

[SVK-2010-1-001](#)

**a)** Slovakia / **b)** [Constitutional Court](#) / **c)** Plenum / **d)** 23-09-2009 / **e)** PL. ÚS 14/06 / **f)** / **g)** *Zbierka zákonov* (Official Gazette), 2/2010; *Zbierka náleзов a uznesení Ústavného súdu Slovenskej republiky* (Official Digest), 90/2009; [www.concourt.sk](#) / **h)** CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

[01.02.01.03](#) Constitutional Justice - Types of claim - Claim by a public body - **Executive bodies.**

[01.03.04.02](#) Constitutional Justice - Jurisdiction - Types of litigation - **Distribution of powers between State authorities.**

[01.03.04.13](#) Constitutional Justice - Jurisdiction - Types of litigation - **Universally binding interpretation of laws.**

[01.05.04.02](#) Constitutional Justice - Decisions - Types - **Opinion.**

[04.04.03.02](#) Institutions - Head of State - Powers - **Relations with the executive bodies.**

[04.10.05](#) Institutions - Public finances - **Central bank.**

Keywords of the alphabetical index:

[President](#), [powers](#), [limits](#), [parliamentary regime](#).

Headnotes:

The President of the Slovak Republic, as Head of State, reviews the legally enshrined criteria for the qualifications of a candidate for the post of Vice-Governor of the Central Bank and should reject the candidate's application if, in his or her evaluation, candidate's qualifications do not meet these criteria.

Summary:

I. Under Article 128 of the Constitution the Constitutional Court has the power to issue an authoritative and universally binding interpretation of constitutional law (including the Constitution) at the request of listed public bodies if there is a dispute over differing interpretations of the constitutional law.

According to Article 102.1.h of the Constitution, the President appoints and dismisses high ranking public officials if this is prescribed by law.

Under the Law on the Central Bank, the President appoints the Vice-Governor of the National Bank of Slovakia (Central Bank) on the proposal of the government and with the consent of parliament.

In 2006, the government, with the consent of parliament, put forward a candidate for the position of Vice-Governor of the Central Bank. The President rejected this nomination claiming that the candidate did not have the necessary qualifications required by the Law on the Central Bank, namely five years' experience in the area of monetary policy. The government did not agree with this decision and sought an authoritative interpretation of

Article 102.1.h of the Constitution from the Constitutional Court. It should be noted that the candidate did not, in fact, have the requisite experience.

The government argued that the President did not have the power to review the necessary qualifications of the nominee. It pointed out that it had chosen the candidate in accordance with the qualification criteria enshrined within the Law and the application was then reviewed by the Parliament applying sort of "authentic interpretation" of "its" Law. The power of the President is merely formal in nature, and its purpose is to verify whether the government and parliament acted legally, in accordance with proper procedure.

The government also observed that the Slovak Republic is a parliamentary democracy. The President performs certain executive powers. The government noted the necessity to distinguish between the executive and non-executive powers of the President. It gave a contrasting example. The President has executive power as commander-in-chief of the Army and may therefore appoint and dismiss generals. On the other hand, the President has no executive powers in monetary policy. When appointing the Vice-Governor, he or she is limited to confirming previous procedure.

II. The Court began by pointing out that, under the Constitution, the President is a part of the executive power. Both the government and President belong to the executive power, but there is no hierarchy between them. The President has two types of power: one type can only be performed on the motion of another public body; the other may only be carried out at the discretion of the President.

Aside from the specific powers related to the appointment and dismissal of officials, Article 102 of the Constitution contains a general clause enabling the President to appoint and dismiss other public officials, if this is stated within a law. Such delegation is contained within the Law on the Central Bank, which states that on the proposal of the government with the consent of parliament, the President appoints the Vice-Governor of the National Bank. This appointment is carried out in conjunction with other public bodies.

The Court stressed that the Central Bank is an independent body, not subordinated to government. The participation of parliament and government in the appointment of the Vice-Governor guarantees the democratic legitimacy of the Central Bank, which is otherwise a politically independent body.

Textual analysis of Article 102 as a whole shows that there are three types of presidential powers:

1. "may" powers,
2. "must" powers, and finally
3. powers which are simply "carried out".

The power to appoint a Vice-Governor falls within the third category. It is impossible to discern solely from the text whether the President has some discretion.

The Court examined Czechoslovak and Slovak constitutional history. In the pre-war Czechoslovak Republic all acts of the President had to be countersigned. After the

Communist *coup d'état*, the 1948 Constitution made provision for counter-signature, but only for law on the statute-book. Later, in the 1960 Constitution, the President was responsible to parliament and counter-signing did not exist. The original wording of the 1992 Slovak Constitution adopted the latter concept of presidential powers. This was modified by the 2001 amendment, which introduced countersigning for listed powers. Some powers, therefore, are carried out by the President on his or her own political line. In carrying out these powers, the President's role cannot be considered as formalistic or confirmatory.

The Court further argued that the President, like all public bodies, is bound by law and the principle of legality. He or she cannot ignore the fact that a candidate does not meet the criteria set out in the Law. Moreover there is no sort of "authentic interpretation" of the Law by parliament which is binding on the President.

Finally the Court emphasised that the presidential power to review the necessary qualifications differs from the application of political discretion over a nominee.

The Constitutional Court accordingly formulated a binding interpretation of Article 102.1.h whereby the President, as Head of State, reviews the legally enshrined criteria for the qualifications of a candidate for the post of Vice-Governor of the Central Bank and should reject the candidate's application if, in his or her evaluation, candidate's qualifications do not meet these criteria.