



Trans European Policy Studies Association

TEPSA BRIEFS

MAY 2020

Election Game Changer: Embargo on Public Polls

Andrea Figulová*

Abstract

In October 2019, Slovak MPs passed an amendment to the law which extended the fourteen-day moratorium on public polls before elections to fifty days. The country's President regarded this as unconstitutional and returned the bill to Parliament, but her veto was outvoted. The Constitutional Court decided to suspend this bill on a temporary basis. How can the right to information about the "score" of political parties influence election results in democracy?

Role and Reality of Public Polls and Embargo

One of the main outcomes of the November 1989 change to democracy was citizens' participation in regularly held elections with free participation of political parties. Part of reviving democracy was also the advent of public polls that illustrated citizens' sentiments before elections and, presumably, the final distribution of power among the various political parties. A general fact from the sociological and psychological point of view is that public

polls bring a valuable element that influence public debate, meetings, advertising, etc. and thus the election results, since free competition of political parties is a condition sine qua non for democracy based on free elections.

The Slovak Republic currently has effective laws (No 181/2014 on Election Campaigns and No 180/2014 on the Exercise of the Voting Right), which also include a moratorium on polls in the final stage of the election campaign, which starts 48 hours before the start of election day and ends immediately after polling stations are closed. Political parties are not allowed to run any campaign, inform the media, or contact voters. However, the whole country is covered by billboards, online political messaging, and social media campaigns (not yet explicitly provided for in the law), which are sources of influence over the voters until the very end.

The law says: "14 days before the day of the elections and on the day of the elections until the end of voting, it is forbidden to publish the results of polls".

Public research output means a different manifesto for many political parties – some may use it as a source of mobilization - to

* Andrea Figulová is a Member of the Institute of European Studies and International Relations, Faculty of Social and Economic Sciences, Comenius University. The opinions expressed in this briefing are the sole view of the author, and do not represent the position of Comenius University nor of the Trans European Policy Studies Association (TEPSA).

gamble on which topic voters find interesting and thus support at the polls - or others, as a source of “Stockholm syndrome” - to scare voters so much that in the end they vote. And that may be the case of the amendment to the Elections Act in autumn 2019 when the “truth” of the reality of public polls – and when some political parties feared the results of the election – was harmful for some parties before the February 2020 election. The then-ruling coalition proposed the amendment to this law in October 2019 and it was passed by Parliament with the support of coalition partners Smer-SD (S&D) and Slovak National Party (SNS), and Kotlebovci – People’s Party Our Slovakia (LSNS), a far-right opposition party. The fundamental change was in the duration of the campaigning ban before elections: it was extended from the original 14 to 50 days. This amendment meant that Slovakia would be in the third place in the world as regards the length of the public poll blackout (Tunisia 150 days and Cameroon 90 days). This amendment was, in reality, intended to implicitly change the rules of political parties’ free political competition and thus influence election results.

In recent years, public polls in Slovakia have shifted the results of elections quite extensively. During the presidential election in 2019, public polls steadily did not approve Mrs Čaputová, later elected as the country’s President. The polls (below) are showing fast track of growing support of candidate Čaputová in last month before first election round on March 16th. And then almost ten percentage point drop in realistic election result.

Election Game Changer: Embargo on Public Polls

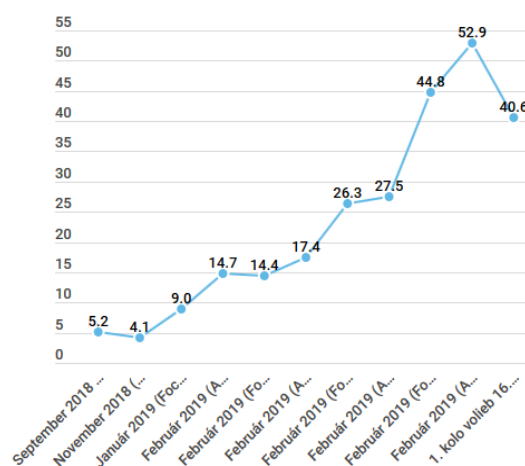


Table 1: Development of preferences for Zuzana Čaputová

Public polls helped in the 2010 elections, when right-wing voters facilitated one of the small minority parties, Most-Híd, achieve the parliamentary threshold. Results of polls were leaning more towards support for another minority party, Strana maďarskej koalície, to enter Parliament. However, the election results were the opposite and Most-Híd became part of a new coalition government although it was a new political entity.

