

SVK-2007-2-002

a) Slovakia / b) [Constitutional Court](#) / c) Senate / d) 29-03-2007 / e) III. ÚS 381/06 / f) / g) *Zbierka náleзов a uznesení Ústavného súdu Slovenskej republiky* (Official Digest) / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

- [01.06.05.02](#) Constitutional Justice - Effects - Temporal effect - **Retrospective effect (*ex tunc*)**.
- [01.06.05.04](#) Constitutional Justice - Effects - Temporal effect - ***Ex nunc* effect**.
- [01.06.09.01](#) Constitutional Justice - Effects - Consequences for other cases - **Ongoing cases**.
- [03.09](#) General Principles - **Rule of law**.
- [03.10](#) General Principles - **Certainty of the law**.

Keywords of the alphabetical index:

[Constitutionality](#), [principle](#) / [Law](#), [unconstitutional](#), application to ongoing cases.

Headnotes:

The substantive legal effects of a judgment to the effect that a legal provision is in conflict with the Constitution of the Slovak Republic are binding *ex tunc* for all parties to proceedings in individual cases which have not been finally adjudicated by the time of publication of the judgment on the conflict. To decide otherwise would be against the principle of the observance of constitutionality. It would also be an unacceptable interpretation of the principle of legal certainty.

Summary:

I. If a health insurance company in Slovakia delays paying healthcare facilities (e. g. pharmacy), it will be obliged *ex lege* to pay a fine to those facilities for the delay. Before 1 June 2003, the amount of this fine was set at 0,1 % of the principal per day. Changes to Act no. 138/2003 Coll. which came into effect from 1 June 2003, reduced the level of the fine to 0,01 % per day. In finding PL. ÚS 38/03, published in the Collection of Laws on 15 July 2004, the Constitutional Court held that the above reduction in payment for delay was in breach of the Constitution.

Under Section 41a.3 of the Law on the Constitutional Court, if certain legislation loses validity or effect as a result of a Constitutional Court finding, that does not lead to restoration of the legislation which was previously repealed by it. Where, however, the legal enactments in question are amendments, the "pre-amendment" wording of the legislation will be valid.

Under Section 41.2 of the Law on the Constitutional Court, a finding of the non-conformity of a legal enactment with another legal enactment having higher legal force or with an international treaty is to be published in the same way as laws are published. A finding is generally binding from the day of its publication in the Collection of Laws.

After the Constitutional Court finding, many proceedings were pending at ordinary court level, where plaintiffs were claiming against health insurance companies for payments of fines for delay. The period forming the basis for calculation of the sum representing the fine for delay included the period before as well as after 15 July 2004. In the period after 1 June 2003, the plaintiffs sought payment of an amount of 0,1 % per day because, they argued, Section 38.4 (the original provision) had been restored. The courts, however, between 1 June 2003 and 15 July 2004 adjudicated a fine in the amount of only 0,01 % per day. After 15 July 2004 they set the amount at 0,1 % per day, on the basis that abstract review findings of the Constitutional Court Plenum and restoration of enactments operate *ex nunc*.

The plaintiffs filed a constitutional complaint, alleging breaches of the rights to own property and to judicial protection.

II. One of the Constitutional Court's senates first rejected their complaint as patently ill founded, because it agreed with the ordinary courts' interpretation, but not all the senates shared this view. Acting upon Section 6 of the Law on the Constitutional Court, the Constitutional Court Plenum unified the divergent legal opinions. Thereafter, the 3rd Senate, for example, issued the following finding in line with the unifying decision of the Plenum:

The complainant (pharmacy) in this matter (III. ÚS 381/06) claimed that there had been a breach of its right to judicial protection, as the ordinary court had imposed a duty to pay a fine for the delay on the health insurance company and awarded the money to the pharmacy at the 0,1 % (higher) rate only after 15 July 2004. The Constitutional Court ruled that the regional (appellate) court should not have applied the invalid provision to the period after 1 June 2003. It should, instead, have applied the restored provision, under which the fine for delay was made at the 0,1 % rate.

The Constitutional Court based its decision upon the general principle of a democratic state governed by the rule of law, which comprises both the principle of constitutionality and that of legal certainty, enshrined in the Law on the Constitutional Court. The latter appears in the presumption of constitutionality of legal enactments. It is also significant that decisions which became final and no longer subject to appeal before 15 July 2004 (before the publication of the Constitutional Court abstract review judgment) might not be reopened, regardless of the fact that they were issued under regulations later pronounced unconstitutional by the Court. The principle of legal certainty is embodied by legislation in Sections 41b and 41.2 of the Law on the Constitutional Court.

The principle of constitutionality manifests itself in decision-making on the basis of laws (enactments) which are in conformity with the Constitution. In the Constitutional Court's view, Section 41a.3 of the Law on the Constitutional Court ensures the implementation of the principle of constitutionality in proceedings not yet finally adjudicated. To comply with the principle of constitutionality, the restoration of the prior legal enactment must be interpreted retrospectively *ex tunc* and not *ex nunc* in future in ongoing cases.

The Constitutional Court held that the regional court rendered its decision in the case in point under a regulation already devoid of force and validity. It thereby violated the complainant's right to judicial protection. The Constitutional Court overturned the regional court's decision, and referred the case back to the regional court for further proceedings.