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## The Troubled Institutionalization of Parliamentary Democracy in Slovakia

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### Summary

The authors investigate the relationship between the institutional set up as defined by the Constitution and the dynamics of democratic consolidation in Slovakia. The rule of parliamentary majority between 1994 and 1998 in Slovakia was characterized by unrestricted imposition of its will and its disrespect for institutional limitations, which significantly jeopardized the position of parliamentary opposition and other constitutional actors. The outcome of this development was a regime of distorted parliamentarism which could not advance into a fully consolidated democracy. The authors see the reason for this deficiency in the lack of adequate stipulations in the Slovak Constitution by which an omnipotent parliamentary majority could be checked. After the 1998 parliamentary elections and the retreat of Mečiar's government, the new parliamentary majority proposed and partly adopted constitutional reforms in order to correct those deficits. The institutional changes need to be broadly accepted and practiced by all main political actors in order to function effectively.

### *Introduction*

Among the factors that have impeded successful institutionalization of democracy in Slovakia, the constitutional rules established by the Slovak Constitution of 1992 have played a prominent role. Institutionalization, or similarly consolidation, of democracy was not completed, as Slovakia's hurriedly drafted and vaguely formulated constitution did not successfully perform the goals expected from the institution of such significance since the independence of Slovakia. Therefore, the new government formed after the 1998 elections put on its agenda a rather complex revision of the constitution, aimed at improving the provisions which belonged to the most contested issues in the past. However, two consequent amendments have not changed the general framework of the political system, i.e. that of parliamentary democracy. The institutionalization and performance of a parliamentary democracy is our main interest, as this institutional arrangement is the dominant form of government in Central and Eastern Europe, especially in those countries that have already applied for European Union membership. During the last decade several applicant countries have shifted toward this pattern,

though their constitutions may have originally provided for some forms of mixed types of government, semi-presidentialism, for example.

Obviously, this is not to claim that constitutions (as a specific form of the institution) as independent actors somehow miraculously marginalized political actors and predetermined the course of events. It is always agency (political actors) that makes and carries out individual and concrete decisions. However, political institutions matter in the sense that they provide agency with formative incentives that shape both the strategies to be pursued and the goals to be achieved. In other words, what politicians do and how they do it is channelled through, and encouraged by, the existing institutional framework. Slovakia's hastily drafted and adopted Constitution, and especially its vaguely formulated provisions specifying the division of powers, encouraged and made likely those objectives and actions that have not been conducive to the consolidation of democratic polity. We argue that to avoid these perils is a matter of a balanced interaction between the clearly drafted constitutional rules and the complying political actors. In other words, we argue that a successful institutionalization of democracy requires congruent formal and informal institutions and rules. In Slovakia, the frequent clashes between the formal political rules (which demand an underlying political consensus), and the informal rules (which involve unrestrained majority rule) have hindered democratic consolidation.

We have divided our paper into three main parts. In the first section we clarify our understanding of the constitution as an institution and specify the relationship between the institutional set up and the consolidation of democracy. Next, we analyze the situation of Slovakia's parliamentarism in the period between 1994 and 1998 and describe the way the strong and disciplined parliamentary majority brought about a "majoritarian" understanding of democracy. In the third part we look into the ways in which an omnipotent parliamentary majority can be checked. We also show that the Slovak constitution neither established institutions capable of constraining the Parliament nor endowed them with sufficient and unequivocal powers to do so. The last part reviews political and constitutional changes after the 1998 elections.

### *Democratic Consolidation and the Role of the Constitution*

Most scholars studying the regime transition and democratic consolidation in the post-communist countries consider Slovakia a confusing case among the other East Central European countries. Even though after the electoral defeat of the Mečiar-led ruling coalition in the 1998 elections the new liberal, democratic and Western-oriented government of Mikuláš Dzurinda was formed, Slovakia is still classified among countries such as Albania, Belarus and Croatia (Ekiert 1999). Some analysts went even further east and compared Slovakia (although positively) to Kazakhstan (Fish 1999). The political regime under Mečiar's government was often labelled as either a non-liberal democracy (Zakaria 1997) or a nationalist-populist one (Carpenter 1997). The main reason for this was the behaviour of the political elite during 1994-1998 – mainly the serious violations of democratic rules, including the exploitation of the secret service in political struggles, the cancellation of a deputy's mandate, the installation of new Members of Parliament, and the cancellation of the 1997 referendum on the topic of direct

presidential elections. All these actions either violated constitutional rules or were not in line with the decisions of the respective political institutions, which have the authority in these matters, such as the Constitutional Court and the Central Referendum Commission.

