THE AUTHORITY OF A SENATE OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC TO INITIATE LEGAL COMPLIANCE PROCEEDINGS UPON A PETITION FILED BY A NATURAL OR LEGAL PERSON*

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Abstract: The article provides a perspective on the expansion of the powers of the Constitutional Court of the Slovak Republic. This is possible when the complainant, together with the constitutional complaint, petitions the Senate of the Constitutional Court of the Slovak Republic to submit a proposal to the plenary to initiate proceedings on the compliance of legal regulations. This power brings an expansion of the powers of the constitutional judiciary in proceedings on individual constitutional complaints. Although, generally, there are mostly critical voices calling for the powers of the Constitutional Court not to be further increased, it can be assumed that this change has positive potential, because it will create a corridor allowing complainants to challenge legal regulations. Aware of the competence imbalance, the authors in the article also formulate considerations towards the disposal of some of the powers of the Constitutional Court. In line with the study's research focus, the authors also advance *de lege ferenda* proposal to improve legal-normative regulation in the realm of legal consciousness.

Keywords: Constitution; Constitutional Court; constitutional complaint; legal compliance proceedings

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1. INTRODUCTION

In its concentrated and specialized form, the model of judicial checks of constitutionality is characterized by a multitude of competences which are (*inter alia*) typical for it. In the casestates that have introduced the above model of the constitutional court, the concept of constitutional justice is based on a much broader context than in the states following the model of general constitutional justice. Thanks to the wide range of competences entrusted to constitutional courts, it is the countries of Central Europe, where the Slovak Republic can also be included from geopolitical point of view,

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that may be considered as countries in which constitutional courts have a particularly strong position within the constitutional mechanism.[1] For example Austrian literature uses the term "Verfassungsgerichtsbarkeit" which, in a broader sense, means the jurisdiction of the court institutionally aimed at observing and enforcing the constitution. In a narrower sense, it is the Court's authority to assess laws and other legal regulations in terms of their constitutionality.[2]

In the course of legal and political development after 1993, the scope of the competence fabric of the Constitutional Court of the Slovak Republic (hereinafter: CC) took shape along both negative and positive lines in terms of different quantitative and qualitative aspects. Some procedural and organizational changes were understood properly, while other bear the signs of a lesser or greater hesitancy on the part of the constitutional legislator, or even the legislator. Without the intention of presenting a detailed analysis of this issue,[3] it can be stated that, in particular, the issue of a significant reduction in the competences of the Slovak constitutional judiciary, which regularly reemerges with more or less force in the domestic professional audience, remains unresolved, especially with regard to those competences that were granted to the CC in an "inorganic" manner, devoid of foresight of its consequences.

In one breath, however, it should be added that not every new competence of the constitutional judiciary that was enshrined was associated with a negative response in terms of its evaluation. Positive changes include, for example, replacement of the former complaint procedure under Art. 130 para. 3 of the Constitution of the Slovak Republic no. 460/1992 of the Statutes (hereinafter: Constitution) in the reading effective before the constitutional amendment implemented by Constitutional Act no. 90/2001 of Statutes (1 January 2002) by a constitutional complaint. The reasons for enshrining the complaint pursuant to Art. 127 of the Constitution were several. It was mainly the ineffectiveness of the complaint from the point of view of Art. 13 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention), as well as the weak position of the constitutional judiciary *vis-à-vis* other public authorities, which meant that the constitutional court could only assess public administration

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1 For more details, see GAJDOŠÍKOVÁ, Ľ. – LUBY, J. – MOCHNÁČOVÁ, M. – OROSZ, L. – MACKO, R. Rozširovanie právomoci Ústavného súdu Slovenskej republiky a aktuálne problémy rozhodovacej praxe [Expansion of the powers of the Constitutional Court of the Slovak Republic and current issues in decision-making practice]. In: OROSZ, L. – DOBROVIČOVÁ, G. (eds.). *15 rokov Ústavy Slovenskej republiky: zborník príspevkov z vedeckej konferencie, Košice, 6.–7. septembra 2007* [15 Years of the Constitution of the Slovak Republic: Collection of Papers from the Scientific Conference, Košice, September 6–7, 2007]. Košice: Pavol Jozef Šafárik University in Košice, Faculty of Law, Košice Self-Governing Region, 2008, pp. 223 et seq.

2 ÖHLINGER, T. – EBERHARD, H. *Verfassungsrecht*. Vienna: Facultas, 2019, p. 473.

3 The authors L. Orosz and A. Krunková deal with these issues in detail in their up-to-date article OROSZ, L. – KRUNKOVÁ, A. Mnohosť a komplementárnosť kompetencií Ústavného súdu Slovenskej republiky [The multiplicity and complementarity of the powers of the Constitutional Court of the Slovak Republic]. In: OROSZ, L. – KARAFOVÁ, S. – MAKATUROVÁ, M. (eds.). *Konanie o súlade právnych predpisov – návrhové oprávnenie a účinky rozhodnutí ústavného súdu: XIII. ústavné dni: Košice, 3.–4. október 2024* [Proceedings on the conformity of legal regulations – right to propose and effects of constitutional court decisions: XIII Constitutional Days: Košice, October 3–4, 2024]. Košice: Pavol Jozef Šafárik University in Košice, Vydavateľstvo ŠafárikPress, 2025, pp. 136 et seq. See also OROSZ, L. Účinné ústavné súdnictvo ako ústavou chránená hodnota [Effective constitutional justice as a constitutionally protected value]. *Studia Iuridica Cassoviensia*. 2019, Vol. 7, No. 1, pp. 9 et seq.

decisions and could not derogate therefrom.[4] More specifically, under Article 130(3) of the Constitution, the Constitutional Court of the Slovak Republic could initiate proceedings based on a petition submitted by a natural or legal person alleging a violation of their rights. However, even if such a petition was successful, the only possible outcome was the finding that the rights had been violated by an individual act without the Constitutional Court's authority to annul the contested decision (the so-called academic ruling). Although the opposite might appear to be the case at first glance, according to the case law of the Constitutional Court, a natural or legal person could not invoke a violation of their rights arising from legislation through such a petition. From an early stage of jurisprudence, the Constitutional Court held that proceedings on such a petition could not be conducted – and no constitutional right could be found to have been violated – if the finding would require prior proceedings before the Constitutional Court that the petitioner had no constitutional right to initiate. As a result, it was impossible to find a violation of a constitutional right based on a petition if such a finding would require legal compliance proceedings, which a natural or legal person was not entitled to initiate.[5] *Ex post*, the constitutional complaint also stood its ground in the light of the case law of the European Court of Human Rights (hereinafter: ECHR), which granted it the character of an effective national remedy that had to be exhausted before the complainant submitted a complaint to Strasbourg.[6] After a relatively long professional discussion, the legislator deepened the constitutional protection of human rights and freedoms in proceedings on constitutional complaint, namely by introducing the possibility of seeking protection in cases where the reason for violation appears to be legislation inconsistent with the highest legal force.[7] We refer here to the constitutional regulation introduced in Art. 127 para. 5 of the Constitution, which entered into force on 1 January 2025. The adoption of this legal regulation did not proceed without certain concerns, particularly regarding the excessively long *vacatio legis* period, which lasted from 29 December 2020 to 31 December 2024. In particular, the rationale for why the regulation could not have entered into force earlier remained unclear. Unsurprisingly, this had an adverse impact on the effectiveness of the protection of the rights and freedoms of natural and legal persons, whose petitions – challenging the legal compliance within constitutional complaints – could not be assessed by the constitutional judiciary during that period (for further discussion, see the following sections of this article).

