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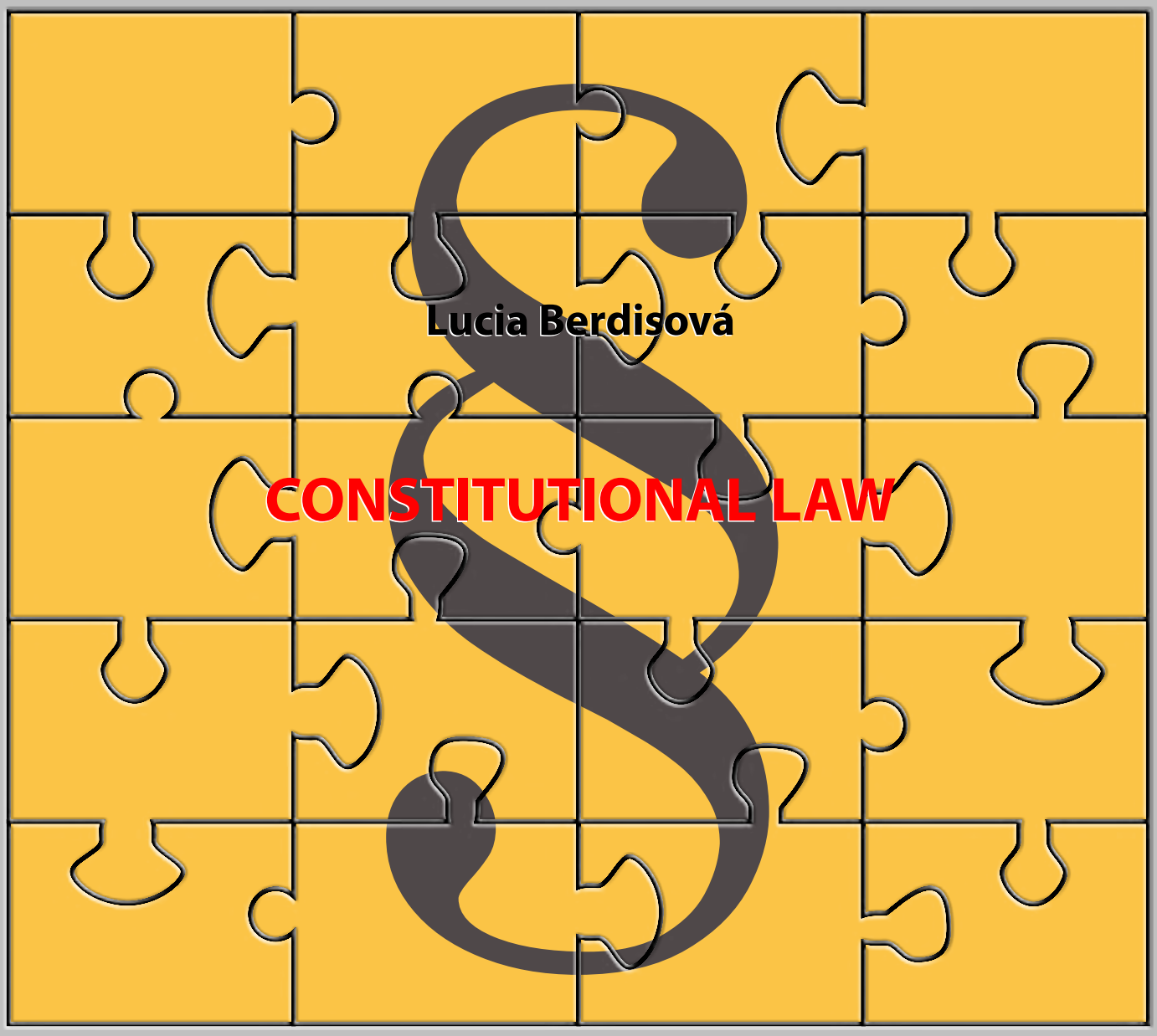

Lucia Berdisová

CONSTITUTIONAL LAW

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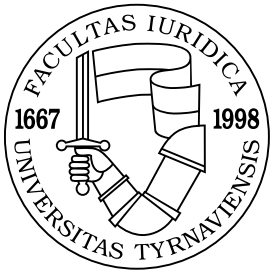

Constitutional Law

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1. Preface and introduction[1]

This textbook strives to sketch the fundamental issues of the constitutional law in the Slovak Republic. There is no need to hide that the selection of issues is a matter of subjective point of view and the interest of the author. Hence, what can be said about constitutional law of any state within circa 100 pages? The author has decided to tell the story of the Constitution of the Slovak Republic based on principles and fundamental values that are embodied in it, based on the relationship of the national constitutional law to the European law and the international law, based on concepts (or institutions) like citizenship, language and territory, based on human rights and based on institutional frame of separation of powers (National Council of the Slovak Republic, Government of the Slovak Republic and judiciary). The story of the human rights is the most stressed topic in this textbook, because that is what really distinguishes democracies from totalitarian states.

Slovak Republic is still a transitional country/transitional democracy - 20 years after fall of socialism, after Velvet Revolution in 1989, we are still striving to find the democratic face, we are still trying to live our lives under the rule of law, under rules and not under our interests or orders of those who are more powerful, indeed. Many things had happed in the last 20 years and we have succeeded to reach a fragile constitutional balance. What will happen in the future, what we will make of the Constitution, is in our hands. From this point of view, the wording of the Constitution somehow matters and somehow it does not.

Different storytellers would tell you different stories about the Slovak Republic. Some would start in the 9-th century with the story about Great Moravia that existed also on the territory of today's Slovakia. Some would start in the 19-th century when Slovak nation has lived in the multinational state - Austro-Hungarian Empire. They would speak about effort of the Slovak representatives to liberate the Slovak nation and to reach more autonomy from the Empire.

However, we would start much later. In 1918, after the World War I, the Empire fallen apart and as it was promised to the representatives of Czechs and Slovaks by winners of the war, the time for the liberation and creation of own state had come. It was the state of the Czechoslovak nation (there was a mere fiction that such a nation existed from current point of view but this fiction probably played important role

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as it allowed a common action towards foreign state and non-state authorities). The Act no. 11/1918 Coll. from 28. October 1918 claimed the existence of the independent Czechoslovak state and the republic existed in the state of constitutional makeshift till 1920. The constitution of the Czechoslovak Republic was promulgated in 1920 (Act no. 121/1920 Coll.). The Czechoslovak Republic was considered to be a democratic state – the people(s) were the source of all the state power, they were the source of legitimacy. The constitution contained the provisions about the (modern conception of the) constitutional court as the first one in the world. However, the Austria succeeded to create one sooner. The constitution included provision about separation of powers (legislative, executive and judicial) and it also accepted one of the highest standards of human rights in the contemporary world - e.g. the right to vote was given even to woman.

The first Czechoslovak Republic however existed for almost no more than 20 years. With the spread of Nazi fight for Weltraum the Czechoslovakia became a victim. In 1939 the Czech territory was transformed into Protectorate of Bohemia and Moravia and Slovak part of the state was transformed into Slovak state – Slovak Republic that collaborated with Nazi Germany. Things are surely more complicated that they may seem at the first sight, but it is a historical and legal fact that the Constitution of the Slovak Republic adopted in 1939 settled a lower standard of the protection of human rights and this standard was not even followed (see Jewish laws). Famous Slovak writer, Dominik Tatarka, called this state the "Parochial Republic". Even so, the opposition against collaboration and against totalitarian regime existed in the Protectorate and also in the Slovak state. The existence of the Slovak national uprising, the assassination of Reinhard Heydrich, the Reichsprotektor of Bohemia and Moravia, the Czecho-Slovak representation abroad etc. led to the fact, that the downfall of the Czechoslovak Republic in 1939 was not accepted by the international community and the constitutional fiction that Czechoslovak constitution from 1920 has never been abolished took a place. It means, that from point of view of constitutional law, the Czechoslovak Republic existed even during the World War II. The old (the former President of the first CSR) and at the same time new President of the Republic was Edvard Beneš who, as the President in exile, adopted decrees with the State Council. These decrees became the matter of many (even constitutional) disputes later on.[2]

The post-war Czechoslovak Republic let itself be charmed by the communism and the new constitution of 1948 (constitutional act no. 150/1948 Coll.) defined the Czechoslovak Republic as a democratic republic of peoples. The constitution spoke about Czechoslovak nation that consisted of Czechs and Slovaks. The goal for society was settled in constitution too – the goal was to reach the level of socialism. The human rights (mainly those of the second and third generation) found their place in constitu-

[2] The Czech Constitutional Court held that the decrees had a sufficient constitutional background in the Constitution of 1920 and that even if they seem to put a collective guild (and responsibility) on German citizens and Hungarian citizens, there was a way how to liberate from this guilt by showing that the respective person had supported the Czechoslovak State. The Court also held that the Beneš decrees were not exemption in the war and post-war Europe. Finally the court said that the democratic state may protect the democracy by undemocratic means if the sole existence of the democracy is threated. See decision of the Constitutional Court of the Czech Republic no. Pl. ÚS 14/94.

tion; however, they were often violated by the state power, because the state turned into totalitarian to-be-communistic state. The conformity, the demon of consent, ruled the people and the search for socialism with human face failed. The payback for this adventurous search of Czechoslovakia as one of Soviet satellites came in 1968. The "friendly" armies came to "help" to fight the Czechoslovakia the "contra-revolution". The Prague Spring, the phase of the political liberation in the sixties, ended unhappily. Actually, the constitution of 1960 (constitutional act no. 100/1960 Coll.) claimed that the Czechoslovakia had reached the level of socialism and now we need to reach the level of communism. The leading role of the Czechoslovak Communist Party was embodied in Constitution in art. 4 od the Constitution of 1960. As a symbol of totality of the communist state this article was abolished as the first one in 1989 after the Velvet revolution. The Constitution of 1960 did not embodied many fundamental rights and freedoms, in point of view of Marx it might be because of the belief that in communist society everybody per se (because of nature of a matter) will respect the rights of others and there is no need to put it in the constitution. The history proved this belief wrong very soon – already in sixties during the Prague Spring and its failure.

The death of Jan Palach, the student who protested in Prague against the occupation of the Czechoslovakia by foreign armies, and what have followed, framed the situation and atmosphere in the socialist Czechoslovakia. More about the atmosphere and the law (what the law really was) may be learned from movies or from the fiction that from textbooks. The author takes a liberty to recommend Tatarka's *Demon of consent* (1956, addendum 1963), the movie by Agnieszka Holland *Burning bush* (2012, org. Hořící keř), Beckham's movie *Tiny Revolutions* (1981) and the *Fairytale about the Silent Country* (1990, org. Rozprávka o tichej krajine) by Kákoš. The last one of the recommended sources shows also the revolution, the change of the regime in the Silent country. For the Czecho-Slovak federation (the unitary state was transformed into federation by the constitutional law in 1968) the so called *Velvet revolution* marked the end of socialism as a state *régime*.[3] The Czechs and Slovaks kept the federation even after Velvet revolution and the hard work to transform the totalitarian legal order into pluralistic one (in all spheres) started. In 1992 the Slovak politicians (some of them) supported the creation of the independent Slovak Republic and the Declaration of independence was adopted in summer 1992. The President of the Czechoslovak federation, Václav Havel, abdicated in the reaction on the declaration. The Slovak National Council as a body of the Slovak Republic in federation adopted the Constitution of the Slovak Republic on 1. September 1992, i.e. still during the existence of the common federation. The Federal Assembly of the Czechoslovak Federation adopted the dissolution law that took the legal effect on the 1. January 1993. The breakup of the Czechoslovakia became real.

The Constitution of the Slovak Republic that was adopted during the non-existence of the independent Slovak Republic and which was promulgated in the Collection of laws of the different republic (Czech and Slovak Federation) is in force until today - with some minor changes and many quite fundamental changes.

[3] The minds of people may not be changed through the law easily. I believe that we are justified to say that the socialism still lives in the heads of some (maybe even many) people.

2. Constitutional principles and values in the Constitution of the Slovak Republic

2.1 State governed by the law/Rule of law

The Constitution of the Slovak Republic declares that the Slovak Republic is a democratic state governed by the rule of law already in the article no. 1 par. 1. The rule of law encompasses number of principles which are:

- separation of powers,
- sovereignty of the people,
- protection of human rights and fundamental freedoms,
- legitimacy,
- legality and constitutionality (supremacy of the constitution and the law)
- legal certainty (non-retroactivity, clarity of the laws, intelligibility of the laws, clarity of the legal order, legal protection in the modality of inviolability and immutability of judicial decisions, predictability of the law),
- proportionality of the interference of public authorities into the sphere of the individual(s).

Separation of powers, or division of power into three branches[4], is most frequently seen as a principle of the rule of law. Especially since the World War II the concept of the democratic state and the concept of the state governed by the rule of law merged and they are blended.[5] That is why we do not need to wonder why the principle of the separation of powers is now considered to be even principle of democratic state. There are however still two concepts of the state governed by the law. The first one, the Anglo-American, is the concept of Rule of Law – contains even the explicit require-

[4] Separation of powers is not the synonym of the division of power into branches. Separation of powers is term that is wider and it contains not only division of powers into three branches, but also division of power on different levels – e.g. level of state bodies, level of the centre and other areas (hence the decentralisation as a mantra of the administrative law in the past couple of years is in fact the transfer of the power from the central unit to a different administrative entities – i.e. it is the power that is in fact shared). The notion of the separation of power as used in this chapter however denotes only division of powers into branches on the horizontal level in order to create the organisation barrier to dictatorship (see BARÁNY, E.: Moc a právo. Veda, Bratislava 1997, p.31.).

[5] See PRUSÁK, J.: Teória práva. Vydavateľské oddelenie Právnickej fakulty UK, Bratislava 1995, p.162.

ment to use democratic means while governing the people.[6] The separation of powers is sometimes connected even with a liberal state (as a concept).[7] But again, the principles of the liberal state are considered to be inseparable from the democratic state in the theory of law. Even though such a classification may seem ill-conceived at first sight, there is a good reason for it. First, the theoretical "spawn" of the rule of law and separation of powers, lies primarily in the ideas of liberal thinkers such as John Locke and Charles de Montesquieu. Those are later on followed by so called "federalists" (i.e. Alexander Hamilton, James Madison a John Jay) in the United States of America. Second, the purpose of separation of powers is to limit the risks of the concentration of the power which means to protect and defend any ad hoc minority in general. The reason is also to create a space of freedom for individual and protect the borders of this space against the interference of the power.

But let's go back, at least shortly, to the roots of the idea of separation of powers. We would need to look back into the period of the birth of Enlightenment in England and France, i.e. into 17th respectively 18th century. John Locke laid down the foundations in the work *Second Treatise of Government* (1690) where he claimed that the concept of separation of powers is able to prevent absolutism, which would threaten the observance of natural rights, just as the right to life, liberty and property while the freedom was crucial in all his writings because "*without it is the man unhappier than an animal*". Locke based his arguments also on the Social contract theory of the state and on iusnaturalistic character of the human rights stemming from the human reason (common sense) through which we are able to get to know the laws that were put into nature by the God. In this work Locke requires the separation of powers into legislative, executive and federative. In the connection of the legislative and judicial branch, respectively in the connection of the judicial and executive branch, he sees no danger, while the danger in this connection is seen and reflected by Montesquieu later on in his writings. Locke's federative branch of power is nowadays divided (shared indeed) between legislative branch and executive branch. The federative branch shall have a competence within foreign affairs, foreign policy, just as proclamation of war, peace conclusion and treaties and contractual agenda with the foreign countries.

In France, fifty years later, Charles L. S. de Montesquieu distinguished legislative, executive and judicial power in his famous work *Spirit of Laws* while the leitmotif is again the protection of liberty: "*When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may anse, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.*"[8]

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6 The second concept, which has a German roots, is the concept of Rechtsstaat. The antonym of the Rechtstaat is the totalitarian society. The antonym of the Rule of law is the anarchy.

7 See WINTR,J.: Princípy českého ústavního práva. Eurolex Bohemia, Praha 2006, p. 57 and following.

8 MONTESQUIEU, CH.L.: O duchu zákonů. Právnické kníhkupectví a nakladatelství V Lindhard, Praha 1947, p.172 and following.

No control of government would be needed (from outside and from inside) and therefore no separation of powers would not be needed, if the "people would be angels" as James Madison stated in 1788 in one of the Federalist Papers. However, based on empirical evidence, we know that people are no angels. To strengthen this argument we can remind the Plato's idea of governors presented in *The Republic*. According to Plato, the philosopher is able to control the rational element of the soul, he can perceive the "real" world, as he left the cave in which only shadows of the real world can be seen. Therefore "*until philosophers are kings, or the kings and princes of this world have the spirit and power of philosophy, and political greatness and wisdom meet in one, and those commoner natures who pursue either to the exclusion of the other are compelled to stand aside, cities will never have rest from their evils*."[9] As Plato sums up, the philosophers would not want to become kings, because they would have to return to the cave, so we need to force them to govern the village.

From the text of the Constitution of the Slovak Republic (published under no. 460/1992 Coll.) we can deduce that the Slovak Republic is the Parliamentary Republic with some specific features, such as direct election of the President, or relatively strong competences of the President with only minor need for countersignature by the prime minister. It means that the criticism of parliamentary republics applies also on the Slovak Republic. In the parliamentary republic the relationship of the government and the President on one hand and the government and the legislator on the other hand are often considered to be ruled by the parliamentary coalition and opposition, not by the separation of powers as imagined by theory. It means that the coalition in Parliament in fact influences the action of the government, because the government is most of the time created by the Parliamentary coalition and that is why the key legal issues and key executive issues are decided by the same group of people. Hence the legislative power and the executive power are not separated in such a manner as in presidential republics. They are less separated. The incompatibility of functions plays its role too.[10]

In the Slovak Republic the principle of separation of powers can be deduced not only from the explicit wording of the constitution but also based on the systematic interpretation of the constitution.

According to the article no. 1 of the Constitution of the SR the Slovak Republic is a state governed by the law, it means that it is the state with the separation of powers.

Chapter V. of the constitution has the title "Legislative power" and it contains the provisions about the National Council of the Slovak Republic and also the referendum. Chapter VI. is titled "Executive power" and it includes the President of the Slovak Republic and the Government of the Slovak Republic. The Chapter number VII. is titled "Judicial power" and it included the sections about the Constitutional Court of the Slovak Republic and the sections on "Courts of the Slovak Republic".

National Council is the sole constitutional and legislative body based on the grammatical approach to the text of the Constitution. However, the Constitutional Court decision no. II.ÚS 31/97 stated that as the citizens are a source of power in the SR, which they exercise through their elected representatives or directly, they even have

[9] PLATÓN: Ústava. OIKOYMENH, Praha 2005, p. 222.

[10] See also WINTR,J.: Princípy českého ústavního práva. Eurolex Bohemia, Praha 2006, p.59.

the constitutional power in their hands through the referendum. They can even take part in referendum on constitutional question, but they currently (because of the act on referendum) cannot vote on and they cannot pass the specific constitutional law. As to the court the result of the referendum if valid is binding and it is in fact the order for the National Council of the Slovak Republic to act in such a way to bring the results of the referendum into life. The constitutional court strengthened the need of the systematic and teleological interpretation as the literal interpretation may corrupt the spirit of the constitution while this spirit shall be reflected in the interpretation. Neither the original wording of the Constitution stating that the government is "highest executive body" had not survived the systematic interpretation because the government of the republic was considered to be sort of equal to president in the position within hierarchy, as the Constitutional court stated in one of its decisions. Court said that the President is based on the constitution not in subordinate position to the government, what is now reflected in the "new" wording of the constitution – government is the supreme body of the executive power.

The judiciary in Slovakia is carried by both ordinary courts and by the Constitutional Court. The Constitutional Court, however, is not the appellate court of the ordinary courts is the case law of the Slovak Constitutional court states. The Constitutional court of the SR "only" controls the compliance of the application of decisions of the ordinary courts with the constitution - constitutional rights. Thereby the constitutional court occupies the independent and separate position in the structure of the Slovak judiciary (see e.g. decision of the Constitutional Court of the SR no. I. ÚS 13/01).

2.2 Values

The law of the democratic state governed by the law is not neutral and it cannot be free of values. In fact, not only constitutional principles enshrined in constitution but also human rights and fundamental freedoms may be considered to be values. The values are also objects protected be the constitution. These ideas were confirmed by the case law of the Constitutional Court of the Slovak Republic in decision no. PL. ÚS 12/01 (the human life before the birth, equality, liberty etc. were described as objective constitutional values). The principles of economical functioning of the Republic may be considered values too - e.g. market orientation of the economy, ecological and social orientation of the economy of the Republic (see art. 55 of the Constitution), etc. We will discuss the value of equality and value of justice more deeply on the following pages.

2.2.1 Equality and Justice

The idea of equality in human society is as old as mankind itself and discussion about it found itself to be in the centre of the socio-legal considerations long before the times when Socrates was taking walks around Athens with his students. The very idea of law and any rules is in fact inevitably connected with some concept of equality and justice. When the legislature chooses a hypothesis and a disposition of the legal

norm (and he implements his ideas of what is good), the legislator sets the right or the obligation to everybody or only to somebody based on some characteristics (based on some features). The legislature therefore differentiates, he distinguishes, however, the normativity of the law binds all the subjects of the law plus all the subjects that are in the eyes of legislator considered to be of the same "kind" (e.g. people over 18, spouses, students, pregnant woman, etc.) are equal before such a law.[11] This means that in the core of the law is sort of paradox that consists in the fact that legal norm, legal rule, distinguishes and equalises (deals the identical entities identically) at the same time. We should keep in mind that the classification of someone or something as the same/identical/similar is not only descriptive but it is also evaluative and therefore the classification of what the identical, what is relevantly similar, mirrors and reflects the value preferences and concepts of justice of the one who carries out a classification. Such a concept of equality is traditionally called the formal equality. However, the formal equality has never (and it will not) prevented the conflict of the law that embodies it with the justice and equality as perceived nowadays.[12] Formal equality is only the requirement for the form, not the content. In order to get the content into the formal algorithm of equality we would need the prohibition of discrimination. But let us get back to the value of justice and we will proceed to discrimination later on.

We may legitimately claim that the motive of the creation of the law, the legal order, is to promote and possibly achieve justice and through it settle the social peace. This can be claimed without any specific idea of what is just (i.e. without specific concept of justice) in our mind. Even the totalitarian legal orders are trying to realise specific ideas of justice (what is just as to totalitarian government), even though we would consider them to be unjust form democratic point of view. Concept of justice is closely connected with a concept of equality. The Lady Justice – *Justitia* - has the balance scales in her hand in order to balance equally. She is sometimes portrayed with the blindfold ("Justice is blind.") and sometimes, in earlier portrayals, not. Even in these different portrayals we can see the different concept of justice. First, the Justice has to have her eyes covered because she has to balance equality irrespectively of who is standing in a front of her. Second, she has to be informed of the person standing before her, so she can balance equally – she has to see the man so she can judge him/her.

The difference between the formal concept of equality and material concept of equality may be somehow explained based on the difference between the formal and material understanding of a state governed by the law (i.e. formal Rechtsstaat and material Rechtsstaat). The "new" conceptual understanding of the state governed by the law is, unless the old/formal understanding, characteristic for the fact that "*it is*

[11] Compare the idea of Dr. Bárány that the "*formal form of equality before the law is almost inevitable component of any legal regulation and it is the result of our understanding of the legal norm as the rule that is applicable on the groups of cases (social relations) of the identical kind/type*." BÁRÁNY, E.: Rovnoprávnosť. In LENGYELOVÁ, D. (ed.): (Ne)rovnosť a rovnoprávnosť. Slovak Academic Press: Bratislava 2005, p. 13.

[12] That is because of the fact that practically any concrete concept/idea of justice is compatible with the formal equality. E.g. idea that the black people may only sit it the back of the vehicle, idea that people with blue eyes have to pay higher taxes, the idea that people with red socks must not drink alcohol, etc. are all compatible with a formal equality, but in fact we would (hopefully) consider them unjust.

connected with a acceptance of the requirement of the validity of norms that are placed above the positive law"[13] while the basis of those norm is iusnaturalistis, rational or ethical.[14] Hence the roots of the concept of material Rechtsstaat may be seen in the work of Locke or Kant. However, the new phase, the second wind, of this idea was got after the experience of the mankind with the totalitarian regimes in the first half of the previous century. Rule of law in a material sense, unless the formal Rule of law, aspires to reach specific quality of a legal regulation and it is such that laws shall be just be able to reach consensus. This is however not the only one difference.[15] It means that the material Rechtsstaat is not neutral as to values and the values that shall be incorporated in the positive law and realised (and promoted) by the law are justice, as we already mentioned, equality, legal certainty, human rights, etc. The "new" Rule of law, thus, respects human rights and fundamental freedoms, and state governed by the law (quite recently) shall have a positive obligation to actively enforce the human rights and to create conditions for their realisation. Last but not least, the material Rule of law, unlike the formal one, incorporates specific point of reference of judgement through which some ideas of what is just are indeed considered to be just and the others are not. It means that some ideas of what is just (e.g. the idea that it is just to kill the Jewish people because they are not people at all and they are just spoiling the space given to Arian rase) are in the material Rule of law ex ante unjust/incorrect and hence they are in violation of the Rule of law. This also means than that the *formal* equality is not always able to reach the standards of the material Rule of law because one of the judgements that is wanted by the material Rule of law is the certain specific evaluation of what is considered to be equal and what is considered to be unequal.

To put it more simply, the criterion for evaluation of people as equal or unequal before the law may be in the formal Rechtsstaat under the concept of formal equality even the race, gender, religion, etc. – i.e. even the law that provides the right to vote only to men, not women, would be in conformity with this concept. In a material Rule of law, such a criterions/grounds would be very suspicious and they must be used very carefully and sensitively as a criterion of access to human rights they should not be used at all. Concept of equality of the current western Rule of law consist in order (i) not to distinguish if there is not important reason for that (legitimate and proportionate), (ii) to distinguish if there is an important and relevant reason for that, because the equality is not based on treating the alike likely but also in treating the relevantly different people differently and (iii) not to distinguish at all (ever) based on some grounds/criterions in some specific cases. It means that in the material Rule of law the concept of formal equality is amended by the principle of equal treatment, legitimacy and proportionality (ad i and ii) and prohibition of discrimination (ad iii). The Lady Justice sometimes has to have her eyes covered (prohibition of discrimination) and sometimes more or less uncovered (the principle of equal treatment, particularly in the formulation of "relevantly different differently").

Just as some ideas of what is just are "principally" respectively *a priori* considered to be just and others are disqualified as unjust in the material Rechtsstaat, such a Re-

[13] BRÖSTL, A.: Právny štát. Medes: Košice, 1995, p. 24.

[14] See ibid. p. 23 and following.

[15] See BRÖSTL, A. et al: Ústavné právo Slovenskej republiky. Aleš Čeněk: Plzeň, 2010, p. 57.

chtsstaat embraces specific variation of ideas of what is just and other variations are disqualified, the concept of material equality is imprinted by the specific and concrete evaluation of what is just and equal. This is the difference between the formal concept the equality (concept of formal equality) and the material concept of equality (concept of material equality). This is because, as we already stated above, the formal concept of equality is neutral as to its content.[16] In the heart of the material equality is a concrete idea (in different but finite variations) than in some cases the equal treatment of the alike, but in a specific aspect different people, likely, would be in fact unjust and unfair.[17]

Let's illustrate it on the example of the sport. Imagine us to draw the same start line, to measure the same length of the track, pose the same weather so all the conditions would be formally the same. Imagine 10 runner standing at the start line. Three of them would be disabled, e.g. one of them would be blind, another one would have lower ability to move his legs and the third one would have had his left leg amputated. Would we claim that such a competition is fair? I believe that huge majority of us would say that it would be not. In fact, this is the reason why the competitions of disabled athletes we created. But if we would think the case over, we would find out that there are many levels of disability. And this is the reason why the disabled athletes are divided into groups based on the level of disability and there is a specific system of evaluation of specific disciplines based on coefficient of disability.

Such a solution of such situation is in fact the realisation of the concept of material equality. We could even "solve" the "problem" in such a way that would try to repair the inequality by the affirmative action (positive action). E.g. we can let an athlete with imputed leg use an artificial leg. Such an action may ensure de facto equal condition of athletes and as a version of material equality it is called equality of opportunities. Proponents of the concept of equality claim that the state shall actively intervene to promote equality, help those who are in a worse position and bring equal opportunities. This idea is – let us give the people equal opportunities and let them compete according to their skill. This concept of equality raises some controversy as well as the application of physically handicapped runner Oscar Pistorious, and his request to compete in the "regular" Olympics.

Even more controversial is another branch of the concept of substantive equality - equality of outcome. In this concept the de facto inequality shall be cured by the promotion of those who are disadvantaged in achievement of outcome (typically quotas for underrepresented groups). Another version of equality of outcome is focused on systematic removal of barrier that are putting obstacles in achieving equal outcome. This concept of equality is thus associated with positive action of state.

The concept of equality as embodied in the Constitution of the Slovak Republic is the subject of the chapter 6 of this book.

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[16] Compare BOBEK, M., BOUČKOVÁ, P., KÜHN, Z. (eds.): Rovnost a diskriminace. C.H.Beck: Praha, 2007., p.11 and following.

[17] See also FREDMAN, S.: Antidiskriminační právo. Multikulturní Centrum Praha a Poradna pro občanství, občanská a lidská práva: Praha, 2007, p. 8.

3. Constitutional law of the SR and the European Union

Slovak Constitution in its original wording did not contain an explicit legal basis for accession of the Slovak Republic to the supranational organizations such as the European Union. As the Slovak Republic applied for membership in the EU in 1995 it was necessary to create it the legal basis mostly for the sake of the effectiveness of the Slovakia within the EU.[18] It was needed due to the specific nature and extent of obligations stemming for the membership. The legal basis was created by an amendment to the Constitution by the Constitutional Act no. 90/2001 Coll..

The legal basis for the accession was enshrined mainly in the "new" art. 7 paragraph 2, first sentence - " The Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union."

The Constitution thus provides formal conditions for accession to the EC/EU.[19] These conditions are (i) the conclusion of an international treaty by which (or based on which) the exercise of the rights is transferred to the EC and the EU, (ii) expression of the approval with this international treaty by the National Council of the Slovak Republic by three-fifths majority (article 84 of the Constitution par. 4), (iii) ratification of this treaty by the President of the Slovak Republic and (iv) promulgation of the treaty as stipulated in the law.

All of these conditions have been met as an international treaty by which the Slovak Republic acceded to the EC/EU was concluded (so called Treaty of Accession)[20] and

[18] Radoslav Prochazka claimed that such a question (whether the SR would (not) be able to effectively fulfil the obligations stemming from the EU law without the amendment) is purely hypothetic and academic. He belived that the amendment was not needed in fact. See PROCHÁZKA, R. - ČORBA, J.: *Právo Európskej únie*, Žilina: Poradca podnikateľa, 2007, p. 99.

[19] The material conditions are absent in the Constitution of the SR. However some material conditions were incorporated in the constitutions of other Member States. Such a material condition is often connected with the purpose or aim of the transfer of powers. For some material conditions see PROCHÁZKA, R. - ČORBA, J.: *Právo Európskej únie*, Žilina: Poradca podnikateľa, 2007, p. 98 footnote no. 195. In the Constitution of the Slovak Republic the material conditions are stated only for accession to the organisation of collective security – e.g. NATO (art. 7 par. 3). These conditions are communicated through aim: the aim of maintaining peace, security and democratic order.

[20] Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the

on 1. July 2003 the national council approved the treaty and classified it as a treaty as to art. 7 par. 5 of the Constitution, which takes precedence over the laws of the Slovak Republic. This international treaty was ratified by the President and promulgated in the Collection of Laws under no. 185/2004 Coll.. It entered into force on 1. May 2004.[21]

The wording of the first sentence of article 7 par. 2 is not the legal experts' most "favourite" amendment because of the lack of its accuracy and precision. One of the criticisms of this formulation was directed against vagueness of the transfer/restriction of the sovereignty of the SR. On the one hand, from the wording of the Constitution it is clear that the Slovak Republic transmitted the *exercise* of some of its power and competences, not the competences themselves. On the other hand, it is not clear how this way of transmission impacts the sovereignty of the Slovak Republic.[22] It is also criticized that the Slovak Republic may, based on the art. 7 par. 2 transfer execution of its competences on the two organizations - the European Communities and the European Union but the relationship of the European Communities and the EU is (or rather was) complex.[23]

Relations within the tree branches of power had changed as a result of the accession of the Slovak Republic to the European Communities and European Union.[24] The great number of books deals with this issue from the perspective of law, political science, sociology or philosophy.[25] One of the main aspects of the changes in the mentioned relationships is the transfer of legislative power from the "classical" legislative body – Parliament - to the executive body. Legislative body of a Member State of the European Union is partially losing its main agenda – adoption of generally binding legal acts (laws) - at the "European level". This process is the fundamental (but not only one) component of the so-called democratic deficit and it is connected with the issue of the legitimacy of the EU.

Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union.

21 The facultative referendum on accession took place in May 2003 and citizens approved the accession.

22 J. Azud claims that the former draft of the ammendment (The Slovak Republic may transfer a part of exercise of its sovereignity...) was more appropriate. See AZUD, J.: *K otázke vplyvu vstupu do EÚ na suverenitu SR v kontexte článku 7 Ústavy Slovenskej republiky*. Právny obzor , *86*, 2003, no. 6, p. 596.

23 This is why Azud again considered the former draft of amendment (The Slovak Republic may transfer a part of exercise of its sovereignty to *supranational bodies*.) to be more suitable. See ibid..

24 These realtions were partially changed even before the accession basef on the Treaty of Accession. See KIČINOVÁ, E.: *Národná rada Slovenskej republiky v procese integrácie*. In: ČORBA, J.(ed.) : *Európske právo na Slovensku*. Bratislava: Kalligram, 2003.

25 See e.g. WEILER, J.H.H.: *The Constitution for Europe: Do the new clothes have an emperor? And other essays on European integration*. Cambridge: Cambridge University Press 2004, 4th ed.; SIEDENTOP, L.: *Demokracie v Evropě*. Brno: Barrister & Principal, 2004; YATAGANAS,X.A.: *The Treaty of Nice: The sharing of power and the institutional balance in the European Union - A continental perspective*. Jean Monnet working paper 1/01, accessible from http://www.jeanmonnetprogram.org/papers/papers01.html.

