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## OVERCOMING LEGAL FORMALISM AND THE PROTECTION OF THE SLOVAK REPUBLIC CONSTITUTIONALISM

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### **Ondrová J., Úradník M. Overcoming legal formalism and the protection of the Slovak Republic Constitutionalism.**

The principles are considered the basic ones as they constitute the contradistinguished component-part between the lawful state and another state establishment. However, it would be naive to think and to rely on the reality that the only creation of the basic principles is sufficient for the further legal state "life". Therefore, it is needful to implement the legal state principles into the everyday decision-making activities of the public power bodies, and at the same time to maximize the safeguarding of their protection while refusing the exclusive authority of lawmaker

None of the modern constitutions is value neutral, on the other hand there are based on the relatively complex value system that are appreciated and respected by the state and safeguards their protection by means of the public power bodies. However, the protection of the most fundamental values is important, and it must be maximal, but it cannot be hampered by the strict following of the legal norms. The protection of the democratic society and the lawful state requires the rejection of pretentious legal formalism and grammatical dogmatism. The purpose of the legal norm within the context of the protection of the lawful state basic principles must become mainly the source of every procedure. Concerning, the doing away with the legal formalism was evident in the Slovak Republic when the Slovak Republic Constitution Court declared that the constitution act is not in compliance with the constitutionality protection interest. The judge-made decision was justified by the reference to the created constitution substantial cornerstone and the necessity to give priority of the substantive lawful state instead of the legally formal state. That's why, the Slovak Republic Constitution Court as the independent protector of the constitutionality might apply their powers in cases of the extreme encroachment. In this way, the Constitution Court would declare the protection of the fundamental base of the Constitution, the so-called Constitution core, even in cases when their powers would not be expressly declared by the legal regulations, eventually if they have to investigate the accordance of the constitution laws with the Constitution. Such an extreme infringement of the so-called material focus of the Constitution can be considered to be the intensive, respectively the gradual changes of the Slovak Republic character and its diversion from the democratic and lawful state.

**Key words:** formalism, constitution substantial cornerstone, legal state, constitution protection.

### **Ондрова Й., Урадник М. Подолання правового формалізму та захист конституціоналізму Словачької Республіки.**

Вказується, конституційні принципи вважаються основними, оскільки вони становлять протилежну складову між правовою державою та іншим державним устроєм. Проте було б наївно думати і покладатися на реальність, що для подальшого «життя» правової держави достатньо лише створення основних засад. Тому необхідно впроваджувати принципи правової держави в повсякденну діяльність органів публічної влади щодо прийняття рішень і водночас максимально забезпечити їх захист, відмовляючись від виняткових повноважень законодавця.

Жодна з сучасних конституцій не є ціннісно нейтральною, з іншого боку, вони базуються на відносно складній системі цінностей, які цінуються та поважаються державою та гарантують їх захист за допомогою органів публічної влади. Проте захист найбільш фундаментальних цінностей є важливим, і він має бути максимальним, але не може перешкоджати суворому дотриманню правових норм. Захист демократичного суспільства і правової держави вимагає відмови від претензійного

правового формалізму і граматичного догматизму. Головним джерелом будь-якої процедури має стати мета правової норми в контексті захисту основних принципів правової держави. Щодо цього, відмова від правового формалізму була очевидною у Словацькій Республіці, коли Конституційний суд Словацької Республіки оголосив, що конституційний акт не відповідає інтересам захисту конституційності. Прийняте суддею рішення обґрунтовувалося посиланням на суттєвий наріжний камінь створеної конституції та необхідністю віддати перевагу матеріально-правовому стану замість юридично формального стану. Тому Конституційний суд Словацької Республіки як незалежний охоронець конституційності може застосувати свої повноваження у випадках особливого посягання. Таким чином, Конституційний суд проголосив би захист фундаментальної основи Конституції, так званого ядра Конституції, навіть у випадках, коли їхні повноваження не були б чітко проголошені правовими нормами, зрештою, якщо вони повинні досліджувати відповідність конституційних законів Конституції. Таким крайнім порушенням так званої матеріальної спрямованості Конституції можна вважати інтенсивні, відповідно поступові зміни характеру Словацької Республіки та її відхід від демократичної та правової держави.

