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Possibilities of Strengthening the Independence of the Public Prosecutor's Office of the Slovak Republic: A System of Appointment of the Prosecutor General to the Office as a Key Element?

Bystrík Šramel

Faculty of Social Sciences, University of Ss. Cyril and Methodius in Trnava, 917 01 Trnava, Slovakia; bystrik.sramel@ucm.sk

Abstract: This paper deals with the issue of the independence of the Prosecutor's Office of the Slovak Republic as an attribute that allows the Prosecutor's Office to actually carry out its mission, regardless of the individual interests of the parties concerned and regardless of the government's political goals and basic beliefs. In the first chapter, the paper deals with the current constitutional regulation of the Prosecutor's Office of the Slovak Republic in the context of the legal regulation of its independence. The author points out the problems that arise from the absence of granting the attribute of independence to the Slovak Prosecutor's Office and emphasizes the need for its legislative anchoring. Subsequently, the paper deals with the issue of external independence, which allows the public prosecution office to carry out its tasks without being influenced by various entities from the external (political) environment. In the last chapter, the paper presents the possibilities for strengthening the current degree of external independence of the Slovak Prosecutor's Office. The author considers it crucial to reconsider and redefine the current system of appointing the Prosecutor General and to remove political ties in the creation of this function. The author of the paper considers two variants of the system of selecting a suitable candidate for the Prosecutor General. First, it is possible to strengthen the existing system of self-government of prosecutors and to increase the scope of the powers of authorities of prosecutorial self-government, the current task of which is to ensure the protection of the rights and legitimate interests of prosecutors. The second possibility for strengthening the external independence of the Prosecutor's Office of the Slovak Republic could be the creation of another type of Council of Prosecutors, the composition of which would be balanced and would not represent a closed system accessible only to prosecutors.

Keywords: Public Prosecutor's Office; independence; executive power; Prosecutor General; constitutional system; politicization

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1. Introduction

The Prosecutor's Office, as a body enforcing the protection of rights and legally protected interests, has its place in the system of state bodies and has an irreplaceable function. It is a universal body for the protection of objective law, acting in the public interest. The Constitution of the Slovak Republic entrusts this body with important roles in society, as its activity is to ensure the protection of the rights and legally protected interests of natural persons, legal persons, and the state, including such rights as the right to personal liberty, the right to own property, the freedom of expression, the right to privacy, the right to work, the right to information, etc. (see Funta 2021; Žofčinová et al. 2018; Alman 2020). The competence of the Slovak public prosecution service is not limited to representing the interests of the state, but above all to the protection of the public interest. For this reason, too, it plays important roles not only in the criminal field (e.g., the fight against organized crime, see Čentéš and Beleš 2018) but also in the non-criminal field, where one of its most

crucial functions is to exercise prosecutor's supervision over the observance of laws and other generally binding legal regulations issued by public administration bodies (Jesenko 2018, p. 21). The proper functioning of the prosecution service can be ensured under the rule of law only by adopting legislation that does not interfere with the independence of this law enforcement body, does not allow the prosecution office to abuse its position for the unjustified persecution of the population, and best ensures the main purpose of criminal or civil proceedings.

Pursuant to Art. 1 of the Constitution of the Slovak Republic published under no. 460/1992 Coll., the Slovak Republic is a sovereign, democratic state with the rule of law (Burda and Trellová 2019, p. 68). In light of the basic principles of the functioning of a democratic state governed by the rule of law, it is therefore required that no interference or decision by a Public Prosecutor's Office be influenced by individual interests, whether of a political or other nature. It is the requirement of the independence of public prosecution bodies that this is currently one of the basic principles that are enforced and reflected in the way the public prosecution service is organized in the modern democratic state governed by the rule of law (Hoffmann 2010; Beneč 2003). The question of the position of the Prosecutor's Office in the constitutional system of the Slovak Republic is currently highly topical. However, in professional and political circles, since the establishment of the independent Slovak Republic, there have been constant debates about the character of the Slovak public prosecution body about its constitutional status.

The issue of the independence of the Prosecutor's Office is a particularly burning question. This is an issue that has long caused controversy in Slovak society and which divides members of the professional community as well as ordinary citizens. One of the reasons is also the fact that the public prosecution service in the Slovak Republic has a monopoly over prosecution and criminal indictment (Šramel and Klimek 2022).Thus, the crucial questions are: Is the independence of the public prosecution office just an illusion? Or is it a real and essential characteristic that this body must have without any doubt? How can the widest possible degree of the independence of this body be ensured and strengthened? These are issues that go beyond the scope of this paper. Due to the limited scope, in the following paper, we focus on the possibilities for changing the system of appointment of the Prosecutor General to the office, which we consider a key element to strengthen the current independence of the Slovak Prosecutor's Office and cut the General Prosecutor's ties to the political environment, which are more than obvious.[1] It is precisely these ties that represent an objective obstacle that makes it difficult for the Slovak Prosecutor's Office to fulfill its basic mission in a democratic state governed by the rule of law and are the cause of enormous injustices in criminal proceedings and their privatization (privatization in a negative meaning) (Šramel et al. 2020).

It should be pointed out that the Slovak scientific literature deals with the issue of securing the independence of the Slovak public prosecution service only partially. The existing papers deal mainly with the description of the current status or problems connected with the prosecution of certain types of criminal offenses. However, the problem is that the current papers are not analyzing the possible ways out of the problematic situation arising from the existing system that enables political or other types of manipulations. They are not searching for alternative ways for the appointment to the office of the Prosecutor General, who is the main figure, the chief of the whole system of the public prosecution service. I can only mention a few publications that can be considered relevant in terms of the examined topic. One of the newer publications, whose authors are Strémy and Popélyová and Ozoráková, deals with the Prosecutor's Office in the conditions of the European Union. The monograph deals with the position and functioning of the Prosecutor's Office with emphasis on the position, powers, and independence of the Prosecutor General within the structure of the Prosecutor's Office. Its aim is to identify whether the system of the Slovak Prosecutor's Office is uniform with generally accepted standards in the EU Member States. For this purpose, the monograph provides a comprehensive and detailed analysis of the Slovak legislation on the position and functioning of the Prosecutor's Office in general, but

