



**3<sup>rd</sup> Congress of the World Conference on Constitutional Justice  
'Constitutional Justice and Social Integration'  
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Questionnaire  
Reply by the Constitutional Court of the Slovak Republic

**A. Court description**

The presentation of the Constitutional Court of the Slovak Republic (hereinafter “the Constitutional Court”) is in the CODICES database.

**B. Social integration**

**1. Challenges of social integration in the decision-making activity of the Constitutional Court.**

The Constitutional Court deals with social issues and issues of social integration from two aspects. The first aspect consists in specific constitutional review in cases where the Constitutional Court decides on a challenged infringement of rights and freedoms of natural persons or legal entities on the basis of the individual complaint institution defined in Art. 127 of the Constitution of the Slovak Republic (hereinafter “the Constitution”). Regarding the second aspect, the Constitutional Court deals with this issue also within abstract constitutional review, namely by considering the constitutionality of impugned legislation under Art. 125 of the Constitution or by interpretation of the Constitution and constitutional laws within abstract constitutional review in the case of a dispute under Art. 128 of the Constitution.

With respect to the subject of discussions of the 3rd Congress of the World Conference on Constitutional Justice, in this part we are going to deal particularly with the decision-making activity of the Constitutional Court in the field of asylum law, tax law and social security law.

From the outset it is necessary to state that the Constitutional Court as an independent judicial authority vested with the mandate to protect constitutionality, deals in specific constitutional review mainly with examination of challenged infringements of rights and freedoms of individual complainants caused by decisions and procedures of ordinary courts, or other public authorities of last instance.

The fundamental part of the decision-making activity of the Constitutional Court consists of the examination of challenged infringements of the fundamental right to fair trial under Art. 46 sec. 1 of the Constitution.

The constitutionality of legal regulations is considered by the Constitutional Court within abstract constitutional review under Art. 125 of the Constitution, where it reviews the conformity of a specific impugned legal regulation, its part or provisions with the Constitution, constitutional laws, international legal norms and other legal norms. According to valid legal regulation, only precisely defined entities in the Constitution such as 1/5 of the deputies of the National Council of the Slovak Republic, the President of the Slovak Republic, the Government of the Slovak

Republic, any court, the General Prosecutor and the Ombudsman, are entitled to commence proceedings on conformity of legal norms.

### **The right to social security law**

The Constitution in its Art. 39 sec. 1 guarantees citizens the right to adequate material security in old age and incapacity to work, as well as in the case of loss of a breadwinner. Pursuant to sec. 2 of this Article, everybody who is in material need has the right to the assistance which is necessary for ensuring basic living conditions. It is possible to seek basic rights which are granted in Art. 39 of the Constitution only within the limits of the law as defined by the provisions of Art. 39.

International treaties ratified by the Slovak Republic with priority over national legislation, or legal binding acts of the European Communities or European Union, are the exceptions.

The Constitutional Court within its decision-making activity encounters questions and challenges related to the field of social security law, particularly within abstract constitutional review, namely in the examination of conformity of legal regulations related to the field of social security with the Constitution or other legal norms.

Natural persons may claim the violation of their fundamental rights under Art. 39 of the Constitution within the institution of individual complaint. However, in this situation the Constitutional Court is mostly obliged to state its lack of competence, since the regulation of this field falls into the sphere of legislative power.

The fact that regulation of the legal regime of social security falls into the competence of the legislator was stressed by the Constitutional Court in its Finding Ref. No. **PL. ÚS 11/08** dated 30<sup>th</sup> July 2010. As the Constitutional Court has already stated, it is for the legislator to select the legal regime of social security of individual groups of natural persons in order to ensure their social security in accordance with Art. 39 sec. 1 of the Constitution; however, there must be a legal solution which corresponds particularly with Art. 1 sec.1, Art. 12 and Art. 13 of the Constitution<sup>1,2,3</sup>.

