

## CONSTITUTIONAL AMENDMENT PROCEDURE IN THE SLOVAK REPUBLIC (2016–2020) FROM THE PERSPECTIVES OF MAJOR PROBLEMATIC AREAS

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**Abstract:** *The paper concerns the issue of large constitutional activities of The National Council of the Slovak Republic during the 7<sup>th</sup> parliamentary term from 2016 until 2020. While discussing the quantity of constitutional activities of the National Council of the Slovak Republic, first of all, the author points to the theoretical matters concerning the Slovak polylegal constitutional system and legal regulation of the constitutional amendment procedure. This document summarizes results of constitutional amendment procedure – all constitutional initiatives, including adopted constitutional Acts in a form of the basic statistical data from the 1<sup>st</sup> to the 7<sup>th</sup> election term (1994–2020) and extended statistical data in the 7<sup>th</sup> election term (2016–2020) of the National Council of the Slovak Republic. The imminent part of this document is the analysis of above-mentioned data, the synthesis of the major practical and legislative problems that causes the numerous proposals of the Constitution Acts, mainly by deputies of the parliament and subsequently the description of the proposal de constitutione ferenda, or de lege lata to improve the stability and quality of the Constitution of the Slovak Republic.*

**Key words:** *constitutional amendments, the process of amending the constitution, the 7<sup>th</sup> electoral terms of the National Council of the Slovak Republic, stability of the constitution, the parliamentary opposition*

### INTRODUCTION<sup>1</sup>

The constitution as the essential law of the state is the significant basis of each modern democratic rule of law. The constitution stands on the top of the pyramid of the legislation, whereas regulates the fundamental rules in state such as basis of the organisation and functioning of the public authorities and the relations between the state and its citizens and other subjects of law. The modern constitution defines the key social values, which the state recognises and applies in its activities.<sup>2</sup> Therefore, the analysis of the content and form of the constitution is the key role of the constitutional theory.<sup>3</sup>

One of the key functions of the constitution is the **stabilisation of the society** as the expression of reasonable and permanent will of the people. However, this function cannot be understood in the absolute way. Number of authors claim, that the **changes** are natural in constitutions. For example, **L. Orosz** points to the “*organic link between the stabilizing and dynamic function, that is based on the claim, that no human work – neither constitution is perfect, nor therefore the constitution is subject to change.*”<sup>4</sup> **T. Lařík** states, that “*the*

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<sup>2</sup> GIBA, M. a kol. *Ústavné právo*. Bratislava: Wolters Kluwer, 2018, p. 52.

<sup>3</sup> OROSZ, L. a kol. *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. Košice: UPJŠ, 2009, p. 5.

<sup>4</sup> *Ibid.*, p. 48.

*constitution is the evidence of fighting the change and conservating the past (and present) as long as possible.*<sup>5</sup> According to **A. A. Ninet** “in constitutional terms, no constitution is permanent, and of course, no disposition is unamendable. Constitutions are continually flowing throughout a never-ending change.”<sup>6</sup> Finally **B. Aláez-Corral** claims, that “the constitutional amendment procedure, which allows the adaptation of the constitutional text to social changes, ultimately serves to protect the Constitution’s essence.”<sup>7</sup>

**The Constitution of the Slovak Republic n. 460/1992 Coll.** from 1 September 1992 (herein referred to as “the Slovak Constitution” or “the Constitution of the SR”) created the legal basis for the establishment of the separate Slovak Republic and for the functioning of the constitutional bodies. In the period from January 1, 1993 to April 1, 2021 the National Council of the Slovak Republic (herein referred to as “NCSR” or “National Council of the SR” or “the Slovak parliament”) has adopted 19 constitutional amendments.<sup>8</sup> The important questions arise: Are these too many amendments? What is the optimal level of intervention in the constitution in order to maintain the stability and quality of the constitution? Such a large quantity of constitutional amendments has been taking into question by number of **the Slovak constitutional experts** in many scientific works, particularly in the topics such as excessive plurality of constitutional laws and their internal disharmony,<sup>9</sup> low stability of constitutional laws,<sup>10</sup> mutual relations between the Constitution and constitutional laws<sup>11</sup> or legislative perspectives of the constitution, resp. need for further amendments.<sup>12</sup> The issue of constitutional amendment is also relevant in **the international context**; from the perspective of foreign authors prevails particularly the matters

<sup>5</sup> LALÍK, T. Tracing Constitutional changes in Slovakia between 2008–2016. *Hungarian Journal of Legal Studies*. 2017, Vol. 58, No. 2, p. 118.

<sup>6</sup> NINET, A. A. The inexorableness of constitutional amendments and its democratic potentiality. *Journal of constitutional research*. 2020, Vol. 7, No. 3, p. 690.

<sup>7</sup> CORRAL, B. A. Constitutional Amendment and Concept of Constitution. *International Journal of Human Rights and Constitutional Studies*. 2020, Vol. 7, No. 4, p. 7.

<sup>8</sup> This state is valid as of November 30, 2021.

<sup>9</sup> OROSZ, L. K problémom kompatibility ústavného systému Slovenskej republiky. *Justičná revue*. 2005, No. 3; HERZ, T. Polemika o ústavnom poriadku a jeho kompatibilite. *Právny obzor*. 2007, No. 5; NIKODÝM, D. *Kompatibilita ústavného systému – 15 rokov Ústavy Slovenskej republiky*. Košice: UPJŠ, 2018; KRUNKOVÁ, A. *Nové trendy v novelizáciách Ústavy Slovenskej republiky. Ústavné dni. 25. výročie ústavy Slovenskej republiky – VI. ústavné dni*. Košice: UPJŠ, 2018.

<sup>10</sup> BALOG, B. *Stabilizácia (súčasnej) Ústavy Slovenskej republiky. 20 rokov Ústavy SR – I. ústavné dni II. Zväzok*. Košice: UPJŠ, 2012; CIBULKA, L. *Ústava SR – trhací kalendár ? 25. výročie Ústavy Slovenskej republiky – VI. Ústavné dni*. Košice: UPJŠ, 2018; OROSZ, L. *Ústava v ohrození (ústavné iniciatívy v rokoch 1993 – 2010 a ich dopady na aktuálnu podobu ústavného systému SR)*. In: H. Jermanová – Z. Masopust (eds.). *Dvacet let poté: Právo ve víru metamorfóz*. Praha: Ústav státu a práva, 2010, pp. 110–128.

<sup>11</sup> BRÖSTL, A. O ústavnosti ústavných zákonov. In: Helena Jermanová (ed.). *Metamorfózy práva ve střední Evropě*. Plzeň: Aleš Čeněk, 2008; BREICHOVÁ LAPČÁKOVÁ, M. *Ústava a Ústavné zákony*. Bratislava: Kalligram, 2013; BALOG, B. *Materiálne jadro Ústavy Slovenskej republiky*. Žilina: EUROKÓDEX, 2014.

