QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL CATALOGUES IN THE 21ST CENTURY

NATIONAL REPORT – SLOVAKIA

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I. International catalogues of human rights (ECHR, UDHR and ICCPR)

IN YOUR COUNTRY, WHAT IS THE CONSTITUTIONAL POSITION/CHARACTERISTIC/LEGAL FORCE OF INTERNATIONAL TREATIES PROTECTING HUMAN RIGHTS?

The original wording of the Constitution of the Slovak Republic (adopted on 1 September 1992, effective from 1 January 1993) regulated the relationship between national law and international law in Article 11. This article stipulated that international treaties on human rights ratified by the Slovak Republic and promulgated in the prescribed manner had priority over "laws", if they guaranteed greater human rights protection. For some time, it remained unclear whether the word "laws" should be understood restrictively to only mean ordinary laws passed by the parliament (requiring a simple majority of the MPs present), or extensively to include constitutional laws and the Constitution itself (requiring a qualified three-fifths majority of all MPs). The Constitutional Court of the Slovak Republic resolved this question by stating that while the international treaties defined in Article 11 had priority over ordinary laws, this priority did not apply to the Constitution (II. ÚS 91/1999).

Article 11 was repealed by way of a constitutional amendment in 2001 (Constitutional Law no. 90/2001). The amending law introduced a different regime for human rights treaties ratified and promulgated before 1 July 2001 (when the amendment took effect) and those ratified and promulgated after that date. Article 154c.1 of the Constitution now explicitly stipulates that human rights treaties ratified and promulgated before 1 July 2001 are part of the Slovak legal system and have priority over the Slovak laws, if they guarantee greater human rights protection. On the other hand, human rights treaties ratified and promulgated since 1 July 2001 have priority over Slovak laws irrespective of whether they guarantee greater human rights protection in relation to the Constitution (Article 7.5 of the Constitution).

WHAT MECHANISM IS USED TO INVOKE THE INTERNATIONAL TREATIES IN NATIONAL COURT DECISION-MAKING?

Pursuant to Article 144.1 of the Constitution, judges perform their office independently and are bound in their decision-making solely by the Constitution, constitutional laws, ordinary laws and international treaties under Article 7.2 and 7.5 of the Constitution. The last category is to be interpreted extensively to include human rights treaties under Article 154c.1 of the Constitution, i.e. judges are not only bound by human rights treaties ratified and promulgated since 1 July 2001 but also those ratified and promulgated before that date, provided that they guarantee greater protection of human rights. Such treaties, after all, have priority over the laws of the Slovak Republic.

IS IT POSSIBLE TO INVOKE THE DIRECT EFFECT OF THE INTERNATIONAL CATALOGUES OF HUMAN RIGHTS? IF SO, PLEASE DESCRIBE THE MECHANISM.

As outlined above, there are two types of human rights treaties according to the Slovak Constitution. Human rights treaties ratified and promulgated before the 2001 constitutional

amendment (i.e. before 1 July 2001) have priority over the Slovak laws if they guarantee greater protection of human rights. The priority rule follows directly from the Constitution. In practice, the authority deciding the particular case assesses whether the treaty guarantees greater human rights protection and should therefore have priority over the laws of the Slovak Republic.

Human rights treaties ratified and promulgated after 1 July 2001 fall under the regime of Article 7.5 of the Constitution. Pursuant to Article 86.d of the Constitution, the decision whether a treaty fulfils the conditions laid down in the said article and thus whether it shall have priority over the laws of the Slovak Republic belongs to the National Council of the Slovak Republic (the Slovak parliament).

I.II. Supranational catalogues of human rights (the Charter)

IS THE CHARTER A POINT OF REFERENCE TO REVIEW THE CONSTITUTIONALITY OF LEGAL RULES AND/OR DECISIONS OF PUBLIC AUTHORITIES, BE IT DIRECTLY (A FORMAL POINT OF REFERENCE IN SOME EU MEMBER STATES) OR INDIRECTLY BY "RADIATING" THROUGH THE NATIONAL CATALOGUES (A SUBSTANTIVE POINT OF REFERENCE IN OTHER STATES)?

The Constitutional Court has dealt with the legal nature of the EU Charter on several occasions and consistently concluded that the EU Charter has the same nature as human rights treaties under Article 7.5 of the Constitution.

Therefore, if the conditions laid down in Article 51.1 of the EU Charter are met and it is thus applicable to the case under consideration, the EU Charter becomes a reference norm in the same way as other human rights treaties in both the proceedings on the conformity of legal regulations and constitutional complaint proceedings (Articles 125 and 127 of the Constitution, respectively).

"Although the EU Charter was not adopted in the form of an international treaty, the Constitution grants it within the legal system of the Slovak Republic a status of a human rights treaty pursuant to Article 7.5 of the Constitution (PL. ÚS 10/2014, § 69 – 73; PL. ÚS 2/2016, § 54). The obligation on the part of member states to interpret and apply the relevant provisions of the Constitution within the meaning and spirit of the EU Charter and the related case-law of the Court of Justice of the European Union, in those cases where the national measure falls within the framework of the EU law according to Article 51.1 of the EU Charter, also follows from the principle of loyal cooperation enshrined in Article 4.2 TEU ..., which inter alia requires that the member states adopt all the necessary measures of both general and specific nature in order to ensure the fulfilment of obligations stemming from the Treaties (i.e. TEU and TFEU) and from the acts of the EU institutions (PL. ÚS 10/2014, § 75; PL. ÚS 2/2016, § 54)" (PL. ÚS 8/2016).

DOES THE HUMAN RIGHTS CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION SERVE AS GUIDANCE FOR THE INTERPRETATION AND APPLICATION OF THE NATIONAL CATALOGUE IN YOUR COUNTRY BY GENERAL COURTS, OR AS A SOURCE FOR JUDICIAL LAW-MAKING?

The most recent research looking into the application of the EU Charter in the decision-making of both ordinary courts and the Constitutional Court was published in 2016[1] and considered the period from 1 December 2009 to 31 July 2016. Over 8000 relevant ordinary court decisions from that period were analysed.

According to the authors, the examined decisions showed the following deficiencies:

- oversimplified justifications of the conclusion that the challenged decision does not violate the relevant article of the EU Charter,

- incorrect conclusions that there was no need to file a preliminary ruling request to the CJEU justified by reference to the CILFIT judgment,

- insufficient and imprecise use of the existing CJEU case law regarding the applicability of the EU Charter and regarding the interpretation of some of its articles, mainly Article 47,

- preference for argumentation based on the ECHR rather than on the EU Charter, when in fact the subject matter of the dispute was closely linked to the EU law.

Since the publication of the research, there has been no further large-scale research and the Supreme Court of the Slovak Republic has not issued any harmonising opinion with regard to the application of the EU Charter.

