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OF THE COMMITTEE OF MINISTERS

SEMINAR ON

“The use of international instruments for protecting individual rights, freedoms and legitimate interests through national legislation and the right to legal defence in Belarus: challenges and outlook”

Minsk, Belarus
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REPORT

“Influence of the decisions of the European Court of Human Rights on the judicial practice of the Constitutional Court of the Slovak Republic”

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The Slovak Republic became the sovereign state with a full political and legal jurisdiction on 1 January 1993. At the same time, this fact meant to adopt legal guarantees of fundamental democratic values – to ensure the adoption and applying of human rights and fundamental freedoms. This was also supported by adopting the Constitution of the Slovak Republic on 1 September 1992, which became the basic ideological, legal as well as democratic document for functioning of the society on the new fundamentals.

The adoption of this document, especially as far as human rights and fundamental freedoms are concerned, was an essential fact, because human and citizens' rights are permanently actual topic in the life of the society and of the state. Legal and particularly the factual status of a citizen in the state, the nature, scope and guarantees of his/her rights and freedoms – this all has cardinal importance for the life of each individual, for the development of his/her personality, as well as for the satisfaction of his/her important interests and needs. Therefore, the key issue of the constitutional law of each state is the regulation of fundamental rights and freedoms. The constitutional regulation of fundamental rights and freedoms contains the initial value criteria for realising the freedom, equality and justice.

Through the Constitution, the state confers to the individual the rights, which it undertakes to respect and protect, either towards public authority or to anybody. Just the constitutional regulation of fundamental rights leads to the fact that even if an individual is somehow subordinated to power-political or juridical hierarchy of the state, the folk as a law-maker binds the democratic state to a duty in favour of a human being.

The Slovak Constitution-maker came out from respecting of the indicated historical and international continuity by anchoring of fundamental rights and freedoms in the Constitution of the Slovak Republic, which was adopted by the Slovak National Council on 1 September 1992.

The high-priority requirement for adopting the qualitatively new constitutionally-legal regulation was the Charter of Fundamental Rights and Freedoms adopted during the existence of the Czech and Slovak Federative Republic in the year 1991.

The Charter of Fundamental Rights and Freedoms was and still is an international document being the basic guideline for all countries trying to establish the democratic state and to observe the fundamental democratic values.

Being not an exception, the Slovak Republic anchored these fundamental rights and freedoms directly into the Constitution. The Slovak Republic became later the fully-fledged member of the European Union, in consequence of which it took over the obligations resulting from this membership. Therefore, in the amendment of the Constitution of the Slovak Republic from 2002, the Article 7 paragraph 5 has been anchored, according to which the international treaties regarding human rights and fundamental freedoms, international treaties for the realisation of which no Act is necessary and international treaties which directly establish the rights or duties of natural persons or legal persons ratified and promulgated in a way specified by Law do have precedence over the national laws.

The approximation to the European standard is a constitutional solution upon which natural or legal persons may claim their rights and the particular authority applying the law has to apply preferentially the international treaty as it results from the aforementioned facts.

The adoption of the above-mentioned obligation does not, however, necessarily mean that the European law has the absolute priority over the national law. The Constitution of the Slovak Republic confirms the precedence of the European law and this could be also understood as a demonstration of constitutional openness towards the European law.

As the starting point, which most symptomatically expresses the transformation of the constitutional and legal system of the Slovak Republic and which at the same time creates a context for all future legal regulations of the state, could be considered the systematic ambition of the state to constitute, in the long term, the regime within the continental Europe known as **Rechtsstaat**, it means the regime based on the strict liability of the state power towards the law (it means the state governed by the rule of law).

Among the key signs of the actual constitutionally-political system of the Slovak Republic, during the transition from the power-political arbitrariness to the state governed by the rule of law belong first of all:

- institutional anchoring of basic democratic minimum consisting in the possibility of a competition of more political powers (i.e. plurality), general and equal possibility to take part in this competition (i.e. participation) and the availability of guarantees of political rights (i.e. protection of plurality and participation),
- execution of public authority being based on traditional institutional as well as functional division of powers into legislative power, executive power and judicial power, whereby it comes to successive likeness of relations between particular components of state power to the models applied in the well-established constitutional regimes, and at the level of vertical division of powers also to the successive decentralization of public administration,
- accessibility to the, in principle, complete catalogue of human rights and fundamental freedoms the protection of which relatively (in relation to historical, political, economic and social context) and effectively realises the institutionally as well as functionally separate authority of judicial protection of the constitutionality,
- system openness of legal system towards internationally-legal standards.

