

SVK-2016-3-003

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 18-11-2015 / e) PL. ÚS 5/2015 / f) / g) *Zbierka náleзов a uznesení Ústavného súdu Slovenskej republiky* (Official Digest), 18.11.2015, 49/2015 / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

[01.03.01](#) Constitutional Justice - Jurisdiction - **Scope of review.**

[04.07.14](#) Institutions - Judicial bodies - **Arbitration.**

Keywords of the alphabetical index:

[Arbitration](#), [court](#), [decision](#), [constitutional review](#).

Headnotes:

Courts of arbitration in the Slovak Republic, whose power to settle legal disputes is based solely on private agreements by parties to arbitration proceedings, do not possess the status of public authority notwithstanding the fact that their decisions are binding and enforceable. The Constitutional Court, before which only decisions or procedural measures taken by public authorities may be reviewed, therefore does not have jurisdiction over complaints against decisions or procedural measures taken by such courts.

Summary:

I. The proceedings commenced with a motion submitted to the Plenum of the Constitutional Court (hereinafter, the «Court») by one of its senates, which intended in its case to deviate from the Court's previous case-law regarding constitutional complaints against decisions or procedural measures taken by courts of arbitration. According to that case-law, the Court had the power to adjudicate on such constitutional complaints provided that no other legal remedy was available.

II. In its motion the said senate argued that in the legal framework of the Slovak Republic the courts of arbitration exercised their powers upon agreements by parties to arbitration proceedings, so their juridical powers were conferred on them exclusively by private entities, not by the state. For that reason the courts of arbitration did not have the status of public authorities, which generally exercise their powers without the consent of parties within their jurisdiction, and are permanent bodies established by law to discharge state powers.

The senate considered that the fact that decisions of the courts of arbitration were binding and enforceable did not run counter to the above-mentioned conclusion, since the legal quality of a decision itself did not necessarily define the nature of the body issuing this decision. Thus the legal system of the Slovak Republic recognises decisions of courts of arbitration as binding and enforceable, while it did not accord these courts public authority status. The same applies to private settlements signed before notaries, which are enforceable under certain circumstances, whereas parties to such settlements may not be deemed public bodies.

The senate went on to say that the relevant legislation gave ordinary courts the possibility of reviewing decisions or procedural measures taken by the courts of arbitration in specific,

exhaustively listed cases. In particular, ordinary courts might quash decisions of the courts of arbitration, if these decisions were in breach of public policy. As regards this judicial review, the senate emphasised that ordinary courts did not act as appellate courts, and consequently the courts of arbitration must not be considered as part of the judicial system. The role of the ordinary courts was strictly confined to overseeing whether certain aspects of the relation between parties to proceedings and a court of arbitration, which was of a contractual nature, were duly observed in the course of proceedings. In doing so, ordinary courts protected the minimum level set by law of procedural rights of parties to proceedings before the courts of arbitration. These statutory regulations also indicate that the responsibility for safeguarding justice in arbitration proceedings lies with ordinary courts rather than with the Constitutional Court.

Having established that the courts of arbitration were private entities, the senate reasoned that Article 127 of the Constitution, which stipulates the conditions for submitting constitutional complaints, was unequivocally interpreted as granting the Court the power to examine decisions, measures, or actions of public bodies only. It followed that the Court might not entertain complaints against the courts of arbitration.

For these reasons the senate asked the Plenum to issue a ruling which would determine that complaints against the courts of arbitration fell outside the scope of Article 127 of the Constitution.

The Plenum of the Court fully agreed with the arguments presented by the senate and held that the Court did not have jurisdiction over complaints against decisions or procedural steps of the courts of arbitration.

Supplementary information:

This decision of the Plenum is the outcome of specifically designed proceedings which may be commenced only by the senates of the Court, and are aimed at setting standards for the Court's ensuing case-law. The case itself remained to be dealt with by the respective senate, which subsequently rejected the constitutional complaint at a preliminary hearing.