SLOVENIA / SLOVÉNIE
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Criminal proceedings

In the field of criminal proceedings Slovenia has introduced specific legislative provisions to their reopening in order to facilitate execution of the ECHR's judgments.

The Slovenian Code of Criminal Procedure explicitly regulates reopening of criminal proceedings in the context of the execution of the judgments of the ECHR in individual cases (inter partes). Article 416 of the Code of Criminal Procedure is worded as follows: "*The provisions of this chapter on the reopening of criminal proceedings (Articles 406 through 415) shall apply correspondingly to the request for modification of a final judicial decision pursuant to the decision of the constitutional court by which the latter reversed or abolished the regulation on the basis of which the final judgement of conviction was passed, or pursuant to a decision of the European Court of Human Rights relating to grounds for reopening criminal proceedings.*"

The judgment of the ECHR can be the basis for filing the request for the protection of legality. Paragraph 4 of Article 421 of the Criminal Procedure Act provides:

> *"(4) If under a decision of the European Court of Human Rights it is established that the final judicial decision prejudicial to the convicted person is in violation of a human right and basic freedom the period of time for filing the request for the protection of legality shall be counted from the day the decision of the European Court was served on the convicted person.*"

Systemic solution to the reopening of criminal proceedings based on the judgment of the European Court of Human Rights in the Criminal Procedure Act is furthermore confirmed by Article 113 of the Courts Act – which refers to the text of the European Convention on Human Rights or the Slovenian national laws (in this case the Criminal Procedure Act). Article 113 of the Courts Act provides:

"*A decision of the European Court of Human Rights shall be directly enforced by the competent court of the Republic of Slovenia only if so provided by a ratified international treaty or if so provided by the act regulating judicial proceedings.*"

The Slovenian Code of Criminal Procedure so explicitly provides for the possibility for a successful applicant to request review of a criminal case on the basis of a finding of a violation by the European Court of Human Rights; however in practice there have been no examples of reopening in such cases so far.

Civil proceedings

Regarding the question of reopening of civil proceedings Slovenia follows the principle of *res judicata*.

The reopening of proceedings in civil cases (where applicable Civil Procedure Act) in order to facilitate execution of the ECHR's judgments is currently not explicitly provided for by the existing legal provisions. This is the traditional view of the Constitutional Court of the Republic of Slovenia[1] and legal theory.

By analogy, the reopening is not possible either **for administrative proceedings** – ie administrative disputes to be decided by the courts because for the administrative disputes shall apply mutatis mutandis Civil Procedure Act.

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Constitutional Court's decision following the judgment *Gaspari v. Slovenia* (21 July 2009, no. 21055/03)[2]

ORDER

In proceedings to examine the petition and the application for the reopening of the constitutional complaint proceedings of Alenka Gaspari, Ljubljana, represented by Marjan Sušnik, lawyer practising in Ljubljana, at a session on 14 April 2011 the Constitutional Court decided as follows:

1. The petition to initiate proceedings for the review of the constitutionality of Articles 394 through 401 of the Civil Procedure Act (Official Gazette RS, No. 73/07 – official consolidated text, and No. 45/08) is rejected.

2. The petition to initiate proceedings for the review of the constitutionality of Articles 50 through 60 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text) is dismissed.

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[1] Regarding the view of the Constitutional Court, it is important to note the judgment *Gaspari v. Slovenia*, (21 July 2009, no. 21055/03). In this judgment the European Court of Human Rights considered that the most appropriate form of redress in respect of a violation of Article 6 of the Convention is to ensure that the applicants far as possible is put in the position he or she would have been had the requirements of Article 6 not been disregarded. The Court further noted that this would in the present case be best achieved, if the domestic legislation provided for a possibility to reopen the proceedings and re-examine the case (see paragraph 80 of the Court's judgment), however the Constitutional Court of the Republic of Slovenia (*Ustavno sodišče*) (Order no. U-I-223/09, Up-140/02 of 14 April 2001) stated that the ECHR decision does not necessarily entail that thereby the Constitutional Court has an obligation to unconditionally implement the specific measure of reopening the constitutional complaint proceedings. The Constitutional Court considered that it is not within the jurisdiction of the ECtHR to order the reopening of national judicial proceedings (see Lyons and others v. the United Kingdom, no. 15227/03, 8 July 2003). Therefore, the Constitutional Court found that the reasons, on which the ECHR based this particular decision, can be understood as the indication of possible type of measure which could be appropriate to redress the consequences of the established violation (see *Öcalan v. Turkey*, no. 46221/99, 12 May 2005,§ 210)..

