U-I-292/09
Up-1427/09
20 October 2011

DECISION

At a session held on 20 October 2011 in proceedings to examine a petition for the review of constitutionality and to decide upon the constitutional complaint of A. B. and C. D., both from X., represented by Mag. Matevž Krivic, Spodnje Pirniče, and E. F. and G. H., represented by Mag. Matevž Krivic on the basis of the power of attorney granted by their legal representatives A. B. and C. D., the Constitutional Court

decided as follows:

1. The third paragraph of Article 22 of the International Protection Act (Official Gazette RS, No. 11/11 – official consolidated text) is abrogated.

2. Supreme Court Judgment No. I Up 425/2009, dated 7 October 2009, is abrogated and the case is remanded to the Supreme Court for new adjudication.

3. The petition for the initiation of proceedings to review the constitutionality of the fifth indent of the third paragraph of Article 21 and Article 26 of the International Protection Act is rejected.

REASONING

A

1. On the basis of the second indent of the first paragraph of Article 52 in relation to the first indent of Article 53 of the International Protection Act (hereinafter referred to as the IPA), the Ministry of the Interior (hereinafter

referred to as the MI) dismissed the applications of the complainants for international protection. At the same time, it decided that the complainants must leave the Republic of Slovenia in seven days after the decision becomes final. Due to the fact that the complainants in the procedure did not submit any evidence (not even personal documents by which they could have demonstrated their identity), but substantiated their applications merely by their allegations, the MI carried out an assessment on the basis of the third paragraph of Article 21 of the IPA. In the framework of such assessment, the MI established that the majority of the allegations by which the complainants substantiated their applications for international protection were not convincing or probable. On the basis of a comprehensive assessment of all the allegations and the conduct of the complainants in the procedure, the MI assessed that they are in general not credible. The Administrative Court found for the complainants [who had filed an] action, annulled the challenged decision of the MI, and remanded the case to the MI for a new procedure. The Administrative Court assessed that the findings of the MI do not suffice for adopting an assessment of the evidence entailing that the [allegations of] the complainants are in general not credible. The MI filed an appeal against the Administrative Court Judgment, which the Supreme Court granted and changed the Administrative Court Judgment so as to dismiss the action. The Supreme Court concurred with the assessment of the MI that the adult complainants did not make enough effort to base their allegations on evidence and to demonstrate their credibility in general. Since in the assessment of the Supreme Court the assessment of the MI that the complainants did not demonstrate their general credibility was well founded, it did not have to verify the information on the country of origin, with respect to the fourth paragraph of Article 22 of the IPA.

2. The complainants claim that the challenged Supreme Court Judgment violates their rights determined by Article 22 of the Constitution. They stress that the reasons stated in the Judgment regarding one of the decisive facts (i.e. the citizenship of the complainants) are unclear, contradictory, and inconsistent with the case file. Allegedly, the MI clearly established in its decision that the complainants are Chinese citizens. Consequently, when the Supreme Court stated that the MI only presumed, on the basis of the legislation and the case law studied, that they are most probably Chinese citizens, it only created an unclarity. In the opinion of the complainants, this entails a manifestly erroneous finding (which is inconsistent with the case file). They also allege that the statement of reasons for the adopted decision, which are [allegedly] not true and are inconsistent with the case file, in Paragraphs 16 and 17 of the reasoning of the judgment, entails a violation of

the right determined by Article 22 of the Constitution. In the opinion of the complainants, the Decision of the MI is unlawful, because the MI did not assess the conditions for granting a subsidiary form of protection therein (as an obligatory element of the assessment in the procedure for granting international protection), but it only hypothetically (subordinately) stated that in the event the complainants are without citizenship, they cannot in any manner be refouled to China, “resulting in the fact that no subsidiary protection is then possible.” Furthermore, the complainants draw attention to the fact that the Supreme Court Judgment is unsubstantiated in the part that refers to the alleged inadmissibility of the application of the fourth paragraph of Article 22 of the IPA. In this respect, the Administrative Court Judgment includes a very detailed reasoning, whereas the Supreme Court did not substantiate its position that differed from the position of the court of first instance. The complainants also allege a violation of the right to asylum as a right that follows from the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees (Official Gazette of the Federal People's Republic of Yugoslavia, MP, No. 7/60; Official Gazette of the Socialist Federal Republic of Yugoslavia, MP, No. 15/67; Official Gazette RS, No. 35/92, MP, No. 9/92 – hereinafter referred to as the Geneva Convention) and from Article 35 of the Constitution. They are of the opinion that the MI should have treated them as applicants *sur place* – i.e. as applicants who are under threat of being persecuted in China, their country of origin, and who fled from D. out of fear of being refouled to China. In this part, the applicants allege that the courts erroneously applied substantive law, due to which the right to asylum determined by the Geneva Convention and Article 35 of the Constitution was allegedly directly violated.

