



CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

Hlavná 110, 042 65 Košice 1

P. O. Box E – 35

PRESS RELEASE N. 22/2020

13 May 2020

The Constitutional Court of the Slovak Republic informs about reasoning behind decision PL.ÚS 13/2020

At a closed session of the Plenum on 13 May 2020 in case No. PL. ÚS 13/2020, the Constitutional Court of the Slovak Republic decided to accept for further proceedings the motion of a group of members of the National Council of the Slovak Republic concerning the compliance of several provisions of the Law on the Judicial Council, the Law on the Courts and the Law on Electronic Communications with the Constitution of the Slovak Republic, the Charter of Fundamental Rights and Freedoms, the Convention on the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

The contested provisions of these laws were adopted in abbreviated legislative procedure and the petitioners claimed that in the case of the provisions concerning the Judicial Council Law and the Courts Law, the conditions for such legislative procedure were not met. In the case of the provisions of the Electronic Communications Law, they further argued that they violated the right to privacy and the right to protection of personal data. The Constitutional Court will assess these objections in proceedings on the merits of the case after the decision to accept the motion for further proceedings enters into force.

At the same time, the petitioners demanded that the Constitutional Court suspend the effect of the legal provisions challenged by them before deciding on the merits.

The Constitutional Court did not accept the motion to suspend the effect in the part concerning the Law on the Judicial Council and the Courts Law, as it did not find that their further application could pose an imminent threat of violation of fundamental rights and freedoms or another serious threat justifying such a decision to suspend, in particular in the present case the threat to the proper functioning of the Judicial Council.

The Constitutional Court partially accepted the motion to suspend the effect of the challenged provisions of the Electronic Communications Law. The Court so decided for the following reasons:

The contested provisions were adopted by the National Council of the Slovak Republic for the purpose of combating the COVID-19 pandemic. In practice these provisions create a system of comprehensive data collection by telecommunications operators which are to be subsequently made available to the Public Health Authority of the Slovak Republic on the basis of a request in specific cases.

Given the exceptional nature of the situation, at this stage of the proceedings the Constitutional Court limited its examination to finding out whether the legislation is sufficiently specific and whether it provides sufficient guarantees against the misuse of the data obtained by the state authorities. The more narrowly the legislator restricts the rights of the individual, the more precise it must be in formulating its intentions, and at the same time the legal regulation must also provide stronger protection of the individual against the undesirable consequences of interfering with his/her rights. If these constitutional requirements are sufficiently guaranteed, any risk of irreparable interference with the fundamental rights of the persons concerned is also significantly lower.

At the same time, it must be emphasized that the Constitution does not allow the protection of the individual to be regulated only by infra-statutory regulation issued by an executive authority. The right to determine the limits of fundamental rights and freedoms is entrusted exclusively to the National Council of the Slovak Republic, and if guarantees against violations of rights were contained only in such a regulation, the legislator could not guarantee them to individuals in the future and the executive could change or remove them at any time.

The Constitutional Court is aware that the ongoing pandemic requires the deployment of swift and innovative solutions to protect the life and health of citizens. At the same time, however, it must ensure that the speed of implementation of changes during this period does not lead to unintended erosion of the rule of law. Modern society is characterized by the ability to collect and process information about the individual in an automated way, hence the Constitution of the Slovak Republic protects the individual from the collection and misuse of personal data, in order to ensure truly free development of his/her personality.

The Constitutional Court points out that, according to its settled case law, the processing of identification and location data obtained from telecommunications operators constitutes a particularly serious interference with the Law on privacy and personal data protection of the individual. The Constitutional Court therefore requires that the strictest criteria be met in the event of such serious interference.

Based on the above, the Constitutional Court found that part of the suspended legislation was not sufficiently specific, as it allowed the state power to process personal data without clearly defining the purpose of such processing and the methods of handling personal data.

In the next part of the suspended legislation, its purpose may admittedly have been evident, but the necessary guarantees against possible misuse of the processed personal data were lacking. The legislation did not take into account the possibility of obtaining the necessary data from less sensitive sources, or the possibility of achieving the objective pursued in other ways which are less restrictive of fundamental rights. In addition, the legislation lacked provisions on high-quality independent supervision to control the processing of personal data by the state; further provisions ensuring an exceptionally high standard and protection in the actual processing of personal data; definite time-specified deletion of personal data once the purpose of their processing has been achieved and, finally, provisions on informing the individual whose personal data could be processed.

The Constitutional Court therefore decided to suspend the effect of those provisions of the Electronic Communications Law which were too vague or did not yet provide sufficient guarantees against the possible misuse of personal data by state authorities.

In its ruling, the Constitutional Court extensively formulated its preliminary legal views in order to be as helpful as possible at this stage of the proceedings in finding a legal framework for technical

solutions that will be useful in combating pandemics while respecting fundamental human rights and freedoms.

The ruling of the Constitutional Court will enter into force and become generally binding from the day of its promulgation in the Collection of Laws of the Slovak Republic, which will suspend the effect of part of the provisions of the Electronic Communications Law.

The full text of the ruling together with the reasoning will be published on the website of the Constitutional Court within 15 days of its coming into force.

Unofficial document for the media, which is not binding for the Constitutional Court of the Slovak Republic.

For more information, contact the spokesperson of the Constitutional Court Dr. Martina Ferencová, PhD.

tel: 055/7207 295, cell: +421 918 827 344, e-mail: martina.ferencova@ustavnysud.sk