The democratic deficit of the EU can be seen as an issue at the European level, but also as an issue at the national level. The European level of the issue consists in the position of the European Parliament within the European legislative procedure. The position of the European Parliament was strengthened by the Treaty of Lisbon, but it still does not have the position that national parliaments have in their countries. The national aspect of the democratic deficit consists in the fact that national parliaments, unlike national governments through its members sitting in the Council, are not *directly* participating in the EU legislative procedure. Even though the role of national parliaments was strengthened based on Treaty of Lisbon (that is in force from December 2009), they still do not have the power "typically" ascribed to par excellence legislative bodies.[26]

National parliaments are therefore trying to regulate their relationship with the national governments on the level of national (constitutional) law in order to gain more control over the actions of the members of governments. One of the ways to regulate the relationship in European issues is to bind the members of government to follow some (binding) opinion of the national parliament when in the Council.

Even the Protocol on the Role of National Parliaments in the European Union annexed to the Treaty on the European Union and the Treaty on the Functioning of the European Union states that "*the way in which national Parliaments scrutinize their governments in relation to the activities of the Union is a matter of constitutional organization and practice of each Member State*".

The National Council of the Slovak Republic had used the opportunity to modify its relationship with the government of the Slovak Republic based on inspiration with experience of other countries, particularly with regards to (i) the obligation of the government to inform the Parliament and (ii) the possibility to bind the member of government by the binding opinions.

According to an unapproved draft of the Constitutional Act, which was to amend the provisions of the Constitution, the relationship of the National Council and the

[26] See Treaty of Lisbon - Protocol on the Role of National Parliaments in the European Union. This protocol among other states: "*Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.*
(…) Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament. Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.
National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.
If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.
If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.
An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure."

government in EU matters should have been embedded directly in the Constitution. However, the Constitutional Act that does not amend the Constitution was finally adopted - act no. 397/2004 Coll. on the cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in the European Union Affairs (hereinafter "Act on cooperation").

As to the act on cooperation the government or its authorized member shall submit the following documents to the National Council:

- proposals of the legally binding acts of the EC/EU, which would be discussed by the representatives of the Governments of the Member States of the EU,
- drafts of other acts, which would be discussed by representatives of the Governments of the Member States of the European Union and
- information on other matters related to the membership of the SR in the EC and the EU.

The informational obligation of government is hence relatively broad in comparison to the other countries.[27] The government also has an obligation to submit an annual report to the National Council on matters related with our membership in the EU. National Council obtains the relevant information also through the Committee of the National Council of the Slovak Republic for European Affairs (hereinafter "the Committee for European Affairs"), which was established in April 2004. The Committee was established under the Act on the Rules of Procedure of the National Council and it is mandatory. The National Council also annually dedicates a session to discussion of matters related to Slovakia's membership in the EU. The background of the session is the report submitted by the Government. The National Council also issues recommendations for the Government.

Apart from the competence to discuss proposals and reports delivered by the Government, the National Council has the power to approve the opinion, i.e. the positions of the Slovak Republic on drafts of European acts. The legal basis for this competencies the act on cooperation and the act on rules of procedure of Parliament which gives this competence to the Committee for European Affairs if the National Council does not reserve it for itself.

The opinions of the Slovak Republic that may by adopted by the Parliament National and it may be directed not only towards the draft legislature of the EU, but also towards other EU affairs.

Opinion of the Slovak Republic adopted by the Parliament shall be binding for member(s) of the Government of the SR who are hence obliged to represent such an opinion while sitting in the institutions of the EU. The Act on cooperation regulates the procedure of adoption of the opinion. First, the Government sends the draft of the opinion to the Parliament and the Parliament or its Committee for European Affairs has two weeks to approve the draft opinion or to formulate its own opinion. It the Parliament remains silent the drafted opinion becomes binding opinion of the Slovak Republic.

Even though the opinion is binding for the member of Government of the Slovak Republic the Act on Cooperation states that she can depart of it "*if necessary in order to*

[27] See e.g. URBANTSCHITSCH, W.: *National Parliaments in the European Union – The Austrian Experience*. Gratz: Forschungsinstitut für Europarecht der Karl-Franzes-Universität, 1998, p. 46-47.

protect interest of the Slovak Republic". However, if so the member of the government shall inform the National Council of the Slovak Republic immediately a she shall justify the departure. If the justification would not be considered to be sufficient of persuasive, the Government or its members would probably bear political responsibility.

Through the above mentioned opinion the National Council of the Slovak Republic can influence the legislature on the level of EU, because it can influence the acts of members of the Government. The question is, whether such a competence is in conformity with Constitution of the Slovak Republic when used by the Committee on European Affairs. The fact is that the committees of the Parliament are defined by the Constitution as an initiative or supervisory bodies. Adoption of the opinions, which may have a significant impact on the adoption of EU legislature hardly, fits this definition.

Other aspects of the relationship of the law of the Slovak Republic and the European law are discussed in the following chapter.

4. The relationship of the constitutional law of the Slovak Republic and the European law

Due to the conversion of relations of States in the last century, the emergence of what is conventionally known as the international community, the establishment of the European Communities and later the European Union, the issue of relationship of (national) constitutional law with the international and European law became both theoretically and practically very important. The relationship between the international law and the European law is also of interest, we would however not deal with it.[28]

We will provide the definition of the international law and European law in the first part of this chapter. The second part of the chapter is focused on the relationship of the municipal law with the international law and the EC/EU law and we will also focus on the role the constitutional law plays in this respect.

If we would try only to list the sources of international law we are facing problem. The overwhelming general definition of the sources of international law simply does not exist.[29] However the Article 38 of the Statute of the International Court of Justice (the "Statute") may serve as a guide. The Statute lists the "documents" fundamental for the decision of the International Court of Justice. These are:

- International treaties/conventions,
- International customs as evidence of a general practice accepted as law,
- General principles of law recognized by civilized nations,
- Judicial decisions (except decisions of the Court, which are binding only inter partes under Art. Statute 59) and doctrine the most qualified teaching professionals of different nations which assists in the determination of rules of law.

These "sources" are not hierarchically arranged based on their legal force, i.e. the legal customs does not have "lower status" or lower power than international treaties. We can find many disputes regarding the actual meaning or the content of the expressions "international custom", "general principles of law recognized by civilized nations"

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[28] For such a relationship see e.g. DE BÚRCA, G.: *The EU, the European Court of Justice and the International Legal Order after Kadi*. Harvard International Law Journal, Vol. 1, No. 51, 2009; Fordham Law Legal Studies Research Paper No. 1321313. Available at http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1323806_code788468.pdf?abstractid=1321313&mirid=3.
The author of this paper comes to the conclusion that the Court of Justice of EU is the proponent of the dualistic conception of relationship of international law and the EC/EU law.

[29] See KLUČKA, J.: *Medzinárodné právo verejné: Všeobecná a osobitná časť*. Bratislava: Iura Edition, 2008. p. 105 and following.

etc.[30].

The term "European law" usually means the law of the European Union, however before the adoption of the Lisbon Treaty is was actually the law of the European Communities ("EC") plus the law of the European Union ("EU"). Before the 1. December 2009 European law was thus the complex consisting of the community law (acquis communautaire) and the EU law. It is so because the EU has been defined in Article 1 of the Treaty on European Union, in force since 1993, as being based on the European Communities. Three pillars structure of the EU was designed from the Community pillar and two Union pillars - Common Foreign and Security Policy ("CFSP") and the Police and judicial cooperation in criminal matters, but since the entry into force of the Lisbon Treaty this structure has expired.

The Treaty of Lisbon[31], which amends the Treaty on the European Union and the Treaty establishing the European Community, replaced the European Community as its successor. Thus there remains only one law of the European Union law. Yet, not for all the EU policies there are the same rules and procedures and the supranational not only intergovernmental approach is somehow preserved. The Treaty of Lisbon also changes the name of one of the founding treaties of the Communities, the EC Treaty into the Treaty on the Functioning of the European Union. Thus we come to the source of European law, namely:

- the founding treaties, i.e. the Treaty establishing the European Coal and Steel Community (its validity has expired), the Treaty establishing the European Community (signed in r. 1957; and renamed and amended in 2009 into the Treaty on the Functioning of the EU), the Treaty establishing the European Atomic energy (signed 1957) and the Treaty on European union (signed 1992),
- treaties that changed and amended founding treaties (e.g., so-called Treaty of Amsterdam Treaty of Nice, Treaty of Lisbon),
- acts of Accession of particular states,
- general principles of law,
- secondary legislation - regulations, directives, decisions, recommendations, opinions,
- international treaties concluded by the EU (before the entry into force of the Lisbon Treaty there were (mostly) concluded by the EC).

At the first sight the EC law was the "typical" international law. However, the European Court of Justice, institution of EC, ruled relatively soon in the (in)famous case of Van Gend en Loos that the Community establishes a new order of international law. The nature of Community law and, therefore, the nature of European law is different from the nature of international law. This is due to the object of regulation of Community law, which is dependent on the objectives of the Communities. In many respects Community law (now EU law) regulates relations that were considered to be regulated solely by the means of the municipal law. The European Union is therefore not an

[30] Seei SHINER, R.A.: *Legal Institutions and the Sources of Law*. Dodrecht: Springer, 2005, p. 195 and following.

[31] OJ EU 2007/C 306/01.

international organization, but specific organization *sui generis*. It is a kind of supranational entity. What will become of it (whether federation of states, state or st. else) we will see perhaps relatively soon.

The jurisprudence currently recognizes and develops mainly two basic concepts of the relationship of the municipal law (including also the national constitutional law) and international law. These are dualism and monism. Dualistic concept considers the municipal law and international law to be the two separate and distinct entities/systems in their nature, which have different objects (relations they govern), bodies and sources. Monistic concept is based on the idea that the international law and municipal law create only one legal system because their nature is not essentially different. The monistic conception therefore needs to solve the problem of primacy and supremacy (i.e. hierarchy) of norms within the legal system. Then as to some proponents of monism the municipal law shall have the supremacy and as to some the international law has the supremacy. Some of monists consider the previous propositions to be false and they propose that only the question of primacy in applicability not hierarchy in legal force shall be the question to be solved. Both of these concepts have their deep philosophical roots.[32]

It can also be said that the dualistic conception in fact responds to the problem of the legitimacy of international law. If in democratic state the law is legitimized *inter alia* by the democratic procedure of the adoption then the democratic process is condition of the validity of law. Dualists therefore point to the democratic deficit in adoption of the international law and, therefore, in their opinion there if a need to legitimize the international acts by their transformation into the municipal resp. national law.[33]

Each conception of the relationship of international law and municipal law may be simply illustrated as follows. Imagine that a national legal order is an entity surrounded by walls with a single gateway. The dualistic conception puts the national legislator as the guardian to the gate. The guardian would not let the international act to enter the gate just like that. The legislator would "touch" the international regulation with transformation – i.e. legislator himself would adopted the rules the laws following the international standard literally (transformation in the *stricto senso*), or it the municipal legislator passes it in a modified way (adaptation). The monistic conception does not put the guardian to the gate. However, the Constitution is standing there in order to show the way to international standard – i.e. to show the place where to go and where to stand to the international law.

Dualism and monism are not applied in the distilled form in the practise of the states. The countries more of *tend to* one of the doctrine but they do not implement them exclusively.

As it was already mentioned, the Constitution as a national law the highest legal

[32] See STARKE, J.G.: *Monism and Dualism in the Theory of International Law* In. PAULSON,S.L. - LITSCHEWSKI-PAULSON, B.(eds.): *Normativity and Norms: Critical Perspectives on Kelsian Themes*. New York: Oxford University, 1998. p. 538 and following. Dualism is based on G.W.F. Hegel's ideas while the monism is built on ideas of Hans Kelsen.

[33] See DE BÚRCA, G.- GERSTENBERG,O.: *The Denationalisation of Constitutional Law*, Harward International Law Journal, Vol. 47, No.1, 2006, p. 244 a foll..

power regulates the conditions under which international law respectively EU law becomes the part of domestic law and to what extent this is happening. It e.g. states whether there is a need of transformation of international law, when the transformation is needed, who shall perform it, what position will have the international norm in municipal law, etc.

Therefore, from the perspective of municipal law it is difficult, if not impossible, to understand how the international law or EU law can prevail over municipal law if the rule in the municipal law did not state so. However, from an international perspective or EU perspective it is difficult to understand how they could be realised and brought to life if the municipal law would not stand out of their way and grand them absolute primacy.

4.1 Primacy of the legal norms of the international law and EU law over national law

The primacy of the norms of international law and European law before the law of the Slovak Republic is regulated by the Constitution explicitly. *In concreto* it is regulated in Art. 7 paragraph 2 and 5 of the Constitution and in Art. 154c of the Constitution. To award the primacy to the international law and EU law is probably the best way to protect the state against non-compliance with its international obligations. Given the norms of international law the Constitution determines the priority of only one of its sources – international treaties. Thus, the Constitution does not put primacy on other sources of international law, namely international customs, although Art. 1 par. 2 declares that the SR recognised and respects them. Therefore, in the view of the systematic inclusion of Art. 1 par. 2 into Constitution, some authors have concluded that this article provides only a constitutional principle that is of interpretive function towards other national standards. Those authors hence concluded that the state authority may not apply international customs directly.[34] On the other hand, some other authors provide the argumentation leading to the conclusion that even if Art. 1 par. 2 serves as constitutional principle that does not mean that international customs cannot be applied directly and that they cannot have the primacy over municipal law.[35]

Article 7 paragraph 5 of the Constitution states: "*International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws.*"

This means that primacy of international law over municipal laws works only for three categories of international treaties, namely (i) international treaties on human

[34] See ČORBA,J.: *Prednosť medzinárodných zmlúv pred zákonom*. Justičná revue, 54, 2002, no. 6-7, p. 704.

[35] See KÁČER,M.: *Medzinárodná obyčaj v slovenskom právnom systéme*. In: Právník, Vol. 149, no. 3 (2010), p.251-227.

rights and fundamental freedoms, (ii) auto-executable treaties and (iii) treaties which have a direct impact. All of them must be at the same time ratified and promulgated in the manner prescribed by law. The legal theory and explanatory memorandum to the amendment of the Constitution (which introduced current wording of Art. 7 in 2001) claim that there is even a need to add that such a treaty must be also directly executable.

As I have mentioned above, the provisions of Art. 7 was incorporated into the Constitution by amendment to Constitution by Constitutional Act no. 90/2001 Coll., raised a number of discussions. The problem is that Article 7 par. 4 of the Constitution determines that the international treaties on human rights and fundamental freedoms and international treaties which directly establish rights and obligations of natural and legal persons are valid only if there is prior approval by the national Council. However the fourth paragraph of Art. 7 of Constitution does not mention so called auto-executable treaties. Therefore, some authors have concluded that the validity[36] of the international treaties whose execution does not require a law is not the subject of an approval of the National Council of the Slovak Republic.[37] On the other hand, others have argued that the notion of auto-executable treaties is to be interpreted as "directly executable" treaties, and so they have to be approved by the National Council under Art. 7 par. 4 and they take primacy over the laws.[38] Thirdly, there is an interpretation that the institute of primacy has in this context its meaning only if the primacy is awarded to international treaty, which is capable of immediate application by the state authority (e.g. the court) – i.e. to auto-executable treaty. Therefore, the problems in interpretation of Article. 7 par. 5 is not a lack of regulation if the auto-executable treaties in Art. 7 par. 4 but the redundancy of inclusion of (i) treaties on human rights and fundamental freedoms and (ii) treaties which directly establish rights or obligations of natural persons or legal persons.[39] Based on such an interpretation, the international treaties under Art. 7 par. 5 are the "subset" of treaties under Art. 7 par. 4 of the Constitution. And it is such a subset whose distinguishing feature is primacy over the law.

Before the reader of this lines gets the heavy headache I would rather move on to other issues and I will just add that the authority, which under the Constitution classifies the international treaties is the National Council of the Slovak Republic. National Council does so in the context of approval of the international treaties under Art. 86 letter d) in connection with Art. 7 par. 4 of Constitution. Nonetheless, the majority of international agreements have a mixed character, that means that some provisions of the treaty X do have the primacy and other provisions of treaty X do not have primacy over the laws.

Another article of the Constitution which regulates the primacy of international treaties over the laws is Art. 154c par. 1 which states: "*International treaties on human*

[36] Validity is in fact the binding force.

[37] See KLUČKA, J.: Miesto *a úprava noriem medzinárodného práva v Ústave Slovenskej republiky*. Justičná revue, 54, 2002, no. 4, p. 389.

[38] See e.g. HAŤAPKA, M.: *K článku „Prednosť medzinárodných zmlúv pred zákonom"*. Justičná revue, 54, 2002, no. 8 – 9, p. 941.

[39] See PROCHÁZKA, R.: *Postavenie a účinky medzinárodných zmlúv v právnom poriadku SR*. Justičná revue, 55, 2003, no.10, p.867 and foll.

rights and fundamental freedoms that were ratified by the Slovak Republic and promulgated in a manner laid down by law before this constitutional law comes into effect are a part of its legal order and have primacy over the law, if that they provide greater scope of constitutional rights and freedoms."

This article got into the Constitution by constitutional amendment in 2001 as the reaction on abolition of Art. 11 by the same amendment. The fact was that there was a need to retain the primacy of the "old" international treaties (ones concluded and ratified before 2001) and hence the double track of primacy was introduced. The international treaties ratified before the 1. July 2001 are awarded primacy if they provide the greater scope of constitutional rights which is not the case for the ones ratifies after this date. The latter ones have the primacy based on the mechanism in Art. 7 par. 5.

The treaty which takes precedence over the laws under Art. 154 par.1 is for example the Convention for the Protection of Human Rights and Fundamental Freedoms promulgated under no. 209/1992 Coll. (Hereinafter "the Convention"). The Constitutional Court of the Slovak republic held that even the case law of the ECtHR takes precedence over national law if the ECtHR interprets the Convention in such a way that it awards more rights to individual that our Constitution (see decision of the Constitutional Court no. I. ÚS 100/04).

Unlike the first paragraph of Art. 154c of the Constitution, the second paragraph provides precedence of international treaties before the law only if the national law itself states so. The second paragraph reads that "*other international treaties which were ratified by the Slovak republic and promulgated as required by law before this constitutional law comes into effect are a part of its legal order, if so laid down by law*." International treaties under Art. 154c par. 2 that have been ratified and promulgated before 1 July 2001 became part of the law of the Slovak Republic, where the law provided so. On this basis, they can also get primacy over laws provided that they are directly enforceable. Examples of laws that established precedence of international agreements and treaties are e.g. Commercial Code, the Law on Income Tax Act on Private International Law, and others.

The primacy of European law over Slovak law is enshrined in Art. 7 par. 2, second sentence of Constitution. Somehow indirectly it is present even in the third sentence of the abovementioned article.

Article 7 par. 2, second and third sentence reads: "*Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be executed by law or a government ordinance pursuant to Article 120, paragraph 2*."

The Constitution used the term "legally binding acts" however the EU law does not use such an expression. It is therefore necessary to clarify its meaning. Drgonec believes that legally binding acts of the EC/EU (since 1. December 2009 there is only EU) are in the relevant context regulations and directives under Art. 249 of the EC Treaty (now under Art. 288 of the Treaty on the Functioning of the European Union) as well as primary law of the EU, i.e. Roma treaties and treaties that amended Roma treaties and

Acts on accession of member states.[40] Other scholars present the view that "legally binding acts" are here to be understood as the acts of the secondary EU law that are eligible for preferential and direct application, but not the primary union law, which takes precedence over Slovak law based on Art. 7 par. 5.[41] I personally tend to the second opinion, nonetheless both opinions lack the practical relevance from point of view of the Court of Justice of EU. As it is well known, the case law of the former European Court of Justice now Court of Justice of EU created the doctrine of primacy of EC law over national law and even over national constitutional law. The paradigm of Constitution as the act of the highest legal force had been torn apart on the EU level. Even though many states had not accepted it and their constitutional courts did a lot to protect their Constitution and its primacy and supremacy. As many books and papers had been written on this topic we will not deal with the case law of ECJ, CJ EU and national constitutional courts and their interpretation. It would be interesting to trace the approach of the Constitutional Court of the Slovak Republic as to this matter; however, the court did not leave any traces yet.

One last note – we shall not forget that the possible conflict of the EU law and national constitutional law is not the Huntington's clash of civilisation. The fundamental principles of EU law and national legal orders shall be the same so the matter of primacy is more of a political then legal issue and it may be transformed form the question: Which law has the primacy? into question: Which law shall we apply?.[42]

However, let's point out that the Constitution enshrines the primacy of legally binding acts of the EC/EU over the laws but not over Constitution itself.

Based on Art. 7 par. 2 the legally binding acts of the EU that cannot be applied directly to (typically directives) shall be implemented resp. transposed by the laws or by the governmental ordinances pursuant to Article 120 par. 2. The governmental ordinances pursuant to Article 120 par. 2 (so called "approximatory regulations") are specific because, among other things, through them the government may impose obligations. The problem of approximatory regulations is mainly the issue of their legal force. Some scholars suggested that the approximatory regulations do not have the force of "regular" governmental regulations, but their legal force is higher.[43] Other scholar did not agree.[44] Anyway, approximatory regulations were highly efficient form

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40 See DRGONEC, J.: *Ústava Slovenskej republiky. Komentár.* 2nd edition. Šamorín: Heuréka, 2007, pp.127-128.

41 See ČORBA,J. - KLUČKA,J. - PROCHÁZKA,R. - VÁVROVÁ,V.: *Uplatňovanie európskeho práva na Slovensku*. In: ČORBA, J.(ed.): *Európske právo na Slovensku. Právny rozmer členstva Slovenskej republiky v Európskej únii.* Bratislava: Nadácia Kalligram 2003, p. 235.

42 The transformation of the question was proposed by M. Kumm in KUMM, M.: Who is the final arbiter of constitutionality in Europe? Three conceptions of the relationship between the German Federal Constitutional Court and the European Court of Justice. 36 *Common Market Law Review* 351 (1999) p. 362-374) http://www.jeanmonnetprogram.org/papers/98/98-10-.html.

43 See VETRÁK,M.: Aproximačné nariadenia vlády Slovenskej republiky. Právny obzor, 86, 2003, no.5, p.435- 455.

44 See PROCHÁZKA, R.: Niekoľko poznámok k aproximačným nariadeniam. Justičná revue, 54, 2002, no. 6-7, p.722-730.

of transposition and implementation of EC and EU law even if there are doubts about their legitimacy.

5. Citizenship, language and territory

5.1 Citizenship

Citizenship is evolved as political, cultural and social institution already in ancient Greece, the Greek city-states in the 5th century BC.. It has even been a subject of theoretical interest to contemporary thinkers. It is a good habit to quote Aristotle in the outline of the historical context of citizenship. Aristotle's notorious definition of citizen in *Politics* is: *"And the citizen was defined by the fact of his holding some kind of rule or office -- he who holds a judicial or legislative office"* and "*Wherefore it is thought to be just that among equals every one be ruled as well as rule*."[45]. Citizenship of Athens was obtained on the basis of gender, origin and status, so be it men, who were descendants of the citizens of Athens and obtained the status of the household patriarch, soldier and slave master.

The characteristic of the Greek citizenship was then the participation in the administration of *polis*.

The situation had been different in Rome - the Republic used citizenship as a political tool to obtain and maintain the loyalty of the population. Characteristic of the citizens in the Roman sense was their equality. Still, citizens in ancient time were relatively exclusive club - minority of the populations.

Citizenship as an institution had changed due to changes in society and concepts of law. Since 18th Century the citizenship was transformed from an elite club into citizenship of masses. The crucial historical event that catalysed the change was the French Revolution.[46] The "new" citizenship is citizenship of the masses, as was mentioned above, and citizens are threatened with the 'syndrome' of man - million – i.e. why to vote, why to participate if my voice does not change anything.

Democratic citizenship has the political aspects (participation in governance) and "legal" aspects (citizens have specific rights compared to other people). Citizenship in a democracy can therefore be defined as a relatively stable political and legal relationship of an individual and the State, through which an individual acquires the rights and duties to the state, including the right to participate in formation of the State and its policies, as a member of the civil society.

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45 ARISTOTELES: *Politika*. Bratislava: Kalligram, 2006, p.99 a p. 105 (thrd book).

46 Compare BELLAMY, R.: *Citizenship: A very short Introduction*. New York: Oxford University Press, 2008, p. 46 and foll. and RIESENBERG: *Citizenship in the Western Tradition: Plato to Rousseau*. Chapel Hill, NC: University of North Carolina Press, 1992, p. xviii and p. 253 and foll..

The Constitutional Court of the Slovak Republic has defined citizenship as "*a permanent (relatively permanent) relationship of the natural person to a particular State. The subject of the state-citizen relationship is a natural person and a particular State. It is the subject of the relationship (natural person) that is a criterion for distinguishing between citizenship and state affiliation that is substantially broader term that includes not only individuals but also legal persons. The content of the State-citizen relationship is reciprocal rights and obligations provided by the laws of each state. This stems from the sovereignty of each state. The citizenship is the institute of national law in this sense.*" (decision of the Constitutional Court no. II. ÚS 23/96).

Hence the each state itself thus provides conditions for the acquisition and loss of citizenship. However, even the international law has its say in the matter as it for example addresses the issue of dual citizenship (bi-politism), respectively with lack of any citizenship (apolitism). In some situations in life, the position of persons with dual citizenship and apolity gets complicated. Apolity persons typically do not enjoy the right to vote and to be elected, they do not fall under the positive obligation of the State to assist them to return to the State territory and they do not (fully) have many really practical economic and social rights such as the right to work and right to adequate material security in old age. Persons with dual citizenship cannot rely on their second citizenship while justifying the failure to fulfil the duty posed on them by the first State thus some of their duties may be double or they may be even in the conflict. In the event of a dispute about citizenship it is decisive which of the States has the authentic and effective bond to the person.[47]

Most of the States grant the citizenship to persons usually from the moment of birth (descent), either on the basis of so-called law of blood (ius sanguinis), where citizenship is derived from the parental citizenship or the law of the territory (ius soli), where citizenship is derived from the place of birth. However, most countries, including Slovakia, combine both of the principles. Another means of derived the acquisition of citizenship are (i) adoption – adopted person gets the citizenship of their "new" parents, (ii) marriage - when a person acquires citizenship of a husband/wife or (iii) acknowledgment of paternity to the child when the child acquires the citizenship of his father, whom he had acknowledged.

The original way of acquisition of citizenship is the one upon application (naturalization) or the choice of citizenship (optional) and repatriation.

Citizenship can also be lost in many ways. The most common method of the loss of citizenship in democratic countries is the dismissal of a person from the State union at their own request. Citizenship can be also lost in the moment of receiving of another citizenship, so some means of acquirement and the loss of citizenship are the same. For example, if State X citizen marries a citizen of country Y, after the marriage the X State citizen may receive the citizenship of the country Y, but, under the rules of State X he or she may lose the citizenship of the State X. This type of loss of nationality is not concordant with the Convention on the Nationality of Married Women (1957) that was ratified also by Czechoslovakia.

[47] See the famous Nottebohm case available at http://www.uniset.ca/naty/maternity/nottebohm.htm.

Citizenship of course terminates after the death of the citizen as well as in the case of dissolution of the State, as the entities of the relationship would cease to exist. Another way of the loss of citizenship which shall not be used in democratic countries is the deprivation of citizenship. This method of termination of citizenship has already been banned in 1948 in Art. 15 of the Universal Declaration of Human Rights (even if this document lacks the legal authority).

Citizenship is in the Constitution of the Slovak Republic defined in Art. 5 in such a way that conditions for the acquisition and loss of the citizenship of the Slovak Republic shall be laid down by law. In contrast with the law valid till 1990 the second paragraph of this article does not allow the possibility of deprivation of his/her citizenship against the will of the citizen. The law, which regulates the acquisition and the loss of citizenship of the Slovak Republic is Act no. 40/1993 Coll. on the citizenship of the Slovak Republic (hereinafter "Law on Citizenship").

Under this law it *was* possible to acquire citizenship of the Slovak Republic:

- by determination – when the persons who were citizens of the Slovak Republic on 12/31/1992 under the law no. 206/1968 Coll. acquired the citizenship of the Slovak Republic,
- by choice – which applied to the citizens of the Czech and Slovak Federal Republic without the citizenship of the Slovak Republic. These people could have made their choice until 31.December of 1993 as they could have chosen the citizenship of the Slovak Republic,
- by derivation to the minors – minors acquired the Slovak citizenship through derivation from the citizenship of their parents who got it under abovementioned means.

It is *now* possible to acquire citizenship of the Slovak Republic under the Law on Citizenship in the following ways:

- by birth - if (i) at least one parent has citizenship of the Slovak Republic, or (ii) a child is born on the territory of the Slovak Republic and his parents are apolites, or (iii) a child is born on the territory of the Slovak Republic to parents who are foreigners and the child has not acquired citizenship of another country, or (iv) a child is born on the territory of the Slovak Republic and it is not proved that a child had acquired foreign citizenship or (v) the child is found in the territory of the Slovak Republic, his or her parents are not known and it is not proved that the child acquired foreign citizenship.
- by adoption - provided that the adopted child does not have the citizenship of the Slovak Republic and the adoptive parents or at least one of the adoptive parents is a citizen of the Slovak Republic.
- by naturalisation – citizenship of the Slovak Republic can be acquired upon request by a person without any citizenship under following conditions:
  a) applicant has continuous residence in the Slovak Republic for at least 8 years immediately prior to the application,
  b) applicant is irreproachable,

c) applicant had not been sentenced by the court to expulsion,

d) applicant was not criminally prosecuted,

e) it is not against the extradition proceedings conducted by the procedure of issuing of the European arrest warrant,

f) applicant is not the subject of proceedings for deportation,

g) applicant is not the subject of proceedings for withdrawal of asylum,

h) applicant needs to demonstrate Slovak language proficiency - spoken and written, and he/she needs to demonstrate a general knowledge of the Slovak Republic (a condition does not have to be fulfilled by applicants who is less than 14 years old),

i) applicant fulfils his or her obligations under the laws governing the residence of foreigners in the territory of the Slovak Republic and other obligations of foreigners under the law of the SR.

The condition of continuous residence does not apply to applicants who are allowed to stay in Slovakia as well as married to a citizen of the Slovak Republic, the marriage lasts and couple is living together in the Slovak Republic for at least five years immediately preceding the filing of the application. Another example of the statutory exemptions from 8-year continuous residence are persons who significantly contributed to the SR in the economic, scientific, technical, cultural or social sphere or within sports or the acquirement of the citizenship is in the interests of the Slovak Republic. Citizenship is acquired by retirement of the letter on acquirement of citizenship that was issued by the relevant authority. However, before the retirements of the letter the applicant must take an oath of the citizen of the Slovak Republic.

Under the Law on Citizenship the loss of the citizenship of the Slovak Republic may happen by (i) dismissal/release of a citizen from the State union at his/her own request, or (ii) the acquisition of a foreign citizenship on the basis of explicit consent. It is the second way of the loss of citizenship aroused much controversy and it is a subject of judicial review by the Constitutional Court (till December 2012 the Constitutional Court has not decided the matter). In that mean of the loss of citizenship the contradiction with the constitutional prohibition of deprivation of citizenship is challenged (see the above-mentioned Article 5 of the Constitution). The act in fact tries to simulate the expression of the citizens towards the loss of citizenship when it presumes that the expression of the will to acquire the foreign citizenship is in fact the will to lose the Slovak citizenship. There are however exemptions: (i) if the person acquires the foreign citizenship by the marriage or (ii) if the person acquires the foreign citizenship by the birth.

With regards to the dismissal based on request of a citizen it is allowed only if the person already has the foreign citizenship or if a person is promised to acquire foreign citizenship. However some persons may not be released if (i) there is a pending criminal prosecution against a person or if (ii) a person is serving a sentence or if (iii) a person has not executed the punishment imposed upon him or her by court or (iv) he/she arrears on taxes and public payments in Slovakia. Citizenship is lost by retirement of the letter on the release from the state bond.

Some of the rights and obligations under the Constitution are awarded only to citizens. These are (i) the full right to property under Art. 20, (ii) the right to freely enter the territory of the Slovak Republic and prohibition to force citizen to leave the homeland and to be deported under Art. 23, (iii) the obligation to defend the Slovak Republic according to Art. 25, (iv) the right to establish political parties and political movements and to associate within them in accordance with Art. 29 par. 2, (v) the full right to participate in the administration of public affairs directly or through elected representatives; the right to have access to the elected and other public posts under the same conditions under Art. 30, (vi) the right to resist as to Art. 32, (vii) the rights of national minorities and ethnic groups according to Art. 34, (viii) the right to free choice of profession and training for it; right entrepreneurial or other gainful employment and the right to work and right to social security provision – as the state shall materially and to an appropriate extent provide for citizens who are unable to exercise this right through no fault of their own in accordance with Art. 35, (ix) the right to adequate material security in old age and in incapacity to work or if the loss of breadwinner under Art. 39, (x) the right to free health care and medical devices based on the health insurance under Art. 40, (xi) the right to free education at primary and secondary schools and also at universities based on abilities of citizens and capabilities of the society; and the right to be assistance from the state in studies according to Art. 42.

5.2 Language

Language is an important feature of the community, the nation and therefore it is somehow important feature of the State too. The identity of the community is not only reinforced through the language but language also plays an important role in its formation.[48] Out of the Preamble of the Constitution we can read of more of a national principle of creation of the Slovak Republic in contrast to the principle of creation based on a civil state (as in the Constitution of Czech Republic). I have in mind that even if the Preamble reflects not only the national principle but also the civil principle, the Preamble still tends to the first one.[49] Hand in hand with such an idea, given the mentioned link between nation and language, is the idea of a need to protect the language of the so-called state-forming nation.[50] This fact is reflected in the Constitution of the Slovak Republic as Art. 6 provides that "*the state language on the territory of the Slovak Republic is the Slovak language*". The Constitution in its second paragraph

[48] As to the role of a language in formation of nation and as to the development of the Slovak language and other languages of Central Europe see e.g. KAMUSELLA, T.: *The Politics of Language and Nationalism in Modern Central Europe*. New York: Palgrave Macmillan, 2009, mainly chapter 11. Kamusella reminds us that out of the four nation states that are the subjects of his research (Czech Republic, Hungary, Poland and Slovak Republic) the Slovak Republic is the least homogenous as to nationalities and languages. Based on the 2001 census 85,8 % of the population is of the Slovak nationality. See KAMUSELLA,T., p. 892.

[49] See „*We, the Slovak nation, bearing in mind…".*

[50] The civil principle may be perhaps considered to be more suitable as to the development of democracy and the social cohesion. See e.g. RHODES, M.: *National Identity and Minority Rights in the Constitutions of the Czech Republic and Slovakia*. East European Quarterly. Vol. 29, Issue 3, 1995. p. 347 and foll.

