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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of the Slovak Republic*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

Pursuant to Art. 134 sec. 2 of the Constitution of the Slovak Republic (hereinafter „The Constitution“) the judges of the Constitutional Court shall be appointed by the President of the Slovak Republic for a twelve-year term on a proposal of the National Council of the Slovak Republic. The National Council of the Slovak Republic shall propose double the number of candidates for judges that shall be appointed by the President of the Slovak Republic.

Concerning the recall of judges, according to Art. 138 of the Constitution, the President of the Slovak Republic shall recall a judge of the Constitutional Court:

- a) on the basis of a final condemning judgement for a willful criminal offence or if he/she was lawfully convicted of a criminal offence and the court did not decide in his/her case on probationary suspension of the imprisonment sentence,
- b) on the basis of disciplinary decision made by the Constitutional Court for a conduct which is incompatible with holding the office of a judge of the Constitutional Court,
- c) if the Constitutional Court has announced that the judge does not participate in proceedings of the Constitutional Court for over one year, or
- d) if he/she is not eligible for the National Council of the Slovak Republic.

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

The Chancellery of the Constitutional Court represents a separate budget chapter within the state budget. In connection with the preparation of the state budget, the Ministry of Finance of the Slovak Republic submits to the Constitutional Court supporting documents of the draft budget for the chapter “The Chancellery of the Constitutional Court”. Subsequently, the Plenary Session of the Constitutional Court approves draft budget for the Chancellery of the Constitutional Court. The draft budget approved by the Plenary Session is the subject to an assessment in the competent committee of the National Council of the Slovak Republic. Thereafter as part of the proposed Law on the State Budget for the appropriate year, the draft budget is being approved in the legislative process of the National Council of the Slovak Republic.

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

The *National Council* of the Slovak Republic may amend the Law on the Organization of the Constitutional Court even without the consultation with the Constitutional Court.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

Pursuant to Art. 125 of the Constitution, the Constitutional Court shall decide on the conformity of:

a) laws with the Constitution, constitutional laws and international treaties to which the National Council of the Slovak Republic has expressed its assent and which were ratified and promulgated in the manner laid down by a law,

b) government regulations, generally binding legal regulations of Ministries and other central state administration bodies with the Constitution, with constitutional laws, with international treaties to which the National Council of the Slovak Republic has expressed its assent and which were ratified and promulgated in the manner laid down by a law and with laws,

c) generally binding regulations pursuant to Art. 68, with the Constitution, with constitutional laws and with international treaties to which the National Council of the Slovak Republic has expressed its assent and which were ratified and promulgated in the manner laid down by a law, save another court shall decide on them,

d) generally binding legal regulations of the local bodies of state administration and generally binding regulations of the bodies of territorial self-administration pursuant to Art. 71 sec. 2, with the Constitution, with constitutional laws, with international treaties promulgated in the manner laid down by a law, with laws, with government regulations and with generally binding legal regulations of Ministries and other central state administration bodies, save another court shall decide on them.

6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.

According to Art. 125 sec. 3 of the Constitution, if the Constitutional Court holds by its decision that there is inconformity between legal regulations, the respective regulations,

their parts or some of their provisions shall lose effect. The bodies that issued these legal regulations shall be obliged to harmonize with the Constitution, with constitutional laws and with international treaties promulgated in the manner laid down by a law, and in cases stipulated by the Constitution also with other laws, governmental regulations and with generally binding legal regulations of Ministries and other central state administration bodies within six months from the promulgation of the decision of the Constitutional Court. If they fail to do so, these regulations, their parts or their provisions shall lose effect after six months from the promulgation of the decision.

6. b) Parliament can invalidate the constitutional court's decision: specify conditions.

The National Council of the Slovak Republic cannot repeal the decision of the Constitutional Court.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

- Pursuant to Art. 104 of the Constitution the elected President of the Slovak Republic shall take before the National Council of the Slovak Republic an oath into the hands of the President of the Constitutional Court of the Slovak Republic;
- Pursuant to Art. 144 of the Constitution if a general court assumes that other generally binding legal regulation, its part, or its individual provisions which concern a pending matter contradicts the Constitution, constitutional law, international treaty pursuant to Art. 7, sec. 5 or law, it shall suspend the proceedings and shall submit a proposal for the commencement of proceedings according to Art. 125, sec. 1. of the Constitution (proceedings on compliance of the legal regulations). Legal opinion of the Constitutional Court contained in the decision shall be binding for the court;
- The Constitutional Court shall convene disciplinary proceedings regarding the Chief Justice of the Slovak Republic, the Deputy Chief Justice of the Slovak Republic and the General Prosecutor;
- The Constitutional Court shall give its assent to the criminal prosecution or a pre-trial detention of a judge and of the General Prosecutor;
- According to Art. 31 sec. 2 of the Law No. 38/1993 Coll. on the Organization of the Constitutional Court of the Slovak Republic, on the Proceedings before the Court and the status of its Judges, all courts, authorities of public administration and other state institutions shall grant the Constitutional Court, at its request, assistance in procuring documentary proofs for its decision-making.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

- 1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**
- 2. Specify whether the Constitutional Court is competent to resolve such litigation.**
- 3. Which public authorities may be involved in such disputes?**
- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**
- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

It is necessary to note that the complaints by the natural persons and legal entities are the most numerous causes decided by the Constitutional Court where fundamental rights and freedoms or human rights and fundamental freedoms resulting from international treaties are challenged.

