

Central European Education Institute s.r.o.

SUMMARY OF ANALYSES

Economic and Political Perspectives of democratic transition of Ukraine

1. Legal Aspects of Transformation of Slovak Republic after 1989

- After the turbulent year 1989, there had occurred major changes in wide society in the former Czechoslovakia and then in the independent Slovak republic.
- One of the most important changes was undoubtedly change of the Constitution as the highest and most important law in the rule of law of democratic state. After this turbulent year, many changes that began to take shape on behalf of building democratic and legal principles comparable with the principles of Western Europe.
- Many changes resulted mainly from the fact that Czechoslovakia and subsequently the independent Slovak Republic opted for the democratic values which were certainly reflected in the formation of new legislative acts - mainly in the areas of constitutional, criminal, civil, commercial, administrative and family law.
- Goal to set out the legal industry undoubtedly forged and changed partial legislative documents, which however, in the present study and in presentation, I could not analyse more deeply. The study analyses the basic framework of legal changes in the priority areas that we see as most important in response to changing political and economic functioning of the state after 1989.
- Long period that followed the occupation of Czechoslovakia by Warsaw troops in 1968 was marked unilaterally by development of the socialism in the state. Until 1989, in fact, we lived in a society that was based on the Soviet model functioning of society, economy and politics in the country, which today can be described as state-capitalist and bureaucratic system in the state. Period of socialism can be characterized especially by hold of power in the hands of the Communist Party of Czechoslovakia, while 1989 brought the recovery and restoration of the traditional division of power in private area and politically pluralistic society and interest.
- By the end of 1992, we can talk about transformation, distinguishing the first period of the initial period of democratization and institutionalization of democracy in the country. The period of initial democratization is considered by experts as particularly revolutionary period for transposition of power from the hands of the Communist Party. We can define the period from 17 November 1989 to the first democratic parliamentary elections which were held in June 1990. Following a period of

institutionalization of democracy directed to strengthening the democratic character of the political life and was well accompanied by the gradual democratization in other areas of social life.

- At that time, it is impossible not to mention also addressing the constitutional issues of Czechoslovakia and the establishment of the Slovak Republic in 1993. The period in question lasted from June 1990 until holding the early parliamentary elections to the National Council of the Slovak Republic in 1994. In that period, the balance of power began to fully interconnect and consequently also influence the legal development of the country.
- It is important to say, that Czechoslovak Republic since its inception has been generally internationally recognized as a legal state, which had a rich tradition of memberships in international organizations, and was just as well co-founder of the League of Nations and then the United Nations. Czechoslovakia was also participant in international conferences in the inter-war period and was treated to international treaties and conventions to which subsequently entered as the successors of the Czechoslovak Federal Republic, Slovak and Czech Republic.
- Developments after 1989, by my opinion, only follow the democratic traditions of the interwar Czechoslovakia and subsequently in 2004 were only stimulated by our membership in international and regional organizations such as the European Union. This process ensured the compliance with democratic, internationally recognized standards of protection of human and civil rights, which are now enshrined in national legislation of the Slovak Republic.
- One of the most fundamental changes since 1989 in the legal field was undoubtedly change of the constitution, which was adopted by a new Constitutional Act 135/1989, which constituted a derogation of constitutional articles that were typical for the socialist model of the state. There was as well redefined the concept of National Front, which according to Art. 6 of the new Constitution of the Czechoslovak Federal Republic amounted to as “political expression of union of nations and nationalities, social classes and interest groups. It may contain association of the political parties, social organizations and interest organizations.” This Article was supposed to secure the pluralism of political parties and secure the governance of all layers of society in the country. The Act then changed cultural policy when stipulated that “all cultural policy in Czechoslovakia, the development of education, training and teaching are conducted in a spirit of scientific knowledge and in line with the principles of patriotism, humanity and democracy.”
- Following Constitutional Act 161/1989 regulated the issue of election of the President in free democratic elections.
- The constitutional act No. 46/1990 edited incompatibility of parliamentary functions with other functions, regulated the position of national authorities and enabled them to determine a different number of members, but still required a oath of fidelity to Czechoslovak Socialist Republic. It was necessary to change the name of the state. First, however, the Constitutional act number 50/1990 brought the name, national emblem, national flag, state seal and national anthem of the Slovak Republic used in form of state symbols till today.