(in context of Art. 34 par. 2) at the same time states that the conditions of the use of other languages in the official communication shall be laid down by the law. There are two main laws that do the job. First of all there is an Act no. 270/1995 Coll. on the State language of the Slovak Republic (hereinafter "the State Language Act") and Act. no. 184/1999 Coll. on the use of languages of national minorities (hereinafter "Minority Languages Act").

The State Language Act provides the primacy of the Slovak language over other languages used at the territory of the SR. Codified form of the State language (literary form of the language) shall be approved and published by the Ministry of Culture of the Slovak Republic. The State Language Act provides that public authorities, legal persons established by them and legal persons established by law shall use the State language in the official communication. The same works for natural persons and legal person in official communication with them. The conditions for the use of minority languages in official communication are laid down in Minority Languages Act.

The State language is used (i) in publication of generally binding legal regulations and public documents, (ii) as the official language in the sessions of bodies of public administration and the official documents are written in it. In a way, some favourable treatment of the one language is enshrined in the law. It is so because the State Language Act favours the "*language that satisfies the requirement of basic clarity*", which, according to the explanatory memorandum to the law is the Czech language.

The Act also regulates the use of the State language in the field of geographical names in education and in selected areas of public relations (for example, in radio and television broadcasting, print, etc.). State language should be used also in the armed forces and armed corps.

Minority Languages Act provides a range of conditions under which the members of national minorities may to use their minority language even in official communication with state authorities. Conditions are (i) citizenship of the Slovak Republic, and (ii) minority must include in 2 last censuses in the village at least 15% of the population of the municipality. Extent of use of minority languages in official communications is defined on one side by the range of public authorities, in dealing with which a citizen can use a minority language. On the other hand the parts of the official communication where there is the right to use the official minority language are identified. Range of public authorities is defined in such a way that those bodies are: a self-governing bodies in the municipality and bodies performing the state administration in the municipality. By the term state authorities in the municipality I have in mind the governmental bodies that carry out their duties within the municipal community. Thus, I do not have in mind the bodies who have their seat in the municipality but they do not have the jurisdiction resp. the competence over the matters that the municipal. Individuals who meet the conditions mentioned above have the right to submit written submissions to public authorities in municipality in their own minority language. Public authorities have to answer them in State language and in the Minority language, with the exception of public documents like e.g ID card, passport, driving license etc. All the decisions of public authorities shall be published not only in the State language, but also in the Minority language if demanded by the rightful person. The local governments

shall provide their citizens with the official municipal forms in the minority language. Municipalities that fulfil the abovementioned condition of 15% minority share of the population who are citizens of the Slovak Republic may provide the street names and other topographical indications in minority languages. The right to use the minority language in relations with public authorities is partially covered by other laws too.

In 2001, the Slovak Republic ratified the European Charter for Regional or Minority Languages which entered into force on 1. January 2001. According to the Charter the minority or regional languages in Slovakia are Bulgarian, Czech, Croatian, Hungarian, German, Polish, Roma, Ruthenian and Ukrainian. The same languages were recognised as minority language in Minority Languages Act later on in 2011. The Slovak Republic bound itself to support and protect minority languages on its territory under the condition they are the means of communication of a number of people in some area.

5.3 Territory

National territory is considered to be one of the defining features of the State.[51]

Textbooks of international law define the State as a subject of international law through the famous international regional (American) document Convention of Montevideo. The Convention among others stated that if the State is to be an international entity it must meet four basic criterions, among which the criterion of defined territory is.[52] The State power shall then sovereignly rule the people on the certain territory.[53]

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[51] See e.g. PRUSÁK, J.: Teória práva. Vydavateľské oddelenie PF UK, 1995, p. 56 and foll. See Art. 1 of the Montevideo Convention on Rights and Duties of States (1933).

[52] See Art. 1 of teh Montevideo Convention. Compare KLUČKA, J.: *Medzinárodné právo verejné: Všeobecná a osobitná časť*. Bratislava: Iura Edition, 2008. p. 62, SHAW, M. N.: *International Law*. (6th edition), New York: Cambridge University Press, 2008, p. 198 or MALANCZUK,P.: *Akehurst`s Modern Introduction to International Law.* (7th revised edition). New York, London: Routledge, 1997, p. 75. Non-existence of the state territory, i.e. the territory which is obviously ruled by the "state" (public) authority, is/was one of the reasons why not to recognise the existence of Palestinian state by the international community. See SHAW, M. N.: *International Law.* (6th edition), New York: Cambridge University Press, 2008, p. 199. On the other hand there is a need to note that if the state authority loses the power to effectively govern the territory of the State in case of war for example, it does not inevitably means that the state had perished. The example may be the constitutional and international presumption of the existence of the Czechoslovak Republic even during the II. World War even though the Czechoslovak government did not effectively governed the territory of the country.

[53] Quite significant challenge to this classical definition of the State and statehood had been brought by the development of communication technologies, especially by the phenomenon of internet. The communication in this network is performed in the so called cyberspace, the space which is not "real", it does not exist 3D or 4D just as the "real" world. Of course the States are trying to execute their jurisdiction even in this "unreal" space and they oscillate between the different approaches while claiming and applying their jurisdiction. Such an approach may be e.g. "territorial" – focusing on the territory where the server which enabled the communication is stored. Another one may be the "personal" approach – focusing on the localisation of the person who performed communication or focusing on persons who had the approach to the communication, typically website.
See e.g. GOLDSMITH, J. – WU, T.: *Who Controls the Internet? Illusion of the Borderless World*. New York: Oxford University Press, 2006, BIEGEL, S.: *Beyond Our Control? Confronting the Limits of our Legal*

State territory can be defined as a three-dimensional space, which covers "*the land, the space below ground of the Earth (to the centre of it), inland and ocean waters to the borders of territorial waters as well as airspace as far as the cosmic space.*"[54] This area is bounded by national borders that separate the territory from the territory of other States or territories that cannot be controlled by state authority under international law (e.g. space).

Territory of the Slovak Republic had been established in the context of the dissolution of the Czech and Slovak Federal Republic on 1. January 1993 and based on the territory of the Slovak Republic as the subject of the Federation. In turn, territory of Czech and Slovak Federal Republic followed the territory of Czechoslovak Socialist Republic and that one followed the territory of Czechoslovakia.

Territory of the first Czechoslovak Republic was delimited by the post-war peace treaty regime. Versailles Treaty of 1919 designated the border with Germany and Poland. Borders with Poland and Romania have been modified by even by the Sévres Treaty of 1920. By treaty of Saint-Germain-en-Laye in 1919 Austria recognised the Czechoslovakia and the treaty also determined the boundary between them. By Trianon Treaty of Versailles of 1920 the Czechoslovakia was recognised even by the Hungary. The state borders of the Czechoslovak Republic and Czechoslovak Socialistic Republic were later on changed (in relation to the Second World War) by several constitutional laws and by international treaties.[55]

After the demise of Czechoslovak federation borders of the Czech Republic and Slovak Republic should have been identical with the administrative boundary between them. This had been agreed based on the Treaty on general delimitation of common state borders (promulgated under no. 194/1993 Coll.). Czech Republic and the Slovak Republic further agreed to conclude the treaty on the common state border that would lead to completion of demarcation works. Finally the treaty on the common border was signed in 1996 and promulgated under no. 274/1997 Coll.

Under Art. 153 of the Constitution the Slovak Republic also succeeded into international treaties which were binding for Czechoslovak federation and thus Slovakia succeeded in treaties which defined its territory. During its independent existence the Slovak Republic confirmed the course of the common state border with Ukraine (1/1995 Coll.), Poland (69/1996 Coll.) and Hungary (269/1996 Coll.). Later on the Slovakia concluded even the change of its state borders with Hungary (because of the Watergate works), with Poland and with Austria.

Article 3 of the Constitution states that the territory of Slovak Republic is united and indivisible and Slovak borders can be changed only by constitutional law. In the light of Art. 34 par. 3 of the Constitution the unity of the territory can be interpreted in

System in the Age of Cyberspace. Cambridge, MA: MIT Press, 2001. BOMSE, A. L.: *The dependence of cyberspace*. Duke Law Journal, Vol. 50, 2001, p. 1717 and following.

[54] KLUČKA, J.: *Medzinárodné právo verejné: Všeobecná a osobitná časť*. Bratislava: Iura Edition, 2008. p. 270.

[55] See e.g. constitutional laws no. 102/1930 Coll., no. 205/1936 Coll., no. 62/1958 Coll., no. 66/1974 Coll., no. 143/1975 Coll., no. 37/1982 Coll. etc..

such a way that it is not possible for somebody to establish territorial autonomy that threatens the sovereignty of state power in Slovakia. On the other hand, the decentralization of state administration and local government and delegation of the territorial self-administration to territorial units defined in the Constitution is not a priori contrary to the unity of the national territory. Indivisibility of the territory of the Republic does not mean inability to dispose of its territory. However, if the Republic disposes of its territory - such as the change in the common borders with neighbouring country – it must comply with the rules of international law and the process regulated in the Constitution.

Constitutionally established system of state borders in practice requires a certain sequence of steps. The first step, since states cannot arbitrarily change their borders, is the conclusion of an international agreement on the change of the common state border. As an example we can use the agreement between the Slovak Republic and Poland on the change of the state border and border documentation that was signed on 9. July 2002. The second step is to express agreement with such s change of state borders by National Council of the Slovak Republic in the form of constitutional law and approval with an international treaty that regulates the change of state borders in accordance with Art. 86 letter d) of the Constitution. National Council expressed the agreement with a change of the state border as stated in the treaty with the Republic of Poland on 23 April 2003. The National Council subsequently expressed the agreement with an international treaty with Poland and classified it as a treaty under Art. 7 par. 5 of the Constitution. The respective constitutional law was published under no. 160/2003 Coll. The third step is the ratification of an international treaty on the change of the state border by President of the Slovak Republic and promulgation of the treaty in Collection of Laws. President of the Slovak Republic ratified the treaty with Poland on 30th May 2003 and the treaty was published under no. 361/2005 Coll.

In practice the state borders can be demarcated by (i) orographic demarcation according to the natural geographical entities such as rivers, mountains, etc.., (ii) geometry, based on artificial designation, and (iii) astronomical manner, according to astronomical features such as latitude and longitude. In the case of orographic demarcation there is a problem of natural change of natural geographical entities like the banks of river, which leads to the change of state orders. It does mean that we can see that state borders may be moveable or fixed. The moveable is e.g. the part of the border between Slovakia a Poland.[56]

[56] See the treaty between Slovak Republic and the Polish republic on common state border promulgated under no. 69/1996 Coll.

6. Fundamental rights and freedoms

The wording of the Constitution of the Slovak Republic which deals with a fundamental rights and freedoms has its predecessor in the federal Constitutional Act no. 23/1991 Coll., which promulgated the Charter of Fundamental Rights and Freedoms ("the Charter"). This document was adopted during the existence of the Czechoslovak Federation and the Czech Republic continues to use it as a "human rights" part of the constitutional order because the Czech Republic did not transfer the Charter into the Constitution. In Slovakia, by contrast, the text of the Charter was transferred into the second chapter of the Constitution, however with some changes. Through this, the somehow double-standard of human rights was created and it still raised some disputes whether to use the wording of the Constitution or the wording of the Charter, in cases where the Charter provides the better standard for some rights. Matters of fact, both acts have the same legal force - both counts as the constitutional laws/acts. One of the clashes is the limit of the right to personal liberty. The Constitution allows a greater restriction on the right to liberty in detention (detained person must be released or he/she shall be handed over to the court within 48 hours) in comparison with the respective provision in the Charter (detainee must be released or he/she shall be handed over to the court within 24 hours). This conflict is resolved by the reference to the primacy of the later law (i.e. the Constitution) over the earlier one, or it is resolved by a reference to the constitutional obligation of conforming interpretation, according to which all the laws (even constitutional laws) shall be interpreted in conformity with the Constitution (see art. 152, par. 4 of the Constitution). The second argument may be refused quite easily, as essentially the conforming interpretation may not be used in cases where the wording no. one is in apparent linguistic (grammatical) contradiction with the wording no. two. Then there would be no interpretation, but creation.

The phrase "Fundamental rights and freedoms" or "Basic rights and freedoms" is a term used specifically by the Constitution of the Slovak Republic, while it encompasses fundamental human rights and freedoms, political rights, economic, social and cultural rights, rights of national minorities and ethnic groups, right to judicial and other legal protection, and the right to protection of the environment and cultural heritage. The terminology of the Constitution to a greater extent, but not completely, follows the terminology of the international human rights conventions, covenants and treaties - those documents typically use the term "human rights and fundamental freedoms".

The Slovak Republic has bound itself to follow the international human rights standards already as a member of federation (adoption of the Charter) and later on as the sovereign state (adoption of the Constitution, ratification of the international human rights instruments). However, as history has taught us, the existence of a binding

catalogue is not yet a guarantee of actual compliance. Slovak Republic has also had to go through the same ideological conversion, transformation into standard democracy. The so-called "wild nineties" were marked not only by the creation of human rights doctrine and rule of law doctrine especially by our constitutional court, but also by (i) flagrant violations of various rights and freedoms by some public authorities and (ii) privatization of national assets.

As a member of the Council of Europe, the European Union and other international organizations, the Slovak Republic is of course bounded by many standards of protection of human rights, but the national/municipal standard nevertheless plays the very important role mainly towards the individuals were it is the first one (but not the last one) to speak. This is one of reasons why we will focus on the Slovak national standards of protection of human rights, mainly on the case-law of the Constitutional Court of the Slovak Republic. The other reason is that the case-law and doctrines of the "international" courts are widely described and deeply analysed in many books, papers, textbook etc., which is not the case for the wording of our Constitution and the case-law of our constitutional court. We are about to provide two to three decisions of the Constitutional Court that we consider the most crucial, regarding each constitutional right or freedom. We shall keep in mind that the case-law of our Constitutional Court is inspired by the case-law of the European Court of Human Rights or by the other (supreme) courts, so the principles of the case-law of foreign courts may be in it sort of a mirrored.

6.1 Basic constitutional frame of the protection of fundamental rights and freedoms – Art. 12 and Art. 13 of Constitution

Under article 12 of the Constitution, all people are free and equal in dignity and rights. It is questionable whether the text is more of a descriptive than prescriptive, in any case, this sentence is also a basic interpretive maxim, basic interpretative prism, through which the constitutional provisions on human rights shall be interpreted. Equality in dignity refers to the equal value of people, and to what is at stake, so to speak, when the constitutional rights and freedoms are violated. Equality in rights refers to one of the concepts of equality and it is closely connected with the formal understanding of equality - it requires the same rights for the same people. However, the concept of equality has changed over the times, the society has changed, the lawmaker reflected the changes and sometimes it made them more visible and now we have more concepts of equality, among others e.g. the concept of prohibition of discrimination in distribution of rights (generally goods) based on some grounds. This social change, which led to enlightenment and it was developed within it, strived to consider the formal equality under the law to be insufficient. It had developed the concept of equality with the specific sum of ideas of what is just and what is unjust mirrored in the fact that some characteristics, such as e.g. gender shall not be a criterion for the award of certain fundamental rights and goods. Then there is the concept of equal treatment that goes beyond formal equality and equality under the law. The concept of equal treatment requires not only the equal rights for equal human beings, but it also focuses on their implementation in many areas of human relations. It means

that this concept is not connected only with a specific rights and access to them, it does not "look" into the book of laws, and it looks into the actual practise, the actual life. In a later version, the equal treatment requires activity in creation of conditions that can ensure equal treatment. The equal treatment can be implemented by the non-discrimination - as set out in the Act no. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amendment of some laws (the "Anti-Discrimination Act") - but also in the broader prohibition of discrimination respectively differentiation on the basis of some characteristics that are not tied to the identity of the individual and they do not relate to human dignity. However, it is possible that the second version of equal treatment would not realise the principle of equality, but it would lead to egalitarianism that is in many ways incompatible with the principle of equality.

The second sentence of the first paragraph of Art. 12 of the Constitution states that the fundamental rights and freedoms are (i) vested, (ii) inalienable, (iii) imprescriptible and (iv) irrevocable. The first of those characteristics of the fundamental rights and freedoms refers to the fact that these rights cannot be taken from individual or group of individuals, not even as a sanction for violation of law.. This does not mean that they cannot be, under certain conditions which are laid down in Article 13 of the Constitution, restricted. Non-alienability of fundamental rights and freedoms points to the fact that person may not transfer them to another person, e.g. through donation. Imprescriptibility means that when the person does not exercise those rights, this does not lead to impossibility to exercise them later. There is no statutory limitation connected with the fundamental rights and freedoms (unlike in case of many non-constitutional rights - e. g. contractual rights). For example, the fact that I will not exercise my right to vote for 30 years would not lead to its expiration. Irrevocability of rights binds primarily the public authority such as legislator and framers of the Constitution who are not entitled to abolish the fundamental rights. This comes from the nature of the matter; the framer of the constitution (or their decision) is not the source of the human rights. The public authority may "only" respect and protect human rights but this public authority does not grand those rights to people. The Constitution reflects iusnatural basis of fundamental rights and freedoms. We may add, however, that even if the framers of the Constitution would invalidate the second chapter of the Constitution those right would be still guaranteed by the provision of Constitution on Rule of law.

Article 12 par. 2 can be classified as a so-called antidiscrimination clause, respectively equality clause. The value of equality and non-discrimination is then secured also by the laws, for example the anti-discrimination law. The word "discrimination" is often used as a synonym for any distinction. This word also often expresses any feeling of injustice. There are even such a uses of this word where discrimination points to any selection: "*If you can afford only one car and you have a choice between a mini-van and SUV, you have to choose between them, (...), you have to discriminate and therefore you have the right to discriminate, which is actually the right to choose*," writes Block. We do not claim that Block used the word "discrimination" in a wrong way, but that he uses this word to describe different phenomena with a different function than the one implied in the legal order of the Slovak Republic. There are two basic differences. The prohibition of discrimination is in Slovak law (and not there) connected with specific

grounds - characteristics - which shall not create the basis for a different distribution of human rights and freedoms on the territory of the Slovak Republic (article 12 par. 2 of the Constitution of the Slovak Republic) and on the basis of such a grounds no one may be treated unequally in certain social relations (§ 2 section 2 Anti-Discrimination Act). These grounds have one common feature - they are connected with the identity of an individual, they are relatively immutable, respectively the change affects the self-perception of the individual and last but not least, they are bound to the human dignity of the individual, through which the equality is realised too. There we can see the systematic connection of the first paragraph and second paragraph of article 12 of the Constitution. Another difference in the ordinary use of the word "discrimination" and the legal use (in Slovak legal order context) is that discrimination in ordinary use points to any differentiation however such a differentiation may be justified. On the contrary, the Anti-Discrimination Act, does not consider legitimate, proportionate and justified differentiation to be discriminatory (§ 8). According to the Anti-Discrimination Act, discrimination is always a violation of the principle of equality.

The list of characteristics in Article 12 par. 2 is important for a proper understanding of the purpose of prohibition of discrimination, and so we will try to extend our previous argument. Article 12 par. 2 of the Constitution of the Slovak Republic and also § 2 section 2 of the Anti-Discrimination Act name some grounds, on the basis of whose a person cannot be compared with others in order to favour her or disadvantage her. The calculation, the list, is not exhaustive, as it contains an open status, namely "other status". While interpreting the statutory calculations which include open status as "other/s" the interpretive maxim ejusdem generis (of the same type, the same kind) is used. This principle of interpretation will help us determine if something / someone falls under calculation. This is the mental process of induction, in which the courts "*determine whether something that is not defined should be included as 'other'. That is, it is used to define the scope of general words that immediately follow specific words.*" If we find out what connects statuses listed in art. 12 par. 2 of the Constitution, and § 2 section 2 of the Anti-Discrimination Act, we would realise, as we have already mentioned above, that it is a significant degree of immutability, stability, it is a typically personal characteristic, which are not in disposition of person (e.g. sex, race, colour of the skin, disability, age, sexual orientation, national or social origin, etc.) or that its change would cause a change in personal identity (membership in national minority or ethnic group, religion or belief, marital status, family status). Therefore, the last part of the clause "other status" must have the same specific commitment to the identity of the person and to his/her dignity. As Fredman put it while discussing similar clause enshrined in the law of South Africa, "*the question whether the distinction based on the ground not listed in the South African constitution is discriminatory is answered through consideration whether the distinction is based on the attribute or characteristic that can objectively undermine the basic dignity of persons as human beings.* "

Let us again remind that article 12, par. 2, of the Constitution of the Slovak Republic is built on the so called "principle of accessority" - there is no separate right not to be discriminated against in the Slovak Constitution. It means that the principle of equality is violated only if some other constitutional right is/was violated - the person did not enjoy the full protection of human rights because they were taken from her or access

to them was restricted based on grounds in Art. 12 of the Constitution. Nevertheless, we can find some more equality clauses in the Constitution, e.g. the citizens have the right to access to the public positions and elected positions based on the equal conditions.

In order to understand article 12 of the Constitution, it is also necessary to interpret the requirement that the person shall not be harmed, preferred, or discriminated against on the abovementioned grounds (see art. 12 par. 2 second sentence of the Constitution). In strictly literal interpretation, this provision may be interpreted in such a way that it prohibits the so-called positive action/affirmative action, which is a form of realization of the concept of material equality (in contradiction to formal equality). On the other hand, we shall keep in mind that a literal interpretation of (constitutional) provisions may abuse their nature/core and purpose. In our opinion, there are several arguments in favour of the claim that the at least one version of substantive/material understanding of equality is incompatible with Art. 12 par. 2 of the Constitution. One of them is the existence of the requirement of interpretation of law in conformity with EU law and in conformity with international law obligations the other on is the existence of an evolutive interpretation doctrine of the Constitution and also that this assertion (the affirmative action is compatible with the Slovak Constitution) may be somehow read of the decision of the Constitutional Court of the Slovak Republic no PL. ÚS 8/04. To sum up our previous ideas - in order to realise whether the Art. 12 par. 2 of the Constitution was violated, we need to perform (i) the test of the existence of disadvantageous treatment, (ii) the test of accessority and the (iii) test of the existence of the ground (status) based on which the person was treated differently from others (this ground does not need to exist in reality but in "the eyes" of the entity that performs discrimination). However, the Constitutional Court of the Slovak Republic does not use such a testing consistently - we may find the case-law where the accessority and grounds for discrimination are missing (mainly in the panel decisions). We are of the opinion that such a testing does not have the legal ground in art. 12 of the Constitution, but, if any, in Art. 1 par. 1 of the Constitution, because one of the principles of the Rule of law is also the principle of equality. Then the Constitutional Court may test the *rationality/reasonableness* and legitimacy of the different treatment based in the laws (i.e. caused by the legislator) which may be similar to the U.S. version the *rational basis test*.

To finish the "article 12 part" of this book - article 12 par. 3 of the Constitution secures the freedom of the choice of nationality, which perhaps contrasts conventional perception of nationality which is that we do not choose it - we are born into it. However, the Constitution states the opposite.

The fourth paragraph of Art. 12 is a very relevant too. It states that no one can be harm because of he/she exercises his/her fundamental rights and freedoms. It gives us, the People some insurance while deciding whether to exercise our basic rights and freedoms, so we do not need to calculate whether such a exercise of the right (e.g. freedom of speech in modality of criticism of government or employer) would lead to punishment - e.g. dismissal from employment.

6.1.1 Imposal of duties and limits of restrictions of fundamental rights and freedoms

Since the power to impose duties belongs to the most powerful functions and powers of public authorities, the Constitution settles standards of "who" and "how" the duties may be imposed towards inhabitants - natural persons and legal persons. The article 13 explicitly states the types of legal acts which may impose duties and so implicitly even who may do so. According to the first paragraph of article 13 duties may be imposed by:

- an Act or on the basis of an Act, within its limits, and while complying with the fundamental rights and freedoms, which means that the legislature may impose duties directly, or it may provide (in an Act) that that other public authority would do so. Imposed duties shall not exceed the statutory powers of the body that imposes it and in any case the imposed duty must not unconstitutionally (see par. 3 and 4 of art. 13) interfere with the fundamental rights and freedoms.
- an international treaty under Article 7, paragraph 4, which directly establishes the rights and obligations of natural or legal persons. Such a treaty has primacy over municipal laws (save Constitution) in accordance with Art. 7 par. 5 or
- a regulation of the Government pursuant to Art. 120, paragraph 2 of the Constitution. This is a specific type of governmental regulation, the so-called "approximatory regulation of the government". This kind of governmental regulation was introduced to the Slovak law to simplify and accelerate the approximation of laws of the Slovak Republic to the EC / EU law. However, they are still in use with the same goal. What was in many countries in the accession process to the EC/EU received or adopted by the Acts (i.e. legislative power), in the Slovak Republic it was done thought governmental regulations (i.e. executive power). Of course, this fact raised the dispute over the legal power of such governmental regulations and over their legitimacy. Some scholars have even expressed the opinion that the approximatory regulations have the same power as the Acts.

Just as in other democratic countries it is standard that the limits of the fundamental rights and freedoms may be set only under conditions laid down in the Constitution and only by the law. However, restrictions of fundamental rights must fulfil also some other conditions, namely: (i) they have to apply equally to all cases which meet prescribed conditions, (ii) they have to preserve the essence and the meaning of basic rights and freedoms, (iii) they shall be used to follow the prescribed purpose and (iv) they shall follow the purpose that is legitimate. If these maxims are not met, the Constitutional Court will state (if the empowered bodies would file a respective motion) that such an Act is not in conformity with the Constitution.

We shall also add that the Constitution of the Slovak Republic enshrines also the basic rights and freedoms which cannot be restricted at all. They are:

- prohibition of torture, cruel, inhuman or degrading treatment or punishment (Article 16);
- freedom of thought, conscience, religion and belief (Article 24 paragraph 1) -

although it is possible to restrict expression of such a thought, content of conscience, religion and belief (Article 24 paragraph 4),

- legal capacity as the capacity to have rights (Article 14) - although the capacity to act with legal consequences, i.e. the competence to perform legal acts *yourself*, the capacity to obtain rights and obligations may not be restricted. The restriction of legal capacity may be performed only by a decision of the court while the restriction may by partial or total. The legal capacity is gained by the person on his/her birth and some rights are retroactively gained even by nascitura.
- the right to life - However, the question of restriction of this right is still discussed in academia. The fact is that the Constitution does explicitly provide the available restrictions in the Art. 15. At the same time it states that the acts that are not contrary to Criminal Code do not violate the right to life. It means that the right to life is open for balancing with some other constitutional right, value or public interest (embodied into the Criminal Code) and hence it may be restricted, as we believe. The dilemma after all does not cause the practical problems so far.

6.2 Fundamental human rights and freedoms

6.2.1 Right to life

The constitutional provisions dealing with a right to life had caused a number of legal disputes because the respective wording of the Constitution is relatively vague, as it is typical for constitutions in general. Article 15 of the Constitution which regulates the right to life is divided into four paragraphs. The first paragraph provides a subject of the right to life (person who was born) and an object of constitutional protection - constitutional value, which is a human life before birth.

This subject-object differentiation within the first paragraph of Article 15 of the Constitution comes from the decision of the Constitutional Court of the Slovak Republic no. PL. ÚS 12/01. The Constitutional Court had to decide whether some provisions of the Act on termination of pregnancy and the regulation that executed this act are is in conformity with Art. 15 of the Constitution. The complainant argued that the division of legal conditions for termination of pregnancy into two parts based on two phases of pregnancy - the first trimester (12 weeks) and the rest of the pregnancy violates the right to life of foetus. The fact that based on the law, the life of foetus depends on the decision of pregnant woman only (if she applies for termination of pregnancy in written and if there are no contradictions) during the first trimester even though in later stages of pregnancy there must be a specific reason for termination of pregnancy (e.g. health risk for woman, life risk for woman, pregnancy was caused through criminal act, health risk of foetus, etc.) shall, in the opinion of claimant, lead to unconstitutional balancing or right to privacy of pregnant woman and right to life of foetus. This is also

reason why the Constitutional Court had to realise whether the foetus enjoys the right to life. The Constitutional Court, as already mentioned above, provided negative reply. The foetus, as the court stated, is not subject to the right to life because the creator of the Constitution has divided the Article 15 par. 1 into two sentences intentionally (when the legislature does something, it does so always with the intention, not by mistake). The first sentence speaks about the subject of the right to life and the second sentence specifies the object - the constitutional value to be protected. Subsequently, the Constitutional Court did not rule out that it is possible to balance the right to privacy of women and objective constitutional value - human life before the birth. However, the court came to conclusion that currently there is a balance in the legal order and that the relevant provisions of the Act on termination of pregnancy are in conformity with the Constitution. It is so also because of the fact that the life of foetus is inseparably connected (especially in the early stages of pregnancy) to the life of the mother and because of the other arguments, which are relatively well known from case-law of the Supreme Court of the United States or the European Court of Human Rights. On the other side, according to some dissenting opinions of minority of judges, the majority poorly estimated the realisation of positive obligation of state while protecting constitutional value - the unborn human life. The dissenters claimed that the positive obligation of state is not sufficiently fulfilled.

The propositions of the Constitutional Court may be summarized as follows:

- the Constitution protects unborn human life as a constitutional value,
- the life of the mother is inextricably linked to the life of the foetus,
- the right to privacy of the pregnant women includes the right to free decision of women, regarding her pregnancy without unjustified state interference,
- it is possible to balance a constitutional right or principle with a constitutional value,
- there is a positive obligation of state to protect the constitutional value (a way of protection is realised particularly by the legislator).

The second paragraph of Article 15 provides that no one shall be deprived of his/her life. However, based on paragraph 4, there is no violation of rights under Article 15, if someone has been deprived of life as a result of an action which is not considered criminal under the law. The Criminal Code states that the circumstances excluding unlawfulness (e.g. also the criminal nature of an act) are among others extreme necessity, necessary self-defence, authorised use of a weapon, exercising rights and performing duties, acting as an agent, etc..

The third paragraph of Article 15 provides that the death penalty is inadmissible and cannot be so neither used nor executed, regardless of whether the State is at peace or at war.

In the Slovak Republic the applicants before the Constitutional Court claimed the violation of the right to life relatively very sporadically, so far in only 19 cases. In one complaint, the applicant, mother of a two children who were murdered by her husband, alleged that in addition to violation of her right to privacy and the right to ju-

dicial and other legal protection there had been a violation of a right to life of her children. She claimed that the police and law enforcement bodies did not protect her children; hence the positive obligation of state was violated. The applicant argued that she contacted the Police station with many notices that the husband had repeatedly physically and mentally attacked her and that he even threatened her to kill their children and himself. The husband executed his last threat one day. Some of Police officers in case were charged and even convicted for violation of their duties. The applicant did not have the standing of aggrieved party in the mentioned proceedings. The complainant then filed a complaint before the Constitutional Court. The court, however, considered the complaint inadmissible with reference to the doctrine of subsidiarity (Constitutional Court believed that there is still an effective remedy for applicant before the general courts) and by reference to the fact that the applicant may claim only a breach of her own rights not her children's rights. The Constitutional Court held in decision on dismissal of the case that even if the applicant had acted in the proceedings as a representative of their children, it is not possible under the current law to rule over the violation of rights of a dead person.

The applicant then filed a complaint before the European Court of Human Rights (hereinafter "ECHR") claiming the violation of right to life (Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also referred to as "the Convention"), the right to a fair trial (Article 6 of the Convention) and the right to privacy (Article 8 of the Convention). This court decided to investigate even the possible violation of the right to an effective remedy (Article 13 of the Convention). But let us focus only on the violation of Article 2 of the Convention, although other parts of the decision of the ECHR in the case, concretely Kontrová v. Slovak Republic, no. 7510/04 of 31 May 2007, are interesting too. According to the complainant the Slovak Republic has failed to fulfil its positive obligation to protect the right to life of her children. The court upheld the applicant's opinion and held that even in cases of so called negative rights there is a positive obligation of the active State protection. In the case of right to life the positive obligation consists in the fact that the state shall provide effective criminal law that will deter potential offenders and that will be used for the prevention and suppression of crime. It also means that in the life-threatening cases the public authorities shall act if it can reasonably asked of them. In the case of Ms. Kontrová the ECHR held that the (different) action from public authorities may have been reasonably asked form them, which is why the right to life of the applicant's children was violated.

6.2.2 Right to privacy

The constitutional provisions on right to privacy are somehow fragmented. The right to privacy is enshrined not only in one article but in more of them, namely: Art. 16, Art. 19, Art. 21 or Art. 22 of the Constitution.

Article 16 of the Constitution guarantees the inviolability of a person and his/her privacy rather on the physical/material level and it provides that they may be restricted only in cases laid down by law. The provision dealing with restriction of this right as somewhat doubled because of the conditions for restriction laid down in general in

Art. 13 par. 4 of the Constitution.

The second paragraph of Article 16 prohibits the torture or cruel, inhuman or degrading treatment or punishment towards people. As we mentioned above this prohibition is absolute. There is no way to put restrictions on the right not to be tortured etc. in laws.

In order to stress important aspects of this right we can mention relevant case law of the Constitutional Court. E.g. we can stress that the Article 16 was violated by the National Council of the Slovak Republic as it has created the legal basis for establishment of investigatory committees. The court said that National Council violated the right to privacy because it gave these committees the power to interrogate citizens as witnesses and summon them and because it had among others took the powers of executive branch, so the council acted *ultra vires*. The Constitutional Court also suggested that the bodies of the National Council shall have the initiatory and control function, based on the Constitution. No other powers may be given to them if it supposed to be in conformity with the Constitution.

In the other case the Constitutional Court claimed that the right to privacy in modality of Art. 16 par. 1 may be violated the competence of the person to perform legal acts is restricted or he/she is deprived of it by a decision of a general court, if such a court does not follow the conditions prescribed by the law or if it does not reflect upon the constitutional aspects of the case (mainly the court does not perform interpretation in conformity with Constitution). The Constitutional Court stated that the possibility of deprivation/restriction of capacity to perform legal acts was established primarily to protect the respective person, not his/her family or vicinity - thus it is here to protect more of a private interest and not a public interest. As to the Constitutional Court, the deprivation of capacity of person to perform legal acts may be imposed on person only if the other means are not effective, hence it is the *ultima ratio* intervention (I. ÚS 313/2012). As the courts in respective case did not justify, they did not sufficiently explain the need for deprivation of complainant's legal capacity to act, there has been a breach of Article 14 of the Constitution and the violation of the right to privacy in modality of the Article 16 par. 1, as well as Art. 19 par. 2.

