



## THE CONSTITUTIONAL DEVELOPMENT OF THE SLOVAK REPUBLIC: THE WAY FROM SEPARATION TO INTEGRATION

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### I. INTRODUCTION

On July 17, 1992, after a long and heated discussions, the Declaration of Sovereignty of the Slovak Republic was proclaimed by the Slovak National Council.<sup>1</sup> On the same day Václav Havel, President of the Czech and Slovak Federal Republic, has resigned from his post.<sup>2</sup>

A few months later, on September 1, the Slovak National Council (Parliament) has used its authority under Article 102 of the Constitutional Act on the Czechoslovak Federation and has taken a decisive vote on the constitutional draft of the Constitution of Slovak Republic.<sup>3</sup> The Constitution of the Slovak Republic entered into effect on October 1, 1992.<sup>4</sup>

On November 25, 1992, the Federal Assembly<sup>5</sup> had voted about the split of the federation of Czechs and Slovaks and adopted Constitutional Act (No. 542/1992 Coll.), which brought about the dissolution of the Czech and Slovak Federal Republic.

As we can see, the adoption of the Constitution was only one among many steps which led to the dissolution of the Czech and Slovak Federal Republic and to the formation of two new sovereign states.

Despite the drama of these final developments, the process of dissolution actually began in 1968 when the former Czechoslovak Republic, established in 1918<sup>6</sup> on the ruins of the former Austro-Hungarian Empire, was transformed into a federation of the Czech Republic and Slovak Republic.<sup>7</sup>

Rigid centralization, which was inherent in the former Communist regime also found its way into the new federal structure, constraining the functions of the new federation.

Since relatively strong powers were vested in the Federal Government,<sup>8</sup> both republics were prevented from developing their own identity and also from developing competency to resolve issues independently, even from having their own constitutions.

Regarding to such historical experience, it was not surprising, that after 1989, the newly formed democratic political powers began a

process of rebuilding not only the social order,<sup>9</sup> but also the 1968 communist federation.<sup>10</sup>

Despite the fact that the Czech and Slovak Federation was constitutionally built on the equality principle and the voluntary bond of both republics,<sup>11</sup> many Slovaks still felt disadvantaged and accused the federal government of a strong centralization which was heavily favored by Czechs.

A new arrangement of mutual relations between the federal government and the national governments appeared to be of crucial importance not only for the contents of the proposed new federal and state constitutions, but also for the future of the whole federation as well.

During the second half of 1991, after more than a year of negotiations on different levels, the Joint Commission appointed by the Czech National Council and the Slovak National Council considered proposals not only for redistribution of powers but for a new constitutional foundation of the common state.

In spite of the many problems, on February 8, 1992 the Commission approved in Milovy<sup>12</sup> the so-called "Draft Treaty on the Principles of the Constitutional System of the Common State". The Czech National Council ratified this treaty on February 12, 1992. However, because of its substantive and terminological inconsistencies for Slovaks, the Presidium of the Slovak National Council refused its recommendation to the Slovak National Council.<sup>13</sup>

It was understood that the issue would be decided after new parliamentary elections to be held on June 5 and 6, 1992.<sup>14</sup>

The electoral results on the federal as well as the republic levels dramatically changed the direction of future developments.<sup>15</sup>

Despite of the fact that the former political representation had tried its best to build a workable two-state federation, the effort failed for lack of willingness to continue on the path to a common state. Regardless of previously declared views, the new federal parliament halted discussions of a new federal model and replaced the former federation by two new sovereign states – the Czech Republic and the Slovak Republic.



As it has been already mentioned the disintegration of the federation was formally accomplished by the Constitutional Act providing for the dissolution of the Czech and Slovak Federal Republic. The Federal Assembly, by a qualified majority of both Chambers in accordance with Article 41 of the federal constitution, approved it on November 25, 1992. The Constitutional Act declared that by December 31, 1992, the Czech and Slovak Federal Republic would be dissolved.<sup>16</sup>

Since January 1, 1993 the two new successor states have appeared on the maps of Europe.

## II. THE CONSTITUTION OF THE SLOVAK REPUBLIC

The Constitution of the Slovak Republic has been enacted as the result of the efforts to complete the emancipation process of the Slovak nation.

The preparations of the Slovak Constitution were made during the process of transformation in economic mechanism introducing the plurality of ownership relations as the prime source of prosperous multisectoral economy, as well as changes in the mutual relationship between the Czech and the Slovak Republic.

The process of the preparation and adoption of the Constitution has been affected by the necessity to resolve the previous status of Slovakia within the governmental structure of a federal state, but also by the distribution of political powers after the elections.

The drafters of the Constitution followed not only the legal experience of the democratic "first" Czechoslovak Republic created in 1918, but also the experience of Czech and Slovak federal Republic since 1989 and the content of significant international instruments, especially the Universal Declaration of Human Rights, Roma Convention for the protection of Human Rights and Fundamental Freedoms, Covenant on Social and Economic Rights, European Social Charter.

