

No Skyfall

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The Twenty-Third Amendment to the Slovak Constitution

On 26 September 2025, the Slovak parliament adopted the 23rd amendment to the Constitution, introducing an explicit “national identity” clause and a series of provisions presented as measures to “protect the family”. The amendment immediately drew international attention, including from the Venice Commission, which issued an Opinion two days earlier highlighting both

procedural irregularities and substantive concerns. Yet, despite the alarm it has caused, the amendment's immediate impact is likely to be limited: most of its provisions remain largely symbolic without accompanying legislation or supportive judicial interpretation. Overemphasising its textual changes therefore risks overstating Prime Minister Fico's manoeuvres. Instead, the real battleground will unfold in legal disputes over the amendment's meaning and reach – with the Constitutional Court, petitioners, and the broader constitutional interpretive community expected to play a decisive role.

The prime minister in the lead role

The concept of the amendment was proposed by Robert Fico in January 2025. Slovakia's four-time PM was once known for a pragmatist attitude to the EU and even as contributing to further integration (including Euro adoption). However, after a series of electoral defeats and risks of charges for criminal conduct, Fico used his return in 2023 to accelerate Slovakia's illiberal transformation. The 23rd amendment was part of this effort.

The amendment package was officially submitted as an executive bill in March. Unlike other changes initiated by Fico (such as those to criminal legislation), this package was not subject to accelerated proceedings. Thus, at least in principle, parliament could debate on the proposal. In the voting process, the opposition party of the Christian Democrats went through a split. Two Christian Democrat MPs, including a prominent conservative intellectual, refused to support the amendment, but the majority of the MPs of this party, including the party chairman, broadly endorsed it.

The prelude for the week

The Venice Commission's Opinion sought to offer an authoritative analysis amid a deeply partisan debate – an uphill task given the polarisation and broader context of Slovakia's illiberal turn. It focused its strongest criticism on the enactment procedure which – while justified in principle – was less compelling in this case because unlike in past cases, the 23rd amendment was not pushed through an accelerated process.

The Opinion explicitly does not question states' rights to regulate a wide range of actions as they see fit. It mostly uses terminology referring to the "margin of appreciation" to get this point across. Moreover, it adopts a largely descriptive tone, mostly summarising ECtHR case law with ECHR references rather than engaging in broader conceptual analysis or detailed commentary on the Slovak context. By doing so, it seems to intend to deflect accusations of siding with the Slovak opposition. This approach avoids directly criticising some of the

measures that could undermine minority rights by noting that similar restrictions exist in other ECHR member states, thereby suggesting that maintaining the status quo ante is the advisors' primary objective.

The Opinion also problematises the blurring of lines between politics and partisanship. It calls for a "clear separation" between "constitutional and ordinary politics" (para 21), and later refers to "ordinary majority politics" (para 68). Such a distinction could support depolarisation by stressing the need for broader consensus on constitutional changes. At the same time, it risks legitimising "ordinary" legislative measures that can be just as, or even more, consequential for people's lives. For example, Slovakia's recent "criminal reform" falls into this category. Also, the need for proportionate justification and deliberation applies to all changes of Slovak laws.

The (un)surprising voting result

The atmosphere in the Slovak parliament and partisan discourse made it unlikely for the Venice Commission Opinion to have major and immediate impact in the voting process. Still, the amendment needed 90 votes to pass, and it was not expected that PM Fico can assemble such a coalition because not enough opposition MPs were willing to endorse it. The leadership of the opposition Christian Democrats was supportive. Most of its MPs did not question the "national identity" exception. The changes in the wording of the amendment they initiated prevented some of the more egregious formulations of Fico's original initiative that would have amounted to more extensive interferences with the right to education. However, they retained and reinforced the exclusionary language vis-à-vis transgender and LGBTIQ+ persons.

The amendment could ultimately pass with the narrowest margin thanks to the last-minute support of two MPs belonging to the "Slovakia" movement of Igor Matovič, the former PM known for opposing PM Fico but also for embracing populist "improvisational" approaches at the expense of durable problem-solving.

