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AMNESTY AND PARDON UNDER THE SLOVAK LAW AND THEIR UNIQUE STORY

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Abstract
The article analyses a unique phenomenon in the Slovak society - amnesty that has been abolished nearly twenty years later after it was granted and this procedure was confirmed by the highest authority that oversees constitutionality - the Constitutional Court of the Slovak Republic. The authors focus on the analysis of this phenomenon from a comparative law perspective and from the perspective of national constitutional and criminal law. An interesting and sadly amusing case when the amnesty granted by the deputy president was abolished twenty years later is apparently unique worldwide. The uniqueness of this case lies in several aspects which deserve a more detailed legal analysis. There is a limited number of cases worldwide when amnesties were abolished but these cases have always concerned either an amnesty related to a war conflict genocide or an amnesty related to a mass destruction of people for political reasons. This was not the case in Slovakia.
In 1998, Vladimir Mečiar, holding the office of the prime minister and, at the same time, the deputy president, firstly granted amnesty in connection with the dismissal of the referendum on the direct election of the president and, in particular, in connection with the kidnapping of the son of the former President Michal Kovac. The case also featured an individual pardon granted by President Michal Kováč to his son on suspicion of economic crime. This is just the beginning of the story with very serious and far-reaching legal consequences.

Keywords: *amnesty, reprieve, criminal proceedings*

Introduction

"Amnesty is defined as collectively forgiving and commuting sentences and legal consequences of convicting judgements and the right to order not to commence criminal proceedings, and if such criminal proceedings have already been commenced, not to go ahead with them."[1] "The purpose of pardon is to, in substantiated cases, rectify the sternness of the law caused by thorough and strict application of the Criminal Code by a competent court, where such sternness, given the specific life and health circumstances of the convicted person, may be of inadequate intensity."[2] "Pardon means pardoning an individual whereas amnesty stands for general pardoning pertaining to an unspecified number of people… In terms of its form, we distinguish between abolition, remission and rehabilitation. Abolition means that the president orders not to commence criminal proceedings or not to go ahead with such proceedings. Remission means remitting or mitigating a sentence lawfully imposed by court in criminal proceedings, and by means of rehabilitation, the president expunges the effects of sentences imposed by courts."[3]

"From a theoretical perspective, amnesty is the manifestation of the checks and balances system in the rule of law. Amnesty shall serve to ensure that mutual balance and checks exist between a judicial branch and an executive branch. It is claimed that the ideal of justice should be enforced in court proceedings. However, if a decision of court is considerably unjust (ergo, its approach towards the law was a rather formalistic one), the president has the power to rectify such state by means of amnesty or individual pardon."[4] It does not produce the effects directly but has to be executed by relevant bodies. Amnesty is a regulatory legal act through which the head of the state orders not to commence, or, if already commenced, to stop the criminal prosecution and through which the head of the state forgives, either partly or in its entirety, the final and conclusive sentence or expunges the conviction of offenders who meet certain requirements. This legal act applies to anonymous persons the number of which is determined by the extent of amnesty which is, by general rule, specified by the amount (term) of the sentence and its type, enumeration of the elements of crime, type of crimes committed, offender's age, etc. The specification of persons occurs once the amnesty is applied.[5] If we view amnesty as being part of the checks and balances system, it has to be perceived as a possibility "to modify the effects and consequences of the terminated or pending criminal proceedings for the purpose of achieving the general good through social mercifulness, forgivness or forgetting."[6] Its task shall not be interpreted as the one representing a component of the checks and balances system in a rule of law, which should be a part of the separation of powers preveting, the due exercise of judicial power. As far as amnesty is concerned, we could speak about the possibility of one branch of power interfering with the exercise of public power by another branch not contradicting the principle of the separation of powers. Amnesty should ensure that mutual balance and checks exist between the judicial and executive branch.

[1] Gerloch, A.; Hrebejk, J.; Zoubek, V., *Ústavní systém České republiky*, 5th edition, Aleš Čeněk, Plzeň, 2013, p. 179.
[2] Bröstl, A. et al., *Ústavné právo Slovenskej republiky*, Aleš Čeněk, Plzeň, 2010, p. 283.
[3] Krajčovič, M., *Teoreticko-právna úvaha k možnosti zrušenia amnestie v Slovenskej republike*, Justičná revue, Vol. 69, Issue No. 5, 2017, p. 692.
[4] Krajčovič, *Teoreticko-právna…*, *op. cit.* note 3, p. 694 - 695.
[5] Hencovská M., *Milosť a amnestia v československom právnom poriadku*, Institute of Law at the Ministry of Justice of SSR, Bratislava, 1986, p. 39.
[6] Resolution of the Constitutional Court of the Czech Republic (file No. Pl. ÚS 4/2013).

