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The Constitutional Court of the Slovak Republic
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Co-operation of Constitutional Courts in Europe – Current Situation and Perspectives

Report of the Constitutional Court of the Slovak Republic
Drawn up on the basis of the submitted questionnaire

I.
Constitutional courts between Constitutional law and European law

The Constitutional Court of the Slovak Republic (hereinafter "the Constitutional Court") is obliged to take into account the priority of the European Union legislation during the exercise of its competences in accordance with the Constitution of the Slovak Republic (Law No. 460/1992 Coll. as amended; hereinafter "the Constitution"). The provision of Art. 7 Sec. 2, second sentence of the Constitution stipulates the priority of European law stating that legally-binding acts of the European Communities and the European Union have priority over the legislation of the Slovak Republic (NB: but not over the Constitution itself). Moreover, the provision of Art. 7 Sec. 5 of the Constitution specifies that international treaties on human rights and fundamental freedoms, international treaties which do not require the law for their execution, and international treaties which directly establish rights or obligations of natural persons or legal entities and which have been ratified and promulgated in the manner laid down by law, have priority over national legislation. Whereas the provision of Art. 7 Sec. 2 of the Constitution stipulates mostly the issue of European Union secondary law, the provision of Art. 7 Sec. 5 of the Constitution is particularly relevant in relation to European Union primary law.

According to the provision of § 14 Sec. 1 of the Law of the National Council of the Slovak Republic No. 38/1993 Coll. on the Organization of the Constitutional Court of the Slovak Republic, Proceedings before the Court and the Status of its Judges as amended (hereinafter the "Constitutional Court Law"), the judges of the Constitutional Court are independent in their decision-making activities, and bound by the Constitution and constitutional laws.

The requirement for interpretation of national legislation in compliance with European law as well as for ensuring the full and effective application of European Union legislation results not only from the standards of European Union legislation but also from constitutional acts within the legal order of the Slovak Republic.

The Constitutional Court takes this fact into consideration in reviewing the decisions of other public authorities in the Slovak Republic. It also considers the requirement of respect for European Union legislation in relation to its own decision-making activity as part of its constitutional responsibility arising from Art. 1 Sec. 2 of the Constitution, which stipulates that the Slovak Republic acknowledges and respects general rules of international law and treaties to which it is bound, as well as other international obligations.

In the Finding of the Constitutional Court ref. no. PL. ÚS 115/2011 from 12th December 2012, concerning the review of conformity of some provisions of Law No. 231/1999 Coll. as amended on State Support and other provisions of the Code of Distraint Procedure with the Constitution, the Convention for the Protection of Human Rights and

Fundamental Freedoms (hereinafter "the Convention") and its Additional Protocol, the Constitutional Court stated for example that: "With regard to the provision of Art. 4 Sec. 3 of the Treaty on the European Union (the principle of loyal cooperation) in connection with Art. 1 Sec. 2 and Art. 7 Sec. 5 of the Constitution, as well as to the provision of Art. 7 Sec. 2 of the Constitution, the relevant provisions of the Law on State Support and equally the Code of Distraint Procedure must respect the appropriate legal standards of European Union law relating to state support, as interpreted and applied by the Court of Justice of the European Union."

Concerning the issue of the application of various sources of international law in the decision-making of the Constitutional Court, it should be noted that all international treaties ratified by the Slovak Republic and promulgated in the same manner as provided for the promulgation of laws stipulating human rights and fundamental freedoms, constitute sources of law relevant also to the decision-making activity of the Constitutional Court. Any person entitled to commence proceedings before the Constitutional Court under the Constitutional Court Law, may challenge the violation of rights or freedoms guaranteed by those international conventions or refer to the rights and freedoms guaranted by those conventions.

Within this context, the following examples can be mentioned:

a) Convention for the Protection of Human Rights and Fundamental Freedoms

Of all the international law sources, the Constitutional Court decides most often on violation of the provisions of the Convention. Therefore a large number of examples of Constitutional Court decisions in which reference is made to this Convention exist. The objection of discordance with Art. 6 Sec. 1 of the Convention in terms of the right to fair trial and the right to have the case heard within reasonable time, is the most frequent allegation of violation of the Convention's provisions.

b) Charter of Fundamental Rights of the European Union

The Constitutional Court has frequently made reference to the Charter of Fundamental Rights of the European Union, for example in its Finding ref. no. PL. ÚS 115/2011 from 12th December 2012, in which it stated *inter alia* that: "fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union form part of European Union legislation with the same legal force as treaties and fundamental rights as guaranteed by the Convention, and since they result from constitutional traditions common to the Member States, they represent general principles of European Union legislation while respect for them is ensured by the Court of Justice of the European Union."

c) other legal instruments of international law on the European level

In some complaints related to criminal proceedings, the Constitutional Court has had to deal *inter alia* with the challenged violation of several provisions of the European Convention on Extradition, e. g. Art. 14 of this Convention as in decisions III. ÚS 204/2011, III. ÚS 61/01, II. ÚS 95/03, IV. ÚS 144/03).