<sup>12</sup> DRGONEC, J. *Ústava Slovenskej republiky – ako ďalej ?* In: L. Orosz – M. Breichová Lapčáková – T. Majerčák (eds.). *20 rokov Ústavy SR – I. ústavné dni II. Zväzok*. Košice: UPJŠ, 2012; MACEJKOVÁ, I. *Ústava Slovenskej republiky, jej doterajšie zmeny a legislatívne perspektívy*. In: Ladislav Orosz – Marta Breichová Lapčáková – Tomáš Majerčák (eds.). *20 rokov Ústavy SR – I. ústavné dni I. Zväzok*. Košice: UPJŠ, 2012; GIBA, M. *Potrebuje slovenská ústava zmenu?* In: Ladislav Orosz – Marta Breichová Lapčáková – Tomáš Majerčák (eds.). *Ústava Slovenskej republiky. 20 rokov v národnom a európskom pohľade*. Bratislava: Lonfinger, 2012.

of the unconstitutional constitutional amendments,<sup>13</sup> the rigid constitutions,<sup>14</sup> the constitutional reforms<sup>15</sup> or some comparative perspectives.<sup>16</sup>

The Slovak authors, mainly focusing on the analysis and evaluations of adopted constitutional amendments, have different points of view on those matters. For example, A. Krunková moderately claims, that: “*high quantity does not have to have a negative effect, unless proves justification of its content.*”<sup>17</sup> On the contrary L. Orosz critically states, that: “*the National Council as the sole constitutional and legislative body has done nothing essential for the stabilization of the constitutional text for the past five years.*”<sup>18</sup> L. Cibulka, by mentioning the political background of the constitutional amendments, asks the question: “*What confidence and seriousness can the basic law of a state have, which changes from day to day according to the needs of the current political situation?*” At the same time the same author emphasizes that: “*by adopting the constitutional amendments it is necessary to be very careful and sensitive, in particular in those states – including our republic – where the fragile culture of political relations exists.*”<sup>19</sup>

Although the Slovak Constitution has been 19 times amended, there is other disturbing fact regarding to the constitutional initiatives, what should deserve the attention of scientific researchers in Slovakia; during the last seventh electoral term up to 70 constitutional initiatives (in other words proposals of constitutional acts) have been submitted to the NCSR, of which up to 61 were submitted by the deputies of the parliament. **Why have so many proposals of constitutional acts been submitted? What are the implications of the numerous constitutional initiative?** These are the basic research questions given in this article.

Based on previous knowledge, the author will focus on **the scientific hypotheses**, that constitutional initiatives (mostly by groups of deputies) associated with poor quality are

<sup>13</sup> LIMA, J. Decision by supermajority in constitutional courts: The case of unconstitutional constitutional amendments. *Revista Estudos Institucionais (Journal of Institutional studies)*. 2020, Vol. 6, No. 3, pp. 1310–1330.

NINET A. A. The inexorableness of constitutional amendments and its democratic potentiality. *Revista de investigacoes Constitucionais (Journal of constitutional research)*. 2020, Vol. 7, No. 3, pp. 689–705.

TOREES-ARTUNDUAGA, C., GARCIA-JARAMILLO, S. Democratizing the Doctrine of Unconstitutional Constitutional Amendments: The Puzzle of Amending the Judiciary Branch. *ICL Journal Vienna Journal on international constitutional law*. 2020, Vol. 14, No. 1, pp. 1–42.

<sup>14</sup> PULIDO-ORTIZ, Constitution and the Constitutional Body of Law. *Revista de Derecho Politico*. 2020, No. 108, pp. 337–360.

LORENZ, A. How differently actors cope with demanding constitutional amendment rules: two types of constitutional politics in federal democracies. *Regional and federal studies*. 2016, Vol. 26, No. 5.

<sup>15</sup> DOMINGUEZ, F. C. We the people: federalism and constitutional reform. *International journal of human rights and constitutional studies*. 2021, Vol. 8, No. ½, pp. 4–16.

WEINRIB, J. The Principles of Constitutional Reform. *Kantian Review*. 2019, Vol. 24, No. 4, pp. 631–651.

MOORMANN-KIMAKOVA, B., FRUHSTORFER, A., HEIN, M. Constitutional politics in central and eastern Europe: From post-socialist transition to the reform of political systems. *Vergleichende Politikwissenschaft*. 2016.

<sup>16</sup> REUTTER, W. The Changeableness of Subnational Constitutions: A qualitative comparative analysis. *Government and opposition*. 2019, Vol 54, No. 1, pp. 75–97.

PODOLNJAK, R. Forming a government in the Republic of Croatia in comparative perspective – a proposal for a constitutional change. *Pravni Vjesnik*. 2018, Vol. 34, No. 3–4, pp. 55–84.

<sup>17</sup> KRUNKOVÁ, A. Nové trendy v novelizáciách Ústavy Slovenskej republiky. In: L. Orosz – S. Grabowska – T. Majerčák (eds.). *Ústavné dni 25. Výročie Ústavy Slovenskej republiky – VI. Ústavné dni*. Košice: UPJŠ, 2018, p. 96.

<sup>18</sup> OROSZ, L. Účelovosť ústavných zmien a kritéria ich hodnotenia. p. 20.

<sup>19</sup> CIBULKA, L. *Ústava SR – trhací kalendár?* p. 53.

unprofessional, quickly prepared and repeatedly presented. The aim of these initiatives is not the effort to optimize the constitution, but raising political preferences and the growth of personal prestige or popularity. The natural consequences of such an unqualified initiative are incompatibility and inconsistency of constitutional Acts, as well as the lack of their clarity. The author's effort in this document lays in confirmation or refutation these hypotheses.

**The aim of this document** is therefore a comprehensive and objective analysis of the constitutional activities of the National Council of the Slovak Republic in the 7<sup>th</sup> election term. To achieve the aim of this document, it was necessary to use the **theoretical research methods**. Firstly, to **analyse** the polylegal constitutional system in the Slovak Republic, including the current legal regulation of the constitutional amendment procedure of National Council of the Slovak Republic. Secondly, to **introduce** the basic statistical data form the 1<sup>st</sup> to the 7<sup>th</sup> election term (1994–2020) and extended statistical data in the 7<sup>th</sup> election term (2016–2020).<sup>20</sup> Subsequently, the main point of interest is to **synthesize** the result of statistical data and to draw certain generalizations and to name the major problematic areas. Subsequently, I shall try to **deduce** a relatively comprehensive proposals de constitutione ferenda and de lege ferenda to improve the legal regulation of the constitutional process to establish safeguards against its abuse intentions of Members and thus strengthen the stability and increase the quality of the Constitution.

## 1. THE CONSTITUTIONAL AMENDMENT PROCEDURE – THEORETICAL SCOPE AND LEGAL REGULATION IN SLOVAKIA

I can absolutely agree with R. Albert, who states that *“no part of a constitution is more important than the rules we use to change it.”*<sup>21</sup> B. Aláez-Corral claims that *“a formal concept of the Constitution considers the constitutional amending power the only legally true constituent power.”*<sup>22</sup> G. Tsebelis links the amendment rules with the democracy in two point of view: *“from a normative point of view, amendments rules specify the delegation of the constituent power, which is the truth of modern democracy since formulating popular sovereignty as constituent power is to affirm the basic democratic value of self-government. From a positive point of view, the constitution is the only self-enforcing construct or coordination mechanism in a democratic country. Without the existence of this self-enforcing contract, democracy is impossible.”*<sup>23</sup>

<sup>20</sup> For the purposes of this Document, this is the author's own collection and processing of factual data concerning the constitutional activities of the subject of the constitutional initiatives during the 7<sup>th</sup> election term available on the digital parliamentary library on the National Council of the Slovak Republic. In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/dl/Browser/Default?legId=13&termNr=7>>.

