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CONSTITUTIONAL LAW PROCEEDINGS IN SLOVAK REPUBLIC AND CZECH REPUBLIC

The characteristics of the proceedings regarding the control of law at the constitutional courts of the Slovak Republic and the Czech Republic are given focusing on the proceedings and the substance of the significant differences having common features found at both constitutional courts. These features bring together the common and special in the processes of analysing the legal regulation of the legal compliance procedure made by the Constitutional Court of the Slovak Republic, and the proceedings concerning the annulment of law of other legal regulation or their individual provisions made by the Constitutional Court of the Czech Republic.

Keywords: Constitutional Court of the Slovak Republic, Constitutional Court of the Czech Republic, compliance, control, legal force.

Одрова Ю. Конституционное судопроизводство в Словацкой Республике и Чешской Республике. Дана характеристика судопроизводства в деле о контроле за правом в конституционных судах Словацкой Республики и Чешской Республики с акцентом на особенности существенных отличий судопроизводства, которые обнаружены в обоих конституционных судах. Эти особенности сближает общее и особенное в процессах анализа правового регулирования процедуры соблюдения законодательства, вынесенного Конституционным Судом Словацкой Республики, и судопроизводства относительно отмены законов правового регулирования или их отдельных положений, вынесенных Конституционным Судом Чешской Республики.

Ключевые слова: Конституционный Суд Словацкой Республики, Конституционный Суд Чешской Республики, ответственность, контроль, юридическая сила.

Background. The proceedings concerning the control of legislation have a dominant position in all proceedings which fall under the jurisdiction of the Constitutional Court of the Slovak Republic and the Constitutional Court of the Czech Republic. The essence of the review procedure is that, on the basis of the proposal made by the initiative of qualified entities, the Constitutional Court protects constitutionality without the existence of a specific legal dispute by any public authority which could result in the application of a specific legal regulation to threatening or violating the fundamental rights and freedoms or any other constitutionally unacceptable

consequences. The purpose of this procedure is to remove the legal norm of lower legal force from the legal order in case when it is in contradiction with the rule of higher legal force. In this activity the Constitutional Court is placed in the position of a negative lawmaker. Under the conditions of the Slovak Republic the legal basis of the compliance procedure is defined by Art. 125 of the Slovak Republic Constitution, while the procedure itself is more specifically defined by the Act of the National Council of the Slovak Republic № 38/1993 Coll. on the Organization of the Constitutional Court of the Slovak Republic on the Proceedings done by them and the Status of its Judges as amended. The Constitution of the Czech Republic grants the power to review standards to the Constitutional Court, that is the power to review the constitutionality and lawfulness of acts, or their individual provisions being in contravention with the Constitutional Order, or to repeal other legislation and their individual provisions defined in Art. 87 (1) (a) and (b) if they are in conflict with the Constitutional Order or ordinary law. The procedural aspect of this procedure is guaranteed by Act № 182/1993 Coll. on the Constitutional Court as amended.

The analysis of recent researches and publications. The compliance procedure is a fundamental and priority function of the Constitutional Court of the Slovak Republic and the Constitutional Court of the Czech Republic [1–2]. During the long-term pedagogical and publishing activities, the author systematically deals with the constitutional issues of the constitutional judiciary [3].

The **aim** of the contribution is to characterize the proceedings regarding the control of law at the constitutional courts of the Slovak Republic and the Czech Republic focusing on the proceedings and the substance of the significant differences having common features found at both constitutional courts. The contribution approximates the proceedings common and special features by means of analysing the legal regulation of the legal compliance procedure made by the Constitutional Court of the Slovak Republic, and the proceedings concerning the annulment of law, other legal regulation or their individual provisions made by the Constitutional Court of the Czech Republic.

Materials and methods. The prime method applied in the presented article rests in the use of analyses and assessment of the available Judicature of the Constitutional Court of the Slovak Republic and the Constitutional Court of the Czech Republic and in this way the aim rests also in the way to make the reader more familiar with the topic in question.

Results. Incorporation of the legal provisions on the legal compliance procedure and the procedure relating to the annulment of act, other legislation or their individual provisions are in their essence similar in the Slovak Republic and the Czech Republic. The competence of the Constitutional Court of the Slovak Republic and of the Constitutional Court of the Czech Republic to act in matters of legal compliance, respectively in matters of the control of legislation is preserved by the highest laws of both

states and the procedural aspect of both proceedings are enshrined in a separate legal regulation in the form of act. The derogation is that the Czech legislation distinguishes between the proceedings of act annulment or its individual provisions and the proceedings of other legal regulation annulment. However, the subject-matter of the proceedings is the same in both proceedings conducted by the constitutional courts by which the law of different legal force is investigated, respectively by which the compliance of lower law with higher law is examined.

