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The Supreme Administrative Court of the Slovak Republic – the First Step Towards a Modern Justice System¹

L I L L A G A R A Y O V Á *

Abstract: The article provides an overview of the ongoing comprehensive judicial reform in the Slovak Republic, focusing mostly on the creation of the Supreme Administrative Court, which will become the highest judicial authority in the field of administrative justice. It will also act as a disciplinary court for general court judges, prosecutors and other statutory professions. This is one of the first steps in what will be a huge undertaking – the complete reform of the Slovak justice system.

Keywords: judicial reform, administrative justice, supreme administrative court, administrative acts, administrative courts

1. INTRODUCTION

The Supreme Administrative Court of the Slovak Republic was formally established on 1 January 2021 as part of the Judicial Map reform. The primary aim of this ongoing reform is to improve the efficiency and quality of Slovak courts by optimising the judicial map and the specialisation of judges, simplifying judicial proceedings, introducing the Supreme Administrative Court, changing the composition of the Judicial Council of the Slovak Republic and the Constitutional Court of the Slovak Republic, improving techno-

logical advancements in the judiciary, data analytics and agile project management, introducing electronic payment orders, changing the selection process of judges, verifying judicial competence, and much more. It is a huge undertaking, and a comprehensive reform of the judiciary that is crucial to improve the efficiency of the courts and the quality of their services. This should, eventually, lead to the restoring and maintenance of public confidence in the judiciary. In a democracy, the judiciary should be viewed as the upholder of legality and justice. However, in recent years, many surveys have shown that the citizens of the Slovak Republic do not have any trust in the quality of the judicial system. This set of reforms seeks to remedy this fundamental deficit with systemic changes. There has been a tremendous societal demand for this reform, which is still in its initial stages and will undoubtedly undergo some tweaks until its final form. The preparation of the reform was extensive, and it follows the recommendations of the experts of the Council of Europe. This study provides an overview of one of the first steps of this winding road towards a modern, transparent and efficient judiciary – the creation of the Supreme Administrative Court of the Slovak Republic.

* Lilla Garayová, JUDr. PhD., PhD., assistant professor, vice dean for bachelor and master studies and international relations, Pan-European University in Bratislava, Faculty of Law, Institute of International and European Law. Contact: garay.lilla@gmail.com, ORCID: <https://orcid.org/0000-0002-7999-4823>

2. THE LEGISLATIVE PROPOSALS

On 9 December 2020, the National Council of the Slovak Republic approved the government's bill amending the Constitution of the Slovak Republic,² as well as the government bill on judicial reform.³ These bills proposed including the Supreme Administrative Court in the system of courts, which would share equal status with the Supreme Court in the hierarchy of general courts. For this reason, it was therefore proposed to amend all the provisions of the Constitution concerning the Supreme Court.

In the Slovak Republic, there will be two highest courts, with the Supreme Administrative Court being the highest court in the area of administrative justice, and the Supreme Court being the highest court in the area of civil, commercial and criminal matters. In addition to the general jurisdiction of the Supreme Administrative Court in the field of administrative justice, it was proposed that the constitutional jurisdiction of this court should include disciplinary jurisdiction over judges of general courts and, to the extent prescribed by law, other legal professions. Following the establishment of the Supreme Administrative Court and its position as a disciplinary court for judges of general courts, it is proposed to eliminate the constitutional competence of the Judicial Council to create disciplinary chambers, as this regulation will become obsolete.

In terms of the procedure for establishing the Supreme Administrative Court, it was proposed that the Supreme Administrative Court be established on the effective date of the Act (1 January 2021), but would not actually start operating until 1 August 2021. This preparatory period should ensure that all the acts necessary to ensure the proper functioning of this court are carried out, in particular, supplying the Supreme Administrative Court with judges and appointing its management. Simply put, the legislation expected that the staffing of the Supreme Administrative Court should take place first, and only after this process would the Supreme Administrative Court start

operating. Based on this, the positions at the Supreme Administrative Court will be filled through a public external selection process, instead of the automatic transition of the Administrative College of the Supreme Court, as many had expected. Until the Supreme Administrative Court begins to carry out its activities, its powers will be exercised by the bodies established based on existing regulations, i.e. the Supreme Court, the Constitutional Court and the Disciplinary Chambers.

