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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**CONSOLIDATED OPINION
ON THE ACT OF 4 JULY 2001
ON ELECTIONS TO BODIES
OF SELF-GOVERNMENT REGIONS
AND ON AMENDMENT
TO THE CODE OF CIVIL PROCEDURE
OF THE SLOVAK REPUBLIC**

**Adopted by the Venice Commission
at its 49th Plenary Meeting
(Venice, 14-15 December 2001)**

On the basis of observations by:

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and Mr B. Owen (expert)**

Foreign nationals' right to vote and eligibility for election

Foreign nationals who are permanently resident in a municipality are entitled to vote and eligible to stand for election (Sections 2-4 and 7).

More information is required on what is deemed to constitute proof of "permanent residence" – for example, a residence permit indicating the individual's address or such a permit with an application made by the local authorities to the relevant municipality in his/her home country. The Act is unclear in this respect, and an implementing regulation is essential in order to avoid problems concerning definition of this term.

These provisions are not usual; neither do they contravene any constitutional principles. Nonetheless, it is debatable whether foreign nationals' eligibility for election should extend to the position of president of an autonomous region, given the latter's responsibilities at both national and international level.

Eligibility

It is not unusual that there should be a difference in the age of eligibility for election, between 18 years for candidates to the assembly of an autonomous region and 25 for regional presidential candidates.

Withdrawal of political rights

Section 2.2 (a and d) refers to the withdrawal of political rights in the interests of public health or where military or alternative civilian service or other duties are being performed. The legislation referred to has not been brought to the Commission's attention.

Electoral constituencies

The drawing of constituency boundaries, at no later than 65 days before the date of election (Section 5.2), is extremely late. Impartiality would be better served if boundaries were redrawn at ten-year intervals, for example, and well away from election dates. There is a high risk of political tampering if constituencies are formed shortly before elections are due by the assembly to which they are to be held (Section 5.2). Moreover, particular care is necessary given the application of a multi-seat constituency relative majority system with preferential voting, since any changes in constituency boundaries may mean that a number of seats are transferred. Responsibility for redrawing constituency boundaries should be conferred on an independent commission.

According to the Act on Elections (Section 5.1), the distribution of constituencies (as with the allocation of seats to each constituency) is decided on the sole criterion of population. In practice, there are quite considerable differences between the populations of the various constituencies. This results from the short period of time between the Act being voted and the election which led to constituencies being modelled on administrative districts. However, such differences remain within the limits of what is acceptable. For the next elections, the constituencies will be established according to the Act of 4 July 2001 on the autonomous administration of territorial units (Section 11), according to which "the regional Council shall determine the number of deputies according to a ratio of 12,000 to 15,000 inhabitants to one deputy".

The role of electoral commissions

According to the Act, the role of electoral commissions is secondary and strictly limited to the holding of elections, whereas the public authorities take responsibility for key administrative decisions and matters of logistics. In the most striking example of this, the Act provides that electoral rolls, having been drawn up by the municipalities, are to be delivered to the electoral commissions no later than two hours (!) before voting is due to begin (Section 7.2). It would be advisable to ensure that electoral rolls are displayed in town halls in order to facilitate the lodging of appeals with the competent courts. Limiting the role of electoral commissions runs contrary to current practice, which favours increasing their powers, although there is no evidence that they provide a better system than one in which the Ministry of the Interior co-operates with local authorities.

Electoral commissions at all levels are constituted from the political parties with one or more candidates for election in the area for which the commission is responsible.

The fact that the first meeting of the Central Electoral Commission (CEC) takes place just twenty days before the election date, while a regional commission will meet 35 days beforehand, indicates how little weight is placed overall on the role of the CEC, the interval of 15 days being justified by the authors of the Act by the fact that the registration of candidates takes place at the regional level. Furthermore, it is the National Assembly which determines constituency boundaries 65 days before the election date (Section 5.2) and local councils which decide 40 days in advance where polling stations will be situated.

The Ministry of the Interior undertakes specific administrative tasks on behalf of the CEC. The Statistical Office of the Republic makes arrangements within the commissions for the results of voting to be communicated to the CEC.

Further information is required concerning the manner in which results are communicated, beginning with their collection at polling stations.

A party representative's membership of an electoral commission expires when the chair of the commission (who is appointed by the drawing of lots) receives notification to this effect from the party or from the representative him/herself.

The importance attached to the need for commissions to be composed of party representatives is underscored by the fact that parties can withdraw any one of their members from a commission (Section 8.3). Members are therefore bound to comply with party instructions, which could raise questions concerning the independence of electoral commissions.

