

Date Printed: 11/03/2008

JTS Box Number: IFES_10
Tab Number: 28
Document Title: The 1998 Parliamentary Election Law of
the Slovak Republic: Amendments in
Document Date: 1999
Document Country: Slovak Republic
IFES ID: R01844





International
Foundation
for Election
Systems

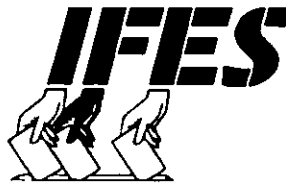
***DO NOT REMOVE FROM
IFES RESOURCE CENTER!***

The 1998 Parliamentary Election Law of the Slovak Republic:

Amendments in Controversy

**By
Carol Conragan, Attorney at Law**

***Edited for content by Denise Wales, Senior Program Assistant, Central and Eastern
Europe***



International Foundation for Election Systems

**1101 15th Street, NW
Washington, DC**

October 1999

F. Clifton White Resource Center
International Foundation
for Election Systems 2/01
1101 15th Street, NW
Washington, DC 20005

This paper was made possible by a grant from the United States Agency for International Development (USAID). The opinions expressed in this paper are solely of the International Foundation for Election Systems (IFES). This material is in the public domain and may be reproduced without permission; citation is appreciated.

Table of Contents

Introduction	3
The Political Climate in 1998: Blowing Winds of Change	4
Two Critical Miss-Steps Erode Democratic Principles.....	5
<u>The 1997 Referendum</u>	6
<u>The Gaulieder Case</u>	8
SDK Coalition Turns the Tide.....	8
Redefining Districts: The First Step toward Electoral Change	9
The Proposed Amendments: The Ruling Coalition Struggles for Control	10
Inappropriate Timing?	13
Against a Throng of Protest, the Election Law is Passed.....	13
The Coalition Parties Threshold: A Unique Provision	15
The Election Campaign and Access to Broadcast Media	17
Domestic and International Observers.....	20
International Observers Invited at the Last Possible Hour	23
The Constituency Issue: One for All – Not All for One	24
Voter Lists	25
The Selection of Substitutes within the Parliament	25
State Control of Electoral Commissions.....	27
Constitutional Court Decision	29
The Actual 1998 Parliamentary Election: A Critical Step Towards a Consolidated Democracy	32
IFES Recommendations: Amending the Amendments.....	33
<u>Timing</u>	34
<u>Article 41(3): Threshold for Coalition Parties</u>	35
<u>The Election Campaign and Use of the Broadcast Media</u>	36
<u>Domestic and International Observers</u>	39
<u>The Constituency Issue</u>	39
<u>Voter Lists</u>	40
<u>State Control of Electoral Bodies</u>	40
Conclusion	41

Introduction

On 20 May 1998, the National Council of the Slovak Republic (Parliament) amended Slovakia's parliamentary election law sending a wave of protest throughout the country and beyond.¹ Not only did Slovakia's opposition parties raise their voices against the sudden amendments, but so too did the NGO and international communities – finding that many of the provisions in the laws were in direct contravention to international election standards and democratic principles. The Slovak opposition parties viewed the changes as an attempt by the ruling party to influence the parliamentary elections, which would be held later that same year. They also claimed that the new amendments benefited the incumbent parties and violated the Slovak Constitution. In addition, many protested the timing of the amendments since they were adopted only four months before the elections were expected to be held.²

Before and after the law was passed, NGOs, international organizations, political analysts, politicians, and journalists published commentaries concerning the amendments. In addition, on 30 June, shortly after the law was enacted, 35 Members of Parliament (MPs) from among the opposition parties filed suit in Slovakia's Constitutional Court challenging the constitutionality of the amendments. The complaint took issue with the provisions concerning the election campaign, substitutions in Parliament, the right of appeal, candidate lists, and others.

Even though these controversial amendments were passed in May 1998, the laws remain contentious a year later. And the debate promises to continue, at least through the year 2000 when the Parliament plans to revisit and revise the laws.

Much has been written on Slovakia's 1998 amendments and much more will likely be written as the issue heats up again. As such, this report is designed to provide interested readers with: a brief history of the 1998 parliamentary election law, the government in place at the time, the circumstances leading to the amendments, and the opposition parties' response. Also included is a comprehensive review of the laws at issue, a sampling of published commentaries, and a review of the Constitutional Court's decision on the suit filed by the MPs in June 1998. While this report attempts to provide a fair representation of the commentaries published to date, much of the relevant material written in Slovak could not be translated and were therefore out of the author's reach.

¹ The Act of the Slovak National Council No. 80/1990 Collection on Elections to the Slovak National Council (as amended No. 187/1998).

² On 23 June 1998, the Chairman of the Slovak National Council, Mr. Ivan Gasparovic, officially announced that the next parliamentary elections would be held on 25 and 26 September 1998.

The Political Climate in 1998: Blowing Winds of Change

By the year 1998, Slovakia's efforts to become a consolidated democracy were stalling. Many saw the government under Prime Minister Vladimir Meciar and the ruling coalition headed by the Movement for a Democratic Slovakia (HZDS) which included the Slovak National Party (SNS) and the Association of Workers of Slovakia (ZRS), as Slovakia's stumbling block to membership in the European Union (EU) and North Atlantic Treaty Alliance (NATO). According to political scientist Sona Szomolanyi, "the aftermath of the 1994 elections brought not only a change in the government elite but also attempts by the incoming ruling coalition to alter the 'rules of the game' that were put in place by the post-Communist democratic regime."³

Since the ruling coalition held 83 of the 150 seats in Parliament, it had the parliamentary majority necessary to alter these "rules of the game." Thus, from its earliest days in office, the ruling coalition began to effectively clean house, leaving opposition MPs with a minor role, if any, in the new HZDS-controlled parliament. The parliamentary session of 3 and 4 November 1994 remains famous for the number of dramatic changes imposed by the ruling coalition. For example, in a vote of no confidence, Interior Minister Ladislav Pittner (KDH) and Privatization Minister Milan Janicina (DU) were removed; the general prosecutor was recalled; and also dismissed were: the management of the Supreme Inspection Office; the members of the Slovak Television Council and Slovak Radio Council; and the members of the National Property Fund. In addition, the Parliament passed privatization laws, which the Constitutional Court later found unconstitutional. The Court also found unconstitutional the vote of no confidence against Ministers Pittner and Janicina.

Juraj Hrabko, a well-known journalist and General Director of the Section of Human Rights and Minorities in Slovakia's Government Office, wrote about the famous November session noting that the EU sent a demarche to Slovakia to express its concern about "certain phenomena of the political development since the [1994] elections."⁴ This practice under Prime Minister Meciar, kept Slovakia out of the running in the first round of Central and Eastern European applicants to the EU and NATO. This failure to meet EU and NATO standards, Ms. Szomolanyi stated, "was clearly the result of the supremacy of the personal interests of those in power over the interests of the nation and state. Strategic decisions in this case were not made by the voters but by the ruling coalition."⁵

Adding to the power of the ruling elite after the 1994 elections, was the noticeable lack of organized opposition parties within the Parliament. This lack prevented any possible check on the government. "This kind of government," Ms. Szomolanyi wrote, "where one branch of power has no possibility of controlling other branches, can hardly be compared with a

³ Szomolanyi, Sona, "Slovakia's Transition Path and the 1998 Elections," *The 1998 Parliamentary Elections and the Democratic Rebirth in Slovakia*, Institute for Public Affairs, Bratislava, Slovakia, 1999, p. 25. Sona Szomolanyi is Head of the Political Science Department at Comenius University and a published author, and sociologist.

⁴ Hrabko Juraj, "Political Reporting: A Primer for the 1998 Elections," ProMedia Slovakia o.m.p., Bratislava, Slovakia, Summer 1998, p. 2.

⁵ Szomolanyi, "Slovakia's Transition Path and the 1998 Elections," p. 30.

majority-based democracy of the Westminster type.”⁶

In its “General Evaluation” regarding Slovakia’s eligibility for EU membership, the European Commission found that Slovakia was far from practicing internationally recognized democratic principles. It noted that the period from July 1997 until September 1998 demonstrated “a lack of stability in the institutions guaranteeing democracy, the rule of law and protection of human rights. . . .” This was reflected, the evaluation noted in the “inability to elect a President, the controversial use of the transferred presidential powers, the unsatisfactory functioning of the parliamentary committees and the disregard for the Constitutional Court rulings. There have been problems in the treatment of minorities and a lack of progress concerning the adoption of legislation on minority languages.”⁷

Aware of their country’s very fragile democracy under the HZDS-led coalition, Slovak citizens’ confidence in the democratic electoral process began to erode. Early in 1998 nearly forty percent of the Slovak population did not believe the 1998 election would be free and fair. In December 1997, the International Foundation for Election Systems (IFES) conducted a Pre-Election Technical Assessment (PETA) for the Republic of Slovakia to evaluate the strengths and weaknesses of the country’s electoral laws and administration.⁸

In its report, the IFES team noted the “shaken confidence” of the electorate at that time. “There is no question,” the report stated, “that there is a deep-seated fear that the election for the upcoming parliamentary and local elections may be manipulated by the government for its own interest.” The report listed some of the electorates’ fears as follows:

- that the government will “enact a new election system without input from the public, particularly from those associated with the opposition, minority interests and NGOs”;
- that the government will “adversely influence the court system to postpone the election or to issue decisions which cause last-minute confusion and lower voter turnout”; and
- that the government will “manipulate the vote count at the local, regional and federal levels”.⁹

Two Critical Miss-Steps Erode Democratic Principles

Regrettably, the scope of this paper does not allow for an in-depth analysis of events that led to Slovakia’s eroding confidence in the ruling coalition, but two events in 1996 and 1997 are consistently cited and bear mentioning. One was the ousting of MP Frantisek Gaulieder and the other was the failed 1997 referendum. In October of 1997, Mikulas

⁶ Ibid, p. 25.

⁷ Slovakia Report, Section B. (1.3) “General Evaluation,” *Regular Report from the Commission on Progress Towards Accession*, website: <http://europe.eu.int>.

⁸ Knapp, Alexander, Paul DeGregorio, Ronald Sereg, Katarina Duich, “Slovak Republic Pre-Election Technical Assessment,” International Foundation for Election Systems, Washington, D.C., December 1997.

⁹ Knapp, “Slovak Republic Pre-Election Technical Assessment,” p. 21.

¹⁰ Knapp, “Slovak Republic Pre-Election Technical Assessment,” p. 21.

Dzurinda, currently serving as Prime Minister and Chairman of the SDK in Slovakia, said that the ousting of Gaulieder and the thwarted May 1997 Referendum had shown "that the government coalition ceased to be the guarantor of preserving democracy."¹¹ These two incidents damaged confidence in the government to such a degree, that the ruling coalition's seat of power was no longer assured.

The 1997 Referendum

In February 1997, the Meciar-led Parliament agreed to hold a referendum on 23 and 24 May regarding Slovakia's membership in NATO.¹² Several months before the February decision, however, the opposition parties, absent the Party of the Democratic Left (SDL and SZS, collected over 500,000 signatures in a petition drive asking for a referendum on the direct election of the president. This was because the term of President Michael Kovac was ending in March 1998, and the opposition parties feared that the presidency might remain vacant indefinitely due to a stalemate in Parliament. A stalemate could easily occur since the president had to be elected by a three-fifths majority.¹³ If the presidency remained vacant, the Slovak Constitution governs that many of the powers of the president may be delegated to the prime minister.¹⁴ The last thing that the opposition parties wanted was to see more power placed in Meciar's hands. President Kovac certified the petition and added to the existing referendum ballot this fourth question: should the Slovak Constitution be amended to allow for the direct election of the president?

Despite a Constitutional Court ruling which held that the four-question ballot was valid and that the referendum should go forward, the Interior Minister deleted the fourth question just two days before the scheduled vote. In protest, the opposition parties appealed to the citizens of Slovakia to boycott the referendum. As a result, only ten percent of the registered voters turned up and the referendum was declared flawed by the Central Election Commission.

While general consensus among the Slovak electorate and international community found that Slovakia's previous parliamentary elections (in 1990, 1992, and 1994) satisfied international standards, the May 1997 referendum "raised a key question for all democratic political actors: whether they were able to defend free elections and to avert the advent of an authoritarian regime."¹⁵ In addition, according to political scholars Martin Butora,

¹¹ Druker Jeremy, "International Observers and the 1998 Elections," *The 1998 Parliamentary Elections and the Democratic Rebirth in Slovakia*, Institute for Public Affairs, Bratislava, Slovakia, 1999, p. 87.

¹² The Nato referendum included three questions: 1) did voters support membership in NATO; 2) did they support the stationing of nuclear weapons in Slovakia; and 3) did they support the stationing of troops in Slovakia.

¹³ Article 101(3) of the Slovak Constitution states as follows: "The President shall be elected by a three-fifths majority of all members."

¹⁴ Article 105(1) of the Slovak Constitution states as follows: "In a case where the President has not been elected, or at the time of the vacancy before the election of the new President, or after the new President has been elected but before he has been sworn in, or he has been unable to perform his official duties, the powers of the President shall be delegated to the Government of the Slovak Republic except for those defined in Article 102, subsections d) to g). In these cases the Government may vest some of the powers of the President in the Prime Minister. During such time the Prime Minister shall act as Commander-in-Chief of the armed forces."

