



ÚSTAVNÝ SÚD
SLOVENSKEJ REPUBLIKY

YEARBOOK 2021



CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

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CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

FOREWORD BY THE VICE-PRESIDENT

♦
JUDr. Ľuboš Szígeti



Dear readers,

The year 2021, just like the previous one, was full of emergencies. We survived it without any significant improvement in the predictability of the evolution of the COVID-19 pandemic. Temporary easing of anti-pandemic restrictions alternated with more severe ones and this triggered both debate and tension in various areas of social life. In addition to verified information from reliable sources, the public was confronted with numerous misinformation sources concerning vaccinations, quarantine, the wearing of facemasks and digital COVID passes, some of which were stimulated by misinterpretation of decisions from the Constitutional Court.

The COVID-19 pandemic did not spare the Constitutional Court either; its functioning was however not fundamentally affected. Due to the great number of submissions (motions to commence proceedings), the variety of individual complaints, and thus the complexity of their processing, the judges of the Constitutional Court had to set a high work pace.

In 2021 the Constitutional Court delivered a number of decisions which had society-wide impact and were closely followed by the media.

In all these cases, the Court made a decision in reasonable time. Moreover, the constitutional judges also paid due attention to a significant number of cases in which individuals and legal entities sought a declaration that their fundamental rights and freedoms had been violated, most often by decisions of ordinary courts.

The Plenum of the Constitutional Court ruled on the merits in three cases related to the spread of COVID-19 (PL. ÚS 2/2021, PL. ÚS 8/2021 and PL. ÚS 4/2021). With regard to complaints from individuals and legal entities which fall within the competence of chambers, the Constitutional Court received 21 complaints concerning measures linked to the COVID-19 pandemic (49 fewer than in 2020). Twenty of these complaints were not admitted by the Constitutional Court for reasons of incompleteness or inadmissibility. Further cases are still pending.

In 2021 we redesigned the website of the Constitutional Court and made it more user-friendly. We are currently preparing a new, modern website which should improve the user experience for all those interested in the Court, and at the same time enable high-quality and secure streaming of press briefings organised by the Constitutional Court. We will also continue to publish the so-called extended press releases, which present and explain the decisions of the Constitutional Court immediately after the full Court's sessions in cases closely monitored by the media and members of the public.

The Court's decision-making activity itself remains our highest priority. Together with my colleagues, we focus in particular on the efficiency of our procedure, the speed of proceedings and the quality of decisions, especially in terms of unifying case law. We are also gradually succeeding in developing better computerisation of the Constitutional Court's work, in which we see great prospects. Thanks to all of the judges, we have been able to increase the number of cases handled year by year, even with a high volume of submissions. I would like to thank them for their highly professional and expert approach and their efforts throughout the year. At the same time, I would also like to express my gratitude to the staff of the Chancellery of the Constitutional Court, who create excellent conditions for our work.

JUDr. ĽUBOŠ SZIGETI
Vice-President of the Constitutional Court of the Slovak Republic

PLENUM
OF THE CONSTITUTIONAL
COURT OF
THE SLOVAK REPUBLIC



JUDr. IVAN FIAČAN, PhD.
President of the Constitutional Court of the Slovak Republic
from 2019



JUDr. ĽUBOŠ SZIGETI
Vice-President of the Constitutional Court of the Slovak Republic
from 2019



JUDr. JANA BARICOVÁ
Judge of the Constitutional Court of the Slovak Republic
from 2014



JUDr. LADISLAV DUDITŠ
Judge of the Constitutional Court of the Slovak Republic
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JUDr. LIBOR DUĽA
Judge of the Constitutional Court of the Slovak Republic
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JUDr. MIROSLAV DURIŠ, PhD.
Judge of the Constitutional Court of the Slovak Republic
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JUDr. PETER STRAKA
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JUDr. ROBERT ŠORL, PhD.
Judge of the Constitutional Court of the Slovak Republic
from 2020



JUDr. MARTIN VERNARSKÝ, PhD.
Judge of the Constitutional Court of the Slovak Republic
from 2019

DECISION-MAKING ACTIVITY OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

I. DECISIONS ON THE COMPLIANCE OF LAWS WITH THE CONSTITUTION OF THE SLOVAK REPUBLIC

PL. ÚS 6/2018 – SEPARATE OPINION OF A MEMBER OF THE JUDICIAL COUNCIL

On 10 May 2017, the National Council („parliament“) adopted an amendment to the Law on the Judicial Council, introducing the right for members of the Judicial Council to have their opinions expressed during a meeting published in writing together with the majority decision.

This amendment was challenged in proceedings before the Constitutional Court by the then President of the Judicial Council, according to whom the publication of members' own opinions was contrary to the provisions of the Constitution, which stipulate the method of voting by a majority of all members and enumerate the personal competences of the Judicial Council. Collective voting on personnel issues, in her view, precluded the submission of members' own opinions, and she stressed the need to maintain the secrecy of the vote.

The Constitutional Court did not accept these arguments because, according to the Court, the combination of the Judicial Council's personnel powers and the vote in the eighteen-member body does not in itself imply a prohibition on members expressing their own opinions. The Constitution does

not stipulate a secret ballot, nor does it imply such a requirement; it leaves that choice entirely to the National Council, which, moreover, in the meantime changed the statutory provisions and introduced a public ballot for the Judicial Council's decision-making. Moreover, separate opinions have been present in our legal system almost from the beginning, not only in the judiciary but also in other state bodies, including legislative ones.

The Judicial Council was established as a body with democratic and occupational legitimacy, composed of respected individuals in the legal field, and entrusted with scrutinising, shaping and legitimising of the general judiciary. With that in mind, the Constitutional Court does not expect it to make decisions collectively, but primarily to make expert and discursive decisions. In other words, the Constitution anticipates that the members of the Judicial Council express and specify their positions to each other and only vote based on this exchange of ideas. Separate opinions are one of the constitutionally permissible ways of reinforcing this important requirement of discursiveness. The Constitutional Court therefore rejected the motion.

PL. ÚS 25/2020 – OPENING THE SUPREME PROSECUTION POSTS TO OTHER LEGAL PROFESSIONS

On 2 September 2020, the National Council adopted an amendment to the Law on the Prosecution Service and the Law on Prosecutors. This brought a significant and, for some members of the public, controversial change in the office of Prosecutor General, i.e. the head of the entire prosecution service, and the Special Prosecutor, who heads a specialised office of the prosecution service in charge of prosecuting mainly organised crime and corruption. Until the adoption of the controversial amendment, only candidates from the ranks of prosecutors could run for both positions, but this change opened the possibility for other legal professions to run as well. However, candidates must meet a number of conditions, the most important of which is the requirement for fifteen years of professional experience.

The amendment was challenged before the Constitutional Court by a group of MPs and by the First Deputy to the Prosecutor General. They claimed violation of the rules of legislative procedure, in particular the repeated failure to comply with statutory time limits. The Constitutional Court acknowledged that there were some violations of the rules of legislative procedure, but in its view, these violations were not of such intensity as to be constitutionally unacceptable. The fundamental guarantees of proper legislative procedure in a state governed by the rule of law were respected. Despite the alleged faults, individual members of the National Council had the opportunity to comment on the draft law submitted to them.

Above all, however, the movants challenged the amendment at issue on the merits. The First Deputy disputed the fact that the

contested amendment did not expressly stipulate the creation of a prosecution service relationship in case a person who had not previously been a prosecutor was elected Special Prosecutor. As a result, that person would not have a prosecution service relationship and would be discriminated against compared to other prosecutors, since he would not benefit from the provisions of the law regulating the working conditions of prosecutors which are linked to that service relationship (e.g. leave, salary compensation for unused leave, severance pay).

The Constitutional Court acknowledged that the amendment at issue had this formal flaw, but did not see it as a violation of the prohibition of discrimination and the right to fair and just working conditions. The amendment at issue provides that if a person outside of the prosecution service is elected Special Prosecutor, they become a prosecutor of the general prosecution service upon taking the oath. The contested deficiency can therefore be overcome by interpretation in conformity with the Constitution, according to which, on taking the oath, they also become a prosecutor in service relationship together with all the employment benefits.

The movants saw the opening of supreme prosecution service posts to non-prosecutor candidates as interference with the independence of the prosecution service and its constitutional position, and thus a violation of the principle of separation of powers. The Constitutional Court did not agree with this argumentation.

Constitutional comparative law shows that different models of prosecution service are permissible in states governed by the rule of law. Similarly, our Constitution defines the prosecution service as the guardian of rights and interests of individuals and the State. It is led by the Prosecutor General appointed by the President of the Republic after nomination by the National Council. Its inclusion in Chapter Eight of the Constitution, together with the Public Defender of Rights, does not imply that it should be a closed and isolated system of bodies, which has no links to other public authorities and whose activities cannot be interfered with in any constitutionally compatible way.

The Constitution leaves additional regulation to the legislature. The National Council has a wide margin of discretion in determining the structure of the prosecution service, the exercise of its powers and the conditions for the Prosecutor General and other prosecutors.

The constitutional limits of this margin, in addition to the relatively strict text of the Constitution, are the principles of democracy, rule of law and the protection of fundamental rights and freedoms. However, these principles were not endangered by the contested amendment, and therefore the Constitutional Court rejected the motion.

PL. ÚS 14/2018 – ACCESS TO THE MINERAL OIL MARKET

On 11 October 2017, the National Council approved an amendment to the Law on Mineral Oil Consumption Tax introducing restrictions on entry to the mineral oil market consisting of a minimum annual sales volume of 30,000,000 litres per year for entrepreneurs already established on the market and minimum capital of 500,000 euros for new entrepreneurs. The previous regulation did not prescribe any similar restriction on market entry.

The disputed provisions were challenged before the Constitutional Court by a group of MPs, who argued that the disputed amendment created, without relevant reasons, significant inequality of competition, especially to the detriment of small and medium-sized entrepreneurs, for whom these conditions were liquidating and whose freedom to conduct business was consequently interfered with by the legislator. According to this group of MPs, it also facilitated the rise of oligopolistic or even monopolistic entities and thus endangered market principles.

Freedom to conduct business is a so-called second-generation human right and, under our Constitution, it can only be claimed within the limits of the laws implementing it, which may impose conditions and restrictions on the exercise of entrepreneurial activity. In this respect, the National Council has a wide margin of discretion as to how it regulates the business environment and what conditions and restrictions it imposes on entry to the market. However, this discretion is not limitless. While the legislator may restrict access to a particular market sector by imposing certain conditions, this must not strike at the very core of the freedom to conduct business, and the restrictions must pursue a legitimate aim capable of being achieved. The relative breadth of discretion that the legislator has in the case of second-generation rights is reflected in the fact that restrictions on those rights need not be strictly necessary or proportionate to the aim pursued.

According to the Constitutional Court, by setting a minimum annual sales volume as a condition for entering the mineral oil market, the National Council did not interfere with the very essence of the freedom to conduct business. However, as regards the existence of a legitimate aim pursued by the challenged amendment, no such aim could be recognized in the explanatory memorandum to the relevant provisions. The National Council's statement before the Constitutional Court indicated that the amendment was intended to prevent tax evasion and protect the environment, but it did not further substantiate its claims with any arguments or evidence that tax evasion was actually going on among a specific group of entrepreneurs. On that basis alone, the Constitutional Court concluded that the existence of a legitimate aim had not been established and that the contested provisions therefore constituted an infringement of the freedom to conduct business and were therefore unconstitutional.