In this connection, we can mention the legal regulation of the social security law arising from abstract constitutional review:

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<sup>1</sup> According to Art. 1 sec. 1 of the Constitution the Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not linked to any ideology, nor religion.

<sup>2</sup> According to Art. 13 of the Constitution: (1) Duties may be imposed

a) by law or on the basis of a law, within its limits, and while complying with basic rights and freedoms,  
b) by international treaty pursuant to Article 7 sec. 4 which directly establishes rights and obligations of natural persons or legal entities, or

c) by government ordinance pursuant to Article 120 sec. 2.

(2) Limits to basic rights and freedoms may be set only by law under conditions laid down in this Constitution.

(3) Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions.

(4) When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose.

<sup>3</sup> According to Art. 12 of the Constitution: (1) People are free and equal in dignity and in rights. Basic rights and freedoms are inviolable, inalienable, imprescriptible and inderogable.

(2) Basic rights and freedoms in the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, faith and religion, political or other thoughts, national or social origin, affiliation to a nation, or ethnic group, property, descent or any other status. No one may be harmed, preferred or discriminated against on these grounds.

(3) Everyone has the right to freely decide on his/her nationality. Any influence on this decision and any form of pressure aimed at suppressing of anyone's nationality is forbidden.

(4) No one may be harmed in his/her rights for exercising of basic rights and freedoms.

The Constitutional Court dealt in its Finding Ref. No. **PL. ÚS 16/06** dated 2<sup>nd</sup> July 2008 with impugned nonconformity of some provisions of Law No. 461/2003 Coll. on Social Insurance both with the Constitution and the Charter concerning the index-linking of social security benefits.

The Constitutional Court held that the fundamental right to adequate material security, the details of which are regulated by law in conformity with the Constitution, mainly includes adequate material security in old age through the pension system, in which social insurance plays the key role.

Social insurance as a system based on the insurance principle, on personal participation translated into consideration of “merit” in the calculation of old age pension, on social solidarity and state guarantees, is therefore founded on principles which affect not only the calculation of old age pension, but also the system by which it is increased.

As the old age pension and its index-linking, which is regularly implemented every year at a specific time and under certain conditions, are integral parts of the social insurance system, it is possible to consider them as components of the fundamental right to adequate material security in old age under Art. 39 sec. 1 of the Constitution and Art. 30 sec. 1 of the Charter, and it is therefore necessary to assess them from this point of view.

Concerning the question of material need, the Constitutional Court issued its Finding Ref. No. **PL. ÚS 3/04** dated 30<sup>th</sup> March 2006, in which it decided on impugned nonconformity of some provisions of Law no. 599/2003 Coll. on Assistance in Material Need with the Constitution and the Charter of Fundamental Rights and Freedoms.

In this Finding the Constitutional Court stated that differentiated security of fundamental living conditions in the law in question does not automatically mean its nonconformity with Art. 39 sec. 2 of the Constitution<sup>4</sup> in view of the absence of any definition of fundamental living conditions in the Constitution, which allows the legislator to consider the manner of application of this fundamental right; in fact Art. 39 sec. 3 of the Constitution<sup>5</sup> also allows the legislator to do so.

The violation of the principle of equality cannot be considered only from the quantitative point of view of differentiated calculation of sums of social assistance allowances, namely from considering only one quantitative value out of other relevant parameters. These are represented not only by the form and level of other social benefits (social assistance benefit and state social benefit) which contribute to the resolution of material needs and to assurance of fundamental living conditions, but also by further relevant facts such as the structure and number of members in each household.

Equality in rights under Art. 12 sec.2 of the Constitution does not mean equality expressed by quantity, but the equality in rights which must have a further, qualitative dimension.

The right to fair and satisfying working conditions guaranteed by Art. 36 of the Constitution, which among other things includes also the right to remuneration for work done sufficient for enabling a dignified living standard, falls within the category of social rights which have been the subject of decision-making activity by the Constitutional Court.

