Political opposition in Slovakia: no explicit legal recognition but significative legal possibilities

MAREK DOMIN*

1. The constitutional system of the Slovak Republic and the opposition's role

A democratic state is unimaginable without the existence of political opposition. This is especially true in a country that went through two undemocratic regimes in the not-so-distant past (a regime with fascist elements collaborating with Nazi Germany in 1938/1939-1945 and a communist regime in 1948-1989). In the conditions of the parliamentary form of government, which also applies in the Slovak Republic (Cibulka *et al.* 2014: 223; Čič *et al.* 2012: 580; Giba *et al.* 2019: 229; Orosz, Sv\u00e1k and Balog 2011: 312-313)[1], the opposition represented in Parliament has the most important position. It is precisely the parliamentary opposition that is the counterweight and

* Associate Professor in Constitutional Law at the Comenius University in Bratislava (Slovakia).

[1] Exceptionally, one can also find different opinions (especially Drgonec 2015: 1080-1081). However, the basic features of the parliamentary form of government (dependence of the compositon of the executive on the results of parliamentary election and political accountability of the executive before the parliament) are undoubtedly present.

controller of the government and of its majority in Parliament. This is certainly true in Slovakia, where after the fall of the communist regime (1989), and the establishment of an independent state (1993), the practice of coalition governments gradually established, even if they have never been supported by all political parties represented in Parliament. On the contrary, some of political parties in the Slovak Parliament, the National Council of the Slovak Republic (hereinafter referred to as "the National Council"), used to join the opposition after the elections and to oversaw the policy of the majority government, mainly through a loud criticism.

The term "opposition" is used in the daily Slovak political and constitutional discourse and there is no fundamental doubt about its content. However, the 1992 Constitution does not contain the term "opposition". At the same time it does not explicitly regulate the status of the opposition or any of its rights. Therefore, some authors conclude that the constitutional law of the Slovak Republic does not yet explicitly recognise the organisational relevance of the opposition for the state (Bröstl *et al.* 2015: 214). Nevertheless, several provisions that protect political minorities in various ways can be found in the Constitution, such as the disposition imposing to hold elections at regular periods, by which the principle of government for a limited time is expressed (Palúš and Somorová 2012: 71). The lack of an explicit regulation of the position of the opposition is also observed at the level of the statutory regulation. No existing law in the Slovak Republic, nor the 1996 Act on the Rules of Procedure of the National Council, recognises the term "opposition" and therefore does not explicitly regulate the status of the opposition. As for the legal status of the members of the National Council, it should be noted that this is a general one, meaning that, in principle, all deputies are given the same rights (Krošlák *et al.* 2016: 454). Therefore, the law does not distinguish between a deputy supporting a government and a member of the opposition.

Despite the fact that the legal order of the Slovak Republic does not explicitly recognise the opposition, it is possible to derive from its various components significant legal possibilities for the opposition, especially the parliamentary one. Finally, despite the frequent criticisms of Slovak political culture, one can agree with the statement that granting certain rights to the opposition is considered to be a part of political culture (Krošlák *et al.* 2016: 454). Some of the rights of opposition are directly derived from the legislation, others have the characteristics of legal customs.

The aim of this chapter is to identify and systematically summarise the legal possibilities that the legislation of the Slovak Republic provide for the

opposition's political forces. Our attention will be primarily focused on the activity of the National Council, since, as already indicated, this is the most important forum for opposition voices. Consequently, our attention will be on the organisation of the National Council and on the usual functions of opposition forces (2). Subsequently, the subject of interest will be the National Council rules of procedure (3), within which it is also possible to identify several intervention tools of opposition forces. Then, we will outline the opposition's ability to appeal against the legislation promoted by the government before the Constitutional Court (4), as well as the opposition's ability to take part to the State Electoral Commission (5). Then, we will examine the institute of referendum (6), which in the Slovak political practice often serves as a tool to promote opposition's interests. Finally, we will try to assess the overall position of the opposition in the Slovak Republic, considering the principles and requirements on which a democratic state and a state based on the rule of law should be based (7).

2. The organisation of the National Council and the opposition's role

As already mentioned, the most important space for the implementation of opposition policy can be found in the Parliament. Therefore, it is appropriate to deal with the organization of the National Council and the possibilities that arise from this organization to the parliamentary opposition. Before that, however, a few remarks on the National Council in general have to be made. The National Council, consisting of 150 deputies, is the supreme representative and the only legislative and constitutional-making body of the Slovak Republic. Every citizen of the Slovak Republic older than 21 years of age with permanent residence in the country can become a member of the Slovak Parliament. However, the law only allows registered political parties (or their coalitions) to submit candidate lists for the parliamentary elections. The registration of political parties is carried out by the Ministry of the Interior of the Slovak Republic. The fundaments of the internal organisation of the National Council are assumed by the constitution, the details are regulated by the Act on the Rules of Procedure of the National Council. Thus, the Slovak Parliament belongs to the group of parliaments whose internal relations are not regulated only by their own resolution, but are the subject of a law.

The analysis of the organisation of the National Council must begin considering how individual deputies, including those belonging to the oppo-

sition, can be organised within it. The Act on the Rules of Procedure provides for the creation of the so-called parliamentary groups, which are set up during the inaugural session of the parliament, i.e. practically immediately after the parliamentary elections. The basic rule is that parliamentary groups copy political parties whose candidates have won a parliamentary seat. Thus, if a deputy has been a candidate on the list of a political party, the rule is that he or she becomes a member of a parliamentary group of the same name. However, the Act on the Rules of Procedure also provides for the possibility of creating a parliamentary group on a different basis than the fact of belonging to a political party that took part in the elections. In such a case, the consent of the Plenum of the National Council is required. On the contrary, in the case of the standard creation of a parliamentary group, this creation is only taken into account by the Plenum. No consent is needed. For the sake of completeness, it should be added that the placement of deputies in one of parliamentary groups is not obligatory. However, non-attached deputies are in a slightly disadvantaged position, as the members of parliamentary groups have certain advantages in parliamentary deliberations. For example, only parliamentary groups can propose additional items to parliament agenda during a session. In turn, authorised representatives of parliamentary groups have the right to be the first to speak in the debate. Therefore, in Slovak political practice, deputies always join some parliamentary group and cease to be their member only if they resign from the political party of the same name, for example due to political disagreements.

