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**INTERNATIONAL  
LEGAL TRAINING WORKSHOP**

**Improving Examination Methods of  
Individual Complaints  
Effective Case Management  
Effective Decision Drafting**

**Baku, 26-27 February 2004**

**REPORT ON**

**“Effective Life Cycle of a Case.  
The experience of the Constitutional Court of Slovakia”**

**Ján Klucka, Slovak Republic**

## **Effective Life Cycle of a Case.**

### **“The experience of the Constitutional Court of Slovakia” Ján Klucka, Judge of the Constitutional Court.**

#### **Introductory remarks.**

Effective case management today forms integral part of the duly exercise of constitutional justice through constitutional courts or other supreme judicial bodies vested with the similar competences in the sphere of constitutional justice. Its importance is still increasing on the background of heavy workloaded constitutional courts (at least in Europe) which are trying to find appropriate legislative and factual measures both to reduce its work load and simultaeously to deal with the cases brought before constitutional body by the most rational and economic way in order to ensure that the decision of constitutional body shall be taken in appropriate time. With respect of the great number of cases before constitutional bodies it should be generally noted that it reflects the scope and character of competences of each constitutional court on the one hand and the right of direct acces to the constitutional court by legal and natural persons on the other hand. The common experience of constitutional courts at this moment fully confirms their workload predominantly by the individual complaints of legal and natural persons objecting the alleged violations of their basic constitutional rights and freedoms by public authorities. The regulation of the number and scope of competences of constitutional courts and/or the right of individual persons on direct access to constitutional body (through constitutional complaints) however falls exclusively in the competence of domestic legislator and in such a sense the case management system has no room to deal effectively with the number of cases brought before constitutional court. Effective case management system is however able to deal with the petitions having lodged to the constitutional body with the most economic way in order to take the constitutional finding in reasonable time and without undue delay. The specific contribution of the case management system into whole effectiveness of the judicial proceeding before constitutional bodies may be therefore identified. Each case management system represents the complex of anumber of elements involving specific material, organizational, procedural and other aspects and obviously reflects the speciality of the concrete constitutional body. Every case management system however usually consists in two principals segments namely non judicial and judicial. First of them is represented by the registry office , the secretariat, or any other administrative body of the constitutional court (regardless of its denomination) receiving, registering and screening every petition adressed to the constitutional court and delivering the final findings of the court to the parties of the proceedings. A number of other administrative and procedural acts may be however taken by this body as well. The scope and character of latter acts depend on the general wishes of the domestic legislator to have either “strong” or “weak” administrative body in its constitutional court. Strong administrative body may take not only purely administrative measures but to examine the petitions as regards as its admissibility, to review the petition with respect of its compliance with other statutory requirements, to contact the complainant in order to correct its petition in the fixed time limit etc. Weak administrative body deals purely with administrative and procedural aspects of petitions not to be involved into their examination from the “judicial” point of view and for the need of further proceeding before constitutional court. Judicial segment of case management system is usually represented by the judges including the chairman and vice chairman and other judicial personnel (advisers) of constitutional court and obviously involves preparatory stage of the proceeding and proceeding in the merits. The effective case management system is therefore not static but dynamic and able to react in a reasonable time on the changes concerning the competences of the constitutional

courts, increasing number of cases etc. The reaction of the case management system may in such a case involve f.e. the modification of existing organizational structure, increasing number of legal advisers and administrative staff, relevant changes of procedural and internal rules etc<sup>1</sup>.

It should be pointed out as well the importance of appropriate legal regulation of the above mentioned segments of case management system. Constitutional bodies have usually complete autonomy concerning not only its organizational structure, self-government and financial management but its judicial activity as well. As the bodies protecting the constitution and constitutionality stands outside judiciary both ordinary and administrative, have its own competences and its own procedural and internal rules laid down in the specific legal regulations. The above mentioned segments of case management system form integral part of procedural regulation of each constitutional body and one can mention that the judicial segment is usually regulated by the special statute governing the activity of constitutional court (Constitutional Court Act) and activity of non judicial segment may be regulated partly by such act and partly by the internal rules of the court. An appropriate balance should be however maintain between these two kinds of legal regulations in order to ensure effective and truly exercised constitutional justice. Following remark may be therefore given in relation to the both kinds of such regulations. With respect of the procedural law regulating the activity of the constitutional court it should not be too detailed and should leave the room for the internal regulation of the court. It is certainly important that the procedure before court can be regulated as clearly and precisely as possible. It is also important however that the court enjoys a certain autonomy with regard of its own procedure and to modify its details in the light of practical experience without parliamentary intervention.

