



Office for Democratic Institutions and Human Rights

# SLOVAK REPUBLIC

## PRESIDENTIAL ELECTION

16 March 2019

### ODIHR NEEDS ASSESSMENT MISSION REPORT

3-5 December 2018



Warsaw  
22 January 2019

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**I. INTRODUCTION**

In accordance with its mandate and in anticipation of an official invitation to observe the 16 March 2019 presidential election in the Slovak Republic, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 3 to 5 December 2018. The NAM included Steven Martin, ODIHR Senior Adviser on New Voting Technologies, and Radivoje Grujić, ODIHR Election Adviser.<sup>1</sup>

The purpose of the mission was to assess the pre-election environment and the preparations for the presidential election. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions as well as with representatives of political parties, media and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign and European Affairs for its assistance and co-operation in organizing the visit. ODIHR would also like to thank all of its interlocutors for having taken the time to meet with the mission and sharing their views.

**II. EXECUTIVE SUMMARY**

The Slovak Republic is a parliamentary republic with a directly elected president serving as the head of state. By law, the presidential election should be called no later than 55 days prior to election day. A candidate is elected with an absolute majority of valid votes. If no candidate is elected in the first round, a run-off is held within 14 days between the top two candidates. On 10 January 2019, the speaker of the parliament announced that the presidential election will be held on 16 March, with a potential second round on 30 March 2019. There is a limit of two consecutive terms in office. The current president stated that he would not seek re-election.

The current political environment has been influenced by a series of large-scale anti-government demonstrations related to alleged corruption and the murder of an investigative journalist and his fiancée in February 2018. In response to these events, the prime minister resigned shortly thereafter and was replaced by the deputy prime minister.

The electoral legal framework comprises numerous laws and acts and was comprehensively amended in 2014. The revised legal framework provides more detailed regulation on the activities and composition of the State Commission for Elections and the Control of Funding for Political Parties (SEC). Additional changes on campaign finance were introduced in 2015. ODIHR NAM interlocutors stressed that although the legislation has been codified and harmonized, certain aspects are still under-regulated particularly on campaign finance, and that this will be first

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<sup>1</sup> On 14 January 2019, following the announcement of the election, the Ministry of Foreign and European Affairs of the Slovak Republic invited ODIHR to observe the 16 March presidential election.

presidential election conducted under the amended legislation. The majority of prior ODIHR recommendations remain unaddressed.

The responsibility for organizing the election is shared between three levels of election commissions, headed by the SEC, and supported by a number of state bodies, primarily the Ministry of Interior. ODIHR NAM interlocutors expressed overall confidence in the election administration with the technical preparations and conduct of the election, although they noted that this would be the first presidential election administered under the current structure.

Citizens over 18 years of age have the right to vote. In line with prior ODIHR recommendations, in 2017, the Constitutional Court repealed the restrictions on the right to vote based on a deprivation of legal capacity and for those serving prison sentences for particularly serious crimes. Voter registration is passive and decentralized with the voter register maintained by municipalities based on the permanent residence register. Some 4.4 million voters are registered. No concerns were expressed by ODIHR NAM stakeholders regarding the accuracy and inclusiveness of voter lists.

Eligible voters over 40 years of age may stand as presidential candidates. Candidates are nominated by at least 15 members of parliament or by a group of voters, with all nominations approved by the speaker of parliament. ODIHR NAM interlocutors did not express concern regarding the candidate registration process.

The campaign officially starts from the announcement of the election and lasts until 48 hours before election day. Campaign issues are expected to include immigration, national identity, security, and relations with the European Union. While ODIHR NAM interlocutors confirmed the ability to campaign freely, some concerns were raised over a potential role of misinformation and its influence on voters and the use of intolerant and harsh rhetoric during the campaign related to issues of immigration.

The legislation limits campaign expenditures by candidates and third parties, and only obliges post-election reporting. For the campaign, candidates and third parties are required to open dedicated transparent accounts, which are open to public scrutiny. Overall, ODIHR NAM interlocutors stated that while the campaign finance framework has improved, it still contains gaps and ambiguities, including on reporting, that could be exploited and that SEC oversight under the current framework has yet to be tested in a presidential election.

