

## **CONSTITUTION CHANGES INFLUENCED BY THE EUROPEAN UNION MEMBERSHIP**

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### **1. Introduction**

The European Union is a political and economic community associating 28 member states located on the European continent. The idea of the foundation of the European Union based on the cooperation of individual states was highlighted after the end of the Second World War. The cooperation of the European states had to safeguard peace, security, reconstruction of economy and social stability. The continuation of integration activities of the concerned states and their chief representatives had been completed in 1992 by the approval of the Treaty on the European Union known as well as the Maastricht Treaty. The second founding treaty of the European Union was the Treaty on Functioning of the European Union regulating relation and defining the common and delegated powers among the European Union as the supranational institution and the member states creating its constituent substance.

The accession of the Slovak Republic into the European Union on 1<sup>st</sup> May had been the outcome of the several years' intensive integration process accompanied by the various economic and political changes carrying out the predestined completion of many provisions regarding the prospect of its accession to the European Union. In connection with the European policy and deliberations on its enlargement the European commission constantly states that after the countries' accession into the European Union, the candidate country is required to create conditions for integration by the adjustment of its administrative structures. In this connection it is obligatory, on the one hand to provide the transmission of the European Union legal regulations into the domestic legal ones, and at the same time to assure their effective implementation by means of the court and administrative structures. Having in mind of the then existed European Communities' law and to be in compliance with what have been said the harmonization of domestic law with the European law had been considered to be one of the most important and fundamental conditions for the Slovak Republic accession into the European Union. The prime integration norms had been represented by the Constitution Act No. 90/2001 Coll.,

the act which have changed and adjusted the Slovak Republic Constitution by No. 460/1992 Coll. as amended.

## **2. Constitution Changes under the conditions of the Slovak Republic influenced by the Accession to the European Union**

Despite the reality that the most important changes of the constitution amendment under the Slovak Republic conditions have been brought by the cited Constitution Act, but according to the author's opinion, it is inevitable at the same time to point to the most important alterations of the previous constitution amendment which had been bound to the Slovak Republic within its historical context. That is to say that the Constitution of the Slovak Republic had been approved by the Slovak National Council during the existence of the Czech and Slovak Federative Republic and proclaimed on 1<sup>st</sup> September 1992 affirmed by the Collection of laws of the Czech and Slovak Federative Republic. At the time of the recognition of the Constitution of the Slovak Republic a lot of the constitution laws had been approved by the Federal Assembly of the Czechoslovak Federal Republic. Therefore, the Slovak Republic Constitution was not a direct document cancelling the previous constitution establishment having been in existed on the contemporary territory of the Slovak Republic until 1989, but rather it was an outcome of the implementation of the right of nation to sovereignty and the right to create its own state.

By the opinion of the author, the integration fundamental essentials bringing nearer the Slovak Republic to the European civilization had been not only the outcome of amendments of the Constitution Act No. 100/1960 Coll. as amended by the Constitution of the then Czechoslovak Socialist Republic, e.g. cancelling by one of them the Article 4 regarding the leading mission of the Communist party of Czechoslovakia, but it was an approval of the Constitution Act No. 23/1991 Coll. as amended, too. According to it the Charter of Fundamental Rights and Freedoms had been enclosed as the Constitution Act of the Federative Assembly of the Czech and Slovak Federative Republic into the legal order of the Czechoslovak Federative Republic.

The Czech and Slovak Federative Republic have reached the European standard by adjustment of basic rights and freedoms of the Charter of Fundamental Rights and Freedoms. In this way, the foundation of a new constitution and legal quality of this institute has been made.<sup>1</sup> Following the breakdown of the Czechoslovak federation the Charter of Fundamental Rights and Freedoms occurred in a kind of danger in connection with the appearance of disagreements connected with its enclosure into the text of the new Czech Republic Constitution. The legislator has finally decided to include it autonomously into the Czech legal order. By Article No. 3 regarding to Article No. 112 paragraph 1 of the Czech Republic Constitution it has become its integral part.<sup>2</sup> In the Slovak Republic conditions the legislator had

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<sup>1</sup> PALÚŠ, I.: *The Slovak Republic State Law*. Košice, Univerzita Pavla Jozefa Šafárika, 2008. 135.