¹⁵ Butora, Martin, Grigorij Meseznikov, Zora Butorova, "Introduction: Overcoming Illiberalism - Slovakia's 1998

Grigorij Meseznikov and Zora Butorova, the obstructed referendum "violated a basic human right of millions of Slovak citizens" and "served to raise tensions in society and to increase the risk of political destabilization."¹⁶ What was unexpected, however, was the adverse effect the thwarted referendum would have on Meciar's government. As Szomolanyi wrote: "Nobody would have expected that rather than leading directly to the election of a president, the petition campaign would instead result in a thwarted referendum whose consequences were counterproductive for Meciar and, conversely, favorable for the democratic players."¹⁷

At that time, the "democratic players" were the opposition parties. As Grigorij Meseznikov wrote in his article, "The 1998 Elections and the Development of the Party System in Slovakia," "the obstructed referendum had invigorated cooperation among the opposition parties. Even the SDL, which had been critical of the efforts by the opposition parties to change the constitution through a referendum, was induced to increase cooperation with the other opposition parties after the referendum fiasco."¹⁸

By December 1997, at the EU Summit in Luxembourg, Slovakia was the only country reprimanded for its "non-adherence to the basic political criteria [required for EU membership]."¹⁹ The Chairman of the Council of Europe, J. C. Juncker, stated at the Summit that "Direct negotiations on the accession of Slovakia to the EU will not start unless Slovakia accepts democratic principles applied in the European Union."²⁰ In addition, Slovakia was also not considered for membership in NATO. The only formal response was from United States Secretary of State, Madeline Albright, who said that "it was important that Slovakia understand that NATO membership requires democratization, a market system, and the ability to be an active participant."²¹

Elections," *The 1998 Parliamentary Elections and the Democratic Rebirth in Slovakia*, Institute for Public Affairs, Bratislava, Slovakia, 1999, p. 16. Martin Butora is an associate professor of sociology and founder of the Institute for Public Affairs, a well-known think tank in Slovakia. He is also co-founder of the Public Against Violence movement. Zora Butorova is an external scholar at the Institute for Public Affairs and was director there for the Political Culture and Public Opinion program. She is also a published author and lectures at Comenius University Department of Political Science. See footnote 17 for biography on Grigorij Meseznikov.

¹⁶ Ibid, p. 13..

¹⁷ Szomolanyi, p. 31.

¹⁸ Meseznikov, "The 1998 Elections and Development of the Party System in Slovakia," *The 1998 Parliamentary Elections and the Democratic Rebirth in Slovakia*, Institute for Public Affairs, Bratislava, Slovakia, 1999, p. 52. Grigorij Meseznikov is a resident scholar at and president of the Institute for Public Affairs, a well-known think tank in Slovakia. He has lectured at Trnava University's Department of Political Science and is a frequently published author on Slovak politics

¹⁹ Hrabko, "Political Reporting: A Primer for the 1998 Elections," p. 4..

²⁰ Ibid.

²¹ Ibid, p. 5.

The Gaulieder Case

Another critical event that eroded Slovak citizens' confidence in the likelihood of fair elections was the Parliament's decision, under then-Prime Minister Meciar, to defy the Constitutional Court by refusing to reinstate MP Frantisek Gaulieder. The brief facts of the case are as follows: Gaulieder, a member of the HZDS, was elected as an MP in the 1994 parliamentary elections. In late 1996, however, Gaulieder announced that he wanted to resign from his party to become an independent MP. Fearing defections, the ruling coalition was against such a move and tried to prevent Gaulieder from becoming an independent. To this end, they presented a letter of resignation from Gaulieder which had been secured before he became a MP. Gaulieder stated that the letter had been coerced and the opposition parties raised their voices against the presumed forgery. Nonetheless, the Parliament accepted Gaulieder's "resignation" and then filled his vacant seat with another member of the HZDS. To further exacerbate the matter, the Parliament ignored an appeal by the European Parliament to restore Gaulieder's mandate.

The Parliament also ignored an August 1997 ruling of the Constitutional Court to reinstate Gaulieder. The Court found that Gaulieder had been denied his fundamental rights and ruled that "a parliamentary deputy has the right to execute his or her parliamentary mandate according to his or her own conscience."²²

While the ruling coalition may have thought that thwarting the 1997 referendum or denying Gaulieder his seat would have worked in its favor, in fact, the opposite was true. These combined events proved to be the "political turning point" in the ruling elite's previously unthreatened power-base.²³ This turning point was due, in large part, to the formation of the Blue Coalition, from which the Slovak Democratic Coalition (SDK) was formed, which became the first viable contender against the HZDS.

SDK Coalition Turns the Tide

The SDK formed in July 1997 to prevent the possibility of another thwarted election process. It joined the forces of five opposition parties: the Christian Democratic Movement (KDH), the Democratic Union (DU), the Democratic Party (DS), the Social Democratic Party of Slovakia (SDSS), and the Party of Greens in Slovakia (SZS). The SDK's strategy was twofold: "1) to eliminate the risk of wasting votes cast in support of the three smaller parties (the DS, SDSS, and SZS) in case they should fail to surpass the 5% threshold, and 2) to induce the possibility of a 'majority effect,' according to which the new coalition would become the biggest group in the party system and thus cause the HZDS to lose its dominant position."²⁴ Early on, the strategy appeared to be working since 30 percent of

²² "Memorandum of the International Helsinki Federation for Human Rights and the Slovak Helsinki Committee to the Slovak Government, the Slovak Parliament and the People of Slovakia on Slovakia's Human Rights Record and Its OSCE Commitments," International Helsinki Federation for Human Rights, Vienna, Austria, 19 August 1998, p. 2.

²³ Butora, et al., "Introduction: Overcoming Illiberalism - Slovakia's 1998 Elections," p. 16.

²⁴ Meseznikov, "The 1998 Elections and Development of the Party System in Slovakia," p. 49.

the electorate showed a preference for the new coalition.

Now the SDK would have a very good chance of reaching the ten percent aggregate threshold requirement for coalitions of four or more parties (as established in the election law at that time).²⁵ This would prevent the usual wasting of votes cast for smaller parties (as happened in the 1992 and 1994 elections in Slovakia). With the SDK's entrance onto the political scene, the HZDS could no longer be assured of victory at the polls.

Public opinion confirmed this. By 1998, "most people were convinced that the society was heading in a wrong direction: ordinary citizens felt the need for a decisive change."²⁶ In fact, under the government's control, Slovakia's citizens began to pay closer attention to democratic principles and began to consider the value of inalienable rights and fundamental freedoms.

Not only did the strong arm of the ruling coalition bring about a heightened awareness of Slovakia's fragile democracy, but, as political scholars Butora, Meseznikov, and Butorova observed, the "West's open emphasis on the need for democratization was of great importance in shaping public opinion. Research data repeatedly showed that a substantial segment of the population considered the criticism from abroad to be justified and saw democratization as a prerequisite for Slovakia's integration into Euro-Atlantic structures."²⁷

Redefining Districts: The First Step toward Electoral Change

Early on in the 1994 – 1998 Meciar government, certain acts indicated that the government was willing to manipulate legislation to ensure a concentration of political power. For example, soon after Meciar was elected, the HZDS attempted to remove the fifteen deputies of the Democratic Union (DU) from Parliament, claiming that they had not properly registered as a political party. The attempt failed, but political analyst Lebovic asserted that part of Meciar's style of governing included "efforts to strengthen the position of the power holders, through the use of such tools as the amendment of the election law."²⁸

It was also suspected that the HZDS's plan (which started in 1995 and ended in 1996) to change Slovakia's electoral system from that of proportional representation to a majority or mixed system in order to create an advantage for itself. According to political analyst Meseznikov, the HZDS had concluded "that in areas where the democratic opposition was fragmented (consisting of nine small and medium-sized parties of various ideological

²⁵ Article 41(2)(c) of the previous election law (no. 81/1995) states that coalitions with at least four political parties must receive ten percent or more of the total valid votes cast.

²⁶ Butora, et al, p. 15.

²⁷ Ibid.

²⁸ Lebovic, Peter, "Political Aspects of the Election Law Amendments", *The 1998 Parliamentary Elections and Democratic Rebirth in Slovakia*, Institute for Public Affairs, Bratislava, Slovakia, 1999, p. 40. Peter Lebovic is a political analyst who served as editor in chief of the newspaper *Gemerske zvesti* from 1992 to 1994. Since 1995 he has been director of the archives at the Economics University in Bratislava

orientation), the HZDS – as the dominant party – would win in most of the newly-created one-mandate constituencies, either on its own or in coalition with the SNS and ZRS.”²⁹

Meseznikov also pointed out that the HZDS was suffering from declining support from the Slovak citizens. By the summer of 1996, voter support for the HZDS had fallen below thirty percent. At the same time, support for the opposition was well above fifty percent, making a constitutional majority in Parliament possible. Thus, Meseznikov asserted, that the HZDS had a clear incentive to create “legislative obstacles to the potential victory of the opposition and the subsequent change in the ruling power.”³⁰

A change to a majority electoral system, then, would likely secure the HZDS’ victory in future elections. And a change in the territorial and administrative organization of the country would be seen as the first step towards adopting a new electoral system. Thus in 1996, the ruling coalition redefined the districts within Slovakia from 37 large districts to 79 small districts in eight regions. According to Lebovic, “The regional and district boundaries were defined in a strictly pragmatic manner to reflect the voting preferences for the HZDS and its allies.” Meseznikov added that “through this, the HZDS appeared to be preparing for a classic ‘gerrymandering,’ the purposeful demarcation of boundaries for individual constituencies to the benefit of the ruling party on the basis of long-term patterns of the population’s voting behavior.”³¹

In the end, the HZDS was unsuccessful in its attempts to change Slovakia’s electoral system since its coalition partners, the SNS and ZRS, were against the change. The opposition parties were also against the change and saw this as “an attempt [by the HZDS] to change the rules of the game in order to pave the way for its victory in the 1998 parliamentary elections.”³²

The Proposed Amendments: The Ruling Coalition Struggles for Control

By the spring of 1998, Slovakia’s opposition parties were ever stronger, the NGOs were growing louder, and the international community had fixed a watchful eye on electoral events in the country. Given the ruling party’s questionable approach to democratic governance, Slovakia’s citizens were also questioning the effectiveness of Prime Minister Meciar’s governing, better known as “Meciarism”.³³

The ruling coalition was well aware of its shaken foundation within the electorate and of the significant threat posed by the SDK. As such, changing the electoral system would no

²⁹ Meseznikov, p. 50.

³⁰ Ibid.

³¹ Ibid, pp. 50 and 51.

³² Ibid, p. 51.

³³ As defined by political analyst Lebovic, “Meciarism” was characterized by the “illiberal exercise of power and ‘tyranny of the majority,’ with the apparent aim of preparing for the establishment of an authoritarian political system.” Lebovic, “Political Aspects of the Election Law Amendments,” p. 39.

longer guarantee success at the polls. "From the very inception of the SDK," Meseznikov wrote, "HZDS leaders ceased to push for the introduction of a combined or majority election system and instead preferred amending the election law to complicate the SDK's position."³⁴

Slovakia's parliamentary election law was initially adopted in 1990 when the National Council of the Slovak Republic was functioning within the greater Czechoslovakia. The law was modeled after the electoral system of proportional representation used in the Czechoslovak Republic from 1918 to 1938. Only minor changes had been made to the law since its initial adoption in 1990.³⁵ While the government did not attempt to change the system of proportional representation during the 1998 amendments, it did alter several critical provisions. Many saw this as a direct manipulation of the law to favor the ruling coalition and to disadvantage the opposition. Some of the most controversial changes concerned coalitions, access to the electronic media, the number of constituencies, voter lists, substitutions, and the power vested in the Ministry of the Interior and state institutions. A conspicuous omission that was also controversial was the lack of a provision for domestic and international observers.

Before reviewing the range of criticism that was registered against the proposed amendments, it is important to note that Slovakia's parliamentary election law does meet certain international standards. For example, some of the provisions are in keeping with the "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE" (the Conference on Security and Co-operation in Europe, now the OSCE) (the Copenhagen Document). In keeping with paragraph 7, Slovakia's amended law does provide its citizens with free elections at reasonable intervals, with equal suffrage, a secret ballot, the opportunity to run for political office, and the opportunity to establish political parties.

In addition, it is important to note that certain positive pre-election conditions did exist in Slovakia suggesting the country was continuing to build a constitutional democracy despite certain activities and events that suggested otherwise. In its Pre-Election Technical Assessment, the IFES team did make several positive observations, noting the "advanced development of the electoral administration, as well as the extremely vibrant civic sector and NGO community" in the country.³⁶ The IFES team also applauded the political parties, which were "by and large, well organized and motivated, possessing a keen comprehension of the democratic and electoral process as well as respectable connections to their constituencies." The IFES report also recognized that the previous elections in the Slovak Republic have "generally met international and European standards."³⁷

³⁴ Meseznikov, p. 52.

