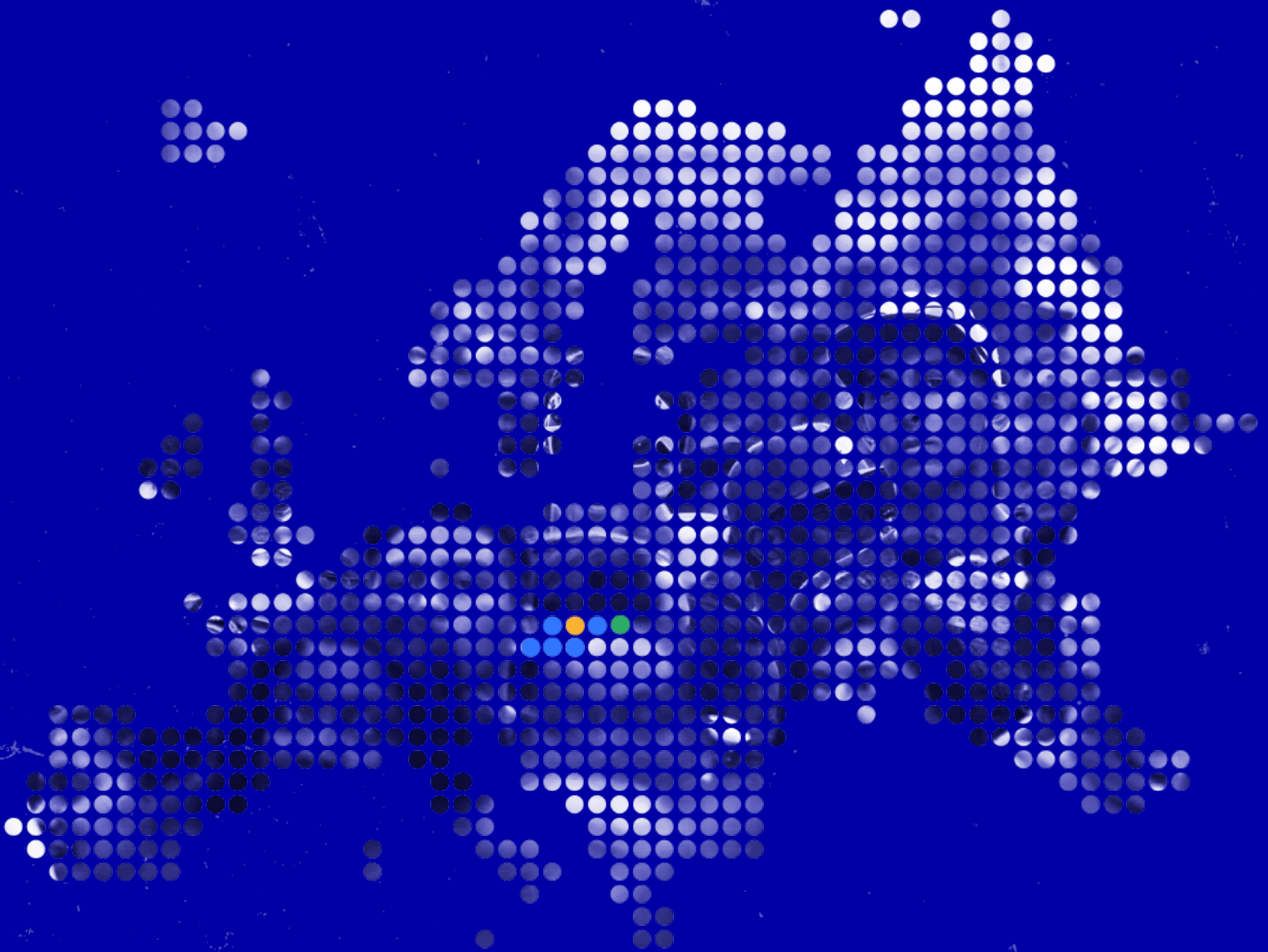


# **LIBERTIES RULE OF LAW REPORT 2022**

**SLOVAKIA**



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## **Foreword**

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

**[Download the full Liberties Rule of Law Report 2022 here](#)**

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# Slovakia

## About the authors



**VIA IURIS** is a non-partisan, not-for-profit organisation, which has been an officially registered in Slovakia as a civic association since 1993. Its main office is in Banská Bystrica (Central Slovakia), and it has a regional office in the capital city Bratislava (Western Slovakia). We operate at national level. Our mission is to use the law as an instrument of justice, bringing systematic solutions and promoting the equal application of the law for all. Our activities fall under three pillars:

- **Citizens:** Our aim is to promote effective public participation in decision and policy making. Citizens should be able to participate effectively in various impact assessments and permission procedures on decisions and policies that affect their lives, such as the building of public and private infrastructure. They should have access to information and access to justice in matters of public interest, such as environmental protection and accountability of state institutions and municipalities. We support and provide assistance to people who are threatened while advocating in the public interest.

