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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**The Constitutional Court of the Republic of Slovenia:  
Current Problems Concerning the Organisation and Proceedings**

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Basic Problems of Legal Proceedings, Organisation and Practice”**

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## 1. Introduction

The Constitutional Court of the Republic of Slovenia (hereinafter the Court) consists of nine members including the president. The Court is also composed of the Secretariat, including the clerks as the group of law advisors and the departments providing administrative assistance or other kind of support.

The Court hears cases in public hearings or closed sessions. It decides by a majority of the votes of all judges (exceptions are determined in the Constitutional Court Act). As a rule the Court decides at plenums, however, in constitutional-complaint cases it decides also in three-member panels. A judge who does not agree with a majority decision or the reasoning of a decision may announce their concurring or dissenting opinion, which must be submitted in a time limit determined by the Rules of Procedure of the Court. The peculiarities of the Court procedure are determined in the Constitutional Court Act. Concerning the issues not regulated by this Act the Court applies, depending on a specific legal nature, the statutory provisions dealing with other court proceedings.

This paper intends to present the procedure dealing with constitutional complaints (hereinafter complaint). Hearing a complaint, as a legal remedy of human rights protection, is one of the most important powers of the Court. In relation with the nature and function of a complaint and the respective powers of the Court, it needs to be emphasized that the Court cannot function in adjudicating complaints as an appeal from the ordinary judiciary, but can only find whether a human right was violated by the challenged decisions. Thus, the Court will not accept a complaint for consideration if there is no human right violation. Irrespective of the alleged violations claimed by the petitioner, in order to file a complaint the requirements determined by statute must be fulfilled.

That is why every complaint the Court receives goes through the process of examination. To examine a complaint means to examine the fulfilment of the procedural requirements for continuing the Court proceedings, and to examine the obviousness of the human rights violations. Only if the complaint survives this test, it is accepted for consideration. The Court may dismiss the complaint as unsubstantiated. If found substantiated, the Court grants such and entirely or partially annul or annul *ab initio* (in the case of the individual acts of public administration bodies) the challenged individual act, and remand the case to the competent body for retrial. If necessary, the Court itself can also decide on the disputed right.

## 2. The Examination of a Complaint

The examination of a complaint is thus the first phase of a procedure in which the Court, in a panel of three judges, decides whether to accept the complaint for consideration. The Court has three three-member panels for the examination of complaints, each of them dealing with the areas of criminal law, civil law and administrative law. In the program of activities the Court also determines the composition of these panels. According to such a program, for example, a complaint in the area of criminal law may only be assigned to a judge who is a member of the panel to examine complaints in that area of law. As regards the members of the same panel, the task of a reporting judge is assigned according to the determined order of precedence (the alphabetical order of precedence).

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As soon as the Court receives a complaint, it is assigned to a reporting judge. The Secretary General of the Court assigns the case also to a clerk depending on the area of law they deal with. The scope of activities and the given potentials of the staff require that clerks specialize on certain areas of law.

The clerk classifies the case as to its substance. Perhaps this sounds unusual, however, it is logical as a complaint might be filed by anyone. There are nor prescribed form neither mandatory representation by a qualified authorized person (lawyer) required to file a complaint. Thus, the Court receives many submissions, which can be appropriately classified only by a professionally qualified person. The clerk writes on a special form the individual act against which the complaint was filed and whether the complainant suggested that the implementation of such act be temporarily suspended. Furthermore, the subject of decision-making in the challenged act (e.g. detention, settlement of claims, etc.) and whether the case is to be adjudicated as a priority task are also the data important for the Court. The latter information is important to determine an order of precedence in adjudicating cases.

Following such classification, the Secretary General orders the entry of the case into the register. Thereupon the original file (kept in the registrar) and internal files for all the judges and the assigned clerk are made out. The Court notifies the complainant of the number of the case and the reporting judge, who was assigned the case.

