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APPOINTIVE POWERS OF SLOVAK PRESIDENT AND THEIR USE IN RELATION TO SELECTED CONSTITUTIONAL OFFICERS

Peter Horváth*

ABSTRACT
Presidential powers are stipulated in Article 102 of the Slovak Constitution (no. 460/1992 Coll.). This constitutional article defines presidential powers e.g in relation to foreign policy, the National Council, the government or the judiciary. In recent years, the use of some of these powers raised several legally relevant issues. Especially, this is the case of presidential appointive powers. Hence, in the present study, an examination of concrete appointive powers of President was done. The attention was paid to relevant decisions of Constitutional Court of the Slovak Republic. The results of study show that existing concept of appointive competence of the President entails application problems, as the Constitution does not explicitly state whether it is the duty of the President to exercise the appointive competence or not. In other words, the formulation of a number of powers does not give an answer whether the Constituent Assembly had an intention to place a duty on the President to exercise his powers in a particular case or to confer a right to consider whether the President will act or not. To this day, the appointive powers of the President that have been clarified by the Constitutional Court relate only to a member of the Slovak Government, Vice-Governor of the National Bank of Slovakia, the Prosecutor General and judges of the Constitutional Court. In relation to other subjects that occupy their positions based on presidential appointment, the further procedure is legally unclear. The solution to this problem will have to be adopted in decision-making activities of the Constitutional Court, or the National Council.

Key words: president, appointive powers, Constitution, Prosecutor General, constitutional judges, presidential powers

Introduction

Recent social and political events relating to action / omission of an act of former and also current President of the Slovak Republic in the matter of

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appointment of major state officers have raised several legally relevant issues. It also brought to the fore the question of media influence, its impact of members of political, cultural, and intellectual elites etc. (Guťan, 2013). This is particularly true in case of the media protracted cause of non-appointment of the candidate for Prosecutor General and the candidates to the position of constitutional judges elected by the Parliament and the subsequent dispute whether the competence of the President defined by the words "shall appoint" (Art. 102 paragraph 1 letters s) and t) of Slovak Constitution) should be understood as a right or a duty of the President to act in the case. It may be noted that in connection with the answer to this question, media have marked not only many lay opinions, but also many qualified legal opinions. Many of them considered that the execution of appointive powers of the President is his duty, not a right, whereby the argumentation has been in many cases based on Article 101 paragraph 1 of the Constitution, under which *"the President shall ensure the regular operation of Constitutional bodies by his or her decisions."* Presented legal opinions on the issue are certainly diverse, but since they are non-legally binding opinions of expert public, the submitted paper will, in principle, take no regard of them and our analysis will be based mainly on previously published legally relevant opinions of the Constitutional Court, that have been expressed in connection with its decision-making activity. One of the fields of action of the Constitutional Court is in fact the execution of interpretative competence, which represents a "positive judicial lawmaking". The Constitutional Court acts here as an authority shaping, or supplementing existing law created by the Constituent Assembly. This is done through the legal interpretation, which is the process of clarifying the meaning and content of legal norms forming a constitutional order of Slovak Republic (Šramel, 2016). As the Constitutional Court is the only authority that is entitled to provide legal interpretation (moreover, generally binding interpretation), in this paper it is more than necessary to reflect the results of its decision-making activities.

1 The powers of the President, their ambiguity and constitutional interpretation

Apart from the massive politicisation of a purely legal issue of interpretation of presidential appointive powers, it should be noted that the issue of a right / duty of the President to appoint a specific person to the post is not the primary issue. This issue is in fact a part of a broader issue, namely an issue relating to

a right / duty of the President to do something or act in a certain way. This issue poses a long-term problem arising from the very dubious and ambiguous content of a number of normative sentences that are part of the Slovak Constitution.[1] For this reason, it is important to know several legally relevant opinions of the Constitutional Court, that the Constitutional Court has expressed in this field during its decision-making activities (since 1993). Subsequently, they can give us a picture of the nature of appointive powers of the Slovak President.

