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Interpretation of Constitution or of Constitutional Act by the Constitutional Court of the Slovak Republic²

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Słowa kluczowe: uprawnienie Sądu Konstytucyjnego Republiki Słowackiej, wykładnia konstytucji lub aktów konstytucyjnych, ogólnie wiążący charakter wykładni

Abstract

This paper analyzes the power of the Constitutional Court of the Slovak Republic (hereinafter only as “Constitutional Court”) to provide legal interpretation of the Constitution or of constitutional acts, to ensure the solution of disputes between governmental bodies applying the Constitution of the Slovak Republic. The analysis of the individual decisions confirms that it is not possible to determine that the purpose of these proceedings is fulfilled. The author further states that even after the judgement of the Constitutional Court, the appointing powers of the president in cooperation with other constitutional bodies remain an open problem.

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Streszczenie**Interpretacja Konstytucji lub ustawy konstytucyjnej
przez Sąd Konstytucyjny Republiki Słowackiej**

Niniejszy artykuł analizuje uprawnienia Trybunału Konstytucyjnego Republiki Słowackiej (zwanego dalej „Trybunałem Konstytucyjnym”) do zapewnienia interpretacji prawnej Konstytucji lub aktów konstytucyjnych, aby zapewnić rozwiązywanie sporów między organami rządowymi stosującymi Konstytucję Republiki Słowacji. Analiza poszczególnych decyzji potwierdza, że nie można ustalić, czy cel tego postępowania został osiągnięty. Autor stwierdza ponadto, że nawet po wyroku Trybunału Konstytucyjnego, kompetencje prezydenta w zakresie powoływania we współpracy z innymi organami konstytucyjnymi pozostają otwartym problemem.

A democratic state respecting the rule of law establishes an institutional framework for the settlement of legal issues and one of the essential institutions that contribute to the protection of constitutionality is the constitutional court. The attention of the constitutional court as well as of other authorities applying the law is also focused on the interpretation of legal norms contained in individual legal sources during the process of the law's application. The interpretation of law requires the understanding of linguistic expressions and their normative content³. The process of the interpretation of law is not only a process of clarifying the meaning, but also a result with which the clarification process concludes with normative sentences acquiring substance⁴.

It is presumed that in the interpretation process the constitutional court is considered as an official authority provided by legal norms with the power to provide binding interpretation of the legal sources and is also a natural authority⁵ that formulates persuasive and constant argumentation in the rea-

³ C.W. Larenz, K.-Canaris, *Methodenlehre der Rechtswissenschaft*, Verlag 1999, pp. 24–25.

⁴ J. Prusák, *Teória práva*, Bratislava 1995, p. 296.

⁵ A. Gerloch, *Problémy interpretace a argumentace v soudobé právní teorii a právní praxi*, [in:] *Sborník příspěvků z vědeckého kolokvia kateder teorie práva právnických fakult České republiky* (Milovy 19.–20.6.2002), Praha 2003, p. 15.

soning of individual decisions. The Constitution of the Slovak Republic (hereinafter only as “Constitution”) accorded the Constitutional Court of the Slovak Republic (hereinafter only as ‘Constitutional Court’) with the authority to provide legal interpretation of the constitution or of constitutional acts, that must be distinguished from the interpretation of legislation of different legal force which the Constitutional Court applies in all forms of its decision-making process. According to the Article 128 of the Constitution currently in effect⁶, the Constitutional Court provides the interpretation of the constitution or of constitutional acts in the case when the matter is disputed. The interpretation is according to the Article 128 of the Constitution the purpose of the action and is specified in the verdict of the Constitutional Court’s decision⁷.

Both constitutional legislation as well as legislation contained in the individual acts on the interpretation of the constitution and of constitutional acts were very brief which posed numerous issues that had to be resolved by the adoption of additional legislation. This process was also furthered by the Constitutional Court itself as it specified in its decision-making process the procedure on the interpretation of the constitution or of constitutional acts.

In regard to the procedure on the interpretation of the constitution or of constitutional acts, a practice was established, according to which the interpretation is conditioned on the basis of the existence of a specific dispute be-

⁶ The amendment of the Constitution by the constitutional act No. 90/2001 Coll. significantly strengthened the position of the Constitutional Court of the Slovak Republic which also impacted the process of interpretation of the constitution or of constitutional acts. Before the amendment, the constitution only contained provisions on the interpretation of constitutional acts, with questions arising as regards the court’s authority to interpret the constitution itself. Despite of the fact that the Constitutional Court resolved this issue in its decision I. ÚS 39/93, in which it determined that it is only relevant to distinguish between a ‘simple’ act and an act adopted by the qualified majority of votes of the members of the parliament, which impacted the court’s authority as regards the interpretation, the adoption of the amendment also clarified this issue, which must be assessed as positive. The amendment also specified at that time absenting regulation, according to which the decision on the interpretation of the constitution or of constitutional acts is promulgated in the same way as is stipulated for the promulgation of acts, with decisions becoming generally binding as of the day of their promulgation. Moreover, the amendment also stipulated that the motion for the interpretation of constitution or of constitutional acts is decided by the plenary and not by the senate, as it was stipulated before the amendment.

