

International conference
20th anniversary of the Constitutional Court of the Slovak Republic

**“THE POSITION OF CONSTITUTIONAL COURTS AND
THEIR INFLUENCE ON THE LEGAL ORDER OF THE STATE”**

Košice, 9 April 2013

Opening presentation

by Gianni Buquicchio, President of the Venice Commission

Madam President of the Constitutional Court of the Slovak Republic,
Presidents of Constitutional and Supreme Courts,
Honourable Judges,
Ladies and Gentlemen,

I am very pleased to be here in Košice with you today to celebrate the 20th anniversary of the Constitutional Court of the Slovak Republic.

The creation of a Constitutional Court is an important event in the history of a country and I remember well when the Slovak Republic joined the Council of Europe in January 1993 and the Venice Commission shortly after, in July of the same year.

The “birth” of your Constitutional Court therefore coincides with your country’s membership of the Council of Europe and of the Venice Commission!

It is hard to believe that this has happened twenty years ago already... Time flies...

The Venice Commission is of the firm opinion that the constitutional stability that has resulted from your Constitutional Court’s case law has greatly contributed to the development of democracy in your country and to its smooth accession to the European Union back in May 2004.

This is now nearly ten years ago...and the Constitutional Court is and will remain important in its role as the independent guarantor of your Constitution.

Madam President,
Ladies and Gentlemen,

At the Venice Commission, we believe that the Constitutional Court of the Slovak Republic has successfully strived to promote fundamental democratic values and principles in its role in upholding the values contained in the Constitution.

This is the reason why this Court is respected by other state bodies, by the population at large and why it belongs to the leading constitutional courts in Europe.

For the Venice Commission, constitutional courts have and will continue to play a special role. You may know that the Venice Commission has, since the outset, always supported the

creation of these courts. In fact, in nearly all Central and Eastern European countries, constitutional courts have been established with our assistance.

Constitutional courts provide for the stability of the Constitution and respect for the rule of law and - beyond this classical approach - these Courts have a distinctive role to play in furthering and strengthening the democratic process, in which the Constitution serves as a main pillar.

Once these courts are up and running, the Venice Commission works with them to promote an exchange of information and experience between them and equivalent bodies, by organising seminars and conferences and by publishing the Bulletin on Constitutional Case-law and the database CODICES.

In addition, the Venice Commission provides a confidential on-line forum for the courts where they can quickly request and exchange information relating to pending cases.

This spurs intercultural dialogue based on democracy, the protection of human rights and the rule of law as a means of promoting mutual understanding and peace – a type of cross-fertilisation.

Madam President,
Ladies and Gentlemen,

We are gathered here today to discuss the interesting topic of the influence that constitutional courts have on the legal order of the state.

This is indeed a good question: how do constitutional courts influence the legal order of a state?

In this respect, one has to sadly note that constitutional courts are sometimes wrongly accused of what is known as “judicial activism” – a term used to describe that judgments are based on personal or political considerations rather than on the law.

This unfair accusation probably results from the fact that the Constitutional Court has a special relationship with the Constitution. This Court is the guarantor or the guardian of the Constitution and - as such - takes the historical background, the context of the Constitution and its wording into account. And, in doing so, it interprets and develops the inherent values of the Constitution by using a systematic or teleological approach.

Although this is crucial in order for the Constitution to remain a dynamic and living instrument – that is, a living Constitution that shapes society and is shaped by it and not a dead, inflexible document - this can lead to the unfair accusation of “judicial activism”.

It is therefore of the utmost importance to remember that the constitutional court’s role in filling in legal gaps is legitimised by its constitutional obligation to ensure the functioning of the democratic institutions.

A number of constitutional courts have been put under pressure as a result of their misunderstood role with respect to decisions they have rendered. The Venice Commission endeavours to support constitutional courts against this undue influence.

For instance, we supported the constitutional courts of Bosnia and Herzegovina and Ukraine when their budgets were about to be slashed and in two cases, we even had to come to the rescue of the constitutional courts that were threatened to be dissolved – this was in Georgia and in Kyrgyzstan.

The Venice Commission has also produced a statement in favour of the Constitutional Court of Ukraine when the Parliament of that country refused to appoint Constitutional Court judges and we are now closely following the situation with respect to the appointment of Constitutional Court judges in Moldova.

A more recent example is Hungary, where the Prime Minister's ruling party has used its two-thirds majority to make laws that intend to curb the powers of the Constitutional Court. It decided that all decisions handed down by this Court before the new Constitution entered into force in 2012 will no longer be valid – discarding a significant amount of case law and undermining the Court's role.

For this reason, we must remain vigilant and never take any achievements in constitutional justice as permanent and stable. It is a constant battle that needs to be fought to ensure that fundamental rights do not get set aside and autocratic government brought back in through the back door.

Madam President,
Ladies and Gentlemen,

Constitutional Courts' influence on the legal order of a state is also played out through their role in mediating conflicts between state bodies. These Courts often find themselves in the role of the neutral arbiter of such conflicts.

The very fact that a constitutional court exists and is able to decide a conflict on the basis of the Constitution, often incites parties to find a compromise solution to their conflict.

Over the years, constitutional courts have increasingly taken on the role of safeguarding the individual against the excesses of the executive. In addition, by safeguarding the principle of a fair trial, they have also become a safeguard against judicial errors in many countries.

Therefore, although the protection of human rights is one of their main tasks, constitutional courts also have an important role to play as the guarantors of the separation of powers.

Another important factor is the esteem in which the Constitutional Court is held by society. The higher this esteem, the better its decisions are accepted and respected.

In this respect, it is of course helpful if this Court's judgments are drafted clearly so that they are intelligible to the media and to the public at large.

This has been achieved by the Constitutional Court of the Republic of Slovakia and I wish for it to be able to (and I know it will) continue to uphold this esteem over the years to come.

Madam President,
Ladies and Gentlemen,

I would like to briefly conclude my presentation by congratulating the Constitutional Court of the Slovak Republic on the results achieved during its 20 years of existence and to wish it all the best for the future.

May it continue to flourish!

Thank you very much for your attention.