<sup>21</sup> ALBERT, R. *Constitutional Amendments: Making, Breaking, and Changing Constitutions*. Oxford: Oxford University Press, 2019, p. 2.

<sup>22</sup> CORRAL, B.A. Constitutional Amendment and Concept of Constitution. In: *International Journal of Human Rights and Constitutional Studies*. 2020, Vol. 7, No. 4, p.11.

<sup>23</sup> TSEBELIS, G. The Time Inconsistency of Long Constitutions: Evidence from the World. In: *European Journal of Political Research*. 2017, Vol. 56, No. 4, p. 4.

As it is seen the constitutional amendment procedures, as well as constitutional amending power take important place in democratic states of law and have significant connection to its important values. The constitutional amendment procedure can be defined as the process which is aimed to change the constitution or adopt the new constitution.<sup>24</sup>

The process of formal constitutional amendments in Slovakia is done through the **constitutional Acts**. As the matter of such practice, the constitutional order of Slovakia is **polylegal**, as outside of constitutional text, there are several constitutional Acts that also regulate constitutional content. This reflects the domestic constitutional traditions when all Constitutions of the former Czechoslovakia's republics (1920, 1948, 1960), as well as the Constitutional of the Slovak state 1939 were adopted as polylegal constitutions or assumed the plurality of constitutional Acts. In addition, the fact is that at the time of the approval of the Slovak Constitution in 1992, there was a polylegal constitution of the common Czechoslovak federal state, which along the Constitutional no. 460/1992 Coll. consisted of valid federal constitutional Acts. Moreover, the plurality of the constitutional Acts followed from the original text of the Constitution of the SR no. 460/1992 Coll.<sup>25</sup>

According to some author, the constitutional Acts (as the part of the polylegal constitutional system) can be categorized into four groups:<sup>26</sup> **the first group** is the **amending constitutional acts**, which directly and explicitly changes, derogates and supplements the constitutional text according to Art. 86 letter a) of the Constitution of the SR.<sup>27</sup> **The second group** is called **blanket constitutional Acts** adopted on the ground on the empowering constitutional blanket according to the Constitution itself as from Art. 3 par. 2, Art. 7 par. 1, Art. 51 par. 2, Art. 86 letter b), Art. 99 par. 1, Art. 102 par. 3.<sup>28</sup> **The third group** contains the **“unforeseen” constitutional acts**, which the Constitution does not assume: (i) so-called **“indirect constitutional acts”**, which permanently supplement the constitution and deviate from its text,<sup>29</sup> and (ii) so-called **“ad hoc constitutional acts”**.<sup>30</sup> **The last group** contains **constitutional acts remaining in force** after their adoption in the constitutional body of the previous state according to the general constitutional reception clause Art. 152 par. 1.<sup>31</sup>

<sup>24</sup> OROSZ, L., SVÁK, J., BALOG, B. *Základy teórie konštitucionalizmu*. 2<sup>nd</sup> edition. Bratislava: EUROKÓDEX, 2012, p. 106.

<sup>25</sup> OROSZ, L. a kol. *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. Košice: UPJŠ, 2009, p. 67.

<sup>26</sup> GIBA, M. a kol. *Ústavné právo*. p. 74; LALÍK, T. Tracing Constitutional changes in Slovakia between 2008–2016. *Hungarian Journal of Legal Studies*. 2017, Vol. 58, No. 2, p. 121; OROSZ, L. a kol. *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. Košice: UPJŠ, 2009, p. 68.

<sup>27</sup> The Constitution of the SR has been already amended for 19 times. The last constitutional amendment was performed by the constitutional act no. 422/2020 Coll. from September 9, 2020.

<sup>28</sup> The Constitutional acts on changes in the state border, the Constitutional Acts no. 227/2002 Coll. on the security of the state in time of war, state of war, martial law and state of emergency, as amended.

<sup>29</sup> For example, the Constitutional Act no. 357/2004 Coll. on the protection of the public interest in the performance of the functions of public officials, the Constitutional Act no. 397/2004 Coll. on cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in matters of the European Union, the Constitutional Act no. 493/2011 Coll. on budgetary responsibility.

<sup>30</sup> For example, the Constitutional Act no. 330/2011 Coll. on shortening the election term, the Constitutional Act no. 332/1998 Coll. on the extension of the election term of municipal bodies elected in 1994.

<sup>31</sup> For example, the Constitutional Act no. 23/1991 Coll. establishing a Charter of Fundamental Rights and Freedoms.



The difficult issue in the states with polylegal constitution is mainly the understanding of internal links between the relevant constitutional Acts.<sup>32</sup>

In the condition of Slovakia, according the Art. 152/4, the Constitution of the Slovak Republic factually and legally prevails over other constitutional acts, only in the interpretation and application level.<sup>33</sup> Although, from the formal point of view, the Constitution of the Slovak Republic and other constitutional acts are the legal regulations of the highest degree of legal force with the same degree of constitutional protection. In the system of sources of law there is no distinction between the Constitution and other constitutional laws; the consent of at least a three-fifths majority of all members of parliament is also required for the adoption of a constitution, an amendment to a constitution and a constitutional act (Article 84/3).

Turning back now to **the constitutional amendment procedure**, in the condition of the Slovak Republic can be considered as **specific type of the legislative procedure**. The fundamental legal regulations that regulate the constitutional law-making activities include, in particular:

- The Constitution of the Slovak Republic in Article 72, Article 84, Article 86 paragraphs a), b), Article 87, Article 102 paragraph f) and o), Article 119 paragraph a),
- The Act No. 400/2015 Coll. on the law-making and on the Collection of Laws of the Slovak Republic and on the amendment of the relevant regulations (hereinafter referred to as “*the Law-making Act*”),
- The Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic – the tenth part entitled Debate on the Bills (hereinafter referred to as “*the Rules of Procedure NCSR*”).

Above mentioned regulations apply to the creation or amendment of the Constitution of the SR, all others constitutional acts, as well as to the ordinary acts. Both amendment procedures (constitutional and legislative) share the same stages of procedures such as (i) stage of law-making initiative, (ii) stage of debating and passing of the Act, (iii) stage of signing of the Act, (iiii) stage of publication of the Act. Even the range of the entities having the law-making initiative in Art. 87 section 1 are the same: “*A Bill may be submitted by the Committees of the National Council of the Slovak Republic, Deputies and the Government of the Slovak Republic.*” **Contrary** the legislative process, for an amendment to the Constitution of the SR and to the Constitutional Acts to be passed, the Constitution of the SR requires a consent of three fifths of all Deputies.

There seem to be no limits on what can pass through constitutional amendment procedure, except the qualified majority. In this regard T. Lálík points to the fact that: “*some empirical analyses showing that the Slovak Constitution is considered to be the least rigid among written constitutions of the EU member states.*”<sup>34</sup> Moreover, the Slovak Constitution does not explicitly contain intangibility clauses as a necessary content of the constitutional text.<sup>35</sup> Although the text of the Constitution of the Slovak Republic lacks an explicit material

<sup>32</sup> OROSZ, L., SVÁK, J., BALOG, B. *Základy teórie konštitucionalizmu*. p. 90.

<sup>33</sup> OROSZ, L. a kol. *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. p. 71.