IS THE NATIONAL IMPACT OF THE CHARTER CONDITIONED, IN CONSTITUTIONAL TERMS, BY ITS ESSENTIALLY EQUIVALENT DEGREE OF PROTECTION AFFORDED, OR AS THE CASE MAY BE IN THE EU MEMBER STATES, IS CONDITIONED BY MAKING A REQUEST FOR PRELIMINARY RULING WITH THE COURT OF JUSTICE OF THE EU?

As regards the criterion of equivalent degree of protection, the Constitutional Court has not given any answer to this question. The fact that according to the Court's case law the EU Charter has the same status as human rights treaties under Article 7.5 of the Constitution means that it has priority over the laws of the Slovak Republic irrespective of its comparative degree of protection. However, the Court has not granted the EU Charter priority over the Constitution.

With regard to the making of requests for preliminary ruling, the Constitutional Court has so far made only one such request, but it did not concern the EU Charter. In a case concerning the constitutionality review of legislation implementing Directive 2006/24/EC, the petitioners proposed that the Constitutional Court file a preliminary ruling request to the CJEU with regard to the conformity of several provisions of the Directive with the EU Charter. The Constitutional Court rejected this motion on the basis that the issue had already been resolved by the CJEU, essentially applying the *acte éclairé* doctrine (PL. ÚS 10/2014).

I.III. National human rights catalogues

[1] The research is also available in English. Mazák, Ján – Jánošíková, Martina: The Charter of Fundamental Rights of the European Union in Proceedings before Courts of the Slovak Republic, 2016, Univerzita Pavla Jozefa Šafárika, ISBN: 978-80-8152-432-5.

IS THE CATALOGUE OF HUMAN RIGHTS PART OF THE CONSTITUTION OF YOUR COUNTRY? IF SO, HOW IS IT INCORPORATED (A SEPARATE CONSTITUTIONAL CHARTER, A PART OF THE CONSTITUTION, A PART OF THE CONSTITUTIONAL ORDER)? WHAT IS ITS STRUCTURE?

The national catalogue of human rights is part of the Constitution of the Slovak Republic (Constitutional Law no. 460/1992). The Constitution is organised into nine chapters and the fundamental rights are included in the second chapter, which bears the title Fundamental Rights and Freedoms.

The chapter itself contains eight subchapters: 1. General Provisions; 2. Fundamental Human Rights and Freedoms; 3. Political Rights; 4. Rights of Ethnonational Minorities and Ethnic Groups; 5. Economic, Social and Cultural Rights; 6. Right to Protection of the Environment and Cultural Heritage; 7. Right to Judicial and Other Legal Protection; 8. Common Provisions Relating to the First and Second Chapters.

The entire Constitution is available in English and French the CODICES database administered by the Venice Commission.[2]

In addition, there is a second human rights catalogue on the national level, a remnant of the democratisation process in Czechoslovakia after the fall of the Communist regime, called the Charter of Fundamental Rights and Freedoms. The relationship of these two national catalogues is sometimes complicated, but it may be said that the importance of the Czechoslovak Charter has been diminishing in the last decades (see the next question and the third question in I.IV for details).

WHAT IS THE HISTORICAL BACKGROUND OF THE CREATION OF THE NATIONAL CATALOGUE OF HUMAN RIGHTS IN YOUR COUNTRY? IS THE RESPECTIVE LEGISLATION IN YOUR COUNTRY BASED ON OTHER LEGISLATION (PREVIOUS OR FOREIGN), OR IS IT ORIGINAL?

After the fall of the Communist regime in 1989, the question arose of adopting a modern national catalogue of human rights based on a natural-law perspective. According to relevant political agreements at the time, the Federal Assembly formed after the June 1990 national elections was to pursue as it primary objective the drafting of a new federal constitution containing a modern catalogue of human rights which was to be fully in line with current international standards. This noble idea would, however, be met with an insurmountable obstacle when the political elites were unable to agree on what the future form of coexistence of the Czech and Slovak nations should be and there began to emerge voices calling for a separation of the binational federal state. The project of the mono-legal federal constitution was therefore abandoned.

However, given Czechoslovakia's ambition to join the Council of Europe without further delay, alternative solutions for adopting the human rights catalogue were considered. Consensus was found for drafting a separate catalogue in the form of a constitutional law. The result was the Charter of Fundamental Rights and Freedoms instituted by Constitutional Law no. 23/1991 of 8 February 1991. The drafters of this constitutional law drew primarily on

[2] http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

earlier international catalogues (mainly the Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, Cultural and Rights) as well as to some degree the previous Czechoslovak constitutions of 1920 and 1948.

The Charter of Fundamental Rights and Freedoms was divided into six chapters: 1, General Provisions, 2. Human Rights and Fundamental Freedoms, 3. Rights of Ethnonational and Ethnic Minorities, 4. Economic, Cultural and Social Rights, 5. Right to Judicial and Other Legal Protection, 6. Common Provisions.

The constitution of the soon-to-be independent Slovak Republic was adopted on 1 September 1992 and essentially incorporated the provisions of the Charter Fundamental Rights and Freedoms into its second chapter, with some minor differences. Those differences deepened with further amendments of the Slovak Constitution (see below).

WHAT HAS BEEN THE DEVELOPMENT OF YOUR NATIONAL CATALOGUE OF HUMAN RIGHTS OVER TIME? IS IT UNDERGOING A CHANGE? ARE NEW RIGHTS INCLUDED? IS THERE A CONSTITUTIONAL PROCEDURE FOR ITS MODIFICATION OR AMENDMENT?

The procedure for amending the Constitution, including the second chapter on fundamental rights, is the same as for passing any other constitutional law, i.e. a three-fifths majority in the parliament.

There have so far been six amendments to the second chapter of the Constitution.

Constitutional Law no. 90/2001 was passed at a time when the Slovak Republic was aspiring to join the European Union and NATO, and affected many areas of constitutional law. It is the most far-reaching and significant constitutional amendment to date and has modified the constitutional regulation of fundamental rights as well. The most notable changes brought about by this amendment included:

In Article 17, the original 24-hour time limit for bringing a detained person before a judge and the original 24-hour time limit for the judge to decide whether that person should be released or taken into custody was prolonged to 48 hours for bringing the detained person before a judge and to 48 hours (72 hours in the case of exceptionally serious felonies) for the judge to decide. The original 24-hour time limit was only maintained in cases where a substantiated arrest warrant was issued by a judge. In those cases, the detainee had to be brought before a judge within 24 hours from the arrest and the judge had 48 hours (72 hours in the case of exceptionally serious felonies) to decide on their custody or release. The original time limits were too short and on several occasions, this would thwart the whole investigation.

In Article 18, which regulates the prohibition of forced labour, a new exception was added, allowing for minor municipal service.

