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## THE GOVERNMENT STRUCTURE IN THE NEW SLOVAK REPUBLIC

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### I. INTRODUCTION: THE HISTORY

The Constitution of the Slovak Republic (Constitution) went into effect on October 1, 1992, the day of its proclamation.<sup>1</sup> The decisive

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1. The Constitution of the Slovak Republic was printed on October 1, under No. 460/1992 Zb. (Coll. of Laws). Because the Constitution of the Slovak Republic was written for a sovereign republic but passed by the Slovak National Council during the existence of the Czech and Slovak Federal Republic, not all its articles went into effect at the same time. Only the following articles went into effect with the changes in the constitutional arrangement of the CSFR on

vote on the constitutional draft was taken by the Parliament of the Slovak Republic (National Council).<sup>2</sup> After long and heated discussions on September 1. The Constitution was solemnly signed by the Chairman of the National Council, Ivan Gasparovic, and the prime minister of the government of the Slovak Republic, Vladimir Meciar, on September 3, 1992.

Notwithstanding the importance of the Constitution, its adoption was only one among many steps which led to the dissolution of the Czech and Slovak Federal Republic (CSFR) and the emergence of two new sovereign states. On July 17, 1992, the Declaration of Sovereignty of the Slovak Republic was proclaimed by the National Council.<sup>3</sup> On the same day Vaclav Havel, President of the CSFR, resigned his post.<sup>4</sup> On November 25, 1992, the Federal Assembly<sup>5</sup> adopted Constitutional

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January 1, 1993:

—Article 84(3) (regarding the declaration of war on another state and the election and recall of the president);

—Article 86(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(l) (giving the National Council the power to express consent for sending armed forces outside the territory of the Slovak Republic);

—Article 102(g) (regarding the appointment of university professors and rectors and the appointment and promotion of generals);

—Article 102(j) (declaring that the president is the commander in chief of the armed forces);

—Article 102(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);

—Article 152(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).

2. See Article 102 of the Constitutional Act of the CSFR of October 27, 1968, *reprinted in* No. 143/1968 Zb. (Coll. of Laws), which stated that the Czech National Council and the Slovak National Council were the representatives of the national sovereignty and independence of the Czech and Slovak nations, and the supreme organs of state power in the Czech and Slovak Republics. The National Councils were recognized as the supreme representative bodies of the Republics and their sole legislative organs. Article 107 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. Article 142 provided that the CSFR Constitution may be amended only by a Constitutional Act of the Federal Assembly and that both republics shall adopt their own constitutions together with the adoption of the CSFR Constitution.

3. Approved by Resolution of the Slovak National Council on July 17, 1992, and effective since August 28, 1992, the date of its publication. See No. 84/1992 Zb. (Coll. of Laws).

4. President Havel resigned on July 13, 1992. During his last address, he declared that he did not intend to serve over the "liquidation" of the CSFR.

5. Article 29(1) of the Constitutional Act of the CSFR of October 27th, 1968, No.

Act No. 542/1992, which brought about the dissolution of the Czech and Slovak Federal Republic.

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 and Slovak Republics.<sup>7</sup> Later developments were spawned not only by the non-democratic political environment in which the Czech-Slovak federation was created, but by the strong centralization inherent in the former Communist regime. Rigid centralization 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> the component republics were prevented from developing their own identity, from developing competency to resolve issues independently, and even from having their own constitutions. The centralized character of the socialist "federal" state was especially illustrated by Articles 4 and 6 of the 1960 Constitution.<sup>9</sup> Article 4 anchored the leading role in the

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143/1968 Zb. (Coll. of Laws) (as amended by other constitutional acts), declared the Federal Assembly to be the supreme organ of state power and the sole legislative body of the CSFR.

According to section 2 of that article, the Federal Assembly consisted of two chambers: the Chamber of People and the Chamber of Nations. According to section 3, a valid decision of the Federal Assembly required the concurrent decision of both Chambers (unless a constitutional act provided otherwise or unless an internal matter of only one of the two Chambers was involved). According to Articles 30 and 31, the Chamber of People consisted of 200 members elected by direct vote in the whole CSFR 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.

6. The Czechoslovak Republic was formally constituted by the Act of the National Council concerning creation of the Czechoslovak Republic in Prague, later published under No. 11/1918 Z.z. a.n. (Coll. of Laws). This document was described as the first "temporary constitution" of the Czechoslovak Republic.

7. The Constitutional Act of the CSFR was approved on October 27, 1968, and published under No. 143/1968 Z.z. (Ustavny Zakon c. 143/1968 Zb.). Czechoslovak Constitution of 1968, *reprinted* in Blaustein and Flanz, *Constitutions; Czechoslovakia*.

According to Article 29, 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 CSFR Constitution and other acts (art. 36). The enactment of the Federal Constitution required a three-fifths majority of all the Members of the Chamber of 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 (art. 41). *See id.*

8. Formally, the Constitutional Act of the CSFR was divided between exclusive jurisdiction of the CSFR (art. 7), joint jurisdiction of the CSFR and the two republics (arts. 8 & 10-28a) and exclusive jurisdiction of the CSFR (art. 9), which was formulated negatively ("matters which have not been specifically placed under the jurisdiction of the CSFR shall be under the exclusive jurisdiction of the Czech Republic and the Slovak Republic").

9. The Constitution of the Czechoslovak Socialist Republic of July 11, 1960, published as

government for the Communist Party of Czechoslovakia.<sup>10</sup> Article 6 created the National Front of Czechs and Slovaks as a people's alliance led by the Communist party which unified all political parties, associations and people's organizations.<sup>11</sup>

As a constitutional time-bomb ticked, the supermajority requirement of Article 41<sup>12</sup> and "the prohibition of majoritarian rule" in Article 42<sup>13</sup> stifled democratic action. Article 42 required the Czech and Slovak components in the Chamber of Nations to vote separately for each important piece of legislation.<sup>14</sup> A bill was approved only if

Constitutional Act No. 100/1960 Zb. (Coll. of Laws), later amended by the Constitutional Law of the Czechoslovak Federation and published under No. 143/1968 Z.z. and other constitutional acts.

10. See Constitution of the Czechoslovak Socialist Republic, Article 4, which holds that the guiding force in society and in the State, and the vanguard of the working class, is the Communist Party of Czechoslovakia, a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia.

11. See Ústava [Constitution] art. 6 (S.R.), which states that the "National Front of Czech and Slovaks, in which the people's organizations are associated, is the political expression of the alliance of the working people of town and country, led by Communist Party of Czechoslovakia."

12. Constitutional Law No. 143/1968 Zb. (Coll. of Laws), art. 41 states that:

The enactment of the Federal Constitution, of Constitutional Acts of the Federal Assembly and their amendments, the election of the President of the Czech and Slovak Federal Republic and decisions declaring war shall require a three-fifths majority of all the Members of the People as well as 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.

13. Constitutional Law No. 143/1968 Zb. (Coll. of Laws), art. 42(1) states that:

In Cases where under the present Constitutional Act majority rule is prohibited, Members elected in the Czech Republic and Members elected in the Slovak Republic shall vote separately in the Chamber of Nations. A decision shall be adopted in an affirmative vote cast by a majority of all Members elected in the Czech Republic and a majority of all members elected in the Slovak Republic, unless the present Constitutional Act requires a qualified majority.

14. Constitutional Law No. 143/1968 Zb. (Coll. of Laws), art. 42(2) states that: Majority rule shall be prohibited with respect to the approval of

a) a Bill concerning the acquisition and loss of Czechoslovak citizenship,

b) medium term state plans of development of the national economy of the Czech and Slovak Federal republic,

c) Bills governing the matters specified in Article 10 (2) [principles of national economic planning as the uniformly organized process of forming and securing plans and of controlling their implementation—P.K.),

d) Bills determining the method of securing the receipts of the Federal Budget, relations between the Federal and Republican Budgets, as well as the principles of administering the Budget,

adopted by a majority of the *elected* representatives of each Republic. These articles, originally intended as a protection of the equality principle among constituent states, caused no particular problems during communist rule. However, they proved to be significant obstacles to the decision-making process of a parliament which consisted of democratically elected representatives from different political parties within a pluralistic society.

After 1989, the newly formed democratic political powers began a process of rebuilding not only the social order,<sup>15</sup> but also the 1968

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e) Federal Budget and the final budgetary accounts of the Federation,  
f) Bills establishing special-purpose funds tied to the Federal Budget,  
g) Bills governing the questions listed in Article 11 (7) (general principles of allocation and amortization policy—P.K.)

h) Bills determining taxes, returns and duties under Article 12 (2) (enterprise taxes and returns, the turnover tax, the pension tax, the agricultural tax, the income tax, the tax on artistic and literary activities, the motor vehicle tax, the road tax, the tax on income of the population and the taxation of banking and insurance institutions, the charges which by their character had an exclusive or almost exclusive relationship to other countries or were related to the exercise of the jurisdiction of Federal organs—P.K.)

i) Bills governing the questions listed in Article 13 (2) (custom service, custom policy and the issuance of customs tariffs—P.K.)

j) Bills regulating the Czechoslovak currency and the Acts specified in Article 14, (2) (the status duties and responsibility of the Czechoslovak State Bank as well as the method of its administration, the status and legal relations of other banks—P.K.)

k) Bills governing the questions listed in Article 15 (principles governing the price policy and price control, determination of the prices of raw materials, products and services—P.K.)

l) Bills relating to economic relations,

m) Bills governing the questions listed in Article 21(2) and Article 22 (scientific, technological and investment policy, sphere of labour, wages and social policy—P.K.)

n) Bills governing the establishment, the legal status and method of management of economic organizations,

o) Bills enacted under Article 27 (2) Article 28 as well as Article 28a (division of jurisdiction between the CSFR and the two Republics in matters of internal order and security—P.K.),

p) Bills establishing Federal organs of state administration with the exception of ministries.