- The name of state was edited by constitutional acts – the first in March 1990, which introduced the name of the State Czechoslovak Federation without hyphen and also the name with the hyphen. Around this Act was aroused so-called hyphen war, which led to sporadic phenomenon – the state with two names.
- Second Constitutional act number 101/1990 introduced a state name without a hyphen as Czech and Slovak Federative Republic. After 1990, the adoption of several acts and constitutional acts slowly recovered political democracy and civil liberties. There were these acts:
 - Act on political parties 15/1990
 - on elections to the Federal Assembly 47/1990
 - on the association of Citizens 83/1990,
 - on the right of assembly 84/1990
 - on petition no. 85/1990 and
 - on periodicals and newspapers no. 86/1990.
- The competence of the Federation and the republics was redefined by the Constitutional act 556/1990. Basic rebuilding of political and legal establishment has been documented in the following years by the Constitutional Act 23/1991, introducing the Charter of Fundamental Rights and Freedoms. There was also important fact that by the new constitutional acts was presented competence by which the Czech Republic and Slovak Republic was bound to conclude on their own behalf bilateral international agreements on matters which fall within the scope of the Czech Republic and the Slovak Republic.
- This was a dream come true on Slovak's part in the area of international legal subjectivity. This last mentioned Act was already associated with the process of the disintegration of Czechoslovakia; the Slovaks have led demands for increasing republican powers in the Federation.
- The starting point for the negotiations on the redistribution of responsibilities was a basic diagram of the Constitutional Act on the Czechoslovak Federation from the 1968. Under this law, Federation possessed certain exclusive competences and a number of other responsibilities, the Federation and the Republic shared some responsibilities and Republic had exclusive competences in area of health, education and culture.
- Negotiations of the Slovak party requested that the expense of competence should be spread from centre to republics. Unlike the model of 1968, the new text omitted calculations for exclusive competences of Federation and joint responsibilities. Instead, the act named things that fall under the Federation, and then the remaining areas were left within the competence of the republics.
- According to the Czech perception, first had to be created a federal constitution and only after the Constitutions of the Republics. However, until the summer of 1992, there was the preparation of the national constitutions under the shade of the preparations of constitution of Federation. In desperation, Václav Havel presented his own draft of constitution. In July 1992 the political negotiations between ODS and HZDS took place after more confusion and apparent inability to reach consensus on

the arrangement of the relationship of Czechs and Slovaks to the mutual satisfaction of the adoption of political agreement between ODS and HZDS. HZDS considered confederation with the international legal personality of both the countries. ODS did not consider such a confederation as a common state, but a union of two independent states. In this case, ODS preferred two completely independent states, thus the constitutional division of the state. In this context, on July 17 National assembly adopted the Declaration of Sovereignty of the Slovak Republic. The natural right of the Slovak nation to self-determination and the free formation of national life were announced. There was also promised to respect the rights of national minorities and ethnic groups.

- Main area changed was criminal law, when there was deleted some bodies of criminal acts – such subversion of the Republic or disorder. Other bodies of the crime as emigration or sponging had been fundamentally changed.
- Significant changes, however, brought a change to the Criminal Law 175/1990, which deepened the differentiation of criminal responsibility and implement the requirement of de-ideologization of Criminal Code. There was a withdrawal of the specific strict protection of property in socialist ownership, very important - confirmation of abolition of the death penalty and the incorporation of the sentence to life imprisonment. The Criminal Code was subsequently amended several times, while substantial change of criminal law was made by the process of recasting the Slovak criminal law. This process was completed by adopting new Criminal Code number 300/2005 - valid and effective till today.
- Change of political regime in 1989 not only allowed, but inevitably required a fundamental change in the areas of private law and specifically in commercial relations. It was necessary to rapidly liberalize legislation to enable development on the principles of market economy.
- Given the urgency of these changes, there was first amended Economic Code, which incorporated the legislation of companies in addition of joint stock company which was adapted in separate act. These changes were supposed to quickly establish the private sector in economy. In meanwhile, there was adopted new act – Act on the private business No. 105/1990.
- Two ways were offered. The first was to develop a single code, which would also inherit the civil law and commercial law. The second way was in addition to the amendment of the Civil Code, adopt also a Commercial Code. Because of need of rapid changes in the legal system especially needs for new legislation in the area of commercial relations because of their importance to the economy in transition to a market economy, there was chosen the second way, i.e. to prepare two codes: the Civil Code and Commercial Code.
- Despite the commitment to adopt new Civil Code, there was drafted and adopted only a comprehensive and fundamental amendment to the Civil Code no. 509/1991. This amendment removed the basic system and content deformations of rules in the area of civil law. At the time of its adoption, however, it was considered to be a provisional regulation and at the same time the work began on preparing the new Civil Code.