Within the mainstream democratization scholarship there have been different attempts to explain the Slovak case. The first group of explanations links the problems of democratic consolidation to structural factors, such as the lower level of socio-economic development, the rather belated modernization and industrialization, the authoritarian political culture, etc. (Miháliková 1997). The second set of reasoning looks into the institutional design, including the executive-legislative relations, the electoral system, the shape of the parties and the party system (Malová 1998, Učeň 1999, Krause 2000). The third type of justification aims to account for Slovakia's deficient democracy in terms of elite configuration (Szomolányi 1997).

However, the explanatory power of formal institutions during the process of transition from the authoritarian rule is limited. First, political actors are not impartial and they choose those institutions in which their particularistic interests and preferences are vested. Thus, political institutions, including constitutions, are more a result of immediate power relations than a source of power distribution; at that stage institutions do not shape the behaviour of political actors. Indeed, there are many proofs that a specific set of formal institutions does not automatically secure the survival of democracy. This is why we analyze the interaction of the formal and the informal rules during the institutionalization of parliamentary democracy in Slovakia. We examine how the political elite has learned from the unbalanced set-up of political institutions and tried to improve the institutional arrangement to steer the political behaviour.

Together with Huntington, we understand institution as a "stable, valued, and recurring pattern of behavior," or at least as that kind of recurring behavioral pattern that aspires to become stable and valued. (Huntington 1968, 12) The actual process of acquisition of stability and value we call "institutionalization." Thus, the notion of consolidation of democracy approximates to the institutionalization of institutions encouraging democratic rules and procedures. Clearly, not every kind of institutionalization equals *democratic* consolidation, since the institutionalization of a non-democratic regime is also possible. Thus, the institution of a democratic constitution is to create a clearly balanced division of powers between the bodies specified therein. Moreover, it is also to provide the fundamental principles upon which the autonomy of political, economic, civic and other domains can be based.

If institutions are the legal, administrative, and customary arrangements for repeated human interactions, their major function is the predictability of behavior. The prevailing institutional framework in a society consists of formal and informal rules, all of which carry their own incentives and transaction costs. Thus, an analysis of the efficiency of institutional changes has to establish the effects of changes in formal and informal rules on the incentives and transaction costs. The examples of formal rules are constitutions, statutes, common law, and other governmental regulations. They define the political system, the economic system and the protection system. One of the major common traits of formal rules is that they are externally enforced (North 1990; Pejovich 1995).

The informal rules stem from the experiences – traditional values, religions, and all other factors that influence the subjective perceptions individuals form about the world in which they live. They are part of the heritage, which has passed the test of time. That is why the informal rules are referred to as the old ethos, the hand of the past or the carriers of history. The informal rules are often deeply rooted and widely shared; that is why these rules seem to be highly “institutionalized”. The informal rules change when ignored, through their erosion or replacement by formal rules. Evidence shows that similar formal rules imposed on different societies have produced different outcomes.

The drafting and establishing basic political rules and institutions should constitute a successful transition to procedural democracy, but it does not guarantee its stability and continuation. If the formal and informal rules are irreconcilable, the new democratic regime may be endangered. Self-sustaining democracy also requires the creation of consensus among the strategic elite over the democratic rules of political game and the respect for democratic institutions.

From the ‘constitutional’ point of view, a major change occurred in the late 1980s / early 1990s in Eastern Europe – constitutions again started to matter. After decades of communism, when constitutions were largely formal and empty texts, the constitutions of transitional countries became legal expressions of newly acquired sovereignty and the documents establishing the rules of the political game. The same is true for the Slovak Constitution of 1992. The constitution establishes the guiding principles regulating the rules and procedures through which actual policy outcomes are reached. Many constitutional experts argue in favor of a clear separation of the ‘constitutional politics’ and the ‘everyday politics’. The former includes discussion about, fights over, and adoption of, the text of the constitution whose provisions constitute the solid grounds for everyday political clashes. The adoption of constitutional provisions usually requires specific procedures (e.g. constitutional assemblies) and extraordinary majorities (e.g. two thirds). These are to safeguard an overall political consensus regarding the rules of the game. The position of the constitution in political struggles is a clear indicator of the degree of the ‘vertical dimension’ of democratic consolidation: “In case consolidation is strong (...) a spill-over is unlikely to occur from the disagreements about the rules to the disagreement about those second-order rules that are supposed to govern the conditions of our disagreement on the rules.” (Elster, Offe, and Preuss 1998, 30) The ‘horizontal dimension’ of consolidation (ibidem) encompasses an indication of the degree to which economic, political, cultural and other sectors (domains, arenas) enjoy autonomy from each other. The higher the degree of autonomy, the more consolidated the given polity is.

