

Sabina Grabowska

University of Rzeszów
Faculty of Sociology and History
Institute of Political Science

Constitutional responsibility of the President of Slovenia

Abstract: Constitutional responsibility of the President of Slovenia

The subject matter of the article are issues related to the enforcement of constitutional responsibility of the President of Slovenia. In Poland, the body authorized to conduct proceedings on the constitutional responsibility of the President is a special court, namely the State Tribunal. The Slovenian legislator introduced a different model for the institution. The legislature chose the Constitutional Court as the body competent to conduct proceedings relating to the President's constitutional liability. Just like the Polish solutions concerning that institution, also Slovenian regulations have drawbacks. In my article, I try to depict the consecutive stages of the procedure concerning the constitutional responsibility of the President of Slovenia, the proceedings in the parliament and before the Constitutional Court. In the end, I present conclusions from the analysis of the collected material.

Keywords: constitutional responsibility, president, constitutional court

Liability of individuals who hold the highest positions in a country has always been a subject of interest for academics and ordinary citizens. The subject matter of this article is the institution of constitutional responsibility of the Slovenian President. The political system of that country is poorly known in Poland, just as the legal regulations that cover these issues. As in the majority of European republics,¹ in Slovenia, the body entitled to decide in respect of

¹ The first ones to apply that solution were the authors of the Austrian Constitution in its original version. Then, such provisions were included in the legislative frameworks of Germany and Italy as well as Albania, Bulgaria, Croatia, Macedonia, Slovakia and Hungary. See M. JABLOŃSKI: "Formy odpowiedzialności konstytucyjnej w Republice Austrii." In:

constitutional responsibility is the Constitutional Court.² As rightly pointed out by Mirosław Granat, attribution of this entitlement by the legislator to the Constitutional Court is justified by the fact that such court — as a body responsible for the judicial protection of the Constitution — implements the protection by resolving matters relating to the control of constitutionality of law.³ This opinion is also shared by other authors, such as Eugeniusz Zwierzchowski,⁴ Anna M. Ludwikowska,⁵ Lech Garlicki,⁶ M.A. Nudel,⁷ or René Marcic,⁸ who depict adjudication on the constitutional responsibility for violations of the Constitution or law as one of the areas of activity of the Constitutional Court.

1.

An analysis of the model of the President's constitutional responsibility in which the adjudicating body is the Constitutional Court must start from the delimitation of the objective scope of the constitutional responsibility

Formy odpowiedzialności konstytucyjnej w państwach europejskich. Eds. S. GRABOWSKA, R. GRABOWSKI. Toruń 2010, pp. 46—49; R. BALICKI: "Formy odpowiedzialności konstytucyjnej w Republice Federalnej Niemiec." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 207—209; E. ZWIERZCHOWSKI: "Republika Federalna Niemiec." In: *Systemy polityczne rozwiniętych krajów kapitalistycznych.* Ed. A. JAMRÓZ. Warszawa 1989, p. 267; W. ORŁOWSKI, W. SKRZYDŁO: "Ustrój polityczny Republiki Włoskiej." In: *Ustroje państw współczesnych.* Vol. 1. Lublin 2005, pp. 86; K. WITKOWSKA-CHRZCZONOWICZ: "Formy odpowiedzialności konstytucyjnej w Republice Włoch." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 365—367; K. BUDZIŁO: "Formy odpowiedzialności konstytucyjnej w Republice Albanii." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 35—39; M. GIŻYŃSKA: "Formy odpowiedzialności konstytucyjnej w Republice Bułgarii." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 70—72; K. SKŁADOWSKI: "Formy odpowiedzialności konstytucyjnej w Republice Chorwacji." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 76—78; A. MLYNARSKA-SOBACZEWSKA: "Formy odpowiedzialności konstytucyjnej w Republice Macedonii." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 184—186; T. MAJERCAK: "Formy odpowiedzialności konstytucyjnej w Republice Słowackiej." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 297—299; A. SURÓWKA: "Formy odpowiedzialności konstytucyjnej w Republice Węgierskiej." In: *Formy odpowiedzialności konstytucyjnej...*, pp. 357—358.