**Ключові слова:** формалізм, змістовний наріжний камінь конституції, правова держава, захист конституції.

**Problem statement.** According to the constitution and the legal diction of the Article 1 Constitution Act No. 460/1992 Coll. of the Slovak Republic Constitution as amended and in the connection with an additional statutory text of the SR Constitution, the Slovak Republic is a sovereign, democratic and lawful state. Additional to that, it is a state built on such principles as a the absolute guarantee and protection of the fundamental rights and freedoms, the protection of constitutionality and the additional immanent principles required the state denotation to be "lawful" and finding its expression equally in the substantive cornerstone of the SR Constitution.

The mentioned principles are considered the basic ones as they constitute the contradistinguished component-part between the lawful state and another state establishment. However, it would be naive to think and to rely on the reality that the only creation of the basic principles is sufficient for the further legal state "life". Therefore, it is needful to implement the legal state principles into the everyday decision-making activities of the public power bodies, and at the same time to maximize the safeguarding of their protection while refusing the exclusive authority of lawmaker.

That right and justice are not at disposal of the lawmaker. The idea that the lawmaker or the constitution-maker can adjust everything according to their own that might lead to a certain kind of the come-back to the spiritual stance of the non-value legal positivism. Nevertheless, such a stance is the long time go outperformed reality in the juridical science and practice as well. Perhaps, the best example is the German lawmaking body during the Second World War (Ruling of the Constitution Court of the Federal Republic of Germany, case no: BVerfGE 3, 225 of 18 December 1953, point 21) when the protection of life, health, lawful state, and another important values of the democratic society were absolutely suppressed by the lawmaker.

**Purpose of study.** Since the Constitution embodies not only the basic state law of the highest legal power but in the advanced democratic states it is the fundamental legal decree by-law protecting the fundamental human rights and freedoms. Therefore, it is logically to suppose that it should be predominantly the Constitution and the principles encompassed in it that have such an institute constitute.

**The status of the study of the problem.** Within the context of the scientific article it is needed to accentuate the constitution take hold of power by the Slovak Republic National Council (further on in the text used "Parliament"), which is the only one constitutional and lawmaking body in the Slovak Republic declared by Article 72 of the SR Constitution. In conclusion by the discussed matter, the statutory text by Article 86 letter a) of the SR Constitution that is the only Parliament entitled to constitute a quorum as regards the Constitution, the constitution and the additional acts. In case when the SR Constitution do not state otherwise then the valid National Council resolution of the Slovak Republic need the more than a half of the attended deputies' majority consent.

The exception of the mentioned constitution and legal adjustment is declared by paragraphs 3 and 4 Article 84 of the SR Constitution, in concreto by the paragraph 4 it requires at least three fifth of the majority by the Parliament deputies for the acceptance of the SR Constitution and its changes, for the constitution act approval and consent with the international covenant stated by Article 7 paragraph 2, further on in case of the resolution passing concerning the plebiscite vote on withdrawing the Slovak Republic president from his/her post or laying down an accusation against him/her. It concerns the Act approval regarding the Slovak Republic National Council election period shortening as well. Additionally, it concerns cases when declaring war against another state or the abolishment of the president's decision as amended by Article 102 paragraph 1 letter j.

In the legal theory, it is primarily the legislative process of the SR Constitution and constitution acts endorsement causing different apprehension concerning their legal force. Ad effectum of the legislative process and the need of the equal number of deputies' votes needed for the endorsement of the SR Constitution and other constitution acts (the above mentioned minimal agreement at least of three fifth of all the Slovak National Council deputies), the academic and professional community agreed on that both of them have the equal legal force, that's why there is no difference between them [17, p. 656]. They support the mentioned conclusion in connection with the absence of the declaratory legislative authorization of the Slovak Republic Constitution Court (later used in the text "the SR Constitution Court") to investigate if the constitution act is in accordance with the SR Constitution as it is declared by Article 125 [13, p. 329]. In other words by one group of the legal community the SR Constitution Court have no justification to investigate the coincidence of the constitution acts with the SR Constitution.