### *Constitution as an Institution*

In order for a social arrangement to be called ‘institution’, two conditions have to be fulfilled. First, institutions play a socializing role in that they prescribe desirable behavior. In other words, they restrict the modes of actions (negative part) and reward the preferable activities (positive part). Second, institutions do not only perform the role of “congruent socialization” (Offe 1996, 200) but should also function correctively, i.e. should be able to solve problems they were created to cope with. In short, institutions impose obligations upon actors and produce policy outcomes. Applied to the Slovak

Constitution, the constitutional provisions (concerning the division of powers) should clearly and unequivocally specify the ways political actors are expected to behave and deal with each other. In such a way the behavior complying to those rules is repeated and acquires stability. Moreover, any action not in line with the prescribed and repeated patterns will be considered deviant and not met with approval. At the same time, the behavior complying to the repeated and stable rules will better fit the need to generate the desired policy outcomes (the second characteristic of institution).

We argue that many articles of the Slovak constitution were not clearly specified. Hence the constitution, instead of being capable of solving political crises, itself became the source of political conflicts. A poorly crafted constitution cannot become the grounds for the consolidation of democracy (of which institutionalization is a prerequisite). The reason is threefold: First, disputable (and disputed) provisions are a source of conflicts among the actors whose roles are not clearly specified. Hence the “stability by repetition” is but a distant goal. Second, the capacity of distorted rules to generate desirable outcomes is largely limited. And third, the vague rules are themselves becoming the formative factor of actors’ behavior. Thus, not only do actors comply with (the unclear rules) as it was probably envisaged by the constitution drafters, but the rules themselves become the object of political squabbles.

### *Distorted Parliamentarism*

Many provisions of the Slovak Constitution of 1992, including the stipulation of the separation of power are not clear and are open to different interpretation and conflicts over the rules. Also, the provisions on human rights are not supreme, as they can be further stipulated by the ordinary legislation and require only the majority vote (Bealey 1995). According to the constitutional prerogatives, the Parliament – called the National Council of the Slovak Republic – is the strongest actor in the political arena. The National Council enjoys many powers in establishing, replacing and suspending the executive and the judicial bodies and their incumbents. Therefore, the development of political process depends on the composition of the Parliament, the party discipline and cohesion, and the ruling elite’s understanding of democracy.

Slovakia’s development of the parliamentary system is a proof how difficult it is to maintain the separation of powers within the fused executive and legislative branches of government. We argue that the inner dilemma of a parliamentary democracy consists of two tasks. On the one hand, it is necessary to form a majority to back up the cabinet, and on the other, it is essential to preserve the constitutional checks on the executive. In Slovakia this problem has been ‘resolved’ in favor of the majority rule. The recent political practices have undermined the potential for resistance from offices and agencies, which might otherwise exert certain limiting pressures on the coalition in the legislature. Parliamentary systems in general have the fewest checks on the executive; therefore, if the disciplined majority parties emerge, this will likely promote a winner-takes-all approach. Usually, single-party majorities are not conducive to the survival of (parliamentary) democracies, because the party can devise the political rules that foster its interests and promote legislation that guarantees its own electoral victory, thereby undermining free and fair political competition. However, in Slovakia the ruling coalition be-

fore the 1998 elections performed in most cases as a single-party cabinet. Only the diverging privatization interests caused some minor crises which were soon resolved.

After the 1994 elections the coalition of three parties (the Movement for a Democratic Slovakia – HZDS, the Workers' Association of Slovakia – ZRS, the Slovak National Party – SNS) managed to impose strong party discipline over their deputies. This influenced the performance of parliamentary democracy and the functioning of the separation of powers. This process began on November 3, 1994, at the opening session of the Parliament, and continued at the second session. During this night session the newly formed parliamentary majority, controlling 83 seats out of 150, managed to change the institutional set up of Slovakia's parliamentary democracy by changing the statute laws and not following the previous informal customs to reserve some parliamentary posts for the opposition. In one night, the parliamentary majority constituted the absolute majority rule, with very few checks on the executive and the constitutional constraints on the cabinet. In one night, the majority fully marginalized the opposition. Contrary to the traditional parliamentary practice, the majority voted against the opposition candidates for the vice-chairmanship of the Parliament; in addition, the opposition MPs were denied the chairmanship of any parliamentary committees. The opposition lost their seats in the supervisory bodies overseeing the mass media and the intelligence service. The opposition representatives were removed from the Supreme Auditing Office and the National Property Fund (FNM). Attorney General was also replaced. The majority also amended the Large Privatization Act and transferred the decision-making from the cabinet to the National Property Fund (FNM) controlled by HZDS<sup>1</sup>. Moreover, the parliamentary statistics of 1994-1998 period proved that the opposition could not even effectively participate in proposing the agenda of parliamentary sessions; the opposition suggestions made for only 13 per cent of all proposals to the agenda<sup>2</sup>.

The country's political discourse had dramatically changed in favor of a majoritarian interpretation of democracy. The political leaders of the ruling parties defended their distorting actions by apologetic rhetoric based on the principle of majority rule, asserting that "after the elections you (the opposition) should get used to it (arbitrary and unlimited rule of majority)"<sup>3</sup>, or "democracy is the terror of the majority"<sup>4</sup>, or "the winner takes it all"<sup>5</sup>. The ruling elite explicitly clarified what democracy is and is not.