It may seem to us that in democratic society the right to privacy as to Art. 16 par. 2 is violated in extremely rare cases, it is violated at all. However, there are still some violations. Of course, in order to find out whether this paragraph of Art. 16 was violated, we need to define the word like "torture", "cruel treatment", "inhuman treatment", "degrading treatment", etc.. In fact, the Constitutional Court of the Slovak Republic follows the case-law of ECHR regarding this matter. The ECHR made the relevant definitions stricter, more rigid, over the time and so the acts that did not constitute the violation of prohibition of torture do so nowadays. The right to privacy as embodied in Art. 16 par. 2 has also the dimension relating to a certain standards of the way to serve the sentence or to be in custody.

The two decisions, which need to be at least outlined in this subsection, are: (i) decision of the Constitutional Court on sterilization of Roma women and (ii) decision about extradition of an Algerian citizen, Mr. Labsi, to Algeria. I the first one, decision of the Constitutional Court no. III. ÚS 86/05, the court needed to considered whether

the involuntary sterilization of Roma women - complainants, constitutes the violation of their constitutionally guaranteed rights, including the rights under the second paragraph of Article 16 of the Constitution. Complainants argued that the involuntary sterilization caused them physical and mental suffering and they were deprived of the opportunity to have a child, while these sterilisations were linked to their Roma origin. The authorities responsible for the criminal proceedings (the criminal proceeding as to the genocide was started) were claimed to investigate the case deficiently, by the applicants. As to applicants, the insufficiency of the investigation led to the closure of the criminal proceedings. The Constitutional Court had scrutinised the acts of law guarding bodies ad it came to conclusion, that respective bodies did not use all the means of investigation they should have used, an hence the investigation did not provide the sufficient and effective remedy for claimed violation of rights. This is why the court decided that the right to effective remedy and the right to privacy as to Art. 16 par. 2 of applicants were violated and the court revoked the decision of the Prosecution and returned the case back to it for further proceedings. In spite of the mentioned decision of the Constitutional Court, the Prosecution acted the same way as before and it had violated the rights of applicants repeatedly (III. ÚS 194/06). In the second decision, the Constitutional Court pointed out that the sterilization is not only the interference with personal integrity but also the interference into the most intimate parts of private and family life. Any forced sterilization may so constitute inhuman and degrading treatment, the absolute prohibition of which is enshrined in the Constitution and the Convention. The Constitutional Court also confirmed that rule of law states the State has not only negative but also a positive obligation.

The so-called "Labsi" case has been widely publicized in the media and in its final stage - at the ECHR - it had led to the loss of the Slovak Republic. But let us get back to the beginning. Mr. Labsi, has been tried and found guilty of crimes connected with terrorism in Algeria. Algeria asked for extradition of Mr. Labsi. General courts finally allowed the extradition and they stated it is not their role to review whether there is a threat of torture, cruel treatment etc., for Mr. Labsi in Algeria. The general courts believed that this task belongs solely to the Minister of Justice who was explicitly given it by the law. Mr. Labsi filed a complaint before the Constitutional Court of the Slovak Republic and he claimed that his right not to be tortured or treated in cruel way etc. based in Art. 3 of the Convention and in Art 16 of the Constitution have been violated by the general courts (namely the Supreme Court of the SR). The applicant relied also on famous ECHR case-law in the "Soering case". It was the fact that the valid Criminal Code did not state the competence of general courts to review the possible threat of violation of rights in the Convention and in the Constitution while deciding upon admissibility of extradition. The law stated that this can be done (but it does not have to be done) by the Minister of Justice, as we already mentioned above. Yet, the Constitutional Court held that "*even general courts are obliged to follow human rights provisions. In other words, the conditions of admissibility of extradition (substantive extradition law) which courts are obliged to follow are broadened because of the human rights. The core of the "conformity with human rights condition" is the realisation of the wording of the Convention and the case-law of the Convention*" (II. ÚS 111/08). It means that even if there is closed enumeration of conditions of admissibility of extradition and the condition of human right realisation is not one of them, the general courts have to take

into account, they have to consider, even this condition. To quote the relevant parts of decision no. II. ÚS 111/08: *"The literal interpretation of law and classical understanding of closed legal enumerations may not always stand on and pass in the concept of direct applicability of the Constitution and international treaties on human rights"*.

And so the Constitutional Court held that the respective rights of Mr. Labsi were violated, and the Constitutional Court quashed the decision of the Supreme Court of the Slovak Republic and returned the case to it for further proceeding.

It means that our Constitutional Court followed the ideas of the Soering case - the State (or its bodies) may violate the rights under Art. 3 of the Convention and under Art. 16 of the Constitution, if it exposes the person to such a situation which will reasonably lead to violation of those rights.

Although the Constitutional Court found a violation of the rights of the complainant, the Slovak Republic after some time administratively expelled Mr. Labsi to Algeria despite the existence of preliminary decision of ECHR that prohibited extradition.[57] This act of the Slovak Republic was highly criticised by officials of Council of Europe as the despicable act that manifested despite of the SR towards Convention. Later on, on May 2012, the ECHR unanimously held that the rights of Mr. Labsi under Art. 3 of the Convention were violated.[58]

Let us focus on the Article 19. This article of the Constitution provides the protection of let us say non-material dimension of privacy, as it stipulates that everyone has the right to maintain her human dignity, honour, reputation and good name. Every person has the right to be protected from unauthorised interference in private and family life and the right to protection against unauthorized collection, disclosure or other misuse of her personal data.

The right to human dignity, personal honour, reputation and good name are as usual protected in the first row by the ordinary courts based on their competence and jurisdiction defined in the law. The abovementioned values are protected especially, but not solely, by the Civil Code or Commercial Code. The protection in Commercial Code is focused on legal persons while the natural persons are protected mostly by the Civil Code. The right to privacy in modality of Art. 19 par. 1 of the Constitution often gets into conflict with freedom of expression. The ordinary courts hence need to balance these rights and they need to decide which one prevails in the concrete case. The ordinary courts were helped by the Constitutional Court which created the test of balancing of those two constitutional rights (respectively freedoms). We will describe this test later on in the subsection about freedom of expression.

The right to privacy includes also the right to inviolability of the home. The Constitution states it is not permitted to enter the home without the consent of the resident. Under Art. 21 of the Constitution a house search is allowed only in connection with criminal proceedings and only on the basis of written substantiated order issued by the judge. As the Constitution states the other interventions into the inviolability of

[57] The administrative expulsion has the same effects as extradition.

[58] See Labsi v. Slovak Republic, no 33809/08, 15. May 2012. The ECHR awarded Mr. Labsi the sum of 15 000,- Eur. as non-pecuniary damage.

the home may be defined in the law, but only if they are fulfil sort of a typical conditions for restriction of human rights. It means that if the infringement is about to be compatible with the Constitution, it must be:

- permitted by the law, and at the same time
- necessary in a democratic society for (i) the protection of life or (ii) protection of health or (iii) protection of property or (iv) protection of the rights and freedoms of others or (v) prevention of a serious threat to public order or (vi) performance of tasks of public administration if the home is used for business activities.

The Constitution also protects privacy of letter and secrecy of transported messages and other written documents. The protection of personal data is guaranteed too. No one is allowed to violate the privacy of letters, other documents, records or reports communicated by a telephone, telegraph, or other similar device (hence even through the email, etc.). It does not matter whether they are/were kept private or they were sent by a mail or through other means of transport.

Exceptions must be, again, laid down by law plus they have to fulfil all the conditions of Art. 13 par. 2 to 4.

6.2.3 Right to liberty

On the constitutional level the right to liberty is protected by Article 17 of the Constitution. The restriction of this right on the level of ordinary law may be found mostly in the law on criminal procedure - i.e. the Code of Criminal Procedure. This right is one of the oldest fundamental rights. The Constitution provides not only positive definition but also negative definition of admissible restrictions of this right. The negative definition, the determination of cases when a person cannot be deprived of his/her liberty, is stated as follows: "*No one shall be deprived of his liberty only for her inability to fulfil a contractual obligation.*" Almost the same sentence that identified prohibited grounds for deprivation of liberty, may be found in the Constitution of Athens, the document written for study purposes by Aristotle and introduced by Solon. Positive definition of authorised deprivation of liberty within the meaning of the Constitution is:

- there exists a ground for deprivation of liberty, which is established by the law and at the same time,
- the manner resp. the means of deprivation of liberty respects the condition stated in the respective law.

The frame of the process of the deprivation of liberty is settled in the Constitution in the case of two means - detention and arrest. The process is more specified in the law - Code of Criminal Procedure.

The only person that is suspected or he/she is accused of criminal act may be detained and s/he must be immediately after the detention informed of the reasons for detention, than interrogated, and within 48 hours either released or handed over to the court. The judge must question detainee within 48 hours and decide on his/her

custody within 48 hours respectively within 72 hours in cases of particularly serious crimes.

The only accused (but not suspicious) person may be arrested. There must be a written substantiated order issued by a judge for such an action. As the arrest is more intensive interference into the personal liberty the arrested person shall be handed over to court within 24 hours. The judge must question the arrested person and decide upon the custody or the release of the person within 48 hours. In case of particularly serious crimes the judge has to do so within 72 hours.

The Constitution also determines the specific conditions for the custody - it states that this restriction of personal liberty must always respect the periods laid by the law, there must always be the ground for the custody that is established be the law and there always has to be a decision of a court on the custody. There was such a practice in the Slovak Republic in the past that there was presumed that by the start of the actual trial the custody was "automatically" prolonged per se. This practice was stopped by the Constitutional Court of the Slovak Republic and by the ECHR because it was incompatible with the Convention and with Constitution. This means that in order to prolong the custody there must be a separate judicial decision stating such a fact. In any case, any minute of the detention of person in custody must by traceable to the specific judicial decision. The custody does not and shall not serve as a punishment of arrested person. Its aim is to (i) deter the accused person to commit other crimes or to finish attempted crime or (ii) deter the accused person from fleeing or (iii) prevent the potential influence on witnesses from the side of accused person. Based on the case law of the Constitutional Court there shall be used the only necessary interference into constitutional rights and freedoms that is needed in order to reach the aim (this is connected with the test of proportionality). If we are t apply this axiom on the right to liberty the court has to use the most moderate mean of restriction of personal liberty which would reach the purpose/aim defined in the law. One of the aims is e.g. the personal presence of the accused person at the trial. For example in such a case the custody may be replaced with other means, even by the means which do not restrict personal liberty (e.g. bail).

There are some more limitation and restrictions of the right to personal liberty. One of them is possibility to keep the person in institutional health care without his or her consent. The Constitution leaves the determination of conditions of such a restriction of personal liberty to legislator. However, the Constitution states that it is always necessary to report such a measure to the court and the court shall decide within five days whether the person will be released or whether he/she will be placed in the medical institutions. The topic of the actual respect to the rights of the mentally incapacitated persons is just getting into attention of scholars and legal practitioners in the Slovak Republic.

The existing basic means of deprivation of liberty may be put in the following hierarchy based in their intensity (less intensive first):

1. Summons
2. Astitution resp. emplazamiento
3. Detention

4. Arrest
5. Custody
6. Home imprisonment
7. Imprisonment
8. Imprisonment for life

6.2.4 Right to property and peaceful enjoinment of property

"*The right to property is the key prerequisite of human self-realization as it ensures the independence thus creating the space for the realization of his or her freedom.*"[59]

The concept of democratic ownership has been resuscitated on the territory of the Slovak Republic right after the fall of communism. The division of the types of ownership/s, where there were differences as to level of protection of property or its content, were abolished. The national property, cooperative property and personal property have merged into "one kind" of property, property without an attribute. Article 20 of the Constitution stated that everybody has the right to property and all the owners, regardless of the fact who they are - State or John Doe, have the property of the same legal content and the same protection. However, the Constitution also stated that certain things can only be owned by the State (Art. 4 of the Constitution) or on the other hand, that the law may state so.

The Constitution also states that the ownership, just as any other right, obligates the owner, but this time the Constitution explicitly sets so. It means *inter alia* the owner may not use the object of ownership in any way he pleases. The exercise of the ownership may not harm human health, nature, cultural monuments and environment beyond limits laid down by law.

Just as most of other constitutional rights the right to property may be more or less restricted (through expropriation or forced restriction of the ownership) in compliance with the Constitution - i.e. in compliance with the conditions specified by the Constitution, which are:

- necessary extent of expropriation or forced restrictions of ownership and
- the existence of the public interest in restriction and
- based on the law (but never by the law itself) and
- the adequate compensation.

All of these conditions must be met at the same time. The necessary extent (not adequate extent) means that if in order to meet the goal of restriction, which is public interest of some kind (e.g. highway construction), there is necessary only to use the forced restriction of the ownership the land expropriation must not be used. The most moderate restriction needs to be used. If in order to build a highway it is necessary to

[59] See the decision of the Constitutional Court no. PL. ÚS 19/09.

expropriate 10 square meters of land, only 10 m2 may be expropriated. Of course, we cannot hide that the assessment of necessity (just as it works for proportionality) is and will always be partially subjective. But it does not mean there are no objective criteria.

The existence of a public interest is also complicated issue, especially when it seems that this word is more and more often used as magical wand that opens any doors - it allows the public authorities to gain more competences and to restrict the constitutional rights in a way that we would not consider to be necessary few years ago. However, the Constitutional Court of the Slovak Republic consistently holds that to maintain a balance between public and private interests is one thing that plays role in the test of proportionality. To provide an example, the public interest has been defined by the Constitutional Court when examining conformity of the act on emergency measures in the construction of highways with Constitution in this way "*public interest may not be understood arithmetically (it's in the interest of greater population) or automatically (each highway is in the public interest (...))*." (PL. US 19/09). With reference to the case law of the Constitutional Court of the Czech Republic, our Constitutional Court held that "*the public interest is not always identical with the collective interests (...) and it should be understood as interest, which can be described as generally beneficial interest*" (PL. US 19/09). The public interest, though we do not offer our own definition here, should be surely not used as a cover for a private interest, and so restriction of right to property shall not be done when there is an undercover concurrence or competition of two private interests.

The condition "based on the law" means that the restriction shall follow procedure laid down by law. But the restriction of right to property must not be settled in the law directly. Then there would be a nationalisation. The restriction must happen based on the decision of the competent body of the state, but never directly based on the decision of the National Council of the Slovak Republic. The nationalisation is not allowed as to Constitutions as the Constitutional Court held in decision no. PL. ÚS 36/95).

To assess the adequacy of compensation is perhaps even more difficult that to assess the necessity of the measure. The case law of the Constitutional Court clearly states that it does not mean the market price of the property - there may be a lower compensation. In any way, the compensation still needs to somehow provide satisfaction for the harm of the owner. Also, it is possible that the level of adequacy may be judges by the level of intensity of public interest. (See PL. ÚS 37/95).

At the end of this subchapter we should note that the amendment to the Constitution of 2010 introduced the possibility of other restrictions of other property rights (see paragraph 5 of Art. 20). The conditions in such a case are. (i) the property had been acquired illegally or from illegal income and (ii) the intervention into right to property is necessary in democratic society for national security, public order, morals or the rights and freedoms of others. The details shall be stated by the law.

The idea of such a interference into right to property was based on the fact that some members of our society seem to have more property than they may have based on their income. The idea was to sanction those people (even those who gain the property in "strange" way during "wild nineties" in the Slovakia). The law that had been passed based in this constitutional provision ceased to work in practice.

6.2.5 Freedom of movement and residence

This fundamental freedom is enshrined in Article 23 of the Constitution in such a way that it is guaranteed to everyone, not only to citizen, who is legally on the territory of the Republic to freely leave the territory. Freedom of movement and residence may be restricted in accordance with the law while the restriction has to be necessary for (i) the security of the State or (ii) the maintenance of public order or (iii) protection of the health or (iv) protection of the rights and freedoms of others or (v) protection of wildlife in specified territories.

The citizens of the Republic only have the right to freely enter the territory of the Republic and they have also the right not be forced to leave the country or to be expelled (the aliens may be expelled) within the meaning of Article 23. This probably does not mean that a citizen of the Republic cannot be extradited for prosecution or punishment abroad. The provision of the Constitution which stated that expressively was abolished long time ago. It means that in Slovakia, unlike some other EU countries, there was no significant and let us say emotional constitutional problem with the transposition of the European arrest warrant in contrast to other countries, e.g. Poland. Despite the foregoing, it is obvious that there are judges who believe that there is a contradiction between the European arrest warrant and the constitutional prohibition of forced leave of the territory of the SR (see petition of the case no. PL. ÚS 12/2012). For now, however, the admissible petition that would challenge the European arrest warrant was not filed before the Constitutional Court, so the court did not have a chance to review the compatibility of the legal provisions on warrant with Article 23 of the Constitution.

Based on the wording of paragraph 2 of Article 23 of the Constitution it may seem that the right to enter and leave the territory of the country freely is a negative right. But in the case of kidnapping of Michal Kováč, jr., son of the former President of the Slovak Republic, the Constitutional Court held that there is a positive obligation of the state to help the citizen to return to the territory of the Republic when staying abroad against his/her will (II. ÚS 8/96). In this case was the son of the president was probably[60] kidnapped to Austria. He had contacted the various bodies of state, such as the Ministry of Foreign Affairs, etc. and asked for their assistance in return to the Slovakia, but nobody had found (or wanted to find) explicit legal power to do so. The Constitutional Court held that this omission of bodies of state violated right of Mr. Kováč, ml. under Art. 23 par. 2 (former par. 3) to freely return to the territory of the Slovakia, because there was a positive obligation of state to protect this right.

6.2.6 Freedom of the thought, conscience, religion and faith

Relationship of the state and churches and religious communities is regulated in Article 24 of the Constitution (besides Art.1 par. 1 of the Constitution) and in other

[60] The kidnapping has not been investigated since the act was granted the amnesty by former Prime Minister - Vladimír Mečiar - while exercising the powers of the president when the "new" president has not been elected.

laws, mainly in the Act on freedom of religious faith and the status of churches and religious societies (hereinafter the "Act on freedom of religion").

In addition to the relationship of churches and the state, however, Article 24 refers generally to freedom of thought, conscience, religion and belief. Based on the wording of the Constitution they are guaranteed. This right includes also the right to change the religion or be without the religious belief. Everyone has the right to express his/her opinion respectively his or her thoughts.

According to the second and third paragraphs of Article 24 everyone has the right to manifest one's religion or belief, either alone or together with others, privately or publicly, by the worship, religious acts, observance or participation in the teaching. Churches and religious communities administer their own affairs; they especially set up their bodies, appoint their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

Conditions for restriction of the exercise of these rights must be (already a classic) laid down by the law and measures that restrict these rights nay be imposed only if they are necessary in a democratic society for the protection of (i) public order or (ii) health and morals, or (iii) the rights and freedoms of others.

Only a church or religious society which meets the requirements laid down by law on freedom of religion is recognized by the Slovak Republic to be the church or religious society, and can it thus receives benefits provided by law (not all the registered churches indeed accept benefits that are provided to them as they try to keep the independence from state). Churches and religious societies are registered by the Ministry of Culture of they fulfil the condition for recognition. There are currently 18 registered churches and religious societies. One of the conditions that must be met in order to register is to have a 20 000 adult members. This condition was introduced in 2007 and it replaced the requirement of 20 000 adult supporters. Later the new (more strict) condition became the subject of constitutional scrutiny before the Constitutional Court of the Slovak Republic. The court needed to decide whether the new condition as to number of members (together with other conditions) is compatible with the limits of the freedom of religion or belief and the general limits of the possibility of restrictions of fundamental rights and freedoms (see Article 13 of the Constitution). The Constitutional Court dismissed the petition and it decided that a census of 20 000 consenting members of the church or society is within the limits of reasonable restriction of rights (inter alia) under Article 24 and 13 of the Constitution. However, the dissenting judge had performed the test of proportionality and as to him the given condition did not even pass the second step of the test - the measure was not necessary to achieve the aim (see dissenting opinion of judge Mészáros PL. ÚS 10/08).

6.3 Political rights and freedoms

6.3.1 Freedom of expression and right to access information

It may be said that the freedom of speech is the most typical democratic political right.

Therefore, we can agree with the ECHR that in countries in transition, passing from a totalitarian regime to a democratic one, the protection of freedom of expression shall rather prevail over the protection of the right to privacy. The Constitution of the Slovak Republic regulates the freedom of expression together with the right to information. The freedom of expression, however, has been historically developed rather as negative right. It also means that this freedom may be realised even without the existence of the statutory act that would specify it. The right to information, on the other hand, is more of a positive right and the actual implementation, the actual exercise, of this right depends on the existence of a statutory law that would specify it. The state bodies do not (like to) provide information if they do not have legal basis. However, based on the doctrine of positive obligation of state both rights have their positive aspect.

Everyone has the right to express themselves in words, writing, print, pictures or otherwise, and to seek, receive and impart information and ideas regardless of borders of the state. Print publishing is not subject to approval procedure. Enterprise in the field of radio and television may be subject to permission from the state, the conditions shall be laid down by law.

Freedom of expression does not exist to protect the nice expressions, they ultimately do not need to be protected (nobody would feel offended), but to protect offensive, shocking and disturbing expressions. Therefore the freedom of expression often gets in the conflict with the right to privacy in the modality of right to good name and reputation. The Constitutional Court of the Slovak Republic gradually shaped its doctrine of balancing of these rights. One of the last comprehensive decisions which tuned the doctrine of the Constitutional Court as to such a balancing appeared in II. ÚS 152/08. In that case, the Slovak judge of the ordinary court, Mr. Polka had been criticized by the tabloid weekly Plus 7 days. Mr. Polka won the case before the ordinary courts and so the publisher of the magazine filed the complaint before the Constitutional Court. The Constitutional Court held that with regards to the case law of the ECHR, it needs to answer the following questions to resolve the conflict of these two rights at stake: Who criticized/ Who delivered an expression? Who was criticized? What had been said (expressed)? When was it done? Where was it done? How was it done? [61] These questions created six steps test which already includes the distinction between evaluative statements and statements of facts. The fundaments of the test with regards to the respective case of the Constitutional Court were put as follows:

[61] Shortly: Who? Whom? What? When? Where? How?

"*Who is criticized*

The result of the effort to support the discussion about topics interesting for public is the classification of the objects of critique. The degree of permissible critique varies according to the characteristics of the recipient of the critique. Boundaries of acceptable critique are the widest toward politicians as adressees of the criticism and the most strict when the "ordinary" people are criticized. Constitutional Court accepts the trend that is moving the judges, who stand somewhere in between, closer to politicians (...).

Who criticizes

Just as the recipients of criticism, the critics themselves are classified in terms of their importance for the exchange of views in society. It is clear that the privileged group are journalists. The European Court of Human Rights constantly reminds us that the press is democracy watchdog ("public watch dog") and it plays an important role in the rule of law because it allows the free game of political debate. Journalists have a (social) obligation to provide information and ideas on all matters of public interest and the public has the right to receive such information. Journalists are even allowed to use some degree of exaggeration and provocation. Based on the abovementioned the ECHR provides the journalists with a higher level of protection compared with other subjects of freedom of expression. The Constitutional Court accepts this approach of the ECHR, and only based on it's authority, but mostly because of the fact that the arguments of ECHR are convincing. (...)

What is criticized

The Constitutional Court and ordinary courts must examine the object and form of criticism. Criticism usually heads towards to judicial decision itself, its reasoning or the process in proceeding or it is headed sprightly towards the personality of the judge. (...)

Where is he/she/it criticized

The place where the expression was orally expressed or published is also useful criterion for assessment of the interference into freedom of expression. Generally speaking, the more distributed the criticism is the higher the protection of personal rights is. However, there is a need to understand the respective matter in connection with the criterion of the author of expression. If the author is a journalist, his or her privileged position partially neutralises the criterion of location. (...)

When is he/she/it criticized

When criticising the judicial decisions it is of importance whether they are criticised during the proceeding, resp. trial, or after the end of it. Timing of criticism should be seen not only in terms of phase of the trial, but also in terms of social timing. The respective maga-

ziner concerned the proceeding that was not final as it was decided only by the court of first instance and the decision had been challenged before the court of the second instance (see also the decisions of the Constitutional Court no, II. ÚS 23/00, II. ÚS 13/02 (...)). In this case, it is generally necessary to raise the demands for more accurate reporting. In the present case there was no report about the judicial decision but selected cases and decisions served as the examples to illustrate the current problem of the number of cases before courts initiated by the public figures who were provided high amounts of money as non-pecuniary damage in those cases. The social topicality is linked also to say historical actuality. While building judiciary in the rule of law, the countries in transition can protect judiciary against public discussion with perhaps defamatory aspects or on the other hand they can open discussion about judiciary. The Constitutional Court is inclined to accept the second of these alternatives, taking into account the fact that changes in the judiciary are underway for two decades already. (...)

How is he/she/it criticized

Not only what is said needs to be taken into account. Also how it it said is of an importance in assessment of acceptability of the criticism. In this case the criticism is indirect, genre criticism of respective judicial decisions, and implicitly it is also the criticism of the judge who has been successful in these cases before the courts. The magaziner has been published on the last but one page of the magazine under the column "Word of Publisher" with the caricature of prickly hedgehog. This means that it was a commentary, not reporting section of the magazine. A reader hence counts with the value-colouration or polemical text and therefore a reader treats the article more cautiously. The tone of the article can be seen as sarcastic but not as insidious. Form of criticism is therefore the disagreement with the judicial decisions but there are no offensive, incursive or indecent formulations. In overall context the magaziner refers to a systematic problem of high satisfactions of non-pecuniary damages granted to judges in the defamation trials. The primary goal is to critique the specific decision-making practice of the courts, which corresponds to the title of the article where there is no name of the applicant mentioned. (...)." (II. ÚS 152/08)

In the case of judge Polka and weekly Plus 7 days the Constitutional Court held that the right to freedom of expression should have prevailed over right to privacy hence the Constitutional Court found a violation of the right to freedom of expression of the magazine (publisher of the magazine) by ordinary courts that prevailed the right to privacy.

One of the limitations of freedom of expression in non-democratic countries is censorship. The Constitution prohibited (banned) the censorship even with regard to the socialist past of our country. This does not mean that freedom of expression and right to information cannot be restricted. In addition to the abovementioned example of possible restriction because of the conflict with some other constitutional right (the balancing needs to be done) the freedom of expression may be restricted on the basis of the law and, as always, it must be necessary in democratic society for the protection of (i) the rights and freedoms of others or (ii) security or (iii) public order or (iv) the public health and morals.

When speaking about the right to receive information the public bodies are obliged to provide information on their activities in an appropriate manner and in the state language under the Constitution. The conditions and manner of execution shall be laid down by law. The key law through which the right to access to information is realised is the act no. 211/2000 Coll. on free access to information. This law regulates who is required to disclose the information, what information must be made available, how it may be made available, how long it shall be available and what kind of appeals exist against the decision of non-disclosure of information.

Towards the possibility to get access to information the Constitutional Court held that if state bodies exercise public authority or there are specific persons who do so, everybody is entitled to record their activity in a situation where public power is exercised. So you are e.g. free to take pictures or create other records of police officers in situations where they are in the line of duty despite the fact that they refused to provide their consent (II. ÚS 44/00). In another case before the Constitutional Court the complainant argued that the judge ordered him to turn off the sound recording device during a public court hearing that he went to as a member of public. However, the law allowed (and still allows) us to create the sound record of the public trial without any permit provided by a judge. The consent of a judge is needed e.g. in the case of transmission or record of the picture. The Constitutional Court held that there was a violation of the right of access to information (III. ÚS 169/03).

6.3.2 Right to petition, right to peaceful assembly and right to association

All the rights belong to the really important and inherently strong political rights the exercise of which is regulated by specific laws. The right to petition consists in possibility to refer oneself to state authorities and bodies of local self-government in the public interest matters or others matters of common interest with requests, suggestions and complaints. In order to indeed petition someone the number of the petitioners (people who signed petition) does not matter. What is relevant in order to indeed use this right is the object of the petition that petitioners want to protect - the public interest, not private interests. Therefore, although there is a specific law on complaints those complaints are filed in the private interest of the complainants (even though there would be a huge number of them) and therefore this act does not to exercise the right to petition. The Constitution also provides a negative definition of the subject of petition: A petition cannot call for the violation of fundamental rights and freedoms nor it may interfere with the independence of the court. The Act on the Right to Petition states that if a petition is signed by 100 000 people the National Council of the Slovak Republic has an obligation to deal with it and addressed it.

The right to assemble as constitutional right consists of right to assemble on public places and right to assemble on private places. However, the Constitution states that the law may restrict or limit only assemblies on public places. The exercise of this right may be restricted only if it is necessary in a democratic society for the protection of the rights and freedoms of others, public order, health and morals, property or national security. Assembly shall not be subject to approval by public authorities. However, under the law which regulates the conditions for the exercise of this right, the con-

crete assembly may be banned. Thus, although it is true that the assembly must be announced to the municipal authority in whose area where it supposed to happen and at the same time municipal office does not have the competence to permit it, it has perhaps paradoxically) the power to ban it under some circumstances listed in the law - for example because at the same time and place some other assembly has been already announced. The law then also determines the conditions under which assembly can be dissolved. One such a situation is when the assembly encourages the violation of rights and freedoms of others.

As for the right to association the Constitution states that everyone has the right to associate with others in clubs, societies or other associations. Forms of associations are regulated by law. The specific way of association is the right to establish political parties and political movements and to join them. However this right is constitutionally guaranteed to citizens only. Terms of establishment and operation of political parties and movements are also determined by the specific law. Right to association may be restricted only in cases specified by law, if necessary in a democratic society for reasons of national security, protection of public order, prevention of criminal acts or for protection of the rights and freedoms of others. The law for example states under which conditions it is possible to dissolve the association or political party. In the case of political parties and movements, since their existence is closely linked to the right to vote, there is a constitutional review of decision on dissolution of a political party or movement under specific motion before the Constitutional Court. Based on the Constitution the political parties and political movements, as well as clubs, societies or associations are separated from the state. This may be seen as a reaction to our past and experience with the socialism and the leading role of the (communist) party in the state and society.

6.3.3 Right to participate on the government – election and right to resist

In 1968, at the time of the Prague Spring and after all unsuccessful search for socialism with a human face, singer Marta Kubišová sings: *"Let the peace stay in this country, shall it so, let the bitterness, envy, hate, fear and feud to go, please let them go. Now, the lost government of your own affairs is returning back to you, the Peoples, it is returning back to you."*[62]

Citizens of Czechoslovakia had to wait for another 20 years for return of the lost government into their own hands. And this government over their own affairs is provided to them (resp. us) basically by the right of citizens to participate in the administration of public affairs. This right may be exercised in two forms, two ways - directly and through the (free election of) representatives. Indirect exercise of the government (in the broad sense of the word "government") takes place mainly through the active exercise of right to vote. The Constitution grants the right to vote and to be elected to the municipal self-government bodies not only to citizens but also to foreigners.

However, the elections alone never ensure that the country would be governed by the people. Election itself never ensures that country is a democratic one. Elec-

[62] For the song see e.g. http://www.youtube.com/watch?v=S3UaBQSYQCU.

tions have to have some specific features and one of them is that they need to be held in certain periods. This aims to ensure effective recovery of legitimate mandate. Therefore, the extension of the election period in the democratic rule of law state is extremely problematic and it evokes a usurpation of power, i.e. tendency towards totalitarianism. So the elections have to be held at intervals not exceeding the regular term, which is always provided for by law.

The transference of legitimacy from people to those who would actually govern the country has to have some qualities that shall ensure democracy, equality a legitimacy of elections. Based on the Constitution the right to vote is:

- universal (the only threshold is the specific age, which passed the constitutional judicial review successfully),
- equal (the ballot/vote of everyone has the same weight),
- direct (there is no election of electoral college, the electors vote for their candidates directly) and
- carried out by secret ballot (this is an obligation, although the elector may reveal whom did he vote for but his or her decision must not be objectively ascertainable).

Under the Constitution citizens have access to the elected and other public posts under the same conditions. To provide the examples, the office of the President of the Supreme Court of the Slovak Republic, member of the Judicial Council, the President of the ordinary court, the President and Vice-Presidents of the Supreme Audit Office were recognised as elected and other public post by the Constitutional Court. In contrary, office of the Director of radio and television of Slovakia was not recognised as elected and other public office. In order to tell whether a post or office falls under the term "elected and other public" public power dimension needs to be considered. And one more remark, Constitutional Court had in fact extended the abovementioned right in its case law thought interpretation. It held that Art. 30 par. 4 does not include only the right of access the public office but also the right to undisturbed tenure in accordance with the law.

The legal regulation of all political rights and freedoms, and its interpretation and application must enable and protect a free competition of political forces in a democratic society as required under Article 31 of the Constitution.

The right to resist is an interesting right which is linked to the concept of contract law theories of creation of state. This right belongs only to citizens (of the Slovak Republic) only. The citizens may resist anyone who would abolish the democratic order of basic human rights and freedoms listed in this Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible. Slovak constitutional law scholar, Procházka, is of the opinion that this right is the only substantive core of the Constitution (but still, super-soft core).[63]

[63] PROCHÁZKA, R.: Ľud a sudcovia v konštitučnej demokracii. Plzeň: Aleš Čeněk, 2011.

6.4 Economic, social and cultural rights

In the section of the Constitution entitled "Economic, Social and Cultural Rights," we cannot find the rights which would show the only one and pure characteristic – economic, social, cultural. Matter of fact, the right to work for example has an economic dimension but also social dimension, the right to education has the social dimension but also economic dimension and even cultural dimension, and so on. The specific issue of these so-called second generation rights is that the level of their realisation mostly depends on economic situation in a country. Therefore, some scholars[64] claim that constitutional review of their realisation (in the laws) performed by constitutional courts is in fact very problematic. The reason is that constitutional courts would have to have a strong knowledge of the economic situation in the country, which they could not have, plus such a review (or specific level of the judicial review) may get in conflict with the principle of separation of power.

The Economic, Social and Cultural Rights are, as listed in Constitution, the right to free choice of profession and training for it, the right to engage in entrepreneurial or other gainful activity, the right to work, the right to a fair and satisfactory working conditions, the right to freely associate with others to protect their economic and social interests, the right to strike, the right to enhanced protection of health at work and special working conditions, the right to special protection in labour relations and to assistance in professional training, the right to adequate material security in old age and incapacity to work, as well as in case of loss of breadwinner, the right to health and the right to health care, protection of marriage, parenthood and family, the right to education, the freedom of scientific research and the arts, the right to intellectual creations and the right of access to cultural heritage.