On the background of the above-mentioned it is possible to outline some trends of the development of the constitutional law in the Slovak Republic. It is a matter of the internationalization of the local legal environment what is most markedly reflected through the limitation of the normative autonomy of the legislative panel by the regulative acting from the side of the authorities of the European Community. Further it is a continuation of the process of competence determination of particular powers, successive enforcement of decentralization and self-governing elements, which has been manifested by the decentralization and modernization of the public administration by the shift of important powers from the state, then by the legal re-codification in compliance with the European standards, by creation of new branches of law (for example computer law, customer law, national entity law, feminism, antidiscrimination legislation etc.) and also by reduction of normative relevance of law and the opportunist attitude of public towards law.

The development of the constitutional law in the indicated trend is not, however, possible without being influenced by international institutions, the member of which is also the Slovak Republic. The ways of influencing the national legal order consist in the implementation of recommendations of the Committee of Ministers being based on the reopening of the cases on the national level in consequence of the judgments of the European Court of Human Rights, in publishing and distributing the Convention for the Protection of Human Rights and Fundamental Freedoms and case-law of the European Court of Human Rights, in university education and professional education trainings regarding the Convention for the Protection of Human Rights and Fundamental Freedoms, in reviewing the

compliance of draft laws, existing legal enactments and administrative practice with basic principles anchored in the Convention for the Protection of Human Rights and Fundamental Freedoms.

Natural and legal persons may claim their rights in the Slovak Republic at the courts. The judicial system consists of a district court – as a court of first instance, then of regional court – as a court of second instance and of the Supreme Court of the Slovak Republic. Within the general judiciary, the administrative judiciary has been anchored in the Code of Civil Procedure, which as a new institute (let us say instrument) has been launched only in the year 1992. It's role is to review the lawfulness of decisions and measures of public authorities. It is for the first time, when the control of decisions of public authorities is subordinated under general courts, which are independent authorities within the judicial system. The experiences and the practice do show that the implementation of this institute/instrument was very effective and bringing the quality of decision-making at administrative authorities.

Furthermore, it is not possible to omit the status of the Prosecutor's Office, the role of which is to carry out a general control in the field of civil law, whereby the Prosecutor's Office has extensive powers. It is true, that there were discussions concerning the status of this authority, the opinions were different especially by reason of the fact that the Prosecutor's Office acted negatively before the year 1989, nowadays it has new roles being helpful and useful by settling and solving the cases. We cannot forget the institute of the civil rights protection, the so-called Ombudsman, who nowadays does not have large powers, but who is an authority initiating the petitions being filed to public authorities and administrative public authorities upon the petitions of aggrieved parties. Therefore, the ombudsman does not have an omissible status.

The structure of the judicial authorities in the Slovak republic results from the above-mentioned. The Constitutional Court of the Slovak Republic has a separate status. This court is not included in the system of general courts and in the Constitution it is characterised as the independent authority of the protection of constitutionality with many vested powers.

At the same time, from the indicated structure does it follow, that the right of a natural or legal person is to file his/her application to the European Court of Human Rights in Strasbourg, but only after s/he exhausts all domestic remedies and extraordinary remedies. In the practice it means that a complaint has to be dealt by the particular courts and after the validity of a decision, a subject concerned may address the Constitutional Court with his/her complaint. Once the Constitutional Court has decided his/her complaint, s/he can be given the procedural right consisting in the possibility to submit his/her application to the European Court of Human Rights. It would not be fair to assert that the citizens of the Slovak Republic do not make use of this possibility. It is true, that this institute is being used in large extension, because the number of the applications is approximately the same as the number of applications from other countries.

The decisions of the European Court of Human Rights are binding for the Slovak Republic. This Court may, and it is also its practice, to award financial satisfaction to the subjects concerned, for the reimbursement of which it binds the Slovak Republic.

It is natural, and the Slovak Republic not excluding, that each state efforts to reduce the applications being filed to the European Court of Human Rights to a minimum. This, however, demands the quality of the decision-making activity of the courts at the domestic level, then to become acquainted with the judicature of this Court, therefore, it is necessary to study the case-law of this Court and to become acquainted with its decisions which create the basis for the qualitative decisions.