Besides the Opinion of the Venice Commission, several experts and NGOs as well as the ombudsman warned against the changes. The Slovak Bar Association endorsed the critique of the Venice Commission. Unlike some human rights NGOs, the Bar Association or the ombudsman cannot be seen as speaking for primarily more progressive members of the legal profession. Indeed, the lack of professionalism and justification in the practice of changing the constitutional text has become a broader concern in the Slovak lawmaking practices.

At a press conference a few days later, Prime Minister Fico misrepresented the Venice Commission's findings by claiming that it essentially supported the amendments – despite the fact that the Opinion was, for the most part, cautious or openly critical. This interpretation was contradicted even by a response from the Ministry of Justice, led by a nominee of Fico's own party. Rather than twisting the Commission's words, the Ministry attempted to rebut its criticisms by pointing to similar exclusionary rhetoric and practices in so-called "Western" democracies – notably the May 2025 letter from several European prime ministers challenging the ECtHR's competence on migration, an initiative widely condemned by human rights experts.

PM Fico's anti-evidence rhetoric – the readiness to subvert the evidence to support his position – is part of his broader strategy. He relies (and likely rightly) on the fact that few of his voters would find and read the Opinion to confront his claims, while those opposition and civil society actors who do can be discarded as "foreign agents" and the real deceivers among his fervent supporters. In such an environment, opinions of supranational advisory bodies are unlikely to make a major difference. Nevertheless, they remain important as a point of reference for a broader conversation as well as for interpreting the changes by domestic institutions, particularly the courts.

Has anything really changed?

The enactment of the amendment certainly cements Slovakia's reputational harm as a democratic state. The text reads particularly hurtful towards sexual minorities and transgender persons. It also devalues children, whose rights may be jeopardised by extending the parents and guardians' rights over deciding (some) educational content. Some stakeholders, including PM Fico himself, might use the vague wording to attempt to justify actions that will challenge EU institutions' authority on the ground of reservations of competence.

At the level of legal validity, however, the amendment did not alter the fundamental principles of the Slovak Constitution that run counter to these illiberal tendencies, nor did it change the role and responsibilities of the Constitutional Court and the wider epistemic communities around it. Even before the amendment, Article 7(2) of the Constitution established the primacy of EU law over ordinary Slovak legislation – though the use of the term "laws" makes it unclear whether that primacy applies to the Constitution, as well. This means Slovakia could, in principle, resist specific EU laws that entrench exclusionary practices, for example by imposing more restrictive measures on vulnerable groups such as asylum seekers than those provided under domestic law. Given current EU approaches to migrants and refugees, this scenario is far from hypothetical.

It is likely, however, that both the implementing legislation and broader political developments in Slovakia will prompt human rights advocates to rely on EU and ECHR law – imperfect though they may be – as providing comparatively higher standards in the areas affected by the amendment. Litigation at the Constitutional Court will matter. As in other cases with (so far) independent judicial institutions, the quality of the petitions brought forward to the Court will be important, and the judges could be expected to seriously consider (at least) disapplying those provisions that are in tension with the constitutional foundations (“the constitutional core”) of the Constitution. The “constitutional core” is rooted above all in Article 1(1) of the Constitution, which defines Slovakia as a “sovereign, democratic state governed by the rule of law [and] not bound to any ideology or religion.” As a result, the Constitution continues to require respect for those international and supranational legal obligations that embody these principles in their entirety, rather than treating them in isolation.

The Court also has the formal powers needed for review. One complication stems from a 2020 amendment spearheaded by none other than Igor Matovič, Fico’s opponent, which formally prohibits the Court to review changes to the text of the Constitution. Even though the Court declined (pp. 265-267) to outright invalidate that ban, it retained a leeway for review if the amendment text touches upon the “constitutional core” to an “extreme extent”.

The Court did not develop a methodology of establishing the extent of interference that would pass the threshold, leaving the interpretive space rather open. Still, insofar as the “constitutional core” encompasses a democratic future for Slovakia, the Court arguably has an obligation to push back against laws and practices that promote truncated, unrestrained majoritarian conceptions of democracy. Moreover, truncated conceptions of democracy as unrestrained majoritarianism create tensions with the rule of law. Ultimately, whether the amendment endorsed via the sheer majoritarian logic of the minimum required majority of 90 votes amidst a deeply polarised societal environment will be read as curtailing the rule of law by, for instance, cracking down on human rights NGOs or minority groups, will depend on the Court’s interpretation.

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