Vice versa another judgement-stream emphasizes the fact that the absence of the SR Constitution Court rigorous legislative authorization to examine the accordance of the constitution acts with the SR Constitution is simply valid on condition that the accepted text of the Article 152 paragraph 4 of the SR Constitution was unnoticed. The labelled provision of the SR Constitution declares that the interpretation and implementation of the constitution acts, acts and other generally bound regulations must be in accordance with the Constitution. In this way there is a space for consideration that the constitution acts have a higher legal force than other "ordinary" acts but at the same time with the lower legal force than the SR Constitution. Based on the mentioned facts, it is more than necessary to emphasize the necessity to differ between:

- 1) The constitution act which literary changes norms approved by the SR Constitution, respectively the changes of the mentioned norms amendments and by
- 2) The constitution act that declares the rules of conduct in constitution and legal relations but from the point of their significance, they are not primarily important. The legal force of this act rests more or less in the sphere of strategies and in this way to secure the higher stability of the legal amendment.

Taking into account the mentioned differential criteria in connection with the Article 152 paragraph 4 SR Constitution, it can be justified to suppose that the constitution acts that do not possess the so-called direct adjustment of the SR Constitution have the lower legal force in comparison with the SR Constitution [7, p. 6].

Within the context of the Constitution legal force and constitution acts of the individual states, we can refer to the legal opinion of the Constitution Court in the Austrian Republic declaring that even in the case when the constitution maker avoids the constitution court powers to investigate the accordance of the act with the Constitution resulted in the act formal aspect constitutional acceptance, such a procedure cannot lead to the breaking of the fundamental constitution principles (see the Judgments of the Austrian Republic Constitution Court, case no: VfSlg. 11.584, 11.756, 11.827, 11.916, 11.918, 11.927, 11.972).

Under the Slovak Republic conditions primarily in the area of legal theory and the SR Constitution Court decision-making, the legal opinion was valid regarding the impossibility to declare constitution act unconstitutional, respectively there was no possibility to examine its accordance with the SR Constitution. Of the same legal opinion on the impossibility to examine the congruence of the constitution act with the Constitution is, for instance the French Constitution Council. In 1962 it was decided by the French Constitution Council that they are not authorized to provide inspection concerning the Constitution changes provided by referendum. Moreover, in 2003 it was decided that they had no powers to examine the Constitution changes approved by Parliament. The negative perception of the probable examination of the constitution acts constitutionality can be also found, for instance in the decision-making activities made by the Slovenia Republic Constitution Court. It was judicated by them that the texting itself to examine the congruence of acts with the Constitution prevent them to examine the congruence of the constitution acts as well [7, p. 1321].

Moreover, the internal hierarchy of the constitution acts and the SR Constitution was admitted by JUDr. Boris Balog, PhD., declaring the following statement: *"The substantial understanding of the constitutionality overcomes the classical approach based on the desirable theory of all constitution norms having the equal legal power. This theory encourages towards a simple conclusion- not thinkable... but de facto, it is conceivable by accepting the internal substantial hierarchy of the constitution norms. Thus, it would make conceivable for the Constitution Court, being the independent judicial body of the constitution protection, to investigate their congruence with the Constitution substantial cornerstone. In this way it would be probable to provide the Constitution substance protection against such constitution encroachments made by the National Council that would intrude the Constitution substantial cornerstone substantially by the non-constitutional manner."* [1, p. 177].

