



Office for Democratic Institutions and Human Rights

# SLOVAK REPUBLIC

## PRESIDENTIAL ELECTION 16 and 30 March 2019

### ODIHR Election Assessment Mission Final Report



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**SLOVAK REPUBLIC  
PRESIDENTIAL ELECTION  
16 and 30 March 2019**

**ODIHR Election Assessment Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the authorities of the Slovak Republic and based on the recommendation of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 16 and 30 March 2019 presidential election.

The election was competitive, pluralistic and held with respect to fundamental freedoms. Voters could choose from a wide range of candidates, who reached out to the electorate through a variety of tools, including a number of debates. Online outlets disseminating intolerant rhetoric and alleging concern over the security of voting played a substantial role in campaign discourse. The election was conducted in a professional manner, corresponding to a high degree of public confidence in election administration.

The 2019 presidential election took place according to a new legal framework enacted in 2014, which includes the Act on Conditions for the Exercise of the Right to Vote and on Amendments to certain Acts and the Election Campaign Act. The new comprehensive framework largely eliminated inconsistency and redundancy of previous laws. Nevertheless, issues such as the complaints and appeals mechanism, the powers of the State Commission for Elections and the Control of Political Parties Funding (SEC) remained under-regulated or vague.

In terms of its operational capacity the SEC fully relies on the Ministry of Interior (MoI), which may affect independence and professional capacity of the body. Transparency of SEC could be improved by opening its sessions to the public.

The voter registration is passive and decentralized, with municipalities responsible for maintaining the voters' register which is updated on the basis of permanent residence register. The voters with permanent residence abroad can, upon request, be registered at polling station on election day, contrary to electoral good practice. All ODIHR EAM interlocutors expressed their trust in the voter lists accuracy. In 2017, in line with ODIHR recommendations, the Constitutional Court repealed the restrictions on the right to vote based on deprivation of legal capacity and for those serving prison sentences for particularly serious crimes.

Slovak citizens aged at least 40 years can stand for office. Contrary to the OSCE commitments, limitations are imposed for those serving prison sentences or convicted for perpetration of deliberate criminal acts, without specifying their gravity, as well as those deprived of the legal capacity. Of the 15 candidates who had registered, two resigned in the course of the race in favour of competitors with similar support base. Three candidate nominations were rejected due to non-compliance with the legal provisions. While there were two candidates from Hungarian minority, none of the candidates had a specific program focused on minorities.

The candidates offered a variety of political platforms. The main issues discussed in the course of campaign concerned Slovakia's foreign policy, corruption, national identity and traditional values.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Slovak.

Instances of hostile personal messages towards candidates were noted and criticized by opponents and the mainstream media. The campaign was characterized by strong reliance on social media, predominantly Facebook, and YouTube. A number of ODIHR EAM interlocutors raised concerns over the lack of regulatory framework for online campaigning.

Campaign finance issues were at the core of the electoral discourse gaining substantial media attention. Whereas many assessed positively the public scrutiny of campaign financing via transparent accounts, some of ODIHR EAM interlocutors complained about existing ambiguities in the regulation of in-kind donations and the lack of provisions for the latest online fundraising methods.

Competence related to campaign finance is divided between the SEC and the MoI, with the control and sanctioning powers exercised by the MoI and the SEC vested with an advisory role and power of redress against the MoI decisions. The involvement of the MoI as an executive institution casts shadow on the independence of the campaign finance control.

Media landscape is pluralistic. The campaign coverage was ample on the various media platforms and voters were able to make an informed choice. Freedom of expression was respected, but challenged by the fact that defamation remains a criminal offence and by uncapped damages in civil libel cases. The murder of journalist Ján Kuciak and his fiancée in 2018 along with dismissive comments by public figures and anonymous online commentators on the media's role has left the journalists' community feeling vulnerable.

Gender and LGBTI issues featured prominently in the campaign. Right-wing candidates were critical of policies promoting gender balance and of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). LGBTI issues were discussed in the context of support for or rejection of registered partnerships and child adoption by same-sex couples.

The new legal framework did not establish a clear and consistent mechanism for handling complaints by the electoral authorities. Competence to adjudicate election related disputes is divided among different institutions. Petitions against the validity of elections can be brought in front of the Constitutional Court. The timeline for adjudication on constitutionality and legality of elections is not harmonized with the commencement of term of the elected President, thus compromising the right to an effective remedy.

In line with the ODIHR's methodology, the ODIHR EAM did not observe election day proceedings in a systematic and comprehensive manner, but observers visited a limited number of polling stations. Provisions are in place to allow citizens and international observers to observe elections, but not all the stages of the process are fully accessible.

Accessibility to polling stations for voters with physical disabilities was limited and no measures were undertaken to allow for persons with visual impairments to vote independently. However, the possibility for persons with disabilities to be assisted in voting by a person of their choice or the use of mobile ballot boxes is provided by law.

This report offers a number of recommendations to support efforts to bring elections in Slovak Republic closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to election administration, campaign finance oversight, media environment, and electoral dispute resolution system. ODIHR stands ready to assist the authorities to improve the electoral process and to address the recommendations contained in this and previous reports.

## II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from authorities of the Slovak Republic to observe the 2019 presidential election and based on the recommendations of a Needs Assessment Mission conducted from 3 to 5 December 2018, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) from 6 March to 1 April.<sup>2</sup> The ODIHR EAM was led by Ambassador Alexandre Keltchewsky and consisted of six experts from six OSCE participating States. The EAM was based in Bratislava and visited Banská Bystrica, Košice and Pezinok. The ODIHR EAM observed both rounds of the presidential election (16 and 30 March).

The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation. In line with the ODIHR's methodology, the EAM did not observe election day proceedings in a systematic or comprehensive manner, but visited a limited number of polling stations.

The ODIHR EAM wishes to thank the Ministry of Foreign and European Affairs and the State Commission for Elections and the Control of Political Parties Funding for their co-operation and assistance, as well as to express gratitude to representatives of other state institutions, election commissions, political parties, candidates, media, civil society, academia, the resident diplomatic community, and other interlocutors for sharing their views.

## III. BACKGROUND AND POLITICAL CONTEXT

Slovakia is a parliamentary republic with the president elected by direct suffrage under a two-round system for a five-year term, with a maximum of two consecutive terms. The president appoints prime minister and members of the government, judges of Constitutional and Supreme courts, and the Prosecutor General, represents the country abroad and serves as commander-in-chief of the armed forces. The role of the president is considered largely ceremonial, with majority of executive power being vested with the head of government. The National Council, unicameral parliament, is composed of 150 deputies, with eight parties currently represented.<sup>3</sup> Women hold 30 parliamentary seats, and 5 of 15 ministerial posts.<sup>4</sup>

On 10 January 2019, in line with the Constitution the speaker of the parliament announced that presidential election would be held on 16 March, with a possible second round scheduled for 30 March. The incumbent president Andrej Kiska, elected for the first term on 2014, did not seek re-election citing personal reasons. A total of 15 candidates were registered in the presidential race.

The electoral campaign took place against the backdrop of investigations of journalist Ján Kuciak's murder and of corruption cases involving people associated with the government. The murder, on

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<sup>2</sup> See [previous ODIHR election reports on the Slovak Republic](#).