The first legally relevant legal opinion of the Constitutional Court, which concerns the legal nature of the powers of the President under the Constitution in general, is the opinion of the Constitutional Court from 1993. The Constitutional Court expressed its opinion on the powers of the President in general as follows: *"The Constitution of the Slovak Republic (no. 460/1992 Coll.) provides for three types of formulations for regulation of presidential powers. The first type includes expressly recognized right expressed by words "may do"; for example "may dissolve the National Council of the Slovak Republic" (article 102 letter d)), "may recall a judge of the Constitutional Court" (article 138 paragraph 2). The second type includes expressly identified duty expressed by the phrase 'is obliged to'; for example, "is obliged to hear an opinion of the President of the National Council of the Slovak Republic" (art. 102 letter d) second sentence). The third type includes a formulation "shall do", for example "shall confer decorations" (article 102 letter h)), "shall recall the member of Government" (article 116 paragraph 7). This formulation has an ambiguous sense. Its interpretation offers a right, but also a duty.* (Decision of the Constitutional Court no. I. ÚS 39/93)

In another part of the same decision, the Constitutional Court also confirmed that powers of the President are not always clear and therefore they need a legal interpretation or précising by the activity of legislator. In this connection, The Constitutional Court says: "*Constitutional status of the President of the Slovak Republic is clear only when Slovak Constitution expressly confers a right, or expressly imposes a duty. In other cases, the constitutional status of the*

[1] Examples of such normative sentences can be found in many articles of Slovak Constitution. For example, a long time problem arises from Article 98, under which "The National Council of the Slovak Republic shall promulgate the proposals adopted by a referendum as a law." This provision is not clear whether the National Council has an obligation to prepare a draft law and this law must go through the ordinary legislative process, or the solutions confirmed by a valid voting of citizens in the referendum should enter into effect automatically as a law without voting in the National Council. (Machyniak – Šebík, 2014)

President should be shaped either through the interpretation of legal norms mentioned in the text of the Constitution of the Slovak Republic or through a change in the formulation of individual provisions of the Constitution of the Slovak Republic."

As can be seen, the Constitutional Court itself already at the very beginning of its meritorious decision-making activities confirmed that presidential powers are not always clearly formulated. The formulation of a number of powers does not tell whether the Constituent Assembly had intention to put the President under an obligation to exercise his competences in a particular case or to confer a discretional right (thus the possibility to consider whether the President will exercise the power or not). Nevertheless, it should be noted that even in the case of ambiguously formulated powers of the President, he is always obliged to exercise his powers without reasonable doubts on his independence, impartiality, objectivity. Each of his powers must be exclusively directed to promoting the interests of citizens and the interests and values of legally consistent state. They represent certain limits of execution of any presidential power. Promotion of any other interests despite ambiguously formulated powers of the President is unacceptable and conflicting to the purpose of the powers conferred on the President. Any action of the President leading to an arbitrary application of even ambiguously defined competences, and the promotion of partial (e.g. political) interests could, under certain circumstances, be qualified as one of the constitutional offenses, allowing to draw legal consequences on the President in the form of filing the prosecution to the Constitutional Court of the Slovak Republic for a wilful infringement of the Constitution. On the other hand, it should be noted that in the case of a wilful infringement of the Constitution as a constitutional offense, there are several problematic aspects, among which the authors refer particularly to the ambiguity of the definition of that term (Šramel, 2015).[2]

[2] The President may be prosecuted only for two constitutional offences - a wilful infringement of the Constitution or for treason. The Act of treason is defined in Section 311 of Slovak Criminal Code as the act, when the citizen of the Slovak Republic (e.g. the President) in association with a foreign power or a foreign agent, commits the criminal offence of seditious conspiracy against the Slovak Republic, terror, destructive actions or sabotage. However, a wilful infringement of the Constitution is not defined in any law. Therefore, it may be stated that it is extremely difficult to give a clear answer, what a wilful infringement of the Constitution means. It is reasonable to conclude that it will be such act of the President, which is in conflict with the Constitution and constitutional laws.