In the same time, there was also drafted and adopted new Commercial Code no. 513/1991.

- Fundamental change in the context of private law was that there were changes in the subject matter of the Civil Code, which is till today defined generally as a proprietary and personal relationships, regardless of subjects, among which these relationships arise.
- Very important was also transition of ownership in the country through the transfer of things and property from the state ownership to the individual and legal entities.
- The main problem in the area of civil law is, that till today, we have not adopted new recodification of the civil law – Civil Codex and Commercial Codex, as done for example in Czech Republic. There are many perspectives, for example to adopt only one Codex for civil and commercial law, but there was no agreement in special commission for the recodification of civil law.

2. Economic transformation in Slovakia

- The severity of the transformation, economic, democratic and state -legal, was confronted with a society that had not been sufficiently prepared for it. The transformation scenario was a framework scheme that no one in the countries with the inheritance of a planned economy could ever try. This is undoubtedly one of the factors why the first stage of economic transformation is characterized by a number of significant errors and shortcomings. The first major decision was to decide on the speed of the transformation process, while the chosen way the way preferred by the international financial institutions, i.e. a shock therapy. Under this heading, very serious measures such as liberalization of prices and liberalization of foreign trade, which struck business subjects and had unimaginable consequences for the economy and citizens, were quickly taken. Similarly, the privatization process and took place in non-conceptual and extraordinary manner. Nowadays, also promoters of a shock therapy cannot fail to admit that if some elements of the transformation process had to be done quickly, as price liberalization, in many spheres, this approach was either not feasible (for example corporate restructuring, privatization) or harmful (rapid liberalization of foreign-economic relations).
- The second major mistake was the beginning of establishing the institutional framework of the market mechanism. Coupon privatization began without any existence of a legislative framework for the operation of investment funds. At the same time, the extensive complex of economic transformation steps brought privatization to the forefront with the hope that an economic miracle would emerge after its implementation. There is no doubt that establishing the private sector is a necessary condition for establishing and functioning of a regular market economy. It is also true that privatization and private ownership are not self-sustaining and not the only source of effective development. In order for such a result to arrive, it is

necessary to have proper owners and managers. Such types of people had often been absent in our country, and so it has been argued that privatization, in many cases, had not been the source of growth in economic and economic performance (except some exceptions), but had become a new form of original accumulation that created an enviable opportunity for enrichment to some individuals, and/or groups of citizens.

- The third major shortcoming was misunderstanding of the role of state in the market economy and, in particular, in the transformation process. The transformation from the planned to the market economy was supposed to fundamentally reform the owner and the entrepreneurial role of the state. Free market ideology, however, promoted a minimal state, and many of its functions - such as regulatory, social and others - stayed underestimated. Market institutions arose late, the state was unable to respond to some market failures, widespread economic fraud, enterprise tunnelling, and so on. It took quite a while to define its new roles in the market economy.
- Due to “November” events, people gradually created certain ideas and expectations of the future development and life in a democratic society, but soon after the introduction of the new regime they gradually began to replace feelings of dissatisfaction. Among the main factors causing the negative perception of the post-November regime were, in particular, social-economic changes, such as a decline in living standards, high unemployment or serious crime. The second important factor was the human capital. The past regime had built up some of the skills and abilities that people could hardly use in the new environment. This was of course also a lifestyle that varied significantly under the changed conditions from what people got used to be under the old regime.
- In the following period, the reform scenario of the first stage of the transformation essentially continued. The integration aspirations of the Slovak Republic towards the EU started to be more intense. Around the mid-1990s, so-called transformation recession occurred that was further deepened by the consequences of some key political decisions in the economic and political spheres, such as the conversion of military production and the division of the CSFR, so it had caused a high rate of unemployment and started to divert income and property differentiation as well as regional inequalities. Income and property differentiation was accelerated by the privatization process and the rise of unemployment, with several characteristics - the unemployment rate and the length of unemployment as well as youth unemployment - were the second highest after Poland. Coupon privatization, which was intended to ensure a more balanced participation in the division of state ownership, did not meet this objective. Other privatization methods did not made such a goal. Both stages of economic transformation resulted into a rapid increase in income inequality and uneven distribution of wealth as well as a rapid increase in poverty and the exclusion of whole groups of people and regions from participation in positive transformation results (so-called lost generation of people aged over 50, Roma ethnic minority, or critical situation in regions affected by conversion).
- Transformation of the society after 1989 is unprecedented and barely repeatable. Although the initial mass support was based on some new values such as democracy, the benefits of a market-based economic system, etc., people did not sufficiently

understand their content, the institutional prerequisites, the process towards their achievement and their consequences. The transformation, in a very short time, broke old values and mechanisms, while the formation of new values and mechanisms proceeded slowly and not straightway.