The media environment is diverse with a wide variety of commercial and public broadcasters as well as print media. However, freedom of speech is challenged by potentially high damages in civil defamation cases. The law requires all broadcast media to abide by the principles of pluralism, objectivity and impartiality and allows paid political advertising during the campaign. While ODIHR NAM interlocutors generally noted the ability of candidates to access media throughout the campaign, some concern was expressed about how the media would report on potential instances of intolerant rhetoric and hate speech.

The law does not provide for specific mechanisms for the resolution of election-related disputes and there is a variety of authorities involved depending on the issue. In particular, there are no legal mechanisms for the adjudication of campaign-related complaints. Even within the current framework, ODIHR NAM interlocutors did not raise concerns on the adjudication of complaints and positively noted the impartial approach of the different authorities involved.

All ODIHR NAM interlocutors expressed confidence in the impartiality of the election

administration and its ability to organize elections professionally and transparently. At the same time, a number of ODIHR NAM interlocutors stated that several aspects of the process would merit specific attention by an ODIHR election observation activity considering that this will be the first presidential election to be administered by the electoral management body and under a new codified legal framework. The administration of the election and oversight of campaign finance as well as the conduct of the campaign and the media environment could benefit from review. On this basis, the ODIHR NAM recommends, subject to the availability of resources, the deployment of an Election Assessment Mission for the 16 March 2019 presidential election.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

The Slovak Republic is a parliamentary republic with a directly elected president serving as the head of state. The president formally holds significant powers, including the right to appoint the prime minister, other government ministers, Constitutional and Supreme courts judges, and the Prosecutor General, represents the country abroad, and serves as commander-in-chief of the armed forces. In practice, however, the role of the president is largely considered ceremonial with decisions typically based on the recommendations of the government or the parliament.

The parliament is composed of 150 deputies with eight parties current represented.<sup>2</sup> Women are generally underrepresented in public office, holding some 20 per cent of parliamentary seats and 5 of 15 ministerial posts.<sup>3</sup> By law, the presidential election should be announced by the speaker of the parliament no later than 55 days prior to election day. On 10 January 2019, the speaker of the parliament announced that presidential election will be held on 16 March, with a potential second round on 30 March 2019. The current president, Andrej Kiska, elected for a first term in 2014, stated that he would not seek re-election.

The current political environment has been influenced by a series of large-scale anti-government demonstrations related to alleged corruption and the murder of journalist Ján Kuciak and his fiancée in February. In response to these events, Prime Minister Robert Fico resigned shortly thereafter and was replaced by Deputy Prime Minister, Peter Pellegrini. Antagonism between Mr. Fico, who remains the Smer-SD chairperson, and the civic groups that led the anti-government demonstrations has continued.

ODIHR has observed six elections in Slovakia since 1998, both presidential and parliamentary. The ODIHR Election Assessment Mission for the 2016 parliamentary elections concluded that the elections “were held in a competitive and pluralistic environment and fundamental freedoms were respected. Stakeholders expressed confidence in most stages of the electoral process. Voters had the opportunity to make an informed choice from a variety of political options.”<sup>4</sup>

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<sup>2</sup> The 2016 elections resulted in the following seat distribution: Direction – Social Democracy (Smer-SD) 49, Freedom and Solidarity (SaS) 21, Ordinary People and Independent Personalities (OEaNO-NOVA) 19, Slovak National Party (SNS) 15, Kotleba People’s Party our Slovakia (Kotleba – ĽSNS) 14, We are the Family (SME RODINA - Boris Kollár) 11, MOST - Híd 11, and Network (SIEŤ) 10.

<sup>3</sup> See the United Nations (UN) Committee on the Discrimination against Women “[Concluding observations on the combined fifth and sixth periodic reports of Slovakia](#)” (25 November 2015).

<sup>4</sup> See [previous ODIHR election reports on the Slovak Republic](#).