Therefore, exercise of the powers of the President has and must have certain limits that will prevent abuse of powers conferred by the Constitution. It should be noted that the reasons for limiting the exercise of all constitutional powers of the President were resolved by the Constitutional Court in its another decision, as follows: *"The only provision of the Constitution of the Slovak Republic (but common to all constitutional powers of the President of the Slovak Republic) is contained in the oath that the President takes. ... Interests of citizens, as well as preserving and defending the Constitution and other laws are the only constitutionally stipulated reasons that the President of the Slovak Republic takes into account in the exercise of any of his constitutional powers as provided for in article 102 letters a) to r) of the Constitution. The Constitution does recognize no other (and specific) reasons that lead the President of the Slovak Republic to the exercise of his specific constitutional powers (including the one referred to in article 102 letter i) of the Constitution), and therefore does not regulate them."* (Decision of the Constitutional Court no. I. ÚS 61/96). From this decision we can deduce that in the exercise of his powers, the President is bound only by interests of citizens and legally consistent state (rule of law); any other interests and needs must not be taken into account in the exercise of presidential powers.

It should be emphasized that the ambiguity in the formulation of many parts of the normative text of the Constitution does necessarily lead to specific application problems or disputes about interpretation of the relevant constitutional articles. Opinions of expert public on their interpretation vary (Čič a kol., 2013). In this context it may be noted that the Constitutional Court in its decision-making activities has issued four specific decisions relating to the issue of right / duty to exercise a certain kind of presidential powers. In these decisions the Constitutional Court resolved the issue of a presidential right / duty to a) recall the member of the Slovak Government on the proposal of the Prime Minister (article 116 paragraph 4 of the Constitution), b) appoint the vice-governor of the National Bank of Slovakia (article 102 paragraph 1 letter h), c) appoint the Prosecutor General (article 102 paragraph 1 letter t) and d) appoint the candidates for judges of the Constitutional Court (article 102 paragraph 1 letter a)). Let us take a closer look at the legal opinions of the Constitutional Court in each case.

As for the recalling powers of the President in relation to a member of the Slovak Government, the Constitutional Court expressed the following opinion: *"Article 116 paragraph 4 of the Slovak Constitution provides for the right of the*

Prime Minister of the Slovak Republic to submit legally significant proposal to recall a member of the Slovak Government. Submission of such proposal results in presidential duty to deal with the proposition. After considering the circumstances of the case, the President has to decide whether the proposal of the Prime Minister of the Slovak Republic will be accepted and the member of the Government will be recalled or whether the proposal of the Prime Minister of the Slovak Republic will not be accepted and the member of the Government will not be recalled. Article 116 paragraph 4 of the Constitution of the Slovak Republic does not place a duty on the President to recall a member of the Government, if the Prime Minister files a proposal." (Decision of the Constitutional Court no. I. ÚS 39/93). Thus, mentioned decision of the Constitutional Court indicates that if the President receives a proposal to recall a member of the Government, he cannot be inactive. At the same time, however, the President is entitled to consider all the facts related to the case and, if he considers that there is no reason for the recall of a member of Government, he simply is not obliged to exercise his recalling competence.

In connection with the interpretation of another constitutional article about appointive powers of the President relating to the Vice Governor of the National Bank of Slovakia, the Constitutional Court in its another decision pointed out: *"When exercising powers under Article 102 paragraph 1 letter h) of the Constitution of the Slovak Republic, the President of the Slovak Republic considers whether a candidate for the post of Vice-Governor of the National Bank of Slovakia proposed by the Government and approved by the National Council of the Slovak Republic under § 7 section 2 of Act no. 566/1992 Coll. on the National Bank of Slovakia, fulfils the conditions for appointment to this position under § 7 of the Act. If he concludes that the proposed candidate does not meet the conditions, the proposal of Slovak Government will not be accepted."* (Decision of the Constitutional Court no. PL. ÚS 14/06). Similarly, as in previous decision, in the case of appointment of Vice-Governor of the National Bank of Slovakia, the Constitutional Court confers a right to decide about non-appointment. At the same time, the Constitutional Court adds that the President makes a decision on non-appointment only if he finds that a candidate does not meet the prescribed conditions. Thus, the President acts here as a kind of "safety catch", a guarantee that should prevent ineligible person from execution the function of Vice-Governor of the National Bank of Slovakia.