<sup>3</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 (OLaNO-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. Consequently, Smer-SD, SNS and MOST – Híd formed the government coalition.

<sup>4</sup> The UN Committee on the Discrimination against Women "[Concluding observations on the combined fifth and sixth periodic reports of Slovakia](#)" (25 November 2015) recommends taking "sustained measures, with specific goals and timetables, to accelerate the increase in the number of women in political and public life".

21 February 2018, of the investigative journalist and his fiancée, triggered series of anti-government and anti-corruption demonstrations, which led to the resignation of the leader of Smer-SD Robert Fico from the post of Prime Minister and his replacement by the Deputy Prime Minister, Peter Pellegrini. Issues pertaining to the functionality of the Constitutional Court, with the terms of its 9 out of 13 judges having expired in February 2019, were also present in the political discourse.

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

The electoral legal framework primarily comprises the 1992 Constitution (last amended in 2017 and 2019), the 2014 Act on Conditions for the Exercise of the Right to Vote and on the Amendments to certain Acts (Elections Act), which replaced separate laws on different types of elections and introduced the independent State Commission for Elections and the Control of Political Parties Funding (State Election Commission – SEC), and the 2014 Election Campaign Act (ECA), which consolidated and further elaborated campaign finance provisions.<sup>5</sup> This was the first presidential election held under the amended legislation.

The enactment of both acts represented a major step in harmonising different legal instruments by removing redundancy and inconsistencies as recommended by ODIHR. Nevertheless, provisions related to the SEC binding authority over lower level structures, the right of observers to participate in the process and the complaints and appeals system still remain vague, under-regulated and rely solely on consistent implementation by the authorities. Furthermore, the law does not expressly mandate the SEC to issue regulations that further interpret and clarify the provisions of the Elections Act. Despite this, prior to and during the election, the SEC issued a number of resolutions of regulatory character and upon requests, mostly from voters, interpreted specific provisions of the electoral legislation and even of the Constitution. The SEC promptly published its regulations and interpretations, but solely in a chronological order and non-consolidated manner, making them neither easy to use nor enforceable in future elections.<sup>6</sup>

*To increase the consistency of electoral legal framework, State Election Commission could be mandated by law to issue regulations to further detail and interpret the Elections Act.*

The president is elected by direct suffrage for a five-year term and may hold office for up to two consecutive terms. According to the Elections Act, if none of the candidates receives the absolute majority of valid votes of eligible voters, a second round between the two leading candidates is held within 14 days. The candidate who receives the majority of votes in the second round is elected president.

#### **V. ELECTION ADMINISTRATION**

The responsibility for organizing the presidential election is shared between election commissions, comprising the SEC, 49 District Election Commissions (DECs), and 5,940 Precinct Election Commissions (PEC), and the Ministry of Interior (MoI), Statistics Office, as well as authorities of district, self-governing regions and municipalities. All ODIHR EAM interlocutors expressed confidence in the professionalism and impartiality of the election administration bodies.

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<sup>5</sup> Other related laws are: Administrative Code, Criminal Code, and Law on Constitutional Court (amended March 2019).

<sup>6</sup> The SEC does not have its own website but a dedicated [section](#) at the MoI website.

The SEC is a permanent and independent body, consisting of 14 members (currently all men) appointed after every parliamentary elections. Ten members are nominated by political parties represented in the National Council, in proportion to the seats obtained.<sup>7</sup> Other four members are nominated, one each, by the presidents of the Constitutional Court, the Supreme Court, the Supreme Audit Office and Prosecutor General. The SEC oversees the management of elections, funding of political parties and movements, and delivery of election results. The MoI is responsible for logistical and technical aspects of the election, including printing ballots and other electoral materials, providing guidance and training materials to municipalities and electoral authorities on their respective duties.

The SEC premises are embedded in the MoI and the Director of the MoI Department for Elections, Referendum and Political Parties is the SEC's registrar. The SEC is supported by a five-employees office, which is a special organizational unit established at the MoI. Given the range of competencies vested in the SEC, the current composition of its office may not be sufficient to effectively conduct its tasks and to handle cases and complaints it receives in a fully professional and adequately prompt manner.

*Full independence of the State Election Commission should be ensured and its administrative and financial capacity strengthened.*

The SEC issues resolutions in regular sessions held at least once a month, or through an online correspondence in cases that do not require deliberations of SEC members.<sup>8</sup> Those include instructions on procedural matters. Although not explicitly provided in Elections Act, according to the SEC, the instructions are binding for the lower levels of election commissions.

*As previously recommended, the Elections Act could be amended to specify that the instructions of the State Election Commission are legally binding for the lower level election commissions.*

The meetings of the SEC are not public, contrary to good practice.<sup>9</sup> According to the Rules of Procedure, the SEC can invite persons and organizations, whereas interested persons may file a request to attend the SEC sessions. The SEC Chairperson informed ODIHR EAM that no one was prevented from observing the sessions. ODIHR EAM attended two sessions of the SEC and had full access to observe the decision-making process. However, limited public access to the SEC sessions diminished the overall transparency of the electoral process.<sup>10</sup>

*Consideration could be given to make all sessions of the State Election Commission public in order to enhance transparency of election administration.*

Since the announcement of the election in January 2019, the SEC convened five times, including sessions on election days and for the announcement of results. During the SEC sessions observed by the ODIHR EAM, most decisions were taken unanimously. Some complaints submitted to the SEC were redirected to other institutions and several decisions were postponed until after the election. In

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<sup>7</sup> The current structure of the SEC reflects the results of the 2016 parliamentary elections.

<sup>8</sup> In 2019 presidential election the SEC took 16 decisions without convening regular sessions (*per rollam*). The decisions concerned registration of third parties.

<sup>9</sup> 2002 Venice Commission Code of Good Practice in Electoral Matters Section II.3.1.81 recommends that “[t]he meetings of the central electoral commission should be open to everyone, including the media”.

<sup>10</sup> See [the UN Human Rights Committee's General Comment no. 34 on Art. 19 of the ICCPR](#), Paragraph 18. : “the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output.”

a case that questioned the integrity of electoral process, SEC's decision-making was overly protracted. (*See, Complaints and Appeals, and Election Days Sections*)

DECs oversee the activity of PECs and the processing of voting results, while PECs manage the voting and counting process. The DECs and PECs were established according to legal deadlines, engaging some 48,000 members. Each commission is composed of at least five representatives proposed by parliamentary political parties or groups of voters that proposed candidates. In case the number of nominations is not sufficient to form a commission, district authorities provide additional members for DECs and municipal authorities for PECs. Some municipalities informed the ODIHR EAM about difficulties in forming the PECs due to insufficient number of parties' nominees. At the same time, political parties flagged that due to the lack of a consolidated list of municipalities or polling stations for which they should nominate their representatives, they needed to reach out to each municipality individually, which was time-consuming. Although most of the ODIHR EAM interlocutors stated that women are well represented at lower levels of election administration, gender disaggregated data on DECs and PECs composition is not readily available.<sup>11</sup>

*In line with national commitments and international standards, gender disaggregated data produced during the electoral process should be made available in a comprehensive manner.*

For processing the results, there is a permanent summarization unit of the Statistics Office at the SEC, while summarization units for each DEC were established for the election.<sup>12</sup> Results are published online in real time on the Statistics Office webpage, after the protocols are confirmed by the DECs.<sup>13</sup> Based on the protocols received from the DECs, the SEC announces the results of election.