In the indicated context, the aim of this paper is to focus attention on individual protection of constitutionality in the form of the eligibility of a natural person or a legal entity to file a petition with the CC's Panel of Justices to initiate proceedings on the

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4 ĽALÍK, M. – ĽALÍK, T. *Zákon o Ústavnom súde Slovenskej republiky: komentár* [Act on the Constitutional Court of the Slovak Republic: Commentary]. Bratislava: Wolters Kluwer, 2019, p. 365.

5 Ruling of the Constitutional Court of the Slovak Republic in the case no. I. ÚS 96/93 of 16 November 1993.

6 MACEJKOVÁ, I. – KANÁRIK, I. Monizmus právneho poriadku Slovenskej republiky v podmienkach právneho pluralizmu [Monism of the legal system of the Slovak Republic in conditions of legal pluralism]. In: LEGYELOVÁ, D. (ed.). *Pluralizmus moci a práva: zborník z medzinárodnej vedeckej konferencie konanej v dňoch 25.–27. marca 2009 v Tatranskej Štrbe* [Pluralism of Power and Law: Proceedings from the International Scientific Conference held on March 25–27, 2009, in Tatranská Štrba]. Bratislava: Bratislava College of Law, 2009, p. 343.

7 OROSZ – KRUNKOVÁ, *c. d.*, p. 137.

compliance of legal regulations where a legal regulation, its part or its individual provision that relates to the complaint filed, is believed to be contrary to the Constitution, constitutional law, international treaty pursuant to Art. 7 para. 5 of the Constitution of the Slovak Republic or the law. This issue is first analyzed against a broader procedural and historical background, where the authors focus on examining the fate of the petition for a compliance procedure applied in the constitutional complaint procedure up to 31 December 2024. In connection with the above, they take into account the temporal aspects of the entry into force of the Amendment no. 422/2020 of Statutes. Here, they reflect on the (il)legitimacy of the legislative solution, under which this amendment became effective more than four years after it became final. Lastly, before the final summary and formulation of one *de lege ferenda* proposal, the authors examine the positive-legal context of the issue.

The article uses the methodical and methodological approach standardly applied in legal research. In connection with the development of case law, the historical method is applied. To compare the Czech and Slovak position, the comparative method is used. In addition, the method of analysis, synthesis, as well as induction and deduction is also applied. To the necessary extent appropriate for this paper, the descriptive method is also applied.

2. PROCEDURAL-HISTORICAL ASPECTS

It should be noted that the cases of the complainants' petitions for the compliance procedure filed under the constitutional complaint procedure will not constitute a complete novelty in practice. These have already been a reality in the application practice, largely in a non-petitious form and, in the minor number of cases, also taking the procedural formulation of the constitutional complaint petition. In terms of their argumentation, the validity of these petitions was relatively broad. On an imaginary spiral, these would range from (i) the so-called "lay" ones, not too sophisticated constitutional complaints as to their grounds, originating from legally unrepresented complainants, to (ii) motions filed on relatively qualified grounds. However, in some situations, this second group of procedural initiatives became the subject of compliance proceedings initiated on the basis of a new motion of an actively legitimized (privileged) entity and, as a result, the petition filed finally proved to be justified. This will be discussed later. Up to 31 December 2024, the common denominator in both situations was the necessity to admit procedural failure of the petitions mentioned. Simply put, the CC could not address such petitions in the constitutional complaint procedure.

Addressing both groups of petitions, the CC had already introduced at an earlier stage of its activity[8] and, subsequently, evaluated at the preliminary hearing, the identical manual for rejecting constitutional complaints also relatively consistently across

[8] Resolution of the Constitutional Court of the Slovak Republic in the case no. III. ÚS 262/04 of 25 August 2004.

its individual chambers,[9] in the parts where the complainants invoked the review of legislation. It was that such argumentation aimed at criticizing a normative regulation. In addition, the CC repeatedly emphasized that within the constitutional law of the Slovak Republic, presumption of constitutionality of generally binding legal regulations applies. Thus, from a legal and theoretical point of view, the CC rightly based itself on the presumption of constitutionality of laws and subordinate legal regulations in the complaint procedure. At the same time, it follows from Art. 127 para. 2 of the Constitution that the fundamental rights and freedoms of the complainants may be violated only by a final decision, measure or other intervention, i.e., by individual legal acts, which cannot include legal regulations. In proceedings pursuant to Art. 127 para. 1 of the Constitution, the CC was thus not authorized to rule on violation of fundamental rights and freedoms of natural persons and legal entities resulting from normative legal acts.

Only certain deviations could have thus been noticed in the activity of the CC when it identified the grounds for rejecting the constitutional complaint in the part in which the complainant sought the review of compliance of a legal regulation with certain reference criteria. For example, in the case no. IV. ÚS 91/2020, the complainant objected to the statutory regulation of parliamentary elections as being contrary to Art. 12 para. 1, Art. 30 and Art. 74 of the Constitution, as well as Art. 21 of the Constitutional act no. 23/1991 of the Statutes, which lists the CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as the Constitutional Act of the Federal Assembly of the Czech and Slovak Federative Republic (hereinafter: Charter). In other words, the complainant sought a ruling that would declare electoral law inconsistent with specific articles of the Constitution or the Charter. In response, the CC established that the case at hand was not a petition for initiation of legal compliance proceedings, because as a natural person, the complainant does not belong to the group of persons entitled to file such petition under Art. 130 para. 1 of the Constitution and § 74 of the Act no. 314/2018 of Statutes on the Constitutional Court of the Slovak Republic, as amended (hereinafter: CCA). Similarly, in proceedings involving complaints of natural persons and legal entities, the CC is not entitled to rule on the compliance of legal regulations [cf. Art. 127 and Art. 125 para. 1 (a) of the Constitution]. Thus in the part aiming at declaration of violation of Art. 12 para. 1, Art. 30 para. 3 and Art. 74 of the Constitution, as well as Art. 21 of the Charter, the constitutional complaint was rejected as a petition filed by a manifestly ineligible person [§ 56 para. 2 (e) of the CCA] in conjunction with the lack of competence of the CC's Panel of Justices to hear a petition to initiate proceedings on the compliance of legal regulations [§ 56 para. 2 (a) of the CCA].[10] On the contrary, in other rulings, the CC rejected petitions seeking a review of legal-normative regulation on the grounds under § 56 para. 2 (g) of the CCA as manifestly unfounded.[11]

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[9] For example, resolutions of the Constitutional Court of the Slovak Republic in the case no. III. ÚS 506/2023 of 12 October 2023, case no. IV. ÚS 646/2023 of 12 December 2023, case no. I. ÚS 406/2024 of July 3, 2024, or case no. II. ÚS 429/2024 of 24 September 2024.