Concerning complaints about the infringement of individual rights, the subject of which is the procedure or decision-making of ordinary courts in the field of care for minors, in several cases the complainants have also claimed violation of the provisions of the European

Convention on the Exercise of Children's Rights. In one case related to this Convention, the Constitutional Court stated its lack of competence due to the fact that although the Slovak Republic had already signed the document in question, it had not ratified it yet (IV. ÚS 560/2012). In other cases, the Constitutional Court has not considered claimed violation of this Convention´s articles due to other procedural reasons.

In one case concerning the custody of a minor, the complainant also claimed the violation of the provision of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. However, the Constitutional Court stated that this Convention covers the cases related to enforcement of decisions delivered by foreign courts. Since the present case concerned the enforcement of a Slovak court's decision, it was clear from the outset that no violation of the European Convention's provision had occurred (I. ÚS 138/03).

In connection with a pronounced violation of complainant's fundamental rights in proceedings before a regional court, the Constitutional Court in its Finding ref. no. IV. ÚS 10/2010 from 3rd June 2010, annulled the decision of this court and referred the case back for further procedure, whereby it stated the obligation of the regional court in further procedure to react also to the argumentation of the relevant party to proceedings concerning the violation of the provisions of the Convention on Human Rights and Biomedicine, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, since they formed part of the legal standards which constituted the basis for assessement of the complaint as a whole, and since the regional court had not taken them into consideration within the complainant's appeal.

d) other legal instruments of international law at the international level

The Constitutional Court in its Finding ref. no. ÚS 313/2012 from 28th November 2012 pronounced the violation of the right to equality before the law under Art. 12 of the Convention on the Rights of Persons with Disabilities (hereinafter "UN Convention") by a procedure of an ordinary court in proceedings relating to deprivation of legal capacity.

Moreover, concerning Art. 12 of the UN Convention, the Constitutional Court also noted the following: «The National Council of the Slovak Republic expressed its agreement with the UN Convention by the Resolution no. 2048 from 9th March 2010 and decided that the UN Convention was an international treaty which had priority over legislation under Art. 7 Sec. 5 of the Constitution. This Convention was ratified by the President of the Slovak Republic on 28th April 2010. The document of the ratification was placed in the depository of the United Nations Secretary-General on 26th May 2010. In the case of the Slovak Republic, the UN Convention entered into force on 25th June 2010. Art. 12 of this UN Convention is introduced by the title "Equality before law" and in connection with legal capacity it enshrines *inter alia* supported (assisted) decision-making, the principle of equality, prohibition of discrimination, appropriateness and adequacy. In this context the UN Convention, in the already mentioned Article 12 (NB: also its Sec. 4 and Sec. 5), challenges/obliges states to take such measures which will not signify the exclusion of persons with disability from social life, but on the contrary lead to their inclusion».

In its Finding ref. no. III. ÚS 454/2011 from 13th December 2011, the Constitutional Court decided that the right of a complainant who was a minor to have the interest of a child taken into account in the activities of a court pursuant to Art. 3 Sec. 1 of the Convention on the Rights of the Child, the right to ensure child protection and care as is necessary for his or her well-being pursuant to Art. 3 Sec. 2 of the Convention on the Rights of the Child, and the

right to assure the child the expression of his or her views and the right of the child to be heard in judicial proceedings pursuant to Art. 12 Sec. 1 and 2 of the Convention on the Rights of the Child, was violated by the decision of the Supreme Court of the Slovak Republic.

In this Finding, the Constitutional Court stated that: "The positive commitment of the state to take measures by means of which every child is able to exercise his or her rights guaranteed by the Convention on the Rights of the Child, results from this Convention, which is also binding for the Slovak Republic (II. ÚS 47/97). If a minor is one of the parties to proceedings, a court may hear his or her view, if the child is capable of expressing it freely in accordance with his/her age and maturity, not only during his or her questioning in proceedings, but also through the relevant body for social care protection of children. It is up to the court which way it opts for hearing the view of the minor in proceedings (Resolution of the Supreme Court ref. no. 2 Cdo 193/2007 from 1st May 2008). Similary, this obligation of a court is regulated in the provision of § 100 Sec. 3 of the Code of Civil Procedure."