Amnesty and pardon thus represent tools for solving any possible miscarriage of justice. Last but not least, amnesty and pardon should serve as an educational tool, supposing that they will have an educational impact on persons to whom amnesty or pardoned is granted."[7]

Amnesty and pardon have formed an absolutely common part of the body of laws of almost all countries around the world since time immemorial and the Slovak Republic is no exception. However, it had a peculiar historic experience with a number of amnesties by which its population had been shaken up both from the political and social perspective so significantly that the cases of these amnesties were reopened almost twenty years later and the amnesties were abolished. This is in fact a rather unusual case in the rule of law where the retroactivity to the detriment of persons is not allowed. Even if we compare this case to the cases occurring in other countries where amnesties were abolished, we arrive at the conclusion that this approach is unique worldwide.

1. Amnesties which struck Slovakia

At the end of the nineties, the Slovak Republic found itself in an escalated political conflict which was perceived by many as a battle for the state's character – whether it would retain its democratic nature or turn into dictatorship. This conflict was mainly visible through disputes between the then President Michal Kováč and the then Prime Minister Vladimír Mečiar. President Michal Kováč held a referendum which, *inter alia*, contained a question on whether the citizens demanded the direct election of the president by citizens. The government led by Vladimír Mečiar did not incorporate this question in the referendum; thus the referendum was *de facto* partly thwarted. Criminal proceedings were commenced against president's son in Germany on suspicion of economic crime. The then legal regulation did not allow extraditing state's own citizens for the purpose of criminal proceedings abroad. So one day, president's son, Michal Kováč Jr., was seized by unknown offenders, shoved into the boot and, a few hours later, found himself in a car parked outside a police station in Austria. And it was Prime Minister Vladimír Mečiar and the people around him who were blamed for this offense by many people. Whatever the truth, once President Michal Kováč's office was over, the parliament did not elect his successor and the right to grant amnesty was constitutionally temporarily assumed by Prime Minister Vladimír Mečiar (before that, though, Michal Kováč granted individual pardon to his son in connection with the above-mentioned economic crime) who granted two amnesties in the form of abolition.

The first abolition was granted by means of Decision of the Prime Minister of the Slovak Republic of 3rd March 1998 on Amnesty No. 55/1998 Coll. which stated in its Article 5: "*I order not to commence, and if already commenced, to stop the criminal prosecution for criminal offences committed in connection with the preparation and holding of referendum of 23rd and 24th May 1997*." Article 6 further stated: "*I order not to commence, and if already commenced, to stop the criminal prosecution for criminal offences committed in connection with the abduction of Michal Kováč Jr.*"

The second abolition was granted by means of Decision of the Prime Minister of the Slovak Republic of 7th July 1998 on Amnesty No. 214/1998 Coll. which stated in its Article 1: "*I order not to commence, and if already commenced, to stop the criminal proceedings conducted on suspicion of criminal offences allegedly committed in connection with the*

[7] Balog, B.; Tittlová, M.; Fakla, M, *Amnestie a milosti v právnom poriadku Slovenskej republiky*, Wolters Kluwer, Bratislava, 2019, p. 9.

preparation and holding of referendum of 23rd and 24th May 1997." Article 2 further stated: "*I order not to commence, and if already commenced, to stop the criminal proceedings for criminal offences allegedly committed in connection with the abduction of Ing. Michal Kováč, born on 5th December 1961, which allegedly occurred on 31st August 1995*."

