

SLOVAK REPUBLIC/RÉPUBLIQUE SLOVAQUE

1) A compliance of the draft laws with the international treaties is one of the aims of the legislative work. The liability for compatibility of the draft laws with the international treaties is born by submitters of the draft acts who are obliged to declare in the preference clause, as well as explanatory report to the draft acts their compliance with international treaties.

Pursuant to Article 4 § 4 of the Legislative Rules for Law Making (No. 19/1997 Coll.), a law must comply with the obligations, which result for the Slovak Republic from the international treaties and international documents thereof.

Verification of draft law material compliance with Convention runs throughout the whole legislative process in the National Council of the Slovak Republic. The contents of deputy mandate give rise to this duty of the deputies (Article 75 of the Constitution of the Slovak Republic). Pursuant to Article 68 of the Rules of the National Council of the Slovak Republic (Act No. 350/1996 Coll.), a draft law shall contain its wording in sections and an explanatory report. The explanatory report must include a statement on the draft law's compliance with the Constitution, its relation to other laws and international treaties and on the draft law's compliance with the EU law elaborated by means of a clause on compatibility of the respective draft law with the EU law (compatibility clause).

The Legislation and Law Approximation Department of the Office of the National Council performs a legal analysis of law drafts. Its role is to point out, inter alia, to an eventual contradiction with the international treaties which bound the Slovak Republic, thus it has an opportunity to initiate an alternation of the draft law also in the case when such a draft law is not in compliance with the Convention.

In scope of the second reading the draft law shall be deliberated by those committees of the National Council, which it was allotted to in the first reading. Each committee or any member thereof may point out to any incompatibility of the draft law with the international obligations, and to propose a rectification that shall reflect, after being adopted by the committee, in a joint report of the committees which shall be voted on in the plenum of the National Council. Any deliberation within the committees of the National Council is open to public so that chairman of a committee may also let speak representatives of various institutions dealing with, for instance, the issue of human rights. The National Council may invite specialists or other individuals to its meetings and ask them to give their position relating to the draft law, or to set up an expertise and, subsequently, an oral explanation (Article 54 of the Rules of the National Council). The most important role from the aspect of verification of draft law compatibility with the Convention in the National Council is played by the Constitutional Law Committee that deliberates all the draft laws, also from the aspect of their compatibility with international agreements, and the Committee of Human Rights and Minorities that deliberates on the draft laws in view of their compatibility with human rights anchored in the Constitution of the Slovak Republic, and which result from the international obligations of the Slovak Republic.

Within the scope of the second reading by the general assembly of the National Council the deputies may make any suggestions for an amendment thereto whereby they may equally propose a specific rectification of any eventual incompatibility with the Convention.

If, in the third reading by the general assembly of the National Council, a need to make the deliberated bill compatible with the Convention occurs then there is an opportunity to decide, based on a proposal presented by 30 deputies, to repeat the second reading where the necessary modification in form of an amendment proposal can be voted through.

Pursuant to Article 102 § 1(o) of the Constitution of the Slovak Republic the President of the Slovak Republic may remand any law of the National Council, together with its commentary. Under Article 87 § 2 of the Constitution of the Slovak Republic, should the President remands a law with a commentary then the National Council has to deliberate it repeatedly. It follows from the above that if the President finds out, for instance, any incompatibility with the Convention then he can deny signing the law adopted by the Slovak National Council, and remand it to be repeatedly deliberated by the National Council.

In the case of government draft laws, before filing a draft law of the National Council, the Legislative Rules of the Government of the Slovak Republic must be adhered to. Those stipulate the rules for making the generally binding legal regulations. In accordance with Article 17 § of the Legislative Rules of the Government the so-called Compatibility Clause aiming to ensure and transparently verify and justify compatibility of the draft legislation with Law of the EU is an integral part of the General Part of the Explanatory Report to the submitted draft regulation/act.

Before draft law submission to be deliberated by the Government, a comment procedure runs during which the bill is discussed with relevant authorities and institutions. The draft law is published on internet and a notification of the publication is forwarded to the Deputy Prime Ministers of the Government, ministries and other central bodies of government administration, to the Institute of Law Approximation, National Bank of the Slovak Republic, The Supreme Audit Office of the Slovak Republic, The Supreme Court of the Slovak Republic, the General Prosecution of the Slovak Republic, and other bodies and institutions concerned with the issue, or if this duty results from a special regulation, or if so determined by the Government or Prime Minister. The draft law may also be forwarded for comments to other public bodies, or bodies of regional self-government, professional organisations or other institutions. This means that an entity providing comments may also be, for instance, the Ombudsman or non-governmental organisations. The public can use the so-called “massive comment”, i.e. a comment of a larger number of physical or legal entities. It follows from the above that any of the aforesaid entities or the public can raise an objection of the incompatibility of a proposed legal regulation with the Convention.

The Legislative Council of the Slovak Republic, as an advisory body of the Government of the Slovak Republic, gives its opinions on the draft laws from the view of their compatibility with conventions of the Council of Europe, in the same manner as it gives its opinions on compliance with other international treaties binding for the Slovak Republic, while the Institute for Approximation of Law under the Office of the Government of the Slovak Republic elaborates written opinion on the draft laws also from the viewpoint of their compliance with the EU law and conventions of the Council of Europe. Should the draft law is not in compliance with the Legislative Rules of the Government, the chairman of the Legislative Council can remand the draft law to its presenter for completing it.

