Strasbourg, 27 February 2017 **CDL-REF(2017)013**

Opinion No. 877 / 2017 Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

SLOVAK REPUBLIC

DECISIONS BY THE CONSTITUTIONAL COURT

AND FURTHER RELEVANT TEXTS

Table of contents

1. Ruling of the Constitutional Court of the Slovak Republic ref. PL. ÚS 45/2015

SLOVAK REPUBLIC

R U L I N G

of the Constitutional Court of the Slovak Republic
PL. ÚS 45/2015

The Plenary Session of the Constitutional Court of Slovak Republic composed of President Ivetta Macejková and judges Jana Baricová, Peter Brňák, Ľubomír Dobrík, Ľudmila Gajdošíková, Sergej Kohut, Milan Ľalík, Lajos Mészáros (Judge Rapporteur), Marianna Mochnáčová, Ladislav Orosz and Rudolf Tkáčik at a closed session of 28 October 2015 preliminarily discussed the motion of the President of the Slovak Republic under Article 128 of the Constitution of the Slovak Republic and Section 18 par. 1 letter b) of the Law No. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the status of its Judges as amended for commencement of proceedings on interpretation of Article 2 par. 2 of the Constitution of the Slovak Republic in connection with Article 128 of the Constitution of the Slovak Republic as well as interpretation of Article 134 par. 2 of the Constitution of the Slovak Republic in connection with Article 101 par.1 and Article 102 par.1 letter s) of the Constitution of the Slovak Republic and

d e c i d e d:
The motion of the President of the Slovak Republic is r e j e c t e d.
R e a s o n i n g:

I.

The Constitutional Court of the Slovak Republic (Constitutional Court) was served on 11 August 2015 with the motion of the President of the Slovak Republic (President or applicant) under Article 128 of the Constitution of the Slovak Republic (the Constitution) and under Section 18 par.1 letter b) of the Law No. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the status of its Judges as amended (Law on the Constitutional Court) for commencement of proceedings on interpretation of Article 2 par. 2 of the Constitution in connection with Article 128 of the Constitution as well as interpretation of Article 134 par. 2 of the Constitution in connection with Article 101 par.1 and Article 102 par.1 letter s) of the Constitution.

The President based his motion on the grounds as follows:

«1. Under Article 130 par.1 letter b) of the Constitution of the Slovak Republic (the Constitution) the Constitutional Court of the Slovak Republic (Constitutional Court) shall commence proceedings upon a motion submitted by the President of the Slovak Republic.

2. This procedural legitimacy of the President applies to the proceedings on interpretation of the Constitution and constitutional laws under Article 128 of the Constitution.

3. Under Article 128 of the Constitution the Constitutional Court shall give an interpretation of the Constitution or constitutional laws if the matter is disputable. The decision of the Constitutional Court on the interpretation of the Constitution or constitutional laws shall be promulgated in the manner laid down for the promulgation of laws. The interpretation is generally binding from the date of its promulgation.

4. The purpose of this type of proceedings before the Constitutional Court is to give interpretation of the Constitution or constitutional laws and therefor remove further disputes between public authorities on how to interpret and apply their constitutional competences or powers in a particular case.

This case must raise doubts about the way a particular constitutional officer or other public authority applied his competences or powers granted by the Constitution, which is confirmed by the adoption of the motion for commencement of proceedings on interpretation of the Constitution or constitutional laws by the Constitutional Court (PL. ÚS 14/06).

5. The Constitutional Court in case PL. ÚS 11/09 in connection with case II. ÚS 30/97 concerning the requirements, which need to be fulfilled to give interpretation, states:

„The first requirement on filing such a motion is the existence of a dispute between the applicant and state authority bodies….The second requirement is the existence of a dispute concerning the right or duty which is granted to the parties by Constitution…The requirement on proceedings under Article 128 par.1 of the Constitution is the actual existence of a dispute.

The legal effects of Article 128 par.1 of the Constitution are not associated with any dispute concerning the interpretation of the Constitution; only a constitutionally relevant dispute…A constitutionally relevant dispute concerning the interpretation of the Constitution cannot exist between every person eligible to file a motion under Article 130 par.1 letter a). A constitutionally relevant dispute concerning the interpretation of the Constitution is a dispute concerning rights and duties of state authority bodies, whose are granted with such a right or duty by the Constitution. As follows, in proceedings under Article 128 of the Constitution, there must exist a specific (actual) dispute over a right (power) or duty laid down by the Constitution or constitutional laws to both parties to the proceedings, i.e. to both the applicant and the state authority body who is referred to as the one who incorrectly applies a provision of the Constitution or constitutional law."

Every requirement needed to conclude that there is a real and actual dispute between the President and the National Council – as it emerges from the following arguments and evidence – are fulfilled.

6. The Chairman of the National Council of the Slovak Republic (National Council) by his letter dated 16 May 2014 proposed the President with six candidates for three vacant offices of judges of the Constitutional Court.

7. On 2 July 2014 the President appointed Jana Baricová to the office of judge of the Constitutional Court; the other five candidates were dismissed the same day. As a result, two vacant offices of judges remained at the Constitutional Court. Accordingly, the President requested the Chairman of the National Council to call new elections for the remaining four candidates. Elections for new candidates did not take place to this day. The Chairman of the National Council Pavol Paška publicly announced that the National Council has fulfilled its constitutional obligations to propose twice the number of candidates for the tree vacant offices at the Constitutional Court and hereby it will not propose new candidates. According to the content of this statement, the President was not entitled to dismiss the candidates based on Interpretation ref. PL. ÚS 4/2012 (Interpretation concerning Prosecutor General).

8. The five dismissed candidates issued constitutional complaints. These complaints were subject to two proceedings. In case III. US 571/2014, the Constitutional Court, after contending that the President infringed the rights of Eva Fulcová, Miroslav Duriš and Juraj Sopoliga, annulled the President´s decision on dismissing the candidates. All at once, the President was ordered to hear and decide the case anew. The proceedings in case of Ján Bernát and Imrich Volkai were stayed after the withdrawal of their motions. As a result, their candidacy for judges of the Constitutional Court ceased to exist; my decision on their dismissing became binding and irrevocable. These proceedings resulted in such a situation, in which there are still two vacant offices of judges of the Constitutional Court, but there are only three candidates: Eva Fulcová, Miroslav Duriš a Juraj Sopoliga.

9. Based on the result of these proceedings, the President, by a letter dated 22 July 2015, requested the Chairman of the National Council to propose one candidate for the office of judge of the Constitutional Court under Article 134 of the Constitution so the President can act and decide in accordance with ruling III. ÚS 571/2014.

10. According to the applicant, the situation, in which the National Council is not ready to propose new candidates for judges of the Constitutional Court when the President dismisses the half of them and requests the National Council to propose new candidates, still continues. In this particular case the term "disputable matter" includes the situation, in which the National

Council and the President - as constitutional bodies entitled to propose and appoint candidates for judges of the Constitutional Court - have different opinions on exercising their powers. This is the reason of disputes between the applicant and the National Council. The President declared that he will only appoint those candidates for judges of the Constitutional Court who are qualified under the same criteria as in the Interpretation concerning Prosecutor General. When the number of candidates for the vacant offices is not sufficient, i.e. twice the number, the National Council is obliged to propose new candidates; on the other side, the National Council argues that (see evidence presented in part II of this motion) the President is obliged to appoint judges of the Constitutional Court among the proposed candidates (twice the number of judicial vacancies), if they meet the requirements laid down by the Constitution without referring to the Interpretation concerning Prosecutor General.

11. According to the opinion of the applicant, it is necessary to file a motion for commencement of proceedings on interpretation of Article 2 par. 2 in connection with Article 128 of the Constitution, as well as interpretation of Article 134 par. 2 of the Constitution in connection with Article 101 par.1 and Article 102 par.1 letter s) of the Constitution; interpreting these Articles shall clarify the rights and duties of the National Council concerning the proposal of candidates for judges of the Constitutional Court in regards with the rights and duties of the President concerning the appointment of judges of the Constitutional Court, while ensuring the proper functioning of constitutional bodies, in this case the Constitutional Court.

12. The complaints of five dismissed candidates were heard and decided in two proceedings.

13. In case III. ÚS 571/2014 the Chamber by majority adopted and pronounced a finding, according to which:

„The fundamental right to have access to elected and other public posts under equal conditions under Article 30 par. 4 of the Constitution in connection with Article 2 par. 2 of the Constitution was i n f r i n g e d by the decision of the President No. 1112-2014-BA of 2 July 2014 on dismissal of the candidates for judges of the Constitutional Court. The decision in question is annulled and the President is obliged to hear and decide the case anew."

14. After the pronouncement of the finding in case III. ÚS 571/2014, the decision was orally reasoned as follows:

„Examine the qualification of the candidates in terms of professional and other qualities for judges of the Constitutional Court, while taking into account the fundamental requirements laid down by Article 134 par. 3 of the Constitution, is implicitly included in the process of election and proposal by the National Council to the President. The President is entitled to make his own examination of the qualification of the candidates in terms of professional and other qualities under Article 134 par. 3 of the Constitution, under which the President shall appoint a required number of judges of the Constitutional Court among the proposed double number of candidates.

The authorization of the President to dismiss a candidate for an constitutional office in case of existence of any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out an office in a way not diminishing the authority of this office and of the whole institution in which he is to be a supreme representative or which does not contradict to the mission of this institution, if this reason may interfere with the proper functioning of constitutional bodies as it follows from the interpretation ref. PL ÚS 4/2012, refers to exceptional reasons, which are so severe, that they disqualify the candidate for this particular office from the perspective of constitutional law.

In case I. ÚS 397/2014 on constitutional complaint of doc. JUDr. Jozef Čentéš, PhD. concerning his non-appointment to the office of Prosecutor General, the Constitutional Court considered as such circumstances the demonstrated action of the complainant constituting obstructions of a procedural act in criminal proceedings or violation of rights of others by an action which intended to blame an administrative assistant at the Office of Prosecutor General for shredding and deleting files from his computer.

No such compelling or exceptional circumstances emerge from the decision of the President on dismissal of the complainants. The reasoning of this decision in question is limited

more or less to general statements on failure to fulfil the criteria of professional predispositions of the complainant without individualization and specification.

Other circumstances than demonstrated existence of compelling circumstances, which could reasonably question the ability to perform the duties of judges of the Constitutional Court by means not diminishing its seriousness or ability to perform theses duties by means not contrary to the very mission of a judges of the Constitutional Court, does not authorise the President to exceed the scope of his discretionary power granted by Article 134 par. 2 of the Constitution while examining the quality of the candidates for judges of the Constitutional Court proposed by the National Council. In other words: it does not authorise the President not to accept and therefore dismiss more than half of the double number of proposed candidates."

15. Despite the fact that under Section 31a of the Law 38/1993Coll. on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the status of its Judges as amended (Law on the Constitutional Court) in connection with Section 156.2 of the Code of Civil Procedure, a ruling is biding from the day it is pronounced, the Third Chamber by majority performed a written reasoning with a different tone than the pronounced reasons. In the written reasoning, the Third Chamber by majority excluded the application of the Interpretation concerning Prosecutor General.

The written finding – in contrary to the pronounced reasoning – reveals that the Chamber by majority did not consider necessary to examine the reasoning of the decision of the President to find out whether there are compelling or exceptional circumstances (regarding the Interpretation concerning Prosecutor General), because the Chamber observed that the President´s decision on dismissal under Article 134.2 of the Constitution does not need to contain a statement of reasons and therefore the speculations about its content and scope are irrelevant. ***In the pronounced reasoning,*** *the majority of the Chamber , implicitly allows the application of the Interpretation concerning Prosecutor General to the appointment of judges of the Constitutional Court by arguing that in this case [the Chamber] only observed its incorrect application by the President (non-existence of compelling or exceptional circumstances and individualized reasoning), whereby at the same time there is no explicit argument that the Interpretation concerning Prosecutor General cannot be applied to the appointment of judges of the Constitutional Court. On the other hand, the same Chamber by majority noted* ***in its written reasoning,*** *that examining the powers of the President concerning the appointment of judges of the Constitutional Court from the point of view of this only one existing interpretation (Interpretation concerning Prosecutor General) connected to Prosecutor General is more than tendentious and the Interpretation concerning Prosecutor General is not applicable to the appointment of judges of the Constitutional Court.*

16. In this regard, the applicant points out that the date on the written ruling and reasoning does not agree with the date of its adoption, whereby the procedure of its adoption is unclear, in particular concerning the counselling and voting about the written reasoning of the finding in case III. ÚS 571/2014 in the parts, which are not in line with the pronounced reasoning or they are in conflict with it.

17. The applicant also reasons by pointing out the contradictory nature of proceedings before Chambers of the Constitutional Court, because while proceedings were stayed in case II. ÚS 718/2014 on the complaints of Ján Bernát and Imrich Volkai, in cases II. ÚS 718/2014 and II. ÚS 719/2014 the Constitutional Court commenced proceedings upon the complaints of these two complainants and the Chamber argued that the complaints are manifestly unfounded in the parts where they exclude the application of Interpretation of Constitution PL. ÚS 4/2012 (Interpretation concerning Prosecutor General). On the contrary, the Chamber added that the application of this particular interpretation led to commencement of proceedings upon the complaints, because only in proceedings on the merits it is possible to examine the adequacy and well-foundedness of the application of the Interpretation concerning Prosecutor General on two specific and individual complaints of the dismissed candidates.

18. The result of these proceedings before the Constitutional Court, mainly due to conflicting procedures and decisions of the two Chambers, is severe legal uncertainty. This legal uncertainty concerns the question whether the President is entitled to apply the Interpretation concerning the Prosecutor General and whether, following its well-founded

application leading to the dismissal of candidates and reduction of their number below that which is required, the National Council is obliged to propose new candidates.

19. This situation of legal uncertainty initiated and still maintains a substantial dispute between the applicant and the National Council; the President, contrary to the National Council, applies different consequences from the mentioned decisions regarding his constitutional practice concerning the appointment of judges of the Constitutional Court. The President insists that the National Council is obliged to propose new candidates if the originally proposed candidates are rejected. The National Council argues against this obligation. In its opinion, the National Council is not obliged to propose new candidates for judges of the Constitutional Court if the lack of candidates is caused by the President's rejection of more than half of the candidates. The conflict between these opinions is evidence of a substantial dispute and it permits the President to file a motion for commencement of proceedings on interpretation.

20. Under Article 2.2 of the Constitution, state bodies may act solely on the basis and within the scope of the Constitution, and their actions shall be governed by procedures laid down by law.

Under Article 101.1 of the Constitution, the President shall ensure the proper functioning of Constitutional bodies by his or her decisions.

Under Article 102.1.s, the President shall appoint and recall judges of the Constitutional Court of the Slovak Republic, and the President and Vice-President of the Constitutional Court of the Slovak Republic.

Under Article 134.2 of the Constitution, the National Council of the Slovak Republic shall propose twice as many candidates as the number of judges to be appointed by the President of the Slovak Republic.

Under Article 134.3 of the Constitution, a judge of the Constitutional Court must be a citizen of the Slovak Republic, eligible to be elected to the National Council of the Slovak Republic, not younger than forty years and a law-school graduate with fifteen years of experience in the legal profession.

Under Article 128 of the Constitution, the decision of the Constitutional Court on the interpretation of the Constitution or constitutional laws shall be promulgated in the manner laid down for the promulgation of laws. The interpretation is generally binding from the date of its promulgation.

21. According to the interpretation concerning the Prosecutor General: "The President of the Slovak Republic is obliged to consider the candidate proposed by the National Council for the office of Prosecutor General under Article 150 of the Constitution of the Slovak Republic, and if the candidate has been nominated in accordance with the law, the President either appoints or dismisses the proposed candidate within a reasonable period. He can only dismiss a candidate if he/she fails to fulfil the legal requirements or if there is any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office in a way not diminishing the authority of that office and of the whole institution in which he/she is to be the leading representative, or which does not contradict the mission of that institution if this reason could interfere with the proper functioning of constitutional bodies (Article 101.1 second sentence of the Constitution of the Slovak Republic). The President shall provide the reasons for rejection and these reasons may not be arbitrary."