<sup>2</sup> WAGNEROVÁ, E.–ŠIMÍČEK, V.–LANGÁŠEK, T.–POSPÍŠIL, I. a kol.: *Charter of fundamental rights and freedoms. Commentary*. Praha, Wolters Kluwer ČR, a. s. 2012, 9.

to challenge the question if to take the Charter of Fundamental Rights and Freedoms, having reached a deep respect in the whole Europe, into the constitution adjustment in its full range or to proclaim an original constitution adjustment. The legislator has decided to implement a direct adjustment of the institute of fundamental rights and freedoms in a separate Chapter of the Slovak Republic Constitution. However, the Slovak Republic Constitution transfers and further develops the amendment of fundamental rights and freedoms having been anchored by the Charter of fundamental rights and freedoms.<sup>3</sup> The author is of an opinion that before now the original wording of the Slovak Republic Constitution had contained the provisions which have begun to direct the Slovak Republic towards the European civilization, e.g. the original provision Article No. 1 of the Slovak Republic Constitution has been and is contrary to the previous statutory text of the Article No. 4 of the Czechoslovak Socialist Republic affirming the leading assignment of the Communist party in Czechoslovakia. Article No. 1 of the Slovak Republic Constitution has anchored an idea of the legal and democratic state which is an innate substance of the continental legal order.

Furthermore, the Slovak Republic has reflected towards the other European countries' standard by the adjustment of Article No. 55 paragraph 1 of the Slovak Republic Constitution as amended. By the cited provision the Slovak Republic has based the principles founded on the social and ecologically oriented market economy. It has been clearly declared by the Constitution that the economy of the Slovak Republic would be built on the market principles and not on the principles of the so-called socialist economy. By the authors opinion the provisions on the territorial self-governance and the establishment of the Slovak Republic Constitution Court might be included into the additional provisions of the Slovak Republic Constitution as regards their original statutory text, provisions which have prepared the Slovak Republic into the European Union integration process. The local administration in such an arrangement as we know it today had not been affirmed on the constitution level and had not any support in the legal norms which would have the force of law. In spite of that the reality that the previous adjustment of the constitution law No. 100/1960 Coll. as amended of the Czechoslovak Socialist Republic had counted with the establishment of the Slovak Republic Constitution Court, its judges had never been nominated during its existence which had been caused by the fact that when executing their powers the Constitution Court might have cancelled some acts of the legislative and executive powers and that would have been in contradiction with the Article 4 regarding the leading mission of the Communist party of Czechoslovakia.

In connection with the direct accession of the Slovak Republic into the European Union and other organizations of the European significance, such as the Council of Europe, the Constitution of the Slovak Republic must have overcome such changes by introducing of which the Slovak Republic could have become the rightful member of the European associations, and at the same time to be ready to take

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<sup>3</sup> PALÚŠ, I.: *The Slovak Republic State Law*. Košice, Univerzita Pavla Jozefa Šafárika, 2008, 135.

charge of commitments as any other member-states. During the integration process into the European Union the Constitution of the Slovak Republic has been fundamentally changed by the Constitution Act No. 90/2001 Coll. regarding the transformation and adjustment of the Slovak Republic Constitution No. 460/1992 Coll. as amended. The biggest change has been the endorsement of a new statutory text of the Article 7 of the Slovak Republic Constitution. Before the approval of the Constitution Act No. 90/2001 Coll. which has changed and adjusted the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, the cited Article of the SR Constitution contained only the provision being in one sentence with the wording that based on free decisions the Slovak Republic might enter into a state association with other states while the right to leave this association must not be restricted.

According to the actual and valid statutory text of the Article 7 paragraph 1 of the Slovak Republic Constitution, the Slovak Republic can decide to enter a state association with other states. Comparing with the previous amendment it does not contain the actual statutory text of the Article 7 regarding the provision on impossibility of the encroachment of the right to leave the state association with other states. Not-possible encroachment of the right to leave state association with other states indirectly follows from the second sentence of the Article 7 paragraph 1 declaring that entering the state association with other states or leaving it will be decided by the constitution act affirmed by referendum.

Article 7 paragraph 2 of the Slovak Republic Constitution enables the Slovak Republic to give up the execution of some of its own rights in favor of the European Communities and the European Union as it is settled done by the international treaty. The first sentence of the cited provision is the special constitution norm regulating the relationship of the Slovak Republic with the European Communities and the European Union. On this base, the legal fundament has been created for the acceptance of such international agreement by the legal order, and thus enabling the reassigning of the state bodies powers of the Slovak Republic to bodies established by the European Communities and the European Union. The second sentence of the given provision affirms a priority of the European Communities and the European Union law over the acts of the Slovak Republic.