also with an emphasis on the specific position of the Prosecutor General in the structure of the Prosecutor's Office. The authors analyze international and European standards in the organization and functioning of the Prosecutor's Office and tools at the EU level in the field of the monitoring and evaluation of the functioning of judicial systems in EU member states with an emphasis on the organization and functioning of the Prosecutor's Office (Strémy et al. 2021). Another author, Hoffmann, deals with the Prosecutor's Office of the Slovak Republic as a body of law protection. The author deals with the general characteristics of the Prosecutor's Office of the Slovak Republic, its functions, and various systems of the organizational structure of the Prosecutor's Office within Europe. It outlines the history of the development of non-criminal activity in the Slovak Republic. He analyses the position of the Slovak Prosecutor's Office from a constitutional, European, and international legal point of view. He also deals with the position of the prosecutor in the Slovak Republic. He analyses the legal regulation of prosecutor's supervision in public administration, including legal means of supervision (Hoffmann 2010). In a paper from 2008, Čentéš deals with the competence of the Prosecutor's Office and the powers of the prosecutor in the Slovak Republic. His paper pays particular attention to the definition of the position and the competence of the Prosecutor's Office in the Slovak Republic, the powers of the Prosecutor General, and the position and powers of the prosecutor in criminal proceedings (Čentéš 2008). Another author, Šamko, deals with the issue of the justification of issuing legal opinions by the Prosecutor General of the Slovak Republic and their binding force. In the paper, the author briefly deals with the problem of issuing interpretative opinions by the Prosecutor General of the Slovak Republic and their binding force, while expressing reservations about the creation of interpretative opinions, the manner of their change, and finally, the very justification of the institution of opinions (Šamko 2007). The historical aspects and causes of the current situation are dealt with in a paper by Šanta and Čentéš from 2018, which deals with the historical development of the Prosecutor's Office—from the establishment of the independent Czechoslovak Republic in 1918 to the present. The authors chose to point out the specific historical periods in which the Prosecutor's Office operated under various designations, as well as the relevant legislation in the area in question (Šanta and Čentéš 2018). A comparative analysis of the position of the Prosecutor's Office in Slovakia and the Czech Republic is presented in a paper by Kouřil. In the paper, this author examines several relevant issues, such as the position of public prosecution bodies in the Czech Republic and Slovakia, a historical excursion to the second half of the 20th century, the post-revolutionary development of public prosecution bodies in the Czech Republic and Slovakia, and the current position of the Public Prosecutor's Office and the Prosecutor's Office (Kouřil 2012).

As can be seen, the existing papers do not pay thorough attention to the fundamental problems arising from the current politicized system of the appointment of the Prosecutor General. That is why, in this paper, I look closer at the existing problematic constitutional regulation. I analyze the existing problems and reasons, and finally, I attempt to bring new views and opinions to the scientific debate in Slovak jurisprudence.

2. Independence of the Prosecutor's Office of the Slovak Republic in Light of the Current Constitutional Regulation

In connection with the recent reform of the Prosecutor's Office, a number of issues concerning the constitutional definition of the position of the Prosecutor's Office and its independence and problems directly related to it have also come to the fore (such as the subordination of the Prosecutor's Office to the executive branch, its politicization, and possible abuse). At the beginning of this chapter, it is necessary to clarify what the term independence means. Explaining this concept is key to understanding the position and functions of the Prosecutor's Office. In general, the term independent (independence) can be understood as unbound by orders, instructions, recommendations, and the advice of other entities, acting according to one's internal convictions. From the point of view of legal theory, independence is one of the basic principles of the organization of the public

prosecution service (Svák et al. 2017; Beneč 2000; Drgonec 2012) and a basic precondition for the proper and undisturbed performance of the functions and mission of the Prosecutor's Office. No one, no state body or citizens, may interfere in the activities of the prosecutor and, conversely, the prosecutor is not entitled to receive any instructions or comply with the requests of other entities in the performance of his/her activities. The prosecutor must therefore act as impartially as possible in the performance of his or her duties and, as a representative of the public interest, is obliged to act only for the purpose of the protection and strict enforcement of the public interest. The prosecutor must therefore act impartially, avoiding any discrimination, whether political, social, religious, racial, cultural, or otherwise (Fenyk 2002, p. 66). In defending the public interest, the prosecutor can often come into conflict with individual interests, but can never prioritize them.

The independence of the Prosecutor's Office can be understood on two basic levels—external independence and internal independence (Delmas-Marty 1995, p. 353). Both of these forms of independence significantly affect the activities of the Prosecutor's Office, its proper functioning, and the fulfillment of tasks in the protection of the public interest. Nevertheless, the two have different impacts and each affects the functioning of the Prosecutor's Office in a different way, to a different extent, and in different areas. External independence is more important in the work of the Prosecutor's Office than internal independence, as it is grounded on the non-existence and inadmissibility of any external influences, whether of a political or other nature (e.g., by other state bodies). On the contrary, in the case of internal independence, the extent of the centralization and bureaucracy of the public prosecution body is assessed. Internal independence can be characterized as "a measure of sufficient autonomy of prosecutors", or more precisely, "the degree of excessive hierarchical dependence of a particular degree or individual prosecutor in the performance of his/her activities" (Fenyk 2001; Bröstl 2010). The proper, impartial, and autonomous performance of the function of public prosecution bodies thus comes to the fore here. Due to the limited scope of the paper, we will continue to analyze only the issue of external independence. In the case of using the term independence, we will mean external independence.

Based on the analysis of the wording of the legal regulation of the highest legal force, it can be concluded that the Constitution of the Slovak Republic does not classify the Prosecutor's Office among the bodies of legislative, executive, or judicial power. The Public Prosecutor's Office, as a sui generis body (Procházka and Káčer 2019; Svák and Cibulka 2013), is defined in a special eighth title, which also includes the institution of the Public Defender of Rights (Ombudsman). Unlike the Public Defender of Rights, to whom the Constitution of the Slovak Republic explicitly grants the status of an independent body (Art. 151a), the Prosecutor's Office has not yet been granted the attribute of independence. Independence is therefore not a necessary conceptual feature of the Slovak Prosecutor's Office, to which the Constitutional Court of the Slovak Republic itself commented: *"... this function (protection of rights and legally protected interests of natural and legal persons and the state, author's note) with competencies given by the law, can (Prosecutor's Office, author's note) fulfil without adding an attribute of independence. The legislator granted independence only to certain bodies and explicitly provided for it in the constitution. In bodies where he does not want to grant independence, he does not mention it in the constitution."* (Finding of the Constitutional Court of the Slovak republic no. PL. ÚS 17/96). Thus, while the constitution directly anchors the independence of other bodies, such as the courts, the Supreme Audit Office of the Slovak Republic, or the ombudsman, the Prosecutor's Office does not have an explicitly anchored attribute of independence. There are several reasons why this is the case, and this must necessarily lead to doubts about the real existence of the independence of the Prosecutor's Office. The independence of the Prosecutor's Office is questioned in many cases, even among members of the professional community, in contrast to the judiciary, where there is a general consensus on the real existence of independence or at least on the necessity of the existence of independence. In this context, several authors point out that public prosecutors (prosecutors in general), for objective reasons, may find it difficult to achieve independence comparable to that of judges. At the same time, however, they note

that in many respects, judicial independence can be approached in such a way that the public prosecutor is able to co-operate in a fair decision of the court in a particular case by promoting the public interest (Fenyk 2001, p. 150).