The right to work is granted only to citizens and the state shall in adequate extent materially supply those citizens who cannot exercise this right not of their own fault. Employees have the right to fair and satisfactory working conditions and the Constitution states that the law shall provide them in particular:

- the right to remuneration for work done, sufficient to enable them to a decent standard of living;
- protection against arbitrary dismissal and discrimination in workplace,
- labour safety and the protection of health at work,
- the longest admissible working time,
- adequate rest after work,
- the shortest admissible period of paid leave,
- the right to collective bargaining.

The right to strike emerged as constitutional right already at around the beginning of twentieth century and it is relatively strong economic and social right. This right, however, does not belong to judges, prosecutors, members of the armed forces and the armed corps, and members and employees of the fire and rescue brigades. What

[64] SADURSKI, W.: Rights before Courts. Springer: 2005, p. 171 and foll.

is more, the law may restrict the right to strike of other professions that are vital for the protection of life and health. Based on the case law of ordinary courts the right to strike may not be used to solve the concrete personnel issues (e.g. the strikes may not use this right to ask the employer to put concrete persons in concrete offices of work posts), whereas it is unlikely that only a specific person or persons are capable of protecting and ensuring the economic and social rights of employees. On the level of laws the right to strike is specified only in the context of collective bargaining. Because of the wording of Art 51 par. 1 of Constitution[65] some scholars[66] came to conclusion that the right to strike may be exercised only during collective bargaining. If opposite the action may not be considered (and protected) as right to strike. There would be mere protest. In contrast, other scholars[67] claim that the right to strike may be executed even if outside of collective bargaining. It would only have a weaker legal protection, but it would be constitutionally protected strike anyway.

The right to protection of health and right to health care (and medical supplies) is defined in the Constitution in such a way that based on the public medical insurance the health care is provided free of charge. The Constitutional Court interpreted this constitutional provision *inter alia* in decision no. PL. ÚS 38/03. It held that the change of services related to health care (such as food or bed in the hospital) is in conformity with this constitutional right. Two judges however provided dissenting opinion where they argued that the word "free of charge" is to be interpreted literally, and therefore a healthcare, from the related services cannot be reasonably separated as they are closely related it, indeed free of charge.

Everyone has the right to education under the Constitution but only citizens are entitled to education at primary and secondary schools free of charge. The citizens also have the right to the education at colleges and universities free of charge under the two cumulative conditions:

1. based on ability of a citizen and
2. based on (primarily economic) opportunities of the society.

Under the act on colleges and universities citizens are currently guaranteed a free education at one university full-time study at a standard length of study. Constitution and statutory framework allows establishment of (i) public schools, (ii) church schools and (iii) private schools. At church schools and private schools the education may be provided for a payment. Besides abovementioned the Constitutions includes another social aspect of the right to education as it states that the law shall lay down conditions under which citizens are entitled to assistance from the state in their studies.

The right to freedom of scientific research and art and the related right to intellectual creations are to be considered as significant fundamental rights and freedoms. As to doctrine of legal scholars Article 20 of the Constitution, which protects the right

[65] *The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions.*

[66] E.g. Ján Drgonec see DRGONEC, J.: *Základné právo na štrajk: rozsah a podmienky jeho uplatnenia v právnom poriadku Slovenskej republiky*. In: Justičná revue, 59/2007, no. 6-7, pp. 759-780.

[67] BARANCOVÁ, *H.: Štrajk len podľa zákona o kolektívnom vyjednávaní?* In: Právny obzor. – Vol. 2/2008, pp.94-108.

to ownership of property does not provide protection to intellectual property. That is why it is important to have the specific article which guarantees not only intellectual property but also activities that lead to its creation – research and art. The importance of this right might be seen as even higher than importance of right under Art. 20. The reason is that the right under Art. 43 in fact realises one of the fundamental human characteristics - creativity.

6.5 Right to judicial protection and other legal protection

The right to judicial protection and other legal protection involves a number of sub-rights while without this right the other fundamental rights and freedoms would only be illusory - they would have been remained without an effective protection.

According to the Constitution, any person may claim his or her right in a manner laid down by law before an independent and impartial court and in cases laid down by law he or she can do so before another body of the Slovak Republic. The person that claims that he or she was deprived of his rights by a decision of public authority may appeal to the court to examine the legality of the decision, unless the law provides otherwise. The jurisdiction of courts shall not be precluded in cases of review of decisions relating to fundamental rights and freedoms. We may claim that the judicial review of decisions of bodies of public authorities supposed to function *inter alia* as protection against malfunction of public state administration and self-government administration.

Everyone is entitled to compensations of damages caused by unlawful decision of the court, state body or public administration or by maladministration. This constitutional right is ensured mainly by the act no. 514/2003 Coll. on liability for damage incurred within the exercise of public power.

Everyone has the right to remain silent (refuse to testify) if by doing so he or she may cause a risk of criminal prosecution to himself or herself or to a close person.

Everyone has the right to legal aid in proceedings before courts or before other state authorities or public administration authorities since the beginning of the procedure already and under the conditions laid down by law. One of the institutions which greatly helped the right to access to legal assistance was the introduction of free legal assistance to persons in material need and the establishment of Centre for Legal Aid that provides such a assistance. Parties in a proceeding are based on the Constitution equal and may surely claim that the free of charge legal aid for economically weaker party improves access to justice for persons in material need and helps to promote substantive equality of parties in dispute. A person who claims not to have a command of Slovak language resp. language in which the proceeding before the court is held has the right to interpreter However, the Constitution does not state that the interpreter shall interpret the proceeding into the mother tongue of the person who declared inability to understand the language of the proceeding.

To ensure the fairness of the proceedings before the courts the Constitution establishes the order according to which no one can be deprived of his lawful judge – judge

who was assigned to the person /case in accordance with the law. In Slovak legal order the lawful judge is currently defined in Act on courts in such a way that the lawful judge is a judge of the court who has the jurisdiction over the matter and to which the case was randomly assigned based on the work schedule of the court. If the case is decided in the chamber, the chamber is the lawful judge. In the context of case-law of the Constitutional Court it may be added that the chamber is not defined by its label (e.g. 4T), but by its cast. Exchange of members of the chamber may violate the right to a lawful judge if it lacks the legal basis and reasonability.

As slow justice is no justice, the Constitution in Art 48 par. 2 enshrines the right to have the matter tried without undue delay. Thus, delays in the proceedings may occur, but they must not be unnecessary. Assessment of the existence of the undue delay under constant case law of the Constitutional Court as inspired by the case law of the ECHR is framed into surveys of (i) how the court proceeded, (ii) how the parties proceeded, (iii) whether the matter/dispute is a hard case (legally) or complex case (factually) and sometimes (iv) the importance of a decision in case for the parties of the case.

The Constitution also stipulates that everyone has the right to have his or her case tried in in his/her presence on in public and the right to deliver the opinion on all the presented evidence. The public may be excluded only in cases specified by law, for example, if it is necessary to protect morality, minors, etc.

The Constitution also enshrines the principle nullum crimen sine lege and nulla poena sine lege – it means that only the law shall lay down the what action and conduct constitutes a crime and what punishment or other deprivation of the rights or property may be imposed for its commitment.

There are no jury courts in the Slovak Republic. Although there are laics present in the court chamber under conditions defined in the law. Therefore, only the court (no jury) may decide on the guilt and punishment for criminal conduct. Anyone against whom criminal proceeding is conducted is considered to be presumed innocent until the court withholds final judgment of guilt and the verdict is valid. It means that the presumption of innocence is guaranteed by the Constitution. The accused has the right to have time and opportunity to prepare a defence and to defend himself or herself in person or through a lawyer - defence counsel. The accused also has the right to remain silent; this right may not be denied in any way. No person shall be prosecuted for an offense for which he or she has already been finally convicted or acquitted. This principle, as Constitution explicitly states, does not apply in case of extraordinary remedies in accordance with law. Criminal offense shall be assessed a penalty is imposed under the law that is/was in force at the time the act was committed. A later law will be used only if it is beneficial for the perpetrator. It means that there is an exemption of the principle of prohibition of retroactivity within criminal law which has to favour the perpetrator. However, for aggrieved party in the respective criminal proceeding, this exemption usually means the opposite – the favour of perpetrator is disfavour of aggrieved party.

7. Legislative power

Legislative power, as we would deal with it in this chapter, may be used in the modality of (i) power to enact Constitution or Constitutional laws and (ii) power to enact laws. The legislative power in the Slovak Republic is in fact bifurcated, just like the executive power, as we can read it of the case-law of the Constitutional court and wording of the Constitution itself.[68]. It is not just the National Council of the Slovak Republic (hereinafter the "National Council"), but also the people, who exercise their legislative power directly by the referendum.

7.1 National Council of the Slovak Republic

The Slovak Parliament has 150 members, elected for four years. Members of the Parliament are defined as substitutes of the citizens, however, it would be a more appropriate to define them as "representatives".[69] The mandates of the members of Parliament must be performed according to their own conscience and conviction and they are not bounded by orders, as the Constitution so provides. It means that the mandate of the members of Parliament is a free mandate. This principle is violated if there is a so-called reverse of the Member of Parliament.[70]

Members of Parliament are elected by secret ballot in general, equal, and direct elections. A citizen who has the right to vote, has reached the age of 21 and has permanent residence on the territory of the Slovak Republic may be elected a Member of Parliament. Verification of the validity of the election of Members of the National

[68] However, there is still a discussion about this bifurcation among legal scholars. Some claim that the referendum or citizens expressing their opinion in referendum is not a real "body" which means that there is not real bifurcation. The other also claim that the results of referendum which is valid is not binding for members of Parliament and the result of referendum (even if promulgated in the Collection of Laws) does not have the power to be a novelisation of the Constitution.

[69] This is a reason why we use the term „representatives" in the English translation of the Constitution in this book.

[70] As to this mater the Constitutional Court held that the fact the person – candidate for member of Parliament – signed „reverse" (ex ante declaration on surrender of mandate) and this reverse was later on accepted by the National Council even though the respective person expressed the opposite will (many times) constitutes the violation of the Constitution. (see case of Gaulieder, decision of the Constitutional Court no. PL. ÚS 8/97). The decision of the Constitutional Court was however not accepted by the National Council so Mr. Gaulieder filled the complaint before the ECHR and Slovak government created after election in 1998 signed a friendly settlement with Mr. Gaulieder. For the facts see Gaulieder v. Slovakia, application no. 36909/9, judgement of 18. May 2000.

Council of the Slovak Republic is performed by the National Council itself. Such a decision on validity may be appealed before the Constitutional Court under Article 129 of Constitution.

The post of a Member of Parliament is incompatible with the post of judge, prosecutor, public defender of rights, member of the Armed Forces, member of Armed Corps and member of the European Parliament. If a Member of Parliament appointed to the Government of the Slovak Republic, his or her mandate does not terminate while he executes the government post, it is just not exercised.

Members of the Parliament have indemnity, i.e. they may not be prosecuted for their voting in the National Council of the Slovak Republic or in the parliamentary committees, even after the termination of his mandate. For statements made in the National Council of the Slovak Republic, or its body, while discharging the function of a Member of Parliament, a Member of Parliament may not be criminally prosecuted; this applies also after the termination of his mandate. A Member of Parliament is subject to the disciplinary powers of the National Council of the Slovak Republic.

The immunity of the Members of Parliament (hereinafter "MP" or "MPs") has been restricted over the time. At the beginning MPs had the full procedural immunity – if the National Council did not approve the criminal proceeding, the MPs could have not been tried before the court for the respective conduct even after the termination of their mandate. Later on it has been restricted in such a way that after the termination of their mandate the MPs could have been tried. In 2012 the procedural immunity had been abolished at all; however there is still a need for approval of the National Council for the restriction of personal freedom of MP. The present state is hence such that the MP cannot be taken into custody without the consent of the National Council of the Slovak Republic. If a Member is found and arrested while committing a crime, the competent authority is obliged to immediately notify the Chairman of the National Council of the Slovak Republic and the Chairman of the Mandate and Immunity Committee of the National Council of the Slovak Republic. If the Mandate and Immunity Committee of the National Council of the Slovak Republic does not give its consent to the detainment, the Member of Parliament must be released immediately. If a Member of Parliament is in custody, his mandate does not terminate, it is only not exercised.

The National Council may control the government, since the government is responsible to the National Council. As an instrument of such a control MP may address an interpellation to the Government of the Slovak Republic. Than the member of the Slovak government, the prime minister and the head of a governmental agency must provide an answer in matters of their competence. MP must receive a reply within 30 days. The reply to interpellations is followed by a debate in the National Council of the Slovak Republic on the subject, while it may be combined with a vote of confidence.

Parliamentary mandate expires

a) the expiry of the term,

b) resignation,

c) loss of eligibility,

d) dissolution of the National Council of the Slovak Republic,

e) the occurrence of incompatibility pursuant to Art. 77 par. 1 of Constitution,

f) on the day the court decision becomes effective by which a Member of Parliament was sentenced for a deliberate criminal act, or by which a Member of Parliament was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence.

Meetings of the National Council of the Slovak Republic are public. Closed meetings may be held only in cases specified by law (such as hearing reports of SIS (Slovak Intelligence Service), or discussion of classified information), or in the event that a resolution of the National Council of the Slovak Republic approves so by the three-fifths of all the members.

The National Council of the Slovak Republic has a quorum if an absolute majority of all its members (i.e. minimum 76 MPs). The resolution of the National Council of the Slovak Republic is passed by a simple majority of the MPs *present*, unless this Constitution states otherwise. If approving an international treaty under Art. 7 par. 3, par. 4 and if adopting an Act returned to National Council by the veto of President of the Slovak Republic the resolution is passed by a simple majority of *all* Members of Parliament. The adoption of Constitution, Constitutional amendment, constitutional law and approval of an international treaty under Art. 7 par. 2 shall be performed by the consent of three-fifths majority of all members. The same majority is needed for adoption of a resolution on public vote to remove the President of the Slovak Republic, to file charges against the President and to declare war on another state.

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

c) deciding on proposals to call a referendum,

d) expressing consent, prior to ratification, with the international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing membership of the Slovak Republic in international organizations, international economic treaties of a general nature, international treaties whose execution requires the enactment of a law, as well as with international treaties that directly establish rights or obligations of natural persons or legal persons, and at the same time making determination if these are international treaties stipulated in Article 7, paragraph 5,

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

f) 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,

g) approving the state budget, checking on its fulfilment and approving the state closing account,

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

i) electing and recalling the chairman and deputy chairman of the Supreme Audit Office of the Slovak Republic and three members of the Judicial Council of the Slovak Republic.

j) deciding on the declaration of war, if the Slovak Republic is attacked, or as a result of commitments arising from international treaties on common defence against aggression, and on peace agreement after the war,

k) expressing consent to sending armed forces outside the territory of the Slovak Republic, unless it is a case stipulated in Article 119, letter p,

l) expressing consent with the presence of foreign armed forces on the territory of the Slovak Republic.

The draft of the law may be introduced by committees of the National Council of the Slovak Republic, Members of Parliament and the Government of the Slovak Republic. If President of the Slovak Republic Act returns the passed law with comments back to the National Council, the National Council of the Slovak Republic will discuss the law again and, in the event of its approval, such a law must be promulgated. If the Act is negotiated and if it is approved such a law must be declared. The law is signed by the President of the Slovak Republic, Chairman of the National Council of the Slovak Republic and the Prime Minister of the Slovak Republic. If the National Council of the Slovak Republic for the renegotiation of an Act despite the comments of the President of the Slovak Republic and the Slovak President sign the law, the law is declared without the signature of the President of the Slovak Republic. If the law is passed even against the comments by the President and the President of the Slovak Republic does not sign the law, the law is promulgated even without the signature of the President of the Slovak Republic.

As an expression of dissatisfaction with the government or its members, i.e. as a mean of drawing the responsibility, National Council may pass a vote of no-confidence in a member of the government or in the entire government. Such a motion must be requested by at least one-fifth of Members of Parliament. The confidence in the Government of the Slovak Republic or its member is passed by a simple majority of all MPs.

National Council of the Slovak Republic shall establish committees as its own initiative and control bodies. The chairmen are elected by secret ballot. Under current law the National Council establishes mandatory Committee on Conflicts of Interest, Mandate and Immunity Committee, Constitutional and Legal Committee, the Committee on European Affairs[71] and the Committee for the control of activities of the National Security Office.

[71] This committee had been established based on the Constitutional Act.

7.2 Referendum

The theory distinguishes between optional and mandatory referendum. An obligatory referendum must be held in case of confirmation of admission of the Republic into a union with other states. Optional referendum may be used to decide on other important issues of public interest. A referendum cannot be held in cases where the subject of it would be the fundamental rights and freedoms, taxes, levies and the state budget. Every citizen of the Slovak Republic who has the right to vote in the National Council of the Slovak Republic has the right to participate in the referendum.

Referendum is called by the President of the Slovak Republic based on a petition submitted by at least 350,000 people or upon a resolution of the National Council of the Slovak Republic. Before calling a referendum the President of the Slovak Republic may file a petition before the Constitutional Court of the Slovak Republic in order to realise whether the subject of the referendum to be declared is in accordance with the Constitution and constitutional laws. The Constitutional court shall decide the issue within 30 days. This power of the President to check the compliance of a subject of referendum before the court had been put into Constitution in 2001 following the practical problems with interpretation of Constitution in nineties. In nineties there was a question whether the referendum might be called if it is dealing with constitutional question, i.e. in cases where the change of Constitution is at stake. The Constitutional court provided the positive answer while interpreting Constitution based on Art. 128.[72] The court even stated that the will of citizens transformed into results of referendum is in fact the order addressed to MPs to change the Constitutional in respective way. This decision had been widely criticised as the opponents believed that the MPs shall not be bound by anyone (Art. 73 of the Constitution), not even people who decided a question in referendum. That is why it is still not clear what kind of power has a valid result of referendum.

To continue, the results of the referendum are valid if more than one-half of eligible voters participated in it and if the decision was endorsed by more than one half of the participants in the referendum. Proposals adopted by referendum are promulgated by the National Council of the Slovak Republic in the same way as the laws are. The National Council of the Slovak Republic may amend or annul the result of a referendum by means of a constitutional law no sooner than three years after the result of the referendum came into effect. Some scholars interpret this sentence as a leading hint to the legal power of results of referendum. E.g. prof. Prusák based on it claims that the result of referendum has to have the higher legal force that constitutional laws in the period of three years after their promulgation. Later on they have to have the force of the constitutional laws because they may be changed only by constitutional law.[73]

Referendum on the same issue may be repeated no sooner than three years after the result of the referendum came into effect.

[72] See decision of the Constitutional Court no. II. ÚS 31/97.

[73] PRUSÁK, J.: Teória práva. Vydavateľské oddelenie PF UK: Bratislava, 1995, p. 189-190.

8. Executive power

Executive power is distributed, respectively in fact shared, between President of the Slovak Republic and the Government of the Slovak Republic.

8.1 President

The President represents the Slovak Republic externally and internally decisions ensures proper functioning of constitutional bodies. The President shall perform the office of conscience and belief, and is not bound by any instructions. President elected by the citizens of the Slovak Republic in direct elections by secret ballot for five years. The right to elect the President belongs to the citizens who have the right to vote their representatives in the National Council of the Slovak Republic. Candidates for president shall be proposes by at least 15 MPs (the party candidate) or by the people who are eligible to vote in the National Council on the basis of a petition signed by at least 15,000 citizens (the civil nominee). The candidate who obtains an absolute majority of the valid votes of eligible voters in the first round of elections becomes the President. If none of the candidates obtains the required majority of votes, the second round shall be held within 14 days. Those two candidates who obtained the highest number of valid votes proceed in the second round of the elections. The candidate who received the highest number of votes is elected president in the second ballot.

The powers of President based on the Constitution are in particular:

a) represents the Slovak Republic outwardly and concludes and ratifies international treaties,

b) may filed with the Constitutional Court of the Slovak Republic a petition for a decision on the compliance of a concluded international treaty, which requires a consent of the National Council of the Slovak Republic, with the Constitution or a constitutional law,

c) receives, accredits and recalls chiefs of diplomatic missions,

d) calls the constituent meeting of the National Council of the Slovak Republic,

e) may dissolve the National Council of the Slovak Republic if the policy statement of the Government of the Slovak Republic is not approved within six months after its appointment, if the National Council of the Slovak Republic failed to pass within three months a government draft law that the government tied with a vote of confidence, if the National Council of the Slovak Republic was incapacitated to make decisions for more than three months, although the session was

not interrupted and during that time it was repeatedly called for sessions, or if the session of the National Council of the Slovak Republic was interrupted for more than permitted by the Constitution. The President may not exercise this right during last six months of his term, during war, state of war, or martial law. The President will dissolve the National Council of the Slovak Republic if in the public voting on removal of the President, the President was not removed,

f) sign laws,

g) appoints and removes from office the prime minister and other members of the Government of the Slovak Republic, entrusts them with the management of ministries and accepts their resignation. S/he also recalls the prime minister and other members of the Government in the cases when the National Council passes a vote of no-confidence in it, or if it turns down the Government's request to pass a vote of confidence. A Government member may submit his resignation to the President of the Slovak Republic. The National Council of the Slovak Republic may pass a vote of no-confidence also in an individual Government member. In this case, the President of the Slovak Republic will recall the Government member. The proposal to recall a Government member may be submitted to the President of the Slovak Republic also by the prime minister,[74]

h) appoints and removes from office the heads of central bodies and higher-level state officials and other officials in cases laid down by law; appoints and recalls university rectors, appoints university professors, appoints and promotes generals,

i) awards distinctions, unless he empowers another body to do so,

j) grants amnesty and pardon, lowers punishments imposed by courts in criminal proceedings and nullifies punishments by an individual clemency, or amnesty,[75]

k) is the supreme commander of the armed forces,

l) declares war on the basis of a decision of the National Council of the Slovak Republic, if the Slovak Republic is attacked, or as a result of commitments arising from international treaties on common defence against aggression, and concludes peace agreement,

m) upon the motion of the government of the Slovak Republic may order mobilization of armed forces, declare the state of war, or declare martial law, and the

[74] There had been a constitutional dispute whether the President is obliged to recall the member of the government or the prime minister. The Constitutional court decided that the constitution shall be interpreted in such a way that if a member of government fails to receive confidence by the National Council, the President is obliged to do so. If the proposal to recall the member of government comes from a Prime minister, the President is free to decide whether he will recall the member of government. See decision of the Constitutional Court no. I. ÚS 39/93. The Constitution had been change since that dispute with obvious intention to make the discretion of President stricter. However, the wording of Constitution still does not provide us with a clear answer.

[75] The power of President to grant the amnesty in the way of abolition had been taken from the Constitution after the case, when Prime Minister – Mr. Mečiar, performed the President's powers in nineties in such a way that he had put two amnesties on crime of kidnap of Presidents son and crimes allegedly connected with it.

termination thereof.,

n) announces referenda,

o) can return to the National Council of the Slovak Republic any Act with comments within 15 days after their approval,

p) presents to the National Council of the Slovak Republic reports on the state of the Slovak Republic and on important political issues,

q) has the right to demand reports from the government of the Slovak Republic and its members necessary to perform its tasks,

r) appoints and recalls the judges of the Constitutional Court of the Slovak Republic, President and Vice-President of the Constitutional Court of the Slovak Republic; takes oath of the judges of the Constitutional Court of the Slovak Republic and the oath of the General Prosecutor,

s) appoints and recalls judges, Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic, General Prosecutor[76] and three members of the Judicial Council; takes oath of judges,

t) decides to mandate a government gives its consent to the exercise of its restricted powers.

President's decision issued in accordance with letters c) and j), with respect to granting an amnesty, and pursuant to letter k) is valid after it is signed by the Prime Minister of the Slovak Republic or a minister authorized by him. In such cases the Government of the Slovak Republic shall be responsible for the President's decision. This means that the Government countersignature is not as common as usually assumed by public and even some lawyers. We cannot even say that under the Constitution and the case law of the Constitutional Court the position of the President is a weak one.

Any citizen of the Slovak Republic may be elected President who can be elected to the National Council of the Slovak Republic and has reached the age of 40 on the day of elections. The President may be removed from office before the end of the term by popular vote. A public voting on recalling of the President is called by the Speaker of

[76] The Constitutional Court interpreted this power of the President to appoint the candidate for General Prosecutor elected by the National Council in decision no. PL. ÚS 4/2012 in this way: *"President of the Slovak Republic is obliged to deal with the proposal of National Council of the Slovak Republic to appoint General Prosecutor of the Slovak Republic as to Art. 150 of the Constitution of the Slovak Republic if he or she was elected by the process conform to legal order. The President is obliged to do so in the reasonable time. The President shall either appoint the nominated candidate or he/she shall announce to National Council of the Slovak Republic that he/she would not appoint the candidate.*
The President is allowed not to appoint the candidate only if he/she does not fulfil the legal requirements for appointment or because of significant matter connected with the person of the candidate which casts a reasonable doubt on ability of candidate to exercise the function in a manner that would not degrade the authority of constitutional post or the whole body, which is governed by this person or in a manner which would not be in conflict with the mission of this body if as the result of this matter the due performance of the constitutional bodies might be disrupted (Art. 101 par. 1 first sentence of the Constitution of the Slovak Republic).
The President shall present the reasons for non-appointment and those reasons must not be arbitrary." This decision had been widely criticised by the lawyers and by the public for broadening the powers of the President and hence rewriting the Constitution.

the National Council of the Slovak Republic based on the resolution of the National Council of the Slovak Republic adopted by not less than a three-fifths majority of all members of the National Council of the Slovak Republic. He must do so within thirty days from adoption the resolution so that the referendum takes place within 60 days after it has been called. The President is recalled if more than one-half of all eligible voters voted for his recall in the public voting. If the President was not recalled in the public voting, the President is obliged to dissolve the National Council of the Slovak Republic.

The President may be prosecuted only for a deliberate violation of the Constitution or high treason. An indictment is filed by the National Council before the Constitutional Court.

8.2. Government

The government consists of a President - Prime minister, Vice-Presidents and Ministers, which means that members of the government can be a person who is not the head of any ministry (i.e. so called "Minister without a chair"). The Prime Minister is appointed and dismissed by the President of the Slovak Republic. Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic can be appointed prime minister. At the proposal of the Prime Minister of the President shall appoint and recall other members of the government and entrusted them with the management of ministries.

The government is responsible for the performance of its duties to the National Council of the Slovak Republic. The National Council can pass a vote of no-confidence in it at any time. If the National Council of the Slovak Republic Government expresses distrust or rejects the proposal for a vote of confidence, the President of the Slovak Republic recalls the government.

If the President of the Slovak Republic accepts the resignation of the government, he/she shall entrust it to exercise its functions until a new government. If the President of the Slovak Republic recalls the Government which lost the confidence of the National Council, he/she empowers the Government through a decision published in the Collection of Laws, to exercise certain powers until the appointment of the new Government. These powers must fall exclusively within the scope of power to draft Acts, to decide on governmental regulations, to decide on international treaties of the Slovak Republic, the negotiation of which was transferred by the President of the Slovak Republic to the Government, to decide on appointing and recalling of other state officials in cases specified by law and three members of the Judicial Council of the Slovak Republic, to decide on a proposal for declaration of a state of war, a proposal for ordering a mobilization of armed forces, a proposal for declaration of the martial law and a proposal for their termination, on declaration and termination of the state of emergency, to decide on sending armed forces outside the territory of the Slovak Republic for the purposes of a humanitarian aid, military manoeuvres, or peace observation missions, giving consent with the presence of foreign armed forces on the territory of the Slovak Republic for the purposes of humanitarian aid, military manoeu-

vres, or peace observation missions, giving consent with the passing of foreign armed forces through the territory of the Slovak Republic and to decide on sending armed forces outside the territory of the Slovak Republic within commitments ensuing from international treaties on common defence against an attack for no more than 60 days. The government is also allowed to decide on other matter which are laid down in law as its competence. While doing so these matters are in every individual case subject to the prior consent of the President of the Slovak Republic. The same is true as to pwer to appoint and recall state officials in cases specified by law and three members of the Judicial Council of the Slovak Republic.

Member of the Government is responsible for the performance of his or her duties to the National Council of the Slovak Republic.

The government has a quorum if an absolute majority of its members is present. The government adopts resolution by a simple majority of all members of the government.

The government decides as collective body in particular on:

a) draft Acts,
b) governmental regulations,
c) the Government's program and its fulfilment,
d) principal measures concerning the implementation of the Slovak Republic's economic and social policy,
e) drafts of the state budget and the state closing account,
f) international treaties of the Slovak Republic, the negotiation of which was transferred by the President of the Slovak Republic to the Government.
g) compliance with the transfer of power to negotiate international treaties under Article 102, paragraph 1, letter a) to its individual members,
h) filing with the Constitutional Court of the Slovak Republic of a motion to decide on the compliance of a negotiated international treaty for which an approval of the National Council of the Slovak Republic is required with the Constitution and constitutional law.
i) principal questions of domestic and foreign policy,
j) submitting a draft law or some other important measure to the public for discussion,
k) requesting the passing of a vote of confidence,
l) awarding amnesty for petty offences,
m) appointing and recalling of other state officials in cases specified by law and three members of the Judicial Council of the Slovak Republic,
n) a proposal for declaration of a state of war, a proposal for ordering a mobilization of armed forces, a proposal for declaration of the martial law and a proposal for their termination, on declaration and termination of the state of emergency,
o) sending armed forces outside the territory of the Slovak Republic for the pur-

poses of a humanitarian aid, military manoeuvres, or peace observation missions, giving consent with the presence of foreign armed forces on the territory of the Slovak Republic for the purposes of humanitarian aid, military manoeuvres, or peace observation missions, giving consent with the passing of foreign armed forces through the territory of the Slovak Republic,

p) sending armed forces outside the territory of the Slovak Republic within commitments ensuing from international treaties on common defence against an attack for no more than 60 days; the Government will forthwith notify the National Council of the Slovak Republic of such decision.

q) other matters, if laid down by law.

In order to implement the laws the government may issue regulations, which are generally binding acts.

9. Judicial power

9.1. Constitutional Court of the Slovak Republic

9.1.1 The status and creation of the court

Regarding the concept of a model that should be the blueprint and inspiration for the creation of the Constitutional Court of the Slovak Republic in the Constitution of the Slovak Republic promulgated under number 460/1992 Coll. it should be noted that the draft of the Constitution of 1992 itself was created in a very short time - in a few weeks in the summer of 1992. The explanatory memorandum of the Government on the draft Constitution dealt with the Constitutional Court only in a fragmentary way. It had defined it in the general section of the memorandum as the authority which supposed to "amplify the judicial power" (p. 2 of the explanatory memorandum). In a separate part of the explanatory memorandum - the Constitutional Court of the Slovak Republic - the space of one page was devoted to the court and the memorandum identified its core competence as ensuring the compliance of legal order. As shown later in practice the hints we may get from the explanatory memorandum became a reality. The protection of human rights and freedoms and its effectiveness were not given much space to be thought oven in draft of Constitution and in Constitution itself. Conceptual model of the protection of constitutionality which had been created by the Constitution of 1992 was model of specialized and concentrated constitutional judiciary with ex post control of the compliance of legal order. Generally binding legal regulations are however not abrogated if found not be in conformity with regulations of higher legal force. They are "only" declared to be incompatible and based on the Constitution they lose their legal effectiveness. If the body who passed them does not bring them to conformity within 6 months (from declaration of inconformity) they even lose the validity.

At this point it is possible to mention that it is not customary, but rather a rarity, if the Constitutional Court sends the ruling for publication in Collection of laws shortly after the announcement of its decision. There were cases where the period between the promulgation of verdict and the publication of the whole decision with the reasoning was couple months long. The legislature even used / abused this practice of the court in such a way that it had changed the respective law even before the publication of the decision on unconstitutionality of law hence avoiding the loss of effectiveness of the unconstitutional law and its validity (namely the Act on Special Criminal Court,

which was replaced by the Act on the Specialised Criminal Court).

The ex post control of compatibility of legal order was not used in the 2001 novelisation of Constitution which among others gave the Constitutional Court the power to decide upon the compatibility of any international treaty (which had not been ratified by the SR). In this concrete power the Constitutional Court shall use the ex-ante control while checking the compliance of international treaties with the Constitution and constitutional law (an amendment to the Constitution of the Constitutional Act no. 90/2001 Coll.)

The Constitution of 1992 was inspired by a federal constitutional judiciary also in such a way that it had established a procedure for interpretation of the Constitution and constitutional laws. Only the decision on interpretation of Constitution or Constitutional Act and the decision on in/compatibility of legal regulations with the legal regulation of the higher legal force are *generally binding* under the Constitution.

It is therefore clear that the model of protection of the constitutionality in Slovakia is inspired by Hans Kelsens understanding of the role of constitutional courts. However, there are even traces of activity of the court not only as negative but also as positive legislator in the decision-making of the Constitutional Court.

The model of protection of constitutionality is closely related to the two other issues, namely (i) creation/appointment of judges and (ii) determination of the entities entitled to initiate proceedings before the Constitutional Court.

In the Slovak Republic, as in many other countries, the constitutional judiciary and constitutional judges are sometimes accused of politicization, which in turn affects the degree of legitimacy of constitutional courts.

The process of appointment of judges of Constitutional Court is in the Slovak Republic divided into four stages. In the first stage, eligible entities propose the candidates for judges of the Constitutional Court to the National Council of the Slovak Republic. Competent entities under the Act no. 38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic are (i) members of the National Council of the Slovak Republic, (ii) the Slovak Government, (iii) the President of the Constitutional Court of the Slovak Republic, (iv) the President of the Supreme Court of the Slovak Republic, (v) the General Prosecutor of the Slovak Republic, (vi) interest organisations of lawyers and (vii) scientific institutions.

In the second stage the Constitutional and Legal Committee of the National Council of the Slovak Republic checks whether the candidates fulfil the conditions laid down by the Constitution. This part starts to serve as the factual hearings of candidates but there is still an on-going controversy about what such a hearing may be a may not be performed by the Committee. Perhaps due to the fact that it is de facto the only public presentation (the candidates do not appear before the National Council during the election) of all the candidates we are inclined to believe that the Constitutional and Legal Committee is not in this position to perform only the formal role of the controller. The hearings are shortly recorded in Minutes of committee meetings and they are available on the website of the National Council. They may serve as a good source of public information about the views and knowledge of candidates. Hearings are far from detailed - usually the candidates are asked only a few questions (not more than

5) and therefore they cannot be compared with hearings of candidates for judges of Constitutional Court of the Czech Republic nominated by the President that take place before the Senate of the Czech Republic. Than they certainly cannot by compared with the hearings of the candidates for the U.S. Supreme Court justices. Of course hearing may fulfil different function in different models of protection of constitutionality.