[2] This decision is also available on the following webpage:
http://odlocitve.us-rs.si/en/odlocitev/AN03482?q=U-I-223%2F09 or
http://odlocitve.us-rs.si/documents/fa/39/up-223-09-up-140-02-final2.pdf

3. The application for the reopening of the proceedings of constitutional complaint No. Up-140/02 is rejected.

Reasoning

A.

1. The petitioner submitted to the Constitutional Court an application for the reopening of the constitutional complaint proceedings which were concluded by Constitutional Court Decision No. Up-140/02, dated 12 December 2002. She substantiates her application by referring to the Judgment of the European Court for Human Rights (hereinafter: ECtHR) in the case *Gaspari v. Slovenia*, dated 21 July 2009. In it, the ECtHR found that the right of the applicant for the reopening of proceedings [hereinafter the applicant] (at that time the opposing party in litigation) to a fair hearing, as determined by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter ECHR), was violated due to the fact that she had not had the opportunity to participate in the above-mentioned constitutional complaint proceedings. The applicant calls attention to the standpoint of the ECtHR in the above-mentioned Judgment, according to which in the event of such violations, the most appropriate form of redress is the possibility to reopen the national proceedings and thus the possibility to re-examine the case in keeping with the requirements of a fair hearing. She is of the opinion that given the binding force of ECtHR judgments for convicted states, her application should be granted (on the basis of the existing statutory provisions). She additionally substantiates her application by referring to the right to obtain redress for the violation of human rights (the fourth paragraph of Article 15 of the Constitution) and to the right to an effective remedy (Article 13 of the ECHR).

2. At the same time, the applicant submitted a petition to initiate proceedings for the review of the constitutionality of Articles 394 through 401 of the Civil Procedure Act (hereinafter: the CPA), and of Articles 50 through 60 of the Constitutional Court Act (hereinafter: the CCA), in the event the Constitutional Court assessed that the challenged acts could not be interpreted so broadly. In the present case, the challenged acts are allegedly inconsistent with Articles 14 and 15 of the Constitution and with Articles 13 and 14 of the ECHR. According to the assessment of the petitioner, the possibility to appeal to the ECtHR is not by itself an effective remedy, as follows from the fourth paragraph of Article 15 of the Constitution and Article 13 of the ECHR, since by means of such it is not possible to obtain redress for a violation of human rights and since such is not a legal remedy before national authorities. Therefore, the above-mentioned provisions of the Constitution and the ECHR allegedly require the upgrading of the system of national legal remedies. That the alleged existence of an unconstitutional legal gap in the challenged acts that occurred due to the non-existence of the possibility of an "ECtHR judgment in which the ECtHR establishes a violation of the ECHR or its Protocols" is grounds for the reopening of the proceedings is allegedly especially evident when a violation occurs in proceedings before the Constitutional Court. In proceedings before ordinary courts individuals are allegedly ensured protection against human rights violations by means of the institute of the constitutional complaint, while in the event a violation occurs in constitutional complaint proceedings, individuals allegedly do not have available any national legal remedy to redress such. Furthermore, the petitioner substantiates her allegations regarding the violation of the right to equality before the law by comparing her situation to the situation of persons charged in criminal procedures. She emphasises that in the event of the conviction of the Republic of Slovenia before the ECtHR,