Unlike the Czech legislation being in force in the area of the standards control, the Legal Order of the Slovak Republic does not allow to file a motion to initiate the procedure of compliance with the legal provisions together with the constitutional complaint. This fact can be considered to be a kind of shortcoming since the remedy in the case of adoption of the generally binding legal regulation that violates the fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic can only be achieved by amending or repealing the legal norm. In this respect, according to Article 127 of the Constitution of the Slovak Republic it cannot be assimilated to the legal opinion according to which a constitutional complaint of a natural person or a legal entity or a complaint by a local authority is submitted. Pursuant to Article 127a it may lead to the procedure of compliance with the generally binding legal regulations as it is stated by Article 125 (1). That conclusion is contradictory by the fact that neither a natural person nor a legal entity is entitled to initiate proceedings of compliance. Likewise, the Legal Order of the Slovak Republic does not confer to the Senate of the Constitutional Court of the Slovak Republic, the right to file a motion to initiate the proceedings even if it is found that the application of the law has become a matter which is subjected to the constitutional complaint. At the same time the Senate of the Constitutional Court of the Slovak Republic is not entitled to discuss the proposal for compliance with the law, which would be submitted together with the constitutional complaint in cases pursuant to Article 125 (1) (c) and (d) of the Slovak Republic Constitution in which the competent Senate decides.

In order to allow individuals to access the Constitutional Court of the Czech Republic, the possibility of submitting the proposal for annulment of law together with the constitutional complaint pursuant to § 74 of the Act on the Constitutional Court was introduced. The introduction of this option was mainly aimed at bringing the Czech legislation in this area closer to the international standards. This is borne out by the explanatory memorandum to § 74 of the cited law, according to which «the proposal is based on the fact that even with regard to the individual international treaties on human rights and fundamental freedoms as interpreted and applied by the relevant international institutions, it is similarly necessary to ensure individuals an opportunity to the right to access the Constitutional Court with proposals for the abolition of legislation under the above conditions» [4, p. 484–485]. The Czech professional public attributed to this provision declaring that it is

«an extremely significant prominence for the democratic development of legal culture» and further on they called it «a significant reversal in the understanding relations between citizenry and state» [5].

Under § 74 of the Act the constitutional complaint submitted to the Constitutional Court of the Czech Republic may be proposed in order to repeal a law only under the conditions if its application has become a matter subjected to the constitutional complaint and further on if the complainant claims that the law or its provision is contrary to the constitutional law or any other law in case of a subordinate legal regulation. In other words, the contested law had to be actually enforced regarding the complainant, and the complainant must indicate the constitutional law to which the contested legislation is in conflict. In relation to the constitutional complaint the proposal for the abolition of law is of a minor character. Therefore, if a constitutional complaint is rejected for some reasons, the proposal for the repeal of the law is also automatically rejected. Without any reference to the specific decision or intervention made by the public authority, natural person or legal entity then they are not entitled to propose the repeal of legal regulation. The direct application for the annulment of law should be dismissed by the Constitutional Court as a proposal made by someone having been manifestly unjustified.

In connection with the proceedings under § 74 of the cited law, the question arises how to proceed in case of filing an application for the annulment of legal act, together with the constitutional complaint against a certain decision or other public intervention which had no negative consequences on him; but on the other hand it attacks the unconstitutionality of the procedure which had preceded the decision. Concerning the present case the plenary of the Constitutional Court of the Czech Republic has rejected a proposal for the annulment of the legal regulation, declaring that «the application of the contested provisions has not caused any adverse effects on the complainants, and therefore, complainants are those who have not been legally entitled to submit this proposal» (Pl. ÚS 10/94). Since this is the case for two different proceedings, the complainant is obliged to file a separate application for the annulment of the law. This means that it cannot be included in the text of constitutional complaint. An application for the annulment of law, other legislation or their individual provisions may be filed only together with the constitutional complaint.

