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Report on the observation of the first regional elections held in Slovakia, 1st December 2001

Rapporteur: Mr Martin HAAS (L, Switzerland)

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I. INTRODUCTION

1. On 7 November 2001, in the light of Recommendation (88) 2001 of the CLRAE on local and regional democracy in Slovakia and the reply to the recommendation by the Slovakian Minister of the Interior, the Bureau of the Congress took note of the report prepared by Mr Jean-Marie Woehrling¹ on Act No. 302 - adopted by the National Council (the Slovakian parliament) on 4 July 2001 - on the autonomous administration of the upper tier of local and regional government (the Self-Governing Regions Act)².

2. The Bureau also considered the views of the Slovakian Minister for Foreign Affairs³, the Association of Towns and Municipalities of Slovakia (ZMOS)⁴, the members of the Slovakian delegation to the CLRAE⁵ and the President of the Hungarian Coalition Party⁶.

3. The Bureau approved the expert report and took note of Mr Woehrling's comment that "*broad acceptance of the territorial boundaries adopted will only be achieved if the electoral procedures adopted guarantee satisfactory representation of cultural minorities, particularly the Hungarian minority*".

4. The Bureau then:

a. asked the Council of Europe's European Commission for Democracy through Law (the Venice Commission) to express an opinion on Act No. 303 of 4 July 2001, on elections to the self-governing regional bodies and on the amendment to the Code of Civil Procedure⁷;

b. expressed the wish to observe the country's first regional elections on 1 December 2001, subject to an official invitation from the Slovakian authorities.

5. The Bureau's decision to observe the regional elections was communicated by the Executive Director of the Congress to Mr Josef Liška, Director General of Public Administration at the Slovakian Ministry of the Interior, when the latter attended the mini-session of the Congress in Strasbourg on 9 November 2001.

6. On 19 November 2001, at the request of the Slovakian authorities, the President of the Congress wrote to them confirming the Bureau's decision. In reply, Mrs Eva Garajová, Permanent Representative of Slovakia to the Council of Europe, wrote to the Congress on 21 November to inform it that that same day the Slovakian Government had "welcomed the Council of Europe's interest in the regional elections and agreed to Congress observers' taking part in them" (see appendix 1).

7. The Secretariat of the Congress organised the observation mission in conjunction with the Association of Towns and Municipalities of Slovakia (ZMOS). The list of members of the Congress observer delegation appears in appendix 2. Mr Gerhard Engel (L, Germany) was appointed head of delegation and Mr Martin Haas (L, Switzerland) was asked to present a detailed report to the Bureau at its meeting on 12 December 2001.

8. During the visit, the delegation met representatives of the authorities directly concerned in the electoral process, political parties and civil society. The meetings took place before and after polling day (see the programme in appendix 3).

9. Following the observation exercise, the delegation organised a press conference in conjunction with the Ministry of the Interior. At the conference, held in Bratislava on 2 December 2001, MM Engel and Haas presented the press release that appears in appendix 4.

10. The Congress wishes to thank the Slovakian authorities for their co-operation and the Association of Towns and Municipalities of Slovakia for its effective assistance and extremely warm welcome. Particular thanks are also due to the experts, Mr Bernard Owen and Mr Giuseppe Alessandro La Scala, for their assistance to Congress members during the observation visit.

II THE POLITICAL AND LEGAL BACKGROUND TO THE FIRST SLOVAKIAN REGIONAL ELECTIONS

11. As previously stated, the CLRAE observation mission had an essentially political purpose. When it decided to observe the elections, the Bureau was effectively seeking to assess the impact of the reform that recently divided the country into eight self-governing regions (see the new regional map in appendix 5). One of the main aspects of the reform concerned the geographical division of the country.

12. In his report, Mr Woehrling said that "one might question the criteria governing the decision on how to divide up the territory. Such criteria should take account of a wide range of concerns such as economic considerations, local infrastructure, distribution of the population, historical and cultural traditions, rational management of the territory and the preferences of the people in question. The criteria should reflect a concern not to reduce existing possibilities for national or cultural minorities to manage and preserve their specific cultural traits.