- **Civil society:** Authentic civil society – one of the cornerstones of freedom and democracy – is being jeopardised by non-systemic legislative proposals, populist statements by politicians and disinformation campaigns spearheaded by conspiracy-minded media. Our role is to unravel myths about NGOs, critically analyse civil society and protect the legislative environment so that, in the future, Slovak citizens have the right to freely express, associate, and actively participate in and control the administration of public affairs.

- **Rule of law:** VIA IURIS aims to promote systematic measures to strengthen the political independence of courts, public prosecutors and the police. These institutions are fundamental elements of the rule of law and are crucial for securing equality before the law and enforcing justice. They should guarantee the exercise of public power via elected officials in compliance with the public interest rather than the private interests of oligarchs. They have to guarantee that everyone is held accountable for overstepping the law, even politicians.

## Key concerns

In 2021, Slovakia's justice system underwent some significant reforms, although no concrete progress has been reported yet. Even though the Supreme Administrative Court, a supreme judiciary body tasked also with disciplining judges and prosecutors for misconduct,

formally started its operation in August 2021, it is still too early to see any significant changes. Criminal proceedings against several judges that were initiated in 2020 are ongoing, but no judgments have been issued yet.

In its attempts to secure a framework for anti-corruption efforts, Slovakia created the Whistleblower Protection Office. Its mission is to help people who report on unlawful activities both of civilians and politicians. The Office began operating in September 2021.

There has also been little progress in the area of media freedom and freedom of expression. There have been some legislative proposals to introduce criminal liability in some areas of freedom of expression, such as spreading disinformation, but none of these proposals have been voted on yet.







The Constitutional Court of the Slovak Republic has issued several ground-breaking decisions that further specified the powers and competencies of several branches of public authority. Significant interpretations of the constitution have been issued, which have had a positive effect on Slovakia's system of checks and balances.

By contrast, civil society was excluded from several significant political decisions in 2021, in particular decisions pertaining to reforming Slovakia's recovery and resilience plan.

The current Slovak human rights legislation is chaotic and fragmented due to repeated attempts to amend different parts of it. As a result, people are often unsure of where the

limits of their fundamental rights and freedoms are, especially with COVID-19 health and safety measures. This has led to public resistance to the current regulations.

### **State of play**

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

#### **Legend (versus 2020)**

Regression: 

No progress: 

Progress: 

## **Justice system**

### **Key recommendations**

- Reassessing the scope of power granted to the General Prosecutor of the Slovak Republic and reconsidering the model of the Slovak prosecution in its current state.
- Finalising the court map based on the current requirements of the judiciary.
- More consistent training for judicial appointees and an emphasis

on the ethical standard of the judiciary must be enforced.

## ***Judicial independence***

### ***Appointment and selection of judges, prosecutors and court presidents***

In September 2021, the president of the Judicial Council of the Slovak Republic announced the elections for the judge and additional judge of the General Court of the European Union. Eligible applicants were able to submit proposals for candidates until November 5. However, not a single proposal was received by this deadline. For this reason, the elections, which were originally scheduled for 2 December 2021, did not take place. This was the fourth election that had to be cancelled due to a lack of registration for either position.

### ***Independence and powers of the body tasked with safeguarding the independence of the judiciary***

Two new members of the Judicial Council of the Slovak Republic were appointed in 2021, one by the president and the other by the Judicial Council at the Regional Court in Banská Bystrica, both for five-year terms. The ratio for appointing members remains the same – nine members are appointed by the judges, three members are appointed by the government, three members are appointed by the National Council and three members are appointed by the president.

Last year, the meetings of the Judicial Council were also broadcast to the general public and the audio recordings were accessible to everyone, making the Judicial Council meetings more transparent.

### ***Accountability of judges and prosecutors, including the disciplinary regime, bodies and ethical rules, judicial immunity, and criminal liability of judges***

Act No. 432/2021 Coll. On the disciplinary rules of the Supreme Administrative Court of the Slovak Republic was approved in November 2021 (and came into effect on 1 December 2021). It entitles the newly created Supreme Administrative Court (operative since 1 August 2021) to take on disciplinary proceedings in cases of judges, prosecutors, notaries and bailiffs (until then, these types of disciplinary proceedings were conducted by the Supreme Court of the Slovak Republic and professional chambers). Accountability is enforced through the disciplinary chambers of the Supreme Administrative Court, which are composed of three judges from the court (one of whom is the chairman of the Senate) and two jurors from non-judicial backgrounds; either prosecutors, executors or notaries, or other persons from the legal field, depending on who is being disciplined. The term for issuing a disciplinary decision is usually three months, but can be up to six months, provided that the legal conditions are met.