The proposed constitutional change responded to the establishment of the Supreme Administrative Court aiming to introduce a mechanism for resolving possible conflicts of jurisdiction between the Supreme Court and the Supreme Administrative Court. Given the existence of the two highest judicial bodies within the administrative judiciary, it seems desirable that the power to settle conflicts of jurisdiction between them be vested in the body which is above those institutions. Therefore, it was proposed that jurisdictional disputes between the Supreme Court and the Supreme Administrative Court be resolved by the Constitutional Court. In this context, it should be pointed out that in the case of a jurisdictional dispute between the Supreme Court and the Supreme Administrative Court, this will in fact be a dispute as to whether or not the case belongs to the administrative judiciary.

Based on the aforementioned bill, the establishment of the Supreme Administrative Court would take place in two steps. The first step is to adopt legislation establishing this court, the second step is to start its activities. This is why the date when the Supreme Administrative Court will start operating is not the same as the date of establishment of the Supreme Administrative Court. The start of the activities of the Supreme Administrative Court shall be established by law. Given that the Supreme Administrative Court would not have judges on the date of its establishment, as the vacancies of this court would only be filled gradually thereafter, it was proposed that the first President of the Supreme Administrative Court be nominated not by the judges of this court, but from all judges of the general courts. This is therefore

a different one-off rule, which would not apply to the next President of the Supreme Administrative Court, who will be chosen from among the judges of the Supreme Administrative Court.

3. THE CREATION OF THE COURT

The proposed changes outlined above were accepted, and as a result, the system of general courts will cease to be a single-top pyramid – the Supreme Administrative Court will join the Supreme Court as the two supreme authorities in the hierarchy of the judiciary. In the event of a dispute between them regarding competence, the Constitutional Court of the Slovak Republic will decide on which court has jurisdiction. Within the hierarchy of courts, the Supreme Administrative Court will share equal status as the Supreme Court of the Slovak Republic, with the Supreme Administrative Court being the highest judicial instance in the field of administrative justice and it will also be a disciplinary court for judges of general courts, prosecutors and other legal professions.

According to the aforementioned amendment of the Constitution of the Slovak Republic, as per Art. 143 (1) of the Constitution of the Slovak Republic,⁴ the system of courts will consist of the Supreme Court of the Slovak Republic, the Supreme Administrative Court of the Slovak Republic and other courts. The effective date of this amendment to the Constitution of the Slovak Republic, as well as the Judicial Reform Act, is 1 January 2021, this being the date the Supreme Administrative Court is established. The Court will officially begin its activities on 1 August 2021, and at the time this article is submitted, the selection process of the judges is ongoing. The creation of the Slovak administrative judiciary is greatly inspired by the Czech model that has been in place since 2003, whereas in most cases, in the first instance the administrative judiciary will be performed by specialised administrative chambers of regional courts, making it a partially separate model.

The Supreme Administrative Court will be managed by the President of the Court and the Vice-President of the Court. The President and Vice-Presi-

dent of the Supreme Administrative Court will be appointed by the President of the Slovak Republic from among the judges of the Supreme Administrative Court for five years, based on the proposal of the Judicial Council of the Slovak Republic. The proposal for the appointment of the President of the Supreme Administrative Court and the Vice-President of the Supreme Administrative Court shall be submitted to the President by the Judicial Council based on the results of the elections held at a public meeting of the Judicial Council.

The election of the President of the Supreme Administrative Court was announced by the President of the Judicial Council in January, with a deadline for submitting proposals for candidates by 1 February 2021 – the only candidate was the President of the District Court in Žilina, Jaroslav Macek, who resigned. Subsequently, on 1 March 2021, the President of the Judicial Council announced the re-election of the candidate for the post of President of the Supreme Administrative Court, to be held on 20 April 2021, with a deadline for submitting proposals by 19 March 2021. Persons eligible to nominate applicants were members of the Judicial Council, the professional organisation of judges, and the Minister of Justice.

The President of the Supreme Administrative Court can only be a judge who has practised law for at least 15 years, or a person who is not a judge but meets the following conditions:

- is a citizen of the Slovak Republic and has reached the age of 40,
- is eligible for election to the National Council of the Slovak Republic,
- has no criminal record,
- holds a university degree in law,
- has practised law for at least 15 years,
- is of full legal capacity,
- is medically fit to perform the function of the chairman of the Supreme Administrative Court.

In the second round of applications, the only candidate running for the position of President of the Supreme Administrative Court was Pavol Nad', former judge of the Košice regional court and later a judge of the Supreme Court. He has since been elected by

the Judicial Council to serve as the first president of the newly established Supreme Administrative Court. All of the 17 council members present voted for Pavol Naď, who has since been appointed by the President of the Slovak Republic, Zuzana Čaputová.⁵

The legislator understood that in order to ensure the efficient functioning of the Supreme Administrative Court it was necessary to make sure a sufficient number of judges would work there.