<sup>34</sup> LÁLÍK, T. Tracing Constitutional changes in Slovakia between 2008–2016. p. 120.

<sup>35</sup> CORRAL, B. A. Constitutional Amendment and Concept of Constitution. *International Journal of Human Rights and Constitutional Studies*. 2020, Vol. 7, No. 4, p. 6.

core, constitutional theory largely agrees that there is no longer a constitution that is neutral in value, and that is why, in principle, every constitution has an unwritten material core, whether or not it contains an intangibility clause. The important part in drawing the material core of the Slovak constitution plays the case law of the Constitutional Court, particularly the judgement PL. ÚS 21/2014 of 30 January 2019, when based on the large analysis concluded that The Constitution contains an implicit material core, the basis of which is the principles of a democratic state governed by the rule of law according to Art. 1 par. 1 of the Constitution. Such principles include the principle of separation of powers and the related independence of the judiciary. The constitutional laws cannot contradict the implicit material core of the Constitution. The Constitutional Court is entitled to examine any conflict between the norms of the Constitutional Act and the implicit material core of the Constitution, and if it finds a discrepancy, it is entitled to state the inconsistency of the norms of the Constitutional Act with the implicit material core of the Constitution” (paragraph 169). The Constitutional Court (as well as legal theory) did not abandon this doctrine even after the adoption of the amendment in the form of Constitutional Act no. 422/2020 Coll. and reaffirmed it in the referendum judgment (Pl. ÚS 7/2021).

The problem of eventual insufficient constitutional amendment procedure in the Slovak constitution can lead to several difficulties linked mostly to the stability and quality of the constitution.

Worse still is the situation that is described by B. Aleáz-Corral when “*constitutional legitimacy turns constitutional amendments that seek to suppress democracy by democratic means into a logically impossible paradox. And if this happens, it only can be considered, legally speaking, a constitutional fraud inasmuch as they do not respect the moral-political values underlying the exercise of the constitutional amending power and the source of validity of its competence.*”<sup>36</sup>

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<sup>36</sup> CORRAL, B. A. *Constitutional Amendment and Concept of Constitution*. p. 6.

## 2. QUANTITY OF CONSTITUTIONAL INITIATIVES OF THE NATIONAL COUNCIL OF THE SLOVAK REPUBLIC AND ITS CONSEQUENCES

2.1 The overview of the basic statistical data (from the 1<sup>st</sup> to the 7<sup>th</sup> election terms – 1994–2020) and extended statistical data from the 7<sup>th</sup> election terms (2016–2020)<sup>37</sup>

	<b>Election terms of NC SR</b>	<b>Constitutional Acts submitted</b>	<b>Difference</b>	<b>Constitutional Acts passed</b>	<b>Difference</b>
1	1994–1998	17	–	4	-
2	1998–2002	25	47,06%	5	25,00%
3	2002–2006	35	40,00%	14	180,00%
4	2006–2010	34	-2,86%	1	-92,86%
5	2010 – 2012 <sup>37</sup>	11	-67,65%	3	200,00%
6	2012–2016	44	300,00%	6	100,00%
7	2016–2020	70	59,09%	8	33,33%

*Table No. 1 – Constitutional activity of the National Council of the Slovak Republic from 1994 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

<b>Proposals of constitutional Acts in the 7<sup>th</sup> electoral term</b>					
<b>Election term</b>	<b>Total number of adopted constitutional Acts</b>	<b>adopted</b>	<b>of this</b>		
			<b>unsuccessful</b>		
			<b>of this</b>		
			<b>not adopted</b>	<b>withdrawn</b>	<b>not discussed</b>
2016–2020	70	8	52	3	7

*Table No. 2 – Constitutional activity of the National Council of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

<sup>37</sup> 5. Election term only lasted for 2 years and it terminated earlier.



Proposals of constitutional Acts in the 7 <sup>th</sup> electoral term						
Election term	Total number of proposals of constitutional Acts	of this				Other constitutional Acts as not part of the constitutional system of the Slovak Republic
		Direct amendment of Constitution	Other constitutional Acts as part of the constitutional system of the Slovak Republic			
			of this			
			new	Amendment		
2016–2020	70	51	1	14	4	

*Table No. 3 Constitutional activity of the National Council of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

Proposals of constitutional Acts according to the subject entitled to propose the constitutional Act						
Electoral term	Total number of proposals of constitutional Acts	Gov.	Of this proposed/ adopted/ not adopted			
			Coalition deputies		Opposition deputies	
			of this		of this	
			Group of deputies	Single deputy	Group of deputies	Single deputy
2016–2020	70	3/2/1	4/4/0	0	55/0/55	5/0/5

*Table No. 4 Constitutional activity of the National Council of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

Proposals of constitutional Acts according to the subject entitled to propose the constitutional Act			
Electoral term	Of this proposed/ adopted/ not adopted		
	Coalition and opposition deputies	Committee	accelerated procedure
2016–2020	1/0/1	2/2/0	2

*Table No. 5 Constitutional activity of the National Council of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

<b>Proposals of direct amendment of Constitution in terms of their subject – Substantive focus</b>			
<b>The subject of proposal of constitutional Acts</b>	<b>Total number 51</b>	<b>of this</b>	
		<b>adopted 4</b>	<b>not adopted 47</b>
<b>TITLE ONE of the Constitution:</b>	5	0	5
The Treatment of National Property	2	0	2
The Relation to international and European law	3	0	3
<b>TITLE TWO of the Constitution:</b>	3	2	1
The Fundamental Rights and freedoms + Right to protection of environment	1	1	0
The Political Rights	1	0	1
The Economic, Social, Cultural Rights	1	1	0
<b>TITLE THREE of the Constitution:</b>	6	0	6
The Changes in control scope of the Supreme Audit Office of the Slovak Republic	2	0	2
The changes in the position of official of Supreme Audit Office of the Slovak Republic	4	0	4
<b>TITLE FOUR of the Constitution:</b>	5	0	5
<b>TITLE FIVE of the Constitution:</b>	21	1	20
The referendum	8	0	8
The status of the National Council of the SR	6	1	5
The status of deputies	7	0	7
<b>TITLE SIX of the Constitution:</b>	6	0	6
The status of the President of the Slovak Republic	5	0	5
The status of the Government of the Slovak Republic	1	0	1
<b>TITLE SEVEN of the Constitution:</b>	1	0	1
The status of the Constitutional Court of the Slovak Republic	1	1	1
The status of the general courts	1	0	1
<b>TITLE EIGHT of the Constitution:</b>	2	0	2
The status of the Public Prosecution of the Slovak Republic	2	0	0
<b>TITLE NINE of the Constitution:</b>	2	1	1

*Table No. 6 Constitutional activity of the National Council  
of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

<b>The proposals of the other constitutional Acts as part of the constitutional system of the Slovak Republic</b>			
<b>The subject of proposal of constitutional Acts</b>	<b>Total number 19</b>	<b>of this</b>	
		<b>adopted 4</b>	<b>not adopted 15</b>
The shortening/extension of the election term of the National Council of the Slovak Republic and municipal self-government bodies	1	0	1
The changes in state borders	1	1	0
The protection of the public interest	11	3	8
The annulment of decisions on amnesty and individual pardon	2	0	2
The state security in times of emergency	1	0	1
The budgetary responsibility	1	0	1
The public health	1	0	1
The relations with the EU	1	0	1
The proof of origin of property	0	0	0

*Table No. 7 Constitutional activity of the National Council of the Slovak Republic from 2016 to 2020*

In: *nrsr.sk* [online]. [2022-03-28]. Available at: <<https://www.nrsr.sk/web/?sid=schodze/cpt>>.

