

## CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC AND ITS PLACE IN THE SLOVAK LEGAL ORDER

**JUDr. Bystrík Šramel, PhD.**

*Assistant Professor, Faculty of Social Sciences,  
University of Ss. Cyril and Methodius,  
Department of Public Politics and Public Administration,  
Trnava, Slovak Republic*

The basic starting point for determining the position of the Constitutional Court in Slovak legal order is the provision of Article 124 of Slovak Constitution, under which the Slovak Constitutional Court is an independent judicial authority protecting constitutionality. The wording of this constitutional article indicates three basic attributes characterizing the status of the Slovak Constitutional Court. The first attribute defines its function, the second attribute defines its subsumption in terms of division of state powers and the third attribute characterizes its institutional relations with other public authorities.

An exclusive function of Slovak Constitutional Court is the protection of constitutionality. The protection of constitutionality is a specific activity the aim of which is to reach the state that all public authorities exercise their powers in accordance with the Constitution. The protection of constitutionality, as basic function cannot be equated with the protection provided in specific disputes of citizens by general judicial authorities. The protection of constitutionality is much more important activity and its importance affects all citizens of the state. The Constitutional Court is “the public authority with enormous potential to influence the character of the state. It decides on the fate of the state, on its future orientation in terms of both national and international law, on the status of the individual in society, on relations between the state and its citizens, on government’s approach to individual and on handling with him, on status of political parties, on election results, on number of other issues of critical importance far not only political, but also economic, social, national or religious.”<sup>1</sup> It should be emphasized that the Slovak legal order regards the Constitutional Court as the only public authority that is directly and explicitly *ex constitutione* given the task of protecting the Constitution.

In terms of division of state powers, the Constitutional Court can be subsumed among the bodies of the judiciary. This stems not only from the

---

<sup>1</sup> DRGONEC, J.: *Ochrana ústavnosti Ústavným súdom Slovenskej republiky*. Bratislava: EUROKÓDEX, 2010, s.15.

actual inclusion of the Constitutional Court in the Constitution (Head VII - Judicial Power) but also from the factual activity of this body. The Constitutional Court is focused on the execution of specific type of judiciary within the judicial power in the Slovak Republic, which is the constitutional judiciary. Its task is not to execute a general judiciary. This was also confirmed by the Constitutional Court itself in one of its decisions when stating that the Constitution divides judicial power between the Constitutional Court and the general courts - two separate, one from each other independent and procedurally enclosed systems of judiciary and with separately defined function with special decision powers. The Constitutional Court is the body protecting the Constitution, which is exercised in cases under Articles 125 to 129 and 130 sect. 3 of the Constitution. By contrast, the general courts perform tasks of protection of legality; their competence is defined in Article 142 sect. 1 of the Constitution, and more specifically in special procedural codes. Autonomous and equivalent status and function of these two systems of judiciary excludes their mutual superiority, or subordination of one another. Therefore, the Constitutional Court is neither an alternative institution nor special remedial institution in matters within the jurisdiction of general courts with the Supreme Court of the Slovak Republic as the last resort of general judiciary.<sup>1</sup> Thus, the Constitutional Court is not a third instance within the system of general judiciary in Slovakia. It does not examine the claims of violation of the rights conferred on physical and legal persons by the Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code or any other legal regulation with the power of law, if the alleged infringement can not constitute a breach of a fundamental right or freedom guaranteed by the Constitution or international Treaty. Since the Constitutional Court is constituted as a single state body, it can be stated that it is a one instance authority. This fact has the practical consequence: the decision of the Constitutional Court cannot be contested, for example, by an appeal. Its decision is final and binding. Nevertheless, if the person alleging a breach of fundamental human rights and freedoms has failed even before the Constitutional Court, he/she can go with complaint to the European Court of Human Rights. However, exhaustion of all state means of protection of rights is a prerequisite for filing the individual complaint to Strasbourg law protection authorities.