In its recent Finding Ref. No. **PL. ÚS 13/2012**, the Constitutional Court dealt with this issue in a relatively extensive way. In this case it considered the impugned nonconformity of provisions of

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<sup>4</sup> According to Art. 39 sec. 2 of the Constitution, everybody who is in material need has the right to such assistance which is necessary for ensuring the basic living conditions.

<sup>5</sup> According to Art. 39 sec. 3 of the Constitution, the details of the rights under sec.1 and sec. 2 are laid down by law.

Law No. 62/2012 Coll. on Minimum Wage Claims of Nurses and Midwives. The Constitutional Court stated that the right to remuneration for work done sufficient for providing employees with a dignified living standard falls into the category of social rights and it is possible to claim this right only within the limits of the laws which execute it, as regulated by Art. 51 sec. 1 of the Constitution.

In addition, Art. 36 a) of the Constitution directly states that the law guarantees employees the right to remuneration for work done. The right in question is one of the few provisions of Chapter II of the Constitution which differ from the wording of the Charter of Fundamental Rights and Freedoms. In 1992 the Slovak Constitution makers took over the draft wording of Art. 28 of the Charter (Federal Assembly, issue 330/VI<sup>th</sup> electoral term), which was not accepted in its original extent by the Federal Assembly of the Czech and Slovak Federative Republic.

The content of Art. 36 a) of the Constitution firstly consists of the guarantee of providing a minimum subsidiary standard of remuneration in employment contracts and, in accordance with the sense of constitutional ensuring of social rights, it does not reflect the right to optimal remuneration for work done. This is the space for the autonomy of the parties' will.

The provision has the international counterpart in Art. 7 of the International Covenant on Economic, Social and Cultural Rights (the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable working conditions which ensure in particular fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work) and Art. 4 sec. 1 of the European Social Charter (published under no. 279/2009 Coll.; with a view to ensuring the effective exercise of the right to fair remuneration, the Contracting Parties undertake to recognise the right of workers to remuneration such as will give them and their families a decent standard of living).

The supervisory bodies (the Human Rights Committee and the European Committee of Social Rights) which monitor the respecting of rights by studying reports of individual countries, in connection with these articles, focus on the regulation of the minimum wage and there is no reason to perceive Art. 36 a) of the Constitution in any other light. The law in question sets the wage level considerably above the minimum wage and therefore it is not only about the closer specification of Art. 36 a) of the Constitution.

The Constitutional Court held that increasing nurses' salaries cannot be in nonconformity with the right to remuneration for nurses' work done. The persons entitled to remuneration for work done sufficient for enabling a dignified living standard are the employees directly under Art. 36 of the Constitution.

The impugned law concerns the nurses and midwives in the position of employees of state and non-state providers of health care (compare also with § 3 sec. 4 of Law no. 578/2004 Coll.) and not the nurses who practise health-care professions on the basis of a licence for carrying out separate health practice. In this case the nurses and midwives, the employees, are the holders of the right under Art. 36 a) of the Constitution.

The question of nonconformity could arise if the legal position of nurses concerning their salaries was aggravated by the impugned legal enactment.

However, in the case in question the truth is different. The fact that the proper rights of employees are enhanced cannot be constitutionally problematic in terms of employees. It is similar to a tax reduction which would mean interference with the property rights of taxpayers. The fundamental rights balance each other, including the identification of the aim of legal regulations regarding other fundamental rights and the public interest. They cannot be balanced

regarding their proper holders. This is inconsistent. Thus the impugned legal regulation does not fall within the scope of Art. 36 a) of the Constitution in the mentioned sense and therefore no non-conformity with this article can occur. Similarly, the violation of Art. 13 sec. 3 and 4 of the Constitution, which have accessory character, cannot occur even if the complainant links them with Art. 36 a) of the Constitution.

Art. 13 sec. 3 and 4 of the Constitution include norms which are in the position of emphasis because the norms which guarantee fundamental freedoms are not included (the norms which are absolute rights which cannot be limited).