The Constitutional Court of the Czech Republic considers the proposal itself to be the subject of constitutional complaint procedure inadmissible if in the same case the Constitutional Court has already acted. Under the provisions of Section 75 (1) of the Czech Republic Constitutional Court Act, the constitutional complaint is likewise inadmissible even if the complainant has not exhausted all the procedural means that the law for the protection of his/her rights provides. Such remedies are the proper remedies concerning typical appeals, complaints, lawsuits in administrative justice, etc., and extraordinary appeals as well. In addition to the most common law

enforcement remedies, other procedural remedies need to be exhausted too. If the Constitutional Court of the Czech Republic finds that a constitutional complaint is inadmissible, then it is rejected by them for its inadmissibility pursuant to Article 43, paragraph 1 (e) of the Act on the Constitutional Court. If a petition for annulment of a law has been filed together with a constitutional complaint and there is no direct legal relationship between the subject matter of the constitutional complaint and the contested legislation, the application for the annulment of legal act is rejected as a motion by a manifestly unauthorized person. In case when the direct legal relationship is merely absent between the subject of the constitutional complaint and a part of the contested law, according to the established case law of the Constitutional Court of the Czech Republic the Constitutional Court will make an assessment of the part of such motion as a petition submitted by an manifestly unauthorized person who will be rejected and being simply meritorily treated according to the remaining part of the proposal the Constitutional Court of the Czech Republic. It cannot be ruled out that the plenary of the Constitutional Court of the Czech Republic can reach the aforementioned conclusions.

The constitutional complaint is decided by the Senate of the Constitutional Court of the Czech Republic if a submitted proposal for the review of legislation is in accordance with the Article 87 (1) (c) or (d) of the Constitution of the Czech Republic, then the Senate will discontinue the constitutional complaint proceeding. Subsequently, the competent Senate will advance a proposal for the standards review to the plenary of the Constitutional Court of the Czech Republic. The proceedings of a constitutional complaint are resumed only after the conclusion of the legal standards review. If another law enforcement proceeding is in progress in order to review compatibility of the identical law, other legislation or their individual provisions, the request of the complainant to repeal the law will be rejected by the Constitutional Court of the Czech Republic. In such a case, the complainant is entitled to be an intervener in an earlier initiation of the legal standards review. For the sake of completeness, it should be noted that the annulment of the contested law does not automatically result in the constitutional complaint being upheld, and the refusal, respectively rejection of a proposal to review standards, does not give rise to rejection of the constitutional complaint. Another body authorized to initiate review procedures is the Senate of the Constitutional Court of the Czech Republic which decides on the constitutional complaint if it is considered that the application of the contested legal provision has been the subject of the constitutional complaint. Even of its own motion the complainant might process the petition for the legal standards review by the Judge-Rapporteur who has been given a constitutional complaint.

Another difference between the legislation of the Slovak Republic and the Czech Republic can be found also in the case of drafting restitution of the constitutional complaint. Whereas the Slovak law allows the

Constitutional Court of the Slovak Republic to decide that the withdrawal is not allowed, especially if the complaint is directed against such lawful decision, measure or other interference that seriously infringes the fundamental rights or freedoms of the complainant stated by § 54 of the Act on the Organization of the Constitutional Court of the Slovak Republic, on the Proceedings done by them and on the Status of its Judges, such a modification is absent in the Czech law. It is just limited to the adjustment of the cessation of proceedings under the Section 77 of the Constitutional Court Act of the Czech Republic. Nevertheless, the Constitutional Court of the Czech Republic «has already rejected the petition to withdraw a constitutional complaint, in which, pursuant to Section 74 of the Czech Constitutional Court Act, it was proposed to examine the constitutionality of the law. In this case, the Constitutional Court has placed the foremost interest of the rule of law in the exercise of the constitutionality function» [5]. The Constitutional Court of the Czech Republic will stop the complaints procedure and the procedure for reviewing the law if the complainant withdraws back the petition for the constitutional complaint before the decision on the interruption of the constitutional complaint proceedings has been issued. Besides that the constitutional complaint will be dealt with if the petitioner takes a petition to repeal the law. Under the Czech legal order another common feature of the legal compliance and control procedures is that both proceedings are governed by the dispositional principle. Furthermore the principle in question affects the provision of the application to initiate proceedings which may be limited in the light of the existing case-law. This is especially true in cases where the interest in protecting constitutionality exceeds the applicant's right to dispose of his proposal.