The 2016 parliamentary elections are an example of public polls’ influence in the negative sense. Representatives of political parties had their own surveys (even during the moratorium) and had information about the growing strength that the far-right Kotleba party (L’SNS) was gaining in the late stages of the campaign, unlike the rest of the public in Slovakia. And the election day then brought a surprise: 8.4% for a far-right party, elected to the Slovak Parliament for the first time. According to polls, 30% of voters decided on their preference in the last week before the election, and almost every sixth voter out of this percentage did so on election day itself ¹

¹¹ Gyarfášová, O. & Slosiarik, M. (2017) “Volby do NR SR 2016: Čo charakterizovalo voličov [Election to the National Council of the Slovak Republic in 2016: What Characterised the Voters]”, Working Papers in Sociology 1/2016

Fairness of Information

The amendment bill was vetoed by the President on 6 November 2019 and was returned to Parliament, which outvoted the veto on 26 November 2019. The President decided on 5 December 2019 to file a constitutional appeal with the Constitutional Court, seeking a decision on the conformity of the bill with the Slovak constitution. The Constitutional Court decided very promptly on 18 December 2019 and postponed the effect of the amendment bill that had been passed; thus, the parliamentary elections in February 2020 were held under the valid Elections Act from 2015.

Political parties usually conducted surveys until the very end before the opening of the polling stations. However, that information was not for “ordinary” citizens and only reached the politically active people in each particular political party. Therefore, one of the arguments against this change is that there are ‘equal’ and ‘more equal’ citizens, thus some voters could be informed and others not (as was the case in the parliamentary elections in 2016). The Constitutional Court’s judgment confirms the argument that the presidentially contested amendment prohibited election polls during the embargo. But it does not prohibit conducting such public polls.

Another argument is that political parties shall not adjust their policies in accordance with the results of public polls, because they would be acting against their mandate vows to act and decide upon their knowledge and conscience.

According to President Čaputová, constitutional appeals concerning public polls are one of the forms of the

implementation of the fundamental right to information:

“The contested amendment imposes an unacceptable restriction on the right to freely seek, receive and disseminate information without censorship and does not fulfil the conditions laid down in the Slovak Constitution and the Convention for the restriction of these rights.” She compared this status to the second half of the Champions League’s final football match.

The President also points out in her constitutional appeal the problem of the timing of the bill, as Slovakia was immersed in an ongoing election campaign and therefore the bill was a direct threat to the campaign itself and to the election results as well.

According to President Čaputová, constitutional appeals concerning public polls are one of the forms of the implementation of the fundamental right to information.

The explanatory memorandum, which is a compulsory part of an amendment bill, notes that extending the period of the embargo helps to “protect the voters from disinformation”. However, the Constitutional Court’s judgment holds that there is an exhaustive list of the grounds (Article 26 (4) of the Slovak Constitution and Article 10 (2) of the Convention) on which the fundamental right to information should be limited, and this one is not listed.

President Čaputová claims that: “... the consequences of this amendment concern

directly fundamental rights, the safeguarding of which is the most essential for the proper functioning of democracy (the right to information, the right to vote) and they also concern a large number of people (all eligible voters) and are fit to influence voters' behaviour and the outcome of elections."

Election Game Changer?

The Slovak National Party (SNS), the political party that was one of the authors of the amendment changing the public polls embargo, did not gain seats in the Slovak Parliament after the 29 February 2020 election. The new date for the Constitutional Court's sitting to decide on the merit of the President's constitutional appeal is still not known at the beginning of May 2020.