Commonly used dogmatic comprehension of the constitution acts resting in their equal legal force with the SR Constitution and the constitutionality presumption were breaking down by the SR Constitution Court Ruling, case no: PL.US 21/2014 dated back on the 30<sup>th</sup> January 2019 (further on used only "the ruling"). Taking into account the substantiation denoted ruling, with a certain extent of the legal abstraction and some simplification it can be stated that the act unconstitutionality formally denoted as "the constitutional" rests in its contradiction with the principle of power division and the substantial cornerstone of the SR Constitution for the first time completely defined by the SR Constitution Court Ruling, case no: 7/2017 the 31<sup>st</sup> May 2017 (further on used "the ruling 7/2017").

The states' Constitutions determine the political decisions rules and the basic principles concerning the commonsensible society's arrangement [21, p. 9]. As regards the substantial core of the SR Constitution it is basically needed to agree with. The act in the form of constitution act should not become a kind of tinsel of the unconstitutional content since that means the violation of constitution principles, it means the violation of the lawful state [4, pp. 11–24]. At the same time it is not legally correct to simplify the fact that the acts accepted by deputies elected by the majority of citizenry are democratic and vice versa. In the best way the mistaken consideration is expressed by the acts approved by the totalitarian regimes, although the mentioned acts were accepted by the representatives elected by the majority of citizens, they on the other hand they seriously violated the fundamental human rights and freedoms [19, p. 144].

The creation of the constitution cornerstone in the form of the lawful state principles is appreciated as the unchangeable essential core of the SR Constitution and at the same time it can be designated as the natural progression course in the decision-making activities of the SR Constitution Court. Besides that, it can be denoted as the manifestation of democracy adolescence and the legal state transformed into the entering the advanced Western democracies of Europe, such as Germany, Austria or France and accepting the so -called unalterable clause incorporated in their legal orders and constitutions. Most of those clauses forbid any changing as regards the modern democracies' fundamental core principles. They are the following ones: the principle of democracy, the principle of legal state, the fundamental rights and freedoms, human rights, division of power, constitution preference and the republican form of governance [9, pp. 69–84]. On the basis of the mentioned facts, it can be said that the further remaining on the formal impossibility to examine the constitution conformity of the constitution act with the SR Constitution and the designation of the absence of the SR Constitution Court powers would be unsustainable under the conditions of the democratic and legal state.

The continuation in the acceptance of the impossibility to examine the constitution act accordance with the SR Constitution would lead to the undesirable refence of the legal formalism and its prioritizing before the cornerstone appreciation of the state legal norms content would finally result to the total disappearance of the basic substance element of the lawful state.

At the same time, the control of constitutionality of the legal regulations including the adjudication of the constitution conformity of a constitution act with the Constitution enables to retain narrow connections of the constitution courts with the Parliament. In this way, the judicial power representatives communicate with the elected representatives of people being the representatives of the legislative power primarily provided on the legislative process level. The differentiation of the survey done by the judicial power on the one hand and the competences of the lawmaking body on the other hand remains only in the sphere of time and structure but not in the area of function. Both integral parts, the Constitution Court and lawmaking body follow the safeguarding of legal regulations [11, pp. 157–158]. In case when the lawmaking body omit their obligations, then the Constitution Court of the Slovak Republic must enter into the ex post legislative process as the so-called negative legislative body in order to protect the interests of the lawful state and the SR Constitution. Accordingly, by their decision concerning the inconsistency of the legal regulation with the Constitution, the Constitution Court protects the democratic lawful state comprising its conception principles as well.

However, not to remain only with the expressing our agreement regarding the need of the creation and the subsequent protection of the SR Constitution substantial cornerstone, it is conceivable to built up the legal polemic on the lawful, respectively the constitution seizing power by the SR Constitution Court to indicate unconstitutionality of the constitution act as it is declared by Article 1 paragraph 1 of the SR Constitution. The mentioned Article of the SR Constitution declares that the Slovak Republic is a lawful state and the articulation of the Article 2 paragraph 2 of the SR Constitution [14, p. 33]. follows the reality that the state bodies can act only on the base of the Constitution, within its intention and the content, and measures stated by law.

