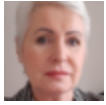


Governing in Slovakia after the 2023 Early Elections

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To Hell, on a White Horse

Slovakia voted on the final day of September 2023. The majority of the emerging governing coalition used narratives typical from Hungarian, Polish and other illiberal discourses, and now represents a risk of illiberalizing Slovakia's constitutional system and joining Hungary in a revamped illiberal Visegrad alliance, with Poland expected to leave it.

The electoral rhetoric, results and subsequent coalition-building give grounds to expect illiberal constitutional changes. Is it possible that Slovakia backslides to the era of 'Mečiarism', named after the Slovak Prime Minister who tried — and failed — to implement a non-democratic regime between 1994 — 1998? This post, while it cannot conclusively answer this question, argues that more attention is needed towards the Constitutional Court's capacity to resist illiberalization.

The context of the elections

The elections came early, due to the fall of the governing coalition constituted in 2020, at the start of the COVID-19 pandemic. This coalition led by Igor Matovič mismanaged the COVID-19 pandemic. The fatigue from the ensuing economic downturn coupled with the frenetic work of the former PM, the increasingly illiberal Robert Fico, have secured the latter the dominant position.

Fico won convincingly over his main contender, the liberal 'Progressive Slovakia' party led by the then Vice President of the European Parliament, Michal Šimečka. During the campaign, Fico has consistently been promoting illiberal rhetoric and pro-Russian stances, which helped him gain support of large segments of the population, who increasingly lean toward conspiracy and disinformation. His success with this rhetoric weakened the far-right 'Republic' party and the pro-Orbán Hungarian minority party 'Alliance', which failed to reach the threshold of five per cent votes needed to gain mandates by a narrow margin.

To form a majority, Fico needed the support of the more mainstream party 'Voice' (Hlas). The latter emerged via splitting from Fico's 'Smer', led by one of his closest aides, Peter Pellegrini, who also became PM in Fico's government when he had to leave the post due to public pressure. The chauvinist 'Slovak National Party' (SNS), which joined forces with a range of conspiracy theorists and anti-European activists, found itself, by a similarly narrow margin, on the successful end of the threshold. If we add the votes for 'Republic' and 'Alliance' (over 270,000 in total) to the ones of Smer and SNS, over 1,100,000 voters of the around three million (68.5 %) participating voted for parties with illiberal appeals.

Hlas had good reasons to be reluctant to consent to a coalition with Fico, who is also known for his tendency to siphon his coalition partners to boost support for Smer at their expense, even at the cost of their total political annihilation. Moreover, Progressive Slovakia, Fico's strongest opponent, offered Pellegrini the PM position. Yet, Pellegrini decided to join forces with Fico and Andrej Danko, the Chairman of the SNS. The deliberate decision of Pellegrini to join this coalition makes it unlikely that Hlas would be able to become a bulwark against illiberalism.

Looming illiberalization, step 1: Official post-election rhetoric

The three future governing parties signed a 'Memorandum of Understanding' (Memorandum) that, between the lines, sets out a clear illiberal trajectory for Slovakia. When introducing the Memorandum, Fico referred to a nursery rhyme composed by Czech composer Leoš Janáček saying that if we should go to hell, then on a white horse (he used the phrase before).

The Memorandum, when read thoroughly, contains few remnants of a pro-EU position and indicates the readiness to assault constitutional human rights guarantees.

On the former, while it claims the parties "guarantee the foreign-policy orientation of the Slovak Republic on the basis of EU, NATO and other important international organization membership", it hastens to add that they will be doing so while "respecting sovereignty and national-state interests of the [Slovak Republic] and strengthening of healthy patriotism". The coalition agreement (an informal set of joint commitments by the parties which had agreed to form a government in Slovakia) signed on 16 October softened some portions of the Memorandum, by highlighting "the significance of European integration and international cooperation for the security of the citizens of the Slovak Republic".

Nevertheless, the presentation of national interest as in tension with the European and global integration of Slovakia is retained in both the Memorandum and the coalition agreement. Moreover, as the Hungarian (and, to a lesser extent Polish) examples demonstrate, EU institutions have been tolerant towards "multitasking" between EU membership and building illiberal regimes.

Of course, it may come at a (monetary) price, for example, due to the Conditionality Regulation, and Slovakia is smaller in size than Hungary or Poland (as a Politico commentary was quick to assert even before the elections), which may pose a challenge in opposing joint EU solutions. One cost for Smer and Voice has already materialized through their suspension from the Party of European Socialists. The suspension materialized because the parties associate with the chauvinist SNS, while Smer also opposes military aid to Ukraine and engages in anti-minority rhetoric.

However, it is unclear whether the European Commission will be strong and effective enough to pick new battles and devote resources to combatting illiberal surges. In addition, Fico is likely to join forces with Hungarian PM Orbán.

Looming illiberalization, step 2: The possibility for an illiberal constitutional majority

Domestically, the Memorandum declares, inter alia, the ambition to “through constitutional and legal means implement a reform of the Slovak criminal justice system and mechanism of human rights protection”. This is a vaguely formulated ambition that may open the floodgates for regress in human rights standards, common for illiberal regimes. The Minister of Interior, despite hailing from the more moderate Hlas, communicated to the investigators of high-profile corruption cases that they should “pack their stuff and get lost from Slovakia”.