3. Organizational Principles Contributing to a Culture of Institutional Independence: Overview of Exerted Institutional and Bureaucratic Features

Before we address the issue of specific ways in which European Union states approach the construction of their public prosecution systems, we would like to briefly pay attention to certain organizational principles, the exercise of which can contribute to the greatest possible degree of the independent action (activity) of public prosecution services. We have to notice that the principles we will analyze in the next sections do not relate exclusively to the public prosecution itself. These are the principles that can be used in general for the entire area of justice and which are applied to a large extent, especially in the structures of judicial power (judiciary) as a whole. We believe that these principles can be applied to a reasonable extent in the area of public prosecution services, too. So, we will talk about the basic organizational principles of the Prosecutor's Offices that may contribute to their independence. They should represent a kind of basic building block of the Prosecutor's Office, on which its organization should stand. Any changes to laws should always be consistent with these principles. When introducing new elements into the Prosecutor's Office system, the legislator should take into account the principles listed below and respect their system.

Talking about organizational structures is very important. Organizational theorists have long recognized that group norms and internal organizational structures can further an organization's goals, as well as the goals of individuals within organizations. These theorists are a diverse bunch, and they span multiple disciplines, from law to economics, sociology, political science, and anthropology. Moreover, they study a wide range of organizations, from corporations to private associations and public bureaucracies. Thus, it is difficult to generalize this literature, and a detailed survey is beyond the scope of this paper (Dickinson 2010, p. 6). Instead, we focus on some of the core structural features of judiciary and justice as a whole that the literature has identified as instrumental in establishing a culture of independence or rule-of-law compliance within organizations generally. Before we move on to the author's attitudes, we should note that the authors look at independence and its organizational aspects and principles from different points of view.

At first, we can mention Shimon Shetreet and Christopher Forsyth who argue that the culture of judicial independence is created by five important and essential aspects: creating institutional structures, establishing constitutional infrastructure, introducing legislative provisions and constitutional safeguards, creating adjudicative arrangements and jurisprudence, and maintaining ethical traditions and a code of judicial conduct.[2] We believe that these five organizational features, if appropriately applied, can be a proper basis for strengthening the prosecutor's independence. The institutional structures should regulate matters relative to the status of the public prosecutors. The constitutional infrastructure should embody in the constitution the main provisions of the protection of the public prosecution services. The legislative provisions should offer detailed regulations of the basic constitutional principles. The ethical traditions and code of conduct should cover the official and non-official spheres of activities and shield the prosecutor's substantive independence from dependencies, associations, and even less intensive involvements that might cast doubts on judicial neutrality. The next group of authors, which includes lawyers such as Jackson or Karlan[3], are of the opinion that independence has components of independence from certain forces and independence to do justice impartially. At its core, the idea of judicial independence goes to the nature of the decisions judges make in adjudicating the cases before them: judges are supposed to be independent of "men" or human pressures, so that they are free to impartially apply the "laws".

Other authors, such as Svák and Drgonec, point out another fact—that independence has both personal and institutional aspects. Personal aspects may take the form of personal guarantees of independence and their purpose is to safeguard impartial adjudication. The authors claim that guarantees may be legal and non-legal. The personal aspects of independence cannot be enumerated in full for their dynamic development. However, the most important guarantees include career guarantees, professional guarantees, material, and vocational guarantees. Career guarantees of independence are the oldest ones and traditionally they include the principle of an indefinite term of the judicial office together with restrictive grounds for the termination of office. The other traditional career guarantee of independence applies to the principle of non-transferability. The most important professional guarantees of independence include the right to the freedom of association for the protection of the officer's rights and the right to self-government. The material guarantees of independence relate mainly to the non-reducible salary (Svák 2011). Authors such as Peter H. Russell and David M. O'Brien[4] approach the organizational principles in a similar way. These authors highlight structural principles of independence (the power of governmental bodies outside the judiciary not to create and modify judicial institutions) and personnel principles (such as appointing, remunerating, and removing judicial personnel) (p. 15). In this connection, we would like to add that the security of tenure is an important means of strengthening independence. Moreover, what is essential for independence is that removal should be quite difficult. Independence is seriously at risk when a judge or prosecutor can be removed because their decisions have offended someone.

We should add that we can find authors who specifically deal with the determinants of the independence of prosecutors. For example, Stefan Voigt and Alexander J. Wulf[5] distinguish between two types of determinants of judicial independence. Those factors that are not open to policy intervention, at least not in the short and medium term (e.g., the legal tradition of a country, its political system, the religious and ethnical diversity in a country, etc.) and factors open to policy intervention (e.g., the degree of press freedom granted, whether immunity from prosecution is granted to members of parliament, and various legal regulations pertaining to the prosecution authority). They conclude that countries of common law legal origin perform better in ensuring the independence of prosecutors than countries of Socialist, German, or Scandinavian legal origin. Besides that, they state that there are also several factors that affect the independence of prosecutors who are susceptible to policy interventions. According to their empirical analysis, the freedom of the press is a key guarantor of prosecutorial independence. Furthermore, a law granting immunity to parliamentarians is another factor that contributes to the de facto independence of prosecutors. Countries whose criminal procedural laws grant the right to prosecute public figures to prosecutors of any position in the authority's hierarchy reach higher levels of de facto independence.

After a brief overview of attitudes concerning organizational principles strengthening independence, we would like to point out the necessity of the independent training of officers/prosecutors through a non-political civil service bureaucracy where advancement is controlled outside the political process. We believe that such an institutional and bureaucratic feature is capable of strengthening the guarantees of independence.

The training itself is very important. Ensuring the proper way of training is a key to the proper, independent, and impartial exercise of the functions of the justice system. In connection with training, the OECD states that prosecutors should have both the right and the duty to receive initial and regular continuous training in view of their specialization, with an independent and expert body participating in the determination of the training provided to prosecutors. Training courses for prosecutors should include components covering prosecutorial independence (OECD 2020).[6]

4. Organizational Structures of Public Prosecution Services in Selected European Countries Contributing to Their Independence

The clarification of the current state of independence of public prosecution services in the world is closely related to finding out the level or degree of the dependence of the public prosecution service on any of the three classic components of state power and the possibility of this power to directly intervene in the activity and decision-making of public prosecutors. Since interventions by the legislative or judicial power in the activity of the public prosecution service are very rare in Europe or in the world, the stated problem can de facto be narrowed down only to revealing the degree of the dependence of the public prosecution service on the executive (political power) and the possibility of the executive directly or indirectly interfering in the activity and operation of public prosecution services. The subordination of the public prosecution service to the executive power is the most problematic issue, since, as Vyklický (1993, p. 6) also points out, the executive tends to concentrate power and jealously guards its position. It has excellent means for this—a hierarchical structure, state discipline, and above all, money and a means of power. According to him, the party secretariats naturally prefer the government as the most operative and sufficiently flexible power, and moreover suitably composed of their political representatives. So what is the situation regarding the organizational structures of the public prosecution in contemporary European countries? Based on the analysis and comparison of the legal systems of individual countries, it can be stated that there are currently only a few European states where public prosecution is part of the executive branch and where it is subordinate to the Ministry of Justice (e.g. Austria, Denmark, Germany, The Netherlands). The scientific literature continuously points out the fact that the impact that politics might have on prosecutorial decision-making is enormous. It is important to recognize that the Minister of Justice is a political appointee who is subject to pressure from other cabinet ministers as well as from the political party that he/she represents (Boyne 2013, p. 98).