From what was said, the question appears if the basic principles of lawful state embodied into the substantial cornerstone of the SR Constitution are protected at the expense of, respectively in the parallel violation one of another characteristic principles of the lawful state having in mind the legality

principle which might be infringed by the creation of a new competence of the SR Constitution Court and thus violated the legal principles by them themselves.

A contrario, according to Article 125 of the SR Constitution the searching solely the legislative power seizing in the SR Constitution text giving the power to the SR Constitution Court to investigate constitution act with the SR Constitution, respectively with its substantial core would be purely a strict legal formalism which should be refused by the lawful state. Vice versa it is needed to apply the substantial approach when interpreting and applying legal norms, especially if it is necessary to protect certain fundamental principles of the lawful state.

Within this context, it is needed to pay attention to the categorical constitution forbiddance. Being in force since the 1st January 2021, it is stated by the statement Article 125 section 4 of the Slovak Republic Constitution, the constituent creator declared that the Slovak Republic Constitution Court do not decide neither on the compliance of the constitution act with the Constitution. The Constitution Court have given beams with the amendatory act by means of the constitution and legal exploratory development work declared by the statement PL. ÚS 8/2022 dated 25th May 2022. It is more detailed and explained further on.

On the other hand, it is needed to remember that even the argument itself on the non-existence of the constitution competence of the SR Constitution Court to examine the constitution acts if they are in accordance with the SR Constitution it is not completely legally correct. Even before the publication of the ruling, the legal theory had come to the conclusion that it is just the Article 124 of the SR Constitution [18, pp. 51–58]. in connection with Article 152 paragraph 4 of the SR Constitution establishing not only the competences of the SR Constitution Court to examine the constitution conformity of the constitution acts with the SR Constitution, but at the same time, as regards the legal force they emphasize the inevitability to make difference between the SR Constitution and the constitution act.

Presumption of the constitution protection by means of the so-called deduced competence is supported by the argument that in case of finding the constitution act non-conformity, the passivity of the SR Constitution Court as the body of the constitution protector, their non-acting would be considered not to be in accordance with the SR Constitution and not at all with its cornerstone substance as it stated by Article 124 of the SR Constitution [4, pp. 11–24]. To use another words, the Constitution Court of every democratic country must be active, cautious, and mainly they must think and act pro future as they are only those who can prevent non-democratic changes in their country.

In this context it is necessary to add that the validity of the constitution act depends mainly by the fulfillment of the following three conditions: 1) procedural, 2) competence and 3) substantial, all of them are in consensus with the unchangeable principles of the democratic legal state (The Czech Republic Constitution Court Ruling, case no: Pl.ÚS 27/09 September 10th 2009.). Those constitutional acts that are in contradiction with the SR Constitution have a destructive impact on the status quo where the Constitution stands for the highest legal form in state. The destroyed constitution conformity can be renovated only by the Constitution Court or the people as the sovereign creator of the public power. If the people do not act, then the SR Constitution Court must be active as the guarantor and protector of constitutionality in spite of the eloquent legislative non-statement of their powers to examine the conformity of the constitution act with the SR Constitution.

**Presentation of the main material.** It is not correct to limit the dating origin of SR Constitution cornerstone substance only in connection with the legal case procedure ruling. As it was correctly cited by the Constitution Court the constant principles of the SR Constitution have been gradually created in connection with the development of the Constitution Court decision-making, and for the first time they were completely presented in the Ruling 7/2017. (See PL. ÚS 21/2014 of 30 January 30 019, pp. 70–71). Having in mind the purpose of abstraction and presentation of the reasons concerning “the origin” of the Constitution cornerstone substance, it is necessary to come out from the articulation of the Article 1 paragraph 1 the SR Constitution. Moreover, it is predominantly needed to refer to the democracy essence possessing the following characteristics:

- 1) democracy is based on the people`s sovereignty and that it is applied by the active right to vote
- 2) democracy finds its fulfillment in the realm of values and another immanent and independent factors, e. g. the value of majority governing [2, p. 56–57].