³⁵ While the original law required a three percent threshold, this was raised to five percent before the 1992 elections. The minimum threshold for entering the Federal Assembly of Czechoslovakia and the Czech National Council was also five percent.

³⁶ Knapp, "Executive Summary."

³⁷ Ibid.

The *proposed* amendments received a wide range of criticism, some of which is included below. Since most all the complaints focused on amendments that eventually did pass, these comments remain relevant for the upcoming debate in the Slovak Parliament in the year 2000:

- Political analyst Peter Lebovic found that the act of amending the laws "infring[ed] on generally recognized democratic principles" and was an "effort to strengthen the position of the power holders" ³⁸ In addition, he stated that "the amendment's individual provisions could be perceived both as a tool for exerting political pressure against the opposition and – what was of special concern – as the introduction of legislative 'loopholes' enabling unlawful manipulation of the elections." ³⁹
- The IFES election assessment was concerned that the proposed amendments would succeed in alienating the electorate, "making them cynical about the ability of the democratic system to represent their interests." ⁴⁰
- The analysis from the American Bar Association's Central and Eastern European Law Initiative (ABA/CEELI) stated that: "The thrust of the proposed amendments is in no way surprising. Election laws, whether in the Slovak Republic or in any other democratic jurisdiction, are of necessity enacted by incumbent politicians, often in such a way as to further their incumbency. While many of the provisions here may not be fair, the provisions are typical incumbent-protection legislation. Such a realization, however, does not excuse the adoption of laws that may tend to create the impression of electioneering." ⁴¹
- The National Democratic Institute (NDI) found that while Slovakia's election law and proposed amendments "incorporate many international standards for election processes, important aspects of the proposed amendments appear to run counter to international trends in democratic elections. These aspects, combined with other weaknesses present in the election law, give cause for serious concern." ⁴²
- The proposed amendments also caused a significant stir in Slovakia's NGO community. OK 98 (Obcianska Kampana, Civic Campaign 98), a coalition of NGOs which worked to promote voter education during the parliamentary and municipal elections in 1998, held a press conference in March appealing to MPs to "adopt fair election laws." The OK 98 press statement expressed concern that the proposed changes would fundamentally alter the current laws, which guaranteed the citizens of Slovakia free and fair elections. The press statement went on to say that if the proposed laws are

³⁸ Lebovic, p. 39.

³⁹ Ibid, p. 42.

⁴⁰ Knapp, p. 22.

⁴¹ "Analysis of the Draft Amendments of the Act Governing elections for the Slovak Republic, American Bar Association/Central and East European Law Initiative (ABA/CEELI), Bratislava, Slovakia, 21 April 1998, p. 6.

⁴² "National Democratic Institute for International Affairs, Comments on the Proposed Amendments to the Slovak Republic's Election Law," National Democratic Institute, Bratislava, Slovakia, 30 April 1998, p. 2

approved, the elections may not be democratic and would, therefore, not reflect the will of the citizens or the political reality in Slovakia. The statement also noted that the proposed laws were in direct contravention to the Slovak Constitution and international treaties to which Slovakia is a signatory.⁴³

Inappropriate Timing?

Most of the critics also registered dissatisfaction with the late passing of the laws, which occurred only four months before the election. Many claimed that this was an intentional delay – a deliberate strategy from the ruling coalition – to prevent lengthy dialogue on the issues and to handicap the political parties most affected by the changes.

The International Republican Institute (IRI) also raised concern over the late passing of the laws: "Both Slovak opposition parties and western governments have been critical of fundamental changes in the legal framework made so close to election day. While not inherently unfair, the fact that the law passed without any opposition support indicates that the Slovak government made little effort to build consensus. Moreover, many provisions in the law remain unknown because they remain subject to regulations yet to be issued by the Interior Ministry."⁴⁴

Obcianske Oko '98 objected to the timing of the amendments which occurred "relatively shortly before the election and without reaching a consensus of the political forces." It noted that these late changes "resulted in a lack of knowledge and understanding of certain parts of the election law by election commissions at various levels and the government," and that this "created an atmosphere of distrust and insecurity among voters and people responsible for the preparation of elections."⁴⁵

Against a Throng of Protest, the Election Law is Passed

On 20 May 1998, with five hours of debate on 200 amendments, the Parliament, by simple majority, passed the amended parliamentary election law. Despite united protest, including a massive petition with 400,000 citizens' signatures, the majority of controversial laws were passed as proposed. This left many to claim that the 1998 elections were going to be held "under unfair conditions" that would benefit the ruling parties, in particular, the HZDS."⁴⁶

According to journalist Hrabko, the amendments allowed the elections process and results to be manipulated "The law contains several provisions," he wrote, that are not only

⁴³ "Statement of Non-Governmental Organizations Taking Part in Civic Campaign 98 Regarding the Proposed Changes of Election Law," OK 98 Press Release, Bratislava, Slovakia, 23 March 1998.

⁴⁴ "International Republican Institute, Guide to the Parliamentary Elections in the Slovak Republic, September 1998," International Republican Institute, Bratislava, Slovakia, 3 September 1998, p.6.

⁴⁵ "Parliamentary Elections in the Slovak Republic: Preliminary Report by Domestic Observers," a Special Report by Obcianske Oko '98, October 1998, pp. 1 and 2.

⁴⁶ Butora, et al, p. 17.

purpose-oriented but also mutually contradictory. It rather blurs and expands than simplifies the interpretation of the law, which in itself provides a possibility of manipulation."⁴⁷

While a team of officials on an OSCE/ODIHR Needs Assessment Mission, acknowledged that "the amendments were approved by the parliament, formally in line with the legislative procedure," they also noted that the laws passed "apparently without the broad support of the main political parties in the country."⁴⁸ That the laws passed with obvious disregard for international standards, succeeded in further eroding the electorate's confidence in the ruling coalition's "democratic" agenda.

A statement issued on 23 June 1998 by the United States Department of State registered its concern, stating that the amended law "may result in an election process inconsistent with current international norms, and thus not free and fair. The statement noted that the new legislation "increases the authority of the Ministry of Interior, which was instrumental in disrupting last year's referendum on NATO membership and [in disrupting the] direct election of the President." It also noted that the amended election law "increases the possibility that media coverage of the election will be unfairly and excessively restricted" and registered its concern over the timing of the laws. "Significantly changing the election process only four months before voting creates confusion, and calls into question the intent of the legislation." The statement urged the Slovak government to accommodate international and domestic observers and to "clarify or amend provisions that do not meet current international norms." The statement went on to encourage Slovakia to hold elections that will be "consistent with international norms, so that Slovakia can take its place among its neighbors in Western institutions."⁴⁹

From the range of comments that were published, certain amendments were consistently held to be in direct contravention to the Slovak Constitution and International instruments to which Slovakia is bound such as the United Nation's Universal Declaration of Human Rights (Universal Declaration), the Copenhagen Document, the United Nation's International Covenant on Civil and Political Rights (ICCPR), and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (Human Rights Convention). The main amendments at issue are as follows:

Article 8(1): which requires voters to go to the municipal office if they want to check their voter registration information;

Article 9(2): which creates one election district;

⁴⁷ Hrabko, p. 9.

⁴⁸ "Report, OSCE/ODIHR Needs Assessment Mission in Slovakia, Bratislava, July 6 – 10, 1998," Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Bratislava, Slovakia, July 1998.

⁴⁹ *U.S. State Department Comments on Slovak Election Law*, United States Information Service Bratislava, News Release, Bratislava, Slovakia, 23 June 1998.

- Article 12(2)(a): which allows the Slovak government to appoint the recorder to the Central Election Commission (CEC);
- Article 12(1): which allows the CEC recorder to function as an expert advisor to the CEC;
- Article 13(4): which allows the Ministry of the Interior to establish an "expert administrative body" to assist the CEC;
- Article 22: which directly involves the Ministry of the Interior in the production and distribution of ballots;
- Article 41(3): which requires each political party within a coalition to meet the five percent threshold requirement (which is also required of individual political parties);
- Article 23(1): which prohibits parties from using private radio and television stations to campaign;
- Article 23(3): which forbids the broadcasting of election speeches and election programs outside of the allotted 21 hours of campaign time; and
- Article 48(1): which allows a political party to provide a substitute from its party when a mandate within Parliament is vacated;

These Articles and the relevant issues raised will be treated in greater detail below.

[Note: Whenever a 1998 parliamentary election law is cited, the English language version has been taken from the translation prepared by ABA/CEELI in cooperation with IRI and NDI.]

The Coalition Parties Threshold: A Unique Provision

Of all the amended provisions, many found Article 41(3), addressing the seat allocation for coalitions, to be the most blatant attempt by the ruling party to manipulate the outcome of the 1998 election. Article 41(3)⁵⁰ requires each political party within a coalition to meet a five percent threshold requirement which is the same threshold set for each political party.⁵¹ While the Constitutional Court did not find this amendment unconstitutional, nonetheless, the provision still negates the advantage of forming a coalition. Because the

⁵⁰ Article 41(3) of the parliamentary election law states as follows: "In further determination of election results and the allocation of mandates, the political party described in paragraph 2 and votes cast to it are not taken into consideration. Should this political party be a member of a coalition, other political parties are considered as if they submitted the List of Candidates independently."

⁵¹ Article 41(2) of the parliamentary election law states as follows: "The Central Election Commission shall further determine which political party received less than 5 % of the total number of valid votes."

coalition parties can not amass their votes to meet the threshold requirement, they have no incentive to even form a coalition. In the previous election law, an aggregate threshold was allowed for a political party that was a member of a coalition. For example, a coalition made up of two or three parties would receive seats if the coalition as a whole won seven percent of the national vote. A coalition made up of four or more parties, received seats if it won at least ten percent of the national vote.⁵² Political analyst Lebovic surmised that with this provision the ruling coalition was "hoping that the parties forming the two coalitions [SDK and the Hungarian Coalition] would not overcome their differences and that their voting preferences would simply be wasted."⁵³

The ABA/CEELI report noted that this amendment "effectively destroy[s] any incentive to form a coalition, thereby generating potential discord and infighting between previously cooperative political parties. In addition, very small political parties would effectively be precluded from having any representatives in the National Council."⁵⁴

The report of the OSCE/ODIHR Needs Assessment Mission observed the great disadvantage that the amended law held for the smaller opposition parties. In order to ensure they could meet the new threshold requirements, coalitions would now have to form one party. These parties were forced to merge "despite the very short period of time available before the elections" and "risk[ed] losing their party identity."⁵⁵ Making matters worse, the ODIHR final report noted that when the coalition parties actually registered as political parties, they were "met with resistance by almost half of the Central Election Commission. One such registration [the SDK's] was appealed to the Supreme Court, which upheld the party's registration."⁵⁶

Despite these obstacles, the SDK and the Party of the Hungarian Coalition (SMK),⁵⁷ made up of the Hungarian Christian Democratic Movement (MKDH), Coexistence, and the Hungarian Civic Party (MOS), did manage to successfully merge their individual political parties, thereby avoiding the five percent requirement which they would have encountered had they ran as separate parties in a coalition.

⁵² See footnote 24 for Article 41(2)(c) of previous election law.

⁵³ Lebovic, "Political Aspects of the Election Law Amendments," p. 46.

⁵⁴ "Analysis of the Draft Amendments," ABA/CEELI, p. 4.

⁵⁵ "Slovak Republic Parliamentary Elections 25 and 26 September 1998," Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), GAL/61/98, Bratislava, Slovakia, 25 November 1998, p. 3.

⁵⁶ Ibid, p. 4.

⁵⁷ Approximately ten percent of the Slovak population is Hungarian. The SMK ran in the 1994 elections as a coalition. In 1998, they merged into one party to avoid the amended coalition law.

The Election Campaign and Access to Broadcast Media

In addition to the mass outcry against the new coalition threshold, Article 23, the "Election Campaign," raised noticeably strong protest. In particular, Articles 23(1)⁵⁸ and 23(3)⁵⁹ were at issue. Article 23(1) allows parties and coalitions to use *only* state-run media – Slovak Radio and Television – to conduct their campaigns. The use of private broadcast media is forbidden. Article 23(3) prohibits the state-run stations from broadcasting election speeches, election programs and the election campaign outside the allotted broadcasting time allowed for the campaign period. It also prohibits private stations from covering the election campaign altogether. As governed by Article 23(2), Slovak Radio and Television must provide 21 hours of broadcasting time for the election campaign, but this time is to be divided evenly among the parties.⁶⁰

To ensure that radio and television operators upheld the provisions of Article 23, the HZDS coalition authorized the Council for Radio and Television Broadcasting (Broadcasting Council) to police the media during the election campaign period, which was to begin 30 days and end 48 hours before the start of the election.⁶¹ The Council was also authorized to impose fines from 50,000 to 5,000,000 Slovak Crowns (approximately \$1,200 to 120,000 U.S.) against any operator found to be in violation of the law.⁶² The Council could also stop, for one month, any programming found to be in violation of the election law and could require the operator in violation to publicly announce the violation.⁶³

In ODIHR's final report, it expressed concern that the "high fines" that the Broadcasting Council could (and did) impose, created "legal insecurity for broadcasters and political parties" – an insecurity, it stated, that "might have led to self-censorship within the

⁵⁸ Article 23(1) of the parliamentary election law states as follows: "For the purposes of this Act, the period of the election campaign shall mean the period commencing 30 days, and ending 48 hours, before the start of elections. During the period of election campaigning every running party is ensured equal access to the mass media and other services of territorial self-government (uzemnej samospravy). Running political parties can conduct election campaigns through radio or television broadcasting only on Slovak Radio and Slovak Television. Election campaigning is prohibited in the radio broadcasting and television broadcasting of private license holders. It is not allowed to use local public loudspeakers for election campaigning, except for announcements concerning the holding of election meetings."