22. The President of the Republic is a state body under Art. 2.2 of the Constitution, which obliges him/her to act solely within the limits set by the Constitution. Moreover, according to Art. 128 of the Constitution he/she is also obliged to act in line with the generally binding interpretation by the Constitutional Court delivered in the proceedings on interpretation of the Constitution and constitutional laws, which in this case also includes the interpretation concerning the Prosecutor General.

23. According to the second sentence of the interpretation concerning the Prosecutor General, the determining criteria for hearing and deciding on the candidates for judges of the Constitutional Court is his obligation to ensure the proper functioning of Constitutional bodies. It unambiguously follows from the Constitution, that Prosecutor General is not the only Constitutional body appointed by the President. This includes (not only) judges of the Constitutional Court.

24. Therefore, when deciding on the six candidates for judges of the Constitutional Court, the President shall take in account, minding his obligation to ensure the proper functioning of Constitutional bodies, the criteria for the candidates delivered in the second sentence of the Interpretation concerning Prosecutor General, i.e. their qualification for performing the duties of judges of the Constitutional Court.

25. The obligation to ensure the proper functioning of Constitutional bodies lasts during the entire term of the President. This obligation cannot be restricted or modified by any circumstances, not even a decision delivered by the Constitutional Court. For this reason, finding ref. III. ÚS 571/2014, due to which the President is obliged to hear and decide anew, does not mean that the President is obliged to appoint the rest of the candidates; its significance lies in the fact that the President is obliged to repeat the entire procedure of appointment among candidates who were returned to the stage of examination of their qualification in regards to the quoted finding of the Constitutional Court. Even in this procedure, the President is obliged to appoint the candidates who will perform the duties of a judge of the Constitutional Court in a way for the President to be able to fulfil his obligation to ensure the proper functioning of the Constitutional Court.

26. The President is obliged to ensure the proper functioning of Constitutional bodies, including the Constitutional Court and he cannot be limited or obstructed by the National Council's not respecting its constitutional obligation under Article 134.2 of the Constitution, i.e. to propose the double number of candidates for judges of the Constitutional Court. The National Council has no permission for such obstructions; it only has, according to the quoted Article of the Constitution, the obligation to ensure that the President has, in every stage of the procedure, the double number of candidates for each vacant office of a judge of the Constitutional Court.

27. Article 101.1 of the Constitution contains a clear obligation to ensure the proper functioning of Constitutional bodies; the Constitution does not distinguish by any means between Constitutional bodies appointed by the President. It follows that the President is obliged to fulfil this obligation with each Constitutional body under his power. This obligation does not cease to exist or change because the appointment of some Constitutional bodies follows the proposal of only one candidate (Prosecutor General, President of the Supreme Court) or more candidates (double number of candidates for judges of the Constitutional Court). Such a result would have to be explicitly stipulated in the wording of the Constitution in force and there would have to be a specific Article on the different approach in case of judges of the Constitutional Court, which there is not. It follows that the obligation of the President to ensure the proper functioning of Constitutional bodies must be exercises with each Constitutional body in equal manner, with equal intensity and without distinction (without discrimination) between the procedures and results of proposed candidates for Constitutional bodies.

28. Regarding this interpretation concerning the duties of the President, the President of the Constitutional Court argued in her concurring opinion par. 10 as follows: "In connection with personal proposals to the President, relying on the above, it can be stated that if the Constitution does not oblige the President to respect the personal proposals [under Article 102.1. g of the Constitution in connection with Article 111 of the Constitution – the President shall "appoint and recall" members of the Government] and the Constitution without any other specification assumes the cooperation of the President [for example Article 102.1.h, 102.1.t and 102.1.i – the President "appoints and recalls"], the President has an equal position with the submitter of this personal proposal and in this sense the President (like the submitter of the personal proposals) is permitted to independently reconsider this proposal and decide, whether he will accept it or not." *In par. 12 she added:* "The Constitution does not grant the National Council direct powers in relation to the President elected directly by citizens. Therefore, if the Constitution uses the term "appoints and recalls", the interpretation which delivers a general obligation for the President to accept all personal proposals of the National Council without the possibility of dismissal, is not acceptable." *This opinion of the President of the Constitutional Court contradicts the opinion of the National Council, in which if the National Council once proposed the required number of candidates, there cannot be a new obligation to propose new candidates in the same case. The quoted opinion of the President of the Constitutional Court*

significantly challenges the interpretation in the written finding of case III. ÚS 571/2014, according to which the interpretation concerning Prosecutor General was not applicable in the case of judges of the Constitutional Court.

29. Last but not least, it is important to take into count the Principle of the Sovereignty of the People, which implies that the only holders of state power are the citizens. Following the criterion of trust, the citizens directly elect their representatives in the National Council and the President and naturally expect that by these means they will make reality their ideas about the functioning of the state and about who shall perform the directly elected constitutional posts and also those in whose elections the representatives are involved. In this regard, and also in response to the quoted opinion of the President of the Constitutional Court, the directly elected President is equal to the National Council. The National Council, when electing the double number of candidates for judges of the Constitutional Court, is in no case obliged to accept proposals submitted by authorised subjects. The candidates proposed by the National Council to the President are solely in the discretion of the National Council and are chosen from among individuals fulfilling the required criteria. The National Council is not obliged to give reasoning on the appointment/non-appointment of a candidate and it is quite common that the elections in the National Council need to be repeated when they fail to elect the required double number of candidates. The President´s choice, compared to the National Council, is undoubtedly more limited, because he can only choose from among candidates proposed by the National Council as it follows from the text of the Constitution. With regard to his equal position to the National Council, the President cannot be put into a situation where he is obliged to appoint the exact half of the double number of candidates fulfilling the formal criteria. By doing this, the scope of his discretional power would be effectively narrowed. For the President to always be obliged to appoint the half number of the candidates, it would have to be based on constitutional text or other generally binding interpretation by the Constitutional Court, which, in this case, is not given. »

With regards to the above, the President by his motion seeks to obtain an interpretation in the following terms:

"In the fulfilment of his duty to ensure the proper functioning of constitutional bodies, the President of the Slovak Republic is both entitled and obliged, after examining the constitutional prerequisites for judges of the Constitutional Court of the Slovak Republic, to appoint such candidates for the position of judge of this court proposed by the National Council of the Slovak Republic, in whose case in accordance with the interpretation of the Constitution of the Slovak Republic given in the ruling by the Constitutional Court of Slovak Republic ref. PL. ÚS 4/2012 dated 24 October 2012 promulgated as No. 390/2012 Coll. he has not found any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office of a judge of the Constitutional Court of the Slovak Republic in a way not diminishing the authority of this judicial office and of the Constitutional Court of the Slovak Republic.

The National Council of Slovak Republic is obliged to ensure that at each stage of the process of appointing judges of the Constitutional Court of the Slovak Republic, the President of the Slovak Republic has at his disposal a double number of candidates for each vacant position of a judge of the Constitutional Court of the Slovak Republic."

On 31 August 2015 a submission from the President was delivered to the Constitutional Court, in which he stated:

"*On 6 August 2015 I submitted a motion requiring an interpretation of the Constitution of the Slovak Republic ("the Constitution"), which is filed under ref. Rvp 11794/2015. My reason for this motion is the existing dispute between the President and the National Council of the Slovak Republic ("the National Council"), which relates to two fundamental questions.*

The first question is whether I as the President of the Republic am bound without further discretion to appoint judges of the Constitutional Court of the Slovak Republic ("the Constitutional Court") from the proposed candidates, if the latter fulfil the prerequisites laid down in the Constitution, or whether I may and am obliged also to examine their qualification for performing that office. The second question relates to the duty of the National Council to ensure the President of the Slovak Republic has at his disposal double the number of candidates for each vacant position of a judge of the Constitutional Court of the Slovak Republic.

These questions arose in connection with two proceedings and decisions at the Constitutional Court. The first decision is the interpretation of the Constitution and constitutional laws given in the Constitutional Court ruling ref. PL. 4/2012 dated 24 October 2014 promulgated as No. 390/2012 Coll., obliges the President of the Republic to examine also other than constitutional (legal) criteria in the case of candidates for a constitutional office. The second decision is finding ref. III. ÚS 571/2014, in which the majority of the Chamber adopted and pronounced a finding, where the reasoning given in the oral pronouncement differs from that given in the written version (for more details see the motion for interpretation of the Constitution).

As a consequence of these decisions by the Constitutional Court and of the fact that the proceeding before this court in case ref. II. ÚS 718/2014 resulted in a stay of proceedings after the withdrawal of the complaints by two candidates whom I had not appointed, there remained only three candidates for two vacant positions of judges of the Constitutional Court. With regard to this I asked the Chairman of the National Council to propose in accordance with the Constitution another candidate in order to bring their number to four.

The content of this letter (by the Chairman of the National Council) confirms that in the case of the candidates for position of judges of the Constitutional Court there exists and persists a real dispute between the President of the Republic and the National Council about the manner in which the President of the Republic should decide about the candidates proposed by the National Council for positions of judges of the Constitutional Court, as well as whether the National Council is responsible for the number of candidates being sufficient and in accordance with the Constitution.

For this reason I suggest that this letter be considered as proof which by virtue of its existence not only justifies admission of the motion for interpretation of the Constitution for further proceedings, as well as adoption of a decision on the merits of the case as proposed in the original motion for the interpretation of the Constitution.

II.

Under Article 124 of the Constitution, the Constitutional Court of the Slovak Republic is an independent judicial body charged with the protection of constitutionality.

Under Article 128 of the Constitution, the Constitutional Court provides an interpretation of the Constitution or constitutional laws in disputable matters. The decision of the Constitutional Court on interpretation of the Constitution and constitutional laws is promulgated in the manner established for promulgation of laws. The interpretation is generally binding from the day of its promulgation.

Under Article 131.1 of the Constitution, the Constitutional Court decides in Plenum in matters listed in Article 128. The Plenum of the Constitutional Court decides by the absolute majority of all judges. If this majority is not reached, the proposal is rejected.

Under Article 130.1.b of the Constitution, the Constitutional Court commences proceedings upon a motion submitted by the President of the Slovak Republic.

Under Article 140 of the Constitution, details on the organization of the Constitutional Court, on the manner in which proceedings before the Constitutional Court are conducted and on the status of its judges shall be laid down in a law.

Under Section 18.1.b of the Law on the Constitution Court, the Constitutional Court commences proceedings upon a motion submitted by the President of the Slovak Republic.

Under Section 46 of the Law on the Constitutional Court, the persons entitled to submit a motion are listed in Section 18.1.a to 18.1.e.

Under Article 45 of the Law on the Constitutional Court, the Constitutional Court issues interpretations of constitutional laws only in disputable cases.

Under Section 20.1 of the Law on the Constitutional Court, the motion for commencement of proceedings must be submitted in writing to the Constitutional Court. The motion must contain the following: the matter to which it relates, who is submitting it, alternatively the person whom against the motion is being filed, what decision the applicant seeks, the reasoning underlying the motion, and the proposed evidence. The motion must be signed by the applicant(s) or his/her/their representative.

Under Section 47 of the Law on the Constitutional Court, a motion for the commencement of proceedings must contain, besides the general requirements stipulated in Section 20, also information concerning which constitutional law, or its part or provisions, are to be interpreted, what the reasons for the conflict are, and which of the state bodies, according to applicant's opinion, is interpreting the constitutional law incorrectly.

Under Section 20.3 of the Law on the Constitutional Court, the Constitutional Court is bound by motion for commencement of proceedings, except in cases expressly mentioned in that law.

Under Section 25.1 of the Law on the Constitutional Court, the Constitutional Court holds a preliminary hearing on a motion in closed session without the presence of the applicant, unless that law provides otherwise.

Under Section 25.2 of the Law on the Constitutional Court, the Constitutional Court may reject during the preliminary discussion done in closed session by a ruling motions concerning cases which the Constitutional Court is not competent to decide, motions which do not meet the formal requirements defined by law, non-admissible motions or motions submitted by a person who is clearly not authorised to do so, as well as motions submitted late. The Constitutional Court may also reject a motion which is manifestly unfounded.

Under Article 2.2 of the Constitution, state bodies may act only on the basis of the Constitution, within its limits, and to the extent and in manner laid down by law.

Under Article 134.2 of the Constitution, judges of the Constitutional Court 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 double the number of candidates for judges that the President of the Slovak Republic is to appoint.

Under Article 101.1 of the Constitution, the President is the head of state of the Slovak Republic. The President represents the Slovak Republic both externally and internally 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.

Under Article 102.1.s of the Constitution, the President appoints and recalls judges of the Constitutional Court of the Slovak Republic, the President and Vice-President of the Constitutional Court of the Slovak Republic; accepts the oath of judges of the Constitutional Court of the Slovak Republic and the oath of Prosecutor General.

III.

The Plenum of the Constitutional Court held a preliminary hearing in closed session on the motion of the Applicant under Section 25.1 of the Law on the Constitutional Court.

At the preliminary hearing, the Constitutional Court examined whether the requirements under Section 25.2 of the Law on the Constitutional Court might impede admitting the motion for further proceedings. Under this provision, motions concerning cases which the Constitutional Court is not competent to decide, motions which do not meet the formal requirements defined by law, non-admissible motions or motions submitted by a person who is clearly not authorised to do so as well as motions filed late may be rejected by the Constitutional Court in a ruling at the preliminary hearing done in closed session. The Constitutional Court may also reject a motion which is manifestly unfounded.

