

## **RIGHT TO COURT ACCESS**

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### **Introduction**

The personal right to lay down a case to court proceeding and making decision is guaranteed by the constitution and legal provisions and in addition to by the international documents. Right to fair and just trial is created by two guarantees of a general kind. The first one is the guarantee of the right to fair trial, the right to obtain a decision in a reasonable time, the right to public proceeding and the right to an efficient remedy. The second group of guarantees is composed of the right to be familiar with the accusation, assumption of innocence, the right to be defended, the right to evidence and the right to have an interpreter. “The content to the right to fair trial does not rest in circumstance that people must not be inhibited from the execution of their right or to be discriminated in its implementation. The content of this right is to provide a relevant action by courts and other bodies of the Slovak Republic. The right to fair and just trial does not comprise the right of lawsuit party to agree with the general court statement with the court proposals and evaluation of court evidences.”<sup>1</sup>

In comparison with the majority of other human rights the domain of the right to fair trial is not the guarantee of the result in the sense of pursuing claims of a real substantive law right. It is not the right to victory in the court action but merely the guarantee of the quality proceedings in achieving a result. Another difference rests in the fact that the right to fair and just trial expresses the privilege given to everybody to submit a case to an impartial and independent body who, within the framework of just proceeding, publicly makes decisions and the state is just obliged to create an execution and protection of this right by means of the definite court system.<sup>2</sup>

### **I.**

The European Convention on Human Rights and Fundamental Freedoms, (further on only the Convention) accepts the right of individuals to fair trial declared by the Article 6 paragraph 1 with the following statement “everybody has the right to just, public and in an appropriate time deliberation of his case provided by an independent and impartial court established by law which will decide on some bodies civil rights or pledges or any other *criminal offence of which a person is accused on. A verdict must be passed publicly, but media and the general public might be excluded during the all proceeding or a part of it if it is needed from the point of view of the moral interest, the public order or national safety of the democratic society, or if it is required by the interest of the protection of juvenile or the protection of private life of lawsuit action parties, or if it is considered to make it necessary by court having in mind the special conditions when a public might worsen the interest of*

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<sup>1</sup> The Slovak Republic Constitution Court Ruling, file reference IV. CC 252/04.

<sup>2</sup> MOLEK, P.: *The right to fair and just trial*. Wolters Kluwer, Prague, 2012, 15.

justice.” “For the first time regarding the civil cases the right to fair trial had been recognized in the case of Golder. The right is not of an absolute character and it depends on the contracting states how this right is amended by them, but under the condition that the fundamental nature of this right would not be endangered. States are given a definite space for their free consideration and margin of appreciation in amending this right. However, their delimitation is under the control of investigation by European Court of Human Rights.”<sup>3</sup>

“According to the Strasbourg bodies the right to fair and just trial regarding the criminal offences and civil cases means that both lawsuit parties must have been given a chance to submit a case to an independent court under the conditions which do not principally create a privilege for one of the parties. The principle of the equality of arms must go through the entire fair and just trial which is closely interconnected with the principle of non-discrimination regulated by Article 14 of the Convention.”<sup>4</sup>

“The right to fair and just trial stands for a component part characterizing one of the essential attributes of the right declared by Article 6 of the Convention. It does not require an extensive interpretation forcing the contracting parties to accept a new obligation. Article 6 paragraph 1 of the Convention guarantees to everybody the right to submit a case to court concerning the civil rights and obligations. Principle, which belongs to the universally declared fundamental legal principles, stands for an obligatory opportunity which must be given to lay down a civil sue to the court.”<sup>5</sup>

The Convention provision in question guarantees the right to fair and just trial but on the other hand this notion is not specifically defined by the Convention. The literal explanation of this provision might be interpreted in such a way that a court should be an independent<sup>6</sup> and impartial subject established by law. More detailed specification of the court can be found in European Court of Human Rights judicature regarding the decision *Sramek against Austria*. It is declared that “on the grounds of legal norms and within the action administered by the prescribed manner, it is mainly the body whose function is to decide cases within its competences”.<sup>7</sup> At the same time it is required to make its decisions bound and to make a court qualified to investigate the case and the legal merits of the case.