² M. WISZOWATY: "Formy odpowiedzialności konstytucyjnej w Republice Słowenii." In: *Formy odpowiedzialności konstytucyjnej...*, p. 320.

³ M. GRANAT: "Zakres kompetencji sądów konstytucyjnych państw Europy Środkowej i Wschodniej w innych sprawach". *Przegląd Sejmowy.* 2001, No 4, pp. 116—120.

⁴ E. ZWIERZCHOWSKI: "Zakres działania europejskich trybunałów konstytucyjnych." *Studia Iuridica Silesiana* 1984, Vol. 9, p. 139.

⁵ A.M. LUDWIKOWSKA: *Sądownictwo konstytucyjne w Europie Środkowo-Wschodniej w okresie przekształceń demokratycznych.* Toruń 1997, pp. 99—102.

⁶ L. GARLICKI: *Sądownictwo konstytucyjne w Europie Zachodniej.* Warszawa 1987, pp. 165, 173.

⁷ M.A. NUDEL: *Konstytucyjnyj kontrol w kapitalisticheskich gosudarstwach.* Moskwa 1968, pp. 73—110.

⁸ R. MARCIC: *Verfassung und Verfassungsgericht.* Wien 1960, p. 90 ff.

to which the President is subject. The Constitution of Slovenia permits, in Art. 109, accountability of the President if, in the performance of his or her office, they violate the Constitution or seriously violates the law.

The Slovenian lawmaker formulated the scope of the President's constitutional responsibility in rather laconic terms.⁹ The imprecise prerequisites, capable of covering a wide range of situations, may indicate that the parliament might abuse its power to impeach the highest official in the country. Moreover, the widely tailored prerequisites of responsibility may give rise to a situation in which the intention to hold the President politically accountable is prone to be veiled by a façade of constitutional responsibility.

The Constitution of Slovenia envisages the President's constitutional responsibility for a violation of the Constitution or serious violation of the law. In consequence, only a serious violation of law counts as constitutional delict, even though the legislation does not specify the term "serious violation of the law." In the opinion of Tadeusz Mołdawa, a serious violation is a transgression which compromises the very essence of a statute and produces negative legal consequences for the Slovenian political system.¹⁰

2.

Apart from the subjective and objective scope of the institution, the specificity of constitutional responsibility is co-determined by the specific procedure. Within the proceedings enforcing constitutional responsibility, one can discern the following stages. The procedure is initiated when a group of applicants lodges the application concerning commission of a constitutional delict by the President. Then, the issue is debated at the plenary session of the chamber. After the debate, a resolution is passed in respect of the President's impeachment before the Constitutional Court. If the application for holding the President constitutionally responsible is upheld by a majority of votes, the case is referred to the Constitutional Court, where the proceedings are held and the charges of impeachment, as alleged to the President, are examined. Within the analyzed constitutional framework, this involves preparatory proceedings and the subsequent main trial before the Constitutional Court. Upon conclusion of the procedure, the court delivers its decision concerning commission of a constitutional delict by the President.

Constitutional provisions do not govern precisely the problems of constitutional responsibility of the President. Rather than that, they make up only a framework regulation. Article 109 of the Constitution of Slovenia reads:

⁹ I. KAUCIČ, J. TOPLIŠEK: *Ustava Republike Slovenije, Nova slovenska zakonodaja*. Ljubljana 2005, pp. 98—101.

¹⁰ T. MOŁDAWA: *Zagadnienia konstytucjonalizmu krajów Europy Środkowo-Wschodniej*. Warszawa 2003, p. 135.

“If in the performance of his office the President of the Republic violates the Constitution or seriously violates the law, he or she may be impeached by the National Assembly before the Constitutional Court. The Constitutional Court shall decide either that the impeachment charges are justified or it shall dismiss the charges, and it may further decide on relieving the President of office by a two-thirds majority vote of all judges. Upon receiving a resolution on impeachment from the National Assembly, the Constitutional Court may decide that pending a decision on impeachment the President of the Republic may not perform his office.”¹¹ The detailed regulation of the proceedings concerning constitutional responsibility of the President was left to statutory law, that is to: the legislative acts governing the operation of the parliament and the competences and organization of the Constitutional Court.