### **Life Cycle of a Case before the Constitutional Court of Slovak Republic.**

Constitutional Court of Slovak Republic (hereinafter as Constitutional Court, Court) has a number of competences including *á posteriori* review of the constitutionality of domestic legal regulations, *á priori* review of the constitutionality of international treaties, the proceedings of the constitutional complaint, the proceeding of generally binding interpretation of constitution and other constitutional statute, the proceedings for resolving elections and referendum disputes etc. ( Articles 125-130 of the Constitution of the Slovak Republic). According to Article 140 of the Constitution the details of the organization of the Constitutional Court, its proceedings and of the status of its judges shall be regulated by a separate law. Procedural, organizational and other relevant questions concerning the Constitutional Court are regulated by the statute No.38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic, on proceedings before the Court and the status of its judges in the wording of later amendments (hereinafter as Constitutional Court Act). More detailed regulation of the Constitutional Court proceeding includes Rules of Administration and Procedure of the Constitutional Court approved by the plenary session of the Constitutional Court and promulgated under No.114/1993 Coll. These

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<sup>1</sup> With respect of the experience of concrete constitutional court see at least : Dr. Britta Wagner: "The life cycle" of a case before the Constitutional Court" (Austria). Doc.CD-JU (97) 20 : "Workshop on the functioning of the Constitutional Court of Latvia", Riga, Latvia, 3-4. July 1997.

regulations in principle respect the role and position of the above mentioned judicial and non judicial segment of case management system before Constitutional Court.<sup>2</sup>

As regards as the “life cycle” of a case before Constitutional Court the whole cycle may be divided into four main consecutive stages namely:

- 1) the stage of registration of the petition and other procedural measures necessary for its “entry” into preliminary proceeding;
- 2) the stage of preliminary proceeding and procedural decision of admissibility;
- 3) the stage of the proceeding in merits and final finding of Constitutional Court;
- 4) the stage of delivery of final finding to the parties of proceeding.

At 1) each petition addressed to the Constitutional Court is registered by the Registry Section of the Judicial Agenda Department (JAD) immediately after its delivery to the Constitutional Court. Register may be used only for the internal purpose of the Constitutional Court and it is to be renewed on the beginning of each year. The special Registration Rules have been adopted (December 2001) as an internal document for complete regulation of all items connected with the registration of petitions addressed to the Constitutional Court. The registration of each petition is carried out through the reference number composed of two elements. First of them is consecutive number and the second one the year of the registration of petition. The exact date of delivery of petition is marked on the front page of the petition as well. Constitutional Court has “weak” JAD (see above) so that it is not competent neither to analyse the content of the petition nor to examine its compliance with the procedural requirements or even to contact the petitioner to redress or complete its petition in fixed time limit etc. Each petition is however scrutinized with respect of the name and identity of the petitioner in the central (computerized) register of the Constitutional Court. Provided that the petitioner lodged to the Constitutional Court the petition (s) previously the total number of its petitions and their reference numbers shall be marked on the front page of its latest petition. These informations are important for the reporting judge in the later stage of the proceeding (for example for application of res iudicata objection and to help him/her to avoid double proceeding of the Constitutional Court with respect of the same case). Provided that all these steps have been taken the formal record is set up and only in such a form the petition may be admitted into next stage of the procedure before Constitutional Court.

2) After the registration of petition the president of the Constitutional Court assigns cases among the reporting judges (judges rapporteurs). The distribution of the cases among reporting judges follows the principles embodied in the Work Schedule which is approved regularly by the Plenary Session of the Constitutional Court. As a rule at the beginning of each “business” year Plenary Session of the Court adopts Schedule work containing the principles according to which all incoming petitions shall be distributed among the judges in the capacity of rapporteurs. Two of these principles are decisive namely the respect of the specialization of each judge and well balancing of the workload among all reporting judges. If the petition concerns the case on which Constitutional Court should decide in the Plenary Session the President of the Court shall assign the case directly to the reporting judge. Petition which should be decided by the Chamber of the Court shall be assigned by the President of the Constitutional Court to reporting judge only after consent of the Chairman of the concrete Chamber. Taking into account great flow of the cases to

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<sup>2</sup> Brostl A.- Klucka J.- Mazák J.: Constitutional Court of Slovak Republic (Organization, Process, Doctrine), PHARE, Foundation, Košice 2001, pp.177.

the Constitutional Court since January 1<sup>st</sup> 2002 such assignments have to take place more or less regularly every week (on the Thursday) and each judge receive obviously five and more new cases.<sup>3</sup>

If the petition is assigned to one of the reporting judges this conducts its preliminary examination independently within the framework of preliminary proceeding. Regularly the formal requirements will be checked at first. Constitutional Court Act distinguishes between general procedural requirements (common for all types of procedures before Constitutional Court) and specific procedural requirement (for concrete type of procedure). Reporting judge therefore considers the petition from this point of view and provided that latter not comply with general and/or specific procedural requirements he or she contacts the lawyer of the petitioner in order to correct or to complete the petition in the fixed time limit. A number of defects however cannot be corrected and lead to the rejection of petition on procedural grounds. Activity of the reporting judge includes in concreto procedural acts connected with the examination and verification of procedural conditions such as conditions of admissibility and a number other procedural requirements (Article 20 para.1 of the Constitutional Court Act). The stage of preliminary examination of the case by the reporting judge principally results in two kinds of procedural decision taken within preliminary proceeding. One of them denies the admittance of the petition on the specific procedural grounds by the Chamber or Plenum of the Constitutional Court competent to deal with the case in the merits (lack of the competence of Constitutional Court, delayed constitutional complaint, non respecting the formal requirements of petition, manifestly not founded petition, lack of obligatory legal representation of the petitioner etc.) Such procedural decision is final without any appeal or other legal remedy. Only if the petition is clearly justified and well founded may be accepted on next proceeding in merits. No oral proceeding is required for such procedural decisions of Constitutional Court.