The aim of the uniform legislation for reforming several legal professions was not only to replace the fragmented former system, but also to enhance capacity and flexibility to create

functioning disciplinary senates and improve the effectiveness of disciplinary proceedings concerning judges.

However, a problem concerning jurisdiction and competence arose when the proposal to initiate disciplinary proceedings against the Special Prosecutor of the Slovak Republic was filed by the General Prosecutor in August 2021. This was because, while the disciplinary proceedings against the Special Prosecutor were triggered when the Supreme administrative court was constitutionally competent for assessing them, it was not clear whether the disciplinary proposal had to be decided on the basis of existing law or postponed until the new disciplinary code for the Supreme administrative court had been approved by parliament.

According to a recent amendment to the constitution, the Supreme Administrative Court of the Slovak Republic became operative from 1 August 2021, and one of its responsibilities is to decide on cases concerning the disciplinary liability of judges and prosecutors. The manner of disciplinary proceedings was to be defined by the disciplinary rules of the Supreme Administrative Court, which were only approved in November 2021. Until then, the disciplinary liability of prosecutors was governed by the Act on Prosecutors, but the mandate of the disciplinary commission should have been passed onto the Supreme Administrative Court in August 2021. However, the disciplinary commission continued its operation into autumn. This situation was formally in conflict with the Constitution, since, at that time, the Supreme Administrative Court had been

granted jurisdiction. Practically speaking, the court could not decide on cases, even though it had the mandate to do so, because it was not able to define the disciplinary senates and rules until November. The disciplinary proceedings against the Special Prosecutor were also tinged with political tensions, since the General Prosecutor and the Special Prosecutor had had several misunderstandings, which limited the smooth operation of both offices during the second half of the 2021.

In a few cases, judges have been temporarily suspended by the Judicial Council for refusing to adhere to anti-epidemic measures against COVID-19 without legitimate reasons. These decisions were preceded by reprehension and the repeated imposition of disciplinary fines. One of the most common offenses was for judges to refuse to wear masks while presiding over hearings.

### *Independence/autonomy of the prosecution service*

The independence of both the General Prosecutor and the Special Prosecutor of the Slovak Republic may be brought to the question. Besides the aforementioned disciplinary case, the General Prosecutor officially visited the Russian General Prosecutor Igor Krasnov for the 300th anniversary of the Russian Prosecutor's Office, even though Krasnov is on the EU sanctions list for violating human rights. There is also a provision in the Slovak legal system that enables a general prosecutor to annul valid decisions made by a prosecutor or police officer, if that decision, or the actions preceding it, violated the law. The current

General Prosecutor applied this mandate in several politically delicate cases, placing the legal provision at the centre of public discussion.

It seems that the Special Prosecutor is still influenced by his history as a politician and an attorney, which becomes evident especially in his media communication.

In any case, when it comes to assessing the independence of the General Prosecutor and the Special Prosecutor, it seems that both would benefit from refraining from making references to each other in the media.

### ***Independence of the Bar and of lawyers***

Act No. 432/2021 Coll. On the disciplinary rules of the Supreme Administrative Court of the Slovak Republic excluded two professional chambers, the Chamber of Notaries and the Chamber of Bailiffs, from the power to decide on disciplinary offenses. Instead, this power was transferred to the Supreme Administrative Court on the grounds that these cases concern public professions (in contrast to attorneys, whose disciplinary offenses will continue to be decided by the Bar). This was not accepted positively by everyone, although it is a step towards greater independence of disciplinary proceedings, as representatives of several legal professions will be present in the disciplinary chambers.

## ***Quality of justice***

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### ***Digitisation***

Preparations for a new business register, which would fully replace the existing one, is underway and expected to enter into force on 1 January 2023. The new interface presupposes electronic access to all public data in the commercial register, including the collection of documents (which is now only accessible on request) and more accessible online establishment of limited liability companies, as well as the possibility of simultaneous registration in the Commercial Register and notification about the commencement of business and translations.