These amnesties were also one of the reasons why Vladimír Mečiar, despite having won the elections in 1998, was unable to form a coalition government and the power was thus taken over by his opponents. New Slovak Prime Minister Mikuláš Dzurinda attempted to modify the decisions on amnesties by means of Decision of the Prime Minister of the Slovak Republic of 8th December 1998 No. 375/1998 Coll. on Amnesty the only Article of which read as follows: "*Article V and Article VI of the Decision on Amnesty of 3rd March 1998 published under No. 55/1998 Coll. and Article I and Article II of the Decision on Amnesty of 7th July 1998 published under No. 214/1998 Coll. shall be deleted.*"

This subsequent abolition of Mečiar amnesties by Mikuláš Dzurinda was later reviewed by the Constitutional Court of the Slovak Republic which stated in its Resolution (file No.: I. ÚS 30/1999) of 28th June 1999: "*The right to grant amnesty enjoyed by the president does not also entail the right to modify the decision on amnesty already published in the Collection of Laws of the Slovak Republic*."

Thus in 1999, the requirement for legal certainty and the impossibility of retroactivity to the detriment of potential criminal offenders, constituting the immanent parts of the body of laws in democratic states governed by the rule of law, prevailed in the Constitutional Court of the SR in the case of the abolition of amnesties. This infamous story at least contributed to the fact that the following amendment to the Constitution of the SR cancelled the possibility to grant amnesty in the form of abolition and from that moment on, for other amnesties to be valid, it was required that these, in addition to the decision of the president, be also countersigned by the prime minister or a minister authorised by him/her.

The issue of Mečiar amnesties traumatised the public life regularly in the following twenty years. There were even attempts to cancel them by means of a constitutional Act but such attempts were always politically unsuccessful with the legal justification based on the requirement for legal certainty and the prohibition of retroactivity until one beautiful day …

2. How were Mečiar amnesties actually abolished?

The era of Mečiar left the Slovak population rather traumatized irrespective of the fact who he was loved or hated by. As long as Slovakia is a democratic state goverened by the rule of law, Vladimír Mečiar will hardly ever see any exalting law which would officially give him any credit for contributing to the formation of the separate Slovak Republic (which, from the historical perspective, actually happened). It is mainly caused by the fact that his office is infamously connected to the era when anything was possible in Slovakia – uncontrolled privatization, misappropriation of public funds, significant unemployment, political warfare far beyond any good manners, abuse of power – namely the thwarted referendum and the suspicion of cooperating with the organised crime (or contributing to its formation). However, it shall be noted that neither Mečiar's opponents avoided many of these maladies during their office. In any case, the society was heavily polarised. One group hated Mečiar for the above-mentioned reasons, another group hated him simply because of the fact that the life philosophy of some people is based on hatred, and one group loved him uncritically which is why these people have been facing subsequent hatred or contempt by his opponents up to this day. That

is why the society is still traumatised by Mečiar era and everybody who perceived these events with any slight interest in them suffers from such trauma.

It is hard to say if it had existed sooner but definitely ever since the Mečiar era, there has been a great polarisation in opinions at the back of the mind of the Slovak society (or maybe the society is very well aware of it given the fact that such awareness is intentionally nourished) – on the one hand, it is an extreme hatred against unpopular politicians and, on the other hand, an uncritical defence of popular politicians, no matter what they say or do. Given the fact that these emotions, life philosophies and political strategies were mostly formed in the Mečiar era (and a great part of the society has still not come to terms with this era), it is understandable that the society longs for the clarification of some high-profile cases occurring in the Mečiar era and the potential punishment of offenders. The petition for the abolition of Mečiar amnesties was signed by approximately 67 000 citizens of the Slovak Republic which is very decent in a country where a referendum is held very often and only the most important one (about the accession of the SR to the EU) was successful (even though by a narrow margin). On the other hand, this figure only stands for 1.2% of the citizens. What does the rest think? Do they actually care? Do they agree with the petition but forgot to sign it? Are they Mečiar's supporters who are disgusted with the development? Do they perceive this issue as something which the history only should deal with and which should stop further traumatising and polarising the society which, as it seems, lives in hatred and off hatred?

Is it only an interesting coincidence, development or a well thought-out game? The recent popular premiere of the movie "Kidnap" which is supposedly based on the events related to Mečiar amnesties and therefore can sometimes distort the truth when it finds it suitable. Challenge for the Slovak jurisprudence personalities. Re-birth of the issue with strong politicians. It is useless to speculate about potential conspiracies – the issue has been reborn and needs to be addressed. It is true that at the time of economic prosperity and constant decline in the unemployment rate, this issue may also represent a political salvation of the opposition. On the other hand, a great social pressure to abolish amnesties has been created, whether artificially by the media or realistically, in people's viewing of this issue and any opposition to it would be a mere suicide for any political party (irrespective of any potential legal opinions on the impossibility to abolish amnesties). The abolition of Mečiar amnesties thus became a reality.