Parliamentary groups are formed by all political parties whose candidates won mandates in the National Council, including parties that have ended up in opposition. The Act on the Rules of Procedure requires at least eight deputies to form a parliamentary group. The electoral system used for the elections to the National Council[2] generally results in the fact that each political party obtain at least the specified number of deputies and thus fulfills the conditions for setting up its own parliamentary group. The only exceptions were the first democratic and free elections held after the fall of the communist regime (1990), in which two political parties won a number of mandates

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[2] Elections to the National Council are conducted through a proportional representantion system. The whole territory of the Slovak Republic form one single constituency. Exceeding the electoral threshold of 5% of all valid votes is a prerequisite for the possibility of obtaining seats in the National Council. If several political parties are running in a joint coalition, it is necessary to obtain 7 or 10% of all valid votes, depending on a number of parties forming the coalition.

lower than eight (seven and six)[3]. However, at that time the law did not provide for the creation of formalised parliamentary groups or factions. In addition, one of these political parties (*Demokratická strana*) was directly one of governing parties, the other (*Strana zelených*) acted as a government-inclined non-opposition party (Hrnko and Petranská Rolková 2018: 89). The minimum number of deputies required to form a parliamentary group must be maintained throughout the term of the National Council. If, as a result of the departure of one or more members, the number of members falls below eight, the parliamentary group shall cease to exist.

Representatives of all parliamentary groups together create the so-called Panel of Deputies (*poslanecké grémium)*, which is a kind of advisory body for the President of the National Council, with which issues of a political and procedural nature are discussed. Thus, the above-mentioned rules for the creation of parliamentary groups ensure the access to the Panel of Deputies of the opposition parties as well.

From the point of view of the organisation of the National Council, its administration or management is undoubtedly important. Both the Constitution and the Act on the Rules of Procedure presuppose that the Slovak Parliament is headed by its President. Due to the balance of power between the governing parties and the opposition, the President of the National Council always becomes a representative of one of the governing parties. However, the Vice-Presidents of the National Council are also part of the management of the parliament. Their role consists in a representantion of the President if necessary. It is precisely the position of Vice-President of the Parliament, to which the Slovak opposition has traditionally had access. In this regard, it is interesting that the Act on the Rules of Procedure does not specify any details in relation to the position of Vice-President of the National Council. The mentioned Act only presupposes that one or more Vice-Presidents are elected by all members of the Parliament in a secret ballot. Already after the first democratic and free elections (1990), the practice that the National Council has four Vice-Presidents has become established. Following the subsequent elections in 1992, the opposition also obtainted one Vice-President. Since then, in every parliamentary term the opposition has at least one Vice-President of the National Council. After the 2012 elections, when the government was formed by only one political party (in Slovak *Smer - Sociálna demokra-*

[3] The lower number of seats won in the 1990 elections was mainly due to the fact that the then electoral system contained the electoral threshold of only 3%.

cia), even two opposition parties obtained the position of Vice-President of the National Council. In the following period (elections in 2016 and 2020), there was another return to the tradition that one of four seats in the parliamentary administration belongs to the opposition, namely the strongest opposition political party. Even if only 10 parliamentary elections have taken place in Slovakia after the fall of the communist regime, the assignment of one post to the Vice-President of the Parliament for the opposition can already be described as a kind of constitutional custom, the disregard of which is very difficult to imagine.

Committees are another organisational part of the National Council. The law defines them as the initiative and control bodies of the Parliament. Each deputy becomes part of one or more committees, usually according to his or her professional orientation. The members of committees are elected by all deputies of the Parliament.

In relation to the parliamentary opposition, it should be noted that opposition deputies not only can be members of committees, but in some of the latter the Act on the Rules of Procedures explicitly stipulate that their members are elected taking into consideration the proportional representantion of all parliamentary parties. This means that in the some committees the representation of opposition parties is guaranteed by law according to the total share of their deputies. Specifically, these concern (1) the Committee on Mandates and Immunities, (2) the Committee on Incompatibilities, (3) the Committee on European Affairs, (4) the Committee for Review of the National Security Office decisions and (5) special control committees. Special control committees are set up to monitor the activities of the National Security Office, the civil intelligence service (*Slovenská informačná služba*) and the military intelligence service. With regard to the roles of the other committees, the Committee on Mandates and Immunities is responsible for verifying the validity of election of individual deputies; the Committee on European Affairs is in charge of discussing draft legally binding acts of the European Union and approving the positions of the Slovak Republic on them. The Committee for Review of the National Security Office decisions decides on appeals against non-granting security clearances. The aforementioned committees, together with the Constitutional Law Committee, can be considered the most important committees of the National Council (these committees are established on a mandatory basis). Thus, the proportional representation of the opposition in these committees guarantees the participation of the opposition in fundamental activities of the Parliament. In the case of

special control committees, it is also a question of the possibility of control of intelligence services, with the abuse of which Slovakia has already several experiences. The guaranteed proportional representation of the opposition in the Committee on Mandates and Immunities and in the Committee on Incompatibilities is intended to ensure that opposition deputies cannot be arbitrarily harassed by the government majority.