### ***Use of assessment tools and standards***

Significant analytical activities are being carried out by the Analytics Centre of the Ministry of Justice, which is seeking to systematically collect, process, evaluate and supply the reliable data needed to make strategic decisions. Relevant data, collected and provided through functional information systems, are also used for reporting departmental and international statistics. The Centre helps with the evaluation of designated vacancies of judges in the courts, analysis of the length of proceedings and with the examination of external factors impacting the operation of the judiciary.



### ***Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation***

The Supreme Administrative Court of the Slovak Republic, a supreme judicial authority together with the Supreme Court, was formally established on 1 January 2021 and started operating on 1 August 2021. The main function of the court is to decide on cassation complaints against decisions of the regional courts. In some instances, it also acts as a first-instance judicial body and decides on remedies or other issues.

Currently, the court makes its decisions in chambers or in plenary sessions, but the law also presupposes the establishment of colleges.

The establishment of the court through the uniform judicial reform was also accompanied by the plans for a new judicial map. However, the current political establishment has still not agreed on its final form, and opinions on its future composition are divided. It is expected that the final version of the court map will be approved in the first quarter of 2022.

An updated methodology for determining the number of judges’ seats in district and regional courts was signed in March 2021. The methodology itself is based on the average estimated length of proceedings in Slovakia before the COVID-19 pandemic. Judges are assigned twice a year, in March and September. Additional judge vacancies are determined mainly for courts that are not in line with the national average of “disposition time” (an indicator established by CEPEJ which estimates

the timeframe for solving cases in the judicial system) and thus cannot cope with the volume of cases.

### ***Fairness and efficiency of the justice system***

#### ***Respect for fair trial standards including in the context of pre-trial detention***

In 2021, the question of the overuse of collusive detention in criminal proceedings was once again a topic of debate. The prerequisite for collusive detention is a reasonable suspicion that the offence in question was committed by the accused and that, cumulatively, his or her actions or other factors raise reasonable concerns that the accused might try to influence witnesses, experts or co-defendants, or otherwise obfuscate the facts relevant to the criminal prosecution. This becomes problematic when, in the next stages of the preparatory proceedings, the detention of the accused is relatively lengthy (often more than 12-18 months) and when there is no longer a need to hear witnesses who may be susceptible to collusion with the accused (because they have already been heard, for example). This does not apply to cases in which witnesses that have already been heard are also scheduled to testify in court proceedings, meaning that the collusive detention should continue. But again, no political consensus has been reached in this matter.

#### ***Quality and accessibility of court decisions***

There is still no open data source for judicial decisions run by the public authorities. All of

the greater and more complex databases are run by private individuals and are monetised.

## **Anti-corruption framework**

### **Framework to prevent corruption**

#### **Measures in place to ensure whistleblower protection and encourage reporting of corruption**

The Whistleblower Protection Office finally began operating on 1 September 2021 (it was established with the adoption of Act no. 54/2019 Coll.). Its main mission is to provide legal advice and assistance to people who report on unlawful acts that have a negative social impact. Formally, anti-social activities are understood as all crimes, offenses, administrative offenses, and other actions that negatively impact society. Informally, the office primarily supports citizens who expose corrupt practices and promotes the protection of whistleblowers.

## **Media environment and freedom of expression and of information**

### **Public trust in media**

The most comprehensive study on media trust in Slovakia for 2021 was conducted by Reuters Institute for the Study of Journalism.<sup>1</sup> Based on this, only 30% of respondents trust the news overall, 42% trust the news they use, 29% trust the news they search for and only 16% trust news on social media. The highest scoring news outlet in terms of trust was the Slovak private news television broadcaster TA3 (65%), followed closely by the national public broadcaster RTVS (63%). Third place was shared by both the internet news portal Aktuality.sk (55%) and print and virtual economic news publisher Hospodárske noviny (55%).

### **Freedom of expression and of information**

#### **Laws regulating freedom of expression**

In November 2021, an amendment to the Criminal Code was submitted by the Ministry of Justice of the Slovak Republic, which included a new form of offence, the dissemination of false information. The proposal has been widely criticised by the legal community, media and general public as such. It has raised

<sup>1</sup> <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/slovakia>

concerns among many about whether the dissemination of any politically sensitive information could be prosecuted, or even if such information is at risk of censorship.

### **Access to information**

In Slovakia, access to information is regulated by Act no. 211 / 2000 Coll. On Free Access to Information, which largely implements the regulations of the Directive (EU) 2019/1024 on open data and the reuse of public sector information. Shortcomings are mainly the result of the practice of the public authorities. In November 2021, our organisation, together with two other NGOs, proposed improvements during the inter-ministerial comment procedure regarding the latest amendment to the Act. These suggestions directly reflected the practical issues that arose from our activities within the area of free access to information. The evaluation of the comment procedure will take place sometime in February 2022. However, our comments have not yet found political support.