In order to meet the requirement of a legitimate aim justifying an interference with a fundamental right, it is not sufficient to claim its existence, but it must also be demonstrated. A contrary approach would lead to the unacceptable conclusion that a legitimate aim is always present if the legislator or a party to proceedings before the Constitutional Court merely claims it, which would render the legitimacy test meaningless.

Moreover, the Constitutional Court noted that restricting the freedom to conduct business did not appear to be a reasonable means of combating tax evasion. In this case it had not been proved, and it was extremely unlikely, that any of the excluded group of entrepreneurs would be even partially in breach of their tax obligations. Even if the State could not collect the full amount of tax, its fiscal interests would be at least partially satisfied, which is certainly more economically favourable than no tax being collected at all as a result of elimination of certain entrepreneurs. The contested amendment was therefore found not suitable for achieving the aim pursued; on the contrary, it would have the opposite effect. Any shortcomings on the part of the State in the collection of taxes cannot be prevented by this means.

PL. ÚS 25/2019 – UNIQUE IDENTIFIER OF THE BUYER

A group of MPs challenged the provisions of the Law on Electronic Cash Registers, which, according to them, obliged entrepreneurs to collect and transmit many data related to both entrepreneurs and buyers to the Central Register of the Financial Administration Service (“inland revenue”). They specifically targeted the taxpayer identification number of the seller and the unique identifier of the buyer in their argumentation. From the data collected and transmitted, it would be possible to acquire information on the daily habits of specific buyers, their social status and financial means, their family life and their health, and even their religious beliefs, i.e. to generate an excessively accurate profile of the individual.

The Constitutional Court recalled that the purpose of the constitutionally recognised right to privacy is to prevent the public authorities from excessive intrusion in the conduct of an individual and from inappropriate control of their private life. This right is connected with the individual’s ability to live as they wish without unnecessary restrictions, orders and prohibitions, without the State commanding their way of life. The right to privacy includes the right to informational self-determination, i.e. the authority of the individual to decide what personal data the state, public authorities and others may collect, store and process.

The qualification of what constitutes personal data depends on what data the public authorities have already acquired and what possibilities they have at their disposal to collect further information. If a particular state authority processing some data is able to identify a specific individual with reasonable effort, given its

powers and the other information at its disposal, those data are classed as personal, even if they do not by themselves directly identify the individual.

This also applies to the unique identifier of the buyer. Although data such as a gym card number, a library card number or a loyalty card number in a clothing store do not directly identify any person, a public authority can identify a particular individual with little effort, and therefore the unique identifier of the buyer must be regarded as personal data.

The Constitutional Court concluded that collection and further processing of the buyer’s unique identifier did not pursue a legitimate aim. Even after months, the National Council and the Financial Administration Service failed to formulate the reasons behind collecting such data, even though the specific purpose of data collection must be apparent from the legislative process. Without a clear policy for their use established in the legislative process, it is impossible to speak of a specific purpose for processing personal data. The National Council may specify it either directly in the text of some legislation or in the explanatory memorandum. The State must be able to explain clearly the need for the data in question, and it is not enough to claim that it could need them in the future. In case the State fails to do so, such interference with privacy cannot be accepted as constitutional, which is why the Constitutional Court declared the collection of the buyer’s unique identifier itself unconstitutional.

However, the Constitutional Court rejected the motion in the part where it challenged the constitutionality of the provision permitting the collection and processing of the seller’s taxpayer identification number, but restricted its application by setting the limits of interpretation in conformity with the Constitution. It allowed the processing of such data strictly within the Financial Administration Service, and only for verification of compliance with the Law on Electronic Cash Registers. The Court prohibited its transmission to other authorities and its use for automated risk assessment of entrepreneurs, as there was a lack of sufficient legal basis and no guarantees regarding the quality of supervision of this processing.

PL. ÚS 8/2021 – PUBLICATION OF PUBLIC HEALTH AUTHORITIES’ REGULATIONS

On 14 October 2020, the National Council adopted an amendment to the Law on Protection of Public Health, changing the status of regulations issued by public health authorities and the manner of their publication. From the first days of the COVID-19 pandemic in Slovakia in March 2020, the public health authorities started announcing a variety of measures to prevent the spread of the virus. According to the case law of the Constitutional Court, these measures were hybrid administrative acts reviewable be-

fore administrative courts, based on the then effective Law on the Protection of Public Health.

The amendment in question changed their legal nature. Since its entry into force, the public health authorities issue these measures in the form of regulations published in the Government Gazette, i.e. in the form of normative acts. According to a transitional provision, the measures binding at the time of the entry into force of the amendment were considered regulations under the new legal regime until their repeal or for a maximum period of 15 days.

This new legislation on public health authorities' regulations was challenged before the Constitutional Court by the Prosecutor General, who claimed that the method of publication of these regulations in the Government Gazette was unconstitutional, as it was impossible to review them in proceedings on conformity of laws before the Constitutional Court. He also challenged the retroactive effect of transposing the content of previous measures into the newly-established regulations.

The Constitutional Court did not agree with this argumentation and rejected the Prosecutor General's motion in its entirety. Article 123 of the Constitution is the fundamental constitutional standard for assessing whether the promulgation of public health authorities' regulations in the Government Gazette is constitutional. According to this article, "ministries and other state bodies may, based on and within the limits of laws, issue generally-binding legal regulations if they are empowered by law. Such generally-binding legislation is promulgated in a manner prescribed by law. Public authorities may, on the basis of a statutory mandate, issue generally-binding legal regulations which must be promulgated in a manner prescribed by law".

According to the Constitutional Court's findings, public health authorities, as required by Article 123, are government bodies established by law and empowered to issue regulations. Regulations are promulgated in a manner prescribed by the Law on Protection of Public Health, i.e. publication in the Government Gazette. The publication of regulations in the Government Gazette is in line with the rule of law, because the regulations are both formally and practically accessible to their addressees. The contested provision of the Law on the Protection of Public Health is therefore consistent with the reference standards of the Constitution, which lay down the conditions for issuing generally-binding legislation by state bodies.

Similarly, the Constitutional Court confirmed its previous jurisprudence according to which regulations of other state bodies, and thus also regulations issued by the Public Health Authority as a decentralized state administration body with nationwide competence as well as regional public health authorities, are reviewable in proceedings on the compliance of laws before the Constitutional Court.

Finally, the Constitutional Court held that the temporary transposition of the content of public health authorities' measures issued before 15 October 2020 into newly-adopted regulations in the interests of continuity of legislation did not have negative retroactive effects on the addressees of the measures. In fact, it did not follow from the amended provisions of the Law on the Protection of Public Health that the new legal regime should apply retroactively and the old measures should be regarded as regulations from the beginning. Moreover, the contested provisions no longer had any legal effect. The transitional provision under review therefore did not violate the non-retroactivity principle.

PL. ÚS 4/2021 – SELF-ISOLATION AND QUARANTINE MEASURES

During the first wave of the COVID-19 pandemic in the spring of 2020, public health authorities adopted a number of measures to prevent the spread of the virus, including quarantine in state facilities for people returning from abroad. A number of individuals who were forced to undergo quarantine and spend several weeks in health facilities, and who were subsequently invoiced for these stays, submitted their complaints to the Public Defender of Rights.

Subsequently, in proceedings before the Constitutional Court, the Public Defender of Rights challenged a number of provisions of the Law on the Protection of Public Health, which served as the legal basis for the Public Health Authority to place individuals in quarantine. Her arguments could be divided into three groups.

Firstly, the Public Defender of Rights considered the provisions of the Law on Protection of Public Health authorising the Ministry for Health and public health authorities to adopt "additional measures prohibiting or imposing further activities within the extent and time necessary" in the event of a threat to public health, as being vague and unpredictable. The provisions did not include the necessary guarantees for protection of individuals against arbitrary interference with their fundamental rights by the executive power, which contradicts the constitutional requirement that only the legislator can set limitations on the use of restrictions on rights. The Constitutional Court agreed with the movant's argumentation and allowed this part of the motion.

Secondly, the Public Defender challenged the provisions empowering the public health authorities to impose "self-isolation at home or in a medical or other designated facility" and "quarantine measures". She considered them as being a form of deprivation of liberty and therefore objected to the absence of an obligation to inform individuals of the reasons for the deprivation and the possibilities of judicial protection. Subsequently, the Public Defender also claimed the absence of effective judicial protection as initiated by the persons concerned, based on which any court would be obliged to act swiftly and would have the power to order the immediate release of persons.

Firstly the Constitutional Court addressed the question of whether the measures issued by the public health authorities constituted deprivation of liberty. In the case of self-isolation at home, the Court concluded that, due to the lower degree of social isolation and above all the lower level of supervision, the restriction did not amount to deprivation of liberty, and therefore it rejected this part of the motion.

However, this did not apply to quarantine in a medical or other designated facility, where there was already a higher degree of social isolation and a higher level of supervision, compounded by the fact that the individuals were kept away from their homes, and therefore these measures constituted deprivation of liberty. Because of the insufficient, almost tautological legal definition of quarantine measures, it was not possible to exclude equally severe interference with personal liberty, and therefore the Constitutional Court considered quarantine measures to be deprivation of liberty and allowed this part of the motion due to the lack of safeguards against abuse of executive power.

However, this conclusion did not mean that the Constitutional Court would consider so-called state quarantine to be an unacceptable imposition in all circumstances. It was, however, a serious interference with fundamental rights justified only if less severe measures had been carefully and demonstrably considered and assessed as insufficient, while at the same time all the safeguards against abuse of power required by the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms were respected. Under these safeguards, any person deprived of liberty must be informed promptly and clearly, even if verbally, of the reasons for the deprivation of liberty and of the possibility of judicial review. The person concerned must be able to initiate such judicial protection in due time and the relevant court must consider itself bound to decide swiftly, and must be empowered, if the conditions for deprivation of liberty are not met, to order the immediate release of the person concerned. The law must also lay down the maximum time limit for such deprivation of liberty and provide for an effective review mechanism to assess periodically the existence of grounds for deprivation of liberty. In the Court's opinion, the contested provisions did not fulfil those conditions.

Lastly, the third group of challenged provisions stipulated that the costs incurred in the performance of duties in connection with the protection of public health were to be borne by the person who was obliged to undergo them. The movant saw a disproportionate interference with the fundamental right to property and, by implication, with other fundamental rights and freedoms. The Court carried out a proportionality test, taking into account that the contested provision imposed an obligation to reimburse the costs actually incurred, as well as the fact that the person undergoing the obligations referred to therein would bear them even if the contested provisions did not form part of the Law on the

Protection of Public Health. It concluded that the obligation arising therefrom was in conformity with the Constitution. Moreover, both the legal order and the Constitutional Court's judgment eliminated the risk of disproportionately high costs.

II. DECISIONS ON THE ADMISSIBILITY OF A REFERENDUM

PL. ÚS 7/2018 – REFERENDUM ON THE DISSOLUTION OF NATIONAL COUNCIL?

In what was undoubtedly its most widely observed and debated judgement last year, the Constitutional Court for the second time in its history addressed the admissibility of a referendum. The initiators of the referendum managed to collect more than the required number of signatures of eligible voters. They pursued a referendum on "shortening the 8th term of the National Council of the Slovak Republic so that elections are held within 180 days from the announcement of the results of this referendum". In essence, they intended to call for a popular vote on the dissolution of National Council.