<sup>1</sup> It should be emphasized that the presumable authors of this 'night scenario', HZDS leaders Vladimír Mečiar and Ivan Gašparovič, who was elected as Chairman of the Parliament, did not vote for these bills; perhaps they were aware that many of them contradicted the Constitution.

<sup>2</sup> Chairman of Parliament is responsible for setting the agenda; however, individual MPs have a right to propose additions to the agenda. These proposals have to be passed by the majority of Parliament.

<sup>3</sup> Vladimír Mečiar, HZDS Chairman, at the first session of the Parliament.

<sup>4</sup> Daily *Sme* cited Eva Zelenayova, HZDS MP. *Sme*, June 7, 1995.

<sup>5</sup> Daily *Pravda* cited Vitazoslav Móric, MP of the Slovak National Party. *Pravda*, February 7, 1997.

### *Limiting Parliamentary Omnipotence*

The need for a clearly and carefully drafted constitution increases in countries where there is an unsettled elite, lacking underlying procedural and cultural consensus. Especially critical for the consolidation of democracy are the rules on the separation of powers and the system of check and balances (Holmes, 1993; Zielonka, 1994). There are at least four possible ways a Parliament with a strong and disciplined majority can be checked. These include an upper chamber constituted on a different principle than the lower chamber; referendums in which citizens can decide about relevant and important political issues; the Constitutional Court effectively preserving country's constitution; and a president who can stand as a barrier with more than the formal power to veto the legislation adopted in the parliament.

Even though in 1992 there were some signs that the Slovak deputies from the Federal Assembly (who voted for the dissolution of Czechoslovakia, effective from January 1, 1993) would be placed in an upper chamber of the Slovak Parliament, the decision that the National Council would remain a unicameral body was adopted.

A referendum offers a possible tool that may serve as an additional check on the fused executive-legislative power. However, this element of direct democracy has been often misused and, therefore discredited by autocratic regimes in the 20th century. In the new democracies it may assist to both the development and the breakdown of fragile regimes. While the opposition may mobilize population by organizing petitions and prevent the expansion of rising autocratic forces, the autocratic government can also confirm itself and prolong its power (see Butler and Ranney, 1994, pp. 181-183). The Slovak Constitution rather carefully divided rights of the organization of referendums between the executive and legislative branches of power. Article 95 states that referendum "shall be announced by the President of the Slovak Republic upon a petition submitted by no less than 350,000 citizens, or upon a resolution of the National Council of the Slovak Republic." However, the main problem of the referendum as specified in the Slovak Constitution is the fact that its effects are confusing. The Constitution remains unclear regarding the consequences of a referendum's results. The Constitutional Court, clearly under strong pressures from both the opposition and the coalition forces, ruled that the result of a referendum does not automatically become a legislative norm. At the same time, it is binding for the parliamentarians, who are to adopt legislations in accordance with the "will of the people." However, there is no way deputies can be legally forced to comply with the results of a referendum since the Slovak constitution states that they are not bound by any directives. Hence, a referendum in Slovakia does not perform the role of a check upon the legislature. Moreover, the confused constitutional provisions regulating a referendum's outcomes may be indirectly held responsible for the circumstances leading to the thwarted referendum on the direct presidential election and the NATO membership in 1997.

The Constitutional Court in the Slovak Republic was established in March 1993. The President, who chose from 20 candidates nominated by the Parliament, appointed ten Justices to a seven-year term. The Court may examine the constitutionality of any law, statute, or regulation passed by the Parliament, the Cabinet of Ministers, or local government without the need for an actual lawsuit. However, the Court does not have

the power of an *a priori* constitutional review, which could stop unconstitutional laws before they can be implemented.<sup>6</sup>

The enforcement of the Court's decisions is to a certain extent "soft". When the Court finds any contradictions in laws, these rules, parts or clauses thereof shall become ineffective. The authorities that passed these rules shall bring them to conform with the Constitution not later than six months following the finding of the Constitutional Court. After this period these rules become ineffective. The former cabinet efficiently used this broad provision with respect to privatization and this also contributed to the legal complications in the "Gaulieder case". Gaulieder, a HZDS deputy decided to leave his parliamentary party club and stay in the parliament as an 'independent' MP. However, before the elections of 1994 he (and many of his colleagues from HZDS) signed a letter (undated) in which he resigned from his parliamentary seat. The purpose of this was to discipline future HZDS deputies and not to allow them to leave the party. After Gaulieder quit the HZDS faction, the letter appeared in the Parliament as if it was sent by the deputy. The parliamentary majority simply "accepted" his "resignation," even though Gaulieder several times proclaimed the he had not given up his mandate. The Constitutional Court later ruled that Gaulieder's constitutional rights were infringed; however, the Constitution did not provide the Court with the power to cancel the Parliament's decision. The Court only appealed to the legislature to reconsider its decision. The case pointed to a previously unnoticed flaw in the Constitution – it does not contain a mechanism by which a basic individual constitutional right can be enforced.