such persons are ensured the possibility that proceedings be reopened by the Criminal Procedure Act (Official Gazette RS, Nos. 32/07 – official consolidated text, 68/08, and 77/09), with regard to which convicted persons allegedly have the possibility to submit, on such grounds, a request for the protection of legality, whereas parties to civil proceedings and proceedings before the Constitutional Court are allegedly not (explicitly) ensured such legal remedies. The petitioner is of the opinion that it is possible to compare these situations since the two examples entail judicial proceedings in which the rights and obligations of individuals are decided upon. Therefore, in her opinion there are no sensible grounds for such to be treated unequally. She proposes that the Constitutional Court issue an appropriate declaratory decision and determine the manner of its implementation, such that, until the established nonconformity with the Constitution is remedied, it is possible to reopen civil procedures and constitutional complaint proceedings which the ECtHR has established human rights violations in relation to.

3. The National Assembly of the Republic of Slovenia did not respond to the petition, however, the Ministry of Justice did submit an opinion. In it, it states that a legal basis for the reopening of constitutional complaint proceedings on the basis of the ECtHR judgment does not exist. It refers to the fourth paragraph of Article 41 of the CCA, in accordance with which no appeal is allowed against decisions and orders issued in cases within the jurisdiction of the Constitutional Court. In addition to this, the CCA allegedly does not allow any other legal remedies. The Ministry is of the opinion that according to the hitherto case-law of the Constitutional Court, the reopening of the constitutional complaint proceedings would be possible had any grounds for reopening as determined by the CPA existed; however the present case manifestly does not demonstrate such. The Ministry rejects the allegations that the two challenged acts are unconstitutional merely due to the fact that in the present case the petitioner's application for the reopening of the proceedings cannot be granted. Furthermore, it is of the opinion that the different regulation of legal remedies with regard to different judicial procedures does not entail a violation of Article 14 of the Constitution or the ECHR, since in accordance with the first paragraph of the mentioned constitutional provision, the status of party to proceedings cannot be deemed to be a personal circumstance. With regard to criminal procedure and civil procedure, respectively, the different regulation of the possibility to reopen proceedings on the basis of an ECtHR judgment is allegedly also otherwise reasonably justified. The Ministry emphasises that civil procedure and criminal procedure are essentially different from one another. The decisive difference between the two can allegedly be seen in the very concept of the two types of judicial procedures. Due to the fact that civil procedure is conceptualised as a dispute between two equal parties, broadening legal remedies in such procedure allegedly always entails an infringement on the right of the opposing party to effective judicial protection. Allegedly, differently holds true for criminal procedure, which is conceptualised as a dispute between the person charged and the state. An abrogated judgment issued in criminal proceedings is allegedly not harmful to anyone. Therefore, in the assessment of the Ministry, in criminal procedure legal certainty can give way to justice, which allegedly cannot be the case for civil procedure. The more extensive regulation of legal remedies in the field of criminal procedure is allegedly also justified by the more severe consequences that conviction therein allegedly has for individuals. For the same reasons, the alleged nonconformity of the challenged acts with the fourth paragraph of Article 15 of the Constitution and Article 13 of the ECHR allegedly does not exist. Furthermore, the Ministry added that the regulation of extraordinary legal remedies in judicial procedures belongs in the domain of the legislature’s consideration. With regard to such, the legislature must, in the Ministry’s opinion, only be careful to not interfere excessively with the situation of other

participants in proceedings. In light of the above-mentioned, the Ministry is of the opinion that the challenged acts are not inconsistent with the Constitution or the ECHR.