The constitutionality of this referendum was challenged by the President of the Slovak Republic with a motion in which she questioned its compliance with several articles of the Constitution and constitutional principles. In particular, she referred to the principle of government for a fixed period and the constitutional regulation of the termination of a deputy's mandate, the principles of legality, legal certainty and the generality of law, the right to free vote and to run for public office in elections. At the same time, the President expressed doubts about the legal force of the referendum result, which has been the subject of disputes among Slovak constitutional law experts for decades due to the ambiguity of the constitutional regulation of referendums. As a result, the President along with the expert and lay public expected the Constitutional Court to decide whether the referendum could be used as a popular vote on the dissolution of the National Council and to determine the legal force of the referendum result and its place in the constitutional order of the Slovak Republic in general.

First of all, the Constitutional Court considered the overall nature of the referendum in the Slovak legal order. Based on the provision of the Constitution, according to which only a constitutional law or a new referendum may change the result of a referendum after three years at the earliest, it concluded that the result of a referendum is a legal norm with the legal force of a constitutional law. The Constitutional Court concluded, considering that Chapter 5 of the Constitution regulating the legislative power is divided into two equivalent sections on the National Council and the institution of referendum, that these are equivalent ways of exercising legislative power and therefore that a referendum can be used to amend the Constitution directly.

However, there is no doubt in constitutional legal theory that any exercise of state power, even directly by the citizens in a referendum, is subject to the limitations of the Constitution.

While a referendum may change the Constitution, it cannot negate it, nor can it violate the nature of the Slovak Republic as a democratic state based on the rule of law.

The substantive core of the Constitution protects the Constitution against these detrimental amendments adopted by referendum. This substantive core is formed from the most important constitutional values including fundamental rights and freedoms and the principles of a democratic state governed by the rule of law. In assessing the compliance of the referendum question with the Constitution, the Constitutional Court examines whether the referendum question undermines the substantive core of the Constitution.

It follows from the case law of the Constitutional Court that one of the principles of the rule of law is the generality principle, according to which legal norms do not deal with one specific case, but regulate an indefinite number of cases of the same kind. The principle of separation of powers is also part of the substantive core of the Constitution and it forbids the reversal of the separation of powers through overlapping of specific types of power or the exercise of power beyond the limits of the Constitution. In a referendum, the citizens exercise legislative power resulting in a normative act with the legal force of a constitutional law, and they cannot exceed the limit on the exercise of legislative power.

The referendum question in this case was considered as being contrary to both the generality principle and the principle of separation of powers. Formally, with the force of a constitutional law, in one particular case it would bypass the rules enshrined in the Constitution concerning the creation and functioning of the National Council as a constitution-making and legislative body. According to the Constitution, the term of the National Council is four years, and at present, only the President of the Republic has the power to dissolve the National Council under precisely-defined conditions.

Therefore, a popular vote on the dissolution of the National Council would not establish any legal norm, as required by the constitutional provision on referendums. It would ultimately decide on the dismissal of a particular composition of the National Council, i.e. it would not be a normative act, but an individual one.

The Constitution also explicitly prohibits referendums on fundamental rights. One such right is the right of every citizen to stand in elections to the National Council under the conditions laid down by the Constitution and the law. If elected, individuals can exercise this right under predetermined conditions and for a

predetermined term of office, while the deputy's mandate may be terminated only under circumstances laid down by the Constitution. However, the Constitution does not provide for the dissolution of the National Council by popular vote.

According to the Constitutional Court, it is not impossible that in the future, just as the Constitution allows for a popular vote on the impeachment of the President of the Republic under certain circumstances, to allow for a popular vote on the dissolution of the National Council. However, it would require an amendment to the Constitution explicitly introducing this possibility.

III. DECISIONS ON CONSTITUTIONALITY OF THE STATE OF EMERGENCY

PL. ÚS 2/2021 – PROLONGATION OF THE STATE OF EMERGENCY

In the midst of the second wave of the COVID-19 pandemic in late December 2020, the National Council amended the Constitutional Law on State Security to allow the government to prolong repeatedly the state of emergency for a maximum of 40 days on each occasion. The new regulation introduced a requirement of subsequent approval by the National Council within 20 days at the latest. The government took immediate advantage of this new regime and prolonged the state of emergency declared at the end of September 2020 by 40 days and then repeated it three times before the end of spring 2021.

The Prosecutor General and a group of MPs challenged a government resolution of 17 March 2021, which introduced a curfew with specified exceptions, in proceedings before the Constitutional Court. They argued, in particular, that the government's ordinance failed to justify the necessity of extending the state of emergency and the measures taken, that the nationwide testing being a condition for certain exemptions from the curfew could not be considered voluntary, and they also questioned its effectiveness and legal basis. The movants also questioned the necessity of the ban on recreational trips abroad and the curfew's legal basis.

The Constitutional Court rejected the motion and ruled that the state of emergency had been extended in accordance with the Constitution. It acknowledged that the ordinance itself did not contain an explanatory memorandum clarifying the necessity of extending the state of emergency and the introduction of the relevant measures. However, the Court considered sufficient that the draft resolution had been discussed in detail by the government's pandemic commission and that the government had relied on detailed and high-quality expert documents adequately justifying the necessity of both the extension of the state of emergency and its duration and the measures to be taken.

As regards the arguments challenging the necessity of an absolute ban on recreational trips abroad, the Constitutional Court did not accept them either. The government considered more lenient measures, such as a ban applicable only to certain countries and compulsory state quarantine on return, but were found to be insufficient taking into consideration the data on the epidemic situation in Europe and neighbouring countries. The Constitutional Court therefore did not find any reasons contesting the proportionality of the ban on recreational trips abroad.

The Constitutional Court accepted the argument that if nationwide testing was a condition for engaging in various activities which constituted exceptions to the curfew, then the testing could not be considered voluntary. On the other hand, it disagreed with the Prosecutor General that it constituted an interference with physical integrity, because the testing was one part of a set of rules restricting freedom of movement and residence. The government introduced nationwide testing in order to ease the curfew by providing for exceptions, and several of the exceptions were not even conditional on a negative test. The Constitutional

Court therefore concluded that the government had satisfied the requirement of necessity by setting exceptions to the curfew.

Finally, the Constitutional Court did not agree with the argument challenging the legal basis of the curfew. The Prosecutor General argued that, following the aforementioned amendment to the Constitutional Law on State Security of December 2020, the latter already explicitly stipulated the possibility of a curfew during the state of war and state of alarm. In the case of a state of emergency, it mentioned only restrictions on freedom of movement, which led the Prosecutor General to conclude that a curfew could no longer be declared during a state of emergency. The Constitutional Court, however, understood from the explanatory memorandum of the amendment in question the opposite intention of the legislator, i.e. to maintain the possibility of declaring a curfew and at the same time making it possible to adopt more lenient restrictions on the freedom of movement.

IV. DECISIONS ON CONSTITUTIONAL COMPLAINTS

III. ÚS 199/2020 – PURPOSE OF JUDICIAL REVIEW OF COMPULSORY HOSPITAL ADMISSIONS

The complainant was admitted to a psychiatric ward late in the evening. The following day the psychiatric ward notified the regional court on the absence of written consent and that the complainant was suffering from a mental disorder which poses a danger to herself and others. A judicial clerk, who interviewed the doctor and the complainant as well, reviewed the complainant's situation. He learned that the complainant was unable to under-

stand the purpose of court proceedings; however, her brother was interested in her situation.

On the same day, the court appointed a judicial clerk of the regional court as the complainant's guardian instead of a member of her family, on the grounds that there was an imminent risk of missing procedural time limits. The regional court ruled that the hospital admission was acceptable, and apart from quoting the statutory provisions, it merely transcribed the facts ascertained from the doctor's interview.

The Constitutional Court criticized a number of serious errors on the part of the district court. It was not at all clear from the order whether the interviewing doctor was the complainant's treating doctor, which specific mental disorder the applicant was supposed to be suffering from, or why she was deemed to be a danger to herself or other people. The district court had made no attempt to communicate with the complainant and did not serve her with the order even after she expressly requested it, effectively depriving her of her right to appeal. Moreover, this unacceptable formalistic approach was reflected in the fact that the district court made no attempt to appoint a relative as guardian, even though it was aware that the applicant's brother was interested in her condition.

III. ÚS 472/2020 – PRELIMINARY ENFORCEABILITY OF JUDGMENTS ON CHILD SUPPORT

The complainant was ordered by judgment to pay both regular child support from the date of validity of his divorce, as well as child support to create savings for minor children, which was bound to the validity of the judgment on child support. Since the complainant appealed against the judgment on child support, it became valid after the decision of the appeal court.

At the same time, however, distraint proceedings were brought against him in the case of creating savings for the period from the service of the first-instance judgment until the final judgment of the appeal court. The distraint court did not accept the complainant's argument that he did not have a debt. The complainant argued that the court had only ordered him to pay child support for savings from the moment the judgment became final, and he had been complying with that obligation since then. The court referred to the provision according to which judgments ordering payment of child support are enforceable from the moment they are served.

The Constitutional Court disagreed with the interpretation of the distraint court and declared a violation of the complainant's right to a fair trial. Although the relevant procedural rule provides that "child support judgments are legally enforceable from the moment they are served", the Constitutional Court considered that this provision could not be interpreted in a purely literal manner

and in isolation from other provisions of the legal order.

As follows from the explanatory memorandum, the purpose of preliminary enforceability of child support judgments is the timely fulfilment of urgent material needs in family law relationships. There is an unquestionable logic to such preliminary enforceability in the case of ordinary child support, which serves the urgent material needs of dependent family members, since otherwise those material needs could potentially be jeopardised by a long wait for a final judgment.

However, the case is different for the supplementary type of child support, such as savings. According to the Law on the Family, if the court concludes that the obligor parent is able to pay more than the minor child actually needs, it may order that parent to transfer a certain amount of money to a special account, where the money will be deposited for the purpose of building up savings, and its use is subject to the court's approval. According to the Constitutional Court, the creation of savings does not correspond to the purpose of preliminary enforcement; therefore, the court-ordered obligation to pay child support for the creation of savings is not covered by the provision on preliminary enforcement.

I. ÚS 374/2020 – ILLEGAL EVIDENCE AND THE OVERALL FAIRNESS OF CRIMINAL PROCEEDINGS

The complainant, together with two other persons, was arrested in possession of methamphetamine and a search of his person and home was carried out, during which, in addition to the methamphetamine, a mobile phone and typical equipment of a drug dealer were found in his possession. He had been questioned as a suspect on the same day, and it had already emerged from his statement that he had been buying the drug regularly over a period of approximately one year.

He was subsequently charged and re-interviewed twice under caution. All three of these interrogations took place without the presence of a defence counsel, as the complainant waived that right. However, this was made possible by the fact that the police officer had classified the offence as a crime punishable with imprisonment lasting from three to ten years, even though the evidence adduced at the time already indicated that a more severe penalty should be applied, which required mandatory defence under the law. In the course of the pre-trial proceedings, the offence was eventually reclassified to this more severe penalty.

The Constitutional Court acknowledged that in the proceedings before the district court the complainant's procedural rights had been violated due to illegal evidence taken during the police interrogation, which should have been excluded by the court. According to the Constitutional Court, however, this was not sufficient

to conclude that his constitutional right to judicial protection had been violated, since what is relevant is whether the criminal proceedings as a whole were fair.

