

**Conference of European Constitutional Courts  
XIIth Congress**

*The relations between the Constitutional Courts  
and the other national courts,  
including the interference in this area  
of the action of the European courts*

**Report of  
the Constitutional Court  
of the Slovak Republic**

# **I. The constitutional court, the other courts and the constitutional review**

## ***A. The judicial organization of the State***

### **1. The judicial system**

1. The system of courts in the Slovak Republic consists of the Supreme Court of the Slovak Republic, regional and district courts, Higher Military Court and circuit military courts. The judiciary is organised in two-instance system consisting of district court, regional court and the Supreme Court.

The General courts in the Slovak legal system make decisions on civil and criminal cases. The general courts review the legality of the decisions of administrative authorities; we have not yet an independent administrative judiciary.

Those cases are heard and decided in civil proceedings that follow from civil, family, co-operative or commercial relations, including relations between entrepreneurs and economic relations unless they shall be decided by other bodies under the law.

In criminal proceedings the courts decide on guilt or innocence of the charged person and on imposition of just punishments or protecting measures for criminal offences listed in the law.

### **2. The Constitutional Court**

2. The Constitutional Court of the Slovak Republic is a part of the judicial power regulated in the Chapter VII of the Constitution of the Slovak Republic. In Article 124 of the Constitution it is embedded that “The Constitutional Court shall be an independent judicial authority vested with the mandate to protect the constitutionality.” The Constitutional Court of the Slovak Republic is a permanent and special body of the protecting of the constitutionality which does not belong to the general judiciary.

## ***B. The respective jurisdictions of the Constitutional Court and other courts in the area of constitutional review***

### **1. Review of laws and other acts**

#### ***§ 1. Type of review***

3. 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 para. 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.  
e) agreed international treaties, which require the assent of the National Council of the Slovak Republic, with the Constitution or constitutional law.

4. The protection of the constitutionality is not the exclusive competence of the constitutional court. Other public authorities have jurisdiction over the protection of the constitutionality too, especially the general courts which have broad competencies, among others the competencies of the administrative judiciary too. The constitutional court has subsidiary powers i.e. it protects the constitutionality only after exhausting the other available and effective legal means of the constitutional protection. Decisions on the conformity of legal regulations belong to the competency of the Constitutional Court of SR. The recent constitutional amendment created such conditions that the constitutionality of the generally binding regulations, issued by municipalities, could be reviewed by general courts too.

5. The Constitutional Court of the Slovak Republic does not have jurisdiction over the conformity of the draft bills or drafts of other generally binding legal regulations with the Constitution, constitutional law or international treaties, promulgated as defined by law. The Constitutional Court reviews the conformity of the valid legal acts so it provides *a posteriori* review.

## **§ 2. Referral to the constitutional court**

### **a. Types of referral**

7. The Constitutional Court of the Slovak Republic shall commence proceedings on the motions filed on:

- the mutual compliance of legal regulations
- matters of conflicts of competencies
- interpretation of constitutional statutes
- constitutional complaints
- elections
- dissolving a political party or movement or suspending its political activities
- complaints against the result of a referendum and complaint against the result of a plebiscite on the recall of President of the Slovak Republic.
- complaint against decision verifying or rejecting verification of the mandate of a Member of Parliament
- reviewing the decision of the National Council of the Slovak Republic in matters of conflict of the individual interest with the public interest

- impeachment of the President of the Slovak Republic.

Until the recent Amendment to the Constitution of the Slovak Republic, i.e. until July 1, 2001 the Constitutional Court of the Slovak Republic made decisions on the petitions filed by natural or legal persons who objected violation of their rights.

The Constitutional Court settled different types of proceedings as follows:

- the mutual compliance of legal regulations – 225 cases
- constitutional complaints – 365
- interpretation of constitutional statutes – 45
- complaint against decision verifying or rejecting verification of the mandate of a Member of Parliament – 2 cases
- constitutionality and legality of the elections to the National Council of SR and to bodies of the territorial self-government – 79
- petitions filed by natural or legal persons who objected violation of their rights - 1975 cases.