3. By Order of a panel of the Constitutional Court, No. Up-1427/09, dated 8 January 2010, the Constitutional Court accepted the constitutional complaint for consideration and decided that until a final decision of the Constitutional Court is adopted, the execution of the decision of the MI is suspended. In conformity with the first paragraph of Article 56 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text – hereinafter referred to as the CCA), the Constitutional Court notified the Supreme Court thereof. On the basis of the first paragraph of Article 56 of the CCA, the Constitutional Court sent the order on the acceptance and the constitutional complaint to the MI.

4. In its application dated 27 January 2010, the MI proposed that the constitutional complaint be dismissed. The allegation of the complainants with regard to the unclarity regarding the citizenship of the complainants

caused by the Supreme Court judgment was, in the assessment of the MI, unfounded. According to the MI, it was clear from the entire context that in the part where the Supreme Court stated that the MI only "presumed" that the adult complainants are Chinese citizens, this was [only] a clumsy formulation and not a conviction of the Supreme Court. The MI underlined that it established in its decision that the applicants are Chinese citizens. It rejected the allegation that when assessing the conditions for acquiring refugee status it deemed the complainants to be Chinese citizens, whereas in the framework of the assessment of a subsidiary form of protection it deemed them to be persons without citizenship. With regard to the allegation regarding the unlawfulness of the decision, which allegedly did not contain an assessment of the conditions for acquiring subsidiary protection status, the MI underlined that the credibility of the complainants cannot be considered separately when what is at issue is the granting of refugee status or subsidiary protection status, because this is decided on in a uniform procedure. For such reason, the allegation that the MI did not adopt a decision on both statuses is not true. The MI underlined that it did not adopt the assessment that the complainants were in general not credible only on the basis of one statement or only several statements, but it took into consideration the majority of the statements and the conduct of the complainants in the procedure. The allegations of the complainants with regard to citizenship were only a part of the assessment of their credibility, with regard to which it was crucial for an assessment of their statements that during their interview they did not state everything they knew with regard to their citizenship.

5. The Constitutional Court notified the complainants of the positions of the MI with regard to the allegations in the constitutional complaint. In the application dated 9 July 2010, the complainants maintain the allegations and proposals stated in the constitutional complaint. They draw attention to the fact that the position in accordance with which the "refusal to grant the application for international protection does not automatically entail forced removal to the country of origin, which consequently entails that the refusal to grant the application does not result in a violation of the principle of *non-refoulement*, which is something that the state must prevent *ex officio*, due to which in the procedure for granting international protection it does not have to verify the information regarding the country of origin if general non-credibility is established," is not tolerable. They are of the opinion that when deciding on international protection, it is not admissible to avoid this question.