The possibility to extradite Slovak citizens for the purposes of criminal proceedings abroad was introduced in Article 23.

Foreigners with permanent residence right in the Slovak Republic received the right to vote and run for elections to local and regional self-government bodies (Article 30).

Constitutional Law no. 100/2010 confirmed the principle earlier established by the Constitutional Court that the law protects only property acquired lawfully. It introduced a provision explicitly stating that property acquired unlawfully shall not enjoy legal protection (Article 20).

Constitutional Law no. 161/2014 modified Article 41 and introduced a provision stating that marriage may only be between a man and a woman, thus effectively outlawing same-sex marriages.

Constitutional Law no. 427/2015 prolonged even further the time limit for bringing a detained person before a judge to 96 hours, but only in the case of crimes of terrorism.

Constitutional Law no. 137/2017 sought to improve the protection of agricultural and forest land against speculative purchase of such land. Prior to this amendment, Article 20.2 delegated to the parliament the passing of a law regulating the types of assets only to be owned by the State, municipalities or selected legal entities, provided that these assets were necessary to guarantee that the needs of the society are met, as a matter of public interest, and for the growth of national economy. The amendment added food self-sufficiency to those reasons and allowed that the assets could also be owned by certain types of individuals (the explanatory memorandum speaks of self-employed farmers as an example). The amendment also elevated the protection of agricultural and forest land by the State to a constitutional principle.

Constitutional Law no. 99/2019 expressly introduced the right to minimal wage. Previous constitutional regulation referred to the right to remuneration for work done, sufficient to ensure a dignified standard of living for workers. The right to minimal wage was only regulated on the statutory level. The declared intention of this amendment was to guarantee that the minimal wage would not be abolished in the future, as there had been a debate about its economic desirability. Another change brought about by this amendment was the constitutional fixation of the right to old age pension at 64 years of age, with the age limit for women incrementally lower depending on the number of children they have brought up.

I.IV. The mutual relationship between different catalogues of human rights

CAN YOU GIVE EXAMPLES FROM THE CASE LAW OF YOUR COURT RELATED TO THE USE OF ANY OF THE INTERNATIONAL CATALOGUES?

The international catalogue most commonly referred to by the petitioners is certainly the Convention on the Protection of Human Rights and Fundamental Treaties ("ECHR"). In constitutional complaint proceedings, the petitioners refer to the ECHR in the vast majority of complaints (see the special part of this document for examples).

Reference to other human rights treaties by the petitioners is comparatively rare, but the Court occasionally examines the conformity with other human rights treaties, if the petitioners refer to them.

In a constitutional complaint case initiated by an unsuccessful Prosecutor General candidate, who claimed that the parliament had breached his fundamental rights by not respecting the secrecy of the voting procedure, the Court considered the difference in the protection

according to the Constitution and the ICCPR and concluded that *"the National Council violated the complainant's fundamental right to access to elected and other public offices under equal conditions pursuant to Article 30.4 of the Constitution (see § 38 – 45) and his right pursuant to Article 25.c of the ICCPR, since the difference between the two regulations lies merely in the fact that the phrase "public service in his country" has undoubtedly broader meaning that the phrase "elected and other public offices"."* (I. ÚS 76/2011).

In another constitutional complaint case, the Court found violation of the right to equal recognition before the law guaranteed by Article 12 of the Convention on the Rights of Persons with Disabilities in the procedure adopted by general courts in proceedings on deprivation of legal capacity (I. ÚS 313/2012).

In another constitutional complaint case, the Court found violation of the rights guaranteed by Article 3.1, Article 3.2 and Article 12.1-2 of the UN Convention on the Rights of the Child by the decision of the Supreme Court (III. ÚS 454/2011).

In several constitutional complaint cases, the Court had to examine the claimed violation of several provisions of the European Convention on Extradition (III. ÚS 204/2011, III. ÚS 61/01, II. ÚS 95/03, IV. ÚS 144/03).

More examples and in greater detail can be found in the national report by the Constitutional Court of the Slovak Republic prepared for the XVIth Congress of the CECC, which took place in 2014.[3]

HAS YOUR COURT CONSIDERED THE RELATIONSHIP/HIERARCHY/COMPETITION OF THE CATALOGUES OF HUMAN RIGHTS IN LIGHT OF THE PROTECTION AFFORDED?

As outlined above, the Slovak situation is unique in that our constitutional system contains two separate and competing human rights catalogues. Pursuant to Article 152.1 of the Constitution, constitutional laws, ordinary laws and other generally binding regulations remain in force even in the Slovak Republic, unless they violate the Constitution. By virtue of this provision, the Charter of Fundamental Rights and Freedoms can be considered integral part of the Slovak constitutional system both from the formal (it was passed in the form of a constitutional law) and substantive (it regulates human rights, i.e. a traditional constitutional matter) viewpoint.

Pursuant to Article 152.4 of the Constitution, constitutional laws, ordinary laws and other generally binding regulations must be interpreted and applied in line with the Constitution. Therefore, while the Charter of Fundamental Rights and Freedoms is formally on the level in the hierarchy of norms as the Constitution of the Slovak Republic, on the interpretational and applicational level the Constitution prevails.

In many cases, the Charter guarantees the same level of protection as the Constitution. However, there are rights which enjoy a greater level of protection under the Constitution or, on the contrary, under the Charter. The former problem is easier to resolve since already Section 3.1 of the constitutional law which instituted the Charter expressly states that

[3] https://www.confeuconstco.org/reports/rep-xvii/slovaquie_EN.pdf

fundamental rights may be granted greater protection in the Constitution of the Slovak Republic.

In some cases, however, the Charter grants greater protection than the Constitution, a classic example of which are the maximum detention periods (Article 17 of the Constitution against Article 8 of the Charter). These periods have since been extended in the Constitution of the Slovak Republic, but since the Charter remains in force, there are now conflicting provisions on the constitutional level with regard to how long a person may be detained before being brought before a judge and before it is decided whether he/she should be released or taken into custody (see above, I.III.). The Constitutional Court addressed this issue on several occasions. In one case dating to 2004, the Court considered a constitutional complaint, in which the complainant claimed violation of his personal liberty guaranteed by Article 8 of the Charter, which contains the shorter 24-hour time limits. However, authorities deciding in the criminal proceedings against him applied the longer time limits stipulated by the Constitution. The Court declared the complaint manifestly unfounded and clearly stated that the Constitution should have precedence. While both the Constitution and the Charter are formally on the same level in the hierarchy of legal norms, the Constitution was adopted later and therefore the *lex posterior derogat legi priori* interpretational principle should apply. In addition, Article 152.4 of the Constitution requires that all generally binding legal regulations, including constitutional laws, be applied and interpreted in conformity with the Constitution (I. ÚS 141/04, but see also III. ÚS 273/05).

