

INDIVIDUAL APPLICATION BEFORE THE CONSTITUTIONAL COURT OF SLOVENIA

Marko Bošnjak, Judge of the European Court of Human Rights

The Constitutional Court (CC) – the highest authority:

- protection of constitutionality
- protection of human rights and fundamental freedoms

Individual application before the CC:

- introduced by the Constitution in 1991, operational since entry into force of the Constitutional Court Act in 1994
 - constitutional complaints against individual acts (judgments, decisions)
 - petition to review constitutionality of a law/ constitutionality or legality of a bylaw
 - petition to establish unconstitutionality of activities of political parties (never used in practice)
 - application regarding confirmation of election of MPs (candidates only)

Constitutional complaints:

- alleging violations of human rights and fundamental freedoms
- after exhaustion of all available legal remedies
- within 60 days from delivery of the relevant individual acts
- excluded by law in *de minimis* cases
 - * apart from the individual concerned/his or her representative, it can also be lodged by the ombudsperson

Relevant human rights and fundamental freedoms:

- guaranteed by the Constitution
- guaranteed by any international law instrument ratified by Slovenia (direct applicability effect)

Exhaustion of available legal remedies:

- criminal cases: court of first instance – appeal to the Higher Court – appeal on certain points of law to the Supreme Court
- civil cases: court of first instance – appeal to the Higher Court – leave to appeal/appeal on certain points of law to the Supreme Court
- administrative cases: administrative litigation before the Administrative Court - leave to appeal/appeal on certain points of law to the Supreme Court

Excluded by law in the minimis cases – no significant disadvantage for the applicant:

- disputes below 2.000 EUR
- decision solely on costs of proceedings
- trespassing
- minor offences (e.g. road traffic contraventions)
- however, the CC may examine a constitutional complaint if it concerns an important constitutional questions exceeding the circumstances of that particular case

Examination of the constitutional complaints:

- a panel of three judges decides on its admissibility (95% dismissed at this level) – certain exceptions
- (in)admissibility decision is normally reasoned only by a reference to the relevant provision of the Constitutional Court Act
- if declared admissible, it is sent to the public authorities that issued the impugned decisions and to the adversary in the underlying proceedings – may present observations
- admissible constitutional complaint submitted to the plenary composition of the Court (9 judges) – an exception

Decisions that can be taken by the plenary composition:

- may dismiss the constitutional complaint (less than 50% of applications declared admissible)
- grants in whole or in part:
- quashes the individual acts (judgments, decisions) and remands the case for new deliberations
- exceptionally may decide on the merits of the underlying case
- cannot grant just satisfaction

Petition to review constitutionality of a law/constitutionality or legality of a bylaw:

- anyone having a legal interest in such review – no *actio popularis* – the act in question must interfere directly with petitioner's rights, legally protected interests or legal position
- in practice: a petitioner must first start legal proceedings in lower courts or before other competent authorities alleging unconstitutionality of a particular provision – only after all legal remedies have been exhausted, he or she may file a petition before the Constitutional Court
- review of constitutionality/legality may be started upon request of qualified applicants (any of the houses of Parliament, one third of MPs, Government, in certain instances: courts, ombudsperson, the State Prosecutor General, local communities, trade unions)
- in case of review request – examination by the CC is mandatory

- in case of petition for review – admitted for consideration (by the plenary composition of the CC) if:
 - it is not manifestly ill-founded or
 - it concerns on important legal question that the CC should resolve

Decisions that can be taken by the plenary composition:

- finds that the impugned law or its provision is not unconstitutional
- finds that the impugned law or its provision is unconstitutional and orders the Parliament to rectify the established unconstitutionality by a given deadline (maximum one year) – in such a case, it may regulate the way the law should be applied until the unconstitutional situation is remedied
- abrogates the law with immediate effect
- abrogates the law with a deferred effect (may regulate the way the law should be applied until abrogation)
- annuls the bylaw

Some further observations:

- clearly a success: several landmark decisions, well-established jurisprudence, *erga omnes* effect, clear independence from other institutions
- victim of its own success: how to manage case load? How to deal with public expectations?
- instances of tensions with judiciary/other branches of power