According to Gustav Radbruch [16, pp. 78–79] democracy is a kind of gratified goodness but the lawful state is an everyday bread, or as water for drinking or air for breathing. The best thing regarding democracy is that only democracy is capable to safeguard the existence of the lawful state [5, p. 158].

In accordance with the declared article of the SR Constitution the Supreme Court of the Slovak Republic judicated: “*The interpretation basis and application of the Constitution Article 1 paragraph 1 is to preserve the substantive and not the formal lawful state. Th basic premise of the substantive*



*lawful state is presented by the general obligation for everybody...*" (The judgement made by the Slovak Republic Supreme Court, case no: 7Sžk/15/2017 on the 1st August 2018.).

The Czech Republic Constitution Court had judicated in their Ruling, case no: PL.US 19/93 on 21<sup>st</sup> December 1993: *"...Our new Constitution is not based on the neutral value assessment, it is not the only usual definition of the institutions and processes but it includes certain regulating ideas into its text, it expresses the basic untouchable values of the democratic society. ... it accepts and respects the legality principle as an integral part of the whole conception of the lawful state, but it does not bind the positive law only as regards the formal legitimacy. The interpretation and application of legal norms are subordinated to their contents and substantive sense..."*

The lawful state stands for the public authority directed by law, the area where the law governs and not individuals, where the state power bodies exercise their powers and functions based on the law and within the intention of law. As regards the most precise deduction of the lawful state characteristics, it is not lawfully correct to concentrate one's attention exclusively at the legal principles, but it is needful to appreciate the substantial conditions of the society's life [15, p. 166].

According to the legal opinion of the SR Constitution Court represented by the Resolution, case no: PL.US 17/08 dated from 21<sup>st</sup> May 2008 *"... at the same time the substantial cornerstone legal state conception embodies the demand regarding the contents and value quality of the legal norm safeguarding the use adequacy of the legal order implemented into the chosen legislative regulation in relation to the legitimate goal monitored by the lawmaking body, the legal regulation resolve declared by the legislative body. In addition, it is needed to consider the accordance of the chosen legislative measure with the constitution principles and the democratic values creating the concept of the cornerstone substance of the lawful state."* (see the Ruling of the SR Constitution Court, case no: PL. ÚS 22/06 on October the 1st, 2008).

In connection in what it has been said, the Czech Republic Constitution Court Ruling, case no: Pl. US 77/06 dated the 15<sup>th</sup> February 2007 advocates the legal opinion that in the substantial legal state it is not imaginable to understand the law only formally, as the holder of the various changes applied by the legal order. On the other hand, the substantial lawful state requires the law from the formal standpoint and contents as well, it must become the foreknow and consistent source of law.

On the page 5 of the Ruling, case no: PL.US 16/95 the SR Constitution Court judicated that the Parliament as the lawmaking body is without any doubt bound by the SR Constitution and its principles [8, p. 44]. According the Constitution principles, it is not possible to provide any changes as they have the constitutional significance for the democratic character of the Slovak Republic in such a way as it is declared by the Article 1 of the SR Constitution. In conclusion with what was stated, it is needed to come to the conclusion that a certain stable rule is inevitable to create a kind of a fixed pole in relation to changes, particularly concerning the changes provided on the peoples representatives' level, it means the deputies of the lawmaking body [20, p. 92].

For the constitution creator the substantial cornerstone mainly stands for boundaries, restraining or disable to do away with the existed constitution and democratic order, even if it is done by means of *lege artis*, but nevertheless, it would be in contradiction with the democratic state principles.

The activities of the previous Constitution creator that could bring everything to order according their will, it would mean getting back to the spiritual stand- point- of- view of the pure non-value legal positivism that is for a long time outperformed in the legal science and practice. (see the Judgement of the German Federal Constitution Court BVerfGE 3, 225 dated the 18th of December 1953, item 21).