## **B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM**

The legal framework for the presidential election primarily comprises the 1992 Constitution, the 2014 Law on Conditions for the Exercise of Voting Rights and on Amendments to Certain Laws (Elections Act), and is complemented by several other acts.<sup>5</sup> The legislation was comprehensively amended in 2014 to codify and harmonize the legal framework and to provide more detailed regulation on the activities and composition of the State Commission for Elections and the Control of Funding for Political Parties (SEC). Additional changes on campaign finance were introduced in 2015. According to ODIHR NAM interlocutors, although the legal framework was improved, certain aspects remain under-regulated, particularly concerning campaign finance. This will be first the presidential election conducted under the amended legislation. The majority of prior ODIHR recommendations, including those by the ODIHR Election Assessment Mission to the 2016 parliamentary elections, remain unaddressed.

The president is directly elected for a five-year term and may hold office up to two consecutive terms. A candidate is elected by an absolute majority of valid votes. If no candidate is elected in the first round, a run-off between the top two candidates is held within 14 days with the one receiving more votes deemed elected.

## **C. ELECTION ADMINISTRATION**

The responsibility for organizing the election is shared between three levels of election commissions, headed by the SEC, along with 49 District Election Commissions (DECs) and some 6,000 Precinct Election Commissions (PECs), and supported by the Ministry of Interior (MoI) and the Statistics Office.

The SEC is a permanent and independent body that oversees the management of elections. It is composed of 14 members, currently all men, appointed after every parliamentary election. Parliamentary parties delegate 10 members in proportion to their representation in the parliament, but equally shared between the governing and opposition parties. An additional four members are nominated, one each, by the presidents of the Constitutional Court, Supreme Court and Supreme Audit Office, and the Attorney General. ODIHR NAM interlocutors raised no issue with regard to the impartiality of the SEC.

DECs and PECs are formed prior to each election to manage voting, counting and results tabulation, and should each have at least five members. Parliamentary parties and civil groups nominating candidates have the right to nominate members to these commissions. If less than five members are nominated, the remaining positions are filled by the head of the respective district authority for DECs, or by the respective mayor for PECs.<sup>6</sup>

Polling stations can be opened in specialised social institutions, including prisons and detention centres, with at least 100 voters. By law, polling stations should be accessible for all voters; however, the practice varies and ODIHR NAM interlocutors stated that in cases with limited access, a voter may request to vote using a mobile ballot outside of the polling station.

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<sup>5</sup> This includes the 2014 Act on Electoral Campaign, the 2000 Act on Broadcasting and Retransmission and the 2005 Criminal Code.

<sup>6</sup> Electoral officers with advisory votes are appointed to support election commissions at all levels.

The MoI is responsible for logistical and technical aspects of the election, including printing materials, and coordinating training, voter information and education. The Statistics Office is responsible for tabulating election results and provides support through providing staff to the SEC and each DEC along with the necessary equipment.<sup>7</sup>

ODIHR NAM interlocutors expressed overall confidence in the election administration regarding the technical preparations and conduct of the election, although they noted that this would be the first presidential election administered under the current structure.

#### **D. VOTER REGISTRATION**

Citizens over 18 years of age have the right to vote, except those who are under a “legally set restriction of the personal freedom due to protection of the public health”. In line with prior ODIHR recommendations, in 2017, the Constitutional Court repealed the restrictions on the right to vote based on a deprivation of legal capacity and for those serving prison sentences for particularly serious crimes. The Court ruled that relevant provisions in the 2014 Elections Act were not in conformity with the Constitution, the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities.<sup>8</sup>

Voter registration is passive and decentralized with the voter register maintained by municipalities based on the permanent residence register. Voter lists are updated continuously based on municipal records and input provided by state institutions or other municipalities. Voters may verify their data in voter lists, and, if necessary, request correction until the day before election day. On election day, a voter can be added to a voter list upon presenting an identity card with proof of residency. Some 4.4 million voters are registered. No concerns were expressed by ODIHR NAM stakeholders regarding the accuracy and inclusiveness of voter lists.