The established practice concerning the application of Article 128 of the Constitution in proceedings before the Constitution Court can be generalised so that the Constitutional Court will hear a motion on interpretation of the Constitution in merits only when it is confirmed that the requirements laid down by the Constitution for commencement of proceedings are met. Based on its case law, the Constitutional Court stated in this regard in case ref. II. ÚS 30/97:

« 1. "The purpose of proceedings on interpretation of the Constitution under Article 128.1 of the Constitution of the Slovak Republic is to give an interpretation of disputable provisions of constitutional laws in an unambiguous manner so that the dispute which led to proceedings before the Constitutional Court can be avoided in the future. Although one of the requirements for proceedings before the Constitutional Court on interpretation

of constitutional laws is the existence of a specific dispute between specific state bodies of the Slovak Republic at a specific time, the ruling of the Constitutional Court on interpretation of the Constitution has effects erga omnes and is legally binding (until the amendment or annulment of this constitutional law provision which was the subject of this interpretation by the Constitutional Court).” (I. ÚS 61/96, p. 9)

2. “One of the requirements for proceedings on interpretation of constitutional laws in a disputable case is the existence of a dispute (Section 45 of Law No.38/1993 Coll.).” (I. ÚS 61/96, p. 5)

“One of the fundamental requirements for admitting a motion on commencement of proceedings on interpretation of constitutional laws is demonstrating the existence of a dispute. As the Constitutional Court noted in previous cases ref. I. ÚS 20/94 and I. ÚS 7/96: „The Constitutional Court, in proceedings on interpretation of the Constitution in disputable cases, is bound by the motion filed by the authorised person to the extent to which it has been proved that there is a real dispute.” (I. ÚS 51/96, p. 3)

3. “Law no. 38/1993 Coll. uses the term “disputable” to mean proceedings in cases where there is a dispute between two parties – state bodies with different opinions on the interpretation of a constitutional provision (Section 46.2 of the Law No. 38/1993 Coll.).” (I. ÚS 39/93, p. 7)

4. “The purpose of the interpretation of constitutional laws is the fact, that the applicant seeks to know the proper manner of exercising his/her individual right or carrying out his/her duty laid down by this constitutional law. The interpretation concerning the exercise of rights of other persons than those whose rights or duties are laid down by constitutional law would interfere with the purpose of the interpretation of constitutional laws under Article 128.1 of the Constitution.” (I. ÚS 129/93, p. 2)

5. “In proceedings on interpretation of constitutional laws in disputable cases, the Constitutional Court, according to Article 2.2 of the Constitution, respects the powers of each branch of state power of the Slovak Republic laid down in the Constitution and in laws. When interpreting constitutional laws, the Constitutional Court cannot arrive at a determination (identification) of a power of one state body of the Slovak Republic if the Constitution or other generally binding regulations entrust this same power to another state body different from the one whose powers form the subject matter of the proceedings on interpretation before the Constitutional Court under Article 128.1 of the Constitution. In situations where legal regulations of the Slovak Republic entrust particular powers to specific state bodies which are at the same time exclusively entitled to exercise these powers, the same power does not belong to any other state body, including the President of the Slovak Republic. Such a legal situation cannot be changed even by the Constitutional Court in proceedings on the interpretation of constitutional laws in disputable cases.” (I. ÚS 61/96, p. 18)

6. “The demonstration of disputability of interpretation of constitutional laws in preliminary hearing on motion on interpretation of constitutional laws follows the determination of the scope of questions which may be subject to proceedings on interpretation... After determining the subject matter (scope) of these questions, the Constitutional Court examines whether concerning their interpretations there is a dispute between the parties of proceedings on interpretation of constitutional laws in disputable cases before the Constitutional Court.” (I. ÚS 61/96, p. 6)

7. “The term manifestly unfounded motion on interpretation of constitutional laws in disputable cases in the opinion of the Constitutional Court includes also a motion which requires interpretation of provisions which are not subject to constitutional regulations even if they are (can be) subject to legal regulations.” (I. ÚS 61/96, p. 20) »

The President argues in his motion on commencement of proceedings on interpretation under Article 128 of the Constitution that the dispute between him and the National Council of the Slovak Republic (“the National Council”) started due to the article of the Constitution he cited in his motion and he submits the following evidence to prove his claim that there is a dispute:

A. In contrast to the National Council's opinion, in the applicant's opinion, it is necessary to apply the interpretation of the Constitutional Court ref. PL. 4/2012 to the appointment of judges of the Constitutional Court and therefore in his opinion, when appointing the judges of the Constitutional Court the President is obliged to examine "*the existence of any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office of a judge of the Constitutional Court of the Slovak Republic in a way not diminishing the authority of this judicial office and of the Constitutional Court of the Slovak Republic".*

B. In contrast to the National Council's opinion, in the applicant's opinion, since the proceedings on the constitutional complaints of candidates Ján Bernát and Imrich Volkai were stayed, their candidacy for the office of a judge of the Constitutional Court ceased to exist and in consequence there are now two vacant offices of judges of the Constitutional Court at the present time and only three candidates (Eva Fulcová, Miroslav Duriš and Juraj Sopoliga) and therefore the National Council is obliged to propose one more candidate for judge of the Constitutional Court.

A. With regards to the alleged existence of a dispute between the applicant and the National Council concerning the question whether, when deciding on the appointment of candidates for the office of a judge of the Constitutional Court, the President may or is obliged to examine the existence of "*any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office of a judge of the Constitutional Court of the Slovak Republic in a way not diminishing the authority of this judicial office and of the Constitutional Court of the Slovak Republic",* the Constitutional Court states that there is no legally relevant dispute in the circumstances of this case between the National Council and the applicant and therefore the applicant's motion does not satisfy the fundamental requirement laid down by the law for commencement of proceedings on interpretation of the Constitution and constitutional law.

With regards to the applicant's question, the Constitutional Court points out in the first place that this question is answered by the final decision in case ref. III. ÚS 571/2014, in which the Constitutional Court unambiguously stated that the interpretation of provisions of the Constitution referred to by the applicant, is not in conformity with the Constitution, but to the contrary, the applicant infringed the rights of the complainants by applying this interpretation.

Therefore, if there was a dispute in the past between the applicant and the National Council whether the President may or is obliged to examine the existence of "*any serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office of a judge of the Constitutional Court of the Slovak Republic in a way not diminishing the authority of this judicial office and of the Constitutional Court of the Slovak Republic",* this dispute has been solved by the final decision of the Constitutional Court in case ref. III. ÚS 571/2014, where the Court expressly stated in the reasoning that under Article 134.2 and 139 of the Constitution the President is unambiguously obliged to appoint half of the double number of candidates for judges of the Constitutional Court. Furthermore, the Constitutional Court also specifically emphasized in the reasoning of this decision that the President is obliged to exercise his competence under Article 102.1.s of the Constitution in accordance with the conditions laid down by the Constitution, which defines the scope of his discretion in Article 134.2 and 139 of the Constitution, i.e. to choose from among two candidates proposed by the National Council for one vacant position, in contrast to the appointment of only one candidate for the office of Prosecutor General of the Slovak Republic. Finally, the Constitutional Court unambiguously stated in the reasoning of finding in case ref. III ÚS 571/2014 concerning the President:

"In the case of Prosecutor General, the President is given only one candidate for one office. His power to decide includes the possibility to dismiss the proposed candidate under some circumstances specified by the Constitutional Court. In the case of judges of the Constitutional Court, the President is given double the number of the required candidates for judges of the Constitutional Court. His decision-making power – the limits of facultative and obligatory choice – is in this case laid down directly in the Constitution. The constitutional regulation of presidential powers significantly differs in the case of Prosecutor General and in

the case of judges of the Constitutional Court. Therefore, where the author of the Constitution makes a distinction, the interpretation and application of the Constitution must reflect this."

The reasoning of the finding ref. III ÚS 571/2014 clearly states that the interpretation in case ref. PL. ÚS 4/2014 does not apply to the appointment of judges of the Constitutional Court, because it applies only to the appointment of Prosecutor General of the Slovak Republic.

The President is obliged to appoint the exact half of the double number of candidates for judges of the Constitutional Court and therefore the President is not permitted to appoint less than half of the candidates for judges of the Constitutional Court because he believes in the existence of a serious reason relating to the candidate which casts serious doubt on his/her ability to carry out the office of a judge of the Constitutional Court of the Slovak Republic in a way not diminishing the authority of this judicial office and of the Constitutional Court.

Beyond the aforementioned, the Constitutional Court adds for the sake of completeness that if the President had doubts about the interpretation of the relevant provisions of the Constitution, he had to file a motion to the Constitutional Court before applying the interpretation preferred by him and therefore before the Constitutional Court decided that the application of this interpretation led to infringement of rights of candidates for judges of the Constitutional Court.

The President was supposed to proceed in accordance with the procedure followed in case ref. PL. ÚS 4/2012, to which he has referred several times, where the President waited until the decision of the Constitutional Court on interpretation of the Constitution and only following that decided not to appoint the Prosecutor General of the Slovak Republic.

B. With regards to the alleged existence of a dispute between the applicant and the National Council concerning the question whether, after the withdrawal of constitutional complaints of two candidates for judges of the Constitutional Court and the subsequent stay of proceedings, their candidacy for judges of the Constitutional Court ceased to exist, it can be unambiguously stated that there is a dispute between the applicant and the National Council, because while the applicant believes that there are only three candidates for judges of the Constitutional Court, the National Council claims that the withdrawal of constitutional complaints does not lead to their candidacy for judges of the Constitutional Court ceasing to exist and therefore in the opinion of the National Council there are still five candidates for judges of the Constitutional Court.

However, as follows from the relevant articles of the Constitution and provisions of the Law on the Constitutional Court, in the case of proceedings on interpretation of the Constitution and constitutional laws, the existence of any dispute concerning the interpretation of specific provisions is not sufficient, because the Constitutional Court can only give interpretation of those provisions which are part of constitutional regulation. If it is necessary to answer a question which is not regulated in the Constitution or constitutional laws and therefore this question is not part of constitutional regulation and is "only" subject to statutory regulation, the requirement of a relevant (constitutional) dispute is not fulfilled and the motion on commencement of proceedings on interpretation should be regarded as manifestly unfounded.

The Constitutional Court stated in his previous decisions that *"the term manifestly unfounded motion on commencement of proceedings on interpretation of constitutional laws in a disputable case includes, according to the Constitutional Court, a motion on interpretation of such provisions which are not to be found in the Constitution, even if they are part of the statutory regulation."* (I. ÚS 61/96)

In this particular case, the dispute concerns the effect of staying the proceedings on complaints of candidates for judges of the Constitutional Court on the further existence of their candidacy or whether and when the candidacy ceases to exist.

In the first place, the Constitutional Court observes that Article 134.3 of the Constitution "merely" comprehensively lists the requirements on the qualification of candidates for judges of the Constitutional Court and not even marginally regulates the creation or termination of candidacy for judges of the Constitutional Court. The legal regulation of elections for candidates for judges of the Constitutional Court, including the legal regulation of creation of candidacy for judges of the Constitutional Court, is subject to "only" statutory and sub-statutory regulation – Law no. 350/1996 Coll. on the rules of procedures of the National Council of the Slovak

Republic, Electoral Code on elections and recall of officers (adopted in Resolution No. 498 of the National Council of the Slovak Republic dated 17 June 2011).

Accordingly, as regards the effects of staying the proceedings on complaints of individual persons and legal entities under Article 127 of the Constitution following the withdrawal of the constitutional complaint by the complainant, the Constitutional Court points out that this question is not subject to constitutional regulation. The legal regulation on the stay of proceedings following the withdrawal of constitutional complaints is subject "only" to statutory regulation – Section 54 of the Law on the Constitutional Court.

As follows from the aforementioned, despite the real existence of a dispute between the applicant and the National Council concerning the question whether the candidacy of two candidates for judges of the Constitutional Court did or did not cease to exist, the motion of the applicant is in this part regarded to as manifestly unfounded, because the applicant requires the interpretation of provisions which are not subject to constitutional regulation and they are "only" object to statutory regulation and therefore in this particular case the dispute does not have the required quality, i.e. the dispute does not concern interpretation of the Constitution or constitutional law, but "only" of statutory or sub-statutory regulation.

However, the Constitutional Court, based on the principle of substantive protection of the Constitution and holding in mind the principle of legal certainty, notes that it is aware of the apparent problem lying in the fact that the finding ref. III. ÚS 571/2014 annulled the decision of the applicant on the non-appointment only with regard to three out of five candidates for judges of the Constitutional Court and the other two (Ján Bernát and Imrich Volkai), whose complaints were heard in a different proceeding, withdrew their complaints and this led to stay of proceedings and thus the applicant's decision on their non-appointment still exists.

With regard to this, the Constitutional Court states that the factual and legal situation of all the five non-appointed candidates is, beyond doubts, equal (the applicant's decision on non-appointment are identical) and the decisions on their non-appointment have not constituted rights or duties to other individuals. In the opinion of the Constitutional Court, it is not just to allow the decisions of the applicant to deprive the two candidates who withdrew their complaints of the chance to be candidates for judges of the Constitutional Court as these decisions are considered as manifestly unconstitutional according to the finding ref. III. ÚS 571/2014.

As follows, under the circumstances of this case, the applicant may and is obliged to annul his two decisions on the non-appointment of Ján Bernát and Imrich Volkai and subsequently appoint two judges of the Constitutional Court from among the five candidates (Ján Bernát, Eva Fulcová, Miroslav Duriš, Juraj Sopoliga, Imrich Volkai) proposed by the National Council.

In doing so, the applicant will stop this unconstitutional situation and the infringement of rights of five candidates for judges of the Constitutional Court. By following this procedure in accordance with finding ref. III. ÚS 571/2014, the applicant will stop the "dispute" with the National Council, which started following the applicant's actions disrespecting finding ref. III. ÚS 571/2014, from which clearly follows that the applicant is obliged to appoint two candidates out of the five candidates for judges of the Constitutional Court and at the same time he is not permitted to apply interpretation ref. PL. ÚS 4/2012, because this, as described in the finding of case III. ÚS 571/2014, does not apply to the appointment procedure of judges of the Constitutional Court.

As follows, the Constitutional Court rejected the applicant's motion at preliminary hearing under Section 25.2 of the Law on the Constitutional Court, since it found that the motion partly does not fulfil the legal requirements (non-existence of a legally relevant dispute between the parties to the proceedings – under the circumstances the matter is not disputable) and is partly manifestly unfounded.

Attached shall be the dissenting opinions of Judges Ľudmila Gajdošíková, Lajos Mészáros, Ladislav Orosz and Rudolf Tkáčik

Instruction on appeal: This decision is not subject to legal remedies.

Košice, 28 October 2015

- Courtesy translation-

2. Abridged transcript of the oral pronouncement of finding of the Constitutional Court of the Slovak Republic ref. III. ÚS 571/2014

Abridged transcript of the recording of the public hearing dated 17 March 2015

Finding of the Constitutional Court of the Slovak Republic

R e a s o n i n g :

The complaints were delivered to the Constitutional Court on 27 August 2014, 28 August 2014 and 2 September 2014. The Chamber of the Constitutional Court decided by ruling Ref. No. III. ÚS 571/2014 of 24 September 2014 on joining the cases regarding the complaints of JUDr. Eva Fulcová and JUDr. Juraj Sopoliga, and admitted them for further joint proceedings.

The complaint of JUDr. Miroslav Ďuriš, PhD. was admitted for further proceedings by ruling I. ÚS 588/2014 of 1 October 2014. The Plenum of the Constitutional Court decided by ruling PLs 4/2014 of 12 November 2014 on joining the cases under III. ÚS 571/2014 and I. ÚS 588/2014 for further joint proceedings under III. ÚS 571/2014.

The complainants claimed the violation of their fundamental rights guaranteed in the Constitution and the International Covenant on Civil and Political Rights by the action and decisions of the President of the Slovak Republic No. 1112-2014-Ba of 2 July 2014 on their non-appointment as judges of the Constitutional Court of the Slovak Republic.

The reasoning of the complainants can be briefly summarized as follows:

1. In appointing the judges of the Constitutional Court of the Slovak Republic, the President applied the interpretation of the Constitutional Court regarding the appointment of the Prosecutor General under PL ÚS 4/2012 of 24 October 2012. This interpretation however does not relate to the competences of the President to appoint judges of the Constitutional Court.

2. The President of the Slovak Republic established an advisory body to review the suitability of the candidates for the position of Constitutional Court judges and took its recommendations into account while deciding on the non-appointment of the claimants as judges of the Constitutional Court. However,

1. The establishment of this body and its recommendations do not have any constitutional basis, and also
2. The composition of this body did not guarantee non-biased decision-making regarding the complainants. The membership of several ordinary court judges in the advisory body was in contradiction with the law.

3. The President of the Slovak Republic did not appoint three (out of six) candidates proposed by the National Council of the Slovak Republic as Constitutional Court judges, but only one.

4. In comparison with previous candidates for the office of Constitutional Court judge, the President of the Slovak Republic did not apply the same conditions for access to public office with regard to the complainants as candidates for the position of Constitutional Court judges.

5. The President of the Slovak Republic did not give proper reasoning for his decision on non-appointment of the complainants as Constitutional Court judges. As a party to proceedings before the Constitutional Court, in his statements on the complaints of the complainants the President of the Slovak Republic stated that it follows from the wording of Art. 134 sec. 2 and Art. 102 sec. 1 (s) of the Constitution in conjunction with the interpretation of the Constitutional Court PL ÚS 4/2012 of 24 October 2014 that it is within his authority not to appoint half of the proposed candidates for the position of Constitutional Court judge according to Art. 134 sec. 2 of the Constitution, but also within his authority and his duty not to appoint more than half or all of the proposed candidates, if the conditions for their appointment are not met.

It is possible to subsume the legal terms used in the second section of the operative part of the interpretation of the Constitution in case PL ÚS 4/2012 under one general term “suitability of the candidate for the position of Constitutional Court judge”.