Penultimate case in which the Constitutional Court has given its legal opinion on the appointive powers of the President, concerned the appointment of Prosecutor General. The Constitutional Court, in many ways very much like in previous decisions, said: "*The President of the Slovak Republic is obliged to deal with the proposal of the National Council of the Slovak Republic for the appointment of the Prosecutor General of the Slovak Republic under article 150 of the Constitution of the Slovak Republic, and if he was elected in accordance with the law, within a reasonable time either to appoint the proposed candidate, or to inform the National Council of the Slovak Republic that this candidate will not be appointed. He is entitled to make a decision on non-appointment only if a candidate does not meet the legal conditions for appointment or because of a serious matter relating to a person of the candidate that casts doubts on his ability to act in a way not lowering respect for constitutional function or for the entire body of which that person is going to be the supreme representative, or in a manner that is not contrary to the very mission of that body, if it could cause disruption to the regular operation of Constitutional bodies (article 101 paragraph 1 of the Constitution of the Slovak Republic).*" (Decision of the Constitutional Court no. PL. ÚS 4/2012). Despite some similarities of this decision with previous decisions it should be emphasized that in the case of appointment of the Prosecutor General, the President enjoys a fairly wide margin of manoeuvre. The president is entitled to examine not only legal prerequisites of candidates (similarly to the Vice Governor of the National Bank of Slovakia), but also all the other circumstances relating to the person of the candidate, that do not cast doubts on his ability to act in a way not lowering respect for constitutional function or for the entire body of which that person is going to be the supreme representative, or in a manner that is not contrary to the very mission of that body. Therefore, the President, in principle, is not obliged to appoint an elected candidate for the office of the Prosecutor General. His decision must be justified and must not be arbitrary (e.g. politically motivated).[3]

Finally, the legal opinion of the Constitutional Court on the issue of exercise of appointive powers in relation to candidates for constitutional judges is

[3] However, this normative sentence was not adopted unanimously by all the judges of the Constitutional Court. The interpretation was objected by four judges of the Constitutional Court. According to their legal opinions, the President of the Constitutional Court was granted with an excessively wide range of discretion in exercising the appointing power.

contained in the decision from 2014, which dealt with the constitutional complaint of non-appointed candidates for constitutional judges. Constitutional complaint concerned alleged violation of their fundamental rights and freedoms, in this case the fundamental right of access to elected and other public offices under the same conditions (Bröstl et al., 2010). In this decision, the Constitutional Court also expresses its opinion whether the issue of a right / duty to appoint constitutional judges can be governed by its decision of 2012 on the appointment of the Prosecutor General. The Constitutional Court also examines the boundaries that the President has to respect when deciding on the appointment / non-appointment of the candidates for constitutional judges submitted by the Parliament. The Constitutional Court stated *in concreto* that: *"The impossibility to match the appointment of the Attorney General with the appointment of candidates for judges of the Constitutional Court lies not only in the difference of these constitutional bodies, but also in the exceptionality of constitutional structure of creating the candidates for judges of the Constitutional Court, that is stemming from the constitutional order addressed to the National Council contained in article 134 section 2 of the Constitution "shall propose double the number of candidates for judges" and article 139 of the Constitution "shall appoint another judge for a new term from two nominees presented by the National Council of the Slovak Republic." This constitutional text must be understood as a boundary of the possible presidential choice that does not allow him to appoint all of the elected candidates but always only one candidate for one vacant position, thereby ensuring stable functioning of the Constitutional Court. The Constitution clearly stipulates the need for choice that can be done only by the President from among the candidates submitted by the National Council."* (Decision of the Constitutional Court no. III. ÚS 571/2014). This decision constitutes a departure from the framework that has been outlined in previous decisions concerning a right / duty to appoint and recall officers. In fact, the decision of the Constitutional Court says that in the case of the appointment of constitutional judges, the President has minimal room for manoeuvre. If the Parliament submits the required number (double) of candidates from which the President has a choice, he cannot act in a manner leading to non-appointment of one or substantial majority of candidates. This fact is emphasized also by the legal doctrine, which agrees that the President is bound by the proposals submitted by the Parliament and that he cannot choose a candidate that was not proposed (Šramel, 2015). In other words, in the case of constitutional judges the President is always obliged to choose from

submitted double of the candidates and to appoint the required number of constitutional judges. Limits to his decision-making are therefore relatively narrow, and, in principle, the President is always obliged to appoint a candidate submitted by the Parliament, even if he does not identify with him.[4]