## **b. Actions for annulment**

*8. Does direct recourse exist to the constitutional court against statutes? And against other regulations and acts?*

Yes, there is a possibility to ask directly to review the conformity of legal statutes or other legal acts.

9. The Constitutional Court shall commence proceedings upon a motion submitted by:
- a) not less than one fifth of all members of the National Council of the Slovak Republic,
  - b) the President of the Slovak Republic
  - c) the Government of the Slovak Republic
  - d) any court in connection with its decision-making,
  - e) the Attorney-General of the Slovak Republic,
- No time limit has been stated.

10. According to the present regulation a challenged legal act shall lose its validity if the authority issuing such an act does not repair its unconformity within 6 months from the promulgation of the decision of the Constitutional Court on the found unconformity. The recent Amendment from 1 January, 2002 enables to suspend the validity of the unconstitutional legal acts immediately.

## **c. Preliminary issues – plea of unconstitutionality**

*Who can refer cases to the constitutional court?*

11. Petitions to commence proceedings can be filed by a general court in connection with its decision-making activity.

12. Yes, if a general court supposes that a generally binding legal act, its part or provisions connected with the tried case contradict to the Constitution, constitutional statute or international treaty, it has to suspend the proceedings and submit a petition to commence proceedings on the conformity of the concerned acts before the Constitutional Court.

13. NA

14. Petition to commence proceedings shall be filed by a general court ex officio but always in connection with its decision-making activity. In such a case the parties of the proceedings before the general court shall be associate parties before the constitutional court proceedings. If it is a criminal proceeding associate parties will be the person charged and the public prosecutor.

15. Ruling on constitutionality is a competence of the Constitutional Court of the Slovak Republic.

### *Screening*

16. In accordance with the valid law, the judge of the Constitutional Court can adjourn the proceedings, finding that the filed submission is not a motion to commence proceedings before the court. So far 4 045 cases have been adjourned.

The Constitutional Court shall reject motions not falling under its jurisdiction, motions which do not fulfil requirements defined by law, inadmissible motions or motions submitted by delay or by incompetent persons. Such motions can be rejected in the preliminary proceedings. The constitutional court has so far rejected 2 275 cases for the mentioned reasons.

17. The general courts' reasoning does not bind the constitutional courts. If during the proceedings on the originally submitted motion the Constitutional Court establishes that a legal regulation of lower legal force is in conflict with some other legal regulation of higher legal force (not just with the challenged one) or international treaty, and if the constitutional court establishes nonconformity of this regulation with another regulation, then it will examine the constitutionality even of this legal regulation.

18. The general courts do not show all aspects in law and in fact connected with the decision of a concrete case. They indicate just non-conform legal regulations as shown above.

19. The constitutional court cannot reject submission of the court a quo to commence proceedings on the conformity of legal regulations with such reasoning.

20. The constitutional court is bound by the motion of the general court that submitted it in connection with its decision making activity.

21. The constitutional court is not bound by the interpretation, given by the general court.

22. Expiration of the effectivity of the legal regulation, following the Constitutional Court's finding results the retrial of the case in accordance with the Code of Criminal Procedure. Other lawful decisions, made in civil or administrative proceedings, under legal regulation that has lost its effectivity, will be unaffected.

23. The parties in general court proceedings are associate parties in proceedings before the Constitutional court. In criminal proceedings the associate party will be the person charged and the public prosecutor. The associate (secondary) party has the same rights and duties as all the other parties, but he/she acts just on his/her behalf. The constitutional court sends its

decision on admission of the case for proceedings to the associate (secondary) party and this way it announces the commencement of the constitutional court proceedings.

24. Mandatory representation by counsel or commercial lawyer in the proceedings before the Constitutional Court extends to the entire proceedings. The Constitutional Court can decide on the impeachment of the President of the Slovak Republic upon an accusation by the National Council of the SR.

25. The withdrawal of suit before the court a quo or the death of a party affects the proceedings before the Constitutional Court. Respecting the fact that a general court refers to the Constitutional Court only in case when the presumption on the inconformity of legal regulations is connected with the tried case, striking out the general court proceedings results the same before the Constitutional Court too.