6. The complainants also filed a petition to initiate proceedings for a review of the constitutionality of the fifth indent of the third paragraph of Article 21, the fourth paragraph of Article 22, and Article 26 of the IPA. The complainants substantiate the alleged unconstitutionality of the fifth indent of the third paragraph of Article 21 of the IPA by claiming that the term *general credibility of the applicant* itself "markedly contradicts fundamental human rights, especially the right to human dignity, and also the right to a fair trial and administrative decision-making." In their opinion, also the fourth paragraph of Article 22 of the IPA is unconstitutional, which allows the competent authority to disregard the information on the country of origin if the general credibility of the applicant is not established. The complainants are convinced that this Article is contrary to the principle of *non-refoulement*, as one of the fundamental principles of the Geneva Convention. Even if unclarities arise and there are contradictions in the statements of the applicant, in the opinion of the complainants, this cannot entail an admissible reason for the competent authority to not be obliged to verify the information on the country of origin. The complainants also draw attention to an internal contradiction of the provisions of the IPA, which in multiple places envisages comparing the content of the applicant's statements with the information on the country of origin (*cf.* the third indent of the third paragraph of Article 21 of the IPA and the fourth indent of the first paragraph of Article 55 of the IPA). Therefore, the fourth paragraph of Article 22 of the IPA is, in their opinion, also contrary to the fundamental principles of a state governed by the rule of law, from which follows the requirement of clear and non-contradictory laws. The complainants also allege the inconsistency of Article 26 of the IPA with the Geneva Convention. In conformity with this Convention, applicants for international protection do not have to prove that they have already been persecuted, but must demonstrate a "reasonable fear of persecution." Allegedly, the result of the fact that Article 26 of the IPA refers to "acts of persecution" is that on the basis of this provision this standard has been legally incorrectly interpreted in the administrative and judicial case law.

7. The Constitutional Court sent the petition to the National Assembly of the Republic of Slovenia, which did not reply thereto.

8. In their application dated 23 February 2010, the complainants added to the petition the argumentation from the action in the *Tenzin* case, which was allegedly considered by the Administrative Court and which allegedly contains a motion to initiate proceedings for the review of the constitutionality of the entire third paragraph of Article 21 of the IPA. They allege that this statutory provision as a whole is severely inconsistent with

Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304, 30 September 2004, pp. 12–23 – hereinafter referred to as the Qualification Directive), and consequently also with Article 3a of the Constitution.

B – I

The petition for the initiation of proceedings for a review of the constitutionality of the third paragraph of Article 22 of the IPA

9. The complainants filed a constitutional complaint against the Supreme Court Judgment (by which that Court modified the Administrative Court Judgment and dismissed the action filed against the decision of the MI), which is, *inter alia*, based on the position that in conformity with the fourth paragraph of Article 22 of the IPA the competent authority did not have to take into consideration the information on the country of origin of the complainants, because their general credibility was not established. In the assessment of the Constitutional Court, the complainants have a legal interest to initiate proceedings for a review of the constitutionality of the mentioned statutory provision. Since the decision on the constitutional complaint also depends on the decision on the petition, the Constitutional Court had to first decide on the latter.

10. In conformity with the second paragraph of Article 22 of the IPA, in the procedure the competent authority verifies the statements of the applicant relating to the information on the country of origin referred to in the eighth and ninth indents of Article 23 of the IPA (i.e. general information on the country of origin, in particular on the social-political situation and the adopted legislation, and specific in-depth detailed information on the country of origin related exclusively to the concrete case, but may also include the manner of implementation of laws and other regulations of the country of origin. The challenged fourth paragraph of Article 22 of the IPA determined: “If the general credibility of the applicant is not established, the competent authority shall disregard the information on the country of origin referred to in the preceding paragraph.” When adopting the Act Amending the International Protection Act (Official Gazette RS, No. 99/10 – hereinafter referred to as the IPA-B), the legislature transferred the content of the challenged fourth paragraph of Article 22 of the IPA to the third paragraph of the same article

of the [amended] Act. Since only a modification of the enumeration of the Article was at issue, whereas the content of the challenged statutory provision was not amended, the Constitutional Court assessed the allegations of the petitioners in the framework of the third paragraph of Article 22 of the IPA.

11. The petitioners allege that the challenged statutory provision is contrary to the principle of *non-refoulement*, as one of the fundamental principles of the Geneva Convention. In their opinion, eventual unclarities and contradictions in the statements of the applicant cannot entail an admissible reason for the competent authority to not be obliged to take into consideration the information on the country of origin.