As regards the applicability of human rights treaties ratified by the Slovak Republic and promulgated in the prescribed manner, the Court *"has ruled since the beginning of its activity in line with the* pacta sunt servanda *principle that the fundamental rights and freedoms guaranteed by the Constitution are to be interpreted and applied in the meaning and spirit of human rights treaties (PL. ÚS 5/93, PL. ÚS 15/98, PL. ÚS 17/00, PL. ÚS 24/2014). Therefore, unless it was precluded by the wording of the Constitution, the Court has always taken into consideration the wording of those treaties and the related international case law when determining the content of fundamental rights and freedoms guaranteed by the Constitution (II. ÚS 55/98, PL. ÚS 24/2014)"* (PL. ÚS 10/2014).

Human rights treaties thus on one hand serve as interpretational tools when determining the scope and content of constitutional rights. On the other hand, human rights treaties are also reference norms in the proceedings on the conformity of legal regulations (Article 125 of the Constitution) and in constitutional complaint proceedings (Article 127 of the Constitution). Laws and other generally binding regulations, as well as individual decisions, measures and other interventions may be annulled if they violate a human right guaranteed by one of the human rights treaties binding for the Slovak Republic, which in the vast majority of cases will be the ECHR.

The applicability of the EU Charter is defined in its Article 51. The Court acknowledged this by stating, *"The case law of the CJEU referred to in the explanatory memorandum with regard to Article 51 of the EU Charter specifies situations in which proceedings in the member states falls within the scope of EU law. This applies in three situations: (1) if a member state is implementing EU law …, (2) if their proceedings falls within the exception from the application of the EU rules admissible according to EU law, and if their proceedings*

fall in general within the scope of EU law. The third situation applies if a specific substantive EU rule is to be applied to a specific situation in a certain context" (PL. ÚS 10/2014).

However, it has to be admitted that the Court's doctrine with regard to the application of the EU Charter in constitutional court proceedings is still evolving.

In an earlier decision dating to 2015 and reviewing the constitutionality of national legislation, the Court, while finding the EU Charter applicable to the case in accordance with its Article 51, refrained from submitting the contested legislation to review from the viewpoint of its conformity with the EU Charter, since it had already found violation of the Constitution and thus, in the Court's opinion, no further review in relation to the EU Charter would be able to change the result of the proceedings, which was that the contested legislation, having been found unconstitutional, was repealed by the Court (PL. ÚS 10/2014).

The Court took a different approach in two later decisions dating to March 2017 and to December 2018. In those two decisions, even though the Court found the contested legislation unconstitutional, it nevertheless proceeded to review those provisions' conformity with the EU Charter and found violation there, too (PL. ÚS 2/2016, PL. ÚS 8/2016).

In has to be noted that the Universal Declaration of Human Rights is not a source of law according to the Constitutional Court, since it is merely a political document. Therefore, if this catalogue is referred to by the petitioners, the Court will always declare this part of the petition inadmissible (see e.g. IV. ÚS 470/2018).

The applicability of different human rights catalogues is primarily dependent on whether they are referred to in the petition. Secondly, their applicability is governed by the relevant provisions of the Constitution (mainly Articles 7.5 and 154c.1 of the Constitution, but also Article 51.1 of the EU Charter, as outlined above). In the most typical cases, a violation of constitutional rights is claimed, most often in conjunction with a violation of the corresponding ECHR rights. The Court then examines the conformity of the contested normative or individual act with both catalogues. In fact, the Court has a practice of using the ECHR as a tool for interpreting the rights guarantees by the Constitution even if the ECHR is not referred to in the petition.

IS THERE AN ESTABLISHED PROCEDURE FOR CHOOSING A SPECIFIC CATALOGUE OF HUMAN RIGHTS IN CASES WHERE THE RIGHT IS PROTECTED UNDER MORE CATALOGUES (NB: THE APPLICATION OF THE CHARTER IS BINDING IN EU MEMBER STATES SUBJECT TO COMPLIANCE WITH ARTICLE 51(1), I.E. ITS APPLICATION IS NOT DISCRETIONARY.)

Please see the answer to the preceding question, where this issue is covered.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I. Right to life

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

The right to life is regulated in Article 15 of the Constitution, which has never been amended. It reads:

"(1) Everyone has the right to life. Human life is worthy of protection already before birth.

(2) No one may be deprived of life.

(3) Capital punishment is not permitted.

(4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law."

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

The general regulation with regard to restricting fundamental rights is contained in Article 13.2-4 of the Constitution. Several fundamental rules follow from these provisions. Firstly, fundamental rights may only be restricted by means of laws of the parliament and in line with any further conditions laid down in the Constitution. Secondly, these restrictions must apply equally to all cases which meet the prescribed conditions. Thirdly, any restrictions made must always respect the core and essence of the affected fundamental right. Finally, the restrictions may only be used for the prescribed purpose.

Article 15.4 contains specific regulation concerning the restriction of the right to life. In this regard, the Constitutional Court observed, *"Article 15 of the Constitution contains the right to life according to the first sentence of paragraph 1 and the related prohibition of taking another person's life (par. 2) subject to exceptions justified by the protection of the rights of others (Art. 15 par. 4) on the one hand, and the absolute and categorical prohibition of the capital punishment, which cannot be subjected to any balancing exercise (Art. 15 par. 3). Both rules thus differ in their nature and logical structure, since the fundamental right defined in the first sentence of paragraph 1 and in paragraph 2 represents a typical fundamental right subject to proportionality balancing when applied. The current constitutional theory considers this fundamental right a principle to be satisfied to the highest degree possible, depending on its interaction with other fundamental rights and constitutional values and with respect to the requirement of proportionality as a key concept for the application of fundamental rights."* (PL. ÚS 12/01)[4]

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

In a case concerning the abstract constitutionality review of legislation introducing compulsory childhood vaccination, the Constitutional Court identified the right to life as *"the gateway to and main pillar of the whole system of fundamental rights protection"* and human

[4] The Court found violation of several articles of the Constitution. The Court made additional reference to the relevant provisions of the ECHR, ICCPR, Convention on the Rights of the Child, and Convention on the Elimination of All Forms of Discrimination against Women. The Court made further reference to the case law of foreign constitutional courts and the applicable legislation in their countries.

life as *"a key value protected by the legal system"*. The Court stressed that violations of this right are among the most serious human rights violations and are irreversible and irredeemable. It added, *"The purpose and scope of protection of the right to life ... are also regulated in international conventions and our constitutional regulation must be interpreted according to their spirit"* (see PL. ÚS 10/2013[5], also available in the CODICES under SVK-2015-2-002).