2.1. Constitutional Act and abolition of amnesties

In 2017, the government understood increasing social trends demanding the abolition of Mečiar amnesties and despite the fact that some of its members refused to abolish them in the past, they realised in 2017 that Mečiar amnesties still burden the Slovak society (and actually them as well as long as they keep refusing their abolition).

Consequently, the National Council of the Slovak Republic (parliament) adopted the Constitutional Act No. 71/2017 Coll. of 30th March 2017 amending and supplementing the Constitution of the Slovak Republic No. 460/1992 Coll. as subsequently amended laying down the constitutional prerequisite for the abolition of amnesties. Pursuant to Article 86(i) of the Constitution of the SR, the powers of the National Council of the Slovak Republic shall also include the power "*to decide about the cancellation of a decision made by the president pursuant to Art. 102(1)(j)*" (granting amnesty and individual pardon) "*if such decision is contrary to the principles of a democratic state governed by the rule of law; the adopted*

resolution is generally binding and declared in the same way as an Act." Due to the fact that this legal regulation was a new one, and to avoid any doubt that it shall also apply to Mečiar amnesties, a new indisputable retroactive provision was inserted into Art. 154f(1) of the Constitution of the SR and it reads as follows: "*The provisions contained in Art. 86(i), Art. 88a and Article 129a shall also apply to Article V and Article VI of the Decision of the Prime Minister of the Slovak Republic of 3rd March 1998 on Amnesty published under No. 55/1998 Coll., Decision of the Prime Minister of the Slovak Republic of 7th July 1998 on Amnesty published under No. 214/1998 Coll. and Decision of the President of the Slovak Republic in the Proceedings on Individual Pardon of 12th December 1997 (proceedings No. 3573/96-72-2417*.")

Subsequently, on 5th April 2017, the National Council of the Slovak Republic passed resolution No. 74/2017 Coll. on the Cancellation of Article V and Article VI of Decision of the Prime Minister of the Slovak Republic of 3rd March 1998 on Amnesty published under No. 55/1998 Coll., Decision of the Prime Minister of the Slovak Republic of 7th July 1998 on Amnesty published under No. 214/1998 Coll. and the Decision of the President of the Slovak Republic in the Proceedings on Individual Pardon of 12th December 1997 (proceedings No. 3573/96-72-2417).

2.2. Constitutional court and abolition of amnesties

It was very clear to everyone from the very beginning that this legally controversial issue, which the abolition of amnesty definitely is, will be brought before the Constitutional Court of the SR. Therefore, in order to avoid the prolongation of this process and ever greater legal uncertainty, the National Council of the Slovak Republic introduced a very interesting "safeguard" in Art. 129a in the above-mentioned amendment to the Constitution of the SR: "*The Constitutional Court decides about the compliance of the resolution of the National Council of the Slovak Republic on the abolition of amnesty or individual pardon adopted pursuant to Art. 86(i) with the Constitution of the Slovak Republic. The Constitutional Court commences the proceedings on merit pursuant to the first sentence without a motion; Art. 125 shall apply mutatis mutandis*." Unless the Constitutional Court makes a decision within the period of 60 days, the resolution becomes unchangeable after the lapse of this period.

The political incumbents thus very cleverly "passed the buck" of abolishing the amnesties to the Constitutional Court of the SR. Many actually did not believe that the Constitutional Court would make a decision but the contrary was the case.

The finding of the Constitutional Court of the SR (PL. ÚS 7/2017-159) thus read as follows: "*The resolution of the National Council of the Slovak Republic No. 570 of 5th April 2017 on the cancellation of Article V and Article VI of Decision of the Prime Minister of the Slovak Republic of 3rd March 1998 on Amnesty published under No. 55/1998 Coll., Decision of the Prime Minister of the Slovak Republic of 7th July 1998 on Amnesty published under No. 241/1998 Coll. and Decision of the President of the Slovak Republic in Proceedings on Individual Pardon for the Accused of 12th December 1997 (File No. 3573/96-72-2417) IS in compliance with the Constitution of the Slovak Republic*."[8]

The Constitutional Court relied mainly on the following reasons:

[8] The finding of the Constitutional Court of the SR (PL. ÚS 7/2017-159), p. 1 and 2.