### **The right to asylum**

The right to asylum is the subject of decision-making activity of the Constitutional Court, mainly to the extent to which the constitutionality of procedure and decision-making of public authorities, particularly ordinary courts, is considered. In its decision-making activity, the Constitutional Court does not often encounter this issue and if so, it occurs mostly in connection with extradition proceedings in the case of a complainant as the asylum seeker.

In this field, one of the most recent decisions is Finding Ref. No. **II. ÚS 147/2013** dated 9<sup>th</sup> October 2013, the core of which consists of consideration of the possibilities of administrative expulsion of a person, an asylum seeker.

The Constitutional Court held that the provisions of the law on asylum prevent expulsion only during the asylum procedure. However, after the end of this procedure (if the asylum application is not successful) this protection of the asylum seeker ceases to exist and the asylum seeker becomes in principle open to being administratively expelled. For the purposes of Art. 5 sec. 1 f) of the Convention the asylum procedure can be considered as a part of the pending expulsion proceedings, not as an obstacle to expulsion.

According to the opinion of the Constitutional Court, the Law on asylum provides a sufficient legal basis for the detention of a foreigner also within the asylum procedure. The relevant provisions of this Law expressly presume detention for the purpose of carrying out administrative expulsion, namely without reference to the fact whether the foreigner in detention is at time of his/her (temporary) detention entitled to reside in the Slovak Republic by reason of the submission of the asylum application.

In its Finding Ref. No. **III. ÚS 388/2012** dated 2<sup>nd</sup> October 2013 the Constitutional Court dealt with the impugned violation of rights of the complainant, an asylum seeker, in connection with his extradition to the Russian Federation.

In this case the Constitutional Court held that the fundamental right of the complainant not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under Art. 16 sec. 2 of the Constitution and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under Art. 3 of the Convention, were violated by the resolution of the Supreme Court of the Slovak Republic.

The Constitutional Court reproached the Supreme Court in the sense that within the spectrum of factors which tend to be considered in assessment of quality of provided diplomatic guarantees, the Supreme Court had limited them to only two.

In the first case it pointed out the membership of Russia in the Council of Europe and in the second case it presented the specific decision-making activity of the European Court of Human Rights, which had in the past confirmed the reliability of diplomatic guarantees from the Russian side.

The Constitutional Court was of the opinion that in the partial test of reliability of the provided guarantees which was carried out by the Supreme Court, there had been a lack of assessment of crucial factors such as: assessment of the question whether the guarantees provided by the General Prosecution Service of Russia were specific enough, namely relating to the personal situation of the complainant; whether Russia in the past in similar extradition cases had respected the guarantees it had provided to the Slovak Republic; what were the possibilities concerning the specific control mechanism for verification of provided guarantees, either through direct diplomatic channels or monitoring bodies of intergovernmental nature; and last but not least the answer to the highly topical question concerning the trend in procedure of the competent Russian authorities in cases of suspicion of the use of inadmissible practices of mistreatment (see the current criticism from the Council of Europe on practices of torture and inhuman treatment used in the fight against the Islamic rebels in the North Caucasus area – see the report by the CPT Committee from 2013).

With reference to all the specified shortcomings, the Constitutional Court qualified the judicial control of credibility of provided diplomatic guarantees carried out by the Supreme Court as being superficial and insufficient.

### **Tax law**

The sphere of tax law similarly to the social security law falls standardly within the attributes of Parliament, in which the Constitutional Court intervenes only in exceptional situations.

The Constitutional Court expressed its opinion on the tax legislation and the obligation to respect fundamental rights and freedoms of individuals in Finding Ref. No. **I. ÚS 241/07** dated 18<sup>th</sup> September 2008, where it decided on an individual complaint alleging the violation of fundamental rights by decisions of ordinary courts in proceedings on the review of legality of a decision by the tax office.