Regarding the institutional links with other public authorities, legal definition of the Constitutional Court determines that the Constitutional Court is an independent body. This means that it is the body which is separate and independent from any other public authorities, including the

---

<sup>1</sup> Resolution of the Constitutional Court no. II. ÚS 1/95.

legislative and executive authorities and the general courts. Therefore, the Constitutional Court, in principle, has no formal links with other public authorities, by virtue of which it would have to execute their instructions or directions. There are only two situations when the Constitutional Court is linked to other public authorities. It is a constitution of constitutional judges and budgeting. In the first case, the Constitutional Court is connected to the body of legislative power (Parliament), but only at the stage of constituting the Constitutional Court judges. Slovak Constitution enables the National Council to submit proposals for constitutional judges. The second case is a connection to the executive authorities, primarily to the President, who has the power to appoint nominees for constitutional judges. In addition, a certain influence can be exercised also by the Government, through its task to create optimal material conditions for the work of the Constitutional Court, including the budget.<sup>1</sup> However, it should be noted, that despite the constitution of constitutional judges on political basis, the Constitutional Court as a whole should be considered as an apolitical institution. This statement results mainly from the fact that the appointed candidates are required to give up membership in a political party or movement. In this context, it may also be noted that the pursuit of independent and separate position of the Constitutional Court can be seen in its actual location in Slovakia. The seat of the Constitutional Court is in fact the city of Košice, which represents a sort of counterpoint to Bratislava, the seat of all major state bodies.

With the exception of mentioned cases, the Constitutional Court is fully independent and separate from other public authorities. This also applies to the general courts, including the Supreme Court. It is noteworthy that both judiciary bodies fulfil tasks defined by the Constitution connected with the right to judicial protection. In those cases, which could lead to possible conflicts of jurisdiction between the Constitutional Court and general courts, particularly in matters of administrative justice, the legislator applies the principle of subsidiarity. It means that the competent courts in administrative justice are essentially general courts. It should also be emphasized that with regard to relations with the system of general courts, the Constitutional Court is not an appellate court. The system of general courts ends with the Supreme Court and the matters belonging to the decision-making activity of the general courts in principle end with the definitive ruling of the Supreme Court. The relations between the Supreme Court and the Constitutional Court are not relations of subordination, and both types of courts are strictly separate and independent. A certain excep-

---

<sup>1</sup> SVÁK, J.: *Organizácia a činnosť orgánov ochrany práva*. Bratislava: Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského, 1995, s. 45.

tion is consent to the taking into custody of the President and Vice-President of the Supreme Court, which is given by the Constitutional Court.<sup>1</sup>

Thus, the Slovak Constitution explicitly grants a formal status of independence to the Constitutional Court. At the same time, the proper functioning of the rule of law and the need for effective protection of constitutionality require the creation of certain guarantees that will secure the independence in performing activities of particular law protection authorities. Slovak Constitution expressly stipulates such guarantees in Article 134 to 140. Svák names these guarantees as institutional and organizational guarantees of the independent status of the Constitutional Court and classifies them into three categories: special way of creation and termination of function of a judge of the Constitutional Court, the criminal immunity of judges of the Constitutional Court and the incompatibility of function of a judge of the Constitutional Court.<sup>2</sup> In the following, we will discuss one of the most important guarantees - the way of creation of function of constitutional judge.

Conditions for appointment to the function of a judge of the Constitutional Court and the actual process of its establishing are defined in Art. 134 of the Constitution, in § 11 of Act no. 38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic, the proceedings before it and the status of its judges and § 115 and 116 of Act no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic. From the wording of mentioned Acts we can deduce that the process of establishing constitutional judges to their function has three phases. The first phase consists in submitting nominations of candidates for constitutional judges to the National Council, the second phase consists in selecting suitable candidates to the function of the constitutional judge by the National Council and the third phase consists in selecting a suitable candidate by the President of the Slovak Republic and in subsequent appointment to the function of constitutional judge. When establishing constitutional judges to the functions, the legal order uses not only election, but also appointing principle.

The first stage of the process of establishing constitutional judges includes submitting the proposals for candidates to constitutional judges which are to be elected in the National Council. Under § 11 sect. 1 of Act no. 38/1993 Coll., the nominations of candidates to constitutional judges may be submitted to the National Council of the Slovak Republic by a) members of the National Council of the Slovak Republic, b) the Government of the Slo-

---

<sup>1</sup> Ibid.