#### **E. CANDIDATE REGISTRATION**

Eligible voters over 40 years of age may stand as presidential candidates. Candidates are nominated by at least 15 members of parliament or by groups of voters, the latter having to collect 15,000 support signatures. A number of public positions are incompatible with the post of the president.<sup>9</sup> All nominations should be submitted to the speaker of the parliament within 21 days from the announcement of the election who should approve them within seven days.

ODIHR NAM interlocutors did not express concerns regarding the candidate registration process. A number of parliamentary parties that the ODIHR NAM met with expressed their intention to nominate candidates, although many have not yet publicly declared their candidates. ODIHR NAM interlocutors expected a considerable number of candidates, nominated by both parliamentary parties and groups of voters.

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<sup>7</sup> In addition to processing hard copies of results, PECs have the option to use tabulation software provided by the Statistics Office; its use has been increasing with more than half of PECs using it for the 2018 local elections.

<sup>8</sup> Repealed restrictions related to the execution of a custodial sentence for committing a particularly serious crime and deprivation of legal capacities. See the UN Committee on the Rights of Persons with Disabilities “[Concluding observations on the initial report of Slovakia](#)” (17 May 2016).

<sup>9</sup> If the president-elect is a member of parliament, a member of government, a judge, a public prosecutor, a member of the armed forces or the armed corps, or a member of the Supreme Audit Office, they must resign from their previous office once elected.

## F. ELECTION CAMPAIGN

The campaign is primarily regulated by the 2014 Act on Electoral Campaigns and officially starts from the announcement of the election and until 48 hours before election day. The law allows the broadcasting of paid political advertisement from 21 days before election day, but the publication of opinion polls is prohibited starting from 14 days prior to election day. During the campaign, municipalities allocate specific locations where contestants are able to display election materials. Beyond this, there are no restrictions on the placement of campaign materials, including billboards. According to ODIHR NAM interlocutors, prospective candidates have already begun to post campaign materials. Overall, ODIHR NAM interlocutors confirmed the ability to campaign freely. Several, however, mentioned longstanding concerns with vote-buying in Roma communities.

While traditional campaign methods will be used, the campaign is expected to rely heavily on online and social media. However, interlocutors noted that the legislation does not contain specific provisions regulating online campaigning and raised concern with a lack of transparency with online advertisements as well as candidates and other stakeholders engaging in the dissemination of misinformation. Campaign issues are expected to include immigration, national identity, security, and relations with the European Union. In particular, some concerns were raised over a possible increase in intolerant and harsh rhetoric and potential hate speech during the campaign in the context of issues concerning immigration.

## G. CAMPAIGN FINANCE

Campaign finance is regulated by the 2014 Act on Electoral Campaigns. Candidates can receive private donations without limit from legal entities, political parties and individuals until 48 hours before election day. Donations from state, foreign and anonymous sources are prohibited. While the legislation provides details on managing donations to political parties, some ODIHR NAM interlocutors were unclear on specific provisions on donation disclosure requirements for presidential candidates. The campaign expenditure limit is EUR 500,000 per candidate, which includes a possible second round.<sup>10</sup> The law does not specify how to manage any unspent donations after the election. A physical person or a legal entity that intends to campaign must register with the SEC as a “third party”, and may spend up to EUR 100,000.

All candidates and third parties are required to open dedicated “transparent campaign accounts”, which are open to public scrutiny. While ODIHR NAM interlocutors considered this as a positive step, they opined that its effectiveness was limited as not all expenditures would likely come through the account, in particular those incurred before the start of the campaign or opening of the account. Some concerns were also noted over accounting for possible in-kind contributions.

Within 30 days after the election, candidates should submit detailed reports to the MoI on campaign expenditure from 180 days before the start of the campaign, which are to be published online.<sup>11</sup> The MoI noted that it would introduce and require the use of reporting templates starting from January 2019. In general, ODIHR NAM interlocutors expressed concerns that late and vague reporting requirements for candidates would limit transparency.

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<sup>10</sup> This amount includes direct promotion costs, the costs candidate spent during the period 180 days before the day the election was announced and the costs candidate paid or should pay.