So, it can be concluded that the tendency towards the greater independence of public prosecution is much more widespread than the trend towards public prosecution being subordinated to or linked to the executive. The discussions are still ongoing. For instance, it should be stated that up to now, the professional associations of prosecutors in Germany have been the main proponents of reform for the Prosecution Service with respect to its independence. The proposals in Germany can be divided into two basic concepts. First, it has been suggested to abolish any right of the Ministry of Justice to give instructions in individual cases. Moreover, all personnel decisions and organizational questions should be up to a new Board of Justice. The second proposal goes much further: it has been suggested to abolish not only the external right of the Ministry of Justice to give instructions but also the internal authority of the local head of the Prosecution Authority to give instructions in individual cases (Colvin and Stenning 2018, p. 212).

Above all, in the Nordic countries, in recent decades, a significant tendency can be observed towards the creation of an independent system of public prosecution and the elimination of the influence of the executive power (Ministry of Justice) on its activities. In Finland, the reform carried out in 1996–1997 ensured a considerably stronger position for the Finnish public prosecutor, as a result of which the Finnish public prosecution is now characterized by a high degree of independence. The public prosecution is headed by the general public prosecutor, who is not subordinate to another body. Political influences on his/her activity are excluded and the Ministry of Justice cannot in any way oblige the General Public Prosecutor to act in a certain way. The only doubt about the independence of the Finnish Public Prosecution may be the existing dependence of the Finnish Public Prosecution on the Ministry of Justice in the field of funding (Fenyk 2001). In Norway, the king is formally at the head of the public prosecution, but he does not interfere in its activities in practice. The responsibility for the Public Prosecution Office lies with the General Director of Public Prosecutions, while his/her office is a non-political office (Fenyk 2001). Sweden belongs to the first Nordic country in which the modern concept of the organization of public prosecution was enforced. Already in 1948, the function of the

Chancellor of Justice was separated from the Office of the General Public Prosecutor, leading to the subsequent creation of an independent system of public prosecution headed by the General Public Prosecutor. Public prosecution in Sweden is thus a completely independent body headed by the Public Prosecutor General. It is not considered part of the Ministry of Justice or any other ministry, and in the performance of its tasks, the government or any of the ministers cannot give instructions on how to proceed in individual matters (Zila 2009). In Iceland, the separation of public prosecution from the executive power is also ensured. The head of the Icelandic Office of Public Prosecutions is the Director of Public Prosecutions, who is not subject to the instructions of any other authority (The Icelandic Police and the Justice System. A short introduction, 2005). Denmark currently remains the only Nordic country where the Public Prosecution Service still reports to the Minister of Justice. However, this situation has been subject to criticism in Denmark for a long time, as the Minister of Justice is authorized to issue instructions to public prosecutors not only of a general nature but also individual instructions on specific criminal cases.

However, independence from the executive power is not only enjoyed by the Nordic countries, but also by many other European countries. Spain belongs to those countries that also try to create conditions for the greatest possible independence of the public prosecution. The public prosecution is considered here as a part of the judiciary, with an autonomous status within it, and since 1981 it has enjoyed the attribute of independence in the performance of its functions, and the general public prosecutor is the only person authorized to issue instructions to individual public prosecutors. However, the professional public points out that the system is not yet completely independent from the executive power, as certain links are still present (e.g., the public prosecutor is appointed by the king at the proposal of the government and after discussion by the General Council of Judges) (Castresana Fernandez 1997; Conde-Pumpido Touron 2009). In Portugal, the public prosecution system is headed by a public prosecutor who is independent not only in relation to the Ministry of Justice and the government but also to the judiciary. Any influence of political power on the activity of the public prosecution is prohibited, and only the general public prosecutor is authorized to issue instructions to the public prosecutors subordinate to him. The only connection between the public prosecution and the executive power results from the authority of the Minister of Justice to request information about criminal prosecutions from public prosecutors, provided, however, that they are not subject to secrecy (Strasser 2002).

In Italy, the situation in the field of public prosecution is similar. Although in the initial periods of the development of the Italian public prosecution, there was subordination to the executive power, already in the middle of the 20th century, steps were taken towards ensuring its independence. The reason was to promote the general view that the administration of justice must be separated from political pressures. Therefore, the organizational structure of the public prosecution in Italy is separate from the executive power and independent from any power other than its own (Kremens 2021). Even the Italian Constitutional Court commented on this issue in 1991, stating that legality and equality can only be achieved under conditions of the absolute independence of the public prosecution. It should be noted that, from the point of view of the threefold division of state power, the Italian public prosecution ranks among the organs of judicial power (Palombarini and Mura 2009). As for the current status of public prosecution in France, from Art. 65 of the French Constitution, it follows that the French Ministry of Public Affairs is included in the judicial power, similar to the Italian public prosecution. In 1993, the inclusion of the Ministry of Public Affairs in the judiciary was also confirmed by the French Constitutional Court in one of its decisions (The Decision no. 93-326DC, Aug. 11. 1993, J.0. 11599). However, it is necessary to note that the traditional ranking of the French public prosecution in the judiciary has been increasingly questioned in recent years. Important is the judgment of the European Court of Human Rights from 10 July 2008 in the case of Medvedyev v. France, where the court ruled that the French Public Prosecution Service was not a judicial authority. He justified this by saying that every judicial body must enjoy the attribute of independence. In France,

however, at the highest level of the hierarchical organization of the public prosecution is the Minister of Justice, who is politically responsible for the functioning of the entire public prosecution office and, for this purpose, is authorized to issue public prosecutors not only with instructions of a general nature but also with individual instructions in a specific case. It should be noted that the subordination of the public prosecution to the executive has been the subject of criticism for a long time in France, and for a long time, there has been a demand to make the public prosecution office independent and make it an independent body. From the point of view of European jurisprudence, such a step seems more than necessary and can be expected in the near future.

We can observe the trend of securing the organizational guarantees of the independence of public prosecution not only in countries with a civil law legal culture but also in the countries of the Anglo-American legal system. However, due to the limited scope of this paper, we will not deal with the countries of the Anglo-American legal system in detail, and only for a basic illustration, we will state that the Federal Prosecutor's Office in Canada has also undergone a change from the model where public prosecution was an integral part of the Ministry of Justice to the model of an independent director of public prosecution. Northern Ireland has similarly created the Public Prosecution Service as an independent body. England, Wales, and Ireland are gradually eliminating the power of the police to prosecute in favor of public prosecutors, although originally this police power was part of the traditional system of Anglo-American law.

