



Decision of the Constitutional Court of the Slovak Republic no. PL. ÚS 7/2021 on the motion of the President of the Slovak Republic to review the compliance of the subject matter of a referendum with the Constitution of the Slovak Republic

7th July 2021

At a closed session of the Plenum on 7th July 2021, the Constitutional Court of the Slovak Republic decided on the motion of the President of the Slovak Republic to review the compliance of the subject matter of a referendum with the Constitution of the Slovak Republic. The Plenum held that the subject of the referendum in the words "Do you agree to shorten the 8th term of office of the National Council of the Slovak Republic with the aim of new elections to be held within 180 days from the date of the announcement of the results of this referendum?" is not in compliance with Art. 1 par. 1 and Art. 1 par. 1 in conjunction with Art. 73 par. 1, Art. 81a, Art. 82 par. 5 and Art. 93 par. 3 of the Constitution of the Slovak Republic.

The Court emphasized that the citizens exercise legislative power in the referendum directly and the result of a valid referendum has the rank of a constitutional law and is a directly binding legal norm. The Court thus respected the fact following from the Constitution that the citizens, being holders of state power, have the authority to decide on important issues of public interest in a referendum.

However, any exercise of state power, even directly by citizens in a referendum, is subject to limits set by the Constitution. Although the referendum may also amend the Constitution, it cannot undo it or violate the character of the Slovak Republic as a democratic state based on the rule of law.

The substantive core of the Constitution protects against the above-mentioned undesirable changes adopted in a referendum. This substantive core contains the most important constitutional values, both fundamental rights and freedoms or the rule of law. In assessing the conformity of the subject matter of a referendum with the Constitution, the Court examined whether it is in compliance with the substantive core of the Constitution.

Rule of law includes the principle of generality of legal norms (generality of the law), which protects the constitutional separation of powers and its application prevents arbitrariness in the administration of public affairs and decisions on freedom of individuals.

The subject matter of the referendum in question is contrary to the principle of generality of the law, because with the force of a constitutional law it would both

circumvent the constitutionally enshrined rules concerning the creation and functioning of the National Council as a constitutional and legislative body, and at the same time, it would violate the constitutionally enshrined manner of separation of powers, which is also part of the substantive core.

In violation of the Constitution and the principles of generality of legal norms and separation of powers, the referendum would in a single and specific case circumvent the constitutional articles according to which the term of the National Council is four years and the National Council may be dissolved by the President of the Republic. At the same time, the above-mentioned constitutional articles would remain in force; should the participatory quorum be met and the referendum result thus be binding, those articles would not apply only to a specific situation.

If the Court allowed such a breach of general constitutional rules, it would pave the way for such interferences to the constitution through which it would be possible to remove limitations protecting citizens from the abuse of state power. At any time, it would be possible to annul the decisions of state executive and judicial authorities, to interfere in their composition, to change their powers, as well as the established rules governing their activities and mutual relations. The constitutional order would no longer be an area guaranteeing freedom and autonomy of individuals through clear and predictable rules.

Under no circumstances does the Constitutional Court imply that the organizers of the referendum aimed to achieve the above-mentioned goals, but they must consider the consequences that the referendum results could have in the future. Without following rules, democracy ceases to exist.

Interference with the constitutionally determined length of the National Council's term of office through voting of citizens cannot be ruled out in the future. However, this instrument needs to be created in a prescribed way - by amending the Constitution to explicitly regulate such voting.