12. The principle of the *non-refoulement* of persons to countries where they may face a certain danger, persecution, or where their life, personal integrity, or freedom is endangered in some other manner is a generally recognised international principle.[1] The obligation to respect this principle follows from the first paragraph of Article 33 of the Geneva Convention and the first paragraph of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette RS, No. 24/93, MP, No. 7/93 – hereinafter referred to as the Convention against Torture).[2] Substantively, this obligation also follows from Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter referred to as the ECHR), which prohibits torture and inhuman and degrading treatment or punishment. When assessing asylum cases from the viewpoint of Article 3 of the ECHR, the European Court of Human Rights (hereinafter referred to as the ECtHR) has formed the position that the extradition of an individual to another state is prohibited when there exist weighty reasons that justify the conclusion that there exists a real threat that the person at issue will be subjected to torture, inhuman or degrading treatment, or punishment.[3] The first paragraph of Article 21 of the Qualification Directive determines that Member States shall respect the principle of *non-refoulement* in accordance with their international obligations.

13. In Decision No. Up-78/00, dated 29 June 2000 (Official Gazette RS, No. 66/2000, and OdlUS IX, 295), the Constitutional Court defined the fundamental starting points that must be taken into consideration when deciding on asylum and the extradition of individuals to another state or their expulsion. It included the assessment of the circumstances related to the principle of non-refoulement under Article 18 of the Constitution (the

prohibition of torture). In conformity with the established standpoint of the Constitutional Court, this Article prohibits that a person with regard to whom there exists a realistic threat that in the event of his or her return to the country of origin he or she would be subjected to inhuman treatment is extradited to that state or expelled thereto. When adopting such standpoint, the Constitutional Court also relied on the standpoints of the ECtHR with regard to the content of Article 3 of the ECHR. Due to the fact that the final dismissal of an application for international protection entails that the applicant can be removed by force to the state from which he or she came, the dismissal of an application for international protection must also include, according to the position of the Constitutional Court, an assessment that such removal by force will not cause his or her life or freedom to be jeopardised and that the applicant will not be subjected to torture, inhuman and degrading treatment, or punishment in that state.[4] Furthermore, in the constitutional case law the position was adopted that also the right determined by Article 18 of the Constitution is of an absolute nature, meaning that it cannot be limited even on the basis of the third paragraph of Article 15 of the Constitution.[5]

14. The requirements that follow from the mentioned international legal instruments and Article 18 of the Constitution are binding on the legislature when it regulates the procedure for granting international protection. The procedure for the consideration of applications for international protection must be conceived in such a manner that the applicants are ensured respect for the guarantees determined by Article 18 of the Constitution. This includes, in particular, the possibility to assess all the circumstances that could have an influence on the assessment of the competent authority that the return of the applicant to his or her country of origin will not cause his or her life or freedom to be jeopardised or that he or she will be exposed to torture or inhuman and degrading treatment. With regard thereto, it must be assessed whether the challenged statutory provision that allows the competent authority to disregard information regarding the country of origin if it establishes the general non-credibility of the applicant interferes with Article 18 of the Constitution.

15. The challenged third (previously the fourth) paragraph of Article 22 of the IPA is placed in Chapter III of the IPA, which regulates the assessment of the conditions for international protection. In Article 21 of this Act, the legislature determined the duties of the applicant with regard to the substantiation of the application (the so-called subjective element), and in Article 22 it determined the verification procedure to be carried out by the

competent authority (the so-called objective element). Consideration of an application for international protection is carried out by taking into consideration two fundamental elements: the subjective element, in the framework of which the applicant must state all the facts and circumstances that justify his or her fear of persecution or serious harm, and present all the documents and all available evidence by which he or she substantiates his or her application; and the objective element, in the framework of which the competent authority verifies the statements of the applicant from the viewpoint of objective facts and information on the country of origin.[6] For instances where the applicants cannot present any evidence but substantiate their application merely by their statements, the legislature determined, in the third paragraph of Article 21 of the IPA, special assessment conditions.[7]