Besides other things, the Austrian Constitution Court in its ruling, case no: G12/00 on October the 11<sup>th</sup> had judicated that the deprivation of the Constitution function indicates the violation of the legal state principle if it concerns a certain part of the legal order without considering its meaning. Moreover, it would be in contradiction with the democratic principle in case of the presumption that the legislator was legitimate to stop the Constitution meaning by "the rule of constrained norms" even if it was the area of the under-constitution law. Further on, the likelihood of the constitution holding-up by the simple constitution law would finally mean the consequence leading to the removing that part of the constitution power derived from people.

Therefore, the Constitution cornerstone cannot be perceived only by a narrow optics being a kind of the academic paradigm without any sense or functions. In contradiction the cornerstone substance of the Constitution protects the Constitution from the legislative encroachments inferring the changing of those provisions that characterized its identity and whose change or release would violate the Constitution continuity. Therefore, the unchangeability of the Constitution stands for the sovereign's sovereignty manifestation when the Constitution change and adjustment depends entirely on the sovereign will. The imperative of unchangeability establishing the identity of the constitutional system stands for the constitution immanency and it is included by the Constitution even in cases when it is not expressively

pronounced in the Constitution text. [10, pp. 327-28]. Within the delimitation of the SR Constitution cornerstone, it is necessary to put accent on the need of adequacy resting in its content's limits.

The Constitution Court in their rulings appropriately stated that the more added constitution norms being labeled as the building components of the implicit substantial cornerstone then the more rigid the SR Constitution becomes. The stated result needs to be understood predominantly within the demarcation optics of the most fundamental principles of the lawful state. Their changes might considerably endanger the existence of the legal state, respectively cause its extinction. The consequences might be fatal characterized by coming into power the form of government and state establishment which cannot be labeled legal or democratic.

**Conclusions.** The creation of the SR Constitution substantial cornerstone together with the conviction of the long time unrecognized legal theory concerning the unconstitutionality of the constitution acts must be understood as a positive step in the Slovak constitutionality. The reason is very simple. The material focus of the SR Constitution or any other state's fundamental act protect their state and inhabitants against the legislative body who might approve a long series of the new legal measures in the name of "the higher" purpose. Although they might be approved by the allowed legally correct modes, but on the other hand, their formally legal correctness might be in a considerable contradiction with the real foundations of the lawful and democratic state. Therefore, it must be a certain counterbalance in the form of principles and basic values to save the legal and democratic state in case of an unexpected and undemocratic procedures of the legislator.

The mentioned outcome is confirmed by the legal judgment made by the Austrian Constitution Court declared by the ruling, case no: G12/00 dated on October the 11<sup>th</sup>, 2001. By this ruling, the cornerstone of the constitution law is to safeguard the relevancy of the Constitution and at the same time to make impossible for the legislator to do away with it in connection with a particular part of the legal system. The principle of the Constitution appropriateness together with the Constitution Court powers regarding the constitution norm control should be considered the central constitution integral part.

We can conclude that the competences of the SR Constitution Court should be perceived positively having in mind the protection of the democratic and lawful state. Within the context of the declared SR Constitution Court powers [6, pp. 377-380], it is inevitably to accentuate the need of self-restriction. The SR Constitution Court should not commit their willfulness. The act of willfulness is forbidden to the Constitution Court as it represents the body of public power and therefore, they are under the control to respect the given status quo. Moreover, it is mainly the Constitution Court who must respect the framework of the constitution state where the exercise of willfulness by the public power bodies is strictly forbidden (see the Czech Republic Constitution Court Ruling, case no: Pl.ÚS 11/02 on June 11th 2003). It is forbidden for the Constitution Court to misuse their powers as it is declared, e. g. by Article 124 of the SR Constitution. The Constitution Court cannot act according the willfulness, they must use this institute and apply it only in the name of the constitution protection and in this way safeguarding the state democratic and lawful fundamental principles, the principles which are without any doubt esteemed by the Slovak Republic being the lawful and democratic state.