The Constitutional Court stated that even the state interest in ensuring the receipt of revenues in the state budget is not and cannot be superior to the fulfilment and respect of rights which are acknowledged to tax payers by law.

In the situation where the law allows different interpretation, it is not possible in adjudication of a case to avoid the fact that in the field of public law (tax law) the state authorities can act only within the limits stated by law (in contrast to the citizens, who can act freely, unless it is forbidden by law).

It follows then from this maxim that in the imposition and exaction of taxes according to the law, i.e. in the de facto confiscation of part of a person's property, the public authorities are obliged to preserve the essence and purpose of fundamental rights and freedoms.

In subsequent proceedings where the Constitutional Court dealt with the tax law issue, it gave its opinion particularly on procedures of tax authorities, e.g. in the exercise of tax inspections (I. ÚS 238/06, III. ÚS 24/2010) or on respecting the time-limit stated by law for making a decision by a state authority (II. ÚS 14/01).

### **Social integration**

The Constitutional Court expresses its opinion on social integration as such in its various forms, only through decisions where it reviews the impugned violation of rights by the procedure or decisions of public authorities.

This is also the case of Ruling Ref. No. **IV. ÚS 335/2010** dated 16<sup>th</sup> September 2010, in which the Constitutional Court rejected a complaint concerning the impugned violation of the right

under Art. 6 sec. 1 of the Convention by a judgment of the Supreme Court of the Slovak Republic, as being evidently groundless.

The core of the proceedings consisted in non-satisfaction of the complainant's (a seriously disabled person) application for a monetary contribution by way of compensation for increased expenditures related to the operation of a personal motor car.

The Constitutional Court identified with the legal opinion of the Supreme Court stating that there was no legal claim for such a contribution and its granting falls within the discretionary powers of administrative bodies.

These decisions based on the discretion of administrative bodies could be revoked only if they contradict the content of personal data files or the principles of logical reasoning. However, such doubts were not found in this case.

One of the aims of the Law on Social Assistance is to moderate or overcome social need by active participation of citizens and to assure the integration of citizens into society. The respondent state may thus proceed only on the basis of proper finding of legal conditions for providing social assistance benefits.

In judicial review the courts do not substitute the discretion of administrative bodies by their own decisions and do not examine the purpose of a pronounced decision.

In addition to the examination of conformity of a decision with the content of personal files and the principles of logical reasoning, ordinary courts may in administrative justice examine only the question whether the factual circumstances which the discretion of administrative body issues from were established in the right procedure and whether the legal consequence caused by the decision is not contrary to the law.

Within the sphere of the integration of foreigners, it is possible to include also the Finding Ref. No. **III. ÚS 331/09** dated 16<sup>th</sup> December 2009, in which the Court held that the right of the complainant, a citizen of the Republic of India, to respect for family life guaranteed by Art. 8 sec. 1 of the Convention on Human Rights and Fundamental Freedoms was violated by a judgment of the Supreme Court of the Slovak Republic.

After the arrival of the complainant in the Slovak Republic, he married a Slovak citizen. Then he applied for permanent residence, which was not granted to him. Nor was he successful in the subsequent judicial proceedings on review of the legality of the decision of the administrative authority in administrative justice.

The Constitutional Court stated that for the potential review of respecting the principle of proportionality (if the refusal of the permanent residence permit was considered as a violation to the complainant's right to respect for family life), the rigorous consideration of the facts that at the time of the marriage (and long before) the complainant must have been conscious that he was residing illegally in the territory of the Schengen Area and had no legal claim to reside or settle down in this territory, was crucial.

The right to respect for family life under Art. 8 of the Convention does not include the general obligation of contracting states to respect the selection of spouses as to their settlement in the territory of a particular state, in such a way that the state concerned would be obliged to accept the settlement of a partner who is not its citizen.

Article 8 of the Convention does not guarantee the right to family life in a specific country but only the right to real family life as such. For this reason it was necessary to consider in the complainant's case (on the basis of specific and relevant facts) whether there were serious

obstacles preventing or obstructing, in a cardinal manner, the family life of the complainant with his wife, in his country.