While scrutinising the legal regulation applicable in Slovenia with regard to the legislature, it should be pointed out that the Slovenian parliament, composed of the State Assembly and the Council of State, is considered bicameral by the doctrine of the Slovenian constitutional law.¹² However, the Council of State has separate competences and it is not expressly named in the Constitution as a part of the parliament.¹³ Moreover, this body is not involved in the proceedings relating to the President’s constitutional responsibility, as only the State Assembly was vested with powers in this regard.

The procedure of the President’s impeachment at the parliamentary stage is regulated by the Regulations of the State Assembly of the Republic of Slovenia of 5 July 1993,¹⁴ and at the Constitutional Court stage by the Constitutional Law Act and the Constitutional Court Regulations.¹⁵

3.

In order to commence impeachment proceedings with regard to the President, it is necessary to lodge an application. The Slovenian legislator granted the right of initiative in this respect exclusively to the members of parlia-

¹¹ *Constitution of the Republic of Slovenia of 23 December 1991*, URS, (*Uradni list Republike Slovenije* [official journal of the Republic] No 33/91). The text is available at: [<http://www.us-rs.si/o-sodiscu/pravna-podlaga/ustava/>] (accessed: 15.07.2016); *Constitution of the Republic of Slovenia*. Transl. and introd. P. WINCZOREK. Warszawa 1994.

¹² P. MIKULI: *System konstytucyjny Słowenii*. Warszawa 2004, pp. 25—27; K. KRYSIENIEL: “Słowenia.” In: *Systemy polityczne państw Europy Środkowej i Wschodniej. Ustrój, organy władzy, partie polityczne*. Ed. M. BARAŃSKI. Katowice 2005, pp. 386—388; P. MIKULI: *Parlament Słowenii*. Warszawa 2003, p. 10.

¹³ I. KAUCIČ, J. TOPLIŠEK: *Ustava Republike Slovenije...*, p. 127.

¹⁴ “Regulations of the State Assembly of the Republic of Slovenia.” (5 July 1993), Transl. P. WINCZOREK. *Przegląd Sejmowy* 1998, No. 3, pp. 111—165.

¹⁵ Regulations of the Constitutional Court of 15 September 2003 (Uradni list RS, št. 86/07, 54/10 in 56/11), The text is available at: [<http://www.us-rs.si/o-sodiscu/pravna-podlaga/poslovnik-ustavnega-sodisca/>] (accessed: 15.07.2016).

ment.¹⁶ The requirements for the application have been laid down in the Regulations of the State Assembly. In Slovenia, the group of parliamentarians entitled to submit the application for the President's impeachment must include as many as thirty persons, which makes one third of the total number of members in the State Assembly.¹⁷ Moreover, if the application is to be validly lodged, it must comprise description of the violation of the Constitution or serious violations of the law, as well as evidence in support of the allegations.¹⁸ In the Slovenian legislative framework, it is possible to withdraw the application until the end of the discussion in respect of such application in the parliament.¹⁹

The Slovenian regulation on the President's impeachment in consequence of commission of a constitutional delict does not provide for the involvement of a committee in the parliamentary proceedings.²⁰ All matters relating to the application for the President's impeachment are analyzed and discussed in the course of the debate at the plenary meeting of the State Assembly.

The next stage in the proceedings concerning the President's responsibility in connection with commission of a constitutional delict is the adoption by the State Assembly of the resolution on the President's impeachment. In the countries where the parliament consists of only one chamber, this stage of the procedure intended to hold the President constitutionally responsible is not complicated. In Slovenia, whose legislation does not envisage involvement of a committee in the proceedings,²¹ the Speaker of the State Assembly is obliged to call the meeting within a deadline not shorter than thirty days from the date of submission of the application for the President's impeachment.²² The Speaker of the State Assembly serves the President with the copies of the application and other documents so as to enable the latter to take a stance on the charges of the impeachment.²³ The access to the documents allows the President of Slovenia to participate in the debate and present his position

¹⁶ In Austria, the issue of a complaint by a natural person lodged against the Federal President was additionally commented on by the Constitutional Tribunal, which, in its ruling of 7 December 1994, E2/94, G285/94 found that complaint by a natural person against the Federal President was inadmissible. The complaint referred to ratification of the Accession Treaty by the president.

