



SLOVAK NATIONAL  
CENTRE FOR  
HUMAN RIGHTS

**CILC**  
Center for International  
Legal Cooperation



# Rule of law conceptual framework

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This is the first draft of the rule law conceptual framework created by the Slovak National Centre for Human Rights and Center for International Legal Cooperation. The list of additional objective indicators for the selected areas of the rule of law are still undergoing the expert review process.

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# Table of contents

<b>Introduction</b>	<b>4</b>
<b>1. THE CREATION OF THE RULE OF LAW CONCEPTUAL FRAMEWORK AND THE DESK REVIEW</b>	<b>7</b>
1.1 Overview of the approaches to conceptualization of the rule of law	7
1.2 Defining the rule of law for the conceptual framework	8
<b>2. METHODOLOGY DESCRIPTION</b>	<b>12</b>
<b>3. SELECTED RULE OF LAW INDICATORS</b>	<b>15</b>
3.1 Anti-corruption framework	15
3.2 Media pluralism and media freedom	17
3.3 Open government and government bounded by law	19
3.4 Protection of fundamental rights and freedoms	21
3.5 Functioning of the justice system	23
3.6 Enabling space for civil society and human rights defenders	26

# Introduction

Promoting and upholding the rule of law requires commitment and constant improvement, as there is a risk of backsliding.<sup>1</sup> Regular monitoring of the state of rule of law provides opportunities to identify trends and detect emerging or systematic issues in the different areas of the rule of law.

The findings of number of existing tools, including the European Rule of Law Mechanism, Eurobarometer, the European Union Justice Scoreboard, the Transparency International Corruption Perceptions Index show that the rule of law in Slovakia has either been deteriorating or remains below the regional average. In addition, there also remain important and alarming alerts in selected areas, such as freedom of media or the independence of the judiciary, which could potentially indicate a rule of law backsliding.<sup>2</sup> Despite the numerous efforts, particularly in the form of legislative amendments or adoption of policies, including for example, the Action Plan on Strengthening the Rule of Law in the Slovak Republic, mounting scepticism remains on the progress achieved in the state of the rule of law at the national level during last years.

Based on the findings of the monitoring mechanisms, focusing on improving and finding innovative ways in promoting the enhancement of the rule of law is particularly important.

The mandate of the Slovak National Centre for Human Rights:

The Slovak National Centre for Human Rights is a national human rights institution established in the Slovak Republic, accredited with status B by the Global Alliance of National Human Rights Institutions. As an NHRI, the Centre is a member of the European Network of NHRIs (ENNHRI). The Centre was established by Act of Slovak National Council No. 308/1993 Coll. on the Establishment of Slovak National Centre for Human Rights, as amended.<sup>3</sup> Pursuant to Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection from Discrimination, as amended (Anti-Discrimination Act), as amended,<sup>4</sup> the Centre also acts as the only Slovak equality body.

As an NHRI and equality body, the Centre performs a wide range of tasks in the field of protection and promotion of human rights and fundamental freedoms, including the principle of equal treatment. The Centre monitors and evaluates the observance of human rights and the equal treatment principle, including by monitoring compliance with international human rights treaties and recom-

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<sup>1</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2021 Rule of Law Report, the Rule of law Situation in the European Union', COM(2021) 700 final, 20 July 2021.

<sup>2</sup> More on the meaning of the rule of law backsliding, please see for example, Pech, L and Scheppele, K. L., 'Illiberalism Within: Rule of Law Backsliding in the EU,' In: Cambridge Yearbook of European Legal Studies, 2017, vol. 19.

<sup>3</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20190101.html>

<sup>4</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102.html>

mendations of international human rights mechanisms. As such, the engagement in European Rule of Law mechanism forms part of the Centre's mandate to promote and protect human rights. Since 2020, the Centre has been actively involved in monitoring and reporting on the state of the rule of law in the Slovak Republic through submitting its annual report on the state of the rule of law as part of the European Network of Human Rights Institutions' (ENNHRI) report on the State of the Rule of Law in Europe for the selected year.<sup>5</sup> ENNHRI submits a joint report of all the national human rights institutions that it covers. Moreover, monitoring and reporting on the state of the rule of law in Slovakia and its fundamental pillars also become part of the strategic areas in which the Centre is actively carrying out its activities within its mandate. These activities include engaging with different national, regional, or international stakeholders as well as actively seeking opportunities for cooperation and building partnerships in order to contribute to awareness of rule of law issues.

## Short description of the project and the created tracking tool

The created rule of law monitoring tool is one of the main outcomes of the project "Fostering innovative approaches to rule of law monitoring in Slovakia" conducted and developed by the Slovak National Centre for Human Rights and the Center for International Legal Cooperation (CILC) thanks to the financial support from the Ministry of Foreign Affairs of the Netherlands.<sup>6</sup> The aim of the project was to create a rule of law monitoring tool as a practical and meaningful tool for monitoring and evaluating the state of the rule of law in Slovakia.

In essence, the monitoring tool will serve to provide relevant and comprehensive information on the state of rule of law in the selected areas for all interested stakeholders, including scholars, legal professionals, media, members of civil society, businesses or wider public. However, the rule of law monitoring tool is not intended to provide an exhaustive evaluation or description of all developments pertaining to particular areas of the rule of law. **Its main objective is to enhance the regular monitoring of the most significant progress in the selected areas** of the rule of law in Slovakia and **to provide a more comprehensive assessment** of the situation in each of the selected areas. In addition, it will aim to include a timely identification of the most searing flaws in order to contribute to the prevention of serious deterioration in the performance in the selected areas. In other words, its functions will enable to highlight areas where significant progress has been achieved, on the contrary to also alert areas in which no progress has been achieved, or in which the standards deteriorated. Additionally, to its preventive and informative functions, it will aim to encourage and initiate a public debate on the need for further legislative and policy proposals or reforms in the areas of identified searing flaws.

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<sup>5</sup> For more information, please see ENNHRI, 'State of the rule of law in Europe – 2022', available at: <https://ennhri.org/rule-of-law-report-2022/>

<sup>6</sup> For more information, please see, Slovak National Centre for Human Rights, 'Ongoing projects', available at: <http://www.snsip.sk/en/projects/ongoing-projects/>.

The created rule of law monitoring tool complements and is without prejudice to other existing and analyzed monitoring mechanisms that are tasked with monitoring and evaluating the state of the rule of law in particular selected areas.<sup>7</sup> Moreover, the rule of law monitoring tool will also feed into the monitoring activities currently conducted by the Centre, namely it will provide an important and relevant source of information for further assessments in the reporting and engagement in the European Rule of Law Mechanism<sup>8</sup>, or with other relevant international and regional monitoring mechanisms.<sup>9</sup>

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7 For more information, please see the desk review.