However, the proportional representation of political parties represented in the National Council, including the opposition parties, is also reflected in other committees. This is, for example, the already mentioned Constitutional Law Committee. Thus, the representation of the opposition parties in proportion to their parliamentary strength is respected in practice, notwithstanding the fact that the Act on the Rules of Procedure does not explicitly prescribe it in the case of committees other than those mentioned above. For example, the Constitutional Law Committee elected in 2020 has 12 members, 8 of whom are members of political parties supporting the government and 4 members of the opposition parties. Thus, the proportional representation of the opposition parties in this committee roughly copies the overall *ratio* of the opposition deputies to the government-supporting deputies, which in this term (at least at the beginning of it) was 55 to 95.

Another representation of the parliamentary opposition in the organisational structure of the National Council, namely the presidency in selected committees, has also the nature of a legal custom. Unlike ordinary members, the Act on the Rules of Procedure does not contain any explicit rule in relation to the function of chairperson and vice-chairperson of committees. Since the government parties have the majority, the positions of chairpersons of the individual committees are usually filled by members of political parties supporting the government. However, one can observe the constitutional custom of granting the position of chairperson in control committees to the opposition political parties. In particular, it is a presidency in committees overseeing major state security institutions headed by government nominees (Krošlák *et al.* 2016: 455). Specifically, these are the three already mentioned special control committees monitoring the activities of the National Security Office, the civil intelligence service and the military intelligence service. The fourth one is the Committee for Review of National Security Office decisions. However, also the presidency of the Committee on Incompatibilities usually belongs to the opposition, as even in the case of this committee the control function clearly predominates.

3. National Council's rules of procedure and opposition's rights

While the previous part was focused on the functions that legislation or practice confers to the opposition deputies in the Slovak Parliament, the following lines will draw attention to the opportunities offered by the National Council's rules of procedures to opposition deputies.

As the National Council is, according to the Constitution, a legislative and constitutional-making body, the negotiation of drafts of laws can be described as one of the most important processes taking place in it. That is why the possibilities that Slovak opposition deputies have in connection with the legislative process will be presented firstly. The Constitution and the aforementioned Act on the Rules of Procedure recognise the right of legislative initiative (the right to propose the adoption of a law with the parliaments's obligation to discuss this proposal) to the Government, to National Council committees and to individual deputies. In the case of the third of these elegible entities, the right of legislative initiative belongs to each of deputies separately. The minimum number of deputies who would have to sign a bill is not specified. The right to legislative initiative conferred to one sole deputy is exceptional from a comparative point of view (Pavlíček, V., Jirásková, V. *et al.* 2021: 397). The consequence of the rules set in this way is that the right of legislative initiative also belongs to opposition deputies without any further restrictions. Opposition deputies also make extensive use of the right of legislative initiative, but the fact is that a substantial part of acts actually passed are bills submitted by the Government. For example, in 2020, out of 124 acts passed, only 29 were a result of the National Council deputies initiative. In addition, a substantial number of those bills were submitted by deputies supporting the Government. In 2021, there were slightly more such laws, 66 out of a total of 168 approved acts (Štatistiky a prehľady 2022).

A specific case of legislative procedure taking place in the National Council is a vote on those legislative proposals for which a qualified majority is required. The Constitution presupposes that a majority of at least three-fifths of all deputies is required for the adoption of a constitutional act, the act with higher legal force which is usually also used to amend the Constitution[4]. This means that at least 90 members of the National Council

[4] Not every constitional act amend the Constitution. The constitutional system of the Slovak Republic also recognizes such constitutional acts which "stand" besides the Constitution and do not directly affect its text.

must vote for a constitutional act. Consequently, the need to obtain a qualified majority for voting on constitutional act, often leads the Government majority to seek support from part of the opposition. Thus, the opposition has an opportunity, at least to a certain extent, to participate in the adoption of constitutional acts as legal regulations with the highest legal force, which are decisive for the formation of the constitutional system of the Slovak Republic. At the same time, however, it should be reminded that the parliamentary elections following the 1989 transition produced some results in which the governing coalition had enough votes to implement constitutional changes on its own. It was, for example, the case of the Government formed after the 1998 elections or the one that emerged following the 2020 elections. On the other hand, it should not be forgotten that the Slovak coalition governments were and are relatively unstable and therefore seeking support from the opposition is not completely ruled out.

In addition to voting on constitutional acts, a qualified majority (three-fifths of all deputies) is required in other specific cases, such as a resolution declaring a recall referendum on the dismissal of the President of the Republic or a resolution indicting the President of the Republic for treason or intentional violation of the Constitution. However, none of these votes have ever taken place. A qualified majority, which also presupposes the involvement of the opposition, is also required if the Parliament wishes to revoke the amnesty or pardon because of their conflict with the principles of a democratic state and state based on the rule of law. Such a vote has already taken place once. Therefore, it can be concluded that the existing constitutional rules will to a large extent ensure that the opposition can participate in the most important votes that take place in the Parliament.

The traditional task of the opposition, especially in conditions of a constitutional system based on the principles of a parliamentary form of government, is to control the activities of the Government. The Slovak Republic is not an exception in this respect. The Constitution and especially the Act on the Rules of Procedure entrust deputies with several instruments for controlling the activities of the Government. Although these tools are accessible to all members of the National Council, regardless of their political affiliation, it is clear that they will be used more by the opposition deputies.

One of the most important rights of all deputies, used especially by the opposition, is the so-called interpellation right. The interpellation right is the right of a deputy to request a qualified answer to a question addressed to the Government, its member or the head of another central state administration body in matters within their competence (Giba *et al.* 2019: 176). The

submission of an interpellation question is accompanied by the obligation of the subject to which it was addressed to provide a response in writing and within 30 days. Based on the answer, a debate is then held in the National Council, which can also be linked to a vote of confidence. However, such a proposal of voting on confidence can only be made by the Government, not by the opposition deputy who tabled the interpellation. The possibility of deriving political responsibility of the Government, in the form of a possible rejection of the motion of confidence, distinguishes the interpellation right from other tools available to deputies to control the executive. The Act on the Rules of Procedure also recognises the so-called question time (held every week) in which members of the Government, as well as other executive officials, answer questions from deputies. The order in which the questions are answered is determined by a lot. Deputies, especially from the opposition, also have the opportunity to carry out the so-called a parliamentary survey to find out how the law is being complied with and enforced. The object of such a survey may be various public authorities, not just those that are part of the executive.