The Constitutional Court first explained in detail the criteria for assessing whether criminal proceedings are fair as a whole. It was specifically necessary to take into account whether the accused was in a particularly vulnerable position (due to his age or mental state), whether he had the opportunity to challenge the reliability and use of the evidence obtained, the quality of that evidence, whether the circumstances of its acquisition cast doubt on its reliability and accuracy, taking into account the existence, nature and degree of coercion, if any, on the part of the law enforcement authorities, the manner in which the illegally-obtained evidence was used, in particular whether it formed a substantial or significant part of the incriminating evidence, as well as the probative force of the other evidence, the weight of the social interest in the investigation and punishment of the offence in question, and other procedural safeguards of the applicant's rights.

In the present case, the key criterion was whether the illegal evidence constituted a substantial part of the incriminating evidence. The Constitutional Court found that the criminal courts had not based the complainant's conviction on the illegal interrogations to a significant extent. They had based the conviction on the complainant's other statements, witness statements, the quantity of drugs and other equipment seized, the phone records and text messages, which together sufficiently demonstrated the purchase, possession and onward distribution of methamphetamine over a prolonged period. The Court therefore did not uphold the constitutional complaint and added that it did so exceptionally and that this rejection should not be understood as an endorsement of the unlawful practices of the courts and law enforcement authorities.

III. ÚS 21/2021 – LIABILITY FOR INJURY CAUSED TO A FOOTBALL PLAYER

In a football match, physical contact between the complainant and a teammate during a collision with the ball caused the latter to suffer a double fracture of his leg. The teammate claimed damages from the complainant, which were partly awarded. The courts considered crucial that the referee assessed the complainant's tackle as a foul and held up a yellow card.

The interpretation of liability for damages applied by the courts was questioned by the complainant and raised an interesting legal question as to whether the mere breach of the rules of sport automatically implies a breach of the duty to "act in a way to avoid health damage", as required by the Civil Code. According to the Constitutional Court, it does not. The interpretation of the general courts in this case was considered constitutionally unsustainable.

There is no doubt that playing football, like any sport activity characterised by competitiveness and a degree of physical interplay between players in order to achieve a favourable match result, poses an inherent risk to the physical integrity of the players. Indeed, football is a sport in which physical contact takes place even during properly and legitimately organised competition. In the course of the game, all of the players are exposed to a number of personal clashes in which they come into contact with parts of their opponents' bodies, and every player must be aware of the risk of injury. In other words, entering a match automatically implies an understanding of what can happen in the heat of battle.

The special nature of football forces players to consider possible opportunities and risks in a split second. This places high demands on their physical and mental strength, speed, agility and physical commitment, as a struggle for the ball quite routinely creates situations that draw the spectator's eye. Fighting for the ball also brings unpleasant encounters, which may involve violations of the rules of the game. However, these are not uncommon and football has established standard mechanisms by which rule violations are dealt with.

Therefore, a breach of the rules of the game (even involving a yellow card) cannot in itself be sufficient to establish liability for the injury caused, but it will be crucial whether there is a functional relationship between the conduct and the game. This functional relationship is excluded if the violence or the severity of the play reaches a level that is incompatible with the nature of the sport, the circumstances of the particular match or the nature of the participants. In the complainant's case under consideration, although there was a breach of the rules of the game, the intervention used appeared to be functionally related to the objective of the game, i.e. it was not an excess that would be unusual in football. It must be borne in mind that entry into a sporting arena conditioned by fear of possible civil sanctions would ultimately attack the very essence of sport and, in an extreme case, destroy the beauty of sport as such.

III. ÚS 561/2021 – ROADSIDE CHECKS AND TIMELY ADVICE ON RIGHTS

The complainant was driving a motor vehicle in the evening and was stopped by a police patrol as part of a routine roadside check because he failed to signal a change of direction when turning. During a document check and breathalyzer test for alcohol, a member of the patrol smelled the odor of marijuana coming from the vehicle, which he informed his colleague about. Acting on the suspicion that the complainant was committing a drug offense, the officer asked the complainant to present the essential car equipment, giving the impression that he was carrying out a routine roadside check as well as investigating a traffic violation. During this check, the patrol officers noticed two foil packages pos-

sibly containing marijuana in the passenger door compartment, and asked the complainant to submit them. The latter submitted them and signed a report. It was only at this point that he was notified of being a criminal suspect and was advised on his rights, particularly the right not to self-incriminate. Subsequently, he was charged and taken into custody. In his constitutional complaint, he claimed that he was not informed of his procedural status and his rights on time, which made the evidence gathered against him unlawful.

The Constitutional Court agreed with this reasoning. It stressed that the prohibition of self-incrimination is a constitutional principle which is intended to protect the accused against unjustified pressure from state authorities and thus contribute to ensuring a fair trial. The public interest in the detection, prosecution and punishment of the offender cannot justify any practice which interferes with the very essence of the accused's right to defence, including the right not to be forced into self-incrimination. It is therefore important that, before asking a person to submit an item, the police officer advises them of their right not to self-incriminate, and that they are under no obligation to submit the item if, by submitting it, they would put themselves in danger of prosecution.

If a police officer becomes convinced that it is necessary to convert a routine traffic check into a search for drugs, they undoubtedly have that option. However, all necessary procedural safeguards must be complied with, including the instruction of the person(s) involved on their right to remain silent. The complainant should have been advised on his rights and, in particular, of the prohibition of self-incrimination from the very first arousal of the suspicion of drug usage.

The Constitutional Court referred to the "fruit of the poisonous tree" doctrine, i.e. that all evidence that has been obtained illegally, whether obtained directly or indirectly as a result of an illegal search, is not admissible and must be excluded. Since the illegal evidence in question in the present case was crucial to establishing the complainant's guilt, the Constitutional Court had to declare a violation of his constitutional rights and order his release from detention.

STATISTICAL DATA ON THE DECISION- MAKING ACTIVITY

NUMBER OF SUBMISSIONS DELIVERED TO THE CONSTITUTIONAL COURT IN 2021 2 643

PLENUM	23
Proceedings on conformity of legal regulations under Art. 125 of the Constitution	20
Proceedings on conformity of legal regulations under Art. 125b (1) of the Constitution	1
Proceedings on conformity of legal regulations under Art. 129 (6) of the Constitution	2
CHAMBERS	2 620

NUMBER OF SUBMISSIONS PROCESSED BY THE CONSTITUTIONAL COURT IN 2021 2 942

PLENUM	23
Proceedings on conformity of legal regulations under Art. 125 of the Constitution	20
Proceedings on conformity of legal regulations under Art. 125b (1) of the Constitution	1
Proceedings on conformity of legal regulations under Art. 129 (6) of the Constitution	2
CHAMBERS	2 919

PENDING SUBMISSIONS AS AT 31th DECEMBER 2021 1 299

SUMMARY OVERVIEW

Submissions	Plenum	Chambers	Altogether
Pending submissions as at 31st December 2020	31	1 567	1 598
Delivered in 2021	23	2 620	2 643
Decided in 2021	35	2 919	2 942
Pending submissions as at 31st December 2021	31	1 268	1 299

AS AT 31 DECEMBER 2021, THE CONSTITUTIONAL COURT HAD THREE SUBMISSIONS STILL PENDING FROM 2017.

CHAMBERS

1

PLENUM

2

SUMMARY OVERVIEW

Year	Pending submissions - Plenum	Pending submissions - Chamber	Altogether
2017	2	1	3
2018	5	2	7
2019	5	42	47
2020	4	239	243
2021	15	984	999
TOGETHER	31	1 268	1 299

THE PROTOCOL AND INTERNATIONAL ACTIVITIES OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

in 2021

The COVID-19 pandemic continued in 2021, and it was marked by cancelled and postponed international activities. However, one positive aspect of the situation was that modern means of communication and platforms such as zoom and webex were also widely used internationally.

The activities of the Department focused on the translation of European case law and opinions of the Venice Commission, the organisation of the Constitutional Days Conference for the first time in an online format, as well as the preparation of protocol receptions, of which there were several, despite the pandemic situation.

On 22 February, the President of the Constitutional Court Ivan Fiačan received the new President of the Slovak Bar Association Viliam Karas at the premises of the Constitutional Court of the Slovak Republic in Košice. The two Presidents, together with the Vice-Presidents of the Slovak Bar Association Tomáš Illeš and Ondrej Laciak, discussed topics such as the quality of motions filed by attorneys, the digitalization of the activities of the Constitutional Court of the Slovak Republic, and other issues related to the judiciary.

On 24-25 February, the President of the Constitutional Court Ivan Fiačan attended the Congress of the Conference of European Constitutional Courts (CECC), which was held online for the first time in its 17-year history, as it was postponed twice due to the pandemic. It was therefore held virtually and streamed live, with pre-recorded speeches by foreign speakers. The President of the Constitutional Court delivered a speech entitled *"Specifics of the National Catalogue of Human Rights of Slovakia and the historical development of its application in the case law of the Constitutional Court of the Slovak Republic"*. Speakers at the Congress included the President of the European Commission for Democracy through Law (Venice Commission), the President of the Court of Justice of the European Union, the President of the European Court of Human Rights, the President of the Constitutional Court of the Federal Republic of Germany, the President of the Constitutional Court of the Republic of Austria, and of course the host, the President of the Constitutional Court of the Czech Republic, Pavel Rychetský.

Judges of the Constitutional Court Jana Baricová and Peter Molnár, as representatives of the Slovak Republic in the European Commission for Democracy through Law (Venice Commission), participated in plenary sessions online throughout 2021. The plenary sessions took place in March, July, October and December. The October plenary session also included a discussion with the Minister for Justice of the Slovak Republic Maria Kolíková on issues related to the organisation of the legal profession in the Slovak Republic and the role of the Supreme Administrative Court of the Slovak Republic in disciplinary proceedings against lawyers. The December plenary session resulted in the appointment of a new President of the Venice Commission, Claire Bazy-Malaurie, Judge of the Constitutional Council of France, who replaced Gianni Buquicchio from Italy, the long-standing President of the Venice Commission.

On 1 April, the President of the Constitutional Court took part in the ceremony of appointing the members of the new Government of the Slovak Republic, which Eduard Heger has been entrusted with forming. The ceremonial constitutional act took place in the Great Hall of the Presidential Palace in Bratislava.

The Supreme Administrative Court of the Slovak Republic was established within the framework of the reform of the judiciary as the highest authority in matters of administrative justice. It was established with effect from 1 January 2021 by Constitutional Law No. 422/2020, with the commencement of its activities on 1 August 2021. The first-ever President of the Supreme Administrative Court of the Slovak Republic, Pavol Naď, was inaugurated in the post by President Zuzana Čaputová on 18 May, also in the presence of the President of the Constitutional Court.

On 19 May 2021, the President of the Constitutional Court met with the President of the Constitutional Court of Hungary, Tamás Sulyok, and the President of the Constitutional Court of Austria,

Christoph Grabenwarter, at a working lunch in Pannonhalma, Hungary. The meeting was a continuation of previous friendly contacts between the Presidents of these Courts, and took place this time at the invitation of the President of the Constitutional Court of Hungary. The topics of the talks included the decision-making activities of the Constitutional Courts during the COVID-19 pandemic and the current situation in the European judiciary.

On 11 June, the President of the Constitutional Court participated in the Conference of Barristers 2021, and in his speech he emphasised the importance and significance of the exercise of the constitutional right of natural persons and legal entities to legal aid. He discussed with the heads of the Slovak Bar Association the decision-making activity of the Constitutional Court and the quality of constitutional complaints filed at the Constitutional Court by natural persons and legal entities, which constitute a significant part of the Constitutional Court's work, as well as the need to educate attorneys further in this area.