16. The regulation in the IPA is based on the principle in conformity with which the applicant must substantiate an application for international protection.[8] From the constitutional viewpoint, the duty of the applicant to cooperate when substantiating the application is in itself not disputable. However, if the guarantees determined by Article 18 of the Constitution are to in fact be ensured, the applicant must not be given too heavy a burden as regards proving his or her endangerment. It follows from Constitutional Decision No. Up-78/00 that by the nature of the matter it is the affected person who must allege that there exist circumstances entailing his or her endangerment. In the procedure, the competent authority must assess (1) whether the circumstances due to which the affected person is requesting international protection are such that he or she can feel endangered and (2) whether such fear is objectively justified. When assessing the existence of the first element, the competent authority must take into consideration the allegations of the affected person in their entirety, as well as possible other evidence, and carry out a reliable assessment of the credibility of these allegations. The assessment of the existence of the second element must include an assessment of the situation in the country to which the applicant would have to return in the event of a decision of dismissal.[9] From the constitutional case law there also follows the standpoint that the competent authority can take into consideration, as one of the assessment conditions, the general credibility of the applicant.[10] The competent authority must, in each individual procedure in which it decides on an application for international protection, give substance to this indefinite legal term by applying methods of interpretation and then determine whether in the case at issue there exist circumstances that correspond to the mentioned term. The establishment of general credibility must always be the result of a

comprehensive assessment of the statements and actions of the applicant before and during the procedure for acquiring international protection.[11]

17. Similar requirements follow from the standpoints of the ECtHR adopted in the framework of Article 3 of the ECHR. Also the ECtHR underlines that an applicant is obliged to provide to the greatest possible extent the documentation and information that allow the competent national authorities, as well as the [competent] court, to estimate the risk to which the applicant would be exposed if removed to his or her country of origin.[12] If necessary, the ECtHR also acquires individual pieces of data by itself (*proprio motu*). In each individual case, the ECtHR focuses on an assessment of the predictable consequences in the event the applicant is returned to his or her country of origin, namely both from the viewpoint of the general situation in his or her country of origin and from the viewpoint of the personal circumstances of the applicant. The responsibility of contracting states in the framework of Article 3 of the ECHR is to ensure that the individual is not exposed to torture or inhuman and degrading treatment. Therefore, the existence of risk is primarily assessed with regard to the facts that were known or should have been known to the contracting state during the time of expulsion or extradition of the applicant.[13] Also important for the ECHR is recent information on the situation in the state during the time when the court is adopting its decision, which is [i.e. the information] gathered after the national authorities have adopted their final decision.[14] As a general rule, the ECtHR draws this information from the reports of international organisations on the general situation in the state to which the applicant is to be extradited. However, the finding that serious violations of human rights do occur in an individual state does not of itself suffice to find for the applicant [before the ECtHR]. Namely, the ECtHR each time assesses whether the personal situation of the applicant is such that his or her extradition to the state of origin would be contrary to Article 3 of the ECHR. In doing so, it also assesses the general credibility of the statements of the applicant that have been given to national authorities and in the procedure before the ECtHR.[15] According to the ECtHR, due to the specific position in which applicants often find themselves, the principle that must be respected is that when in doubt, the decision must be in favour of the applicant. However, the applicant must provide, in the event that with regard to the available information there exists a serious doubt concerning the credibility of his or her statements, a satisfactory interpretation as to the established inconsistencies.[16]

18. What was stated above demonstrates that, with regard to the requirements that follow from Article 18 of the Constitution and international instruments, it is not possible, in the procedure for the consideration of applications for international protection, to avoid an assessment of the circumstances that are important from the viewpoint of respect for the principle of *non-refoulement*. The statements of the applicant with regard to the threat that in the event of his or her return to his or her country of origin he or she would be exposed to torture or inhuman and degrading treatment can only be assessed, by the nature of the matter, in such a manner that the competent authority also includes in its assessment information on the situation in the state to which the applicant would have to return in the event of a decision of dismissal. The scope of establishing these facts and information depends primarily on the allegations and statements of the applicant with regard to his or her subjective endangerment. Nonetheless, the competent authority must also by itself collect all the necessary data and is not limited only to [consideration of] the applicant's allegations or submitted evidence.[17] In the assessment of the Constitutional Court, the legislature interfered with the right determined by Article 18 of the Constitution by allowing the competent authority to disregard information on the country of origin if the general credibility of the applicant is not established. In the assessment of the Constitutional Court, the challenged statutory provision allows the competent authority to dismiss an application for international protection without taking into consideration all the circumstances that could have an influence on the assessment of whether there exist weighty reasons that substantiate the conclusion that there exists a real threat that in the event of the forced removal of the applicant, [the applicant’s right determined by] Article 18 of the Constitution would be violated. Taking into consideration the standpoint that the right determined by Article 18 of the Constitution is of an absolute nature, meaning that it cannot be limited even on the basis of the third paragraph of Article 15 of the Constitution, the Constitutional Court assesses that the mentioned interference is not admissible. For such reason, the Constitutional Court abrogated the third paragraph of Article 22 of the IPA (point 1 of the operative provisions).