In the third stage, the candidates are voted on by the National Council and Council's task is to make twice as number of candidates than the number of those who are to be appointed by the President. The candidates are brought to the President based on their votes, but there must always be at least a majority of votes of the present MPs.

In the fourth stage, the President alone determines who shall be appointed from nominees and he/she also appoints the President and Vice President of the Constitutional Court.

The constitutional wording did not include the time variations for judges of the Constitutional Court for example in such a way that it would determine different terms in office for the first cast of judges. This perhaps jeopardized some stabilization, consistency and "ideological" line of decisions of the Constitutional Court. This problem was however solved by the time, not by the legislator. Some judges had resigned before the end of term and the "new" ones were elected to a full term under the Constitution. Due to that there will be election of three judges of the Constitutional Court in 2014.

The issue of determining the persons/bodies entitled to file a motion with the Constitutional Court's is a repeated matter of discussion. In fact, according to the original text of the Constitution the right to initiate proceeding on compatibility of legal regulations belonged to one fifth of members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Slovak government, the court in connection with its decision-making and to the General Prosecutor. The list of competent authorities was however later on extended. But there is still not explicitly possible for natural or legal person to initiate proceedings on compatibility if he or she believes that his or her fundamental rights and freedoms are/were violated by the legal regulations itself, not by the individual act, like decision, failure to act or by other act. The Constitutional Court has repeatedly rejected such a motions stating that the parties concerned shall approach and contact the body that has a competence to initiate proceeding on compatibility and ask them to do so. However, those bodies have no obligation to do so.

Until the 1. July 2001 the individuals were able to use the so called petition in order to protect their fundamental rights and freedoms (Art. 130 par. 3 of the Constitution as applicable till 07/01/2001) and connected constitutional complaint (Article 127 of the Constitution as valid till 1/7/2001). However, based on the case law of the Constitutional Court this meant that natural and legal person were not allowed to use this motions based on alleged infringement of rights caused by a generally binding regulation. Following the amendment of the Constitution by the Constitutional Law no. 90/2001 Coll. the institute of petition had been abolished and the new complaint under Art. 127 of Constitution had been introduced. Although in theory there was suggested that through a newly conceived complaint it is possible to protect natural and legal persons against infringement of fundamental rights and freedoms even if they had been caused by a generally binding legal regulations (e.g. Jana Kvasničková as

regards to any laws or Radoslav Procházka as regards to the violation of constitutional rights resulted from the adoption of the Constitutional Act)[77] such a views, however, were not (yet) accepted by the Constitutional Court. The Court still refers the natural and legal person to concerned authorities that are explicitly authorized to initiate proceedings under the legislation – under Article 130 of the Constitution and the Act no. 38/1993 Coll. This creates a problem, however. Because even if explicitly authorized body would file the problem of incompatibility before the Constitutional Court the decision of court still has effects only in the future and on that basis it is not possible to claim the finding of a breach of fundamental rights and freedoms in the individual case, and it is not possible to award adequate financial satisfaction and/or order the restore of the state before the violation, etc. .. The laws do not solve the situation (Act no. 514/2003 Coll. on liability in the exercise of public authority and amendment of certain acts does not really address the situation within its practical application).

Some kind of connection of the complaint procedure for violations of fundamental rights and freedoms and the procedure of incompatibility had been drafted couple of times. However, it had never been passed. Undoubtedly, there is a need to solve the situation.

The process of creation of judges had not been changed since the original version of the Constitution. However, the number of judges of the Constitutional Court had been changed and their tenure had been changed too. Since 1992 till 2001 the number of judges was 10 and they were nominated for 7 years term with the possibility of reappointment. Regarding the increasing number of submissions at the end of the nineties and the extension of powers of the court by amendment to the Constitution by Constitutional Act no. 90/2001 Coll. the number of the judges had been changed. The number of judges was raised to 13 and their term was extended to 12 years without the possibility of reappointment. Some of the legal scholars claimed that there is a ban for reappointment but it is "only" the ban for repeated follow-up appointment.[78] However, it seems that most of the academia is of the opinion that there is indeed a prohibition to be appointed as a judge of the Constitutional Court twice. I am personally inclined to the second interpretation since the framers of the Constitution dealt with the prohibition of *followed-up* reappointment elsewhere in the Constitution in such a way that they had used a different wording in comparison to the one in Art. 134 par. 3. There is no reason why the framers would have not used that formulation if they wanted to communicate the same rule (e.g. Art. 103 par. 2 of the Constitution and other provisions containing words "two consequent/consequent terms/periods"). Relevant dispute, however, did not appear in practice yet, given that the term of office of the judges appointed to the first 12 years based on the 2001 constitutional amendment had not yet expired. This does not mean that such a dispute would not arise in future.

The conditions that a citizen appointed as judge of the Constitutional Court needs

[77] See Procházka, Radoslav. Ľud a sudcovia v konštitučnej demokracii. Aleš Čeněk : Plzeň, 2012, p. 43-47; Kvasničková, J. Skryté možnosti konania o súlade právnych predpisov. In: Justičná revue 1/1999, p. 2

[78] This view had been expressed e.g. by Drgonec in DRGONEC, J,: *Ochrana ústavnosti Ústavným súdom Slovenskej republiky*. Žilina: Eurokódex, 2010.p. 257-258.

to fulfil have not changed since the adoption of the Constitution in 1992. According to Art. 134, par. 3 of the Constitution: "*Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic, has reached the age of 40, is a law school graduate and has been practicing law for at least 15 years may be appointed judge of the Constitutional Court.*" Removal from the office of a judge of the Constitutional Court is regulated in Art. 138 of the Constitution so that "*The President of the Slovak Republic recalls a judge of the Constitutional Court (i) on the basis of the effective court decision by which he was sentenced for a deliberate criminal act, or by which he was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence, (ii) on the basis of a disciplinary decision by the Constitutional Court passed because of a deed that is incompatible with the execution of the post of a judge of the Constitutional Court, (iii) if the Constitutional Court declares that the judge has not been participating in Constitutional Court proceedings for over a year, or (iv) if he ceases to be eligible to be elected to the National Council of the Slovak Republic.*" The dispute over the interpretation of this provision arose in the case of judge Horváth. Matter of fact, the Constitution does not explicitly state a condition like criminal impeccability or probity of the person - candidate for appointment as a judge of the Constitutional Court - although such a requirement must be met in case of judges of ordinary courts. The judge Horváth was found (some years after his appointment) to have been previously convicted and sentenced of a tax crime which he had committed before his appointment. Some lawyers saw it as a reason for the removal from the office by President SR based on the abovementioned wording of Constitution. The others considered the condition of probity to be implicitly present in Art. 134 of the Constitution while arguing that the interpretation to be used shall be *a minori ad maius* (if judges of ordinary courts must be impeccable the more judges of the Constitutional Court must be impeccable). The President did not remove judge Horváth form his office, but proponents of the arguments *a minori ad maius* claim that judge Horváth is not a lawful judge of the Constitutional Court. Some lawyers even use this argument when being the party of a dispute before the Constitutional Court (e.g. Štefan Harabin, currently the President of the Supreme Court).

Let us not forget to add that the judges of the Constitutional Court are assisted by their legal advisors (currently two full term advisors per one judge).

9.1.2 The types of procedures before the court and its doctrines

Based on the Constitution the Constitutional Court decides upon the conformity of laws of lower legal force with superior legislation (Article 125 of the Constitution), conformity of international treaties that were not yet ratified with Constitution and constitutional laws (Article 125a of the Constitution), the conformity of the subject of a referendum with the Constitution and constitutional laws (Article 125b Constitution), the conflicts of jurisdiction (Article 126 of the Constitution), complaints of natural and legal persons (Article 127 of the Constitution), the municipal complaints (Article 127a of the Constitution), the interpretation of the Constitution and constitutional laws (Article 128 of the Constitution), the complaint against the decision to verify or not to verify the mandate of the MP, on the constitutionality and legality of the election of the Pres-

ident of the Slovak Republic, the elections to the National Council of the Slovak Republic, the elections to municipal and European Parliament elections, on complaints filed against the results on the public voting on recalling of the President, on whether the decision to dissolve or to suspend the activities of a political party or political movement is in conformity with constitutional and other laws, on high treason charges, or charges of deliberate violation of the Constitution, filed by the National Council of the Slovak Republic against the President of the Slovak Republic and upon whether a decision on declaration of the martial law, or the state of emergency, and relating decisions were issued in compliance with the Constitution or constitutional laws (all of them in the Article 129 of the Constitution).

As the text of the Constitution is annexed to this textbook I would only outline the procedure before the Constitutional Court and some of the doctrines of the Constitutional Court.

Procedure before Constitutional Court starts when the motion is delivered to the Constitutional Court. Once registered, the motion is assigned (by the random means of selection) to one of the judges of the Constitutional Court, who becomes the Judge-Rapporteur. The judge considers the matter and submits the draft of decision as to acceptability[79] of the motion to the Panel of 3 judges or the Plenum – Panel of all the judges. The relevant body decides on the acceptability of the matter on a preliminary hearing that is not public and parties shall not be present at the hearing. The motion may be dismissed if:

- the Constitutional Court lacks the jurisdiction over the matter – i.e. the matter is outside of scope of authority of the Constitutional Court,
- the motion is filed by manifestly unauthorized person,
- the motion does not meet the statutory requirements (as to the Act no. 38/1993 Coll.),
- the motion is inadmissible – i.e. (i) if matter had been already decided by the Constitutional Court and (ii) if the applicant seeks the review of the decision of the Constitutional Court,
- the motion had not been filed within the time specified by the law (i.e. by the Act no. 38/1993 Coll.)
- the motion is manifestly ill founded.[80]

If the motion is not dismissed the rapporteur shall draft the decision as to merits of the case. The judges then discuss the draft, perhaps they direct the rapporteur to change the draft or prepare also the contra-draft. The public hearing is held as a rule, the only exemption is the case where both parties agree not to have the public hear-

[79] This concept is similar to the concept of admissibility; however under current Slovak law the concept of admissibility is narrower than concept of acceptability.

[80] See § 24 and § 25 of the Act no. 38/1993 Coll. on organisation of the Constitutional Court on procedure before it and on status of its judges (so called "Act on Constitutional Court").
Based on the § 23a of this act the Judge-Rapporteur may cast aside the motion if he/she finds out that the motion is not the proposal resp. petition for start of the procedure before the Constitutional Court.

ing. While voting on the merits of the case the applicant may be fully satisfied, partially satisfied or the motion may be rejected (dismissed as to merits). The Constitution states that the plenary meeting of the Constitutional Court decides by more than one-half of all judges and if such majority is not reached, the motion is rejected. It means that the motion may be rejected as to merits even because of procedural reasons (no majority was reached). Some scholars believe that such a situation is in fact bizarre and the more bizarre is if its results are regulated by the Constitution itself. The effects of rejection of the motion are regulated differently in specific types of procedures before the Constitutional Court.

As part of its decision-making activities the Constitutional Court has defined a number of doctrines. The main are:

1. Doctrine of subsidiarity - when the Constitutional Court finds and claims that it is in principle neither entitled to review decisions of the ordinary courts and to replace their assessment of the evaluation of evidence with own assessment nor it is entitled to substitute theirs legal opinion with its own legal opinion. The Constitutional Court performing such self-restraint holds that the authority to review the decision of the court and to replace the court's interpretation of law, facts, etc. is possible only if the decision of the court is arbitrary and the same time it is violating the fundamental rights and freedoms. The Constitutional Court then created some doctrine as to what does arbitrariness means. As to the Constitutional Court the decision is arbitrary e.g. if the interpretation of the law performed by the state authority does not respect the spirit of the interpreted law, its aims and goals, or if the factual findings of the state authority (court) are in significant tension with the legal assessment and outcome of the case as exhibited in decision. In practice, however, it seems that the Constitutional Court will proceed with the review of the decision even when considered interpretation of the law is not arbitrary but "only" if it does not appear to be conform to the Constitution. Therefore in our view this doctrine is corrected or balanced by other doctrines. (See and compare II. ÚS 230/09 and I. ÚS 231/2010). To be honest, the Constitutional Court does not really apply this doctrine consistently and this doctrine sometimes perhaps serves as the hardly foreseeable measure for selection of decisions for review in a manner of U.S. Supreme court right to choose the matter for judicial scrutiny.

2. Doctrine of minimisation of interference with the powers of other bodies (version of judicial self-restriction) – by application of this doctrine the Constitutional Court assesses which of its intervention in order to protect constitutionality will be the smallest one and it would still reach the goal. The idea is to use the minimal interference into powers and competences of other bodies. This doctrine involves also the doctrine of political questions or the principle that if there is the interpretation of an impugned legal provision that not in conformity with the Constitution and the one that is in conformity with the Constitution (although it is not used in practice), the Constitutional Court shall not abolish the law but it shall point to the existence of such a conforming interpretation. The latter principle may e.g. limit the interference into the powers of legislator (see and compare IV. ÚS 303/04 and PL. ÚS 17/08).

3. Doctrine of interpretation in conformity with Constitution - this doctrine had been partially described above. Anyway, it is quite clear that the doctrine is not explic-

itly present in the Constitution, as Article 152 par. 4 of the Constitution, which is sometimes considered to be its basis, belongs to Transitional and final provisions. Hence as to the systematic context it does not apply to current legislation but to legislation that was in force before 1. September 1992.

4. doctrine of substantive Rule of Law - Constitutional Court usually uses this doctrine on order to withdraw from the strict resp. literal interpretation of the wording of the law in order to avoid formalism.

5. doctrine of proportionality - the assessment of the proportionality is sometimes carried out in three typical steps (suitability, necessity and proportionality in the strict sense), similar to the test in a way it operates in other western democracies. Sometimes the Constitutional Court relies on the intuition of a reader and it just claims that interference is dis/proportionate or even manifestly dis/proportionate.

9.2 Ordinary judiciary

Constitutional wording constitutes "only" very general framework of the ordinary judiciary. This is caused by the fact that in 1992 the framers of the Constitution wanted to leave some more space for legislator to regulate the organization of the judiciary and to optimize judicial system.

According to the Constitution, the judiciary in the Slovak Republic is administered by independent and impartial courts. Legal scholars and the courts had developed the concept of impartiality and independence so that they are divided into personal guarantees (related to the person of judge) and institutional guarantees (related to the judicial system, its organization and management). In order to strengthen the institutional aspects of judicial independence, in 2001 the Judicial Council of the Slovak Republic (hereinafter "Judicial Council") had been enshrined into Constitution by the Constitutional amendment. The Constitutional Court later on defined this body as *sui generis* authority which exercises both judicial self-administration and the state administration (the Judicial Council received some powers that used to behave to Minister of Justice) (see I. ÚS 62/06).

The independence of the judiciary is secured by institutional and personal means e.g. by administration of judiciary independently of other state bodies, specific process of creation of judges through several stages, financial security provided to judges – i.e. payment, etc., judicial immunity, where the previous consent to prosecute the judge must be provided by the Constitutional Court, judges have the relative non-transferability, there is an incompatibility of judicial office with other functions, etc.

As to the guarantees of judicial independence guarded by the financial security of judges the Constitutional Court has repeatedly reviewed the compatibility of changes in the financial security of judges with the Constitution. According to case law of the Constitutional Court of the Slovak Republic (e.g. PL. ÚS 52/99 and PL. ÚS 12/05) and case law of the Constitutional Court of the Czech Republic (e.g. Pl. ÚS 12/10, Pl. ÚS 13/08, Pl. ÚS 11/02 respectively other saga decisions so called salaries of judges I to salaries of judges XI), there is no doubt that it is possible to restrict - lower or "freeze" - salaries of judges from the side of legislator in a way that is compatible with Constitu-

tional guarantees of judicial independence. The restrictions in the modality of "salary freeze", the failure to pay "other" salary (i.e. 13.-th and 14-th salary) or the reduction of salaries of all the judges is compatible with Constitution under certain conditions. These conditions are:

- exceptionality and rarity of interference into financial security of a judge (i.e. including the salary of a judge) (explicitly in decision of the Constitutional Court of the Czech Republic no. Pl. ÚS 12/10 and others),
- legitimacy of interference, i.e. action must not be arbitrary (explicitly in decision of the Constitutional Court of the Slovak Republic no. PL. ÚS 52/99),
- proportionality of the interference (explicitly in decision of the Constitutional Court of the Slovak Republic no. PL. ÚS 52/99),
- non-discrimination of the interference that is related to the proportionality of the interference (explicitly in decision of the Constitutional Court of the Slovak Republic no. PL. ÚS 52/99).

Towards the principle of impartiality of judges we can note that it is evaluated both from a subjective point of view and also from an objective point of view. This is an instrument that aims to ensure a fair and just decision and a fair decision is the one that *appears* to be fair. We have therefore two levels of reference. The first level in which the fair and just decision it is to be ensured the justice is assessed and compared to compatibility with the law, respectively "above the law" justice. Then the core idea is to ensure that someone who has some interest in the matter (he or she has a relationship to parties in dispute, their lawyers, s/he has a pre-knowledge of the matter etc.) shall not be the judge in the case because he or she would not look for a fair and just decision – he or she would rather look for satisfaction of his or her interest. There is a high threat that sensibility towards matter or parties or their representatives etc. would win over the sense (perhaps even in a manner of the famous Jane Austen's book). I.e. the decision as to its merits resp. as to its substance would not correspond as to what should had happened as to the law – i.e. as to how the case should have been decided as to the law.

On the second level the appearance of justice, whether the justice is seen to be done indeed, is at stake. Hence at the same time the authority of the respective decision and hence the authority of the judiciary *per se* is at stake. Thus it is not at all about whether or not the decision will correspond to the law, to what should have been as to the law etc. The idea behind this layer of impartiality is here that if I have doubts about the decision making process, about the arbiter of the matter, then I have doubts about the outcome, about the decision. The authority is quite magical word because it is self somehow magical – it is based on the belief (or a trust resp. faith - the word "faith" has no religious connotations in this context). The entire legitimacy of the law is in fact based on the belief that the law exists, that it binds us and that it governs us. If the judicial decisions do not have the authority the possibility to execute them is lower, legitimacy of the law itself decreases as well as the belief in the law accompanied by the society's willingness to abide by the law. What makes the coloured paper to be the money is the belief that they are the money. Such a belief is held socially by repeated reinforcement of the belief whenever we use coloured piece of paper to buy something as the obligation is successfully concluded and fulfilled. The characteristic

that makes the decision to be fair and just on this second level is therefore not its correspondence with the requirement of justice, as I have already mentioned above, but the *belief/ trust* that the decision is fair and just. Here we have a question – whose belief in the law and justice "holds" the decision? The Constitutional Court has already provided the answer in decision no. III. ÚS 158/08 as it had referred to decision of ECHR in case Padovani v. Italy of 26. February 1993. In this (among many other decisions) ECHR claimed that what is at stake in the evaluation of impartiality from objective site in this way: "*What is at stake is the confidence which the courts in a democratic society must inspire in the public (...).*". Thus the one whose trust and belief in the decision should be held is not only the party in dispute but the public as such.

Courts decide on civil law and criminal law matters; examine the lawfulness of public administration bodies' decisions and lawfulness of decisions, measures, or other acts of the public authority bodies, if so laid down by law. The courts decide in panels of judges unless the law determines that the matter is to be decided by a single judge. A law shall lay down in which cases the panels of judges are attended by accessory judges from the ranks of citizens and which matters may be decided also by a court's employee authorized by a judge. The verdicts are proclaimed in the name of the Slovak Republic and always publicly.

Under the Constitution the judicial system consists of the Supreme Court of the Slovak Republic and other courts. As I already mentioned, the wording of the Constitution as to the system of judiciary is very brief and the legislator was provided wide "space" for his model of judiciary at the level of laws. The Act on courts specifies also district courts and regional courts while the district courts are created as mainly courts of the first instance and regional courts as courts of the second instance. The separate law had established "Special court" that was later on transformed (or more of a renamed) into "Specialized criminal court". That court has a jurisdiction over specially identified crimes e.g. assassination, or over groups of crimes e.g. felonies carrying a custodial penalty of more than 8 years under the Criminal Code if they were committed by the extremist group of terrorist group, etc..

Applicants for the position of a judge must comply with the constitutional conditions and conditions laid down by the law which are mainly: (i) citizenship of the Slovak Republic, (ii) age of at least 30 years, (iii) graduation at law faculty in at least master degree, (iv) moral capability to hold the position, (iv) suitable health condition to exercise the function, (v) successfully passed judicial exam or similar exam where permitted by law. The applicant must apply to the selection procedure that is called in case of vacant judicial post. If the candidate is successful the Chairman of the Selection Committee proposes the nomination of such a candidate to the Judicial Council of the Slovak Republic ("Judicial Council") through its President. Then the Judicial Council decides upon such a proposal and if the candidate gets sufficient votes the Judicial Council sends proposal the appointment of the candidate to the President of the Slovak Republic. President then appoints the candidate, but it is not sure whether it is his or her obligation as there is not case law on this matter. Judges are appointed for life.

The Judicial Council is seen as a body that shall protect independency of judiciary and it had been established in many post-communistic countries. It consists of the President and other members. Overall, the Judicial Council has 18 members. President

of the Judicial Council is the President of the Supreme Court of the Slovak Republic.

Its other members are:

- eight judges elected and recalled by the judges of the Slovak Republic,
- three members elected and recalled by the National Council of the Slovak Republic,
- three members appointed and recalled by the President of the Slovak Republic,
- three members appointed and recalled by the Government of the Slovak Republic.

A member of the Judicial Council, which is a representative of the Government, Parliament or President, must be irreproachable and he or she must have completed university law degree and he or she must have at least 15 years of professional experience. The term of office of members of the Judicial Council of the Slovak Republic is five years.

The scope of the powers of Judicial Council are mainly the right to (i) submit to the President of the Slovak Republic names of candidates proposed to be appointed judges and names of judges to be removed, (ii) decide on assignment and transfer of judges, (iii) submit to the President of the Slovak Republic proposals to appoint the President of the Supreme Court of the Slovak Republic and a Deputy Chief Justice of the Supreme Court and proposals for their recall, (iv) submit to the Government of the Slovak Republic proposals of candidates for judges who should represent the Slovak Republic in international judicial bodies, (v) elect and remove members of disciplinary senates and elect and remove chairmen of disciplinary senates and (vi) comment on a draft budget of the Slovak Republic courts in the process of drafting of the state budget.

Many changes as to organisation of the judiciary were performed in 2010 and 2011 and they are now the subject of review by the Constitutional Court. The applicants (group of MPs and General prosecutor) mainly claim the alleged non-compliance of the new legal regulation with the principle of judicial independence. We will see how the case ends.

Constitution of the Slovak Republic Act No. 460/1992 Coll.[81]

- **as amended by the constitutional Acts published under No**.: 244/1998 Coll., 9/1999 Coll., 90/2001 Coll., 140/2004 Coll., 323/2004 Coll., 463/2005 Coll., 92/2006 Coll., 210/2006 Coll, 100/2010 Coll., 356/2011 Coll. and 232/2012 Coll.

Preamble

We, the Slovak nation, bearing in mind the political and cultural heritage of our ancestors and the centuries of experience from the struggles for national existence and our own statehood, mindful of the spiritual heritage of Cyril and Methodius and the historical legacy of Great Moravia, recognizing the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic, in the interest of lasting peaceful cooperation with other democratic states, seeking the application of the democratic form of government, guarantees of a free life, development of spiritual culture and economic prosperity, that is, we, the citizens of the Slovak Republic, adopt through our representatives this Constitution:

CHAPTER ONE

Part One - Basic Provisions

Article 1

(1) The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not linked to any ideology, nor religion.

(2) The Slovak Republic recognises and honours general rules of international law, international treaties by which it is bound and its other international obligations.

Article 2

(1) State power originates from citizens, who exercise it through their elected representatives, or directly.

(2) State bodies may act only on the basis of the Constitution, within its limits, and to the extent and in a manner which shall be laid down by law.

(3) Everyone may do what is not prohibited by law and no one may be forced to do

[81] This translation of the Constitution is modified, corrected and amended translation of the Constitution as published on the website of the Constitutional Court of the Slovak Republic.

anything that is not prescribed by law.

Article 3

(1) The territory of the Slovak Republic is united and indivisible.
(2) The borders of the Slovak Republic may be changed only by a constitutional Act.

Article 4

Natural wealth, caves, underground water, natural medicinal springs, and waterways are in the ownership of the Slovak Republic.

Article 5

(1) Conditions for the acquisition and loss of the citizenship of the Slovak Republic shall be laid down by law.
(2) No one may be deprived of the citizenship of the Slovak Republic against his/her will.

Article 6

(1) The state language on the territory of the Slovak Republic is the Slovak language.
(2) The use of languages other than the state language in official communications shall be laid down by law.

Article 7

(1) The Slovak Republic may enter into a state union with other states upon its free decision. The decision on entering into a state union with other states, or on withdrawal from this union, shall be made by a constitutional Act which must be confirmed by a referendum.
(2) The Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union. Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be executed by law or a government ordinance pursuant to Article 120, paragraph 2.
(3) The Slovak Republic may, with the aim of maintaining peace, security and democratic order, under the terms laid down by an international treaty, join an organisation of mutual collective security.
(4) In order for any international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing the membership of the Slovak Republic in international organizations, international economic treaties of general nature, international treaties whose execution requires a law and international treaties which directly constitute rights or obligations of natural persons or legal persons to be valid, an approval of the National Council of the Slovak Republic is required prior to their ratification.
(5) International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified

and promulgated in a manner laid down by law shall have primacy over the laws.

Article 7a

The Slovak Republic supports the national awareness and cultural identity of the Slovaks living abroad; it supports their institutions established to achieve this purpose and their relations with the mother country.

Part Two - Symbols of the State

Article 8

The state symbols of the Slovak Republic are the state coat of arms, the national flag, the state seal and the national anthem.

Article 9

(1) The state coat of arm of the Slovak Republic is a red early Gothic shield featuring a silver double cross erected on the central, slightly raised hill of three blue hills.

(2) The national flag of the Slovak Republic consists of three horizontal bands - white, blue and red. The left half of the national flag of the Slovak Republic features the state emblem of the Slovak Republic.

(3) The state seal of the Slovak Republic is formed by the state emblem of the Slovak Republic encircled by the inscription "Slovenská republika" [the Slovak Republic].

(4) The national anthem of the Slovak Republic consists of the first two stanzas of the song "Nad Tatrou sa blýska".

(5) Details on the state symbols and their use shall be laid down by law.

Part Three - The Capital of the Slovak Republic

Article 10

(1) The capital of the Slovak Republic is Bratislava.

(2) The status of Bratislava as the capital of the Slovak Republic shall be laid down by law.

CHAPTER TWO - BASIC RIGHTS AND FREEDOMS

Part One - General Provisions

Article 11

Repealed.

Article 12

(1) People are free and equal in dignity and in rights. Basic rights and freedoms are inviolable, inalienable, imprescriptible, and indefeasible.

(2) Basic rights and freedoms on the territory of the Slovak Republic are guaranteed to

everyone regardless of sex, race, colour of skin, language, faith and religion, political, or other thoughts, national or social origin, affiliation to a nation, or ethnic group, property, descent, or any other status. No one may be harmed, preferred, or discriminated against on these grounds.

(3) Everyone has the right to freely decide on his nationality. Any influence on this decision and any form of pressure aimed at suppressing of anyone's nationality are forbidden.

(4) No one may be harmed in his rights for exercising of his basic rights and freedoms.

Article 13

(1) Duties may be imposed

a) by an Act or on the basis of an Act, within its limits, and while complying with basic rights and freedoms,

b) by international treaty pursuant to Article 7, paragraph 4 which directly establishes rights and obligations of natural persons or legal persons, or

c) by government ordinance pursuant to Article 120, paragraph 2.

(2) Limits to basic rights and freedoms may be set only by law under conditions laid down in this Constitution.

(3) Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions.

(4) When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose.

Part Two - Basic Human Rights and Freedoms

Article 14

Everyone has the capacity to have rights.

Article 15

(1) Everyone has the right to life. Human life is worth of protection already before birth.

(2) No one may be deprived of life.

(3) Capital punishment is not permitted.

(4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law.

Article 16

(1) The inviolability of the person and its privacy is guaranteed. It may be limited only in cases laid down by law.

(2) No one may be tortured, or subjected to cruel, inhuman, or humiliating treatment or punishment.

Article 17

(1) Personal freedom is guaranteed.

(2) No one may be prosecuted or deprived of freedom other than for reasons and in

a manner which shall be laid down by law. No one may be deprived of freedom solely because of his inability to fulfil a contractual obligation.

(3) A person accused or suspected of a criminal act may be detained only in cases laid down by law. The detained person must be immediately informed of the reasons for the detainment, questioned and within 48 hours either released or handed over to the court. The judge must question the detained person and decide on his custody or release within 48 hours and in particularly serious crimes within 72 hours from the hand over.

(4) An accused person may be arrested only on the basis of a written, substantiated order of a judge. The arrested person must be handed over to the court within 24 hours. The judge must question the arrested person and decide on his custody or release within 48 hours and in particularly serious crimes within 72 hours from the hand over.

(5) A person may be taken into custody only for reasons and for a period laid down by law and on the basis of a court ruling.

(6) The law shall lay down in which cases a person can be admitted to, or kept in, institutional health care without his consent. Such a measure must be reported within 24 hours to the court which will then decide on this placement within five days.

(7) The mental state of a person accused of a criminal act may be examined only on the basis of a written court order.

Article 18

(1) No one may be subjected to forced labour, or services.

(2) The provision of paragraph 1 does not apply to

a) work assigned according to law to persons serving a prison sentence or persons serving other sentence substituting a prison sentence,

b) military service or other service laid down by law in lieu of compulsory military service,

c) services required on the basis of the law in the event of natural disasters, accidents, or other dangers posing a threat to life, health, or property of great value,

d) activities prescribed by law to protect life, health, or the rights of others,

e) small community services on the basis of the law.

Article 19

(1) Everyone has the right to the preservation of human dignity, personal honour, reputation and the protection of good name.

(2) Everyone has the right to protection against unauthorized interference in private and family life.

(3) Everyone has the right to protection against unauthorized collection, publication, or other misuse of personal data.

Article 20

(1) Everyone has the right to own property. The ownership right of all owners has the same legal content and protection. Inheritance is guaranteed. Any property acquired inconsistently with the legal system, does not enjoy protection.

(2) The law shall lay down which property, other than property specified in Article 4 of this Constitution, necessary to ensure the needs of society, the development of the

national economy and public interest, may be owned only by the state, municipality, or designated legal persons. The law may also lay down that certain things may be owned only by citizens or legal persons resident in the Slovak Republic.

(3) Ownership is binding. It may not be misused to the detriment of the rights of others, or in contravention with general interests protected by law. The exercising of the ownership right may not harm human health, nature, cultural monuments and the environment beyond limits laid down by law.

(4) Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation.

(5) Other interference with ownership rights may be permitted only if the property was acquired in an unlawful manner or from means acquired illegally and if such measure is necessary in a democratic society to protect national security, public order, morals or the rights and freedoms of others. Details will be laid down by law.

Article 21

(1) A person's home is inviolable. It may not be entered without the resident's consent.

(2) A house search is admissible only in connection with criminal proceedings and only on the basis of a written, substantiated order of the judge. The method of carrying out a house search shall be laid down by law.

(3) Other infringements upon the inviolability of one's home may be permitted by law only if it is necessary in a democratic society in order to protect people's lives, health, or property, to protect the rights and freedoms of others, or to prevent a serious threat to public order. If the home is used also for business, or to perform other economic activity, such infringements may be permitted by law also when this is necessary in the discharge of the tasks of public administration.

Article 22

(1) The privacy of letters and secrecy of mailed messages and other written documents and the protection of personal data is guaranteed.

(2) No one may violate the privacy of letters and the secrecy of other written documents and records, whether they are kept in privacy, or sent by mail or in any other way, with the exception of cases which shall be laid down by law. Equally guaranteed is the secrecy of messages conveyed by telephone, telegraph, or other similar means.

Article 23

(1) Freedom of movement and right of abode are guaranteed.

(2) Everyone who is rightfully staying on the territory of the Slovak Republic has the right to freely leave this territory.

(3) Freedoms under paragraphs 1 and 2 may be restricted by law, if it is necessary for the security of the state, to maintain public order, protect the health and the rights and freedoms of others, and, in designated areas, also in the interest of environmental protection.

(4) Every citizen has the right to freely enter the territory of the Slovak Republic. A citizen may not be forced to leave the homeland and may not be deported.

(5) A foreign national may be deported only in cases laid down by law.

Article 24

(1) The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express his thoughts.

(2) Everyone has the right to freely express religion, or faith alone or together with others, privately or publicly, by means of religious services, religious acts, by observing religious rites, or to participate in the teachings thereof.

(3) Churches and religious communities administer their own affairs; in particular, they constitute their own bodies, appoint their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

(4) Conditions for exercising of rights under paragraphs 1 to 3 may be limited only by law, if such a measure is necessary in a democratic society to protect public order, health, morals, or the rights and freedoms of others.

Article 25

(1) The defence of the Slovak Republic is a duty and a matter of honour for citizens. The law shall lay down the scope of the compulsory military service.

(2) No one may be forced to perform military service if it is against his conscience or religious creed. Details will be laid down by law.

Part Three - Political Rights

Article 26

(1) The freedom of speech and the right to information are guaranteed.

(2) Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to approval procedures. Enterprise in the fields of radio and television may be subject to the awarding of an approval from the state. The conditions shall be laid down by law.

(3) Censorship is banned.

(4) The freedom of speech and the right to seek out and disseminate information may be restricted by law, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, state security, public order, or public health and morals.

(5) Public authority bodies are obliged to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution shall be laid down by law.

Article 27

(1) The right of petition is guaranteed. Everyone has the right, alone or with others, to address requests, proposals, and complaints to state bodies and territorial self-administration bodies in matters of public or other common interest.

(2) A petition must not call for the violation of basic rights and freedoms.
(3) A petition must not interfere with the independence of a court.

Article 28

(1) The right to peaceful assemble is guaranteed.
(2) Conditions for exercising this right shall be laid down by law in the event of assemblies in public places, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, public order, health and morals, property, or the security of the state. An assembly may not be made conditional on the issuance of an authorization by a state administration body.

