

September 2014

SLOVENIA

(a)	Registration no.	SLO/1
(b)	Date	8 March 2001
(c)	Author(ity)/(Service)	Constitutional Court of the Republic of Slovenia
(d)	Partie	A.A. (individual) v. Germany (state)
(e)	Points of law	<p>- There is no proof of general state practice recognized as a law and thus as the creation of a rule of international customary law, which would in the case of violation of the cogent norms of international law in the area of human rights protection as a consequence of state activities in the framework of lure imperil allow to Slovenian courts to try foreign state in such cases.</p> <p>- Judicial immunity reflects the principle of the equality of states and thereby respects for the independence and integrity of another state. This goal is constitutionally legitimate and the exclusion of judicial protection is needed and necessary for achieving this goal.</p>
(f)	Classification no.	0.a., 1.a.
(g)	Source(s)	In Slovene: Official Journal of the Republic of Slovenia, No. 28/01
(h)	Additional information	
(i)	Full text-extract translation-summaries	Summary in English: Appendix 1 Translation/ full text in English: Appendix 2*

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Appendix

The complainant had filed the action against the Federal Republic of Germany, in which he claimed damages for the activities the defendant had allegedly performed during the Second World War. He claimed damages for the period spent in the concentration camp, for mental anguish and for the property destroyed by the occupier's authorities in 1942. The district court decided in its later challenged first-instance ruling that Slovenian courts had no jurisdiction to decide on the dispute and rejected the complainant's action. The appeal and the review were dismissed. The complainant challenged in his constitutional complaint the position taken in the challenged rulings according to which the defendant is granted immunity in proceedings before courts of another state. The complainant asserted that judicial immunity is not an absolute right so a case which *iure imperii* activities, which violate *ius cogens*, are concerned, should also be considered an exception. The complainant also asserted that the position of the courts according to which a foreign state may claim judicial immunity when it is sued before a court of another state due to the activities performed within the framework of *iure imperii* was contrary to the right to judicial protection ensured in Art. 23 of the Constitution of the Republic of Slovenia and Art. 6, Para.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitutional Court stated that the decision of the courts on what was the rule of international law concerning judicial immunity in cases in which a foreign state is sued before a Slovenian Court was not arbitrary and thus not inconsistent with the guarantee of the equal protection of rights. The Constitutional Court decided that there is no proof of general state practice recognized as a law and thus as the creation of a rule of international customary law, which would in the case of violation of the cogent norms of international law in the area of human rights protection as a consequence of state activities in the framework of *iure imperii* allow to Slovenian courts to try foreign state in such cases.

An interference with the right to judicial protection is allowed if it is in conformity with the principle of proportionality. This means that a limitation must be needed and necessary for reaching a pursued constitutionally legitimate goal and in proportion to the importance of this goal. Judicial immunity reflects the principle of the equality of states and thereby respects for the independence and integrity of another state. This goal is constitutionally legitimate and the exclusion of judicial protection is needed and necessary for achieving this goal. The goal can only be achieved by the exclusion of court jurisdiction in another state. The exclusion of judicial protection in the Republic of Slovenia is also proportionate to the importance of the pursued goal. Respect for the principle of sovereign equality is necessary for preserving international cooperation and cohesion between the states. On the other hand, the complainant is not deprived by the challenged ruling of all judicial protection, but only of such before domestic courts. According to general rules on jurisdiction (*actor sequitur forum rei*), the complainant may sue the Federal Republic of Germany before its courts, where an argument in favor of judicial state immunity has no value.

Accordingly, the argument on the violation of the right to judicial protection is not substantiated. The Constitutional Court dismissed the constitutional complaint.

Addendum, September 2014

Court practice still follows the constitutional court decision Up 13/99-24¹, where main elements of immunity have been elaborated, as well as non-acceptance of the claim that violation of international rules *ius cogens* would present exemption from the state immunity.

Also later court practice² maintained the position, that the state is entitled to immunity in case of *acta iure imperii*, and not in case when it engages in civil rights and obligations (***acta iure gestionis***), e.g. labour law cases.

¹ Decision of the Constitutional Court of the Republic of Slovenia, No. Up 13/99-24, 8.3.2001, <http://odlocitve.us-rs.si/usrs/us-odl.nsf/bcaf0777a0b458cac12579c30036ecff/a36ea9601378e1d4c12571720028f4f0?OpenDocument>

² Decision of the High Court of Ljubljana, No. I Cpg 191/2001, <http://www.sodisce.si/vislj/odlocitve/56719/>