Review of the suitability of candidates for the position of Constitutional Court judge means the process of reviewing their ability to hold the office of Constitutional Court judge based on their theoretical knowledge of constitutional law, constitutional justice, the case law of the European Courts, especially the case law of the European Court of Human Rights and Court of Justice of the European Union, as well as their personal and practical experience with constitutional justice. The suitability of candidates may also consist in the fact that their curriculum vitae and practical results in the area of law show that they are persons who can be perceived as experts in a certain area of legal theory or practice.

Regarding the establishment of the advisory body to review the suitability of the candidates, the President of the Republic stated that the legal order as well as the constitutional practice of the Presidents of the Slovak Republic imply that the President has the right to have advisors. By establishing the advisory body the President could not by any means have acted in conflict with Art. 2 sec. 2 of the Constitution. This Article relates only to the decision-making of the President within his competences, and not to the way he carries out the groundwork for his decision-making. The recommendations of the advisory body were not binding for the President because their nature was purely consultatory and advisory, which means that the advisory body did not act as a crucial element in his decision-making.

According to the President, the contested decisions on the non-appointment of the complainants are concise in order to protect the personality of the candidates. However, the CVs of the candidates as well as the recommendations of the advisory body are part of the President’s reasoning, and the President identified with their content. That is why, in his opinion, it was not possible to claim that his decisions were not properly reasoned.

The President of the Slovak Republic stated that he had afforded the complainants full opportunity to exercise their fundamental right to access to elected and other public offices under the same conditions.

In deliberating the case, the Constitutional Court of the Slovak Republic started out from the opinion pronounced in its existing case law, according to which the Constitution of the Slovak Republic is based on the principles of a democratic state and the rule of law, which as basic principles of the Slovak legal order are reflected in the status of the public authorities and their exercise of power. Both of these principles are simultaneously valid, however in simpler terms the exercise of state power must always be based on democratic legitimacy and must take place within the limits of the law.

This conclusion applies to the constitutional bodies which (according to the Constitution and constitutional laws, or so-called subconstitutional legal rules) are authorised to take decisions. It is necessary that these decisions be always taken based on the competences set in the Constitution and within its limits. The precise manner of taking decisions will always depend on

how the constitution-making authority regulates it in the Constitution. The Constitution contains the basic framework of competences for the exercise of state power. That framework contains substantive limitations, especially by fundamental rights and freedoms and some constitutional principles, as well as formal and procedural limitations whose aim is not to block the adoption of decisions with particular content, but inter alia to act preventatively against the misuse of power, which would be more probable if a certain competence were assigned only to one body.

One of the possible ways of facing this risk is to make the adoption of a decision subject to the consent of several bodies, which ensures their mutual supervision. The said mechanisms capture the essence of the separation of powers, one of the basic features of the organisation of state power in modern democratic constitutional systems. This essence of the separation of powers is the distribution of powers within the constitutional system among several bodies, while at the same time certain mechanisms exist which prevent the misuse of powers through mutual participation in the exercise of those powers or through the possibility of ex post review.

This is the context in which presidential appointment powers should also be viewed and assessed, which is why in general terms they cannot be considered as being a pure formality. Quite to the contrary, if the President's decision concerns nominations for constitutional offices, which is related to his constitutional duty to ensure the proper functioning of constitutional bodies pursuant to Art. 101.1 of the Constitution, the presidential power includes some discretion as to whether he accedes to the submitted proposal or not.

However, the scope of the President's discretion is limited in all such cases by the related constitutional regulation of the respective appointment power. This follows from Art. 2.2 of the Constitution, according to which state bodies (including the President) may act only on the basis of the Constitution, within its limits, and to the extent and in a manner laid down by law. The scope of discretion for the assessment of suitability of candidates for the office of Constitutional Court judges follows from the provisions of Art. 102.1.s of the Constitution in connection with Art. 134.2 and Art. 134.3 of the Constitution, according to which the President appoints judges of the Constitutional Court of the Slovak Republic on the proposal by the National Council of the Slovak Republic, which proposes double the number of candidates for the number of judges the President is to appoint.

Only citizens eligible to the National Council of the Slovak Republic having at least 40 years of age, a university degree in law and at least 15 years of work experience in a legal profession may be appointed as judges of the Constitutional Court. These basic qualification requirements for candidates for Constitutional Court judges are set forth in Art. 134.3 of the Constitution. Examination of the qualifications of the candidates for judges of the Constitutional Court in terms of their professional and other qualities, while taking into account the fundamental requirements laid down in Article 134.3 of the Constitution, is implicitly included in the process of selection and proposal of candidates by the National Council to the President.

The President is entitled to make his own examination of the qualifications of the candidates in terms of professional and other qualities when following the procedure set out in Article 134.2 of the Constitution, under which the President appoints the required number of judges of the Constitutional Court from among the proposed double number of candidates.

The President's power to reject a candidate for constitutional office in case of the existence of a serious reason relating to the candidate which casts serious doubt on his/her ability to carry out that office in a way not diminishing the authority of the office and of the whole institution of which he/she is to be a supreme representative or which does not contradict the mission of this institution, if this reason could interfere with the proper functioning of constitutional bodies, as follows from the interpretation pronounced in case ref. PL ÚS 4/2012, relates to exceptional reasons which are so severe that they disqualify the candidate for this particular office in terms of constitutional law.

For example, in case ref. I. ÚS 397/2014 on the constitutional complaint of doc. JUDr. Jozef Čentéš, PhD. concerning his non-appointment to the office of Prosecutor General, the Constitutional Court considered that in the circumstances of that case, the proven action of the complainant constituted such an "exceptional reason" because his action tended towards obstruction of a procedural act in criminal proceedings or towards violation of the rights of others which consisted in the intention to blame an administrative assistant at the Office of Prosecutor General for shredding records and deleting files from a computer.

No such compelling or exceptional reasons underlie the decision of the President not to appoint the complainants. The reasoning of this decision is limited more or less to general statements on their failure to fulfil the criteria of professional predisposition without individualised specification.

No other opinion of the President in assessing the suitability of candidates proposed by the National Council for the position of Constitutional Court judge, without the demonstrable existence of compelling reasons relating to the candidates which cast serious doubt on their ability to carry out the office of Constitutional Court judge in a way not diminishing the dignity of the office, or on their ability to carry out that office in a way consistent with the very mission of the Constitutional Court, can justify the President's exceeding the scope of his discretion granted to him in the selection of candidates by Art. 134.2 of the Constitution. In other words, it does not justify the President's refusal to accept and appoint more than half of the total number of candidates proposed by the National Council.

By acting beyond his powers under Art. 102.1 of the Constitution in combination with Art. 134.2 of the Constitution when deciding on the candidates, the President also violated the fundamental right of the complainants to access to elected and other public offices guaranteed in Art. 30.4 of the Constitution in combination with Art. 2.2 of the Constitution. Under Art. 127.2 of the Constitution, if the Constitutional Court upholds the complaint, it will state in its finding that the challenged final decision, measure or other intervention has violated the rights or freedoms of the complainant and it will annul that decision, measure, or other intervention.

Having reached the conclusion that there has been a violation of the fundamental right of the complainants to access to elected and other public offices under equal conditions pursuant to Art. 30.4 of the Constitution in combination with Art. 2.2 of the Constitution, the Constitutional Court annulled the decision of the President not to appoint JUDr. Eva Fulcová, JUDr. Miroslav Duriš, PhD. and JUDr. Juraj Sopoliga as Constitutional Court judges and ordered him to act and decide the case anew. Under Sec. 56.6 of the Law on the Constitutional Court, if the Constitutional Court quashes a final decision, measure or other intervention and refers the case back for further proceedings, the body which issued the decision, decided on the measure or caused the other intervention is under obligation to reconsider the case and to decide anew. In these proceedings that body is bound by the Constitutional Court's legal opinion. In the present case this means the President's obligation to assess the candidates/complainants anew in order to select the required number of Constitutional Court judges from among the candidates proposed by the National Council of the Slovak Republic.

Under Sec. 36.2 of the Law on the Constitutional Court, in vindicated cases according to the results of its proceedings, the Constitutional Court may issue through a ruling imposing the obligation on one of the parties to the proceedings to fully or partially reimburse the costs of the proceedings incurred by another party.

The complainants did apply for the reimbursement of the costs of the proceedings before the Constitutional Court. Given the outcome of the hearing on the merits of the complaint, the Constitutional Court deemed it necessary to award the complainants reimbursement of the costs of the proceedings in the amount specified in the operative part of this decision. The costs

of proceedings were calculated according to Sec. 1.3, Sec. 11.3 and Sec. 14.1.a and 14.1.b of Regulation of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on the remuneration and compensation of attorneys for providing legal services as amended.

As regards the procedural motions of the President of the Slovak Republic, the Constitutional Court evaluated them and did not consider the motion to adjourn and suspend the proceedings for reasons of unification of the legal opinions of the respective Chambers under Sec. 6 of the Law on the Constitutional Court and of taking further evidence as relevant for the decision on the merits and did not deem it necessary to include the decision on these procedural issues in the operative part of this finding.

A dissenting opinion by Judge Rudolf Tkáčik is attached to this decision.

According to Art. 133 of the Constitution, this finding shall become final on the date on which it is served on all the parties to the proceedings.

A detailed reasoning for this finding will be included in its written version, which will also be published on the website of the Constitutional Court after it is served on all the parties to the proceedings.

The hearing is over, you may leave.

- Courtesy translation -

3. Concurring opinion by judge Ivetta Macejková in case of Ref. No. PL. ÚS 4/2012

According to Article 32 § 1 of the Act of the National Council of the Slovak Republic no. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the status of its Judges as amended (hereinafter the „Constitutional Court Act") I shall attach supplementation of the reasoning to the decision of the Constitutional Court of the Slovak Republic (hereinafter the „Constitutional Court") Ref. No. PL. ÚS 4/2012 of 24 October 2012 on the proposal of the group of members of the National Council of the Slovak Republic on providing interpretation of Article 102 § 1 t) and Article 150 of the Constitution of the Slovak Republic (hereinafter the „Constitution").

The Constitutional Court with decision Ref. No. PL. ÚS 4/2012 of 24 October 2012 upon proposal of 60 members of the National Council of the Slovak Republic (hereinafter the "plaintiffs") provided the following interpretation of Article 102 § 1 t) and Article 150 of the Constitution:

The President of the Slovak Republic is obliged to deal with the proposal of the National Council of the Slovak Republic to appoint the Prosecutor General of the Slovak Republic according to Art. 150 of the Constitution of the Slovak Republic; and if the candidate is proposed in proceedings in compliance with the law, to appoint him/her **without undue delay** or to announce to the National Council of the Slovak Republic that he will not appoint the proposed candidate.

He can decline to appoint a candidate only if the candidate does not fulfill the legal prerequisites for the appointment, or on the grounds of a particularly serious matter of fact related to the person of the candidate, which reasonably challenges his/her ability to carry out the position in the manner which does not decrease the importance of the constitutional function or the whole institution which should be headed by this person; or in the manner which is not in conflict with the very mission of this institution, if the regular operation of constitutional bodies could be disrupted (Art. 101 sec. 1 second sentence of the Constitution of the Slovak Republic).

The President is obliged to publish the reasons for the non-appointment, and moreover these must not be arbitrary.

I shall consent to the decision of the majority of the Plenum of the Constitutional Court Ref. No. PL. ÚS 4/2012 of 24 October 2012, as for its statement. However, I attach supplementation of the reasoning, as I hold it necessary to supplement the reasons of the majority of the Plenum the verdict of the noted decision is based upon.

I.

To the existence of dispute on the interpretation of the Constitution and its definition

1. It may be deduced from the diction of Article 128 of the Constitution, as well as from Article 45 of the Constitutional Court Act that inevitable condition for the admission of the motion to commence proceedings under Article 128 of the Constitution for further hearing (meritory negotiation) is the existence of a relevant dispute which the plaintiff must demonstrate in the motion to commence proceedings (similarly for instance the decision of the Constitutional Court Ref. No. PL. ÚS 11/09 of 17 June 2009).

2. During the preliminary negotiation of the motion in this case four members of the Plenum of the Constitutional Court voted against its admission for further hearing, in that, as for the statement of claim (proposed verdict of the decision) claimed by the plaintiffs is concerned, (see part I section 7 of the decision Ref. No. PL. ÚS 4/2012 of 24 October 2012), there existed no dispute between the plaintiffs and the President of the Slovak Republic (hereinafter the "President") (see part II sections 11 to 15 of the decision Ref. No. PL. ÚS 4/2012 of 24 October 2012).

3. In his comment to the proposal the President stressed that he considers the interpretation suggested by the plaintiffs *"obvious and unquestionable",* also as far as the obligation and at the same time the entitlement of the President to assess and reason if the proposed candidate for the position of Prosecutor General of the Slovak Republic (hereinafter the "Prosecutor General") fulfils the requirements for appointment into such a position set by legal rules and if he was elected as candidate for the position of Prosecutor General in accordance with legal rules regulating such election. In this regard the President pointed to the conclusions of the Constitutional Court in case of Ref. No. PL. ÚS 14/06 (non-appointment of the Vice Governor of the National Bank of Slovakia; hereinafter the "Vice Governor of the National Bank").

4. However, the majority of the Plenum of the Constitutional Court voted for the adoption of the proposal for further hearing, arriving to the conclusion that relevant dispute existed between the parties regarding the interpretation of provisions of Article 102 § 1 t) and Article 150 of the Constitution, considering the subject matter of the dispute, thus also the subject matter of the proceedings in the given case, the submission of an interpretation clarifying the issues whether the President under Article 102 § 1 t) and Article 150 of the Constitution has the obligation to appoint the candidate for the position of Prosecutor General proposed by the National Council, in case he fulfils the constitutionally and legally defined requirements for appointment and what is the timing aspect of the exercise of such a presidential power (see part III.A section 31 of the reasoning of the decision Ref. No. PL. ÚS 4/2012 of 24 October 2012).

5. I hold it necessary to remind these facts in order to stress that as defined by the Constitutional Court, it shall not suffice to apply *per analogiam* the conclusions of the Constitutional Court in case pending under Ref. No. PL. ÚS 14/06 on the subject matter of the dispute. In this case, the President refused to appoint the proposed candidate to the position of the Vice Governor of the National Bank for not meeting the legally set requirements for the appointment to such a position. That time, the Constitutional Court defined the subject matter of the dispute in the way that "it is first off necessary to answer the question how the President should proceed in case of doubt if the proposed candidate for the position of Vice Governor meets all the legally set requirements for appointment to such a position" (see part III section 10 of the reasoning of the decision Ref. No. PL. ÚS 14/06 of 23 September 2009). It shall be interpreted in this context also the opinion of the Constitutional Court that the margin of political appreciation of the President by the abovementioned appointing power may however as such include also the assessment of legal requirements. However, in the view of the Constitutional Court such assessment is not depending upon the possibility of political consideration (part III section 33 of the reasoning of the decision Ref. No. PL. ÚS 14/06 of 23 September 2009). The Constitutional Court did not find a reason to deal with the interpretation if, in case the candidate for the position of Vice Governor of the National Bank would meet the legal requirements for the appointment to such a position, the President would be obliged to appoint him or could refuse his appointment. Such issue was not subject matter of the dispute. Neither may the statement of the Constitutional Court that the entitlement of the President to assess the fulfilment of legal requirements may not be identified as arbitrary and commuted with the political assessment of the candidature (part III section 37 of the reasoning of the decision Ref. No. PL. ÚS 14/06 of 23 September 2009), does not concern the settlement of the issue if the President is

entitled to refuse to appoint the candidate into the function of Vice Governor of the National Bank if he meets the legal requirements for the appointment into such function. With the noted statement the Constitutional Court only characterized more closely the nature of the decision of the President when assessing the fulfilment of the legal requirements by the proposed candidate, when adding: "When assessing if the proposed candidate meets the requirement of Article 7 § 4 of the Act no. 566/1992, the President, as well the National Council must respect the doctrinally admissible interpretational conduct, must rationally reason its conclusion and must respect the eventual binding interpretation of the Constitutional Court or the courts which would be relevant for the assessment of the respective issue."