If in this part of the questionnaire the question of the characteristic content of the legal disputes of the constitutional nature between public authorities is concerned, it should be noted that the Constitutional Court decides in particular:

- proceedings on the mutual compliance of legal regulations based on the motion by entitled persons (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, a court, the General Prosecutor, the Ombudsman); besides the submitter the party to proceedings is the Government of the Slovak Republic represented by the Ministry of Justice of the Slovak Republic;
- proceedings on the conformity of negotiated international treaties to which the assent of the National Council of the Slovak Republic is necessary with the Constitution and constitutional law. The President of the Slovak Republic or the Government may submit a proposal for a decision pursuant to paragraph 1 to the Constitutional Court prior to the presentation of a negotiated international treaty for discussion of the National Council of the Slovak Republic;

- if the subject of the referendum, which is to be announced on the basis of the resolution of the National Council of the Slovak Republic, or on the basis of a citizens' petition is in compliance with the Constitution or constitutional law (the President of the Slovak Republic is the submitter);
- disputes over competency between the central state administration bodies unless a law provides that these disputes are to be decided by another state authority (motion may submit the central body claiming to be competent to decide as well as the one, which refuse its competency);
- in case of disputes between the state bodies concerning the interpretation of the Constitution or the constitutional law, the Constitutional Court issues the interpretation of the concerned provision of the Constitution or the constitutional law (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, a court, the General Prosecutor);
- on complaints of local government authorities against unconstitutional or other undue intervention into the matters of local self-government, unless the protection is the subject to other court jurisdiction (submitter is the local self-government body);
- on complaints against the decision to confirm or reject the mandate of a Member of the National Council of the Slovak Republic (proceedings commence by the motion of a Member of the National Council of the Slovak Republic);
- on constitutionality or legality of elections to the National Council of the Slovak Republic, to the European National Council of the Slovak Republic or to organs of local administration (submitter is 1/5 of the Members of the National Council of the Slovak Republic, the President of the Slovak Republic, government of the Slovak Republic, court, Prosecutor General, political party), or against the results of such elections, may be submitted, apart from by the persons entitled by § 18 Clause 1 Subsection a) to e), also by a political party taking part in the elections, 10 % of the entitled voters of an electoral district, or a candidate who gained at least 10 % of votes in the electoral district;
- on complaints claiming unconstitutionality or illegitimacy of the elections of the President of the Slovak Republic (parties to proceedings are the submitter and a candidate who was elected for the President of the Slovak Republic in that challenged election);
- on complaints against the result of a referendum and on complaints against the result of a plebiscite on the recall of the President of the Slovak Republic (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, the General Prosecutor, at least 350 000 citizens of the Slovak Republic);

- if the decision on the dissolution or suspension of the activity of a political party or movement is in compliance with the constitutional and other laws (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak Republic, a court, the General Prosecutor, political party or movement);
- on indictment of the President of the Slovak republic by the National Council of the Slovak Republic in matters of wilful infringement of the Constitution or high treason (the National Council of the Slovak Republic lay the indictment);
- if the decision on declaring an exceptional state (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the Government of the Slovak Republic, the General Prosecutor) or state of emergency (the motion may submit at least one-fifth of all Members of the National Council of the Slovak Republic, the President of the Slovak Republic) were issued in compliance with the Constitution or constitutional law.

6. What procedure is applicable for the adjudication of such dispute?

Law on the Organization of the Constitutional Court includes regulation on different types of proceedings before the Constitutional Court (proceedings on the mutual compliance of legal regulations, proceedings on conformity of international treaties, proceedings on the subject of a referendum, proceedings in matters of disputes over competencies, interpretation of constitutional statutes, proceedings on complaints, proceedings on electoral matters, proceedings on the dissolution or termination of the activity of a political party or movement, etc.).