The government had also contested the powers of the Constitutional Court, its decisions, and its role in the political life, since the Court was the last institutional barrier that could be used by the opposition. The Mečiar-led HZDS and the leaders of the Slovak National Party often criticized the Court as a biased institution that backs the opposition. For example, in 1995 the Cabinet withdrew some financial support for the Court Chairman, trying to punish him for the Court's independence. Moreover, a HZDS Member of the Parliament proposed to amend the Court's decision-making procedure, which would replace the majority voting by the qualified majority, requiring seven votes.

Presidential competencies have probably been the most controversial issue of the Constitution. President was weak in comparison with the Parliament and could be made politically accountable to the Parliament. His right to dissolve the Parliament was unproductive, because it did not constitute a real threat to the parliamentarians. The president could dissolve the legislature only in one case, if it failed three times within six months after the elections to form a cabinet. In the period of six months after the general elections the president did not have a chance to play any role in possible parliamentary crises. The president was defined as a part of the executive branch of power, within which he might enjoy a relatively strong influence, since he might preside over cabinet meetings and require reports from ministers. Increasing the incongruity of presidential

<sup>6</sup> For example, the constitutional amendment of the Act on privatization passed in November 1994 allowed to privatize a huge part of the national property by new owners, before the Court ruled on the unconstitutionality of this amendment. The government continued to apply this law for the next six months, as is stipulated by the Constitution.



powers, the provisions defining the rights to appoint and recall the prime minister, the members of the cabinet and some other administrative bodies were not clear.<sup>7</sup> Moreover, the presidential veto power was submitted to the prime minister, because the president had to return laws on the prime minister's request. This paved the way for institutional competition and conflicts within the branches of the power. Finally, the design of this component of power was made even more complicated by confusing the provisions regulating presidential elections.

To get a president elected, MPs had to muster a three-fifth majority, i.e. to find a candidate who received at least 90 of all 150 votes. If any of the candidates did not receive such a majority in the first round, the two candidates who received the most votes were scheduled for the second round. However, the number of the required votes was not decreased in the second round, and the third one was not foreseen at all. According to the Constitution, the candidates who did not get enough votes were simply eliminated from the race, and the subsequent rounds of the presidential elections should start with entirely new candidates. The procedure implied the danger that a president was not elected and thus, institutional structure established by the Constitution was incomplete. The danger of a vacant president's position indeed came about and Slovakia did not have a head of state between March 1998 and May 1999. In addition, in case no president was in office, the Constitution did not transfer all presidential powers to the prime minister and some of them were not allocated to any institution, including the powers of dissolving the Parliament, promulgating laws, and appointing the prime minister, cabinet ministers, and other principal officials. The opposition feared that this situation could evolve into a constitutional crisis, because the Constitution did not provide the rules for the cabinet's resignation after the general elections scheduled for September 1998. The constitution stipulated that the prime minister must submit his resignation to the president. It was unclear how a prime minister can be removed from office if there was no head of state to which their resignation could be submitted. This was solved only in July 1998, after long political controversies, when Mečiar-led political forces made concessions, and the Parliament passed an amendment to the Constitution which transferred all the above mentioned powers, including the competence to accept the resignation of the incumbent cabinet to the chairman of the Parliament in the case of a vacant presidential seat.

The presidential veto power, a possible check on the legislature, was also ineffective. Though the president may ask the National Council to reconsider a law it has adopted, the National Council may override this veto by a simple majority. This provision was too far from democratic parliamentary traditions, which usually require a higher majority to overrule the vetoed laws. Since the opposition could not block destructive legislation in Parliament, President Kováč was forced to use his veto power, and this tool, usually rarely used in stable democracies, became a part and parcel of the

<sup>7</sup> Mečiar-led Cabinet used these constitutional ambiguities and shifted some powers of the president to the cabinet. In April 1995, the Parliament passed an amendment to the law on the Slovak Intelligence Service (SIS), according to which the President lost the right to name and recall the Head of the SIS. In July 1995, the Parliament approved a cabinet bill transferring from the President to the Cabinet the power to name the Chief of General Staff of the Slovak Army. Formerly, the Chief of General Staff was nominated by the Defense Minister and approved (or rejected) by the President.

legislative process in Slovakia. However, it had almost no impact on the quality of legislative norms. The frustrated opposition and the President could appeal to the Constitutional Court as the last available institution that could stop destructive consequences of the unlimited majority rule.

The Constitution did not stipulate the formal rules of the selection of prime ministers and the formation of cabinets; it states that the president shall, on the advice of the prime minister, appoint and recall cabinet members. However, another article of the Constitution states that the Prime Minister might also present a motion for the dismissal of a member of the Government. These two articles led to a conflict between the President and Prime Minister in 1993, when Mečiar began dismissing ministers who resisted him. President Kováč petitioned the Constitutional Court to decide this issue. The Court ruled that only the president has the power to appoint or dismiss ministers, while the Prime Minister may propose dismissals and appointments to the president.