In a landmark case concerning the abstract constitutionality review of a law allowing for voluntary abortion in the first twelve weeks of pregnancy, the Constitutional Court had to consider the question whether an unborn child had legal capacity, i.e. whether it was a bearer of rights and thus had the right to life. The Court concluded that this was not so and that only living, born people had rights. The second sentence of the first paragraph was therefore to be understood not in the sense that unborn children had the right to life, but that their life was instead a constitutional value. The Constitution thus contained a precept for the legislator and other state authorities to protect the life of unborn children. The Court also noted, however, that this precept did not constitute a fundamental right and therefore the margin of appreciation granted to the legislator with regard to the precise manner of satisfying the precept was greater than it would have been in the case of a fundamental right. The Court thus had to consider whether the right to privacy and the constitutional value (not fundamental right) of unborn life were properly balanced. The Court argued that this protection of unborn life should be viewed from the perspective of the entire Slovak legal order. The unborn child is protected via the special protection of pregnant women under labour and criminal law. The Court accepted the opinion that the life of the foetus was intimately connected with and could not be regarded in isolation from the life of the pregnant woman. The unborn child is also protected against his or her own mother's will by the special four-step procedure including counselling at the doctor's office before the abortion. The Court also stated that the period of the first trimester was constitutionally acceptable. It was not arbitrary because, on the one hand, it is not too short for pregnant women to consider abortion and thus to fulfil the aim of the law and, on the other, it is not too long to breach the constitutional value set in the worthy of protection clause (see PL. ÚS 12/01, also available in the CODICES under SVK-2009-3-002).

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

II.II. Freedom of expression

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

[5] The Court found no violation of the contested articles of the Constitution. Moreover, the Court made extensive reference to the ECHR and the case law of the ECtHR. The Court also referred to the relevant legislation in selected countries.

The freedom of expressions is regulated in Article 26 of the Constitution, together with the right to information. The current wording reads:

"(1) The freedom of speech and the right to information are guaranteed.

(2) Everyone has the right to express his/her views in words, either spoken or written, print, picture, or other means as well as the right to freely seek out, receive and spread ideas and information without regard for state borders. The publishing of print media is not subject to approval procedures. Enterprise in the fields of radio and television may be subject to the granting of a licence by the state. The conditions shall be laid down by law.

(3) Censorship is banned.

(4) The freedom of speech and the right to seek out and disseminate information may be restricted by law, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, state security, public order, or public health and morals.

(5) Public authority bodies are obliged to provide information on their activities in an appropriate manner and in the official language. The conditions and manner of implementation shall be laid down by law."

The sole amendment to this article, carried out by Constitutional Law no. 90/2001, affected only paragraph 5, which only concerns the right to information. It changed the original phrase "state authorities and local self-government bodies" to "public authorities".

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

From the formal point of view, freedom of expression may only be restricted by means of a law of the parliament (Article 26.4 of the Constitution). This means that no other generally binding regulation may entail restrictions on the freedom of expression (e.g. ministerial regulations or governmental ordinances) and no act of parliament other than a law can contain such restriction. It is not sufficient for the parliamentary majority to pass a simple resolution; any restriction on the freedom of expression must be contained in a law.

From the substantive point of view, any restriction of the freedom of expression must meet two conditions. Firstly, it must follow one of the legitimate aims detailed Article 26.4 of the Constitution (protection of the rights of others, national security, public order, public health, and morals). Secondly, the restriction must be necessary.

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

The Constitutional Court has considered the freedom of expression on many occasions. A large portion of the Court's jurisprudence in this area comes from constitutional complaint cases where there is a conflict between the freedom of expression on the one hand, and the right to privacy and protection of reputation and good name on the other. It is especially in this area that the Constitutional Court draws heavily on the case law of the European Court of

Human Rights. The Court has repeatedly stressed the importance of the freedom of expression for liberal democracy (see e.g. II. ÚS 152/08), as it is crucial for the formation of free public opinion in an open society and serves the finding of the truth, thus enabling the confrontation of different ideas and opinions.

In a case concerning a constitutional complaint filed by a private press agency which was ordered by ordinary courts to publish an apology to the plaintiff who was a district court judge and had been criticised in an article published by the complainant for having been awarded extreme sums of money as just satisfaction for defamation in unrelated civil proceedings, the Constitutional Court's role was to examine *"(1) whether the expression in question is protected under Article 26 of the Constitution, (2) whether there has been interference with the freedom of expression, (3) whether the interference was based in the law, and (4) WHO said WHAT, WHERE, WHEN, HOW, and ABOUT WHOM, as the answers to these questions will allow us to assess whether the interference was proportionate"* (II. ÚS 152/08).

The Court then proceeded to elaborate on the enumerated criteria. It continued, *"The degree to which criticism is admissible changes in relation to the nature of the addressee. The limits of acceptable criticism are broadest in the case of politicians and narrowest with regard to ordinary citizens. The Constitutional Court endorses the trend to consider judges to stand somewhere in-between on the spectrum, but rather closer to politicians. ... Similar to the addressees of the criticisms, the critics themselves are also classified with regard to their importance for the exchange of opinions in the society. It is evident that journalists are a privileged group. The European Court of Human Rights constantly recalls that the press are a sort of public watchdog and play a significant role in any state governed by the rule of law, because it makes free political discussion possible. Journalist have a (social) duty to inform about and spread ideas relating to all matters of public interest and the public has the right to get that information. Journalists are even allowed to use some degree of exaggeration and provocation. ... The direct object of criticism in this case is the paradox consisting in the disproportionality between just satisfaction sums awarded to former political prisoners and damages awarded to crime victims on the one hand, and the amounts that the plaintiff had been awarded as just satisfaction on the other. ... The Constitutional Court establishes that judiciary is a legitimate topic of public interest. ... It is legitimate that legal issues should be ... reflected by the lay public through journalism. ... The place in which the contested statements are said or published is another useful criterion in assessing interferences with the freedom of speech. In general it may be held that the more widely the criticism is being published, the higher the protection of personality rights. In the present case, however, it is necessary to consider the criterion of who the critic is. If the critic is a journalist, then his/her privileged position neutralises to some extent the criterion of the place. The contested article was published in a highly popular, high-circulation weekly magazine operating nationwide, but not in the television or other electronic medium, which are to be assessed more strictly. ... When assessing criticism of court decision, an important criterion is whether the criticism takes place in the course of the proceeding or after it is finished. ... The present case, however, is not about news reporting, since the cases chosen for the article served to illustrate a current problem of litigiousness of public officials and the large sums awarded to them as just satisfaction. ... The article's tone might be sarcastic, but it is not malicious. The*

critical article expresses disagreement with some judicial decisions, but there is no offensive, aggressive or obscene language" (II. ÚS 152/08).[6]

The Constitutional Court regularly uses the above test in similar cases when balancing the freedom of expression with the right to reputation.