In relation to the International Covenant on Civil and Political Rights, the Constitutional Court has dealt with the claimed violation of its provisions in several cases. In a few cases the Court pronounced violation of rights regulated by this Covenant, as well as violation of the fundamental right to judicial protection under Art. 46 Sec. 1 of the Constitution, and the right to a fair trial under Art. 6 Sec. 1 of the Convention (IV. ÚS 464/2010, I. ÚS 91/2011).

Another broad field of this report is the issue of taking into consideration European courts' jurisprudence. In the legal order of the Slovak Republic, there are no specific constitutional provisions which would expressly impose a lawful obligation to take into consideration the decisions of European courts. There are only general provisions in terms of which the Slovak Republic is obliged to respect its commitments resulting from international law (Art. 1 Sec. 2 of the Constitution) as well as the provisions establishing international treaties on human rights (ratified and published in the Collection of Laws of the Slovak Republic) as part of the legal order of the Slovak Republic with priority over national laws. (Art. 7 Sec. 5, Art. 154c Sec. 1 of the Constitution).

At the level of legal standards, it is possible to mention the provisions of § 228 Sec. 1 (d) of the Code of Civil Procedure (hereinafter "the CCP") and § 394 Sec. 1 and 4 of the Code of Criminal Procedure, which are indeed relevant only to proceedings before ordinary courts.

Pursuant to § 228 Sec. 1 (d) of the CCP, a party to proceedings can claim a final judgment by means of a motion for retrial, if the European Court of Human Rights (hereinafter "the ECHR") has decided or come to the conclusion in a judgment that fundamental human rights or freedoms of a party to proceedings have been violated by a court's decision or by proceedings that have preceded its decision, and serious consequences of this violation have not been compensated by recognition of adequate financial satisfaction.

According to § 394 Sec. 1 of the Code of Criminal Procedure, a retrial which ends in a final judgment or final court order is authorized if new facts or evidence earlier unknown for the court appear, and if separately or in connection with the facts or evidence earlier known for the court they could justify another decision.

According to § 394 Sec. 4 of the Code of Criminal Procedure, an earlier unknown fact under Sec. 1 to Sec. 3 may also be a decision of the ECHR in the context of which fundamental rights and freedoms of an accused person have been violated by decision of a prosecutor or court of the Slovak Republic, or by proceedings which have preceded a decision, if the negative consequences of this decision cannot be remedied in another way.

The Constitutional Court and ordinary courts in their decision-making activity take into consideration the case-law of the European Court of Human Rights and the Court of Justice of the European Union.

Thus, the case-law of European courts has an impact on the decision-making activity of the Constitutional Court in many ways. In the initial years of its existence, the Constitutional Court within its decision-making activity already expressed its position on the interpretation of the Constitution's provisions regulating fundamental human rights and freedoms, in the sense that it is necessary to take into account international standards in the interpretation and the application of national law. The restriction of the interpretation of legal standards to the national interpretation could in a specific case also lead to the establishment of the international responsibility of the Slovak Republic for not respecting international commitments (e. g. Ruling of the Constitutional Court ref. no. PL. ÚS 5/93 from 18th May 1994). Within other decisions, the Constitutional Court has pointed out the fact that several fundamental rights and freedoms guaranteed in the provisions of the Constitution are identical or comparable as to their content with the rights and freedoms guaranteed in the Convention on the Protection of Fundamental Rights and Freedoms, and in this connection it is necessary to take into account the standards of the application of the Convention´s provisions. According to the case-law of the Constitutional Court, Art. 17 Sec. 2 and 5 of the Constitution, for example, regarding the right to personal freedom, includes also the right to proceedings in which the Court would immediately or speedily decide on the legality of custody and order the release of a person if this custody is illegal, as well as the right not to be in custody longer than the necessary period or a reasonable period, or to be released during the proceedings, which means the rights arising from Art. 5 Sec. 3 and 4 of the Convention (the decisions of the Constitutional Court in cases ref. nos. III. ÚS 7/00, III. ÚS 255/03 and III. ÚS 199/05).