⁵⁹ Article 23(3) of the parliamentary election law states as follows "It is forbidden to broadcast election speeches and election programs during the period of the election campaign and to publicize any external expressions which promote the running political parties outside of the broadcasting time reserved for the running political parties in accordance with paragraph 2. It is also forbidden to broadcast the election campaign during the time which is reserved for advertising in radio and television broadcasting or use radio and television advertising for the election campaign."

⁶⁰ Article 23(2) states in full states as follows: "Slovak Radio and Slovak Television shall reserve 21 hours of broadcasting time for the election campaign which will be divided evenly among running political parties, such that no political party shall be disadvantaged by allocation of its air time; the terms of air time are allocated by lot. Political parties are responsible for the content of these programs."

⁶¹ The Council is authorized under Article 5(g) and (h) in the Act on the Operation of Radio and Television Broadcasting (No. 468/1991).

⁶² Article 20 of the Act on the Operation of Radio and Television Broadcasting (No. 468/1991).

⁶³ Article 2(a) of the Act on the Operation of Radio and Television Broadcasting (No. 468/1991).

⁶⁴

media.”⁶⁵

Article 23 raised protest on several fronts. Many questioned the objectivity of the Broadcasting Council and took issue with the high fines that were allowed. Others raised concerns over the infringement on the parties' rights to media access, and the broadcast operators' rights to freedom of the press – to provide balanced coverage of the campaign.

It was also unclear what events constituted the “election campaign.” Without a clear understanding, operators might unknowingly find themselves in violation of the law. For example, they might cover a political demonstration on a non-campaign issue. Yet, if a political party candidate was shown speaking at the event, the Broadcasting Council might find that the event was campaign related. In general, as the IFES Assessment Team noted, “Restrictions on media access should not be a consideration in a political campaign.

All political parties must have the opportunity to offer their ideas for improving government and to compete with each other and with the ruling coalition.”⁶⁶

[Note: comments written against the *proposed* amendments are also included here since the language of concern against Article 23(1) and 23(3) was adopted.]

Many of the commentaries noted that Article 23 was in direct contravention to Article 26 of the Slovak Constitution, which guarantees freedom of expression.⁶⁷ The Constitutional Court agreed, finding that Article 23(1), sentences three, four and five, and Article 23(3) were in direct violation of the Slovak Constitution: Articles 26(1), 26(2), and 26(4), in connection with Article 1. The Court later found that these articles violated Article 10 of the Human Rights Convention (the right to freedom of expression) after the elections.⁶⁸ Article 19, the International Centre Against Censorship, based in London, asserted that Article 23 violates international standards regarding freedom of expression and media freedom and stressed that Slovakia is “obliged to protect and promote the right to freedom of opinion and expression and information, including through the media, as a result of international treaties to which it is a party, specifically the European Convention on Human Rights and the International Covenant on Civil and Political Rights.”⁶⁹ It also pointed out

⁶⁵ “Slovak Republic Parliamentary Elections.” OSCE/ODIHR, p. 8.

⁶⁶ Knapp, p. 29.

⁶⁷ Article 26 in the Slovak Constitution states as follows: “(1) Freedom of expression and the right to information shall be guaranteed. (2) Every person has the right to express his or her opinion in words, writing, print, images and any other means, and also to seek, receive and disseminate ideas and information both nationally and internationally. No approval process shall be required for publication of the press. Radio and television companies may be required to seek permission from governmental authorities to set up private businesses. Further details shall be provided by the law. (3) Censorship shall be prohibited. (4) Freedom of expression and the right to receive and disseminate information may be lawfully limited only where, in a democratic society, it is necessary to protect rights and freedoms of others, state security, law and order, health and morality. (5) Governmental authorities and public administration shall be obligated to provide reasonable access to the information in the official language of their work and activities. The terms and procedures of the execution thereof shall be specified by law.”

⁶⁸ Article 10(1) of the Human Rights Convention states as follows: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

⁶⁹ “Memorandum from ARTICLE 19, the International Centre Against Censorship on the Proposed Amendments to the Selection Election Law No. 80/1990 of Slovakia,” Article 19, The International Centre Against Censorship,

that this obligation "arises equally" under Article 26 of Slovakia's Constitution.⁷⁰

In a special legal analysis of Article 23 issued by Covington & Burling, a law firm in Washington, D.C. working pro bono under the USAID-funded Professional Media Program, Attorney Kurt Wimmer found that under Article 10 of the European Convention on Human Rights, "it is simply impermissible . . . to stifle political debate in the name of ensuring more fair elections. The denial of information on which to judge candidates undermines the fairness of any election that would follow."⁷¹

While Article 19 recognized that Article 26(4) of the Slovak Constitution "does not relate to regulation of the media during elections," it noted that "[a]t times of election, which are a fundamental aspect of the democratic process, the greatest flows of information should be permitted within the society."⁷² It added that "the government's obligation to actively promote freedom of expression and information through any media, including the mass media is "particularly strong at times of election so that the electorate is fully informed of the parties, the personalities of the politicians and the different political platforms, in order that they are able to make an informed choice at the ballot box on voting day."⁷³

The ODIHR final report supported the Article 19 position, adding that "Article 23(3) made it difficult for electronic media to provide comprehensive political information."⁷⁴ The report noted that "in a democratic society, election campaigning by definition involves expressions of different political attitudes aimed at promoting parties' political platforms. Public debate between parties is essential for a free and informed choice by the voters. Exceptions to the fundamental freedom of expression and right to information require very particular circumstances and justifications."⁷⁵

The ABA/CEELI report was concerned that Article 23 provides the government with "too much control over the use of the media and the distribution of information."⁷⁶ It also took issue with the ban on private broadcasters from covering the campaign. "Such a ban is practically unenforceable," the report stated, "in that it is impossible to draw a clear line between reporting and campaigning. The potential for biased and arbitrary government enforcement of such a law against independent broadcasters would seem to call for prompt reconsideration of this provision."⁷⁷

Attorney Wimmer also took issue with the lack of definition of important terms in Article

London, U.K., document not dated, but presumably written in the spring of 1998, before 8 May, p. 1.

⁷⁰ Ibid.

⁷¹ Wimmer, Kurt, "Memorandum to the Professional Media Program," Covington & Burling, Washington, D.C., 22 April 1998, p. 8.

⁷² "Memorandum from Article 19," Article 19, p. 2.

⁷³ Ibid.

⁷⁴ "Slovak Republic Parliamentary Elections." OSCE/ODIHR, p. 7.

⁷⁵ Ibid, p. 8.

⁷⁶ "Analysis of the Draft Amendments," ABA/CEELI, p. 6.

⁷⁷ Ibid.

23(3): "the law fails to define any of these three important terms [election speeches, election programs, and external speeches]. Accordingly, journalists and editors seeking to comply with the draft law would be forced to eliminate all political coverage to ensure that they do not violate any of the draft law's vague terms. Such a result constitutes prior censorship under the Slovak Constitution and fails to meet the tests set out by the European Court under Article 10 [of the Human Rights Convention]."⁷⁸

As journalist Hrabko noted, a joint statement was issued to Slovakia's Ministry of Foreign Affairs from Ambassador G. Stoudman, Director of the OSCE ODIHR Office, and from F. Duve, OSCE representative for freedom of the media. The statement addressed the ban on private media as follows: "The exclusion of private and regional media from the election campaign is at variance with the basic commitments adopted by the OSCE member countries. It is difficult to understand why private media should be discriminated [against] during the election campaign. If the official bodies of Slovakia feel that all parties must be given equal opportunity in media of public law and private media, then the same provisions should be applied for both types of media."⁷⁹

Domestic and International Observers

A notable omission in the parliamentary election law is that no provision addresses the need for or presence of domestic or international observers. The previous election law also did not include such provisions, however, in the review of the proposed and adopted 1998 amendments, commentators stressed how critical the presence of observers is to preserving the transparency and integrity of the election process. As paragraph 8 of the Copenhagen Document⁸⁰ advocates, domestic and international observers should be invited to observe election processes.

The International Helsinki Federation for Human Rights added that Slovakia, as a participating State in the OSCE has undertaken a commitment "to democracy and respect for human rights and the rule of law".⁸¹ The Helsinki memorandum recognized that these commitments are not legally binding, but are "morally and politically binding" and added that "they represent standards for democracy, human rights and the rule of law for 52 European states plus the United States and Canada, and serve as a code of conduct for states in relation to their citizens, and each other."⁸²

⁷⁸ Wimmer, "Memorandum to the Professional Media Program," p. 9.

⁷⁹ Hrabko, p. 13.

⁸⁰ Paragraph 8 of the Copenhagen Document states as follows: "The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE [now OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings."

⁸¹ "Memorandum of the International Helsinki Federation," International Helsinki Federation for Human Rights, p. 1.

⁸² Ibid.

While no article provides for the presence of election observers, Article 32 of the election law, in fact, inherently excludes anyone other than election commission officials and those approved by the Central Election Commission to be present during the count. The officials of the OSCE/ODIHR Needs Assessment Mission stressed the need for domestic observers at all levels of the election process. "Due to the lack of consensus on the Election Law and the importance of creating maximum confidence in the election process, the accreditation of domestic non-partisan observers is of the utmost importance for the transparency and the integrity of the elections in Slovakia. Domestic non-partisan observers should be permitted to observe all stages of the election process."⁸³

Obcianske Oko '98, an NGO organized by the Association for Fair Elections (Association)⁸⁴ requested accreditation for 1,746 domestic non-partisan observers from the Central Election Commission (CEC). The CEC decided not to accredit these domestic observers itself but left the decision to the precinct election commissions (PECs). Obcianske Oko '98 observers were allowed to observe the polling about 60 percent of the time. However, none were allowed to observe the count. According to the Association, the election (again, excluding the count) "took place throughout Slovakia properly and without a greater number of [isolated, indiscriminate] incidents."⁸⁵

The Association did note, however, that even in its early stages of organizing the Obcianske Oko '98 campaign, its efforts were met with "mistrust."⁸⁷ Certain political parties, the media and state-run television issued "harsh attacks" against the Association, accusing them of attempting to manipulate the elections, and of catering to foreign interests and certain political parties.⁸⁸ The Association also noted that the attacks escalated before the election and that any of its attempts to respond were ignored.

The Association met with similar hostility when applying for accreditation to observe the count. According to its preliminary report on the elections, its first application to the CEC was ignored. Its second request was flatly refused. The Association noted that paragraph 8 of the Copenhagen Document applies to both foreign *and* domestic observers, yet, this did not sway the CEC's third and final refusal to allow domestic observers in during the count.⁸⁹ According to the Helsinki Memorandum, the First Deputy Chair of the SNS party, Ms. Anna Malikova, "sharply rejected the notion that domestic observers from non-governmental organizations should monitor the elections, stating that 'the elections and

⁸³ "Slovak Republic Parliamentary Elections," OSCE/ODIHR, p. 6.

⁸⁴ Obcianske Oko '98 was responsible for the civic monitoring of the elections to "contribute to a fair, free and democratic election process . . . as well as to strengthen the involvement of citizens on the elections." "Parliamentary Elections in the Slovak Republic," Obcianske Oko '98, p. 1.

⁸⁵ "Parliamentary Elections in the Slovak Republic," Obcianske Oko '98, p. 1.

⁸⁶ Ibid.

⁸⁷ Ibid, p. 2.

⁸⁸ Ibid.

⁸⁹ Ibid.

counting of votes is no circus in which everyone can be present."⁹⁰

As a result of the CEC's refusal to allow the Association to observe the count, Juraj Corba, a law student who works for Obcianske Oko, filed a complaint with the Constitutional Court on 21 December 1998. The complaint asserted that the CEC's refusal violated his rights and those of the civic organization Obcianske Oko to freedom of expression and information as guaranteed under Articles 26(1) and (2) of the Slovak Constitution.⁹¹ These rights, stated the complaint, must be read in conjunction with Articles 12(1) and (2) of the Slovak Constitution⁹² and are also guaranteed under Article 14 of the Human Rights Convention.⁹³

On 16 June 1999, the Constitutional Court agreed (decision 10/99), finding that the CEC had, in fact, violated Corba's and Obcianske Oko's rights under Article 26 of the Slovak Constitution and Article 14 of the Human Rights Convention. The Court noted that the CEC gave no reason for refusing the Association's application and also found that Article 26(4) of the Slovak Constitution does not apply in this case. Article 26(4) allows the lawful limitation of the right to freedom of expression and information when "it is necessary to protect rights and freedoms of others, state security, law and order, health and morality."