The specification in relation to the dispositional principle is the provision of § 40 of the Act on the Organization of the Constitutional Court of the Slovak Republic on the Proceedings before them and on the Status of its Judges, according to which the plenary of the Constitutional Court of the Slovak Republic may issue a judgment even without the delivery of the previous proposal if the decision pursuant to Article 125 of the Constitution of the Slovak Republic finds inconsistency with the legally-enforceable legislation or international treaty. Likewise, ruling on the constitutional complaint, the Senate of the Constitutional Court of the Czech Republic may also file a petition for the annulment of a law without the complainant's motion to initiate the proceedings if it is concluded that its application has become a matter which is the subject of the constitutional complaint. Similarly the Czech law grants an analogous authorization to the plenary of the Constitutional Court of the Czech Republic if the handling of the constitutional complaint falls within its competence. In this context, it is still necessary to point out the finding of the Slovak Constitutional Court (PL. ÚS 95/2011) in which the Constitutional Court of the Slovak Republic has resolved the amendment of the proposal. The Constitutional Court has clearly defined how the group of deputies can change the proposal for the

compliance procedure. In this proceeding, the deputy of the group of deputies has delivered the extension of the petition for contradiction of the contested provisions with other provisions of the Constitution of the Slovak Republic to the Constitutional Court. In paragraph 18 of the recitals, the Constitutional Court pointed out that it was not signed by a group of 35 members of the National Council, so the Constitutional Court did not allow the extension of the proposal of the legal representative of the group of 35 members of the National Council.

Entities in the compliance procedure and the repeal procedures are the Constitutional Court of the Slovak Republic and the Constitutional Court of the Czech Republic which carry out the constitutional decision-making process and the participants in these proceedings without whom any action would be conceptually unthinkable. In view of the nature of these proceedings there are included the secondary participants in the proceedings as well. Both legal orders include the exhaustive calculation of the persons legally entitled to file an initiation, motion, whereas the Czech legislation confers the right to initiate the request for review of standards to the larger circle of persons, especially in the case of proceedings under the Article 87 (1) (b) of the Constitution of the Czech Republic. Unlike the provision of Section 64, paragraph 2 (d) of the Act on the Constitutional Court of the Czech Republic, the legal order of the Slovak Republic does not confer an active right on an individual.

Moreover the Government of the Slovak Republic guarantees the right to initiate a proposal for the legal compliance by Article 130 (1) of the Constitution of the Slovak Republic. It can challenge the unconstitutionality of laws, the non-compliance of their regulations, generally binding legislation of ministries and other central bodies of the state administration with the Constitution of the Slovak Republic, constitutional laws, international treaties and laws. Besides that the unconstitutionality and illegality of generally binding regulations are contested as it is stated by Article 68 of the Constitution of the Slovak Republic. The non-compliance with the generally binding legislation of the local government bodies and generally binding regulations of the territorial self-governing bodies is queried pursuant to Article 71 (2) of the Constitution of the Slovak Republic, further on they are contested with the Constitution of the Slovak Republic, constitutional laws, international treaties, laws, regulations and generally binding legal regulations of ministries and other central state administration bodies.

One of the powers of the Government of the Czech Republic is to submit proposals for the abolition of other legislation, not the law, respectively their individual provisions. An application for the annulment of legal regulation or its individual provision is entitled to file a motion only if the conditions defined in Section 118 of the Act on the Constitutional Court of the Czech Republic are fulfilled. Therefore, the legitimate legitimacy of the Government of the Czech Republic is limited, since the proposal can

simply be submitted to the Constitutional Court of the Czech Republic if it is the only basis for ensuring that the International Court of Justice has ruled that the international obligation resulting from the international treaty has been violated. This is a special case of the specific legal check, since the active legitimacy of the Government of the Czech Republic depends on the specific content of the decision made by the international court.

The power of the universal courts to address the constitutional courts with proposals to initiate the procedure in order to be in conformity with legislation or to ask for abolition of legislation comes from the Constitutions of both republics. The *Condictio sine qua non* in the case of petitions by the General Courts is that the court proceedings must be conducted in that court, and the contested provision must be applicable in a given litigation.

The Constitution of the Slovak Republic and the Constitution of the Czech Republic differ in the question which law can be challenged by the general court. The Constitution of the Czech Republic in Article 95 (2) declares; if the court concludes that the law which has to be used to resolve the matter is inconsistent with the constitutional order than the case will be transferred to the Constitutional Court. The Constitutional Court has already decided on this issue in the first months of its existence (Pl. ÚS 1/93) and has concluded that «within the context of their decision-making activity, the courts are entitled to submit only proposals for the annulment of law or its individual provisions for their inconsistency with the constitutional laws». The Slovak General Courts do not have such restrictions.