2) A compliance of the laws in force with the Convention is ensured by means of constitutional conformity review. Article 125 of the Constitution provides that the Constitutional Court shall decide on the conformity of laws with the Constitution,

constitutional laws and international treaties to which the National Council has expressed its assent and which have been ratified and promulgated in the manner laid down by law. The Constitutional Court shall open such proceedings on an application by no less than one fifth of the deputies of the National Council, the President, the Government, a court of law and the Prosecutor General. If the Constitutional Court finds a lack of conformity between legal instruments, the relevant instruments, parts of them or certain of their provisions shall lose their effect. The bodies that issued these legal regulations shall be obliged to harmonise them with the Constitution, with constitutional laws and with international treaties promulgated in the manner laid down by a law, and also, in the case of Instruments, with other laws, and in the case of instruments, with government regulations and with generally binding legal regulations issued by ministries and other central State administrative bodies within six months from the promulgation of the decision of the Constitutional Court. If they fail to do so, these instruments, parts of them or their provisions shall lose their effect six months after the promulgation of the decision.

3) A compliance of the administrative practice with the Convention is ensured by means of the individual constitutional complaint under Article 127 § 1 of the Constitution. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms have been violated by a final decision, specific measure or other act and shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order the authority which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights have been violated.

4) As to the obstacles that have been encountered in establishing or applying these mechanisms, the statutory framework for the examination of individual constitutional complaints did not allow to examine the compliance of laws with the Constitution and international instruments as such. It follows that if the basis for the violation of the Convention is a statutory there is no available domestic remedy and the applicants have a direct access to the European Court of Human Rights (see e.g. *Bittó and Others v. Slovakia* concerning the application of rent-control scheme under the relevant legislation to the applicants, application no. 30255/09, judgment of 28 January 2014, §§ 75 and 76). It would be useful to empower the Chamber of the Constitutional Court, while deciding on the individual complaint pursuant Article 127 of the Constitution, to introduce *ex officio* or at the applicant's request the review of the constitutionality of legislation before Constitutional Court's plenary session pursuant Article 125 of the Constitution. The proceeding pursuant Article 127 of the Constitution will be postponed until the decision of the plenary session pursuant Article 125 of the Constitution.

Modification of an existing law

Examples (Slovakia)

PL. ÚS 23/2006 (on the devolution of costs of phone-tapping on telephone providers) – Incompatibility of the provision of Article 13 § 2 j “costs of the company” in conjunction with Article 56 § 2 of the Act on the Electronic Communication No. 610/2003 Coll., as amended, with Article 1 of the Protocol No. 1 to the Convention

PL. ÚS 19/09 (on the protection of property rights to real estate /land) – Incompatibility of the provisions of Article 2 § 1a the words “or was an act done to obtain it,” Article 2 § 2 point a) the words “or evidence” and Article 2 § 2 a the first point and the second point of the Act on Extraordinary Measures in Preparation of Certain Motorways and Roadways No. 669/2007 Coll., as amended, and on amendments to Act on the Land Registry (Land Act) No. 162/1995 Coll., as amended, with Article 1 of Protocol No. 1 to the Convention.

PL. ÚS 3/09 (on changes in the system of public health insurance and their constitutional acceptability) - Incompatibility of the provision of Article 15 § 6 of the Act on Health Insurance Companies and Healthcare Supervision No. 581/2004 Coll., on as amended, with Article 1 of Protocol No. 1 to the Convention.

PL. ÚS 1/2010 (on starting point of the period for contesting paternity) – Incompatibility of the provision of Article 86 §1 of the Family Act No. 36/2005 Coll., as amended, with Article 6 § 1 and

PL. ÚS 11/2011 (on the immunity of state assets from execution) – Incompatibility of the provision of Article 18 § words "enforcement" of Act on State Property Administration No. 278/1993 Coll., as amended, and supplementing Act on Modification of the Ownership of Land and Other Agricultural Property No. 229/1991 Coll., as amended with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

PL. ÚS 109/2011 (on the obligation to determine the payer of the court (judicial) fee by the Act) – Incompatibility of the provision of item 13 b) in the Annex Fees in Civil Proceedings (Tariff of the Court Fees) Act on Court (Judicial) Fees and Fee for Criminal Record No. 71/1992 Coll., as amended, with Article 6 §1 of the Convention

PL. ÚS 115/2011 (on the enforcement of so-called unauthorized state aid) – Incompatibility of the provision Article 26 § 5 of the Act No. 231/1999 Coll. on the State Aid with Article 6 §1 of the Convention and Article 1 of the Protocol No. 1 to the Convention

PL. ÚS 11/2013 (on the statutory average marks as a criterion for access to the full secondary education) – Incompatibility of the provision of Article 62 § 1 point a) and c), Section 62 § 3 of Act No. 245/2008 Coll. Education Act with Art. 2 of the Protocol No. 1 to the Convention