¹⁷ Art. 187(1) of the Regulations of the State Assembly of the Republic of Slovenia.

¹⁸ Art. 187(2) of the Regulations of the State Assembly of the Republic of Slovenia. See: I. KAUCIČ, J. TOPLIŠEK: *Ustava Republike Slovenije...*, p. 131.

¹⁹ Art. 190(3) of the Regulations of the State Assembly of the Republic of Slovenia.

²⁰ Art. 187 and 190(1) and (2) of the Regulations of the State Assembly of the Republic of Slovenia.

²¹ J. RUPNIK, R. CIJAN, B. GRAFENAUER: "Ustavno pravo." Vol. 2: *Ustavno pravo Republike Slovenije*. Ed. R. CIJAN. Maribor 1993, p. 67.

²² Art. 187(3) of the Regulations of the State Assembly of the Republic of Slovenia.

²³ Art. 106(2) of the Regulations of the National Council of the Republic of Slovakia, Art. 190(1) of the Regulations of the State Assembly of the Republic of Slovenia. See: G. CHMIELEWSKI: *Rada Narodowa Republiki Slowackiej*. Warszawa 2011, p. 50.

in a written or oral form. It is not clear if the President's attorney, e.g. and advocate, may take part in the debate.

The next stage of the proceedings is the meeting of the National Assembly at which the debate in respect of the application and the vote in respect of the President's impeachment in connection with commission of a constitutional delict are held. A representative of the applicants may present his or her stance, and the draftsman presents a report from the committee's works. The parliamentarians are free to ask questions and participate in the debate. The meeting is concluded with the Speaker's ordering of vote in respect of the President's constitutional responsibility. Under the Slovenian legislative framework, a resolution is passed if a simple majority of the statutory number of members of the State Assembly vote in its favor.

The State Assembly of Slovenia takes the decision on the President's impeachment in the form of a resolution, within sixty days of the submission of the application in this matter.²⁴ In this period, it is not permissible to lodge another application for the President's impeachment before the Constitutional Court. If the Assembly fails to adopt the resolution within the prescribed deadline, the application is deemed to be rejected. Until the end of the parliamentary debate, a representative of the applicants may withdraw the application, which is then treated as though it had never been lodged.²⁵

As long as the application has not been withdrawn, the Assembly votes on its adoption. The resolution is taken by a majority of votes of the statutory number of members of the State Assembly, by a ballot.²⁶ The Assembly's application for holding the President responsible for a constitutional delict is subsequently delivered by the Speaker of the Assembly to the Constitutional Court and the President. The resolution by the Assembly must include description of the alleged violation of the Constitution or the serious violation of law and the evidence in support of the allegations.²⁷ Moreover, the State Assembly appoints, out of the applicants, the member of parliament who is going to represent the Assembly in the procedure before the Constitutional Court.²⁸

4.

The next stage of the proceedings concerning the President's constitutional responsibility is the examination of the case by the Constitutional

²⁴ J. RUPNIK, R. CIJAN, B. GRAFENAUER: *Ustavno pravo...*, p. 69.

²⁵ Art. 187(4), Art. 188(2), art. 190(4) of the Regulations of the State Assembly of Slovenia.

²⁶ Art. 109 of the Constitution, Art. 63 of the Constitutional Court Act and art. 85(3) of the Regulations of the State Assembly of Slovenia.

²⁷ Art. 187(2) of the Regulations of the State Assembly of Slovenia and Art. 63(2) of the Constitutional Court Act.

²⁸ Art. 191(3) of the Regulations of the State Assembly of Slovenia.