## VI. VOTER REGISTRATION

Citizens over 18 years of age have the right to vote, except those who are under a "legally set restriction of personal freedom due to protection of 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 ICCPR and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>14</sup>

Voter registration is passive and decentralized, with permanent voters lists compiled and systematically updated by municipalities, based on the permanent residence register. Citizens are allowed to verify their data in voter lists at municipalities of their residence and, if necessary,

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<sup>11</sup> Article 48d of the 1997 UN Committee on the Elimination of Discrimination Against Women General Recommendation No. 23 requires state parties to provide "statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights." The 1991 [Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#), paragraph 40.13 commits the States to "ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women".

<sup>12</sup> The Statistics Office provides an Integrated Electoral Information System (IVIS), which allows PECs to fill in and transmit protocols electronically. According to ODIHR EAM interlocutors, the number of protocols submitted through the IVIS steadily rises with each election. For the first round, 39.32 per cent of PECs used IVIS, for the second round 38 per cent of PECs used the system.

<sup>13</sup> See Statistics Office [webpage with the election results](#).

<sup>14</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).



request corrections until the day before election day. Legislation allows for absentee voting in a location different from the place of registration, on the basis of a voting certificate (VC). Requests for VCs could be submitted to municipalities by post or electronically up until 15 days before the election as well as in person or by proxy until one day before the election. Consequently the VC is sent as a recorded delivery to voter's permanent address.<sup>15</sup> While some ODIHR EAM interlocutors expressed concerns about insufficient safeguards related to delivery of VC by post or e-mail, the municipalities met with by ODIHR EAM did not report any cases of abuse.

Voters residing outside the country and hence not included in the permanent residence register are registered upon request and added to the voters list during the election day, contrary to international good practice.<sup>16</sup> On election day, registration can be done at each polling station by the PEC on the basis of a valid passport and an affidavit of non-residence in Slovakia prepared by the MoI. Voters can be also added to the voters list on election day pursuant a court decision, in case of absentee voting, or if a voter is not included in the list but their permanent residence in a constituency has been verified.<sup>17</sup> All ODIHR EAM interlocutors expressed trust in the accuracy of voters' lists.

*In line with international good practice, possibility of election-day registration at a polling station could be reconsidered.*

A number of ODIHR EAM interlocutors expressed their dissatisfaction with the legal framework which, unlike in parliamentary elections, does not provide for out of country voting in presidential elections. A few ODIHR EAM interlocutors expressed concerns about the possibility of multiple voting as Slovak citizens can hold two Slovak passports.

## VII. CANDIDATE REGISTRATION

Eligible voters of at least 40 years of age, except legally incapacitated persons and those sentenced for an intentional crime, regardless of its gravity, can stand as presidential candidates. These blanket restrictions are contrary to international standards.<sup>18</sup>

*Limitations on the right to stand should be reviewed to ensure that the disqualification based on a criminal conviction is proportionate to the gravity of the offence.*

Candidate nomination needs to be supported by at least 15 members of the parliament or 15,000 voters.<sup>19</sup> A citizen can support multiple candidates. Candidates' nominations must be delivered to the speaker of the National Council within 21 days from the announcement of election date.

The speaker of the National Council scrutinizes the compliance of nominees with eligibility requirements within seven days from the delivery of the application. Speaker's decisions regarding candidates' registration are published on the National Council website and delivered to the candidates. The system of verification of presidential candidates' nomination – which involves a political figure – differs from those used in National Council and European Parliament elections,

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<sup>15</sup> A separate VC is required for each round. Voters in penitentiary and detention centres, hospitals or social service facilities that are not registered at the current place of residence need to request the VC.

<sup>16</sup> The 2002 Venice Commission Code of Good Practice in Electoral Matters, Section I.1.2.iv. stipulates that “the registration should not take place at the polling station on election day.”

<sup>17</sup> There were 4,429,033 voters registered in the [first round](#) and 4,419,833 in [the second](#) round of the election.

<sup>18</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document provides in part that “any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of the law”.

<sup>19</sup> [According to the National Council](#), a commission composed of 21 members of the National Council Office verified more than 22,500 petition sheets and almost 224,000 signatures.

where the SEC is responsible for examining and registering the lists of candidates. No ODIHR EAM interlocutors raised concerns about the registration process.

*To harmonize the electoral legal framework and ensure impartiality of the process, the State Election Commission could be entrusted with registration of presidential candidates.*

For this election, 15 candidates, of whom 2 were women, were registered in an inclusive process. Two candidates were registered with the endorsement of 15 members of parliament, and the others resorted to collection of signatures. Three candidacies were rejected due to non-compliance with legal provisions.<sup>20</sup> Consequently, two of the rejected candidates lodged complaints to the Supreme Court, which in both cases upheld the speaker's decision (*See Complaints and Appeals Section*).

The law allows for withdrawing a candidacy, no later than 48 hours before the first round or after announcement of results of the first round. On 19 February, József Menyhárt resigned and endorsed Robert Mistrík. Following the agreement with Zuzana Čaputová that the candidate who enjoys lesser support according to the opinion polls would renounce its candidacy in favour of the other, Robert Mistrík withdrew from the race on 26 February.

Since the two candidates withdrew after the printing of ballots and other electoral materials, PECs published and displayed in polling stations information about the deregistered candidates.

## VIII. ELECTION CAMPAIGN

The campaign is primarily regulated by the 2014 Election Campaign Act (ECA) and officially starts with the announcement of the election and lasts until 48 hours before election day. The law allows 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.

The campaign can be run by candidates and third parties, i.e. a natural person, entrepreneur or legal entity who intends to run electoral campaign for certain candidate and who registered itself for this purpose with the SEC.<sup>21</sup> For presidential election, political parties are also considered as third parties. In total 20 third parties were registered by the SEC for this election.<sup>22</sup>

Voters could choose from a variety of political programs ranging from right-wing to social-liberal. The key presidential candidates represented three broad political platforms. The governing coalition candidates like Béla Bugár and Maroš Šefčovič underlined the need for national unity, whereas Štefan Harabin and Marian Kotleba questioned the current political system and the direction of Slovak internal and foreign politics. Zuzana Čaputová, František Mikloško and Robert Mistrík put emphasis on the need to change the political leadership and to return to the values of the 'Velvet Revolution'.

Gender and LGBTI issues featured prominently in the campaign. Right-wing candidates were critical of policies promoting gender balance and of the Council of Europe Convention on

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<sup>20</sup> Martin Konečný submitted only 164 signatures, Ján Molnár collected signatures of 15 MPs required to register as a presidential candidate in a deceptive manner, for the MPs were made to believe that they were signing a citizens' supported petition for candidate's registration. Juraj Zábajník did not fulfil the constitutional requirement of being 40 years old on election day.

<sup>21</sup> State and public administration institutions, foreign residents, persons and legal entities with headquarters abroad cannot be third parties.

