity of such regulation shall terminate.

As has been already mentioned, neither the legislative procedure nor its specific mode of fast-track procedure are regulated by the Constitution of the Slovak republic, but only in general law – Act No 400/2015 Coll. on the Creation of Legal Acts and on the Collection of Laws of the Slovak Republic as amended and Act No. 350/1996 on Rules of Procedure of the National Council of the Slovak Republic as amended. As a rule, the Constitutional court decides on the conformity of the law with the Constitution in regard to its content, not the process of its adoption – that is the legislative procedure. But if there is a breach of legislative process caused by the fact that the fast-track procedure has been proposed and adopted as an arbitrary decision, it might violate the constitutional principles of a democratic state, which is governed by the rule of law, where state bodies may act solely on the basis of the Constitution, within its scope, and their actions must be governed by procedures laid down by a law.

The judges of the Constitutional Court of the Slovak republic have already had several opportunities to express their opinions and decide if the law may be unconstitutional owing to its lack of legislative process. However, the Constitutional Court has not yet made such a decision. Initially, its decisions were guided by the doctrine of self-limitation of the Constitutional Court and minimisation of interference in the legislative process. In the opinion of the Constitutional Court, the last resort to remedy procedural errors committed by the National Council and its organs during the discussion of the draft law was for the deputies to vote on the draft law as a whole. If, during that vote, the bill was approved despite the persistence of procedural irregularities in the earlier stages of the legislative process, it had to be assumed that the bill

had been duly passed. In the Constitutional Court's view, the final vote of the deputies was a validation of all procedural errors.[18]

In 2016, the Constitutional Court again asked itself the question of whether, if a law is promulgated without observing the rules of legitimate law-making process, it can be said to comply with the requirements of a democratic state governed by the rule of law. At the same time, the Court found it remarkable that it had not yet been able to fully answer this question. In the dichotomous battle between the constitutional court's self-restraint doctrine and judicial activism, in 2016 the Constitutional Court again leaned towards restraint in reviewing the compliance of legislation, especially in the context of reviewing the constitutionality of the legislative process when the National Council adopts a law.[19]

From our point of view, the most flagrant abuse of the FTP occurred in the National Council of the Slovak Republic in February 2020, when just four days before the parliamentary elections, MPs approved the Government's proposal for a shortened legislative procedure as well as the bill itself, which introduced the 13th old-age pension, within one day. The only extraordinary circumstance that threatened at that time was precisely the parliamentary elections, the outcome of which the parliamentary majority tried to influence at the last minute in this way. No human rights were threatened, no serious economic damage to the state was threatened, nor was there any threat to security. The President of the Republic decided not to use her veto in this case, as this would have been an absolute veto and not a relative veto, which the Constitution and the separation of powers in the Slovak Republic provide for. There would no longer be any possibility for Parliament to override the President's veto in this case and the President would made a final decision that pensioners would not receive the 13th pension. Moreover, the President was not bothered by the content of the law itself, although she pointed out that the ruling coalition had had four years to pass the law, but by the legislative procedure. She therefore asked the Constitutional Court to rule that in this case there had been such a clear and serious

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[18] Nález Ústavného súdu Slovenskej republiky z 11. decembra 2003, spisová značka PL. ÚS 08/2003.

[19] Nález Ústavného súdu Slovenskej republiky z 22. júna 2016, spisová značka PL. ÚS 17/2014.

violation of the legality of the legislative process and such an abuse of the fast-track legislative procedure that several principles of democracy and the rule of law had been violated, and to declare the law unconstitutional. The Constitutional Court accepted the application for further proceedings but did not rule on the matter. Before the Constitutional Court had expressed its opinion, the new Government majority in Parliament abolished the 13th pension and the Constitutional Court therefore stopped the proceedings on the President's petition.

The common historical experience between the Slovak Republic and the Czech Republic is also reflected in the similarity of our constitutions and the decision-making activity of the constitutional courts. In the case law of the Constitutional Court of the Slovak Republic, decisions of Czech colleagues are often quoted. However, the Constitutional Court of the Czech Republic reached its decision finding the law unconstitutional as a result of arbitrary abuse of the state of legislative emergency in its adoption as early as 2011.[20] The Constitutional Court of the Slovak Republic has not done so to date. This is not because the legislative process is better in Slovakia. The Constitutional Court stays on the position that for a declaration that a law is incompatible with the Constitution owing to a violation of the rules of the legislative process, there must be a situation that the violation of the legislative procedure itself has a direct impact on the constitutionality of the adopted law, especially as a consequence of the gross and arbitrary disregard of the rules of the legislative process by the National Council of the Slovak Republic.

4. Changes in Political Culture

The third possibility we might subsume under the term of political culture. The relationship between law and politics, especially constitutional law, is very close. Law and politics are closely linked. Even constitutional lawyers are often concerned with what we might call political culture, or culture in politics.

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[20] Nález Ústavního soudu České republiky ze dne 1.3.2011, spisová značka PL. ÚS 55/10.

It is very tempting to make decisions in the state without them being checked. It is quick and convenient, but often at the expense of quality. The different steps of the legislative process have their own significance. The fundamental aim of a good legislative process is to pass laws with public participation and thus to reaffirm the principle of legal certainty and predictability in the law. Adhering to a political culture in politics is like playing fair play in sport. Politicians follow the rules of the game, they do not circumvent the provisions of the law or bend the law as it currently suits them, and they act within the boundaries set by the constitution and laws. Politicians must learn how to live with constitution and within its boundaries, and not change the rules of the game every time they need to. As long as the Government operates for a more or less stable majority in the Parliament, and if there are no grounds for passing a law under the fast-track legislative procedure, it is just an attempt by the parliamentary majority to exclude the opposition and the public from the debate and co-decision making. Although it is a tool in accordance with the legal order, it is intended only for objective emergencies, not as an instrument of abuse of power.

Conclusion

The fast-track legislative procedure is a quite often discussed topic of Slovak parliamentarism. It means that a law, which is otherwise adopted with public participation and allows for extensive discussion in committees or in a plenary of Parliament, is adopted in an accelerated procedure, usually within a few hours. The condition of the existence of an emergency situation is a prerequisite for its application. The way it is applied in practice shows that the Government uses it even in cases where the statutory conditions are not met. This was also the case during the Covid–19 coronavirus pandemic, when the Government tabled nearly 100 bills in Parliament under the fast-track legislative procedure. However, it did not resist the temptation to adopt, in this extraordinary procedure, norms that were in no way related to the coronavirus. The decision-making bodies in this process are not apolitical – the Government proposes the FTP, the parliamentary majority approves it.

There are instruments to defend against such action by the Government and the parliamentary majority, and we see them in particular in the work of the Constitutional Court. The Constitutional Court is very right to respect the system of the tripartite separation of powers and is therefore rationally restrained in its interference in the work of the National Council of the Slovak republic. The latter has a privileged position vis-à-vis the other supreme organs owing, above all, to its derivation from the act of creation of the people it represents, which makes it the organ with the strongest democratic legitimacy. However, the National Council and the deputies are also obliged to comply with the Constitution and the law in their work. And although the legislative process is not regulated by the Constitution, even a breach of the law in the adoption of bills in a shortened legislative procedure can take on constitutional intensity and, consequently, it is the task of the Constitutional Court to protect the character of the Slovak Republic as a democratic and legal state.