In other words, administrative division should not be deliberately aimed at scattering the members of a specific cultural group over various administrative entities, thus making it more difficult for them to manage their common interests. The authorities of member states are therefore not asked to organise the division of the territory solely or mainly in keeping with the cultural interests of minorities. On the other hand, territorial division should not be mainly or partly concerned with dispersing the minorities among several administrative units.

As far as the territorial division of Slovakia into eight regions is concerned, it does not seem possible to level such a criticism in respect of the eastern part of the Slovak Republic. One might, however, wonder what criteria were used to divide up the western part of the country into regions. It has been divided vertically, instead of horizontally as in the east. This means that the Danube plain between Bratislava and Sturovo is divided into two and that a number of areas which at first sight do not appear to be homogeneous are grouped together to form a long narrow region stretching from Skalica to Medved'ov. The result of this division seems to be that a geographical area made up of a large minority of Hungarian origin is divided between the two regions of "Nitra" and "Trnava" in a way that has the effect of weakening the influence of this minority in each of these regions. This does not in itself constitute a reason for challenging the territorial division opted for if there are sound objective arguments in its favour. I am not, however, aware of any such arguments. It is conceivable that, even if objections could be raised to the division carried out in 1996 in respect of the decentralised state authorities, it is now a fait accompli and might be expensive or difficult to change, and that the advantages arising from the fact that the self-governing regional authorities and the decentralised administrative authorities cover exactly the same area will in the long run justify using the same division for the establishment of autonomous regions, even if it is questionable. This is something on which I cannot give a definite opinion. Nevertheless, it is highly desirable that care be taken when undertaking regional reform to divide the country into coherent regions, from the standpoint of not only economic and geographical criteria but also the cultural traits of the populations concerned.

The problem could perhaps be solved by ensuring that cultural minorities are satisfactorily represented by means of specific provisions in legislation on the autonomous regions. Specific provisions to this effect in the electoral law or with regard to the setting up of regional councils representing cultural minorities might offset the aspects of this territorial division which are less favourable to these minorities, if there are no other sufficiently good reasons for challenging this division. It might therefore be a good idea to advise the Slovak government to try to supplement the law of 4 July 2001 with provisions designed to take account of the specific needs of the Hungarian cultural minorities."

13. In the light of these comments and of the Bureau's terms of reference, the CLRAE observer delegation saw the visit as an opportunity for the Congress to gain a clearer idea of the way the communities concerned viewed the geographical divisions described above.

14. On polling day, the Congress representatives were divided into four two-person groups. The four teams observed the conduct of the elections in six separate regions (Bratislava, Nitra, Trnava, Trenčín, Žilina, and Banská Bystrica). This enabled them to visit a total of 64 polling stations. The count was observed in four polling stations, in the Trnava and Bratislava regions. During the observation stage, particular attention was paid to regions with ethnic Hungarian minorities (Nitra, Trnava). This involved visits to the towns of Šamorín, Dunajská Streda, Komárno, Šturovo, Nove Zámky and Šal'a.

15. In these regions the observers found that, with certain exceptions, the territorial reform sub-dividing the country into eight self-governing regions that matched the administratively decentralised state authorities was generally well accepted by the communities concerned. The only criticisms of the "vertical division" of the regions in question were of a practical nature and simply concerned the excessive distance between certain local authorities, no matter what their ethnic composition, and their regional capitals.

16. From its direct contacts with citizens, the CLRAE observers concluded that the main concern of the inhabitants of towns and villages with a strong Hungarian element was less the tracing of regional boundaries than whether they could participate actively in regional public life. For these individuals, particularly young persons, problems relating to unemployment, social assistance, transport and the environment probably constituted higher political priorities than a reorganisation that would concentrate their ethnic community in a single autonomous administrative unit. This view was only challenged by a few elderly persons still firmly attached to their Hungarian linguistic and cultural identity.