On 2 July in Košice, the President of the Constitutional Court hosted the French Ambassador Christophe Leonzi, the Counselor for Cooperation and Cultural Activities of the French Embassy and Director of the French Institute in Slovakia Jean-Marc Cas-

sam-Chenai, and the Attaché for Scientific and University Cooperation, Yann Pautrat. At the working meeting, they jointly discussed the re-establishment of contacts with the French Constitutional Council (Conseil constitutionnel) with a view to organising a joint French-Slovak seminar on constitutional law and the rule of law, and the possibilities of cooperation with the French Council of State (Conseil d'Etat) in connection with the establishment of the Supreme Administrative Court of the Slovak Republic.

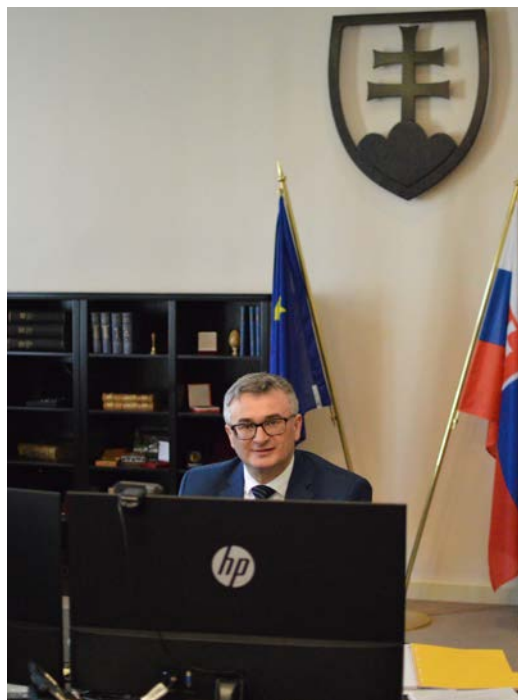
On 20 July and 26 August 2021, the Vice-President of the Constitutional Court Ľuboš Szígeti participated in the ceremonial act of inaugurating judges of the Supreme Administrative Court of the Slovak Republic by the President of the Slovak Republic in Bratislava. On 12 October, he also attended the inauguration ceremony of the Deputy President of the Supreme Administrative Court of the Slovak Republic, Marián Trenčan.

On 2-3 September, an online conference was held in Riga under the patronage of the President of the Court of Justice of the European Union, Koehn Lenaerts, entitled "United in Diversity: amidst common constitutional traditions and national identities", which was attended by Ladislav Dudíť, Judge of the Constitutional Court.

President of the Slovak Bar Association Viliam Karas and the President of the of the Constitutional Court of the Slovak Republic Ivan Fiačan



President of the Constitutional Court of the Slovak Republic Ivan Fiačan attending the XVIIIth Congress of the Conference of the European Constitutional Courts



On 20 September 2021, the President of the Constitutional Court received Nigel Baker, the British Ambassador to Slovakia in Košice. During the working meeting, they discussed in particular the tasks and competences of the Constitutional Court of the Slovak Republic, the relations between the Constitutional Court and the subjects of legislative, executive and judicial power, as well as possibilities of mutual cooperation.

On 28 September 2021, the Constitutional Court of the Slovak Republic in cooperation with the Faculty of Law of Pavol Jozef Šafárik University in Košice organised the 10th international academic conference “Constitutional Days” entitled “Fundamental Rights and Freedoms and their Protection in the State of Emergency and Other Special Legal Regimes – 10th Constitutional Days”. Due to the pandemic situation, it was necessary to organise the conference in online format. Inspired by the organisation of the CECC online congress, we invited and received pre-recorded speeches from Laurent Fabius, President of the Constitutional Council of France, Pavel Rychetsky, President of the Constitutional Court of the Czech Republic, and Tamás Sulyok, President of the Constitutional Court of the Republic of Hungary. Other prominent representatives of the Slovak judiciary as well as legal experts from abroad attended the conference online. It was thematically focused on significant constitutional law effects in terms of the organisation of the exercise of public authority and the protection of fundamental rights and freedoms during the state of emergency, as well as on constitutional law comparison of the knowledge and experience gained in the protection of fundamental rights and freedoms during the pandemic caused by the coronavirus COVID-19 in selected European Union countries.

On 8 November, at the premises of the Constitutional Court of the Slovak Republic in Košice, Constitutional Court Judge Jana Baricová met with Ana Paula de Fonseca Lobo, a Judge of the Supreme Administrative Court of Portugal, who was on an internship at the newly-established Supreme Administrative Court of the Slovak Republic. Their working meeting focused on constitutional justice and administrative justice, as well as on the overlaps between these branches of law in Slovakia and Portugal. They also discussed the relationship between the courts and the media.

On 14 December 2021, the President of the Constitutional Court welcomed Abbas Bagherpour Ardekani, Ambassador of the Islamic Republic of Iran to Austria and Slovakia, an expert in international law, in Košice. During their working meeting, they discussed the position of the Constitutional Court of the Slovak Republic in the system of the judiciary, its tasks and competences and the relations between the Constitutional Court and the subjects of legislative, executive and judicial power.

As part of the modernization of internal communication of the Chancellery of the Constitutional Court, in 2021 Mgr. Andrea Nagyová created a completely new intranet platform for decision-making activity called IURO, the purpose of which is to effectively share information necessary for the activities of judges, advisors and court analysts in one place. IURO is a modern and dynamic space that not only makes it easier to work with available documents, but also to search and share information. For example, analyses of the Constitutional Court’s case law prepared by the Analytical Department, translations of documents of the European Court of Human Rights and other international institutions, as well as links to Slovak or foreign court decision search tools and internet databases are available on the site.



Ambassador of the United Kingdom of Great Britain and Northern Ireland to Slovakia Nigel Baker and the President of the of the Constitutional Court of the Slovak Republic Ivan Fiačan

Judge of the Constitutional Court of the Slovak Republic Jana Baricová, President of the Constitutional Court of the Slovak Republic Ivan Fiačan, Dean of the Faculty of Law of Pavol Jozef Šafárik University Miroslav Štrkolec



Judge of the Constitutional Court of the Slovak Republic Robert Šorl, emeritus Judge of the Constitutional Court of the Slovak Republic Ladislav Orosz, President of the Constitutional Court of the Slovak Republic Ivan Fiačan, Dean of the Faculty of Law Pavel Jozef Šafárik University Miroslav Štrkolec



Judge of the Constitutional Court of the Slovak Republic Libor Duľa, President of the Constitutional Court of the Slovak Republic Ivan Fiačan, Dean of the Faculty of Law Pavel Jozef Šafárik University Miroslav Štrkolec





*Judge of the Supreme Administrative Court of Portugal
Ana Paula de Fonseca Lobo signs the guestbook*



*President of the Constitutional Court
of the Slovak Republic Ivan Fiačan at
the Conference of Barristers 2021*

*Ambassador of the Islamic Republic of
Iran Abbas Bagherpour Ardekani and
President of the Constitutional Court of
the Slovak Republic Ivan Fiačan*



ACTIVITIES OF THE CONSTITUTIONAL COURT

22 February	Košice	President of the Constitutional Court received Viliam Karas, the new President of the Slovak Bar Association
24 - 25 February	Prague/online	President of the Constitutional Court attended the XVIIIth Congress of the Conference of European Constitutional Courts
22 March	online	Judge of the Constitutional Court Peter Molnár attended the 126th Plenary Session of the Venice Commission
1 April	Bratislava	President of the Constitutional Court participated in the act of appointing the new government
18 May	Bratislava	President of the Constitutional Court participated in the inauguration ceremony for the first President of the Supreme Administrative Court of the Slovak Republic
19 May	Pannonhalma	President of the Constitutional Court had a working lunch with the Presidents of the Constitutional Courts of Hungary and Austria
1 June	Bratislava	President of the Constitutional Court participated in the Conference of Barristers 2021
2 July	Košice	President of the Constitutional Court received Christophe Léonzi, French Ambassador to Slovakia
2 July	online	Judges of the Constitutional Court Jana Baricová and Peter Molnár attended the 127th Plenary Session of the Venice Commission
20 July	Bratislava	Vice-President of the Constitutional Court participated in the appointment ceremony of Judges of the Supreme Administrative Court of the Slovak Republic
26 August	Bratislava	Vice-President of the Constitutional Court attended the inauguration ceremony for Judges of the Supreme Administrative Court of the Slovak Republic
2 - 3 September	Riga/online	International conference "EUited in diversity: between common constitutional traditions and national identities" under the auspices of the President of the Court of Justice of the European Union Koen Lenaerts
28 September	Košice	International Academic Conference "Fundamental Rights and Freedoms and their Protection in the State of Emergency and Other Special Legal Regimes - X. Constitutional Days"
12 October	Košice/online	Vice-President of the Constitutional Court attended the inauguration ceremony for the Vice-President of the Supreme Administrative Court of the Slovak Republic
16 October	Bratislava	Judges of the Constitutional Court Jana Baricová and Peter Molnár attended the 128th Plenary Session of the Venice Commission
8 November	online	Constitutional Court Judge Jana Baricová received Ana Paula de Fonseca Lobo, Judge of the Portuguese Supreme Administrative Court
10 December	Košice	Constitutional Court Judges Jana Baricová and Peter Molnár attended the 129th Plenary Session of the Venice Commission
14 December	online	President of the Constitutional Court received Abbas Bagherpour Ardekani, Ambassador of the Islamic Republic of Iran to Austria and Slovakia

PROVIDING INFORMATION AND RELATIONSHIP WITH THE MEDIA

PROVIDING INFORMATION

The Constitutional Court of the Slovak Republic transparently and openly informs the public about its activities. The most important communication channel for the Constitutional Court is its website, where all the most important and up-to-date information is regularly published. A lot of information is provided to the public via the Constitutional Court's information e-mails, not forgetting the information published and made available to the public under the Freedom of Information Act.

In accordance with Section 70 para 2 of the Law on the Constitutional Court, final decisions of the Constitutional Court ter-

minating the proceedings and decisions on interim measures and suspension of the enforceability of contested final decisions, measures or other interventions were also published in 2021 within 15 days from the date of their entry into force on the website of the Constitutional Court in the Requests and Decisions Retrieval section.

The 2020 Collection of Findings and Rulings of the Constitutional Court of the Slovak Republic was published on the website of the Constitutional Court at the end of July 2021 and also published in book form at the end of August 2021. It can be found on the website of the Constitutional Court in the Decision-making Activity section.

For the sake of transparency in informing the general public about the decision-making activities of the Constitutional Court, press releases from the sessions of the Plenum and the chambers of the Constitutional Court are regularly published. Press releases from the sessions of the Plenum of the Constitutional Court are published on the main

page of the website of the Constitutional Court in the Current Information section, usually on the day of the session of the Plenum of the Constitutional Court. Press releases from the sessions of the chambers of the Constitutional Court are published in the Media - Press Releases from the Chambers" section, usually within five days after the meeting of the relevant chamber.

The Constitutional Court also regularly publishes statistical reviews, in particular statistical reviews of decisions in which it has ruled on violation of complainants' fundamental right to have their case heard without undue delay pursuant to Art. 48 par. 2 of the Constitution, and their right to have their case heard within a reasonable time according to Art. 6 par. 1 of the Convention; review of decisions in which it has found violations of complainants' fundamental rights to judicial and other legal protection pursuant to Art. 46 par. 1 of the Constitution, and the right to a fair trial pursuant to Art. 6 par. 1 of the Convention; and review of decisions in which it has found violations of the fundamental right to personal free-



dom under Art. 17 of the Constitution, and the right to freedom and security pursuant to Art. 5 of the Convention.