As it was stressed by the Address delivered by Ivan Gasparovič, President of the Slovak National Council, on the occasion of the solemn signing of the Constitution of the Slovak Republic on September 3, 1992: **"... the bad experience of the past is a good starting point for the new arrangement in the mutual relations, based on democratic coexistence of the two sovereign countries living and closely cooperating in the Central European region."**<sup>17</sup>

The Constitution of the Slovak Republic provides a basic frame for the whole legal system, guarantees the fundamental rights and freedoms, moral, spiritual and property values as they were established by the Charter of Fundamental Rights and Freedoms adopted by the Federal Assembly of the Czech and Slovak Federal Republic<sup>18</sup> and provides for distribution of governmental powers.

The Constitution is divided into nine Chapters (**General provisions, Fundamental rights and freedoms, Economy in the Slovak Republic, Territorial self-government, Legislative power, Executive power, Judicial power, Office of the public prosecution of the Slovak Republic, Transitory and final provisions**). The Chapters of the Constitution are divided into sections.

The Slovak Republic is by its Constitution declared a sovereign and democratic state linked with no ideology or religion and governed by the rule of law principle.

The democratic features of the Constitution are confirmed by its guarantee for the plurality of the political system and of rights and freedoms of the citizens.

The basic principles, on which the constitutional system of the Slovak Republic is based, can be found explicitly mentioned in individual articles of the Constitution or can be derived from the content of the further constitutional text. The most significant ones are: the democratic and republican principle, the rule of law principle, principle of separation of state from any religion and ideology (**e.g. Article 1, Article 2, and Article 30**), respecting of the basic rights and freedoms (**the whole Chapter Two**), the principle of pluralism (**Article 31**), the principle of socially and ecologically oriented market economy (**Article 55**), the principle of separation of powers, the principle of checks and balances (**Chapter Five, Six, and Seven of the Constitution**) and the oversight of constitutionality (**Chapter Seven and Chapter One of the Constitution**).

The most extensive chapter of the Slovak Constitution is the Chapter Two which defines the fundamental rights and freedoms. Its content follows the fundamental constitutional principles of the rule and supremacy of law which means that the freedom of an individual (citizen) is given a priority and that the state may interfere to the rights and freedoms of an citizen only by and under the law.

Special system of legal protection of fundamental rights and freedoms is guaranteed by judicial and semi-judicial protection. Judicial



structure under the Constitution consists of the courts of general jurisdiction, of the Constitutional Court of the Slovak Republic. The constitutional amendment of 2001 established an institution of Public Protector of Rights.

Chapter Three of the Constitution in its First Section regulates the Slovak economy as socially and ecologically oriented market economy, the national budget, tax collection (collection of taxes), customs policy and the National Bank of Slovakia as an independent central bank of the Slovak Republic.

The Second Section of this Chapter has created the Supreme audit Office of the Slovak republic, as an independent agency supervising the auditing of, and control over, budgetary funds, public property, property rights, and public debts. The Chairman and Vice-Chairmen of the Supreme audit Office are elected by the National Council of the Slovak Republic. The authority, powers and structure of the Supreme Audit Office is further specified by Law.<sup>19</sup>

New approach to the structure of governmental administration has been reflected in local self-governing bodies with the municipality as the basic unit (**Chapter Four - territorial self-government**). The status and competences of the municipalities provides a useful framework for the citizen's participation in local self-government.

As has been already mentioned Chapters Five, Six and Seven of the Slovak Constitution describe legislative branch of the government, executive branch of the government and judiciary. Because of the basic relationship between the National Council of the Slovak Republic (the Parliament) and the government, the Constitution of the Slovak Republic can be characterized as a parliamentary democracy (**parliamentary form of government**).

The government is responsible to the parliament and the composition of government is being determined by the composition of the parliament.

This determination is supported by the government's political responsibility and accountability to the National Council<sup>20</sup> and the separate constitutional positions of the President (i.e., the head of state) and the Prime Minister.<sup>21</sup>

Parliamentary democracy has a tradition also in our parliamentary history and is revealed also in the structure of the national government authorities and the relations among them.

The status of the National Council of the Slovak Republic has been established in the first section of Chapter Five of the Constitution - "The Legislative power."<sup>22</sup>

The Constitution defines the National Council as the sole constituent and legislative body of the Slovak Republic consisting of 150 deputies elected for a four-year term.<sup>23</sup>

Most of the powers vested in the National Council are mentioned in article 86 (**has been amended in 2001**), whereas others are found in other provisions in the Constitution.<sup>24</sup>

The power of the National Council to legislate is substantially limited, especially by Chapter Two of the Constitution - "Fundamental Rights and Freedoms".