<sup>22</sup> See [the list of SEC registered third parties](#) for 2019 presidential election.

preventing and combating violence against women and domestic violence (Istanbul Convention).<sup>23</sup> LGBTI issues were discussed in the context of support for or rejection of registered partnerships and child adoption by same-sex couples. A few mainly online outlets, that, according to some ODIHR EAM interlocutors, engaged in disinformation, promoted anti-Semitic narratives, alleged hidden interests of Jewish elites in Slovakia and Jewish origin and connections of some of the candidates.<sup>24</sup> Instances of hostile personal messages towards candidates were noted and criticized by opponents and the mainstream media.<sup>25</sup>

The campaign was characterized by strong reliance on social media, predominantly Facebook and YouTube, and according to some analysis, the leading candidates spent 40 to 50 per cent of their budgets on online campaigning.<sup>26</sup> The candidates used also traditional campaign tools, such as billboards, leaflets, and meetings with voters. Some invested in direct mailing, including in minority languages.

The campaign was accompanied by voter mobilization initiatives, undertaken by civil society. “For Decent Slovakia” – the movement born from the February 2018 anti-government protests – embarked on a campaign “We hit the road”, during which it conducted 12 discussions and 25 meetings underlining the importance of participation in elections.<sup>27</sup>

## IX. CAMPAIGN FINANCE

Campaign finance is regulated by the ECA and the Act on Political Parties and Political Movements. This was the first presidential election campaign under the new campaign finance legal framework, which among other things introduced requirement of transparent accounts for campaign incomes, regulated campaign financing of third parties, mandated the SEC with the overall responsibility for the monitoring of party funding, and vested the MoI with campaign finance oversight functions.<sup>28</sup>

Financial and in-kind donations for candidates and third parties can be received from legal entities, physical persons, or a political party registered in Slovakia, until 48 hours before the election day. Donations from the state, foreign and anonymous sources are prohibited. There is no public funding for presidential election.

Most of candidates relied on their own financial resources, donations from relatives and friends, and from political parties. Small donations from private persons were, according to many ODIHR EAM

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<sup>23</sup> Slovakia signed the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#) on 11 May 2011. On 29 March 2019 the government of Slovakia took the decision to withdraw from the process of ratification of the Istanbul Convention.

<sup>24</sup> For example, on 14 March *Zem a vek*, magazine altered Zuzana Čaputová photo implying Jewish features.

<sup>25</sup> Due to a large volume of hostile online messages received, Zuzana Čaputová contracted bodyguards to protect her during campaign events. Consequently, Maroš Šefčovič reacted expressing his concern for Ms. Čaputová and calling for fair campaign without aggression.

<sup>26</sup> As of 28 February 2019 [Transparency International Slovakia noted](#) that Zuzana Čaputová invested 43 per cent of her incomes on transparent account to online advertising, and Maroš Šefčovič 65 per cent.

<sup>27</sup> See [Ideme na cesty](#).

<sup>28</sup> The Council of Europe’s Group of States Against Corruption (GRECO) in its 2014 [Addendum to the Second Compliance Report on the Slovak Republic](#) of the Third Evaluation Round prized the adoption of ECA, which ‘broadens the scope of liability and also covers individual election candidates and third parties involved in election campaign financing.’

interlocutors, a new feature in this election.<sup>29</sup> Progressive Slovakia, which registered as a third party for Ms. Čaputová's campaign, flagged that fundraising methods, such as crowd-funding, credit card and PayPal transfers, are not covered by campaign finance legal framework.<sup>30</sup>

The campaign expenditure limit amounts to 500,000 EUR for candidates, including a possible second round and comprises the expenses for the direct promotion incurred from 180 days before the election announcement. The ceiling for expenditures for third parties amounts to 100,000 EUR. There is no limit as to the number of third parties registered in support of a certain candidate, hence candidates are in fact not bound by any limit on expenditures.<sup>31</sup>

Campaign finance issues were at the core of the electoral discourse and gained substantial media attention. A few ODIHR EAM interlocutors posited that some candidates obscured the transparency of expenditures by contracting PR agencies to run their campaign activities.<sup>32</sup>

Candidates and third parties are required to open dedicated "transparent campaign accounts", which must be easily accessible to the public.<sup>33</sup> Marian Kotleba was the only candidate, who did not open a transparent account.<sup>34</sup> Bank operations can be processed on candidates' accounts until 90 days after the announcement of election results. There are no provisions regulating the status of unused funds after that period.

Any in-kind contributions or gratuitous services must be reported by the candidates and third parties. If the in-kind donation or service was provided at a discounted amount, the market price must also be indicated. The law does not specify, however, according to which parameters the 'market price' should be calculated. Some political parties raised the problem of assigning adequate value to work and services provided during electoral campaign on voluntary basis.

The candidates should publish online their campaign finance reports and provide them to the MoI within 30 days after the election campaign. If no costs were incurred, a candidate should also declare it. A third party must, within 10 days after the end of the election campaign, provide an overview of costs on its website for 60 days and provide a report to MoI within 30 days after the elections. The MoI should publish candidates and third parties reports online within 30 days and make them available to public for five years.<sup>35</sup>

The MoI provided online reporting templates both for candidates and third parties, consistent with the itemisation provided by the law. The template required outlining expenses for opinion polls, paid advertisement, billboards and travel, and other expenses for advertising. With regard to

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<sup>29</sup> For Eduard Chmelár 90 per cent of received donations (749 of 830 donations) were of amounts lower than 100 EUR; for Zuzana Čaputová – 89 per cent (5,354 of 6,040 donations); for Štefan Harabin – 64 per cent (133 of 209 donations), respectively. See [the candidates' transparent accounts](#).

<sup>30</sup> Pursuant SPOLU inquiry whether the monetary donations "in form of cashless payment transaction", include donations transferred via a credit/debit card, on 26 February SEC issued a decision that such donations are not allowed as they do not reveal donor's identity.

<sup>31</sup> Zuzana Čaputová had four registered third parties supporting her electoral campaign, i.e. Progressive Slovakia, SPOLU, Michal Truban, and Michal Styk. Maroš Šefčovič was supported by three registered third parties: Smer-SD; the Young Social Democrats – the Smer-SD youth branch, and Viktor Stromček.

<sup>32</sup> According to candidates' transparent accounts: Béla Bugár, Štefan Harabin, Robert Mistrík, and Maroš Šefčovič made bulk transfers to PR agencies, which amounted to over 70 per cent of their respective campaign budgets. Mr. Bugár informed ODIHR EAM he would present a detailed financial report from the hired PR agency to ensure full transparency of his campaign finance.

<sup>33</sup> Coordinates of the accounts were promptly published [on the MoI website](#) in accordance with the ECA. Presidential candidates must keep the bank statements for five years.

<sup>34</sup> Mr. Kotleba's campaign team informed the ODIHR EAM that the candidate's campaign is financed from a transparent bank account of the Kotleba-L'SNS party, which in this case acted as a third party.

<sup>35</sup> Candidates' and third parties' campaign finance reports are available on [the MoI webpage](#).

incomes, the template required reporting on received in-kind donations and gratuitous services, but did not entail aggregated information about received financial donations.

*The campaign finance reporting provisions could include the requirement of reporting on financial donations. Further regulation on unspent incomes and on in-kind donation disclosure and reporting could be considered to increase transparency of campaign finance.*

The oversight of campaign finance is made by the MoI, and its district offices that perform oversight of campaign expenditures outside Bratislava. The MoI can impose sanctions up to 300 EUR in case a candidate does not cooperate with the authority in conducting the oversight. The law does not provide for a comprehensive scrutiny of the candidates' reports that would be presented to the public in a consolidated form.<sup>36</sup> The MoI informed ODIHR EAM that they intended to conduct only sporadic checks and did not plan to produce a compiled report of the undertaken control activities. The law also does not provide a timeline for publication of the control's findings.