(3) Majority rule shall not apply to the approval of statements of policy of the Government of the Czech and Slovak Federal Republic and to votes of confidence in the Government.

15. The leading role of the Communist Party was abolished. Constitutional Act No. 46/1990 Zb. (Coll. of Laws) 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 Zb. (Coll. of Laws) exchanged the only recognized socialist ownership by equality of all forms of owner-

communist federation.<sup>16</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>17</sup> some Slovaks still felt disadvantaged and accused the federal government of a strong centralization which heavily favored the Czechs. Voices from the Slovak Republic calling for a new arrangement of mutual relations within a federation were opposed by widely divergent groups. On the one hand there were politicians, especially in the Czech Republic, who stressed the need for a strong federal government during a time of economic and political transition; this group refused to consider a serious redistribution of governmental power. On the other hand there were politicians, mostly in the Slovak Republic, who supported the split of the federation and the creation of two sovereign nations.

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 also for a new constitutional foundation of the common state.<sup>18</sup> In spite of the many problems, on February 8, 1992 the Commission approved in Milovy<sup>19</sup> the so-called "Draft Treaty on the Principles of the Constitutional System of the Common State."<sup>20</sup> The Czech National Council ratified this treaty on

ship. New acts were passed concerning political parties (No. 15/1990 Zb. (Coll. of Laws)), the right to association (No. 83/1990 Zb. (Coll. of Laws)), the right to assembly (No. 84/1990 Zb. (Coll. of Laws)), and right to petition (No. 85/1995 Zb. (Coll. of Laws)), to mention just a few. The whole process was concluded on January 9, 1991 by approval of the Constitutional Act (23/1991 Zb.), declaring the Charter of Fundamental Rights and Freedoms.

16. One of the most important steps in this direction was Constitutional Act No. 556/1990 Z.z. (Coll. of Laws), concerning the new division of jurisdiction between the federation and republics ("Kompetenčný zákon").

17. The Constitutional Law of the CSFR, in Article 1, section 1 stated that: "The Czech and Slovak Republic is a federative State of two equal, fraternal nations, Czech and Slovak." Section 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."

18. *See, e.g.*, ERIC STEIN, CZECHO/SLOVAKIA: ETHNIC CONFLICT, CONSTITUTIONAL FISSURE, NEGOTIATED BREAKUP, University of Michigan Press (1977); Katarina Mathernova, CZECHO? SLOVAKIA: CONSTITUTIONAL DISAPPOINTMENTS IN CONSTITUTION MAKING IN EASTERN EUROPE 57-91 (A.E.D. Howard, ed., Woodrow Wilson Center Press, 1993).

19. A small village located in Moravia, at that time a part of the Czech Republic.

20. Text of the Draft Czech-Slovak Constitution Treaty, FBIS-EELI-92-031, February 14,

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>21</sup>

It was understood that the issue would be decided after new parliamentary elections to be held on June 5 and 6, 1992.<sup>22</sup> The electoral results on the federal as well as republican levels dramatically changed the direction of future developments.<sup>23</sup> In spite 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 good will 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 with two new sovereign states—the Czech Republic and the Slovak Republic.

The disintegration was formally accomplished by a Constitutional Law providing for the dissolution of the CSFR. 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 law declared that by December 31, 1992, the CSFR would be dissolved.<sup>24</sup>

Since January 1, 1993 the two new successor states have appeared on the maps of Europe. In that same year the Slovak Republic began its struggle with the new structure of mutual relations between the legislative, executive, and judiciary branches of the government. But the constitutional relations, especially between the Parliament, the President and the Government are unusual in many respects. This article—with

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1992, at 6 (citing *Hospodarske Noviny*, February 11, 1992) reprinting the entire text of the document.

21. Article 121 of the Constitutional Act of the CSFR 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.

22. 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.

23. The Civic Democratic Union (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 "populist" Movement for Democratic Slovakia, headed by Mr. Meciar, gained the most electoral support. Both leaders became prime ministers of coalition governments, but were still powerful enough to press their own views about future constitutional development of the country.

24. See generally Constitutional Law No. 542/1992 Zb. (Coll. of Laws).



the benefit of hindsight and nearly four years of the Slovak experience—will focus on some of the most interesting features of these relations and suggest possible solutions for the future.

## II. THE STRUCTURE OF GOVERNMENT: A BASIC THEORETICAL OVERVIEW

In jurisprudence, the terms “structure of government” and “form of government” are understood to mean the composition, method of selection, and relationships among democratically elected parliaments, governments,<sup>25</sup> and heads of state (i.e., monarchs or elected presidents).<sup>26</sup>

The methods characterizing different structures of government are based on the selection of the executive,<sup>27</sup> the mutual relationships between the legislative and the executive,<sup>28</sup> the internal structure of the executive,<sup>29</sup> the position and powers of the head of state, and on other aspects as well. The common feature of all democratic forms of government is that the legislative power belongs to the democratically

25. This article uses the term “Government” to refer to the Prime Minister and council or cabinet of ministers as it is common in parliamentary systems.

26. See, e.g., PRUSAK J. A KOL., VYBRANE KAPITOLY Z MODERNEJ TEÓRIE STATU A PRAVA (CHAPTERS OF MODERN THEORY OF STATE AND LAW) 50 (UK Bratislava 1990); FILIP, J., SVATON, J., ZIMEK, J., ZAKLADY STATOVEDY (FOUNDATIONS OF JURISPRUDENCE) § 73 (Masaryk University, Brno 1994); KATZ, A., STAATSRECHT (CONSTITUTIONAL LAW) 27 (C.F. Muller Juristischer Verlag, Heidelberg 1987); MATTERN, K., GRUNDLINIEN DES PARLAMENTES (THE MAIN CHARACTERISTICS OF PARLIAMENTS) 47-8 (Verlag Franz Vahlen GMBH, Berlin 1969); KRESAK, P., POROVNAVACIE STATNE PRAVA (COMPARATIVE CONSTITUTIONAL LAW) 216 (UK Bratislava, 1992).

27. The executive can be created by parliamentary election, see Grundgesetz [Constitution] [GG] art. 63 (F.R.G.), by affirmation of a candidate introduced by the head of the state, Constitution [Constitution] [C.E.] art. 62(d), or by the affirmation of the whole government Úsaka [Constitution] art. 113 (S.R.).

28. For example, the executive might be non-responsible to the legislative branch of the government, as in the Constitution of the United States, or responsible to the legislative branch. The powers of the Parliament, even within the structure of the responsible executive, do not necessarily have to be the same. The Parliament could be empowered to express no-confidence only to the Government as a whole, see e.g., La Constitution [Constitution] art. 49, Ústavní Zákon České Republiky [Constitution] art. 72), or it could be empowered to express no-confidence to the government and to its individual members as well. See Ústava ČR [Constitution] art. 116.

29. Constitutional models by which some executive powers are vested in the President and in which the head of the executive is the Prime Minister, used to be characterized as models with a “dual executive.” Constitutional models in which the President of the Republic is at the same time the head of the executive used to be characterized as models with a “monistic executive.” See, e.g., Lownstein, K., Zum Begriff des Parlamentarismus (About the term of Parliamentarism), in: PARLAMENTARIZMUS, ATHENÁUM-HAIN-SCRIPTOR-HANSTEIN, 1980, s. 67; ÖHLINGER, TH., VERGLEICHENDS VERFASSUNGSRECHT (COMPARATIVE CONSTITUTIONAL LAW), Universitätsverlag für Wissenschaft und Forschung, Wien 1986, s.35.

elected parliament. This is the cornerstone of representative democracy, which is based on the transfer of the people's sovereignty to a representative organ: the parliament.

The present diversity of forms of government in well-developed democratic states is due to the fact that the basic components employed in characterizing forms of government have evolved on their own.<sup>30</sup> Most European authors distinguish between the following basic models: (1) parliamentary democracies (2) presidential democracies (3) extreme parliamentary democracies (i.e., government by parliament or government by assembly), and (4) several mixed or differently combined forms of government.<sup>31</sup> Others, like Peter Perntahler of Austria, extend this basic division even further.<sup>32</sup>

The principal difference between the two basic governmental structures—the parliamentary and the presidential democracy—lies in the powers, position and internal structure of the Government (i.e., the cabinet) and the head of state. Within the classical structure of a parliamentary form of government, executive powers belong to a Government headed by the Prime Minister, and the Government is politically responsible to the parliament. The Government is under the control of Parliament and depends on its confidence. The head of state does not compete with Parliament or the Government for political power, but

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30. For more on the process of evolution of constitutional positions of parliaments, relations between parliaments and governments and heads of states, see BAXA, B., *PARLAMENT A PARLAMENTARIZMUS (PARLIAMENT AND PARLAMENTARISM)* (1924); AULARD, E., *HISTOIRE POLITIQUE DE LA REVOLUTION FRANCAISE* (1901); LAUNDY, PH., *PARLIAMENTS IN THE MODERN WORLD (INTER-PARLIAMENTARY UNION, 1989)*; R.N. CURRENT, T.H. WILLIAMS, F. FREIDEL, *AMERICAN HISTORY: A SURVEY* (1965); BRAZIER, R., *CONSTITUTIONAL PRACTICE* (Clarendon Press, 1988); YARDLEY, D.C. M., *INTRODUCTION TO BRITISH CONSTITUTIONAL LAW* (Butterworths, 1995); BELL J., *FRENCH CONSTITUTIONAL LAW* (Clarendon Press, 1992); WRIGHT, V., *THE GOVERNMENT AND POLITICS OF FRANCE* (1989); MULLER H., KRIEGER, K., F., *DEJINY NEMECKA (THE HISTORY OF GERMANY)*; *NAKLADATELSTVÍ LIDOVÉ NOVINY* (1995); BENDA, E., MAIHOFFER, W., VOGEL H.J., *HANDBUCH DES VERFASSUNGSRECHTS DER BUNDESREPUBLIK DEUTCHLAND (HANDBOOK OF GERMAN CONSTITUTIONAL LAW)* Walter de Gruyter (1984); HOLBORN, L., CARTER, G., HERZ, J., *GERMAN CONSTITUTIONAL DOCUMENTS SINCE 1871* (Prague Publishers, 1970); MCBAIN, H., ROGERS, L., *THE NEW CONSTITUTION OF EUROPE* (Doubleday, Page & Company, 1922).