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

Concerning the decision making of the Constitutional Court, the Court may:

- a) refuse the motion if a judge discovers from the content of a submission that it is not a motion to commence proceedings;
- b) at the preliminary hearing the Constitutional Court may reject by a ruling motions concerning cases which the Constitutional Court is not competent to decide; motions which do not have the necessary requisites as defined by law; non-admissible motions or motions submitted by a person who is clearly not entitled to do so; as well as motions submitted with excessive delay. The Constitutional Court may also reject a motion which is clearly unsubstantiated;
- c) if a motion is not refused or rejected, it is accepted for further proceedings in part or in full, as stipulated in the statement of the ruling on the acceptance of the motion;

- d) the Constitutional Court shall decide on the merits of the case with a finding (by which the Court grants or does not grant the motion) or decides on the case with a ruling (if it reject the motion or ceases the proceedings).

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

Here are some examples:

- If the Constitutional Court holds by its decision that there is inconformity between legal regulations stated in paragraph 1, the respective regulations, their parts or some of their provisions shall lose effect. The bodies that issued these legal regulations shall be obliged to harmonize them with the Constitution, with constitutional laws and with international treaties promulgated in the manner laid down by a law, and if it regards regulations stated in paragraph 1 letters b) and c) also with other laws, if it regards regulations stated in paragraph 1 letter d) also with government regulations and with generally binding legal regulations of Ministries and other central state administration bodies within six month from the promulgation of the decision of the Constitutional Court. If they fail to do so, these regulations, their parts or their provisions shall lose effect after six months from the promulgation of the decision. The finding has generally binding force from the date of its publication in the Collection of Laws.
- Constitutional Court decisions on the conformity of legal regulations, on suspension of the application of challenged legal regulations, their parts or some of their provisions, on the cancellation of suspension of application, and decisions on interpretation of the Constitution or constitutional statutes shall be published in the Collection of Laws of the Slovak Republic.
- If in the proceedings on conformity of international treaties the Constitutional Court decides that the negotiated international treaty is not in conformity with the Constitution or with constitutional laws, it cannot be ratified.
- If the Constitutional Court decides that the subject of the referendum is not in conformity with the Constitution or with constitutional laws, such a referendum cannot be announced.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

Pursuant to Art. 133 of the Constitution, there is no possibility of lodging an appeal against a decision of the Constitutional Court.

Decisions of the Constitutional Court on conformity/compliance of the legal regulations, on suspension of the of the application of challenged legal regulations, their parts or some of their provisions, on the cancellation of suspension of application, and decisions on interpretation of the Constitution or constitutional statutes are generally binding. Decisions on matters of complaints are binding *inter partes litigantes*.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

If in the proceedings on compliance of the legal regulations the Constitutional Court holds by its decision that there is inconformity/incompliance between legal regulations, the respective regulations, their parts or some of their provisions shall lose effect. The bodies that issued these legal regulations shall be obliged to harmonize them with the Constitution, with constitutional laws and with international treaties promulgated in the manner laid down by a law, and if it regards regulations stated in paragraph 1 also with other laws, if it regards regulations stated in paragraph 1 also with government regulations and with generally binding legal regulations of Ministries and other central state administration bodies within six month from the promulgation of the decision of the Constitutional Court. If they fail to do so, these regulations, their parts or their provisions shall lose effect after six months from the promulgation of the decision.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

If in proceedings on complaints by natural persons and legal entities the Constitutional Court grants the complaint, it may:

- a) order the party violating the fundamental right or freedom through omission to hear the case under special regulations;
- b) return the case for further proceedings;
- c) prohibit continued violation of the fundamental right or freedom;
- d) order the party which has violated the fundamental right or freedom to reestablish the state prior to the violation of the fundamental right or freedom.

The Constitutional Court may however award appropriate financial compensation to that party whose fundamental right or freedom has been violated.

Should the Constitutional Court decide on awarding of appropriate financial compensation, the authority which has breached a fundamental right or freedom should be obliged to pay it to the complainant within two months of the decision of the Constitutional Court coming into force.

If the final judgement, measure or other intervention is quashed or if the case is returned by the Constitutional Court for further proceedings, the party who has issued the decision, decided on the measure or caused other intervention shall be obliged to rehear the case and to decide it again. In such proceedings or procedure the concerned authority shall be bound by the Constitutional Court's legal opinion.

Whosoever has issued a decision in a case, decided on a measure or made other intervention, shall be bound by the decision under clause 3 which is enforceable on its delivery.

- 4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?**

See Item III. 2.

- 5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

See Item III. 2.

- 6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

There is no such legal regulation that would prevent the legislator adopting an identical legal enactment, which has already been promulgated by the decision of the Constitutional Court as not compliant with a legal regulation of a higher legal force.

If the identical legal regulation was repeatedly adopted, the legislator would be exposed to the risk that the new legal enactment could become again a subject of constitutional review (based on a motion submitted by entitled persons).

7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?

The Constitutional Court does not have right to entrust any other state body with the enforcement of its decisions.