The Court stated that the CEC's refusal did not protect the rights and freedoms of others, nor did it protect the security of the state, public order, or public health and morality. The Court found that the opposite was true: "Civic observation contributes to the democratic, fair and transparent process of elections and contributes to the credibility of the election results in the eyes of the citizens of the Slovak Republic and of foreign countries." The Court also added that the CEC can not use its own decision-making powers to refuse the presence of election observers, but can only limit observers under Article 26(4). Since the CEC gave no reason for its refusal to accredit observers for the count, the Court found that the CEC neglected its obligations and violated Corba's and Obcianske Oko's rights to freedom of expression and information.

Based on the Court's decision, the right to observe the elections process in the Slovak Republic is now protected under Article 26(1) and (2) of the Slovak Constitution, unless the refusal is justified to protect the rights and freedoms of others, state security, law and order, health and morality, as Article 26(4) allows. This is a significant victory for the election observers in the country and all the more reason that the parliamentary election law should be amended to include provisions for the accreditation of election observers.

⁹⁰ "Memorandum of the International Helsinki Federation," International Helsinki Federation for Human Rights, pp. 8 and 9.

⁹¹ For Articles 26(1) and (2), see footnote 66.

⁹² Articles 12(1) and (2) state as follows: 1) All human beings are free and equal in dignity and rights. Their fundamental rights and freedoms are inalienable, irrevocable, and absolutely perpetual." 2) Fundamental rights shall be guaranteed in the Slovak Republic to every person regardless of sex, race, color, language, faith, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, birth or any other status, and no person shall be denied their legal rights, discriminated against or favored on any of these grounds."

⁹³ Article 14 of the Human Rights Convention states as follows: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

International Observers Invited at the Last Possible Hour

While the OSCE did finally receive an invitation to observe the parliamentary elections, the Meciar government waited until the last possible hour before inviting the OSCE/ ODIHR Observer Mission to Slovakia. The invitation came just six weeks before the election and after a long and protracted process that started in October 1997. This was the year that the opposition parties lost confidence in the integrity of the electoral process. Consequently, they sent a letter to then Prime Minister Meciar, asking the government to invite international monitors to observe the 1998 elections.

Meciar reacted strongly against the request, claiming that it implied that "state institutions are incapable of ensuring the democratic development and democratic organization of the elections."⁹⁴ While Meciar resisted the possibility of inviting international observers, the opposition parties and international organizations protested, citing paragraph 8 of the Copenhagen Document.

Under international pressure, Meciar's previous strong stance against international observers had somewhat softened, and on 13 August 1998, Meciar sent a conditional invitation to the OSCE, basically inviting only 18 of the 54 OSCE-member states. Among those *not* invited were the United States, Great Britain, Hungary and the Czech Republic.

A commentary in the *Sme* newspaper, 17 August 1998, stated that "Meciar's attempt to divide the OSCE countries into the specially invited and the specially uninvited is tragicomic because it is both ridiculous and sad for the HZDS leader to try to apply the fundamental principle of his internal policy to the international community."⁹⁵

Finally, on 18 August 1998, the Foreign Ministry sent an unconditional invitation to the OSCE to monitor the elections. In the end, the CEC allowed international observers to observe the count.⁹⁶ However, the CEC denied the requests of IRI and NDI to independently observe the elections. Four observers from the British Helsinki Human Rights Group were accredited, but they declined to observe the elections "to help create peace in the country during the election."⁹⁷ According to Jeremy Druker, a freelance journalist based out of Prague, "the presence of international observers helped to calm the opposition's fears that the elections would be manipulated and may have been influential in convincing representatives of the ruling parties not to interfere in the voting process."⁹⁸

⁹⁴ Druker, "International Observers and the 1998 Elections," p. 87.

⁹⁵ Ibid, p. 91.

⁹⁶ "Guide to the Parliamentary Elections," IRI, p. 9.

⁹⁷ Druker, p. 94

⁹⁸ Ibid, p. 95.

The Constituency Issue: One for All – Not All for One

As was previously stated, in 1996, the ruling HZDS coalition redefined the districts and administrative organization within Slovakia as a first step toward changing Slovakia's electoral system. Many claimed this was done to ensure the HZDS' continued success at the polls since the districts were designed to favor the ruling party. While the HZDS was not successful in changing electoral systems, it was successful in changing Article 9(2) from four electoral districts into one – a change that the Slovak Bar Association stated worked to the detriment of the small political parties, essentially diminishing their chances of success at the polls.⁹⁹

Under the previous Article 9(2),¹⁰⁰ Slovakia was divided into four constituencies, identified as Bratislava, the Western, Middle, and Eastern constituencies. The HZDS enjoyed popular support in the Middle constituency and the Hungarian parties dominated the Western constituency, especially along the Hungarian border. To cover four constituencies under the earlier law, a political party would submit a separate candidate list for each region (four lists per party).¹⁰¹ In this way, voters could effectively elect a regional representative to Parliament.

Under the amended law, Article 9(2) requires political parties and coalitions to submit one candidate list of up to 150 names (for the 150 parliamentary seats), to cover the entire country. The voter is no longer as likely to know the candidates of his or her party unless they are high-profile national figures. Thus, many saw this amendment as yet another attempt by the Meciar government to influence the outcome of the 1998 elections to its advantage.

As political analyst Lebovic asserted, by changing to one constituency, the HZDS was trying to "cash in on the high popularity that Meciar enjoyed among the voters. By giving him a prominent position in the HZDS candidate list, the party hoped to attract voters from the regions where, under the original legislation, his name would not have appeared."¹⁰²

The ODIHR final report recommended that as an alternative to the single constituency, the country could be divided "into constituencies along boundaries that also reflect the concentration of ethnic groups; a political competition could then [be] more easily combined with possibilities for ethnic representation. Under this arrangement,

⁹⁹ "Slovak Bar Association Standpoint, on the Act No. 187/1998 Coll. Amending And Supplementing the Parliamentary Act No. 80/1990 Coll. Governing the Elections for the Slovak National Council in the Wording of Later Regulations and on the Amendment and Supplement of Other Laws for the Slovak Republic," Slovak Bar Association, Bratislava, Slovakia, 16 July 1998, p. 2.

¹⁰⁰ Article 9(2) of the previous law (no. 81/1995) states as follows: "In the Slovakian Republic, in accordance with its territorial subdivision, 4 constituencies are formed: constituency of the capital of Slovakian Republic – Bratislava, Western-Slovakian constituency, Middle-Slovakian constituency and Eastern-Slovakian constituency."

¹⁰¹ Parliamentary seats were allocated to each region based on the threshold calculation of total valid votes cast divided by 150 (the total number of parliamentary seats.) Then the number of valid votes cast in each region was divided by the threshold figure to determine the number of seats allocated to each region.

¹⁰² Lebovic, p. 44.

proportionality between parties could still be secured by compensational seats distributed according to the countrywide support of the parties."¹⁰³

Voter Lists

Several organizations voiced concern over the amendment on the voter lists. Article 6(1) of the previous election law required the local administrators to post voter lists "no later than 30 days before election day" and required administrators to inform all voters about publication of the lists "through all available means."¹⁰⁴ In addition, in locations that included more than 5,000 voters, Article 6(2) required local administrators to post voter lists on all buildings where voters lived.

In the 1998 amendments, these two articles were merged, yet critical provisions within each were deleted. The "30-day" notice requirement was deleted without specifying any new deadline for the posting of lists. Also, the requirement that voter lists be posted in neighborhoods was deleted. The new Article 4(4) states that the: "municipality is obligated to make it possible for the citizen to look at his or her record in order to make certain if he or she is registered in the list, or if the registered data on his or her person are correct." No deadline is specified. The new Article 8(1) states, in part, that: "Each voter can verify at the municipal office whether he or she is registered in the list, and can ask for completion of data or for corrections to be made." Voters must go to the Municipal Office; no posting in neighborhoods is required. As the Slovak Bar Association noted in its "Standpoint" on the amendments, the "real possibility of manipulation" arises if the voter lists are not publicly posted.¹⁰⁵

While Article 8(1) asserts that voters must go to their municipal offices in order to check their voter information, according to the ODIHR final report, the arrangements for posting the voter lists varied. "In some places the full list was available in such a way that voters could check the quality of entries in the whole neighborhood. In others the voter was permitted to check her or his name only."¹⁰⁶

The Selection of Substitutes within the Parliament

Article 48 was also amended in 1998 and addresses the issue of substitutes when a mandate within the Parliament is vacated. According to Article 48(1), if a mandate is

¹⁰³ "Slovak Republic Parliamentary Elections," OSCE/ODIHR, p. 11.

¹⁰⁴ Article 6 of the previous election law (no. 81/1995) states as follows: (1) The administration of locality is obliged to publicize voter lists for familiarisation with them [for] all citizens no later than 30 days before election day. Administration of locality informs citizens about publication of said lists through all available means. 2) At population locations, where more than 5000 voters, entered to voter lists live, administration of locality is obliged to provide that on each building were placed voter lists of those voters who live in the building."

¹⁰⁵ "Slovak Bar Association Standpoint," p. 2.

¹⁰⁶ "Slovak Republic Parliamentary Elections," OSCE/ODIHR, p. 15.

vacated, the same political party as that of the vacated MP, appoints a new MP. The new MP does not have to be on the certified list of candidates; he or she only has to be a member of the party. This amended law is quite different than its predecessor, which required a vacated mandate to be distributed to the next person on that party's candidate list – the list being from the same constituency as that of the vacated MP.¹⁰⁷

According to political analyst Lebovic, altering Article 48 “strengthened the influence of the central party leadership and substantially reduced the influence of the voters, in drawing up the candidate lists.”¹⁰⁸ In addition, Lebovic pointed out that “Meciar used the provision on substitutes to give up his seat after the elections, handing it over to Ivan Lexa. . . .” Lexa had previously served as director of Slovakia's secret service and allegedly played a role in several controversial cases, including the 1995 kidnapping of then-President Michael Kovac's son. As an MP, Lexa would avoid any legal challenges under parliamentary immunity.¹⁰⁹

The ODIHR final report, also pointed out that the revised Article 48 was in direct contravention to paragraph 7(9) of the Copenhagen Document and Article 30(4) of the Slovak Constitution. The Copenhagen Document requires participating States to “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office”¹¹⁰ In the Constitutional Court's 18 March 1999 decision, the Court held that Article 48 was, in fact, unconstitutional, since it did not comply with Article 30(4) of the Slovak Constitution, which grants all citizens “equal access to elected or public offices.”

Article 48 become problematic since the seat of the former MP, Rudolf Schuster (Party of Civic Understanding, SOP), was vacated on 15 June when he assumed his new role as President of Slovakia. This article, amended on 24 August 1999 is now as it was before the 1998 changes, allows for the installation of substitutes that reflect the will of the electorate. The law is in keeping with international standards since it required a vacated mandate to be distributed to the person on the candidate list (from the same party and constituency as that of the vacated mandate) who received the greatest number of preferential votes. Where there were no preferential votes, the party must choose the substitute from its candidate list.

¹⁰⁷ Article 48(1) of the previous law (no. 81/1995) states as follows: “If a mandate became free, then it is distributed to a reserved candidate from the same political party, according to the priority of its position in the list of candidates for Deputy within that constituency, where the Deputy whose mandate became free was elected. If there were noted preferential votes of voters in the list of candidates, the mandate is distributed to the candidate who gained the greatest number of preferential votes. If there is no such reserved candidate, then the candidate of the same political party becomes the Deputy, but in accordance with priority in the list of candidates, the priority being established in the course of the second round of elections.”

¹⁰⁸ Lebovic, p. 45.

¹⁰⁹ Ibid.

¹¹⁰ Paragraph 7(9) of the Copenhagen Document states as follows: “To ensure that the will of the people serves as the basis of the authority of government, the participating States will – ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”

State Control of Electoral Commissions

With the establishment of the Central, District, and Precinct Election Commissions last year came strengthened state control over the commissions. Under the 1998 amendments, state control is authorized in several areas of the elections process. For example:

- The Statistical Office, a government body, is authorized to appoint government employees to serve on "expert summarization bodies" which are responsible for the preparation and processing of election returns;¹¹¹
- The Slovak government is authorized to appoint the recorder to the CEC.¹¹² The recorder functions as the administrator of and "expert advisor" to the election commissions;¹¹³
- The Ministry of Interior is authorized to establish an "expert administrative body" that will assist the CEC in completing its tasks;¹¹⁴
- The CEC reviews the registration lists of candidates and accepts or rejects each candidate.¹¹⁵ Since the CEC is required to work under the advice of the government-appointed expert administrative body and the recorder, many questioned the objectivity of the CEC in making such determinations; and
- The Ministry of the Interior is assigned a key role in ballot processing. It ensures the necessary number of ballots, stamps the ballots, and delivers the ballots.¹¹⁷

¹¹¹ Article 11(7) of the parliamentary election law states as follows: "The Statistical Office of the Slovak Republic shall establish expert summarization bodies consisting of employees assigned for this purpose by the appropriate state statistical bodies for preparation of processing and for processing of election returns for the Central Election Commission and for precinct election commissions. The employees appointed in the expert summarization bodies of the election commissions shall take a vow in the wording and manner specified in paragraph 4."