On the ground of the basic and extended statistic data on the constitutional activities of the National Council of the Slovak Republic, it is possible to draw certain generalizations and to name the major problematic areas, despite of the fact that (citing L. Orosz) “*the informative value of any statistic data is, to a certain extent, always relative*”:<sup>38</sup>

- Total numbers of proposals of the constitutional acts and adopted constitutional acts during the existence of independent Slovak Republic;
- The subject of the constitutional initiatives in 7<sup>th</sup> election term;
- The object (content) of the proposals of the constitutional act and constitutional amendment in 7<sup>th</sup> election term from the perspective of using the summary legislative procedure.

## 2.2 Total numbers of proposals of the constitutional Acts and adopted constitutional Acts during the existence of the independent Slovak Republic

The Constitution of the Slovak Republic no. 460/1992 Coll. entered into force on 1.1.1993 and since that has been amended by 19 amendments. From all 236 constitutional initiatives of it 41 passed. From total number of 41 passed constitutional Acts 19 direct amendments into text of Constitution and 22 other constitutional Acts.

<sup>38</sup> OROSZ, L. Legislatívna činnosť Národnej rady Slovenskej republiky. Niekoľko kritických poznámok. *Právny obzor*. 2003, Vol. 86, No. 2, p. 124.

Particulars concerning the intensity of the constitutional activities of the National Council of the Slovak Republic (throughout its history) have been summarized in Table No. 1; we may observe **a rapid rising trend of the total number of submitted Constitutional Acts**, which derives from comparing particular election terms. From a point of view of passed Constitutional Acts, there is no tendency of considerably significant intensification; the highest number of Constitutional Acts were approved in the 3<sup>rd</sup> election term. In the 6<sup>th</sup> and 7<sup>th</sup> election terms it is possible to see a somewhat stabilized trend of the passage of the Constitutional Acts. From a point of view of submitted Constitutional Acts we see exactly opposing tendencies: increase in the number of the constitutional amendments in the last two election terms. The most significant increase can be seen in the 7<sup>th</sup> election term, which is four times more than in the 1<sup>th</sup> election term.

In this respect it is possible to state that a significant quantity of submitted (and also passed) Constitutional Acts is capable of influencing the qualitative parameters of the constitutional system. The high quantity of the submitted Constitutional Acts causes overburdening of deputies, lack of transparency of the whole constitutional amendment process, and this will eventually be reflected in the (lack of the) quality of the Constitutional Acts.

### 2.3 Subjects of the constitutional initiatives in the 7<sup>th</sup> election term

The Constitution of the Slovak Republic defines the range of the entities having the (constitutional) law-making initiative in Art. 87 section 1: *“A Bill may be submitted by the Committees of the National Council of the Slovak Republic, Deputies and the Government of the Slovak Republic.”* The Government submits its Act as a collective body, its law-making initiative is therefore not vested with its individual members, but only with the Government as a whole. However, Deputies may submit Act on an individual basis or as a group of Deputies.

Ideally, the correct constitutional or legislative process resembles a pyramid with a wide base and a narrow top, i.e., the sound background for the drafting of the text followed by its sensitive and subtle refinement in later stages. In this respect K. Baránik has described this process as *“distillation of binding rules from concrete social relations.”*<sup>39</sup> For these reasons the first drafting of constitutional Act should be concentrated in the bodies that are best equipped for it as far as professional and personnel capacities are concerned, i.e., the Ministries, and/or the Government.

As it is seen from the table no. 4 the reality of the beginning of the constitutional amendment procedure is far from the ideal vision. From the total number of proposed constitutional Act (70), only 3 of them were proposed by the Government. **The Government** was relatively successful with two proposals of the Constitutional Acts.

The parliamentary practice shows, that drafting of constitutional Acts is concentrated in the hands of **deputies**. Moreover, the peculiar paradox is, that on one hand the highest number of draft constitutional laws (61) were submitted by **opposition deputies**, but on the other hand none of their proposals were adopted. On the contrary, the most successful

<sup>39</sup> BARÁNÍK, K. Problémy legislatívneho procesu v Slovenskej republike. In: L. Dufalová et al. (eds.). *Milníky práva v stredoeurópskom priestore*. Bratislava: Univerzita Komenského v Bratislave, 2011, p. 95.

proposals of constitutional Act come from **coalition deputies**, who naturally have the most suitable conditions for adoption of their proposal due to constitutional majority. Currently rare in the parliamentary practice in Slovakia is case, when **coalition and opposition deputies** unite and create common proposal of Constitutional Act. The only case bringing together a broad spectrum of opposition and coalition deputies in the total number of 53, was the effort to pass the constitutional law to repeal some Mečiar's amnesty decisions (the parliamentary press No. 318). Although the proposal successfully reached the second reading, in the meantime the Government proposed constitutional law on the mechanism of repealing the so-called Mečiar's amnesties (No. 71/2017 Coll.) and therefore, the petitioners withdrew their proposal.<sup>40</sup>

Particularly, regarding the content of the constitutional initiatives, it is possible to identify a **direct ideological connection with the political program and activities of the political party** itself, or its chairman and individual members. The content of the examined constitutional proposals shows that the deputies followed the key communication agenda, resp. enforcement of pre-election promises.

This approach is particularly emphasised in the activity of these **coalition** political parties:

- The strongest coalition political party *SMER-SD* (social democracy), that actively and in a populist way have used left-wing slogans on the need to supporting social justice,<sup>41</sup> proposed the amendment concerned the constitutional fixation of the age for entitlement to adequate material security in retirement with an appropriate reduction of the maximum retirement limit for women who raised children (art. 39) and the constitutional guarantee for the employee on the minimum wage (art. 36/2), which led to the adoption of the constitutional amendment No. 99/2019 Coll.<sup>42</sup>
- Other coalition political party *Slovak National Party* (SNS – Slovenská národná strana) as one of the oldest political party in Slovakia, that promotes national interests, proposed constitutional amendment ensuring food security of the state (art. 20/2) and protection of agricultural land and forest land (art. 44), which led to the adoption of the constitutional amendment No. 137/2017 Coll.<sup>43</sup> The issue of the increasing the food self-sufficiency in Slovakia takes place in the Election program 2020.<sup>44</sup>

From the **opposition** political parties in parliament, the special attention deserves two of them – political movement the *Ordinary people and independent personalities* (OLANO – Obyčajní ľudia a nezávislé osobnosti) and the *People's Party our Slovakia* (ĽSNS – Ľudová strana naše Slovensko).

<sup>40</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 318. In: *nrsr.sk* [online]. 4. 11. 2016 [2021-05-26]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>41</sup> MARADYK, N., DUDINSKÝ, V. *Volby 2020 na Slovensku, špecifiká parlamentných volieb 2020 na Slovensku. Parlamentné volby 2020 na Slovensku*. Prešov: Prešovská univerzita v Prešove, 2021, p. 27.

