

## *Contributing to a more transparent and democratic society in the civil law field*

### *Contribution by Miloš Hat'apka*

Thank you very much for the invitation to speak at this celebratory event. The invitation has inevitably triggered in me a trip down the memory lane as my involvement with the Council of Europe is very much linked with the then Czechoslovakia becoming Member of the Council of Europe and my membership in the CDCJ happened at a very momentous period shortly after the creation of the Slovak Republic and its independent Membership in the Council of Europe.

Slovakia was one of a large number of new democracies that become Members of the Organisation in the early 90's and as new democracies these States were looking for models and standards to develop their political and legal systems based on the principles of rule of law.

At that period the Council of Europe was THE Organisation to look up to and follow as the oldest political organisation in Europe aimed at upholding human rights, democracy and the rule of law. Our Membership in the Organisation was an important validation of our place among the democratic countries of Europe, but it also placed an important obligation on us to adapt and develop our legal system in line with modern principles of transparent and democratic society. The recommendations and the Conventions of the Council of Europe thus represented the standards guaranteeing that our direction towards modern democratic values and the rule of law is secured.

The Slovak government imposed an obligation on all Ministers to regularly evaluate the possibility of ratifying the Council of Europe Conventions and any new piece of legislation contained references to the relevant Conventions (even if Slovakia has not ratified them) and recommendations of the Council of Europe.

Side note: This reliance and respect for the Council of Europe standards lead so far that at one point in the Slovak Parliament a modification of a piece of legislation did not carry solely based on a claim by one of the MPs that it was not in line with a CoE recommendation. The sad fact was that there was no such recommendation...

But it shows the impact the standard setting by the CoE has had alongside its unique and robust human rights protection mechanism

From the instruments falling within the remit of CDCJ, the principles of the Convention on Nationality played an important part in the process of resolving issues related to nationality after the division of Czechoslovakia where the legal situation in the Czech Republic and in the Slovak Republic differed as regards the acquisition of nationality. The principles of the Convention helped in the process of finding transparent and fair legal solutions for the Czechoslovak nationals in both succeeding countries.

Of course, the process of looking at the CoE standard setting continued long after our becoming Members. Slovakia was one of the first States to sign the Civil Convention Against Corruption which was the first binding text defining international rules in the field of civil law and

corruption. It was also one of the first texts to offer protection to whistleblowers. And its importance is underlying by the creation of a specific monitoring mechanism. The creation and operation of GRECO was an important milestone in the process of making the obligations of the Contracting Parties enforceable by continuous monitoring, evaluation and peer pressure. Provisions of the CoE anti-corruption conventions represent an important reference point for other international mechanisms aimed at the protection of the rule of law, including the toolbox of the European Union, mainly its Rule of Law Report cycle.

I would also like to mention one Convention which is at times maligned and underrated, but which remains for me one of the most innovative Conventions falling within the remit of the CDCJ, and that is the Convention on information on Foreign Law. For Slovakia, as I am sure also for many other countries applying the principle *iura novit curia*, this Convention played and plays a very important role for the courts being able to fulfil their legal obligations in crossborder proceedings. It remains unchallenged after all these years as the recent attempts by both the EU and the Hague Conference on Private International Law to deal with the topic of access to foreign law failed to bring any substantive improvement.

I chose examples from three very different areas to demonstrate the wide array of the CDCJ's responsibilities