5. Comparison of Methods of Election and Appointment of General Prosecutors in EU Member States

The methods of electing the Prosecutor General differ considerably within individual EU countries. There is also a difference in the entity that has the right to propose a candidate for a given post: in countries where the Prosecutor General is part of the government, the government is entitled to appoint a candidate for Prosecutor General to the position. On the other hand, in countries where the Prosecutor General operates as an independent institution, the Prosecutor General is appointed either by the president of the country or by the supreme legislature. The Venice Commission assessed both models as equivalent in relation to the attributes of the independence of the appointment of the person who is at the head of the General Prosecutor's Office. At the same time, however, the Venice Commission recommended two conditions to improve the selection of a suitable candidate: (1) the right to nominate candidates should be clearly defined, and (2) advice on the professional qualification of candidates should be taken from relevant persons such as representatives of the legal community (including prosecutors) and of civil society (Compilation of Venice Commission Opinions and Reports Concerning Prosecutors, p. 26). As for the subjects authorized to nominate the candidate for the general prosecutor, based on the analysis of legal orders and legislation in the area of the Prosecutor's Office, the following conclusion can be reached: in the case of EU member states and the United Kingdom, in 21 out of 28 states the general prosecutor is nominated by representatives of the executive power, namely: (a) in 10 countries (Belgium, the Czech Republic, Denmark, Estonia, France, The Netherlands, Luxembourg, Germany, Austria, Romania), the Minister of Justice of the given country has the right to nominate a candidate for a given position; (b) in six cases (Finland, Croatia, Greece, Portugal, Spain, and Sweden), the government has the right to nominate the candidate for the Prosecutor General; (c) in two cases the Prime Minister has the right to directly nominate a candidate for Prosecutor General (Malta and Poland); (d) in three countries (Hungary, Lithuania, Cyprus), the president has the right to nominate a candidate.

The right to nominate candidates for the Prosecutor General has been granted to the legislative power in one case—Slovakia. The Slovak Republic is the only state that authorizes the highest legislative body to nominate a candidate for the position of Prosecutor General.

The examples from Ireland and the United Kingdom are specific because these countries exercise a selection procedure that is open to potential applicants. In the case of the

United Kingdom, submitted nominations are considered by a committee chaired by the Civil Service Commissioner. The given committee then makes recommendations to the highest public prosecutor, who selects the so-called head of prosecutors.

The remaining countries have the right to nominate a candidate for the Prosecutor General granted either to the judiciary, namely the Judicial Council (Bulgaria, Italy), and the President of the Supreme Court (Latvia) or the State Council of Prosecutors (Slovenia) (Mališka and Csudai 2020).

As for the entities authorized to appoint general prosecutors, this system is variable. Based on the analysis of legal orders and legal regulations, the following can be concluded: (1) in 17 cases, the Prosecutor General is appointed by the king or the president (Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Greece, Lithuania, Luxembourg, Malta, Germany, Poland, Portugal, Austria, Romania, Slovakia, and Spain); (2) in four cases, the highest legislative body appoints or confirms the position of Prosecutor General (Croatia, Hungary, Latvia, Slovenia); (3) the government is authorized to appoint or comment on the nomination of a candidate for Prosecutor General in the case of six states (Czech Republic, Estonia, Ireland, The Netherlands, Slovenia, and Sweden); (4) in only one EU state, a collective body of judges, i.e. Judicial Council (Italy), appoints the general prosecutor (Mališka and Csudai 2020).

It should be emphasized that the Venice Commission in its document did take into account the fact that the involvement of the parliament in the appointment or election of the general prosecutor may represent a certain risk of the politicization of the process. However, on the other hand, the Venice Commission recommended the involvement of the parliament as a way to mitigate this risk, stating that: a) it would be necessary to take into account the opinion of the relevant parliamentary committee and also the expert council, and b) a qualified two-thirds majority should be used in the voting (Compilation of Venice Commission Opinions and Reports Concerning Prosecutors, p. 26). The Venice Commission also recommended considering the legal status of the head of state in situations where the head of state has the right to nominate or recall the Prosecutor General (Compilation of Venice Commission Opinions and Reports Concerning Prosecutors, p. 26). As an example, it is possible to cite the efforts of the Romanian Minister of Justice, who proposed to recall the Prosecutor General. However, the Judicial Council issued a negative opinion on such a proposal, which was also confirmed by the President of Romania by issuing a decree not to recall the Prosecutor General. The Constitutional Court, as an authorized entity in matters of decisions of the highest authorities of Romania, annulled the decree issued by the President and ordered him to dismiss the Prosecutor General. The given decision strengthened the position of the Minister of Justice in matters of proposing and recalling the Prosecutor General.

6. External Independence of the Prosecutor's Office of the Slovak Republic as a Necessary Precondition for Its Proper Functioning

In a procedural sense, external independence can be defined as a degree of the prosecutor's decision-making autonomy in relation to other bodies, state and political institutions, political forces, and individuals (Žďárský 1994, p. 195). External independence thus allows the public prosecution office to actually carry out its mission, regardless of the individual interests of the parties concerned and regardless of the political objectives and basic convictions of the government. It should be noted that even today, reforming public prosecution systems and other public prosecution projects favor models that ensure the highest possible degree of external independence. It is possible to mention, e.g., the Finnish Public Prosecution Act, changes in the organization of the Public Prosecutor's Office of the Czech Republic (Klíma 2010), the institution of the European Public Prosecutor's Office regulated by the Lisbon Treaty and by the Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, the Statute of the Public Prosecutor at the International Criminal Court, or the Statute of the Public Prosecutor at the International Criminal Court (Fenyk 2001, p. 151). However,

the tendency to strengthen external independence can be seen not only in countries with a continental legal system but also in countries with an Anglo-American legal system.

In this regard, Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system adopted by the Committee of Ministers on 6 October 2000 points out that *"States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability."* One of the conditions for the proper functioning of the Prosecutor's Office is that prosecutors have the opportunity to act regardless of any interests, without unjustified interference by another power, executive or legislative, but also economic or political power. The Venice Commission report on European standards as regards the independence of the judicial system: Part II–The Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17–18 December 2010) states that *"the main element of "external" independence of the Prosecutor's Office resides in the impermissibility of the executive to give instructions in individual cases to the Prosecutor General (and of course directly to any other prosecutor). General instructions, for example to prosecute certain types of crimes more severely or speedily, seem less problematic."* According to the Venice Commission, such instructions may be regarded as an aspect of policy that may appropriately be decided by parliament or government.