<sup>42</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 1015. In: *nrsr.sk* [online]. 25. 5. 2018. [2021-05-26]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>43</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 348. In: *nrsr.sk* [online]. 15. 12. 2016 [2021-05-26]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>44</sup> MARADYK, N., DUDINSKÝ, V. *Volby 2020 na Slovensku, špecifiká parlamentných volieb 2020 na Slovensku. Parlamentné volby 2020 na Slovensku*. p. 37.

- The first mentioned political movement OĽANO can be characterised as the protest, anti-party, populist movement. OĽANO party and its leader (Igor Matovič) have a very controversial reputation among citizens. On one hand, it is one of the most important political movements in the country, whose actions are often political activism. On the other hand, they are often blamed from populism, which masks the lack of a coherent position on important political issues.<sup>45</sup> Their numerous constitutional initiatives have been primarily aimed at public officials (entrusting investigative powers to the NCSR committee,<sup>46</sup> incompatibility of the function of the Head of the National Council of the Slovak Republic with membership in a political party,<sup>47</sup> incompatibility of the function of a deputy with the head of the self-governing regions).<sup>48</sup>
- Right – wing extremism reflected in the political party ĽSNS have been gaining new grounds in Slovak parliament since election in 2016. Their political program is a set of a populist slogans aimed primarily at the inhabitants of rural areas of the country. Promoting Christianity, banning same-sex marriages, leaving the European Union, protection of the Slovak national identity – their rhetoric contains almost no real proposals for the development of the economy and is extremely flirtatious with the conservative part of the population.<sup>49</sup> However, from a constitutional point of view, their proposals interfere with the generally valid and recognized principles of constitutionalism, which are protected by the constitution. It is primarily (i) an intervention in the representative, respectively free parliamentary mandate (by introducing an obligation for deputies to resign after leaving the parliamentary group),<sup>50</sup> (ii) recognition and observance of international obligations and the primacy of EU law (deletion of Article 7 (2) of the Constitution),<sup>51</sup> (iii) interference with the traditional concept impunity of the head of state (introduction of criminal liability of the president).<sup>52</sup>

In the Slovak constitutional practice, a number of serious difficulties occur at first sight, from which the most controversial aspects can be summarised as these:

- The highest number of proposals of constitutional Acts submitted by opposition deputies with zero success confirms, that Constitution and other constitutional Acts

<sup>45</sup> MARADYK, N., DUDINSKÝ, V. *Volby 2020 na Slovensku, špecifická parlamentných volieb 2020 na Slovensku. Parlamentné voľby 2020 na Slovensku*. p. 32.

<sup>46</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary presses No. 81, No. 615, No. 1696. In: *nrsr.sk* [online]. 29. 4. 2016 [2021-05-27]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>47</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 298. In: *nrsr.sk* [online]. 26. 8. 2016 [2021-05-27]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>48</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 813. In: *nrsr.sk* [online]. 10. 1. 2018 [2021-05-27]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>49</sup> MARADYK, N., DUDINSKÝ, V. *Volby 2020 na Slovensku, špecifická parlamentných volieb 2020 na Slovensku. Parlamentné voľby 2020 na Slovensku*. p. 28.

<sup>50</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary presses No. 593, No. 1706. In: *nrsr.sk* [online]. 26. 5. 2017 [2021-05-27]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>51</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary presses No. 324, No. 1375, No. 1755. In: *nrsr.sk* [online]. 4. 11. 2016 [2021-05-27]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>52</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary presses No. 962, No. 1527. In: *nrsr.sk* [online]. 20. 4. 2018 [2021-05-28]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.



have been the subject of **political struggle** between coalition and opposition, while disregarding the stability and the social value of the Constitution that should be respected and protected by special regards.<sup>53</sup> The most common motives for the numerous constitutional activities of opposition deputies can be considered to have favourable statistics, the effort to political presentation of the deputy and the growth of his individual prestige.

- Similarly, the ruling (coalition) political parties are aware of the power and importance of constitutional power, which is inextricably linked to the most important state-political decisions in the country, which are often associated with a strong political-populist dimension, which has been reflected in constitutional-political practice in 7<sup>th</sup> election term of the National Council of the Slovak Republic.<sup>54</sup>
- The lack of any joint successful proposal from the coalition and opposition deputies and the lack of any previous political agreement through political spectrum, which would definitely lead to stability of the constitutional system, shows that main effort of the relevant political parties is not the improvement of the stability and quality of the constitutional system in Slovakia, but only their own political presentation.

#### 2.4 The object (content) of the proposals of the constitutional Act and constitutional amendment in the 7<sup>th</sup> election term from the perspective of using the summary legislative procedure

In conformity with L. Orosz,<sup>55</sup> it is possible to draw the following distinction of the object (content) of the constitutional initiatives:

the constitutional initiatives objectively aimed to address the concrete and long-lasting constitutional resp. societal problems concerning the constitutional amendments long term and carefully prepared in the professional bureau of the government or the political parties;

- a) the constitutional initiatives aimed at expeditious way of resolving the concrete problems, that are processed in high time pressure and are not rarely half-back or non-systemic;
- b) monothematic constitutional initiatives; the political will to assert these is normally easier and simpler; they should meet a specific purpose which shall be supported by other political parties;
- c) multithemed constitutional initiatives; the political will to assert these is rather complicated, several political parties sought to promote their own priority by adopting the constitutional amendment.

From the perspective of that distinction, I shall focus on the use of **summary/accelerated legislative proceeding in the constitutional amendment procedure** in 7<sup>th</sup> election

<sup>53</sup> OROSZ, L. a kol. *Ústavný systém Slovenskej republiky (doterajší vývoj, aktuálny stav, perspektívy)*. Košice: UPJŠ, 2009, p. 94.

<sup>54</sup> More details about populist dimension of the constitutional amendments by coalition deputies will be presented of other part of the article.

<sup>55</sup> OROSZ, L. *Účelovosť ústavných zmien a kritéria ich hodnotenia*. p. 25. (L. Orosz in his document focused only on adopted constitutional acts, my approach is broader and besides the adopted constitutional amendment I focus on all constitutional initiatives/proposals during the 7<sup>th</sup> electoral term).

term. In generally, the use of the summary legislative procedure in the constitutional amendment procedure is debatable, despite the fact, that the use is not prohibited by the law. What is happening is that responsible legislation is sliding into regulatory zeal that does more harm than good. Moreover, according to A. Krunková “*the mechanism of the summary legislative procedure has no place in constitutional amendment procedure and its use can be necessary assessed as unreasonable*.”<sup>56</sup>

During the 7<sup>th</sup> election term, the summary legislative proceeding happened **twice**<sup>57</sup> in the constitutional amendment process, which can be linked with **two** serious paradoxes.

