

SVK-2015-2-001

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 24-10-2012 / e) PL. ÚS 4/12 / f) / g) *Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky* (Official Digest), 58/2012 / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

- [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.**
- [03.03.01](#) General Principles - Democracy - **Representative democracy.**
- [03.04](#) General Principles - **Separation of powers.**
- [04.04.03.01](#) Institutions - Head of State - Powers - **Relations with legislative bodies.**
- [04.07.04.03.02](#) Institutions - Judicial bodies - Organisation - Prosecutors / State counsel - **Appointment.**

Keywords of the alphabetical index:

[Presidential acts](#), [counter-signature](#) / Presidential powers, increase.

Headnotes:

The President of the Republic, who appoints the Prosecutor General upon the proposal of Parliament, has limited powers to consider the integrity of a candidate.

Summary:

The Constitutional Court has special competence for abstract, generally-binding interpretation of the Constitution, where there is a genuine dispute (over competences and objective law) between constitutional authorities.

Parliament put a candidate forward for the post of Prosecutor General, for appointment by the President. However, the President was inactive and did not appoint him. (There were tensions between the political majority at that time and the then President). The Constitutional Court was asked to interpret the Constitution in such a way that the President was obliged to appoint the candidate if he fulfilled the legal, technical criteria (with no discretion regarding the candidate's personality).

II. The Court had decided in earlier proceedings (PL. ÚS 14/06 on the appointing of the vice governor of the national bank) that the President may and indeed must review the legal requirements of candidates, but this was not applicable in the present case.

The rationale behind the reasoning was that the constitutional system is based on both principles – democracy and the rule of law. Slovakia is a parliamentary democracy, but this does not necessarily entail the dominance of parliament. The Constitution recognises procedures, which must be adopted through co-operation between Parliament and the

President. The Court emphasised that it only interprets the Constitution; it is not within its remit to rewrite it in the sense of which alternative is better.

The constitutional design of the President's role has its roots in the 1992 Czechoslovakian Constitution. An important feature of this was the non-requirement for counter-signature of the President's acts. Under Article 101.1 of the Constitution, the President maintains the proper functioning of constitutional mechanisms through his decisions. This position, in combination with the somewhat autonomous character of the prosecution service, would suggest that the President has discretion over the appointment of a candidate. Such discretion must not be arbitrary, it must be based on the President's neutral role in the constitutional system, and he must give reasons for any non-appointment. Finally the Court noted that Parliament and the President, even after non-appointment of the candidate, both bear responsibility for coming up with a new Prosecutor General.

On this basis, the Court issued its interpretation of Article 102t (the President is to appoint the General Prosecutor) and Article 150 (the prosecution service will be headed by the Prosecutor General, who will be appointed and recalled by the President upon the proposal of the National Council of the Slovak Republic), which is published in the Collection of Laws and is generally binding.

The President is under an obligation to act on a proposal from the National Council for the appointment of the Prosecutor General under Article 102t of the Constitution. If the candidate has been duly elected in accordance with the law, the President is under an obligation within a reasonable time either to appoint the proposed candidate or to inform the National Council that he will not appoint the candidate.

The President may decline to appoint the candidate for one of two reasons: either the candidate does not fulfil the legal requirements for appointment, or there are serious factors connected with the candidate's personality, which substantially compromise their ability to discharge the office in a manner which does not diminish the status of its constitutional position or the body itself of which this person is to be the highest representative or in a manner which is not contrary to the essential purpose of this body, if, as a consequence of the above, the proper functioning of constitutional bodies might be disrupted.

The President must state the justifications for the non-appointment so that these are not arbitrary.

III. There were three dissenting opinions and one concurring opinion. One of the judges argued that the interpretation should have been stricter in the sense that the President's decision should be immediate and the reasons for rejection very serious (the judge cited related decisions of the Polish SK 37/08 and Hungarian 48/1991 Constitutional Courts and Czech Supreme Administrative Court 4 Aps 3/2005). Another judge would also have preferred an immediate decision, but thought that the President might simply review the formal, legal criteria. Two other judges, in a joint dissenting opinion, argued for an immediate decision, observing that it depended on which authority nominated the candidates for the President to consider (executive or legislative power). In the case of the Prosecutor General, Parliament (s)elects the candidate, so the reasons for rejection must be very serious. In this sense they agreed with the interpretation, but would have preferred a less complicated formulation. The President of the Court concurred that the President is equal in power with Parliament, stressing the direct election of the President and thus his legitimacy.

Supplementary information:

Before Parliament asked the Court for its interpretation, the candidate, who had been waiting for appointment, submitted a constitutional complaint (III. ÚS 427/2012) alleging a breach of his right to access to public office due to the President's inactivity. Early parliamentary elections were held at that time. After the decision on interpretation, which introduced a degree of discretion for the President, the then President refused to appoint the candidate elected by Parliament, giving extensive reasons for his refusal. The candidate submitted a second complaint (I. ÚS 397/2014) alleging a breach of his right to access to public office, this time because of unacceptable reasons articulated by the President.

The senates of the Court could not decide on these complaints because both the President and the rejected candidate called for the recusal of almost all of the judges of the Court on the basis that they were not impartial. The Court was obstructed to such an extent that Parliament adopted an amendment to the Law on the Constitutional Court, to the effect that if the Court was obstructed by too many objections, these should be ignored. This amendment was unsuccessfully challenged by the opposition in abstract review, arguing that it was *ad hoc* legislation.

Meanwhile the new Parliament (s)elected a new candidate, who was immediately appointed by the President. In case I. ÚS 397/2014, the Court decided that the reasons the President had given for not appointing the original candidate were insufficient and the latter's right was violated, although the appointment of the new Prosecutor General was legal and legitimate. In case III. ÚS 427/2012, the Court decided that the President had not been arbitrarily inactive; he may have been waiting for the outcome of two pending cases. It did, however, take the view that he could have been more decisive, rather than wait for so long.

In 2015 the new President refused to appoint certain new judges to the Constitutional Court, who had been elected by Parliament. Related cases and appointments are presently pending.

Cross-references:

Constitutional Court of Slovakia:

- no. PL. ÚS 14/06, 23.09.2009, *Bulletin* 2010/1 [[SVK-2010-1-001](#)].

Constitutional Court of Hungary:

- no. 48/1991, 26.09.1991, *Special Bulletin Leading Cases* 2 [[HUN-1991-S-002](#)].