As it results from the above-mentioned decisions of the Constitutional Court, all the appointive powers of the President, for which he is responsible and where the nature of the matter does not constitute a requirement of restraint (e.g. the appointment of professors[5]), have a power dimension. This means that the President must always have some space for decision-making. This is the case not only of members of Government and Vice-Governor of the National Bank of Slovakia, but also of the Prosecutor General and judges of the Constitutional Court. In the case of the Prosecutor General, the President receives one proposal for one function. Here, his decision-making power includes the possibility, under certain conditions specified by the Constitutional Court, to refuse the proposed candidate. In the case of judges of the Constitutional Court the President receives double of the candidates for constitutional judges. His decision-making power (his limits of the possible and obligatory choice) are here laid down by the Constitution. Thus, the constitutional regulation of powers of the President relating to the appointment of the Prosecutor General and judges of the Constitutional Court is fundamentally different. The president may, and is obliged to choose the most appropriate judges of the Constitutional Court from the candidates elected by the National Council.

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[4] It should be noted that besides the exercise of appointive / recalling competence in relation to mentioned officers (member of Government, Vice-Governor of the National Bank of Slovakia, Prosecutor General, constitutional judges), the Constitutional Court previously considered also the issue of appointment of heads of diplomatic missions (article 102 paragraph 1 letter c)). However, in this case the Constitutional Court concluded that the action of the President, when he had not accepted the request of the Government to place the person proposed by the Government in the function of ambassador, is not subject to constitutionally relevant dispute over the interpretation of the Constitution, also because the Government had committed a procedural error, it did not include that part of the dispute, which could be constitutionally relevant in a motion for commencing the proceedings (Decision of the Constitutional Court no. I. ÚS 51/96). As can be seen, on grounds of procedural reasons, the Constitutional Court could not proceed to the interpretation of article 102 paragraph 1 letter c) of the Constitution. Currently, it is still not clear, how the President has to perceive the competence to delegate heads of diplomatic missions.

[5] Generally, the appointment of professors is considered a duty of the President and the President's role here is of ceremonial nature. So far, there has been no constitutionally relevant dispute regarding the appointment of professors.

2 Classification criteria for exercise of the appointive powers of the President and problematic issues arising from appointive competence of the President

If we take a closer look at the decisions of the Constitutional Court, we find that none of them brings classification criteria allowing to distinguish cases in which the President has a right to exercise the appointive powers from cases in which the President has a duty to exercise the appointive powers. From regulation of constitutional powers it is evident that the President exercises his appointive powers not only in relation to members of the Government, Vice-Governor of the National Bank of Slovakia, the Prosecutor General or the judges of the Constitutional Court, where in the light of previous decisions of the Constitutional Court the action of the President is / should be obvious. However, the subjects that occupy their positions based upon the exercise of appointive powers of the President include also many other officers, such as higher state officials, rectors of universities, university professors, generals, the President and Vice-President of the Constitutional Court of the Slovak Republic, the Chief Justice and the Deputy Chief Justice of the Slovak Republic, three members of the Judicial Council of the Slovak Republic etc. In this connection, the legal doctrine proposes a certain solution to this problem according to which the answer to the question "may / must appoint" depends on consideration whether the President has only notarizing position in the matter or whether the President is a balancing / equilibrium force in the system of separation of powers (Kanárik, 2009).[6]

This means that if the President verifies the compliance of procedure of certain authorities with the Constitution and laws without further interference, it is his duty to exercise the appointive powers (e.g. the appointment of rectors of universities, university professors, generals). However, if the President is ensuring a balance in the system of separation of powers, it is his discretion whether he exercises his appointive powers in relation to a certain person (e.g.

[6] This solution is based and arises from the cardinal principle of legally consistent state saying that state bodies may act solely on the basis of the Constitution, within its scope and their actions must be governed by procedures laid down by a law. On the other hand, everyone may do what is not forbidden by a law and no one may be forced to do what the law does not enjoin. Therefore, the President should have a right to participate in ensuring separation of powers and to control components of state power. He should be the last guarantee ensuring that a particular officer will a) be a reliable and competent person, b) act in accordance with basic principles of law.