Besides that, the right to proceeding and decision in civil action belongs to other bodies if they are eligible fulfill the criteria stated above. “It is important at least for one interstate body and a proceeding, which is provided by it, to accomplish all demands concerning court and the action in court as it is stated by Article 6 paragraph 1 of the Convention. It is not sufficient if any other conditions have not been fulfilled as regards the proceeding course done by the various bodies, unless they have not contented the relevant required

<sup>3</sup> VRŠANSKÝ, P.–PEČNÍKOVÁ, M.–PETRÍK, M.: *Convention of the Protection of Human Rights and Fundamental Freedoms*. Association of Lawyers and Friends of Law, Bratislava, 2001, 36.

<sup>4</sup> ČAPEK, J.: *The European Court and the European Commission of Human Rights*. Linde Prague, a. s., Prague, 1997, 379.

<sup>5</sup> European Court of Human Rights decision on the case *Golder against the United Kingdom*, complain No. 4451/70.

<sup>6</sup> If a definite body can be considered independent regarding the decision, it is primarily needed to take into consideration modus of its creation and the mandate tenure of its members, further on the existence of the protection against the inner pressure and conditions if there is an image concerning its independence. European Convention of Human Rights verdict on the case *Langborger* in 1989.

<sup>7</sup> European Court of Human Rights decision on the case *Sramek against Austria*, complain No. 8790/79.

demands. According to the Convention by Article 6 paragraph 1, when a proceeding is provided publicly by an administrative body which cannot be considered to be a court, while on the other hand, if a court who has examined their decision has acted in chambers, the requirement of the public action is not fulfilled unless there are special exceptional conditions presuming the un-necessity of public proceeding. In this connection the fulfillment of the individual demands by various bodies must not be taken into account.”<sup>8</sup> The Convention enables dealing and making decisions on the civil-law disputes and obligations by the court of arbitration who would guarantee all necessities which are required by the Convention.

The Article 6 paragraph 1 of the Convention enables the interstate legal orders implementation of some restrictions in relation to the right to fair trial only if they follow the legitimate goal and under the condition to keep a balance between the used means and having in view the legitimate aim. European Court of Human Rights admit that “the purpose of the legal amendment of different formal necessities and time-limits, which must be kept concerning any fulfillment as regards the court, is to make sure a proper execution of justice, and especially, to safeguard legal confidence constituting one of the most fundamental rudiments of the lawful state. From what was said it follows that on the one hand courts have a duty in procedural provisions executing to stop an enormous formalism which would be in contradiction with the just proceeding, and besides that to avoid an extreme discretion which in its final consequences might issue in decomposition of the proceeding requirements amended by law. If the definite provisions are applied which are stated by the interstate law and they are not respected by the lawsuit parties, then the parties might expect that they would be penalized by not accepting the given correcting legal remedy.”<sup>9</sup>

In spite of the fact that Article 6 paragraph 1 guarantees to everybody the right to the fair trial together with the correct procedural guarantees in proceeding, it does not guarantee the right to free of charge court action. In contradiction to the Convention there is not such a legal amendment which states the court fee or any other fees for the court action deciding on civil rights or obligations.<sup>10</sup> At the same time European Convention on Human Rights and Fundamental Freedoms declare that “Taking into consideration justification of the needs of the just execution of justice, the Article 6 paragraph 1 does not exclude a likelihood to fix a fee limitation to the individual’s right of court access”.<sup>11</sup> When deciding a complaint on the right to court action which had been abridged according to a complainant in connection with the obligation of fee charging, in that case European Convention on Human Rights and Fundamental Freedoms investigate the amount of the court fee and the phase of proceeding within which a fee duty had been imposed. In case of Schneider against France European Convention on Human Rights and Fundamental Freedoms did not consider “the violation of the right to court action if at first the complainant had been obliged to put down an advance payment of the amount of financial

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<sup>8</sup> ŠIMÍČEK, V.–LANGÁŠEK, T.–POSPÍŠIL, I. and co-authors: *The Bill of Fundamental Rights and Freedoms. Commentary*. Wolters Kluwer, Prague, a. s., 2012, 623.

<sup>9</sup> KMEC, J.–KOSAŘ, D.–KRATOCHVÍL, J.–BOBEK, M.: *The European Convention on Human Rights. Commentary*. C. H. Beck, Prague, 2012, 630.