31. PRUSAK, *supra* note 30; FILIP, SVATON, ZIMEK, *supra* note 30; KATZ, *supra* note 30; MATTERN, *supra* note 30; KRESAK, *supra* note 30.

32. See, e.g., P. PERNTAHLER, *ALLGEMEINE STAATSLHRE UND VERFASSUNGSLEHRE (GENERAL COMMON JURISPRUDENCE AND CONSTITUTIONAL LAW)* 252 (Springer-Verlag 1986). Perntahler considered "apparent" or "false" parliamentarism a structure which operates within totalitarian states and thus could not be recognized as democratic. Apparent parliamentarism could be characterized by the fact that parliament and other supreme state organs act only as a cover for the non-democratic political structure, which does not recognize freedom of speech, freedom of association and other basic rights and freedoms and lacks true democratic elections.

usually represents the country in a more or less symbolic role. At the same time, as an "arbiter" in the interplay between the Parliament and the cabinet, the head of state holds important powers necessary for securing the appropriate functioning of the entire constitutional mechanism. These powers allow him to resolve extraordinary situations which might emerge from conflicts between the parliament and the executive or from internal political conflicts within the parliament.<sup>33</sup>

The presidential form of government, contrary to the parliamentary system, is built on the principle of separation of powers and is characterized by a Government which is not responsible to the Parliament.<sup>34</sup> The executive is often described as a monistic one. This entails a consolidation of the functions of the head of state and the Prime Minister in the office of the President, who is most often elected directly by the people through universal suffrage.<sup>35</sup>

In the parliamentary form of government there exists only one state organ deriving its legitimate position directly from the people: the parliament. Conversely, in the presidential form of government there are two such state organs: Parliament and the President forming the head of the Government. The parliamentary form of government can be described as a vertically-structured system of mutual relations between state organs, with the parliament at its top, and the subordinate positions of the government, and with the head of state serving as guarantor against the failure of the system.<sup>36</sup> The presidential form of govern-

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33. The head of state, as an arbiter, can dissolve the parliament when it fails to perform its principal duties: to form the Government or pass a budget, not when it merely encroaches upon presidential prerogatives; or recall a Government which has lost the confidence of the Parliament. In 1993, we witnessed the importance of this power during resolution of a political crisis in Poland, where on May 28, 1993, the Parliament expressed its non-confidence in the government headed by Mrs. Suchocka by a margin of only one vote. In an effort to preserve the continuity of governmental policy, President Walesa preferred to dissolve the politically shattered parliament before recalling the relatively successful government.

34. See, e.g., the relation between the legislative and executive branch of the government not only within the U.S. CONST. but also within the VENEZ. CONST. (1811), MEX. CONST. (1824), CONST. ARG. (1853), NIG. CONST. (1979), and PHIL. CONST. (1987).

35. The executive branch within such constitutional structures can be characterized not only by the fact that it is headed by the President of the Republic, but also by its constitutional non-responsibility to the legislative branch. The result is that the parliament does not have the power to compel the government to resign through a vote of no-confidence and its deputies are not empowered to question the government members in the Parliament at all.

36. The fact that these constitutional systems usually contain measures for resolution of extraordinary situations (state of defense, serious and immediate threat of the state institution etc.) under which some other constitutional organs could temporarily suspend the role of parliament does not collide with its supreme position. F.R.G. CONST. art. 53a-Joint Committee; FR. CONST. art. 16.-President of the Republic.

ment is characterized by horizontal distribution of powers between the Parliament and the Government headed by the president.<sup>37</sup>

Extreme parliamentary democracy might be characterized by a concentration of state power in the parliament and an absence of powers in the head of state. The head of state has no power to intervene in a conflict between parliament and the government, and no power to dissolve a parliament which for some reason is unable to perform its constitutional function.<sup>38</sup> Such a governmental arrangement operates on the federal level in Switzerland,<sup>39</sup> where its disadvantages are balanced by intensive use of direct democracy through popular referenda.

The hybrid form, consisting of different combinations and modifications of the first two models, appears to be the most widespread variant. Examples of this form are illustrated by the chancellor principle in Germany (in existence since 1949),<sup>40</sup> the semi-presidential form of government in France (in existence since 1958),<sup>41</sup> and the constitutional model of Austria (in existence since 1920 but significantly amended in 1929).<sup>42</sup>

### III. THE STRUCTURE OF GOVERNMENT IN THE CONSTITUTION OF THE SLOVAK REPUBLIC

#### A. *A Parliamentary Democracy?*

Because of the basic relationship between the National Council and the government, the Constitution of the new Slovak Republic could be characterized as a parliamentary democracy. If characterized solely by the categories thus far mentioned, the Constitution clearly establishes a

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37. A "pure" presidential system within a democratic order is a system of mutual independence in which the legislative branch of the government and the executive branch of the government have firm mandate gained through election with their own source of legitimacy. See A. Stephan and C. Skach, *USTAVNE RAMCE A DEMOKRATICKA KONSOLIDACIA: PARLAMENTNA VERSUS PREZIDENTSKA DEMOKRACIA* (Constitutional Frameworks and Democratic Consolidation: Parliament Versus Presidential Democracy) in *POLITOLOGICKY CASOPIS* 1/1994, PF UM Brno, s. 48.

38. Historical predecessors of present form extreme parliamentary democracy can be traced to "the Assembly government", as used to describe a period of so called "Long Parliament" in England after 1640, or to "Government Conventionnel," constitutional arrangement in France after 1793.

39. BV, Cst., Cost.Fed. [Constitution].

40. The Basic Law was adopted on May 8, 1949 and promulgated by the Parliamentary Council on May 23, 1949 as the Constitution of the "Federal Republic of Germany."

41. The Constitution of the Fifth French Republic was adopted on September 28, 1958 by referendum.

42. The Austrian model is characterized by directly elected and relatively powerful presidents who have traditionally hesitated to take full advantage of their own constitutional powers.

parliamentary form of government. This determination is supported by the government's political responsibility and accountability to the National Council<sup>43</sup> and the separate constitutional positions of the President (i.e., the head of state) and the Prime Minister.<sup>44</sup>

To ascertain whether *all* criteria of a parliamentary form of the government are met, however, it is necessary to look more closely especially at the constitutional position and powers of the head of state, the constitutional position of the legislative power, the creation and composition of the executive power, the mutual relationships between all other mentioned state organs and the authority of the people to exercise their power.

### *B. A Strong President?*

The position of the National Council is fixed in the first section of Chapter Five of the Constitution, "Legislative power."<sup>45</sup> The Constitution defines the National Council as the sole constituent and legislative body of the Slovak Republic<sup>46</sup> consisting of 150 deputies elected for a four-year period.<sup>47</sup> Most of the powers vested in the National Council are mentioned in Article 86, whereas others are found in other places within the constitutional text.<sup>48</sup> The power of the National Council to

43. SLOVK. CONST. art. 86(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 (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.

44. SLOVK. CONST. art. 101(1) 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.

45. Chapter Five: Legislative Power consists of Part One-The National Council of the Slovak Republic (arts. 72-92) and Part Two-Referendum (arts. 93-100).

46. SLOVK. CONST. art. 72, which stresses the unique constituent and legislative position of the National Council within a sovereign state, could be understood as a useless residue of the former federative state arrangement. At the same time, however, it could be understood as a declaration of the fact that a new constitution in the future must be finally approved only by the National Council (. . . the only constituent body).

47. SLOVK. CONST. art. 73 (1).

48. Most of the powers of the National Council are defined by art. 86 of the Slovak Constitution, which states:

The jurisdiction of the National Council of the Slovak Republic comprises, above all:

- a) deciding upon the Constitution and constitutional and other laws and controlling compliance with them,
- b) electing and recalling the president of the Slovak Republic by secret ballot,

legislate is substantially limited, especially by Chapter Two of the Constitution, "Fundamental Rights and Freedoms."

The positions of the President and the Government are defined by Chapter Six, "Executive Power."<sup>49</sup> According to the Constitution of the Slovak Republic, the executive power consists of the President and the Government, which is headed by the Prime Minister. But at the same time the President is constitutionally defined as the head of the Republic,<sup>50</sup> the Government is defined as the highest organ of the executive power.<sup>51</sup> Other factors add to this confusion concerning the constitutional position of the President within the governmental structure of the Slovak Republic. Examples of these are: the President's political responsibility to the National Council;<sup>52</sup> the lack of a clear constitutional division of jurisdiction between the President and the

c) approving by means of a constitutional law a treaty on the Slovak Republic's entering into an alliance with other states and on its abrogation of such a treaty,

d) deciding on proposals to call a referendum,

e) voicing consent, prior to ratification, with the conclusion of international political treaties, international economic treaties of a general nature, as well as with international treaties whose execution requires the passing of a law,

f) establishing ministries and other state administration bodies by means of law,

g) discussing the policy statement of the Government of the Slovak Republic, controlling the Government's activity, and passing a vote of confidence in the Government or its members, h) approving the state budget, checking on its fulfillment, and approving the state closing account,

i) discussing basic domestic, international, economic, social, and other political issues,

j) electing judges, the chairman and deputy chairman of the Supreme Court of the Slovak Republic, the chairman and deputy chairman of the Constitutional Court of the Slovak Republic, and the chairman and deputy chairman of the Supreme Control Office of the Slovak Republic.

k) deciding on the declaration of war if the Slovak Republic is attacked or as a result of commitments arising from international treaties on common defense against aggression,

l) expressing consent to sending armed forces outside the territory of the Slovak Republic.