### **Legislation and practices on fighting disinformation**

There have been increased initiatives by the public authorities to combat misinformation, as demonstrated by the activities of the Ministry of Health and the Police of the Slovak Republic. This includes efforts to help in the fight against commonly spread hoaxes on social media by debunking them and communicating fact-checked data and information, as the Ministry of Health does in

relation to disinformation on the COVID-19 pandemic.

## **Checks and balances**

### **Process for preparing and enacting laws**

#### **Regime for constitutional review of laws**

In 2021, the opposition initiated a petition for a referendum to recall the current government and trigger early elections. The petition gathered over 585,000 signatures. In an interesting clash of powers, the President of the Slovak Republic filed a submission to the Constitutional Court concerning the constitutionality of the referendum on early elections.

The case brought before the Constitutional Court was unprecedented in two ways. First, the Constitution does not fully outline the rules on holding referendums, and second, case law on this issue is not consistent.

After the assessment, the Constitutional Court decided in a plenary session that the referendum on early elections was not in accordance with the constitution. It was not possible to appeal against the decision, making it final. This ruling also covers future attempts at holding referendums to shorten parliamentary terms. However, the Constitutional Court also indicated that a referendum on early elections would be possible after a corresponding change to the Constitution.

### *General transparency in decision making*

The selection procedures for all supreme positions in government management needs to be more transparent, and the practice of ministers appointing people to these positions without a transparent selection process must be put to an end.

## **Enabling framework for civil society** ↓

### Key recommendations

- Civil society must be more involved in the decision-making process.
- There must be increased financial support for the non-governmental sector.
- Misinformation about the non-governmental sector needs to be curbed as much as possible.

### Regulatory framework

#### *Access to and participation in the decision-making processes*

Negotiations concerning civic society's participation in the development and implementation of Slovakia's recovery and resilience plan took place in 2021. Unfortunately, it was largely unsuccessful for civil society. Since a large

spectrum of representatives from different sectors was omitted from pre- and post-consultation, in the end public participation was more of a formality than a genuine contribution. We discussed the hapless situation with the government several times, but unfortunately we were unsuccessful.

### *Financing framework*

The financing of the civic sector, especially in the field of culture, appears to be insufficient, as both the Ministry of Culture and individual funds to support the arts finance projects in the form of a de minimis scheme. There needs to be a change in the understanding of the use and disbursement of state funding for non-governmental organizations, as currently the minimum threshold to access funding under the de minimis scheme is inadequate for achieving an effective financing of cultural activities and projects.

## **Disregard of human rights obligations and other systemic issues affecting the rule of law framework** ↓

### Key recommendations

- Current rules should be backed by clearer reasoning and communication to ensure their stability.

- The set powers and competencies of individual public authorities must not be exceeded.
- Judicial review must be available when it comes to measures significantly affecting rights and freedoms.

hand, the court did not restrict the power of the Ministry of Health and the Public Health Office to order domestic isolation, which the court did not view as a restriction of personal freedom. It ruled that the issuing of invoices for the state-enforced quarantine period was in accordance with the Constitution, but that the state had an obligation to reimburse the incurred costs.

### ***Compliance of measures taken to address COVID-19 with fundamental rights and rule of law***

Back in 2020, the Public Defender of Rights of the Slovak Republic filed a complaint to the Constitutional Court concerning violations of fundamental rights and freedoms during the ongoing COVID-19 pandemic. The submission concerned the issue of deprivation of personal liberty of people from other countries, who were compulsorily placed into state quarantine during the first wave of the pandemic. The ombudsperson also objected to the issuing of invoices for this compulsory state quarantine (which seemed irrationally high) and questioned the unclear capabilities of the Public Health Office and the Ministry of Health of the Slovak Republic to deal with the COVID-19 pandemic.

The Constitutional Court largely confirmed the ombudsperson's claims as regards the state-enforced quarantine. The court concluded that it represented an unacceptable interference with personal freedom and that the scope of the restriction of fundamental rights is not clearly defined in Slovak law. On the other

## **Contacts**

### **VIA IURIS**

VIA IURIS is one of the oldest civil society organizations in Slovakia. Since its foundation in 1993, VIA IURIS's mission is to make Slovakia a country where people are not powerless against the powerful and before the law, we are equal. Within its mission, VIA IURIS promotes rule of law, supports civil society and defends civic rights.

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### ***The Civil Liberties Union for Europe***

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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