At the same time, it should be noted that achieving absolute external independence is quite complicated in the conditions of states in which significant socio-political changes are taking place (the transformation of totalitarian regimes into democratic regimes). The same is true in states where political parties and political movements have acquired significant positions of power, as such states seek to undermine the external independence of the Prosecutor's Office and gain influence over its activities (for example, the efforts of many states to gain a decisive say in selection boards for the position of not only prosecutors but also judges). The subsequent politicization of the Prosecutor's Office can lead to many negative phenomena in society, including corruption, clientelism, and the elimination of political opponents. For this reason, too, in the interests of transparency in the relationship between political power and the Public Prosecutor's Office, it is necessary to recognize such a formal status for each public prosecutor so as to ensure their independence, in particular in their appointment and career development. In addition, it is necessary to determine the appropriate range of relations between the Public Prosecutor's Office and all the highest state authorities. However, the legal guarantees of external independence also include adequate funding for the prosecution office, through a separate budget (Orosz 2009, p. 327).

Ensuring the external independence of the public prosecution office is most challenging in systems where public prosecution service is a part of the executive. In such systems, the executive has many important powers in relation to the public prosecution office, making the public prosecution office dependent on the government in two main areas—the personnel area and the institutional area (Strasser 2002). The executive is often at the head of the entire system of the public prosecution service or appoints and dismisses public prosecutors and senior public prosecutors. In many cases, the executive can also exercise disciplinary authority over public prosecution bodies, supervise their activities, and issue not only general instructions and binding opinions for public prosecution bodies but also instructions for proceeding in a specific case. Last but not least, in many cases, the executive also ensures the activities of public prosecution bodies financially (Fenyk 2001, p. 150). If the executive power has the above-mentioned powers, not necessarily all of them, the executive power becomes prone to the abuse of its position and influence. This is especially the case in countries where the rule of law is not very deeply rooted and in countries where totalitarian and authoritarian regimes are only slowly being transformed into regimes applying the basic principles of modern democracies. Although some contemporary authors consider the requirement of the complete independence of the public prosecutor to be demagogic (Coufal and Kučera 1996, p. 9), or under no circumstances do they want to make the necessary democratic changes, we believe that absolute external independence and the impartiality of the functioning of the public prosecution office must be maintained.

Especially in those states where democratic institutions and the rule of law do not have a very long tradition. For this reason, too, we consider any attempt to subordinate the public prosecution service to the executive authority explicitly dangerous. Although there are several states in continental Europe where the Prosecutor's Office is part of the executive power and subordinate to the Ministry of Justice, these are the states where democratic institutions and the rule of law have been in place for many years (e.g., Austria, Denmark, Germany, The Netherlands). In many countries, the subordination of the prosecution service to the executive authority is more a question of principle than reality in the sense that the executive is in fact particularly careful not to intervene in individual cases. Even in such systems, however, the fundamental problem remains, as there may be no formal safeguards against such intervention (The Venice Commission report on European standards as regards the independence of the judicial system: Part II–The Prosecution Service). Should a public prosecution service still be subordinated to the executive power, and at the same time a degree of external independence should be maintained, any state should take effective measures to ensure that the public prosecution office is not misused for political purposes.

However, in the case of the independence of the public prosecution service from the government, the state should also take certain measures that in turn would prevent the arbitrariness and unlimited power of the prosecutor. In this case, it is, therefore, necessary that the nature and extent of the independence of the Prosecutor's Office be clarified by law. At the same time, certain guarantees should be created to ensure that an independent public prosecution service acts in accordance with its mission and does not abuse its position in the legal system. Therefore, prosecutors, in view of the important powers conferred on them and the consequences that the exercise of powers may have on their personal liberty, must be aware that they are liable in the event of personal error (disciplinary, administrative, civil, or criminal liability). The use of hierarchy or ad hoc commissions and disciplinary proceedings should be reserved for prosecutors as well as other citizens for acts committed. The external independence of the Prosecutor's Office also requires ensuring the transparency of the functioning of the Prosecutor's Office. Each Prosecutor's Office, as it acts on behalf of the society, must report on its activities at the local, regional, or national level, if it is structured at this level. These regular reports are intended for the public as a whole—either directly through the media or publications, or in front of elected members. It may take the form of a report, statistics explaining the action taken, the results achieved or the way in which criminal policy has been applied, or the use of public funds, and should indicate future priorities (The Venice Commission report on European standards as regards the independence of the judicial system: Part II–The Prosecution Service).

The consequence of the current legislation is that it cannot be said with certainty that the Prosecutor General is completely independent and not subject to any political influence. The influence of political parties on the selection of a candidate in the conditions of the parliamentary election of candidates for the Prosecutor General is currently undeniable, and for this reason, too, doubts may arise about his independence from the ruling political parties. Although political parties state that the only condition a candidate must meet is high professional erudition and practical experience, it is more than likely that any ruling political party will appoint a person who is either fully committed or whose views are at least not in direct conflict with the political and programmatic vision of any coalition.*

7. Considerations Lex Ferenda

A key element enabling the strengthening of the degree of external independence of the Slovak Prosecutor's Office can be seen in the correct setting of the system of appointing the Prosecutor General. It is necessary to redefine and re-evaluate the current system and to define the basic conditions and preconditions for the exercise of his/her function. Currently, two constitutional bodies (public policy bodies) participate in the appointment of the Prosecutor General—the National Council of the Slovak Republic (as the body that elects a suitable candidate for appointment as the Prosecutor General) and the President of the Slovak Republic (as the body directly appointing the Prosecutor General to office). We

consider it important that a number of constitutional bodies continue to be involved in the appointment of the Prosecutor General, in particular in order to ensure the greatest possible preconditions for the independent and impartial functioning of the institution of public prosecution service. However, in order not to make the post of Prosecutor General the subject of political games in the future, it would be appropriate to entrust his/her election to a body different from the National Council of the Slovak Republic. In light of a possible new legal regulation, such a body could become either the so-called Council of Prosecutors (which would represent a significant strengthening and expansion of the prosecutorial self-government) or a kind of independent personnel (appointment) commission, which would function independently of current political events or political actors.

Thus, as we indicated above, we believe that a change in the system for selecting the candidate for Prosecutor General could primarily contribute to strengthening the guarantees of the external independence of the Prosecutor's Office. In this regard, two variants of the system for selecting a suitable candidate for the Prosecutor General can be considered.

First, it is possible to strengthen the existing system of the self-government of prosecutors and to increase the scope of the powers of the authorities of prosecutorial self-government, the current task of which is to ensure the protection of the rights and legitimate interests of prosecutors. The highest executive body of prosecutorial self-government is currently the Council of Prosecutors, which has nationwide competence. Its role is to proactively secure and protect the rights and legitimate interests of prosecutors and to coordinate the activities of prosecutors' councils (executive bodies of prosecutors' self-government with a smaller territorial scope than the Council of Prosecutors). With regard to the proposed change, one of the manifestations of a strengthened prosecutors' self-government would be to extend the scope of this self-governing body and constitute a new competence. This competence could be the election of a candidate for Prosecutor General from among prosecutors who would stand for such an election. The role of the Council of Prosecutors would be to decide by secret ballot on the candidate, who will then be submitted to the President of the Slovak Republic for appointment. The nominee to be submitted to the President for appointment would be the candidate who received the largest number of valid votes from the members of the Council of Prosecutors. It should be added that in order to ensure the proper position of this body of prosecutors' self-government and guarantee the stability of the existence of such a body with voting competence, it would also be necessary to anchor the Council of Prosecutors at the constitutional level.