<sup>10</sup> Finding of the Slovak Republic Constitution Court, file reference PL. CC 38/1999.

<sup>11</sup> European Court of Human Rights Rulings on the case Airey against Ireland dated on 9<sup>th</sup> October 1979 and on the case Brullla Gomez de la Torre against Spain dated on 19<sup>th</sup> December 1997.

fine for the less serious criminal offence against which she had wanted to protest”.<sup>12</sup> In case of Urbanek against Austria the European Court of Human Rights declared “the risk is that the accuser will have to pay the proceeding charges whose amount will be finally higher than those ones approved by the court. In itself such a risk cannot discredit all system of the amount of court charges bound to the amount in controversy”.<sup>13</sup> To complete this idea we can add that in this proceeding the complainant put down a proposal of his own model of payment obligations. According to this model the amount of court charge is bound to the amount of the piece of the share which would be probably obtainable by the complainant within the insolvent proceeding. European Convention on Human Rights and Fundamental Freedoms considers such model as an unrealizable one.

Other constraints may be caused by the length of time-limits which allows person to address a court. “Similarly, as in other places of the Convention, it is valid in this case as well. The interpretation of interstate law including proceeding norms adjusting the time-limits is first of all the privilege of domestic bodies, especially courts, European Convention on Human Rights and Fundamental Freedoms is not competent to substitute them unless the used interpretation of case in question is an irresponsible one.”<sup>14</sup>

Among other constraints regarding the addressing a court the obligatory legal proxy, formal and content necessities connected with the submitting a case belong.

## II.

By Article 36 the fifth Chapter of the Bill of Fundamental Rights and Freedoms (further on used only the “Bill”) guarantees the right of an individual to fair and just trial including the proceeding guarantee of rights implementation at the independent and impartial court or at other eligible official bodies. By Article 36 paragraph 1 of the Bill, everybody can claim their right at the independent and impartial court as it is affirmed by the procedure and in certain cases at other eligible official bodies. “Objectively taking into consideration the interpretation of this right cannot cover all cases of the infringement of cogent provisions, in other words the breaking of the proceeding regulations stated by the proceeding legal provisions does not immediately mean the violation of the right to fair and just trial. In case of the subjective right to court and other legal protection, it is always needed to examine how the breaking of proceeding prescriptions might make a negative impact on a person prospect to claim the individual proceeding rights and the proceeding action which would otherwise might have much more positive influence on the decision of case in question. Whatever process is it, it does not exist just forming one’s own object, but otherwise, its aim is to achieve the origin, change or ending of the substantive rights and obligations of natural persons and legal entities. This reality must find its reflection on the level of fundamental rights and freedoms and in this case in the sphere of the delimitation of the range of right to fair and just trial. Only the infringement of objective proceeding rules would be a kind of the violation of the subjective right to fair and just court action which would in reality abridge an individual implementing some of the subjective proceeding right, e. g. incapability to provide a certain claimant’s procedural act and as a result of this

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<sup>12</sup> European Court of Human Rights decision on the case Schneider against France, complain No. 37492/05.

<sup>13</sup> European Court of Human Rights decision on the case Urbanek against Austria, complain No. 35123/05.

<sup>14</sup> KMEC, J.–KOSAŘ, D.–KRATOCHVÍL, J.–BOBEK, M.: *The European Convention on Human Rights. Commentary*. C. H. Beck, Prague, 2012, 638.

he might be disadvantaged in comparison to the other lawsuit party or deprived of his substantial rights.”<sup>15</sup>

The claimant of the right to address a court is an individual who claim the protection of his rights and without taking into consideration whether it is a natural person or a legal entity. Under the notion “affirmed approach” the additional conditions must be understood the fulfillment of which a claimant may ask regarding the court and any other kind of protection. From what it has been said the right to access a court is not an absolute one as it can be influenced by different conditions and constraints which are affirmed by law. Those are mainly such official bodies determined by case, local and purpose determinations which are affirmed by law. They are eligible to deal a case and to decide on the necessities of a proposal to start an action, the obligation of a legal proxy of the lawsuit party regarding some specific cases, stating time-limits to submit claim or to submit remedial tools and to state the obligation to accept financial charges etc. On the other hand, the mentioned obstacles, which might be legally stated, are not without a certain limitation, they are under the definite confines. The most common problem is to find out the most reliable balance between requirements concerning all system including the organization of jurisdiction, and on the other hand the right to court access.<sup>16</sup>