**d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde, etc.)**

*Object of the constitutional appeal*

*26. What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the facts of the case?*

The constitutional appeal as effectively regulated by Article 127 of the Constitution from January 1, 2002, is designed to protect the natural and legal persons' fundamental rights and freedoms guaranteed by the Constitution or their human rights and fundamental freedoms guaranteed by the qualified international treaties, i.e. those ratified by the Slovak Republic and promulgated in a statutorily determined manner. The respective provision does not specify the authorities whose decisions are contestable by means of a constitutional appeal and confines itself to stating that such an appeal can be lodged against a valid and enforceable decision, measure or other form of interference with the relevant rights or freedoms. Pursuant to the applicable jurisprudence, the Constitutional Court is not competent to review the assessment of facts as carried out by the respective law-implementing agencies, as it is not called to protect litigants from factual errors committed by the relevant agencies but, rather, to assess whether the effect of the contested decision is in conformity to the Constitution or the qualified international treaty (II. US 21/96, I. US 4/00, I. US 17/00).

There is also a so-called municipal constitutional appeal available, which appeal can be lodged by a body of municipal self-government against an unconstitutional or illegal decision or other unconstitutional or illegal form of interference with the matters of municipal self-government.

### *Allowability of the appeal*

27. *Who can refer an appeal to the constitutional court? How?*

Any natural or legal person claiming that his/her rights or freedoms were violated, or a body of municipal self-government protesting an unconstitutional or illegal interference with its regulatory autonomy, by filing a constitutional appeal satisfying all the relevant statutory criteria (mostly of technical nature).

28. *Is appeal to the constitutional court only possible once all other venues of appeal have been tried?*

It is a necessary prerequisite for the admissibility of a constitutional appeal that the applicant exhausts all other ordinary venues of appeal. The Constitutional Court may disregard this requirement if the relevance of the appeal substantially exceeds the applicant's personal interest.

### *Screening*

29. *Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundness, etc.) What is the proportion of cases screened in this way?*

A rapporteur to whom an application is assigned may dismiss it if it does not satisfy the relevant statutory criteria and thus cannot be deemed an application upon which the Constitutional Court could proceed. A three-member panel is competent to screen an application for its admissibility. An application is inadmissible if the Constitutional Court lacks competence to proceed as applied for, if it does not satisfy the relevant formal criteria, if it is precluded by *res iudicata* or *litis pendens* considerations, if it is filed by an unauthorized person or after the applicable time limit, or if the claim is manifestly ill-founded. The number of cases that are found inadmissible for a full hearing is several times higher than the number of cases decided on the merits.

### *Parties*

30. *Does the plaintiff participate in the procedure before the constitutional court? If so, in what form?*

The plaintiff has full standing in the proceedings, with all the applicable rights. He/she may demand that an oral hearing takes place, access the file of the case, comment on submissions offered by the other parties, use his mother tongue in the proceedings at the cost of the Constitutional Court, etc. The other party with full standing is the subject against whom the application was lodged. There is no requirement of a mandatory intervention by other public authorities.

31. *Is there a counsel for the defence?*

The Constitutional Court is not competent to operate as a criminal court and carry out the functions of such a court, e.g. perform prosecution, find guilt, etc.

## **2. Settlement of conflicts between courts**

*32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of other courts? If so, how does it proceed?*

The jurisdictions of the other courts are delineated through the respective constitutional and statutory regulations. The Constitutional Court must respect this delineation and therefore does not circumscribe the performance by its judicial counter-parts of their constitutional and statutory powers, unless the effect of such a performance contradicts either the constitution or a qualified international treaty.

## **II. The relations between the Constitutional Court and the other courts**

### ***A. The organic link***

*33. What are the organic links between the constitutional courts and other national courts?*  
None such links.

### ***B. The procedural link***

34. An ordinary court that is a party to the proceedings (either as the applicant in the case of an interlocutory appeal, or as the defendant in the case of a constitutional appeal) has the same rights as do other parties. No special mechanism for an inter-judicial colloquy is provided for.

### ***C. The functional link***

#### ***§ 1. The review and its effects***

35. In general, decisions of the Constitutional Court are binding for all the public authorities and for the affected natural or legal persons. Also, if the Constitutional Court issues a decision upon an interlocutory appeal filed by an ordinary court, the legal opinion of the former as expressed in the decision is binding for the latter.