The second possibility for strengthening the external independence of the Prosecutor's Office of the Slovak Republic could be the creation of another type of Council of Prosecutors, the composition of which would be balanced and would not represent a closed system accessible only to prosecutors. In terms of composition, the members would be not only prosecutors of all levels but also other representatives of the professional legal community (e.g., lawyers, academics). Such a system would make it possible to introduce the necessary degree of democratic legitimacy into the process of selecting the candidate for Prosecutor General, as well as a certain degree of expertise from the external environment. In this case, the Council of Prosecutors would represent a kind of personnel committee, a commission that would be entitled to propose to the President of the Slovak Republic a candidate for the position of Prosecutor General and which would de facto weaken the influence of political parties on the selection of candidates, which is unquestionable in parliamentary elections. It would be a certain analogy of the current Judicial Council of the Slovak Republic, the task of which would be to ensure the independent position of the Slovak Prosecutor's Office in relation to other public authorities, thus creating a mechanism to prevent the penetration of unwanted influences by other branches of state power.

The Personnel Committee (Commission, Council) could be composed of two categories of members. The first category could have nine members, and by their nature, they would be exclusively public prosecutors elected by the authorities of prosecutors' self-government. The second group of members could be represented by six members elected (appointed)

by entities outside the environment of the Prosecutor's Office of the Slovak Republic. These members would not have to be exclusively prosecutors in the service; they could be other persons, provided that they are of good repute, have a second-degree university education in law, and have either at least 15 years' professional experience or have been demonstrable scientific or other important personalities in the field of law for at least twenty years active in the legal profession (i.e., employed as academicians, in legal science and legal research). The entities authorized to elect (appoint) members to the second group of the Personnel Commission would be the National Council of the Slovak Republic (electing and recalling two members), the Government of the Slovak Republic (appointing and recalling two members), and the President of the Slovak Republic (appointing and recalling two members). The Personnel Commission (Council, Committee) could elect the candidate for Prosecutor General in a secret ballot, while the President would be presented with the nomination of the candidate who received the largest number of valid votes in a secret ballot.

The term of office of the members of the independent Personnel Commission (Council of Prosecutors) would be five years, and the same person could not be re-elected or appointed as a member of the commission (membership would be non-renewable) due to the reduction in possibilities for influencing when deciding on the choice of a candidate. It should be added that the competence of the Personnel Commission (Council of Prosecutors) would not have to cover exclusively the election of a candidate for Prosecutor General and his submission to the President for appointment, but could also include decisions on other personnel matters (e.g., disciplinary proceedings against the Prosecutor General and other prosecutors). As in the first case, in the case of the personnel committee, in order to ensure the proper position of this body and guarantee the stability of the existence of such a body with voting competence, it would also be necessary to anchor the commission (committee, council) at the constitutional level.

At this point, we would like to emphasize that, as regards the body that selects a suitable candidate for the post of Prosecutor General, we are more in favor of a model in which persons representing apolitical professionals with public trust should also participate in the selection (mainly important experts from the academic field, science and research, or emeritus lawyers). At the same time, however, it can be noted that a certain representation of the government and its participation in the selection process is also justified, due to the legitimate requirement to participate in the formulation of criminal policy.

As regards the next phase of appointment proceedings, the appointment of the Prosecutor General to the office should continue to be left to the President of the Slovak Republic as Head of State. It is the President who should complete the process of appointing the Prosecutor General and, as a result, also serve as a kind of final constitutional insurance against the appointment of an incompetent person to the position of Prosecutor General. The post of Prosecutor General is an extremely important post, with important powers enabling a significant influence on the exercise of criminal justice in the State. In addition, it should be noted that since 1999, the President of the Slovak Republic has been elected directly by Slovak citizens in direct elections and, as a result, the President of the Slovak Republic is qualified to confer on this person the necessary democratic legitimacy to perform his/her function. Moreover, in the Slovak justice system, the prosecution and indictment of the president are not exercised by the Public Prosecutor's Office (Šramel et al. 2019), and therefore he/she is capable to act relatively freely.

In connection with the issue of appointing a candidate for the Prosecutor General by the President, the Constitution of the Slovak Republic should directly stipulate that if the Prosecutor General was elected in accordance with legal regulations, the President is obliged to either appoint the nominated candidate or notify a non-appointment to the National Council. At the same time, the Constitution of the Slovak Republic should stipulate that the President may not appoint a candidate for the Prosecutor General only if he does not meet the legal preconditions for appointment. It is this provision that would make it impossible for the President to act arbitrarily and at the same time make it possible to assess the person

of the candidate for Prosecutor General. It should be noted that in accordance with § 7 (3) of Act no. 153/2001 Coll. on the Prosecutor's Office, only a prosecutor who has reached the age of at least 40 years and has performed judicial practice for at least five years may be considered a Prosecutor General, provided that the relevant prosecutor agrees to the appointment. Following this, Act no. 154/2001 Coll. on Public Prosecutors in § 6 (2) states that the preconditions for the exercise of the function of a prosecutor also include the moral qualities of the candidate, which give a guarantee that the candidate will properly perform the function of a prosecutor. If the President has doubts about the person of the candidate for appointment, he could decide not to appoint. However, the president would have to justify his position with concrete and substantiated serious facts; it should not be a matter of political or other, similar nature. Thus, the non-appointment of a candidate to the position of Prosecutor General should in no case be an act of the President's arbitrariness. However, as a result of such a decision, the candidate for Prosecutor General would also lose the ability to continue to exercise the function of an ordinary prosecutor. If the candidate for the Prosecutor General lacks the moral qualities that guarantee the proper performance of his duties, this must be a reason for a candidate not to exercise only the function of Prosecutor General, but also the function of a prosecutor (the loss of one of the prosecutor's preconditions mentioned in § 6 of Act no. 154/2001 Coll. on Public Prosecutors and Legal Waiters of the Prosecutor's Office).

Last, but not least, it should also be noted that the Constitution of the Slovak Republic should also define the basic preconditions for the appointment of a candidate for the position of Prosecutor General of the Slovak Republic, which should include reaching the age of min. 40 years, at least ten years' judicial experience (as a prosecutor, judge, or lawyer; including at least five years' experience as a prosecutor), and, of course, the candidate's consent to his/her appointment. These preconditions should not be anchored only at the legal level. This statement can be supported in particular by the need for a certain degree of stability and certainty regarding the personnel conditions or requirements for the exercise of an extremely important constitutional function of the Prosecutor General. When the Constitution of the Slovak Republic guarantees personnel conditions or requirements for the exercise of such constitutional functions as the functions of the Public Defender of Rights (Art. 151a), Member of the National Council of the Slovak Republic (Art. 74), President of the Slovak Republic (Art. 103), a judge of the Constitutional Court of the Slovak Republic (Art. 134), or a judge of the General Court (Art. 145), it is not suitable to stipulate the personnel conditions or requirements only at the legal level (not constitutional level).