In the case of the complainant, if some facts appeared which the possibility of interference with his right to family life arose from, and the complainant claimed the protection of this right in the proceedings before the state authorities, it was the constitutional obligation of those authorities to consistently consider all circumstances important for the examination of his application and the argumentation used, namely under the mentioned criteria arising from Art. 8 of the Convention.

The aliens office of the police authorities, the regional court, but also the Supreme Court did not meet this obligation because in their reasoning they contented themselves with the statement of legality of the refusal of the complainant's application for permanent residence without considering all questions relevant for the decision.

## 2. International standards regarding social integration

The Slovak Republic is bound by several international conventions which also regulate the field of social rights and social integration.

They are namely:

- International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights published by the ordinance of the Minister of Foreign Relations in the Collection of Laws under no. 120/1976 Coll.
- European Social Charter published by the announcement of the Ministry of Foreign Relations of the Slovak Republic in the Collection of Laws under no. 329/1998 Coll.
- Additional Protocol to the European Social Charter published by the announcement of the Ministry of Foreign Relations of the Slovak Republic in the Collection of Laws under no. 330/1998 Coll.
- Convention concerning Minimum Standards of Social Security (no. 102) published by the announcement of the Federal Ministry of Foreign Relations in the Collection of Laws under no. 461/1991 Coll.

The Constitutional Court in its decision-making activity encounters these institutions of international law in situations where the complainants or plaintiffs allege the violation of their rights guaranteed by these international norms, or non-conformity of legal norms of the Slovak Republic with their provisions.

In Ruling Ref. No. **III. ÚS 400/08** dated 3<sup>rd</sup> December 2008 the Constitutional Court refused the complaint for its evident groundlessness. The complainant claimed the violation of his rights through the decision-making activity of ordinary courts in proceedings on compensation for diminished social position due to job-related illness. The complainant alleged *inter alia* the violation of the right under Art. 12 of the European Social Charter.

According to Art. 12 of the European Social Charter, with a view to ensuring the effective exercise of the right to social security, the contracting parties undertake:

- 1 to establish or maintain a system of social security;
- 2 to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security;
- 3 to endeavour to raise progressively the system of social security to a higher level;



4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, to ensure:

a equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the contracting parties;

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the contracting parties.

In relation to the impugned violation of fundamental rights under Art. 36 c), Art. 38 sec. 2, Art. 39 sec. 1 and Art. 40 of the Constitution and the right under Art. 12 of the European Social Charter, the Constitutional Court referred to its legal opinion, in conformity with its case-law (for instance ref. nos. II. ÚS 78/05, IV. ÚS 326/07), according to which ordinary courts on principle cannot be the secondary violator of fundamental rights or rights of substantive character (including the specified rights) if this violation does not arise from the fact that an ordinary court simultaneously violates constitutional principles issuing from Art. 46 to Art. 48 of the Constitution or Art. 6 sec. 1 of the Convention on Human Rights and Fundamental Freedoms.

In relation to the impugned violation of Art. 12 of the International Covenant on Economic, Cultural and Social Rights (hereinafter the "Covenant") the Constitutional Court reiterated that this provision has programmatic character and presumes the transfer of international obligations of a contracting state into the legal order of this state in the form of application of a wide scale of measures, including measures of legislative nature.

The Constitutional Court held that in this field the Slovak Republic fulfils its international obligations by adoption of the relevant legislative measures including the Law on Health Care (see the already-mentioned § 3 of this law) and at the same time it stated that it was not possible to allege the violation of individual rights or freedoms through this provision.

For these reasons the Constitutional Court refused this part of the complaint as evidently groundless (II. ÚS 122/03, IV. ÚS 27/04).