The original notion was that the judges of the Administrative College of the Supreme Court of the Slovak Republic would automatically transfer to the Supreme Administrative Court. This was not accepted, so the decision that the judges would be selected during a public selection process was announced by the President of the Judicial Council on 9 March 2021. This decision led to a boycott of the selection procedure by most judges, with debates following whether the Supreme Administrative Court should be open to judges only 29 positions were announced, candidates could apply until 6 April 2021. The applicants had to meet the following conditions:

- be a citizen of the Slovak Republic and have reached the age of 40,
- hold a university degree in law,
- have practised law for at least 10 years,
- are of full legal capacity,
- are medically fit to perform the function of a judge,
- have moral integrity,
- hold permanent residence in the Slovak Republic,
- meet the prerequisites for judicial competence.

34 judges applied in the first round of applications, and 31 of them met the prerequisites based on the Judicial Council's assessment. The selection procedure verified the expertise, general overview, ability to think creatively, speed of thinking, verbal expression and decision-making ability of the candidates. The selection procedure was carried out in a public hearing, at which each of the candidates had the opportunity to speak for no more than 20 minutes without the participation of the other candidates. During this time, the candidates

introduced themselves and stated the reasons for applying for the position of judge, their previous work experience, the scope of their publishing activities and the most significant professional results achieved. The members of the Judicial Council then asked the candidates various questions. The total hearing time could not exceed one hour. After the public hearing of all the candidates, the Judicial Council voted on each candidate individually. Eight candidates were successful.

The Judicial Council announced a second and third round of applications to try and fill the 29 spots, at the time of writing this article we only have the results of the first round. It is already clear, however, that while most judges decided to boycott the first round of application, their initial hesitation disappeared, and many of them decided to apply in the subsequent rounds of the selection process.

Public debate surrounded many aspects of the selection, mostly whether any supreme court should be open to candidates with previous experience in judiciary, or holding a law degree and having experience in practising law as an attorney, prosecutor or even as an academic should be sufficient to apply for such a position. When the intent to introduce a selection process was announced, the judges of the Supreme Court addressed the members of the National Council of the Slovak Republic in an open letter, in which they welcomed the establishment of the Supreme Administrative Court, but at the same time they expressed their concerns about the disruption of decision-making in the agenda of the administrative judiciary, which so far falls within the competence of the administrative college of the Supreme Court. They considered it highly desirable to transfer the current staffing of the administrative college of the Supreme Court to the Supreme Administrative Court, which would have ensured the continuity of decision-making in this important area. They requested that these be amended directly by law, while the status of the chairman of the senate would also be moved and retained – for comparison, they presented a model from the Czech Republic, where they chose this procedure when forming the Supreme Administrative Court of the Czech Republic. They also proposed the re-

tention and transfer of assistant judges and the administrative apparatus, preserving the current salary assessments. Their suggestion was that the staffing of the Supreme Administrative Court should be ensured via the automatic transition of the entire administrative college of the Supreme Court and their agenda, any remaining spots could subsequently have been supplemented by other applicants subject to a selection process. This recommendation, however, was not followed, and all the positions were subject to a public selection process, with no possibility of automatic transfer.

4. COMPETENCES OF THE NEWLY ESTABLISHED COURT

Besides the staffing, eligibility and other organisational matters, another area that had to be resolved was the competences of the newly established court. The competence, hearings and decisions of the Plenum of the Supreme Administrative Court is regulated by the new §24d of Act no. 757/2004 Coll. on Courts and on Amendments to Certain Acts.⁶ The Supreme Administrative Court will become the highest judicial authority in the field of administrative justice in the Slovak Republic. It will also act as a disciplinary court for general court judges, prosecutors and other statutory professions. An understandable consequence of establishing the Supreme Administrative Court will also be a change in the internal organisation of the Supreme Court, which will no longer have an administrative college. With the establishment of the Supreme Administrative Court and the dissolution of the Administrative College at the Supreme Court, in addition to deciding on the disciplinary liability of judges and prosecutors the Supreme Administrative Court will gain competence in the area of deciding on the constitutionality and legality of elections of local authorities, and the dissolution and suspension of political parties.

The Supreme Administrative Court will be the highest instance for administrative justice matters in the Slovak Republic. The establishment of the Supreme Administrative Court is also associated with an extension of the jurisdiction of courts

within the general judiciary, since in accordance with the new provision of Art. 142 (2) of the Constitution of the Slovak Republic, the Supreme Administrative Court will also decide on:

- a) the constitutionality and legality of elections to local self-government bodies,
- b) the dissolution or suspension of the activities of a political party or political movement,
- c) the disciplinary liability of judges, prosecutors and, if the law so provides, other legal professionals.