- However, the transformation process created the foundations of a market economy in Slovakia, formation of which was then subject to further economic and political factors.

3. Cultural and religious transition in Slovakia after 1989

- The presented study reflects the cultural transition in Slovakia after 1989. Given that there is a lack of specialized literature on this topic, we tried to offer an expert insight into some of the important changes that took place in society and how the society influenced and shaped it. We have reflected on changes in film and television culture. We pointed out the change in the financing of culture, the change of the themes that have been processed, we have offered a reflection on the change of televisions in which private capital has entered.
- Another part of the study is an analysis of the democratization of society, which points to the fact that the citizen has the right to enter politics in different ways and to point out that citizens can permanently influence the political scene. In the framework of the democratization of the society, we also remembered the only successful referendum that took place - the referendum on the accession of Slovakia to the European Union.
- Then we discussed the relationship of religion and society. We pointed out the situation that preceded 1989, and mentioned the changes that have been made in society in relation to religion after the "velvet revolution". The current religious trend speaks of the protection of the original Christian population in Slovakia, but to a large extent the number of atheists, or people professing religion other than Christianity, is increasing in Slovakia. This creates trends in society that tend to go beyond Christian space and the Church, while theories such as Islamization or Christian values are rather the exploitation of the fear and disappointment of citizens from the current developments in the world. In the presented study, we subsequently pointed out changes in the society's values and consequently changes in culture and politics.
- The study was focused on the research of the religious and cultural aspects of Slovakia's transformation after 1989. After the collapse of the Soviet Union, Slovakia finds itself in a new geopolitical environment that is framed by institutions and the influence of Western culture. Thus, Slovakia is incorporated into the transatlantic space and the corresponding cultural and religious influences are beginning to influence the country.

4. Democratic transition-case of Czechoslovakia

Democratic transition as an interval of conversion of consecutive political regimes proves 3 stages as follows:

- 1/ initial and **increasing crises of the authoritarian regime** bringing some forms of political openness and greater respect to the fundamental rights of citizens,
- 2/ creation of elected government in free elections with identified guarantees for the respect to democratic rights and freedoms.
- 3/ **stabilisation and consolidation** = a period when country having formed a new democratic government has concluded this process by creating a well consolidated democratic regime proving all the required features.

Based on Karl – Schmitter transition of ČSSR could be classified by actors and their strategies:

- ČSSR = driving forces – masses
- Strategy – compromise
- No use of force

Before analysing case of Czechoslovakia, the following factors of rising communism in CEEs should be given:

- most of the **inter-war period** democracy in the region was short-lived, with authoritarian leaders such as Poland's Pilsudski or Hungary's Admiral Horthy
- weak democracies struggled with the persistent rise of fascism (ČSR).
- **Political parties** - small, divided, and fractious.
- Economies - the region remained dominated by small-holder agricultural systems, under-developed industrial and financial sectors.
- **civil society** - local institutions (youth groups, business associations, women's organizations, and clubs) provided for limited citizen engagement through volunteerism and social activism but rather limited

Communism in CEEs showed the following foundations:

- eliminated political and economic elites
- civil society co-opted by communist leaders to become Party-controlled “transmission belts” of policy
- private sector -destroyed (except Poland and Hungary)
- a sense of citizen empowerment effectively eroded up until the 80s.
- Poland - powerful Catholic Church and remaining private hold on agriculture

- Hungary, with its post-1956 social contract which allowed limited private economic activity
- Both preserved for private citizen some autonomy
- the rest of the region - most citizens turned their attentions inward, living a life of compromised loyalty

Indicators/factors of change in case of ČSSR may be a decline of Soviet influence; rise in citizen movements (Poland's Solidarity e.g.); communist hegemony collapsed overnight; and combination of weak pre-war institutions and the civic and economic desolation brought by communism left very few institutions (formal or informal) on which reform could be based.

5 changes for the latest wave of transitions to democracy are here to be identified as:

- 1) the **deepening legitimacy problems** of authoritarian governments unable to cope with military defeat and economic failure;
- 2) the **burgeoning economies of many countries**, which have raised living standards, levels of education, and urbanization, while also raising **civic expectations** and the ability to express them;
- 3) changes in **religious institutions** which have made them more prone to **oppose governmental authoritarianism** than defend the status quo;
- 4) the push to promote **human rights and democracy** by external actors such as non-governmental organizations and the European Community; and
- 5) the "**snowballing**" or demonstration effects, enhanced by new international communications, of democratization in other countries.