the appointment of judges of the Constitutional Court, judges of general courts, the Prosecutor General). In connection with notarizing nature of appointive powers, the Constitutional Court also ruled as follows: *"By reason of material interference of the National Council, the execution of his notarizing competence has strictly procedural connotation, that means focusing on those aspects of the appointing mechanism the review of which is not within the scope of the submitter, for example, verification whether the proposal was approved by the appropriate majority, or whether it has been approved by the National Council etc. Using an analogous method of interpretation, an analogy can be found, for example, but not only, in the appointment of university professors. Even in this case, the candidate for appointment has to meet the specific material conditions. They are confirmed by the decision of the competent Scientific Council as an author (and thus subject of an authentic interpretation) of these conditions. The examination of the President whether the competent Scientific Council correctly interpreted the conditions which it itself established, would mean the substitution of the material scope of the academic authority by the political authority. There is of course no doubt that the submitted proposal to the President must be complete, i.e. it must allow qualified exercise of his notarizing powers. Due to the material participation of the National Council on the appointing procedure, however, space for material consideration of the various statutory requirements by the President should not be admitted."* (Decision of the Constitutional Court no. PL. ÚS 14/06).

The above-mentioned interpretation of the classification criteria of exercise of presidential appointive powers indirectly results from the wording of Article 101 of the Constitution, under which the President shall ensure the regular operation of Constitutional bodies by his or her decisions. This constitutional provision can in no way be interpreted in the sense that the President is always obliged to appoint a person to a constitutional post. On the contrary, the purpose of that provision is to ensure that the President is just the person whose decision (positive or negative) on candidates for appointment completes the process of establishing a constitutional officer (or another state officer) and thus he guarantees the regular operation of Constitutional bodies. The President acts here as the last constitutional guarantee that still can prevent a certain person from being appointed to the post of constitutional officer (on the basis of constitutionally acceptable reasons). If after election of a candidate by the National Council it came to light that a candidate ceased to fulfil the prescribed conditions, or that a legal obstacle was not known to the proposer for

some reason (e.g. a candidate is corrupt, or he was caught in the act of committing a crime, he has ties to criminal or terrorist group), it would be the President who would have the power to stop such person, and to ensure the regular operation of Constitutional bodies by exercising non-appointment.

It should be emphasized that when exercising his powers, the President is not allowed to replace the exercise of material competence[7] of the body responsible for proposal for the appointment of a particular candidate. In fact, the appointive power of the President is established only after a proposal of the National Council. Without the proposal of the National Council the President is not entitled to proceed to the appointment of a person to the post of the Prosecutor General (Drgonec, 2012). The role of the President as a constitutional guarantee should be in fact only preventive - it should prevent unqualified person who does not fulfil the requirements for performance of office from occupying a position of constitutional officer, if these fact were unknown to the relevant authority (i.e. the authority which submitted a proposal of a candidate for appointment to the President).

From this point of view, a part of the recent decision of the Constitutional Court on the appointive powers of the President in relation to the Prosecutor General (no. PL. ÚS 4/2012) appears to be questionable to a certain extent. The controversy is caused by the sentence according to which the President may not to appoint the Prosecutor General if a candidate does not meet the legal conditions for appointment or because of a serious matter relating to a person of the candidate that casts doubts on his ability to act in a way not lowering respect for constitutional function or for the entire body of which that person is going to be the supreme representative, or in a manner that is not contrary to the very mission of that body, if it could cause disruption to the regular operation of Constitutional bodies. As a result of such interpretation of the appointive powers of the President, the President is provided with very (abnormally) broad discretion in considering the personality of the candidates for appointment to the office of Prosecutor General. We believe that the President has no right, in principle, to consider and evaluate the personality of the candidate for appointment to the office or to consider his moral qualities. It is

[7] Material competence includes examination of all conditions that should be met by a candidate for the Prosecutor General. They are verified by the National Council before the vote on the nomination. Under § 7 section 3 of the Act no. 153/2001 Coll. these conditions are: age at least 40 years, consent to the appointment and at least 10 years practice as a public prosecutor, a judge or an advocate, of which at least five years practice of a public prosecutor or a judge.

a task that falls within the scope of the authority submitting the proposal for appointment (National Council). If this right is granted also to the President himself, the importance of the role of proposer is replaced and relativized. As mentioned above, in the cases of appointment of constitutional officers, the President acts only as a kind of guarantee, as a factor in balancing the division of power in the State. His involvement in creation of constitutional body should consist only in consideration of conditions stipulated by the law (Constitution). Only when they changed after the election of the National Council, the President should be empowered to intervene and not to appoint a candidate to the office.

