



Press Release

Constitutional Court's judgment on the Criminal Law amendments

3rd July 2024

On 3 July 2024, the Constitutional Court of the Slovak Republic, in a closed session of the plenary, decided in a case filed under PL. ÚS 3/2024 on a petition of the President of the Slovak Republic, a group of 36 members of the National Council of the Slovak Republic and a group of 39 members of the National Council of the Slovak Republic on the compatibility of the Law of 8 February amending Law No. 300/2005, the Criminal Code, as amended, and declared certain provisions of this law incompatible.

From the very outset of the proceedings, the Constitutional Court was guided by its jurisprudence concerning both the review of defects in the legislative process and the review of criminal legislation in accordance with the principle of minimising interference with the legislator's powers and autonomy. In that connection, the Constitutional Court emphasises that the legislative process for the adoption of the impugned law was not flawless and in any event does not approve of the routine and excessive use of the accelerated legislative procedure or the cutting of time limits in the context of parliamentary debate. However, after its own examination of the defects in the legislative process identified in the petitions, the Constitutional Court does not find that the alleged defects amount to a constitutional irregularity of such a nature as to amount to a constitutionally incompatible interference by the legislature with constitutional rights or principles.

The Constitutional Court assessed the contested changes in the applicable minimum and maximum penalties, changes in the method of determining the thresholds for the amount of damage, changes in the possibility of imposing a suspended prison sentence and changes in the statute of limitations in full respect of the previous case law on the separation of powers in the field of criminal legislation and did not find that the contested law was manifestly excessive or the product of the legislator's arbitrariness in relation to changes in the regulation of property, economic and corruption-related crimes.

The Constitutional Court found unconstitutionality in the transitional provisions concerning the penalty of forfeiture of property, which require the newly effective wording of the contested law to be applied in relation to this issue after the reopening of the proceedings caused by the earlier abrogating judgment of the Constitutional Court, even though the currently effective wording of the Criminal Code generated by this earlier judgment may be more favourable for the offender.

For the same reasons, the Constitutional Court also considered incompatible with the Constitution the transitional provision of the contested law allowing the prosecution to be considered time-barred only if the reasons for the earlier interruption of the statute of limitations arose only for the first

time after the expiry of the newly established limitation period in case of retroactive application of the new, more favourable rules for the offender regarding the criminality of the offence.

The Constitutional Court also declared incompatible the transitional provision that allows the Minister of Justice to file a cassation appeal against the accused retroactively within three years for plea bargains approved before 15 March 2024.

The reasoning of the ruling includes a constitutionally conforming interpretation of the contested law, according to which the provisions on the extension of the time limit for filing a cassation appeal against the accused to three years and on the extension of the Minister of Justice's power to file a cassation appeal also against court judgments on the approval of a plea bargain can only be applied to decisions that became final no earlier than on 15 March 2024.

Lastly, the Constitutional Court declared that the provisions regulating the possibility of using illegally obtained evidence in criminal proceedings, even if only in favour of the accused, are unconstitutional.

The remainder of the petitions is rejected. This also applies to the parts of the contested law relating to the dissolution of the Special Prosecutor's Office. The Constitutional Court relied on its own case-law, according to which the establishment and existence of the Special Prosecutor's Office as part of the Office of the Prosecutor General did not constitute an interference with Article 150 of the Constitution precisely because the power of the Prosecutor General in relation to the activities of the Special Prosecutor's Office was only partially limited and was not limited to an extent that would negate the position of the Prosecutor General under Article 150 of the Constitution. All the less then can the abolition of the the Special Prosecutor's Office constitute an unconstitutional interference by the legislature in the organisation and structure of the public prosecution service. The abolition of the Special Prosecutor's Office does not undermine the Slovak prosecution service or the international obligations, since the Special Prosecutor's Office's duties are taken over by other units within the prosecution service subordinate to the Prosecutor General.