Article 29

(1) The right to freely associate is guaranteed. Everyone has the right to associate with others in clubs, societies, or other associations.
(2) Citizens have the right to establish political parties and political movements and to associate in them.
(3) The exercising of rights under paragraphs 1 and 2 may be restricted only in cases laid down by law, if it is necessary in a democratic society for reasons of state security, to protect public order, to prevent criminal acts, or to protect the rights and freedoms of others.
(4) Political parties and political movements, as well as clubs, societies, or other associations are separated from the state.

Article 30

(1) Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives. Foreigners with a permanent residence on the territory of the Slovak Republic have the right to vote and be elected in the self-administration bodies of municipalities and self-administration bodies of regions.
(2) Elections must be held within deadlines not exceeding the regular electoral period as laid down by law.
(3) The right to vote is universal, equal, and direct and is carried out by secret ballot. Conditions for exercising the right to vote shall be laid down by law.
(4) Citizens have access to the elected and other public posts under the same conditions.

Article 31

The legal regulation of all political rights and freedoms and their interpretation and use must enable and protect a free competition of political forces in a democratic society.

Article 32

Citizens have the right to put up resistance against anyone who would eliminate the democratic order of basic human rights and freedoms listed in this Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible.

Part Four - The Rights of National Minorities and Ethnic Groups

Article 33

Membership in any national minority, or ethnic group, must not be to anyone's detriment.

Article 34

(1) The comprehensive development of citizens belonging to national minorities or ethnic groups in the Slovak Republic is guaranteed, particularly the right to develop their own culture together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to establish and maintain educational and cultural institutions. Details shall be laid down by law.

(2) In addition to the right to master the state language, citizens belonging to national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed

a) right to education in their own language,

b) right to use their language in official communications,

c) right to participate in the decisions on affairs concerning national minorities and ethnic groups.

(3) The exercise of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution may not lead to jeopardizing of the sovereignty and territorial integrity of the Slovak Republic, and to discrimination against its other inhabitants.

Part Five - Economic, social, and cultural rights

Article 35

(1) Everyone has the right to a free choice of profession and to training for it, as well as the right to engage in entrepreneurial or other gainful activity.

(2) Conditions and restrictions with regard to the execution of certain professions or activities may be laid down by law.

(3) Citizens have the right to work. The state shall materially and to an appropriate extent provide for citizens who are unable to exercise this right through no fault of their own. The conditions shall be laid down by law.

(4) A different regulation of rights listed under paragraphs 1 to 3 may be laid down by law for foreign nationals.

Article 36

Employees have the right to just and satisfying working conditions. The law guarantees, above all

a) the right to remuneration for work done, sufficient to ensure them a dignified standard of living,

b) protection against arbitrary dismissal and discrimination at the work place,

c) labour safety and the protection of health at work,

d) the longest admissible working time,
e) adequate rest after work,
f) the shortest admissible period of paid leave,
g) the right to collective bargaining.

Article 37

(1) Everyone has the right to freely associate with others in order to protect his economic and social interests.

(2) Trade union organizations are established independently of the state. It is inadmissible to limit the number of trade union organizations, as well as to give some of them a preferential status in an enterprise or a branch of the economy.

(3) The activity of trade union organizations and the founding and operation of other associations protecting economic and social interests can be restricted by law, if such measure is necessary in a democratic society to protect the security of the state, public order, or the rights and freedoms of others.

(4) The right to strike is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.

Article 38

(1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work, as well as to special working conditions.

(2) Minors and persons with impaired health are entitled to special protection in labour relations as well as to assistance in professional training.

(3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 39

(1) Citizens have the right to adequate material provision in old age, in the event of work disability, as well as after losing their breadwinner.

(2) Everyone who is in material need is entitled to assistance necessary to ensure basic living conditions.

(3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 40

Everyone has a right to the protection of health. Based on public insurance, citizens have the right to free health care and to medical supplies under conditions which shall be laid down by law.

Article 41

(1) Marriage, parenthood and the family are under the protection of the law. The special protection of children and minors is guaranteed.

(2) Special care, protection in labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy.

(3) Children born in and out of wedlock enjoy equal rights.

(4) Child care and upbringing are the rights of parents; children have the right to pa-

rental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law.

(5) Parents caring for children are entitled to assistance from the state.

(6) Details concerning rights under paragraphs 1 to 5 shall be laid down by law.

Article 42

(1) Everyone has the right to education. School attendance is compulsory. Its period and age limit shall be laid down by law.

(2) Citizens have the right to free education at primary and secondary schools and, depending on their abilities and society's resources, also at higher educational establishments.

(3) Schools other than state schools may be established, and teaching in them provided, only under conditions laid down by law; education in such schools may be provided for a payment.

(4) A law shall lay down conditions under which citizens are entitled to assistance from the state in their studies.

Article 43

(1) Freedom of scientific research and in art is guaranteed. The rights to the results of creative intellectual activity are protected by law.

(2) The right of access to the cultural heritage is guaranteed under conditions laid down by law.

Part Six - The Right to the Protection of the Environment and the Cultural Heritage

Article 44

(1) Everyone has the right to a favourable environment.

(2) Everyone is obliged to protect and enhance the environment and the cultural heritage.

(3) No one may endanger, or damage the environment, natural resources, and the cultural heritage beyond the extent laid down by law.

(4) The state oversees a cautious use of natural resources, ecological balance, and effective environmental care, and provides for the protection of specified species of wild plants and animals.

(5) The details of the rights and obligations according to paragraphs 1 to 4 shall be laid down by law.

Article 45

Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition.

Part Seven - The right to judicial and other legal protection

Article 46

(1) Everyone may claim his right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic.

(2) Anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision reviewed, unless laid down otherwise by law. The reviewed of decisions concerning basic rights and freedoms must not, however, be excluded from the competence of the courts.

(3) Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administrative body, or as a result of an incorrect official procedure.

(4) Conditions and details concerning judicial and other legal protection shall be laid down by law.

Article 47

(1) Everyone has the right to refuse to testify if, by doing so, he/she might bring on the risk of criminal prosecution of himself/herself or a close person.

(2) Everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law.

(3) All participants are equal in proceedings according to paragraph 2.

(4) Anyone who declares that he/she does not have a command of the language in which the proceedings under paragraph 2 are conducted, has the right to an interpreter.

Article 48

(1) No one must be removed from his assigned judge. The jurisdiction of the court shall be laid down by law.

(2) Everyone has the right to have his case tried in public, without undue delay, and in his presence and to deliver his opinion on all pieces of evidence. The public can be excluded only in cases laid down by law.

Article 49

Only the law shall lay down which conduct constitutes a criminal act, and what punishment, or other forms of deprivation of rights, or property, may be imposed for its commitment.

Article 50

(1) Only the court decides on guilt and punishment for criminal acts.

(2) Everyone against whom a criminal proceeding is conducted is considered innocent until the court establishes his guilt by a legally valid verdict.

(3) The accused has the right to be granted the time and opportunity to prepare his defence, and to defend himself either alone or through a defence counsel.

(4) The accused has the right to refuse to testify; this right may not be denied in any

way.

(5) No one may be criminally prosecuted for an act for which he has already been sentenced, or of which he has already been acquitted. This principle does not rule out the application of extraordinary remedies in compliance with the law.

(6) Whether any act is criminal is assessed, and punishment is determined, in accordance with the law valid at the time when the act was committed. A more recent law is applied, if it is more favourable for the perpetrator.

Part Eight - Common provisions for chapters one and two

Article 51

(1) The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions.

(2) The conditions and scope of limitations of the basic rights and freedoms during war, under the state of war, martial state and state of emergency shall be laid down by the constitutional law.

Article 52

(1) Wherever the term "citizen" is used in Chapters One and Two of this Constitution, this is understood to mean a citizen of the Slovak Republic.

(2) Foreign nationals enjoy in the Slovak Republic basic human rights and freedoms guaranteed by this Constitution, unless these are expressly granted only to citizens.

(3) Wherever the term "citizen" is used in previous legal regulations, this is understood to mean every person, wherever this concerns the rights and freedoms that this Constitution extends regardless of citizenship.

Article 53

The Slovak Republic grants asylum to foreign nationals persecuted for upholding political rights and freedoms. Asylum may be denied to those who acted in violation of basic human rights and freedoms. Details shall be laid down by law.

Article 54

The law may restrict the right of judges and prosecutors to engage in entrepreneurial and other business activity and the right listed under Article 29, paragraph 2; the right of employees of state administration bodies and territorial self-administration bodies in designated functions listed also under Article 37, paragraph 4; and the rights of members of armed forces and armed corps listed also under Articles 27 and 28, if these are related to the execution of their duties. The law may restrict the right to strike for persons in professions that are vital for the protection of life and health.

CHAPTER THREE

Part One - The Economy of the Slovak Republic

Article 55

(1) The economy of the Slovak Republic is based on the principles of a socially and ecologically oriented market economy.

(2) The Slovak Republic protects and promotes economic competition. Details shall be laid down by law.

Article 56

(1) The National Bank of Slovakia is an independent central bank of the Slovak Republic. The National Bank of Slovakia may within its competence issue generally binding by laws, if so authorized by law.

(2) The supreme managing body of the National Bank of Slovakia is the Bank Council of the National Bank of Slovakia.

(3) The details pursuant to paragraphs 1 and 2 shall be laid down by law.

Article 57

The Slovak Republic is a customs territory.

Article 58

(1) The financial management of the Slovak Republic is administered by its state budget. The state budget is adopted by means of a law.

(2) State budget revenues, the procedures of budget management and the relationship between the state budget and the budgets of territorial units shall be laid down by law.

(3) Special-purpose state funds linked to the state budget of the Slovak Republic are established by law.

Article 59

(1) There are state and local taxes and fees.

(2) Taxes and fees may be levied by law or on the basis of a law.

Part Two - Supreme Audit Office of the Slovak Republic

Article 60

(1) The Supreme Audit Office of the Slovak Republic is an independent body carrying out control of the management of

a) budgetary resources approved under the law by the National Council of the Slovak Republic or government,

b) property, property rights, funds, obligations and claims of state, public institutions and the National Property Fund of the Slovak Republic, municipalities, superior territorial units, legal persons with ownership interest of the state, legal persons with ownership interest of public institutions, legal persons with ownership interest of the National Property Fund of the Slovak Republic, legal persons with ownership interest of municipalities, legal persons with ownership interest of superior territorial units, legal persons

established by municipalities, or legal persons established by superior territorial units,

c) property, property rights, funds and claims that were granted to the Slovak Republic, legal persons or natural persons within the framework of development programs, or for other similar reasons from abroad,

d) property, property rights, funds, obligations and claims for which the Slovak Republic undertook the guarantee,

e) property, property rights, funds, obligations and claims of legal persons carrying out activities in the public interest.

(2) The control power of the Supreme Audit Office shall apply to the extent specified in paragraph 1 to

a) the Government of the Slovak Republic, ministries and other central bodies of state administration of the Slovak Republic and bodies subordinated to them,

b) state bodies, as well as legal persons that were founded or established by central bodies of state administration or other state bodies,

c) municipalities and superior territorial units, legal persons established by municipalities, legal persons established by superior territorial units, legal persons with ownership interest of municipalities and legal persons with ownership interest of superior territorial units,

d) special-purpose state funds, public institutions established by law, legal persons with ownership interest of public institutions, legal persons with ownership interest of the state,

e) the National Property Fund of the Slovak Republic, legal persons with a specified ownership interest of the National Property Fund of the Slovak Republic,

f) natural persons and legal persons.

Article 61

(1) The Supreme Audit Office is headed by a chairman. The chairman and deputy chairmen of the Supreme Audit Office are elected and recalled by the National Council of the Slovak Republic.

(2) Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic may be elected chairman and deputy chairman of the Supreme Control Office.

(3) The same person may be elected chairman and deputy chairman of the Supreme Audit Office for a maximum of two consecutive seven-year terms.

(4) The office of a chairman and deputy chairman of the Supreme Audit Office is incompatible with an office in any other body of the public authority, employment, or similar labour relation, business activities, membership in a management or supervisory body of a legal person carrying out business activities, or with any other economic or for-profit activity, except for administration of own property, scientific, pedagogical, literary, or artistic activity.

Article 62

The Supreme Audit Office submits reports on the results of its audits to the National Council of the Slovak Republic at least once a year and whenever requested to do so by the National Council of the Slovak Republic.

Article 63

The status, powers, internal organizational structure and basic rules of the control activity of the Supreme Audit Office shall be laid down by law.

CHAPTER FOUR - TERRITORIAL SELF-ADMINISTRATION

Article 64

A municipality is the basic element of territorial self-administration. Territorial self-administration comprises municipalities and regions.

Article 64a

A municipality and regions are independent territorial and administrative units of the Slovak Republic comprising persons who are permanently resident on their territories. Details shall be laid down by law.

Article 65

(1) A municipality and a region are legal persons that, under conditions laid down by law, independently manage their own property and financial resources.

(2) A municipality and a region finance their needs primarily from their own revenues, as well as from state subsidies. The law shall lay down which taxes and fees are municipalities' revenue and which taxes and fees are revenue of a region. State subsidies may be claimed only within the limits of the law.

Article 66

(1) A municipality has the right to associate with other municipalities in order to provide for the matters of common interest; a region has the same right to associate with other regions. Conditions shall be laid down by law.

(2) Merging, splitting, or dissolution of a municipality will be regulated by law.

Article 67

(1) The territorial self-administration is performed at meetings of municipality residents, by a local referendum, by a referendum on the territory of a region, by the municipality bodies or the bodies of a region. The manner of execution of the local referendum and the referendum on the territory of a region shall be laid down by law.

(2) Duties and restrictions relating to the execution of the territorial self-administration may be imposed upon a municipality and region by law and on the basis of an international treaty pursuant to Article 7, paragraph 5.

(3) The state may intervene in activities of a municipality and a superior territorial unit only in a manner laid down by law.

Article 68

A municipality and a region may issue generally binding ordinances in the matters of local self-administration and in order to provide for the tasks ensuing for the self-administration from the law.

Article 69

(1) Municipality bodies are
a) the municipal council,
b) the mayor of a municipality.

(2) The municipal council is composed of the municipal council deputies. The deputies are elected for a four-year term by citizens of the municipality with permanent residence on its territory. Elections of deputies are held by secret ballot, on the basis of a general, equal, and direct right to vote.

(3) The mayor of a municipality is elected for a four-year term by citizens of the municipality with permanent residence on its territory by secret ballot, on the basis of a general, equal, and direct right to vote. The mayor of a municipality constitutes the municipality's executive body. He executes municipality administration and represents the municipality outwardly. The reasons and manner of mayor's removal prior to expiry of the term shall be laid down by law.

(4) The bodies of the region are
a) the council of the region,
b) the chairman of the region,

(5) The region´s council is composed of deputies to the region´s council. The deputies are elected for a four-year term by citizens of the region with permanent residence on its territory. Elections of deputies are held by secret ballot, on the basis of a general, equal, and direct right to vote.

(6) The chairman of the region is elected for a four-year term by citizens of the municipality with permanent residence on its territory by secret ballot, on the basis of a general, equal, and direct right to vote. The reasons and manner of chairman's removal prior to expiry of the term shall be laid down by law. The chairman the region constitutes the municipality's executive body. He executes municipality administration and represents the municipality outwardly.

Article 70

The prerequisites for a municipality to be declared a town, and the method of doing so, shall be laid down by law, which will also designate the names of town bodies.

Article 71

(1) The execution of designated tasks of local state administration can be transferred by law to the municipality and superior territorial unit. The cost of the execution of state administration transferred in this manner will be covered by the state.

(2) In executing state administration, the municipality and regions may, on the basis of the law and within its limits, issue ordinances that are generally binding within its area of jurisdiction, if empowered to do so by the law. The execution of state administration transferred to the municipality, or region by law is governed and controlled by the Government. Details shall be laid down by law.

CHAPTER FIVE - LEGISLATIVE POWER

Part One - The National Council of the Slovak Republic

Article 72

The National Council of the Slovak Republic is the sole constitutional and legislative body of the Slovak Republic.

Article 73

(1) The National Council of the Slovak Republic consist of 150 Members of Parliament elected for a four-year period.

(2) Members of Parliament are representatives of citizens. They execute their mandate personally according to their conscience and conviction and are not bound by orders.

Article 74

(1) Members of Parliament are elected by secret ballot in general, equal, and direct elections.

(2) A citizen who has the right to vote, has reached the age of 21 and has permanent residence on the territory of the Slovak Republic may be elected a Member of Parliament.

(3) Details on the election of Members of Parliament shall be laid down by law.

Article 75

(1) A Member of Parliament is sworn in at the first meeting of the National Council of the Slovak Republic in which he participates, by taking the following oath:

"I swear on my honor and conscience to be faithful to the Slovak Republic. I will discharge my duties in the interest of its citizens. I will uphold the Constitution and other laws and work toward their implementation into life."

(2) Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

Article 76

The validity of the election of Members of Parliament is verified by the National Council of the Slovak Republic.

Article 77

(1) The post of a Member of Parliament is incompatible with the post of judge, prosecutor, public defender of rights, member of the Armed Forces, member of Armed Corps and member of the European Parliament.

(2) If a Member of Parliament is appointed member of the Government of the Slovak Republic, his mandate as a Member of Parliament does not terminate while he executes the government post, it is just not exercised.

Article 78

(1) A Member of Parliament may not be prosecuted for his voting in the National Council of the Slovak Republic, or its bodies; this applies also after the termination of his mandate.

(2) For statements made in the National Council of the Slovak Republic, or its body, while discharging the function of a Member of Parliament, a Member of Parliament may not be criminally prosecuted; this applies also after the termination of his mandate. A Member of Parliament is subject to the disciplinary powers of the National Council of the Slovak Republic.

(3) The Member of the Parliament may not be taken into custody without the consent of the National Council of the Slovak Republic.

(4) If a Member of Parliament has been caught and detained while committing a criminal act, the relevant authority is obliged to report this immediately to the Chairman of the National Council of the Slovak Republic and Chairman of the Mandate and Immunity Committee of the National Council of the Slovak Republic. If the Mandate and Immunity Committee of the National Council of the Slovak Republic does not give its consent to the detainment, the Member of Parliament must be released immediately.

(5) If a Member of Parliament is in custody, his mandate does not terminate, it is only not exercised.

Article 79

A Member of Parliament may refuse to testify in matters about which he learned while discharging his office, even after he ceases to be a Member of Parliament.

Article 80

(1) A Member of Parliament may address an interpellation to the Government of the Slovak Republic, a member of the Government of the Slovak Republic, or the head of another central body of state administration concerning matters within their jurisdiction. The Member of Parliament must receive a reply within 30 days.

(2) The reply to interpellations is followed by a debate in the National Council of the Slovak Republic on the subject, which may be tied with a vote of confidence.

Article 81

A Member of Parliament may surrender the mandate by a personal statement at the session of the National Council of the Slovak Republic. If serious circumstances prevent him from doing that, he may do so in writing in the hands of the Speaker of the National Council of the Slovak Republic, in which case the mandate of the Member of Parliament terminates on the day of delivery of the written decision of surrendering the mandate to the Speaker of the National Council of the Slovak Republic.

Article 81a

The mandate of a Member of Parliament shall terminate by

a) expiry of the term,

b) surrendering of the mandate,

c) loss of eligibility for election,

d) dissolution of the National Council of the Slovak Republic,

e) rise of incompatibility pursuant to Article 77, paragraph 1,

f) on the day the court decision becomes effective by which a Member of Parliament was sentenced for a deliberate criminal act, or by which a Member of Parliament was

sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence.

Article 82

(1) The National Council of the Slovak Republic holds permanent sessions.

(2) The constituent meeting of the National Council of the Slovak Republic is called by the President of the Slovak Republic within 30 days after the announcement of election results. If he fails to do so, the National Council of the Slovak Republic convenes on the 30th day after the announcement of the election results.

(3) The National Council of the Slovak Republic may interrupt its session by means of a resolution. The length of interruption must not exceed four months in a year. During interruption, the Speaker, deputy speakers, and bodies of the National Council of the Slovak Republic execute their powers.

(4) While the session is interrupted, the Speaker of the National Council of the Slovak Republic may convene a meeting of the National Council of the Slovak Republic even prior to the set date. He will do so whenever requested by the Government of the Slovak Republic or at least one-fifth of the Members of Parliament.

(5) The session of the National Council of the Slovak Republic ends with the expiration of the electoral term or with its dissolution.

Article 83

(1) Meetings of the National Council of the Slovak Republic are called by its Speaker.

(2) The Speaker of the National Council of the Slovak Republic shall convene a meeting of the National Council of the Slovak Republic also when requested to do so by at least one-fifth of its Members of Parliament. In that case he will convene a meeting within seven days.

(3) Meetings of the National Council of the Slovak Republic are public.

(4) Non-public meetings can be held only in cases laid down by law or on the basis of a decision by three-fifths of all Members of Parliament of the National Council of the Slovak Republic.

Article 84

(1) The National Council of the Slovak Republic has a quorum if more than one-half of all its Members of Parliament are present.

(2) For a resolution of the National Council of the Slovak Republic to be valid, it must be passed by more than one-half of the Members of Parliament present, unless laid down otherwise by this Constitution.

(3) In order to approve an international treaty stipulated in Article 7, paragraphs 3 and 4 and adopt a bill returned by the President of the Slovak Republic pursuant to Article 102, letter o), a consent of more than one-half of all Members of Parliament is required.

(3) The agreement of at least a three-fifths majority of all Members of Parliament is required to pass and amend the Constitution and constitutional laws, to adopt an international treaty stipulated in Article 7, paragraph 2, adopt resolution on public vote to remove the President of the Slovak Republic, file charges against the President and to declare war on another state.

Article 85

At the request of the National Council of the Slovak Republic, or its body, a member of the Government of the Slovak Republic, or head of another body of state administration, must participate in its meeting or in the meeting of its body.

Article 86

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

c) deciding on proposals to call a referendum,

d) expressing consent, prior to ratification, with the international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing membership of the Slovak Republic in international organizations, international economic treaties of a general nature, international treaties whose execution requires the enactment of a law, as well as with international treaties that directly establish rights or obligations of natural persons or legal persons, and at the same time making determination if these are international treaties stipulated in Article 7, paragraph 5,

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

f) 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,

g) approving the state budget, checking on its fulfilment and approving the state closing account,

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

i) electing and recalling the chairman and deputy chairman of the Supreme Audit Office of the Slovak Republic and three members of the Judicial Council of the Slovak Republic.

j) deciding on the declaration of war, if the Slovak Republic is attacked, or as a result of commitments arising from international treaties on common defence against aggression, and on peace agreement after the war,

k) expressing consent to sending armed forces outside the territory of the Slovak Republic, unless it is a case stipulated in Article 119, letter p,

l) expressing consent with the presence of foreign armed forces on the territory of the Slovak Republic.

Article 87

(1) A draft law may be introduced by committees of the National Council of the Slovak Republic, Members of Parliament and the Government of the Slovak Republic.

(2) If the President of the Slovak Republic returns a law with comments, the National Council of the Slovak Republic will discuss the law[82] again and, in the event of its approv-

[82] It is not sure whether the president can use a power to veto the law towards "all the kinds" of laws,

al, such a law must be promulgated.

(3) A law is signed by the President of the Slovak Republic, the Speaker of the National Council of the Slovak Republic and the prime minister of the Slovak Republic. If the National Council of the Slovak Republic, after having discussed the law again, approves the law even despite the comments of the President of the Slovak Republic and the President of the Slovak Republic does not sign the law, the law is promulgated even without the signature of the President of the Slovak Republic.

(4) A law becomes valid with its promulgation. Details of promulgation of laws, international treaties and legally binding acts of an international organization pursuant to Article 7, paragraph 2 shall be laid down by law.

Article 88

(1) The motion to pass a vote of no-confidence in the Government of the Slovak Republic or a member of it will be discussed by the National Council of the Slovak Republic, if requested by at least one-fifth of its Members of Parliament.

(2) The consent of more than one-half of all Members of Parliament is required to pass a vote of no confidence in the Government of the Slovak Republic or a member of it.

Article 89

(1) The Speaker of the National Council of the Slovak Republic is elected and recalled by the National Council of the Slovak Republic by secret ballot, by more than one-half of the votes of all Members of Parliament. The Speaker is accountable only to the National Council of the Slovak Republic.

(2) The Speaker of the National Council of the Slovak Republic

a) calls and chairs meetings of the National Council of the Slovak Republic,

b) signs the Constitution, constitutional laws and other laws,

c) takes the oath from Members of Parliament of the National Council of the Slovak Republic,

d) calls elections to the National Council of the Slovak Republic, election of the President of the Slovak Republic and elections to the bodies of territorial self-administration,

e) calls public voting on recalling of the President of the Slovak Republic,

f) performs other tasks, if so laid down by law.

(3) The Speaker of the National Council of the Slovak Republic remains in office after the election term expires, until the National Council of the Slovak Republic elects a new Speaker.

Article 90

(1) The deputy speakers of the National Council of the Slovak Republic act as substitutes for the Speaker. They are elected and recalled by secret ballot by the National Council of the Slovak Republic, by the votes of more than one-half of all Members of Parlia-

i.e. also towards Constitution and Constitutional Law. The translation of the Constitution at the website of the Constitutional Court interprets the power of the President extensively. However, we are of a different opinion The argument for our view is that the Constitution or the Constitutional law has been already passed by 3/5 of all the MPs hence it seems to be a bit absurd to use the power of veto which has the result of the need of approval of the law by ½ of all the MPs.

ment. The deputy speaker of the National Council of the Slovak Republic is accountable to the National Council of the Slovak Republic.

(2) The provision of Article 89, paragraph 3 applies also to the deputy speaker of the National Council of the Slovak Republic.

Article 91

The activity of the National Council of the Slovak Republic is managed and organized by the Speaker and deputy speakers.

Article 92

(1) The National Council of the Slovak Republic establishes from the ranks of Members of Parliament committees as its bodies having an initiating and control role; it elects their chairmen by secret ballot.

(2) The deliberations of the National Council of the Slovak Republic and its committees shall be laid down by law.

Part Two - The Referendum

Article 93

(1) A referendum is used to confirm a constitutional law on entering into a union with other states, or on withdrawing from that union.

(2) A referendum can be used to decide also on other important issues of public interest.

(3) Basic rights and freedoms, taxes, levies and the state budget may not be the subject of a referendum.

Article 94

Every citizen of the Slovak Republic who has the right to vote in elections of the National Council of the Slovak Republic is entitled to participate in the referendum.

Article 95

(1) The referendum is called by the President of the Slovak Republic if requested by a petition signed by a minimum of 350,000 citizens, or on the basis of a resolution of the National Council of the Slovak Republic, within 30 days after the receipt of the citizens' petition, or the resolution of the National Council of the Slovak Republic.

(2) The President of the Slovak Republic may, before calling a referendum, file with the Constitutional Court of the Slovak Republic a petition for a decision whether the subject of the referendum, which should be called on the basis of a citizens' petition or a resolution of the National Council of the Slovak Republic pursuant to paragraph 1, is in compliance with the Constitution or a constitutional law. If the President of the Slovak Republic files with the Constitutional Court of the Slovak Republic a petition for a decision whether the subject of the referendum which should be called on the basis of a citizens' petition or a resolution of the National Council of the Slovak Republic is in compliance with the Constitution or a constitutional act, the period pursuant to paragraph 1 shall not continue from filing of a petition by the President of the Slovak Republic until

the decision of the Constitutional Court of the Slovak Republic becomes effective.

Article 96

(1) The motion to pass a resolution of the National Council of the Slovak Republic on calling a referendum may be introduced by Members of Parliament, or by the Government of the Slovak Republic.

(2) A referendum shall be held within 90 days from the day it was called by the President of the Slovak Republic.

Article 97

(1) A referendum may not be held within 90 days prior to elections to the National Council of the Slovak Republic.

(2) A referendum may be held on the day of elections to the National Council of the Slovak Republic.

Article 98

(1) The results of the referendum are valid if more than one-half of eligible voters participated in it and if the decision was endorsed by more than one half of the participants in the referendum.

(2) The proposals adopted in the referendum will be promulgated by the National Council of the Slovak Republic in the same way as it promulgates laws.

Article 99

(1) The National Council of the Slovak Republic may amend or annul the result of a referendum by means of a constitutional law no sooner than three years after the result of the referendum came into effect.

(2) A referendum on the same issue may be repeated no sooner than three years from the day it was held.

Article 100

A law shall lay down the manner in which the referendum will be carried out.

CHAPTER SIX - EXECUTIVE POWER

Part One - The President of the Slovak Republic

Article 101

(1) The President is the head of state of the Slovak Republic. The President represents the Slovak Republic both outwardly and through his decisions ensures due performance of constitutional bodies. The President performs his office according to his/her best conscience and conviction, and is not bound by any orders.

(2) The President of the Slovak Republic is elected by the citizens of the Slovak Republic in direct elections by secret ballot for a period of five years. All citizens with the right to vote in the National Council of the Slovak Republic have the right to vote the President.

(3) The candidates for President are nominated by no less than 15 Members of Parliament or by the citizens with the right to vote in National Council of the Slovak Republic on the bases of a petition signed by at least 15 000 citizens. The nominations are submitted to the Speaker of the National Council of the Slovak Republic not later than 21 days after the elections have been called.

(4) The candidate who gets more than one-half of all valid votes of eligible voters is elected President. If no candidate gets necessary majority of votes by voters, a second ballot is held within 14 days. Those two candidates progress to the second ballot who got the highest number of the valid votes. In the second ballot, that candidate who got the highest number of all valid votes of the participating voters is elected President.

(5) If any of the two candidates who got most valid votes in the first ballot ceases to be eligible to by elected President prior to the second ballot, or waives the right to run for the office, the candidate who received in the first ballot the next highest number of votes proceeds to the second ballot. If there are not two candidates for the second ballot, the second ballot will not be held and the Speaker of the National Council of the Slovak Republic will call new elections within seven days so that they are held within 60 days thereof.

(6) If there is only one candidate running for the office of the President, the election will take place in a way that a vote will be taken on him; he is elected President if he receives more than one-half of the valid votes from participating voters.

(7) The elected candidate assumes the office of the President by taking the oath. He is sworn in before the National Council of the Slovak Republic by the Chairman of the Constitutional Court at noon on the day the former President's term of office ceases.

(8) If the President's term of office terminated early, the elected candidate takes the oath and assumes the office of the President at noon of the following day after the announcement of the election results.

(9) The Constitutional Court of the Slovak Republic decides on the constitutionality or lawfulness of the elections.

(10) Details of the Presidential elections shall be laid down by law.

Article 102

(1) The President

a) represents the Slovak Republic outwardly and concludes and ratifies international treaties. 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,

b) may file with the Constitutional Court of the Slovak Republic a petition for a decision on the compliance of a concluded international treaty, which requires a consent of the National Council of the Slovak Republic, with the Constitution or a constitutional law,

c) receives, accredits and recalls chiefs of diplomatic missions,

d) calls the constituent meeting of the National Council of the Slovak Republic,

e) may dissolve the National Council of the Slovak Republic if the policy statement of the Government of the Slovak Republic is not approved within six months after its appointment, if the National Council of the Slovak Republic failed to pass within three months a government draft law that the government tied with a vote of confidence, if the

National Council of the Slovak Republic was incapacitated to make decisions for more than three months, although the session was not interrupted and during that time it was repeatedly called for sessions, or if the session of the National Council of the Slovak Republic was interrupted for more than permitted by the Constitution. The President may not exercise this right during last six months of his term, during war, state of war, or martial law. The President will dissolve the National Council of the Slovak Republic if in the public voting on removal of the President, the President was not removed.

f) signs Acts,

g) appoints and removes from office the prime minister and other members of the Government of the Slovak Republic, entrusts them with the management of ministries and accepts their resignation. Recalls the prime minister and other members of the Government in the cases listed in Articles 115 and 116,

h) appoints and removes from office the heads of central bodies and higher-level state officials and other officials in cases laid down by law; appoints and recalls university rectors, appoints university professors, appoints and promotes generals,

i) awards distinctions, unless he empowers another body to do so,

j) grants amnesty and pardon, lowers punishments imposed by courts in criminal proceedings and nullifies punishments by an individual clemency, or amnesty,

k) is the supreme commander of the armed forces,

l) declares war on the basis of a decision of the National Council of the Slovak Republic, if the Slovak Republic is attacked, or as a result of commitments arising from international treaties on common defence against aggression, and concludes peace agreement,

m) upon the motion of the government of the Slovak Republic may order mobilization of armed forces, declare the state of war, or declare martial law, and the termination thereof.,

n) announces referenda,

o) can return to the National Council of the Slovak Republic any Act with comments within 15 days after their approval,

p) presents to the National Council of the Slovak Republic reports on the state of the Slovak Republic and on important political issues,

r) has the right to demand reports from the government of the Slovak Republic and its members necessary to perform its tasks,

s) appoints and recalls the judges of the Constitutional Court of the Slovak Republic, President and Vice-President of the Constitutional Court of the Slovak Republic; takes oath of the judges of the Constitutional Court of the Slovak Republic and the oath of the General Prosecutor,

t) appoints and recalls judges, Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic, General Prosecutor and three members of the Judicial Council; takes oath of judges,

u) decides about the authorisation of the Government and gives consent to the exercise of its powers under Article 115 paragraph 3.

(2) President's decision issued in accordance with Article 102, paragraph 1, letters c) and j), with respect to granting an amnesty, and pursuant to letter k) is valid after it is signed by the Prime Minister of the Slovak Republic or a minister authorized by him; in such cases the Government of the Slovak Republic shall be responsible for the President's decision.

(3) Terms of declaration of war, state of war, martial law, state of emergency and the way of execution of the public power in the time of war, declared state of war, declared state of emergency shall be laid down by a constitutional law.

(4) Details of the execution of constitutional powers of the President under paragraph 1 may by laid down by law.

Article 103

(1) Any citizen of the Slovak Republic may be elected President who can be elected to the National Council of the Slovak Republic and has reached the age of 40 on the day of elections.

(2) The same person can be elected President in no more than two consecutive electoral periods.

(3) The election of the President is called by the Speaker of the National Council of the Slovak Republic in a way that the first ballot is held no later than 60 days prior to the end of the acting President's term of office. Should the office of the President become vacant prior to the end of the term of office, the Speaker of the National Council of the Slovak Republic calls the election of a President within seven days in a way that the first ballot is held no later than 60 days after the call thereof.

(4) Should a Member of Parliament, member of the Government of the Slovak Republic, judge, prosecutor, member of the armed forces or armed corps, or chairman or deputy chairman of the Supreme Audit Office of the Slovak Republic be elected President, he will cease executing his previous function from the day of his election.