[10] Resolution of the Constitutional Court of the Slovak Republic in the case no. IV. ÚS 91/2020 of 13 March 2020.

[11] Resolution of the Constitutional Court of the Slovak Republic in the case no. III. ÚS 506/2023 of 12 October 2023.

Regarding this procedural diversity it should be noted that, in particular, after the need to reject the constitutional complaint was safely established, the question of identifying the grounds for such procedure was probably a matter of sub-constitutional law. At last, as of January 1, 2025, the search for an answer to this question has now probably acquired a merely academic or poetic significance. However, if we return to the broached aspect of procedural purity in terms of the statutory law, it is true that a filing of a petition for initiation of proceedings by an eligible person is a procedural condition for the constitutional complaint procedure. Should this condition be left unmet, it then translates into the CC's simultaneous lack of jurisdiction to carry out a certain legal process. On the other hand, if the petition is dismissed as manifestly unfounded, it is subject to substantive examination. In such case, it is not a ruling on the conditions of the proceedings that would be procedural in nature, because the CC now addresses the very essence of the petition, i.e., its substantive aspect. Therefore, the decision to reject the petition due to obvious unfoundedness is of the so-called quasi-meritorious nature.[12] It then thus seems that rejection of petitions seeking review of legal standards brought by complainants in proceedings under Art. 127 para. 1 of the Constitution should have been more correctly substantiated by pointing to the lack of jurisdiction of the CC and the deficit of the petitioner's legitimacy to file such petition, and not due to substantive unfoundedness. Applying the above-mentioned methodological manual, the CC did not in fact provide a substantive answer – the so-called quasi-meritorious answer – to the question of compliance of a legal regulation.

It has already been signified that in terms of content, petitions attacking the constitutional-legal or international-legal consistency of legislation may be divided into two groups.

As (so far) unfounded, for example, have turned out to be petitions aimed at commuting the sentence of life imprisonment under the Crimes Act, which according to some implementation practice is not in every respect consistent with the Convention (Art. 3). Here, the CC,[13] quite correctly *obiter dictum*, replied to the complainant that the Slovak national legislation governing the possibility of release of prisoners sentenced to life imprisonment on parole, effective as of 1 January 2010 (§ 67 para. 2 of the Crimes Act) has also been accepted by the ECHR However, these considerations were put forth by the CC in its above-mentioned resolution only for the sake of completeness (*obiter dictum*)[14] because it could not have reached a positive or negative judgment on the merits of the case, which it would then materialize in the operative part of the ruling.

A wholly opposite case is, for example, the imposition of criminal sanctions involving property. In this sense, within the framework of the complaint procedure, the question of the constitutionality of imposing the penalty of forfeiture of property under § 58

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[12] BABJÁK, M. in: MACEJKOVÁ, I. – BÁRÁNY, E. – BARICOVÁ, J. – FIAČAN, I. – HOLLÄNDER, P. – SVÁK, J. et al. *Zákon o Ústavnom súde Slovenskej republiky: komentár* [Act on the Constitutional Court of the Slovak Republic: Commentary]. Bratislava: C. H. Beck, 2020, pp. 344 et seq.

[13] See Resolution of the Constitutional Court of the Slovak Republic in the case no. II. ÚS 429/2024 of 24 September 2024, item 39.

[14] See also ŠIMÍČEK, V. *Obiter dictum* v praxi českých soudů: kdy ho psát a kdy se mu raději vyhnout [*Obiter dictum* in Czech court practice: when to write it and when to avoid it]. *Právník* [Lawyer]. 2023, Vol. 162, No. 8, pp. 697 et seq.

para. 2 and 3 of the Crimes Act (the so-called mandatory penalty of forfeiture of property), where these provisions were eventually found by the CC, case no. PL. ÚS 1/2021 of 27 September 2023 indeed as inconsistent with Art. 1 para. 1, Art. 13 para. 4, Art. 6 para. 2 and Art. 20 para. 1 of the Constitution, has been, almost neuralgically, reasserted. Similar reservations arose in (i) the area of legal science, while in practice (ii) cases where the general courts failed to impose an obligatory penalty of forfeiture of property, although they were obliged to do so,[15] were not exceptional, either. In the activity preceding the above-mentioned finding, there were several constitutional complaints, where the complainants expressed their disagreement (also) with the up-and-coming legal regulation. For example, the so-called obligatory imposition of a penalty was expressed in the constitutional complaint as a punishment that goes beyond respect for the constitutional rights of the citizen.[16] Although the issue of imposing such penalty was at the time already "on the table" in the framework of the compliance procedure, the matter had not yet been decided on the merits. Thus, in the complaint procedure, the CC did not have an effective mechanism, i.e., a channel, through which it would enable the complainant to successfully defend themselves against legal regulations that concerned individual cases, and which, with regard to the practice of general courts and doctrinal results, could already have been considered, with a certain degree of justification, to contradict hierarchically higher-ranking legal regulations. This means that the CC had no choice in its argumentation addressed to the complainant but to brandish the principle of separation of powers, the role of courts in the rule of law and, finally, to formulate a rather laconic message underscoring the inevitability of procedural failure.[17] In other words, the CC did not have the procedural institution to find a violation of the complainant's rights by imposition of an unconstitutional mandatory penalty of forfeiture of property on the complainant that occurred before the issuance of the aforementioned finding, even if the constitutional complaint was filed after the issuance of this finding, i.e., at the time when it was already beyond doubt and clear with finality that the legal regulation imposing such penalty was contrary to legal regulations of higher legal force[18] and constituted a negation of law, which (the negation of law) is – in its essence – no different than a criminal offense.[19] Thus, it was possible to defend oneself

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15 MICHAĽOV, L. Trest prepadnutia majetku – výzvy a perspektívy [Confiscation of assets – challenges and prospects]. In: ROMŽA, S. – ŠTRKOLEC, M. – VINEROVÁ, B. (eds.). *Košické dni trestného práva 2023, VII. ročník: ochrana vlastníckeho práva normami trestného práva: zborník vedeckých príspevkov z celoštátnej interdisciplinárnej vedeckej konferencie s medzinárodnou účasťou, Košice, 21.–22. 6. 2023* [Košice Criminal Law Days 2023, 7th edition: Protection of Property Rights by Criminal Law Standards: Collection of Scientific Papers from a National Interdisciplinary Scientific Conference with International Participation, Košice, June 21–22, 2023]. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress, 2023, pp. 493 et seq.

16 See Resolution of the Constitutional Court of the Slovak Republic in the case no. I. ÚS 252/2023 of 26 April 2023, item 5.