The Constitutional Court refers in its jurisdiction also to the jurisdiction of the Court of Justice of the European Union. Most frequently this happens in decision-making on complaints claiming the violation of rights in the proceedings or procedure of ordinary courts or other bodies of public authority in cases with a European element (in cases related to issues regulated by European Union law).

As an example it is possible to mention particularly complaints in which the Constitutional Court has commented on the obligation of the ordinary courts to raise a preliminary question under Art. 234 of the Treaty on EC (or more precisely Art. 267 of the Treaty on the Functioning of the EU). In these decisions (e. g. I. ÚS 363/2013, II. ÚS 128/2013, IV. ÚS 92/2013, II. ÚS 170/2013, III. ÚS 207/09, I. ÚS 157/2013), the Constitutional Court has most often quoted, among others, the judgment from 11th July 2006 in the case Chacón Navas, C-13/05.

In relation to the commitment of an ordinary court to raise a preliminary question, the Constitutional Court has also repeatedly referred to the jurisdiction of the ECHR pursuant to which a decision of an ordinary court that sufficiently justifies the failure to raise a preliminary question to the Court of Justice, does not constitute a violation of Art. 6 Sec. 1 of the Convention (the judgment in the case Ullens de Schooten and Rezabek v. Belgium from 20th September 2011, Applications No. 3989/07 and No. 38353/07).

The Constitutional Court in its Finding ref. no. II. ÚS 129/2010 from 3rd November 2011 stated *inter alia* that if a national court does not raise a preliminary question to the Court

of Justice in a specific case where it has the obligation to do so (not only the possibility to do it), subsequently, under certain conditions, it can establish the responsibility of a member state for the violation of community law (European Union law) caused by the procedure and decision-making of a national court (see for example the judgment from 30th September 2003 in the case Köbler v. Republic of Austria, C-224/01).

In Finding ref. no. II. ÚS 501/2010 from 6th April 2011, the Constitutional Court stated that legal standards the application of which can lead to a manifest lack of justification or arbitrariness of a judicial decision by a court, undoubtedly involve the applicable legal standards of the European Union, including legal standards separating competences between authorities of the Slovak Republic (Slovak courts included) and authorities of the European Union. Such is the case, therefore, if a national court exceeds the competences granted to it by the application of European law within the national constitutional order, in the sense that this court appropriates a competence which is granted to other authorities of the European Union, for example the competence to consider the compatibility of state support with European Union law (e. g. the judgment of the Court of Justice from 18th July 2007 in the case Lucchini, C-119/05, Coll. p. I 6199).

As previously indicated, the Constitutional Court in its decision-making activity regularly refers to the jurisprudence of the ECHR. It is even possible to state that the influence of that jurisprudence in the decision-making activity of the Constitutional Court is very evident, and that a positive commitment of the Slovak Republic concerning the respect of ECHR decisions arises also from the international commitments and membership of the Slovak Republic in the Council of Europe.

Of all ECHR decisions which have been referred to in the decision-making of the Constitutional Court, it is possible to mention in particular:

Reasoning of judicial decision

- the judgment in the case Ruiz Torija v. Spain from 9th December 1994, Serie A no. 288 (Following the conclusions of the ECHR, the question of whether a court has failed to fulfil the obligation to state reasons deriving from Art. 6 Sec. 1 of the Convention can only be determined in the light of the circumstances of the case. This means that a statement of reasons in a judgment does not imply a duty to give an answer to each remark, comment or suggestion, unless it concerns a question that is relevant and necessary for the decision in question.)
- Georgiadis v. Greece from 29th May 1997, Higgins v. France from 19th February 1998 (The jurisdiction of the ECHR does not require a court to give an answer to each argument of a party to proceedings in the reasoning of a decision. However, if it concerns an argument which is crucial for the decision, a specific response is required for this argument.)
- Kraska v. Switzerland from 29th April 1993 (The obligation of the court to effectively consider objections, arguments and suggestions to produce evidence of any party to proceedings, under the condition that they are relevant for the decision, arises from the right to a fair trial.)
- Helle v. Finland from 19th December 1997 (application no. 20772/92)

(In rejecting an appeal, an appeal court can restrict itself to taking over the reasoning of the lower court.)

Impartiality of a judge

- the judgment of the ECHR from 1st October 1982 Piersack v. Belgium – (Impartiality must be considered in two aspects; first, the subjective aspect of impartiality, i. e. in this case it is necessary to find out the personal conviction of a judge who deals with a case and secondly, the objective aspect of impartiality, i. e. in this case it is necessary to find out whether sufficient guarantees are provided for exclusion of any doubts in this respect. In the case of the subjective aspect of impartiality, impartiality of a judge is presumed until submission of evidence to the contrary.)