In addition to that, the mentioned wording coming from the decision of the Constitutional Court seems to be redundant. The reason results from the conditions for the exercise of the office of Prosecutor General and a public prosecutor that are stipulated in the Prosecution Codes. According to § 7 sect. 3 of the Act no. 153/2001 Coll. (Čentéš, 2012), a candidate for Prosecutor General must meet the following conditions: he must be a public prosecutor, he must have a minimum age 40, he must have minimum five years judicial practice and he must have accepted the appointment. Under the Act, fulfilment of these conditions is examined by the National Council before the election. It is its primary role when deciding on candidates for appointment to the office of Prosecutor General. Under § 6 sect. 2 of the Act no. 154/2001 Coll., one of the conditions for exercise of function of the Public Prosecutor is also the fact that a person is of impeccable character and his / her moral qualities provide the guarantee that the functions of public prosecutor will be performed properly. Not only this, but all the other conditions for the execution of Public Prosecutor´s office (age, education, legal capacity, permanent address in the Slovak Republic etc.) must be met during the full term of service. That is also the time when applying for the office of Prosecutor General. If this is not the case, public prosecutor should be removed from his office, and this automatically results in discharge of one of the requirements that have to be met by a candidate for the Prosecutor General (execution of Public Prosecutor´s office). As stipulated in the Act, these very conditions are the subject of material examination done by the Parliament in case of a candidate for the Prosecutor General (Šramel, 2012). Therefore, the mentioned sentence of the decision appears to be redundant and, in principle, sufficient would be keeping only the wording "may not to appoint the Prosecutor General if a candidate does not meet the legal conditions for appointment." A part of these conditions is in fact the question of personal qualities.

At this point it is desirable also to mention another decision of the Constitutional Court, the decision no. I. ÚS 397/2014.[8] In this decision, the Constitutional Court dealt with a number of facts related to the exercise of appointive presidential powers (e.g. whether the failure to appoint a candidate for the Prosecutor General established the responsibility of the President for a violation of right to access elected and other public offices, or if the violation of this right can result in remand the matter for further proceedings). In connection with the appointive powers of the President, the Constitutional Court ruled in this decision i.a. that *"the right to appoint the Prosecutor General belongs to the President of the Slovak Republic because he is a constitutional officer, and not because he is a natural person."* As regards the question of possibility of former President (natural person) to become a party to the proceedings before the Constitutional Court in the case of infringement of his presidential powers, the Constitutional Court further stated that *"when exercising his constitutional powers, the President of the Slovak Republic as a constitutional officer cannot be concurrently regarded as a natural person. There is no doubt that only a natural person who at the time acts as the President is entrusted with presidential powers, and any other natural person, also the one who previously held the post of the President, may not exercise these powers and the associated additional competences".*[9] This means that a natural person (former president) cannot invoke rights or to exercise rights which he had as a president. These rights are transferred to the newly elected President, who can exercise these rights differently from the previous President.

[8] This decision of the Constitutional Court is the finding in the case of constitutional complaint of the candidate J. Čentéš to the office of Prosecutor General regarding the alleged infringement of his fundamental right to human dignity, personal honour, good reputation and protection of name under Article 19 paragraph 1 of the Slovak Constitution and Article 10 paragraph 1 of the Bill of Fundamental Rights and Freedoms, infringement of fundamental right of access to elected and other public posts under equal conditions according to Article 30 paragraph 4 of the Constitution and Article 21 paragraph 4 of the Bill, as well as infringement of the right to equal access to public service in his country under Article 25 letter c) of the International Covenant on Civil and Political Rights by the decision of the President of the Slovak Republic from December 28, 2012 on non-appointment to the post of Prosecutor General of the Slovak Republic.

[9] The decision helped to solve the so called "objection war" between the claimant Čentéš and President Gašparovič in connection with deciding a constitutional complaint regarding the infringement of fundamental right of access to elected and other public posts under equal conditions on the grounds of the non-appointment. Both parties expressed a number of prejudice objections against the judges of Constitutional Court, which made it impossible to hear the case for lack of impartial judges. Solution was brought up by the new President Kiska who withdrew all the objections of former president.