*To strengthen the campaign finance oversight, findings of the candidates' reports audits should be published within a reasonable timeframe and should contain consolidated and detailed information.*

The MoI can impose sanctions ranging from 2,000 to 30,000 EUR for presidential candidates and from 1,000 to 10,000 EUR for third parties.<sup>37</sup> Decisions of the MoI are subject to review by the SEC. The prominent role of the MoI in the control of campaign finance may raise concerns regarding impartiality of the process and is contrary to international good practice, which requires an independent monitoring body with regard to funding of electoral campaigns.<sup>38</sup>

*To promote independence and impartiality of the campaign finance oversight, consideration should be given to entrust the competence in campaign finance control to an independent institution.*

## **X. MEDIA**

The freedom of expression and right to information are enshrined in the Constitution and are generally respected. Whereas censorship is banned, defamation remains a criminal offence, which contravenes international standards. OSCE has called on Slovak authorities to decriminalize defamation.<sup>39</sup> The issue of uncapped damages in civil libel cases also remains

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<sup>36</sup> See paragraphs 198 and 214 of the [2010 ODIHR/Venice Commission Guidelines on Political Party Regulation](#) on reporting of incomes and on oversight respectively. See also [Council of Europe Recommendation 2003\(4\)](#) on common rules against corruption in the funding of political parties and electoral campaigns.

<sup>37</sup> Presidential candidates can be sanctioned for the following violations: exceeding the ceiling for campaign expenditures; not opening a transparent account; violation of the deadline of 48 hours to deposit funds in the special account; not keeping record of five years; and not submitting requested documents to the MoI within 10 days from the end of campaign. Sanctions can be imposed on a third party in case it exceeds the expenditure ceiling and for irregularities in opening and maintaining of transparent account.

<sup>38</sup> See Article 14 of the Council of Europe 2003 [Recommendation of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns and paragraph 212 of the 2010 ODIHR/Venice Commission Guidelines on Political Party Regulation](#). See also 2014 GRECO [Addendum to the Second Compliance Report on the Slovak Republic](#) of the Third Evaluation Round.

<sup>39</sup> See Article 19 of the 1966 ICCPR. See also UN Human Rights Committee [General comment No.34](#) specifies that states "should consider the decriminalization of defamation". OSCE Ministerial Council in [Decision No.3/18](#), adopted on 7 December 2018, asked to "ensure that defamation laws do not carry excessive sanctions or penalties that could undermine the safety of journalists and/or effectively censor journalists and interfere with their mission of informing the public and (...) revise and repeal such laws". See also [OSCE RFoM statement](#) from 23 March 2018 calling Slovakia "to decriminalize defamation and respect journalists' rights".

unaddressed.<sup>40</sup> In addition, media community and OSCE Representative on Freedom of the Media (RFoM) voiced concerns about the proposed legislative changes, which may reintroduce the right of reply for politicians, even in cases where there are no factual mistakes.<sup>41</sup>

*Defamation should be decriminalised and a reasonable ceiling for damages should be introduced in the civil libel cases.*

The murder of the journalist Ján Kuciak and his fiancée in 2018, accompanied by dismissive comments by the public figures and online commentators on the role of journalism in society, have increased anxiety about the safety of journalists and the inaction of state authorities to protect the profession.<sup>42</sup>

*Authorities shall swiftly investigate the threats, including those made online, against the journalists, and refrain from the use of derogatory language that may encourage such attacks.*

Global changes in media consumption have led to concentration of ownership of media companies in the hands of influential local business groups, and several ODIHR EAM interlocutors raised concerns of a potential impact that the concentrated ownership may have on editorial independence and self-censorship.

Slovakia's media landscape is pluralistic, with 61 nationwide, 28 regional and 84 local TV channels, 21 national, 15 regional and 9 local radios, as well as 11 daily newspapers and 65 weeklies.<sup>43</sup> The public broadcaster, Radio and Television of Slovakia (RTVS), has two TV channels and nine radio stations, including special programming in national minorities' languages. RTVS is funded by a licence fee, which has been unchanged for more than a decade, leaving the public broadcaster continuously underfunded.<sup>44</sup> Several ODIHR EAM interlocutors stated that the 2018 appointment of a new general director and several mid-level managers, who had previously worked in state institutions, caused the firings and resignations of numerous RTVS reporters and editors.

*To ensure the long-term pluralism of media, the authorities could strengthen the public broadcaster through adequate financing and further enhance its independence.*

Coverage of the election campaign is regulated by the Act on Broadcasting and Retransmission and ECA. The law requires broadcasters to be impartial, objective and ensure plurality of views in news and current affairs programmes. RTVS had to devote ten hours to political discussions both on radio and television before the first round, and two hours before the second. In line with the legislation, for private broadcasters that decided to broadcast debates, the Council for Broadcasting and Retransmission (CBR) had to approve the principles of participants' selection with a view to ensure a level playing field.

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<sup>40</sup> For example, as of March 2019, daily *SME* had 51 criminal and civil defamation cases opened against it, some of those ten years old. The highest request for damages in civil libel case came from a judge asking for EUR 300,000.

<sup>41</sup> In the [legal review](#) of the proposed amendments, published in March 2019, RFoM called to retain the restriction on the right of reply as it is and apply it only to "false, incomplete or truth-distortive" factual statements.

<sup>42</sup> See OSCE RFoM statements from [26 February 2018](#), [2 March 2018](#), and [4 October 2018](#).

<sup>43</sup> The television remains the main source of information. TV market is dominated by *Markiza TV*, *TV JOJ* and RTVS. TA3 is dedicated to news and current affairs. *Nový Čas* and *Plus Jeden Deň* are tabloid newspapers, whereas dailies *SME*, *Denník N* and *Pravda* focus on political affairs.

<sup>44</sup> The fee amounts to 4.64 EUR per person per month. The government's pledge to increase the fee was opposed by the coalition partner SNS in 2016.

The CBR oversees the broadcasters' compliance and can act *ex officio* or upon complaints. Decisions for campaign offences shall be taken within six months. Complaints against print media are dealt with by the Ministry of Culture (MoC) if the outlets have breached the campaign silence period (48 hours before the election day) or the ban on publishing of opinion polls' results (14 days before the first round, 7 before the second). If breach of law is established, MoC is obliged to impose a fine between 1,000 and 10,000 EUR, within three years timeline.

Online campaign is not regulated apart from the ban on opinion polls. A number of ODIHR EAM interlocutors raised concerns over the lack of regulatory framework for online campaigning, indicating the need for a broader, European-level accord with the social media corporations on political advertising.

*To ensure equal and a fair campaign, relevant authorities could consider possibilities of regulating campaign coverage also in the online media.*

Up to ten hours of paid political advertising in radio and TV before the first round was allowed, with each candidate getting no more than an hour in the RTVS and 30 minutes in the commercial broadcasters. Two hours of paid political advertising were allowed before the second round both in public and private broadcasters. The broadcasters were legally bound to provide equal prices and conditions for all contestants.