17 Ibid., item 22. Similar conclusions also result from other rulings – see, for example, the resolution of the Constitutional Court of the Slovak Republic in the case no. II. ÚS 534/2021 of November 11, 2021, item 11, or the finding of the Constitutional Court of the Slovak Republic in the case no. III. ÚS 65/2023 of 15 June 2023, item 32.

18 See, e.g., resolution of the Constitutional Court of the Slovak Republic in the case no. IV. ÚS 646/2023 of 12 December 2023, items 4 (c) and 14.

19 MAĎAR, M. Trest prepadnutia majetku vo svetle nálezu sp. zn. PL. ÚS 1/2021 (alebo čo ostalo za dverami rozhodnutia) [The penalty of forfeiture of property in light of the ruling ref. no. PL. ÚS 1/2021 (or

against an unconstitutional penalty of forfeiture of property subsequently, by filing a petition for permission of reopening the criminal proceedings pursuant to § 93 para. 1 of the CCA and § 394 para. 4 (b) of the Code of Criminal Procedure. Although the practice of general courts proves that such petition is usually successful, it does not change the fact that if the mechanism under Art. 127 para. 5 of the Constitution had been in effect earlier, effective protection of the fundamental rights and freedoms of complainants could have been provided earlier, or in some cases the introduced interventions need not have taken place at all.

The impossibility for the Panel of Justices, proceeding under Art. 127 para. 1 of the Constitution, to initiate compliance proceedings was perceived as an issue not only by the complainants, but also from the opposite side of the table. Insufficiency of the regulation was not met with fondness at the CC itself either. For example, in his dissenting opinion on the rationale for the finding of the CC involving the case no. III. ÚS 412/2020 of November 30, 2021 in connection with the then criminal sentences for the so-called drug crimes, the justice Peter Straka light-heartedly but pointedly enough noted that *"about a sentence of 15 to 20 years for a one-time watering of marijuana, one inadvertently associates such with the ideas from the movie 'The Gods Must Be Crazy'"*.[20] At that time, the CC did not have the competence to initiate proceedings for review of legal standards, not even on the basis of a complainant's petition, because Art. 127 para. 5 of the Constitution had not yet been effective. It then had no choice but to keep inviting the general courts to cooperate in a specific constitutional review, up to the time of the Art. 127 para. 5 of the Constitution coming to effect, which allowed the CC to directly submit a motion to the plenary to assess the compliance with the law. In the interim period between the Article's 127 para. 5 of the Constitution finality and its entry into effect, the protection of constitutionality rested even more with the general judges. Thus, in the rationale of the analyzed *concurring opinion*, with reference to similar cases in the past,[21] the CC only encouraged the general court to file a petition for proceedings on the compliance of the corresponding provision of the Crimes Act (§ 172) with the Constitution. In addition, it should be noted that there is probably no significant doubt that as a primarily human-rights court, the CC would clearly breathe easier if it had the opportunity to initiate proceedings on the compliance of legal regulations on the basis of a complaint. In such case, an independent judicial protector of constitutionality

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what remained behind the doors of the decision)]. In: KŠENŽIGHOVÁ, A. (ed.). *Zborník zo VI. ročníka medzinárodnej vedeckej konferencie Banskobystrické zámocké dni práva: sekcia verejného práva „Verejné právo na priesečníkoch prehlbujúcej sa európskej integrácie"* [Proceedings from the 6th annual international scientific conference Banská Bystrica Castle Days of Law: Public Law Section "Public Law at the Crossroads of Deepening European Integration"]. Banská Bystrica: Belianum, 2024, p. 149.

20 Dissenting opinion of Justice Peter Straka on the finding of the Constitutional Court of the Slovak Republic in the case no. III. ÚS 412/2020 of 30 November 2021, point 21.

21 According to item 32 of this dissenting opinion: *"The Constitutional Court has already tried to encourage the general court to file a petition for compliance of the facts of defamation with the freedom of expression; in the resolution in the case no. II. ÚS 356/2016 under point 21 on the rejection of a complaint against the prosecutor's office concerning the crime of defamation, the Constitutional Court stated: In this respect, the Constitutional Court can imagine compliance proceedings initiated by ordinary courts. Similarly, the Constitutional Court proceeded in its finding II. US 273/2012 (point 15.2) concerning bankruptcy proceedings. Also in a dissenting opinion on the resolution in the case no. PL. ÚS 22/2014 the dissenter indicates suitability to re-submit a petition for a specific review."*

with a prior understanding of the unconstitutionality of a legal standard would not have to rely on filling the competence gap by involving a general court, about the acting of which it was not sure whether and, if so, in what timeframe would bear fruit.

The legal situation and, in particular, the lines along which decision-making of the CC took place, found itself approximately in these frames of intent before 1 January 2025, when Art. 127 para. 5 of the Constitution came into effect.

3. COMMENTS ON THE ENTRY INTO EFFECT OF ART. 127 PARA. 5 OF THE CONSTITUTION

On January 1, 2025, Art. 127 para. 5 of the Constitution became effective, which allowed natural persons and legal entities to file petitions addressed to the Panel of Justices of the CC for the Panel to initiate proceedings pursuant to Art. 125 para. 1 of the Constitution on the merit that a generally binding legal regulation, its part or its individual provision relating to the complaint filed, is contrary to the Constitution, constitutional law, international treaty pursuant to **Art. 7 para. 5**, or the law. It is essentially a manifestation of constitutional check that brings about an individual (specific) element.

Let us first ponder the temporal aspects of the Article's 127 para. 5 of the Constitution entry into force. The Amendment no. 422/2020 of Statutes, through which the aforementioned competence of the CC was introduced, was announced in the Statutes of the Slovak Republic on 29 December 2020. Therefore, on that date, the said competence provision became final. The first provisions of Amendment no. 422/2020 Statutes came into effect already a few days later, on January 1, 2021. However, the rights and obligations of the beneficiaries of the Art. 127 para. 5 of the Constitution only began to arise four years later, on 1 January 2025. In its explanatory memorandum,[22] the constitutional legislator called this step "postponement of effectiveness", justifying it by the workload of the CC. According to the vision presented in the explanatory memorandum, the introduction of individual constitutional review could have snowed the CC under an increased volume of cases. As the constitutional legislator stated, *"given that in the previous period the Constitutional Court 'operated' in a makeshift regime (only four justice positions were actually filled), it is appropriate for the Constitutional Court to be given space to deal with the cases accumulated in that period. The suspension of the effectiveness of Art. 127 para. 5 of the Constitution and related provisions of Art. 130 para. 1 (e), in conjunction with a legislative technical change in Art. 151a para. 6., is subsumed under that purpose."* Such justification may be objected to an extent, namely with reference to three – predominantly empirical – arguments.

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[22] Explanatory memorandum to the Constitutional Act no. 422/2020 of Statutes amending the Constitution of the Slovak Republic no. 460/1992 of Statutes, as amended, is available online, for example, at the National Council of the Slovak Republic's website (Dôvodová správa [Explanatory Report] [online]. [cit. 2025-01-28]. Available at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=484567).

