

NDI COMMENTS ON THE PROPOSED AMENDMENTS TO THE SLOVAK REPUBLIC'S ELECTION LAW

April 30, 1998

NDI's election-related program in Slovakia was established earlier this year to help those working to ensure conditions that are required for free and fair parliamentary and local elections. As part of this effort, NDI is working with Slovak civic groups to help them:

- Monitor political and election-specific developments in the period prior to the elections, and to advocate measures needed for an open and transparent election process that is compatible with accepted international practices for fair and free elections;
- Provide voters with accurate, impartial information about candidates and their parties, so that they can make informed choices and appreciate the importance of participating in the election process.

Based on NDI's experience in election-related programs in more than 50 countries around the world, the Institute also will monitor the process leading to the 1998 elections in accordance with international standards for democratic elections and Slovak law. NDI has assembled an international group of election experts to review proposed changes to the election law for the Slovak National Council, as well as the law itself. NDI will issue its election law commentary this week, and a small delegation of election law experts will visit Slovakia from May 3 to 9 to discuss these comments with governmental, political and civic leaders.

At the request of Slovak political parties and civic organizations, the National Democratic Institute for International Affairs (NDI) has convened an international advisory group of constitutional and election law experts to review proposed amendments to the Act of the Slovak National Council on Elections to the Slovak National Council.

Based in Washington, D.C., the National Democratic Institute for International Affairs (NDI) is a nongovernmental, nonpartisan organization working to strengthen democratic institutions and processes worldwide. As part of its mandate, NDI conducts election programs that focus on constitutional and law reform efforts, pre-election assessments and international and domestic nonpartisan election monitoring. In the past year, NDI has conducted 55 election-related programs around the world, including election law commentary in Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia and Serbia-Montenegro; domestic nonpartisan election monitoring in Albania, Bosnia-Herzegovina, Croatia, and Serbia-Montenegro; and international pre-election delegations to Albania and Croatia to support free and fair elections.

NDI's aim in reviewing proposed amendments to the Act on the Elections to the Slovak National Council is to assess the proposed amendments and the election law in accordance with accepted international standards for free and fair elections and in light of Slovakia's political context, and to note -- in the spirit of international cooperation -- areas of compliance and areas where improvements

could be made.

NDI's Slovak election law advisory group is chaired by Patrick Merloe, NDI Senior Associate and Director of NDI programs on Election and Political Processes. The advisory group also includes: Rafael Lopez Pintor, Professor of Sociology and Political Science at the Universidad Autónoma of Madrid; Lawrence Noble, General Counsel for the United States Federal Election Commission; Matthew Frumin, Thomas Heinemann and Michael Cormaney, each an international election law expert with the Washington, D.C., law firm of Arnold & Porter. Each member of the group has contributed his time freely and in his individual capacity. NDI is grateful for their valuable contributions, which demonstrate the international community's interest in supporting the democratic process in Slovakia.

Three members of the advisory group -- Patrick Merloe, Rafael Lopez Pintor and Matthew Frumin -- will visit Bratislava on May 3-9, to discuss their findings with governmental, political and civic leaders. NDI may release more detailed comments in conjunction those consultations.

Comments

The NDI election law advisory group 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.

One of the most important lessons learned from NDI's electoral experience in over 50 countries is that elections are most successful when the process is fully transparent, an opportunity is provided for the political contestants to have direct and full participation in the electoral bodies and in forming the legal framework for elections, civic groups are allowed to monitor all aspects of the process and appropriate periods are provided for candidate qualification, campaigning, voter education and preparation of electoral administration. There are a number of ways to structure election systems. No election system is perfect, and all can be improved. The Institute therefore addresses how the legal framework for elections complies with international standards and accepted practices for democratic elections and tries to point to areas for improving both the legal framework and for building public confidence in the electoral process.

Slovakia's election law and the proposed amendments incorporate many international standards for electoral processes, including those that call for: universal, equal and direct suffrage; the use of a secret ballot; and extending the franchise to disabled voters, and military personnel. The law and proposed amendments are well organized and generally present acceptable time periods for electoral functions. The law also includes political party members on the electoral commissions, which provides an important aspect of transparency.

The NDI election law advisory group identified several potential problems in the proposed amendments and the election law. The following comments note areas for potential improvement in the law and the proposed amendments.

Nonpartisan Domestic and International Election Observers. Neither the law itself nor the proposed amendments provide for the presence

at each step of the election process of nonpartisan Slovak election observers nor for international election observers. These omissions run counter to accepted practices in democratic elections and conflict with the Slovak Republic's commitment to invite observers from appropriate organizations, both foreign and domestic, as provided in the Organization for Security and Cooperation in Europe's 1990 Copenhagen Document (Paragraph 8).