In this connection we can again mention Finding Ref. No. **PL. ÚS 13/2012** dated 1<sup>st</sup> June 2013 (nurses' pay), in which the Constitutional Court stated that the content of Art. 36 a) of the Constitution firstly represents the guarantee of providing the minimum standard of remuneration in employment contracts, and in accordance with the sense of constitutional anchoring of social rights, it does not reflect the right to optimal remuneration for work done. This is the space for the autonomy of the parties' will.

This provision has its international counterpart in Art. 7 of the International Covenant on Economic, Social and Cultural Rights (the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular fair pay and equal remuneration for work of equal value without distinction of any kind, women especially being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work) and Art. 4 sec. 1 of the European Social Charter (published under no. 279/2009 Coll.): with a view to ensuring the effective exercise of the right to fair remuneration, the Contracting Parties undertake to recognise the right of workers to remuneration such as will give them and their families a decent standard of living.

The supervisory bodies (the Human Rights Committee and the European Committee of Social Rights) which monitor the maintenance of rights by studying reports from individual countries in connection with these articles focus on the regulation of the minimum wage, and there is no reason to perceive Art. 36 a) of the Constitution in another light. The law in question sets nurses' pay levels considerably above the minimum wage and therefore this is not only an issue of the specification of Art. 36 a) of the Constitution.

### 3. Constitutional instruments dealing with/strengthening social integration

The legal regulation of social rights inheres in Art. 35 to 43 of Part V of the Constitution, which regulate economic, social and cultural rights as parts of fundamental rights and freedoms.

Moreover, social integration is protected by other provisions of the Constitution regulating fundamental human rights and freedoms, namely in connection with Art. 12 of the Constitution. The objective of Art. 12 of the Constitution is the protection against discrimination, namely against the evaluation of people according to their affiliation to a certain social group and not to their individual qualities.

The content of Art. 12 of the Constitution reflects in full effect the protection provided by Art. 3 of the Charter of Fundamental Rights and Freedoms<sup>6</sup>.

In relation to Art. 12 sec. 2 of the Constitution, in its Finding Ref. No. **I. ÚS 17/99** dated 22<sup>nd</sup> September 1999 the Constitutional Court stated that this provision has general, declarative character and not the character of a fundamental human right or freedom. It is possible to claim its application only in relation to the protection of specific fundamental rights and freedoms defined in the Constitution.

The Constitutional Court designated the regulation in Art. 38 sec. 1 a 2 of the Constitution<sup>7</sup>, which admits the adoption of positive measures in favour of specific groups of people, as a legal norm complementary to Art. 12 sec. 2.

In the above-mentioned Finding the Constitutional Court stated that the constitutional order of the Slovak Republic acknowledges, as a generally-accepted approach to ensure the equality in rights, only such deviation from the universal understanding of equality (the prohibition of discrimination) which has the express constitutional basis reacting to the natural inequalities between people. In this context it refers to Art. 38 of the Constitution.

Any individuals, natural persons or legal entities in proceedings before the Constitutional Court may claim protection against the alleged violation of their fundamental rights and freedoms, including the social rights regulated in Art. 35 to Art. 43 of the Constitution, within the institution of the individual complaint under Art. 127 sec. 1 of the Constitution. It is possible to claim protection of these rights in the sense of Art. 51 sec. 1 of the Constitution only within the limits of the laws which execute these provisions. The exception from this rule, as mentioned above, is the situation in which the Slovak Republic accedes to an international treaty with priority over the legislation of the Slovak Republic under Art. 7 sec. 5 or Art. 154c sec. 1 of the Constitution, or if a legally-binding act of the European Communities or the European Union exists (Art. 7 sec. 2 of the Constitution).

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<sup>6</sup> According to Art. 3 of the Charter: (1) Everyone is guaranteed the enjoyment of his/her fundamental rights and fundamental freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

(2) Everybody has the right freely to choose his/her ethnicity. It is prohibited to influence this choice in any way, and equally to exert any form of pressure aimed at suppressing a person's ethnic identity.