First of all, the legislator itself caused a deficit manifested in the form of a makeshift staffing of the CC, which it pointed out in its explanatory memorandum. One shortcoming, originating in its own activities, was thus linked to the "postponement of the effectiveness" of Art. 127 para. 5 of the Constitution, which, however, as follows from the considerations set out in chapter II hereof, only deepened further deficiency in the effective protection of rights and freedoms. The National Council of the Slovak Republic thus "justified" one not particularly fortunate constitutional solution by crippling the activities of the CC, which can also not be attributed to anyone else but the National Council itself. Although this poor state of affairs in terms of organization does not continue to persist in the same intensity as in the past, it should be noted that the legislator is inactive in principally the same matter today and is not ready to staff the plenary of the CC so that it can deliberate in full composition. The Constitutional Court has continued to operate with one vacant judicial seat, despite multiple attempts to resolve the issue. Yet the number of petitions addressed to the CC is increasing year on year. According to the President of the CC Ivan Fiačan[23] and publicly available statistical indicators,[24] the situation was no different in the last year of 2024. The justices, as well as their internal and external advisers, could tell.

It is not without significance that in the period from 1 January 2021 to 31 December 2024, the complainants already tried to use the mechanism of Art. 127 para. 5 of the Constitution. However, their petitions, in relatively sensitive social security matters from the human point of view, were unsuccessful precisely because of the lack of effectiveness of the aforementioned provision. For example, in the constitutional complaint case no. II. ÚS 97/2023, which the CC received on September 25, 2022, the complainant (an old-age pensioner) filed a petition in connection with material security in old age pursuant to Art. 127 para. 5 of the Constitution for review of the compliance of § 293ds para. 1 of the Act no. 461/2003 of Statutes on Social Security, as amended with the Constitution, the Convention, as well as the Charter of Fundamental Rights and Freedoms of the European Union. This petition naturally had to fail *a limine* precisely because of the ineffectiveness of Art. 127 para. 5 of the Constitution.[25]

Secondly, although the individual review of constitutionality (Art. 127 para. 5 of the Constitution) had been effective at the time of writing this paper for barely more than one month, the load of new cases at the CC so far does not even hint at an increased rate due to the competence introduced. Although, in view of the above, there can be no doubt

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[23] See the statement of the Chief Justice of the Constitutional Court of the Slovak Republic Ivan Fiačan on the situation at the Constitutional Court of the Slovak Republic in 2024 of 29 December 2024 (FIAČAN, I. Počet návrhov na Ústavnom súde SR sa každým rokom zvyšuje [The number of proposals submitted to the Constitutional Court of the Slovak Republic is increasing every year]. In: *TERAZ.SK* [online]. 29. 12. 2024 [cit. 2025-01-28]. Available at: https://www.teraz.sk/slovensko/i-fiacan-pocet-navrhov-na-us-sa-ka/846038-clanok.html).

[24] Publicly available sources show that while in 2023 the number of petitions addressed to the Constitutional Court of the Slovak Republic counted 3227, in 2024 it was already 3446. This represents a year-on-year increase of more than 200 petitions. More detailed information is available online (Elektronické prideľovanie spisov [Electronic case allocation]. In: *Ústavný súd Slovenskej republiky* [Constitutional Court of the Slovak Republic] [online]. [cit. 2025-01-28]. Available at: https://www.ustavnysud.sk/informacie_pre_navrhovatelov/pridelovanie-spisov).

[25] Resolution of the Constitutional Court of the Slovak Republic in the case no. II. ÚS 97/2023 of 16 February 2023, point 13.

that the backlog of cases before the Constitutional Court is generally increasing every year, according to our information, since 1 January 2025, the Constitutional Court has received so many complaints with a proposal under Art. 127 para. 5 of the Constitution that they can be counted on the fingers of hands. Thus, at the moment, the state of affairs do not lend favor to the validity of the argumentation presented in the explanatory memorandum, which was initially associated with some similar considerations of the professional and application audience in informal discussions. The five-year hesitation of the legislator with making the legal regulation effective has thus probably been negatively reflected also at the level of legal consciousness *de lege lata* of its addressees, i.e., primarily the complainants.

Thirdly, if the legislator was concerned about the CC being snowed under petitions filed under Art. 127 para. 5 of the Constitution, it could have tried to address such concern with a positive regulation that would be associated with relieving the CC of some powers in its competence. Instead, the way of introducing a negative measure was chosen, the expression of which is the "postponement of the effectiveness" of the protection mechanism with a clear potential to contribute to the protection of the rights and freedoms introduced by individual human rights catalogues. In connection with the need to narrow down the competence shortcomings of the CC, the professional community had long discussed, even before the constitutional Amendment no. 422/2020 of the Statutes was introduced, elimination of proceedings under the Constitutional Act no. 357/2004 of Statutes on the Protection of Public Interest in Execution of Offices by Public Officials, as amended by later constitutional acts, from the procedural jurisdiction of the constitutional judiciary.[26] In terms of the caseload, the introduction of another filter in the general judiciary, which addresses real problems of judicial protection of the beneficiaries of law faster and more effectively at the source of their occurrence, would also have had a more significant "relieving" potential. Typically, such solution is possible in the area of delays in proceedings, when, according to the Czech model, at first the superior court could intervene and also set the deadline for execution of acts. Such mechanism would thus be mutually beneficial: it would eliminate legal uncertainty of the parties to proceedings at an earlier stage, while at least partially eliminating the most numerous caseload[27] at the CC.

After all, one can only search for other, real and political (?) reasons for too late an entry into force of Art. 127 para. 5 of the Constitution. It has not escaped attention that this constitutional change came into force at the peak of the "second wave" of the COVID-19 pandemic (December 29, 2020). The question arises whether the legislator, following course set by the operational executive branch and not knowing how much longer the pandemic would last, did not intend to exclude the possibility of challenging subordinate legislation related to the pandemic in the CC in this respect. It needs to be stated here that the measures regulated in various state administration Decrees precluded making of the legal rules more concrete through individual administrative acts,

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[26] GAJDOŠÍKOVÁ et al., *c. d.*, p. 273.

[27] DUĽA, L. *Úvodné slovo* [Introduction]. In: *Ročenka Ústavného súdu Slovenskej republiky 2023* [Yearbook of the Constitutional Court of the Slovak Republic 2023]. Košice: Office of the Constitutional Court of the Slovak Republic, 2024, p. 7.

which could account for conflicting interests in the area of fundamental rights through the principle of proportionality in specific cases. This also excluded the jurisdiction of the administrative courts to review the restrictive measures in terms of their legality and legitimacy. Moreover, and this seems much more essential for the purposes of this paper, even individuals at that time did not have effective tools through which they could address the CC with a petition to review the restrictive measures, because those measures were contained in subordinate legislation. Neither the Constitution nor the CCA granted the individual an active standing to file a motion regarding the non-compliance of a legal act of a lower force with a legal act of a higher legal force. This created a wide room for the executive branch (Public Health Authority and Regional Public Health Authority) to issue emergency measures subject to only limited reviewing by the CC.[28] This could have been the real intention of the legislator regarding the more than four-year "slippage" in connection with the entry into force of Art. 127 para. 5 of the Constitution. Here, too, the statement of C. Starck,[29] who says that the main danger to the judicial review of standards is considered to be the exercise of political influence, likely applies…

4. POSITIVE LEGAL CONTEXT

The legal regulation which, with reference to the blanket constitutional regulation contained in Art. 140 of the Constitution,[30] implements the mechanism referred to in Art. 127 para. 5 of the Constitution, is contained in the CCA.