6. The above noted comments of the Constitutional Court in the case pending under Ref. No. PL. ÚS 14/06 are thus not directly applicable to the submission of interpretation within the issue being subject matter of the proceedings in the assessed case, that is, if the President is obliged under Article 102 § 1 t) and Article 150 of the Constitution to appoint the candidate proposed by the National Council for Prosecutor General if he meets the constitutionally and legally set requirements of appointment.

II.

To the subject matter of the dispute

1. While attempting to find answer on the subject matter of the dispute on the interpretation of the Constitution, I hold it appropriate to at least briefly address the issue if the Slovak Republic represents a model of ideal parliamentary democracy, that is, democracy with "strong" Parliament and "weak" President performing more or less representative function.

2. As already concluded by the Constitutional Court earlier, the constituent is not bound by ideal models of forms of government as far as issues of organisational arrangement of state bodies is concerned. Differentiation between presidential and parliamentary form of government, alternatively the form of government of the Parliament, shall undoubtedly have significance from the point of view of constitutional legal theory and is to a significant extent definitely reflected in the consideration of constitutional arrangement in the respective states. However, it is a matter of political decision of the constituent to define which public bodies will perform certain powers. Neither the actual wording of the Constitution is a result of isolated considerations of its authors, but reflects without doubt the knowledge of constitutional theory including the knowledge of constitutional comparative law, as well the actual constitutional evolution on the territory of the Slovak Republic (part III section 25 of the reasoning of the decision Ref. No. PL. ÚS 14/06 of 23 September 2009).

3. A "weak" President may be considered mainly in case if all his decisions require countersignature by the government if apart from some cases, the political consideration is excluded in his case, if the President is obliged to surrender to political will of the Parliament or resign etc. (see for more details part III sections 25 and 26 of the decision of the Constitutional Court Ref. No. PL. ÚS 14/06 of 23 September 2009).

4. Compared to these typical signs of a "weak" President in the Slovak Republic, the constitutional position of the President is strengthened while keeping the parliamentary form of government. The obligation of countersignature in relation to the Presidential acts is not construed generally, but concerns only some taxatively defined powers of the President. The President disposes with the right of relative veto in relation to the legislative power. If the

National Council of the Slovak republic (hereinafter the “National Council”) votes no confidence to the Government or dismisses its proposal to vote no confidence and the President recalls the government, appointing it whereby with the performance of its function until the appointment of the new government, the performance of governmental functions upon Article 119 m) and r) of the Constitution in each case is bound to the previous consent of the President. Upon own discretion, the President shall also appoint judges of the Constitutional Court from the double number of candidates proposed by the National Council or three members of the Judicial Council of the Slovak Republic. The President disposes with strong democratic legitimacy - direct mandate as he is elected directly by the citizens of the Slovak Republic in direct elections by secret ballot. Before the termination of the election period, he may be recalled from function only by referendum upon the decision of the National Council adopted by at least three fifth majority of all members. In order to recall the President the absolute majority of all entitled electors to vote during referendum is needed. If the President is not recalled during referendum, he shall dismiss the National Council within 30 days from the announcement of the results of the referendum. In such case a new election period starts to elapse for the President.

5. The position of the Slovak President is therefore much stronger as for instance the position of the typical “weak” German President. Also in the amendment of the Constitution the tendencies of further strengthening of the position of the Slovak President prevailed. As an example may serve the penultimate amendment of the Constitution – constitutional act no. 356/2011, supplementing the Constitution of the Slovak Republic no. 460/1992, as amended, which while attempting to resolve the constitutional crisis strengthened the position of the Slovak President in a unprecedented - in an ideal model of parliamentary democracy unthinkable – way .

6. Emerging from the above it is thus impossible to claim that the Slovak Republic represents an ideal model of parliamentary democracy with weak position of the President. Therefore during discussions on the constitutional regulation of the Presidential powers the argumentation by the principle of parliamentary form of government does not suffice for a reasoning of such interpretation of the Constitution, where the Slovak President in relation to other Slovak constitutional bodies would have unequal, subordinate position. Such argumentation is not based on the valid constitutional regulation, either supported by any objective Slovak constitutionally political practice and reality.

7. As for the relation of the President to the government, the Constitutional Court held that even if both components of the executive power in the Slovak Republic (President and the government) are mutually divided, cooperate at the same time and are mutually bound by cooperation in realisation of their constitutional powers. Mutual cooperation of the President and the government while performing their constitutional powers manifests in the way that without the constitutionally defined performance of constitutional power of one of them the assertion (real performance) of the constitutional powers of the other (decision of the Constitutional Court Ref. No. I. ÚS 7/96 of 11 July 1996) is not possible. The Constitutional Court also added later in this regard that both bodies had and still have the own margin of consideration during performance of powers, that is, both bodies could and may apply the own political line, whereas the relevance of such conclusion is particularly well-founded after the invention of the direct election of the President by the citizens (part III section 25 of the reasoning of the decision Ref. No. PL. ÚS 14/06 of 23 September 2009).

8. Such opinion of the Constitutional Court may also be applied for the assessment of the relation of the President and the executive power and concluded that despite of the President as representative of the executive power is separated from the National Council as representative of the legislative power, they cooperate at the same time (in constitutionally assumed cases) and are mutually bound by cooperation during realisation of their constitutional powers. Mutual cooperation of the President and the National Council

when performing their constitutional powers manifests in the fact that in cases where the Constitution estimates their cooperation, without the constitutionally defined performance of constitutional powers of one of them any assertion (real performance) of constitutional powers by the other is excluded.

9. In connection to the constitutional formulation of the powers of the President, the Constitutional Court held that the constitutional position of the President is unambiguous only in case the Constitution explicitly acknowledges him powers (expressed by formulation "may do") of explicitly imposes an obligation (expressed by the formulation "is obliged to"). In other cases the constitutional position of the President shall be completed either by interpretation of legal norms contained in the text of the Constitution or by amendment of the wording of respective provisions of the Constitution (decision of the Constitutional Court Ref. No. I. ÚS 39/93 of 2 June 1993).

10. In relation to personal proposals submitted to the President, it may be emerged from the already mentioned that in case there follows no duty of the President from the Constitution to respect the submitted personal proposal [in sense of Article 201 § 1 g) of the Constitution in connection with Article 111 of the Constitution – the President shall "appoint and recall"], the President shall have equal position with the submitter of the personal proposal in the sense that also the President (such as the submitter of the personal proposal) is entitled to autonomously consider such personal proposal and decide to accept or refuse it.

11. With regard to the high democratic legitimacy following for the President from the fact that he is directly elected by the citizens, it is whereby be of no constitutional relevance if, in case the Constitution without any further specification assumes cooperation of the President when handling personal issues, the personal proposal was submitted to the President by the representatives of the executive power not directly elected by the or the representatives of the legislative power elected by the citizens.

12. The Constitution does not vest in the National Council immediate powers in relation to the President directly elected by the citizens. Thus in case the Constitutional without further ado uses the formulation "appoints and recalls", an interpretation of the Constitution imposing the President general obligation to accept personal proposals of the National Council without the possibility of rejection may not be adopted.

13. In other words, in case there follows no obligation of the President from the Constitution to respect the submitted personal proposal, that is, if the Constitution without further ado uses the formulation "appoints and recalls", the nature of the personal proposal submitted by the executive and legislative powers is identical. Strong democratic mandate the President acquires during direct elections, as well the possibility of recall of the President only by referendum entitles him to act in relation to the National Council even more autonomously as it was the case of the President elected by the National Council and whom the National Council could recall anytime, if three fifth majority of the members voted so.

14. In case there is no obligation of the President following from the Constitution to respect the personal proposal submitted by the legislative power (that is, if the Constitution without further ado uses the formulation the President "appoints and recalls"), the entitlement of the President to autonomously decide to accept or refuse the submitted proposal presents part of his balancing and controlling powers towards the legislative power.

15. Emerging from the above mentioned it may be concluded in relation to the personal proposal of the National Council for the appointment of the Prosecutor General, that the powers of the President directly elected by the citizens to decide autonomously to accept or refuse the proposal of the National Council for the appointment of the candidate for

Prosecutor General selected by the National Council, shall have controlling function towards the legislative power and presents one of the powers confessed by the Constitution into the President directly elected by the citizens for to provide for the balanced power in the state, as well the securing of the regular operation of constitutional bodies.

16. Equal position of the President with the National Council when deciding on the person of Prosecutor General presents among others means of prevention from an eventual misuse of powers to which would more likely occur if the decision on the person of Prosecutor General would be entrusted only to the National Council.

17. In accordance with the principle of division of powers as well the necessity of mutual control of the respective components of state powers preventing its misuse, the President may either not decide arbitrarily about the person of the Prosecutor General, as he may decide only on the person proposed to him by the National Council. Both bodies must therefore arrive to consent about the person of the Prosecutor General.

18. When defining the criteria serving as basis for the Presidential decision to accept or refuse the proposal of the National Council for the appointment of the selected candidate for the function of Prosecutor General, it is appropriate to deal firstly with the criteria basing the decision of the members of the National Council as such:

Prior to the selection as such the members firstly examine if the candidates for the function of Prosecutor General meet the legal requirements for its performance set in Article 7 of Act no. 153/2001 on Prosecution as amended.

If several persons meet the legal requirements for the performance of the function of Prosecutor General applying for such function in the National Council, the members of the National Council must select from these candidates, whereas legal regulation naturally does not set any criteria upon which they should decide among the respective candidates. Deciding only upon own conscience and conviction – after considering his moral integrity, personal expectations, actual performance and behaviour, as well while considering his publicly known attitudes to diverse social issues - , they should select that candidate about whom they are innerly convinced that he might best meet the requirement of consequent, impartial and independent performance of the tasks of the prosecution and Prosecutor General, that is, they should select that candidate in whom they sense major personal trust.

19. In cases the Constitution without any specification estimates cooperation of the President in handling personal issues (the President “appoints and recalls”), the Constitutional Court has already held that the power of the President does no bear only with notarial character. After the submission the of the personal proposal, the President shall be entitled to examine not only the keeping of the set procedural conduct in the preceding proceedings, but shall also be entitled to examine if the candidate proposed meets the legally set (material) requirements for appointment into function (decision of the Constitutional Court file no PL. ÚS 14/06 of 23 September 2009).

20. Autonomous decision of the President on the proposal of the National Council for the appointment of the Prosecutor General and the extent of consideration in this regard shall however include not only the assessment of the preceding procedural conduct and assessment of the fulfilment of legal requirements for the performance of the function of Prosecutor General in relation to the proposed candidate, but also the assessment of further facts.

21. It follows among others from the fact that the President is equal to the submitter of the personal proposal, that the field of evaluating criteria the President is entitled to assess, may not be narrower than the field of evaluating criteria assessed by the submitter of the personal proposal.

22. If the members of the National Council when selecting from several candidates applying for the function of Prosecutor General are undoubtedly entitled to selected that candidate about whom, after the consideration of his moral integrity, personal predispositions, actual performance and behaviour, as well as after the consideration of his publicly known attitudes to diverse social issues, they are internally convinced, that he would guarantee consequent, impartial and independent performance of the tasks of the prosecution and Prosecutor General, and select that candidate in whom they have major personal confidence, not even the President directly elected by the citizens having equal position with the National Council in the process of appointing the Prosecutor General, may be denied the power not to approve the proposal of the National Council for the appointment of a candidate about whom he is not internally convinced that he might provide for a consequent, impartial and independent performance of the task of the prosecution and Prosecutor General in accordance with the requirements of the ordinary course of constitutional bodies which the President is obliged to provide for in sense of Article 101 § 1 of the second sentence of the Constitution, whereas he shall not be bound by orders but discharges his office (such as the members of the National Council) upon own conscious and conviction.

23. Appointment of a person in relation to whom serious facts exist reasonably doubting his ability to perform the function of Prosecutor General in a way not decreasing the seriousness of this constitutional function or the entire body this person is to be head representative of, or in a way which will not contravene with the very function of this body, may whereas no how be described as performance of office upon conscious and conviction.

24. Briefly summarized, if the members of the National Council may not be withheld the right to vote confidence or non-confidence to persons applying for the function of Prosecutor General, such constitutional right may not be withheld either to the directly elected President, having equal position with the National Council in the process of appointment of the Prosecutor General.

25. Such opinion is confirmed also by the actual constitutionally political practice in the Slovak Republic, as the President M.K. in two cases refused two submitted personal proposals.

In the first case, the President dismissed on 3 March 1993 the proposal for the appointment of I.L for director of the Slovak Information Service, reasoning his conduct towards the public by *“Mr. L. does not enjoy my confidence.”*

Article 102 g) of the Constitution as effective on 3 March 1993 stated that the President shall appoint and recall principal officials of central bodies and higher state officers in cases set by the law; he shall appoint professors and rectors of universities, appoint and promote generals. In relation to this article 3 § 2 of the Act of the National Council of the Slovak Republic no. 46/1993 on the Slovak Informational Service as amended to 3 March 1993 stated that the director of the Slovak Information Service shall be upon the proposal of the National Council be appointed and recalled by the President of the Slovak Republic.

As it follows from the aforementioned, the President did not reason his refusing opinion on the submitted personal proposal with any procedural shortcomings or failure to meet legal requirements, but “only” with lack of confidence, whereas despite of the actual tense socio-political ambience his decision was not doubted in any constitutionally relevant way. If the government wanted to exclude assessment of the credibility of the candidate for the position of the director of the Slovak Information Service by the President, it had to initiate amendment of the legal regulation of the appointment of the director of the Slovak Information Service, doing so by means of Act of the National Council no. 72/1995 amending Article 3 § 2 of Act no. 46/1993 in that sense that the director of the Slovak Information Service is upon proposal of the President of the government of the Slovak Republic appointed and recalled by the government of the Slovak Republic.

In the second case the President in 1993 rejected the proposal for the appointment of I.L. for minister of administration and privatisation of national property, publicly reasoning such conduct by the fact that "*Mr. L. does not meet the requirements for the performance of such function and does either not have my personal confidence".*

Article 102 f) of the Constitution as effective in November 1993 stated that the President shall appoint and recall the President and other members of the government, authorize them to conduct the ministries and accept their demission; it shall recall the President and other members of the government in cases listed in Article 115 and 116. Article 111 of the Constitution connected to this, stating in its wording effective by that time, that the President shall appoint and recall upon proposal of the President of the government the other members of the government and authorize them to conduct the ministries. He may appoint as vice President of the government and minister any citizen eligible into the National Council.

As it follows from the above mentioned, the President did not even in this case reason his dissenting opinion to the submitted personal proposal with procedural shortcomings or failure to meet legal requirements, but "only" with conviction about the absence of personal requirements of the candidate and lack of confidence.

In order for the Presidential assessment of personal predispositions and credibility of the candidate for the position of member of the government to be excluded in the future, constitutional amendment had to be approached, by means of constitutional act no. 9/1999, amending and supplementing the Constitution of the Slovak Republic no. 460/1992 in wording of the constitutional act no. 244/1998, amending Article 111 of the Constitution in that sense that upon the proposal of the President of the government, the President shall appoint and recall further members of the government and authorize them to conduct the ministries. The essence of such amendment was to limit the free discretion of the President when deciding on whether to grant leave to the proposal of the President of the government, whereas the explanatory report explicitly states that this provision declares the right of the President of the government to propose the President further members of the government and the obligation of the President to respect the proposals of the President of the government.

It also logically follows from the explanatory report the conviction of the constituent that unless constitutional regulation explicitly provides that the President "appoints" the candidate, the President is obliged to appoint such candidate. That is, if the constitutional regulation uses the word "appoints", the President shall be entitled to appoint the candidate whereas criteria for his decision may also be the (non) existence of personal conviction of the President in the proposed candidate, as confirmed also by the Slovak constitutionally political practise.