If we are talking about the influence of the European Court of Human Rights on the judicial practice of general courts in the Slovak Republic, and particularly on the Constitutional Court of the Slovak Republic, we may unambiguously state that this influence is substantial and decisive, and this without irony.

One of the fundamental rights of natural and legal persons stipulated in the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms – is the right to a fair trial. The conception of the fair trial has several elements. Its core is the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law. This Article also contains the presumption of innocence, the right of the accused to have adequate time and facilities for the preparation of her/his defence, right to defend himself/herself in person or through legal assistance, right to examine and have examined witnesses. The wording of this Article is of general character, but its interpretation is more complicated and is individual from case to case. There, the judicature of the European Court of Human Rights is very important because it reflects legal opinions, which significantly formed the interpretation of this key Article of this Convention.

One of the fundamental rights of a subject is to have safeguarded the basic procedural rights within judicial proceedings. They consist in safeguarding of these proceedings before an independent court, in safeguarding of the right to defence, and this also in the case when the subject is not able to pay for legal assistance, in safeguarding of the right to be heard, right to become acquainted with the proposals of the adverse party, in safeguarding of oral and public hearing, right to have adequate time and facilities for the preparation of her/his defence, right to act and speak in mother tongue and in criminal cases also the acceptance of the principle of the presumption of innocence.

The most frequent problem in our country are asylum seekers, in consequence of which, within the administrative proceedings, there were created special Senates dealing with the asylum agenda. Naturally, the constitutional framework has been created by the Constitutional Court of the Slovak Republic, which comes out from the basic concepts mentioned by the European Court of Human Rights. One of them was for example the concept of family, not knowing whether to qualify it in a broader or narrower sense, then conditions of the country from which the asylum seekers come from, then the inevitability to ensure to this person in judicial proceedings all procedural rights, including the assistance of an interpreter.

After the year 1989 when it came to social as well as political changes in the Slovak Republic, there occur frequent disputes concerning the restitution through which the injustice to former owners of the properties has to be rectified. These were very complicated trials with the lack of basic concepts and judicature in the country, therefore it was very useful to become acquainted with the case-law of the European Court of Human Rights what in the final consequence helped the judicial practice to unify the decisions. The Constitutional Court, with its decisions, contributed to this also in a significant way.

After the social and political changes in the Slovak Republic, there was enormous backlog at the courts which had to be decided by these courts. There was a period when the courts did not physically manage to settle the agenda within “reasonable period”, the consequence of which was an increase of complaints being filed to the Constitutional Court of the Slovak Republic, because the right to have one’s case heard within reasonable period was directly anchored in the Constitution. And also here, the judicature was very useful because the European Court of Human Rights delivered the judgment, that in the criminal cases it is not possible to count the delays for months but for weeks, further it ruled that the delays in proceedings should be considered summarily for the whole proceedings, but not on particular levels of judicial proceedings, the reasonableness of the period is to be considered individually not flatly. As far as the delays in proceedings before the public authorities are

concerned, in the year 2005, being influenced by the judgments of the European Court of Human Rights, there the principle of the possibility to review the speed of proceedings before the administrative authorities by the courts was anchored in the Code of Civil Procedure. In this direction, this legal regulation was helpful both for the courts and for the parties to proceedings. On the other side, however, it unloaded the Constitutional Court from solving these cases. This agenda – delays in proceedings is not the crucial one, but it creates the essential part of the backlog at the Constitutional Court. Also for this reason, the measures are taken that the institutions deciding on these cases, professional as well as layman community have to be acquainted with the case-law of the European Court of Human Rights and of the Constitutional Court of the Slovak Republic, as well.

It is not my role to analyse particular cases or particular provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, but it is necessary to be said that the judgments of the European Court of Human Rights have decisive influence on the decision-making activity of the Constitutional Court of the Slovak Republic. This influence is to be deduced from the fact that we are bound to this obligations, that our legal norms are adopted by the legislative bodies in order to be compatible with the judicature of European judicial institutions, the member of which the Slovak Republic is. This does not necessarily mean that the Slovak Republic gives the legislative powers to the supranational authorities or that it does not have the ability of its own interpretation of laws. For this purpose there is the Constitutional Court of the Slovak Republic, which fulfills this task, and I dare to believe, to the satisfaction of the country.