Both Smer and SNS have engaged in anti-minority rhetoric, in particular against the LGBTIQ and Roma. The ‘human rights provision’ of the Memorandum openly indicates that the new majority will not take existing constitutional and international human rights guarantees for granted. And while they alone do not enjoy a constitutional majority (as several pro-democratic commentators rejoiced in the wake of the elections), it would be premature to argue that effecting constitutional changes are impossible for them.

This is because of the flexibility of the Slovak Constitution, where a three-fifth majority of a unicameral legislature suffices to enact amendments. Moreover, there is an established practice to pass amendments by a coalition of ‘strange bedfellows’, for example, the ‘peculiar union’ between Smer and the Christian Democrats on cementing ‘marriage’ to denote a union between a man and a woman in 2014.

An illiberal majority can be found in the current legislature. Besides the coalition parties, several opposition parties are not reliable guarantors of fundamental rights. Members of Igor Matovič’s party (which remains an amalgamation of various individuals and groupings with little to no ties to any party structures) engage in anti-minority rhetoric, claiming to defend the (Catholic) religious origins of the country.

Finally, there is the Christian Democratic Party, which succeeded to return to the legislature after two terms of non-parliamentary status. This party claims commitment to the democratic foundations of the regime, but it remains adamant to prevent the advancement of some minority rights — perhaps best illustrated by the Chairman of this party having called LGBTIQ people “a plague”. Though he later apologized, this act might have even helped him gain some votes from the more extreme parties amidst a general backlash against gender equality in the region. Some MPs of this party have already indicated openness to support some illiberal constitutional changes, if they are proposed by the governing coalition.

Looming illiberalization, step 3: Small illiberalisms

In addition to the more formal communications and the risks of illiberal constitutional majorities, signs of ‘small illiberalisms’ (paraphrasing Scheppele’s ‘small emergencies’) may be observed in leaders’ post-election communication. For one, Fico has vouched to spearhead legislation registering NGOs with funding from abroad as foreign agents, an inspiration from Putin’s Russia.

Even more telling are the videos posted on his social media. In one of these videos, Fico first explains how the suspension of his and Pellegrini’s parties from membership in the European socialist party family signals an anti-democratic move that does not tolerate ‘freedom of expression’. By presenting freedom of expression as allowing divergences in commitments to fundamental rights and basic foreign policy positions within a party group that is brought together on the basis of shared beliefs in the first place, he undermines the commitment to any coherent principles and stances on key policy issues. He abuses the fundamental rights narrative; a tendency identified to occur in the rhetoric of Slovak extreme political actors, a fundamental characteristic of political parties and party families.

Subsequently, Fico openly engages in dehumanizing rhetoric. Talking about the Roma having been “bought” by former PM Igor Matovič, himself a populist politician, Fico stresses that they will “lick their paws” because his new government will give nothing “for free” to those who think there are “rights but no duties”.

This statement, made on social media instead of an ‘official’ press conference, may not change much in the larger scheme of things. Ultimately, discrimination against the Roma has been the norm, not the exception in Slovak politics. Yet, (more or less) ‘small illiberalisms’ such as these add up, marking the rise of anti-constitutional populist practices in Slovakia.

Constitutional resilience through the Constitutional Court?

With the Parliament unlikely to pose a barrier to illiberalization even via constitutional changes, despite a relatively strong democratic opposition, at least in the domain of fundamental rights protection, more eyes should turn to the Constitutional Court.

Most of the 13 constitutional judges are expected to serve beyond the end of the current electoral term. Hence, it would be difficult for Fico to tamper with the Court's composition.

However, Fico, unlike Vladimír Mečiar, the semi-authoritarian Slovak PM in the 1990s, is well aware of the importance of the Constitutional Court. In fact, at one point he wanted to 'leave politics' by becoming its President, an attempt that failed as more information surfaced on Fico's connection with oligarchs, in particular the one suspected to be responsible for the murder of the journalist Ján Kuciak and his fiancée.

Consequently, Fico could explore complicating the Court's operations through procedural changes, as the 2018 Act on the Constitutional Court does not have a constitutional status and is amendable by a simple majority as standard statutory legislation. For example, the quorum for the Court to be able to make decisions in the plenum could be increased from the simple majority of seven judges, thus complicating the capacity to decide if some judges cannot participate due to objective reasons. Moreover, there are no constitutional budgetary guarantees for the Court's operations, so its budget could be reduced on alleged grounds of budgetary consolidation, along the lines of practices already tried (p. 355) by PM Mečiar in the 1990s. And if the Court strikes down any legislation of interest to Fico, he might publicly condemn the Court and spur animosity or even hatred against its judges.

One can only hope that the current Constitutional Court has what it takes to halt likely illiberal changes in Slovakia despite the expected accusations of its 'undemocratic activism' by their proponents. It may rely on alliances with other pro-democratic stakeholders, including a relatively strong independent media sector, some NGOs and state institutions preserving their democratic commitments, such as the Slovak National Centre for Human Rights. These did not exist or were considerably weaker during 'Mečiarism', but, without the Court, remain vulnerable to practices of autocratic legalism. For the Court to be a bastion of democracy, it should avoid Oliver Wendell Holmes' dictum claiming the "job" of the judge(s) is to "help [...] fellow citizens to go to Hell [...] if they want to".

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References

- ↑**1** If this has a deeper meaning, it is known to him only. However, the hero of the nursery rhyme, who is travelling to hell on a white horse is also said to 'know nothing' and to have 'bought a key'.

References

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