8 For more information about the European Rule of Law Mechanism, please see: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)

9 For more information about the Centre's engagement with other international and regional mechanisms, please see for example.: <https://www.snslp.sk/en/activities-of-the-centre/monitoring-a-reporting/>

# 1. THE CREATION OF THE RULE OF LAW CONCEPTUAL FRAMEWORK AND THE DESK REVIEW

The conceptual framework builds on the approach of the project partners to identify and develop indicators for measuring the state of the rule of law in Slovakia, with a particular focus on selected specific areas. While the conceptual framework and the practical monitoring tool was drafted and created for the purposes of monitoring the state of the rule of law in the Slovak Republic, i.e. the areas to be monitored were particularly selected in the context of the Slovak Republic, the fundamental approach taken to develop the monitoring tool can be further used and developed to create a separate monitoring tool for the purposes of monitoring the state of the rule of law in other selected States.

Part of the conceptual framework focused on providing an initial overview of the existing monitoring tools focusing either on the rule of law in general, or particular areas of the rule of law (such as media freedom and pluralism, or anti-corruption framework). For this reason, the Centre in consultation with an external expert from CILC conducted a detailed desk review. The desk review studied and analyzed 21 existing monitoring mechanisms in the field of rule of law. The aim of the desk review was to acquire a basic overview of the different tools used to monitor the developments regarding the rule of law in general or focusing on a particular aspect. In addition, the aim of the desk review was also to focus on synthesis of basic characteristics of the selected rule of law monitoring mechanisms. In this regard, the desk review particularly focused on analyzing the methodologies of the selected monitoring mechanisms, with particular focus on collecting information on the **sources of data** used, i.e. what type of data is the methodology of the monitoring relying (i.e. purely subjective, or a combination of both) and the **methods of data collection** (i.e. how the data is collected and who the target audience is), the **regularity of the collection of data** (i.e. whether it is on annual basis, or irregular), the **evaluation procedure behind the monitoring mechanism** (i.e. how the performance of a state is assessed and what is the procedure behind assessing the collected data and assigning the final scores or ranking) and in general, **the understanding of the rule of law** (i.e. what is the definition or approach to the rule of law).

## 1.1 Overview of the approaches to conceptualization of the rule of law

As has been indicated in the desk review, there are different approaches to conceptualization of the rule of law in the existing monitoring tools. For example, the two most complex monitoring mechanisms, the **Rule of Law Index from the World Justice Project** and the **European Rule of Law Mechanism** are focused on the rule of law from the viewpoint of durability of systems of laws, efficiency, and effectiveness of (justice) institutions, accountability, predictability and stability of laws as well as the existence of open governments, a high level of accounta-

bility of governments and impartial and accessible justice systems. However, in other existing rule of law mechanism, the focus can be on only legality or a specific rule of law aspect. This is for example the case of **the Rule of Law Checklist of the Venice Commission**.<sup>10</sup> This checklist is a tool for assessing the rule of law in a given country from the viewpoint of its constitutional and legal structures, the legislation in force and the existing case-law. Thus, according to this checklist there is a high level of the rule of law in place, when formally all necessary legal instruments are put in place to protect and strengthen the rule of law, irrespective if this will also lead to a high level of the rule of law in practice. Another example of the understanding of the rule of law is provided by the **UN Rule of Law Indicators**, which are however, limited to a specific rule of law aspect: the protection of the rule of law in the criminal law area. Hence, it provides guidance for monitoring changes only in the performance and fundamental characteristics of criminal justice institutions in conflict and post-conflict situations.<sup>11</sup>

## 1.2 Defining the rule of law for the conceptual framework

Following a comprehensive research and analysis of the existing monitoring tools to measure the state of the rule of law and a careful review of their approaches towards understanding and defining the rule of law, the authors of this rule of law framework propose to follow as much as possible the understanding of the rule of law as provided by the European Rule of Law mechanism. Firstly, it is one of the most comprehensive monitoring mechanisms available at the European level, monitoring significant rule of law developments in all EU Member States. Secondly, it reflects the European traditions and standards that according to the founding treaties, are common to all Member States.

In essence, the European Rule of Law mechanism uses the approach to the rule of law taken by the European Commission<sup>12</sup> and reflects the definition contained in Article 2(a) of the Regulation 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget (hereinafter the “Conditionality Regulation”).<sup>13</sup> The European Commission in its Communications of 3 April 2019, defined the rule of law as a fundamental value enshrined in Article 2 of the Treaty on European Union (hereinafter, the “TEU”) under which all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. *“The rule of law includes, among others, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws;*

<sup>10</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

<sup>11</sup> [https://www.un.org/en/events/peacekeepersday/2011/publications/un\\_rule\\_of\\_law\\_indicators.pdf](https://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf)

<sup>12</sup> See for example, European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘2021 Rule of Law Report – The rule of law situation in the European Union’, COM(2021)700 final, 20 July 2021.

<sup>13</sup> Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I.

*legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law. These principles have been recognised by the European Court of Justice and the European Court of Human Rights.*"<sup>14</sup> This understanding and approach to defining the rule of law in the context of the EU has been further reiterated not only by further communications of the European Commission but also by some recent case law of the Court of Justice of the European Union (hereinafter the "CJEU").<sup>15</sup>

While building on the understanding of the rule of law as given by the European Rule of Law Mechanism, there are also differences that can be identified in the selected approach for the monitoring tool, which distinguishes the methodology and the monitoring tool from other existing rule of law frameworks. The European Rule of Law Mechanism covers four pillars: **justice systems, anti-corruption framework, media pluralism and other institutional issues related to checks and balances**.<sup>16</sup> The proposed methodology of the monitoring tool being developed under the above-mentioned project, however, builds on six selected areas: **anti-corruption framework, functioning of the justice system, media pluralism and media freedom, open government, protection of fundamental rights** and **enabling space for civil society**. Hence, the difference in the proposed methodology of this monitoring tool can be especially seen in the inclusion of the following rule of law areas as separate areas to be monitored: open government, the protection of human rights and fundamental freedoms and the enabling space for civil society, to positively contribute to the rule of law in the given countries.

With regards the relationship between *the rule of law and the inclusion of the protection of human rights and fundamental freedoms* as a specific area in this rule of law framework, they have an indivisible relationship and are mutually reinforcing. We can indicate that in the recent years, the level of protection of human rights and fundamental freedoms is being challenged and human rights and fundamental freedoms are being limited by governments and violated by private companies as a result of restrictive measures that governments have imposed on citizens as for example, part of the COVID-19 pandemic (such as government lockdowns, mandatory temporary closure of businesses/shops, the introduction of covid-passes, mandatory vaccinations, etc, which had a direct impact on the enjoyment of freedom of movement, freedom of assembly, etc.)<sup>17</sup> or as part of a tighter control over citizens (through video surveillance, the

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<sup>14</sup> European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, 'Further strengthening the rule of law within the Union – State of play and possible next steps' (COM(2019)163 final).