Guarantee of the proceeding rights of each individual could not exist without institutions providing protection of rights which were abridged or endangered. Therefore the affirmation of Article 36 of the Bill of Basic Rights and Freedoms rises from the premises that the structure of independent and impartial courts together with the structure of other bodies providing the protection of rights have been built up by the state. However, in the Bill the notion “court” is not precisely defined, but on the other hand a court is not necessary to be a body that is a part of the general court structure. In this way such subjects must fulfill the condition of independence and their members must be impartial and independent when arguing a case and decide on it. Besides that the length of their function must be stated as well as their nomination to the post and their respect to law when executing their making-decisions, but what is the most important thing, they must be established by law.

Regarding the most precise explanation of the notion “other body” is understood any public administration body which differs from a court and to whom the legislator gave powers to decide on rights and legitimate interests of individuals. On the practical level all public administration bodies are included here together with the public protector of rights and police corps bodies of a definite state.

Proposal content and formal necessities to start a proceeding which must be fulfilled are amended by the definite procedural prescriptions of state respecting the obligation not to become an obstacle for the access to court or it might be any other eligible body declared above.

The reason of the lawsuit party to have a proxy in certain actions as it is declared by law rests mainly in the fact to avoid the abundance of non-qualified and irrelevant proposals.

“Another example of the affirmed procedural action, which in itself conceals a potential likelihood of the court protection deprive, is the provision stating the financial obligation. The purpose of the financial obligation is the protection of the court structure to keep away

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<sup>15</sup> Court Ruling of the Czech Republic Constitution Court, file reference I. CC 148/02 dated on 27<sup>th</sup> August 2003.

<sup>16</sup> ŠIMÍČEK, V.–LANGÁŠEK, T.–POSPÍŠIL, I. and co-authors: *The Bill of Fundamental Rights and Freedoms. Commentary*. Wolters Kluwer, Prague, a. s., 2012, 729.

from being overburden. What's more it is to make a guarantee that the right to court and any other protection would not be misused by claimants and thus avoiding their irresponsible and unsuccessful action to claim the right resulting to the useless overload of courts and the rise of the adverse claim proceeding costs."<sup>17</sup> In connection with its judicature activities, European Convention on Human Rights and Fundamental Freedoms takes into consideration the high of court fees as being an improper high fee for putting down a claim to start a court action, if it is an intolerable obstacle regarding the access to court.

### III.

Aahur Agreement, which guarantees the right to court access is not very known document to general public. By Article 7 paragraph 5 of the Slovak Republic Constitution No. 460/1992 Coll., further on used only the "Constitution", it is an international agreement of human rights which had become valid on 5<sup>th</sup> March 2006 and was published in the Collection of Acts of the Slovak Republic under the number 43/2006. Since that time it has become an inseparable part of the interstate order.

Aahur Agreement gives a public<sup>18</sup> the right to information access concerning the environmental life, the right to participate in decision-making-processes on the subject of permission activities concerning environment and the right to attack the violation of law covering the environment at the independent official bodies, respectively at a court. "Having in mind the obstacles, which people meet regarding the protection of their personal rights with, the lawsuit parties of the Aahur Agreement, acknowledged a specific position of people associations or organizations, known as the ecological non-profit organizations whose aim is to protect environment. According to Aahur Agreement ecological non-governmental organizations must have a position which would enable them to participate efficiently in proceeding covering the permission which might considerably influence the environment, and in case of the law violation to claim it's upgrading at the independent body, respectively at a court."<sup>19</sup>

In relation to the right to access a court, the most important provisions of Aahur Agreement is considered to be the provision of Article 9 paragraph 3 enabling to members of the general public fulfilling certain conditions to contest any acts or proceedings of public power bodies and private people who are in contradiction with the interstate law in the area of environment. "According to the contemporary legal status of the Slovak Republic, the ecological non-governmental organizations fulfilling conditions affirmed by law have the right to be the lawsuit party who are connected with the permission of

<sup>17</sup> ŠIMÍČEK, V.–LANGÁŠEK, T.–POSPÍŠIL, I. and co-authors: 2012. *The Bill of Fundamental Rights and Freedoms. Commentary*. Wolters Kluwer, Prague, a. s., 2012, 731.