1) the amnesties were of a political nature; furthermore, they amounted to the so called self-amnesties,[9]

2) the conduct constituted the abuse of powers,[10]

3) the so called "material approach" towards the protection of constitutionality advocates the abolition of these amnesties (the "formal approach" may not take precedence over the "material approach"),[11]

4) no decision of a constitutional body (including the decision on amnesty or individual pardon) may in principle be constitutionally unreviewable (in terms of whether it complies with (is not contrary to) the fundamental constitutional principles being the constituting values which are inviolable and protected and respected by a democratic state governed by the rule of law) in a democratic state governed by the rule of law, [12]

5) the punishability of pardoned offense does not cease to exist upon the abolition; it only constitutes a procedural impediment for the criminal proceedings and ceases to exist when amnesty or individual pardon is cancelled.[13]

How should this decision be viewed? Can it be viewed as a political or ideological one? The Constitutional Court itself was apparently aware of its controversial and ground-breaking nature since it stated in its finding: "*Undoubtedly, as far as the question of constitutional acceptability of the abolition of Mečiar amnesties and the decision of President Michal Kováč on granting individual pardon are concerned, there were arguments for and against, the ratio and significance of which are up to each judge. The Constitutional Court, in its particular composition and within a particular historic time, was given a task to make a decision within 60 days on the constitutional acceptability of the reviewed resolution of the National Council and it made such decision to the best of the knowledge and belief of its judges. This does not preclude the fact that different opinions may exist on some issues subject to these proceedings*."[14]

3. Abolition of Mečiar amnesties from criminal law perspective

As far as the criminal law is concerned, the abolition of amnesties entails the necessity to deal with two issues.

The first issue lies in the potential statute-barring of criminal prosecution – if a long period of time elapsed between the offence and the abolition of amnesties and such a long period of time generally results in the impossibility of commencing criminal proceedings. "*The lapse of this period leads to the extinction of criminal liability for the committed criminal offence. Our law treats the statute-barring as being of a substantive law nature which is apparently correct given the fact that the reasons for statute-barring are also of a substantive law nature*"[15] (this is true despite the misleading term "statute-barring of criminal prosecution"

[9] For more information, refer to PL. ÚS 7/2017-159, p. 86 through 88.
[10] For more information, refer to PL. ÚS 7/2017-159, p. 88 through 90.
[11] For more information, refer to PL. ÚS 7/2017-159, p. 91 through 93.
[12] For more information, refer to PL. ÚS 7/2017-159, p. 121.
[13] For more information, refer to PL. ÚS 7/2017-159, p. 135.
[14] The finding of the Constitutional Court of the SR (PL. ÚS 7/2017-159), p. 155 and 156.
[15] Šámal, P. et al., *Trestní právo hmotné*, 8th edition, Wolters Kluwer ČR, Prague, 2016, p. 289.

because the wording of Section 87(1) of the currently applicable Criminal Code and Section 67(1) of the previously applicable Criminal Code uses the term "extinction of punishability").

The currently applicable Criminal Code (Act No. 300/2005 Coll. Criminal Code as subsequently amended) and even its predecessor (Act No. 140/1961 Coll. Criminal Code as subsequently amended), which was applicable at the time the offences pardoned via Mečiar amnesties were committed, set out (the currently applicable Criminal Code in its Section 87(2)(a), its predecessor in its Section 67(2)(a)) that the limitation period does not include the period in which the criminal offender could not be brought before the court for a statutory impediment. Amnesties undoubtedly also represent such a statutory impediment because they count for a legal reason arising from statute. Therefore, the statute-barring of criminal prosecution does not have any impact on the pardoned criminal offences.

It results from the aforesaid that a part of the sentence following the semi-colon in Article 154f(2)(b) of the Constitution of the SR supplemented via the Constitutional Act No. 71/2017 Coll. ("*the time during which these statutory impediments last shall not be included in the limitation periods pertaining to the offences to which the amnesties and individual pardons referred to in subsection 1 are related*") is absolutely obsolete and totally superfluous. However, it shall be stressed that if the predecessor of the current Criminal Code, which was applicable at the time the relevant offences were committed, had not contained the provisions of Section 67(2)(a), neither the Constitutional Act would have been of use and the criminal prosecution (punishability) would have been statute-barred. Neither the Constitution may retroactively extend punishability conditions to the detriment of criminal offenders. If it was then theoretically legal and legitimate to abolish amnesties, it would be out of the question to breach the fundamental principle of criminal law – legality principle – by extending punishability conditions. On the one hand, we speak about the cancellation of a statutory impediment to make a passage for the justice, but on the other hand, the extension of punishability is rather serious – breaking this principle would mean that anyone could be criminally prosecuted in the future also for an offence which does not meet the punishability conditions at the time when it is committed. However, this problem could be merely of a theoretical nature in the case of Mečiar amnesties.