17. It is interesting to note in this context that certain representatives of the Hungarian minority were firmly of the view that the vertical sub-division of the south-west part of Slovakia was not a problem in itself and that in reality it had been raised by politicians who were "more interested in their careers than in the real interests of citizens".

18. Apart from the (fairly negligible) disappointment that there was no region in the south-west of the country with a Hungarian majority, the point was also made that while the vertical sub-division was not natural, it would probably help to strengthen the social and economic cohesion of the regions concerned, particularly in the context of Slovakia's joining the European Union.

19. Nevertheless, many citizens of all ethnic groups argued that the current geographical division of the country could only be judged in terms of how democracy was actually exercised at regional level. The application of the legislation on the sharing of powers, finance, property holdings, transfrontier co-operation, relationships with local authorities and oversight of regional authorities' activities will provide a very important test-bed for the reform enacted by the Slovakian parliament in July 2001⁸.

20. Another positive argument put forward by the representatives of the Hungarian minority whom the delegation met was that, thanks to its elongated shape, the Trnava region would be able to establish cross-border co-operation with the local and regional authorities of three different countries: the Czech Republic, Austria and Hungary.

21. Other persons wondered about the potential consequences of establishing a horizontal region including all (or nearly all) the Magyar community. In such a region, Slovaks would themselves have become a regional minority. This point was naturally expressed forcefully and spontaneously by all the ethnically Slovak citizens whom the Congress observers met in the Trnava and Nitra regions.

III. OBSERVATION OF THE ELECTIONS

1. Introduction

22. For the purposes of the regional elections, Slovakia was divided up first into the regions themselves and then into electoral constituencies. At the elections on 1 December 2001, the electorate was voting to elect regional assemblies and the presidents of these assemblies. There will be a second round of voting on 15 December 2001, to elect the presidents of assemblies who were not elected in the first round. In both cases, elections are by majority vote. The Hungarian minority parties stood in six regions and eighteen constituencies and had four candidates for regional presidents. They generally stood alone, but in one region they were in a coalition.

23. The delegation did not hear any criticisms of the drawing of constituency boundaries, which under section 5 (1) of the electoral law is decided by the National Council 65 days before the election, with population being the sole criterion. At a meeting with the Bureau of the Central Electoral Commission (CEC), the delegation noted that constituency boundaries were based on groups of 15 000 inhabitants. In fact the number of persons per constituency varied very greatly. The delegation therefore questioned the legal adviser at the Ministry of the Interior, who said that he had not had time (since late July) to work out new constituencies, that he had related them to the administrative divisions and that in future regional authorities would be responsible for defining constituencies. He referred to section 11 of the Self-Governing Regions Act of 4 July 2001, according to which regional assemblies would determine the number of members according to the ratio of 12 000 to 15 000 inhabitants per member.

24. For elections to the regional assemblies, each party can nominate as many candidates as there are seats to be filled in the constituency. Candidates - not parties - are listed in alphabetical order. A constituency with eight seats to fill and eleven parties standing would thus have a list of 88 names, assuming that every party fought all the seats, but a party's places on the ballot paper would be determined by the names of its candidates. Voters circle the names of their selected candidates. In this example, the eight candidates with the highest number of votes, i.e. a simple majority, would be elected. For a ballot paper to be valid, the voter must have selected between one and eight candidates.

2. The media - radio - television

25. The delegation was informed of the Media Act, section 2810 of which prohibited the broadcasting of political propaganda during election campaigns. The use of radio and television during elections has to comply with legislation, such as the National Elections Act of 1990, as amended in 1994. This was not the case with the electoral legislation on regionalisation. Several persons explained this by the fact that since the elections were essentially regional, there was no question of broadcasting national political propaganda. On the other hand, there were non-partisan broadcasts of information. One of the persons met, the Director of the Legal Department of the Ministry of the Interior, said that he had taken part in such a broadcast two weeks before the election.