Significant protocol events, official visits, working meetings, conferences, seminars and professional discussions are also presented in the form of press releases.

In 2021 the Constitutional Court issued a total of 222 press releases, consisting of 26 Plenary press releases, 163 chamber press releases, 13 press releases with statistical reviews and 20 other press releases.

In 2021 the Constitutional Court of the Slovak Republic provided information to the extent required by Freedom of Information Law. In 2021 it registered 248 requests under this law, which was 12 requests more than in 2020. The requests are usually divided into several parts and cover rather diverse topics, so the actual amount of information provided is significantly higher.

1254 requests were processed outside the above-mentioned law, which included informing the parties to proceedings and

their legal representatives, communication with courts, law enforcement agencies, legal aid centres and administrative authorities, and various other requests which did not fall under the Freedom of Information Law. In 2021 there were 352 more such requests than in 2020.

In accordance with § 5 of the Freedom of Information Law, the Constitutional Court published received motions to initiate proceedings pursuant to Articles 125 to 126 and Articles 127a to 129 of the Constitution of the Slovak Republic.

RELATIONSHIP WITH THE MEDIA

In 2021 the most media-focused decisions of the Constitutional Court related to the motion for repeated extension of the duration of the state of emergency, filed by members of the National Council ("parliament") as well as by the Attorney General of the Slovak Republic (file no. PL. ÚS 2/2021), the motion from the President of the Slovak Republic concerning the designated provisions of the Law on Election Campaigns and also the Law on

Political Parties and Political Movements (file no. PL. ÚS 26/2019), the motion from the President of the Slovak Republic to review the compliance of the subject of a referendum with the Constitution of the Slovak Republic (file no. PL. ÚS 26/2019), the motion from the President of the Slovak Republic to review the compliance of the subject of a referendum with the Constitution of the Slovak Republic (file no. PL. ÚS 7/2021), the proposal from the Attorney General of the Slovak Republic concerning the Law on Protection, Promotion and Development of Public Health (namely the issuance of decrees by public health authorities – file no. PL. ÚS 8/2021), and the motion from the Public Defender of Rights of the Slovak Republic concerning a number of provisions of the Law on the Protection, Promotion and Development of Public Health (file no. PL. ÚS 4/2021).

Due to the importance of their social impact, the above-mentioned decisions were transparently communicated immediately after the plenary session of the Constitutional Court by means of briefings with the participation of media representatives and also through ex-



tended press releases, which included an introduction and explanation of the decision and the reasoning in the cases in question for easier understanding by the general public. Media representatives welcomed this approach of the Constitutional Court.

The media were also informed about the decisions of the Constitutional Court in cases concerning measures taken in relation to the spread of the COVID-19 disease, which involved constitutional complaints by natural persons and legal entities.

In accordance with previous practice, statistical summaries were also published based on the number of cases filed and pending in the Plenum and chambers of the Constitutional Court, as well as summaries of the decisions in which the Constitutional Court found violation of the complainants' rights and awarded them financial compensation. Accounts of international, protocol and other activities of the President, Vice-President and Judges of the Constitutional Court are regularly published on the website of the Constitutional Court in the form of press releases..

At the end of April 2021, the Constitutional Court held a press conference to inform media representatives about the key decisions of the Constitutional Court and also about all of its activities since the change of the President and Vice President during the Constitutional Court's fourth term.

The Constitutional Court and its decision-making activities were mentioned in the media a total of 4,438 times (322 times more than in 2020), 4,032 times on web portals (315 times more than in 2020), in daily newspapers 174 times (6 times more than in 2020), on television 98 times (most frequently in TA3: 38 times, in RTVS Jednotka: 28 times, in TV Markíza: 18 times), in radio stations 25 times (Radio Slovakia: 17 times, Radio Express: 5 times) and in magazines 109

times. The President of the Constitutional Court of the Slovak Republic, Ivan Fiačan, was mentioned a total of 393 times, including 303 times on web portals, 29 times in daily newspapers, 33 times on television (RTVS Jednotka: 12 times, TV Markíza: 10 times, TV JOJ and TA3: 9 times each), 18 times on radio (Rádio Slovensko: 9 times, Rádio Lumen: 4 times), and 10 times in magazines. The Judges of the Constitutional Court (including the President of the Constitutional Court) were mentioned by name in the media a total of 875 times (on web portals: 699 times, in daily newspapers: 68 times and on television: 66 times).

The Constitutional Court also communicates with the public via social networks, specifically via Facebook (www.facebook.com/ustavnysud.sk). It publishes selected information there on decision-making activities, protocol events and interesting facts about its activities in relation to the public, e.g. information on the Open Day of the Constitutional Court, which is organized every year, usually in the autumn (in 2021 it was held in virtual mode due to the COVID-19 pandemic, just as in the year before), and on competitions for pupils and students of elementary and secondary schools in order to raise young people's awareness of the Constitutional Court, its powers and its position in the judiciary. The information about competitions in 2021 organized for the Constitutional Court was viewed by 2467 interested persons. The most popular post on Facebook was the one informing the public about the decision of the Constitutional Court in case file no. PL ÚS 7/2021 on the motion from the President of the Slovak Republic to review the compliance of the subject of a referendum with the Constitution of the Slovak Republic (3187 views), and the post relating to the decisions of the Constitutional Court in case file no. PL ÚS 9/2021, which concerned an amendment to the Criminal Code modifying the definition of the offence of dangerous electronic harassment, and case file no. PL ÚS 10/2021, which concerned the de-

cision of the Office of Public Health of the Slovak Republic no. 226/2021 regulating the quarantine obligations of persons after entering the territory of the Slovak Republic (3178 views).

The relations between the Constitutional Court and the public and the media are regulated in the Rules of Procedure and Administration of the Constitutional Court of the Slovak Republic. According to § 8 sec. 1 of these Rules, relations with the public and media are covered mainly: a) by providing information according to the Freedom of Information Law on periodicals and agency news; b) by publishing information on the website of the Constitutional Court; c) by enabling participation of the public and the media in oral proceedings, if they are open to the public. A special organizational division of the Chancellery of the Constitutional Court, the Press and Information Department, is in charge of public relations. The spokesperson of the Constitutional Court provides general communication with the media, otherwise it is done by the President of the Constitutional Court, the President of the relevant chamber or an authorized judge, usually the Judge-Rapporteur (§ 8 sec. 2 of the Rules of Procedure and Administration of the Constitutional Court).

All press releases from the Plenary Sessions of the Constitutional Court are regularly sent to the media, as well as other press releases published on the main page of the Constitutional Court's website in the Current Information section. A total of 222 press releases were sent to the media in 2021. The spokesperson of the Constitutional Court also communicates with the media promptly (by telephone and e-mail) and sends replies to their questions regularly and promptly (usually within six hours, but no later than 24 hours, or within the agreed deadline). The media's interest in answers to their questions about the Constitutional Court's decision-making and organisation has increased by almost one third since 2020.

OPEN DAY 2021

Since 2016 the Open Day of the Constitutional Court of the Slovak Republic has been organised annually. The premises of the Constitutional Court are made available to the public and an opportunity is created to get acquainted with the decision-making activities of the Court in an attractive way for the legal community, pupils and students of primary and secondary schools and other members of the lay public. An essay and drawing competition is held for primary school pupils and students of secondary schools.

As a result of the COVID-19 pandemic, for two years running the Open Day was held in virtual form.

“We were looking for a way to reach out to the general public in this challenging period, to arouse interest in the constitutional judiciary, to inspire young people to think about justice and to express their opinions in relation to the Constitutional Court. We use video and social media to communicate. We cannot see each other in person, but anyone interested can visit the premises where we work through a

video tour. I believe that this is also a way to make the public, especially the younger generation, aware of the importance and position of the Constitutional Court in society and also of our mission, the mission of the Constitutional Court judges, and our service in the public interest,” said the President of the Constitutional Court, Ivan Fiačan.

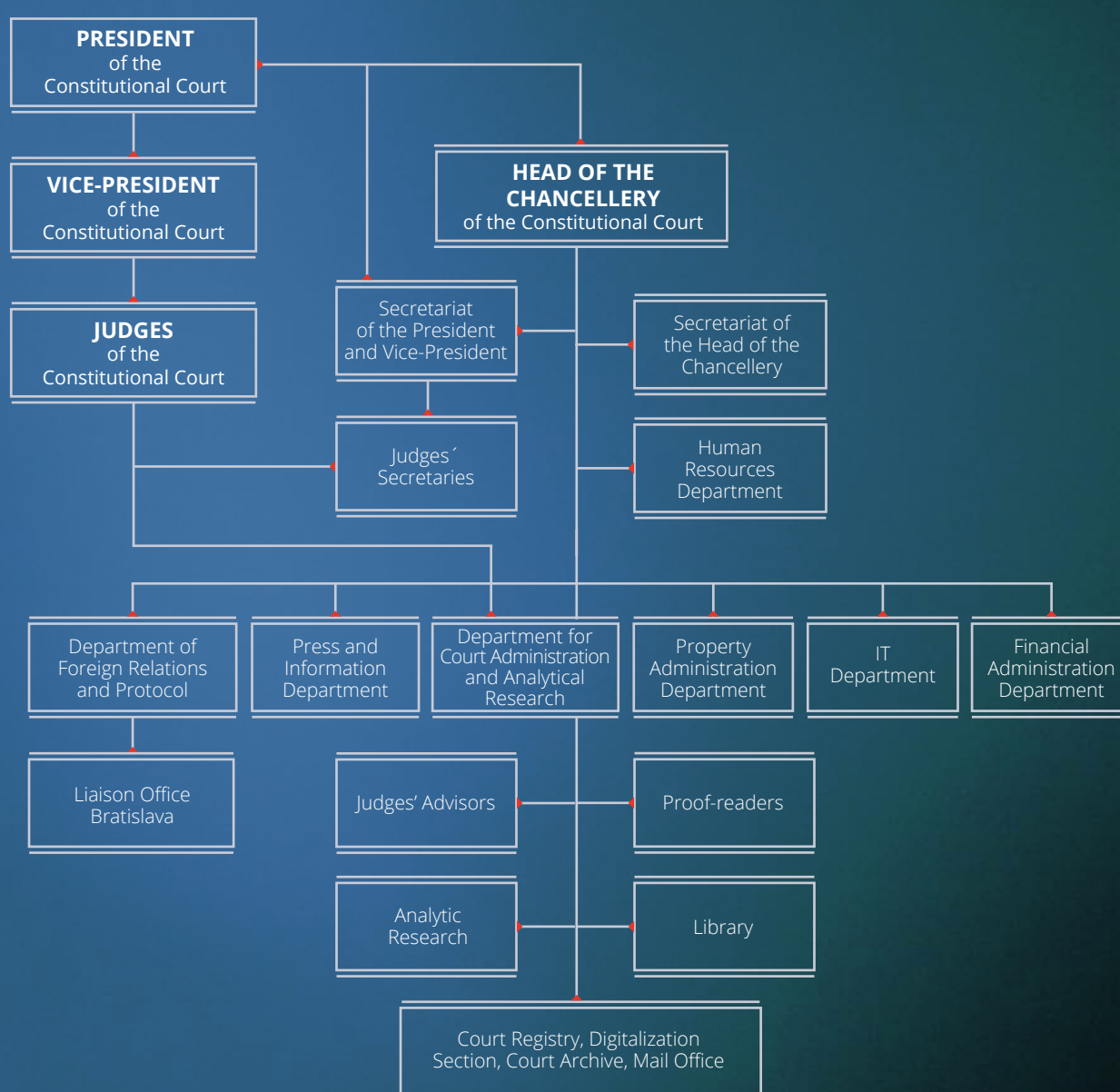
In 2021 two additional videos were available: one of the Constitutional Court’s library and the chronicles, which record important events of protocol and international character. The tour video of the foyer in the building on Main Street was updated as well. We evaluated the essays and drawings which demonstrated young people’s interest in the protection of human rights and freedoms and in public affairs. Pupils and students from Košice, but also from Prešov and other parts of Slovakia took part in the competitions organised with the support of the Representation of the European Commission in Slovakia and the European Commission for Effective Justice (CEPEJ). The CEPEJ also published the best works on its website.