Maybe each constitutional court has its own "circle" of traditional, often very active and well known "regular clients" who are able land it with the number petitions, declarations, complaints obviously manifestly not founded and having no real possibility to be admitted by the Constitutional Court (general declaration of dissatisfaction with the actual political situation in the country, request for money). Increasing number of cases connected with the requirement of procedural economy need to proceed with them by the simple a quick manner without necessity to take formal procedural decision denying their admittance. Article 23a of the Constitutional Court Act therefore grants to the reporting judge of Constitutional Court the right to adjourn such manifestly not founded petition without any formal procedure and decision. The adjournment of such petition shall be simply reported in writing to the complainer.

3) Provided that the petition is not denied proceeding in merits starts either before the Chamber or the Plenary Session of the Constitutional Court (depending of the content and character of the concrete petition). The Constitutional Court is strictly obliged to proceed and to decide within the limits of petitum and any action ultra petitum is excluded. Pending this stage of the proceeding the leading role plays reporting judge who firstly shall ensure delivery of accepted petition to the other parties of proceeding with request for them to give their opinion upon the fixed time limit. Preparation of the case in this stage of proceeding by the reporting judge includes collection and evaluation of the evidence necessary for the examination of the case, collection of explanations and standpoints of the secondary parties in the proceeding, preparation of preliminary measures if

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<sup>3</sup> The main reason of the dramatically increased number of petitions to the Constitutional Court is a "new" constitutional complaint according to Article 127 para.1 of the Constitution. Since 1st January 2001 Constitutional Court regularly receives more than 2000 complaints per year.

they are needed etc. If needed the reporting judge shall ask for external expertises or for necessary cooperation of other public authorities and organizations. All courts, authorities of public administration and other state institutions shall grant the Constitutional Court at its request assistance in procuring documentary proof for its decision making. Another judges and judicial counsellors may be involved in this process as well. The main purpose of this stage of proceeding is to collect and to consider all relevant facts and circumstances of the the case, to analyze them from the legal point of view and to prepare the session of the Chamber or the Plenary Session to proceed with the case and to take a final finding.

Proceeding in the merits differs from the preliminary proceeding and two forms of deliberations can take place namely public (oral) hearing and non public session of the Chamber or Plenum of Constitutional. According to valid legal regulation (Article 30 of the Constitutional Court Act) Constitutional Court has no discretionary power to decide freely about concrete form of deliberations but he may resign to convene the oral hearing with the consent of parties and provided that the further clarification of the case cannot be reasonable expected from such a hearing. In any rate oral hearing should be obligatory in all the proceedings where it is important for the decision to gain abroad spectrum of views in particular in controversies between supreme organs of state, in the proceeding of abstract norm control, in the impeachment and elections procedures etc. In the other kinds of proceedings an oral hearing might be provided facultatively if the Court considers it useful to promote the proceedings. Some basic principles should be however respected as regards as the proceeding in merits. First of all the Constitutional Court should enable the parties in constitutional litigation to duly present their cases before the court whether in an oral hearing or in writing, and the parties should be granted access to all of the documents presented to the Court and to the records of the case. In this sense all procedural regulations and case management system before whichever Constitutional Court must observe the "fairness" of the constitutional proceedings regardless of its writing or oral nature.

After closing oral hearing or non public session the Constitutional Court the final finding shall be taken on the basis of the reporting judge's proposal and after the discussion of the judges in camera. A judge who disagrees with the finding has the right to have his dissenting opinion briefly noted in the record on voting. The judge's dissenting opinion shall be submitted and published as the other parts of the finding. The finding of the Constitutional Court shall be announced publicly provided that it was preceded by oral (public) hearing.

4) Final stage of activity of the Constitutional Court consists in the delivery of the finding to the parties of the proceeding. Before doing so the language correction of the finding is done by the special "Language Unit" of the JAD.

### **Conclusion.**

Pending more than ten years of its existence the case management system of the Constitutional Court have been confronted with a number of changes and challenges. Their main reasons have been represented by the enlargement of the competences of the Constitutional Court (maybe each new constitutional amendment since 1993 brought new competence of constitutional court) and the by the change of the character of the constitutional complaints. Due to the number of judges of Constitutional Court has increased (from 10 to 13), the number of Chambers increased from 3 to 4, each judge has at this moment two full time legal advisers (originally 1) and a substantial changes have occurred in the administration of the Constitutional Court as well. All administrative operations of the court are computerized and special registry and language department (unit) has been set up.