Another possibility provided by the Act on the Rules of Procedure is the initiative of convening a session of the Parliament, which is usually irregular (not scheduled). The President of the National Council is obliged to convene a session whenever requested by at least one-fifth of all deputies, that means at least 30 deputies. The distribution of forces between the deputies supporting the Government and those of the opposition has always been such that the opposition actually had at least 30 deputies to covening an irregular session of the Parliament. Opposition deputies usually call for an irregular session to propose a vote of no confidence or to draw attention to negative social events. Recently, the opposition has responded by convening an irregular session to discuss the serious social consequences of the sharp rise in energy and food prices (February 2022) or the executive measures taken during the COVID-19 pandemic (April 2021). However, it often happens that the irregular session proposed by the opposition actually does not take place because its agenda is not approved. The approval of the agenda requires the votes of an absolute majority of all deputies. In this way, deputies supporting the Government often block the session proposed by the opposition.

Parliamentary immunity is one of the privileges traditionally enjoyed by members of the parliament. As it is well known, the immunity primarily protects opposition deputies from various possible forms of bullying by the executive, which could be the result of criticism of the opposition against the executive. The institute of immunity protects all members of the National

Council, but traditionally is more important for the opposition's MPs. In the conditions of the Slovak Republic, there are two types of immunity. The first type is the indemnity, that means a complete and permanent irresponsibility for a certain behaviour. Specifically, the National Council deputies may not be prosecuted for voting and for statements made in the Parliament or in its bodies in the performance of their duties. The impossibility of prosecution persists even after the expiration of the parliamentary mandate. However, for a statement made in the National Council, the deputy is subject to a disciplinary accountability derived directly by the Parliament. However, the consequence of disciplinary accountability can by only the awarding of a fine or the obligation to apologise. The second form of immunity is procedural immunity, which protects the deputy against certain prosecution measures. In the past, it was not possible to prosecute a deputy without the consent of the National Council. Following the changes in the Constitution effective from 1 September 2012, the consent is only required to take a deputy into custody or to detain them. In case of detention of a deputy, for example due to a suspicion of a criminal offense, the competent authority must seek the consent of the National Council. If the consent is not given, the detained deputy must be released immediately. Another element of the protection for the National Council deputies, including those of the opposition, is the right to refuse to testify in matters which the deputy come to know in the performance of their duties. This right continues even after the person has ceased to be a deputy.

4. Appeal against the legislation promoted by the Government before the Constitutional Court

Since the acts of Parliament, as in other parliamentary systems of government, are passed by a majority of deputies, it can be stated that a substantial part of these acts is an expression of the will of the government's majority. Therefore, it can also be argued that the opposition generally disagrees with a substantial part of the approved acts. One of the opposition's most effective tool to criticise the legislation of the parliamentary majority is the possibility of filing a motion to initiate a constitutional review proceedings before the Constitutional Court of the Slovak Republic (Gajdošíková and Bröstl 2020: 89). Thus, the proceedings before the Constitutional Court of the Slovak Republic (hereinafter referred to as the "the Constitutional Court") on the compliance of legal regulations represent a special opportunity that

the constitutional system of the Slovak Republic provides to the opposition. Moreover, Slovak practice shows that proceedings before the Constitutional Court often represent not only an opportunity for a professional assessment of the adopted acts, but rather an opportunity for the continuation of political struggle between the government majority and the opposition. This is also due to the fact that the constitutional system of the Slovak Republic lacks a second chamber of the Parliament.

The basis of the proceedings on the compliance of legal regulations are contained in the Constitution, the details in the Act on the Constitutional Court (Act no. 314/2018). The purpose of legal compliance proceedings is to remove legal norms that contravene the Constitution from the legal order (Drgonec 2012: 139). The procedure most often consists of assessing the compliance of acts adopted by the National Council (*de facto* usually by the government majority) with the Constitution, constitutional acts and international treaties that have been ratified by the Slovak Republic and which take precedence over Slovak laws. However, the Constitutional Court may also assess the compliance of lower legal regulations, such as the compliance of implementing regulations issued by the Government, ministries or other state administration bodies, not only with the Constitution, constitutional acts or international treaties, but also with National Council acts.

If the Constitutional Court concludes that the challenged legal regulation is in accordance with the Constitution or another legal regulation of higher legal force, it will not grant the motion. On the contrary, if it is convinced that a contradiction exists, an unconstitutional legal regulation, either in whole or in part, declines in effect by declaring a decision of the Constitutional Court. At that moment, the author of an unconstitutional regulation, most often the National Council, has a period of 6 months to bring the problematic regulation into line with the Constitution or another legal regulation of higher legal force. If this does not happen, the challenged regulation (or a part of it) will expire, which will exclude it from the legal order of the Slovak Republic. Before deciding on the merits of the motion, the Constitutional Court may, on the motion or on its own initiative, suspend the effectiveness of the challenged legal regulation or part thereof.