It can be generally observe, that the right of the European Union is of an immense meaning in relation to the legal order of the Slovak Republic and to the legal orders of other states of the European Union as well. The interpretation of the constitution law has to be in compliance with the European law and not in contradiction with it which is one of the preconditions of the so-called Euro-conformity law interpretation. In the case of *Simmenthal*<sup>4</sup> the European Court came to the conclusion stating “following the preference of the European Community Law, it is evident that the outcome of the effectiveness of the directly exercisable provisions and institutes acting in relation to the domestic law of member-states is not only the loss of the use of the every existed inner-state assignation of a certain regulation which is in contradiction with it, but in respect thereof these provisions and acts

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<sup>4</sup> Verdict by the European Court in case *Simmenthal* on 9<sup>th</sup> March 1978.

constitute an inseparable part of the legal order effective on the territory of every member-state as they have a preference above them. At the same time it concerns the exclusion of such an inner-state law which is incompatible with the law of the European Community”.

In this connection the Constitution Court of the Slovak Republic stated “following the axiom of the European Union Law preference, all public power bodies, it means not only general courts are ex of obliged not to use domestic law which according to their opinion might be in contradiction with the law of the European Union, while what more the general courts have an opportunity to verify this legal estimation by putting down the prejudicial question to the European Union Court as it is affirmed by Article 267 of the Treaty on Functioning of the European Union” (PL. ÚS 3/09).

In the Slovak legal literature it is not a problem to find out studies and articles competing as regards the accentuating of the dominance of the European law over the legal order of the Slovak Republic but without taking into consideration the question what kind of role is played by the Constitution in this relation<sup>5</sup> as it is clearly stated in the second sentence of the Article 7 paragraph 2 of the Slovak Republic Constitution that the preference of the European law regards acts but not regarding the Constitution of the Slovak Republic. It means that in this case it is needful to emphasize the significance of the so-called substantive core of the Constitution.<sup>6</sup> When evaluating the Constitution substantive core it is necessary to answer the question if the au pied de la letter denotation of a certain norm, respectively principle or value have to be considered changeless if this changelessness becomes directly instituted or only it is approved. In spite of this that the Slovak Republic Constitution by provision Article 1 paragraph 1 directly affirms that the Slovak Republic is sovereign, democratic and lawful state, the changelessness of these state qualities are not specifically indicated by the Constitution. On the other hand the Czech Republic Constitution provides a guarantee for the democratic lawful state of the Czech Republic stating by Article 9 paragraph 2 that any change of its fundamental essentials are considered to be nonpermissible. The author thinks that it is necessary to mention the fact that when Article 7 paragraph 2 of the Slovak Republic Constitution has been affirmed, the legislator has not taken into consideration the principle concerning the right to predominance of the European Communities and the European Union laws over the domestic law in condition of the disagreement of the domestic law and the European law, in favor of regulating the equal legal relationship. What’s more, the Article 7 paragraph 2 of the Slovak Republic Constitution is important by creating the constitution and legal foundation for stating obligations for government by means of an ordinance. By the original text of the Article 13 paragraph 1 of the Slovak Republic Constitution it was possi-

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<sup>5</sup> DRGONEC, J.: *The Slovak Republic Constitution – Big Commentary. Theory and practice*. Bratislava, C. H. Beck, 2015, 313.

<sup>6</sup> DRGONEC, J.: *The Slovak Republic Constitution – Big Commentary. Theory and practice*. Bratislava, C. H. Beck, 2015, 317.

ble to charge duties only on the base of law, within its limits and at the same time safeguarding the fundamental rights and freedoms. By Article 13 paragraph 1 letter c) of the Constitution of the Slovak Republic it is allowed to charge duties by the ordinance of government issued by the Slovak government newly affirmed by Article 120 paragraph 2. By this Article the government is eligible to issue ordinances even regarding the providing the European Treaty on Accession concluded between the European Communities and their member-states and the Slovak Republic, further on carrying out the international agreements as it is stated by Article 7 paragraph 2. The details are confirmed by Act No. 19/2002 Coll. as amended. According to this Act the conditions of issuing the approximation regulation of the Slovak Republic government are stated here.