⁷ I. Palúš, L. Somorová, *Štátne právo Slovenskej republiky*, Košice 2011, p. 454.

tween government bodies with a real authority to be in the mutual conflict as regards the interpretation of a constitutional norm. This approach of the Constitutional Court was presented in a number of its legal opinions, from which we may present one that also states the purpose of this procedure: "The purpose of the procedure on the interpretation of constitutional acts based on the Article 128 (1) of the Constitution of the Slovak Republic is to comprehensively interpret the conflicting provision of the act so that the dispute that led to the Constitutional Court's decision would not arise in the future. Despite of the fact that the Constitutional Court's interpretation of a constitutional act is conditioned *inter alia* on the existence of a dispute in a given time between specific governmental bodies of the Slovak Republic, the resolution of the Constitutional Court on the interpretation of the contentious provision of the Constitution of the Slovak Republic is applicable *erga omnes* with continuing validity (until further change or cancellation of the provision of a constitutional act that was the object of the constitutional act's interpretation)"⁸.

The procedure on the interpretation of the constitution or of constitutional acts aims to provide a generally binding solution to the dispute between governmental bodies applying the Constitution. The absence of a dispute or its termination during the proceedings is a reason for the defeat of the motion for further proceedings or for the discontinuance of the proceedings if the motion for the proceedings was accepted for a decision. The argument of the claimant based on the existence of different interpretations of constitutional acts is not sufficient to consider the contentiousness of the case⁹.

It is necessary to consider what is typical for interpretation. In the process of interpretation, the text interpreted is clarified with nothing being added or eliminated¹⁰. Therefore, in the process of the interpretation of the constitution or of constitutional acts, one must not search for what is not stipulated in the constitution and with that supplement or change the text of the constitution, as the Constitutional Court is the interpreter and not the author of the constitution. The function of the Constitutional Court is also not to supplement the decision of the legislator as stipulated in the provisions of the con-

⁸ Resolution of the Constitutional Court of the Slovak Republic, I. ÚS 61/96 of January 23, 1997.

⁹ T. Herc, *Konanie o výklad ústavných zákonov*, "Justičná revue" 2009, vol. 61, No. 3, p. 334.

¹⁰ C.W. Larenz, K. Canaris, *op.cit.*, p. 134.

stitution, but to interpret it¹¹. The interpretation is to be provided strictly legally, without a politically motivated dispute¹².

Due to the fact that the decision adopted has generally binding effects for the future, the constitutional court must cautiously and carefully determine “whether the interpretation of the constitution or of constitutional acts is still possible or whether it is necessary to amend, terminate or otherwise modify the constitution or the constitutional act (or its sections or individual provisions)”¹³.

The Constitutional Court is not authorized to initiate the procedure on the interpretation of the Constitution or of constitutional acts without a motion (*ex offio*) and the stipulation of a relief is the essential element of the motion for commencing the procedure. Generally, the defendant also proposes its alternative verdict. However, the Constitutional Court always stipulates its own formulation of the generally binding verdict, where the interpretation of the contentiousness provision must not be identical to either one of the verdicts proposed by the participants¹⁴.

The Constitutional Court itself within its jurisdiction determined the procedure on the interpretation of the constitution or of constitutional acts as a procedure of the abstract protection of the constitutionality¹⁵. In the procedure examined, the Constitutional Court adopts judgements¹⁶ that are generally binding as of the date of their publishing in the Collection of Laws of the Slovak Republic, therefore becoming a formal source of law. As of this date, all subjects of law, including governmental bodies, are obligated to accept the legal interpretation adopted and are not allowed to deviate from it in

¹¹ Resolution of the Constitutional Court of the Slovak Republic PL. ÚS 4/2012 of February 29, 2012.

¹² Resolution of the Constitutional Court of the Slovak Republic II. ÚS 31/97 of May 21, 1997, Resolution of the Constitutional Court of the Slovak Republic I. ÚS 30/99 of June 28, 1999.

¹³ J. Mazák, A. Brostl, J. Klučka, *Ústavný súd Slovenskej republiky: (organizácia, proces, doktrína)*, Košice 2001, p. 92.

¹⁴ Resolution of the Constitutional Court of the Slovak Republic I. ÚS 30/1999 of June 28, 1999.

¹⁵ Resolution of the Constitutional Court of the Slovak Republic II. ÚS 69/1999 of July 15, 1999.