The Constitutional Court cannot initiate proceedings on the compliance with legal regulations itself. On the contrary, the action will start only at the proposal of one of eligible entities. These entities are listed in an exhaustive manner in the Act on the Constitutional Court. These include, for example, the President of the Republic, the Government, the Attorney General, any court or the Public Defender of Rights. Also a group of deputies of

the National Council belongs to the entities to which the law grants the right to file a motion to initiate proceedings on the compliance with legal regulations. Thefore, the right to submit a motion does not belong to the Parliament as a whole, which would not even make sense if the proposal were directed against an act passed by the Parliament. Conversely, a petitioner have to consist of a group of deputies, which must make up at least one-fifth of all deputies of the National Council. As the National Council consists of 150 deputies, a group of at least 30 deputies may file a qualified motion to initiate proceedings before the Constitutional Court. It is irrelevant whether or not all members of such a group are members of the same parliamentary group. The minimum number of members of a group asking the Constitutional Court to start proceedings determined by law as 30 (or one-fifth of all deputies) guarantees that the opposition also has the opportunity to challenge a law before the Constitutional Court, whether it is an act ot the parliament or another law. Never in the history of Slovak democratic parliamentarism has it happened that a the opposition has less than 30 deputies. Of course, the Act on the Constitutional Court does not in any way stipulate that the right to initiate proceedings should belong only to members of the parliamentary opposition. Most often, however, it is just the opposition deputies who turn to the Constitutional Court (Ľalík and Ľalík 2019: 231). The recognition of the right of the opposition to challenge the constitutionality of an approved act can be considered an instrument of protection of a democracy and the rule of law before a parliamentary majority (Drgonec 2015: 1339).

Slovak legislation not only provides the opposition with the opportunity to challenge a law approved by the government majority, but a group of deputies of the Parliament, *de facto* a group of the opposition deputies, is in practice also the most frequent petitioner. In the first 20 years of its functioning (from 1 January 1993 to 31 August 2013), the Constitutional Court received a total of 123 motions to initiate proceedings on the compliance with legal regulations. As many as 62 of them, that is more than 50%, were submitted by groups of deputies of the National Council (Gajdošíková 2013: 5). A similar trend can be observed in the following period of the Constitutional Court's operation. For example, in 2021, the Constitutional Court received 20 motions to initiate proceedings, of which exactly a half was submitted by members of parliament (Vyhľadávanie povinne zverejňovaných podaní 2022).

Interestingly, the opposition's deputies used the compliance of legal regulations procedure not only to challenge acts passed by the govern-

ment majority, but even to challenge a constitutional act amending the Constitution submitted by the government. The Constitutional Court issued a groundbreaking decision in 2019, which defined its power to review the compliance of constitutional acts, including those amending the Constitution, with the material core of the Constitution (judgment PL. ÚS 21/2014 of 30 January 2019). The government's majority formed after the parliamentary elections in 2020 responded to this decision by proposing an amendment to the Constitution, which explicitly excluded the power of the Constitutional Court to review the compliance of constitutional acts with the Constitution.

In connection with proceedings before the Constitutional Court, it is necessary to point out another type of proceedings, which may also be initiated by a group of deputies. The Constitution also entrusts the Constitutional Court with a decision on whether a decision on a state of emergency, or a decision follow-up of that decision, was issued in accordance with the Constitution. The state of emergency, which is envisaged by the constitutional regulation as a special way of dealing with the threat to state security, was repeatedly declared and extended by the Government in 2020 and 2021 due to the COVID-19 pandemic. There was the opposition's deputies who turned to the Constitutional Court twice to examine whether the declaration of a state of emergency had been made in compliance with the conditions envisaged by the Constitution. In both cases, the Constitutional Court finally came to the conclusion that the state of emergency was declared in a constitutionally consistent manner (judgments PL. ÚS 2/2021 of 31 March 2021 and PL. ÚS 22/2020 of 14 October 2020).

5. The opposition as one of creators of the State Electoral Commission

The Electoral Code (Act no. 180/2014 Coll. on the Conditions for Exercising the Right to Vote) is probably the only legal regulation in the Slovak Republic that mentions opposition political parties. However, even in this case, the term "opposition" is not explicitly used. Instead, the Electoral Code works with terms «political parties that formed the government» and «other political parties represented in the National Council of the Slovak Republic». The second of these terms is the one to be interpreted as the political opposition represented in the Slovak Parliament. The division of parliamentary political parties into those

that formed the Government and those that remained in the opposition serves to divide the seats in the State Commission for Elections and Supervision of Political Parties Financing (hereinafter referred to as the "State Electoral Commission"). The State Electoral Commission is the supreme body of the electoral administration, the purpose of which is mainly to supervise the organisation and conduct of all types of elections existing in the Slovak Republic (elections to the National Council, elections of the President of the Republic, elections to the European Parliament and elections to self-government authorities). In addition, the competence of the State Electoral Commission also applies to the national referendum. However, as the full name of the State Electoral Commission suggests, its tasks also concern the functioning and financing of political parties operating in Slovakia.

The State Electoral Commission is composed of 14 members: 4 are appointed by the top representatives of other state bodies[5] and 10 by political parties represented in the National Council. The Electoral Code in relation to political nominees stipulates that the number of nominees of the government parties and the number of nominees of the opposition parties must be the same. Thus, the opposition should have 5 representatives in the State Electoral Commission. Also important is the provision saying that the same *ratio* of nominees of the Government and the opposition parties should be maintained throughout the whole term of the National Council. This means that if one political parties stopped supporting the Government and joined the opposition, the seats in the State Electoral Commission would have to be redistributed so that a situation of equilibrium could be restored. Of course, the opposite is also true. Each political party can remove their nominees in the State Electoral Commission at any time and replace them with others. This possibility may to some extent contradict the definition of the State Electoral Commission as an independent body, which is explicitly present in the Electoral Code (for details see Domin 2015: 1115-1116). The term of office of the members of the State Electoral Commission begins with the taking of the statutory oath and ends on the day of taking the oath of the members of new State Electoral Commission, which always occurs after the elections to the National Council. Thus, the term of office of the State Electoral Commission is

[5] One member of the State Electoral Commission is nominated each by the President of the Constitutional Court, the President of the Supreme Administrative Court of the Slovak Republic, the Attorney General and the President of the Supreme Audit Office of the Slovak Republic.

linked to the parliamentary term. If the parliamentary term is shortened, the term of office of the State Electoral Commission will also be shortened. The State Electoral Commission is headed by its President, who is elected by secret ballot in the Parliament.