4. The opinion of the Ministry was sent to the petitioner, who responded thereto. She disagrees with the standpoint that there was no violation of Article 14 of the Constitution and the ECHR. She does agree with the standpoint that differences exist between civil procedure and criminal procedure, however, she is of the opinion that such are not decisive for the decision regarding her petition. She emphasises that what is especially disputable in her opinion is the regulation of the CCA in reference to the CPA, from which it follows that in the event of a violation of human rights in proceedings before the Constitutional Court, she is not granted an effective national legal remedy by means of which the violation could be redressed. She maintains that the existence of the ECtHR judgment in which the violation of the first paragraph of Article 6 of the ECHR was established requires the established violation to be redressed. With regard to such, it is allegedly not important which body caused the established violation or in what type of proceedings such was committed. In the opinion of the petitioner, it is not permissible to limit her right to obtain redress for the violation of human rights by referring to the rights of the opposing party. She opposes the standpoint of the Ministry that the question whether she should be granted redress for the violation of human rights belongs in the domain of the legislature's discretion. Furthermore, what is also allegedly unconvincing is the argument that reopening the proceedings on the basis of the ECtHR judgment is not possible in order to ensure legal certainty. The petitioner is of the opinion that trust in the unchangeability of judicial decisions cannot be given priority over the right to obtain redress for human rights violations. Allegedly, such trust in the unchangeability of judicial decisions is also not absolutely protected in the Slovene legal order. The already existing system of extraordinary legal remedies as well as the institute of the constitutional complaint allegedly demonstrate such. If it is allegedly possible to file an extraordinary legal remedy for mere statutory law violations or even for an error in the finding of facts, a regulation of a legal remedy by which it would be possible to request redress for human rights violations is allegedly that much more necessary and legitimate. By means of the institute of the constitutional complaint, the constitution framers allegedly already gave clear priority to the protection of human rights over the trust of the opposing party in the unchangeability of judicial decisions with legal finality. The petitioner emphasises that the standpoint of the Ministry regarding the disputed issue is contrary to the standpoint of the ECtHR. She again states that those individuals whose human rights have been violated in proceedings before the Constitutional Court are in a significantly worse position than those whose human rights have been violated in proceedings before ordinary courts. With regard to the above-mentioned, the applicant and petitioner maintains that she should be granted the opportunity to make a statement regarding the constitutional complaint of the opposing parties in the litigation in reopened proceedings. Therefore, she insists on her application and petition in their entirety.

B. – I.

5. In its Judgment in the case *Gaspari v. Slovenia*, the ECtHR established a violation of the first paragraph of Article 6 of the ECHR in proceedings before the Constitutional Court since, due to the fact that the applicant was not correctly served the constitutional complaint of the opposing parties in the litigation (which was accepted for consideration), she was not granted the opportunity to participate properly in the proceedings.[1] Despite the violation having been established, the ECtHR did not award the applicant compensation in respect of pecuniary damage (due to the fact that the existence of a causal link between the violation

found and the alleged damage was not demonstrated). With regard to such, the Court added that the most appropriate form of redress would be to ensure that the applicant is put in the position he or she would have been in had the requirements of Article 6 of the ECHR not been disregarded. In the assessment of the ECtHR, this would in the present case be best achieved if the national legislation provided the party the possibility to reopen the disputed proceedings. For the distress caused to the applicant by the lack of guarantees in accordance with Article 6 of the ECHR, the ECtHR awarded her EUR 4,000.00 in respect of non-pecuniary damage.[2] The Judgment became final on 10 December 2009.

6. The applicant is of the opinion that her application for the reopening of the proceedings should have been granted merely on the already mentioned grounds of the ECtHR Judgment since such is binding for the Republic of Slovenia.

7. In accordance with the first paragraph of Article 46 of the ECHR, contracting states undertake to abide by the final judgments of the ECtHR in any case to which they are parties and the execution of such shall be supervised by the Committee of Ministers (the second paragraph of Article 46 of the ECHR). Thus, the applicant's emphasis that the ECtHR Judgment issued in her case is binding for the Republic of Slovenia is well founded. The binding force of ECtHR final judgments does not entail that only the legislature is obliged to abide by them, but rather that also national courts must strive to interpret national regulations in accordance with the requirements of the ECHR. Such a requirement follows also from Article 1 of the ECHR, which obliges contracting states to ensure the compatibility of national legislation with the requirements of the Convention.[3] In democratic states governed by the rule of law such is possible only if all holders of public authority abide by the requirements of the ECHR. Nevertheless, the applicant is incorrectly of the opinion that the binding force of the ECtHR judgment in itself substantiates the conclusion that her application for the reopening of the constitutional complaint proceedings is well founded.