Second section of Chapter Five (**Referendum**) creates preconditions for exercising the direct democracy on the territory of the Slovak Republic. According to the Constitution a referendum may be used to confirm a constitutional law on entering into an alliance with other states or on withdrawing from that alliance and "...to decide on other important issues of public interest" (**this vague formulation has already caused several constitutional controversies**)<sup>25</sup>.

Fundamental rights and freedoms, taxes, levies, and the state budget cannot be the subject of a referendum.

According to the Constitution of the Slovak Republic, the executive power consists of the President of the Slovak Republic (the President) and the Government, which is headed by the Prime Minister<sup>26</sup>.

Some confusion was caused by the fact that the President was at the same time defined as the head of the Slovak Republic,<sup>27</sup> and the Government as the highest organ of the executive power (**this original constitutional definition of the government position has been amended in 2001**)<sup>28</sup>.

The confusion concerning the constitutional position of the President within the governmental structure of the Slovak Republic had been supported by other factors as well (**examples of these were: the President's political responsibility to the National Council;**<sup>29</sup> **the lack of a clear constitutional division of powers between the President and the Government, especially the Prime Minister and vague language of the Constitution itself in defining the powers of the President**)<sup>30</sup>.

These and some other structural shortcomings of the original constitutional text had been deleted by the first greater constitutional amendment which has introduced direct presidential election<sup>31</sup> and had been approved by the National Council of the Slovak Republic already on January 14, 1999.<sup>32</sup>



Defining new constitutional position of the President, Article 101 sec.1 of the Constitution states, that the President represents the Slovak Republic externally and internally, ensures the regular operation of Constitutional bodies and performs his Office according to his conscience and convictions.

The President is elected by citizens of the Slovak Republic in direct elections by secret ballot for a five-year term. Citizens who have the right to vote for the National Council of the Slovak Republic have the right to vote for a President. Candidates for President can be proposed by at least 15 representatives of the National Council of the Slovak Republic or by citizens who have the right to vote for the National Council of the Slovak Republic on the basis of a petition signed by at least 15,000 citizens.

As the President is elected the candidate who receives a majority of valid votes cast. If none of the candidates receives the necessary majority of votes, a second round is held within 14 days of the voting. The two candidates who gained the greatest number of valid votes shall proceed to the second round. In the second round, the candidate who gained the greatest number of valid votes from participating voters shall be elected President (**amended Article 101 of the Constitution**).

Among other constitutional changes which had been brought by the Amendment to the Constitution in 1999 it is worth to mention that it had more precisely formulated the power of the President to dissolve the National Council of the Slovak Republic,<sup>33</sup> introduced the institution of contrasig nature for specified presidential decisions<sup>34</sup> and strengthened the protection of president's office<sup>35</sup>.

Generally it could be stated, that powers of the President are traditional for a head of the state within the parliamentary form of the government, including the prerogatives, the power to represent and to appoint. At the same time the President is the Commander-in-Chief of the armed force.

The new element in the Slovak constitutional system is the power of the President to return any laws with comments within 15 days after their approval to the National Council of the Slovak Republic (veto power).<sup>36</sup>

The Government of the Slovak Republic (The Government) is the supreme body of executive power (**Article 108, as amended in 2001**). The Government consists of the prime minister, deputy prime ministers, and ministers and is responsible to the parliament for the exer-

cise of their powers enumerated by the Article 119 (**as amended in 2001**).<sup>37</sup>

The Prime Minister and (with the advice of the Prime Minister) also other Ministers are appointed to and removed from office by the President of the Republic and the Government may issue decrees in order to execute a law within its limits.

Chapter Seven (Judicial power) of the Constitution contains two sections. The first section regulates the Constitutional Court of the Slovak Republic (**located in Košice**)<sup>38</sup> and second section about courts of general jurisdiction<sup>39</sup>.

The system of judiciary consists of the Constitutional Court and the so-called courts of general jurisdiction. The jurisdiction of these courts which exist in parallel does not overlap and the Constitutional Court does not have a superior position vis-a-vis courts of general jurisdiction. It means that it does not serve as appellate body for general courts.

The main task of the Constitutional court is to check constitutionality at different levels of the decision-making process (**Articles 124 - 140 of the Constitution of the Slovak Republic**).

The Constitutional Court of the Slovak Republic is an independent judicial body charged with protecting constitutionality and pursuant to the amended constitutional text it is entitled to decide:

- on the compatibility (**to exercise the judicial review over**) of laws and other general binding regulations with the Constitution, constitutional laws and international treaties (Article 125),
- on compliance of the concluded international treaties for which consent of the National Council of the Slovak Republic is required with the Constitution or a constitutional law (Article 125a),
- whether the subject of the referendum to be called on the basis of a citizens' petition or a resolution of the National Council of the Slovak Republic pursuant to Article 95 section 1 is in compliance with the Constitution or a constitutional law (Article 125b),
- on jurisdiction disputes among central bodies of state administration, unless the law specifies that these disputes are decided by another state body. (Article 126),
- on complaints by natural persons or legal persons objecting to violation of their fundamental rights and freedoms, or the fundamental rights and freedoms ensuing from an international treaty, unless other court makes decision on the protection of such rights and freedoms. (Article 127),