The Court has also considered the freedom of speech in proceedings on abstract constitutionality review of laws. Most recently, in a case concerning several provisions of the Criminal Code on hate speech crimes, the Court struck down the contested provisions for violation of the *nullum crimen sine lege* principle as well as the freedom of expression. It stressed *"the necessity of working conceptually when amending the Criminal Code and of exercising restraint in using the criminal law as form of repression. Subtler forms of reacting to hate speech should be considered. In some countries, these types of conduct are dealt with by means of civil lawsuits with the participation of civic associations"* (PL. ÚS 5/2017[7], see also in the CODICES database).

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

II.III. Right to privacy/right to respect for private life/right to private life

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

While this right is regulated in a single article in both the ECHR (Art. 8) and ICCPR (Art. 17), its constitutional regulation is, for historical reasons, spread over several articles, namely Articles 16.1, 19, 21 and 22. These provisions have never been amended and read:

"Article 16

(1) The inviolability of the person and their privacy is guaranteed. It may be limited only in cases laid down by law."

"Article 19

(1) Everyone has the right to the preservation of human dignity, personal honour, reputation and protection of their name.

(2) Everyone has the right to protection against unauthorized interference in private and family life.

[6] The Court found violation of several articles of the Constitution. The Court also extensively based its argumentation on the case law of the ECtHR.

[7] The Court violation of several articles of the Constitution. The Court made reference to the ECHR, and historical and comparative arguments.

(3) Everyone has the right to protection against unauthorized collection, publication, or other misuse of personal data."

"Article 21

(1) A person's home is inviolable. It may not be entered without the resident's consent.

(2) A house search is admissible only in connection with criminal proceedings and only on the basis of a written, substantiated order issued by a judge. The method of carrying out a house search shall be laid down by law.

(3) Other infringements upon the inviolability of one's home may be permitted by law only if it is necessary in a democratic society in order to protect people's lives, health, or property, to protect the rights and freedoms of others, or to prevent a serious threat to public order. If the home is used also for business, or to perform other economic activity, such infringements may be permitted by law also when this is necessary in the discharge of the tasks of public administration."

"Article 22

(1) The privacy of letters and confidentiality of mailed messages and other written documents and the protection of personal data is guaranteed.

(2) No one may violate the privacy of letters and the confidentiality of other written documents and records, whether they are kept in privacy, or sent by mail or in any other way, with the exception of cases which shall be laid down by law. Equally guaranteed is the confidentiality of messages conveyed by telephone, telegraph, or other similar means."

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

The different articles of the Constitution which together regulate the right to privacy at the constitutional level establish different conditions for restricting this right. On the one hand, Article 21.3 establishes strict, specific conditions for entering a person's home without their consent for other purposes than home searches in criminal proceedings, i.e. both formal and substantive. On the other hand, Article 16.1 specifies only the formal condition that restrictions of this right may only be carried out by way of a law, without any substantive conditions. However, the latter standard of protection is lower than the one contained in Article 8.2 of the ECHR. According to Article 154c.1 of the Constitution, human rights treaties providing greater standard of human rights protection take priority over the laws of the Slovak Republic. ECHR is such a treaty in this case.

In practice therefore, the Constitutional Court applies the conditions laid down in Article 8.2 of the ECHR when assessing the constitutionality of restrictions of the right to privacy. With regard to unlawful interference with the right to privacy, the Court stated that any interference would be *"unauthorised if it is not based on a law, does not follow a legitimate aim, does not take into consideration the essence and purpose of the restricted fundamental right or*

freedom, or is not necessary and proportionate as a measure for achieving the intended objective" (PL. ÚS 13/2000)[8].

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

On several occasions, the Constitutional Court proposed a definition of the right to privacy. In one of the more recent decisions, the Court stated, *"Privacy is to be understood to mean mainly that area of a person's life which cannot be interfered with without their consent. The right to privacy guarantees to a person the possibility of making individual decisions concerning those of their matters which are considered to belong to the sphere of privacy. According to the Court's jurisprudence, the right to protection against unauthorised interference with the private sphere of a person's life includes not only the negative obligation of the State to abstain from any governmental interference, but also its positive obligation to adopt effective measures ensuring that protection"* (PL. ÚS 10/2014).[9]

In another decision, *"The term "private life" is a broad one and cannot be exhaustively defined; it especially cannot be reduced to mere "intimate sphere", where everyone may lead their personal life according their liking, and thus completely exclude the outer world of this sphere. Therefore, the protection of private life must include to an extent the individual's right to establish and develop relationships with their close ones and with the outer world, and the professional and work activities cannot be excluded either"* (I. ÚS 13/2000).

The Court also stressed the anti-totalitarian role of this right when it stated, *"The Constitution in several of its provisions contains the unified regulation of the right to private life, the essence of which lies in the individual's possibility to life within certain area of social relationships according to their own liking without unnecessary restrictions, orders and prohibitions issued by public authorities"* (II. ÚS 19/97).[10]

In a case concerning the abstract constitutionality review of legislation introducing compulsory childhood vaccination, the Constitutional Court balanced the right to privacy with the right to life. It concluded that the importance of the protection of public health from outbreaks of infectious diseases outweighed the importance of the protection of individuals from interference with their physical and psychological integrity as part of the right to respect for private life. The public interest in protecting public health and lives of members of society by preventing infectious diseases from spreading through compulsory vaccination had to be preferred to the right of an individual to respect for private life (PL. ÚS 10/2013).

On the contrary, in a case concerning the abstract constitutionality review of legislation allowing for voluntary abortions within the first 12 weeks of pregnancy, the Court preferred the right to privacy of the woman over the constitutional value of protecting the unborn child.

[8] The Court found violation of several articles of the Constitution. In addition, the Court made reference to the ECHR and the relevant ECtHR case law.

[9] The Court found violation of several articles of the Constitution, the Charter of Fundamental Rights and Freedoms, and Article 8 of the ECHR. The Court declared the EU Charter applicable, but refrained from using it as additional reference norm. The Court also made reference to the ECtHR case law as well as the case law of foreign constitutional courts.

[10] The Court found violation of several articles of the Constitution.

"If a woman could not decide at any stage of her pregnancy whether she wanted to keep the child or have an abortion, it would amount to her obligation to gestate the child, which has no constitutional basis, and to the violation of the essence of her right to privacy and personal liberty" (PL. ÚS 12/01).

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

II.IV. Freedom of religion

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

The freedom of religion is regulated in Article 24 of the Constitution. This article has never been amended and reads:

"(1) The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express his/her thoughts.

(2) Everyone has the right to freely manifest his/her religion or faith, alone or together with others, privately or publicly, by means of religious services, religious acts, by observing religious rites, or to participate in the teaching thereof.

(3) Churches and religious communities administer their own affairs, in particular they constitute their own bodies, appoint their clergy, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

(4) Conditions for exercising the rights under paragraphs 1 to 3 may be limited only by law, if such a measure is necessary in a democratic society to protect public order, health, morals, or the rights and freedoms of others."