From that moment on, assisted by the clerk the reporting judge examines: whether the submission is complete, whether all the procedural requirements were fulfilled, and whether a human right was obviously violated. If the submission is unintelligible or incomplete, i.e. if the complainant did not state the act they challenged, or if they did not enclose it with the submission, the reporting judge calls the complainant to complete it. If the submission is complete, it needs to be examined whether the statutory procedural requirements for filing a complaint were fulfilled. These are: the eligibility of the complainant, the meeting of the time limit to file a complaint, and the exhaustion of legal remedies. If, in the opinion of the reporting judge, these (or at least one of them) are not fulfilled, a draft ruling on rejecting the complaint is made. If they are fulfilled, but no human right was obviously violated, a draft ruling on the non-acceptance of the complaint is prepared. As already mentioned, it is up to the three-member panel to decide whether the complaint be rejected or not accepted for consideration. The ruling adopted by the panel is sent through the so-called fifteen-day circulation to other judges of the Court, who may in the meantime decide to accept the complaint. (More on this will be in the continuation.)

Here I would like to point to some of the most frequent grounds for rejecting a complaint:

- A legal interest for filing a complaint: The eligible person to file a complaint can only be the one who can be the subject of a human right violation by an individual act. This is then anyone who is affected by the challenged act. Thus, if the complaint is filed by someone who claims to be a representative of the complainant, and does not enclose with the submission a special authority for representation despite the call of the Court to do so, the Court considers that the complaint was filed by such a person on their own behalf. As the effects of the challenged act do not refer to them, it is logical that they are not eligible to challenge it.
- The exhaustion of legal remedies: The Court decides on a complaint only if the legal remedies were previously exhausted. Thus, a complaint can only concern the

decisions of the Supreme Court or, in cases where there is no possibility of Supreme Court revision, the decisions of courts of appeal or the Senate for Violations, as only with their decisions all the legal remedies are as a rule exhausted. It is not only important that the complainant exhausted the legal remedies formally, but that they claimed in the legal remedies the violations they assert in the complaint already in the previous proceedings. The Constitutional Court Act enables the exceptional deciding on a complaint prior to the exhaustion of all the possible legal remedies, but only if the claimed violation is obvious and if, due to the implementation of the individual act, irreparable detrimental consequences could occur for the complainant. Therefore, a complaint is never allowed prior to the exhaustion of the appeal against a lower court decision, which is always permitted. Unfortunately, many (lay) complainants do not know whether they can file further legal remedies in certain cases, which they need to exhaust prior to filing a complaint. On the other hand, prior to filing a complaint, certain complainants lodge a legal remedy with the ordinary court, with which they do not succeed due to its inadmissibility. In such a case they usually miss the time limit determined by statute to challenge the individual act by which it was decided on their right or legal relation. Thus, the Court can only consider the act by which it was decided on the inadmissibility of the legal remedy, and only in the framework of constitutional review, i.e. whether a human right was violated by such a decision on the inadmissibility of a legal remedy.

- Meeting the time limit to file a complaint: The Act provides that a complaint is to be lodged in sixty days from the service of the individual act that may be challenged by the complaint. The Constitutional Court Act determines that, in the most substantiated cases, the Court may decide on a complaint filed after the expiry of the said time limit. If filing a belated complaint, the complainant must demonstrate why their case is especially substantiated so that the Court can decide despite the failure to meet the statutory time limit for filing the complaint. This does not concern the reasons justifying such failure in filing the complaint (in such a case the reasons could only justify a motion to reinstate the case), but the reasons relating to the fact that the complaint is well founded as to its substance. Ignorance of the law, which is the most frequent reason for the failure to meet the time limit for filing a complaint, does not mean an especially substantiated case.

In a panel of three judges the Court also decides on the (non)acceptance of a complaint. The Court does not accept a complaint if it is obvious that no human right was violated by the challenged individual act. Most often complainants file their complaints since they are dissatisfied with court decisions and thus opine that such decisions are incorrect. However, the circumstance that the challenged court decision might be incorrect does not mean that by such decision a human right of the complainant was violated.