8. ECtHR judgments are of a declaratory nature.[4] The ECtHR can only establish the (non-)existence of human rights violations, while its further possibilities, in accordance with Article 41 of the ECHR, are limited to only awarding the applicant just satisfaction if it finds that there has been a violation and if it assesses that the national law does not allow full redress for the violation. However, the above- mentioned does not necessarily entail that by the payment of just satisfaction the convicted state has entirely fulfilled its obligations following from the judgment. In accordance with the established standpoint of the ECtHR, its judgments can, within the meaning of Article 46 of the ECHR, order the state responsible not only to pay just satisfaction, but it can also impose on it to adopt general and/or, if necessary, individual measures that the state must introduce into its national legal order and thereby prevent further violations and ensure all possible types of redress to remedy violations in such a manner that the situation is returned, as best possible, to the state that existed before the violation.[5] However, it is not within the jurisdiction of the ECtHR to order the contracting state to adopt precisely defined measures. A contracting state can select appropriate measures to redress the consequences of an individual act that is disputed, or measures by which it will be able to ensure that its national legislation is consistent with the requirements of the Convention.[6] Only in exceptional cases, when a violation is of such nature that it excludes any option regarding the selection of measures, does the ECtHR direct the contracting state to adopt a precisely defined measure.[7]

9. In its reasoning in the case Gaspari v. Slovenia, the ECtHR did in fact note that the most appropriate form of redress would be to reopen the proceedings and thus ensure that

the applicant is put in the position she would have been in had the requirements of Article 6 of the ECHR not been disregarded. And in cases of violations of Article 6 of the ECHR, the ECtHR has already adopted such a standpoint on numerous occasions.[8] However, the reasons on which the ECtHR based its judgment in the present case do not necessarily entail that thereby the Constitutional Court has an obligation to unconditionally implement the specific measure of reopening the constitutional complaint proceedings in the applicant's case. It is not within the jurisdiction of the ECtHR to order the reopening of national judicial proceedings.[9] Therefore, in the present case such a statement in the reasoning of the Judgment of the ECtHR cannot be interpreted differently than as an indication of a possible measure which could be, in the assessment of the ECtHR, appropriate to redress the consequences of the established violation.[10]

10. The CCA does not provide for the possibility of reopening constitutional complaint proceedings. With regard to the first paragraph of Article 6 of the CCA[11], the question arose in the process of review by the Constitutional Court whether such a legal remedy can be permissible on the basis of mutatis mutandis application of the statutory provisions regulating individual court proceedings. In its early case-law the Constitutional Court rejected a relatively large number of applications for the reopening of constitutional complaint proceedings, but it did so since the stated reasons for reopening the proceedings were obviously not of such nature that the proceedings could be reopened on such basis.[12] In subsequent orders it added that with regard to such it did not take into consideration the question whether the reopening of proceedings before the Constitutional Court is even permissible.[13] By Order No. Up-2383/06, dated 27 February 2008, adopted in a panel session, the Constitutional Court allowed, by mutatis mutandis application of the provisions of the CPA, the reopening of constitutional complaint proceedings since, due to the unlawful conduct of the Constitutional Court, the party was not given the opportunity to be heard before the court (the second indent of Article 394 of the CPA). The Constitutional Court again addressed the issue of the permissibility of the reopening of constitutional complaint proceedings in panel Order No. Up-915/07, dated 3 July 2008 (Official Gazette RS, No. 73/08, and OdlUS XVII, 79), in which the Court rejected an application for such. It adopted the standpoint that the reopening of the constitutional complaint proceedings, taking into account the special nature of the proceedings in question, is not permissible due to the fact that the CCA does not contain special provisions on the reopening of proceedings. Thus, in accordance with the subsequent standpoint of the Constitutional Court, mutatis mutandis application of the statutory provisions regulating court proceedings does not entail that in proceedings before the Constitutional Court legal remedies are permissible that the CCA does not explicitly provide for.[14] In panel Order No. Up-54/1, dated 17 March 2011, the Court did, however, adopt the standpoint that in the event that an obvious administrative error occurs in constitutional complaint proceedings it can re-examine the constitutional complaint in question. Nevertheless, the present case is not such a case since the applicant requests the reopening of the constitutional complaint proceedings on the basis of the existence of the ECtHR Judgment in which the existence of such an error of the Constitutional Court had already been established.