26. There may be another, unstated, reason for the decision not to involve national media in the campaign. The alliances in the National Council did not always hold in the regional elections. There are two possible causes: the fact that the simple majority voting system obliged smaller parties to form alliances either among themselves or with other larger parties. The strengths of the respective parties varied according to region and led to alliances that sometimes differed from that of the ruling government coalition, which had emerged from elections based on proportional representation in a single national constituency.

3. The election observation itself

27. The electoral legislation concerning regions has an unusual way of dealing with observation activities. It makes no reference to the observation of counts and gives each polling station commission the right to admit observers to their polling station or refuse them admittance (section 34). The Central Electoral Commission and the Ministry of the Interior thought that the observation of Slovakian elections was unnecessary and refused a local NGO access, citing section 34, on the grounds that it was not possible to grant national authorisation since this power was devolved to local polling station commissions. A representative of the OSCE office in Minsk and a member of the OSCE-ODIHR attended with ten members of a Belarus NGO, to introduce the latter to observation techniques. The organisers were adamant that they were not observing the regional elections. In fact, the Council of Europe was the only international organisation accredited for observation. Moreover, during this period the delegation did not encounter any local observers.

28. The majority of members of the Central Electoral Commission had circulated around the polling stations and reported back on the situation on the ground. There was also a press presence. On very rare occasions, Congress observers came across police officers in or around polling stations. At 10 pm on 1 December, part of the Central Electoral Commission left its headquarters to attend the vote counting while the remainder went home to rest. All were scheduled to meet up again at 6 am and only five members remained on the spot. The members of the delegation were free to circulate round the Ministry of the Interior where the Central Electoral Commission had its headquarters and talk at length to the Director General of the Ministry of the Interior and the Secretary General, legal adviser and other members of the Central Electoral Commission.

29. The local electoral commissions were made up of representatives of political parties, probably more from the opposition than the governing coalition. There were also independent members to replace party representatives who were absent. Polling station presidents were chosen by lot (section 8-6), although a few polling stations had voted on the matter. For example, one president, a Communist party member, proudly announced that he had been elected, even though he had been president of the same polling station for thirty years. All the Commission members freely acknowledged their political allegiance. From what the delegation saw, mobile ballot boxes were available in polling stations, but not much used.

30. The polling stations observed were well organised and the operation proceeded without hitches. They appeared to be open for the statutorily prescribed hours. Although only a very small number of vote counting operations were observed, this apparently went smoothly. The law was scrupulously observed, almost to the letter, since in the case of a ballot paper where the candidate's number had been marked with a cross instead of being circled, as the law stipulates, the ballot paper was declared invalid.

31. The delegation's press conference was well attended by the media. Four television cameras were present and some twenty radio stations represented. Numerous questions were asked, but they focused on the points raised in this report. The Central Electoral Commission was represented by four members, including its President.

4. Turnout

32. The turnout on 1 December was approximately 26%. There are several reasons for this low figure. The Congress delegation sees it as a direct consequence of the gaps and organisational shortcomings in the provision of information on television and radio. In addition, the extremely short (about twenty days) election campaign was probably insufficient for the general population to grasp the importance of the country's first regional elections.

IV. CONCLUSIONS

33. The overall assessment of the first regional elections is positive. This conclusion is applicable both to the conduct of the election and the public's perception of the regional reform.

34. In general, the elections were free and democratic. The voting was professionally organised and took place in a calm and positive atmosphere.

Nevertheless, certain reservations must be expressed about the official approach to informing the public about the setting up of regions and the electoral process.

In what was apparently too short an election campaign, the political parties had no opportunity to present their election platforms on television and radio. This was probably one of the main reasons for the low turnout.

The delegation was also told that the pre-election silence was not respected. This claim should be checked.

It would be interesting to seek the Venice Commission's opinion on the Regional Elections Act, No. 303/2001.

The Congress therefore considers that the Slovakian authorities should take steps to ensure that the aforementioned shortcomings and defects are not repeated in the future and that the public is properly informed of the importance of regional democracy and elections.