Election results are published by the regional electoral commission and communicated to the regional office, which disseminates them for public display by each municipality (Section 43). The regional offices are involved presumably because they are permanent bodies with administrative facilities which are not enjoyed by the temporary electoral commissions.

The same is true of the CEC, which publishes the final election results before forwarding them to the Ministry of the Interior for safekeeping. This is explained by Section 47, which provides that electoral commissions and their subsidiary bodies are established for "the whole

electoral term”. There would appear to be an error of translation here – what is meant is surely “the duration of the election”.

Commission registrars

Electoral commission registrars and those of other government bodies play a key role in organising elections (Section 9). They oversee meeting preparations, act as technical advisors to the commissions and have the right to speak in an advisory capacity during meetings.

A number of contradictions arise as regards the role of commission registrars and the moment of their appointment. According to Section 9, registrars of commissions at the regional and constituency level are appointed by the chairs of their respective commissions. However, Section 8.6 provides that each electoral commission appoints a chair at its first meeting by drawing lots in a procedure supervised by the registrar. Those drafting the Act must have become aware of these contradictions and therefore included two separate safeguards. The first is contained in Section 9.3, which provides that registrars are “appointed sufficiently in advance in order to carry out [their] tasks”, while the second appears in the second clause of the appendix and states that commission registrars are appointed, for the first elections, by the Minister of the Interior.

The role of commissions in disputes

One of the main tasks of commissions is to handle electoral disputes, with challenges to a commission’s decisions being referred upwards to the next tier. No procedural information is provided regarding either the deadlines for receiving appeals or the time allowed for a reply.

This system, under which most electoral disputes are dealt with by the commissions themselves (save as provided in Sections 15, 20 and 46) without bringing in the usual State judicial organs, has the advantage of involving bodies which focus almost exclusively on electoral matters and should be more competent to settle disputes of this sort than the courts, which have many other responsibilities. Nonetheless, in practice use is made of both channels for appeal, although, given the nature of regional elections and the presence on the commissions of opposing parties, there is no reason to believe that the current system will give rise to any difficulties. However, as mentioned above, the Act on Elections should provide further information concerning procedure and the deadlines which have to be met.

Appeals concerning the registration of candidates (Sections 15 and 20)

According to the Act, appeals can be lodged only where registration is refused. Provision should be made for the possibility of challenges to registration itself by applicants who consider that a registered candidate does not demonstrate the necessary qualities. The same should apply to the registration of candidates for the position of president of an assembly.

It should be indicated whether the Constitutional Court is empowered to set aside decisions taken by a district court concerning the registration of candidates.

Judicial supervision of electoral procedure: new elections (Section 46)

1) Under the Act, appeals may be lodged only in the event of a refusal to register a candidate. There is no provision for challenges to election results. However, Section 46, which allows for the possibility of a new vote where the Constitutional Court has ruled an election void, indicates that challenges of this sort are handled by the Constitutional Court and must therefore be addressed in the corresponding legal texts.

2) According to the Act, the President of the National Council of the Republic can decide to proclaim new elections in an autonomous region if the first vote was not held in conformity with the Act (Section 46.1.a). Inasmuch as this clause empowers the President of the National Council of the Republic to rule an election void, it is contrary to the principle of the separation of powers because it is the Constitutional Court which takes such decisions.

Candidates' academic qualifications (cf. Sections 14.3.b, 14.6, 16.1 and 18.3)

Reference to candidates' academic qualifications may appear to imply that there is discrimination between different places of study and levels of education.

Universality of coalitions (Section 14)

According to the Act, political parties which file a list of candidates in one constituency as part of a coalition may nominate candidates in other constituencies only as part of the same coalition. This clause could be considered contrary to the freedom of such parties.

Renunciation and withdrawal of candidacies (Section 17)

Where a candidate or a party ceases to stand or is no longer able to stand for election (Section 7.3) this must be clearly brought to the attention of voters, failing which they will be unable to make an informed choice.

Voting procedure

A minor point: in order to avoid the risk of fraud, portable ballot boxes should if possible be used only on election day itself (Section 29.6).

The electoral system

The electoral system is not clearly described. The translation does not appear to render the technical language faithfully, and it can only be deduced how the system works from perusal of a number of sections. In brief, autonomous regional assemblies are elected for the most part on the basis of multi-member constituencies, apparently by relative majority and preferential voting. Regional presidents are elected from the region as a whole over two rounds of single-member constituency majority voting.

The eight regions and their division into constituencies are shown in the appendix.