**The first significant paradox** is reflected, when the most controversial and the most discussed constitutional amendment (Constitutional Act no. 71/2017 Coll. regarding the cancelling the “Mečiar’s amnesties”) not only during 7<sup>th</sup> election term, but during the whole existence of the independent Slovak Republic, was debated and adopted by using **the summary legislative proceeding**. There was a lot of discussion since the late 90s of the 20th centuries about whether it is possible and suitable to cancel so-called Mečiar’s amnesties, i. e. amnesties granted by former prime minister Vladimír Mečiar, while he was interim president after Kováč’s term expired in 1998, to his secret service chief and 12 others for the 1995 kidnapping of the then president Kováč’s son to Austria, where he was dumped outside a police station (herein as “*Mečiar’s amnesties*”). The Constitutional Court of the Slovak Republic delivered its opinion (I. ÚS 30/99, I. ÚS 48/99), the deputies of the National Council of the Slovak Republic repeatedly tried to cancel them in a legislative way, there were also many written professional and laic considerations.<sup>58</sup>

Finally, the constitutional amendment gave parliament a new power to decide on the annulment of the President’s decision to revoke the amnesty or individual pardon, if it contradicts the principles of democracy and the rule of law (Article 86 (i)). At the same time, a new power was also entrusted to the Constitutional Court of the Slovak Republic to decide on the compliance of this parliamentary decision with the Constitution in accordance with Art. 129a of the Constitution of the SR.

The primary purpose of this constitutional change was to create a constitutional space for the abolition of the so-called Mečiar’s amnesties and only secondarily (in the future) to create a derogating constitutional mechanism to repeal such decisions of the President on amnesties or individual pardons, which are contrary to the principles of democratic and the rule of law.<sup>59</sup>

<sup>56</sup> KRUNKOVÁ, A. Nové trendy v novelizáciach Ústavy Slovenskej republiky. *Ústavné dni 25. Výročie Ústavy Slovenskej republiky – VI. Ústavné dni*. Košice: UPJŠ, 2018, p. 102.

<sup>57</sup> Constitutional Act no. 71/2017 Coll. from 30 March 2017 as the direct amendment to the Constitution of the SR Constitutional Act no. 469/2019 Coll. of 5 December 2019 as the amendment to the constitutional Act. no. 357/2004 Coll.

<sup>58</sup> HUBENÁK, T. *Krátká úvaha o spoločenskej zmluve vo svetle jej ostatných doplnení. Ústavné dni, 25. výročie Ústavy Slovenskej republiky – VI. ústavné dni*. Košice: UPJŠ, 2018, p. 320 s.

<sup>59</sup> OROSZ, L. Účelovosť ústavných zmien a kritéria ich hodnotenia. *Ústavné dni, 25. výročie Ústavy Slovenskej republiky – VI. ústavné dni*. p. 32.

The other visible and distinguishing feature from other constitutional amendment is the **strong pressure of the media and general public** to the adoption of the above-mentioned constitutional amendment. Many authors tend to accentuate the significance of this amendment and make a closer link to the influence of the general public, media, even the sphere of the culture. According to T. Hubinák *“the key role in fight for cancellation of the so-called Mečiar’s amnesties played the civil society, media, freedom of expression and the cultural environment.”* L. Cibulka points to the *“important respond in professional and laic public as the effect of the adoption of the other direct amendment of the constitutional Act no. 71/2017 Coll.”*<sup>60</sup> M. Sangretová emphasizes *“the social situation, which in the condition of the Slovak Republic in long-term evoked the Mečiar’s amnesties and the Constitution of the Slovak Republic, under strong social and political pressure, was at the beginning of 2017 amendment again.”*<sup>61</sup>

The important question arises: **Is the impact of pressure by media and the use of the summary legislative proceeding suitable in the constitutional amendment procedure?**

The stable constitution is the significant value of the democratic state of law. Every intervention into the constitution shall be more sophisticated and thoughtfully discussed and supported by the whole political spectrum in parliament. Unfortunately, the concentrated and unskilled pressure from the media or public and using the summary legislative proceeding in the constitutional amendment procedure contradict the stability and the quality of the constitution and can be considered as adverse elements in the constitutional process.

Obviously, the media plays an indispensable role in the proper functioning of a democracy and can be considered as the watchdogs of democracy. At the same time, the process of constitutional amendment is not a sterile area apart of the real world. It is unavoidable that the media and public cover relatively significant portion on the result of the constitutional amendment procedure.

The danger of strong influence of media and public stems from the fact that politicians may meet the requirement laid down by media and public in a populist way, regardless the quality and stability of the Constitution. The constitutional amendment process is always a political process. Naturally, the relevant political party enforce such a constitutional amendment that have massive and strong support of the media and the general public. Otherwise, there is a serious risk that they might lose of the political preferences. According to L. Orosz, *“the vital interest of every political party to increase its political prestige is always linked with the effort on favourable media promotion of the political party with propagandistic and populist features.”*<sup>62</sup> The significantly worse situation occurs when the politicians (in an effort to satisfy the masses of citizens for their own benefit) make effort to accelerate the constitutional amendment process by using the summary legislative pro-

<sup>60</sup> CIBULKA L. Ústava SR – trhací kalendár? *Ústavné dni, 25. výročie Ústavy Slovenskej republiky – VI. ústavné dni*, p. 62.

<sup>61</sup> SANGRETOVÁ, M. *Právomoci Ústavného súdu Slovenskej republiky po zmene a doplnení Ústavy Slovenskej republiky. Ústavné dni, 25. výročie Ústavy Slovenskej republiky – VI. ústavné dni*. Košice: UPJŠ, 2018, p. 179.

<sup>62</sup> OROSZ, L. *Účelovosť ústavných zmien a kritéria ich hodnotenia. Ústavné dni 25. Výročie Ústavy Slovenskej republiky – VI. Ústavné dni*. Košice: UPJŠ 2018, p. 23.

ceeding without proper discussion.<sup>63</sup> It seems to be agreed that with A. Krunková that “populism in combination with the express amendments causes negative influence on the constitutional legitimacy which we must evaluate as insufficient and confusing from the long-term perspective.”<sup>64</sup>

On one hand, it must be recognised that the pressure and the insistence of the media and public was massive while, on the other, the matter of the cancellation of the Mečiar’s amnesties seem contradictory due to discrepancy between adequate punishment of all perpetrators and the requirement of legal certainty. Even though I consider the use of summary legislative procedure was not duly and materially justified. I supposed in that case, there is no exceptional circumstance such as a state of threat to fundamental rights and freedoms or a threat of economic damage. The disputed abolition amnesties were issued by the then Prime Minister of the Slovak Republic Vladimír Mečiar as deputy president in 1998. The risk of threat of the fundamental rights and freedoms decreases rapidly after 19, resp. 20 years after their date of issue. Amnesties could be cancelled throughout the twenty-year period; the different political spectrum morally condemned them, but there was still an obstacle to their cancellation. Moreover, such a constitutional amendment procedure to reform the granting the amnesty by the President of the SR may require extensive time for debate. Also, in that concrete application of the summary legislative procedure may be seen the element of the political populism in the form of the satisfaction the public at the expense of quality and proper discussing the matters in the legislative body.<sup>65</sup>

**The second serious paradox** of using the summary legislative procedure in 7<sup>th</sup> election term is accompanied by deficiencies in the amendment procedure of constitutional Act no. 357/2004 Coll. on the public interest protection in the exercise of the public functions (herein as “*constitutional Act no. 357/2004 Coll.*” or “*constitutional Act on the public interest protection*”).

Out of the total number of 11 constitutional initiatives aimed at amending Constitutional Act no. 357/2004 Coll. finally, three constitutional laws passed during 2019 were successful: constitutional Act no. 66/2019 Coll. of 31 January 2019, constitutional Act no. 232/2019 Coll. of 26 June 2019 and constitutional Act no. 469/2019 Coll. of 5 December 2019.