B. – II.

11. At the same time, the petitioner submitted a petition to initiate proceedings for the review of the constitutionality of the CPA and the CCA due to the fact that the two acts do not determine the possibility of reopening (constitutional complaint) proceedings on the basis of the stated reason. However, in her application, which the petitioner substantiates by the

ECtHR Judgment establishing a violation of a human right only in proceedings before the Constitutional Court, she applies for only the reopening of the proceedings thereof and on these grounds also a review of the constitutionality of the CCA. Thereby, she does not demonstrate legal interest for a petition for the review of the constitutionality of the CPA (cf. the first and second paragraphs of Article 24 of the CCA). Therefore, the Constitutional Court rejected her petition in this part (Point 1 of the operative provisions) and examined only the grounds for the petitioner's allegations regarding the unconstitutionality of the CCA.

12. The petitioner is of the opinion that the requirement to upgrade the system of national legal remedies for cases of violations of human rights in proceedings before the Constitutional Court follows from Article 13 of the ECHR and from the fourth paragraph of Article 15 of the Constitution. In the assessment of the petitioner, the possibility to file an application before the ECtHR is not by itself an effective legal remedy, as follows from the mentioned provisions of the Convention and the Constitution, since such are not legal remedies before national courts, and since by means of such it is not possible to obtain redress for the established violation. Therefore, she is of the opinion that from the above-mentioned provisions of the ECHR and the Constitution, there follows the requirement to provide for the possibility to reopen constitutional complaint proceedings on the basis of the "ECtHR Judgment in which the ECtHR established a violation of the ECHR or its Protocols".

13. Article 13 of the ECHR ensures everyone whose rights and freedoms as set forth in the Convention are violated an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. Thus, the mentioned provision of the Convention obliges contracting states to protect human rights first and above all within the framework of their own judicial systems. In the assessment of the ECtHR, such a subsidiary nature of applications to the ECtHR is reflected not only in Article 13 of the ECHR but also in Article 35. According to the ECtHR, the content of Article 35 of the ECHR is founded on the assumption expressed in Article 13 of the ECHR that an effective national legal remedy exists for claiming a violation of individual rights provided for by the Convention. In the assessment of the Constitutional Court, in order to respect Article 13 of the ECHR while also taking into account the above-mentioned, it is sufficient that an individual can, before resorting to international mechanisms for the protection of human rights, thus before initiating proceedings before the ECtHR, raise the issue of a violation of the rights provided for by the Convention in proceedings before national courts.

14. While the petition in question does, inter alia, open the issue of the need to amend the CCA in a manner that would ensure individuals the possibility to claim before the national (constitutional) court that their human rights have been violated in constitutional complaint proceedings prior to the initiation of proceedings before the ECtHR, the petitioner does not demonstrate legal interest for such allegations. Namely, she does not substantiate her application for the reopening of the constitutional complaint proceedings by claiming a violation of procedural guarantees, the nature of which is that of a human right, but by claiming the existence of an ECtHR judgment in which such a violation was established. Therefore, the petition under consideration does not address the issue of the need to provide individuals with an additional national legal remedy before they initiate international mechanisms, but the issue of the need to ensure such a legal remedy after international mechanisms have already been initiated. In the assessment of the Constitutional Court, the requirement to ensure such a subsequent legal remedy does not follow from Article 13 of the ECHR. Therefore, merely on such a basis, the petitioner's allegations regarding the

nonconformity of the CCA with Article 13 of the ECHR must be dismissed as manifestly unfounded.