49. Chapter Six (Executive Power), Part One, The President of the Slovak Republic (arts. 101-107); Part Two, The Government of the Slovak Republic (arts. 108-123).

50. SLOVK. CONST. art. 101 (1) states: "The President is the head of state of the Slovak Republic."

51. SLOVK. CONST. art. 108 states: "The Government of the Slovak Republic is the supreme body of executive power."

52. The draft of the SLOVK. CONST. art. 102 introduced to the Parliament contained a section 4 which stated, "For the execution of his office the President is responsible to the National Council of the Slovak Republic."

Government, especially the Prime Minister;<sup>53</sup> the vague language of the Constitution itself in defining the powers of the President;<sup>54</sup> and

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53. According to Ústava [Constitution] art. 102(r), the President has 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.

The constitution remains silent about the role of Prime Minister if such a situation should arise, and fails to elaborate on the constitutional responsibility of the Prime Minister for governmental decisions made during such a meeting of the government.

54. Most of the powers of the President are defined by the art. 102 of the Slovak Constitution:

The President:

- a) shall represent the Slovak Republic in international relations, negotiate and ratify international agreements; he can delegate the power to the Government or, with the consent of the Government, to individual members of the Government to negotiate those international agreements for which not consent by the National Council of the Slovak Republic is required. He may delegate to the Government of the Slovak Republic or, with the Government's consent, to individual members of the Slovak Republic, the conclusion of international treaties that do not require approval by the National Council of the Slovak Republic;
- b) shall receive and accredit ambassadors;
- c) shall convene the constituent meeting of the National Council of the Slovak Republic;
- d) may dissolve the National Council of the Slovak Republic provided the Program of the Government of the Slovak Republic has been rejected three times within six months of the elections, in which case the President shall hear the opinion of the President of the National Council of the Slovak Republic within thirty days;
- e) shall sign laws;
- f) shall appoint and remove the Prime Minister and other members of the Government of the Slovak Republic, commission the heads of governmental departments and accept their resignation; he shall remove the Prime Minister and other Ministers in cases defined in arts. 115 and 116;
- g) shall appoint and remove the principal officers of national bodies and high officials as defined by law, university professors and presidents, and promote any generals;
- h) shall award decorations and honors, unless another authority has been empowered by him to do so;
- i) shall grant pardons and amnesty, mitigate sentences imposed by criminal courts, decrees to terminate or not commence proceedings and to erase criminal records;
- j) shall be the Commander-in-Chief of the armed forces;
- k) shall declare, by the recommendation of the Government of the Slovak Republic, a state of war, and declare war by a resolution of the National Council of the Slovak Republic in the event of aggression by parties hostile to the Slovak Republic or in the event that obligations under international agreements requiring the joint defence against aggression must be fulfilled;
- l) shall declare a state of emergency by means of a constitutional statute;
- m) shall announce referendums;

the division of jurisdiction between the Parliament and the Government.<sup>55</sup>

The effectiveness of most decisions taken by heads of states (i.e., presidents or monarchs) within parliamentary democracies depends on the countersignature of the Prime Minister or of an authorized member of the government. Through the countersignature the member of the government accepts his political accountability for the head of state's decision against the parliament. In this way the institution of the countersignature ensures not only the necessary level of coordination and cooperation between the head of state and the government but the politically independent position of the head of state as well.<sup>56</sup>

In spite of this conceptual structure, the Constitution did not condition the effectiveness of any decision of the president on the countersignature of the prime minister nor of any authorized member of the government. Since practically all decisions which the president is constitutionally entitled to make could be understood as his prerogatives, his position within the governmental structure might appear to be a strong one.

But the reality seems to be entirely different. A careful reading of the constitutional text along with a knowledge of constitutional practice leads to the conclusion that the structure of executive power introduced by the Slovak constitution is not only imbalanced, but creates risk of constitutional conflicts between the President and the Government—in particular between the President and the Prime Minister. This assertion is especially supported by the fact that many acts of the President, in

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n) may return constitutional or other bills to the National Council of the Slovak Republic with his comments for consideration within fifteen days after their passage;

o) shall inform the National Council of the Slovak Republic of the state of the Slovak Republic and of major important political issues, and submit proposals and other measures;

p) shall have the right to be present at the sessions of the National Council of the Slovak Republic, and

r) shall have the right to be present at the meetings of the Government of the Slovak Republic, preside over the meetings and require reports from the Government or from individual Ministers.

SLOVAK CONST. art. 102.

55. According to art. 86(i), one of the enumerated powers of the National Council of the Slovak Republic is the debate on basic international political issues, but according to art. 119(g), the Government decides principal questions of foreign policy.

56. COST. art. 89 (1) (Italy) states: "No act of the President is legal unless it is countersigned by the Ministers who have submitted it and accepted his responsibility." Similar provisions could be found in Constitutions of the Czech Republic, Spain, Hungary, and other constitutions creating parliamentary democracy.



practice, relate to the execution of the constitutional powers of the Government.<sup>57</sup>

The disadvantage of this structure is not only that it puts the head of state into the position of a "weak power-player" against the government, but that it makes the president constitutionally dependent on a political majority of the parliament, rendering him powerless to secure the appropriate functioning of the entire constitutional mechanism. Thus, in reality the Constitution has skewed the balance of power by creating an inordinately strong legislative branch of the government. The subordinate position of the President to the National Council of the Slovak Republic is illustrated by (1) the selection of the head of state by the Council; (2) the right of the National Council to recall the President; (3) the inability of the President to intervene in the activities of the National Council in the event that it is unable to fulfill its constitutional duties; and (4) the constitutional conception of the exercise of presidential powers.

### *C. The President's Responsibility to the Parliament*

Under the Constitution the President is elected and can be recalled by the National Council of the Slovak Republic.<sup>58</sup> The selection of the

57. SLOVK. CONST. art. 119:

The Government has the power to:

- a) prepare bills,
- b) issue Government decrees,
- c) decide the "Program of the Government" and its implementation,
- d) adopt principal measures for the implementation of the economic and social policy of the Slovak Republic
- e) authorize drafts of the state budget and the state closing account,
- f) decide about international treaties of the Slovak Republic,
- g) make decisions on principal questions of domestic and international policy,
- h) to submit bills to the National Council of the Slovak Republic or commit important measure for public discussion,
- i) request the parliament for a vote of confidence,
- j) grant amnesty for misdemeanors,
- k) appoint and recall state officials in cases specified by law,
- l) make decisions in other legally stipulated matters.

SLOVK. CONST. art. 119

58. SLOVK. CONST. art. 86(c) states that "the National Council of the Slovak Republic elect and recall the President of the Slovak Republic by a secret ballot." Article 84(3) requires support of at least a three-fifths majority of all Deputies (90 of 150 deputies) for election or recall of the President.

SLOVK. CONST. art. 101 (2) states (partially repeating) that the president of the Slovak Republic is elected by the National Council of the Slovak Republic by secret ballot for a period of five years, and art. 101 (3) states that three-fifths of all deputies' votes is required for the president to be elected.

head of state by the unicameral parliament might be justified through that body's position as representative of the people. But this arrangement is unusual, even though few other examples within Europe can be found.<sup>59</sup> The fact that members of a singular chamber need not discuss or negotiate the selection of the head of state with another group of representatives chosen under different principles is inconsistent with the balance of power principle, and seems to increase the influence of political parties represented in that particular chamber beyond reasonable limits. Neither does this method of selection meet the requirements for the "independent" position of the head of state, which is the basis for the parliamentary form of government.

However, even more serious problems could arise from the fact that the Constitution of the Slovak republic introduced—next to the traditional criminal accountability of the president<sup>60</sup>—his political accountability. The Constitution did this by giving the power to recall the head of state to the National Council.<sup>61</sup> The reasons for which the National Council might recall the president are very broadly formulated. The Council may recall the President from office if he "is engaged in activity directed against the sovereignty and territorial integrity of the Slovak Republic or in activity aimed at eliminating the Slovak Republic's democratic constitutional system."<sup>62</sup> The obvious danger of

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The first President of the Slovak Republic, Michal Kovac, was elected on February 15, 1993. He was the only candidate for the second round of the presidential election and received 106 votes out of a total of 150.

59. The same solution is utilized in the Constitutions of Hungary, Greece, Turkey and the Czech Republic; the disadvantage of such a solution is at least balanced in these countries with the fact that the head of state is elected by bicameral Parliament at a joint meeting of both the chambers (art. 54), which are of different character (House of Deputies and Senate). The Czech Republic a country with the same constitutional tradition as the Slovak Republic in the 1992 Constitution has proffered a more balanced solution. The Czech president is elected by a bicameral Parliament at a joint meeting of both the chambers (House of Deputies and Senate-art. 54, section 2). The chambers are of different constitutional character, vested with different powers and fulfill other constitutional duties separately. At the same time the Czech Constitution in art. 54 section 3 stated that: "The President of the Republic shall not be responsible for the exercise of his function".

60. According to SLOVK. CONST. art. 107, the President "can be prosecuted only on charges of high treason. The indictment against the President is filed by the National Council of the Slovak Republic. The Constitutional Court of the Slovak Republic decides on the indictment."

61. Article 106 states that the National Council of the Slovak Republic can recall the President from his post if the president is engaged in activity directed against the sovereignty and territorial integrity of the Slovak Republic or in activity aimed at eliminating the Slovak Republic's democratic constitutional system. In such cases, the motion to recall the President may be tabled by more than one—half of all deputies. The consent of at least a three—fifths majority of all deputies is required for the President to be recalled.

