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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**REPUBLIC OF SLOVAKIA**

**FURTHER CONSTITUTIONAL DEVELOPMENTS  
(AMENDMENTS TO THE CONSTITUTION  
OF THE REPUBLIC OF SLOVAKIA  
FROM 2001)**

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**Presentation by Doc. JUDr. Ján Mazák**  
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In my brief presentation I would like to inform you on some prospects of the constitutional development in the Slovak Republic after the recent Amendment to the Constitution of the Slovak Republic.

The constitutional statute, Law No. 90/2001 Coll. has changed and amended the Constitution of the Slovak Republic (hereinafter referred to as “the Constitution”) to an extent that can be described as a significant amendment of the basic law of the country. This amendment has considerably changed the constitutional order in the Slovak Republic in several crucial aspects. The amendment represents a further stage of development of the constitutional history of the independent Slovak Republic.

The part of the above constitutional statute which relates to constitutional jurisdiction will become effective progressively on **1<sup>st</sup> July 2001** and **1<sup>st</sup> January 2002**. Some legal powers and the new organization of the Constitutional Court of the Slovak Republic (hereinafter referred to as “the Constitutional Court”) will become effective from 1<sup>st</sup> January 2002.

The basic characteristics of the amending constitutional statute lie in:

- a) strengthening the Pro-European and integrating trends in the Slovak Republic,
- b) consolidation of the principles of the democratic state governed by the rule of law
- c) creating constitutional mechanisms for accepting the international liabilities of the Slovak Republic following from international instruments, from the communitarian law and other sources of the international law,
- d) in more consistent division of the judicial power from the executive and legislative powers,
- e) in more detailed regulation of the supreme audit authority’s powers,
- f) in enhancement of the powers, independency and impartiality of the constitutional court,
- g) in regulation of the powers of the public protector of rights (ombudsman)
- h) in delegation of the powers to territorial self-government.

**On tendencies of the Slovak Republic to the European Union and some other transatlantic structures**

In the introduction to the amendment of the Constitution, the Slovak Republic declared that it recognizes and abides by the general rules of the international law, international instruments with binding force and its further international liabilities. This way have been explicitly formulated the liabilities for the Parliament to create a legal order in conformity with the above rules, instruments and further commitments.

The Slovak Republic may, by its own discretion, enter into a union with other states. The right of secession from such unions shall not be restricted. The decision to enter into union

with other states or to secede therefrom shall be subject to a constitutional statute and subsequent ratification by means of a public referendum. The Slovak Republic can by international treaty, ratified and promulgated as defined by law, or on the base of such a treaty to delegate part of its powers to the European Communities and European Union. Legally binding acts of the European Communities and European Union **shall take precedence over the laws of the Slovak Republic**. Adoption of legally binding acts, requiring implementation, shall be made by law or statutory order.

In order to save piece, security and democratic order the Slovak Republic may, under conditions stated by international treaties, join to the organization of mutual and collective security.

International conventions on human rights and fundamental freedoms, international treaties, implementation of which does not require a special law and international instruments which directly establish the rights and duties of natural persons or legal persons and that have been ratified and promulgated as defined by law, **shall take precedence over the laws**.

### **To strengthening the general judiciary**

The constitutional amendment has created constitutional preconditions for establishment of self-government conception of executing judicial powers.

The Judicial Council of the Slovak Republic has been created which has powers, first of all, by proposing the candidates for the positions of judges, and the president and vice-president of the Supreme Court. The Judicial Council shall fill positions in disciplinary senates and carries out the self-government of the general judiciary (expressing opinion in draft budget for courts). The probation period of the judges has been cancelled and the judge is appointed by the president of the Slovak Republic without time limitation. The minimum age for a judge shall be 30 years.

### **On the powers of the Supreme Audit Office**

The Supreme Audit Office of the Slovak Republic shall be an independent agency supervising the auditing of, and control over, budgetary funds that has been specified in the Amendment. It is essential that starting from 1 July, 2001 the Supreme Audit office can control the management of property, financial means, public property rights and public debts that have been provided for the Slovak Republic, legal or natural persons who administer the means of state budget or state property, **provided for them within development programs or other similar foreign sources**.

### **New competencies of the Constitutional Court of the Slovak Republic**

The basic feature of the changes and amendments in the articles of the Constitution which regulate the organization, competencies and procedural rules of the Constitutional Court, involve the strengthening of the position and the legal powers of the Constitutional Court. The essence of this strengthening includes not only **expansion of the competencies of the Constitutional Court**, but also the **enforceability of its decisions** and a **higher level of protection of fundamental rights and freedoms**.

The constitutional complaint ensures the direct access of natural and legal persons to the protection of fundamental rights and freedoms. Should the Constitutional Court ruling grant the complaint, this decision means that the legally valid decision, measure or other act have violated rights and freedoms and **this decision, measure or other encroachment will be quashed.**

The constitutional court renders a verdict on obligation **to hear the case** if the violation of rights and freedoms has been caused by passivity of an authority. The verdict is addressed to the authority violating the concerned rights and freedoms. The Constitutional Court **may at the same time return this case for further proceedings, to forbid the ungoing violation** of fundamental rights and freedoms or human rights and fundamental freedoms following from international instruments that have been ratified and promulgated by the Slovak Republic as defined by law. The Constitutional Court may also rule that the authority violating rights or freedoms should **reinstate the conditions obtaining before the violation took place.** The Constitutional Court may by its decision, acting upon the complaint, **acknowledge an adequate satisfaction** to those whose rights have been violated.

As a result an **effective domestic tool** of protection of fundamental rights and freedoms has been created. Its application will obviously be a precondition for submission of complaints at the European Court for Human Rights. Failure to apply it will also influence proceedings at this international court authority for protection of fundamental human rights and freedoms.

The basic features also include a conclusion concerning the **strengthening of independence** of the judges of the Constitutional Court due to changes in the articles on the term of office and the possibility of re-appointment and recall.

The judges will be appointed for a period of **12 years** and **the same person may not be re-elected to the office of judge** of the Constitutional Court.

### **Ombudsman**

The constitutional amendment has established a constitutional institution - a public protector of rights, known in some other European countries too. This public protector of rights is an independent authority that shares the protection of fundamental rights and freedoms of natural and legal persons in the stated extent and as defined by law. The ombudsman acts by activities, decision making or passivity of the public administration authorities if their activities, decision making or passivity contradicts to the legal order or the principles of the democratic state governed by the rule of law.

### **Implementation of the process of the decentralization and modernization of the public administration**

In the new constitutional conditions there have been strengthened the position of the territorial self-government and established the constitutional preconditions for the delegation by state to the self-government of higher territorial units some of the competencies concerning the state administration.

The constitutional development in the Slovak Republic adopting the constitutional statute 90/2001 Coll. has made a significant success in creating a modern European constitutional order. Of course, this development has not been finished and its continuation depends on the further domestic development of the Slovak Republic in direction to the united Europe.