¹¹² Article 12(2)(a) of the parliamentary election law states as follows: "The recorder of the Central Election Commission shall be appointed and recalled by the government of the Slovak Republic." In the case of District Election Commission, the director of the district office appointed the recorder. In Precinct Election Commissions, the mayor of the municipality appointed the recorder.

¹¹³ Article 12(1) of the parliamentary election law states as follows: "The recorder of an election commission shall ensure organisational and administrative matters related to the preparation and the course of meetings of the election commission. At the same time, the recorder shall fulfill the function of an expert adviser to the election commission."

¹¹⁴ Article 13(4) of the parliamentary election law states as follows: "The Ministry of the Interior of the Slovak Republic shall establish an expert administrative body for assistance to the Central Election Commission in fulfilling its tasks."

¹¹⁵ Article 13(3)(a) of the parliamentary election law states as follows: "The Central Election Commission shall review the list of candidates and decide on their registration or on rejection of their registration."

¹¹⁶ Article 13(3)(a) of the parliamentary election law states as follows: "The Central Election Commission shall review the list of candidates and decide on their registration or on rejection of their registration."

¹¹⁷ Article 22 (2) of the parliamentary election law states as follows: "The Ministry of Interior of the Slovak Republic shall ensure the necessary number of ballots based on the registered Lists of Candidates. The drawn number of the List of Candidates, name of political party or coalition, first name and surname of candidates, academic title, age, sex, permanent residence and membership in political party must be stated on the ballot. The order of candidates on the ballot must be the same as their order on the List of Candidates. If a political party has placed its graphical symbol on the List of Candidates, it shall also be placed on the ballot."

Article 22(3) of the parliamentary election law states as follows: "Ballots for the elections in the National Council of the Slovak Republic must be printed using the same font and size of letters, on the paper of the same color, quality and size. Ballots shall be stamped by the seal of the Ministry of the Interior of the Slovak Republic."

Article 22(4) of the parliamentary election law states as follows: "The Ministry of Interior of the Slovak Republic shall deliver ballots to the mayors of municipalities who shall ensure that the ballots are delivered to all Precinct Election Commissions on the day of elections."

As IRI stated: "Although the traditional structure of multi-partisan, independent election commissions remains in place, there are concerns over whether the commissions will actually be able to administer the elections. The powers of the Ministry of Interior, State Statistical Office, and other central government authorities are enhanced at the expense of commissions."¹¹⁹ Journalist Hrabko was also concerned with this concentration of control in the Ministry of Interior, noting that this was the same body that "ruined the referendum" in 1997.¹²⁰

NDI found that the transfer of electoral functions to government authorities was "troubling in light of the powers of clerks of the electoral commissions, who are appointed by government officials. Independent, impartial election administration is essential for democratic elections, but governmental employees may not be insulated from partisan political pressures."¹²¹

The ABA/CEELI report expressed concern that the government control of the CEC is "likely to give unfair advantage to the ruling coalition [then HZDS, SNS, and ZRS parties]. . . . Furthermore," the report continued, "the amendments appear to transfer supervision of the ballot production process to the Ministry of Internal Affairs [also referred to as the Ministry of Interior]. The rationale given for these changes is to increase the efficiency of the electoral process. While reliance on professional staff is necessary in any election, the selection and supervision of this staff should rest with the bodies composed of the representative actors participating in the elections – namely representatives of various political parties – rather than with government institutions controlled by the party in power."¹²²

¹¹⁸ Article 22 (2) of the parliamentary election law states as follows: "The Ministry of Interior of the Slovak Republic shall ensure the necessary number of ballots based on the registered Lists of Candidates. The drawn number of the List of Candidates, name of political party or coalition, first name and surname of candidates, academic title, age, sex, permanent residence and membership in political party must be stated on the ballot. The order of candidates on the ballot must be the same as their order on the List of Candidates. If a political party has placed its graphical symbol on the List of Candidates, it shall also be placed on the ballot."

Article 22(3) of the parliamentary election law states as follows: "Ballots for the elections in the National Council of the Slovak Republic must be printed using the same font and size of letters, on the paper of the same color, quality and size. Ballots shall be stamped by the seal of the Ministry of the Interior of the Slovak Republic."

Article 22(4) of the parliamentary election law states as follows: "The Ministry of Interior of the Slovak Republic shall deliver ballots to the mayors of municipalities who shall ensure that the ballots are delivered to all Precinct Election Commissions on the day of elections."

¹¹⁹ "Guide to the Parliamentary Elections in the Slovak Republic," International Republican Institute, p. 7.

¹²⁰ Hrabko, p. 9

¹²¹ "Comments on the Proposed Amendments to the Slovak Republic's Election Law," National Democratic Institute, p. 3.

¹²² "Analysis of the Draft Amendments," ABA/CEELI, p. 5.

Constitutional Court Decision

On 30 June 1998, 35 MPs from the then-opposition parties, represented by Attorney Ivan Simko, also a Member of Parliament (SDK), filed a complaint in the Constitutional Court alleging that eight of the amended provisions within the parliamentary election law were unconstitutional. Overall the complaint alleged that these provisions violated the Slovak Constitution, read in connection with Article 1, which states in part that: "the Slovak Republic is a sovereign, democratic state governed by the rule of law." The constitutional provisions allegedly violated are as follows:

- Art. 26(1) state guarantee of the right to freedom of expression and the right to information;
- Art. 26(2) the right to freedom of expression in words, writing, print, images, and the right to seek, receive and disseminate ideas;
- Art. 26(4) the right to freedom of expression and the right to receive and disseminate information which may only be limited under certain circumstances;
- Art. 142(1) the court shall rule on civil and criminal matters and review decisions made by administrative bodies;
- Art. 30(4) the right to equal access to elected or public offices;
- Art. 31 the protection of political competition through the regulation of political rights and freedoms;
- Art. 46(2) the right to legal redress in a court of law; and
- Art. 48(2) the right to due process of law.

The complaint also alleged that the eight provisions violated Article 6(1) (the right to legal redress in a court of law) and Article 10 (the right to freedom of expression) of the Human Rights Convention.¹²³

The eight contested 1998 parliamentary election law provisions were as follows:

- Art.16(3) concerning the appointment of substitutes by the district office director in precinct election commissions;¹²⁴

¹²³ For Article 10(1) of the Human Rights Convention, see footnote 67.

¹²⁴ Article 16(3) of the parliamentary election law states as follows: If the Precinct Election commission does not have the required number of members stipulated in paragraph 1, the municipality mayor shall immediately make this fact known to the director of the District Office, who, after meeting with the authorized representatives of political parties, shall appoint for the missing members persons who are not members of any political party or coalition."

- Art. 17(2) the second sentence, concerning the candidate lists of coalitions;¹²⁵
- Art. 19(4) concerning the Supreme Court's jurisdiction to consider appeals between the CEC and political parties over the registration of candidate lists;¹²⁶
- Art. 23(1) the third, fourth, and fifth sentences, concerning the prohibition against parties from using private radio and television for campaign purposes;¹²⁷
- Art. 23(3) concerning the prohibition against private radio and television stations from broadcasting election speeches and election programs during the campaign period, and the prohibition against state radio and television from broadcasting the same outside the allotted 21 campaign hours;¹²⁸
- Art. 48(1) concerning substitutes in the Parliament;¹²⁹
- Art. II(200g) from the Collection of Civil Court Regulations (no. 99/1963) concerning legal proceedings in matters regarding the registration of political parties;¹³⁰ and
- Art. III(20a) from the Collection on the Operation of Radio and Television Broadcasting

¹²⁵ Article 17(2) of the parliamentary election law states as follows: "The List of Candidates of a coalition for purposes of the Act means a separate List of Candidates of political parties that concluded a written agreement on a coalition. A member of one political party cannot be in the List of Candidates of another political party, nor within a coalition among the candidates of a coalition political parties (Translator's note: i.e., nor may a member of a political party in a coalition run on the list of a coalition partner party)."

¹²⁶ Article 19(4) of the parliamentary election law states as follows: "Political parties may appeal a decision of the Central Election Commission on registration of the List of Candidates, on registration of the List of Candidates with modifications according to Section 18, paragraph 2, and a decision on refusal of registration of the Lists of Candidates, to the Supreme Court of the Slovak Republic, and may submit a proposal for giving a ruling on cancellation of registration, or a proposal for giving a ruling on withholding a candidate from the List of Candidates, or a proposal for giving a ruling on registration of the List of Candidates. The proposal shall be submitted within three days of the decision of the Central Election Commission. It is not possible to appeal a decision of the Supreme Court of the Slovak Republic. The Supreme Court of the Slovak Republic shall decide within five days."

¹²⁷ For Article 23(1) of the parliamentary election law see footnote 57.

¹²⁸ For Article 23(3) of the parliamentary election law, see footnote 58.

¹²⁹ Article 48(1) of the parliamentary election law states as follows: "If a mandate is vacated during the election period of the National Council of the Slovak Republic, a substitute from the same political party shall take this mandate, the substitute being determined by the political party."

¹³⁰ Article II, section 200 (g) of the parliamentary election law states as follows: "If the election commission with authority, in accordance with a separate Act (footnote: Section 13 paragraph 3 letter a) of Act of the Slovak National Council No. 80/1990 of the Coll. On elections to the Slovak National Council in the wording of Act No. . . . /1998 of the Coll.) decides

- a) on registration of the List of Candidates, a political party may refer to the Supreme Court of the Slovak Republic with a proposal to annul the registration of the List of Candidates,
 - b) on registration of the List of Candidates with an adjustment made in accordance with a separate Act [footnote: Section 19 of Act of the Slovak National Council No. 80/1990 of the Coll. In the wording of Act No. . . . /1998 of the Coll.), a political party may refer to the Supreme Court of the Slovak Republic with a proposal to decide on leaving a candidate on the List of Candidates.
 - c) On refusal to register the List of Candidates, a political party may refer to the Supreme Court of the Slovak Republic with a proposal [to] decide on the registration of this List of Candidates.
- 2) The participants of the proceeding are a political party and the Central Election Commission.
 - 3) The Court shall decide by issuing a decree within five days of filing of the of the proposal.

(no. 468/1991), concerning sanctions.¹³¹

Since the Constitutional Court did not address the complaint until well after the 1998 elections, the laws as amended under the HZDS ruling coalition still applied. However, on 18 March 1999, the Court issued its decision (no. 66/1999), which was published 3 April 1999. The decision does not include the Court's reasoning, but the findings are as follows:

- That Article 23(1), sentences three, four and five, which prohibited political parties from using private radio and television stations and local public loudspeakers to campaign, was unconstitutional, violating the Slovak Constitution: Articles 26(1), 26(2), and 26(4), in connection with Article 1. The Court also found that Article 23(1) violated Article 10 of the Human Rights Convention (the right to freedom of expression);¹³²
- That Article 23(3), which prohibited state radio and television stations from broadcasting election speeches and election programs during the election campaign outside the reserved broadcasting time allotted, and prohibited private radio and television stations from covering the election campaign, was unconstitutional, violating the Slovak Constitution: Articles 26(1), 26(2), and 26(4), in connection with Article 1. The Court also found that Article 23(3) violated Article 10 of the Human Rights Convention;
- That Article 48, which allowed a political party to replace a vacated mandate with a substitute from its political party, was unconstitutional, violating Article 30(4) of the Slovak Constitution;
- That Article II, section 200g, which regulated special proceedings in matters concerning party registration was unconstitutional, violating Article 48(2) of the Slovak Constitution; and
- That Article III, section 20a, which allowed the Broadcasting Council to sanction any television or radio broadcasters that were in violation of the election laws by stopping programming for one month or by requiring the operator to announce the violation, was unconstitutional, violating Article 13(1) in connection with Article 1 of the Slovak Constitution.

The Court also found that three of the eight provisions at issue did comply with the Slovak Constitution as follows:

Art. 16(3) concerning the appointment of members to the precinct election commissions where the required number of members is not satisfied;

¹³¹ Article III, section 20a of the parliamentary election law states as follows: "Should the operator breach the obligations specified by this Act or conditions of the granted license, the Board moreover shall stop the program in which the law was breached for one month, or impose the obligation on the operator to broadcast an announcement about the discovered breaching of the law in range, form and broadcasting time specified by the Board. The provisions of Section 20 are not affected by this."

¹³² For Article 10(1) see footnote 67.

Art. 17(2) concerning the list of candidates for coalitions; and

Art. 19(4) concerning the right to appeal a decision of the Supreme Court of the Slovak Republic regarding the registration of candidate lists.

The Actual 1998 Parliamentary Election: A Critical Step Towards a Consolidated Democracy

Given the unstable political climate in Slovakia in 1998, much was riding on the results of the parliamentary election. Whether the country would favor the continued rule and the ruling coalition, or whether they would opt for change had yet to be seen. What was clear, however, was that Slovakia was at a crossroads. This would be the first general election to follow a full, four-year term. The international community watched the election process closely, knowing that the outcome would significantly affect the country's position among its Central and Eastern European neighbors and its eligibility for membership within the EU and NATO.