THE ORGANIZATIONAL STRUCTURE OF THE CHANCELLERY OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

from 1st July 2021

The organizational structure of the Chancellery of the Constitutional Court of the Slovak Republic ("the Chancellery") is approved for 114 employees (of which 100 are state service employees and 14 are public service employees).



The approved limit on the number of employees of the Chancellery of the Constitutional Court for 2021, i.e. 127 persons (13 judges of the Constitutional Court, 14 public service employees and 100 state service employees) was not exceeded. The average registered number of employees recalculated for 2021 was 118.14.

EDUCATION AND TRAINING

In 2021 the Chancellery of the Constitutional Court enabled its state service employees to participate in various types of competence-based training, with a total of approximately 54 training activities all subject to public procurement requirements.

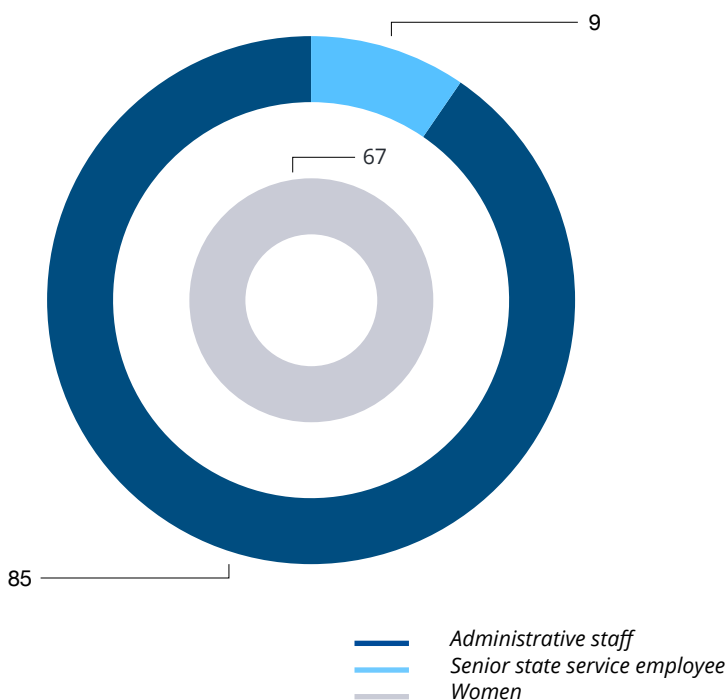
State service employees participated in training activities organized by approved external training-course providers. At the same time the Chancellery of the Constitutional Court provided the state service employees with English language lessons and French language consultations. In total, the Chancellery of the Constitutional Court spent a total of EUR 10,258.60 on training courses for its staff members.

EUR 9523,60 on 48 state service training courses¹.
 EUR 735.00 on six public service training courses.

1. DATA ON STATE SERVICE EMPLOYEES AS AT 31 DECEMBER 2021

CURRENT NUMBER OF STATE SERVICE EMPLOYEES

94 of which:



NUMBER OF UNOCCUPIED STATE SERVICE POSITIONS **6**

NUMBER OF NEWLY-EMPLOYED STATE SERVICE STAFF HAVING JUST ENTERED STATE SERVICE **8**

¹ IT courses: EUR 1153/2 courses

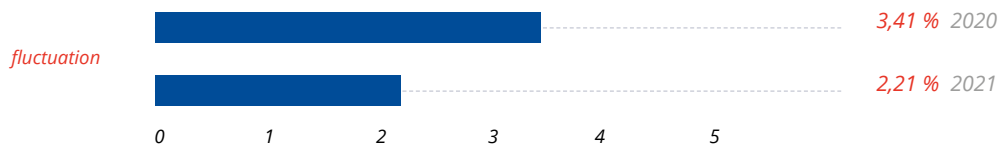
2. NUMBER OF COMPLAINTS ABOUT COURSE SELECTION RESULTS, CONTENT AND EXECUTION IN 2021

0

3. TERMINATION OF STATE SERVICE POSITIONS DURING THE TRIAL PERIOD IN 2021

1

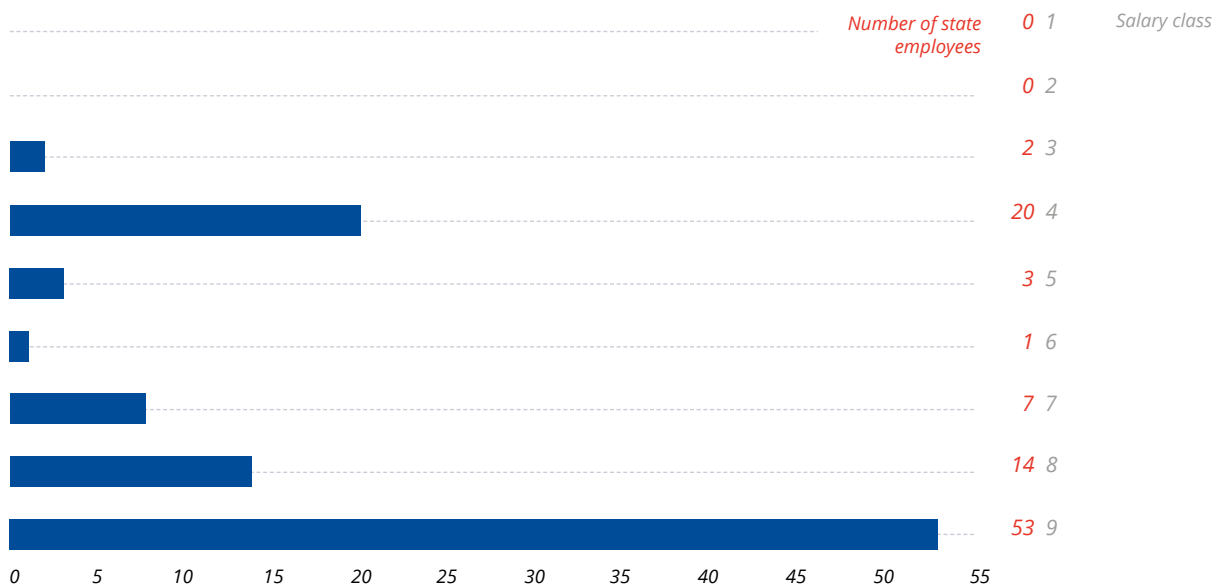
4. FLUCTUATION IN THE GIVEN YEAR IN %²



5. WAYS OF TERMINATING STATE SERVICE EMPLOYMENT IN 2021

TOTAL NUMBER OF STATE SERVICE POSITIONS TERMINATED **2** BY AGREEMENT **2**

6. NUMBER OF STATE EMPLOYEES IN INDIVIDUAL SALARY CLASSES AS AT 31 DECEMBER 2021



TOGETHER **100**

² Number of terminated state service positions/average number of state employees in the given year x 100



INTERNSHIP

*JUDr. Ján Štiavnický, PhD.
Mgr. Tomáš Majerník*

Constitutional law, or the Constitution, can be viewed from two perspectives. Firstly it is the foundation, the core of the legal order in the state. More precisely, it forms the foundation of law-making. The Constitution is the guide to law-making and the reason for the creation of all other legal norms. Secondly it acts as a roof over the entire legal order. Here, the Constitution provides an umbrella for branches of law which otherwise have their own traditional legal life. The Constitution sets, shifts and refines the lines of force between the different branches of law like a magnet. For example, in criminal law the Constitution orders judges to perceive protection against unwarranted interference with personal liberty while deciding on guilt and punishment. Constitutionally-protected freedom of speech fundamentally modifies the protection of personality in the Civil Code when public issues are under consideration.

These approaches are not isolated, but for teaching, for understanding the practical effects, we emphasize the Constitution as an umbrella for every branch of law.

Based on this conception of the effects of the Constitution, the Constitutional Court, through its advisors, works with students of the Košice University and Trnava University Law Faculties, who have authentic interest in constitutional justice. Cases decided by the Constitutional Court or by foreign constitutional courts are discussed with the students.

We try to explain the complex trajectory of legal proceedings which stem from establishing a legal relationship, for example in contract law, through the development of a dispute over breach of contract, to proceedings before district courts, regional courts and the Supreme Court, and finally before the Constitutional Court. Emphasis is placed on understanding the vertical and horizontal effect of human rights. In addition to practical issues, we seek to clarify the very meaning of constitutional justice against the backdrop of central European history.

Finally, we explain the values of law and violations to rights and freedoms through classic works of cinematography.

LET US INTRODUCE OURSELVES

SECRETARIAT OF THE PRESIDENT AND VICE-PRESIDENT

Last year we introduced the closest associates of the Constitutional Court judges, the judicial advisors and analysts who support the decision-making activities of the Constitutional Court through their qualifications, expertise and commitment.

This time we focus on the Secretariat of the Constitutional Court, whose work includes drawing up the agendas of the President and Vice-President and coordinating their implementation, preparing documents for working meetings and deliberations and drawing up records thereof. The Secretariat also ensures the preparation of public and closed sessions of the Plenum and the chambers of the Constitutional Court, and helps in processing submitted complaints in chamber and plenary cases. It prepares statistical data of the decision-making and arranges publication of the Constitutional Court's decisions in the Official Gazette of the Slovak Republic.

The Secretariat's other activities include ensuring the registration, processing and storage of all documents addressed to the President, the Vice-President and the judges of the Constitutional Court in accordance with the registry regulations, overseeing the manner in which they are dealt with.

The judges' secretaries carry out administrative work related to the Constitutional

Court's decision-making activities. They belong under the Secretariat of the President and the Vice-President. They are assigned to individual judges, ensuring the material equipment of the office of each judge; editing and completing the case files, anonymizing decisions and sending them to the parties to the proceedings; preparing documents for the meetings of chambers and the Plenum; transcribing the audio recordings of the public hearings; and overseeing correct completion of the data at the closure of the file.

Administration is essential for the operation and work in any organisation. Administrative staff must be able to accurately and correctly classify a given document, quickly orientate themselves regarding its content, and decide what is essential and necessary for further processing. Secretaries of the judges, despite their increased administrative workload, ultimately influence the quality of the Court's decision-making activity.

COURT REGISTRY

The Court Registry is part of the Department for Court Administration and Analytical Research. It is responsible for the activities of the mail office, the digitalization section, the management of court files, registry and archive management.

The mail office clerk performs activities

related to the receipt of documents delivered to Constitutional Court by post, electronically and in person. All submissions received by the Constitutional Court are registered by the mail office clerk and assigned to the decision-making agenda (Rvp agenda) or to the administrative agenda (Spr agenda). The clerk also ensures the dispatch of postal items, keeps a register of visitors, and additionally operates the telephone switchboard.