◆ - on the complaints filed by the bodies of the territorial self-government against an unconstitutional or unlawful decision or other unconstitutional or unlawful intervention in the matters of the territorial self-government, unless another court is making a decision on its protection. (Article 127a),

- on complaints filed against the decision to verify or not to verify the mandate of a deputy of the National Council of the Slovak Republic,

- on the constitutionality and legitimacy of elections to the National Council of the Slovak Republic and territorial self-government bodies,

- on complaints filed against referendum results,

- whether the decision to disband or suspend the activity of a political party or a political movement was in harmony with constitutional and other laws,

- on high treason charges or charges of deliberate violation of the Constitution filed by the National Council of the Slovak Republic against the president of the Slovak Republic,

- whether a decision on declaration of the martial law or the state of emergency and relating decisions were issued in compliance with the Constitution or constitutional laws (Article 129).

The Constitutional Court also provides an interpretation of the Constitution or constitutional laws in disputed matters (Article 128).

According to Article 130, the Constitutional court initiates proceedings on the basis of proposals made by at least one-fifth of deputies of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, the court, the general prosecutor and in cases listed under Article 127 and 127a, anyone whose rights are to become the subject of inquiry.

The Constitutional Court has 10 members appointed by the President of the Republic (**according to new formulated Article 134 sec. 1 since January 2002 the number of judges will increase to 13**).

According to the Article 141 of the Constitution, the judiciary is administered by independent and impartial courts of the Slovak Republic. The judiciary is independent of other branches of government at all levels. The courts rule on civil and criminal matters and also review the legality of decisions made by administrative bodies.

A court of general jurisdiction decides in bench unless the law provides for a single judge. The judicial system is composed of the Supreme

Court of the Slovak Republic and other courts (Article 143).

The Constitution provides a guarantee for independence of judges in **Article 144**.

The Amendment to the Constitution adopted in 2001 has changed the system of selection of judges and the duration of their term. Before judges were elected by the National Council of the Slovak Republic on the proposal of the Government of the Slovak Republic for a four-year term and upon expiration of this term, the National Council, on the advice of the Government of the Slovak Republic had elected a judge again for an indefinite term.

Newly formulated Article 145 states, that the President of the Slovak Republic appoints and removes judges on the basis of a proposal of the Judiciary Council of the Slovak Republic without time restrictions.

The President of the Slovak Republic gained the power to appoint the President of the Supreme Court of the Slovak Republic and the Vice-President of the Supreme Court of the Slovak Republic on a proposal of the Judiciary Council of the Slovak Republic from judges of the Supreme Court of the Slovak Republic for five-year term as well.

There are three instances of general courts in Slovakia. The first instance courts handling a vast majority of cases are district courts, in some cases regional courts (there are altogether 8 regional courts in Slovakia). Regional courts serve as appellate courts, and three of them also as courts for bankruptcies. The Supreme Court in Bratislava is the appellate court in those cases which are heard and determined by a regional court acting as a first-instance court. In addition, it decides on the so-called extraordinary legal remedies (renewal of the trial, complaint on points of law...).

Chapter Eight of the Constitution contains the institution of the **Office of the Public Prosecutor** of the Slovak Republic. The role of the Public Prosecutor is to protect the legal rights and interests of individuals, corporations and the State (**Article 149**). The Office of public prosecutors is headed by the Attorney General who is appointed and recalled by the President of the Slovak Republic on the advice of the National Council of the Slovak Republic. Further details of the appointment, recall, powers and duties of public prosecutors, as well as the structure of public prosecution shall be specified by law.<sup>40</sup>

Chapter Nine of the Constitution are transitory and final provisions.

The Slovak Constitution does not contain a special chapter regulating the procedure of

constitutional changes. Third section of its Article 84 says, that for the purposes of adopting or amending the Constitution and adopting constitutional statutes, the consent of a three-fifths majority of all deputies is required. It means that the support of at least 90 of 150 deputies of the National Council of the Slovak Republic is needed to change the Constitution.

## FINAL REMARKS

In such a short contribution it is very difficult to speak about all particularities of the 2001 amendment to the Slovak Constitution.

The amendment had changed 67 of altogether 156 constitutional articles and strongly influenced not only the constitutional text but constitutional principles as well. But what is the most important the amendment brings principles of the Slovak constitutional law into line with those in the European Union.

Besides already mentioned changes, the amendment has changed other parts of the Constitution of the Slovak Republic.

To mention briefly some of other important goals of the constitutional amendment, we could put the attention at least to the following.

Allowing the prosecution of deputies after the expiry of their term and, in cases where parliament does not lift immunity in criminal charges, amendments had limited parliamentary immunity (it also allow for lawsuits against parliamentarians by private parties - under the Civil Code, not the Criminal Code).