<sup>18</sup> Aahur Covenant anchors rights and participation regarding licensing procedure covering two forms of public who have at disposal different range of rights within the licensing procedure. While under the notion public the general public is meant consisting of natural persons, legal entities, their associations and organizations, by the concerned public is understood the public, which might be influenced by the decision-making process concerning environment or having an interest in this proceeding. Article 2 paragraph 5<sup>th</sup> of Aahur Covenant contents a legal fiction according to which the non-governmental organizations, which must have the guaranteed rights with reference to them, are always considered to be the concerned public.

<sup>19</sup> WIFLING, P.: Participation of non-governmental organizations in legal proceedings and their access to court by the Aarhus Covenant. *Justičná Revue*, Vol. 59, No. 10, 1250.

activities influencing the environment. As a result of the fact that they are the lawsuit parties of the administrative action, they have the right to claim upgrading of the unlawful decision, to place an accusation against such decision as it is affirmed by the Civil Court Order.”<sup>20</sup>

#### IV.

By Article 46 paragraph 1 of the Constitution everybody can claim his right to be trialed by the independent and impartial court or by any other body of the Slovak Republic as it is declared by law and lawfully stated proceeding.<sup>21</sup> The precondition of the execution of this right rests predominantly in a lawful opportunity by means of the expression of one’s will to claim the protection of the right at the independent and impartial court. Cited article together with the article 12 paragraph 1 of the Constitution “anchored the constitution law based on the autonomy of the will of the parties. The content component part of the autonomy of the will of parties, which is sometimes denoted as the right to self-determination, or self-disposition, together with the right of an individual means to claim the substantive and procedural rights at courts. However, this right includes in itself the legitimacy not to provide its execution, not to make use of it. This proceeding right of the lawsuit party can be considered to be one of the aspects of the constitution right to the autonomy of one’s will”.<sup>22</sup>

“By including the right to court or any other legal protection among the human rights protected by the Constitution, the Slovak Republic emphasizes the real legal protection not only of the human rights, but what’s more, the protection of all rights issued from the legal order of the Slovak Republic. Without the real safeguard of the court or any other legal protection all the other rights would be merely guaranteed by the voluntarily respect what is not sufficiently fulfilled by whatever state it is. Therefore, the regime of the international agreements on human rights, especially articles 6 and 7 of the Covenant regarding the protection of human rights and fundamental freedoms together with the right to court protection have been transformed into the Constitution Law of the Slovak Republic by its 7<sup>th</sup> component part.”<sup>23</sup>

Under the conditions of the Slovak Republic, the legal making is provided by means of general courts, the Constitution Court of the Slovak Republic and other bodies which fulfill the demands of independence, impartiality and the condition of their establishment by law. “Court protection is divided in order to be in accordance with the constitution division of

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<sup>20</sup> WIFLING, P.: Participation of non-governmental organizations in legal proceedings and their access to court by the Aarhus Covenant. *Justičná Revue*, Vol. 59, No. 10, 1250.

<sup>21</sup> By the Decision of the Slovak Republic Constitution Court, file reference I. CC 84/97, the source of law concerning the everybody’s other legal protection is to enable them a real access to such official body who has a duty to act on case in such a way as not to violate the constitution principles as it is amended by the second chapter in the 7<sup>th</sup> section of the Slovak republic Constitution. The content of the fundamental right to other legal protection by any other body of the Slovak Republic might be claimed only within the range of laws which are applicable in relation to that provision as it is stated by Article 46 paragraph 1 and Article 51 of the Slovak republic Constitution. However it is not duty of that body to accept a petitioner’s proposal to renew a proceeding.

<sup>22</sup> Decision of the Slovak Republic Constitution Court, file reference PL. CC 43/95 dated on 10<sup>th</sup> September 1996.

