



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS SLOVAKIA



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**British Institute of
International and
Comparative Law**

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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I. General Collective Redress Mechanism

There is no comprehensive legal regulation of collective redress in the Slovak Republic.

In the Code of Civil Procedure (Act No. 160/2015 Coll., Civilný súdny poriadok - CSP) there are traces of collective redress in the provision of § 126 CSP. This provision contains specific rules for mass/collective judicial claims where at least 10 submissions are addressed to the same court by the same entity during one day. However, at a closer look, the legislation does not display any of the features of collective judicial protection. The provision is merely the reaction to some practical problems associated with the administration of mass submissions.

II. Sectoral Collective Redress Mechanism(s)

1. Scope/ Type

Despite the lack of a comprehensive legal regulation of collective redress in the Slovak Republic, some display of a collective protection of rights can be found in specialised legal acts (representative actions) as well as in the Code of Civil Procedure (abstract control claims).

Specialised legal acts grant certain designated entities (representatives) an active right to initiate proceedings instead of the victims (rightholders) who are not parties to the proceedings. The latter follow traditional principles and rules of civil contentious proceedings without any special features or distinctions.

Elements of a representative action can be found in § 3 para 5 of Act No. 250/2007 Coll. on the Protection of Consumer (Consumer Protection Act). According to para 4, consumer associations protect and promote the legitimate interests of consumers and exercise consumer rights. Para 5 grants the right to seek judicial protection of consumers' rights to the individual consumers as well as to the associations. An association has a right to initiate a lawsuit against a perpetrator in order to force him to abstain from illegal conduct and to remove an unlawful situation where such offender's conduct harms individual or collective interests of consumers.

Another element of collective judicial protection, once again in form of a representative action, can be found in Act No. 513/1991 Coll. Commercial Code and concerns the protection against unfair competition (sections 54, 55). Persons whose rights have been infringed or threatened by an act of unfair competition may initiate a lawsuit against the offender in order to force him to abstain from this behaviour and correct the situation. They may also claim reasonable satisfaction, which may be provided in money, compensation for damages and unjust enrichment. Limited standing to bring an action against the perpetrator is also granted to legal persons authorized to defend the interests of competitors and consumers. The legitimization of these representative bodies is restricted to injunctions against the illegal conduct.

Elements of collective protection of rights can also be found in the provisions on the so-called abstract control. This legislation was introduced to implement Directive 2009/22/EC of 23 April 2009 on injunctions for the protection of consumers' interests. The CSP establishes special provisions for disputes protecting weaker parties, including consumer disputes. Particular rules are then devoted to the abstract control procedure in consumer affairs (section 301 et seq. CSP). In these proceedings, the court examines the unacceptability of contractual terms in a consumer contract or other contractual documents related to it and unfair commercial practices, and that irrespective of the circumstances of the particular case. The purpose of the abstract control procedure is to protect consumers from the continued future use of unacceptable contractual terms or unfair practices. The decision given in these proceedings has an erga omnes effect (§ 306 CSP). In addition, the CSP maintains the possibility of individual legal proceedings of consumers, which have certain specific features in comparison with classical lawsuits as they aim at protecting the weaker party (section 290 et seq. of CSP).

2. Procedural Framework

a. Proceedings initiated by a representative entity

Proceedings initiated by an authorized legal entity have no specific features compared to classical contentious judicial proceedings. Such actions fall under the authority of the civil courts. Jurisdiction is determined according to general criteria set out in the CSP. The court has no special status in these proceedings. Only the representative entity and the defendant are parties. The decision normally binds only the parties.

However, it is important to draw attention to the fact that Sec 54 para 2 Commercial Code (in injunctive proceedings against acts of unfair competition) provides for the so-called extended *lis pendens* and extended *res judicata*. As soon as the proceedings have been initiated, actions of others based on the same claims in the same case are not admissible. In this category of disputes, if the action is brought by a representative body (or a court already made a final decision on the merits in the representative action), the rightholders can no longer initiate proceedings or be a party to the present proceedings, but nonetheless (controversially) the decision is

binding on them (unlike in classical proceedings where the decision has inter partes effect).¹ This broad understanding of lis pendens and res judicata limits the right of access to the courts.