The procedure whereby a deputy may resign from parliament was more precisely specified<sup>41</sup>.

The right of the President to give pardons to people suspected of having committed crimes was abolished (after the amendment the President is entitled to give out pardons or amnesties only to properly sentenced criminals).<sup>42</sup>

The debates had featured 79 speeches, of which 57 were delivered by opposition deputies whose "critical contributions often lasted longer than an hour, but still failed to deliver concrete suggestions for improvement".

There had been 1,473 reactions to speeches (which are limited to two minutes in length). The vote capped the longest parliamentary debate in Slovak history, with speeches stretching for 105 hours over three weeks.

It was the longest and the most expensive parliamentary debate in the history of Slovak Republic and the proceedings had been televised in their entirety by the public Slovak Television (Slovenská Televízia - STV).

Debate on the constitutional amendments has been slowed in Parliament by opposition filibustering by the Movement for a Democratic Slovakia (Hnutie za demokratické Slovensko - HZDS)<sup>43</sup> and Slovak National Party (Slovenská národná strana - SNS). During the televised debates, all 42 MPs from the HZDS signed up to speak and several their monologues lasted hours.

On February 23, 2001, the National Council of the Slovak Republic adopted that significant amendment to the Constitution.<sup>43</sup> The constitutional reform was passed despite wholesale resistance from the opposition what did not influence the very important fact that the constitutional reform could be evaluated as very vital to future integration ambitions of the Slovak Republic.<sup>44</sup>

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<sup>1</sup> Approved by Resolution of the Slovak National Council on July 17, 1992, and effective from August 28, 1992, the date of its publication in the Collection of Laws (thereinafter "Coll.") under No. 84/1992.

<sup>2</sup> President Havel resigned on July 13, 1992. During his last address, he expressed that he did not intend to serve over the "liquidation" of the CSFR.

<sup>3</sup> According to the Article 102 of the Constitutional Act on the Czechoslovak Federation (published under No. 143/1968 Coll.), the Czech National Council and the Slovak National Council were the representatives of



the national sovereignty and independence of the Czech nation and Slovak nation, and the supreme organs of state power in the Czech Republic and Slovak Republic. The National Councils were recognized as the supreme representative bodies of the Republics and their sole legislative organs. Article 107 of this constitutional act stated that the National Councils shall in particular have jurisdiction to adopt Constitutional and other acts of the Republics and shall ascertain how they are implemented by the organs and republics.

<sup>4</sup> The Constitution of the Slovak Republic entered into effect on the day of its promulgation (publication). It was published on October 1, 1992, under No. 460/1992 Coll. Not all articles of the Constitution went into effect at the same time. Article 84 sec. 3 (regarding the declaration of war on another state and the election and recall of the president), Article 86 letter k) (giving the National Council the power to declare war if the Slovak Republic is attacked or is bound by commitments arising from international treaties on common defense against aggression), Article 86 letter l) (giving the National Council the power to express consent for sending armed forces outside the territory of the Slovak Republic), Article 102 letter g) (regarding the appointment of university professors and rectors and the appointment and promotion of generals), Article 102 letter j) (declaring that the president is the commander in chief of the armed forces), Article 102 letter k) (giving the president the power to declare martial law at the recommendation of the Government of the Slovak Republic and to declare war on the basis of a decision by the National Council of the Slovak Republic, if the Slovak Republic is attacked or is bound by commitments arising from international treaties about common defense against aggression) and Article 152 sec. 1), second sentence (giving appropriate authorities of the Slovak Republic the power to abrogate constitutional statutes, laws, and other generally binding legal regulations which conflict with the Constitution) went into effect with the changes in the constitutional arrangement of the CSFR on January 1, 1993.

<sup>5</sup> The Article 29 sec. 1) of the Constitutional Act on the Czechoslovak Federation declared the Federal Assembly the supreme organ of state power and the sole legislative body of the Czech and Slovak Federal Republic. According to section 2 of that article Federal Assembly consisted of two chambers; the Chamber of People and the Chamber of Nations and according to its section 3 a valid decision of the Federal Assembly required the concurrent decision of both Chambers (unless the constitutional act provided otherwise or unless an internal matter of only one of the two Chambers was involved). According to its Articles 30 and 31 the Chamber of People consisted of 200 members elected by direct vote in the whole Czech and Slovak Federal Republic and the Chamber of Nations consisted of 150 Members 75 of whom were elected by direct vote in the Czech Republic and 75 by direct vote in the Slovak Republic.

<sup>6</sup> The Czechoslovak Republic was formally constituted by the Act of the National Council concerning creation of the Czechoslovak Republic in Prague, published under No. 11/1918 Coll. This document has been considered as the first “temporary constitution” of the Czechoslovak Republic.