- Delcourt v. Belgium, the judgment of the ECHR from 17th January 1970 – (It is not admissible to satisfy only the subjective aspect of impartiality, but it is also necessary to consider if a judge provides guarantees from the objective aspect, too. Objective impartiality is not assessed by the subjective aspect of the judge alone, but also by external objective facts. In this case the so called theory of appearance is applicable, according to which it is insufficient that a judge is subjectively impartial, but s/he must appear to be objective from the point of view of parties to proceedings. Justice must not only be done, but also be seen to be done.

Freedom of expression

- the judgment of the Grand Chamber of the ECHR from 17th December 2004 in the case Pedersen and Baadsgaard v. Denmark no. 49017/99 – (In terms of freedom of expression, specific groups of persons, typically politicians and journalists, can be awarded privileged status or a higher standard of protection of this right since they fulfil an essential task of providing information on matters of public interest, and therefore create conditions for public authority control by the public, which is a prerequisite of functioning of a democratic society).

- the judgment of the ECHR from 8th July 1986 in the case Lingens v. Austria no. 9815/82,

- the judgment of the ECHR from 12th July 2001 in the case Feldek v. Slovakia no. 29032/95 and

- Handyside v. the United Kingdom, application No. 5493/72, the judgment from 7th December 1976, § 49

(Freedom of expression is one of the basic pillars of democratic society and one of the basic conditions for its development and each individual's self-realization. It applies not only in relation to "information" and "ideas" which are favourably accepted or considered as inoffensive and neutral, but also to "information" and "ideas" which offend, shock or annoy a state or a part of its population. This requires pluralism, tolerance and generosity, without which it is not possible to talk about "democratic society".)

Principle of equality of arms/ of contradictory proceedings

- Komanický v. Slovakia, the judgment from 4th June 2002, § 45 (The principle of equality of arms requires that every party to proceedings be granted adequate possibility to present her/his matter under conditions which do not set her/him in a considerably unfavourable situation compared to the situation of the opponent. The right to contradictory proceedings signifies that parties to proceedings must be granted an opportunity not only to submit all evidence necessary for a successful petition, but also to be informed on any other evidence and comments which have been submitted with a view to influencing the court's decision, as well as to provide reactions.)

- K. S. v. Finland, the judgment of the ECHR from 31st May 2001 and the case F. R. v. Switzerland, the judgment of the ECHR from 28th June 2001 (It follows from the principle of contradictory proceedings that each party to proceedings must be able to assess whether and

to what measure a written statement of her/his opponent is legally significant, whether it contains such factual and legal grounds which necessitate a reaction, or to express it in another way; in doing so, it does not matter what its real impact on the judicial decision is.)

- de Wilde b. Belgium, p. 41, § 76; Trzaska v. Poland from 11th July 2000, Lanz v. Austria from 30th April 2002, Wloch v. Poland from 19th October 2000 (In respect to the fact that Art. 6 Sec. 1 of the Convention does not apply to proceedings and decision-making related to custody, the procedural guarantees regulated in Sec. 1 cannot be applied in the case of Art. 5 Sec. 4 of the Convention. However, existing jurisdiction indicates that certain basic procedural guarantees must be provided also in proceedings under Art. 5 Sec. 4 of the Convention, although they do not necessarily have to be the same as those arising from Art. 6 Sec. 1 of the Convention when deciding on merits. In any case, a person in custody must have an opportunity to submit arguments and reasons against her/his continuance in custody, whereby the jurisdiction tends toward the obligation to hear an accused person in court. The contradictory proceedings and equality of arms must always be guaranteed. The ensurance of real contradictory proceedings means for example the right of access to files without which an accused person cannot sufficiently submit her/his arguments.)

Speed of proceedings and decision-making on custody

- Sanchez-Reisse v. Switzerland from 21st October 1986 (The speed of the review and the decision-making on applications concerning the release from custody is necessarily considered and interpreted depending on the conditions and circumstances of a specific case.)