However, the experience of the 2020 "fight" for information on public polls brought a better understanding to Slovak society of what their role is and how they are conducted, which information to believe and what the role of polling companies is, as huge debate took place amongst the public. A crowd funding initiative, '50days.sk', commissioned two polls from two renowned agencies during the embargo period. Everyone who contributed at least one euro received results of the polls via e-mail. Since the Elections Act lays down sanctions for breaches thereof only for juristic persons and sole proprietorships, including the media, political parties, companies, and business people, "ordinary" private individuals were allowed to spread the information. They could breach the law but could not be punished. For example, in the Czech Republic these polls were published freely. Citizens in general could therefore receive the information that was "only" for certain people, and voters were able to make a qualified decision.

One of the foundations of political competition in representative democracy is that political parties use information to influence voters' opinion, since political competition in democratic society is de facto an ongoing process. Public polls and opinions have an immense role to influence voters' decision-making process. Slovakia's experience with the ability to gain fair and truthful information serves as a good example of how it thus can change political system outcomes.

The intention to deny citizens their right to information in 2019 - 2020 (especially close to the election time) is not a politically winning idea. However, there is still a chance that the power to change is in the hand of Slovak judiciary system.

References

Gyarfášová, O. & Slosiarik, M. (2016): "Voľby do NR SR 2016: Čo charakterizovalo voličov [Election to the National Council of the Slovak Republic in 2016: What Characterised the Voters]", Working Papers in Sociology 1/2016; Retrieved from

http://www.sociologia.sav.sk/pdf/Working_Papers_in_Sociology_012016.pdf

Judgment of the Constitutional Court of the Slovak Republic dated 18 December 2019 under File Ref. PL ÚS 26/2019

Motion to bring proceedings on conformity of the legislation and the suspension of the effect of a law; retrieved from <https://www.prezident.sk/article/prezidentka-sa-v-suvislosti-s-s-predlzenim-moratoria-obratila-na-ustavny-sud-sr/>

Parliament Paper 1764, Bill of 28 October 2019 which amends Act No 180/2014 on the Conditions for Exercising the Election Right and Amending Certain Laws, as amended, returned by the President of the Slovak Republic to the National Council of the Slovak Republic for new debate.

Právne Noviny Editorial Board (2019): Dôvody vetovania zákona o predĺžení moratória prezidentkou SR; <https://www.pravenoviny.sk/dovody-vetovania-zakona-o-predlzeni-moratoria-prezidentkou-sr>

Juraj Martaus (2017): "Otvorené Otázky zákazu zverejňovania volebných prieskumov podľa nového zákona o volebnej kampani"; <https://www.ulpianus.sk/blog/otvorene-otazky-zakazu-zverejnovania-volebnych-prieskumov-podla-noveho-zakona-o-volebnej-kampani/>

Juraj Petrovič (2019): "Podanie na ústavný súd – moratórium na volebné prieskumy"; <https://dennikn.sk/blog/1665796/moratorium/>

Dominik Hutko (2019): "Moratórium na predvolebné prieskumy môže Ústavný súd zrušiť už v túto stredu"; <https://spravy.pravda.sk/domace/clanok/535999-moratorium-na-predvolebne-prieskumy-moze-sud-zrusit-uz-v-tuto-stredu/>



Trans European Policy Studies Association

Rue d'Egmont 11, B-1000
Brussels, Belgium


To know more about TEPSA visit:

www.tepsa.eu

Follow TEPSA on:

 [@tepsaeu](https://twitter.com/tepsaeu)

 [@tepsa.eu](https://www.facebook.com/tepsa.eu)

 [TEPSA – Trans European Policy Studies Association](https://www.linkedin.com/company/TEPSA-Trans-European-Policy-Studies-Association)



ÚSTAV
EURÓPSKÝCH ŠTÚDIÍ
A MEDZINÁRODNÝCH
VZŤAHOV FSEV UK

Institute of European Studies and International Relations (IESIR)

Mlynské luhy 4
821 05 Bratislava, Slovakia

To know more about IESIR visit:

<https://fses.uniba.sk/en/>

Follow IESIR on:

 [@IESIRatUK](https://www.facebook.com/IESIRatUK)

Co-funded by the
Europe for Citizens Programme
of the European Union



The European Commission support for the production of this publication does not constitute an endorsement of the contents which reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.