<sup>15</sup> See for example, CJEU, Judgement of 20 March 2021, *Repubblika v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311.

<sup>16</sup> European Commission, 'Methodology for the Preparation of the Annual Rule of Law Report', available at: [https://ec.europa.eu/info/sites/default/files/2020\\_rule\\_of\\_law\\_report\\_methodology\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2020_rule_of_law_report_methodology_en.pdf)

<sup>17</sup> See for example the findings in the Slovak National Centre for Human Rights, 'Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2020', 2021, available at: <https://www.snslp.sk/wp-content/uploads/HR-Report-2020.pdf>

use of face recognition software, data collection through the internet, etc.).<sup>18</sup> The rule of law has a direct impact on the level of protection of human rights and fundamental freedoms and as such is a precondition to the defence and enjoyment of the rights of individuals. To observe the progress achieved in the area of the rule of law in the context of protection of human rights and freedoms it is therefore necessary, to monitor the State's compliance with the international and regional human rights obligation and the level of protection of human rights and fundamental freedoms through providing accessible data on the number of cases where a violation of a national, regional or international human rights treaties or legal norm has been found.

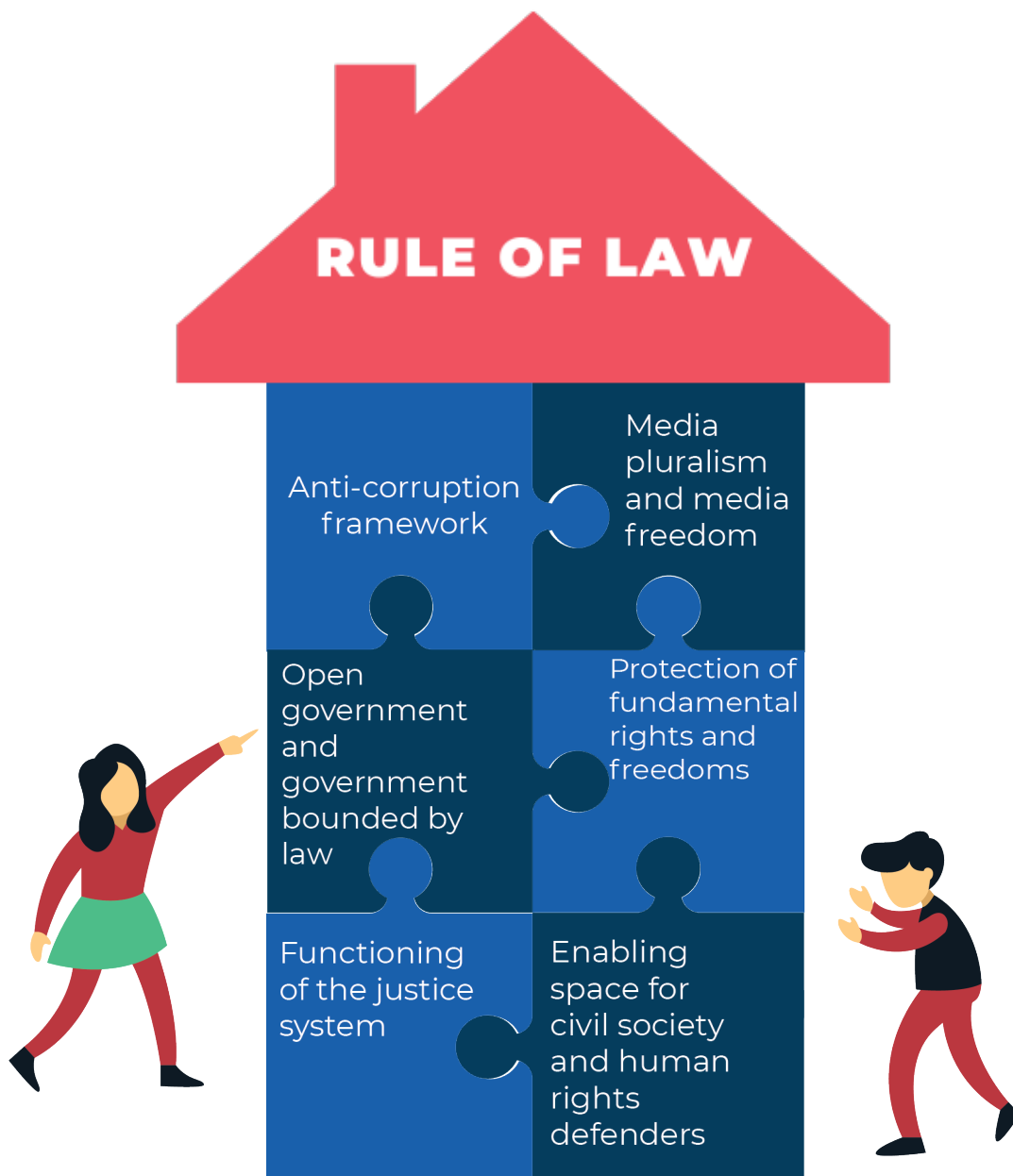
The conceptual framework also includes a separate area for monitoring the *enabling space for the civil society*. Strong and active civil society organizations play a key role in strengthening and upholding the rule of law. In certain countries civil society organizations can play a 'watchdog' role, to verify if a government is following the main (European) rule of law standards. In other situations, civil society organizations are monitoring certain aspects of the rule of law, such as the functioning of the judiciary or the protection of human rights and freedoms. In essence, through their activities including monitoring and reporting, they can effectively hold up a mirror to their national governments. Furthermore, similar like media organizations, civil society organizations can be encouraged by governments in supporting work regarding improving the rule of law. Since civil society organizations can also be put under pressure, especially when they are critical about certain developments in the rule of law areas, or play a positive role in strengthening the rule of law, it is important to include monitoring the enabling space for civil society organizations as a separate rule of law area.

In addition, the conceptual framework will also monitor specifically the selected area of *open government and government bound by law*. The indicators will focus on how open governments are in providing information about, for example, the performance of the court and how easily is the information available. If a government is lesser open in providing information on all governmental sectors, then it is an alarming sign and can have a negative impact on the overall state of the rule of law.