Based on the aforementioned, character of the change – ČSSR is as follows: the transition in the region relied largely on:

- untested theories of shock-therapy
- other hugely disruptive policies that sought to quickly place economic and social responsibilities in the hands of private citizens.
- The goal: remove centralized planning and political power from the previous elites as quickly as possible.
- Political parties were quickly formed
- elections were held
- Speedy painful economic reform process: to create market systems on the ruins of communist economies that failed to generate growth or provide basic necessities.

Czechoslovakia – path to democracy (Velvet revolution, November 17th 1989)

The previous regime was of character of a rigid post-totalitarianism with not well organised and prepared opposition against it ; collapse of regime was accompanied with negotiations of

a **reform communist wing** (Marián Čalfa, V. Havel). Also new **power-holders** operated in unchanged institutions of the previous regime and **stages of liberalisation and democratisation** took place at the same time. Transformation process completed by **first free elections** on June 8.-9. 1990

Actors of the change were of 4 types, moderate and radicals in opposition, and conservatives and reformists within the governing elite.

The following is to provide the actors of the change of SSR: the main transition actor – **VPN** as an initiator of the transition but lacking a control over situation. As there was no stage of liberalisation (run later on with democratisation), VPN had no organisational structure and program documents (in ČSR – OF). But **reform communists = transitive communists** preserved their influence due to **Milan Čič** and **Rudolf Schuster** (Head of post – November Government of mutual understanding; head of Slovak parliament) so the elites proved their pragmatic attitude - -contributed to the peaceful passing of power to new political actors.

Characteristics of the change: a compromise of VPN and OF to find communist party members willing to negotiate + proved to other KSS representatives that no revanchist action were to be taken. The Slovak political parties in negotiations were VPN, KSS, Strana slovenskej obrody, Strana slobody), leading personality – Milan Čič. VPN (= non communist elites) proved not to be prepared to rule - - composition of a new slovak government: 6 non-communists, 11 neutral, 1 of Democratic party, 1 of Party of Freedom. Involvement of Milan Čič, Rudolf Schuster and Jozef Migaš to transformation process and their consequent political activities - - proof of **Evolution type of transition**, however transition started with collapse of Com. Regime but its representatives managed to hold their positions afterwards but unprepared Slovak elites – opposition got organised very late, Therefore **character of transition influenced by a non existence of liberalisation stage and nature of the previous regime**

Challenges for Slovakia in process of democratisation and liberalisation:

- “second“ post-communist transition – i.e. form managed democracy to standard western – liberal democracies
- Civil liberties- freedom of speech, freedom of the press, freedom of assembly, freedom of association
- Principles: -----
- Separation of powers and checks and balances;
- Transparency in creation and check over the execution of power;
- Preventing abuse of (administrative) centre of power and manipulation with public opinion;
- Integration to NATO and EU– economic, security and political IOs;
- open society and rule of law;

- Establ. Multiethnic society
- Keeping international legal obligations of SR in democracy, human rights and fund. freedoms;
- Security area – fight against organised crime, illegal migration, crisis management

The EU played several important roles:

- The **guiding role of the EU in guaranteeing reform** in Eastern Europe -a critical element
- **Role model** – To aspire to EU membership, countries were required to put in place governance, democratic, and economic reforms that harmonized with EU standard= a clear roadmaps - - allowed a more structured reform process.
- **Political foil** –EU membership required many reforms to restore fiscal stability and redefine the limits of the social state.
- **Banker** – Fiscal imbalance was an ongoing threat to reform success in the region - - EU provided the financing needed to bridge the reform gap

Reforms taken - in points

- Decentralization of self-administration (2001)
- Constitutional reform (2001 – supremacy of EU law, division of sovereignty)
- Judicial reform (obligation to implement EU law)
- Transparency requirement (central register of contracts, public procurement, political parties and leaders property and tax statements)
- Free access to information (public interest vs right to privacy)



*„Aktivita je financovaná z grantov Nórska prostredníctvom Nórskeho finančného mechanizmu“/
Supported by a grant from Norway Grants“.*

„Spolufinancované zo štátneho rozpočtu Slovenskej republiky“ / Co-financed by the State Budget of the Slovak Republic“.