Restricting Transparency Concerning Voter Lists. There are a number of areas in which the proposed amendments reduce or eliminate transparency provisions that exist under the original law; for example, voter lists (electoral rolls) will not be posted publicly; only prospective voters who go to municipal offices will be allowed to check whether or not they are properly included on the voter lists. This eliminates an important safeguard against electoral irregularities. Accepted international electoral practices call for making voter lists available for public inspection and timely verification by political parties.

Inadequate Safeguards Against Disenfranchisement and Unauthorized Voting. The proposed amendments lack adequate safeguards concerning the voter lists and voter certification, which appear to open possibilities for manipulation of the voting process. For example, voter lists may be delivered to election authorities as late as two hours before the beginning of voting. This can create confusion on election day and possibilities for disenfranchising voters or for multiple voting. Persons with residency in an election ward may be added to the voter list on election day by presenting an identity card. Also, persons can be added to the voter lists during the election upon presenting a voter certificate from the municipality, but effective safeguards against improperly obtained voter certificates do not appear in the proposed amendments. These factors could present problems with unauthorized or multiple voting.

Lack of Party Protections. Opportunities for political parties to participate in electoral administration and to protect their interests are reduced under the proposed amendments, because the number of political party members on electoral commissions is limited to one member for each party that stands alone and one for each electoral coalition -- rather than one from each party in a coalition, as exists in the present law. Moreover, there are no clear provisions in the law or the proposed amendments for political party pollwatchers, which could exclude parties from adequately safeguarding election day processes. In addition, it is troubling that there appears to be no legal provision allowing for election challenges, other than including the reasons commission members refuse to sign the commission's minutes; even this limited possibility would be denied to parties without members on the commissions.

Limitations on Independent Election Administration. The law places many election administration tasks in the hands of governmental employees, and the proposed amendments transfer more electoral functions away from election commissions to government authorities, particularly to the Ministry of the Interior and the Statistical Office of the Slovak Republic. This is even more 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 government employees may not be insulated from partisan political pressures.

Coalitions and Amended Electoral Thresholds. The proposed amendments treat coalitions of parties inconsistently and dramatically

alter the rules for coalitions from the original law. The original law, which favors coalitions, is reversed by the proposed amendments, which provide that each party in a coalition must receive five percent of the vote to qualify for seats. This major change may be based on sound long-term policy considerations but provides cause for concern, given the relative proximity of the proposed amendments to the 1998 elections.

Restrictions on Media Access and Coverage. The law and the proposed amendments also give cause for serious concern in their limitations on media access for political parties and for the prohibition of private radio and television coverage of election campaigning. Adequate media access is crucial for parties and candidates to communicate their messages to voters and for voters to become adequately informed, so that they can make informed and free choices. Also the media, including private broadcast media, must be free to impart information in keeping with the media's responsibility to present accurate, impartial and balanced coverage of electoral contestants. The proposed amendments' restrictions on media access and coverage contradict provisions of the Constitution of the Slovak Republic (Articles 26) and international human rights standards applicable through Article 11 of the Constitution, including Article 10 of the European Convention for the Protection of Human Rights and Freedoms.

Timing of Election Law Modifications. A significant general issue identified by NDI's advisory group is the timing of the proposed amendments. While many of the proposed amendments may reflect legitimate public policy goals, it is important to proceed to elections under rules of competition that are accepted by the political competitors through open dialogue and broad agreement. Changing the rules for electoral competition within a relatively short time before election day can introduce unfairness and create political instability. NDI therefore hopes that public input, open discussion and broad agreement among political parties in government and in opposition will be sought before formal adoption of the legal framework for the 1998 elections.

The election law and the proposed amendments contain significant provisions that incorporate international standards for fair and free elections. The comments offered by NDI seek to address possibilities for improving the legal framework for the 1998 elections and to help avoid problems presented in the proposed election law. NDI hopes that its comments will assist political and civic leaders who are striving to develop a sound electoral framework and to implement the legal provisions in a way that will ensure fair competition and successful democratic elections. The Institute may release more detailed comments as members of NDI's Slovak election law advisory group discuss NDI's commentary with governmental, political and civic leaders in Slovakia during the period of May 3-9.

Messrs. Merloe, Lopez Pintor and Frumin will be available for interviews with interested journalists. Please call Bob Norris, NDI's Election Processes Program Director, or Rastoslav Kuzel, Program Coordinator, at NDI's Bratislava office for more information.

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