- Tomasi v. France from 27th August 1992, § 84, Abdoella v. Netherlands from 25th November 1992, § 24 (The fact itself that reasons for custody existed during the whole of its duration is not sufficient for the conclusion that an accused person was tried in a reasonable period, if the custody's duration was too long. Here, the adequacy of the period is considered following the same criteria as set for the adequacy of the duration of proceedings under Art. 6 Sec. 1 of the Convention, i. e. the nature of the matter, behaviour of parties to proceedings and behaviour of the state authority. The adequacy of the period is considered more rigorously than in the case of Art. 6 Sec. 1 of the Convention and requires ordinary courts to proceed in custody matters with "specific urgency".)

- Bezichieri from 1989, A–164, § 21, Neumeister from 1968, A–8, § 24 and Sanchez – Reisse from 1986, A–107, § 55 (The custody should be strictly limited in duration and therefore the possibility of its revision at short intervals should be guaranteed. In the wording of Art. 5 Sec. 4 of the Convention, the English expression "speedily" and the French expression "à bref délai" (in the Slovak language "urýchlene") clearly indicates what must be the main object of interest in a certain case. What time period will or will not be acceptable probably depends on specific circumstances.)

In the Constitutional Court's decisions in proceedings on conformity of legal regulations under Art. 125 of the Constitution, referring to the relevant case-law of the ECHR is a standard part of the argumentation of the Constitutional Court. (e.g. PL. ÚS 106/2011, PL. ÚS 1/2010, PL. ÚS 11/2010, PL. ÚS 19/09 etc.).

It is possible to find some differences between decisions of the Constitutional Court and the ECHR, mostly in cases when after exhaustion of national legal remedies, i. e. including an individual complaint before the Constitutional Court where s/he was partially or completely unsuccessful, a complainant claims the protection of her/his rights before the ECHR and the ECHR considers the violation of the complainant´s rights differently.

Some differences in approach to certain issues can also arise from the special status of the Constitutional Court as a national body vested with protection of fundamental rights and freedoms, and the status of the ECHR as an international judicial body. For example, in cases which concern hearing a matter by a court in a reasonable period, the Constitutional Court considers the procedures of respective authorities separately (courts of each instance), while the ECHR considers the adequacy of the duration of proceedings as a whole.

Another example of differences in decision-making between the Constitutional Court and the ECHR was also the case POPRAD TATRY v. the Slovak Republic, the judgment from 3rd May 2011, application no. 7261/06, where the ECHR came to the conclusion that the manner in which the Constitutional Court had dealt with two complaints by the complainant prevented her from exercising her rights and effectively using an instrument of remedy available under Art. 127 of the Constitution with regard to an essential part of her case. In connection with this case, it is possible to point out a change in the jurisdiction of the Constitutional Court consisting in the fact that in a case where a complainant files an individual complaint under Art. 127 Sec. 1 of the Constitution and at the same time files an appellate review as an extraordinary remedy to the Supreme Court, the Constitutional Court will refuse her/his complaint in preliminary hearing. Simultaneously, however, the complainant maintains his/her time-limit for filing a constitutional complaint also in relation to the decision of the Appelate Court (Supreme Court), which the Constitutional Court reviews just in case the appellate review of the complainant is refused due to procedural reasons and s/he reapproaches the Constitutional Court.

Concerning the question if other national courts in the Slovak Republic also refer in their decisions to European courts' jurisdiction as a result of the Constitutional Court´s reference, it is necessary to stress that the Constitutional Court reviews decisions of ordinary courts only on the basis of complaints of entitled person who claim violation of their fundamental rights and freedoms by these decisions. Therefore the Constitutional Court cannot exactly answer this question on a general level (in relation to the case-law of ordinary courts as such); however, in line with empirical knowledge we can affirm that the jurisdiction of the Constitutional Court, which includes the argumentation of European courts' decisions, has contributed very significantly to the infiltration of their jurisdiction into the consciousness of ordinary courts and to the extension of practice of the ordinary courts, which refer in their decisions to that jurisdiction, especially to the ECHR.

II.
Interactions between constitutional courts

The Constitutional Court in its decision-making refers also to decisions of Constitutional Courts of other European countries. The following examples may be mentioned:

- e. g. in the Ruling ref. no. III. ÚS 388/2010 from 20th October 2010, in connection with the obligation to submit a preliminary question to the Court of Justice and the violation of the guarantee of a lawful judge, the Constitutional Court made reference to the decision of the Federal Constitutional Court Europarecht (Eur) 1988 (as well as III. ÚS 207/09, IV. ÚS 206/08);
- in the Finding ref. no. II. ÚS 501/2010 from 5th April 2010, the Constitutional Court made reference to the decision of the Federal Constitutional Court of Germany 2 BvR 197/83, so called Solange II, in which the Federal Constitutional Court stated that it would no longer review the compatibility of legal standards with Community acts if the