The information in the appendix can be summarised as follows:

Assembly seats	Average number of seats per constituency	Minimum/maximum number of seats per constituency
Bratislava 46	7	3/10
Trnava 40	6	2/10
Trenčín 45	5	2/10
Nitra 52	8	3/12
Zilina 52	5	1/12
B. Bystrica 49	3	1/6
Prešov 60	4	1/12
Košice 57	5	2/8

Single-member constituencies are clearly in the minority. Section 5 provides that the number of members elected from each constituency is proportionate to population rather than to the number of registered voters).

It is unclear in the text what form ballot papers take – whether a single ballot carries the names of all candidates on every party list or each party has a separate ballot paper.

In view of the provisions of Section 22, which governs the election of regional assembly presidents, it is assumed that all party lists are included on a single ballot paper. (In practice, all parties and candidates to the assembly are included on a single ballot paper).

Regional presidential elections are conducted over two rounds of majority voting (Section 19). According to Section 22.2, presidential candidates are listed in alphabetical order. Consequently they all appear on one ballot paper, which is identical in every constituency of the region. In the case of elections to the assembly, however, each constituency has a separate ballot paper. Under Section 19.5, independent presidential candidates must present a petition signed by 1000 constituency voters (in the case of presidential elections the region is converted into a single-member “constituency” (Section 5-3).

Sections 35, 36 and 37, concerning the calculation of election results, would appear to indicate (which is the case) that electors voting for the assembly can select candidates from several lists (Section 35.3). Names written in are ignored (Section 36.3).

Section 37 relates to the records drawn up by each polling station. Although the translation is unreliable in relation to the procedure for counting invalid ballot papers, the order of the six elements to be included in records makes it probable that the original text contains the usual provisions.

The Act is unusually tolerant in that it accepts spoilt ballot papers as valid, provided that voters’ intentions are clear (Section 36.3). This is a debatable approach since ballots may be spoilt deliberately in order to make them traceable when votes are being tallied. If such is the case, the practice contravenes voters’ right to confidentiality.

Finally, it is difficult to judge at this remove what impact the electoral system has on the representation of national minorities on elected bodies. However, it is clear that a decisive

factor in a majority system is the existence of constituencies where a national minority is the *de facto* majority, at least if the minority concerned is organised into a party.

Invalid ballot papers (Section 36)

- 1) Under the terms of the Act, where an envelope contains two or more ballot papers none is deemed valid (Section 36.2). An alternative might have been to allow multiple ballot papers showing the same name to be counted as a single vote.
- 2) The Act provides that ward electoral commissions are responsible for taking the final decision concerning a ballot paper's validity or otherwise. In this respect there should be an opportunity for appeal, and electoral commissions should therefore be required to attach ballot papers which they deem invalid to their procedural records.

Drawing constituency boundaries and appointing registrars (Section 56)

In a first election, since the Act provides that constituency boundaries are drawn as they appear in the appendix, they are therefore determined by the National Council of the Republic. The Act also provides that registrars of regional electoral commissions are appointed by the Minister of the Interior, who then convenes the first meeting of each regional commission.

These provisions should be extended to all electoral commissions as a means of enabling them to become operational.

Media – radio - television

The Act contains no provisions on the media. Media impartiality is a crucial element of voting freedom and equal opportunities. It should be regulated either by the Act on Elections or as part of media legislation.

On the basis of information obtained, there is a media Law, Section 28.10 of which supposedly prohibits the dissemination of political propaganda in normal circumstances. For there to be use of radio and television media during an election campaign, this should appear in a law, such as the Law on the election of the Slovak National Council of 1990 as amended in 1994; this is not the case of the Law on regional elections.

Observation

The Act on Elections deals in an unusual way with observation. It only mentions observation as far as the counting of ballot papers is concerned and gives each ward electoral commission, the power to admit or refuse access to the offices of observers (Section 34).

Conclusion

The Commission's assessment of the Act on Elections was hampered by a number of translation inaccuracies. Despite this, the Act would appear to have been drafted in haste, and it should be redrafted for the sake of internal consistency of detail.

We refer only to difficulties in understanding the electoral system. In addition, however, no description is given of the method for converting votes into seats, and extraordinary measures are taken to co-ordinate the appointment of registrars with the duties which they are called upon to perform.

With the text of the Act on Elections we received a declaration dated 5 July 2001 from the presidency of the Hungarian Coalition Party. This declaration criticises the division of regions as being biased against the Hungarian minority. We note that the fact that it is the National Assembly which rules on electoral constituency boundaries and the number of regional assembly members elected from each constituency has not been criticised by politicians. The composition of autonomous regions goes beyond electoral matters, because it is dependent on the regional boundaries as set out in the Constitution.