<sup>7</sup> According to Article 29 of the Constitutional Act on the Czechoslovak Federation, the Federal Assembly was the supreme organ of state power and the sole legislative body of the CSFR. The Federal Assembly had the jurisdiction to enact the Constitution of the Czech and Slovak Federal Republic and other acts (Article 36). The enactment of the Federal Constitution required a three-fifths majority of all the Members of the Chamber of the People, a three-fifths majority of all the Members of the Chamber of Nations elected in the Czech Republic, and a three-fifths majority of all the Members of the Chamber of Nations elected in the Slovak Republic (Article 41).

<sup>8</sup> Formally, the Constitutional Act on Czechoslovak Federation divided between exclusive jurisdiction of the Czech and Slovak Federal Republic (Article 7), joint jurisdiction of the Czech and Slovak Federal Republic and the two republics (arts. 8, 10 - 28a) and exclusive jurisdiction of the Czech Republic and the Slovak Republic (Article 9), which was formulated negatively (“matters which have not been specifically placed under the jurisdiction of the Czech and Slovak Federal Republic shall be under the exclusive jurisdiction of the Czech Republic and the Slovak Republic”).

<sup>9</sup> The leading role of the Communist Party was abolished. The Constitutional Act No. 46/1990 Coll. introduced a prohibition of “imperative mandate” (stating that deputies are representatives of citizens and should execute their mandate personally according to their conscience and conviction and are not bound by orders; Constitutional Act No. 100/1990 Coll. exchanged the only recognized socialist ownership by equality of all forms of ownership. New important acts were passed: Act No. 15/1990 Coll. on political parties, Act No. 83/1990 Coll. concerning the right to association, Act No. 84/1990 Coll. concerning the right to assembly, and the Act on the right to petition (No. 85/1995 Coll.), to mention just a few. The whole process was roofed on January 9, 1991 by approval of the Constitutional Act No. 23/1991 Coll., declaring the Charter of Fundamental Rights and Freedoms.

<sup>10</sup> One of the most important steps in this direction was the Constitutional Act No. 556/1990 Coll. Z concerning the new division of jurisdiction between the federation and republics, so-called “the Competence Act”.



<sup>11</sup> The Constitutional Act on the Czechoslovak Federation in its Article 1 sec. 1 stated that: "The Czech and Slovak Republic is a federal State of two equal, fraternal nations, Czechs and Slovaks." Article 1 sec. 2 stated that the "Czech and Slovak Republic is founded on the voluntary bond of the equal, national states of the Czech and the Slovak nations, based on the right of each of these nations to self-determination."

<sup>12</sup> A small village located in Moravia, at that time a part of the Czech Republic.

<sup>13</sup> Article 121 of the Constitutional Act concerning the Czech and Slovak Federal Republic stated that when the National Council is not in session because it has adjourned or its electoral term has expired, the competence of the National Council shall be exercised by the Presidium of the National Council (with some restrictions). The Presidium was elected by the National Council from among its members.

<sup>14</sup> Another serious disadvantage of the previous federal structure was that the electoral term of all representative bodies was the same (4 years), and the elections to the Federal Assembly and to the Czech National Council and the Slovak National Council were held at the same time.

<sup>15</sup> The Civic Democratic Party (ODS), headed by pragmatic supporter of strong centralized government Mr. Klaus, emerged as the most powerful party in the Czech Republic. In the Slovak Republic the newly created Movement for Democratic Slovakia, headed by Mr. Mečiar, gained the most electoral support. Both leaders became prime-ministers of coalition governments, but they were powerful enough to press their own views about future constitutional development of the countries.

<sup>16</sup> *See generally* Constitutional Act on the dissolution of the Czech and Slovak Federal Republic (No. 542/1992 Coll.).

<sup>17</sup> The Address delivered by Ivan Gasparovič, President of the Slovak National Council, on the occasion of the solemn signing of The Constitution of the Slovak Republic September 3, 1992

<sup>18</sup> The Constitutional Law (23/1991) reporting The Charter of Basic Rights and Freedoms as a Constitutional Law of the Federal Assembly of the Czech and Slovak Federal Republic.

<sup>19</sup> Act No. 39/1993 Coll. on the Supreme Audit Office of the Slovak Republic as amended.

<sup>20</sup> Article 86 letter g) states that the powers of the National Council of the Slovak Republic shall be mainly to debate on the governmental policy proclaimed in the Program of the Government of the Slovak Republic, to monitor the activities of the government, as well as to debate on votes of confidence regarding the Government or an individual member of the Government. Article 114 sec. 1 states that the government shall be collectively responsible for exercise of governmental powers to the National Council of the Slovak Republic which may take a vote of confidence at any time.

<sup>21</sup> Article 101 sec. 1 of the Slovak Constitution states that the president is the head of state of the Slovak Republic and art. 109(1) states that the Government consists of the prime-minister, deputy prime-ministers, and ministers.