As it turned out, despite the last minute controversial amendments, the citizens of Slovakia cast their votes for a decided change in approach to government. As political scholars Butora, Meseznikov and Butorova recognized, "The 1998 elections were the first in the independent Slovakia in which citizens rejected the orientation of their country and opted instead for democracy and rule of law."¹³³ It also turned out that the election process was conducted without any glaring complaints. The domestic observer mission facilitated by Obcianske Oko found that the elections were executed "properly and without a great number of incidents,"¹³⁴ and the international observer mission conducted by the OSCE/ODIHR Office found that the election was carried out "in a correct and acceptable manner."¹³⁵

While the finish line towards a consolidated democracy has yet to be achieved, the goal since this fourth parliamentary election in Slovakia appears that much more reachable. As defined by political scientist Szomolanyi, a consolidated democracy is the stage in a democratic transition "from a non-democratic regime to a democratic regime" when "governmental and non-governmental forces alike become habituated to the resolution of conflict within the specific laws, procedures and institutions sanctioned by the new democratic process."¹³⁶ It is too soon to tell whether Slovakia will achieve this stage in its democratic transition, but Szomolanyi and others believe that the 1998 elections were a solid step in the right direction.¹³⁷

¹³³ Butora, et al, p. 11.

¹³⁴ "Parliamentary Elections in the Slovak Republic: Preliminary Report by Domestic Observers," Obcianski Oko, p. 1).

¹³⁵ "Slovak Republic Parliamentary Elections." OSCE/ODIHR, p. 4.

¹³⁶ Szomolanyi, p. 25.

¹³⁷ Ibid.

While many anticipated the negative consequences of the amended law, the amendments actually inspired the opposition parties and Slovakia's citizens to stand up and support principles of democracy. As political scholars Butora, Meseznikov and Butora noted, "The results of the 1998 elections were backed by broad civic mobilization. Representatives of political parties, NGOs, trade unions, the independent media, and a part of the church showed their ability to learn from past mistakes and to forge democratic alliances. Public opinion lost its powerlessness and became influential."¹³⁸

Adding to this, political analyst Lebovic stated that "only strong domestic and international political pressure made it possible to hold competitive elections. . . . In the end, individual political parties maintained their right to freely seek voter support, and citizens were able to make their choices on the basis of access to information that, although not unlimited, was still sufficiently broad. Moreover, voters were neither intimidated nor persecuted for the choices they made."¹³⁹

The new ruling coalition today consists of the SDK (and its five parties), the SOP, the SDL and the SMK parties and holds 93 out of 150 parliamentary seats – the strongest parliamentary majority to date in Slovakia. As Lebovic noted, "Despite the diversity of their political programs, ideological profiles, and approaches to societal problems, all of the coalition members are committed to democratic principles and the rule of law, and all support Slovakia's integration into the European Union (EU) and NATO."¹⁴⁰

But the legacy of the HZDS election law remains and must be brought into line with international standards as soon as possible. Slovakia's citizens, the NGO and international communities will watch on as the amendment process unfolds once again in the Slovak Parliament. Perhaps this time, in the spirit of democracy, all sides will be heard, and all amendments adopted will further Slovakia's progress towards the consolidated democracy that its citizens voted for and rightly deserve.

IFES Recommendations: Amending the Amendments

The International Foundation for Election Systems (IFES) has been pleased to see the positive developments in Slovakia over the last several years and has enjoyed participating in the country's election processes. IFES first came to Slovakia in 1997 to conduct a Pre-Election Technical Assessment to assess election conditions in the country prior to the anticipated parliamentary and municipal elections in 1998. Then in May of 1998, IFES established an office in Bratislava to assist the Ministry of Interior's Election Department, the Central Election Commission and the NGO community in their election efforts. During this time, IFES worked closely with the NGO community to develop voter education materials, including information brochures and radio spots, which were distributed

¹³⁸ Butora, et al, p. 11.

¹³⁹ Lebovic, p. 43.

¹⁴⁰ Ibid.

throughout the country. IFES also worked closely with the Slovak Bar Association to review the parliamentary and municipal election laws since both were controversial at that time. In 1999, IFES returned to Slovakia on a two-and-a-half-month project to assist in the parliamentary election law reform process.

The law reform process is already beginning to take shape in Slovakia and, as of this writing, informal discussions among MPs and political party representatives have already begun. In fact, the Democratic Party (DS) recently drafted a new set of parliamentary laws which have been circulating. Several opinion editorials in the local papers have addressed the DS proposal and the amendments in general. While Parliament plans to address all amendments in the year 2000, some MPs worry that discussions will begin too late and that the process will be handicapped from the start, as it was in 1998. Others think that starting discussions next year leaves ample time for review.

The parliament seems to be taking a pro-active approach, however, and has formed a special committee to address election law and constitutional law reform. The Commission for the Revision of the Constitution (also referred to as the Ad Hoc Commission) will be working closely with the Constitutional and Legislative Affairs Committee, a standing committee within the Parliament. Together, they will discuss the substance of the existing laws and decide on the necessary changes. The Election Department within the Ministry of Interior will then be responsible for drafting the legislation and presenting it to Parliament for approval.

While much of the 1998 parliamentary election law meets with international standards, the controversial provisions will require close scrutiny during the law reform process. IFES has a vested interest and commitment in seeing that this process moves effectively forward and that all controversial provisions are remedied to satisfy international election standards.

While the Slovak Republic continues to build ever-stronger democratic institutions, election law reform remains a critical stepping stone in this process.

The IFES recommendations that follow address the controversial provisions previously mentioned in this paper. The recommendations are made in consideration of the international standards set forth in the international instruments to which the Slovak Republic has pledged its allegiance and to which it is bound through Article 11 of the Slovak Constitution.¹⁴¹ Such instruments are: the Universal Declaration, the ICCPR, the Human Rights Convention, and the Copenhagen Document.

Timing

First, IFES would like to stress that adequate time should be allowed to fully discuss all proposed revisions prior to adoption of the law. It would be less than ideal to repeat the error of last year, when the ruling coalition forced the amendments through Parliament with limited discussion only four months before the election. (In the final session, over 200

¹⁴¹ Article 11 of the Constitution of the Slovak Republic mandates that international instruments on human rights and freedoms "take precedence over national laws provided that the international treaties and agreements guarantee greater constitutional rights and freedoms."

amendments were considered and adoption of the law was completed in five hours.) As paragraph 26 of the Copenhagen Document advises, democratic principles demand that the MPs "encourage, facilitate and where appropriate, support practical co-operative endeavors and the sharing of information, ideas and expertise."¹⁴²

In the spirit of cooperation, IFES recommends that the MPs work closely with Slovakia's NGO community on election law reform. The NGO community is an excellent resource which is well-positioned to work effectively with the MPs and can help bring the election law debate to Slovakia's electorate nationwide. Since the power of the Slovak Republic is "vested in the citizens" as Article 2(1) of the Slovak Constitution demands, then Slovakia's citizens should be well informed of the law reform process and the implications and impact of any proposed amendments. The NGO community should be as actively engaged in the law reform efforts as the MPs. IFES has every confidence that the NGO community is interested and very willing to participate in the process. It will be up to the Slovak government to effectively utilize this valuable resource.

Article 41(3): Threshold for Coalition Parties

Article 41(3), governing the threshold requirement for parties within coalitions, is the most contentious of the 1998 amendments. Evidence suggests that the ruling coalition specifically altered this law to thwart the SDK's success at the polls. While the Constitutional Court did not find Article 41(3) unconstitutional, it appears that the law violates the spirit of the Slovak Constitution which rests on democratic principles. Article 31 of the Constitution demands that political rights and freedoms be regulated to "facilitate and protect political competition in a democratic society."¹⁴³ Direct manipulation of Article 41(3) to advantage the ruling party, does not protect political competition, but, in fact, strongly discourages such competition. In addition, IFES asserts that Article 41(3) violates paragraphs 7(6) and 26 of the Copenhagen Document, Article 21(1) of the Universal Declaration and Article 25 of the ICCPR.¹⁴⁴

¹⁴² Paragraph 26 of the Copenhagen Document states as follows: "The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following. . . .

electoral legislation, administration and observation . . . developing political parties and their role in a pluralistic society."

¹⁴³ Article 41(3) of the Slovak Constitution states as follows: "The regulation of political rights and freedoms, and the interpretation and usage thereof shall facilitate and protect political competition in a democratic society."

¹⁴⁴ Paragraph 7(6) of the Copenhagen Document states as follows: To ensure that the will of the people serves as the basis of the authority of government, the participating States will: respect the right of individual and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on the basis of equal treatment before the law and by the authorities."

For Paragraph 26 of the Copenhagen Document, see footnote 138.

Article 21(1) of the Universal Declaration states as follows: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives."

Article 25 of the ICCPR states as follows: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: a) To take part in the conduct of public

Because Article 41(3) requires the individual parties within a coalition to satisfy the same five-percent threshold requirement as that required of parties running individually, the incentive to form a coalition is completely negated. Smaller parties are unable to successfully compete under such a regulation and are, therefore, disqualified. Any votes for these smaller parties are, consequently, wasted, and the right of the people to elect their representatives, as Article 2(1) of the Slovak Constitution guarantees, is effectively denied.

To remedy Article 41(3) and thereby protect political competition in a democratic society,¹⁴⁵ this amendment should be revised to allow the member parties of a coalition to total their votes to satisfy an adjusted threshold requirement. In the previous election law, for example, an aggregate threshold was allowed for a political party that was a member of a coalition. A coalition made up of two or three parties would receive seats if the coalition as a whole won seven percent of the national vote. A coalition made up of four or more parties, received seats if it won at least ten percent of the national vote.¹⁴⁶ A return to the previous election law, or to a similar version, would be in keeping with sound international practices and would provide smaller political parties with the "legal guarantees to enable them to compete with each other on a basis of equal treatment before the law...." as paragraph 7(6) of the Copenhagen Document advocates.¹⁴⁷ In addition this revision would provide smaller political parties with the opportunity to develop their role in a pluralistic society as paragraph 26 of the Copenhagen document asserts.

The Election Campaign and Use of the Broadcast Media

The Slovak parliament should take a close look at Article 23, the "Election Campaign," and seriously reconsider Articles 23(1) and 23(3), which both violate the right to freedom of expression as set forth in such international instruments as Article 19 of the Universal Declaration,¹⁴⁸ Article 19(2) in the ICCPR,¹⁴⁹ paragraph 9(1) of the Copenhagen

affairs, directly or through freely chosen representatives; b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; c) To have access, on general terms of equality, to public service in his country."

¹⁴⁵ Article 31 of the Slovak Constitution states as follows: "The regulation of political rights and freedoms, and the interpretation and usage thereof shall facilitate and protect political competition in a democratic society."

¹⁴⁶ Article 41(2) of the previous election law (no. 81/1995) states as follows: "Further the Slovakian electoral Commission determines: a) which political party or political movement received less than 5% of the votes; b) which coalition, including two or three political parties, or political movement received less than 7% of votes; c) which coalition, including at least four political parties, or political movement received less than 10% of total number of valid votes. Under further determination of results of the elections and distribution of mandates these political parties, political movements and coalitions, as well as votes cast for them, shall not be taken into account."

¹⁴⁷ For paragraph 7(6) of the Copenhagen Document, see footnote 140.

¹⁴⁸ Article 19 of the Universal Declaration states as follows: "Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."

¹⁴⁹ Article 19(2) of the ICCPR states as follows: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Document,¹⁵⁰ and Article 26(1) in the Slovak Republic's own Constitution.

Article 23(1) restricts parties from using private radio and television for campaign purposes.

Article 23(3) limits the private electronic media from broadcasting election speeches and election programs and from covering the campaign during the campaign period. It also restricts state radio and television from such coverage outside the 21 campaign hours allowed. These provisions are a direct infringement on a party's right to "impart information and ideas through any media" and on a citizen's right to seek and receive information and ideas, as Article 19 of the Universal Declaration dictates.

Article 23(1) should be revised to allow political parties access to both state and private radio and television stations for campaign purposes. Any prohibition against the use of private media is in direct contravention to paragraph 7(8) of the Copenhagen Document, which advocates that all political groupings and individuals that wish to participate in the electoral process should have "unimpeded access to the media on a non-discriminatory basis" and that no legal or administrative obstacles should stand in the way of this right.¹⁵¹

In addition, the air time allotted for campaign purposes should not be limited. The current law under Article 23(2) requires Slovak radio and television to provide 21 hours of equally divided air time to the parties for campaign purposes. Providing a minimum standard of airtime is in keeping with international standards in that it affords the smaller parties (with presumably less campaign funds) certain minimum access to the broadcast media. However, the 21 hours should not be written as a ceiling but as a minimum standard. Should Slovak radio and television wish to air additional campaign events, provided the exposure to all parties and candidates is balanced, this should not be prohibited.

As paragraph 7(7) of the Copenhagen Document asserts, participating states should ensure that political campaigning is conducted in a fair and free atmosphere where parties and candidates are not barred from freely presenting their views and qualifications and voters are not barred from learning and discussing these views.¹⁵² Thus, by opening up the campaign process to at least 21 hours of broadcast time on Slovak radio and

¹⁵⁰ Paragraph 9(1) in the Copenhagen Document states as follows: "The participating States reaffirm that everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright."