36. Abstract review – upon admission of an application for a full hearing, the Constitutional Court under certain circumstances may suspend the effect of the contested act. As for the decision on merits, the Constitutional Court either declares non-conformity, or rejects the application for declaration of non-conformity, or dismisses the application if it does not muster the requisite number of votes for either of the two previous holdings.



Abstract interpretation – the Constitutional Court issues an universally binding interpretation of the constitution or a constitutional act, which interpretation is published in the manner designed for the publication of statutes.

Concrete review – the Constitutional Court dismisses an application within preliminary proceedings if it finds it inadmissible. As for the decision on merits, it either declares that the contested agency has violated the applicant's rights or freedoms, or rejects the application for declaration of violation.

37. The abstract-review rulings (declarations of non-conformity) are binding *erga omnes* upon their publication in the Official Gazette. The concrete-review rulings are binding *inter partes* from the date of delivery to the affected parties. There is no possibility for the Constitutional Court to modify the temporal effect of its rulings, e.g. make them enforceable from a certain date in the future or the past.

38. In general, the sentences are respected. The legal opinions formulated in the *ratio decidendi*, however, enjoy a less unequivocal respect. The Supreme Court, i.e. the highest instance of the ordinary judiciary, also finds inappropriate the incidental review by the Constitutional Court of its actions, as it argues that it does not fall under the scrutiny of constitutional review.

We are not aware of any such difficulties.

## **§ 2. Interpretation by the constitutional court**

### **a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction**

39. Within abstract review, the Constitutional Court employs autonomous methods of interpretation, e.g. grammatical, systematic, historical, etc. It is not oblivious of the interpretation of the contested act furnished by other law-implementing agencies but the theory of the living law does not constitute a standard element of its jurisprudence. Within concrete review, it is the very effect of statutory interpretation employed by the respective law-implementing agencies that the Constitutional Court examines for its conformity to the constitution or a qualified international treaty.

### **b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of its own jurisdiction**

40. The sentences are binding *de iure*, the legal opinion on which a sentence rests is binding *de iure* only in the case of an interlocutory appeal. Nonetheless, the Constitutional Court decisions, including their rationale, are generally respected. Should non-adherence occur, the affected person may be eligible to contest the relevant act at the Constitutional Court via the applicable redress mechanisms, e.g. a constitutional appeal.

41. This technique, i.e. the so-called interpretive sentences, is not provided for in the Slovak Republic, except for the abstract-interpretation of the constitutional provisions. The living law does not apply, as the ordinary courts do not furnish such constitutional interpretations.

42. The single such form, i.e. the abstract interpretation of a constitutional provision, is binding *erga omnes* upon its publication in the Official Gazette.

### **III. The interference of the European courts**

#### ***A. The constitutional court and the other courts vis-a-vis the European Convention on Human Rights and the case law of the European Court on Human Rights***

43. The case law of the European Court of Human Rights is not binding *de iure*. Nevertheless, the Constitutional Court refers to the ECHR case law on a regular basis, both as the applicable standard when reviewing a claim directly invoking the European Convention and as an orientational interpretive framework when delineating the content of a given right or the criteria for its permissible statutory restriction. The case law of the ECHR figures as a standard reference point in the interpretive endeavours of the Constitutional Court.

44. Pursuant to the Constitution, the European Convention is an integral part of the legal system of the Slovak Republic and has precedence over national legislation to the extent to which it offers a more extensive protection of constitutional rights and freedoms. It is therefore applicable by the national judiciary. The rulings of the Constitutional Court, however, are binding for all the public authorities, including the ordinary courts.

45. The ECHR tended not to deem the previously existing petition procedure an efficient venue of appeal that would have to be exhausted before filing an application with the ECHR. It is expected, however, that given the current scope of the Constitutional Court's competence in the realm of incidental protection of rights the filing of an appeal with the Constitutional Court will be considered a prerequisite for the admissibility of an application lodged with the ECHR.

#### ***B. The constitutional court and the other courts vis-a-vis the case law of the Court of Justice of the European Communities***

46.- 48. Not applicable until the Slovak Republic accedes to the European Communities.