<sup>23</sup> CIBULKA, Ľ.–POSLUCH, M.: *The State Law of the Slovak Republic*. Heuréka, Šamorín, 2006, 545.

powers among general courts in cases of the protection of lawfulness, and the Constitution Court in cases of the constitutionality protection. In addition the right to court protection must be implemented within the system of court power to which a definite case belongs as regards the decision-making power. When implementing the right to court protection, it is not possible freely to choose the one from among the general courts, but also their case and local competences are stated by the procedural court law together with the right to legal proxy declared by Article 48 of the Slovak republic Constitution, not even the choice is probable among the constitution court and general courts. In case of dissatisfaction with the proceeding and decision made by the general courts, the correction can be claimed, even the abolishing of decision by means of the ordinary and sometimes by the extraordinary corrective devices within the close court structure. In this way the right to a great variety of court protection is saved which is provided by courts within the measures, ways and conditions affirmed by the executing regulations.”<sup>24</sup>

However neither the Constitution guaranteed right to access a court is not an absolute one and it might be restricted or conditioned by the fulfilling stated conditions. As it is declared by Convention and the Bill even in this case the obstacles must not interfere the foundation of this right.

Concerning the relation between the right of the court access and obligation to pay court fees, the Supreme Court of the Slovak Republic expressed their statement that by the Article 6 paragraph 1 of the Convention the duty to guarantee the effective right to access to court does not only mean the absence of interference, however, it might require different forms of positive acts on the side of state. Besides that it does not represent nor specify the right of an individual to acquire free of charge legal help from the state in dispute, what's more from this provision cannot be derived the right to free of charge court action.<sup>25</sup> Regarding this problem-area the Constitution Court issued its statement that “In spite of the fact that the right to access to court is not an absolute one it must be effective and the courts are not allowed to restrict or lessen this right in a way which would violate its foundation. From the structural formulation and contextual graduation of the provision § 141 and paragraph 1 of the Civil Court Order it is clear the conditionality of its use but only under the casual condition resting in investigation of two fundamental presumptions which must be cumulatively fulfilled by the examination of the presumption of the exemption from court fees as it is declared by the § 138 of the Civil Court Order, and on the other hand by the examination of the high of the claimed entitlement in connection with the life minimum sum. Only under the grounds of the factual examination, not only by a formal one, of the declared presumptions on the side of the claimed lawsuit participant the conclusion can be made regarding the fulfillment of presumptions to order the obligation of that court action participant to give in earnest to cover costs, but anyway, the proportionality principle must be respected in order to make reasonable and minimal interferences into the property rights of the lawsuit party, only under these conditions the proposed future sum of the approved claim might be estimated covering the court action costs”.<sup>26</sup>

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<sup>24</sup> Decision of the Slovak Republic Constitution Court, file reference II. CC 1/95 dated on 10<sup>th</sup> January 1995.

<sup>25</sup> The Slovak Republic Supreme Court Rulings, file reference 8Sžo/220/2008 dated on 11<sup>th</sup> December 2008.

<sup>26</sup> Finding of the Slovak Republic Constitution Court, file reference I. CC 112/2012 dated on 6<sup>th</sup> January 2012.



Act No. 71/1992 Coll. on court fees and the fee for the extract from criminal records presents an exhaustive list of court actions which are exempted from the payment of court fees in order not to render impossible the right to access to court of individual people by the payment obligations. Further on § 4 section 2 presents the list of people who are exempted from the payment obligation. At the same time Act No. 99/1963 Coll. as amended the civil court order enables to recognize an individual exemption from the court fees. In the sense of this provision the acting court may accept the total or at least a partial exemption from court fees, unless it is given by the lawsuit's conditions and if it is not motivated by the vexatious refusal to pay or an unsuccessful claim, or caused by the law encumbrance. "Under the notion conditions the law understands a material possession conditions of claimant, in case of natural person family, social and health conditions as well. All of them have their source in circumstances which are not only of temporary or short-term character. They create an assumption that the payer absolutely, or to some extent in case of the partial exemption claim of court fees, is not capable to fulfill a payment obligation or if it is not just to ask him to do it. Objective lack of the financial means, respectively any other property, should not cause incapacity to ask one's right at court. According to the law theory a willful claim of the right is considered to be, for instance an assignation of one's right to other subject who might ask for the exemption of court fees based simply on the reason just to achieve the recognition of exemption while the claimant has not completed the required conditions. The evident irrelevance or infringement of the right must be fair only with the aim at the specific conditions of a case. The law theory considers it to be a kind of the lawsuit pre-judication as in the stage of making-decisions on the exemption of court fee, the court might declare that a complainant would be probably unsuccessful."<sup>27</sup>

If the court does not decide otherwise, the decision on the entitlement of exemption regards to entire proceeding, and in addition it has a retroactive force, while fees which have been paid before the pronouncement of this decision are not returned back.