Besides the three different rule of law elements (open government, protection of human rights and freedoms, and enabling space for the civil society) that we include in our rule of law framework, we also opted to include more 'traditional' rule of law areas as well, such as anti-corruption, media freedom and media pluralism and the functioning of justice systems. By adding these areas to our rule of law framework, the rule of law conceptual framework is a unique framework created for the purposes of developing a monitoring tool to monitor and measure the state of the rule of law and the progress achieved in the selected areas in the Slovak Republic, and if further developed, also in the context of the European countries.

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<sup>18</sup> See for example the EU artificial intelligence act. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS\\_BRI\(2021\)698792\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf) and the guidelines on facial recognition developed by the European Data protection agency: [https://edpb.europa.eu/system/files/2022-05/edpb-guidelines\\_202205\\_frtlawenforcement\\_en\\_1.pdf](https://edpb.europa.eu/system/files/2022-05/edpb-guidelines_202205_frtlawenforcement_en_1.pdf)



*Illustration of areas that fall under the concept of the rule of law as understood by the authors of the conceptual framework*

## 2.METHODOLOGY DESCRIPTION

With regard to the chosen methodology we initially were intending to select from various available international rule of law monitoring tools a set of performance indicators and their corresponding data for given countries to build our own rule of law framework. However, given the difference in the evaluation mechanisms used by the monitoring tools combined with the different level of complexity of the existing data sources, keeping in mind the length and complexity of the project being implemented, we have decided to follow a more pragmatic and practical approach. Instead of developing a new complex model for measuring the rule of law, we have decided to select for each proposed area of the rule of law the most suitable available monitoring instrument for covering the selected rule of law area. The suitability of the selected monitoring mechanisms was evaluated based on their complexity (in terms of the areas covered), regularity of the data collection (whether on annual basis), whether the mechanism contains evaluation for Slovakia. Hence, the selected instruments have been proven to be robust, provide reliable data that are of quality and relevance, cover all/most European countries, and collect rule of law data on an annual basis.

Data included in our rule of law framework for (European) countries contains a total score (or a European ranking) for the specific area of the rule of law based on the best existing rule of law monitoring tool. Since most of the existing rule of law instruments are based on perceptions (surveys among households, experts, or companies) there is a need to supplement this information/score with objective data, derived from administrative sources (such as statistical databases, or existing reports, or through requests for information). In this way a proper balance can be provided between the presentation of data based on perceptions and data based on administrative sources. For this purpose, we have developed for each area of the rule of law, basic performance indicators that can be used to objectively rate a country (or a region).

Data visualization and reporting:

The end goal of the development of the rule of law monitoring framework is the creation of a practical tool that visualizes trends and developments in the rule of law, **based on total scores of existing rule of law monitoring instruments and the use of objective data derived from administrative resources.** The results of a rule of law assessment will be visualized in an interactive web-based tool, that describes in an easy understandable manner, what is the current situation of the rule of law in each country and what are the trends when measuring the rule of law over time (on an annual basis). In the figure below a proposal is being presented how the data can be visualized in an interactive web-based instrument.

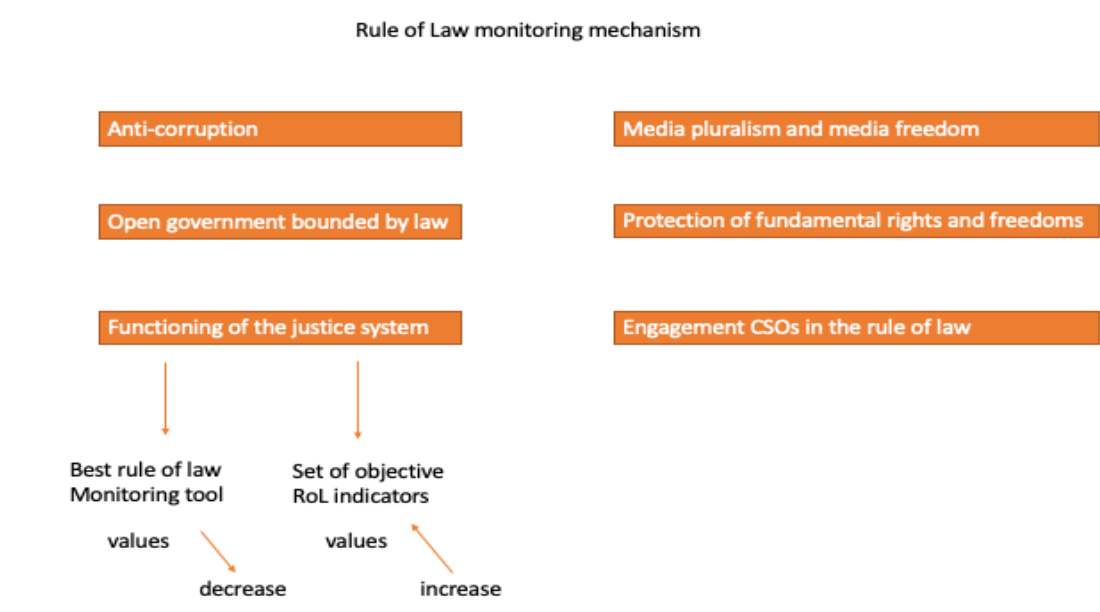


Table 1 First data visualization of a web-based rule of law monitoring mechanism

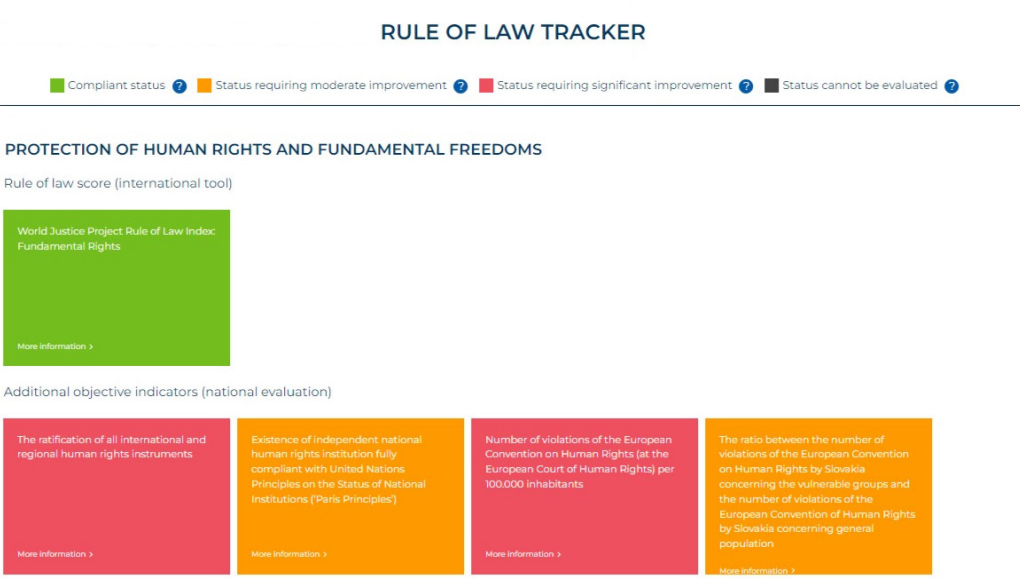


Table 2 Second data visualization of a web based rule of law monitoring mechanism using the already-developed human rights tracker by the Centre

Since the web-based rule of law monitoring mechanism gives only a snapshot of the current rule of law situation and trends of a country, it is necessary that the data visualization tools will be supplemented in the later part of the process with qualitative descriptive national rule of law reports as well as reports from other international and regional monitoring mechanisms on the particular rule of law areas. Since data can be easily misinterpreted it is necessary to provide for specific indicators and/or area of the rule of law also qualitative information. In this way, the data visualization tool will be supplemented with other and more detailed information, explanations, and relevant sources of reference.