Voters were able to access ample information about political platforms of the candidates, as the public broadcaster, two of the commercial TV channels, the most popular radio and several daily newspapers ran the debates that were often streamed online. Media analysts met with by ODIHR EAM assessed that a very high number of electoral debates truly offered voters an opportunity to familiarize with the candidates. Some candidates complained to the ODIHR EAM and to the CBR on being disadvantaged due to broadcasters' debate format dividing candidates into groups according to their popularity in opinion polls.<sup>45</sup>

Online media have gathered a sizeable audience. A significant number of the ODIHR EAM interlocutors opined that online media, including outlets characterized by some as engaging in disinformation, played an increasingly important role in political discourse and candidates' campaigns.

Local media monitoring organizations reported that Ms. Čaputova received the biggest portion of the airtime on TV, followed by Mr. Šefčovič, and that the tone of coverage was largely neutral or positive.<sup>46</sup> Several ODIHR EAM interlocutors opined that the liberally-inclined newspapers gave Ms. Čaputova more endorsing coverage, while the so-called 'disinformation outlets' favoured Mr. Harabin.

On the eve of the electoral silence before the first round Prime Minister Peter Pellegrini requested free airtime in the public broadcaster which the law allows for in certain conditions. In his speech Mr. Pellegrini did not directly call to vote for any of the candidates, but a number of ODIHR EAM

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<sup>45</sup> According to the program plans approved by the CBR, *TV Markiza* invited all 13 remaining candidates, *TA3* 12, *Fun Radio* 10 and *Radio Express* 3 most popular candidates to the debates. Eduard Chmelár filed a complaint with CBR for not being included in the discussion group he felt he was entitled to in *TA3* debate. The ECA requires broadcasters to submit their plans for electoral debates no later than 25 days before the broadcast, which is before candidates' registration is completed. As a result, Bohumila Tauchmannová was excluded from *TA3* discussions. Although the Elections Act entrusts SEC with the task of negotiating with broadcasters the proposed allocation of time, in practice the task is fulfilled by CBR.

<sup>46</sup> See [Joint report](#) by *Globsec*, *Memo98*, *SSPI* and *Stratpol*, from 13 March 2018.

interlocutors perceived it as an implicit encouragement to vote for the Smer-SD supported candidate. Two complaints on the issue were filed to CBR.<sup>47</sup> Several citizens filed complaints against daily *SME* which on the election day published on the front page a mock-up ballot paper, reflecting incorrectly candidates' numbers.

## XI. ELECTION OBSERVATION

The legislation does not specify any observer accreditation procedure. Provisions are in place to allow observers from international organizations and other persons who expressed interest to observe the conduct of elections, but not all the stages of the process are fully accessible. Interested persons can freely observe the proceedings of the PECs but the law is silent about observation at the DEC. Several election administration representatives met with by ODIHR EAM stated that observers may request access to DEC meetings. The legislation does not provide for the work of summarization units to be open for public and several ODIHR EAM interlocutors expressed concerns about the limited access of observers to the tabulation process.

*The Elections Act should be amended to explicitly allow full access of citizen and international observers to all stages of the electoral process.*

## XII. PARTICIPATION OF NATIONAL MINORITIES

Fundamental rights regardless nationality or ethnic origin are guaranteed by the Constitution, which provides national minorities with the right to education in their mother tongue, right to use their language in official communication and right to participate in decision-making in matters affecting the national minorities and ethnic groups. Furthermore, economic development and association are also guaranteed.<sup>48</sup> Legislative provisions put an obligation to ensure official communication in minority languages on municipalities where minority population reaches at least 20 per cent of citizens.<sup>49</sup>

The largest minorities are Hungarians and Roma, representing eight and two per cent of Slovak citizens, respectively.<sup>50</sup> Several ODIHR EAM interlocutors opined that the real number of Roma is much higher than reflected by census.<sup>51</sup>

The Elections Act provides for voter information and voter certificates in minority languages.<sup>52</sup> MoI published on its website general information on elections in Slovak, German, Hungarian, Romani, Ruthenian and Ukrainian. Although there were two presidential candidates from the Hungarian minority, none of the registered candidates' programs focused specially on minority

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<sup>47</sup> Before the second round, both the Prime Minister and the incumbent President requested the free airtime. In that case both officials limited themselves to calling on voters to cast their vote.

<sup>48</sup> Slovakia ratified the Council of Europe's Framework Convention for Protection of National Minorities as well as the European Charter for Regional or Minority Languages.

<sup>49</sup> The provision can be implemented already when the minority population exceeds 15 per cent according to two consecutive censuses. The Council of Europe Committee of Ministers called for revision of the threshold. See: [Recommendation CM/RecChL\(2016\)2 of the Committee of Ministers](#) on the application of the European Charter for Regional or Minority Languages by the Slovak Republic, adopted on 27 April 2016.

<sup>50</sup> According to the 2011 census, there are 458,467 Hungarians and 105,738 Roma in Slovakia.

<sup>51</sup> [Council of Europe](#) estimates there are some 500,000 persons of Roma origin living in Slovakia.

<sup>52</sup> By Act on the Use of Languages of National Minorities, the languages of minorities are Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romani, Ruthenian and Ukrainian.



groups.<sup>53</sup> A few candidates prepared their campaign materials in minority languages, mainly in Hungarian, Romani and Ruthenian.

Some ODIHR EAM interlocutors stated that the presidential election does not enjoy a high level of interest among Roma communities. Furthermore, impediments such as illiteracy, lack of domicile or change of place of residence without notifying respective municipal authorities, hinder Roma participation in electoral process. A few ODIHR EAM interlocutors raised concerns of vote-buying among economically and socially vulnerable communities, including Roma, at the same time assessing that the problem's prevalence is much higher in local and parliamentary than presidential election.

### XIII. COMPLAINTS AND APPEALS

The Elections Act does not establish clear and consistent mechanisms for adjudicating complaints by the electoral authorities, contrary to good practice.<sup>54</sup> Electoral complaints are dealt with by different institutions, and are handled without any pre-set templates, raising concerns about consistency of proceedings. Relevant decisions are not compiled for further reference and development of jurisprudence. Moreover, no timeframe ensuring the right to redress is established in the laws. The lack of a clear complaints system, procedures and deadlines could undermine the right to redress for election-related violations.

*The Elections Act should be amended to introduce explicit mechanisms and legal procedures for resolution of election disputes within adequate timeframes.*

Appeals of the speaker's decisions related to candidate registration can be lodged at the Supreme Court within three days after receiving notification of rejection, and the court's decision must be issued within five days from the delivery of the complaints. The Supreme Court reported receiving two appeals of rejected candidates, and in both cases upholding the speaker's rejection of the candidates' claims.<sup>55</sup>

Campaign and campaign finance cases are lodged at the MoI with the SEC serving as an appellate body. They are governed by administrative rules and deadlines which set a 60-day timeline for adjudication. In cases related to the violation of the campaign and opinion polls moratoriums, the SEC has a first instance competence. Appeals to the SEC decisions can be lodged with the ordinary courts.

MoI received complaints on minor infringements, which it considered had no impact on the results of the election. SEC processed over 100 cases during its sessions on election days. These included complaints related to prisoners voting, advertisement on Facebook, and use of mobile ballot box.