## Conclusion

The proper work provided by all public power bodies creates the real criteria of the lawful state quality. In this aspect courts play an important role being an important component part of the state-power-division. Their importance lays predominantly in the protection of rights and legally protected interests of natural persons and legal entities. In the presented article the author tries to point to the foundation of the right to court access and its significance from the point of view of the real execution of rights and legally protected interests. The right to court access safeguards the practical claim and protection of all rights and freedoms encored by the Slovak Republic Constitution and the European Convention on Human Rights and Fundamental Freedoms. The article analyses the individual component-parts of law which in their complex or separately create the foundation for the efficient and just implementation of law and thus creating a successful accesses to court. Besides that the author tried to emphasize the basic decisions made by the European Court of Human Rights and the Slovak Republic Constitution Court whose decisions should be obligatory for each judge when dealing and deciding on the protection of rights claiming by natural persons and legal entities. Finally the author comes to the conclusion that these minimal rules for safeguarding right to court access are anchored by the Legal Order of the Slovak Republic,

<sup>27</sup> HORVÁTH, E.: *Acceptance of the financial restriction of the right to access to courts.* <http://www.najpravo.sk/rady-a-vzory/rady-pre-kazdeho/p/pripustnost-penzneho-obmedzenia-prava-na-pristup-jednotlivca-k-sudu.html>

but at the same time it is needed independence and impartiality of judge when deciding on the disputable claims, otherwise the right to access to court remains for the claimant exclusively illusory one.

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- [8] WIFLING, P.: Participation of non-governmental organizations in legal proceedings and their access to court by the Aarhus Covenant. *Justičná Revue*, Vol. 59, No. 10, 1249–1260.

#### *List of used Slovak Republic Court Judicature*

- [1] The Slovak Republic Constitution Court Ruling, file reference II. CC 1/95 dated on 10<sup>th</sup> January 1995.
- [2] Finding of the Slovak Republic Constitution Court, file reference PL. CC 43/95 dated on 10<sup>th</sup> September 1996.
- [3] Finding of the Slovak Republic Constitution Court, file reference PL. CC 38/99 dated on 23<sup>rd</sup> June 1999.
- [4] The Slovak Republic Constitution Court Ruling, file reference IV. CC 252/04 dated on 31<sup>st</sup> August 2004.
- [5] The Slovak Republic Constitution Court Ruling, file reference 8 Sžo/220/2008 dated on 11<sup>th</sup> December 2008.
- [6] Finding of the Slovak Republic Constitution Court, file reference I. CC. 112/2012 dated on 6<sup>th</sup> June 2012.

#### *List of used Czech Republic Judicature*

- [1] Finding of the Czech Republic Constitution Court, file reference I. CC 148/02 dated on 27<sup>th</sup> August 2003.

#### *List of used Judicature of the European Court of Human Rights*

- [1] European Court of Human Rights decision on the case Golder against the United Kingdom, complain No. 4451/70 dated on 21<sup>st</sup> February 1975.
- [2] European Court of Human Rights Rulings on the case Airey against Ireland, complain No. 6289/73 dated on 9<sup>th</sup> October 1979.

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- [3] European Court of Human Rights decision on the case Sramek against Austria, complain No. 8790/79 dated on 22<sup>nd</sup> October 1984.
  - [4] European Court of Human Rights decision on the case Langborger against Sweden, complain No. 11179/84 dated on 22<sup>nd</sup> June 1989.
  - [5] European Court of Human Rights Rulings on the case Brualla Gomez de la Torre against Spain, complain No. 26737/95 dated on 19<sup>th</sup> December 1997.
  - [6] European Court of Human Rights decision on the case Schneider against France, complain No. 49852/06 dated on 30<sup>th</sup> June 2009.
  - [7] European Court of Human Rights decision on the case Urbanek against Austria, complain No. 35123/05 dated on 9<sup>th</sup> December 2010.