This decision, which introduced an element of semi-presidentialism into Slovakia's parliamentary system, started serious controversies between President Kováč and Prime Minister Mečiar. It was even increased in March 1994, when President's report on the state of the Slovak Republic pushed hesitant MPs to dismiss the Prime Minister. The political conflicts between these two leaders grew and peaked in September 1995, when President's son was abducted.

Another constitutional provision states that a president might be dismissed by the Parliament by a 3/5 qualified majority if they act contrary to the sovereignty or the territorial integrity of the country or its constitutional and democratic system. We know of no democratic parliamentary system with a similar provision. Moreover, it sets up the possibility for the emergence of the so-called negative coalitions, which are able to reach a consensus if they want to dismiss a president, but are not able to elect a new one.<sup>8</sup> The HZDS-led Cabinet and parliamentary coalition tried to discredit the president and launched a negative campaign in the government-controlled mass media. However, the government did not have support of the required three-fifths majority in the Parliament to dismiss Kováč. As we have suggested in the first part of the paper, a party taking part in the conflict over powers not well settled in the constitution is prone to use almost any means available to shift the balance in its favor. In the case of the conflict over presidential powers, the parliamentary majority (short of a majority necessary to amend the constitution) first circumscribed president's powers by changing the ordinary (statutory) laws specifying the competencies of the head of state. Later, the same parliamentary majority expressed an extra-constitutional "vote of no confidence" to the president, a procedure not specified in the Constitution and thus without any legal implications. Eventually, the attacks against the President and his family (abduction of his son) displayed clear signs of the Slovak Intelligence Service's involvement. The organization was at that time controlled exclusively by the deputies from the aforementioned parliamentary majority.

<sup>8</sup> In parliamentary democracies such situations usually can occur only with respect to the dismissal of prime ministers. Thus, to avoid a destabilization of the political system, the German constitution stipulates the so-called constructive vote of confidence.

### *Political and Constitutional Changes after the 1998 Elections*

The second general elections since independence were scheduled for September 1998. Four months before, the parliament passed a number of amendments to the electoral law, initiated by the HZDS and the SNS parliamentary parties, designed to reduce the strength of the opposition parties. The electoral alliances, which these had formed were in effect rendered useless, as the new provisions of the law stated that each party in any alliance would have to pass the five percent threshold in order to be allocated seats. This was directed against an alliance of five small parties, the Slovak Democratic Coalition (SDK), two of which could not expect to get the required five per cent of the votes; it was directed also against the three small Hungarian parties brought together under the label 'Hungarian Coalition'. These two alliances had therefore to merge into two parties, which required difficult and lengthy negotiations during the election campaign.

In addition to the newly founded SDK and the Hungarian party (MK), a new catch-all populist party was formed under the name of the Party of Civic Understanding (SOP), which looked for support among the left-inclined voters of Eastern Slovakia as well as among the disillusioned HZDS voters. Rudolf Schuster, the charismatic and populist mayor of Košice, a moderate nationalist in favor of EU membership, became the leader of that party. Together with the Party of the Democratic Left (SDL), these three new opposition parties met prior to the election to discuss their campaign strategies as well as the possible post-election coalition arrangements.

In the event, the four opposition parties did win the election with 58 percent of the votes and obtained 93 of the 150 seats in the parliament. Mikuláš Dzurinda, the leader of the Slovak Democratic Coalition (SDK), formed the government. With 62 percent of the seats and 93 MPs, the four-party government had a comfortable majority in the parliament, the majority which allows even for a change of the constitution.

In November of 1998, Prime Minister Mikuláš Dzurinda submitted his program to the parliament. The program envisaged significant political and economic changes, including the restructuring and privatization of banks with the help of foreign investors. Though the new government is hardly to blame for Slovakia's current economic woes, the failure to turn the economy around may result in a resurgence of popularity for the former government. Including PHC in the coalition provoked outrage among the other governing parties, since PHC is widely seen as a threat to Slovak interests. Defending the decision to include PHC, the prime minister remarked that it had proven itself to be a major democratic force in Slovakian politics. He also pointed out that the country needed "peace and good relations with its neighbors" and that these objectives could be accomplished only if all the parties that supported such goals were represented in the cabinet. In addition, Dzurinda argued that the improvement of the Hungarian-Slovakian relations would be "an important element" of the new government's policies.