Court.²⁹ As a rule, the ruling panel is composed of judges of the Constitutional Court. As mentioned above, the body competent to decide in the matters of constitutional responsibility of the President of Slovenia is the Constitutional Court.³⁰ The Court is composed of nine judges elected for the term of nine years.³¹ The candidates for judges are proposed by the President and appointed by the State Assembly.³² With regard to the President's constitutional responsibility, the Court decides by the two third majority of all judges.³³

The proceedings in respect of constitutional responsibility before the Constitutional Court commence upon submission with the Court of the articles of impeachment adopted by the State Assembly. Once the resolution of the State Assembly on the President's constitutional responsibility is received in the Court, the President of the Court, within an eight-day deadline, assigns the date for the trial.³⁴

The President of the Constitutional Court opens the trial on the alleged commission by the President of a constitutional delict by presenting the articles of impeachment along with their justification. Slovenian legislation³⁵ allows the involvement of a representative of the State Assembly in the proceedings before the Constitutional Court.³⁶ At the trial, the evidence is examined, expertise and expert opinions analyzed. Additionally, the President, who may adduce evidence in his defense, is heard, as well as a representative of the State Assembly. Upon completion of the procedure, the President of the Court orders a vote on the commission by the President of a constitutional delict. In Slovenia,³⁷ the judgment is passed by the majority of two third of all members of the Constitutional Court.³⁸ Once the judgment is delivered, its copy is sent to the President and to the Speaker of the State Assembly. The ruling by the Constitutional Court in this respect is final and cannot be

²⁹ E. ZWIERZCHOWSKI: *Sądownictwo konstytucyjne*. Białystok 1994, pp. 151—155.

³⁰ J. RUPNIK, R. CIJAN, B. GRAFENAUER: *Ustavno pravo...*, pp. 189—191.

³¹ S. PATYRA: "Republika Słowenii." In: *Ustroje państw współczesnych*. Vol. 2. Ed. E. GDULEWICZ. Lublin 2005, p. 246.

³² K. KRYSIENIEL, J. WOJNICKI: "Słowenia." In: *Władza państwowa i administracja publiczna w państwach Europy Środkowej i Wschodniej*. Ed. M. BARAŃSKI. Toruń 2009, p. 288.

³³ Arts. 109, 163 of the Constitution of Slovenia, Arts. 9—10, art. 65(2) of the Constitutional Court of Slovenia Act.

³⁴ Art. 27(3) of the Regulations of the Constitutional Court of Slovenia.

³⁵ Art. 64 of the Constitutional Court of Slovenia Act.

³⁶ M. Йораднова: *Съдът, прокуратурата и разследващите органи в държавите — членки на Европейския съюз и страните — кандидатки*. Сб, CSD, 2005, pp. 12—14.

³⁷ Art. 109 of the Constitution of Slovenia, Art. 65(1) and (2) of the Constitutional Court of Slovenia Act.

³⁸ A. BAČIĆ: *Komentar, Ustava Republike Hrvatske*. Split 2003, p. 147; W. SOKÓŁ, B. GRYLAK: "System polityczny Słowenii." In: *Systemy polityczne państw Europy Środkowej i Wschodniej*. Eds. W. SOKÓŁ, M. ŻMIGRODZKI. Lublin 2005, p. 533.

challenged, which means that the President's impeachment proceedings are a one-instance procedure.

In pursuance of its powers to adjudicate in matters relating to the President's constitutional responsibility, following from the constitutional and statutory provisions, the Constitutional Court adopts the judgment. This ruling either ascertains the fault of the President who committed a constitutional delict or illegitimacy of the charges of impeachment as alleged to the President.

The Slovenian legislative framework provides for two votes, rather than a single one. In the former vote, the Constitutional Court resolves as to the fault or innocence of the President. If the judgment confirms the charges set out in the articles of impeachment, a second vote is held, with regard to the President's relief of office. Such regulation enables the Constitutional Court to find the President guilty without the need to impose penalty.³⁹

5.

Proceedings in respect of the constitutional responsibility of the President may be connected with the need to take further steps, such as: suspension in the exercise of the office, interim replacement for the President or early Presidential election.