The complainant's petition under Art. 127 para. 5 of the Constitution must contain several obligatory requirements. First of all, it is required to identify the legal regulation, its part or some of its provisions, the inconsistency of which with the Constitution, constitutional law, international treaty, Art. 7 para. 5 of the Constitution or the law the complainant objects to. A necessary requirement is the justification of the petition in terms of the introduction of lines of argument that lead the complainant to doubt the compliance of the particular law of a lower legal force with one of the laws of a higher legal force. In line with the mirroring principle, it is also necessary to identify the higher legal regulation (or a part or some of the provisions thereof) with which the hierarchically lower legal regulation is not consistent. A very important obligation of the complainant will be to sufficiently objectify that the contested legal regulation, or a part or a provision thereof, touches upon their individual case.

The subsequent procedural procedure of the CC is essentially two-stage. Moreover, both stages are differentiated not only in terms of content, but especially in terms of identifying the decision-making formation. The proceedings on the petition seeking the

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[28] More detail to be found in GIBA, M. et al. *Ústavný systém Slovenska počas krízových situácií: možnosti, limity a riešenia* [The Slovak constitutional system in crisis situations: possibilities, limits and solutions]. Bratislava: Wolters Kluwer, 2022, p. 103.

[29] STARCK, CH. *Der demokratische Verfassungsstaat: Gestalt, Grundlagen, Gefährdungen*. Tübingen: Mohr, 1995, p. 48.

[30] According to this provision: *"Details of the organization of the Constitutional Court, the manner of proceedings before it, the position of its justices and their integrity shall be laid down by law."*

review of standards take place (i) first at the discretion of the Panel of Justices and after a positive judgement of the Panel (ii) they move to the plenary. The first (Panel of Justices) phase also consists of two stages.

The first stage of the proceedings involving the petition under Art. 127 para. 5 of the Constitution belongs to the Panel of Justices of the CC. It consists of (i) additive proceedings, i.e., the examination of the formal admissibility of the petition, and (ii) probatory proceedings, i.e., the examination of the substantive merits of the petition.[31] The CC first deals with the formal and procedural elements of the petition in the additive proceedings pursuant to § 123 para. 4 (a) and (c) of the CCA, i.e., whether the petition contains the correct designations of (i) the contested legal regulation and (ii) another legal regulation with which the contested regulation is in conflict. The perfection of the constitutional complaint itself is, naturally, also a condition for the admissibility of the petition. In particular, it is necessary to examine whether the complainant has exhausted all the legal means granted thereto by law to protect their fundamental rights and freedoms (unless it is a reason worthy of special consideration), whether the complaint is filed prematurely or too late, whether the complainant is legally represented, whether they had legal standing to file a constitutional complaint, etc. These are situations that constitute rejection of a constitutional complaint *ex cathedra* for the reasons set out in § 56 para. 2 of the CCA, which are procedural in nature. However, as part of the examination of the admissibility of the petition, it is also required to carry out a special investigation to determine whether the contested legislation "relates to the complaint"[32] or "relates to the present case".[33] As Z. Kühn states in connection with a similar requirement of the Czech legislation,[34] *"the condition for an admissible petition to repeal a law (or other legal regulation) is that the contested law or other legal regulation was 'used, i.e., applied in the case'"*.[35] The aforementioned requirement manifests the *specific* nature of the review process as per Art. 127 para. 5 of the Constitution, which is associated with the fact that the review of standards in a given case is triggered by a specific judicial,[36] or, in a broader sense, public-power dispute. At the probatory stage, the CC must address whether in their petition the complainant sets out reasons leading to dubiosity in respecting the hierarchical construction of the law [§ 123 para. 4 (b) of the CCA].

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[31] In this context, one can draw attention to the partially similar ideas of L. Trellová, who points to (i) the material review of the petition and (ii) the formal review of the petition. See TRELLOVÁ, L. Aktuálne výzvy konkrétnej kontroly ústavnosti [Current challenges to the concrete control of constitutionality]. In: OROSZ – KARAFOVÁ – MAKATUROVÁ, *c. d.*, pp. 24 et seq.

[32] See Art. 127 para. 5 of the Constitution.

[33] See § 123 para. 4 (d) of the CCA.

[34] Pursuant to § 74 of Act no. 182/1993 of the Statutes on the Constitutional Court, as amended: *"Along with the constitutional complaint, a petition may be filed to repeal a law or other legal regulation or their individual provisions, the application of* ***which resulted in a fact that is the subject of the constitutional complaint, if,*** *according to the complainant's allegations, they are contrary to the constitutional law, or to the law, if it is a different legal regulation."*

[35] KÜHN, Z. Pravomoc stěžovatelů a senátu ústavního soudu iniciovat řízení o souladu právních předpisů s ústavou [Competence of the complainants and the Chamber of the Constitutional Court to initiate proceedings on the compliance of legal regulations with the Constitution]. In: OROSZ – KARAFOVÁ – MAKATUROVÁ, *c. d.*, p. 32.

[36] Cf. IPSEN, J. *Staatsrecht I. Staatsorganisationsrecht*. Cologne: Carl Heymanns Verlag, 2009, p. 243.

If the Panel of Justices of the CC does not accept the petition, it is appropriate to justify this approach accordingly. This is because the complainant cannot apply the petition for proceedings on legal regulations themselves[37] and, therefore, neither is the Panel of Justices obliged to comply with each petition (there is no automatic rise to a legal claim). It is up to the constitutional evaluatory discretion of the Panel of Justices to carefully assess and decide whether, on the basis of the complainant's petition, it will proceeded with a motion for a constitutional judicial review of the standards or whether it will not do so. The complainant is only entitled to have the CC deal with the petition, address it properly and notify the complainant of the substantive reasons for not relaying the case to the plenary.