What is important to notice in this context is that a rule of law monitoring framework can be based on a ranking mechanism. This is for example the situation with the rule of law index of the World Justice Project. The advantage of this approach is that it can detect positive and negative trends for individual countries and countries can be compared with each other. The disadvantage is that countries will/can 'manipulate' the scores in order to get a better ranking. This was for example the case for the Doing Business study of the World Bank. To avoid debates and influences of governments in the scoring of the rule of law, we have decided to present the rule of law data at the level of individual countries and to avoid a ranking approach.

### 3. SELECTED RULE OF LAW INDICATORS

As has been indicated in the desk review, most of the tools to measure the level of the rule is based on perceptions. Mostly, by making use of surveys among households, businesses, and experts. Only a few tools, such as the UN Rule of Law index, the EU rule of law monitoring mechanism offers a mixture of objective and subjective data. To strengthen our Rule of Law monitoring mechanism, and to reduce the level of complexity of the data collection tools applied, we suggest selecting for each proposed rule of law area the best available tool to measure the level of the rule of law for that specific area and to combine this with a small set of key objective indicators. Where possible, the data for the indicators will be collected from available administrative sources. If not available, the data will need to be collected separately, using for example the procedure according to Section 14 of Act No. 211/2000 Coll. on Free Access to Information and Amending and Supplementing Certain Acts (Freedom of Information Act), as amended<sup>19</sup> using the disclosure of information request, or the procedure according to Section 1(5) of Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights, as amended,<sup>20</sup> requesting information from public authorities and civil society organizations.

For each of the areas we will suggest 5-7 indicators covering the most essential areas to measure the level of the rule of law, based on objective data.

#### 3.1 Anti-corruption framework

##### Rule of law score (international tool)

*Best tool: Transparency International Corruption Perception Index*

The first part of the monitoring tool in the area of anti-corruption framework will work with the results of the ranking and information retrieved from the Transparency International Corruption Perceptions Index.<sup>21</sup> The monitoring mechanism has been selected as the most suitable and the most complex monitoring tool available in the area of anti-corruption, providing relevant data for the situation in the anti-corruption framework of the Slovak Republic.

**Description of the tool and evaluation mechanism:** The Transparency International Corruption Perceptions Index measures the perceived levels of public sector corruption in 180 countries/territories around the world, including Slovakia, according to experts and business people. The countries are then ranked and given a score out of 100. A country's score is the perceived level of public sector corruption on a scale of 0-100, where 0 means highly corrupt and 100 means very clean. CPI includes a global average as well.

<sup>19</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/211/>

<sup>20</sup> <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20150901.html>

<sup>21</sup> <https://www.transparency.org/en/cpi/2021>

A country's rank is its position relative to the other countries in the index. Ranks can change merely if the number of countries included in the index changes. As regard the score, the lower the score, the higher the level of perceived corruption, with 0 meaning highly corrupt and 100 very clean.

### Data visualization and reporting:

The sources and surveys which make up the CPI ask their respondents questions which are based on carefully designed and calibrated questionnaires. The CPI is calculated using 13 different independent data sources from 12 different institutions specializing in governance and business climate analysis (in the 2021 CPI, these include for instance the African Development Bank Country Policy and Institutional Assessment 2020; Freedom House Nations in Transit 2021; Global Insight Country Risk Ratings 2020)<sup>22</sup> which capture the assessment of experts and business executives on a number of corrupt behaviours in the public sector.

CPI source data captures the following aspects of corruption, based on the specific question wording used to collect the data: bribery, diversion of public funds, prevalence of officials using public office for private gain without facing consequences, ability of governments to contain corruption and enforce effective integrity mechanisms in the public sector, red tape and excessive bureaucratic burden which may increase opportunities for corruption, meritocratic versus nepotistic appointments in the civil service, effective criminal prosecution for corrupt officials, adequate laws on financial disclosure and conflict of interest prevention for public officials, legal protection for whistleblowers, journalists, investigators when they are reporting cases of bribery and corruption, state capture by narrow vested interests, access of civil society to information on public affairs.<sup>23</sup>

### Additional objective indicators (national evaluation)

- Compliance with the existing international and regional standards against corruption  
*Benchmark: ratification of all existing international and regional treaties against corruption*
- The fulfillment of recommendations given by international and regional institutions (e.g. GRECO)  
*Benchmark: all recommendations given are fulfilled*
- The existence of domestic laws and policies on prevention and fight against corruption reflecting all international and regional standards  
*Benchmark: all domestic laws and policies regarding prevention and fight against corruption meet all international and regional standards*

<sup>22</sup> [https://images.transparencycdn.org/images/CPI2021\\_SourceDescriptionEN.pdf](https://images.transparencycdn.org/images/CPI2021_SourceDescriptionEN.pdf), p. 1

<sup>23</sup> [https://images.transparencycdn.org/images/CPI2021\\_TechnicalMethodologyNote\\_EN.pdf](https://images.transparencycdn.org/images/CPI2021_TechnicalMethodologyNote_EN.pdf)

- The existence of institutional mechanisms to prevent and fight against corruption

*Benchmark: all institutions functioning in the area of prevention and fight against corruption as required from the international and regional obligations*

- The ratio between the total number of registered corruption cases and total number of prosecuted corruption cases

*Benchmark: to be discussed*

- The ratio between the number of convicted persons in corruption cases and the total number of registered corruption cases

*Benchmark: ratio between the total number of convicted persons for all criminal offences and the total number of registered criminal offences*

- The ratio between the number of plea agreements between the prosecutor and the defendant in corruption cases and the number of total judgments with convictions in corruption cases

*Benchmark: The ratio between the number of plea agreements between the prosecutor and the defendant in corruption cases and the number of total judgments/sentences in all criminal offences*

The main reason to focus on these indicators on anti-corruption is that it gives a good insight in how many corruption cases are being registered by the police and which of those cases are being prosecuted, resulting in an indictment. Since not all prosecuted cases will be transferred to the courts (cases withdrawn) and it is important to get a good overview of how many prosecuted cases are resulting in a conviction it is necessary to apply the ratio between prosecuted corruption cases and convictions. The higher the percentage will be, the more successful the offices of the public prosecutor are able to present sufficient evidence to the court concerning corruption which will lead to a conviction decided by judges. Regarding the indicator 'average financial gain obtained from corruption' it is necessary to have a good insight of the 'income' earned through corruption. A high average financial gain may indicate a high level of corruption or at least persons involved in corruption are earning a high (extra) income.