The newly formed ruling coalition also tried to include two opposition parties, HZDS and SNS into the parliamentary leadership and offered them two posts of Vice-Chair and chairmanship in a parliamentary committee. This was an attempt to overcome the adversarial mode of political competition, which was typical for the country since the collapse of the communist regime. However, while SNS accepted this proposal and nominated its deputy to the Vice-Chair position, HZDS used this opportunity to go on

with its previous mode of political behavior and blamed the ruling coalition that the offered positions were not really important and the party's leaders demanded different posts, such as chairing the special supervisory committee for the control of the secret service. The ruling parties rejected these demands as unsustainable in a parliamentary democracy, mainly because of the previous abuse of the secret service by the HZDS leaders.

Once formed, and with the parliament's approval, the government set about to resolve the problems inherited from the Mečiar regime. Most importantly, Slovakia had been without a president since the expiration of Kováč's term, on March 2, 1998. In January 1999, after several months of debating various proposals, the leading politicians of the parties that made up the ruling coalition amended the Constitution. Even though Slovakia will remain a parliamentary democracy, the president now will be directly elected by popular vote. Most opposition HZDS deputies did not take part in the vote, although they were present. The Constitution's new text provides carefully laid out electoral procedure, with a view to avoiding manipulation. The amendment also redefined the scope of presidential powers, in an attempt to square them with the principles of parliamentary democracy. The office of the president lost certain prerogatives but gained others. For example, the president lost the power to preside over cabinet meetings and to take part in parliamentary meetings without an invitation from the deputies. The only parliamentary appearance offered the president under the amended Constitution, is the "state of the union" address. Also, presidents may no longer veto "constitutional laws" (laws passed by a three-fifths majority in parliament) and are able to declare amnesty and exercise prerogatives as commanders-in-chief only with the countersignature of the minister of justice and prime minister. This was clearly a response to the controversial amnesties granted by Mečiar after he had assumed some presidential powers. In addition, the president will no longer be able to intervene in the formation of a government, which he had been authorized to do according to a controversial decision of the Constitutional Court issued in 1993.

On the other hand, the president's power to dissolve the parliament – in the event of a conflict between the legislative and executive branches – was broadened. According to the former provisions (Art. 102), the president "may dissolve the National Council of the Slovak Republic if the policy statement of the government of the Slovak Republic is not approved three times within six months after the elections." According to the new text, which replaced the original provisions of Art. 102, the president may dissolve parliament if, after a no-confidence vote, deputies fail to elect a new government on three separate occasions; if the parliament does not pass a government-supported bill that has been linked to a no-confidence vote; or if the parliament fails to pass any laws within a three-month period (an indication that the chamber lacks a working majority). However, the president cannot exercise this power during the last six months of the parliament's term.

The amendment also provides for impeachment, a somewhat unusual provision in a parliamentary system. Under the previous Art. 106, the parliament may "recall the president from his post if the president is engaged in activity directed against the sovereignty and the territorial integrity of the Slovak Republic or in the activity aimed at eliminating the Slovak Republic's democratic constitutional system." In such cases, the motion to recall the president had to be submitted by more than one-half of all the

deputies, and the impeachment was valid if supported by at least a three-fifth majority of all deputies. The new amendment renders the president's removal somewhat more difficult than it was previously. First, a three-fifth majority must pass a resolution ordering that the issue of impeachment be brought to the electorate. Then a popular vote must be held, and the president is impeached if the resolution is supported by the majority of voters. Should the president survive the impeachment vote, he is entitled to dismiss the parliament and, at that moment, he begins to serve a new five-year term. Another minor change introduced by the amendment is that, in the future, the president's constitutional oath will be administered by the chair of the Constitutional Court rather than by the chair of the parliament. Also, if the president decides to resign, he must submit his resignation to the chair of the Constitutional Court.

It was agreed that the election should take place rapidly, since Slovakia had been without a head of State for a long time. Prime Minister Dzurinda and his coalition partners asked Rudolf Schuster, the chairman of the governing SOP, to stand for the elections. Former Prime Minister Vladimír Mečiar decided to run, as well. At the first ballot, Schuster obtained 47 per cent of the vote and Mečiar 37 percent; none of the other eight candidates scored ten percent. Schuster was then elected president at the second ballot with 57 percent of the votes: the governing coalition had retained strong popular support. Thus, Slovakia's political system was again completed.

However, the ruling coalition has faced several obstacles, which hinders an effective performance of parliamentarism. First and foremost, by its nature, the ruling coalition is very diverse, and consists of several political forces, which have different political preferences, alliances and programs. Coalition governments, with a large number of parties tend to enlarge the scope of representation and fewer interests are excluded from access to decision-making. With an increasing number of actors and policy dimensions, however, efforts to build viable majorities and to agree on durable, binding policy decisions may decline, provided the parties do not agree on techniques of consensus building. Therefore, the Slovak public tends to perceive the post-election development as an ongoing 'crisis', since the coalition political parties usually have different opinions on the governmental policies. Thus several reforms have been delayed, because of frequent disagreements. In such situations, the Coalition Council, a political body set up by the ruling parties and chaired by the party leaders has played the crucial role in consensus building. However, this political institution does not have constitutional legitimation, the fact frequently criticized by the opposition, although the same body used to resolve some political and policy controversies in the past. Further, this mode of decision-making, which requires concessions of all partners, is time-consuming and does not fit into the popular demands and the dominant political culture. Voters expect fast, simple and beneficial decisions, which the current government cannot produce mainly due to the structural and the socio-economic reasons and many divergent interests and demands on the government.