When comparing the initiation proceedings, it can be stated that the fundamental change of the legal regulation is not visible even in the case of the mandatory requirements regarding the initiation of these proceedings. The principle of active procedure applies equally in the Slovak Republic as well as in the Czech Republic. That means that the Constitutional Court of the Slovak Republic and the Constitutional Court of the Czech Republic proceed as efficiently as possible about the issue of meritorious decision of the matter. The finding of the Constitutional Court of the Slovak Republic or the Constitutional Court of the Czech Republic is the proceedings result made by the constitutional courts on the compliance of law and the procedure for the abolition of legislation. It is also published in the collections of laws of the Slovak Republic and the Czech Republic. At the same time, both constitutional courts issue the collection of findings and resolutions.

Conclusion. Incorporation of the legal provisions on the legal compliance procedure and the procedure for the annulment of law, other legislation or their individual provisions is essentially similar in the Slovak Republic and the Czech Republic. The competence of the Constitutional Court of the Slovak Republic and of the Constitutional Court of the Czech Republic to act in matters of legal compliance, respectively in matters of the control of legislation is enshrined in the highest laws of both states and the procedural aspect of both proceedings are protected by a separate legal

regulation in the form of a law. In particular, the contribution describes the common features and differences concerning the conformity procedures or the repeal of legislation at the constitutional courts of both countries. On the foundations of analyses the particular emphasis is put on differences regarding opportunities of an individual to file in connection with the constitutional complaint and a motion to initiate the repeal procedure. Moreover, it describes the way in which the constitutional courts of both countries proceed as regards the withdrawal of the petition to initiate the proceedings or the petition change.

In addition, Slovak legislation does not specify the procedural issues of constitutional complaint motion after making decision on its acceptance or declination. Instead, the procedural issues of processing constitutional complaints on the substance of the raised issues are sated out: the Constitutional Court of the Slovak Republic accepts the evidences necessary to figure out the circumstances of the case. With this aim it may appoint a judge for obtaining evidences out of hearing, to make a request to another court for obtaining certain evidences etc. At the request of Constitutional Court of the Slovak Republic all courts and state authorities provide the assistance in obtaining documentary evidences for its decisions. Meanwhile, the legislation of the Czech Republic also specifies the procedural issues of complaint motion after its adoption or declination, but the issue of processing constitutional complaints on the substance is still unsolved.

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Ондрова Ю. Конституційне судочинство в Словацькій Республіці та Чеській Республіці.

Постановка проблеми. Судові заходи, що стосуються контролю за законодавством, мають домінуюче положення у всіх справах, які підпадають під юрисдикцію Конституційного Суду Словацької Республіки та Конституційного Суду Чеської Республіки. За умовами Словацької Республіки правова база визначається

ст. 125 Конституції Словацької Республіки, а сама процедура більш конкретно – Законом Національної ради Словацької Республіки № 38/1993 про організацію Конституційного Суду Словацької Республіки щодо розглянутих справ та статусу суддів. Конституція Чеської Республіки надає повноваження Конституційному Суду переглядати стандарти щодо конституційності та законності дій або їх окремих положень, які суперечать конституційному порядку, або скасовують інше законодавство та їх окремі положення, визначені в частині 1 статті 87 (а) та (b), якщо вони суперечать конституційному порядку.

Аналіз останніх досліджень і публікацій. Основні та пріоритетні функції Конституційного Суду Словацької Республіки та Конституційного Суду Чеської Республіки викликають інтерес у науковців обох країн. Під час багаторічної наукової діяльності автор систематично займається проблемами конституційної судової системи.

Основна **мета** дослідження – охарактеризувати судочинство, пов'язане з контролем за правом у конституційних судах Словацької Республіки та Чеської Республіки, зосереджуючи увагу на судочинстві та суті значних відмінностей, що мають загальні риси, виявлені в обох конституційних судах.

Матеріали та методи. Основним методом, що застосовується в цій статті, є використання аналізу та порівняння наявної судової системи Словацької Республіки та Чеської Республіки.

Результати дослідження. В статті описано загальні риси та відмінності щодо процедур відповідності або скасування законодавства в конституційних судах обох країн. На підставі аналізу особливий акцент робиться на відмінності можливостей для подання конституційної скарги. Описано спосіб, яким конституційні суди обох країн вирішують справи стосовно скасування клопотання про порушення справи або зміну петиції.

Висновок. Компетенції Конституційного Суду Словацької Республіки та Конституційного Суду Чеської Республіки щодо дій у питаннях юридичної відповідності відповідно до питань контролю за законодавством закріплені у вищих законах обох держав та захищаються окремими правовими регулюваннями у формі закону.

Ключові слова: Конституційний Суд Словацької Республіки, Конституційний Суд Чеської Республіки, відповідальність, контроль, юридична сила.