<sup>11</sup> Third parties are only required to publish campaign expenditures within ten days after the campaign. No formal reporting is required unless information is requested by MoI.

The MoI oversees campaign finance reporting and can request additional information from candidates beyond submitted reports. However, ODIHR NAM interlocutors opined that the extent of investigations and sanctions for potential irregularities, in particular for advertisements on social media, were limited. Overall, ODIHR NAM interlocutors stated that while the campaign finance framework has improved, it still contains gaps and ambiguities that could be exploited and that SEC oversight under the current framework has yet to be tested in a presidential election.

## H. MEDIA

The media environment is pluralistic and diverse with a wide variety of commercial and public broadcasters as well as print media. While the Constitution guarantees freedom of speech, it is challenged by potentially high damages in civil defamation cases, an issue which has previously been raised by the OSCE Representative on Freedom of the Media (RFoM).<sup>12</sup> In addition, the safety of journalists remains of concern following the deaths of Mr. Kuciak and his fiancée, upon which the OSCE RFoM expressed condemnation and urged the authorities to pursue a full, transparent and swift investigation.<sup>13</sup>

During the pre-election period, the Act on Electoral Campaign and the Act on Broadcasting and Retransmission are the main laws regulating the work of the media. The public national broadcaster is Radio and Television of Slovakia (RTVS), comprising two TV channels and nine radio stations. RTVS expects to host several candidate debates, although it has yet to decide how to split a potentially high number of candidates among the debates.

According to the legislation, broadcast media should ensure the plurality of views as well as objectivity and impartiality of news and current affairs programmes. RTVS should allocate up to one hour to each candidate, and altogether no more than ten hours on radio and on television, respectively. Candidates should apply for their allotted time slots no later than five days before the start of broadcasting the political advertisements. In addition, RTVS should allocate up to 10 hours for election-related programmes, including debates. Private broadcasters should allocate up to 30 minutes of paid time to each candidate, up to a total of 10 hours for all candidates. Print media are self-regulated and are not restricted. Most ODIHR NAM stakeholders stressed sufficient media access and impartial coverage via the public broadcaster, although noted that private media tend to take more partisan approach in their coverage.

The Council for Broadcasting and Retransmission (CBR) oversees broadcaster activities and is responsible for ensuring objectivity and impartiality in news and current affairs programmes. It develops guidelines for media for each election and acts upon its own initiative and upon complaints. The Act on Election Campaigns provides that both public and private broadcasters shall ensure equal conditions for price and terms of the purchased broadcasting time for all contestants. While ODIHR NAM interlocutors generally noted the ability of candidates to access media throughout the campaign, some concern was expressed about how the media would report on potential instances of intolerant rhetoric and hate speech.<sup>14</sup>

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<sup>12</sup> The OSCE RFoM called on the authorities to limit compensation in such cases and abolish defamation as a criminal offence in line with international standards See the OSCE RFoM statement from [23 March 2018](#).

<sup>13</sup> Mr. Kuciak was known for investigating cases of suspected tax fraud, and filed two complaints with the prosecutor's office after receiving several threats. See the OSCE RFoM statements from [26 February 2018](#), [28 September 2018](#) and [4 October 2018](#), expressing concerns, welcoming progress in the investigation and calling for all involved to be prosecuted.

<sup>14</sup> See the UN Committee on Elimination of all forms of Discrimination "[Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia](#)" (12 January 2018).

## I. COMPLAINTS AND APPEALS

The Elections Act does not provide for specific mechanisms for the resolution of election-related disputes and there is a variety of authorities involved depending on the issue. Campaign-related complaints are lodged with the MoI. The SEC acts as an appellate body against the decisions of the MoI related to campaign finance. The election administration at any level has no authority to review complaints. Voters can file a complaint with the administrative court on voter registration issues. Complaints against candidate registration are filed with the Supreme Court without an opportunity for appeal. Even within the current framework, ODIHR NAM interlocutors did not raise concerns on the adjudication of complaints and positively noted the impartial approach of the different authorities involved.