<sup>22</sup> Chapter Five: Legislative Power consists of Part One - The National Council of the Slovak Republic (Articles. 72 - 92) and Part Two - Referendum (Articles 93 - 100).

<sup>23</sup> Articles 72 and 73 sec. 1 of the Constitution.

<sup>24</sup> Most of the powers of the National Council are defined in the Article 86 of the Slovak Constitution. Article 86 states: "The powers of the National Council of the Slovak Republic shall be particularly to:

- a) adopt the Constitution, constitutional laws and other laws and to supervise their implementation,
- b) approve the treaties on a union of the Slovak Republic with other states and the repudiation of such treaties by a constitutional law,
- c) decide on a proposal for declaration of a referendum,
- d) before ratification to approve international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties from which a membership of the Slovak Republic in international organizations arises, international economic treaties of general nature, international treaties for whose exercise a law is necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons, and at the same time to decide on whether they are international treaties according to Art. 7 para. 5,
- e) establish Ministries and other governmental bodies,





- f) debate on the Programme Proclamation of the Government of the Slovak Republic, monitor the activities of the Government, as well as debate on vote of confidence regarding the Government or its individual member,
- g) approve the state budget, supervise budgetary policy and approve the final state budgetary account,
- h) debate on basic issues relating to domestic, international, economic, social and other policies,
- i) elect and recall the Chairman and Vice-Chairman of the Supreme Audit Office of the Slovak Republic and three members of the Judicial Council of the Slovak Republic,
- j) declare war in the event of an act of aggression by parties hostile to the Slovak Republic or in the event that obligations under international joint defence treaties must be fulfilled, and after the end of war on concluding the peace,
- k) give consent for despatching the military forces outside of the territory of the Slovak Republic, if it does not concern a case stated in Art. 119, letter p),
- l) approve the presence of foreign military forces on the territory of the Slovak Republic.”

<sup>25</sup> For instance, the Constitutional Court in its decision No. II. ÚS 31/97 declared that the question on the amendment of the Constitution may be the subject of a referendum.

<sup>26</sup> Chapter Six (Executive Power), First Section - The President of the Slovak Republic (Articles 101 - 107); Second Section - The Government of the Slovak Republic (Articles 108 - 123).

<sup>27</sup> Article 101 section 1 of the Slovak Constitution states: “(1) The president is the head of state of the Slovak Republic.”

<sup>28</sup> Article 108 of the original text of the Slovak Constitution states: “The Government of the Slovak Republic is the highest body of executive power.” Text as it was amended in 2001: “The Government of the Slovak Republic is the supreme body of executive power”.

<sup>29</sup> The draft of the Article 102 of the Slovak Constitution introduced to the Parliament contained section 4 which stated that for the execution of his office the President is responsible to the National Council of the Slovak Republic.

<sup>30</sup> According to original text of Article 102 letter r), the President had the right to be present at and to chair meetings of the Government of the Slovak Republic, and to demand reports from the Government or its members. At the same time the Constitution remained silent about the role of Prime Minister if such a situation would arise, and had failed to elaborate on the constitutional responsibility of the Prime Minister for governmental decisions made during such a meeting of the government.

<sup>31</sup> After the original constitutional text, the President was elected by the parliament with the three-fift majority of all votes. In 1997 and 1998 the parliament was unable to muster the 90 votes necessary to elect a new president when Michal Kováč’s term ended. Presidential powers thus devolved to the Mečiar government in March 1998, and were used to cancel another referendum (against the Constitution) and to exonerate those guilty of the 1997 referendum fiasco and the kidnapping of Michal Kováč’s son.

<sup>32</sup> This constitutional amendment was published as Constitutional Act on January 27, under No. 9/1999 Coll.

<sup>33</sup> Article 102 letter e) states that the President may dissolve the National Council of the Slovak Republic if the National Council of the Slovak Republic, within a period of six months from the nomination of a Government of the Slovak Republic, has not passed its Programme Proclamation, if the National Council of the Slovak Republic has not passed within three months of the formation of a Government a draft law with which the Government has combined a vote of confidence, if the National Council of the Slovak Republic has not managed to hold a session for longer than three months although its sitting has not been adjourned and it has during this time been repeatedly called for a meeting, or if a session of the National Council of the Slovak Republic has been adjourned for a longer time than is allowed by the Constitution. This right may not be applied during the last six months of his or her term of office during war, a war state or exceptional state. The President shall dissolve the National Council of the Slovak Republic in the case that after a plebiscite on the recall of the President, the President has not been recalled.

<sup>34</sup> Article 102 sec.2 of the Slovak Constitution states:

“(2) A decision of the President issued pursuant to Art. 102 para. 1 letter c) and letter j) if it concerns the granting of amnesty, and to letter k), is valid if signed by the Prime-Minister of the Government of the Slovak Republic or a Minister authorized by him; in these cases, the Government of the Slovak Republic is responsible for the decision of the President.”.