The Article 13 paragraph 1 letter b) enables to charge duties to natural persons and corporate entities by the international agreements as it is expressed by Article 7 paragraph 4 if they directly affirm rights and duties regarding natural persons and corporate entities. By means of the constitution changes and adjustments provided by the Constitution law No. 90/2000 Coll. even the Article 7 paragraphs 3, 4 and 5 of the Slovak Republic Constitution have become a part of the constitution text.

The integration accession process into the European Union has inevitably brought the evolution of the Slovak legal system, mainly as regards the relation of international agreements within the legal order of the Slovak Republic. Since the preparation of entering the European structures has embodied the ratification of international agreements connected with the association and accession into the European Union, the collection of the original resources of the Slovak Republic have started to be extended by the international agreements acquiring the power of the constitution law and on the other hand the international agreements extended by the power of law. An inevitable part of the integration process of the Slovak Republic has become including the mentioned sources.<sup>7</sup> By Article No. 7 paragraph 4 before the ratification the following agreements must have an approval of the Slovak National Council; the international conventions on human rights and fundamental freedoms, international political agreements, international treaties of an army and military character, the international agreements creating the inception for the Slovak Republic membership in international organizations, international economic agreements of a general character, the international agreements requiring the approval of law and the international treaties which directly affirm the rights and duties of natural persons or corporate entities. All the mentioned international agreements can be ratified only if the National Council of the Slovak Republic has expressed their approval with them. The Constitution of the Slovak Republic does not allow ratifying an international agreement stated in Article No. 7 paragraph 4 if the National Council of the Slovak Republic has refused to give their approval.

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<sup>7</sup> KASINEC, R.: *Correlation among the sources of the European Union and domestic law of the Slovak Republic*. In: CHOVANCOVA, J. (ed): *EU Decision – making processes and their impact on domestic law*. Scientific Script from the international conference, Bratislava on 28<sup>th</sup>–29<sup>th</sup> June 2010. Bratislava, The Law Faculty Comenius University, 2010, 107.

Moreover, by Article 7 paragraph 4, the Constitution does not allow the ratification of an agreement having ad interim approval of the Slovak National Council stating that it would be discussed in future or by the further approbation of the international agreement according to the stated enumerative execution after its ratification as it is declared by the paragraph 4.<sup>8</sup>

Ad effectum Article 7 paragraph 5 the international conventions on human rights and fundamental freedoms, international agreements whose execution do not require to be approved by-law, and international agreements which directly state the rights and duties of natural persons and corporate entities and those being ratified and proclaimed by law have the priority over the laws.

The Constitution of the Slovak Republic recognizes the preference of the international treaties over the Slovak Republic laws. However the international treaties have not predominance over the Slovak Republic Constitution.<sup>9</sup> The attitude that the European Convention on the Protection of Human Rights and Fundamental Freedoms and similarly other international agreements on human rights are above the Charter of Fundamental Rights and Freedoms has not a support in the Constitution and there is no mechanism which would enable to any inner-state application body to prefer the international agreement instead of the Constitution and other constitution acts.<sup>10</sup> Since its beginning the Constitution Court of the Slovak Republic constantly states that “according to the Constitution the fundamental rights and freedoms have to be interpreted and implemented in the terms of the international agreements spirit regarding human rights and fundamental freedoms (PL. ÚS 5/93, PL. ÚS 15/98). From this follows that in cases when the Constitution Court has not been directly forced to declare the encroachment of a convention or any other treaty or agreement on human rights and fundamental freedoms, the Constitution Court takes always into consideration the legal wording of the mentioned agreements and their given judicature when specifying the content of fundamental rights and freedoms affirmed by the constitution unless the constitution does not exclude it by its content wording” (II. ÚS 55/98).

By the enforcement on 1<sup>st</sup> July 2001 the Article 11 of the Slovak Republic Constitution has been abolished by the Constitution Act No. 90/2001 Coll. The then valid law on the international conventions and treaties on human rights and fundamental freedoms ratified by the Slovak Republic and proclaimed by the affirmed law had a preference over our republic laws if they guarantee a higher range of the fundamental rights and freedoms. The preference of the mentioned international agreements under the conditions that they guarantee a higher range of the fundamental rights and freedoms than the laws of the Slovak Republic and fulfilling the condition being ratified and proclaimed in compliance with the stated law before acquiring the force of the constitution law declared by No. 90/2001 Coll., and be-

<sup>8</sup> DRGONEC, J.: *The Slovak Republic Constitution – Big Commentary. Theory and practice*. Bratislava, C. H. Beck, 2015, 333.