The scanning clerk carries out the conversion of all submissions received by the Constitutional Court into electronic and paper form. Submissions falling within the decision-making activity of the Constitutional Court are forwarded to the Court Registry.

The Court Registry provides for the registration of received submissions belonging within the decision-making activity of the Constitutional Court. The Registry clerks check the information system and ascer-

tain whether a submission received is a new submission or an addition to an existing file. Thorough vetting is essential for the correct registration of submissions.

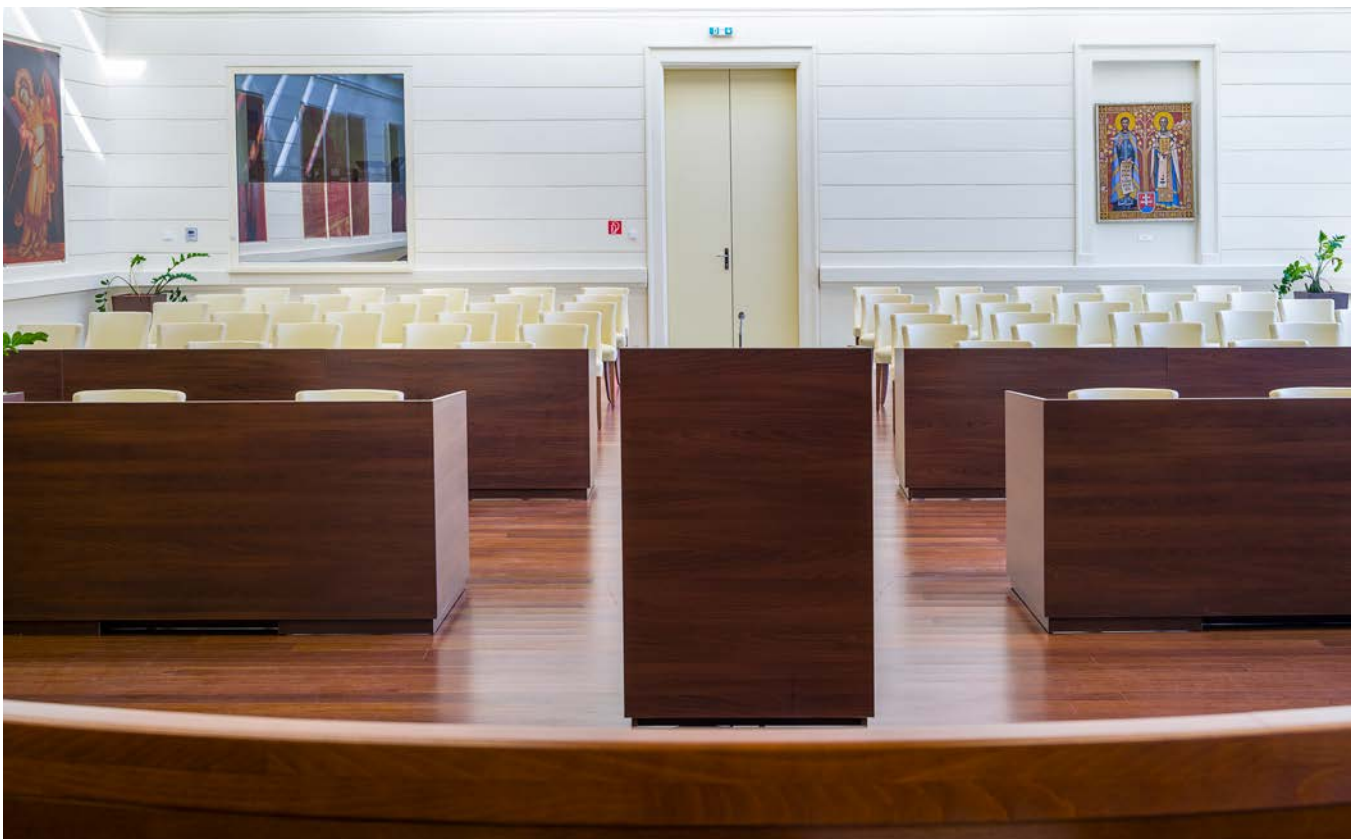
New files are assigned to the individual Judges-Rapporteurs each working day at a fixed time after working hours by means of electronic allocation of files (by algorithms ensuring randomness of selection). The list of assigned files is published on the following working day on the website of the Constitutional Court. The Registry also indicates the legal validity of the decisions of the Court. When the dates of public hearings are set, it publishes these facts on the Court website. It also provides an anonymized form of the submissions which are required by law to be published.

The files from the Judges-Rapporteurs are returned to the Court Registry after the proceedings are completed, whereupon the clerks close the files and store them

in the archive, from where they may be accessed if necessary.

The Registry is governed by the registry regulations and the registry plan approved by the Ministry for Home Affairs of the Slovak Republic.

The number of submissions received by the Court is constantly increasing. In recent years an average of 250 new submissions per month have been received. The number of documents delivered to the Constitutional Court electronically (via the Central Public Administration Portal) is also increasing, accounting for more than 50 % of all submissions and documents delivered to the Constitutional Court. It is not uncommon for a single submission to be delivered to the Constitutional Court in several ways (by e-mail, via the Central Public Administration Portal and then by post), which increases the time taken to manage each submission.



BUDGET OF THE CHANCELLERY OF THE CONSTITUTIONAL COURT

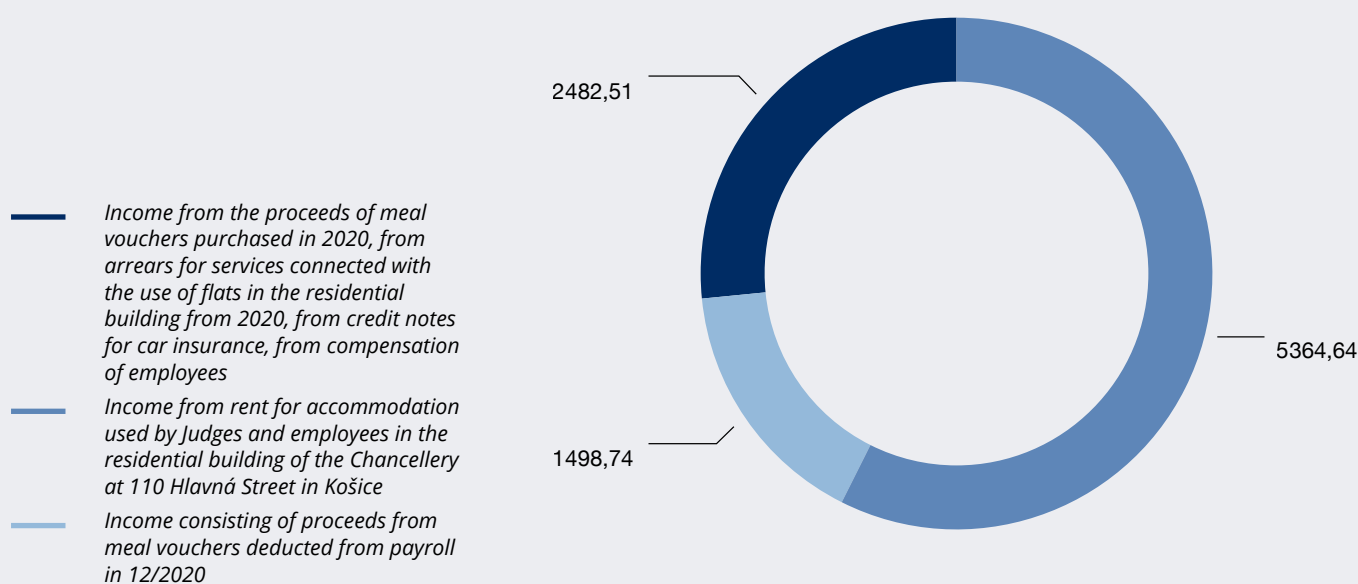
The Constitutional Court, as an independent judicial body for the protection of constitutionality, carries out its activities in accordance with the Law on the Constitutional Court. The Chancellery of the Constitutional Court has an individual chapter in the state budget and is the legal entity responsible for performing tasks related to the organization, staff, financial, administrative and technical support of the activities of the Constitutional Court.

The budget of the Chancellery chapter for 2021 was approved through the passing of the Law on the State Budget for 2021.

INCOMES

THE INCOME ACTUALLY RECEIVED IN 2021 TOTALLED

EUR **9 345,89**



EXPENDITURE

TOTAL EXPENDITURE IN 2021 AMOUNTED TO

EUR **6 953 493,27**

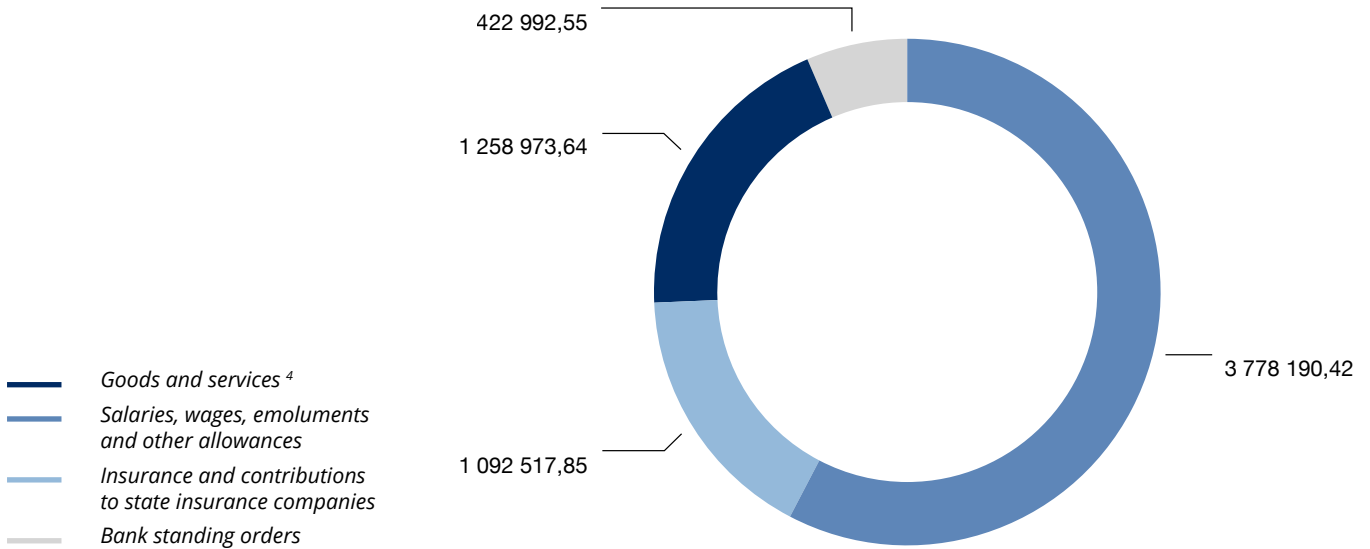
OPERATING EXPENDITURE

EUR **6 552 674,46**

CAPITAL EXPENDITURE ³

EUR **400 818,81**

OPERATING EXPENDITURE



³ Acquisition of passenger motor vehicles; drafting of project documentation for reconstruction of the buildings; extension and modernization of camera system

⁴ Domestic and foreign official trips; electricity and gas supplies; water and sewerage; postal services; communication infrastructure and telecommunications services; acquisition of interior equipment, operational machinery and apparatus; supply of everyday materials; acquisition of software, computers and telecommunications equipment; maintenance and repair of cars; maintenance of interior equipment; official meals.



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