¹⁵¹ Paragraph 7(8) of the Copenhagen Document states as follows: "To ensure that the will of the people serves as the basis of the authority of government, the participating states will: provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process."

¹⁵² Paragraph 7(7) of the Copenhagen Document states as follows: "To ensure that the will of the people serves as the basis of the authority of government, the participating states will: ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution."

television, but not limited to this time, parties and candidates will have greater access to the voters and the voters will be better equipped to make informed decisions at the polls.

In keeping with paragraph 7(7) of the Copenhagen Document, additionally, parties and candidates should not be limited as to the amount of paid advertising they wish to purchase on private or state-run radio and television stations.

In addition, IFES recommends that Article 23(3) be revised to allow private and state-run radio and television stations to cover campaign events in the news as part of their regular broadcasting. Any limit to the usual broadcasting of political events would be a violation of Article 26(3) of the Slovak Constitution which prohibits censorship and would also violate Articles 26(1), freedom of expression, and 26(2), the right to seek, receive and disseminate ideas and information.¹⁵³ Several international instruments, including the Copenhagen Document, paragraph 9(1), also guarantee the right to freedom of expression and to receive and impart information and ideas.¹⁵⁴

The Slovak parliament should also consider establishing an independent adjudicative body to oversee the election campaign in the media. As set forth in the 1998 amendments, the Central Election Commission, under Article 23(8) is to settle all "disputes concerning the equality of division and allocation of time for conducting the election campaign on Slovak Radio and Television. The CEC's decision's shall be binding." All other media-related matters concerning the campaign are to be settled by the Broadcasting Council, which is a state administrative body whose employees are appointed by the Parliament. While the CEC should be an impartial body that includes a fair representation of political party members, the current law allows significant government control over the CEC through the government-appointed recorder and the expert administrative body, which is appointed by the Ministry of Interior. Thus, both the CEC and the Broadcasting Council under the current law lack the independence required to effectively adjudicate campaign conduct.

A permanent election commission would eliminate any question of partiality and, through an enforceable code of conduct, could ensure balanced campaign coverage. Since sanctioning powers would also rest with the permanent election commission, the Broadcasting Council would no longer be able to impose fines on those found in violation of the law. Currently, the Broadcasting Council has the authority to fine offenders anywhere from 50,000 to 5,000,000 Slovak Crowns (\$1,200 to \$120,000 U.S.). It can also,

¹⁵³ Article 26(1) of the Slovak Constitution states as follows: "Freedom of expression and the right to information shall be guaranteed."

Article 26(2) of the Slovak Constitution states as follows: "Every person has the right to express his or her opinion in words, writing, print, images and any other means, and also to seek, receive and disseminate ideas and information both nationally and internationally. No approval process shall be required for publication of the press. Radio and television companies may be required to seek permission from governmental authorities to set up private businesses. 'Further details shall be provided by law.'"

¹⁵⁴ Paragraph 9(1) of the Copenhagen Document states as follows: "The participating States reaffirm that - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright."

among other things, cancel offending programs for up to one month.

Domestic and International Observers

Many critics of the 1998 amendments protested the lack of a provision for the participation of domestic and international observers in the election process. Article 32 of the adopted law does authorize the CEC to permit the presence of individuals in the precincts during the count, but it did not accredit any such observers last year – despite concerted efforts from the NGO community to receive accreditation.

IFES recommends that the parliamentary election law include a provision that provides for the presence of both domestic and international observers during the election process, including the count. Such a provision should also clearly state accreditation procedures and include the deadlines for application and for invitation to the domestic NGO and international communities. As paragraph 8 of the Copenhagen Document sets forth, “the presence of observers, both foreign and domestic, can enhance the electoral process....”¹⁵⁵

As such the Slovak government should incorporate this widely recognized international standard into its election law.

The Constituency Issue

In an ethnically diverse country like Slovakia, IFES finds that Article 9(2), which establishes Slovakia as one electoral district, is not capable of effectively producing a representative government that reflects the will of the people.¹⁵⁶ In addition, IFES finds that this provision discourages competition among smaller political parties and ethnically based parties.

Under the amended Article 9(2), political parties submit one candidate list with up to 150 names to cover the entire country. In this case, voters are less likely to know the candidates and are less likely to elect a candidate from their region. The previous election law divided the country into four constituencies with each political party submitting four candidate lists (one for each constituency). In this case, voters were more likely to know the candidates and could effectively send a local representative to Parliament. Also in this case, smaller parties and ethnically based parties could more effectively run strong campaigns in their respective regions. Since many countries conduct elections with one electoral district, Article 9(2) is not egregious on its face, but in a country as ethnically diverse as Slovakia, such a provision fails to empower the voter or the development of smaller political parties and ethnically based parties.

In addition, the intent behind this law must be considered. Strong evidence suggests that this law was enacted to benefit the then-ruling party, which would more easily succeed at

¹⁵⁵ For paragraph 8 of the Copenhagen Document, see footnote 79.

¹⁵⁶ Paragraph 6 of the Copenhagen Document asserts that the basis for the authority and legitimacy of all government is found in the “will of the people, freely and fairly expressed through periodic and genuine elections.”

the polls by submitting one nation-wide candidate list, featuring such prominent figures as Vladimir Meciar, than by submitting four lists with less popular candidates.

As Article 31 of the Slovak Constitution mandates, political competition in the State should be protected. Also, paragraph 7(6) of the Copenhagen Document asks States to provide the "necessary legal guarantees to enable them [political parties and political organizations] to compete with each other on the basis of equal treatment before the law and the authorities."¹⁵⁷ Article 9(2) does not provide parties with a level playing field.

Given the suspect intentions of Article 9(2) and the well-defined ethnic diversity in Slovakia, the Slovak parliament should abolish the present law and restores the four constituency system, or it should create new election districts that fairly represent the will of the electorate and the country's rich ethnic diversity.

Voter Lists

To guarantee the integrity of an election – from political party registration to certification of election results – election administrators must ensure the integrity of every step in the process. This is the only way to ensure a truly representative government of the people – a fundamental principle of constitutional democracy. Voter registration is a critical step in an election process and pains should be taken to create accurate voter lists, enfranchising as many eligible voters as possible.

Confirming the accuracy of voter lists requires the individual voter to check his or her registration information and to update such information when circumstances change. As such, voter lists should be made easily accessible to the public. Article 8(1) of the amended election law actually limits scrutiny by requiring the voter to physically go to his or her municipal office to check voter information. It also deletes the 30-day posting period and no longer requires voter lists to be posted in neighborhoods where more than 5,000 voters are living.

IFES recommends that the previous provision be reinstated to allow for the widest scrutiny of voter lists. In addition, specific posting procedures, including a deadline for posting voter lists, should be mandated to prevent the random and irregular procedures that occurred last year, absent clear guidelines. Essentially, the new law should provide voters with every opportunity to confirm the accuracy of their voter registration information, to make changes, and to remove the deceased from the lists. This would help to ensure the integrity of the voter lists and transparency in the election process.

State Control of Electoral Bodies

The 1998 amendments strengthened state control over the election commissions. This

¹⁵⁷ For paragraph 7.6 of the Copenhagen Document, see footnote 140.

calls into question the independence of the commissions, which is critical to preserving the integrity of the election process. The election commissions are made up of party representatives, but are dependent on government advisory bodies such as the expert administrative body appointed by the Ministry of Interior and the expert summarization body appointed by the Statistical Office. IFES questions the need for these bodies and the need for the expert advisory role of the recorder to the CEC, who is appointed by the Slovak government. These government positions provide the state with unnecessary control over the election process, which can inhibit the ability of the commissions to work effectively together and can have the ill-effect of binding their hands in critical decisions.

As such, IFES recommends that the Parliament seriously consider removing all "expert advisory" roles, including that of the recorder, from the CEC. IFES also recommends that the Parliament give serious consideration to the formation of a permanent election commission, which would lend credibility and stability to the election process. Slovakia is one of the few countries in the region that has yet to implement such a body. A permanent commission could proportionally represent the electorate's will – as perhaps a smaller version of the parliament- and might even include members of the Constitutional Court to lend greater credibility. Such a commission would effectively eliminate any suspicion of state control over the election process which currently exists in Slovakia today.

Conclusion

The new government has taken many positive steps, which have demonstrated its commitment to democratic principles and the rule of law. But another critical step remains – the adoption of a new parliamentary election law. Each provision in the new law should meet with international election standards. Each provision should satisfy the international instruments on human rights and fundamental freedoms to which Slovakia is bound. The opposition parties of last year are now the ruling coalition of this year. Let them show the world that the platform of democratic principles and practices that they, indeed, strongly promoted, is no longer a platform but common practice. Let them show Slovakia's electorate that the new ruling coalition is *the* mechanism for change – the change this country has been waiting for.

Resource List

"Analysis of the Draft of Amendments of the Act Governing Elections for the Slovak Republic," The American Bar Association, Central and East European Law Initiative (CEELI), Bratislava, Slovakia, 21 April 1998.

"International Republican Institute, Guide to the Parliamentary Elections in the Slovak Republic, September 1998," International Republican Institute (IRI), Bratislava, Slovakia, 3 September 1998.

"Memorandum to the Professional Media Program, Re: Slovak Republic Election Law," Attorney Kurt Wimmer, Covington and Burling, Analysis Drafted for the International Research and Exchanges Board, Washington, D.C., 22 April 1998.

"National Democratic Institute For International Affairs, Comments on the Proposed Amendments to the Slovak Republic's Election Law", National Democratic Institute, Bratislava, Slovakia, 30 April 1998.

"Slovak Republic Parliamentary Elections 25 and 26 September 1998," Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), ODIHR. GAL/61/98, 25 November 1998.

"Statement of the NDI Pre-Election Delegation on Slovakia's 1998 Parliamentary Elections," National Democratic Institute, Bratislava, Slovakia, 3 September 1998.

"Parliamentary Elections in the Slovak Republic: Preliminary Report by Domestic Observers," a Special report by Obcianske Oko '98 (the NGO, Civic Eye '98), October 1998.

"Statement of Non-governmental Organizations Taking Part in Civic Campaign '98 Addressing the Proposed Changes in Election Law," Obcianska Kampana 98 (the NGO, OK 98, Civic Campaign 98), Bratislava, Slovakia, 23 March 1998.

"Memorandum of the International Helsinki Federation for Human Rights and the Slovak Helsinki Committee to the Slovak Government, the Slovak Parliament and the People of Slovakia on Slovakia's Human Rights Record and Its OSCE Commitments," International Helsinki Federation for Human Rights, Vienna, Austria, 19 August 1998.

"Report, OSCE/ODIHR Needs Assessment Mission in Slovakia, Bratislava, July 6-10, 1998," Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, Bratislava, Slovakia, July 1998.

"Amendments to the Parliamentary Election Law," *The Final Report of Domestic Observers*, Obcianske Oko '98, Bratislava, Slovakia, March 1999.

"Memorandum from ARTICLE 19, the International Centre Against Censorship on the

Proposed Amendments to the Selection Election Law No. 80/1990 of Slovakia," Article 19, The International Centre Against Censorship, London, U.K., (document not dated, although presumably written in spring of 1998, before 8 May 1998.)

"U.S. State Department Comments on Slovak Election Law," United States Information Service Bratislava, News Release, 23 June 1998.

"Political Reporting: A Primer for the 1998 Elections," Juraj Hrabko, a journalist for *Sme* Newspaper, article copywrited by ProMedia Slovakia o.m.p., July 1998.

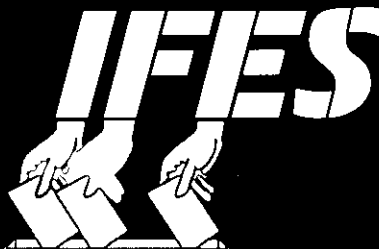
"The 1998 Parliamentary Elections and Democratic Rebirth in Slovakia," Eds.: Martin Butora, Grigorij Meseznikov, Zora Butorova, Sharon Fisher, Institute for Public Affairs, Bratislava, Slovakia, 1999.

"Slovak Republic Pre-Election Technical Assessment," Alexander T. Knapp, Paul DeGregorio, Ronald Sereg, Katarina Duich, "International Foundation for Election Systems, Washington, D.C., December 1997.

"Slovak Bar Association Standpoint, on the Act No. 187/1998 Coll. Amending And Supplementing the Parliamentary Act No. 80/1990 Coll. Governing the Elections for the Slovak National Council in the Wording of Later Regulations and on the Amendment and Supplement of Other Laws for the Slovak Republic," Slovak Bar Association, Bratislava, Slovakia, 16 July 1998.

Decision of the Constitutional Court of the Slovak Republic, Coll. of law no. 66/1999, Decided 18 March 1999.

"Regular Report from the Commission on Progress Towards Accession, Slovakia," European Commission, November 1998. (From the website: <http://europe.eu.int>.)



International Foundation for Election Systems
1101 15th Street, N.W.
Third Floor
Washington, D.C. 20005
TEL (202) 828-8507 FAX (202) 452-0804