If "only" the lack of confidence could be the reason for not appointing member of government, or the director of the Slovak Information Service, such reason of non-appointment must undoubtedly be admissible – from the point of view of regular function of constitutional bodies – also for the similarly significant position of Prosecutor General as head of the independent and impartial constitutional body authorized with the protection of interests of natural an legal persons and the state.

26. Given the aforementioned, it shall be relevant to specially stress that if the constitutionally political practice accepted the right of the President not to grant leave to the personal proposal "only" for the reason of absence of personal conviction of the President in the proposed candidate in case the President is elected by the National Council, such right may rather not be denied to the President democratically directly elected by the citizens, the democratic legitimacy of whom is by rank undoubtedly higher in comparison to a President elected by the National Council.

27. A reflection of the opinion of a President directly elected by the citizens when appointing the Prosecutor General as head of an independent and impartial prosecution increases the legitimacy of the selection of the proposed candidate.

28. In relation to the Prosecutor General, the appointing competence of the President and thus his autonomous participation on the appointment of the candidate, fulfills at the same time institutional guarantee of independence of the Prosecutor General, limits a nomination of a candidate would not necessarily guarantee the independency of the prosecution.

29. Emerging from the above listed reasons it may be summarized that while performing his power upon Article 102 § 1 t) and Article 150 of the Constitution, proceedings in accordance with Article 101 § 1 of the Constitution upon own conscious and conviction, the President shall autonomously assess the:

- Accordance of the procedure of election of the candidate for the position of Prosecutor General of the Slovak Republic proposed by the National Council with the respective legal regulation,
- Fulfilment of legal requirements for the appointment of a candidate into this function, as well
- The credibility of the proposed candidate from the point of view of guarantee of a consequent, impartial and independent performance of the tasks of the prosecution and Prosecutor General in accordance with his constitutional position and mission of the prosecution, with specific stress on the assessment of his independence and impartiality as with regard to the hierarchical organisation of the prosecution, independence and impartiality of the Prosecutor General shall be the basic requirement of the independence and impartiality of the prosecution as an entity, whereas independence and impartiality of the prosecution as an entity are inevitable attributes of its regular operation which the President must provide for by his decision in sense of Article 101 § 1 of the Constitution.

30. The task of the Constitutional Court shall whereby not be to assess the appropriateness of the existing constitutional regulation of the Presidential power, if it is correct for the President to dispose with the opportunity to assess not only the preceding procedural conduct and fulfilment of legal requirements, but also the credibility of the candidate for Prosecutor General. It is up to the constituent to select from the own point of view the most appropriate constitutional solution.

31. As for the timely aspect of the Presidential decision on the proposal of the National Council for the appointment of Prosecutor General, it is clear from the constitutional regulation of the appointment of the Prosecutor General that during the procedure of decision on the taking such function, two constitutional bodies cooperate (assertion of powers).

32. It may not be derived from the performance of constitutional powers by one state body also its right to determine the time limit until which the other state authority shall meet its obligation to cooperate in its performance. Such time limit is contained in the obligation of cooperation of the second component of the state power following for it from the constitutional principle of cooperation of the respective components of the state power.

33. In cases where the constituent held it for appropriate an effective, it defined by own self time limits during which the state body of the Slovak Republic has to assert the constitutional power which assumed cooperation of other component of state power. Thus shall the government according to Article 113 of the Constitution be obliged to within 30 days after its appointment present itself before the National Council, the President may upon Article 102 § 1 o) of the Constitution return to the National Council the act with remarks within 15 days after the service of the approved act etc.

34. In the noted cases the assertion of the obligation of cooperation when performing constitutional powers by the respective component of state power is conditioned also by keeping the constitutionally set time limit, which are also bound to constitutionally assumed legal effects of assertion.

35. In other cases of assertion of those constitutional powers of certain components of state power assuming cooperation of other component of state power, the constitutional principle of their mutual cooperation and the obligation of cooperation resulting out of it shall apply.

36. As it has already been stated, part of this obligation is also its performance within a certain period of time which however (against those explicitly included in the Constitution) is not fixed. Length of such period may therefore be different and is conditioned only by the fulfilment of constitutional or other conditions connected with the assertion of the constitutional obligation of the respective component of the state power, presenting its cooperation during performance of constitutional power of another component of state power.

37. After the fulfilment of these conditions, there arises the obligation of the respective component of state power to exercise its cooperation during performance of constitutional powers of other component of state power, as the Constitution does not set any further conditions (either time limits) which would condition the cooperation (mutatis mutandis decision of the Constitutional Court Ref. No. I. ÚS 7/96 of 11 July 1996).

38. It may be concluded with regard to the above mentioned, that the President is obliged to decide on the proposal for the appointment of the Prosecutor General within a reasonable time the length of which must all the time be assessed according to the conditions of the concrete case. Its a time limit objectively needed for the gathering of relevant information needed for decision of the President after the submission of the proposal by the National Council. If the existence of a preliminary question or a decision falling within the competence of other authority, would prevent from a responsible assessment of the relevant substantive law or procedural questions, or questions concerning the person of the candidate, the President shall be obliged to decide without further delay after the decision on the preliminary question by this body.

In Košice 24 October 2012

- Courtesy translation -

4. Recusal motion by the President of the Slovak Republic

Andrej Kiska
President of the Slovak Republic

Bratislava, 27 October 2016
No: 4101-2016-KPSR

Constitutional Court
of the Slovak Republic
Hlavná 110
Košice
I.ÚS 575/2016

SUBMISSION

Party to proceedings:
President of the Slovak Republic Andrej Kiska

Represented by:
Ján Mazák, advisor to the President of the Slovak Republic, according to the attached power of attorney

Complainants:
Ján Bernát, judge at Regional Court in Nitra
Eva Fulcová, judge at District Court Bratislava I
Juraj Sopoliga, judge at Regional Court in Košice
Miroslav Duríš, public notary

Concerning:
Exclusion of judges of the Constitutional Court of the Slovak Republic Milan Ľalík, Peter Brňák and Marianna Mochnáčová due to their bias

I.

On 5 October 2016 I was served with the ruling of the Constitutional Court of the Slovak Republic ("Constitutional Court" or "Court") dated 14 September 2016 Ref. No. I. ÚS 575/2016 admitting four complainants' submissions filed on 5 September 2016 for further proceedings ("preliminary ruling"). The First Chamber of the Court proceeded and decided as they did without having served me with the complaints in order to respond to them.

The preliminary ruling **does not contain any justification for the admission of all the complaints for further proceedings.** Pages five and six merely contain references to Sections 25 and 50 of Law of the National Council of the Slovak Republic No. 38/1993 Coll.

on the organisation of the Constitutional Court of the Slovak Republic, on the proceedings before it and on the status of its judges as amended ("Law on the Constitutional Court").

The preliminary ruling is therefore **unreviewable and arbitrary.** This especially applies with regard to the complaint of Ján Bernát, which was admitted for further proceedings despite the fact that in case Ref. No. IV. ÚS 719/2014, he had withdrawn his complaint, as a result of which my decision not to appoint him as judge of the Constitutional Court became irrevocable and unchallengeable in proceedings before the Constitutional Court.

II.

Pursuant to Section 28.1 of the Law on the Constitutional Court, a party to proceedings may file a motion to recuse one or more of the judges whom s/he considers to be biased. If the reasons leading to the filing of the motion to recuse a judge for bias arise prior to the beginning of the hearing, the party may claim the judge's bias at the beginning of the hearing at the latest. If the reasons leading to the filing of the motion to recuse a judge for bias arise in the course of the first hearing, the party must claim the judge's bias without undue delay.

The bias of a Constitutional Court judge is mainly apparent in his/her lack of impartiality. The impartiality of a Constitutional Court judge is a fundamental prerequisite enabling the Court to hear and decide cases; if there is **even a doubt about the impartiality** of a Constitutional Court judge, that judge cannot hear the case and decide on its merits (Art. 134.4 of the Constitution of the Slovak Republic ("the Constitution") in combination with Art. 46.1 of the Constitution).

Doubts about the impartiality of a Constitutional Court judge may arise for different reasons, among them his interest in the case, his relationship with the parties to the case or their legal representatives. These doubts can be inferred directly or indirectly; if, however, doubts about impartiality are based on **wilful disrespect of generally binding legal regulations relevant for determining how the judges of the Court should proceed, and on the resulting different treatment of parties to proceedings (procedural discrimination)**, their proof does not involve any problems of interpretation or application.

Disrespect of generally binding legal regulations and the resulting discrimination have been demonstrated mainly by judge-rapporteur Milan Ľalík and following his procedure in preparing the hearing of the complaints also by both remaining members of the First Chamber Marianna Mochnáčová and Peter Brňák.

III.

The complaints were served on the Court on 5 September 2016. As early as on 14 September 2016, the Chamber whose members were the challenged judges admitted the complaints for further proceedings **without serving them on me** as the party against whom they had been filed.

IV.

Pursuant to Section 9.2 of the Rules of Procedure and Administration of the Constitutional Court of the Slovak Republic as amended (promulgated in the Collection of Laws of the Slovak Republic under no. 111/1993 Coll. ("Rules of Procedure")) having the title Commencement of proceedings, the judge-rapporteur ensures that each **motion before the preliminary hearing** or each initiative after its admittance **is served without undue delay on the other parties** and, if applicable, also on the intervening persons with notice to respond to the motion within a specified time period.

This obligation is not affected by Section 29.3 of the Law on the Constitutional Court, which stipulates that a judge-rapporteur must ensure that a **motion admitted for further proceedings** is served without undue delay on the other parties with notice to respond to the motion within a specified time period.

In fact, the quoted provision of the Law on the Constitutional Court concerns a motion **admitted** for further proceedings; Section 9.2 of the Rules of Procedure concerns a **motion before** preliminary hearing.

The judge-rapporteur nonetheless submitted the complaint to the First Chamber for preliminary hearing **without having fulfilled the obligation laid down in Section 9.2 of the Rules of Procedure;** despite this violation of the generally binding legal regulation, the Chamber heard the complaints in a preliminary hearing and admitted them for further proceedings.

However, in an analogous case before the Constitutional Court and with the same legal regulation, the judge-rapporteur was right to serve the complaint of Jozef Čentéš in case ref. I. ÚS 397/2014 before preliminary hearing on the President of the Slovak Republic Ivan Gašparovič. The latter responded to it and by so doing exercised his procedural rights, including the right to file a motion for recusal of Constitutional Court judges for bias, which he used against seven judges of the Court.

In cases ref. II. ÚS 718/2014 and ref. II. ÚS 719/2014, later joined, the judge-rapporteur respected Section 9.2 of the Rules of Procedure and served the complaints on me so that I could respond to them before the preliminary hearing.

The First Chamber of the Court **did not explain any in way** on what legally valid grounds they had chosen a different approach towards me as the President of the Slovak Republic in the present case, in contrast to the approach of another chamber of the Court and another judge-rapporteur in the case of the complaints of Jozef Čentéš, and in contrast to the approach of the judge-rapporteur in cases ref. II. ÚS 718/2014 and ref. II. ÚS 719/2014. Furthermore, a chamber of the Constitutional Court is equally bound by Art. 2.2 of the Constitution, according to which it may act only in the manner allowed by the Constitution and laws.

It follows from this that the judge-rapporteur acted in violation of a generally binding legal regulation (Rules of Procedure) and by doing so discriminated procedurally against me, the current President of the Slovak Republic, compared to the former President of the Slovak Republic Ivan Gašparovič, who in line with Section 9.2 of the Rules of Procedure had been given the possibility to respond to the complaint of Jozef Čentéš. At the same time, in contrast to another judge-rapporteur (ref. II. ÚS 718/2014 and ref. II. ÚS 719/2014), the judge-rapporteur in the present case chose a different approach towards me without any good reason, even though the legal situations, the causes of the action, and the type of parties to proceedings were the same.

V.

The bias of the judge-rapporteur and of other challenged judges of the Court may also be inferred from another serious circumstance which is closely linked to the violation of Section 9.2 of the Rules of Procedure.

The First Chamber of the Court admitted for further proceedings also the **complaint of Ján Bernát**, who claims violation of his fundamental rights due to the fact I did not decide on his candidacy for a judge of the Constitutional Court.

This statement is not based on the truth and is in contradiction with what the Court pronounced in the ruling rejecting the motion of the President of the Slovak Republic for interpretation of the Constitution in case ref. PL. ÚS 45/2015. It is expressly stated in that ruling:

"According to this, the Constitutional Court states that the factual and legal situation of all the five non-appointed candidates is beyond doubt identical (due to the practically identical nature of applicant's decisions on non-appointment), whereby the decisions on their non-appointment have not yet constituted rights or duties for other individuals. In the opinion of the Constitutional Court, it is not fair to deprive the candidates who withdrew their complaints of the chance to be candidates for the position of judges of the Constitutional Court by the applicant's decisions, which are regarded as manifestly unconstitutional according to the finding in case ref. III. ÚS 571/2014. As follows, under the circumstances of this case, the applicant may and is obliged to annul the two decisions about the non-appointment of Ján Bernát and Imrich Volkai and subsequently appoint two judges to the Constitutional Court from among the five candidates (Ján Bernát, Eva Fulcová, Miroslav Duriš, Juraj Sopoliga, Imrich Volkai) proposed by the National Council."

I have never annulled the decision on the rejection of Ján Bernát. In fact, I never had and could not have ever had this duty because my decision not to appoint him became final on the date of its delivery to Ján Bernát, and self-correction could not be applied even theoretically.[1]

For this reason, Ján Bernát ceased to be a candidate for the position of judge of the Constitutional Court but could have become candidate again after being selected anew by the National Council of the Slovak Republic. The question therefore arises how the challenged judges arrived at the conclusion that his complaint **was admissible and had been filed on time,** if that decision has never been annulled and I have incurred no obligation to hear and decide the case of Ján Bernát anew.

Such "overlooking" of the factual and legal status in the case of Ján Bernát, which **must have been known to all the challenged judges of the Court** from their own decisions and could have been easily clarified, had his complaint been served on me before the preliminary hearing, can under no circumstances be accepted as mere opinion.

This is a case of **deliberate action** by all the challenged judges of the Court, which cannot be explained in any other way than by their bias in the present case. In the ruling admitting his complaint for further proceedings, the intention to act with bias is "hidden" in vague, unexaminable phrases about the fulfilment of requirements laid down in Section 25.2 and Section 50 of the Law of the Constitutional Court. These requirements have nevertheless not been fulfilled.

VI.

According to Constitutional Court finding ref. II. ÚS 19/2016 of 15 June 2016, the principle of legal certainty stemming from Art. 1.1 of the Constitution includes the requirement that **the same answer be given to a legal question if it arises again under the same conditions**.

[1] Self-correction means decision on a legal remedy by the same authority which issued the challenged decision. However, self-correction presupposes that a legal remedy against the decision of the state body is laid down in the law. There is nonetheless no legal remedy against a decision by the President of the Slovak Republic on the non-appointment of a candidate for the position of Constitutional Court judge. For that reason, an unsuccessful candidate can only use complaint under Art. 127.1 of the Constitution, which is not, however, a legal remedy.

If in an analogous case an ordinary court decides in a different or contradictory manner without providing reasons for the difference against the position taken in the previous case, this constitutes a violation of the fundamental right to judicial protection under Art. 46.1 of the Constitution as well as the right to fair trial under Art. 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

This legal opinion also applies to the proceedings and decisions of the Constitutional Court Chamber in the present case.

If an individual (Ján Bernát) withdraws his complaint filed against a public authority (my decision on his non-appointment), it results in the loss of his locus standi to file this complaint again not only on the grounds of inadmissibility, but also because it could not be filed on time, i.e. within the time limit of two months from the service of the challenged decision. The right to file a complaint against an existing, irrevocable decision cannot be "renewed" by speculative lodging of a complaint against the procedure of a public authority. That is to say, the procedure merely preceded the issuing of the decision (on non-appointment).