¹⁶ § 64 of the Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic as amended. According to the previous legislation, it provided decision in the form of resolutions.

the exercise of their authority. Not only from the formal and procedural aspect can the new legislation be evaluated in a positive way¹⁷, as it focuses on the promulgation of the judgement on the interpretation of the constitution or of constitutional acts, according to which verdict, reasoning and notice of legal effects of the judgement together with dissenting opinions are published in the Collection of Laws. Moreover, from the provisions cited we can state, that the plenary of the Constitutional Court determines which part of the judgement's reasoning, that clearly stipulates the legal opinion of the Constitutional Court and the reasons that led to its formulation, are to be promulgated in the Collection of Laws. The promulgation of a part of the reasoning in which the legal opinion of the Constitutional Court is contained, can be considered as a further emphasis and certain recommendation regarding the alternative behavior that is constitutionally acceptable.

In the review of the decision-making of the Constitutional Court as regards the interpretation of the constitution or of constitutional acts, I will firstly consider quantitative indicators that, although not the most important, have informative value. The website of the Constitutional Court provides information on the number of motions submitted to start the proceedings (37). In 12 of these cases, a judgement on the merits of the case was adopted, while in the remaining cases motions were either rejected or withdrawn. As of 2002, after the amendment of the constitution that stipulated that the legal interpretation is to be provided by the plenary, the number of cases decreased and only 6 motions were submitted, from which the plenary adopted judgements on the merits of the case only in two cases.

It is generally known to both scientific as well as professional public that the decision-making process of the Constitutional Court on the interpretation of the constitution or of constitutional acts aims to eliminate the dispute that required interpretation. The analysis of the individual decisions confirms that it is not possible to unambiguously state that this objective is fulfilled. In numerous decisions the Constitutional Court adopted original legal opinions that provide unambiguous explanation and specification of the purpose and content of the constitutional text (e. g. I. ÚS 39/93, I. ÚS 7/96, I. ÚS 5/94, I. ÚS

¹⁷ § 150 of the Act No. 314/2018 Coll. on the Constitutional Court of the Slovak Republic as amended.

58/94, II. ÚS 65/97). It can be presumed that some of these were an inspiration for the legislator as regards the amendment of the Constitution.

However, in the practice of the Constitutional Court we can find a decision on the interpretation of the Articles 72 and 93 (2) of the Constitution on the subject of a referendum in the case II. ÚS 31/97, in which the conclusions adopted are incoherent.

In the resolution I. ÚS 30/99, the Constitutional Court specified the power of the president to award amnesty, where it concluded that the decision to award amnesty cannot be legally repealed or withdrawn. In this case, it is as if the Constitutional Court have forgotten the importance of the values guaranteed by the Constitution of the Slovak Republic, as it did not further consider whether amnesties awarded by the prime minister exercising the authority of the president corresponded to the democratic legal order. Only a further amendment of the constitution has breached this legal opinion specified in the mentioned resolution, which established the power of the parliament to repeal the decision of the president of the Slovak Republic to award amnesty, if such a decision is in conflict with the principles of a democratic and legal state.

The appointing powers of the president as regards the process of his/her cooperation with other constitutional bodies were also interpreted by the plenary of the Constitutional Court. The Constitutional Court considered, in general, the question of the discretion of the president as regards his/her appointing powers in the case of cooperation with the parliament or the government. In the resolution PL. ÚS 14/06 it concluded that the president has only notarial powers and is therefore not obligated to accept personal proposals. The president determines the fulfillment of the legal conditions by candidates and if he/she considers that these conditions were not satisfied, he/she can reject the proposal. In its later resolution PL.ÚS 4/2012, the Constitutional Court extended the scope of the president's discretion when it recognized the right of the president not to appoint a candidate nominated by the parliament in the case when the candidate did not satisfy the legal requirements for such appointment due to "a severe issue related to the candidate that reasonably disputes his/her ability to hold office", in connection with the obligation of the president to ensure with his/her decisions the proper functioning of the constitutional bodies as stipulated in the Article 101 (1) of the Constitution.

The resolution PL. ÚS 45/2015 of the plenary of the Constitutional Court in the process of preliminary consideration rejected the president's motion to commence proceedings on the interpretation of *inter alia* Articles 134 (2) in connection with the Articles 101 (1) and 102 (1) of the Constitution. The president's motion requested the interpretation of the president's scope of discretion in the case of his/her power to appoint judges of the Constitutional Court in cooperation with the parliament. The Constitutional Court rejected the motion and concluded *inter alia* that the question posed by the president has already been answered by the Constitutional Court in its judgement based on the individual complaint in the III. ÚS 571/2014 proceedings. The fact that this judgement resulted from the proceedings on the individual complaint according to the Article 127 (1) of the Constitution, the outcome of which cannot be a generally binding interpretation of the constitution, was lost in this case. Due to the fact that the dispute on the interpretation of the constitution as regards the appointment of the Constitutional Court's judges still exists, it is unfortunate that the Constitutional Court have not presented its legal opinion, whether confirming, specifying or dissenting the case law in effect as regards the appointing powers of the president.

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