In the event that the Panel of Justices of the CC, which formally accepts the complainant's petition, forms a positive judgment thereon also from the substantive point of view, such conclusion is not drawn at the level of absolute certainty. This is essentially a preliminary Panel review of the petition. In other words, if the Panel of Justices establishes the merits of the petition, then its assessment ends and does not go beyond the scope of the plenary procedure on the compliance of legislation. In any case, a positive decision to refer the matter to the plenary is not a procedure on the merits in terms of the standards review. The activities of the CC cannot achieve the quality of plenary assessment of the case at the stage of the Panel proceedings. Otherwise, as soon as in the making of a decision to refer the matter to the plenary, the plenary activity would in principle be substituted for. This is the reason why some initial considerations about the possible bias of the Justices of the CC Panel in relation to their participation in the assessment of the compliance of legislation in plenary cannot hold on the grounds that they concluded that the petitioner's petition was well founded, stayed the constitutional complaint procedure and filed a motion for a procedure on the compliance of legislation. Finally, one can also point to some similar and long-established constructs, where the motion for a certain ruling addressed to the plenary comes from the pen of the judge rapporteur of the Panel involved in the case, who subsequently votes on such motion in the plenary. This is to mean, for example, combination of cases falling within the competence of the Panel of Justices of the CC where the cases are heard in different chambers, where the motion to conjoin cases may also be filed by the judge-rapporteur in a particular case, who motions for its conjoining with another case.[38] Another example may be the procedure for unifying legal opinions under § 13 of the CCA, in which case the petition for unifying legal opinions is also submitted to the plenary by the judge-rapporteur of the Panel concerned with that particular case.

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[37] In this context, it can be stated in the form of an excursion that in connection with an individual approach to constitutional justice, the Venice Commission differentiates the so-called normative constitutional complaints targeting the application of unconstitutional laws and the so-called complete constitutional complaints targeting individual acts, regardless of whether they are supported by an unconstitutional normative act. Full constitutional complaints exist, for example, in Germany (*Verfassungsbeschwerde*) or Spain (*amparo*), while normative constitutional complaints are in place, for example, in Armenia, Poland or Russia (Recent documents. In: *Council of Europe: Venice Commission* [online]. [cit. 2025-01-31]. Available at: https://www.venice.coe.int/webforms/documents/). On this, see also JAMRÓZ, L. The right to constitutional complaint in Poland. In: BUDNIK, A. (ed.). *Locus standi across legal cultures*. Białystok: Faculty of Law of the University of Białystok, 2015, pp. 142 et seq.

[38] See § 7 para. 1 (e) of the CCA.

In the case of filing a petition to initiate legal compliance proceedings, the Panel of Justices of the CC is bound by the scope of the petition of the complainant, but not by its grounds. This procedural rule establishes a partial exception to the general norm of bindingness of the CC by the scope and grounds of the motion to initiate proceedings (§ 45 of the CCA). The partial nature of this exception, which is objectified in relation to the grounds of the petition, is understood by the legislator as the constitutional and legal dimension of the petition which, in its own words,[39] it leaves up to the competence of the Panel of Justices of the CC as a qualified and argumentatively equipped actively legitimate petitioner. In fact, the grounds for non-compliance of the legal standards designated in the petition may be different, for example, broader or narrower, than argued by the complainant themselves. On the contrary, the legislator introduced the binding nature of the scope of the petition out of obvious concern about excessive judicial activism, which, in terms of its consequences, could probably be closer to a review *ex offo*. As it follows from the explanatory memorandum to Act no. 423/2020 of the Statutes, the complainant's petition would *"'become a blank check' for the Constitutional Court Panel of Justices, and a condition for the need for a petition to enable the Panel to file a motion for initiation of compliance proceedings pursuant to Art. 125 of the Constitution would thus lose in importance"*.[40] Whether such concern is justified will be yet touched upon at the end of the paper.

The second stage is the procedure at the plenary session of the CC. Proceedings on compliance of legal regulations initiated by the Panel of Justices of the CC as an entity legitimized to file such motion pursuant to Art. 130 para. 1 (e) of the Constitution has several specific aspects of a procedural and substantive nature compared to the standard course of this procedure. The motion to initiate proceedings shall be submitted to the CC by the Judge-Rapporteur in the proceedings on the constitutional complaint with which this motion was applied. This judge remains, apparently correctly due to the economy of the proceedings, the rapporteur also in the proceedings on the review of standards. This is thus an exception to the standard rule set out in § 46 of the CCA, because the case is not assigned to the Judge-Rapporteur by random selection using technical and programmed means. In connection with the substantive specificity, attention can be drawn to the rather interesting opinion of Z. Kühn,[41] who, pointing to the current decision-making practice of the Constitutional Court of the Czech Republic, states that there will be no "ordinary" review of standards in the case without taking into account individual circumstances, but a judicial review that is more closely related to the specific factors of the case.

Finally, with reference to § 131a para. 4 of the CCA, it should be added that the Panel of Justices of the CC continues the stayed proceedings after the ruling issued in the proceedings on compliance of legal regulations has become final. Therefore, although the legal opinion of the CC contained in the ruling is binding on the Panel of Justices of the

[39] The explanatory memorandum to Act no. 423/2020 of the Statutes on Amendments to Certain Acts in Connection with the Reform of the Judiciary is available online, for example, at the National Council of the Slovak Republic's website (Dôvodová správa [Explanatory Report] [online]. [cit. 2025-01-30]. Available at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=484605).

[40] Ibid.

[41] KÜHN, *c. d.*, p. 33.

CC, it is clear that the merits of the constitutional complaint filed must be adjudicated on by a separate ruling. Thus, the compliance procedure and the constitutional complaint procedure remain relatively separate constitutional processes. Compliance or non-compliance with the petition to review the standards does not *ipso facto* mean expressing a violation of fundamental rights and freedoms in the constitutional complaint procedure, or a failure to comply with the constitutional complaint[42] due to lack of a causal link between its grounds and the reference criteria cited by the complainant.

5. FINAL SUMMARY AND *DE LEGE FERENDA* PROPOSAL

The possibility for the complainant to file a complaint under Art. 127 para. 1 of the Constitution, together with a petition for the Panel of Justices of the CC to initiate a plenary inquiry into the compliance of legal regulations seems to be a welcome contribution to the expansion of access to justice for natural persons and legal entities. There is an ambition that this change will not only potentially, but also quite realistically open a channel that will allow complainants to object to such legislation that essentially concerns their cases and which they believe to be contrary to legislation of higher legal force. Past experience shows the bitterly painful merits of some of the petitions for reviewing the standards raised by the complainants in the constitutional complaint procedure which the CC could not examine for deficit lying in procedural basis. Subsequently, at the motion of the actively legitimized entity that had been dragging its feet until then, the unconstitutionality of the regulations was proven. Stating the justification of Art. 127 para. 5 of the Constitution, inspired by the current words of A. Bröstl from the aptly titled paper *"Landscape with dense planting of laws"*,[43] is due perhaps even more so at the time when the primary good old principle of the rule of law, according to which it is not necessary to regulate what does not have to be or should not become the subject of legal regulation, is being forgotten. In other words: At a time of increasing legislative hypertrophy going hand in hand with the progressive qualitative decline of legislation.

The relevance of these considerations is further underscored by the experience of neighboring countries. Similar or equivalent legal mechanisms are in place in several of them. In addition to the already mentioned Czech Republic, one may refer, for example, to the constitutional frameworks of Poland and Hungary. In Poland (Article 79 of the 1997 Constitution),[44] as in Hungary, constitutional complaints do not focus on the alleged unconstitutionality of a decision issued by a court or other public authority as such, but rather on the alleged unconstitutionality of the statute or other normative

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[42] Similarly FILIP, J. – HOLLÄNDER, P. – ŠIMÍČEK, V. *Zákon o Ústavním soudu: komentář* [The Constitutional Court Act: Commentary]. 2nd ed. Prague: C. H. Beck, 2007, p. 545.