<sup>2</sup> Comp. SVÁK, J. - CIBULKA, L.: *Ústavné právo Slovenskej republiky. Osobitná časť*. 4. vyd. Bratislava: EUKÓDEX, 2009, p. 892.

vak Republic, c) the President of the Constitutional Court of the Slovak Republic, d) the President of the Supreme Court of the Slovak Republic, e) the Prosecutor General of the Slovak Republic, f) interest organizations of lawyers, g) scientific institutions. Others (e.g. Slovak citizens) can not submit nominations. The only way for the other person to submit the nomination is to submit this proposal through one of the qualified subjects. Proposals must be submitted to Constitutional Committee of the National Council, which submits them with its opinion (after hearing the individual candidates) to the President of the National Council. The President of the National Council proposes the insertion of the election of candidates for judges of the Constitutional Court in the next parliamentary session.

The second stage takes place in Parliament itself. Parliament's role is to select by secret ballot the required number of candidates to constitutional judges. It is obvious that the selection of candidates is the result of a political decision, which can raise legitimate concerns regarding the professionalism and independence of the candidates. Therefore, the constitution defines in Art. 134 sect. 3 the basic preconditions to be met by a candidate for appointment as a constitutional judge. The preconditions help to alleviate strictly political nature of the process of selecting candidates and to guarantee the necessary degree of professionalism and independence. Consequently, a candidate for appointment as a judge of the Constitutional Court can only be a citizen of the Slovak Republic who is eligible for the National Council of the Slovak Republic (i.e. passive right to vote in parliamentary elections), reached a minimum age of 40 years, with a university education in law and at least 15 years experience in the legal profession. Those five conditions are laid down by the law exhaustively, meaning that each candidate must meet all conditions. The National Council proposes the President of the Republic always double number of citizens as candidates for judges of the Constitutional Court. Proposed are those candidates who receive the most votes, but at least an absolute majority of votes of the members present. If the double number is not proposed, the secret ballot repeats. If the re-election does not lead to the proposition of residual number of candidates for judges of the Constitutional Court, new elections will be conducted, in which the required number of candidates will be elected. A particular course and procedure is regulated in internal normative instruction of the National Council called Electoral Regulations on election and recall of officials no. 498 of 17 June 2011. In the context of the second phase it should be added that the National Council has no constitutional obligation to elect as many candidates as it is necessary under the Constitution. The National Council does not even have a constitutional duty to decide on every proposed candidate (whether he will be elected

or rejected). Under the Constitution, the National Council is responsible for compliance with the conditions laid down by the Constitution. It establishes the obligation of the National Council to review each applicant whether he meets the requirements and if he does not meet them, it is obliged not to choose such an applicant as a candidate for constitutional judges.<sup>1</sup>

In the third stage, Slovak President enters the process of establishing constitutional judges. The decision on the choice of candidates for constitutional judges is submitted to him by the Parliament and the role of head of state is to select those adepts that provide real guarantees of proper, professional and independent performance of the function of constitutional judges. The President is bound by the proposals submitted to Parliament; he cannot choose a candidate that was not proposed. Slovak Constitution requires that the National Council always submits to the President double number of candidates for judges, which the President of the Slovak Republic shall appoint. From them, the president selects the required number of judges (he is not bound by any instructions). His decision making is free, exercised on his own conscience and conviction. However, the Constitution expressly prohibits the re-appointment the same person as a judge of the Constitutional Court. It should be added that the function of a judge of the Constitutional Court is established on the day of taking oath to the hands of the President. This day is also the day of his employment at the Constitutional Court of the Slovak Republic.

**References:**

- [1] Constitution of the Slovak Republic
- [2] Act no. 38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic, the proceedings before it and the status of its judges
- [3] Act no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic
- [4] Resolution of the Constitutional Court no. II. ÚS 1/95.
- [5] DRGONEC, J.: *Ochrana ústavnosti Ústavným súdom Slovenskej republiky*. Bratislava: EUROKÓDEX, 2010, s.15.
- [6] SVÁK, J.: *Organizácia a činnosť orgánov ochrany práva*. Bratislava: Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského, 1995, s. 45.
- [7] SVÁK, J. - CIBULKA, L.: *Ústavné právo Slovenskej republiky. Osobitná časť. 4. vyd.* Bratislava: EUROKÓDEX, 2009, p. 892.

---

<sup>1</sup> DRGONEC, J.: *Ochrana ústavnosti Ústavným súdom Slovenskej republiky*. Bratislava: EUROKÓDEX, 2010, s.77.