(3) No detriment may be caused to anybody's rights merely for asserting his/her fundamental rights and freedoms.

<sup>7</sup> According to Art. 38 sec. 1 of the Constitution

(1) Women, minors and disabled persons have the right to enhanced protection of their health at work and to special working conditions.

(2) Minors and disabled persons have the right to particular protection in employment contracts and assistance with preparation for their profession.

However, the Constitutional Court does not deal with conflicts of social groups directly but through its decision-making activity either based on individual complaints or abstract constitutional review.

Within proceedings on individual complaints, the Constitutional Court has the power to pronounce the violation of the fundamental right or freedom claimed, caused by the specific decision or procedure of a public authority.

If the right was violated by a decision, the Constitutional Court may revoke that decision and refer the case back to the public authority concerned. In the case that the violation of the right or freedom was caused by the procedure of a public authority, the Constitutional Court may prohibit the continuation of the violation or order the authority violating the fundamental right or freedom to restore the state before the violation of that right. If inactivity of a public authority is found, the Constitutional Court may order the authority violating the fundamental right or freedom by its inactivity to act in the case concerned. At the same time the Constitutional Court may also grant the person whose fundamental right or freedom was violated adequate financial satisfaction.

Within its abstract constitutional review based on a motion from an entitled person, the Constitutional Court reviews the conformity of impugned legislation with the Constitution, other legal enactments and international treaties.

In these proceedings the Constitutional Court may decide by a Finding that the impugned legal norm or its part is or is not in conformity with the specified enactments. If the Constitutional Court pronounces in its decision that there is nonconformity between legal enactments, the relevant legal enactments, their parts or some of their provisions cease to have effect. The authorities which issued these legal enactments are required to bring them into conformity with the Constitution, constitutional laws and international treaties promulgated in the manner set by law, within 6 months from the announcement of the decision of the Constitutional Court. If they do not do so, such enactments, their parts or provisions expire six months after the announcement of the decision. However, the Constitutional Court cannot decide on the conformity of any draft law or the draft of any other generally-binding legal enactment with the Constitution, constitutional law or international treaty.

Within its power under Art. 128 of the Constitution, the Constitutional Court interprets the Constitution or constitutional law provided that there is a conflict between the participants, namely two state authorities. In accord with its existing case-law, the Constitutional Court considers the condition of the existence of a dispute between the participants in the proceedings to be met in cases in which the particular manner of the application of the impugned provision by the state authority led to the emergence of the legally relevant dispute concerning its interpretation.

It follows from the above that the Constitutional Court cannot apply this power preventatively but only in the cases of the existence of disputes concerning the interpretation and application of the relevant provisions of the Constitution or constitutional law.

#### **4. The role of constitutional justice in social integration**

The Constitutional Court cannot directly prevent the creation of social conflicts. However, within abstract constitutional review it has a legal instrument at its disposal consisting in temporary suspension of effect of the impugned legal enactment. The condition for using this legal instrument is that further application of the impugned legal enactment may endanger fundamental rights and freedoms, if there is a risk of considerable economic damage or a risk of considerable irreversible consequences.

A Constitutional Court decision on suspension of the effect of impugned legal enactments, their parts or several provisions loses its validity at the moment of the announcement of a decision

on merits by the Constitutional Court, provided that it has not previously revoked the decision on suspension due to the demise of the reasons for which it was adopted.

In the case of individual constitutional complaints, on the proposal of the participant in the proceedings, the Constitutional Court has the power to postpone the enforceability of the impugned public authority decision. These two legal instruments are the only ones with some kind of preventative protection which can be provided by the Constitutional Court.

The Constitutional Court cannot deal preventatively with the lack of conformity between the social agents and political parties in the adoption of legal enactments in the field of social rights. The Constitutional Court can deal only with the examination of conformity of already effective legal regulations with the Constitution, constitutional laws and international treaties. The power of preliminary protection of constitutionality cannot be considered either in the case of individual complaints.