But what is the significance of the parity of representantion of the opposition political forces in the State Electoral Commission? The answer to this question must be sought in connection with the powers conferred to the State Electoral Commission. Legal regulations entrust the State Electoral Commission with important powers in the exercise of which, through its nominees, the parliamentary opposition also participates. As the State Electoral Commission decides by an absolute majority of its members (7 out of 14 members), the 5 opposition votes have a relatively high weight. However, the Electoral Code even defines the cases in which a resolution of the State Electoral Commission can be adopted only by a majority of three quarters of its members (at least 11 of its members). With this method of voting, it is impossible to adopt a valid resolution without the support of at least part of the members nominated by the opposition's political parties. The vote at three-quarters majority is required when deciding that an election campaigner has violated the pre-election silence or a pre-election silence for the publication of election polls results. Voting by a three quarters majority is also required when deciding on the registration of candidate lists for the National Council elections or the European Parliament elections, as well as for deciding to remove an ineligible candidate from the list.

The composition of the State Electoral Commission, in particular the fact that the opposition nominates 5 of its members, guarantees that the Government's majority should not be able to block the registration of a candidate list of any of the opposition political parties and thus prevent its participation in elections. A similar significance of the opposition representation can also be seen in relation to decisions on violations of the pre-electoral silence, as such decisions involve considerable financial sanctions. Through the nomination of part of the members of the State Electoral Commission, the opposition also participates in the supervision of the financing of the election campaign and the financing of political parties. With regard to the supervision of the financing of political parties, a breach of the obligations supervised by the State Electoral Commission may ultimately lead to the dissolution of a political party, which may also lead to restrictions on free competition of political forces. Though, the free competition of political forces is an essential idea of political pluralism.

6. The popular referendum as an instrument for the opposition

Another possibility that political opposition can use in Slovakia to fulfill its desirable functions for a democratic society is related to the referendum. Before we look at how the opposition can use the referendum, it is necessary, at least in the basic features, to take a closer look on the referendum institute in the conditions of the constitutional system of the Slovak Republic.

The Constitution recognises several types of referendum. In the following lines, the attention will focus on the national (or nationwide) referendum, which is regulated in the fifth chapter of the Constitution entitled "Legislative Power". Not only with regard to the indicated systematic classification, but also taking into account the case-law of the Constitutional Court, the national referendum in Slovakia can be understood as a specific instrument of exercising legislative power (see also the Constitutional Court's judgments PL. ÚS 24/2014 of 28 October 2014). In this connection, the Constitutional Court also emphasises that the question submitted to a referendum should be of a normative nature and that its results are generally binding (judgment PL. ÚS 7/2021 of 7 July 2021). The referendum is called by the President of the Republic on the basis of a resolution of the National Council or at the request of at least 350,000 citizens. According to the Constitution, a referendum is to decide on an important issue of public interest, excluding fundamental rights and freedoms, taxes and the state budget. Before the President of the Republic calls a referendum, he or she may apply to the Constitutional Court to assess the constitutionality of the referendum question. If the conclusions is that the referendum question is in conflict with the Constitution, the President of the Republic will not call a referendum. The unconstitutionality of a referendum may concern the referendum as a whole or one of its questions. In the second case, it is possible to hold a referendum only on those questions that do not conflict with the Constitution. In relation to the usability of the referendum in Slovakia, it should be added that its results are valid only if an absolute majority of all eligible voters took part in the vote. Otherwise, the results of the referendum cannot produce any legal effects.

The Constitution does not explicitly stipulate that a referendum may be requested by a political party, regardless of whether it is a government's party or an opposition party. Thus, the Constitution does not explicitly stipulate that parliamentary opposition could request a referendum. However, a political party may initiate a referendum. As the request sub-

mitted by the National Council is expected to be adopted by an absolute majority of its deputies, the possibility of calling a referendum through a request of citizens is more useful. The number of signatures of citizens under the petition asking a referendum, set by the Constitution at 350,000, is not disproportionately large given the standard number of the opposition's voters. We illustrate this with a few examples. In the case of the 2020 elections, the strongest opposition party alone won more than 527,000 votes. Ten years before, in 2010, that was even more. The strongest opposition party then won more than 880,000 votes. In 2016 and 2012 elections, the two strongest opposition parties together obtained more than 602,000 and 443,000 votes respectively (Voľby a referendá 2021). Thus, in all these cases the opposition forces had sufficient electoral support to be able to initiate a popular referendum.

The said assumption is also confirmed by the practice, as a popular referendum is usually initiated by opposition political parties, although they often, quite alibistically, distance themselves from this fact. Therefore, one can unequivocally agree with the opinion that a referendum in Slovak practice usually functions as a tool for mobilising voters of the political party that initiated the referendum, alternatively also as a tool to harm the political opponents of the initiator of the referendum (Spáč and Nemčok 2019: 755-777). The initiator of a referendum is usually one or more political parties and those who are to be harmed by the referendum are usually parties that support the government. Again, several examples can be given, as several referendums, which called on the basis of a citizens' petition, were in fact initiated by the opposition political parties. Examples can be found in 1998, 2000 or 2004[6]. In the case of another referendum, the 2010 referendum, the initiator was a newly formed (until then) non-parliamentary political party (*Sloboda a Solidarita*). It is likely that thanks to this referendum, even though it was ultimately invalid due to low turnout, the said political party succeeded in the same year's elections as it won the third highest vote and even became part of the new government majority.