I stress in this context that there is **no possibility or precedent in the Law on the Constitutional Court or in the Court's case law** which would confirm that after the withdrawal of the complaint the individual may again file another complaint against this decision of a public authority, which has become irrevocable and unchallengeable as a result of its withdrawal, or which would confirm that the impossibility of filing such a complaint could be sidestepped by claiming that there has been a violation of his/her fundamental rights through the procedure of the public authority.

Such repeated complaints **have always been** rejected in the preliminary hearing (Section 25.2 of the Law on the Constitutional Court).

VII.

I reject Constitutional Court judges Milan Ľalík, Peter Brňák and Marianna Mochnáčová due to being manifestly biased for reasons set out in parts II to VI of this submission.

The President of the Slovak Republic

- Courtesy translation -

5. Disciplinary initiative by the President of the Slovak Republic

Andrej Kiska
President of the Slovak Republic

Bratislava 27 October 2016
No: 4101-2016-KPSR

Constitutional Court
of the Slovak Republic
Hlavná 110
Košice

Re:
Initiative by a party to proceedings to have a motion filed for commencement of disciplinary proceedings against certain judges of the Constitutional Court of the Slovak Republic

Dear Ms. President,

As follows from the attachment to this initiative, the judge-rapporteur in case ref. I. ÚS 575/2016 Milan Ľalík and the members of the First Chamber Marianna Mochnáčová and Peter Brňák **wilfully violated** Section 9.2 of the Rules of Procedure and Administration of the Constitutional Court of the Slovak Republic as amended (promulgated in the Collection of Laws of the Slovak Republic under no. 111/1993 Coll.) and are thus guilty of **procedural discrimination** against me as the party to proceedings against whom the complaint had been filed in this case.

Under Section 16.1 of Law of the National Council of the Slovak Republic No. 38/1993 Coll. on the organisation of the Constitutional Court of the Slovak Republic, on the proceedings before it and on the status of its judges as amended, the President of the Constitutional Court may file a motion with the Plenum of the Constitutional Court for commencement of disciplinary proceedings if a judge has culpably violated his/her official duties or by his/her conduct compromised the dignity of the judicial office or undermined the public trust in the Court or if he/she continues activities incompatible with the office of a judge despite notice to discontinue them.

The actions of the judge-rapporteur and of the other members of the First Chamber constitute culpable violation of their official duties, which is all the more serious since the aforementioned judges acted with **the direct intention to deprive me of my procedural rights** as a party to proceedings and committed these actions against the Head of State in a **case which is closely followed** by the general public and not only by the parties to proceedings.

The fact that one of the complainants is a person who previously withdrew his complaint is especially serious, which in my opinion clearly constituted grounds for rejecting the complaint as inadmissible. In this context it was particularly important to allow me as the

party against whom the complaint was filed to respond to it, which the judge-rapporteur nevertheless did not do. My procedural rights have thus been substantially violated at the very beginning of the proceedings in a way which can substantially affect their whole course.

In view of the above I suggest that you file a motion with the Plenum of the Constitutional Court of the Slovak Republic for commencement of disciplinary proceedings against judges Marianna Mochnáčová, Milan Ľalík and Peter Brňák.

Best regards,
The President of the Slovak Republic

- Courtesy translation -

6. Response by the President of the Constitutional Court to the disciplinary initiative by the President of the Slovak Republic

Ivetta Macejková
President
Constitutional Court of the Slovak Republic

Košice, 14 December 2016

Spr 1811/2016

Mr. President of the Slovak Republic,

On 2 November 2016 I was served with your submission dated 27 October 2016, in which, acting in the position of a party to proceedings before the Constitutional Court of the Slovak Republic (hereinafter referred to as "the Constitutional Court" or "the Court") in case ref. I. ÚS 575/2016, you request that I, the President of the Court initiate disciplinary proceedings against Constitutional Court judges Marianna Mochnáčová, Peter Brňák and Milan Ľalík, who are members of the Chamber of the Court with the jurisdiction in case ref. I. ÚS 575/2016.

Having read your arguments contained in the initiative and in the submission attached to it (submission seeking the recusal of First Chamber members due to bias; a separate chamber with jurisdiction to decide recusal motions shall pass a decision regarding the very question of bias and recusal of the challenged judges), having heard the positions of the Constitutional Court judges against whom the initiative had been filed, and having carefully considered all the factual and legal issues relevant to the case, I have arrived at the conclusion that judges Marianna Mochnáčová, Peter Brňák and Milan Ľalík have not committed any disciplinary offence in this case and that there is no relevant reason to initiate disciplinary proceedings against them. For this reason, I will not file a motion for the commencement of disciplinary proceedings with the Plenum of the Court against the said judges of the Court.

I have reached the above conclusion and decision for the following reasons:

Your submission dated 27 October 2016 is based on the claim that in case ref. I ÚS 575/2016 Judge-Rapporteur Milan Ľalík and the other two members of the First Chamber wilfully violated Section 9.2 of the Rules of Administration and Procedure of the Constitutional Court of the Slovak Republic as amended [promulgated in the Collection of Laws of the Slovak Republic as no. 114/1993 Coll. ("Rules of Procedure")], committing acts constituting procedural discrimination against you as a party to proceedings by the fact that before conducting a preliminary hearing on the complaint of Ján Bernát, Miroslav Duriš, Eva Fulcová and Juraj Sopoliga ("complainants") in case ref. I. ÚS 575/2016, the Judge-Rapporteur did not send you the complaints for filing a response and the other members of the Chamber approved this procedure by admitting the complaint submitted by the Judge-Rapporteur for preliminary hearing all the same. Subsequently, the First Chamber decided by ruling ref. I. ÚS 575/2016 dated 14 September 2016 to admit the

complaint for further proceedings, including in relation to complainant Ján Bernát, who had withdrawn his earlier complaint filed with the Court against your decision on his non-appointment dated 2 July 2014.

Under Art. 124 of the Constitution of the Slovak Republic ("the Constitution"), the Constitutional Court is an independent judicial body charged with the protection of constitutionality.

Pursuant to Art. 127.1 of the Constitution, the Constitutional Court decides on complaints by individuals and legal entities claiming violation of their fundamental rights and freedoms, or the fundamental 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 has jurisdiction to pass a decision on the protection of such rights and freedoms.

Article 140 stipulates that details on the organization of the Constitutional Court, the details regarding Constitutional Court proceedings and details on the status of its judges shall be laid down by law.

This law is Law of the National Council of the Slovak Republic no. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, on the Proceedings before It and on the Status of Its Judges ("Law on the Constitutional Court").

Section 16.1 of the Law on the Constitutional Court stipulates: *"The President of the Constitutional Court can submit a motion with the Plenum of the Constitutional Court to start disciplinary proceeding, if a Judge has culpably neglected his/her duties or has undermined by his/her behaviour the dignity of the office of a Judge or has threatened public confidence in the Constitutional Court, or if in spite of a warning continues in an activity incompatible with the office of a Judge."*

Section 29.1 first sentence of the Law on the Constitutional Court stipulates: *"If the motion concerns a case on which the Constitutional Court should decide in a Chamber or the Plenum, this shall be assigned by random choice in line with work schedule to one of the Judges as a judge-rapporteur using computer software adopted by the Plenum of the Constitutional Court; this should happen in a way excluding the possibility of affecting the process of the assignment of the cases to different judges."*

Section 29.2 of the Law on the Constitutional Court stipulates: *"If the Judge-Rapporteur does not shelve a motion under Sec. 23a* (this provision allows the Judge-Rapporteur to shelve the submission if he finds from its contents that it does not constitute a motion for commencement of proceedings)*, he/she shall prepare the case for preliminary hearing. If a motion is admitted for further proceedings, the case shall be heard by a Chamber or by the Plenum of the Constitutional Court."*

Section 29.3 of the Law on the Constitutional Court stipulates: *"The Judge-Rapporteur shall ensure the service of a motion admitted for further proceedings on the other parties to proceedings with a notice requesting that they respond to it within a time limit set by him."*

Section 29.4 of the Law on the Constitutional Court stipulates: *"The Judge-Rapporteur may require every party to the proceedings to provide to the Constitutional Court within a specified time limit the necessary number of copies of their motions, statements or other submissions to the Constitutional Court or to the other parties to the proceedings; if this is not done, these documents shall be procured at the expense of the party concerned."*

The above statutory provisions regulate the Court's procedure as concerns the aspects necessary for evaluating your claim of violation of professional duties by members of the First Chamber of the Court consisting in their failure to serve the complaint by Ján Bernát, Miroslav Duriš, Eva Fulcová and Juraj Sopoliga before the preliminary hearing.

It follows clearly from Section 29.3 of the Law on the Constitutional Court that the statutory procedural provisions regulating the proceedings before the Court oblige the Judge-Rapporteur to serve all motions with notice to respond on all other parties to proceedings (i.e. parties other than the complainant) only after a preliminary hearing has been conducted on the motion and decision has been made to admit the motion for further proceedings.

The purpose of the preliminary hearing is to assess whether the motion for commencement of proceedings contains all the formal requirements laid down in the Law on the Constitutional Court and whether all other procedural conditions for the proceedings on the merits before the Court are met. If during the preparation of the case for preliminary hearing under Sec. 29.2 of the Law on the Constitutional Court the Judge-Rapporteur concludes that in order to assess whether all the statutory requirements for the proceedings in the case before the Constitutional Court it is necessary to clarify some facts, Sec. 31.2 allows him to request the necessary documents from the relevant public authority (this will usually be the authority against which the motion has been filed). It cannot be ruled out that the Judge-Rapporteur also requests that the relevant public authority respond to the motion, in which case he/she will also send a copy of the motion. **However, the statutory regulation of the proceedings before the Court does not oblige him/her to do so before admitting the motion for further proceedings.**

The argumentation contained in your initiative points in this regard to Sec. 9.2 of the Rules of Procedure, with the claim that this provision concerns a motion before its preliminary hearing, while Sec. 29.3 of the Law on the Constitutional Court concerns a motion already admitted for further proceedings. **Such interpretation cannot be accepted.**

Sec. 9.2 of the Rules of Procedure stipulates: "Judge-Rapporteur shall ensure that any motion before preliminary hearing or any initiative after its receipt be promptly served on the other parties to proceedings and, if applicable, on intervening persons with the notice to respond to it within a specified period (Sec. 29.5 of the Law)."

The quoted text of Sec. 9.2 of the Rules of Procedure is clearly directly linked to the statutory regulation of the procedure before the Court in turn connected with the text of Art. 130 of the Constitution which was <u>effective until 30 June 2001</u>. Under this text proceedings before the Court could be commenced upon a motion by entities listed in Art. 130.1 of the Constitution or upon a motion by entities specified on the basis of Art. 130.2 of the Constitution in a special law. The proceedings before the Court could further be commenced upon an initiative by individuals or legal entities claiming violations of their rights under Art. 130.3 of the Constitution. **The adoption of Constitutional Law no. 90/2001 Coll.** amending and supplementing the Constitution of the Slovak Republic no. 460/1992 Coll. as amended ("Constitutional Law 90/2001") **entailed an extensive amendment of the provisions regulating the Court's powers, including its powers in the area of individual protection of constitutionality.** Individuals and legal entities were granted the right to seek constitutional protection of their fundamental rights and freedoms from interferences by public authorities through complaint **under Art. 127 of the Constitution. The initiative under Art. 130.3 of the Constitution was abolished.**

These constitutional amendments were followed by amendments of statutory regulation of proceedings before the Court by way of **Law no. 124/2002 Coll.** amending

and supplementing Law of the National Council of the Slovak Republic no. 38/1993 Coll. on the organisation of the Constitutional Court of the Slovak Republic, on the proceedings before it and on the status of its judges as amended ("Law 124/2002"). **This law changed the original text of Sec. 29.5** of the Law on the Constitutional Court, which stipulated: "The Judge-Rapporteur shall ensure timely service of an already-admitted motion on the other parties to proceedings and, if applicable, on the intervening persons, with the request that they respond to it by the time limit set by him". **It was precisely this original text of Sec. 29.5** of the Law on the Constitutional Court **which was further implemented by Sec. 9.2** of the Rules of Procedure with regard to the procedure prescribed for the Judge-Rapporteur in case of the initiative under Art. 130.3 of the Constitution and other motions for commencement of proceedings. **However, Law 124/2002 changed the statutory provisions regulating the procedure prescribed for Judge-Rapporteur with regard to the procedural duty to serve a motion for commencement of proceedings on the other parties to proceedings (those different from the applicant).** The new wordings of Sec. 29.5 and 29.6 of the Law on the Constitutional Court, whose designation has since been changed to Sec. 29.2 and 29.3 as a result of subsequent amendments to the said law, read as follows: "If the Judge-Rapporteur does not shelve a motion under Sec. 23a, he/she shall prepare the case for preliminary hearing. If a motion is admitted for further proceedings, the case shall be heard by a Chamber or by the Plenum of the Constitutional Court" (Sec. 29.5, which is now designated as Sec. 29.2), and "The Judge-Rapporteur shall ensure the service of a motion admitted for further proceedings on the other parties to proceedings with a notice requesting that they respond to it within a time limit set by him" (Sec. 29.6, which is now designated as Sec. 29.3).

The legislator's intent to amend Judge-Rapporteur's procedural duty regarding the service of motions for commencement of proceedings on the other parties is already apparent when comparing the original wording of Sec. 29.5 of the Law on the Constitutional Court (effective before the adoption of Law 124/2002), which was regulated into greater detail in Sec. 9.2 of the Rules of Procedure, with the new wording of Sec. 29.5 and 29.6 of the law on the Constitutional Court (now designated as Sec. 29.2 and 29.3, respectively). In addition, the legislator expressly stated this intent in the special part of the explanatory memorandum to Law 124/2002, stating: "It has been specified in paragraph 5 that preparation of the case for preliminary hearing continues if the motion has not been shelved. Likewise, a motion is to be served on the other parties only after having been admitted for further proceedings."

The new provisions contained at present in **Sec. 29.3** have **amended and substituted the original** provisions then contained in **Sec. 29.5** of the Law on the Constitutional Court (effective before the adoption of Law 124/2002), **which Sec. 9.2 of the Rules of Procedure implemented. For that reason, the said provision of the Rules of Procedure cannot be applied in combination with Sec. 29.3 of the Law on the Constitutional Court, as it is stated in the initiative.** After all, this is apparent from the very wording of both provisions. If the legislator had intended to preserve the duty to serve a motion immediately after it has been filed with the Court in accordance with Sec. 9.2 of the Rules of Procedure, the amended wording would not have imposed this obligation again after admitting the motion for further proceedings. At most, sending another notice to respond could be considered if in the first response a party did not make any statements regarding the merits of the case, but no duty would be imposed to send again to the parties a motion which had already been sent to them.

The interpretation of Sec. 9.2 of the Rules of Procedure contained in the initiative goes against the text of Sec. 29.3 of the Law on the Constitutional Court and leads to untenable consequences in practice. According to this argumentation, the Court

would be obliged to serve the same motion on the other parties twice, i.e. before the preliminary hearing as well as after it has been admitted for further proceedings.

Although in general some degree of formalism is characteristic of court proceedings, it is never an end in itself. Moreover, one of the fundamental principles of court proceedings is speediness and economic efficiency. It would be fundamentally contrary to one of the fundamental principles of all court proceedings if Sec. 9.2 of the Rules of Procedure were to be applied in combination with Sec. 29.3 of the Law on the Constitutional Court, as it is argued in the initiative. If that were the case, the Court would serve the same document on the parties twice without any apparent reason, which cannot be considered as either expedient or efficient. On the contrary, an interpretation according to which all motions are served on the other parties to proceedings only after having been admitted for further proceedings is fully compatible with the said fundamental principle. In fact, this argument can be simply explained on the example of proceedings on constitutional complaint (complaint under Art. 127 of the Constitution), but it can essentially also be used in the case of other types of proceedings before the Court.