[43] BRÖSTL, A. Krajina s hustou výsadbou zákonov [A landscape with dense planting of laws]. In: BRÖSTL, A. – BREICHOVÁ LAPČÁKOVÁ, M. (eds.). *Právny štát, spravodlivosť a budúcnosť demokracie: zborník zo Zasadnutia slovenskej sekcie IVR pred 31. svetovým kongresom* [The Rule of Law, Justice, and the Future of Democracy: Proceedings from the Meeting of the Slovak Section of the IVR Prior to the 31st World Congress]. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress, 2024, p. 8.

[44] Konstytucja Rzeczypospolitej Polskiej [The Constitution of the Republic of Poland].

act that served as the legal basis for the contested decision. In essence, the core of the constitutional complaint procedure in these jurisdictions is a proceeding on the legal compliance with the Constitution.[45] Article 79 of the Polish Constitution provides: *"In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution."*

It should also be noted that the ***question prioritaire de constitutionnalité*** (QPC) procedure was introduced by the 2008 amendment to the French Constitution of 1958. Pursuant to Article 61-1 of the French Constitution, if, in the course of judicial proceedings, it is alleged that a statutory provision infringes constitutionally guaranteed rights and freedoms, the Conseil d'État or the Cour de cassation may refer the matter to the Constitutional Council, which must decide the issue within a prescribed time limit. The conditions governing the application of this article are further defined by the Organic Law on the Constitutional Council.[46] A parallel with Article 127(5) of the Slovak Constitution may be found in the fact that, under the QPC procedure as well, it is the party to the proceedings who raises the objection of unconstitutionality on their own initiative, by means of a direct allegation, as is evident from the wording of Article 61–1 of the French Constitution. According to M. Giba, this extends the protection of rights for both natural and legal persons by providing them with a new procedural instrument. This observation applies ***mutatis mutandis*** to the Slovak context and the introduction of Article 127(5) of the Constitution, under which even the Constitutional Court of the Slovak Republic may not suspend proceedings under this article on its own initiative. On the other hand, the QPC procedure differs from the Slovak concept of a constitutional complaint in that it does not provide individuals with direct access to the Constitutional Council. Instead, the matter must pass through a dual filter of either the ordinary or administrative judiciary.[47] As for the procedural sequence, the trial court must first assess the relevance of the objection, determine whether the Constitutional Council has already ruled on the issue, and whether the objection is manifestly unfounded. If these criteria are met, the court forwards the matter to the highest instance within its system – either the Cour de cassation or the Conseil d'État. These bodies then examine the merits of the case in light of the criteria set out in the organic legislation and may refer the matter to the Constitutional Council. Once the matter has been referred, the underlying judicial proceedings are suspended, subject to certain exceptions. As M. Giba further notes: *"The Constitutional Council carries out a final review of the constitutionality of the legislative provision, and if it finds the provision to be unconstitutional, the provision*

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[45] For further details, see OROSZ, L. – JIRÁSKOVÁ, V. *Ústavné právo porovnávacie: základy ústavného práva Českej republiky, Maďarskej republiky a Poľskej republiky* [Comparative Constituonal Law: Constitution of the Republic of Poland]. Košice: Pavol Jozef Šafárik University in Košice, Faculty of Law, 2007, p. 262.

[46] Ordonnance n° 58-1067 du 7 novembre 1958 portant loi organique sur le Conseil constitutionnel [Ordinance No. 58-1067 of 7 November 1958 establishing the Organic Law on the Constitutional Council].

[47] GIBA, M. *Súdna kontrola ústavnosti vo Francúzsku* [Judicial review of constitutionality in France]. Bratislava: Wolters Kluwer, 2017, p. 244.

ceases to be valid as of the date and with the effects specified in the decision of the Constitutional Council."[48] In this respect, the QPC procedure shows a degree of similarity to Article 125 of the Slovak Constitution, which governs proceedings on legal compliance with the Constitution, where the ultimate outcome may likewise be the annulment of an unconstitutional provision from the legal system. Finally, in order not to remain indebted to the abstract, one *de lege ferenda* proposal can also be formulated. The paper mentioned the concern of the legislator that if the CC was not bound by the statement of the petition under Art. 127 para. 5 of the Constitution and could also initiate the review of standards of its own initiative, the whole process of reviewing standards could get out of hands of the complainant and the imaginary reins would eventually be taken over by the CC. Is this, however, not a pseudo-objection, the pseudo-nature of which can also take on a human-rights dimension? For example, in the Czech Republic, there is a possibility in connection with ruling on a constitutional complaint for the Panel of Justices of the Constitutional Court of the Czech Republic to conclude that a law or other legal regulation, or their individual provisions, the application of which resulted in the event that is the subject of the constitutional complaint, are contrary to the constitutional law, or the law, to suspend the complaint proceedings *ex offo* and to submit a motion to the plenary to repeal such legal regulation.[49] The co-author of this paper participates in advisory activities to the CC and, based on their experience, can attest that in drafting the documents, they did not only start harboring doubts as to whether a final decision, measure or other intervention does not violate the rights designated by the complainant, but sometimes also whether the law relating to the individual case in question is unconstitutional. The outlined suspicions can certainly not be ruled out in the future, not even for such procedural situations where the complainant fails to file a petition under Art. 127 para. 5 of the Constitution together with their constitutional complaint. Comparatively, this is also evidenced in the practice of the Czech Constitutional Court, which actually proposes the procedure for repealing a legal regulation *ex offo* – although not on a frequent basis.[50] For such future cases, the CC will have no other option but to continue to rely on informal good-natured appeals addressed to privileged petitioners, hoping that "someone may eventually file that petition under Art. 125 para. 1 of the Constitution one day". And here we return to the answer to the above-mentioned question: Such situation can now undoubtedly have a human-rights dimension. The proposed amendment could, in legislative terms, take the form of a newly introduced Article 127(6) of the Constitution, reading as follows: *"If a Senate of the Constitutional Court, in the course of deciding a constitutional complaint under paragraph 1, concludes that a generally binding legal regulation, a part thereof, or one of its provisions relevant to the submitted complaint is contrary to the Constitution, a constitutional act, an international treaty under Article 7(5), or a statute, it shall suspend the proceedings on the complaint and*

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[48] Ibid., p. 227.

[49] See § 78 para. 2 of zákon č. 182/1993 Sb. o Ústavním soudu, ve znění pozdějších předpisů [Act no. 182/1993 of the Statutes on the Constitutional Court, as amended].

[50] Z. Kühn states that in the 32 years of operation of the Constitutional Court of the Czech Republic, there have been 20 such petitions. KÜHN, *c. d.*, p. 34.

submit a petition to initiate proceedings under Article 125(1). The legal opinion of the Constitutional Court expressed in the decision shall be binding on the Senate of the Constitutional Court."

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