<sup>9</sup> DRGONEC, J.: *The Slovak Republic Constitution – Big Commentary. Theory and practice*. Bratislava, C. H. Beck, 2015, 333.

<sup>10</sup> REPÍK, B.: *The Human Rights in court proceeding*. Bratislava, Published by MANZ, 1999, 26.

ing in an actual wording of the Slovak Republic Constitution are guaranteed by Article 154 paragraph 1 which have been enclosed into the constitution adjustment by the cited constitution law. When evaluating the preference of the mentioned international agreements over the laws, the Constitution Court of the Slovak Republic has declared their not preference regarding the Constitution of the Slovak Republic and in this connection the Constitution Court has added their impossibility to be concerned an integral part of the constitution law. Therefore, in connection with this, their protection of rights and freedoms is not of a character of the constitution protection. Consequently, the Constitution Court has not the power to act on the protection of rights and freedoms if a subject of law claims a violation of the international agreement without at the same asking for the protection of fundamental right or freedom guaranteed by the Slovak Republic Constitution (II. ÚS 91/99).

Connected with the more precise clarification of the relationship between the Slovak Republic law and the international law, the text No. 1 of the Slovak Republic Constitution has been amended. By the Constitution Act No. 90/2001 Coll. as amended, it has been put into the cited provision paragraph 2, according this paragraph the Slovak Republic acknowledges and upholds the general rules of international law, international agreements and other international commitments to which she is bound.

In this way Article 1 paragraph 2 of the Slovak Republic Constitution has created the foundation not only for being bounded to international agreements but being bound to all other sources of international law including its norms.<sup>11</sup> Connected with this the Constitution Court of the Slovak Republic has stated the cited article of the Slovak Republic Constitution concerns all international commitments of the Slovak Republic without taking into consideration their content and affirms the duty to fulfill them (PL. ÚS 44/03).

The Constitution Act No. 90/2001 Coll. has significantly changed the provisions concerning matters of election. The Constitution Act has anchored an active and passive election right for foreigners having a permanent stay on the territory of the Slovak Republic when by the Article 30 paragraph 1 foreigners are eligible to vote and to be voted into the administrative municipal bodies and to the bodies of the administrative self-governing units as well. According to the explanatory report regarding the proposal of the Constitution Act<sup>12</sup>, the mentioned proposed amendment of the right to election corresponds to the similar constitution and legal amendments in the countries of the European Community and the European Union. Moreover, it enables to amend the election legislation in order to be in compliance with the general trends applicable abroad. By the author's opinion the stated ex-

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<sup>11</sup> DRGONEC, J.: *The Slovak Republic Constitution – Big Commentary. Theory and practice*. Bratislava, C. H. Beck, 2015, 281.

<sup>12</sup> Report on the proposal made by the Slovak National Council deputies regarding the issue of the Constitution Act by which the Slovak Republic Constitution is changed and amended No. 460/1992 Coll. as amended, Constitution Act No. 244/1988 Coll. and the Constitution Act No. 9/1999 Coll. (number of the parliamentary print – 643).



planatory report follows from the citizenry right of the European member state to settle down on the territory of any member- state of the European union. Only later on this political right has been specifically anchored by the Charter on Fundamental Rights of the European Union.

### **3. Conclusion**

The Constitution Act No. 90/2001 Coll. as amended, the Act which changes and amends the Slovak Republic Constitution has without any doubt an immense influence on the legal and constitution evolution in the Slovak Republic. It is without saying that its purpose has been not only to provide integration of the Slovak Republic into the European Union, but at the same time to implement modern basics into the judiciary, e.g. the establishment of the Judiciary Council of the Slovak Republic. By the lasting-several-years of intensive integration process, the Slovak Republic has announced itself to esteem the European values. Besides the acceptance of the cited Constitution Act, which has considerably changed the texture of the Constitution of the Slovak Republic, the Slovak Republic has been obliged to approximate its legal order to be in compliance with the European legislature. Consequently, since the day of its association into the European Union, the Slovak Republic has been obliged to respect all provisions creating the content of the European Union law having been approved on the day of its accession.