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<sup>53</sup> Béla Bugár - MOST-Híd and József Menyhárt - Party of the Hungarian Community (SMK-MKP). The latter withdrew from the competition before the first round.

<sup>54</sup> The 1996 UN Human Rights Committee, General Comment 31, paragraph 15 states that "State Parties (...) to ensure that individuals have accessible and effective remedies [for protection of civil and political rights] (...) administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies."

<sup>55</sup> The appeals were filed by Ján Molnár and Juraj Zábajník. See the Candidate Registration section.

Only three complaints of a potential criminal nature were transferred by the SEC to the Prosecutor General office.<sup>56</sup>

Legality and constitutionality of election can be challenged in front of the Constitutional Court within 10 days from the declaration of results and within a 90-day deadline for adjudication. Legal standing is extended to candidates who gained at least five per cent of the votes, 15 members of parliament who submitted a valid presidential candidacy proposal, the Prosecutor General, and petition committee representing citizens who had submitted a valid presidential candidacy proposal. The law requires, in addition to the petitioner, the elected candidate to be a party to the challenge.

The mandate of 9 out of 13 judges of the Constitutional Court expired in February 2019, which resulted in only 4 judges at the court at the time of presidential election. Such composition of the Constitutional Court would not have ensured the possibility for timely redress of the validity of the elections since according to the Constitution presidential election petitions must be decided by absolute majority of all judges.

On 6 March 2019, the NGO ‘With heart at home’, with the support of 37 signatures from members of the parliament, submitted a petition to the Constitutional Court. They challenged constitutionality of the Elections Act provision, which allows for out-of-country voting by mail for the parliamentary elections and referendums but not for presidential election.

On 25 March 2019, the presidential candidate Štefan Harabin, who obtained 14.4 per cent of votes in the first round of election, filed a petition in front of the Constitutional Court challenging the constitutionality and legality of the presidential election. The complainant stated that first round front-runner Zuzana Čaputová violated the campaign finance provisions, as she gained direct support both from Robert Mistrík, an independent candidate who withdrew in her favour, and from third parties. The claimant believed that the extent of Ms. Čaputová’s campaign excessively influenced the voters and could cast shadow on whether the election results truly reflect the will of voters. The claimant resubmitted the complaint on 9 April, after the second round of election, assessing that the legal provisions on timeframe for complaints against electoral results lack clarity regarding the deadlines.<sup>57</sup>

The Court must issue the decision within 90 days from the submission. As the first round of presidential election should take place no later than 60 days before the end of the term of the incumbent President, and the newly elected president shall be sworn in on the day when the predecessor’s term ends, the 90 days timeline for adjudication by the Constitutional Court may surpass the time by which the elected president takes the office.

*To ensure the right to effective remedy, the timelines for adjudication on constitutionality and legality of elections should be harmonized with the commencement of term for elected president.*

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<sup>56</sup> Among them was the case of Marian Kotleba allegation that there were 10,000 counterfeit VCs distributed in Bratislava, although it was not addressed directly to the SEC or duly substantiated. The case of misrepresentation of the ballot paper by the newspaper SME was transferred to the MoC.

<sup>57</sup> The Constitutional Court informed the ODIHR EAM that according to its interpretation of legal requirements, the challenge can be filed only after the second round, against the overall election exercise, as the 14 days between rounds would not allow adequate time for adjudication.

#### XIV. ELECTION DAYS

In accordance with the ODIHR's methodology, the EAM did not observe election day proceedings in a systematic and comprehensive manner but visited a limited number of polling stations in several municipalities of Bratislava and Pezinok. In both rounds the voting process at polling stations visited by ODIHR EAM was well organized and polling stations were properly equipped. The ODIHR EAM was granted access to all the polling stations, while in few cases, PEC requested some form of accreditation from the SEC, which was not foreseen by law and consequently not provided to ODIHR EAM.

On 16 and 30 March voting started at 7:00 and ended at 22:00 hours. In all visited polling stations the PECs were composed of five members, majority of them women. In some areas, due to shortfall of nominations from political parties or petition committees, mayors needed to nominate a substantial number of PEC members.

Most of the polling stations visited by the ODIHR EAM were not accessible for voters with physical disabilities, contrary to the Elections Act and international standards.<sup>58</sup> Similarly, no practical measures were in place to ensure the vote of persons with visual impairments, nor were instructions provided in an easy-to-read format for voters with impaired intellectual capacities. Alternative method of voting, i.e. mobile ballot box, could be requested.<sup>59</sup> Assistance, if needed, could be provided by a person of voter's choice, except by PEC members.

*In line with international good practice, consideration could be given to amend the legislation and establish practical measures to ensure full access of persons with sensory, physical and intellectual impairments to the voting process.*

In regards to voters without permanent residence in Slovakia, on 6 March 2019 the MoI issued an instruction requesting PECs to verify each case with the Central Voter Register in Banská Bystrica, in order to confirm that a voter does not reside in Slovakia and to prevent multiple voting. Not all polling stations visited by the ODIHR EAM followed the required verification procedure in the same manner.

Both PEC members and observers can request copies of the protocol. A case of PEC's chairperson refusal to provide it would not be considered a restriction to election observation, for – according to SEC – anyone can request a copy of protocol from the municipality. The Elections Act does not provide that the protocol must be publicly posted, contrary to good practice.<sup>60</sup> The issue was addressed by the MoI instruction to municipalities and PECs from March 2019, which provided that a signed PEC protocol can be made available, e.g. on municipal board or municipal website. None of the PECs visited by ODIHR EAM on election days intended to post their final protocols in polling stations' premises.

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<sup>58</sup> See article 29 of the 2006 [CRPD](#). See also paragraphs 77 and 78 of the 2016 UN HRC [Concluding observations on the initial report of Slovakia](#).

<sup>59</sup> Paragraphs 58 and 74, of the 2011 [Thematic Study of the UN High Commissioner for Human Rights on Participation in Political and Public Life by Persons with Disabilities](#) state that „General reliance on voting assistance and alternative voting as a way to ensure the political participation of persons with disabilities would not be consistent with the general obligations undertaken by States Parties under articles 4 and 29 of the Convention”.

<sup>60</sup> See the 2013 ODIHR [Guidelines for Reviewing a Legal Framework for Elections, second edition](#), page 63 and the 2002 Venice Commission Code of Good Practice in Electoral Matters Section I.3.2.2.4.46.

*Election legislation could be amended to mandate precinct election commissions to publish the final protocol and to provide a copy to all interested members and observers under equal conditions.*

On the second round election day, during the SEC session, the Kotleba-L'SNS representative raised concern over the security of voting on the basis of VCs, claiming they did not have enough safeguards to prevent forgery and that PECs were incapable to differentiate between original and counterfeit VCs. The claim was compounded by Marian Kotleba's allegation in media that some 10,000 counterfeit VCs were distributed in Bratislava. To address these concerns, the SEC adopted a resolution requesting DEC to perform sample audits verifying authenticity of VCs in polling stations of Petržalka, Kuty and Žilina municipalities. According to Bratislava DEC, some 250 voting certificates were successfully verified as authentic and no counterfeit VCs were identified.

## **XV. POST-ELECTION DEVELOPMENTS**

For both rounds of election the results were officially announced by the SEC by midday after the election day and published online in a timely manner. Furthermore, a full database in open format with detailed results was provided for download and the preliminary results could be followed online on the Statistics Office webpage from the moment the electoral silence moratorium was over.