The constitutionality and legality of the election can be challenged to the Constitutional Court through a regular procedure (90-day deadline), with no shorter deadline for decisions related to elections; however, the Court informed the ODIHR NAM that in practice it would rule in a reasonable timeframe.<sup>15</sup> The mandate of 9 of 13 Constitutional Court judges expires in February 2019 and ODIHR NAM interlocutors expressed uncertainty over the appointment of new judges, raising a potential gap in the electoral process.

## IV. CONCLUSION AND RECOMMENDATION

All ODIHR NAM interlocutors expressed confidence in the impartiality of the election administration and its ability to organize elections professionally and transparently. At the same time, a number of ODIHR NAM interlocutors stated that several aspects of the process would merit specific attention by an ODIHR election observation activity considering that this will be the first presidential election to be administered by the electoral management body and under a new codified legal framework. The administration of the election and oversight of campaign finance as well as the conduct of the campaign and the media environment could benefit from review. On this basis, the ODIHR NAM recommends, subject to the availability of resources, the deployment of an Election Assessment Mission for the 16 March 2019 presidential election.

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<sup>15</sup> Initiative can be submitted by: a) a candidate who gained at least five per cent of the votes; b) a group of at least 15 members of parliament who submitted a valid presidential candidacy proposal; c) Prosecutor General; and/or d) a petition committee representing citizens who had submitted a valid presidential candidacy proposal.

## **V. ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign and European Affairs**

H.E. Robert Kirnag, Ambassador, Head, Task Force Slovak OSCE Chairmanship 2019  
Juraj Kubla, Head, Human Dimension Unit, OSCE Chairmanship Department  
Milica Serdarevic, Human Dimension Unit, OSCE Chairmanship Department

### **Supreme Court**

Jarmila Urbancova, Vice President  
Jozef Milucky, Presiding Judge, Administrative Division  
Norbert Ostro, Assistant to the Judge, Administrative Division

### **Constitutional Court**

Milan Lalik, Vice President

### **State Commission for Elections and Control of Financing of Political Parties**

Eduard Barany, President  
Juraj Kolarovic, Member  
Jan Micovsky, Member  
Michaela Ruzickova, Head of Office

### **Ministry of Interior**

Eva Chmelová, Director, Department for Election, Referendum and Political Parties

### **Statistics Office**

Igor Lorenc, Information Systems Department, Elections Processing  
Jozef Brinda, Information Systems Department, Gestor of Elections Processing

### **Council for Broadcasting and Retransmission**

Ľuboš Kukliš, Director  
Martin Dorociak, Head, Legal Department

### **Public Broadcaster - Radio and Television Slovakia (RTVS)**

Vahram Chuguryan, Director, News and Current Affairs Section  
Peter Nittnaus, Head, Radio News Department  
Slavomira Kubickova, Head, International Relations Department

### **Political Parties**

Martin Belusky, MP, Kotleba – Our Slovakia  
Jan Keckes, MP, Kotleba – Our Slovakia  
Milan Uhrik, MP, Kotleba – Our Slovakia  
Iren Sarkozy, MP, Most-Híd Party  
Eduard Heger, MP, Ordinary People and Independent Personalities Movement (OĽaNO)  
Peter Osusky, MP, Head of the Slovak Delegation to the OSCE PA, Freedom and Solidarity (SaS)  
Lubomir Petrak, Member of Parliament, Direction – Social Democracy (SMER-SD)  
Miroslav Ciz, Member of Parliament, Direction – Social Democracy (SMER-SD)  
Ludovit Goga, Member of Parliament, We are Family

### **Media**

Beata Balogova, Editor-in-Chief, SME Newspapers

**Civil Society**

Pavol Lacko, Analyst, Fair-Play Alliance

Daniel Milo, Head of STRATCOM Programme, GLOBSEC

Katarina Klingova, Senior Research Fellow, STRATCOM Programme, GLOBSEC

Rastislav Kužel, Executive Director, MEMO 98

Juraj Seliga, “For Decent Slovakia” Movement