15. The petitioner is of the opinion that the requirement to ensure the possibility to reopen constitutional complaint proceedings on the basis of the ECtHR Judgment also follows from the fourth paragraph of Article 15 of the Constitution. The above- mentioned constitutional provision ensures individuals judicial protection of human rights and fundamental freedoms and the right to obtain redress for violations thereof. The petitioner's opinion that such redress is possible only by re-establishing the prior situation is incorrect. The requirements determined by the mentioned constitutional provision can also be met by ensuring the right to financial compensation or even just by establishing the violation itself.[15] In the present case, the petitioner was already ensured all of the above-mentioned by the ECtHR Judgment. The ECtHR did not merely establish the violation of a human right, but also awarded the petitioner financial compensation on the basis of such. This entails that the consequences of the established procedural error of the Constitutional Court have already been remedied in a constitutionally acceptable manner.[16] With regard to the above- mentioned, the petitioner's allegations regarding the nonconformity of the fourth paragraph of Article 15 of the Constitution are also manifestly unfounded.

16. The petitioner substantiates her petition also by alleging the nonconformity of the CCA with Article 14 of the Constitution (the principle of equality before the law) and Article 14 of the ECHR (the prohibition of discrimination). She bases such on a comparison of the position of parties to civil procedures and the position of parties to criminal procedures. Since the CCA does not allow the reopening of constitutional complaint proceedings on the basis of an ECtHR judgment in any case, the above- mentioned allegations of the petitioner do not substantiate the claimed unconstitutionality of the CCA, but of the CPA. Therefore, in the examination of the petition submitted to initiate proceedings for the review of the constitutionality of the CCA, the Constitutional Court did not examine these allegations. Furthermore, to the extent the petitioner substantiates her allegations regarding a violation of the second paragraph of Article 14 of the Constitution by comparing the positions of parties to constitutional complaint proceedings to that of parties to civil proceedings, such allegations should be dismissed as manifestly unfounded merely because the legislature did not regulate such positions differently (from the perspective of the possibility to reopen proceedings on the basis of an ECtHR judgment). Furthermore, due to the different nature of the two types of proceedings, the situations of parties to them are also not comparable.

17. With regard to the above-mentioned, the Constitutional Court dismissed the petition as manifestly unfounded (Point 2 of the operative provisions).

B. – III.

18. The applicant substantiates her application for the reopening of constitutional complaint proceedings on the basis of the ECtHR Judgment that established the violation of her human rights by her claims regarding the binding force of the ECtHR Judgment concerning the issue in question that were already dismissed above (cf. Paras. 7 through 10 of the reasoning of this Order), and additionally by the arguments she used to substantiate the petition. Since the petition was not granted, by means of such allegations she also cannot substantiate the application for the reopening of proceedings. Since the CCA does not provide for the possibility to reopen constitutional complaint proceedings (for the reasons claimed) and since the applicant's allegations that the Constitution and the Convention require such statutory

regulation are manifestly unfounded, the Constitutional Court rejected the applicant's application for the reopening of the proceedings (Point 3 of the operative provisions).

C.

19. The Constitutional Court reached this Order on the basis of the third paragraph of Article 25, the second paragraph of Article 26, and the first paragraph of Article 54 of the CCA, composed of: President Dr. Ernest Petrič, judges Dr. Mitja Deisinger, Dr. Etelka Korpič – Horvat, Mag. Miroslav Mozetič, Jasna Pogačar, Mag. Jadranka Sovdat, and Jože Tratnik. Judge Jan Zobec was disqualified from deciding on the case. The decision was adopted unanimously.