In addition, the constitutional wording should also stipulate the specific circumstances that make it impossible for the Prosecutor General to continue to hold his office, i.e., the Constitution of the Slovak Republic should define the reasons for the recall of the Prosecutor General from office. The Constitution of the Slovak Republic should define these reasons in an exhaustive manner, while their extension should be explicitly prohibited. Current grounds for recall from the office stipulated in Act no. 153/2001 Coll. on the Prosecutor's Office can, in principle, be considered satisfactory also for their anchoring at the constitutional level. However, it is important to note that the constitutional anchoring of individual grounds for recall of the Prosecutor General should be accompanied by an unambiguous stipulation of the obligation of the President of the Slovak Republic to act in the case of the emergence of any of the grounds for recall. In other words, the Constitutional Article 102 defining the competencies of the President of the Slovak Republic should stipulate that *"…. the President is obliged to recall the Prosecutor General from office, if a) …."*. The President should act similarly on the basis of a motion to recall the Prosecutor General, while the submission of the motion could be entrusted (similarly to the appointment of the Prosecutor General) to the Council of Prosecutors, or an independent personnel (recall) commission, which would function independently of the current political events or the political parties. At this point, it can be added that the law should also clarify and resolve the question of whether an independent personnel (appointment, recall)

commission should function as a permanent body with a certain term of office, or as an ad hoc body (ad hoc personnel commission).

Finally, it should also be added that in both cases (i.e., the appointment as well as recall of the Prosecutor General by the President of the Slovak Republic), the Constitution of the Slovak Republic should directly and unambiguously set a deadline within which the candidate for the Prosecutor General should be appointed/not appointed or recalled from office. The purpose of setting a deadline is to avoid situations that, e.g., as a result of political struggles and other similar circumstances, the position of Prosecutor General will remain unoccupied for a long time, or it shall remain occupied by a person who has an objective reason not to exercise the post of Prosecutor General. The setting of the deadline would also follow up on Art. 101 (1) of the Constitution of the Slovak Republic, according to which the President of the Slovak Republic has a constitutional obligation within his decision-making to ensure the proper functioning of constitutional bodies (Trellová and Balog 2020, p. 114). It is the setting of a deadline that helps to properly fulfill this basic constitutional role of the president. As for the time limits themselves, in the case of the process of occupying the position of Prosecutor General, the time limit for the President to take a decision should be longer than in the case of the recall procedure, due to the natural differences between the two decision-making processes. While in the case of a decision on the appointment/non-appointment of a candidate for Prosecutor General, the time limit should be a maximum of six months, in the case of a decision on the recall of the Prosecutor General, the time limit should be a maximum of two months. In both cases, the factum juridicum establishing the beginning of the period would be the delivery of the proposal of the personnel commission to the President of the Slovak Republic. It should be noted that non-compliance with the deadline set by the Constitution for the decision on the appointment/non-appointment of a candidate for the Prosecutor General, or on the recall of the Prosecutor General should also constitute an act of constitutional tort entitled "Intentional violation of the Constitution" (Article 107 of the Constitution of the Slovak Republic), thus establishing the constitutional responsibility of the President of the Slovak Republic.

8. Conclusions

Pursuant to Art. 1 of the Constitution of the Slovak Republic published under no. 460/1992 Coll., the Slovak Republic is a sovereign, democratic state with the rule of law (Burda and Trellová 2019, p. 68). In light of the basic principles of the functioning of a democratic state governed by the rule of law, it is therefore required that no interference or decision by a Public Prosecutor's Office be influenced by individual interests, whether of a political or other nature. It is the requirement of the independence of public prosecution bodies that this is currently one of the basic principles that are enforced and reflected in the way the public prosecution service is organized in the modern democratic state governed by the rule of law (Hoffmann 2010; Beneč 2003). The question of the position of the Prosecutor's Office in the constitutional system of the Slovak Republic is currently highly topical. However, in professional and political circles, since the establishment of the independent Slovak Republic, there have been constant debates about the character of the Slovak public prosecution body and its constitutional status.

We consider it crucial to reconsider and redefine the current system of appointing the Prosecutor General and to remove political ties in the creation of this function. we believe that a change in the system for selecting the candidate for Prosecutor General could primarily contribute to strengthening the guarantees of the external independence of the Prosecutor's Office. In this regard, two variants of the system for selecting a suitable candidate for the Prosecutor General can be considered.

First, it is possible to strengthen the existing system of the self-government of prosecutors and to increase the scope of the powers of the authorities of prosecutorial self-government, the current task of which is to ensure the protection of the rights and legitimate interests of prosecutors. The highest executive body of prosecutorial self-government is

currently the Council of Prosecutors, which has nationwide competence. Its role is to proactively secure and protect the rights and legitimate interests of prosecutors and to coordinate the activities of prosecutors' councils (executive bodies of prosecutors' self-government with a smaller territorial scope than the Council of Prosecutors). With regard to the proposed change, one of the manifestations of a strengthened prosecutors' self-government would be to extend the scope of this self-governing body and constitute a new competence. This competence could be the election of a candidate for Prosecutor General from among prosecutors who would stand for such an election.

The second possibility of strengthening the external independence of the Prosecutor's Office of the Slovak Republic could be the creation of another type of Council of Prosecutors, the composition of which would be balanced and would not represent a closed system accessible only to prosecutors. In terms of composition, the members would be not only prosecutors of all levels but also other representatives of the professional legal community (e.g., lawyers, academics). Such a system would make it possible to introduce the necessary degree of democratic legitimacy into the process of selecting the candidate for Prosecutor General, as well as a certain degree of expertise from the external environment. In this case, the Council of Prosecutors would represent a kind of personnel committee, a commission that would be entitled to propose to the President of the Slovak Republic a candidate for the position of Prosecutor General, and which would de facto weaken the influence of political parties on the selection of candidates

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Notes

1 In recent years, Slovak investigative journalists have provided circumstantial evidence pointing to the possible connections of the former General Prosecutor to business, political parties, and organized crime. This has been the reason why many high officers of the Prosecutor's Office of the Slovak Republic, including the former General Prosecutor himself, have been accused of serious criminal offenses. However, due to the principle of the presumption of innocence, we can only state that the confirmation of these accusations can only be made in independent criminal proceedings.

2 See (Shetreet and Forsyth 2012).

3 See, (Jackson 2007; Karlan 2007) applying Isaiah Berlins' "two concepts of liberty" to the idea of judicial independence.

4 See (Russell and O'Brien 2001).

5 See (Voigt and Wulf 2019).

6 Similarly, Guidelines on the Role of Prosecutors adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders stipulate that States shall ensure that: *"Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law."*

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