Also a decision of the panel to refuse to accept the complaint (as well as one on rejection) is sent through the fifteen-day circulation to other judges of the Court, who may in the meantime decide to accept the complaint.

A complaint is accepted for consideration if any three judges of the Court decide that. If a panel decides to accept the case, the requirement of the necessary number of judges was already fulfilled, so the fifteen-day circulation and the deciding of other judges are unnecessary. The Court had to design special rules in connection with the cessation of reporting in case the reporting judge votes against the acceptance, however, the complaint is

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nevertheless accepted. Other possible variants are: that other two members of the panel and at least one of other judges vote for the acceptance, that one member of the panel and two other judges vote for the acceptance, or that other three judges not being members of the panel vote to accept the complaint. The reporting judge is always selected from among the judges who voted for the acceptance; they are first selected from the circle of panel members (the alphabetical rule). The transfer of reporting is necessary if the assigned judge submitted their draft ruling on the non-acceptance; it might be important to know that also rulings on the examination of a complaint contain reasons for the decision.

If the complaint is not accepted for consideration, i.e. if it is rejected or not accepted, the proceedings concerning the complaint end. The ruling on rejection or non-acceptance is served on the complainant and the court whose individual act was challenged. There is no appeal against a ruling on rejection or non-acceptance.

If the complaint is accepted for consideration, the second phase of proceedings follows:

### **3. The Hearing and Deciding on the Merits of a Complaint**

A ruling on accepting a complaint is served on the complainant. The complaint, together with the ruling on its acceptance, is also sent to the body that issued the challenged individual act (as a rule the Supreme Court or a court of appeal, by the decision of which the legal remedies were exhausted) to reply. Furthermore, it is sent to the affected party: if the matter concerns a court decision in a civil-law case, this is the opposing party in the civil proceedings. They may also reply to the complaint. If the court or the affected party replies to the complaint, the complainant is notified of that, who may again reply to their assertions.

In such a manner adversary proceedings are ensured. The question remains when the Court may cease informing the participants in the proceedings of the replies. The answer to that depends on the concrete case. The Court continues to serve the writings of the opposing party until they contain allegations their previous submissions did not contain, and which could be a basis for the Court decision. The Court has never been criticized for not ensuring parties adversary proceedings in constitutional-complaint cases.

If needed, the Court may request from other courts files or other individual documents. It also may request the necessary data and information from other State bodies and local community bodies. All the materials, the literature and the case law necessary to study the case are gathered by the clerk independently and guided by the reporting judge. A written report on the matter and a draft decision are worked out, which the reporting judge submits to a Court plenary session. If the suggested draft is accepted, the plenary session is followed by a redaction commission session, where the text of a decision is edited. On the basis of a special ruling, the Court publishes all the decisions on the complaints in the Official Gazette.

A decision may also be pronounced publicly. For public pronouncement a ruling with the summarized grounds for the decision is prepared. Also, the Court informs the media concerning all the decisions.

The reporting judge may submit the case to a plenary session for preliminary hearing. This turned out to be useful in more complicated cases. Also for such type of hearing the appropriate materials must be prepared.

In hearing a complaint the Court may also decide to review the regulation on the basis of which the challenged individual act was reached. It issues a special ruling on that, by which it in fact commences the proceedings of deciding the constitutionality of the regulation. If it finds the regulation to be unconstitutional, it annuls it (an executive regulation may be annulled *ab inito*). Only in such a manner the effective constitutional protection of complainants is guaranteed. Merely the annulment of an individual act based on an unconstitutional regulation would in the case of the complainant entail the ordinary court's deciding on the basis of the unconstitutional regulation despite the retrial ordered by the Court.

