



**REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE**

**Concurring opinion of Judge Dr. Mirjam Škrk in case No. Up 78/00,
joined by Judge Dr. Zvonko Fišer**

I voted for the decision in all of the Paragraphs of the disposition, my concurring opinion, however, refers to the reasons determined in Paragraphs 1 and 2 of the disposition in which the Constitutional Court overturned judgment of Ljubljana Administrative Court No. U 168/00, dated 23 February 2000, and remanded the case to the Administrative Court.

I voted for Paragraphs 1 and 2 of the disposition of the decision only because I agree with the finding of the Constitutional Court in Paragraph 25 of the reasoning that at the time the challenged judgment of the Administrative Court was issued, which the Constitutional Court overturned with this decision, had already finally been decided on the extradition of the constitutional complainant before another court in our state. The challenged decision, however, does not explicitly refer to that, neither does it provide a basis for the existence of substantiated reasons for the suspicion that the constitutional complainant had committed a criminal offence which was the basis for the extradition, and at the same time the rejection of asylum, therefore it is a violation of the principle of the equal protection of rights as determined in Article 22 of the Constitution. I voted for the overturning of the challenged judgment also because it was stated in the legal caution that an appeal against this judgment was not allowed, and thus the right to legal remedies of the constitutional complainant according to Article 25 of the Constitution could be violated.

I agree with the finding of the Constitutional Court in Paragraph 26 of the reasoning, if the competent authority in the asylum procedure establishes the existence of a reason for rejection, as determined in Article 4 of ZAzil, deciding on the existence of humanitarian reasons becomes unnecessary for the asylum procedure itself. Considering the fact that in the discussed matter the asylum procedure and the pending extradition procedure before another domestic court, which became final by approving the extradition of the alien to another state, were pending concurrently, the Constitutional Court in its decision all too much engaged in a review of the circumstances which would justify the reasons for humanitarian asylum in this case. Thereby the Constitutional Court, in my opinion, all too much "burdened" the decision by asserting factual circumstances, and therewith possibly somehow "blurred" the real message of the decision. If the review in an asylum procedure leads to reasons for rejection, according to Article 4 of ZAzil, this provision must be implemented as *lex specialis* and the application for asylum must be rejected (Article 35 of ZAzil).

The evaluation of humanitarian reasons might become relevant in the review of the application of Article 6.1 of ZAzil regarding the prohibition of the forceful removal of an alien from the State. For there to be humanitarian reasons, the threat to an applicant in terms of torture or inhuman or degrading punishment or treatment must be present in the State of origin and its authorities (Article 1 of the United Nations Convention against Torture), or because of a general situation in this State. In the case given, in my opinion, the constitutional complainant did not succeed in establishing the circumstances of the first case with his assertions and thereby exclude the fact of the criminal procedure initiated against him in the State of origin due to a suspicion of the criminal offence of fraud. As far as the existence of general circumstances in the state of origin is concerned, in this case in the Russian Federation, they are not, in my opinion, entirely within the discretionary review of domestic courts. The courts may find the elements for the evaluation of this question in the executive power directly responsible for international relations with other states, or with the help of the United Nations High Commission for Refugees (Article 10 of ZAzil).

Dr. Mirjam Škrk
Judge

Dr. Zvonko Fišer
Judge