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

This right has two components, internal and external. The internal component cannot be restricted under any circumstances. The Constitutional Court expressed it in the following way:

"The forum internum *of this right is absolute in nature, since nobody may be coerced into changing their religion or beliefs or into endorsing certain religion or beliefs. In addition, no such duty stems even from the status of a person as citizen of the Slovak Republic (Article 1 of the Constitution stipulates that the Slovak Republic is not bound to any ideology or religion),*

nor does any legal regulation of the Slovak Republic impose any duty on its citizens to endorse certain religion or beliefs or to change them." (PL. ÚS 18/95)[11]

The external component can be restricted in accordance with the conditions laid down in Article 24.4 of the Constitution.

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

In interpreting Article 24.3, the Constitutional Court explained that its purpose was to ensure the institutional conditions necessary for real exercise of the fundamental right to freely choose one's religion or decide to live without any religious beliefs (Article 24.1) and the fundamental right to express one's religious beliefs (Article 24.2) guaranteed to individuals within the jurisdiction of the Slovak Republic. Article 24.3 guarantees institutional independence of religious organisations consisting in the protection from the State's interference in the questions of spiritual and internal life of the religious organisation, especially with regard to doctrinal and theological questions, internal organisation and structure, establishment of the organisation's institutions, appointment of functionaries to those institutions and the teaching of religion therein (III. ÚS 292/04).[12] The Court had previously ruled that the rights laid down in the third paragraph were only granted to legal entities, not individuals, and thus only legal entities could claim violation of those rights in proceedings before the Constitutional Court (II. ÚS 128/95).[13]

In another decision, however, the Court recalled that the right of religious organisations to "administer their own affairs" and "establish religious orders and institutions independently of state bodies" did not mean that they would be absolved of the obligation to abide the laws and regulations of the Slovak Republic. In this sense, the application of religious legal norms (such as the *Codex iuris canonici* in the cited case) must always respect the Constitution, laws and other generally binding regulations of the Slovak Republic, as any body of religious law merely constitutes internal regulations for the religious organisation in question, but in no way do such norms become valid law in the Slovak Republic. The Constitutional Court reasoned, therefore, that the ordinary courts were wrong in examining the validity of the dismissal of the petitioner from employment by the episcopate solely on the basis of the norms of canonical law, as those did not constitute valid law in the Slovak Republic (III. ÚS 64/00).[14]

In a similar vein, the Court considered the question of the rights of school principals to assess whether persons selected by religious organisations to teach religion in schools not established by any religious organisation met the conditions laid down by law for such teaching positions and on that basis to decide to accept or dismiss such persons as employees of the school. The Court concluded that those rights of school principals did not violate Article 24.3 of the Constitution (III. ÚS 292/04).

[11] The Court found no violation of the Constitution. In addition, the Court made reference to the ECHR and the case law.

[12] The petition was found inadmissible. The Court referred in its argumentation only to the Constitution.

[13] The initiative was found inadmissible. The Court referred in its argumentation only to the Constitution.

[14] The Court found violation of several articles of the Constitution.

The Constitutional Court also reviewed the constitutionality of a law which required a census of 20,000 adult members for the registration of a religious organisation in Slovakia. The Court ruled, *"The conditions for the registration of churches and religious organisations laid down in Law no. 308/1991 in no way restrict the exercise of the right to freely express one's religious beliefs in the manner stipulated in the cited articles of the Constitution. In fact, the exercise of those rights is not absolute, since Article 24.4 of the Constitution and Article 9.2 of ECHR allow for restricting the exercise of those rights, if such measures are necessary in a democratic society for the protection of national security, public order, health, morals or the rights and freedoms of others. The fact that a church or a religious community is not registered in accordance with Law no. 308/1991 by no means constitutes violation of the exercise of fundamental rights and freedoms of people belonging to that church or religious community, as these rights may also be exercised by means of another type of legal entity (civic association). The registration of a church or religious organisation is not a necessary condition for the exercise of the freedom or right defined in Article 24 of the Constitution and Article 9 of ECHR … and is relevant mostly for the economic aspects of their functioning"* (PL. ÚS 10/2008).[15]

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

II.V. Prohibition of discrimination

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

The principle of non-discrimination stems mainly from the first two paragraphs of Article 12 of the Constitution. These provisions have never been amended and read:

"(1) People are free and equal in dignity and in rights. Fundamental rights and freedoms are inalienable, untransferable, imprescriptible and indefeasible.

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

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

The Constitutional Court ruled in this regard, *"The Constitutional Court recalls that Article 12.1 of the Constitution does not guarantee absolute equality, but it is rather a constitutional guarantee of the protection of individuals and legal entities against discrimination*

[15] The Court found no violation of the referred provisions of the Constitution and ECHR.

perpetrated by public authorities. The constitutional principle of equality is then realised through legislation and in the application process, and it essentially means equality of all before the law, representing ultimately the basis for the protection against discrimination. A law which favours a certain group of people does not in itself violate the equality principle. However, the legislator must consider carefully whether there is a reason for such preferential treatment, what its aim is, and whether the preferential treatment contained in that law is proportionate to the pursued aim. In its decision ref. II. ÚS 5/03, the Constitutional Court stated that there will be a violation of the equality principle if one group is treated differently from another, despite the fact that there no serious and relevant enough differences between the two groups as would justify the different treatment." (PL. ÚS 12/2014)[16]

In another decision, the Court opined that *"legal regulation ... is to be considered discriminatory if it treats equivalent or analogous situations differently and the legislator cannot reasonably justify this approach by a legitimate aim and cannot prove that this legitimate aim could only be attained by the selected legislative solution"* (PL. ÚS 21/2000).[17]

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

In relation to the phrase "other status" included among the protected characteristics in Article 12.2 of the Constitution, the Court opined that it was *"to be interpreted by having regard to the previously listed discriminatory criteria linked to human individuality. In other words, the phrase ... should be interpreted as "other status" analogous to those previously mentioned criteria, not as any other status different in its essence from the other, explicitly listed criteria. It is therefore necessary to examine whether the discriminatory criterion under consideration is in its nature directly linked to one of the criteria listed in Article 12.2 of the Constitution"* (PL. ÚS 1/2012). In this way, the Court accepted the status of a clergyman as a relevant "other status" under Article 12.2 of the Constitution (III. ÚS 64/2000).