B – II

The decision on the constitutional complaint

19. Due to the fact that the challenged Supreme Court Decision is based on a provision of the IPA which the Constitutional Court assessed is not in conformity with Article 18 of the Constitution, the Constitutional Court also granted the constitutional complaint, abrogated the challenged Judgment and remanded the case to the Supreme Court for new adjudication (point 2 of the operative provisions). In the new proceedings, the Supreme Court will not be allowed to base its decision on the abrogated statutory provision.[18]

20. Since the Constitutional Court abrogated the challenged Judgment already due to a violation of Article 18 of the Constitution, it did not address the other alleged violations of human rights.

B – III

The petition to initiate proceedings for a review of the constitutionality of the fifth indent of the third paragraph of Article 21 and Article 26 of the IPA

21. By Order No. U-I-55/09, Up-257/09, dated 26 January 2011 (Official Gazette RS, No. 14/11), the Constitutional Court substantiated what a petition for the initiation of proceedings for a review of the constitutionality of a law or another regulation must include.

22. Since in the part where the review of the constitutionality of the fifth indent of the third paragraph of Article 21 of the IPA is proposed the petition does not fulfil the mentioned statutory conditions, the Constitutional Court rejected it (point 3 of the operative provisions) without requesting that the complainants complete it.

23. Due to the fact that the complainants' applications for international protection were not dismissed on the basis of an assessment of the circumstances determined by Article 26 of the IPA, which determines the characteristics of acts of persecution, the complainants do not have legal interest to initiate proceedings for a review of the constitutionality of this statutory provision. Therefore, the Constitutional Court also in this part rejected their petition (point 3 of the operative provisions).

24. The Constitutional Court did not deem the supplement to the petition filed by the complainants on 23 February 2010 to be a petition for the

initiation of proceedings for a review of the constitutionality of the entire third paragraph of Article 21 of the IPA. If the Constitutional Court had assessed that this was necessary for [the adoption of] the decision on the constitutional complaint, it could have initiated proceedings for a review of the constitutionality of this statutory provision by itself on the basis of the second paragraph of Article 59 of the CCA.

C

25. The Constitutional Court adopted this Decision on the basis of Article 43, the first paragraph of Article 59, and the third paragraph of Article 25 of the CCA, composed of: Dr Ernest Petrič, President, and Judges Dr Mitja Deisinger, Dr Dunja Jadek Pensa, Mag. Marta Klampfer, Dr Etelka Korpič – Horvat, Jasna Pogačar, Mag. Jadranka Sovdat, and Jan Zobec. The decision was reached by seven votes against one. Judge Klampfer voted against. Judge Jadek Pensa submitted a concurring opinion.

Dr Ernest Petrič
President

Endnotes:
[1] S. Rakočević, *Nekatera pravna vprašanja glede priznavanja statusa begunca in načelo nevračanja* (*non-refoulement*) [Some Legal Questions Regarding Granting Refugee Status and the Principle of *Non-Refoulement*], Pravnik, Vol. 55, Nos. 6–8 (2000), p. 468.
[2] In conformity with the first paragraph of Article 33 of the Geneva Convention, it is prohibited to expel or return ("*refouler*") by force a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Also the first paragraph of Article 3 of the Convention against Torture expressly prohibits expelling, returning ("*refouler*") or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In conformity with the second paragraph of Article 3 of the Convention against Torture, all relevant considerations including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, are in such context taken into account.

[3] *Cf.* the Judgments of the ECtHR in *Soering v. the United Kingdom* (judgment dated 7 July 1989), *Vilvarajah and Others v. the United Kingdom* (judgment dated 30 October 1991), *Ahmed v. Austria* (judgment dated 17 December 1996), *Salah Sheekh v. the Netherlands* (judgment dated 11 January 2007), and *Saadi v. Italy* (judgment dated 28 February 2008).