Last but not least, it may be noted that one of the questions at issue relating to the analyzed topic is the question at what time limit the President should exercise his appointive powers. Since the Constitution in no way stipulates time limit (period) for exercising his power, it can be concluded that the President has no constitutionally prescribed time (period) in which he should decide on the candidate. For this reason, the statements of experts and lay public about a certain period that should be respected by virtue of constitutional traditions and constitutional practice cannot be regarded as correct. We think that the absence of explicit regulation of the deadline for the appointment cannot be interpreted in such a way that the President can exercise the appointive power at any time or arbitrarily (e.g. on the last day of his term). Such an interpretation of time limit for exercising his powers would be in fact not only contrary to the principle of legal certainty, but also contrary to the constitutional obligation of state authorities to work together and to assist in the effective exercise of the constitutional powers that require such synergy to fulfil their purpose. In this context, reference should be made to one of the decisions of the Constitutional Court in which the Court expressed following legal opinion on the issue of the absence of period (time limit) for the appointive powers of the President: *"The absence of explicit regulation of time limit is an expression of respect and dignity of the office of the President and his role in creation of the Prosecutor General and at the same time it is a reflection of assumption that the holders of state-power privileges will exercise them in accordance with their purpose, which is, among other things, to ensure proper functioning of constitutional bodies. However, it is not possible to attribute to it such importance that it establishes to the President a space for arbitrariness, consisting of a right not to act. On the contrary, with regard to the commitment to "co-operate in the exercise of constitutional powers", it must be interpreted in the way that the President must decide on the appointment of a candidate without delay."* (Decision of the Constitutional Court no. PL. ÚS 4/2012).

For reasons given, the President must exercise his appointive powers without unreasonable delay, respectively in a reasonable time. The length of this time can be of course different in different cases and, as stated by the Constitutional Court in one of its other decisions, it is conditional only on the constitutional or other circumstances linked with the exercise of the constitutional power of the President that is representing the synergy in the exercise of constitutional power of other components of state power (e.g. the National Council). After meeting these conditions, the President has a duty to exercise his cooperation with other components of state power (e.g. the National Council of the Slovak Republic),

because the Constitution does not stipulate any other additional conditions (time limits) that would condition the exercise of cooperation. According to the legal opinion of the Constitutional Court, such an interpretation of the constitutional principle of cooperation between the two components of executive power provides not only real exercise of each of the constitutional powers, but also their exercise in the corresponding time-limits. Such an interpretation of the constitutional principle of cooperation between the two components of executive power at the same time eliminates the need for setting a time-limit for the processing and sending of report by the President of the Slovak Republic. Otherwise, according to the legal opinion of the Constitutional Court, there would be no constitutional guarantee of the exercise of constitutional powers of the components of executive power in Slovakia, exercise of which has no specific time-limits in the Constitution (Decision of the Constitutional Court no. I. ÚS 7/96).

Conclusion

To conclude, we can state that the Constitution does not always clearly stipulate presidential powers. The formulation of a number of powers does not give an answer whether the Constituent Assembly had an intention to place a duty on the President to exercise his powers in a particular case or to confer a right to consider whether the President will act or not. Constitutional status of the President of the Slovak Republic is therefore clear only when the Slovak Constitution expressly confers a right or places a duty. Otherwise, the constitutional status of the President (way of exercising powers) must always be shaped either through the interpretation of legal norms mentioned in the text of the Constitution by the Constitutional Court of the Slovak Republic, or through the revision of constitutional provisions. It makes everything more complicated and this process is not very likely (Meluš, 2016).

This pertains mainly to the appointive powers of the President, that have been clarified by the Constitutional Court only in relation to a member of the Slovak Government, Vice-Governor of the National Bank of Slovakia, the Prosecutor General and judges of the Constitutional Court. In relation to other subjects that occupy their positions based on presidential appointment, the further procedure is legally unclear. A certain solution to this problem seems to be the consideration whether the President has only notarizing position in the matter or whether the President is a balancing / equilibrium force in the system of separation of powers. This rule, however, will have to be adopted in its decision-making activities especially by the Constitutional Court.

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