The proceedings on constitutional complaint can be considered as contentious proceedings, in which the complainant challenges certain decision, procedure or inaction of a public authority and thus enters into a dispute with this public authority, at the same time seeking the annulment of the decision or a redress of the consequences of unconstitutional procedure or inaction of the public authority in question. If during the preliminary hearing the Court finds that the prerequisites for the admission of a motion for further proceedings are not met, in which case the proceedings are stayed, it would not be expedient to seek a response from the public authority in question, since its decision or procedure would not be affected anyway. In other words, its response is unnecessary, since there is no intervention in its activities. Only when the Court admits a motion for further proceedings is a response by the public authority concerned necessary. Such legal regulation respects the procedural rights of the parties to proceedings as well as the principles of speediness and efficiency of court proceedings.

In view of the above, the application of the now obsolete provision of Sec. 9.2 of the Rules of Procedure, on which the argumentation contained in your initiative relies, is at present out of the question due to its conflict with the statutory rules in force governing the procedure before the Court (Sec. 29.3 of the Law on the Constitutional Court), as follows from the principle lex superior derogat legi inferiori.

It is therefore necessary to follow the wording of the Law on the Constitutional Court, which clearly stipulates that a motion for commencement of proceedings is to be served on the other parties only after the preliminary hearing and only if it has been admitted for further proceedings. The procedural steps taken by the First Chamber when serving the motion for commencement of proceedings in case ref. I. ÚS 575/2016 was therefore consistent with Art. 2.2 of the Constitution, according to which state authorities may act only on the basis of the Constitution, within its limits, and in a manner specified by law. **The First Chamber members' actions in connection with serving the motion for commencement of proceedings in case ref. I. ÚS 575/2016 thus do not constitute any breach of professional duties and cannot be regarded as violating procedural rights of the parties in the given case. These actions do not therefore constitute a disciplinary offence.**

At the same time, in the initiative dated 27 October 2016 and its annex you claim that in relation to one of the complainants (Ján Bernát), the decision to admit the motion for further proceedings in case ref. I. ÚS 575/2016 manifestly contradicts the law and the Court's case-law, harming you as a party to the case.

In this context, it must be **stressed that a decision to admit a motion for further proceedings is not a decision on whether the motion** (in this case complaint under Art. 127 of the Constitution) **is well founded; it concerns merely the finding whether the Court is of the opinion that all conditions have been met for the Court to be able to issue a decision on the merits.** In the subsequent proceedings you as a party will be given the opportunity to make your opinion and all your arguments against the motion in question known. **It cannot be thus established in what manner your rights as a party could have been violated. The mere fact that you have a different opinion** regarding the admitting of the motion for further proceedings than the Chamber of the Court acting in the case **cannot mean** that **your rights have been violated** by the decision.

I cannot agree with the claim that a mere withdrawal of a motion for commencement of proceedings should in itself mean that a motion filed anew cannot be admitted for further proceedings. In fact, according to a generally accepted interpretation "if a party withdraws its motion for commencement of proceedings, it is a procedural act towards the court expressing the will that the court no longer act in the case and not decide on its merits (R 54/1992)." (quoted from a decision of the Supreme Court of the Slovak Republic ref. 10 Sžr/45/2012 of 27 March 2013, available online at: <http://www.supcourt.gov.sk/data-/att/29964_subor.pdf>). A ruling on the staying of the proceedings is in this case **a procedural decision which does not in itself create the obstacle of res iudicata, i.e. obstacle under Sec. 24.a of the Law on the Constitutional Court.**

As regards the claim that as a result of the withdrawal of complaint in proceedings conducted in the past under ref. II. ÚS 718/2014 your decision dated 2 July 2014 on the non-appointment of the complainant for the position of Constitutional Court judge became final and that the two-month time period during which the complainant could have challenged this decision has elapsed, I agree that under Sec. 53.3 of the Law on the Constitutional Court a complaint may be filed only within two months from the date when the decision became final, from the notification of the measure or of other interference in fundamental rights and freedoms, and that under Sec. 25.2 of the Law on the Constitutional Court, belated motion must be rejected already during the preliminary hearing. In the case under examination, however, the subject matter of the proceedings is a complaint in which complainant Ján Bernát is not challenging your decision dated 2 July 2014 on his non-appointment for the position of Constitutional Court judge, but your procedural steps after this decision and after the decisions of the Court in cases ref. III. ÚS 571/2014 and ref. PL. ÚS 45/2015, when you did not decide on his candidacy for the position of Constitutional Court judge. For this reason, the date on which your decision dated 2 July 2014 became final has no relevance for the assessment whether the complaint had been filed on time. In relation to the challenged procedural steps, which the complainant claims to have violated his fundamental rights and freedoms, the use of other available and effective remedies under Sec. 53.1 of the Law on the Constitutional Court is not an option either.

Finally, it is apparent from the arguments presented in the initiative dated 27 October 2016 and its annex that you are of the opinion that as a result of the final decision of 2 July 2014 on the non-appointment of complainant Ján Bernát it is not even possible that there could have been any violation of the complainant's fundamental rights by the President's subsequent procedural steps, since the complainant had ceased to be candidate for the position of Constitutional Court judge.

Under Sec. 25.2 of the Law on the Constitutional Court, the Court may also reject a motion during the preliminary hearing if it is manifestly unfounded. The last of the objections is formulated precisely in this manner, corresponding to this reason for the rejection of motion. Therefore, for a decision on the admittance of the motion for further proceedings to be contrary to the law and the Court's case-law, then according to the law and the Court's case-law the complainant's motion would have to be manifestly unfounded.

Complainant Ján Bernát supports his complaint in case ref. I. ÚS 575/2016 by quoting from the statement of reasons of the plenary decision of the Court dated 28 October 2015 in case ref. PL. ÚS 45/2015, according to which the President *"may and is obliged to annul his two decisions on the non-appointment of Ján Bernát and Imrich Volkai and subsequently appoint two judges of the Constitutional Court from among the five candidates (Ján Bernát, Eva Fulcová, Miroslav Duriš, Juraj Sopoliga, Imrich Volkai) proposed by the National Council."* (Constitutional Court ruling ref. PL. ÚS 45/2015 dated 28 October 2015, page 24).[2] The complainant is one of the *"five candidates"*.

According to the Court's case law, a complaint can be considered as manifestly unfounded *"if during the preliminary hearing the Court does not find any possibility of a violation of the designated fundamental right or freedom, which could be verified by after being admitted for further proceedings (ref. IV. ÚS 166/04, IV. ÚS 109/05). Manifest unfoundedness as a special reason for rejecting a complaint during the preliminary hearing differs from other reasons allowing this course of action (listed in Sec. 25.2 of the Law on the Constitutional Court) in the fact that while in these cases the complaint does fulfil the appropriate formalities laid down in the law, it still evident beyond any reasonable doubt and without any need for further examination that even if it were to be admitted for further proceedings, it could not be successful"* (Constitutional Court ruling ref. IV. ÚS 66/2010 dated 10 February 2010).

In a situation where the complainant's arguments contain quotations from the statement of reasons of another Constitutional Court decision which is relevant to the present case, seems to support his argument and he is expressly named in it, it is completely legitimate if the Court's judges admit the existence of relevant doubts about the proposition that the complaint could not be successful under any circumstances. **In this situation, the decision of the First Chamber that the question of whether the complaint is well founded should be examined in greater detail in the proceedings on the merits including as it relates to Ján Bernát, i.e. that the complaint cannot be held to be manifestly unfounded, cannot be considered as arbitrary.** Of course, the decision on the necessity to proceed on the merits says nothing about the final result of the proceedings, in which the Court shall give a definitive answer regarding the subject matter of the dispute. It is apparent from the above that **the decision to admit the case for further proceedings is not in contradiction with the Law on the Constitutional Court** as it is applied in the case law of the Court (with regard to manifest unfoundedness, see e.g. ref. II. ÚS 183/04, III. ÚS 566/2015, II. ÚS 570/2011, I. ÚS 762/2013, IV. ÚS 321/04, etc.). **For these reasons, I do not consider Constitutional Court ruling ref. I. ÚS 575/2016 dated 14 September 2016 as arbitrary.**

The challenged decision ref. I. ÚS 575/2016 dated 14 September 2016 cannot be considered as manifestly lacking justification either.

It is apparent from Part I, items 1 to 4 of the statement of reasons of Constitutional Court ruling ref. I. ÚS 575/2016 that the motion (in this case complaint under Art. 127 of the Constitution) contains all the formal requirements for a qualified motion for commencement of proceedings under Sec. 20 and 50 of the Law on the Constitutional Court. It is also evident from the motion when it was filed with the Court and that it happened within two months from the issuing of your new decisions on the non-appointment of the complainants for positions of Constitutional Court judges dated 6 July 2016. It is further apparent from it that the complainant Ján Bernát is not challenging your original decision on his non-appointment dated 2 July 2014, but rather your procedural steps consisting in not deciding

[2] In the original Slovak version. In the English translation it can be found on pages 23-24.

on his candidacy for the position of Constitutional Court judge, despite the Court's decisions in cases ref. III. ÚS 571/2014 and especially ref. PL. ÚS 45/2015. This then manifested itself in your decision of 6 July 2016, which concerned the other candidates, and this state of affairs persists to this day and is generally known. In Part II items 5 to 8 of the statement of reasons of the Court's ruling ref. I. ÚS 575/2016 dated 14 September 2016, the First Chamber then quotes or cites provisions of the Law on the Constitutional Court which concern preliminary hearing of motions and pronounces the conclusion that in the given case *"the complaint fulfils the general requirements of a motion for commencement of proceedings before the Constitutional Court listed in Sec. 20 of the Law on the Constitutional Court as well as special requirements prescribed for the proceedings on individual complaints in Sec. 50 of that law. Since there are no reasons for the rejection of the motion according to Sec. 25.2 of the Law on the Constitutional Court, the Court decided to admit the motion for further proceedings, as stated in the operative part of this decision."*

While the statement of reasons contained in the written version of Constitutional Court ruling ref. I. ÚS 575/2016 dated 14 September 2016 is rather concise, its scope responds to the nature and range of issues which are dealt with during a preliminary hearing on a motion for commencement of proceedings before the Court and is in line with the long-time established practice of the Court regarding such procedural decisions.

All the relevant facts necessary for the assessment whether the motion for commencement of proceedings met all the formal requirements prescribed by the Law on the Constitutional Court as well as whether all the other procedural conditions were met in the given case either followed directly from the content of the complaint and its annexes or were known to the Court from its decision making (the contents of the Court's decisions concerning judicial nominations to the Constitutional Court, including decisions in cases ref. III. ÚS 571/2014 and ref. PL. ÚS 45/2015). There is not even anything in the statement of reasons of your initiative dated 27 October 2016 which would cast doubt on this fact. At the same time, I am aware of your argumentation regarding the effects of your decision dated 2 July 2014 on the non-appointment of Ján Bernát for the position of Constitutional Court judge in the context of his withdrawal of his complaint in case ref. II. ÚS 718/2014. However, your arguments will be assessed in the further proceedings on the merits and you will surely have the possibility and space to present it in the course of the proceedings on the merits. The competent Chamber of the Court will undoubtedly examine it in the same way as the arguments of the complainant will be examined, which rely on the Court's decisions in cases ref. III. ÚS 571/2014 and ref. PL. ÚS 45/2015.

Under the given circumstances, **the procedural steps** taken by the First Chamber of the Court in **case ref. I. ÚS 575/2016 could not have led to a violation of your rights and could not have been discriminatory against you.** As already stated, **the procedural steps taken by the First Chamber** were in line with **the statutory provisions in force regulating the procedure before the Court contained in Sec. 29.3 of the Law on the Constitutional Court. They were also in line with the long-time established practice of the Court confirmed in hundreds of cases,** among them e.g. cases ref. **II. ÚS 264/04, II. ÚS 249/04, IV. ÚS 214/04, II. ÚS 132/02, II. ÚS 27/05, or II. ÚS 58/05** (the Judge-Rapporteur was JUDr. Ján Mazák, former President of the Court). Neither is this affected by the fact that in some cases the Judge-Rapporteur may require documents or response to the motion even before the preliminary hearing, as has already been stated. If in this context you refer to proceedings ref. II. ÚS 718/2014 and ref. II. ÚS 719/2014, for the sake of balance and objectivity reference should also be made to proceedings in cases ref. III. ÚS 53/05, III. ÚS 282/09, III. ÚS 171/2010, III. ÚS 62/2011, I. ÚS 215/2015, III. ÚS 76/2016 or III. ÚS 571/2014. In these cases, the sole respondent or one of respondents was the President of the Slovak Republic and he was not served with a motion for commencement of proceedings before the preliminary hearing. At the same time, it is not true that in proceedings ref. I. ÚS 397/2014 concerning the complaint of Jozef Čentéš against the presidential decision

on his non-appointment to the office of Prosecutor General the motion for commencement of proceedings was served on the President before the preliminary hearing, as it is claimed in the annex to your initiative. In that case, Jozef Čentéš's complaint was served on the President for response only after the preliminary hearing together with the Court's ruling admitting the complaint for further proceedings, as an annex to the Judge-Rapporteur's accompanying letter dated 1 august 2014.

Mr. President of the Slovak Republic,

I am well aware of the fact that this Constitutional Court proceeding ref. I. ÚS 575/2016 concerns a case which is, as you have stated in your initiative, closely monitored not only by the parties to proceedings, but also by the general public, which makes it potentially more likely to give rise to some degree of emotions in the course of the public discourse (as much on the part of the general public as on the part of the parties). At the same time, I respect the parties' right to use all legal measures according to their own discretion which they deem expedient for bringing success in the proceedings.

However, one of the key conditions for fulfilling the Court's role consisting in protection of constitutionality and of fundamental rights and freedoms is the protection of the Court's independent status and of the independence of its judges in their decision making. It is necessary to proceed with the greatest caution when applying the institution of disciplinary liability against Constitutional Court judges in connection with their decision making, because judges who are under the constant threat of disciplinary proceedings upon initiatives by parties to proceedings dissatisfied with their decision cannot be independent. Thus, the Court's decision making generally cannot constitute grounds for disciplinary liability. If this were not so, it would be impossible to talk about judicial independence.

This is in addition confirmed by international documents related to standards in this area. According to Recommendation of the Committee of Ministers CM/Rec(2010)12: *"66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence."*

The Venice Commission referred to this Recommendation and in the context of respecting well-established case law, but with conclusions generally applicable, added:
"21. A judge may not be limited to applying the existing case-law. The essence of his/her function is to independently interpret legal regulations. Sometimes judges may have an obligation to apply and interpret legislation contrary to "uniform national judicial practice". Such situations can occur, for instance, in light of international conventions, and where decisions from international courts supervising the international conventions may alter the current national judicial practice.
22. The legal interpretation provided by a judge in contrast with the established case law, by itself, should not become a ground for disciplinary sanction unless it is done in bad faith, with intent to benefit or harm a party at the proceeding or as a result of gross negligence."

It can be inferred from the above that a judge's procedural steps taken in the course of decision making may constitute grounds for disciplinary proceedings solely in cases of obvious excesses, if manifestly done in bad faith, with intent to benefit or harm a party to proceeding or as a result of gross negligence on the part of the judge.

However, in the present case under examination I have not found any of the said conditions to be met. Procedural steps taken by judges of the First Chamber Milan Ľalík, Marianna Mochnáčová and Peter Brňák were in line with statutory procedural rules relating to procedure before the Constitutional Court and could not have led to any violation of your procedural rights. Not even the ruling ref. I. ÚS 575/2016 dated 14

September itself, by which the Court admitted the complaint of Ján Bernát, Miroslav Duriš, Eva Fulcová and Juraj Sopoliga for further proceedings, could be considered as arbitrary or manifestly lacking justification.

Yours sincerely