It is this last competence that, from a functional point of view, represents the greatest novelty in relation to the agenda ensured today by the Supreme Court through its administrative college. At the same time, it is an agenda that is probably associated with the highest expectations, but also concerns in some sense.

The President of the Supreme Administrative Court will be able to establish colleges with the prior consent of the Plenum of the Supreme Administrative Court. Their competence and decision-making will be regulated by §24e of Act no. 757/2004 Coll. on Courts and on Amendments to Certain Acts.⁷

The Senate of the Supreme Administrative Court will consist of three judges, one of whom will be the President of the Senate. When deciding on ordinary or extraordinary appeals against decisions of the chambers of the Supreme Administrative Court, the senate will consist of a president and four judges. The Rules of Procedure before the courts may stipulate that the Chamber of the Supreme Administrative Court should also consist of a larger number of judges. The Senate must always be composed of an odd number of judges; this does not apply to disciplinary proceedings. The President of the Senate manages and organises the activities of the Senate.

5. CONCLUSION

The current justice system is not merely the product of the reforms of 2020/2021. It was built on the foundations unique to this region due to its

history, and thus stands on the historic tradition of Hungarian and later Czechoslovak administrative justice.

The first steps towards building an administrative justice system in this territory were taken in 1861 through the adoption of the Provisional Judicial Rules by the *Judex Curial Conference*.⁸ Act XLIII of 1883 on the Financial Administrative Court established an independent financial court based in Budapest, which essentially started the preparatory work for realising general administrative jurisdiction, leading to Act XXVI of 1896 establishing the Hungarian Royal Administrative Court. The Hungarian Royal Administrative Court was a supreme court with two departments: the general administrative department and the financial department. This court, based on the French model, existed till 1949, but for Slovakia its relevance was significant only until 1918. With the establishment of the Czechoslovak Republic, the Supreme Administrative Court was created, which served as the final instance in administrative matters. The Supreme Administrative Court ceased to exist in 1952, with most of its agenda passed to the prosecutor's discretion. After this, we cannot really speak about an independent system of administrative justice up until the Velvet Revolution in 1989. The year of the revolution, however, brought about a revival of administrative justice in Czechoslovakia through a number of legislative changes. General courts had jurisdiction in administrative matters and the

Administrative College of the Supreme Court was created with no specialised administrative courts. Deliberations on the creation of a specialised administrative court emerged from time to time, but the real change came decades later: we are witnessing it now with the creation of the Supreme Administrative Court of the Slovak Republic. While in many ways the current reforms are inspired by the Czech model, in some respects the legislator chose a different path, following the recommendations of the Council of Europe and many renowned experts, creating a unique system that has all the potential to fulfil the need for an efficient administrative judiciary. While it is obvious that the current reform is based on historical traditions and implements solutions from other countries as well, it is still a unique reform tailored to fit the needs of Slovakia. While many countries have vast experience with a Supreme Administrative Court, one-size-fits-all solutions do not exist in the sphere of justice. Therefore, it is a positive development that the proposed judicial reform and specifically the introduction of the Supreme Administrative Court considers the specifics of the country: size, political framework, institutional governance, procedural laws, legal and cultural context within which every policy has to be designed and implemented. Therefore, the proposed changes to the judicial system are likely to fulfil the strategic goal – creating a transparent, efficient and modern judicial system that warrants the trust of the citizens it serves.

Notes

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- 2 Government bill amending the Constitution of the Slovak Republic. Available online: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7962> [cit. 12.05.2021]
- 3 Government bill on the judicial reform. Available online: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=7971> [cit. 12.05.2021]
- 4 Constitution of the Slovak Republic. Available online: <https://www.zakonypreludi.sk/zz/1992-460> [cit. 12.5.2021]
- 5 Prezidentka Zuzana Čaputová vymenovala predsedu novovzniknutého Najvyššieho správneho súdu Pavla Naďa. Available online: <https://www.nsud.sk/prezidentka-zuzana-caputova-vymenovala-predsedu-novovzniknuteho-najvyssieho-spravneho-sudu-pavla-nada/> [cit. 12.05.2021]
- 6 Act no. 757/2004 Coll. on Courts and on Amendments to Certain Acts. Available online: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/757/> [cit. 12.05.2021]
- 7 Ibid.
- 8 Szladits, C. (1937). A Comparison of Hungarian Customary Law with English Case Law. *Journal of Comparative Legislation and International Law*, 19(4), 165-178