In the case of 2000 and 2004 referendums, citizens had to answer the question concerning the shortening of the term of the National Council and thus the early parliamentary elections. Opposition politi-

[6] So far, only a total of 8 national referendums have been held in Slovakia (1994, 1997, 1998, 2000, 2004, 2010 and 2015). The voter turnout condition, which is necessary for the results of a referendum to be valid, was met only in the case of the 2003 referendum (referendum on the accession of the Slovak Republic to the European Union).

cal parties stood behind both of these referendums, despite the fact that the request was formally submitted to the President of the Republic by a petition committee representing a group of citizens. While in 2000 it was the political party *HZDS* (the strongest party of the 1990s), in 2004 there was the new opposition political party *Smer*. Opposition political parties, namely (again) *Smer - Sociálna demokracia* (formerly *Smer*) and the new *Hlas - Sociálna demokracia*[7], were also behind the last two attempts to call a popular referendum. In May 2021, a petition committee representing a group of citizens turned to the President of the Republic to call for a referendum, which was to result in early elections to the National Council. However, unlike in previous cases, the President of the Republic turned to the Constitutional Court, which concluded that a referendum on the proposed issue would be in conflict with the Constitution. Therefore, the President of the Republic did not call the referendum. For the sake of completeness, it is necessary to add that the referendum on early elections in 2021 had to take place at a time of the ongoing COVID-19 pandemic, which would be associated with other constitutional issues and challenges (for more details on the referendum on early parliamentary elections, especially in times of pandemic crisis, see Domin 2021: 204-205). A group of citizens, backed by the two mentioned opposition political parties, asked the President of the Slovak Republic to call a similar referendum again in August 2022. Thanks to a more appropriately formulated question, which respected the case-law of the Constitutional Court, this time they succeeded. The referendum took place in January 2023 (for more information on 2022 efforts of Slovak opposition to hold a referendum see Domin 2022). However, it was not valid due to low voter turn out.

Despite the fact that the opposition failed in the 2021 and 2022 referendum initiatives, the same campaign for holding the referedum undoubtedly contributed to increasing the voters' preferences for the opposition. Thus, the events occurred in 2021 and 2022 (and 2023) once again confirmed the statement of the Slovak constitutional scholars that Slovak referendum was and still is the subject of a political struggle between the governing coalition and the opposition (Nikodým 2002: 47).

[7] *Hlas - Sociálna demokracia* political party was formed by a splitting from the then strongest opposition party *Smer - Sociálna demokracia*. It includes up to 11 out of total 38 deputies (including former Prime Minister Peter Pellegrini) elected on the candidate list of the parent party *Smer - Sociálna demokracia.*

7. Conclusions

Since 1989, when the non-democratic regime of the communist party in the then Czechoslovakia was overthrown, the legal regulation and constitutional political practice in Slovakia have undergone a fundamental development. It did not circumvent even demands placed on the position of political opposition. Today, more than 30 years after fundamental social and constitutional changes, it can be stated that the opposition represents a firmly anchored part of political life. As an evidence of a certain maturity of the democratic political system gradually built after 1989 we can consider the 2006 elections results. In those elections the communist party regained a parliamentary representation, but this situation did not jeopardise the democratic values. In the following elections, which took place four years later, the communist party did not gain enough voter support.

In this chapter, we have tried to identify and systematically summarise the possibilities that legal regulation or constitutional political practice provide to opposition forces in Slovakia. Attention was focused mainly on the activities of the National Council, as the most important forum for opposition voices can be found in the Parliament. Firstly, it was demonstrated that the opposition, not least due to political practice, has a negligible representation within the organisational structure of the National Council, especially in parliamentary committees whose role is mainly to supervise the executive. We also pointed out on the possibilities that opposition deputies have in the National Council procedures, both in legislative process and in connection with instruments enabling the supervision of the government majority. In other parts of the chapter, we stated that opposition has the opportunity to demand a review of acts passed by the Government's majority before the Constitutional Court. The legislation of the Slovak Republic also guarentees the opposition seating in the Parliament with an equal representation in the State Electoral Commission, which plays an important role in the electoral process. Finally, we also pointed out that Slovak opposition, and not only the one represented in the Parliament, often uses the institute of the referendum initiated by a petition of a group of citizens in practice.

In addition to possibilities provided by legal norms or those enshrined in constitutional political practice, we must not forget the case-law of the Constitutional Court, which regularly interprets legal norms of constitutional law and thus develops them. The Constitutional Court described the protection of parliamentary minority (the opposition) as a part of the principles of a democratic state. In this context, the Constitutional Court

added that it felt called to intervene if the legislation would interfere with the free exercise of the opposition's parliamentary mandate in the intensity that violates its essence (judgement PL. ÚS 6/2017 of 22 March 2017). As mentioned earlier, such an intervention by the Constitutional Court could come, for example, in the case of a proposal by a group of opposition deputies to initiate proceedings to comply with a (government) act with the Constitution. An act that would change the rules of parliamentary proceedings, which are contained in the Act on the Rules of Procedure, is even not excluded from the constitutional review.

If we want to assess the position of the opposition in Slovakia, we can use as evaluation criteria the requirements contained in the document called «The Role of the Opposition in a Democratic Parliament» passed by the European Commission for Democracy through Law (the Venice Commission) in 2010. In accordance with these requirements, the parliamentary opposition should have recognised (1) the right to participate in parliamentary procedures, (2) to supervise the government, (3) to block or delay majority decisions of a significant nature, (4) to demand constitutional review of acts adopted by the parliament and (5) to be protected against persecution (Venice Commission 2010). In the previous lines, it was demonstrated that the legal regulation and constitutional political practice in Slovakia provide all the outlined fundamental rights or possibilities of the opposition, especially the parliamentary one, to the necessary extent. Of course, the current legislation is far from ideal and there is still room for improvement.