The Slovenian Constitutional Court may resolve by a two third majority of the statutory number of judges to temporarily suspend the President in the exercise of his office for the duration of the proceedings before the Court.⁴⁰ If the Court decides to suspend the President as the head of the state or ascertains that his post is vacant, the entirety of the President's powers is vested by operation of law in the Speaker of the State Assembly.⁴¹

Upon announcement of a judgment declaring the President guilty of committing a constitutional delict and relieving the President of his office, the election for the vacated post is called. In Slovenia, the election is called within fifteen days as from the date of the relief of office.⁴²

6.

The analysis of the Slovenian legislative framework concerning the President's constitutional responsibility leads to the following conclusions:

The Slovenian legislator has rendered the framework of a constitutional delict inaccurately. Such delict may be understood twofold — it is committed

³⁹ J. RUPNIK, R. CIJAN, B. GRAFENAUER: *Ustavno pravo...*, p. 165.

⁴⁰ Art. 64(3) of the Constitutional Court of Slovenia Act.

⁴¹ Art. 106 of the Constitution of Slovenia.

⁴² Art. 106(1) of the Constitution of Slovenia. See: S. PATYRA: "Prawo wyborcze na urząd prezydenta w Słowenii." In: *Prawo wyborcze na urząd prezydenta w państwach europejskich*. Eds. S. GRABOWSKA, R. GRABOWSKI. Warszawa 2007, p. 189.

either during the term of office or in relation to the post held. A closer analysis of the constitutional provisions favors the latter interpretation, namely that a delict is committed in connection with the post held or within the President's responsibilities. This means that: 1) the President has taken measures from outside his area of competence that, however, were possible taking into consideration his position; 2) that the President has taken measures within his area of competence, however, in violation of law. This would make a constitutional delict in the substantive meaning.⁴³

While analyzing the parliamentary stage of the proceedings concerning the President's constitutional responsibility, one may wonder that only in the legislation governing the constitutional responsibility in Slovenia the mechanism was adopted which consists in the appointment of one of the impeachment applicants as the person representing the position of the State Assembly before the Constitutional Court.

The constitutional and statutory provisions in Slovenia do not account for a situation of a repeated application for the President's impeachment for the same reasons. In my opinion, where the State Assembly has not voted in favor of the pertinent application, it is not admissible to invoke the same act as the ground for another application. A repeated submission of an application with regard to the same acts would, however, be possible, once new pieces of evidence and circumstances which are essential to the case are revealed.

The facultative character of the President's suspension in the performance of his position may be called an ostensible solution. In a situation where the grounds for the President's impeachment are alleged violations of constitutional provisions, which regulate, for instance, the principles of the political regime, it would be difficult to prove legitimacy of the continued exercise of office until the resolution on the merits is made. In addition, in the course of the proceedings, the President's activities would definitely be focused on the efforts to prove his innocence rather than fulfilment of his constitutional duties. That is why, in my opinion, it would seem more appropriate to adopt a mechanism involving the President's suspension in the exercise of his or her office upon the adoption of the resolution by the State Assembly on the President's impeachment, until the date of delivery of the judgment by the Constitutional Court.

I think that in a situation where the President has been found guilty of committing the act alleged to him or her, he or she should be indefinitely relieved of office. It does not seem appropriate for a person found guilty of committing a constitutional delict to continuously hold the post of the head

⁴³ S. GRABOWSKA: "Delikt konstytucyjny." In: *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*. Eds. W. SKRZYDŁO, S. GRABOWSKA, R. GRABOWSKI. Warszawa 2009, pp. 135, 136.

of the state. It is all the more justified as one of the prerequisites for performing a public office in a civilized country is clear criminal record. Nevertheless, legislative regimes in certain countries do not include such restriction. The situation in which the President preserves his or her office once their fault is ascertained seems difficult to accept also in the light of the fact that such solution is prejudicial to the institution of constitutional responsibility. It is the case, since, most apparently, one of the basic objectives behind its enforcement is individual prevention, which in the case at hand means the possibility to relieve the offender of their office.

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