The current legislation does not reflect the right to a fair trial as affected persons may effectively not be allowed to actively participate in the proceedings as parties. Although they may intervene, they have no equal status with the parties, eg with respect to the possibility of filing a motion for prospective enforcement of the judgment. In addition, they can only join on the condition that they have been informed about the proceedings on time.

In fact, the law does not oblige the court to publish information about the initiation of proceedings. Rules on publication only exist for satisfactory judgments. The court may allow a successful party to publish the judgement at the costs of the losing party. Depending on the circumstances, the court may determine the scope, form and manner of publication.

It is possible to settle during the proceedings (section 148 CSP). The court shall decide whether to approve the settlement or not. It does not approve the settlement if it violates the law. The approved settlement has the same effects as a final judgment.

The financing of this type of proceedings is not specifically regulated.

The 'loser pays' principle (section 255 CSP) applies to the costs of proceedings.

Only a party to proceedings may initiate the enforcement of the final judgment.

b. Abstract control proceedings

The Regional Courts in Bratislava, Banská Bystrica and Košice are responsible for proceedings concerning an abstract control in consumer matters. An appeal goes to the Supreme Court.

Such action may be brought against a contractor. Standing is only granted to legal persons established or created for the purpose of consumer protection and to supervisory authorities subject to specific legal regulation (section 302 CSP). Supervisory authorities are the National Bank of Slovakia or the Slovak Trade Inspection. Consumers are not entitled to bring this action, but they are not deprived of their individual defence rights. Individual proceedings in these cases show some specific features in comparison to classical lawsuits in order to protect the weaker party (§ 290 et seq.).

With regard to the purpose of the abstract control procedure, an investigative principle is used in the course of taking of evidence. According to § 303 para 2 CSP, the court is entitled to gather evidence that has not been proposed by the parties if this is necessary to decide the case. The court shall provide such evidence of its own motion. No concentration of proceedings shall be applied here (§ 303 para CSP). There is no need to order a hearing in this type of proceedings. Besides that, all other provisions on classical contentious proceedings apply.

The court's decision on the merits shall take the form of a judgment. If it accepts the claim, the court decides that a contractual term is unlawful, expressly stating its wording, or it specifies that a commercial practice is unfair. Consequently, the defendant may not use this or an equivalent term in any other consumer contract or related documents or may no longer use an unfair commercial practice (§ 305 CSP). In the event of a successful claim, the applicant is entitled to ensure the publication of the final judgment. However, in view of the binding nature of such erga omnes decision, it would be preferable to secure publication by the court, for example in a generally accessible registry. The judgment is binding not only for other consumers but also for all suppliers using the same practices, although they are not parties to the proceedings. They may only intervene in the proceedings but with less rights, provided that they know proceedings are ongoing: the law does not oblige the court to publish information about the initiation of proceedings.

Potential subsequent enforcement proceedings (execution) can only be claimed by the parties to the initial proceedings.

¹ Similarly, if a person concerned (the holder of the right) initiated the proceedings, representative body lost the right to fill the action or become a party to the proceedings.

3. Impact of the Recommendation/Problems and Critiques

Problems relating to access of justice/fairness of proceedings

The current legislation on collective redress in Slovakia is totally inadequate. The elements of collective legal protection that can be found in the legal system do not provide sufficient protection, neither at a substantive nor at a procedural level.

In injunctive proceedings in the area of unfair competition, not all concerned subjects have a right to stand as parties to the proceedings, but the decision is nevertheless binding on them. Those concerned persons may only participate in the proceedings as interveners. Often, however, they cannot access any information about the initiation of proceedings.

Also, the rules for the so-called abstract control in consumer affairs are insufficient. It is problematic that only a legal entity established or created to protect consumers or a supervisory authority and a supplier may be party to the proceedings. However, the judgment is binding erga omnes, not only in relation to other consumers but also to all suppliers using the same practices. However, they are not parties to the proceedings. They may participate only as interveners provided that they got information about the initiation of proceedings, which is often not the case.

III. Information on Collective Redress

1. National Registry

There is no national registry in the Slovak Republic.

2. Channels for dissemination of information on collective claims

The law does not oblige the court to publish information about the initiation of proceedings.

According to § 55 para 2 Commercial Code the court may allow to a successful party of the dispute to publish the judgement at the costs of the losing party. Depending on the circumstances, the court may determine the scope, form and manner of publication. In this case, those who wish to take action for compensation are informed about the outcome of the proceedings.

IV. Case summaries

There are no key cases.

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