(5) The President may not perform any other paid function, profession, or entrepreneurial activity and may not be a member of the body of a legal person engaged in entrepreneurial activity.

(6) The President may resign from the office at any time; his term of office ceases on the day of handing over to the President of the Constitutional Court of the Slovak Republic a written notice of this decision.

(7) The President of the Constitutional Court will notify the Speaker of the National Council of the Slovak Republic of the resignation in writing.

Article 104

(1) The President is sworn in by the Speaker of the National Council of the Slovak Republic, before the National Council of the Slovak Republic, by taking the following oath:

"I promise on my honour and conscience to be faithful to the Slovak Republic. I will dedicate my effort to the well-being of the Slovak nation and the national minorities and ethnic groups living in the Slovak Republic. I will discharge my duties in the interest of citizens and will uphold and defend the Constitution and other laws."

(2) Refusing to take this oath, or taking it with reservations, results in the invalidity of the election of the President.

Article 105

(1) If no President is elected, or if the office of the President becomes vacant before a new President is elected, or before the newly elected President has been sworn in, or if the President is unable to perform his function for serious reasons, the powers of the Presi-

dent under Article 102, paragraph 1, letters a), b), c), n) and o) fall upon the government of the Slovak Republic. In this period the government can entrust the prime minister with executing some Presidential powers. The supreme command of the armed forces is transferred to the prime minister in this period. The powers of the President under Article 102, paragraph 1, letters d), g), h), l), m), s) and t) fall upon the Speaker of the National Council of the Slovak Republic in this period.

(2) If the President is unable to perform his function for more than six months, the Constitutional Court of the Slovak Republic must declare the office of the President vacant. The terms of office of the acting President ceases as of the day of such declaration.

Article 106

(1) The President may be recalled before the termination of the term of office by a public voting. A public voting on recalling of the President is called by the Speaker of the National Council of the Slovak Republic based on the resolution of the National Council of the Slovak Republic adopted by not less than a three-fifths majority of all members of the National Council of the Slovak Republic; he must do so within thirty days from adopting the resolution so that the referendum takes place within 60 days after it has been called.

(2) The President is recalled if more than one-half of all eligible voters voted for his recall in the public voting.

(3) If the President was not recalled in the public voting, the President will dissolve the National Council of the Slovak Republic within 30 days from the announcement of the public voting results. In such event, a new term of office begins for the President. The Speaker of the National Council of the Slovak Republic will call election in the National Council of the Slovak Republic within seven days from its dissolution.

(4) Details of President's removal shall be laid down by law.

Article 107

The President can be prosecuted only for deliberate violation of the Constitution or high treason. The decision on the indictment against the President is made by the National Council of the Slovak Republic by a three-fifth majority vote of all Members of Parliament. The indictment against the President is filed by the National Council of the Slovak Republic with the Constitutional Court of the Slovak Republic, which decides on the indictment in a plenary meeting. A sentencing decision of the Constitutional Court of the Slovak Republic means the loss of the office of the President and eligibility to run for the office again.

Part Two - The Government of the Slovak Republic

Article 108

The Government of the Slovak Republic is the supreme body of executive power.

Article 109

(1) The Government consists of the prime minister, deputy prime ministers and ministers.

(2) The execution of the post of a Government member is incompatible with the exe-

cution of a mandate of a Member of Parliament, execution of a post in any other public authority body, an employment in a state body, any contract of employment, or similar employment relation, entrepreneurial activity, membership in a management or control body of a legal person engaged in an entrepreneurial activity or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, and artistic activity.

Article 110

(1) The prime minister is appointed and recalled by the President of the Slovak Republic.

(2) Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic can be appointed prime minister.

Article 111

At the proposal of the prime minister, the President of the Slovak Republic appoints and recalls other members of the Government and entrusts them with the management of ministries. The President can appoint as deputy prime minister and minister any citizen who may be elected to the National Council of the Slovak Republic.

Article 112

Members of the Government are sworn in by the President of the Slovak Republic and take the following oath:

"I swear on my honour and conscience to be faithful to the Slovak Republic. I will discharge my duties in the interest of the citizens. I will uphold the Constitution and other laws and work toward their implementation into life."

Article 113

Within 30 days after its appointment, the Government is obliged to appear before the National Council of the Slovak Republic, to present to it its program, and to request the expression of its confidence.

Article 114

(1) The Government is accountable for the execution of its duties to the National Council of the Slovak Republic, which can pass a vote of no-confidence in it at any time.

(2) The Government can at any time request the National Council of the Slovak Republic to pass a vote of confidence in it.

(3) The Government can link the vote on the adoption of a law or on another issue with a vote of confidence in the Government.

Article 115

(1) The President of the Slovak Republic shall recall the Government if the National Council of the Slovak Republic passes a vote of no-confidence in it, or if it turns down the Government's request to pass a vote of confidence in it.

(2) If the President of the Slovak Republic accepts the Government's resignation, he will entrust it with the execution of its duties until a new Government is appointed.

(3) If the President of the Slovak Republic recalls the Government pursuant to paragraph 1, he/she empowers the Government, through a decision published in the Collection of Laws, to exercise certain powers until the appointment of the new Government. These powers must fall exclusively within the scope of those defined in Article 119 lit. a), b), f), m), n), o), p) and r). The exercise of powers defined in Article 119 lit. m) and r) are in every individual case subject to the prior consent of the President of the Slovak Republic.

Article 116

(1) A Government member is accountable for the execution of his duties to the National Council of the Slovak Republic.

(2) A Government member may submit his resignation to the President of the Slovak Republic.

(3) The National Council of the Slovak Republic may pass a vote of no-confidence also in an individual Government member. In this case, the President of the Slovak Republic will recall the Government member.

(4) The proposal to recall a Government member may be submitted to the President of the Slovak Republic also by the prime minister.

(5) If the prime minister submits his resignation, the entire Government will submit its resignation.

(6) If the National Council of the Slovak Republic passes a vote of no-confidence in the prime minister, the President of the Slovak Republic will recall him. The recalling of the prime minister results in the stepping down of the Government.

(7) If the President of the Slovak Republic accepts the resignation of, or recalls, a member of the Government, he will determine which Government member will temporarily be charged with the management of the matters previously administered by the Government member whose resignation he accepted.

Article 117

The Government will always submit its resignation after the constituent meeting of a newly elected National Council of the Slovak Republic; however, the Government executes its duties until a new Government is formed.

Article 118

(1) The Government has a quorum if more than one-half of its members are present.

(2) Consent of more than one-half of Government members is necessary to pass a Government resolution.

Article 119

The Government as a body decides on

a) draft Acts,

b) governmental regulations,

c) the Government's program and its fulfilment,

d) principal measures concerning the implementation of the Slovak Republic's economic and social policy,

e) drafts of the state budget and the state closing account,

f) international treaties of the Slovak Republic, the negotiation of which was transferred by the President of the Slovak Republic to the Government.

g) compliance with the transfer of power to negotiate international treaties under Article 102, paragraph 1, letter a) to its individual members,

h) filing with the Constitutional Court of the Slovak Republic of a motion to decide on the compliance of a negotiated international treaty for which an approval of the National Council of the Slovak Republic is required with the Constitution and constitutional law.

i) principal questions of domestic and foreign policy,

j) submitting a draft law or some other important measure to the public for discussion,

k) requesting the passing of a vote of confidence,

l) awarding amnesty for petty offences,

m) appointing and recalling of other state officials in cases specified by law and three members of the Judicial Council of the Slovak Republic,

n) a proposal for declaration of a state of war, a proposal for ordering a mobilization of armed forces, a proposal for declaration of the martial law and a proposal for their termination, on declaration and termination of the state of emergency,

(o) sending armed forces outside the territory of the Slovak Republic for the purposes of a humanitarian aid, military manoeuvres, or peace observation missions, giving consent with the presence of foreign armed forces on the territory of the Slovak Republic for the purposes of humanitarian aid, military manoeuvres, or peace observation missions, giving consent with the passing of foreign armed forces through the territory of the Slovak Republic,

(p) sending armed forces outside the territory of the Slovak Republic within commitments ensuing from international treaties on common defence against an attack for no more than 60 days; the Government will forthwith notify the National Council of the Slovak Republic of such decision.

r) other matters, if laid down by law.

Article 120

(1) The Government may issue ordinances in order to execute a law within its limits.

(2) If so laid down by law, the government is authorized to issue ordinances in order to execute the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and to execute international treaties stipulated in Article 7, paragraph 2.

(3) Government ordinances are signed by the prime minister.

(4) A Government ordinance must be promulgated in a manner which shall be laid down by law.

Article 121

The Government has the right to award amnesty for petty offences. Details shall be laid down by law.

Article 122

Central bodies of state administration and local bodies of state administration are established by law.

Article 123

Ministries and other bodies of state administration may, on the basis of laws and within their limits, issue generally binding legal regulations if empowered to do so by law. These generally binding legal regulations are promulgated in a manner which shall be laid down by law.

CHAPTER SEVEN - JUDICIAL POWER

Part One - The Constitutional Court of the Slovak Republic

Article 124

The Constitutional Court of the Slovak Republic is an independent judicial body charged with the protection of constitutionality.

Article 125

(1) The Constitutional Court decides on the compatibility of

a) laws with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law,

b) Government ordinances, generally binding legal regulations issued by ministries and other central bodies of the state administration with the Constitution, constitutional laws, international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law; and with laws,

c) generally binding ordinances pursuant to Article 68 with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated as required by law, unless other court is making decision on them,

d) generally binding legal regulations issued by local state administration bodies and generally binding ordinances issued by local self-administration bodies issued pursuant to Article 71, paragraph 2 with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law, unless other court is making decision on them,

(2) If the Constitutional Court accepts a petition for a proceeding pursuant to paragraph 1, it may suspend the effectiveness of the challenged legal regulations, their parts or some of their provisions, if their further application could jeopardize the basic rights and freedoms, if there is a threat of a substantial economic damage or other serious irreparable consequence.

(3) If the Constitutional Court states by its decision that there is inconsistency between the legal regulations referred to in paragraph 1, the effect of the respective regulations, their parts or their provisions shall terminate. The bodies that issued these legal regulations are obliged to ensure within six months from promulgation of the decision of the Constitutional Court their compliance with the Constitution, constitutional laws and

international treaties promulgated in a manner laid down by law and with respect to the regulations referred to in paragraph 1, letters b) and c) also with other laws, with respect to the regulations referred to in paragraph 1, letter d) with Government ordinances and with generally binding legal regulations issued by ministries and other central bodies of the state administration. If they fail to do so, the validity of such regulations, their parts or provisions shall terminate six months from promulgation of the decision.

(4) The Constitutional Court does not decide on compliance of a draft law, or a draft of other generally binding legal regulation, with the Constitution, an international treaty promulgated in a manner laid down by law, or with a constitutional law.

(5) The validity of a decision suspending the effect of the challenged legal regulations, their parts or some of their provisions terminates by the promulgation of a decision of the Constitutional Court on the merits, unless the Constitutional Court has cancelled the decision suspending the effect of the challenged legal regulation before, because the reasons for which it was adopted vanished.

(6) A decision of the Constitutional Court issued pursuant to paragraphs 1, 2 and 5 shall be promulgated in a way established for promulgation of laws. A final decision of the Constitutional Court is generally binding

Article 125a

(1) The Constitutional Court decides on compliance of the concluded international treaties for which consent of the National Council of the Slovak Republic is required with the Constitution or a constitutional law.

(2) The petition for a decision pursuant to paragraph 1 may be filed with the Constitutional Court by the President of the Slovak Republic or the Government before submitting of the concluded international treaty for a deliberation to the National Council of the Slovak Republic.

(3) The Constitutional Court decides on the petition pursuant to paragraph 2 within the period laid down by law; if the Constitutional Court by its decision expresses that the international treaty is not in compliance with the Constitution or a constitutional law, such international treaty may not be ratified.

Article 125b

(1) The Constitutional Court decides whether the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is in compliance with the Constitution or a constitutional law.

(2) The petition for a decision pursuant to paragraph 1 may be filed with the Constitutional Court by the President of the Slovak Republic before calling of a referendum, when he has doubts if the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is in compliance with the Constitution or a constitutional act.

(3) The Constitutional Court decides on the petition pursuant to paragraph 2 within 60 days from the day of its delivery; if the Constitutional Court by its decision state that the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is not in compliance with the Constitution or a constitutional act, the referendum may

not be called.

Article 126

(1) The Constitutional Court decides on jurisdiction disputes among central bodies of state administration, unless the law specifies that these disputes are decided by another state body.

(2) The Constitutional Court decides on disputable cases regarding the control power of the Supreme Audit Office.

Article 127

(1) The Constitutional Court decides on complaints by natural persons or legal persons objecting to violation of their basic rights and freedoms, or the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law, unless other court makes decision on the protection of such rights and freedoms.

(2) If the Constitutional Court satisfies the complaint, it will state in its decision that a [disputed] final decision, measure, or other act violated the rights or freedoms pursuant to paragraph 1 and it will annul such decision, measure, or other act. If the violation of rights or freedoms pursuant to paragraph 1 has arisen due to inactivity, the Constitutional Court may order to the person that violated these rights or freedoms to act in that matter. The Constitutional Court may at the same time return the case for further proceeding, prohibit further violation of basic rights and freedoms or human rights and fundamental freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law or, if possible, order the person that violated the rights or freedoms pursuant to paragraph 1 to restore the state before the violation.

(3) The Constitutional Court may, by its decision on satisfaction of the complaint, award an appropriate financial compensation to the person whose rights pursuant to paragraph 1 were violated.

(4) Liability of the person that violated the rights or freedoms pursuant to paragraph 1, for damage or other harm, is not affected by the decision of the Constitutional Court.

Article 127a

(1) The Constitutional Court decides on the complaints filed by the bodies of the territorial self-administration against an unconstitutional or unlawful decision or other unconstitutional or unlawful intervention in the matters of the territorial self-administration, unless another court is making a decision on its protection.

(2) If the Constitutional Court satisfies a complaint of the body of the territorial self-administration, it will state the reasons why the decision, or intervention in the matters of the territorial self-administration, is unconstitutional, or unlawful, which constitutional law or which law was violated and what decision, or act, caused such violation. The Constitutional Court will cancel the challenged decision, or if violation of law was constituted by another act than a decision, it will prohibit further violation of the right and it orders, if possible, that the state before the violation is restored.

Article 128

The Constitutional Court provides an interpretation of the Constitution or constitutional laws in disputed matters. The decision of the Constitutional Court on interpretation of the Constitution of a constitutional law is promulgated in a manner established for promulgation of laws. The interpretation is generally binding as of the day of its promulgation.

Article 129

(1) The Constitutional Court decides on complaints filed against the decision to verify or not to verify the mandate of a Member of Parliament.

(2) The Constitutional Court decides on the constitutionality and legitimacy of elections to the National Council of the Slovak Republic and territorial self-administration bodies and election in the European parliament.

(3) The Constitutional Court decides on complaints filed against the results on the public voting on recalling of the President of the Slovak Republic.

(4) The Constitutional Court decides whether the decision to disband or suspend the activity of a political party or a political movement was in compliance with constitutional and other laws.

(5) The Constitutional Court decides on high treason charges, or charges of deliberate violation of the Constitution, filed by the National Council of the Slovak Republic against the President of the Slovak Republic.

(6) The Constitutional Court decides whether a decision on declaration of the martial law, or the state of emergency, and relating decisions were issued in compliance with the Constitution or constitutional laws.

(7) Decisions of the Constitutional Court pursuant to the paragraphs hereinabove are binding for all bodies of the public authority, natural persons or legal persons to whom it concerns. The respective body of the public authority is obliged to ensure their execution without undue delay. Details shall be laid down by law.

Article 130

(1) The Constitutional Court initiates proceedings on the basis of a proposal by

a) at least one-fifth of Members of Parliament,

b) the President of the Slovak Republic,

c) the Government of the Slovak Republic,

d) the court,

e) the general prosecutor,

f) public defender of right in cases of compliance of legal regulations pursuant to Article 125, paragraph 1, if their further application could jeopardize the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law.

g) the Supreme Audit Office of the Slovak Republic in case stipulated in Article 126, paragraph 2,

h) in cases listed under Article 127 and 127a, anyone whose rights are to become the subject of inquiry,

i) anyone objecting to the control power of the Supreme Audit Office of the Slovak

Republic in case laid down in Article 126, paragraph 2.

(2) A law will lay down who is entitled to submit a proposal to initiate proceedings according to Article 129.

Article 131

(1) Matters listed under Article 105, paragraph 2, Article 107, Article 125, paragraph 1 letters a) and b), Article 125a paragraph 1, Article 125b paragraph 1, Article 128, Article 129, paragraphs 2 to 6; Article 136, paragraphs 2 and 3, Article 138, paragraphs 2, letters b) and c), as well as unification of legal opinion of senates, matters concerning the arrangement of its internal affairs and draft budget the Constitutional Court are decided by plenary meetings of the Constitutional Court. The plenary meeting of the Constitutional Court decides by more than one-half of all judges. If such majority is not reached, the motion is rejected.

(2) The Constitutional Court decides on the remaining matters in panels of three judges. The panels decide by more than one-half of its members.

Article 132

Repealed.

Article 133

There exists no legal recourse against the ruling of the Constitutional Court.

Article 134

(1) The Constitutional Court consists of 13 judges.

(2) Constitutional Court judges are appointed by the President of the Slovak Republic for a period of twelve years upon a proposal by the National Council of the Slovak Republic. The National Council of the Slovak Republic proposes twice the number of candidates for judges that the President of the Slovak Republic is to appoint.

(3) Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic, has reached the age of 40, is a law school graduate and has been practicing law for at least 15 years may be appointed judge of the Constitutional Court. The same person may not be repeatedly appointed judge of the Constitutional Court.

(4) A judge of the Constitutional Court is sworn in by the President of the Slovak Republic by taking the following oath:

"I promise on my honour and conscience that I will protect the inviolability of the natural rights of man and civic rights, protect the principles of the state governed by the rule of law, abide by the Constitution, constitutional laws and international treaties that the Slovak Republic ratified and were promulgated in a manner laid down by law, and decide independently and impartially, according to my best conscience."

(5) A judge of the Constitutional Court takes up office upon taking his oath.

Article 135

The Constitutional Court is headed by its President, who is substituted for by the Vice-President. The President and Vice-President are appointed by the President of the Slovak Republic from among judges of the Constitutional Court.

Article 136

(1) Members of the Constitutional Court enjoy immunity in the same way as Members of Parliament.

(2) The consent to the criminal prosecution of a judge of the Constitutional Court, or to taking him into custody, is given by the Constitutional Court.

(3) The Constitutional Court gives consent to the criminal prosecution or to the taking into custody of a judge and the Prosecutor General. The Constitutional Court executes a disciplinary proceeding against the Chief Justice of the Supreme Court of the Slovak Republic, Deputy Chief Justice of the Supreme Court of the Slovak Republic and the Prosecutor General.

(4) If the Constitutional Court refuses to give a consent, a criminal prosecution or taking into custody is not be possible throughout the term of office of a judge of the Constitutional Court, a judge, or the Prosecutor General.

Article 137

(1) If an appointed judge of the Constitutional Court is a member of a political party or a political movement, he must surrender his membership prior to taking his oath.

(2) Judges of the Constitutional Court execute their post as their profession. The execution of this post is incompatible with a post in any other public authority body, a post, or contract of employment in another state body, any contract of employment, or similar employment relation, entrepreneurial activity, membership in a management or control body of a legal person engaged in an entrepreneurial activity or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, and artistic activity.

(3) On the day a judge takes up the office, his mandate as a Member of Parliament and his membership in the Government of the Slovak Republic expire.

Article 138

(1) A judge of the Constitutional Court may surrender his post of judge by a written notice to the President of the Constitutional Court. His post terminates at the end of the calendar month when the written notice on surrendering the post was delivered.

(2) The President of the Slovak Republic recalls a judge of the Constitutional Court

a) on the basis of the effective court decision by which he was sentenced for a deliberate criminal act, or by which he was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence,

b) on the basis of a disciplinary decision by the Constitutional Court passed because of a deed that is incompatible with the execution of the post of a judge of the Constitutional Court,

c) if the Constitutional Court declares that the judge has not been participating in Constitutional Court proceedings for over a year, or

d) if he ceases to be eligible to be elected to the National Council of the Slovak Republic.

Article 139

If a judge of the Constitutional Court surrenders the post of judge of the Constitution-

al Court, or if he is recalled from it, the President of the Slovak Republic will appoint, out of two persons proposed by the National Council of the Slovak Republic, another judge of the Constitutional Court for a new term of office.

Article 140

Details on the organization of the Constitutional Court, on the manner of Constitutional Court proceedings and on the status of its judges shall be laid down by law.

Part Two - Courts of the Slovak Republic

Article 141

(1) Justice in the Slovak Republic is administered by independent and impartial courts.
(2) Justice at all levels is administered independently of other state bodies.

Article 141a - The Judicial Council of the Slovak Republic

(1) The chairman of the Judicial Council of the Slovak Republic is the Chief Justice of the Supreme Court of the Slovak Republic. Its other members are
a) eight judges elected and recalled by the judges of the Slovak Republic,
b) three members elected and recalled by the National Council of the Slovak Republic,
c) three members appointed and recalled by the President of the Slovak Republic,
d) three members appointed and recalled by the Government of the Slovak Republic.
(2) A person that is irreproachable, has completed a university law education and has been practicing law for at least 15 years may be constituted a member of the Judicial Council of the Slovak Republic pursuant to paragraph 1, letter b) to d).
(3) The term of office of members of the Judicial Council of the Slovak Republic is five years. The same person may be elected or appointed a member of the Judicial Council of the Slovak Republic no more than in two consequent terms of office.
(4) The power of the Council of Judges of the Slovak Republic includes [the right to]
a) submit to the President of the Slovak Republic names of candidates proposed to be appointed judges and names of judges to be removed,
b) decide on assignment and transfer of judges,
c) submit to the President of the Slovak Republic proposals to appoint the Chief Justice of the Supreme Court of the Slovak Republic and a Deputy Chief Justice of the Supreme Court of the Slovak Republic and for their recall,
d) submit to the Government of the Slovak Republic proposals of candidates for judges who should represent the Slovak Republic in international judicial bodies,
e) elect and remove members of disciplinary senates and elect and remove chairmen of disciplinary senates,
f) comment on a draft budget of the Slovak Republic courts in the process of drafting of the state budget,
g) other powers, if so laid down by law.
(5) A consent of more than one-half of all members is required adopt a decision of the Judicial Council of the Slovak Republic.
(6) Details of the method of constituting the members of the Judicial Council of the Slovak Republic, its powers, its organization and its relation with the court administra-

tion bodies and the bodies of judicial self-administration shall be laid down by law.

Article 142

(1) Courts decide on civil law and criminal law matters; examine the lawfulness of public administration bodies' decisions and lawfulness of decisions, measures, or other acts of the public authority bodies, if so laid down by law.

(2) Court decisions are made by panels of judges, unless the law specifies that the matter is to be decided by a single judge. A law shall lay down in which cases decisions by panels of judges are attended by accessory judges from the ranks of citizens and which matters may be decided also by a court's employee authorized by a judge. A legal recourse against a decision made by the court's employee authorized by the judge is admissible, which is always decided by a judge.

(3) Verdicts are proclaimed in the name of the Slovak Republic. They are always proclaimed publicly.

Article 143

(1) The system of courts consists of the Supreme Court of the Slovak Republic and other courts.

(2) The detailed arrangement of the court system, the courts' powers and organization, and the manner of court proceedings shall be laid down by law.

(3) The bodies of the judicial self-administration also participate in the management and administration of courts in the extent laid down by law.

Article 144

(1) Judges are independent in execution of their function and bound solely by the Constitution, constitutional laws, international treaties stipulated in Article 7, paragraphs 2 and 5 and laws.

(2) If the court is of the opinion that another generally binding legal regulation, its part or a particular provision related to the subject-matter of the proceeding contravenes the Constitution, constitutional laws, international treaties stipulated in Article 7, paragraphs 2 and 5 or laws, it will interrupt its deliberations and submit a motion that a proceeding under Article 125, paragraph 1 is initiated. The finding of the Constitutional Court of the Slovak Republic is binding for all courts.

Article 145

(1) Judges are appointed and recalled by the President of the Slovak Republic at the proposal of the Judicial Council of the Slovak Republic for an unlimited period of time.

(2) Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic, has reached the age of 30 and completed a legal education may be appointed a judge. Other prerequisites for appointment to the post of judge and his promotion, as well as the scope of immunity of judges will be determined by law.

(3) The Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic are appointed by the President of the Slovak Republic from the ranks of judges of the Supreme Court of the Slovak Republic for a period of five years upon a proposal of the Judicial Council of the Slovak Republic. The same person may be appointed the

Chief Justice of the Supreme Court of the Slovak Republic and the Deputy Chief Justice of the Supreme Court of the Slovak Republic for a maximum of two consecutive terms. The President of the Slovak Republic may recall the Chief Justice of the Supreme Court of the Slovak Republic, or the Deputy Chief Justice of the Supreme Court of the Slovak Republic for reasons stipulated in Article 147.

(4) A judge is sworn in by the President of the Slovak Republic as follows: "I promise on my honor and conscience that I will abide by the Constitution, constitutional laws and international treaties that the Slovak Republic ratified and were promulgated as required by law, and laws, I will interpret laws and decide independently and impartially, according to my best conscience.".

(5) A judge shall take up the office upon taking the oath.

Article 145a

(1) If the appointed judge is a member of a political party or a political movement, he is obliged to give up the membership in them before taking the oath.

(2) A judge executes its function as a profession. The execution of the post of a judge is incompatible with the execution of a post in any other public authority body, a post, or contract of employment in a state body, any contract of employment, or similar employment relation, entrepreneurial activity, membership in a management or control body of a legal person engaged in an entrepreneurial activity or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, or artistic activity and membership in the Judicial Board of the Slovak Republic.

Article 146

A judge may surrender his post by a written notice to the President of the Slovak Republic. His post terminates at the end of the calendar month when the written notice on surrendering the post was delivered.

Article 147

(1) The President of the Slovak Republic will recall a judge upon the motion of the Judicial Council of the Slovak Republic on the basis of a legally effective sentence passed for a deliberate criminal offense, or if he was sentenced by a legally effective sentence for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence, on the basis of a decision of disciplinary tribunal of judges for a deed that is incompatible with the execution of the post of a judge, or if his eligibility to be elected in the National Council of the Slovak Republic ceased.

(2) The President of the Slovak Republic may recall a judge upon the motion of the Judicial Council,

a) if his state of health does not allow him over the long term, for a period of at least one year, to properly discharge his duties as judge,

b) if he has reached the age of 65.

Article 148

(1) A judge may be transferred to another court only with his consent or on the basis

of a decision of a disciplinary senate.

(3) The reasons for suspension of execution of the post of judge and conditions for a temporary stay of the post of judge or a temporary assignment of a judge shall be laid down by law.

(3) The method of constituting accessory judges shall be laid down by law.

CHAPTER EIGHT - THE PROSECUTOR'S OFFICE OF THE SLOVAK REPUBLIC AND THE PUBLIC PROTECTOR OF RIGHTS

Part One - The Prosecutor's Office of the Slovak Republic

Article 149

The Prosecutor's Office of the Slovak Republic protects rights and the legally protected interests of natural and legal persons and the state.

Article 150

The Prosecutor's Office is headed by the Prosecutor General who is appointed and recalled by the President of the Slovak Republic at the proposal of the National Council of the Slovak Republic.

Article 151

Details on appointing and recalling prosecutors and on their rights and duties, as well as on the organization of the Prosecutor's Office, shall be laid down by law.

Part Two - The Public Protector of Rights

Article 151a

(1) The Public Protector of Rights is an independent body of the Slovak Republic which, within the scope and as laid down by law, protects basic rights and freedoms of natural and legal persons in proceedings before public administration bodies and other bodies of public authority, if their conduct, decision-making, or inaction, is in conflict with the legal order. In cases laid down by law, the Public Protector of Rights may participate in holding the persons working in the public administration bodies accountable, if those persons violated a basic human right or freedom of natural or legal persons. All bodies of public authority shall give the Public Protector of Rights necessary assistance.

(2) The Public Protector of Rights may file a motion with the Constitutional Court of the Slovak Republic to initiate a proceeding pursuant to Article 125, if a generally binding regulation is violating a basic human right or freedom granted to a natural or legal person.

(3) The Public Protector of Rights is elected by the National Council of the Slovak Republic for a period of five years from candidates proposed by at least 15 Members of Parliament. Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic and reached 35 years of age on the election day may be elected the public protector of rights. The Public Protector of Rights may not be a member of any

political party or political movement.

(4) The office of the Public Protector of Rights terminates on the day the court decision becomes effective by which a Public Protector of Rights was sentenced for a deliberate criminal act, or by which a Public Protector of Rights was sentenced for a criminal act and the court did not rule in his case on a conditional suspended execution of the prison sentence, or by the loss of eligibility.

(5) The National Council of the Slovak Republic may recall the Public Protector of Rights if his state of health prevents him over the long term, for a period of at least three months, to properly discharge his duties.

Details on election and recalling of the public protector of rights, his competence, conditions of execution of his office, manner of legal protection and enforcement of the rights of natural persons and legal persons shall be stipulated by law.

CHAPTER NINE - TRANSITIONAL AND FINAL PROVISIONS

Article 152

(1) Constitutional laws, laws, and other generally binding legal regulations remain in force in the Slovak Republic unless they conflict with this Constitution. They can be amended and abolished by the relevant bodies of the Slovak Republic.

(2) Laws and other generally binding legal regulations issued in the Czech and Slovak Federative Republic become invalid on the 90th day after the publication of the ruling on their invalidity by the Constitutional Court of the Slovak Republic in a manner established for the promulgation of laws.

(3) Decisions on the invalidity of legal regulations are made by the Constitutional Court of the Slovak Republic at the proposal of persons listed in Article 130.

(4) The interpretation and application of constitutional laws, laws, and other generally binding legal regulations must be in compliance with this Constitution.

Article 153

Rights and duties arising from international treaties by which the Czech and Slovak Federative Republic is bound are transferred to the Slovak Republic to an extent established by a Czech and Slovak Federative Republic constitutional law or by an agreement between the Slovak Republic and the Czech Republic.

Article 154

(1) The Slovak National Council elected according to Article 103 of Constitutional Law No. 143/1968 Coll. on the Czecho-Slovak Federation, as amended, will execute its powers as the National Council of the Slovak Republic pursuant to this Constitution. The electoral term of the National Council of the Slovak Republic is counted from the day of elections to the Slovak National Council.

(2) The Government of the Slovak Republic appointed according to Article 122, paragraph 1, letter a) of Constitutional Law No. 143/1968 Coll. on the Czecho-Slovak Federation, as amended, is regarded as a government appointed according to this Constitution.

(3) The Chief Justice of the Supreme Court of the Slovak Republic and the Prosecutor General of the Slovak Republic, who have been appointed to their posts according to

present legal regulations, retain their posts until appointments according to this Constitution are made.

(4) Judges of Slovak Republic courts appointed to their posts according to present legal regulations are regarded as appointed to their posts according to this Constitution, without any time limit.

Article 154a

The elections of the President of the Slovak Republic under this constitutional law is called by the Speaker of the National Council of the Slovak Republic within 30 days from the day a law issued pursuant to Article 101, paragraph 10 becomes effective.

Article 154b

(1) A judge elected for four years before this constitutional law comes into effect is, after his term of office elapses and upon the proposal of the Judicial Council of the Slovak Republic, appointed by the President of the Slovak Republic a judge without any time limit even if on the day of appointment has not reached 30 years of age.

(2) Judges elected pursuant to the present regulations without a time limit are considered to be judges appointed pursuant to this constitutional law.

(3) Provisions of the Article 134, paragraph 2, first sentence and paragraph 3, second sentence do not apply to judges of the Constitutional Court appointed before this constitutional law comes into effect.

Article 154c

(1) International treaties on human rights and fundamental freedoms that were ratified by the Slovak Republic and promulgated in a manner laid down by law before this constitutional law comes into effect are a part of its legal order and have primacy over the law, if that they provide greater scope of constitutional rights and freedoms.

(2) Other international treaties which were ratified by the Slovak republic and promulgated as required by law before this constitutional law comes into effect are a part of its legal order, if so laid down by law.

Article 155

The following are repealed:

1. Constitutional Act of the Slovak National Council No. 50/1990 Coll. on the Name, State Emblem, National Flag, State Seal and National Anthem of the Slovak Republic.

2. Constitutional Act of the Slovak National Council No. 79/1990 Coll. on the Number of Slovak National Council Deputies; on the Text of the Oath of Slovak National Council Deputies, Members of the Slovak Republic Government, and National Committee Deputies; and on the Slovak National Council Electoral Period.

3. Constitutional Act of the Slovak National Council No. 7/1992 Coll. on the Constitutional Court of the Slovak Republic.

Article 156

Constitution of the Slovak Republic No. 460/1992 Coll. came into force on October 1st, 1992, with the exception of Article 3, paragraph 2; Article 23, paragraph 4, as re-

gards the deportation, or extradition of a citizen to another state; Article 53; Article 84, paragraph 3, as regards declaration of war on another state; Article 86, letters k) and l); Article 102, letter g), as regards the appointment of university professors and rectors and the appointment and promotion of generals, and letters j) and k); Article 152, paragraph 1, second sentence, as regards constitutional laws, laws, and other generally binding legal regulations issued by CSFR bodies, which came into force simultaneously with the appropriate changes in the constitutional arrangement of the CSFR, in line with this Constitution.

Constitutional Act No. 244/1998 Coll. came into force on August 5th, 1998.

Constitutional Act No. 9/1999 Coll. came into force on January 27th, 1999.

Constitutional Act No. 90/2001 Coll. came into force on July 1st, 2001, with the exception of Article 125a, Article 127, Article 127a, Article 134, paragraphs 1 and 3 and Article 151a which shall come into effect on January 1, 2002

Constitutional Act No. 140/2004 Coll. came into force as of the day of promulgation, i.e. on March 18th, 2004.

Constitutional Act No. 323/2004 Coll. comes into force on June 1st, 2004, with the exception of the first point of Article I, which comes into effect on July 20th, 2004.

Constitutional Act No. 462/2005 Coll. comes into force on January 1st, 2006.

Constitutional Act No. 92/2006 Coll. comes into force on April 1st, 2006.

Constitutional Act No. 210/2006 Coll. comes into force on May 1st, 2006.

Constitutional Act No. 100/2010 Coll. comes into force on January 1st, 2011.