The second questionable issue concerns the cases of offences for which the criminal proceedings were conducted but, due to amnesty or individual pardon, the criminal prosecution was finally terminated against particular prosecuted persons under Section 9(1)(e) of Act No. 301/2005 Coll. Code of Criminal Procedure as subsequently amended (hereinafter referred to as the "CCP"): "*Criminal prosecution may not be commenced and, if already commenced, it shall not go ahead and shall be terminated if conducted against a person whose previous prosecution for the same offence resulted in a final and conclusive court sentence, or it was lawfully terminated or conditionally suspended and the accused proved himself, or conciliation has been reached and the criminal prosecution was terminated unless such decision was declared null and void in a prescribed manner.*"

In this case, one should proceed to retrial under Section 393 *et seq.* of the Code of Criminal Procedure. The retrial is admissible only on the condition that new, previously unknown, facts or evidence have been discovered (Section 394(1) through (3) of the CCP) or if it has been discovered via a final and conclusive judgement that a police officer or a prosecutor, judge or an assessor committed a criminal offence by breaching their duty in the original proceedings (Section 394(5) of the CCP). It is questionable whether the abolition of amnesty could fall within the aforementioned since it represents the change in a legal status,

not a new fact. It is at least disputable, though, whether a new legal fact – the abolition of amnesties – may be subsumed under the term "new facts" for the purpose of retrial.

Anyway, the provisions contained in Section 394(4) of the CCP expressly state that the term "new facts" also includes some legal facts, namely the decision of the European Court of Human Rights according to which the fundamental human rights or freedoms of the accused were breached by the decision of a prosecutor or a court of the Slovak Republic or in the preceding proceedings provided that the negative implications of this decision may not be rectified otherwise.

From the legal perspective, the best solution would consist in the term-specifying amendment to the provisions on the admissibility of retrial – retrial should also be admissible in the case of emergence of new legal facts or expressly in the case of the abolition of amnesties. Such decision should have been made before any action was taken against the offences pardoned by Mečiar amnesties. Otherwise, we give to those potentially accused arguments for challenging the given procedure legally.

Naturally, it is very probable that the persons against whom charges would repeatedly be brought on the basis of the abolition of amnesties would bring their case before the European Court of Human Rights. They could argue that apart from the breach of constitutional law rules, the issue is also quite problematic from the criminal law perspective. However, the criminal proceedings conducted in these cases have not produced any conclusions yet.

4. Abolition of amnesties around the world and innovative approach applied in solving the abolition of Mečiar amnesties

The abolition of Mečiar amnesties is unprecedented and legally unique in the world. It does not mean, though, that there have never been any amnesties abolished anywhere in the world. There have only been amnesties abolished in the cases of war conflict genocides or amnesties related to the mass extermination of persons for political reasons (which, with all due respect, really cannot be compared to a short-lasting kidnap ending in front of a police station in the bordering state governed by the rule of law so that charges would be brought against the relevant person for committing a criminal offence and any attempts for such comparison must only end up with a sad smile).

Well-known cases concerning the abolition of amnesties include: [16]

1) Decision of the Supreme Court of Chile of 7th November 2004 abolishing amnesties granted for criminal offences against life and limb and personal freedom committed during the period of the military dictatorship in the years 1973 – 1989.[17]

[16] The author would like to thank JUDr. Ján Kováčik, a full-time PhD student at the Faculty of Law at Comenius University in Bratislava teaching at the Department of International Law and International Relations, for looking up the cases concerning the abolition of amnesty around the world and preparing a short summary of them.

[17] For more information go to e.g.: Jeffery, R., *Amnesties, Accountability, and Human Rights*, 2014. URL=https://www.jstor.org/stable/j.ctt6wr9f8. Accessed 10 July 2019.