Mag. Miroslav Mozetič
Vice President on behalf of
Dr. Ernest Petrič
President

Notes:
[1] Cf. Paras. 50 through 57 of the mentioned Judgment.
[2] Cf. Para. 80 of the mentioned Judgment.
[3] In accordance with Article 52 of the ECHR, contracting states are obliged to provide an explanation as to which of its national laws ensures effective implementation of the provisions of the Convention.
[4] Cf. the Judgment of the Grand Chamber of the ECtHR in the case *Tierfabriken Schweiz v. Switzerland (No. 2)*, dated 30 June 2009, Para. 61.
[5] As stated by the ECtHR, inter alia, in its Judgment in the case *Lungoci v. Romania*, dated 26 January 2006, Para. 55, and in its Judgment in the case *Yanakiev v. Bulgaria*, dated 10 August 2006, Para. 89. Cf. also P. van Dijk, F. van Hoof, A. van Rijn, and L. Zwaak (eds.), Theory and Practice of the European Convention on Human Rights, 4th edition, Intersentia, Antwerpen – Oxford 2006, p. 257.
[6] Cf. the ECtHR Judgment in the case Lyons and Others v. the United Kingdom, dated 8 July 2003 and the Judgment of the Grand Chamber in the case *Tierfabriken Schweiz v. Switzerland (No. 2)*, Para. 88.
[7] Cf. the ECtHR Judgment in the case *Assanidze v. Georgia*, dated 8 April 2004. For more information, see P. van Dijk, F. van Hoof, A. van Rijn, and L. Zwaak (eds.), op. cit., p. 277.
[8] Cf. the ECtHR judgments in the cases *Somogyi v. Italy*, dated 18 May 2004, Para. 86; *Öcalan v. Turkey*, dated 12 May 2005, Paras. 208 through 210; *Lungoci v. Romania*, Para. 56; and *Yanakiev v. Bulgaria*, Para. 90.
[9] As stated by the ECtHR, inter alia, in the case *Lyons and Others v. the United Kingdom*. Cf. also the Judgment of the Grand Chamber in the case *Verein gegen Tierfabriken Schweiz v. Switzerland (No. 2)*, Para. 89.
[10] Cf. the ECtHR Judgment in the case *Öcalan v. Turkey*, Para. 210. Cf. also the Judgment of the Grand Chamber in the case *Sejdovic v. Italy*, dated 1 March 2006, Paras. 126 and 127, in which the Grand Chamber – differently than the Chamber in its Judgment of 10 November 2004 (Cf. Para. 3 of the operative provisions) – merely established the existence of a violation (for more information, see A. Csaki, Die Wiederaufnahme des Verfahrens nach Urteilen des Europäischen Gerichtshofs für Menschenrechte in der deutschen Rechtsordnung, Verlag Dr. Kovač, Hamburg 2008, pp. 34–35).
[11] The Article determines: "For procedural questions which are not regulated by this Act,

the Constitutional Court applies mutatis mutandis the statutory provisions regulating court proceedings with due consideration of the legal nature of the case."

[12] Cf. Constitutional Court Orders Nos. Up-95/95, dated 26 February 1998; Up-70/98, dated 17 December 1998; and Up-416/01, dated 15 February 2002.

[13] Cf. Constitutional Court Orders Nos. Up-189/01, dated 21 November 2001; Up-524/01, dated 13 January 2003; Up-408/03, dated 24 November 2005; Up-550/02, dated 7 March 2006; and Up-1069/05, dated 28 September 2006.

[14] As the Constitutional Court stated also in panel Orders Nos. Up-555/07, dated 4 July 2008, and Up-1840/07, dated 19 May 2009.

[15] Cf. Constitutional Court Decision Nos. Up-4/95, dated 19 December 1996, Para. 13 (OdlUS V, 193), and Constitutional Court Order No. Up-2436/08, U-I-42/08, dated 26 March 2009, Para. 5.

[16] The ECtHR did not award the petitioner compensation in respect of pecuniary damage, however, this was due to the fact that the existence of a causal link was not demonstrated (and not since it would have awarded her only financial compensation for the damage that could not have been redressed in any other manner), i.e. the request for just satisfaction was not reserved for later deciding until the national court had decided on the reopening of the proceedings (Cf. the ECtHR Judgment in the case *Schuler-Zgraggen v. Switzerland*, dated 24 June 1993, Paras. 72 through 74).