#### IV. Other Decisions of the Constitutional Court

- **A public hearing** is not mandatory in Court proceedings. The President of the Court may call a public hearing on their own initiative or at the request of the participants in the proceedings (if the President of the Court opines that it is necessary). The President of the Court must call such if three judges suggest so.
- **The exclusion of a judge** may be requested by the participants in the proceedings. The Court may exclude the judge only in such cases as determined for the exclusion of a judge. A judge may request their own exclusion if they opine there is a reason for that. The plenum always decides on the exclusion of a judge even if the proceeding is still in the phase of the examination of a complaint. Due to the previously mentioned "circulation" prescribed for rulings on rejecting or not accepting complaints, it is also necessary to decide on the exclusion of the judge, not being a member of the panel, who will decide on the concrete complaint. As a rule, a reason for excluding a judge is their participation in the adjudication on an individual act challenged in the complaint (certain Court judges were previously Supreme Court judges).
- **The suspension of implementation** of a challenged individual act or the regulation on the basis of which the challenged act was issued is envisaged in cases in which the complaint is accepted for consideration, when, by the implementation of such an act irreparable detrimental consequences could develop. The Court receives many too general motions for the suspension of the implementation of either an individual act or a regulation. Such requests load the Court with unnecessary activities, as they always require at least a partial hearing of the case from view of the fulfilled conditions for issuing the so-called temporary injunction. Regarding the character of a case, such a request sometimes entails much sooner hearing of the case than it would be heard according to the order of precedence of the receipt, for it is impossible to separately decide only on temporary suspension. If the deciding on the complaint should wait until it is due according to the order of precedence, the complaint could become superfluous already for this reason.
- **Costs of proceedings:** On principle constitutional-complaint proceedings are free. Only if the participant does not appear for unjustified reasons or for other reasons they do not give the Court the necessary data, so that the Court must adjourn the hearing, it may decide that the hearing is adjourned on the expense of the participant. This has not yet occurred in the practice. As a rule every participant bears their own costs of proceedings (e.g. an expense for the attorney). However, the Court may decide differently. Also, this has not yet occurred in the practice despite numerous complainants' suggestions that such costs be reimbursed from the opposing

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participant. So far the complainants have not asserted any reasons that would require a different Court decision. The "success" itself in a constitutional-complaint case is not yet a criterion for that.

- **Re-vote:** Until the forwarding of a decision or a ruling every judge may suggest in writing a re-vote at a Court session. A re-vote motion stays the forwarding of a decision or a ruling. In re-vote proceedings the motion suggesting it is decided first, and if accepted the already reached decision is voted on anew; if this is impossible the re-vote is postponed. New materials must be prepared for such a re-vote.
- **The withdrawal of a complaint:** The complainant may withdraw their complaint any time during the proceedings. In such a case the proceedings are discontinued. A panel decides on the discontinuation of the proceedings of examining a complaint, while a plenum decides on the discontinuation of the proceedings of consideration and decision.

## V. Conclusion

From the above-mentioned, it follows that in a formal sense Court proceedings are not very complicated. What makes them complicated or demanding is incomplete, ambiguous and unclear submissions of the complainants. Recently (at the end of March) the Court published a form to make filing a complaint easier, the use of which is not obligatory as the statute does not prescribe so. There have been already certain complaints filed on such forms. However, only after a certain time it could be evaluated whether the use of such forms contributed to reducing the number of incomplete and unclear submissions. We hope that the number of complaints will not increase due to this new expedient, but decrease – certainly on account of those complaints, which would be inadmissible anyway due to the failure to meet the procedural requirements. What follow from the form itself are also the procedural requirements for filing a complaint. However, for a complaint to be substantiated the appropriate grounds are necessary, which cannot be envisaged in the form. For the year 2001 the Court established that among the complaints lodged there are more and more submissions composed in a qualified manner, which require the answer to a constitutional questions. This entails a greater number of cases in which the Court must carry out both phases of constitutional-complaint proceedings. Nevertheless last year only 1.6% of all complaints were granted (prior to that 6.4%). The number of complaints increases year after year. In the overall structure of cases they gradually prevail. Their share already exceeds 65%.