The first of mentioned constitutional amendment no. 66/2019 Coll. of 31 January 2019 contained the substantial tightening of public interest protection conditions.<sup>66</sup> Although,

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<sup>63</sup> Pursuant to Section 89 of the Act No. 350/1996 on the Rules of Procedure of the National Council of the Slovak Republic, the rules is that: “under extraordinary circumstances where there might occur endangering of the fundamental rights and freedoms or security, or if the state is threatened by considerable economic damage, the National Council may resolve, upon a motion of the Government, on the summary legislative proceedings in respect of the Bill.” In the summary legislative proceedings there are not applied some of the provisions which are envisaged by the Act on the Rules of Procedure – this concerns especially the provisions related to the meeting of the terms of time during the debating of the Bill in the National Council of the Slovak Republic.

<sup>64</sup> KRUNKOVÁ, A. *Nové trendy v novelizáciách Ústavy Slovenskej republiky. Ústavné dni 25. Výročie Ústavy Slovenskej republiky – VI. Ústavné dni*. p. 100.

<sup>65</sup> FARKAŠOVÁ, S. Politická prax pri aplikovaní skráteného legislatívneho konania v VII. volebnom období Národnej rady Slovenskej republiky (2016-2020) – kritické poznámky. *Grant Journal*. 2020, Vol. 9, No. 2, pp. 15–22.

<sup>66</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The explanatory memorandum. In: *nrsr.sk* [online]. [2021-06-01]. Available at: <<https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=459421>>.

there are no particular objections to the aim of this amendment, it should be noted that in the time of its preparation, discussion and adoption a number of **several legislative errors occurred**, what required the adoption of other two amendments of the constitutional Act on public interest protection.<sup>67</sup>

The reason for adoption of **the second** amendment no. 232/2019 Coll. was to eliminate errors caused by the adoption the previous constitutional amendment no. 66/2019 Coll., when during the final phase of adopting the drafting proposals to the original constitutional proposal was adopted the text of constitutional Act to art. 2/1 letter zp) in the version of the original proposal and at the same time in the wording of the proposed change.<sup>68</sup>

The summary legislative procedure was used on discussion and adoption of **the last third** amendment of the constitutional Act on the public interest performed as the constitutional Act no. 469/2019 Coll., that fixed the errors caused by (the second) previous constitutional Act no. 232/2019 Coll.<sup>69</sup> The explanatory memorandum states: *“The latest legislation expands the group of public officials according to Art. 2 par. 1 letter zc) of the Constitutional Act to a number of natural persons as members of the bodies of legal entities, which already leads and may in the future cause even more possible malfunctioning of the bodies of legal entities, especially when filling positions in supervisory and control bodies of these companies.”*<sup>70</sup>

Based on the things stated so far, three proposals of constitutional amendments to the constitutional Act no. 357/2004 were submitted during 2019, two of them (no. 232/2019 Coll. and no. 469/2019 Coll.) fixed legislative and content deficiencies (no. 66/2019 Coll. and 232/2019 Coll.), while the last amendment of the constitutional Act on public interest protection was adopted by using **the summary legislative procedure**.

This implies that the weak quality of constitutional text is directly proportional to the excessive short time for preparation and adoption of the amendment of the constitutional Act on the public interest protection.

## FINAL RESULTS AND CONCLUSIONS

A prerequisite for an effective and stable constitution is the regulation of the constitutional amendment procedure with higher degree of rigidity of the constitution. The rigidity of the Slovak Constitution is very low, when the consent of the qualified majority of the members of the parliament is sufficient.

As the statistical data and constitutional practice in the 7<sup>th</sup> electoral term has shown, the scientific hypothesis formulated at the Introduction of this document must be con-

<sup>67</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 1234. In: *nrsr.sk* [online]. 9. 11. 2018 [2021-06-01]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>68</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 1443. In: *nrsr.sk* [online]. 18. 4. 2019. [2021-06-01]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>69</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The parliamentary press No. 1818. In: *nrsr.sk* [online]. 20. 11. 2019 [2021-06-01]. Available at: <<https://www.nrsr.sk/web/default.aspx?sid=schodze/cpt>>.

<sup>70</sup> The NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. The explanatory memorandum. In: *nrsr.sk* [online]. [2021-06-01]. Available at: <<https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=474346>>.

firmed. A finding based on facts available demonstrate a negative impact on the quality and stability of the constitution particularly as:

- polylegal constitutional system – a priori, that aspect cannot be assessed negatively itself, although this constitutional model, without specifying certain mechanisms, can cause practical problems regarding the mutual relations between the Constitution and constitutional laws, as it shows the example of Slovakia.
- Progressively increasing numbers of the constitutional initiatives since the 1<sup>st</sup> electoral terms of the parliament, culminated in the last 7<sup>th</sup> electoral terms with the sharp increase in submitting the constitutional proposals, paradoxically not by government, but mainly by opposition deputies.
- The high quantity of proposed constitutional acts causes the congestion of the deputies, the lack of clarity, which will ultimately be reflected in the poor quality of constitutional laws.
- Individual possibility for deputies to submit a proposal to amend the Constitution.
- Mostly, there is no objective necessity to amend the Constitution or other constitutional Acts, but only the aim to fulfil the ideological attitude and the election program of the relevant political parties.
- The constitutional initiatives that are processed in high time pressure or using the summary legislation process in for amending the Constitution or other constitutional Acts.

A poor level of the rigidity, a little distinction between constitutional and legislation procedure and absence of the guarantees against the political abuse of the constitutional process causes that the constitutional amendment process becomes the “area” for political battle between coalition and opposition as well as the “zone” for political self-presentation and increasing the favourable (constitutional) statistics of the concrete deputy.

This unfavourable context underscores even more the need for **stringent** constitutional amendment procedure. First of all, I consider the need for sufficient distinction the constitutional amendment process from legislative process in practice and at the same time try to strengthen the stability of the Constitution. From the perspective of the subject of the constitutional initiative, it is essential to ensure a **restriction** for a single deputy of the parliament to submit a proposal of a constitutional Act. I consider entrusting the right to submit a proposal of a constitutional Act to a qualified group of deputies of the parliament. From the perspective of the object of a constitutional proposal in order to prevent any political abuse I shall propose the general prohibition to discuss and approve constitutional Acts in accelerate legislative procedure. The following measures could be also considered – an extensive consultation exercise as the form of a co-operation with the scientific community to improve a constitutional proposal or a preventive examination of the proposal by a special parliamentary committee or, where appropriate, by the Constitutional court of the Slovak Republic.

The analyses of the legal regulation of the constitutional amendment procedure in connection with the problems that occurred during the 7<sup>th</sup> electoral term of the parliament have shown the extremely topical and complex range of issues which may seriously jeopardise the orderly functioning, stability and quality of the Constitution of the Slovak Republic. These are the reasons for constitutional theory to identify the main problems and formulate the legislative proposals for more professionalism to be applicable and less pol-



icy occurring. The problem concerning the constitutional amendment process is most conspicuously associated with the fact that the process is always also a political process in which active participants are the political parties naturally interested in that the constitutional Act should meet their intentions and policy as much as possible. In a more general context, the constitutional amendment process affects the quality of political culture, e. g. the modes of asserting one's own interests, the settlement of political crises, the ability to cope with political diversity by compromises, and last, but not least, the mode of communication and the character of major representatives of the top politics.