We can mention two changes that would improve the role of the opposition in Slovakia. The first one concerns the possibility of convening an irregular session of the National Council, which, by its nature, is used mainly by opposition deputies. As has already been said, in parliamentary practice it often happens that such a session does not even start, as deputies supporting the government block the convening of an irregular session by not voting for its agenda. Therefore, such a change in legislation, namely the Act on the Rules of Procedure, should be considered in order to allow the opposition to present its views at irregular sessions without the need to support the approval of its agenda by an absolute majority of (present) deputies. The second possible change is related to the approval of constitutional amendments. We have stated that a qualified majority is required to approve an amendment to the Constitution, and that the government's majority often has to seek some support from the opposition, but this is not always necessary. There must not be forgotten the fact that the changes to the Constitution are approved in Slovakia quite often and at the same time often these changes are not nec-

essary. Even in the light of the Venice Commission's demands for a the right to block or delay an important majoritarian decision, making it difficult to approve constitutional changes would be worth considering. Finally, Slovak constitutional law scholars have long called for the tightening of conditions for a change in the Constitution. Of course, the two proposed changes do not represent a list of all possible changes that could be considered in connection with the improvement of the opposition's role in Slovakia.

Bröstl A. *et al.*
Ústavné právo Slovenskej republiky [Constitutional Law of the Slovak Republic], Plzeň, Aleš Čenek, 2015.

Cibulka Ľ. *et al.*
Ústavné právo. Ústavný systém Slovenskej republiky [Constitutional Law. Constitutional system of the Slovak Republic], Bratislava, Univerzita Komenského v Bratislave Právnická fakulta, 2014.

Čič M. *et al.*
Komentár k Ústave Slovenskej republiky [Commentary on the Constitution of the Slovak Republic], Bratislava, Eurokódex, 2012.

Domin M.
"Removal of the Slovak Government by a Referendum: Act II of the Drama", *IACL-AIDC Blog*, 2022, <https://blog-iacl-aidc.org/new-blog-3/2022/12/1/removal-of-the-slovak-government-by-a-referendum-act-ii-of-the-drama>.

Domin M.
"Referendum on early elections in Slovakia: Constitutional challenges in times of crisis", *Nuovi Autoritarismi e Democrazie: Diritto, Instituzioni, Societá*, 1, 2021.

Domin M.
"Štátna komisia pre voľby. Vybrané otázky jej kreácie" [State Electoral Commission. Selected issues of its creation], *Justičná revue*, 10, 2015.

Drgonec J.
Ústava Slovenskej republiky. Teória a prax [Constitution of the Slovak Republic. A theory and a practice], Bratislava, C. H. Beck, 2015.

Drgonec J.
Konanie pred Ústavným súdom Slovenskej republiky [Proceedings before the Constitutional Court of the Slovak Republic], Šamorín, Heuréka, 2012.

Gajdošíková Ľ., Bröstl A.
"O parlamentnej kultúre" [On parliamentary culture], in Neumann J. (ed.), *Parlamentná kultúra*, Trnava, Typi Universitatis Tyrnaviensis, 2020.

Gajdošíková Ľ.
“Deľba moci a jej premeny v rozhodovacej činnosti Ústavného súdu Slovenskej republiky” [Separation of powers and its transformation in the case-law of the Constitutional Court of the Slovak Republic], *Ústavný súd Slovenskej republiky* [Constitutional Court of the Slovak Republic], 2013, <https://www.ustavnysud.sk/documents/10182/0/web+gajdosikova.doc/4186340b-3303-4857-899c-d8209117551e>.

Giba M. *et al.*
Ústavné právo [Constitutional Law], Bratislava, Wolters Kluwer, 2019.

Hrnko A., Petranská Rolková N.
Slovenský parlament v premenách času [Slovak parliament in the changes of time], Bratislava, Kancelária Národnej rady Slovenskej republiky, 2018.

Krošlák D. *et al.*
Ústavné právo [Constitutional Law], Bratislava, Wolters Kluwer, 2016.

Ľalík M., Ľalík T.
Zákon o Ústavnom súde Slovenskej republiky. Komentár [The Act on the Constitutional Court of the Slovak Republic. A commentary], Bratislava, Wolters Kluwer, 2019.

Nikodým D.
“Referendum (aktuálne otázky)” [A referendum (Current issues)], *Právny obzor*, 5-6, 2002.

Orosz L., Svák J., Balog B.
Základy teórie konštitucionalizmu [Fundaments of the Theory of Constitutionalism], Bratislava, Eurokódex, 2011.

Pavlíček V., Jirásková V. *et al.*
Ústavní právo a státověda. I. díl. Obecná státověda [Constitutional Law and the Theory of the State. Part I. General Theory of the State], Praha, Leges, 2021.

Palúš I., Somorová Ľ.
Štátne právo Slovenskej republiky [State Law of the Slovak Republic], Košice, UPJŠ, 2012.

Spáč P., Nemčok M.
“Referendum as a Party Tool: The Case of Slovakia”, *East European Politics and Societies*, 3, 2019.

Štatistiky a prehľady [Statistics and Reports]
Národná rada Slovenskej republiky [National Council of the Slovak Republic], 2022, <https://www.nrsr.sk/web/?sid=nrsr/dokumenty/statistiky_a_prehlady>.

Venice Commission (2010)
Report on the role of the opposition in a democratic Parliament, (CDL-AD(2010)025), <https://www.venice.coe.int/webforms/documents/CDL-AD(2010)025.aspx>.

Vyhľadávaie povinne zverejňovaných podaní [Searching for Mandatory Published Submissions]
Ústavný súd Slovenskej republiky [Constitutional Court of the Slovak Republic], 2022, <https://www.ustavnysud.sk/vyhladavanie-podani#>.

Voľby a referendá [Elections and Referendums]
Štatistický úrad Slovenskej republiky [Statistical Office of the Slovak Republic], 2021, <https://volby.statistics.sk/>.