62. See Ustava [Constitution] art. 106.

such a vague constitutional provision—indeed the very fact that the President can be recalled for political reasons—raises doubts about whether the drafters of the Slovak Constitution possessed even a basic understanding of the parliamentary form of government.<sup>63</sup>

The only protection against more frequent political misuse of Article 106 of the Constitution is the supermajority requirement for approval of a motion to recall the president. In spite of that, it is very difficult to expect that a head of state whose future depends on the “good faith” of three-fifths of the deputies will be able to act as an independent arbiter in case of conflicts between the government and the legislature or within the legislative branch of the government.<sup>64</sup>

#### *D. Limited Power to Dissolve the Parliament*

Another factor contributing to the imbalance of power between the head of state and the parliament is the failure to give the President—either as his own prerogative or upon a motion of the Government—the power to dissolve the National Council during its legislative term. This could bring about serious constitutional problems, especially while a proportional electoral system in the Slovak Republic brings into the parliament many different political parties.

There are other reasons for vesting the power to dissolve the parliament (subject to certain necessary limitations) in the head of state, the most important being the necessity of having a workable government.<sup>65</sup> Thus it is not surprising that within almost all constitutional models of parliamentary democracy or its variants, articles are found empowering the head of state—sometimes in cooperation with the Government—to dissolve the parliament when the need arises.<sup>66</sup>

63. The reason the drafters of the Slovak Constitution did not preserve the independent and neutral position of head of the state (see for example the constitutional structure of Italy, Netherlands, Belgium, Spain, etc.) may be explained by the content of the former “socialist” constitution; art. 60 section 2 of the Constitution of Czechoslovak Socialist Republic—published as const. law No. 100/1960 Zb.—stated that the “President of the Czechoslovak Socialist Republic shall be accountable to the Federal Assembly for the discharge of his office.”

64. Article 106 of the Slovak Constitution is followed by provision about criminal responsibility. According to art. 107 the President can be prosecuted only on charges of high treason. An indictment against him may be filed by the National Council of the Slovak Republic, but the case must be decided by the Constitutional Court of the Slovak Republic.

65. The ability to dissolve parliament can help avoid a “hung” parliament, as when the parliament is not able to pass a vote of confidence on the Government or to approve the state budget, or a parliament which for some reason does not represent the will of electorate.

66. See, e.g., A Magyar Köztársaság Alkotmánya [Constitution] art. 28(3) (Hung.):  
The Republic may dissolve Parliament simultaneously with setting the dates for the new election if:

In the Slovak Constitution, this issue is dealt with in a very unusual manner.<sup>67</sup> The drafters of the Constitution limited the power of the president to dissolve the National Council to one situation: where the policy statement of the Government is not approved three times. Moreover, the drafters limited the President's exercise of this power to the first six months after the elections. This means that if, for example, a political crisis emerged within the Parliament during the second year of a four year electoral term,<sup>68</sup> there exists no constitutional organ other than the Parliament itself empowered to dissolve the National Council and to call for new election.<sup>69</sup> In fact, if such a situation were to emerge, the Parliament itself might solve it through approval of a constitutional act to cut down the term for which it was elected.<sup>70</sup> However, the difficulty of garnering a supermajority vote for passing a consti-

a) Parliament has at least four times within twelve months during its own mandate withdrawn its confidence from the Government, or

b) in case the mandate of the Government had ended, Parliament failed to elect within forty days after the date of the first nomination, the candidate prime-minister put up for the office by the President of the Republic.

*See also* COST. [Constitution] art. 88 (Italy): (1) The President of the Republic may dissolve one or both Chambers after consultation with their Speakers, and (2) He may not exercise this right during the last six months of his term of office; *See also* Grundgesetz [Constitution] [GG] arts. 63, 68(1) (F.R.G): The German Federal Constitution (the Basic Law) empowers the Federal President to dissolve the Bundestag, if after the third ballot of the Federal Chancellor election no person receive the votes of the majority of the members of the Bundestag and art. 68 (1) empowers the Federal President, upon the proposal of the Federal Chancellor, to dissolve the Bundestag within twenty-one days, if a motion of the Federal Chancellor for a vote of no confidence is not assented to by the majority of the members of the Bundestag. However, the right of the Federal President to dissolve the Bundestag lapses as soon as the Bundestag, by the majority of its members, elects another Federal Chancellor.

67. *See* Ústava [Constitution] art. 102(d) (S.R.), which states that the President may dissolve the National Council of the Slovak Republic if the policy statement of the Government of the Slovak Republic is not approved three times within six months after the elections. Prior to dissolving the National Council of the Slovak Republic, the President must hear the standpoint of the chairman of the National Council of the Slovak Republic. New elections will be called by the chairman of the National Council of the Slovak Republic within 30 days.

68. *See* Ústava [Constitution] art. 73(1) (S.R.), which states that the "National Council of the Slovak Republic shall consist of 150 deputies who are elected for a four-year term."

69. There are several examples of situations which could emerge during the electoral term of a National Council—for example, where the parliament expresses distrust of the government but is unable to approve a new one, where a substantive number of elected representatives decide to leave the political party to which they were elected and create a new one, or where the Constitutional Court declares a decision to dissolve a political party represented in parliament constitutional.

70. *See* Constitutional Law (77/1992Zb.). In fact, after the National Council expressed a lack of confidence in the "second Meciar government" in March of 1994 and the new government was created under Mr. Moravcik, it was able to pass a constitutional law cutting down the original term and calling for a new election.

tutional act,<sup>71</sup> as well as the natural hesitation of elected representatives to commit "political suicide," militate against the likelihood of such a solution.

The fact that the constitutional system is not prepared for such a situation illustrates the imbalance of the framework set up by the drafters of the Constitution. Much of the control which should rightfully be the province of the head of state is left to the legislative branch. Such a constitutional scheme does not even create the necessary preconditions for overcoming a "hung" parliament,<sup>72</sup> a situation in which reestablishing a workable government is considered an urgent necessity.

### *E. The President in Government and Parliament Sessions*

As already mentioned, the Constitution subordinates the head of state to the parliament. Indeed, the head of state is relegated to a similar position as that of the government. The most important formal difference lies with the different majority needed to recall the President (as compared with the vote of no-confidence in the government).<sup>73</sup> The substantive difference lies in the fact that the Constitution empowers the National Council to vote no-confidence in the Government at any time,<sup>74</sup> but in regard to the President broadly limits its discretion to the situation mentioned in Article 106.<sup>75</sup>

At the same time, the Constitution appears to alter the traditional functional relationships between the President and the Parliament and between the President and the Government. For example, Articles 85 and 102¶ of the Constitution establish the duty of a member of the

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71. See *Ústava* [Constitution] art. 84(3) (S.R.), which states that "The agreement of at least a three-fifths majority of all deputies is required to adopt or amendment a Constitution, constitutional law, to elect or to recall the president, and to declare war on another state."

72. A "hung" parliament is a term used to describe a situation where the parliament, for whatever reason, is unable to make a political decision.

73. See *Ústava* [Constitution] art. 84(3) (S.R.) which states that "[f]or the purposes of adopting or amending the Constitution, adopting constitutional statutes, electing and recalling the President, or the declaring war on another state, the consent of a three-fifths majority of all members shall be required." See also *Ústava* [Constitution] art. 88(2) (S.R.) which states that a "no-confidence vote in the Government of the Slovak Republic or a member thereof shall be passed provided an absolute majority of all members concur."

74. See *Ústava* [Constitution] art. 114(1) (S.R.). "The Government shall be collectively responsible for the exercise of governmental powers to the National Council of the Slovak Republic, which may take a vote of no-confidence at any time."

75. See *Ústava* [Constitution] art. 106(2) (S.R.) which states that the "President may be recalled by the National Council of the Slovak Republic for activities against the sovereignty or territorial integrity of the Slovak Republic or a conduct aimed to destroy the democratic and constitutional regime in the Slovak Republic."

Government, at the request of the National Council, to participate in its meeting or in the meeting of any of its organs<sup>76</sup> and the right of the President to be present at the regular sessions of the National Council.<sup>77</sup> In the relations between the President and the Government, however, the Constitutional text goes much farther. It gives the President not only the right to be present at the meetings of the Government, but to preside over them and to require reports from the Government or from its individual members—even from the Prime Minister.<sup>78</sup>

But what is the real value of these rights and powers? The right of the President to be present at regular sessions of the National Council means little, since the Constitution grants him no right to speak at those meetings (the only exceptions involve information on the state of the Republic and major political issues, as outlined in Article 102(o)).<sup>79</sup> Likewise, the value of a constitutional right of the President to preside over regular sessions of the Government means little if the Government is directly responsible to the National Council and not to the President. This is because nothing in the Constitution gives the President the means to enforce this right against the Government. In reality, any attempt by the President to exercise his constitutional authority would provoke conflicts over the proper roles of the President and the Prime Minister.<sup>80</sup>

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76. See *Ústava* [Constitution] art. 85 (S.R.) which states that “[a]ny member of the Government of the Slovak Republic, or any principal official of any other body of governmental administration shall be obliged to participate in a session of the National Council of the Slovak Republic or in a meeting of a body thereof, when requested to do so by the National Council of the Slovak Republic.”

77. See *Ústava* [Constitution] art. 102¶ (S.R.) which states that the “President...shall have the right to be present at the sessions of the National Council of the Slovak Republic...”

78. See *Ústava* [Constitution] art. 102(r) which states that the President “shall have the right to be present at the meetings of the Government of the Slovak Republic, preside over the meetings and require reports from the Government or from individual Ministers.”

79. The President has already on several occasions witnessed dishonoured discussions of deputies and their voting procedures in deciding whether he could speak. He has spoken in front of vacant chairs when the opposing majority simply left the floor, showing no interest in his message.

The same majority, headed by Mr. Meciar’s Movement for Democratic Slovakia, had already expressed (in Parliament) no-confidence in President Kovac, notwithstanding the fact that the Constitution does not grant the Parliament the power to vote on confidence of the President or to move to remove the President by a simple majority decision. See *Ústava* [Constitution] arts. 106, 107 (S.R.) which state that a motion to recall the President requires an absolute majority vote of all members of the National Council, to recall the President requires a qualified three-fifth majority decision, and the President may be prosecuted only for high treason. A simple majority vote by the Parliament on such matters was constitutionally “obsolete,” and could even be evaluated as a direct violation of the Constitution itself.