## 3.2 Media pluralism and media freedom

The reason to include *media freedom and pluralism* in our rule of law framework has to do with the fact that the existence of and role media can play a supportive role in the protection and enhancing of the rule of law in countries. This is though, not an automatic given situation, since especially in countries where the rule of law is under pressure or already deteriorating, governments may decide to impose restrictive measures on 'critical' media outlets, to harass them or even to forbid to operate. This is a negative tendency that not only can be found

in Eastern European and conservative countries, but also in Western European countries. One of the most recent negative developments can be found in the Netherlands, where the media freedom is more and more limited, and journalist sometimes are being intimidated by law enforcement agencies.

### Rule of law score (international tool)

*Best tool: Media Pluralism Monitor*

The first part of the monitoring tool in the area of media freedom and media pluralism will work with the results of the ranking and information retrieved from the Media Pluralism Monitor.<sup>24</sup> The monitoring mechanisms has been selected as the most suitable and the most complex monitoring tool available in the area of media freedom and media pluralism, providing relevant data for the situation in the area for the Slovak Republic.

**Description of the monitoring tool:** It's a tool which documents the health of media ecosystems by looking at threats to media pluralism and freedom in the EU member states as well as candidate countries.

#### Sources of data and dataset:

The methodology<sup>25</sup> is based on secondary data gathered through a questionnaire, and supplemented with primary data collected through interviews and document analyses (e.g. academic or legal texts) and Group of Experts' evaluation of variables which are the difficult to measure and/or require a qualitative type of measurement, and/or which showed a lack of measurable and easily verifiable data. The tool assesses the possible risks in 4 areas: Fundamental protection, Market plurality, Political independence and Social inclusiveness. The categorization allows for an assessment which includes the various components and meanings of media pluralism.

### Additional objective indicators (national evaluation)

- The implementation of international, regional and EU recommendations  
*Benchmark: all domestic legislation and policies regarding protection and safety of journalists meet all international and regional standards*
- The existence of domestic legislation and policies regarding the transparency in the ownership of the media reflecting all international and regional standards  
*Benchmark: all domestic legislation and policies regarding the transparency in the ownership of the media meet all international and regional standards*

<sup>24</sup> <https://cmpf.eui.eu/media-pluralism-monitor>

<sup>25</sup> [https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF\\_MPM2021\\_final-report\\_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF_MPM2021_final-report_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y)

- The number of reported physical (for example through intimidation, harassment, assaults) threats to journalist  
*Benchmark: 0 reported attacks and threats*
- The number of prosecuted journalists due to their work  
*Benchmark: 0 prosecuted journalists due to their work*
- The ratio between the number of criminal charges pressed and the number of termination or dismissal of criminal prosecution  
*Benchmark: to be discussed*
- The ratio between the number of criminal charges pressed against journalists and the number of termination or dismissal of criminal prosecutions  
*Benchmark: to be discussed*

The choice for these objective indicators is based on the fact that negative or positive developments in the field of the rule of law can have consequences for media pluralism and media freedom. In countries where the media freedom is limited or suppressed, the level of the rule of law might be lower, compared to countries where there is a high level of media pluralism and media freedom. To get a better overview of the level of media pluralism and media freedom it is necessary to collect and present data about the number of journalists that has been assaulted, arrested, or even imprisoned. The higher the numbers, the lesser is the level of media freedom and media pluralism. Since media is not limited to the written media (newspapers, magazines), radio and television, but also concerns freedom of expression and publication on social media, it is important to collect statistics about the number of posts that have been blocked or removed – at the requests of governments – at/from social media. In situations where media companies are not allowed to express their opinion on social media, there is the assumption that the rule of law will be lower, than in countries where the media is not being blocked by governments on social media.

### 3.3 Open government and government bounded by law

#### Rule of law score (international tool)

*Best tool: World Justice Project Rule of Law Index: (Constraints on Governmental Powers and Open Government)*

**Description of the monitoring tool:** understanding rule of law as a durable system of laws, institutions, norms, and community commitment that delivers accountability (the government as well as private actors are accountable), just law (the law is clear, publicized, and stable and is applied evenly. It ensures human

rights as well as property, contract and procedural rights), open government (the processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient) and accessible and impartial justice (Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve) (The Four Universal Principles).

### Sources of data and dataset:

The methodology is based on subjective data – more than 100,000 household and expert surveys from 140 States. Data is collected and published annually, as for the Slovak Republic, the data is available since 2021. The performance is assessed using 44 indicators across 8 categories: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice. For the purposes of the evaluation in the area of open government and government bounded by law, results of the Rule of Law Index of the World Justice Project for the category open government will be used. This category measures the openness of government defined by the extent to which a government shares information, empowers people with tools to hold the government accountable, and fosters citizen participation in public policy deliberations (publicized laws and government data; right to information; civic participation; complaint mechanism).

### Additional objective indicators (national evaluation)

- The ratio between the number of legislative proposals submitted directly through the Parliament and the total number of all legislative proposals concerning human rights  
*Benchmark: to be discussed (proposal for following a development in time)*
- Right of access to information – data available to the widest public  
*Benchmark: to be discussed*
- The ratio between the total number of accelerated legislative procedures and the total number of legislative procedures for the given year  
*Benchmark: to be discussed (proposal for following a development in time)*
- The ratio between the number of enacted laws submitted for consideration to the Constitutional Court of the Slovak Republic (regarding their compliance with the Constitution) and the total number of enacted laws annulled by the Constitutional Court of the Slovak Republic  
*Benchmark: to be discussed*

The indicators selected to measure the level of open government in the context of the rule of law are mainly based on the following reasoning. In countries where there is a low level of rule of law development and protection, there is a higher chance that there is a low level of transparency of the government as well. The OECD has developed a tool for measuring the level of open govern-

ment data. This is based on the assumption that open government data is related to the level of openness of governments, usefulness of governmental data and re-usability of government data. Besides open government indicators for measuring certain aspects of the rule of law, it is necessary to look at the level of stability and predictability of laws. If there are many changes in legislation in a country or where the application of the laws is unpredictable this will have a negative impact on the level of the rule of law. In countries with stable and predictable laws it is expected that there will be a high level of rule of law too.