<sup>35</sup> Article 107 of the Slovak Constitution states:

“The President may be prosecuted only for a wilful infringement of the Constitution or for treason. The National Council of the Slovak Republic shall decide on the bringing of a prosecution on a President by a three-fifth majority of all Members of Parliament. The National Council of the Slovak Republic shall file the prosecution to the Constitutional Court of the Slovak Republic, which shall decide on it in plenary session. A condemning decision of the Constitutional Court of the Slovak Republic shall mean the loss of the presidential post and of the eligibility to regain this post.”

<sup>36</sup> Article 102 sec. 1 letter o) of the Slovak Constitution states: The president ... may return to the National Council of the Slovak Republic an act with comments up to 15 days of delivery of an adopted act and Article 84 sec. 3 states that in approving an international treaty according to Art. 7 sections 3 and 4, and in adopting a law returned by the President of the Slovak Republic according to Art. 102 letter o), the consent of the absolute majority of all Members of Parliament shall be required.

<sup>37</sup> Article 119 of the Slovak Constitution states:

The Government shall decide as a body:

- a) on draft laws,
- b) on government regulations,
- c) on the Government Programme and its implementation,
- d) on principal measures to be taken to guarantee the economic and social programmes of the Slovak Republic,
- e) on draft state budget and final state budgetary account,
- f) on international treaties entered into by the Slovak Republic whose negotiation the President of the Slovak Republic has delegated to the Government,
- g) on the consent with delegation of negotiation of international treaties according to Art. 102 para. 1, letter a) to its individual members,
- h) on submitting to the Constitutional Court of the Slovak Republic a proposal to decide on the conformity with the Constitution and constitutional law of a negotiated international treaty for which the approval of the National Council of the Slovak Republic is necessary,
- i) on fundamental issues of internal and foreign policy,
- j) on submitting a draft law or a draft of other binding measure for public discussion,
- k) on submitting request for a vote of confidence,
- l) on granting amnesty in cases of offences,
- m) on the appointment and recall of other state officials in cases laid down by a law and three members of the Judicial Council of the Slovak Republic,
- n) on a proposal for declaring a state of war, on proposal for ordering a mobilization of the military forces, on proposal for declaring an exceptional state and on a proposal for their termination, on declaring and on termination of a state of emergency,
- o) on despatching the military forces outside of the territory of the Slovak Republic for the purpose of humanitarian aid, military exercises or peace observing missions, on the consent with the presence of foreign military forces on the territory of the Slovak Republic for the purpose of humanitarian aid, military exercises or peace observer missions, on consent with the passing of the territory of the Slovak Republic by foreign military forces,
- p) on despatching the military forces outside of the territory of the Slovak Republic if it regards performance of obligations resulting from international treaties on joint defence against attack for a maximum period of 60 days; the Government shall announce this decision without undue delay to the National Council of the Slovak Republic,
- r) on other issues if the law provides so.”

<sup>38</sup> The organisation of the Constitutional Court, proceedings before it, and the position of its judges is regulated by the Act/Law of the National Council of the Slovak Republic No. 38/1993 of the Coll. The Constitutional Court of the Slovak Republic started its activity on the 17th March 1993.

<sup>39</sup> Basic legal provisions governing their status include the Constitution (Articles 141 - 148), Act No. 335/1991 Coll. on Courts and Judges, Act No. 80/1992 Coll. on Administration of Courts, Act No. 212/91 Coll. on Disciplinary Responsibility of Judges and Act No. 420/1990 Coll. on Salaries of Judges.

<sup>40</sup> The organisation of public prosecutors is regulated by the Act of the National Council of the Slovak Republic No. 153/2001 of the Collection of Laws of the Slovak Republic published on March 28, 2001.

<sup>41</sup> The necessity of this particular change was recalled through the infamous Gaulieder case when during “Mečiar’s government” a fake letter purportedly sent by Deputy František Gaulieder to parliament’s Mandate



◆ and Immunity Committee served as a pretext for the National Council of the Slovak Republic to strip him of his mandate.

<sup>42</sup> This happened as reaction on Mr. Mečiar behavior when he as acting-President issued his infamous blanket pardon on March 3, 1998 to people involved - but never tried - in the kidnapping of former President Kováč's son and the thwarting of a 1997 referendum on NATO membership and direct presidential elections.

<sup>43</sup> The amendments were adopted by a vote of 90 to 57 with one abstention. Opposition deputies voted against the legislation en masse.

<sup>44</sup> International observers congratulated the country's leaders for pushing the reforms through parliament. European Union Commissioner for Enlargement Günther Verheugen said that although the constitutional reform was an internal affair of Slovakia, he was pleased with its passage as it was "crucial for the country's integration ambitions". European Commission Deputy Spokesman Jean-Christophe Filori also said that the European Commission was "very satisfied" with the vote, adding that the body was especially gratified that the amendments would enable public administration reform to move ahead.

### **АННОТАЦИЯ**

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