80. As a matter of fact, even more arguments could be made not to implement this right of the President at all.

Hopefully, deliberation on these issues will bring future constitutional development. Certainly, such provisions are not typical for a parliamentary form of the government. They are a potential source of constitutional conflict, not only between political supporters and opponents of the president within the parliament but between the president and prime minister as well. The political system is weakened by such a constitutional arrangement, especially should an active president in the future attempt to use the full range of his constitutional powers to directly influence or control the government. For all the above-mentioned reasons, the use of these articles seems to be of questionable benefit.<sup>81</sup>

*F. The President's Power to Request Reports: The Court Leaves Space*

As early as 1995, the first conflict between the President and the Government arose over the interpretation of Article 102(r) of the Constitution. Two members of the Government were asked by the President for reports on different issues. They claimed that the constitutional right of the President to demand reports from the Government or its members does not give the President "the power to impose on members of the Government any kind of activities nor the power to set deadlines to which these should be performed."<sup>82</sup> The President argued that Article 101(1) of the Constitution established the President as the head of state,<sup>83</sup> and that this should be understood to mean the "head of the whole state." He believed his constitutional position to be superior to that of the government.<sup>84</sup> He further argued that for practical reasons it was necessary to understand the constitutional power of the President

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81. Solutions like this one could be found more often by mixed forms of government characterized by a so-called "strong presidency." Such a form is provided by the constitution of the French Fifth Republic of 1958, but, even there, this formula caused serious problems during the time in which the President was not a member of the strongest political party in the parliament responsible for creating the government. See G. Burdeau, *DROIT CONSTITUTIONNEL ET INSTITUTIONS POLITIQUES* 525 (1976); See also M. Kesselman and J. Krieger, *EUROPEAN POLITICS IN TRANSITION 195-97* (2nd ed.) (1992), and Ardent Ph., *INSTITUTIONS POLITIQUES ET DROIT CONSTITUTIONNEL, LIBRARIE DE DEROIT DE JURISPRUDENCE, EJA* (1994).

82. The President in his Letter of September 2, 1995 (No. 20-1252/95) addressed the Minister of Foreign Affairs, asking him to take concrete action regarding a kidnapped Slovak citizen in Austria, and to report the results.

In a letter dated November 10, 1995 (No. 0015-95/PT), the President addressed the Minister of Interior, requesting a count of citizens questioned by the Police in connection with the affair of Petitions archs of the political party Democratic Union.

83. See Ústava [Constitution] art. 101(1) (S.R.) which states that the President is the head of the Slovak Republic.

84. See Constitutional Court of the SR resolution I., US 39/93 (1993), which reached a similar conclusion.

“to demand reports from the Government and its members” as enabling him to demand *new* reports, not merely those already prepared by the government for other purposes. Thus his demands for reports could not be interpreted as imposing unconstitutional duties on the government or its members. In addition, the President argued that the power to set reasonable deadlines for Government reports was implicit in the power to demand reports. Otherwise, a member of the government could delay submission of a report until the mandate of the Government had expired. If this were allowed to happen, the original intent of the Constitution would be frustrated.

On June 11, 1996, the Constitutional Court of the Slovak Republic (Constitutional Court)<sup>85</sup> decided that Article 102(r) does not give the president the right to fix ways and means through which the Government or its members gather information necessary for the reports to the President; nor does it grant him the right to fix deadlines for sending reports to the President. In addition, the Constitutional Court ruled that the appropriate deadline depends on the time which the Government or its member “objectively needs” for getting all information necessary for the report requested by the President.<sup>86</sup>

In light of the need for mutual cooperation between the president and the government, the Constitutional Court has avoided rendering clear answers on important general issues: how can the constitutional rights of the president under Article 102(r) be secured? And what is the specific authority of the president when taking part in the meetings of the government and presiding over them? These questions remain unsolved, and the danger of constitutional conflict between the president and the government still looms.

### *G. The President and the Government*

As already mentioned, the language of the Constitution adds to the uncertainty over the nature of the president’s constitutional authority. Many of the provisions dealing with the powers of the President are

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85. The Constitutional Court of the Slovak Republic was created by the Constitution of the Slovak Republic (Chapter VII. Judicial Power, Section one Constitutional Court, arts. 124-140). The Constitutional Court of the Slovak Republic is an independent judicial body vested with the authority to protect the Constitution. The Court stands aside from the system of the general judiciary, for which the Supreme Court of the Slovak Republic is the highest court. The Court is composed of ten judges, who are appointed by the President of the Slovak Republic for a seven-year term from among twenty nominees approved by the National Council of the Slovak Republic. The judges of the Constitutional Court of the Slovak Republic were appointed on January 21, 1993. The activity of the Court began on March 17, 1993.

86. Constitutional Court of the SR resolution I., US 7/96, N. 229/1996 (July 11, 1996).



vaguely formulated.<sup>87</sup> Others are written in such a way that it is unclear whether they refer to the rights or to the duties of the head of state.<sup>88</sup> Article 102,<sup>89</sup> for example, clearly does not distinguish be-

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87. An example is the term "major political issue," used in Article 102(o), which states that the President "shall inform the National Council of the state of the Slovak Republic and of major political issues, and submit proposals and other measures." The vagueness of the term could be responsible for conflicts between the President and the National Council regarding the fact that the parliament might consider "major political issues" presented by the President to be an improper influence on its own decision-making power. Just this happened in March 1994, when, after the President's report on the state of the SR, the Parliament expressed no-confidence in the Government of Prime Minister Meciar. As a result of the fact that in his "State of the SR" presentation the President referred to some improper practices of the Government, to some decisions of the Prime-Minister Meciar and to the relations between the President and the Prime-minister, Meciar's supporters later accused the President of unconstitutional exercise of his powers.

88. See *Ústava* [Constitution] art. 102(f), (o), ¶ (S.R.).

89. See *Ústava* [Constitution] art. 102 (S.R.) which states

The President

- a) shall represent the Slovak Republic in international relations, negotiate and ratify international agreements, he can delegate the power to the Government, or with the consent of the Government, to individual members of the Government to negotiate those international agreements for which no consent by the National Council of the Slovak Republic is required;
- b) shall receive and accredit ambassadors;
- c) shall convene the opening session of the National Council of the Slovak Republic;
- d) may dissolve the National Council of the Slovak Republic provided the Program of the Government of the Slovak Republic has been rejected three times within six months of the elections, in which case the President shall hear the opinion of the President of the National Council of the Slovak Republic; the new elections shall be announced by the President of the National Council of the Slovak Republic within thirty days;
- e) shall sign laws;
- f) shall appoint and remove the Prime Minister and other members of Government of the Slovak Republic, commissions the heads of governmental departments and accept their resignation; he shall remove the Prime Minister and other Minister in cases defined in Articles 115 and 116;
- g) shall appoint and remove the principal officers of national bodies and high officials as defined by law, university professors and presidents, and promote army generals;
- h) shall award decorations and honors, unless another authority has been delegated by him to do it;
- i) shall grant pardons and amnesty, mitigate sentences imposed by criminal courts, decrees to terminate or not to commence proceedings and to erase criminal records;
- j) shall be the Commander-in-Chief of the armed forces;
- k) shall declare, by the recommendation of the Government of the Slovak Republic, a state of war, and declare war by a resolution of the National Council of the Slovak Republic in the event of aggression by parties hostile to the Slovak Republic or in the event that obligations under international

tween the right of the President to act on his own initiative<sup>90</sup> and his duty to do something on the basis of an initiative of some other constitutional organ.<sup>91</sup>

When creating constitutional norms, as with other types of law, a failure to set down clearly the modality of the performance or scope of the rights and duties of a particular state organ creates a potential source of conflict. Thus the construction of the aforementioned provisions are a defect of the Constitution of the Slovak Republic. These deficiencies are compounded by the structure of the relationships within the executive power.

In order to understand this aspect of the Constitution, it is necessary to examine Articles 102(f)<sup>92</sup> and 116(4).<sup>93</sup> By the terms of the Constitution the President, as head of state, is empowered to appoint and remove the Prime Minister and other members of the Government, to entrust members of the Government with the management of ministries, and to accept their resignations. The Prime Minister and other ministers shall be removed by the President in cases stipulated in Articles 115(1) and 116(4).<sup>94</sup> According to Article 115(1), the President *shall* dismiss the Government in the event that the National Council passes a vote of no-confidence or overrules a motion for a vote of confidence. This is in accordance with the declared parliamentary form of government. However, according to Article 116(4), a proposal for

agreements requiring the joint defence against aggression must be fulfilled;

l) shall declare a state of emergency by means of a constitutional statute;

m) shall announce referendums;

n) may return constitutional or other bills to the National Council of the Slovak Republic with his comments for reconsideration within fifteen days after their passage;

o) shall inform the National Council of the Slovak Republic of the state of the Slovak Republic and of major political issues, and submit proposals and other measures;

p) shall have the right to be present at the sessions of the National Council of the Slovak Republic, and

r) shall have the right to be present at the meetings of the Government of the Slovak Republic, preside over the meetings and require reports from the Government or from individual Ministers."

90. *See, e.g., id.* §§ 102(a),(b),(e) & (h).

91. *See, e.g., id.* §§ 102(f),(k),(l) & (m).

92. *Id.* § 102(f).

93. *See* Ústava [Constitution] art. 116(4) (S.R.), which states that a motion for the dismissal of a member of the Government may be presented by the Prime Minister.

94. *See* Ústava [Constitution] art. 115(1) (S.R.) which states that "[i]n the event that the National Council has passed a vote of no-confidence or overruled a motion for a vote of confidence, the President shall dismiss the Government." *See also id.*

the dismissal of a member of the Government *may* also be presented to the President by the Prime Minister.