[4] *Cf.* Decision of the Constitutional Court No. U-I-238/06, dated 7 December 2006 (Official Gazette RS, No. 134/06, and OdlUS XV, 83), and Decision No. Up-763/09, dated 17 September 2009 (Official Gazette RS, No. 80/09).

[5] *Cf.* Decision of the Constitutional Court No. U-I-238/06, Para. 14 of the reasoning.

[6] *Cf.* R. Thomas, Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined, European Journal of Migration and Law, Vol. 8, No. 1 (2006), pp. 79–96. It follows from this article that in the framework of the subjective element, the existence of the applicant's subjective fear of persecution is established, whereas in the framework of the objective element, it is verified whether there exist reasonable grounds for the conclusion that the applicant's subjective fear is objectively justified.

[7] On the basis of the third paragraph of Article 21 of the IPA, in its assessment the competent authority takes into consideration the following conditions:

– that the applicant made his or her best effort to substantiate his or her application;

– that the applicant presented reasonable grounds why he or she was unable to submit evidence;

– that his or her statements are coherent and probable and do not contradict available general information related to his or her case;

– that he or she applied for international protection as soon as possible, unless he or she can present reasonable grounds why he or she did not do so;

– that his or her general credibility was established.

[8] In the IPA, the Republic of Slovenia adopted the possibility that the first sentence of the first paragraph of Article 4 of the Qualification Directive offers to Member States, namely that they may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection (i.e. the duty to substantiate the application for international protection). For Member States that apply this principle, also the application of the fifth paragraph of Article 4 of the Qualification Directive is obligatory. The legislature transposed this provision of the Qualification Directive into the third paragraph of Article 21 of the IPA. For more details on the content of Article 4 of the Qualification Directive, see

K. Hailbronner (Ed.), EU Immigration and Asylum Law, Commentary on EU Regulations and Directives, Verlag C. H. Beck oHG, München 2010, p. 1024 *et seq.*

[9] *Cf.* Decision of the Constitutional Court No. Up-78/00.

[10] *Cf.* Decisions of the Constitutional Court No. Up-1970/08, dated 2 April 2009 (Official Gazette RS, No. 36/09), and No. Up-2012/08, dated 5 March 2009 (Official Gazette RS, No. 22/09).

[11] See also R. Thomas, *op. cit*., p. 81. The author defines three fundamental criteria for assessing the credibility of the applicant: (1) internal inconsistencies in the narrative of the applicant established either within the same interview or written statement or when comparing the applicant's statements in different phases of the procedure, or when comparing the statements of two or more applicants connected by common circumstances; (2) external inconsistencies established when comparing the applicant's statements with objective information on the situation in [his or her] country of origin; (3) the criterion of the probability of the events such as described by the applicant. The author underlines that the authority that decides in asylum cases is in a specific position, as only the testimony of the applicant is available to it, which the authority can only verify in such manner that it compares it with objective data on the situation in the [applicant's] country of origin (as opposed to, e.g., in civil procedure, where each party presents its own perspective on the same events and, after the procedure for taking evidence has been carried out, the court decides in favour of one party or the other).

[12] *Cf.* Judgment of the ECtHR in *Said v. the Netherlands*, dated 5 July 2005.

[13] *Cf.* Judgment of the ECtHR in *Vilvarajah and Others v. the United Kingdom*, Para. 107 of the reasoning.

[14] *Cf.* Judgment of the ECtHR in *Chahal v. the United Kingdom*, dated 15 November 1996.

[15] *Cf.* order of the ECtHR in *Nasimi v. Sweden*, dated 16 March 2004.

[16] *Cf.* orders of the ECtHR in *Collins and Akaziebie v. Sweden*, dated 8 March 2007, *Nasimi v.* Sweden, and *S. M. v. Sweden*, dated 10 February 2009.

[17] *Cf.* Decision of the Constitutional Court No. Up-763/09, Para. 6. of the reasoning.

[18] In conformity with the first paragraph of Article 99 of the IPA-B, procedures initiated in conformity with the International Protection Act (Official Gazette RS, No. 111/07 and 58/09) are to be continued and concluded in conformity with the provisions of this Act.