### 3.4 Protection of fundamental rights and freedoms

#### *Description of the selected area*

Protection of human rights and fundamental freedoms and the rule of law have an indivisible relationship and are mutually reinforcing. On the one hand, the area of protection of fundamental rights constitutes one of the building blocks of the functioning state of the rule of law, on the other hand, the functioning state of the rule of law contributes to better protection and enjoyment of human rights and fundamental freedoms as it is closely linked with functioning democracy, economic and social development which are key pillars of the rights performance.

*Best tool: World Justice Project Rule of Law Index: Fundamental Rights*

#### **Rule of law score (international tool)**

**Description of the monitoring tool:** understanding rule of law as a durable system of laws, institutions, norms, and community commitment that delivers accountability (the government as well as private actors are accountable), just law (the law is clear, publicized, and stable and is applied evenly. It ensures human rights as well as property, contract and procedural rights), open government (the processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient) and accessible and impartial justice (Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve) (The Four Universal Principles).

#### **Sources of data and dataset:**

The methodology is based on subjective data – more than 100,000 household and expert surveys from 140 States. Data is collected and published annually, as for the Slovak Republic, the data is available since 2021. The performance is assessed using 44 indicators across 8 categories: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice. For the purposes of the evaluation in the area of fundamental rights, results of the Rule of Law Index of the World Justice Project for the category protection of fundamental rights will be used. This category recognizes that a system of positive law that fails to

respect core human rights established under international law is at best rule by law and does not deserve to be called a rule of law system (equal treatment and absence of discrimination; the right to life and security of the person is effectively guaranteed; due process of the law and rights of the accused; freedom of opinion and expression is effectively guaranteed; freedom of belief and religion is effectively guaranteed; freedom from arbitrary interference with privacy is effectively guaranteed; freedom of assembly and association is effectively guaranteed; fundamental labor rights are effectively guaranteed).

### **Additional objective indicators (national evaluation)**

- The ratification of all international and regional human rights instruments  
*Benchmark: ratification of all international and regional human rights instruments*
- Existence of independent national human rights institution compliant with United Nations Principles on the Status of National Institutions ('Paris Principles')  
*Benchmark: full compliance with the Paris Principles on the independence of national human rights institutions*
- Number of violations of the European Convention on Human Rights (at the European Court of Human Rights) per 100.000 inhabitants  
*Benchmark: EU average*
- The ratio between the number of violations of the European Convention of Human Rights concerning vulnerable groups and the number of violations of the European Convention of Human Rights concerning general population  
*Benchmark: The ratio between the victims of criminal offences belonging to vulnerable groups and the overall victims of criminal offences*
- The ratio between the number of cases where the Constitutional Court of the Slovak Republic found a violation of human rights and fundamental freedoms and the total number of applications submitted to the Constitutional Court per 100 000 inhabitants  
*Benchmark: to be discussed*
- The number of judgments of the European Court of Human Rights not implemented by the government  
*Benchmark: implementation of all judgments of the European Court of Human Rights*
- Amount of compensation that Slovakia has to pay in relation to the non-compliance with the European Convention on Human Rights per 100 000 inhabitants  
*Benchmark: CoE average per 100 000 inhabitants*

With regards the selection of the objective indicators for measuring the level of protection of fundamental rights and freedoms it is important to look at the level of protection of the fundamental rights by governments and judicial bodies. To get a better insight in the level of protection of fundamental rights it is important to collect objective data about the number of violations of the European Convention of Human Rights. This should be done by finding the number of violations of the ECHR per 100 000 inhabitants as well as the number of violations of human rights and freedoms as found by the Constitutional Court of the Slovak Republic. The more violations are being registered, the more the protection of fundamental rights is being put under pressure. As a result of this, also the level of rule of law will decline in a given country.

Moreover, specific data should be highlighted as regards the level of violation of human rights and fundamental freedoms of vulnerable groups.

In addition, in the area of protection of human rights and fundamental freedoms, the existence of independent national human rights structures and institutions mandated with the protection of fundamental rights play a crucial role. For example, the European Commission has previously recognized National Human Rights Institutions (hereinafter the “NHRIs”) as relevant contributors to the promotion of the rule of law, prevention of systemic threats and reaction.<sup>26</sup> In particular, strong and effective NHRI is a rule of law indicator itself.<sup>27</sup>

Moreover, the judgments of the European Court of Human Rights have a great potential to enhance the protection of human rights and freedoms at the national level. However, they must be properly implemented at the national level. According to Article 46 of the ECHR, States have an obligation to execute a judgment in any case to which they are parties. The worrying practices of non-implementation of the judgments of the ECtHR are in important alert for increasing challenges in the area of access to justice, including the State’s resistance to abide by its international obligations and as such foresee a decline in the overall state of the rule of law.

## 3.5 Functioning of the justice system

### Rule of law score (international tool)

*Best tool: World Justice Project (the advantage of the WJP is that it is providing total scores for civil and criminal justice)*

**Description of the selected monitoring mechanism:** Understands the rule of law as a durable system of laws, institutions, norms, and community commitment that delivers accountability (the government as well as private actors are ac-

<sup>26</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Strengthening the rule of law within the Union – A blueprint for action’, COM(2019)343 final, 17 July 2019.

<sup>27</sup> European Network of National Human Rights Institutions, ‘State of the rule of law in Europe: 2021 Report’, available at: <https://ennhri.org/wp-content/uploads/2022/04/ENNHRI-EU-Rule-of-law-Report-2022.pdf>, p. 13.

countable), just law (the law is clear, publicized, and stable and is applied evenly. It ensures human rights as well as property, contract and procedural rights), open government (the processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient) and accessible and impartial justice (Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve) (The Four Universal Principles).<sup>28</sup>

### Sources of data and dataset:

The methodology<sup>29</sup> is based on subjective data – more than 100,000 household and expert surveys from 140 States. Data is collected and published annually, as for the Slovak Republic, the data is available since 2021. The performance is assessed using 44 indicators across 8 categories: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, criminal justice. For the purposes of the evaluation in the area of the functioning of the justice system by, results of the Rule of Law Index of the World Justice Project for the categories of civil justice and criminal justice. For the civil justice, the Rule of Law Index measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system (people can access and afford civil justice; civil justice is free of discrimination; civil justice is free of corruption; civil justice is free of improper government influence; civil justice is not subject to unreasonable delay; civil justice is effectively enforced; alternative dispute resolution mechanisms are accessible, impartial and effective). For the criminal justice, the Rule of Law Index evaluates a country's criminal justice system (criminal investigation system is effective; criminal adjudication system is timely and effective; correctional system is effective in reducing criminal behavior; criminal system is impartial; criminal system is free of corruption; criminal system is free of improper government influence; due process of the law and rights of the accused).