European Community and especially the Court of Justice of the European Communities ensured effective fundamental human rights protection with regard to Community acts, whereby this protection must, in principle, correspond to fundamental rights protection provided by the Fundamental Law;

- in the Ruling ref. no. IV. ÚS 573/2012 from 22nd November 2012, the Constitutional Court made reference to the case-law of the Federal Constitutional Court of Germany – decision ref. no. 1 BvR 1160/03 from 13th June 2006, BVerfGE 73, 280; of the Federal Administrative Court of Germany – BVerwG, ref. no. 6 C 6.91 from 21st October 1993, under which *"Stabilized, unanimous and long-term decision-making activity (potentially even inactivity) of public administration authorities, which repetitively confirm a certain interpretation, can create a legitimate expectation of its follow-up",* as well as to the decisions of the Constitutional Court of the Czech Republic ref. nos. III. ÚS 619/06, III. ÚS 2822/07 or the Czech Supreme Administrative Court – the judgment from 28th April 2005, ref. no. 2 Ans 1/2005-57, published in the Collection of Decisions of the Supreme Administrative Court under no. 605/2005, as well as the Ruling ref. no. 6 Ads 88/2006 from 21st June 2009, which completed this notion to the extent that "*at the same time the fact that the practice is stabilized does not prevent it from being changed in the future by an administrative body*."
- in the Finding ref. no. II. ÚS 440/2011 from 11th October 2012, the Constitutional Court made reference to the case-law of other constitutional courts – the decision of the German Constitutional Court BVerfG 82, 159, the decision of the Constitutional Court of Austria VfSlg. 14390/1995, but also the decision of the Constitutional Court of the Czech Republic ref. no. IV. ÚS 154/08 in relation to the right to a lawful judge and the right to a fair trial in cases where a court declines to submit a preliminary question (without a motion from parties to proceedings) thus arbitrarily ignoring the interpretation of European Union law, which is *prima facie* fully incorrect, if the court itself has doubts about its own interpretation.

The Constitutional Court in its decision-making, mostly in legal analysis within proceedings under Art. 125 Sec. 1 of the Constitution, pursuant to which it considers conformity of legal standards with the Constitution, constitutional laws and international treaties, often refers to the decision-making activity of European courts in order to carry out comparison. To give some examples of these decisions, it is possible to mention the Finding ref. no. PL. ÚS 12/01 from 4th December 2007, where the Constitutional Court compared the case-law of European constitutional courts in relation to the issue on legal regulations concerning abortions, the Finding ref. no. PL. ÚS 19/09 from 26th January 2011, or ref. no. PL. ÚS 23/06 from 2nd June 2010, in relation to interference with property rights, the Finding ref. no. PL. ÚS 11/2010 from 23rd November 2011 in relation to some aspects of the fundamental right of association, or the Finding ref. no. PL. ÚS 13/2012 from 19th June 2013, where the Constitutional Court considered conformity of legal regulations related to the minimum wage claim of nurses and midwives.

The Constitutional Court in its decisions often takes inspiration from, compares or refers to the decision-making activity of the Constitutional Court of the Czech Republic, which is caused not only by kinship of languages but mainly by common history and development, as well as similarity of legal regulations.

It is possible to state that most frequently the Constitutional Court makes reference to other decisions of constitutional courts in the fields of public and civil law.

On the other hand, two examples in which the Constitutional Court of the Czech Republic in its decision-making makes reference to the case-law of the Constitutional Court of the Slovak Republic, read as follows:

- the Finding ref. no. PL. ÚS 36/2011 from 20th June 2013, where the Constitutional Court of the Czech Republic reviewed the conformity of challenged legal regulations concerning so-called standard and higher standard health care, increased charges for hospitalization and sanctionary powers of health insurance companies towards medical service providers. In this Finding the Court made reference to the decision of the Constitutional Court of the Slovak Republic ref. no. PL. ÚS 38/03, in which the Slovak Constitutional Court formulated the following legal sentence in its decision: *"Free medical care under Art. 40 of the Constitution has its "limits", i. e. not everything is provided free of charge";*

- the Finding ref. no. PL. ÚS 35/95 from 30th July 1996, in which the Constitutional Court of the Czech Republic reviewed the conformity of the legal enactment stipulating conditions of free medical care in the form of subordinate legal regulations. The Constitutional Court of the Czech Republic made reference to the decisions of the Slovak Constitutional Court in which a similar issue was addressed (PL. ÚS 7/94, PL. ÚS 8/94, PL. ÚS 5/94).