The Slovak Constitution thus grants the power to initiate the dismissal of a Government member not only to the National Council but to the Prime Minister as well. Regarding the dismissal of a member of the government by the Parliament, the Constitution states that a vote of no-confidence may be submitted to and considered by the National Council provided one-fifth of the members so require. The consent of more than fifty percent of all deputies is required to pass a vote of no-confidence in the Government.<sup>95</sup> In contrast, the Prime Minister may propose dismissal of a member of the Government by merely presenting a motion to the President; he is not even required to justify such a motion.<sup>96</sup>

The political responsibility of the Government (headed by the Prime Minister) to the Parliament is different in nature than the political responsibility of the President to the Parliament. At the same time, the President is not responsible for activities of the Government at all. The logical conclusion, based on the traditional parliamentary form of government, is that the drafters intended the President to follow the motion of the Prime Minister and dismiss the member of the Government anytime the Prime Minister presents such a motion—the same way the President must do when the parliament expresses no-confidence in a particular member of the government. This idea is supported by the fact that the constitutional position of the Prime Minister within the Government is traditionally more than *primus inter partes*.<sup>97</sup>

95. See Ústava [Constitution] art. 88 (S.R.), which states:

(1) A vote of no-confidence in the Government of the Slovak Republic or a member thereof may be submitted to and considered by the National Council of the Slovak Republic provided one fifth of the members so require.

(2) A no-confidence vote in the Government of the Slovak Republic or a member thereof shall be passed provided an absolute majority of all members concur.

96. See Ústava [Constitution] art. 111 (S.R.) which states that:

On the advice of the prime minister, the President of the Slovak Republic shall appoint and recall other members of the Government by granting commissions to carry out departmental duties. The President can appoint the Prime Minister or a Minister from among the citizens eligible to be elected to the National Council of the Slovak Republic.

See also *id* at 92.

97. See Ústava [Constitution] art(s). 111, 116(5), 116(6) (S.R.) art. 111, for example, grants the President, on the advice of the Prime Minister, the power to appoint and recall other members of the Government and to entrust them with the departmental duties. art. 116(5) states that if the Prime Minister resigns, the entire Government must resign; and according to art. 116(6), if the National Council of the Slovak Republic passes a vote of no-confidence in the Prime

Because of the Constitution's lack of clarity, it does not give sufficient guidance on whether the President is obliged to follow the Prime Minister's proposal to recall a Government member. Article 116(4) thus creates potential for constitutional conflict. This led to a controversial decision of the Constitutional Court as early as 1993.<sup>98</sup> On June 2 of that year, the Constitutional Court decided that Article 116(4) of the Constitution does *not* charge the president of the Slovak Republic with the duty to recall a member of the government, even when this is proposed by the prime minister. The Court's rationale was that the position of the president is constitutionally dominant over the position of the Government, but not absolute. In the Court's opinion, if the proposal to recall a Government member is submitted to the President by the Prime Minister, the only constitutional duty of the President is to consider such a proposal. This duty is fulfilled when the President decides to recall or not to recall the member of the Government in question.<sup>99</sup>

It is easy to recognize that this interpretation of Article 116(4) of the Constitution influenced the relationship between the supreme state organs in the Slovak Republic and the "form of the government" as well. It unwisely increased the influence of the head of state in the structure of the government. The Government, which is headed by the Prime Minister and created after his recommendation, is politically responsible not to the President but to the Parliament. A "strong" constitutional influence of the President—who is at the same time not bound by any constitutional provision to act as independent arbiter in the interplay between the Parliament and the Government—creates even more tension in the relation between the President and the Prime Minister as well as between the President and the Parliament.

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Minister or any member of the Government, the President shall dismiss him. The dismissal of the Prime Minister results in the stepping down of the Government.

98. See Constitutional Court of the SR resolution N., 39/93 (June 2, 1992). See also Constitutional Law (206/1993 Zb.).

The case has emerged as a consequence of a personal conflict between the Prime Minister, Mr. Meciar, and the Foreign Minister, Mr. Knazko. The Prime Minister's proposal to the President to recall Mr. Knazko from his ministerial position resulted in a serious constitutional controversy between the President and the Prime Minister. The President, Mr. Kovac, who was not convinced that there is a constitutional duty to follow the proposal of the Prime Minister, has asked the Constitutional Court of the SR to interpret art. 102 let. g) of the Constitution. Several days later, without waiting for the Constitutional Court decision, the President recalled Mr. Knazko.

99. See Constitutional Court of the SR resolution N., 29-32/95 (1995). The entire text of the Constitutional Court decision was printed in ZBIERKA NALEZOV A UZENESENI USTAVNEHO SUDU SLOVENSKEJ REPUBLIKY 1993-1994.

### *H. When a Deputy Joins the Government*

Article 72 of the Constitution prohibits the simultaneous exercise of the parliamentary mandate and a government function.<sup>100</sup> Prohibition of the "exercise" of parliamentary mandates by elected members of the Parliament who are subsequently appointed to the Government (i.e., incompatibility) is more close to the understanding of the separation of powers principle as it is applied by the presidential democracy than to the basic constitutional model of the parliamentary democracy. However, it should be noted that compatibility of the office of a deputy with membership in the government is not among the most important characteristics of the "parliamentary form of government" to which the Constitution supposedly adheres. By suspending the mandate of a deputy during his tenure in governmental office, the Slovak Constitution strikes much closer to the principle of incompatibility between parliamentary and governmental positions based on the "separation of powers" and stands much closer to the "presidential form of government" and its derivations.<sup>101</sup>

But through the institution described as a "dormant mandate,"<sup>102</sup> the Slovak Constitution introduced an unusual approach to the "separation of powers" doctrine. Under this approach, a deputy appointed to the government is not obliged to resign his mandate; but he cannot exercise it. The mandate is temporarily filled by a "substitute."<sup>103</sup> If the deputy who was appointed to the Government loses his governmental position—whether by recall caused by a vote of no-confidence, by request of the Prime Minister or as result of his resignation—the substitute shall withdraw and the deputy will resume exercising his mandate again.

This solution, however reasonable it seems, raises several constitutional questions. For example, where one deputy has replaced another who is appointed as a member of the Government, there is some ambi-

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100. See Ústava [Constitution] art. 77(2) (S.R.), which states that "[T]he mandate of a representative who has been appointed a member of the Government, though not fulfilled, shall not expire." See also Ústava [Constitution] art. 109(2) (S.R.), which states that "[A] member of the Government shall not be allowed to hold legislative or judicial office."

101. See, for example, the "semi-presidential system" in France since 1958.

102. The phrase "dormant mandate" indicates a mandate of a representative appointed a member of the Slovak Government which does not cease while he or she executes the government post, but is not being exercised.

103. See Law (197/1994 Zb.) § 1, par. 48 (June 7, 1994), which states that on election to the National Council of the Slovak Republic (No. 50/1990 including alterations and additions), a substitute is a stand-in (reserve candidate) who was nominated on the list by the same Political Party or coalition in the same electoral region as the Deputy first in office.

guity concerning the continued mandate of the substitute in the event of the Government member's resignation or dismissal from the Government. The parliamentary behavior of such a substitute deputy is likely to be threatened by the fact that his parliamentary term depends on his predecessor's presence in the Government.

If such a substitute were to seriously fulfill the function of parliamentary control over the Government, he might often be required at times to work against his own mandate. However, it is very difficult to expect such selfless behavior. In actual practice, members of the strongest political parties in Parliament would not only win governmental posts, but at the same time they would gain support of their substitutes in Parliament and thus be guaranteed to remain in politics even in the event of their removal from governmental posts. The real consequence of such a constitutional provision is not only the weakening of the mechanism of parliamentary control over the Government, but also the strengthening of the influence of political party or parties in the Government.

An important constitutional question stems from the fact that the Constitution itself states only that the mandate of a deputy who is appointed as a member of the Government does not cease while he executes the government post; it is simply not being exercised.<sup>104</sup> The Constitution itself does not speak about substitutes of such deputies, nor about the possibility of creating a mandate temporarily limited by the time the predecessor of a substitute spends as a member of the Government. The institution of substitutes was created by a law of the National Council.<sup>105</sup>

The Slovak Government successfully moved to change Section 2, paragraph 48 of the Law on Election to the Slovak National Council<sup>106</sup> in a way that empowers political parties to influence the choice of parliamentary substitutes.<sup>107</sup> This seems to be inconsistent with the

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104. See *Ústava* [Constitution] art. 77(2) (S.R.).

105. See Law (197/1994 Zb.) § 5, par. 48 (June 7, 1994). The institution of such substitutes was created by § 5, Par. 48 of Law No. 197/1994 of June 7, 1994 (altering the Law of the Slovak National Council on elections to the Slovak National Council of March 16, 1990 No. 80/1990).

106. See Law (80/1990 Zb.) (March 16, 1990). The Law of the Slovak National Council "[o]n election to Slovak National Council of March 16, 1990 No. 80/1990 (including alterations and additions, stipulated in the Law of the SNC of December 3, 1991 No 8/1992; Law of the SNC of February 25, No. 109/1992; Law of the SNC of November 5, 1992 No. 518/1992 and Law of the SNC of June 7, 1994 No. 157/1994).

107. See Law (81/1995 Zb.) (April 7, 1995), approved as Law of the Slovak National Council of April 7, 1995 No. 81/1995 amending the Law of the Slovak National Council "[o]n

constitutionally declared principle of direct election.<sup>108</sup> According to present legal status, if a mandate becomes free for any reason during the electoral term, the substitute (a reserved candidate) is to be chosen by his political party from among candidates placed on the party list not "according to the priority of his position," but "after taking account of the profession of the deputy whose mandate became vacant."<sup>109</sup> Thus, the institute of deputy "substitutes" not only strengthens the role of political parties and their leaders, but seems to work against the declared principle of separation between the political parties and the state.<sup>110</sup> Such an arrangement allows political parties to choose, more or less arbitrarily, the substitute for an elected deputy. Despite the fact that it could be questioned on the ground of Constitutional Articles 30 and 74,<sup>111</sup> no interested party has initiated proceedings of the Constitutional Court on this question yet.<sup>112</sup>

#### IV. THE REFERENDUM

The democratic order established by the Constitution is illustrated by provisions which state that the power of the state derives from the citizens, who shall exercise it either directly or through their elected representatives<sup>113</sup> and that state bodies may act solely in conformity with the Constitution<sup>114</sup>. The Deputies are representatives of the citi-

election to Slovak National Council of March 16, 1990 No. 80/1990 (including alterations and additions, stipulated in the Law of the SNC of December 3, 1991 No 8/1992; Law of the SNC of February 25, No. 109/1992; Law of the SNC of November 5, 1992 No. 518/1992 and Law of the SNC of June 7, 1994 No. 157/1994).