2) Decision of the Supreme Court of Argentina of 14th July 2005 abolishing amnesties granted to the military dictatorship officers during the so called Dirty War in 1976 – 1983 for criminal offences against humanity.[18]

3) Decision of the Supreme Court of El Salvador of 13th July 2016 abolishing amnesty granted to offenders for criminal offences against humanity committed during the civil war.[19]

The possibility to abolish amnesty, provided that it is abolished due to the contravention with fundamental human rights (intentional killing of civilians, grievous bodily harm) was also confirmed by the European Court of Human Rights in its judgement of 27th May 2014 in Marguš v. Croatia case[20] where the decision of the Croatian Supreme Court did not abolish amnesties but stated that the General Amnesty Act does not apply to this case because Mr Fred Marguš acted "excessively" i.e. he did not act in connection with the pardoned military aggression.[21] Hence the Croatian case cannot be used as an argument for legal abolition of amnesties.

There was also an unsuccessful attempt in the United States of America to abolish the individual pardon granted by President Gerald Ford to former President Richard Nixon in connection with the Watergate scandal.

The above-mentioned amnesties which were abolished have two significant features in common. Firstly, they were granted for offences committed during a civil war or military dictatorship. Secondly, they were granted for offences against humanity which affected a substantial number of persons in a way that they were either killed or sustained a substantial bodily harm or were deprived of liberty and exposed to cruel and inhuman treatment (e.g. in Salvador, among other things, the entire village was shot out with a heavy machine gun). That was the reason why these amnesties were eventually abolished – offences for which they were granted were so hideous and affected so many persons that the interest in the punishment of offenders was greater than the interest in complying with the principles of the rule of law, interest in the stability of legal order and prohibition of retroactivity. However, Mečiar amnesties are linked to a period in which the Slovak Republic, despite certain internal difficulties manifested also in the extent of its international acceptance, was a democratic state governed by the rule of law (even though certain political declarations claim the opposite); (despite certain inappropriate action taken by state bodies bearing way too much resemblance to the abuse of power of a public official – we believe that Mečiar amnesties as such correspond to the elements of the criminal offence of the abuse of power of a public official) and the pardoned offences only affected a small number of people, without the infliction of any death.

[18] For more information go to e.g.: *Guide on Article 7 of the European Convention on Human Rights*, 2019. URL=http://www.echr.coe.int/Documents/Guide_Art_7_ENG.pdf. Accessed 10 July 2019.

[19] For more information go to e.g.: *Sentencia nº 44-2013AC de Sala de Lo Constitucional, Corte Suprema de Justicia, 13 de Julio de 2016*, 2016. URL=http://sv.vlex.com/vid/648247501. Accessed 10 July 2019.

[20] *Marguš v Croatia (GC), no. 4455/10, judgement of 27 May 2014 (extracts)*, Reports of Judgements and Decisions, European Court of Human Rights, vol. 2014-III, Oisterwijk: Wolf Legal Publishers, 2016, p. 62. URL= https://www.echr.coe.int/Documents/Reports_Recueil_2014-III.pdf. Accessed 10 July 2019.

[21] *Marguš v Croatia (GC), no. 4455/10, judgement of 27 May 2014 (extracts)*, Reports of Judgements and Decisions, European Court of Human Rights, vol. 2014-III, Oisterwijk: Wolf Legal Publishers, 2016, p. 12 - 13. URL= https://www.echr.coe.int/Documents/Reports_Recueil_2014-III.pdf. Accessed 10 July 2019.

Conclusion

If topics, such as the abolition of amnesties, are discussed solely among academics, it is usually without any difficulty – this actually happens in the sphere of international jurisprudence. However, once they are abolished in practice and are not linked to massive violations of human rights, the concept of the rule of law as such is "caught between a rock and a hard place". Legal certainty and the prohibition of retroactivity represent the most important pillars of the rule of law. The abolition of Mečiar amnesties is, for the reasons referred to above, unique worldwide. There are two possible options how it will be perceived by other democratic states. It will either be seen as an ideological legal error due to the fact that, under the given circumstances, the abolition of these amnesties could not outweigh the prohibition of retroactivity and legal certainty requirement in the proportionality test, or the Slovak legal practice will set a new direction for the democratic world which will rule out any politically motivated amnesties on the basis of the following doctrine: **a public official may protect neither himself nor any other persons from offences resulting from his illegal action or illegal action instigated by him or in his favour**.

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