On 9 April Štefan Harabin resubmitted to the Constitutional Court his petition challenging the constitutionality and legality of the presidential election. This time, Mr. Harabin submitted the case against the winning candidate Zuzana Čaputová.<sup>61</sup> The petitioner, while requesting the two proceedings to be merged, added to the previous allegations that a very high number of VCs used in the second round could have been falsified.<sup>62</sup> The petitioner also claimed that Ms. Čaputová violated the ECA provision which requires that the cost of TV advertising should be paid by the candidate, as a payment for her political advertisement in *Markiza TV* was done by a third party.

On 16 April 2019 the President appointed to the Constitutional Court three new judges out of the eight candidates vetted and nominated by the parliament. This, in case of unanimity of judges, could have enabled reaching the absolute majority of seven votes.<sup>63</sup> Nevertheless, Mr. Harabin objected to one of the judges alleging his bias, and on 12 June the Constitutional Court decided it could not adjudicate on the plaintiff's complaint due to the lack of judges.<sup>64</sup>

On 15 June 2019 Zuzana Čaputová was sworn in as the new President of Slovak Republic.

## **XVI. RECOMMENDATIONS**

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in the Slovak Republic and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with prior ODIHR recommendations, which

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<sup>61</sup> In the first petition, Mr. Harabin, simply included Ms. Čaputová and Mr. Šefčovič as party to the process.

<sup>62</sup> The petition does not specify the number of fake VCs but refers to documents not available for scrutiny of ODIHR EAM. The total number of issued VCs was not readily available as the process is decentralized. *See: Voter Registration section.*

<sup>63</sup> According to the Art. 131.1 of the Constitution “[p]lenary session of the Constitutional Court shall decide by absolute majority of all judges” in matters such as conformity of presidential election with the Constitution and the law.

<sup>64</sup> See [the Constitutional Court Press Release 35/2019](#) from 13 June 2019 (in Slovak).

remain to be addressed.<sup>65</sup> ODIHR stands ready to assist the authorities of the Slovak Republic to further improve the electoral process and to address the recommendations contained in this and previous reports.

#### **A. PRIORITY RECOMMENDATIONS**

1. Full independence of the State Election Commission should be ensured and its administrative and financial capacity strengthened.
2. To promote independence and impartiality of the campaign finance oversight, consideration should be given to entrust the competence in campaign finance control to an independent institution.
3. Defamation should be decriminalised and a reasonable ceiling for damages should be introduced in the civil label cases.
4. To ensure the long-term pluralism of media, the authorities could strengthen the public broadcaster through an adequate financing and enhance its independence.
5. The Elections Act should be amended to introduce explicit mechanisms and legal procedures for resolution of election disputes within adequate timeframes.

#### **B. OTHER RECOMMENDATIONS**

##### **Legal framework**

6. To increase the consistency of electoral legal framework, State Election Commission could be mandated by law to issue consolidated regulations to further detail and interpret the Elections Act.

##### **Election administration**

7. As previously recommended, the Elections Act could be amended to specify that the resolutions of the State Election Commission are legally binding for the lower level electoral commissions.
8. Consideration could be given to make all sessions of the State Election Commission public in order to enhance transparency of election administration
9. In line with national commitments and international standards, gender disaggregated data produced during the electoral process should be made available in a comprehensive manner.

##### **Voter registration**

10. In line with international good practice, possibility of election-day registration at a polling station could be reconsidered

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<sup>65</sup> In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of recommendations from the ODIHR final report on the 2016 parliamentary elections is assessed by ODIHR as follows: recommendation 10 is fully implemented. The recommendations 9, 16, 19 and 20 are partly implemented.

### **Candidate registration**

11. Limitations on the right to stand should be reviewed to ensure that the disqualification in case of criminal conviction is proportionate to the gravity of offence.
12. To harmonize the electoral legal framework and ensure impartiality of the process, the State Election Commission could be entrusted with registration of presidential candidates.

### **Campaign financing**

13. The campaign finance reporting provisions could include the requirement of reporting on financial donations. Further regulation on unspent incomes and on in-kind donation disclosure and reporting could be considered to increase transparency of campaign finance.
14. To strengthen the campaign finance oversight, findings of the candidates' reports audits should be published within a reasonable timeframe and should contain consolidated and detailed information.

### **Media**

15. Authorities shall swiftly investigate the threats, including online, against the journalists, and refrain from the use of derogatory language which may encourage such attacks.
16. To ensure equal and fair campaign, relevant authorities could consider the possibilities of regulating campaign coverage also in the online media.

### **Election observation**

17. The Elections Act should be amended to explicitly allow full access of citizens and international observers to all stages of the electoral process.

### **Complaints and appeals**

18. To ensure the right to effective remedy, the timelines of adjudication on constitutionality and legality of elections should be harmonized with the commencement of term for elected president.

### **Election day**

19. In line with international good practice, consideration could be given to amend the legislation and establish practical measures to ensure full access of persons with sensory, physical and intellectual impairments to the voting process.
20. Election legislation could be amended to allow precinct election commissions to publish the final protocol in polling stations and to provide a copy to all interested members and observers under equal conditions.

## ANNEX: FINAL RESULTS<sup>66</sup>

### 1<sup>st</sup> round

Candidate	Percentage of valid votes cast	Valid cast votes
Béla Bugár	3.10	66,667
Zuzana Čaputová	40.57	870,415
Martin Daňo	0.51	11,146
Štefan Harabin	14.34	307,823
Eduard Chmelár	2.74	58,965
Marian Kotleba	10.39	222,935
Milan Krajniak	2.77	59,464
József Menyhárt [ <i>withdrawn</i> ]	0.05	1,208
František Mikloško	5.72	122,916
Robert Mistrík [ <i>withdrawn</i> ]	0.15	3,318
Maroš Šefčovič	18.66	400,379
Róbert Švec	0.30	6,567
Bohumila Tauchmannová	0.16	3,535
Juraj Zábajník	0.28	6,219
Ivan Zuzula	0.17	3,807
<b>Data regarding the voting process</b>		
# of voters included in the main VLs		4,429,033
# of voters who received ballots		2,158,859
# of voters that participated in the election		2,158,859
% of voting participation/turnout		48.74 %
# of invalid ballots		12,848
# of total valid votes		2,145,364
# of ballots received by the PEC of the PS		N/A
# of unused and cancelled ballot papers		N/A <sup>67</sup>

### 2<sup>nd</sup> round

Candidate	Percentage of valid votes cast	Valid votes cast
Zuzana Čaputová	58.40	1,056,582
Maroš Šefčovič	41.59	752,403
<b>Data regarding the voting process</b>		
# of voters included in the main VLs		4,419,883
# of voters who received ballots		1,847,417
# of voters that participated in the election		1,847,417
% of voting participation/turnout		41.79
# of invalid ballots		38,130
# of total valid votes		1,808,985
# of ballots received by the PEC of the PS		N/A
# of unused and cancelled ballot papers		N/A

<sup>66</sup> Source: [Official webpage of the Statistics Office](#).

<sup>67</sup> The protocol does not include this information. Unused ballots and envelopes are not counted.

## ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of election observation. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's democratization activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of tolerance and non-discrimination, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on Roma and Sinti. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).