35. The regional reform was one of the main incentives for the Congress to observe these elections, particularly from the standpoint of protecting national minorities. Confirmation was received that the way the country had been newly divided up, while far from "natural", generally had full public acceptance. This was also observed in the south-west of the country, where Hungarian ethnic communities expressed themselves positively about the establishment of the regions decided on by the Slovakian parliament in July.

36. In view of the foregoing remarks, the Slovakian authorities must now take the necessary steps to give the self-governing regions real powers, particularly regarding respect for interests linked to minorities' cultural identity.

The Congress will follow with interest the application of the legislation on regional powers, financial resources, oversight, transfrontier co-operation and property.

37. More generally, the Congress will continue to monitor the regionalisation process in Slovakia and is ready to assist the Slovakian authorities in the future wherever appropriate.

APPENDIX 1 - Letter from the Permanent Representative of Slovakia to the Council of Europe to Mr Cuatrecasas, President of the CLRAE

Strasbourg, 21 November 2001

Dear President,

Following your letter of 19 November concerning the intention of the Congress of Local and Regional Authorities of Europe to send an observer delegation to Slovakia for the regional elections, I have the honour of informing you that at its session on 21 November 2001, the government of the Slovak Republic welcomed the Council of Europe's interest in the regional elections. It agreed to Congress observers' taking part in these elections and stated its willingness to facilitate their visit.

The Slovakian Permanent Delegation would like you send a final list of members of the delegation, the date and time of their arrival and departure, and any measures necessary to assist the observers. We also wish to inform you that delegation members must bring a photograph of themselves, which will be needed for their entrance pass to polling stations.

Yours etc.

Eva Garajová
Ambassador

**APPENDIX 4 - CLRAE press release on the observation of the elections
Observation of the regional elections in Slovakia - Bratislava, 1 December 2001**

Strasbourg, 4.12.2001 - Following the enactment of legislation on regional self-government in Slovakia, a delegation of the Congress of Local and Regional Authorities of Europe (CLRAE) observed the country's first regional elections, held on 1 December 2001. The main reason for observing the elections was to assess the application of the new legislation.

The CLRAE delegation concluded that the newly established regions had a very important contribution to make to promoting greater social cohesion in Slovakia, particularly regarding minority interests and the country's integration into Europe. The implementation of further significant legislation on regional powers and responsibilities will be another necessary step towards the strengthening of regional democracy in Slovakia. Following its meetings with voters, the delegation concluded that the establishment of new regions has the general support of the local population.

On election day, the delegation, divided into four teams of two, visited 64 polling stations in six regions (Bratislava, Nitra, Zilina, Trenčín, Trnava and Banská Bystrica). It found that the voting had taken place in a calm and positive atmosphere and that the relevant authorities had organised the electoral process in a professional manner.

However, the CLRAE representatives were informed that the official election campaign had been too short and that there seemed to be a lack of information about the regional reforms and candidates. This was probably the result of the legal restrictions on candidates' and political parties' access to radio and television. These restrictions should be reviewed by the Slovakian authorities.

The CLRAE delegation concluded that the elections had been free and fair. A more detailed report will be presented to Congress in the next few weeks.

For further information and complete appendix, please contact: webcplre@coe.int

¹ French member of the Group of Independent Experts of the European Charter of Local Self-Government, working under the aegis of the Institutional Committee of the Congress.

² CG/Bur (8) 57

³ CG/Bur (8) 56

⁴ CG/Bur (8) 68

⁵ CG/Bur (8) 63 and 70

⁶ CG/Bur (8) 69.

⁷ The Venice Commission will consider a draft opinion prepared by MM Owen and Luchaire at its meeting on 14-15 December 2001, with a view to its final approval

⁸ As Mr Woehrling has already noted in his opinion "the real scope of these powers will not be known until new laws defining them have been passed [and implemented], as well as laws or regulations defining the financial, human and material resources with which the autonomous regions are expected to exercise their powers".