Moreover, the opposition has already used a referendum to undermine the stability of the ruling coalition. The first petition asking for a referendum was connected with the Law on the use of minority languages, and the second was related to early elections. The first referendum initiative involved a serious obstacle, as the constitution forbids referenda on human rights questions, and this one would include language issues. Presi-

dent Rudolf Schuster decided to set up teams of legal experts to advise him on this issue. In the end, Schuster decided against calling a referendum, supporting this decision by legal expertise and international aspects, as such referendum could again injure Slovakia's international credibility.

The second referendum on early elections indeed took place in November 2000, in spite of several arguments that it was not possible to have such question decided by a popular plebiscite. The referendum was not valid – the same pattern was repeated as in all referendums that were organized in Slovakia – because of the low turnout. At least 50 percent of registered voters must participate in a referendum to be valid.

Dzurinda's cabinet has focused on those reforms that are part and parcel of the EU accession process. In February 2001, the parliament adopted the second significant amendment to the Constitution, considered necessary for improving several contradictions in the Basic Law. The amendments, together with the reform of the public-service sector, is a key prerequisite for EU accession and would bring Slovakia's Constitution in line with EU standards. The parliamentary Commission for Constitutional Change was formed in the spring of 1999 and consisted of four deputies from the ruling coalition who are also their parties' constitutional-law experts. Despite the ruling coalition's offer, the opposition parties refused to participate in the commission's work. Although the amendments had been ready since March 2000, several controversial issues between the coalition parties had to be resolved before the parliament could begin to debate. The opposition deputies of Vladimír Mečiar's Movement for a Democratic Slovakia (MDS) voted against the legislation en masse, and called February 23 an 'ominous day for Slovakia', but did not succeed in mobilizing a single person to join their protest in front of the parliament against the amendments.

The other amendment specifies the procedure whereby a deputy may resign from the parliament. (That clarity on this issue is necessary became apparent during the infamous Gaulieder case when a fake letter purportedly sent by Deputy František Gaulieder to the parliament's Mandate Committee served as a pretext for the committee to strip him of his mandate).

The amendments also ushered in changes in the judicial system. The number of Constitutional Court justices was increased from 10 to 13 and their terms were extended from 7 to 12 years. Another amendment remedied provisions regarding referenda, allowing the president to petition the Constitutional Court over a referendum's constitutionality before it is announced to the public. This proposal came at the request of President Rudolf Schuster. The amendments also established a new institution, the Judicial Council, in an effort to strengthen the judiciary. The amendments also established the office of ombudsman. Moreover, articles regulating the competence of the Supreme Auditing Office were substantially amended, and its powers over budgetary spending were strengthened and more clearly defined.

### *Conclusion*

We believe that controversial, inconsistent, and unclear constitutional provisions after the establishment of Slovakia have worked as the driving force generating formative incentives for actors' goals and strategies. The disciplined parliamentary majority during that period was not effectively checked and limited by any bodies (with a partial exception of the Constitutional Court). Unclear provisions concerning referendums were misused to thwart the plebiscite in 1997. Presidential veto was unproductive, while some other articles regarding presidential powers became the generator of further conflicts between the president and the parliamentary majority controlled by the cabinet. Even though the role of the Constitutional Court has been largely positive, some of its rulings caused even more confusion.

Although the brief examination of the constitutional amendments has illustrated that the political elite has been learning fundamental 'rules of the game' under the framework of parliamentary democracy, even this improvement of formal rules cannot overcome the deep rift in the political elite in Slovakia, which continues to be shaped by a sharp mode of party competition between the nationalist and the liberal block. To anchor informal rules of consensus democracy in such a deeply divided polity has been a very complicated process, as only one political block – the liberal – accepts the existing formal rules of parliamentary democracy, while the nationalist forces continue to favor the majority rule and the populist appeals and instruments.

We suppose that the examined constitutional and other institutional changes point to the right direction; however, to function effectively, these formal rules have to be broadly accepted and practiced by all main political actors. Only in this way it is possible to build and sustain a coherent institutional framework, in which the informal rules support the formal ones. Such a development may also help to overcome a strong tendency to majority rule that can be interpreted as the communist legacy – the legacy of an authoritarian regime. In such a way a "congruent socialization" of political actors toward consensual democracy may also gradually develop. Whether it is possible also to "socialize" the nationalist and the populist political actors or a gradual marginalization will be an option, will be resolved only in the next general elections.

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