In relation to positive discrimination, the Court opined that *"preferential treatment of a group of people by means of a special regulation applicable only to them and not to other individuals because of their specific, oftentimes disadvantageous characteristics does not constitute discrimination of those other individuals; on the contrary, it constitutes a guarantee of the constitutional principle contained in Article 12.2 of the Constitution and Article 3.1 of the Charter"* (PL. ÚS 10/02).[18]

In another decision, *"The Constitutional Court has already followed the decision-making practice of the European Court of Human Rights (see decisions ref. PL. ÚS 10/04, PL. ÚS 13/09), which over time developed a test for assessing non-discrimination principle under Article 14 ECHR. The test seeks answers to the following questions:*

(1) Have the individual or the group been excluded with relation to the exercise of their fundamental rights,

[16] The Court found no violation of the referred provisions of the Constitution. The Court also made reference to the case law of the ECtHR and the UN Human Rights Committee.

[17] The Court found violation of several articles of the Constitution.

[18] The Court found no violation of the referred articles of the Constitution and the Charter of Fundamental Rights and Freedoms.

(2) based on a qualified criterion or another unjustifiable grounds,

(3) with the exclusion being to the detriment of the individual or the group,

(4) and the said exclusion cannot be justified since there is lack of justifiable reason (legitimate aim of public interest) or the intervention is disproportionate?" (PL. ÚS 1/2012).[19]

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

II.VI. Right to liberty

WHAT IS THE ORIGINAL WORDING OF THE PROVISION PROTECTING THIS RIGHT IN YOUR NATIONAL CATALOGUE?

The right to liberty is regulated in Article 17 of the Constitution, which currently reads:

"(1) Personal freedom is guaranteed.

(2) No one may be prosecuted or deprived of freedom other than for reasons and in a manner laid down by law. No one may be deprived of freedom solely because of his/her inability to fulfil a contractual obligation.

(3) A person charged with or suspected of committing a crime may be detained only in cases specified by law. The detained person must be immediately informed of the reasons for detention, questioned and either released or brought before a judge within 48 hours, or in cases of crimes of terrorism within 96 hours. The judge must hear the detained person within 48 hours and in cases of particularly serious crimes within 72 hours from being brought before him/her, and must decide whether the person should be held in custody or released.

(4) A person charged with committing a crime may be arrested only on the basis of a written, substantiated order issued by a judge. The arrested person must be brought before a judge within 24 hours. The judge must hear the arrested person within 48 hours and in cases of particularly serious crimes within 72 hours from being brought before him/her, and must decide whether the person should be held in custody or released.

(5) A person may be taken into custody only for reasons and for a period laid down by law and on the basis of a court ruling.

(6) The law shall lay down in which cases a person can be admitted to or kept in institutional health care without his/her consent. This measure must be reported to a court within 24 hours, which must then decide on this placement within five days.

[19] The Court found violation of several articles of the Constitution. The Court also referred to the case law of the ECtHR.

(7) The mental state of a person charged with committing a crime may be examined only on the basis of a written court order."

This article has been amended twice. The amendments affected the time limits for preventive detention and this evolution is covered in this document's section on the development of the national human rights catalogues (see above).

IS IT POSSIBLE TO RESTRICT THE RIGHT? IF SO, HOW AND UNDER WHAT CONDITIONS?

According to the Constitutional Court's stable jurisprudence, *"any deprivation of liberty must be "lawful", i.e. it must be carried out "in conformity with procedure established by the law" and among other things, every measure depriving an individual of their liberty must be in line with the purpose of Article 17 of the Constitution, which consists in protecting individuals against arbitrariness (I. ÚS 165/02, but also II. ÚS 55/98, I. ÚS 177/03, III. ÚS 7/00, I. ÚS 115/07, II. ÚS 282/2014)."* (II. ÚS 703/2014).[20]

Any restriction of personal liberty must in addition respect the essence and purpose of the right to liberty, as stipulated in Article 13.4 of the Constitution (III. ÚS 204/02).

HAS YOUR COURT CONSIDERED THIS RIGHT/ITS INTERPRETATION OR ENSHRINEMENT IN MORE DETAIL? IF SO, PLEASE PROVIDE PRACTICAL DETAILS AND LIST THE CATALOGUES OF HUMAN RIGHTS APPLIED.

The Constitutional Court attempted to define this right by stating, *"Personal liberty is the free, unrestricted movement of people who may decide to remain in one place or to freely move away from that place"* (III. ÚS 204/02).[21]

The Court found no violation in the case of *"the obligation to appear before a state authority, irrespective of whether that authority belongs to the legislative, executive or judicial branch, and to wait in a designated room until that authority calls the citizen to provide testimony, as well as the very provision of the witness testimony restrict the individual in such intensity and duration that if the regular procedure is observed by the state authority, the restriction does not last so long as to be considered violation of the essence and purpose of the right to personal liberty"* (PL. ÚS 29/95).[22]

However, the Court nuanced its position under different circumstances and found violation in a case where a witness was brought to a police station to provide explanation, *"put into a locked room and held at the district headquarters longer than was necessary to provide the explanation and sign her written statement"*. Such procedure was grossly disproportionate to the aim pursued by § 17.1 of the Police Force Act and considered together with the circumstances of the case led to the conclusion that there was no legal basis for that restriction of personal liberty, which thus meant violation of Article 17.2 of the Constitution (III. ÚS 204/02).

With regard to custody, the Court stated, *"A necessary condition for the constitutionality of custody is therefore its determination in conformity with those constitutional norms which*

[20] The Court found violation of several articles of the Constitution. It also referred to the ECHR.
[21] The Court found violation of several articles of the Constitution. It also referred to the ECHR and the ECtHR case law.
[22] The Court found violation of several articles of the Constitution.

express general principles to be followed in every state under the rule of law when restricting fundamental rights and freedoms. These norms include Article 13.4 of the Constitution, which stipulates that in restricting fundamental rights and freedoms, attention must be paid to their essence and purpose and any such restrictions must be used for the prescribed aim. These principles require in relation to Article 17 of the Constitution that authorities involved in criminal proceedings restrict personal freedom only in those cases where the law so allows, and even then only to the extent necessary under the specific circumstances of the case."

These constitutional guarantees of personal liberty require that custody be understood as an exceptional measure of detaining the accused for the purposes of criminal proceedings in those cases where it is justified by the need for speedy and thorough investigation and prosecution of crimes and punishment of the perpetrators. Custody is thus admissible only if there is genuine public interest in its application in the specific case and this interest prevails in spite of the presumption of innocence over the defendant's constitutional right to personal liberty. Any custody may, however, last only for the necessary time and exceeding the maximum time limit for its duration as laid down in the law can never be justified (II. ÚS 55/1998).[23]

IS THERE A DIFFERENCE BETWEEN THE CASE LAW OF YOUR COURT AND THE CASE LAW OF INTERNATIONAL COURTS WITH RESPECT TO THE PROTECTION OF THIS RIGHT?

The case law of the Constitutional Court is in line with the case law of the European Court of Human Rights with regard to the protection of this right.

[23] The Court found violation of several articles of the Constitution. It also referred to the ECHR and the relevant case law.