108. See *Ústava* [Constitution] art. 30(3) (S.R.) which states that the "right to vote shall be exercised through equal, universal and direct suffrage by secret ballot. The terms thereof shall be specified by law."

109. See Law (80/1990 Zb.) (March 16, 1990). Par. 48, § 2 of the Law of the Slovak National Council on election to Slovak National Council of March 16, 1990, No. 80/1990 (including alterations and additions, stipulated in the Law of the SNC of December 3, 1991 No 8/1992; Law of the SNC of February 25, No. 109/1992; Law of the SNC of November 5, 1992, No. 518/1992, Law of the NC of the SR of June 7, 1994, No. 157/1994 and Law of the NC of the SR of April 7, 1995, No. 81/1995).

110. See *Ústava* [Constitution] art. 29(4) (S.R.), which states that "[p]olitical parties and movements, as well as unions, societies or associations shall be separate from the State."

111. See *Ústava* [Constitution] art. 30(3) (S.R.). See also *Ústava* [Constitution] art. 74(1) (S.R.).

112. See *Ústava* [Constitution] art. 130 (S.R.). Under this article, the Slovak Constitutional Court initiates proceedings on the basis of a proposal by at least one-fifth of the deputies of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, the Court and the General Prosecutor.

113. See *Ústava* [Constitution] art. 2(1) (S.R.) which states that the "power of the state is vested in the citizens who shall exercise it directly or through their elected representatives."

114. See *Ústava* [Constitution] art. 2(2) (S.R.) which states that "the state authorities shall

zens empowered to decide issues within the jurisdiction of the National Council,<sup>115</sup> but the right to exercise their power directly through referendum as well was reserved to the citizens.<sup>116</sup> The Constitution has recognized the referendum as a means for deciding important questions of public life<sup>117</sup> in which every citizen qualified to elect the members of the Council shall have the right to participate.<sup>118</sup>

There are two basic forms of referendum recognized within the constitutional system of the Slovak Republic. First, there is the obligatory referendum, which is utilized for confirmation of constitutional laws (i.e., amendments) on entering into or withdrawing from unions or alliances with other states.<sup>119</sup> These issues must be put directly to the people. Second, there is the facultative form of referendum, used to decide other issues of importance to the people.<sup>120</sup> However, a referendum cannot be held on issues of basic rights and liberties, taxes and levies, and the state budget.<sup>121</sup>

Direct democracy could be characterized as the highest form of democracy. It means not only that the most important or highly delicate political decisions are open to a direct vote by the citizens, but also that such decisions have priority over decisions taken by the representative body. This understanding is broken by the highly problematic approach of the Slovak Constitution, which puts direct democracy in second place. The Constitution explicitly allows the National Council to amend

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act only on the basis of the Constitution and to the extent and in the manner which will be stipulated by law".

115. See *Ústava* [Constitution] art. 73(2) (S.R.) which states that the "members shall be the representatives of the citizens, and shall be elected to exercise their mandates individually and according to their best conscience and conviction. They are bound by no directives."

116. See *Ústava* [Constitution] arts. 93-100 (S.R.) The referendum is regulated in Part two (The Referendum) of Chapter Five of the Slovak Constitution.

117. See *Ústava* [Constitution] art. 93(1,2) (S.R.) which states that "(1) A constitutional statute on the formation of a union with other states or a secession therefrom shall be confirmed by a public referendum. (2) A referendum may also be used to decide on other critical issues in the public interest."

118. See *Ústava* [Constitution] art. 94 (S.R.), which states that "[E]very citizen qualified to elect the members of the National Council of the Slovak Republic shall have the right to vote in a referendum."

119. See *Ústava* [Constitution] art. 93(1) (S.R.), which states that a "constitutional statute on the formation of a union with other states or a secession therefrom shall be confirmed by public referendum."

120. See *Ústava* [Constitution] art. 93(2) (S.R.), which states that a "referendum may also be used to decide on other crucial issues in the public interest."

121. See *Ústava* [Constitution] art. 93(3) (S.R.), which states that "[N]o issues of fundamental rights, freedoms, taxes, duties, or national budgetary matters may be decided by a public referendum."



or abolish the results of a referendum by means of a constitutional law, three years after the result of the referendum comes into effect.<sup>122</sup> Even in situations where the Council's constitutional<sup>123</sup> authority to override the people is not exercised, the very possibility of such an override in Article 99 evokes the conclusion that its drafters intended to make the parliament too powerful. The idea seems to be in opposition to the peoples' sovereignty principle on which all democratic states base their legitimacy.

## V. CONCLUSION

The experience of the Slovak Republic since 1993 shows the importance of well-balanced constitutional relations between the Parliament, the President and the Government. The drafters of the Constitution and the National Council, advised by politically oriented lawyers, have created a governmental form which does not adhere to many of the most important features of the parliamentary form of government and bears some features of the first Constitution of the Czechoslovakia (1920) and previous socialist constitutions as well.<sup>124</sup>

The Constitution of the Slovak Republic departs from the model of parliamentary democracy by creating an imbalanced governmental system which vests too much power in a politically disjunctive parliament. These modifications of the parliamentary model are illustrated by the facts that: (1) the head of state is elected and may be recalled by the unicameral parliament; (2) the Constitution draws the head of state into the everyday political processes and does not vest him with the necessary powers to mitigate political conflicts; (3) the Constitution creates relations between the head of state and the Prime Minister and between the head of state and the Government which are likely to erupt into constitutional conflicts.

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122. See Ústava [Constitution] art. 99(1) (S.R.), which states that "[T]he results of a referendum may be derogated or abrogated by a constitutional statute passed by the National Council of the Slovak Republic once a period of three years has passed since the date the outcome took effect."

123. The Slovak Constitution was not subject to the referendum.

124. See The first Constitution of Czechoslovakia (the Law of February 29, 1920) art. 82, which stated that the President of the Republic shall have the right to be present at and to preside over meetings of the Government and to demand from the Government and its individual members written reports on any matter in the jurisdiction, Constitutional Law (100/1960 Zb.) (June 11, 1960)(ČR) and the socialist Constitution of Czechoslovakia (approved on June 11, 1960 and declared as Constitutional law. No. 100/1960 of Collection of Laws), for example, did not ask for countersignature of the acts of the President and its art. 61 (2) stated that the President "shall be accountable to the National Assembly for the discharge of his office."

Other provisions seem equally unusual. Through the institution of the "dormant" mandate, the political parties are empowered to make decisions about the occupancy of parliamentary seats. The Parliament is also entitled to change the results of a popular referendum. The absence of a cohesive constitutional conception at the time of the drafting of the Constitution is evidenced by the incorporation of a variety of solutions from among very diverse constitutional models.<sup>125</sup>

Thus, many of the political problems the Slovak Republic has been faced with since 1993 can be traced not only to the lack of democratic experience of some members of the new political elite, but directly to particular constitutional articles as well. Not surprisingly, the situation resulted very early in an overload on the newly created Constitutional Court. Despite the lack of experience of the Constitutional Court, as well as constitutional imperfections which directly influence its activity<sup>126</sup>, the Court has already been able to mitigate some of the problems. But even the Constitutional Court is not—and should not be—"omnipotent". While some of the mentioned problems could be partially solved through its interpretation of the Constitution<sup>127</sup> the

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125. The strongest influence seems to be exercised by the former socialist Constitution of Czechoslovakia of 1960, the German Basic Law of 1949 and the French Constitution of 1958.

Along with the unusually strong constitutional position of parliamentary deputies, the Constitution provides that if the parliament denies its consent to the criminal or disciplinary proceedings against a deputy during his term, prosecution is ruled out forever. The fact that the parliamentary immunity is treated by the Constitution as indemnity seems to be in clear disagreement with the general understanding of principles of Equality and the Rule of Law. Article 78 (2) of the Slovak Constitution states: "No criminal or disciplinary proceedings can be initiated against a deputy, and he cannot be taken into custody, without the consent of the National Council of the Slovak Republic. If the National Council of the Slovak Republic denies its consent, prosecution is ruled out forever."

126. See *Ústava* [Constitution] art. 131 (S.R.), an example of such constitutional missolution, reserving decisions on the compatibility of decrees issued by the Government, generally binding legal regulations issued by ministries, other central bodies of state administration with the Constitution or constitutional and other laws for the decision of a plenary meeting of the Constitutional Court (consisting of 10 judges). However, important interpretation of constitutional laws in disputed matters is left to the senates of the Constitutional Court (consisting of only three judges).

Another example is the fact that neither the Constitution, the Law No. 38/1993 (The Law on the Organization of the Constitutional Court of the Slovak Republic and on the Proceedings before this Court) nor any other law for example includes an "expressis verbis" rule on the binding force of the judgments of the Constitutional Court. Also exemplary is the fact that no explicit rules exist as to the procedure to be followed in cases where a petition is presented by natural or legal persons who are the opinion that their rights and others' rights have been violated.

127. See *Ústava* [Constitution] art. 128(1) (S.R.) which states that the "Constitutional Court shall be responsible for the interpretation of constitutional statutes in conflicting cases. The terms shall be provided by law."

most important among them must be left to the people and their elected representatives.