In this section we would also like to point out that the Constitutional Court cooperates with other European and non-European constitutional courts in the Venice Commission's Forum, not only in joint conferences but also through mutual communication of liaison officers, who exchange information on the basis of specific legal questions submitted in relation to specific matters, which are the subject of decision-making. This kind of communication is very positive regarding the possibilities of broad comparison of legal regulations in individual countries and their constitutional courts' case-law.

With respect to the constitutional courts of the neighbouring countries such as the Constitutional Court of the Czech Republic, the Constitutional Tribunal of the Republic of Poland or the Constitutional Court of Hungary, the cooperation is closer and less formal.

III.
Interactions between European courts and the jurisprudence of constitutional courts

Regarding the Constitutional Court's reflection of the ECHR's referrals within its decision-making to European Union law or decisions of the Court of Justice of the European Union, we can mention as an example that in relation to the obligation of ordinary courts to submit a preliminary question to the Court of Justice, the Constitutional Court has also repeatedly made reference to the ECHR case-law under which a decision by an ordinary court which sufficiently justifies its failure to submit a preliminary question to the Court of Justice, does not involve the violation of Art. 6 Sec. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms (the judgment Ullens de Schooten and Rezabek v. Belgium from 20th September 2011, Applications no. 3989/07 and no. 38353/07).

The impact of the case-law of constitutional courts on the relationship between the European Court of Human Rights and the Court of Justice of the European Union is an issue which should be addressed to these relevant European courts.

On the issue of possible differences between decisions of the ECHR on the one hand and the Court of Justice of the European Union on the other, as well as the impact of these differences on decisions of the Constitutional Court, on the basis of the Constitutional Court's practice it is possible to conclude that the jurisprudence of the ECHR and the Court of Justice of the European Union, as far as it concerns the protection of human rights and fundamental freedoms, is in mutual accordance, which is in large measure linked to the fact that human rights and fundamental freedoms as guaranteed by the Convention on the Protection of Human Rights, are general principles of the European Union laws respected by the Court of Justice of the European Union, while the Charter of Fundamental Rights of the European Union has taken over the standards of protection of fundamental rights guaranteed by the Convention on the Protection of Fundamental Rights and Freedoms, in principle, as a result of ECHR case-law.

IV.
Summary

On a regular basis, the Constitutional Court of the Slovak Republic in the exercise of its competence takes into account European legislation, international documents regarding fundamental rights and freedoms and, naturally, the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

Even in the initial period of its existence, the Constitutional Court within its decision-making stated that it is necessary to take international standards into consideration in the interpretation and application of national law. Limitation of the interpretation of legal standards to national interpretation could, in specific cases, lead also to the establishment of international responsibility of the Slovak Republic for not respecting its international commitments. At the same time, the Constitutional Court has always pointed out the fact that various fundamental rights and freedoms guaranteed in the provisions of the Constitution are equal or similar in their content to the rights and freedoms guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms, and in this sense it is necessary to take into account the standards of application of these provisions by ECHR.

In its decision-making the Constitutional Court naturally makes reference to the case-law of the Court of Justice of the European Union as well. Most frequently this involves cases with decision-making on complaints challenging violation of rights due to the proceedings or the procedure of ordinary courts or other public authorities in matters falling within the scope of powers of European Union law.

The Constitutional Court also makes use of the decision-making activity of foreign constitutional courts for its comparative purposes. This approach is particularly interesting and inspiring in relation to constitutional court case-law in those countries which are linked to the Slovak Republic by common historical, social and, to a certain measure, legal development. In this sense, we mostly have in mind the countries of Central Europe, although this does not mean that the interests of the Constitutional Court are limited only to the case-law of the constitutional courts of these countries.

Mutual interaction and cooperation between constitutional courts in Europe undoubtedly contributes to enhancement of the decision-making of individual constitutional courts, and it promotes the unification of standards and level of constitutional protection of fundamental rights, which certainly contributes to development of their protection also on a European level, not least by the development and cultivation of what European Union law indicates as constitutional traditions common for all member states, and qualifies as general principles of European Union law. Indeed, such mutual interaction and cooperation between

constitutional courts in Europe contributes to the development of constitutional protection standards to an extent, which transcends the borders of the European Union.