At the same time, it is needed to accentuate what kind of values and principles are inevitable to be protected. *"The assertion that the Constitution hinges upon a set of values expressed by it or those that are at least implicitly present in its text leads to such an assertion which belongs to banality but with the non-banal consequences."* [3, pp. 1-4]. In connection with the values, the prime question rests in the fact who is the author of the added values found in the SR Constitution. With a certain measure of abstraction we can consider the authors to be not only some politicians who were at the birth of the SR Constitution but at the same time the society and the society individuals to whom the constitution norm is addressed. The norm which is based on the foundation of the material law sources expression as the preconditions of the society's life influencing substantially the society future development including the state establishment and the form of government.

However, it is needed to make difference between the value base of the SR Constitution and the cornerstone substance. While the value base is present in the Constitution text itself, the cornerstone substance stands only for those principles that are identified as its integral part being either by the Constitution or by the context of the SR Constitution ruling. The basic findings of the democratic and lawful state do not represent the value foundation of the Constitution, that are only democracy and the lawful state [3, pp. 1-4].

Based on the initiate endeavor to classify the contents of the cornerstone substance of the SR Constitution and its correlation with the social and political changing values which can immediately become undemocratic even if it was done by means *lege artis*, it is necessarily to create a guardian of the legal and constitution state that would primarily encompass the system of the basic constant principles. The guardian must insist on their unchangeability and application whichever actual social

conditions might be in order to prevent the infringement of the lawful state, respectively if the lawful state is violated, the guardian must provide necessary steps to its rectification.

Finally, it can be stated that the most important area of the SR Constitution Court activities rests not only in monitoring of the infringement of the cornerstone substance of the SR Constitution but at the same time to provide necessary corrections. Primarily, the occurrence of certain changes of the constant principles into the changeable principles which might appear during the time-duration must be followed [10, p. 317]. The consequences might be the dropping out of the constant principle from the original focus of the SR Constitution by the gradual violation and weakening of the Constitution cornerstone substance, and lastly leading even to the extinction of nowadays relevance of the SR Constitution cornerstone substance.

Similarly, in the same way it is needful to appreciate the previously mentioned amendatory act of the Slovak Republic Constitution amending the restriction of the constitution acts to be investigated by the Constitution Court. By their declaration PL. ÚS 8/2022 dated 25th May 2022, the Constitution Court has given their response by expressing their reservation resting in the fact that the Constitution Court has a special stance as an independent defender declared by Article 124 of the Constitution, and that` why the court might generate the protection of the Constitution core material substance in cases of its extreme interference. Such an extreme violation of the Constitution core material substance might be considered to be the intensive advanced changing of the Slovak Republic character and its movement from the democratic and lawful state (compare PL. ÚS 21/2014, points 63 and 64, or PL. ÚS 7/202, point 114). The state body is abridged by Article 2 section 3 of the Constitution regarding its acting by the constitution foundation, constitution boundary, lawful extension and modes. In this case, as regards the appearance of some critical defiance, the Constitution Court would have another application of law for state bodies than for other authorities. Within this sense, "the Constitution base" considers to be the Article 124 of the Constitution that primarily creates the position and powers of the Constitution Court. "The Constitution Boundary" means for the Constitution Court to hamper to pass across the boundaries stated by the Constitution foundation, that means "to hamper flooding across the river side" of the democratic and lawful state. In case the parliament procedure was extremely negative concerning the mentioned level, the explanation of their own Constitution Court competences would have to be extensively accommodated, otherwise the protection of the constitution values would not have been failproof in their essence, but only marginally. It means that under the hypothetically concerned situation, the Constitution Court would investigate and decide on the consonance of the constitution act with the Constitution in case of the legal provisions' discrepancy pronouncement accompanied by the consequences stated by Article 125 section 3 of the Constitution.

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