### Additional objective indicators (national evaluation)

- Estimated time to resolve cases in the first instance
  - Disposition time in civil and commercial cases
  - Disposition time in criminal cases
  - Disposition time in administrative cases

*Benchmark: EU average*
- The average clearance rate in the first instance courts
  - The average clearance rate in the first instance courts in civil and commercial cases
  - The average clearance rate in the first instance courts in criminal cases
  - The average clearance rate in the first instance courts in administrative cases

*Benchmark: EU average*

<sup>28</sup> <https://worldjusticeproject.org/about-us/overview/what-rule-law>

<sup>29</sup> [https://worldjusticeproject.org/sites/default/files/documents/INDEX\\_2021\\_methodology.pdf](https://worldjusticeproject.org/sites/default/files/documents/INDEX_2021_methodology.pdf)

- The average number of pending cases in the first instance courts (not decided)
  - The average number of pending cases in the first instance courts in civil and commercial cases per inhabitants
  - The average number of pending cases in the first instance courts in criminal cases per inhabitants
  - The average number of pending cases in the first instance courts in administrative cases per inhabitants

*Benchmark: EU average*

- Capacity of justice: number of judges, prosecutors and police officers per 100 000 inhabitants
  - Number of professional judges per 100 000 inhabitants
  - Number of professional prosecutors per 100 000 inhabitants
  - Number of police officers per 100 000 inhabitants

*Benchmark: EU average*

- Total annual budget available for the justice sector (budgets for courts, prosecution police, and penitentiary) per inhabitants

*Benchmark: CoE median*

- Number of disciplinary proceedings against judges/prosecutors per 1 000 judges/prosecutors
  - Number of disciplinary proceedings against judges per 1 000 judges
  - Number of disciplinary proceedings against prosecutors per 1 000 prosecutors

*Benchmark: EU average per 1 000 judges/prosecutors*

With regards the functioning of justice systems there are many indicators that can be used to measure a proper functioning of the systems. In essence, one of the aspects and essential components of proper functioning of courts in related to the respect of fair trial within a reasonable time (as established in Article 6 ECHR).<sup>30</sup>

The proposed set of indicators for this rule of law framework is focused on the key indicators for measuring a good/high level of performance of the justice institutions and quality of service delivery. With regards the civil, commercial, administrative and criminal proceedings, the efficiency of justice can be measured through the calculation of disposition times. Disposition time refers to pending cases/resolved cases x 365 (in days). It provides a theoretical estimate of time for a pending case to be resolved, taking into account the current pace of work at the individual instances of the judicial structures. The higher this value, the more time it takes for courts to resolve these cases.

<sup>30</sup> European Commission for the Efficiency of Justice, 'Study on the functioning of judicial systems in the EU Member States', CEPEJ(2021)18rev1, 6 April 2022, available at: [https://ec.europa.eu/info/sites/default/files/part\\_1\\_-\\_eu\\_scoreboard\\_-\\_indicators\\_-\\_deliverable\\_0.pdf](https://ec.europa.eu/info/sites/default/files/part_1_-_eu_scoreboard_-_indicators_-_deliverable_0.pdf)

Since the performance of justice institutions is not only influenced by developments in caseloads or workloads this framework also includes indicators related to human resources (the level of availability of judges and prosecutors and the budget that is available for the justice sector) Adequate financial and human resources are necessary for the proper functioning of the justice system (factors: financial resources, human resources, training). The general assumption is that the lesser capacity is available in terms of human resources and budget, the lower the level of performance and quality of the justice institutions will be.

In addition, investing in, contributing and supporting the digitalization of the justice system can enhance the justice system itself as well as it can contribute to making it more accessible, resilient and efficient.

## 3.6 Enabling space for civil society and human rights defenders

### Rule of law score (international tool)

*Best tool: Civicus Monitor*

**Description of the monitoring tool:** The CIVICUS Monitor aims to provide a comprehensive assessment of the conditions for civil society within countries and over time. It analyses civic space, defined as the respect in policy, law and practice for the freedoms of association, peaceful assembly and expression and the extent to which the state protects these fundamental rights. The CIVICUS Monitor is a dynamic online portal that tracks conditions for civil society in 197 countries and territories by collating information from a variety of sources, including civic groups and activists.

### Sources of data and dataset:

Civic space updates from CIVICUS Monitor research partners contain qualitative, narrative information related to the situation for civil society in a country. This qualitative information is directed by a set of guiding questions and the resulting data is gathered from a variety of primary and secondary sources. However, the last updated information for Slovakia is from 2016.

### Additional objective indicators (national evaluation)

- The existence of domestic legislation on the establishment and functioning of CSOs reflecting all international and regional standards

*Benchmark: Existing domestic legislation on the establishment and functioning of CSOs meet all the international and regional standards*

- The existing domestic legislation and policies on the financing of CSOs reflecting all the international and regional standards

*Benchmark: Existing domestic legislation on the financing of CSOs meet all international and regional standards*

- The ratio between the increase of financial state support provided to CSOs and the increase of state expenses

*Benchmark: to be discussed*

- The number of reported harassments or threats against CSOs

*Benchmark: 0 reported harassment and threats*

The protection and the level of the rule of law is not only dependent from the previously mentioned factors but is influenced by the engagement of civil society organizations in rule of law developments as well. As such, civil society play a key role in building and strengthening democracy, monitoring the specific areas of the rule of law, restraining the power of state authorities and promoting transparency, openness and accountability.<sup>31</sup> Therefore, this rule of law conceptual framework considers the enabling space for civil society and their participation as an indicator for the functioning democracy and the rule of law. In certain countries governments are actively supporting civil society organizations since they can have a positive impact on the rule of law. Therefore, it is relevant to measure the average financial support (in euros) that governments are providing to civil society organizations. The more financial support to CSOs, the higher the level of rule of law will be. On the downside part, governments can also play a negative influential role on the existence of civil society organizations. In certain countries critical civil society organizations might be forced to liquidate themselves since they are seen as the 'enemy of the state'. The more liquidations of CSOs caused by governmental interventions, the lesser it is likely that there exists a high level of rule of law. A healthy civil society organizations culture in a country is also dependent from the available budgets of CSOs and the level of intimidation/harassment of CSOs. The higher the average budget, the better this will be for the level of the rule of law in a country. However, if members of CSOs are being harassed or intimidated, there is a lesser chance that there will be a high level of rule of law.

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<sup>31</sup> European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL))