Up-282/15

5 October 2017

DECISION

At a session held on 5 October 2017 in proceedings to decide upon the constitutional complaint of Christa Haase, from the Republic of Austria, the Constitutional Court

d e c i d e d a s f o l l o w s :

Judgement of the Supreme Court No. X Ips 267/2013, dated 10 March 2015, and Judgement of the Administrative Court, Maribor Department, No. II U 491/2012, dated 19 June 2013, are annulled and the case is remanded to the Administrative Court, Maribor Department, for new adjudication.

R E A S O N I N G

A.

1. In a denationalisation procedure, the administrative body of first instance issued an additional decision by which it granted compensation to the complainant in the form of bonds issued by the Slovenian Compensation Company for the decreased value of the real property that was returned to the complainant in kind. In the appeal procedure, the second instance administrative body annulled this decision and dismissed the request of the complainant. The complainant challenged the decision of the appellate administrative body by filing an action in an administrative dispute; however, the Administrative Court dismissed the action and the Supreme Court dismissed the subsequent appeal on points of law that was filed against the judgement of the first instance court.

2. In the challenged judgements the courts concurred with the decision of the administrative body of the second instance that, in accordance with the second paragraph of Article 10 in connection with Article 12 of the Denationalisation Act (Official Gazette RS, Nos. 27/91-I, 31/93, 65/98 and 66/2000 – hereinafter referred to as the DenA), the complainant is not entitled to compensation for the decreased value of the real property of her father returned in kind that had been nationalised on the basis of the Decree on the Transfer of Enemy Property to State Ownership, on the State Administration of Property of Absent Persons and on the Confiscation of Property that Was Forcibly Taken by the Occupying Forces (Official Gazette DFY, No. 2/45 – hereinafter referred to as the AVNOJ Decree). Her father was namely entitled to obtain compensation for seized property on the basis of the Treaty on the Regulation of Damages Suffered by Exiled, Displaced and Persecuted Persons, on the Regulation of Other Financial Issues and Issues from the Social Field (the so-called Settlement of Disputes and Financial Issues Treaty, hereinafter referred to as the SDFIT),[1] which was concluded on 27 November 1961 by the Federal Republic of Germany (hereinafter referred to as the German FR) and the Republic of Austria, and on the basis of legislation adopted by the Republic of Austria for the implementation of the mentioned Treaty.[2] In the view of the courts, the assessment under the second paragraph of Article 10 of the DenA should not be based only on peace treaties and international agreements concluded or acceded to by the Federal People's Republic of Yugoslavia (FPRY) or the Socialist Federal Republic of Yugoslavia (SFRY) (both hereinafter referred to as the former Yugoslavia), but also on treaties concluded by two foreign states and on the laws of these states. As the definition of the subject of nationalisation in the provisions of the AVNOJ Decree, which represented the basis for nationalisation in the case at issue, points to the reparations character of this regulation, and the contracting parties concluded the SDFIT with the purpose of regulating open financial questions in connection with the time period from 13 March 1938 until 8 May 1945 and also in Annex 1 thereof determined the circle of persons who are entitled to the rights determined by this treaty, the courts agree with the assessment of the administrative body that the SDFIT, together with the regulations by which the Republic of Austria regulated compensation for these persons, represent a legal source that regulated compensation for property that was nationalised on the basis of the AVNOJ Decree. According to the courts, it is not relevant in which legal act a foreign state regulated the compensation, how the compensation was designated, how the amount thereof was determined, or whether the expropriated person at all requested compensation from the foreign state, in order to assess whether the person was entitled to receive compensation for nationalised property from the foreign state. The only decisive question is whether "in accordance with the law of the foreign state, there existed a possibility in principle to obtain compensation due to the nationalisation of property in the former Yugoslavia." If in the foreign state a right (although only in principle) to obtain compensation for the seized property existed, a claim under the provisions of the DenA is, in the view of the Supreme Court, entirely excluded even if the entitled person did not actually receive compensation from the foreign state. In assessing whether the excluding reason under the second paragraph of Article 10 of the DenA is fulfilled, an administrative body is not obliged to establish which concrete rights the entitled person would have under Austrian regulations, as this would entail the determination of compensation under such regulations, which would exceed deciding on denationalisation requests, and neither is it bound by certificates issued by Austrian state authorities confirming whether the expropriated person had the right to obtain compensation from the Republic of Austria. In the view of the courts, these certificates are certificates that concern foreign law in the sense of Article 12 of the

Private International Law and Procedure Act (Official Gazette RS, No. 56/99, hereinafter referred to as the PILPA) or Article 7 of the European Convention on Information on Foreign Law (The Law on Ratification of the European Convention on Information on Foreign Law, Official Gazette RS, No. 20/98, MP, No. 4/98 – MEKOTP), which can only be considered to be certificates on the existence of a valid legal basis for obtaining compensation from the Republic of Austria. Insofar as they confirm that an individual was not entitled to compensation under the SDFIT, they, however, only represent an opinion to which an administrative body is not bound, as it is "a decision of an Austrian authority on the determination of compensation" or "an opinion of this authority based on Austrian implementing legislation." Since during the procedure it was established that the complainant's father was a German national who moved to the Republic of Austria from the territory of the former Yugoslavia and had Austrian citizenship in the year 1948 and permanent residency in the Republic of Austria on 1 January 1960, the courts were also of the opinion that he fulfilled the conditions for obtaining compensation for property nationalised under the AVNOJ Decree, as they are determined by point 1 of section A and by point 6 of section C of Annex 1 of the SDFIT.

3. The complainant alleges a violation of the rights determined by the second paragraph of Article 14, Article 22, and Article 33 of the Constitution. She alleges that the challenged decisions are obviously false and lack any reasonable legal basis. She reproaches the courts for interpreting the second paragraph of Article 10 of the DenA arbitrarily, in a manner contrary to linguistic, teleological, and logical interpretations, and that they thus applied this provision contrary to the intent of the legislature, which was allegedly to prevent double compensation for nationalised property. In the view of the complainant, the mere possibility of exercising a "right in principle to compensation" that is available under the law of a foreign state cannot represent an obstacle to denationalisation as the right to obtain compensation for seized property from a foreign state within the meaning of the second paragraph of Article 10 of the DenA can allegedly only exist when it can actually be exercised. Such a view is allegedly also supported by Decision of the Constitutional Court No. Up-547/02, dated 8 October 2003 (Official Gazette RS, No. 108/03, and OdlUS XII, 106), and by Order of the Constitutional Court No. Up-584/05, dated 14 April 2006. The complainant alleges that the SDFIT and the regulations of the Republic of Austria to which the courts refer are not a legal basis for obtaining compensation for seized property from the Republic of Austria within the meaning of the second paragraph of Article 10 of the DenA since it allegedly follows from Decision of the Constitutional Court No. Up-547/02 that in relation to the Republic of Austria only the State Treaty for the Re-establishment of an Independent and Democratic Austria, dated 15 May 1955 (Official Gazette FPRY, MP, No. 2/56 – hereinafter referred to as the AST), and the Treaty on the Regulation of Certain Property Law Questions, concluded in 1980 by the SFRY and the Republic of Austria (Official Gazette FPRY, MP, No. 9/81 – hereinafter referred to as the Treaty with the Republic of Austria from 1980) can represent such a legal basis. The complainant is of the opinion that the courts should have interpreted the content of the SDFIT and the implementing regulations in accordance with the rules valid for interpreting international treaties, i.e. favourably, in accordance with the common meaning that needs to be attributed to expressions in the treaty (and implementing regulations), and in the context and in the light of the subject of this treaty and its objectives. As the courts allegedly did not do so, they allegedly interpreted these legal acts in an arbitrary manner, which allegedly led to the second paragraph of Article 10 of the DenA being applied contrary to the intent of the

legislature. Thereby they allegedly prevented the complainant, contrary to Article 33 of the Constitution, from exercising the rights she has under the DenA, and treated her in an unequal manner compared to entitled persons who are granted the right to denationalisation under the DenA solely on the basis of establishing that her father fulfilled some conditions for being granted the status of an entitled person under the SDFIT, contrary to the second paragraph of Article 14 of the Constitution and contrary to the reasons of Decision of the Constitutional Court No. Up-547/02.

4. By Order No. Up-282/15, dated 13 February 2017, the Constitutional Court accepted the constitutional complaint for consideration. In accordance with the first paragraph of Article 56 of the Constitutional Court Act (Official Gazette RS, Nos. 64/07 – official consolidated text, and 109/12 – hereinafter referred to as the CCA), it informed the Supreme Court of the acceptance of the constitutional complaint, and sent the constitutional complaint to the opposing party in the denationalisation procedure for a reply in accordance with the second paragraph of Article 56 of the CCA.

5. In its reply to the constitutional complaint, the opposing party states that the challenged decisions follow the established case law, according to which the laws by which individual foreign states regulated in their internal legislation compensation for property nationalised by the former Yugoslavia on the basis of concluded peace treaties or international agreements are also relevant for the assessment under the second paragraph of Article 10 of the DenA. The same view was allegedly also adopted by the Supreme Court in its Judgment No. I Up 428/2004, dated 9 March 2005, with regard to compensation under the German Equalisation of Burdens Act. The opposing party states that the property of the complainant's legal predecessor was nationalised under the AVNOJ Decree as the enemy's property. Since the subject of nationalisation defined in this manner allegedly shows the reparations character of this regulation, the SDFIT and the UVEG, by which the Republic of Austria regulated the right of persecuted persons, as determined by the SDFIT, to obtain compensation for seized property, are allegedly legal acts that derive from the rights of the winning states of World War Two to war reparations to the detriment of the aggressor states, and thereby are a legal basis within the meaning of the second paragraph of Article 10 of the DenA. The complainant's allegation that the potential existence of connecting factors with the Republic of Austria within the meaning of the second paragraph of Article 10 of the DenA can be established only on the basis of the provisions of the AST and the Treaty with the Republic of Austria from 1980 is allegedly unfounded. Such a view is allegedly not supported even by Decision No. Up-547/02, in which the Constitutional Court considered the existence of the excluding circumstances referred to in the second paragraph of Article 10 of the DenA only from the view of the concrete facts and only in the light of the provisions of the AST. The opposing party states that the Supreme Court decided on the question of recognising the UVEG as a legal basis under the second paragraph of Article 10 of the DenA already in its Judgement No. II Up 35/99, dated 20 January 2000, while allegedly the Constitutional Court decided by Order No. Up-142/00, dated 29 May 2001, not to accept for consideration a constitutional complaint against this judgement. It maintains that it is not relevant for the assessment in the case at issue that the compensation paid on the basis of the UVEG was granted only for certain kinds and a limited scope of movable property and that it was intended to ease the social hardship of persecuted and exiled persons. In the case law, an interpretation

has allegedly been established according to which “the compensation for seized property” under the second paragraph of Article 10 of the DenA represents each restitution that a foreign state has granted to the expropriated persons in connection with the nationalised property, and this regardless of whether it was given as compensation, social assistance, or maintenance payments, and regardless what damage or damage to what kind of property the foreign state took as the basis for determining its amount. Allegedly, it is only decisive that such restitution was granted due to the seizure (nationalisation) of property. In performing the assessment from the perspective of the second paragraph of Article 10 of the DenA, the deciding authorities are allegedly only bound by criteria that limit the obligation of the German FR determined in Article 1 of the SDFIT to share the cost of the financial expenditures that the Republic of Austria will incur due to the adoption of the statutory regulation of the restitution of material damage experienced by German nationals in relation to the events during and after World War Two. Allegedly, only the content of that part of the SDFIT falls into this framework, in which it was agreed that the groups of persons determined in Annex 1 of the SDFIT will be granted certain amounts of compensation and other benefits. As the SDFIT allegedly does not determine a limitation on compensation in relation to an income threshold, the limitation determined by the UVEG is allegedly of no relevance for the assessment. In view of the case law, according to which it is not relevant for the assessment under the second paragraph of Article 10 of the DenA whether the entitled person received any compensation at all from the foreign state or what amount of compensation was paid to him or her, it is allegedly understandable that within this assessment it is also not necessary to determine whether a compensation claim would be justified under the regulations of the foreign state at all. Allegedly, it suffices that a legal mechanism for remedying injustices arising from the seizure of property was available to the expropriated person in the foreign state. The regulation of the manner of remedying these injustices, however, allegedly falls entirely within the competence of the legislature of the foreign state that regulated the compensation within its margin of appreciation. There has allegedly also not been a case in the case law in which the deciding authorities, in making the assessment referred to in the second paragraph of Article 10 of the DenA, took into consideration the conditions determined by foreign states on the basis of concluded peace or international treaties for granting compensation for seized property. The interpretation of the second paragraph of Article 10 of the DenA supported by the complainant allegedly contradicts the purpose of the DenA and is therefore in contradiction with the teleological and logical interpretations of this provision. Allegedly, it also entails negative discrimination against the entitled persons with regard to their income as it allegedly leads to an absurd position in which only wealthier expropriated persons would be entitled to the return of property on the basis of the DenA, regarding whom the Austrian legislature already assessed that they do not need compensation for the seized property. Less wealthy expropriated persons, however, who were only entitled to socially-oriented compensation on the basis of the UVEG, would be completely excluded from denationalisation as, in accordance with the position expressed in Decision of the Constitutional Court No. Up-142/00, they would not even be entitled to the difference in the property value established on the basis of the DenA. The opposing party adds that it obtained (and also submitted in the case at issue) the expert legal opinions of Prof. Dr Bojan Bugarič and Dr Matija Damjan from October 2010 and January 2011, respectively, relating to the problem of compensation on the basis of the SDFIT and implementing regulations and of the income threshold under the UVEG, with which it concurs entirely and refers to.

6. In her reply to the statements of the opposing party, the complainant maintains her statements in the constitutional complaint as well as those submitted in the denationalisation procedure in which the challenged court decisions were issued. She is of the opinion that in Decision No. Up-547/02 the Constitutional Court already determined the unacceptability of the key position of the challenged decisions, which is allegedly based on the expert legal opinions to which the opposing party refers. In the mentioned Decision, the Constitutional Court allegedly explained that the circumstance that expropriated persons had a right in principle (on the basis of the second paragraph of Article 27 of the AST) to compensation for seized property from the Republic of Austria does not suffice for their exclusion from denationalisation on the basis of the DenA if the implementing regulations of the former Yugoslavia prevented the realisation of this (existing merely in principle) right.

B.

7. In the case at issue, the courts based their assessment that the complainant is not entitled to compensation for the decreased value of the property on the second paragraph of Article 10 of the DenA, which provides:

"Persons who obtained or had the right to obtain compensation for seized property from a foreign state are not entitled persons within the meaning of this Act. The competent authority shall determine *ex officio* on the basis of concluded peace treaties and international agreements whether a person was entitled to obtain compensation from a foreign state."

8. The challenged court decisions are based on a position according to which it suffices for the assessment that a person had the right to obtain compensation within the meaning of the mentioned provision that there existed a legal basis under the law of a foreign state which granted the expropriated persons a right to compensation, "although only in principle", for the seized property, whereby it is not necessary that the former Yugoslavia concluded a peace or international treaty that was a basis for the regulation of compensation in the law of a foreign state but that also international treaties concluded (only) between foreign states are to be considered. In accordance with this view, the Administrative Court and the Supreme Court held that the SDFIT concluded by the German FR and the Republic of Austria and regulations adopted by the Republic of Austria on the basis of this treaty represent a legal basis within the meaning of the second paragraph of Article 10 of the DenA. On the basis of the assessment that these legal acts enabled the complainant's predecessor to exercise a right in principle to obtain compensation for the seized property, the courts held that, on the basis of Article 12 of the DenA,[3] the complainant is not entitled to seek entitlements on the basis of the DenA.

9. The complainant does not agree with the view of the courts according to which the SDFIT, i.e. an international treaty concluded between two foreign states, and the

regulations adopted on the basis thereof by the Republic of Austria, can also represent a legal basis under the second paragraph of the DenA.[4] In her view, it follows from the existing constitutional case law that only those peace treaties or international agreements that were concluded or acceded to by the former Yugoslavia are relevant for the assessment whether a person had the right to obtain compensation for seized property from a foreign state within the meaning of the second paragraph of Article 10 of the DenA, in the case of compensation for nationalised property from the Republic of Austria, thus only the AST and the Treaty with the Republic of Austria from 1980.

10. By the regulation provided in the second paragraph of Article 10 of the DenA the legislature denied the right to denationalisation on the basis of the DenA to both persons who obtained compensation for seized property from a foreign state as well as to persons who could have been granted such compensation in accordance with the regulations of the foreign state had they enforced it. Proceeding from the aim pursued by the DenA and taking into account the principle of equal treatment determined by the second paragraph of Article 14 of the Constitution, the legislature excluded from denationalisation all persons to whom the law of a foreign state, on the basis of a concluded peace treaty or an international agreement, have already recognised the right to compensation for property seized in the former Yugoslavia, or to whom they would have recognised such right had such persons enforced it. In doing so, it prevented these persons from being returned nationalised property in one of the statutorily foreseen forms also on the basis of the DenA. In Order No. Up-584/05, the Constitutional Court explained that it suffices to decide on the non-recognition of the status of a person entitled to denationalisation due to the existence of a circumstance referred to in the second paragraph of Article 10 DenA if a previous owner had the right to obtain compensation for the seized property from a foreign state, whereby it is not even important whether he or she actually obtained it. In several of its decisions (e.g. in the already mentioned Decision No. Up-142/00), the Constitutional Court also explained that the DenA is not a legal basis for the payment of possibly unpaid or not entirely paid compensation to which former owners of nationalised property were entitled under the regulations of a foreign state.

11. The Constitutional Court explained already in Decision No. U-I-23/93, dated 20 March 1997 (Official Gazette RS, No. 23/97, and OdlUS VI, 43)[5] that property was seized in the period after World War Two when the former Yugoslavia was in ruins and its citizens were suffering from extensive war damage. As compensation for damage, reparations were awarded to the former Yugoslavia also internationally, and the treaties concluded with a number of foreign states on compensating their citizens for seized property testify that foreign citizens have already received compensation for seized property or that they were entitled to receive it. The Constitutional Court explained that the former Yugoslavia concluded several international agreements with foreign states, in accordance with which these states assumed the obligation to grant compensation for nationalised property to their citizens. In this respect, it highlighted the second paragraph of Article 27 of the AST,[6] in accordance with which the former Yugoslavia had the right to seize, withhold, or liquidate Austrian property, rights, and interests located on the territory of the former Yugoslavia at the moment this treaty came into force, and the Austrian government undertook to pay compensation to Austrian citizens whose property was seized in this manner.[7] The Constitutional Court also pointed out that the former Yugoslavia concluded a Treaty with the

Republic of Austria from 1980 regarding nationalisation that was carried out on the basis of the regulation under point 8 of the first paragraph of Article 3 of the DenA,[8] and that, also in accordance with this Treaty, a criterion for granting compensation was Austrian citizenship at the time of nationalisation. In that decision, the Constitutional Court also underlined the Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens, concluded on 19 July 1948 (Official Gazette of the Presidium of the People's Assembly of the FPRY, No. 25/51 – hereinafter referred to as the Agreement with the USA),[9] and international agreements with similar content that the former Yugoslavia also concluded with other foreign states (e.g. Hungary, Italy, Switzerland, and Turkey).[10] It stated that one of the criteria for compensation under these international agreements was the requirement that individuals were citizens of the foreign state at issue when property was nationalised,[11] and that it is evident from these and other international agreements that foreigners had a possibility to request compensation for seized property from the state of their citizenship, whereas Yugoslav citizens did not have such a possibility (points 36 to 39 of the reasoning of the mentioned decision).

12. In view of the above, the complainant's view that only international treaties that were concluded by the former Yugoslavia are relevant for the assessment whether the excluding reason referred to in the second paragraph of Article 10 of the DenA exists seems to be well founded at first glance. However, from the point of view of the purpose of the mentioned statutory regulation (i.e. to prevent double compensation for property whose return is regulated by the DenA), it cannot be said that the view of the courts, in accordance with which international agreements concluded (only) by foreign states are also to be considered in such assessment, in and of itself contradicts the mentioned purpose of the legislature if it follows from these agreements and regulations concluded on the basis thereof that the purpose of the contracting parties was (also) to regulate compensation for their citizens (or legal persons) for property that was nationalised in the territory of the former Yugoslavia.

13. The position according to which it is important for the assessment from the perspective of the second paragraph of Article 10 of the DenA that on the basis of a peace or international treaty a person had a possibility to obtain compensation precisely for nationalised property whose return is regulated by the DenA also follows from Decision No. Up-547/02. In that decision the Constitutional Court considered – from the perspective of the second paragraph of Article 14 of the Constitution – the view of the courts according to which persons who were Austrian citizens upon the entry into force of the AST were not entitled to denationalisation although they were Yugoslav citizens at the time of the nationalisation.[12] It adopted the position that it is decisive for the assessment of the status of a person entitled to denationalisation under the second paragraph of Article 10 of the DenA whether a person who was a Yugoslav citizen at the time of the nationalisation or who was considered to be a Yugoslav citizen also had the citizenship of a foreign state at the time of nationalisation from which he or she would have had a possibility to obtain, on the basis of a peace treaty or international agreement, compensation for property whose return is made possible by the DenA. In accordance with this position, which is also important for the assessment in the case at issue, the assessment that a person had the right to obtain compensation for seized property from a foreign state can only be based on previously establishing that the provisions of an individual peace treaty or

an international agreement and regulations adopted by a foreign country for the performance of obligations determined by such legal act enable the awarding of compensation precisely for property that is subject to denationalisation, thus property that was nationalised on the basis of regulations referred to in Articles 3 and 4 of the DenA or in the manner determined by Articles 4 or 5 of the DenA.[13]

14. The assessment whether the excluding reason referred to in the second paragraph of Article 10 of the DenA is fulfilled thus first and foremost depends on the assessment whether an individual peace treaty or international agreement and regulations adopted for the implementation of such act by a foreign state regulate the right to compensation for seized (confiscated or nationalised) property that is being returned on the basis of the DenA. As regards peace treaties or international agreements concluded or acceded to by the former Yugoslavia (e.g. the Peace Treaty with Italy, the AST, and other international treaties or agreements concluded by the former Yugoslavia with the Republic of Austria, the USA, Switzerland, or Turkey), such assessment is justified already by their content as they typically also explicitly regulate the question of compensating foreign citizens (or foreign legal persons) due to the seizure of their property in the territory of the former Yugoslavia. Thereby, the former Yugoslavia namely undertook to pay a certain amount of compensation to an individual foreign state for the property of its citizens (or legal persons) that was nationalised, while the foreign state renounced, in the name of these expropriated persons, invoking claims arising out of the nationalisation of property against the former Yugoslavia (or it declared that it would deem claims arising therefrom to be settled)[14] and undertook to regulate the compensation of its citizens (or legal persons) on this basis in its internal legislation.[15] In these cases it is deemed that by the payment of the restitution agreed to by these treaties or agreements the former Yugoslavia transferred its obligation to compensate expropriated persons for nationalisation to the state of their citizenship and the foreign state fulfilled this obligation in the manner regulated in its internal legislation in accordance with the commitment given in the peace treaty or in the international agreement. For the assessment of whether the excluding reason referred to in the second paragraph of Article 10 of the DenA is fulfilled, it thus suffices in such cases to establish that already a peace treaty or an international agreement regulated compensation for the property of citizens of an individual foreign state (or legal persons thereof) nationalised by the former Yugoslavia and that on the basis of such legal act the foreign state regulated compensation for seized property within its margin of appreciation in its internal legislation. In these instances, the authorities deciding therefore do not have to specifically establish whether persons who were citizens of that foreign state at the time of nationalisation had the right to obtain compensation or other appropriate restitution from that foreign state for property nationalised in the former Yugoslavia.

15. A different approach should be taken in cases such as the one at issue, where the peace treaty or the international agreement was not concluded by the former Yugoslavia or it did not accede thereto. In such cases, in particular when it is not clearly evident from such treaty whether the compensation it regulates (also) refers to property that was nationalised in the former Yugoslavia, the competent authority has to, when assessing whether an excluding reason under the second paragraph of Article 10 of the DenA exists, in accordance with Article 12 of the PILPA[16] and taking into consideration the rules on [the interpretation of] international treaties,[17]

determine whether by concluding an international treaty the foreign states intended to (also) regulate compensation or other appropriate restitution for property that was nationalised by the former Yugoslavia or whether this was the purpose of the regulation adopted by the legislature of an individual foreign state on the basis of such treaty. Only on the basis of such determination can it be concluded that a treaty concluded by two or more foreign states and regulations that one of these states adopted in order to implement such treaty can represent a legal basis within the meaning of the second paragraph of Article 10 of the DenA. It is therefore essential in such instances that the authority that decides in a particular denationalisation procedure, taking into consideration the rules on the interpretation of international treaties and foreign law, first answers the question of whether the purpose of the contracting parties was to regulate by the international treaty (also) compensation for property nationalised in the territory of the former Yugoslavia and whether by the regulations adopted on the basis of such a treaty the foreign state regulated the right of persons specified in the treaty to obtain compensation for lost property. Only an assessment that is based on the interpretation of these legal acts supported by arguments that these legal acts regulate a legal basis (also) for claiming and recognition of the right to obtain compensation for seized property from a foreign state can represent a basis for the assessment that the expropriated person had the right to obtain compensation for property nationalised by the former Yugoslavia.

16. In the challenged decisions the courts based the assessment that the mentioned legal acts represent a legal basis within the meaning of the second paragraph of Article 10 of the DenA on the following grounds: the German FR and the Republic of Austria concluded the SDFIT with the intent to regulate open financial questions relating to the time period from 13 March 1938 until 8 May 1945. This treaty established a legal basis for the German FR to share the cost of the financial expenditures of the Republic of Austria for the benefit of German nationals who settled on its territory (as persecuted or displaced persons). By the treaty, the German FR undertook to pay a certain pecuniary amount to this end to the Republic of Austria and the latter undertook to pay compensation to entitled persons on the basis of a special statutory regulation (determined by the first paragraph of Article 2 of the SDFIT). The courts determined that the Republic of Austria regulated the payment of compensation on the basis of the SDFIT with the KVSG/62, the Damage Registration Act, and the UVEG. In the KVSG/62 it provided a legal basis for requesting restitution for material damage that occurred due to the seizure, loss, or destruction of a household or residential equipment and of objects necessary for performing a profession to persons defined in Annex I of the SDFIT[18] as a consequence of the direct influence of war in the period between 1 September 1939 and 11 September 1945 or political persecution in the period between 6 March 1933 and 8 May 1945. The courts explained that in point 6 of Section C of Annex 1 of the SDFIT also persons who moved to the Republic of Austria or who were persecuted there from the territory of the former Yugoslavia were explicitly defined as persons entitled to receive compensation on the basis of the SDFIT,[19] whereby on the basis of the UVEG only those injured parties (displaced and persecuted persons) were entitled to compensation for damage to movable property defined by the KVSG/62 incurred by these persons due to the direct influence of World War Two during the war or immediately after it who had already registered this damage in accordance with the Damage Registration Act. On the basis of the above, the courts concluded that by adopting the mentioned regulations in which the Republic of Austria determined within its margin of appreciation the form of damage for which it would

pay compensation, the amount thereof, and social and other criteria,[20] it granted former owners of seized property a right in principle to compensation. Therefore, in the view of the courts, it is not relevant for the assessment under the second paragraph of Article 10 of the DenA in the case at issue for what kind of property the Republic of Austria decided to pay compensation and what its amount was, or that the UVEG and the Damage Registration Act denied persons who exceeded the income threshold determined by these two regulations the right to compensation.[21]

17. The complainant reproaches the courts for basing the key position of the challenged decision according to which the SDFIT and the regulations adopted on the basis thereof by the Republic of Austria represent a legal basis within the meaning of the second paragraph of Article 10 of the DenA on an irrational interpretation of the mentioned provision that is contrary to the intent of the legislature. Since with regard to entitlements on the basis of the DenA such interpretation allegedly places the complainant in an unequal position in comparison with persons who have a right to denationalisation under the DenA, the right to equality before the law determined by the second paragraph of Article 14 of the Constitution was allegedly violated in the procedure in which the challenged decisions were issued.

18. The principle of equality before the law determined by the second paragraph of Article 14 of the Constitution requires that essentially equal situations be treated equally.[22] In accordance with the established constitutional case law, there also follows from this principle the requirement that essentially different situations be treated accordingly differently. If essentially equal situations are treated differently or if essentially different situations are treated equally there must exist a sound reason that follows from the nature of the matter for such.[23] The principle of equality before the law, however, is binding not only on the legislature, but also on the executive and judicial branches of power.[24] In accordance with Article 125 of the Constitution, the courts are bound by the Constitution and law. This entails that it is the courts that are called upon to interpret statutory provisions; however, they have to interpret them in a constitutionally consistent manner. If statutory provisions may be interpreted in various manners, it lies within the competence of the courts to decide how they will interpret them in accordance with the rules of the interpretation of legal norms, but they must not choose an interpretation that would entail a violation of a human right or fundamental freedom.[25] Interpretation by the courts must not lead to discrimination that would be, if envisaged explicitly by the legislature, inconsistent from the perspective of the second paragraph of Article 14 of the Constitution.

19. In light of the allegation of the complainant that the courts based their decisions on an interpretation of the second paragraph of Article 10 of the DenA that is not acceptable from the perspective of the right to equality before law under the second paragraph of Article 14 of the Constitution, the Constitutional Court had to review the challenged decisions from the aspect of this human right. Thereby it did not assess whether in the challenged decisions the courts provided reasonable legal grounds for the assessment that the SDFIT and the regulations adopted by the Republic of Austria on the basis thereof represent a legal basis within the meaning of the second paragraph of Article 10 of the DenA as they regulate compensation for property that was nationalised in the former Yugoslavia.

20. The courts held that in assessing whether the excluding reason referred to in the second paragraph of Article 10 of the DenA is fulfilled, the deciding authorities are not obliged to establish which concrete rights the entitled person would have under Austrian regulations, as this would allegedly entail the determination of compensation under such regulations, which would allegedly exceed deciding on denationalisation requests under the DenA.[26] In the view of the courts, it namely suffices for the assessment whether with regard to a person seeking entitlements on the basis of the DenA the excluding reason referred to in the mentioned statutory provision is fulfilled to determine that the person had a possibility, in accordance with the law of a foreign state, to request compensation for seized property regardless of whether this compensation would have been granted to him or her in the foreign state or not. This entails that, in the view of the courts, the right to seek an entitlement arising out of denationalisation on the basis of the second paragraph of Article 10 of the DenA can also be denied to a person for whom it has only been established in concrete proceedings that he or she falls within the circle of persons who were entitled to request compensation under an international treaty although on the basis of the regulations adopted by the foreign state for the implementation of such treaty he or she could not have been granted such compensation even if he or she had requested it.

21. By the first sentence of the second paragraph of Article 10 of the DenA the legislature intended to prevent former owners of nationalised property who were entitled to compensation for seized property already in accordance with the law of a foreign state from achieving the return of such property also on the basis of the DenA. Therefore, it prevented not only persons who have obtained compensation for seized property from a foreign state from exercising entitlements arising from nationalisation, but also persons who had the right to obtain such compensation from a foreign state. By the nature of the matter, only a person who fulfilled all conditions determined for obtaining compensation from a foreign state could have the right to obtain compensation for seized property from a foreign state: not only the formal conditions determined by the foreign state for enforcing entitlements arising on this basis, but also all (substantive) conditions determined by the foreign state in its internal legislature for granting this compensation. Therefore, in cases such as the one at issue, in which the circumstances indicate that a person whose property was nationalised falls within the group of persons whom, on the basis of an international treaty, the law of a foreign state enabled to obtain compensation for seized property, the assessment whether this person had the right to obtain such compensation and thus whether the excluding reason determined by the second paragraph of Article 10 of the DenA is fulfilled can only be based on an assessment whether the person would actually be granted compensation for the seized property from the foreign state (if he or she had requested it) because he or she fulfilled all the conditions therefor. In a denationalisation procedure, the deciding authorities must thus determine on the basis of an interpretation of the individual international treaty and the regulations adopted by the foreign state for the implementation thereof (i.e. by the interpretation of foreign law), and by considering the circumstances of each concrete case, whether a person who in accordance with the international treaty and the regulations of the foreign state pertained to the circle of persons entitled to request compensation for seized property also fulfilled all conditions determined by these legal acts in order to be able to actually be granted compensation in the foreign state. In such, the party must also be given the possibility to prove all facts and circumstances in this regard that are decisive for the assessment. By Decision No. U-I-326/98, dated 14 October

1998 (Official Gazette RS, No. 76/98, and OdlUS VII, 190), in which the Constitutional Court considered the constitutionality of the second sentence of the second paragraph of Article 10 of the DenA, as amended by the DenA-B[27], the Constitutional Court namely highlighted that this statutory provision only includes a guideline given to administrative bodies as to how to establish whether a certain person had the right to obtain compensation from a foreign state and that administrative bodies must *ex officio* establish in accordance with the law regulating general administrative procedure which law to apply in a particular administrative case.[28] However, this does not deprive parties to denationalisation proceedings of their right to prove the facts and circumstances decisive for such assessment (point 55 of the reasoning of the mentioned decision).

22. In view of the above, the assessment in the case at issue whether the complainant's legal predecessor had the right, on the basis of the regulations adopted by the Republic of Austria for the implementation of the SDFIT, to obtain compensation for seized property could only be based on establishing that he would have obtained such compensation from the Republic of Austria had he requested it. This is all the more the case as it follows from the reasoning of the challenged judgments that compensation on the basis of the UVEG[29] could only be granted to those persons (displaced and persecuted persons) who fulfilled all conditions determined for the registration of damage by the Damage Registration Act,[30] as well as all conditions determined for being granted compensation by the UVEG,[31] and the complainant alleged throughout the procedure and attempted to prove by means of certificates issued by the competent Austrian authorities that due to the nonfulfillment of these conditions neither herself nor her legal predecessor would have had the right to be granted compensation on the basis of the mentioned regulations.

23. The courts, however, did not deal with the question of whether the complainant's legal predecessor had any right to obtain compensation on the basis of the regulations adopted by the Republic of Austria for the implementation of the SDFIT. They namely based the assessment that he did have such a right on an interpretation according to which it suffices to be excluded from denationalisation on the basis of the first sentence of the second paragraph of Article 10 of the DenA already if there "existed a right (although only in principle) to obtain compensation for seized property from the foreign state." With regard to a person seeking entitlements on the basis of the DenA, this "right in principle" existed in the view of the courts already if under the general provisions of an international treaty this person fell within the circle of persons entitled to request compensation for seized property from the foreign state although he or she would not have been able to obtain this compensation (due to the nonfulfillment of the conditions determined by the regulations adopted to implement this treaty by the foreign state) even if he or she had requested it. Such interpretation equates the position of these persons with regard to the possibility of seeking entitlements under the DenA with the position of persons to whom the legislature denied the right to denationalisation by the first sentence of the second paragraph of Article 10 of the DenA because they had already obtained compensation for seized property from the foreign state or because they already had the right to obtain such compensation. However, the positions of these groups of persons are essentially different. Therefore, the challenged interpretation would be acceptable from the perspective of the principle of equality before the law under the second paragraph of

Article 14 of the Constitution only if there existed a sound reason that follows from the nature of the matter.

24. The circumstance that "there existed a right (although only in principle) to obtain compensation for seized property in a foreign state" without it having been determined that the person seeking entitlements on the basis of the DenA actually had the right to obtain this compensation from the foreign state had he or she requested it (on the basis of this "right in principle") cannot represent a sound reason for differentiation that follows from the nature of the matter. Were the legislature to use such a circumstance as a criterion on the basis of which these persons should be treated in the same manner with regard to the possibility to seek entitlements pursuant to the DenA as persons who were explicitly excluded from denationalisation because they had already obtained compensation or because they already had the right to obtain compensation from a foreign state, it would also deny, contrary to the purpose of the first sentence of the second paragraph of Article 10 of the DenA, persons who were not at all entitled to obtain compensation for seized property from a foreign state the right to denationalisation. Therefore, the interpretation of the first sentence of the second paragraph of Article 10 of the DenA which equates the positions of both groups of persons, which are essentially different, without a sound reason that follows from the nature of the matter existing therefore is not acceptable from the perspective of the right to equality before the law pursuant to the second paragraph of Article 14 of the Constitution.

25. As the Administrative Court and the Supreme Court based the challenged court decisions on an interpretation of the first sentence of the second paragraph of Article 10 of the DenA that represents a violation of the second paragraph of Article 14 of the Constitution, the Constitutional Court annulled the challenged judgments and remanded the case to the Administrative Court for new adjudication. Thereby the court will have to take into consideration the reasoning of this decision and decide anew on the complainant's claim.

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26. The Constitutional Court adopted this Decision on the basis of the first paragraph of Article 59 of the CCA, composed of: Dr. Jadranka Sovdat, President, and Judges Dr. Matej Accetto, Dr. Dunja Jadek Pensa, DDr. Klemen Jaklič, Dr. Etelka Korpič – Horvat, Dr. Špelca Mežnar, Dr. Marijan Pavčnk and Marko Šorli. Judge Dr. Rajko Knez was disqualified from deciding in the case. The decision was reached unanimously.

Dr. Jadranka Sovdat

President

[1] *Vertrag zwischen der Republik Österreich und der Bundesrepublik Deutschland zur Regelung von Schäden der Vertriebenen, Umsiedler und Verfolgten, über weitere finanzielle Fragen und Fragen aus dem sozialen Bereich (Finanz- und Ausglaichsvertrag*, BGBl, No. 76/62).

[2] In this context, the courts refer to the Act on Securing Restitution for Damage which Occurred to Household or Residential Equipment or to Objects Necessary for Performing a Profession, due to the War or Political Persecution, dated 25 June 1958 (*Kriegs- und Verfolgungssachschädengesetz*, BGBl, No. 127/58 – KVSG), which was supplemented by the Act on Expanding the Field of Application of the Act on the Restitution for Damage due to the Occupation, dated 13 June 1962 (*Erweiterung des Anwendungsbereiches des Besatzungsschäden-und des Kriegs- und Verfolgungssachschädengesetz*, BGBl, No. 176/62 – hereinafter referred to as the KVSG/62), to the Act on the Restitution for Damage to Displaced and Persecuted Persons, dated 13 June 1962 (*Umsiedler- und Vertreibenen-Entschädigungsgesetz*, BGBl, No. 177/62 – hereinafter referred to as the UVEG), and to the Act on the Registration of Material Damage that occurred due to Displacement or Deportation, dated 14 December 1961 (*Anmeldegesetz*, BGBl, No. 12/62 – hereinafter referred to as the Damage Registration Act).

[3] Article 12 of the DenA regulates the position of a so-called substitute person entitled to denationalisation. In accordance with this provision, when a natural person under Article 9 of the DenA is not an entitled person under the DenA (because he or she does not fulfil the criteria determined in the DenA relating to citizenship at the time of nationalisation), the person entitled to denationalisation is the spouse of such person or his or her heir of the first order if this person was recognised Yugoslav citizenship in accordance with the regulations defined in the first paragraph of Article 9 of the DenA.

[4] It follows from the judicial decisions challenged by the complainant in the case at issue and from decisions adopted by the Administrative Court and the Supreme Court in cases of the same type, which are available on the website IUS-INFO, that the Slovenian Compensation Company, d.d., Ljubljana, as the entity liable for denationalisation in individual denationalisation procedures (now Slovene Sovereign Holding, d.d., Ljubljana, which is the opposing party in the constitutional complaint procedure at issue) started to cite the SDFIT (and implementing regulations) as a relevant legal basis within the meaning of the second paragraph of Article 10 of the DenA only at the end of 2010 or the beginning of 2011. Thereby it referred to the expert legal opinions to which the opposing party also refers in its reply to the constitutional complaint. It follows from these decisions, *inter alia*, that in this respect the Supreme Court first adopted the legal position challenged by the complainant in the case at issue in its judgment No. X Ips 85/2013, dated 27 November 2014, issued in connection with judgement of the Administrative Court No. I U 278/2012, dated 22 January 2013. A constitutional complaint was lodged against the mentioned decisions; however, by Order No. Up-148/15, dated 13 March 2015, the Constitutional Court decided not to accept it for consideration.

[5] The mentioned decision was adopted before the Act Amending the DenA (Official Gazette RS, No. 65/98 – hereinafter referred to as the DenA-B) came into force, which supplemented the second paragraph of Article 10 of the DenA with the provision that the competent authority shall determine *ex officio* on the basis of concluded peace treaties and international agreements whether a person was entitled to receive compensation from a foreign state.

[6] The AST was signed on 15 May 1955 and entered into force on 27 June 1955 after the instruments of ratification had been deposited by all five contracting parties (the Soviet Union,

Great Britain, and the USA on one side, and Austria on the other). The former Yugoslavia acceded (within the meaning of Article 37 of the AST) to this treaty on 28 November 1955.

[7] On the basis of this provision of the AST, the Republic of Austria adopted a law for the implementation of the AST (11. *Staatsvertragsdurchführungsgesetz*, BGBl., No. 47/62), in accordance with which natural and legal persons whose property, rights, and interests were seized, retained, or liquidated by the former Yugoslavia in accordance with the second paragraph of Article 27 of the AST were entitled to receive compensation from the Republic of Austria if they had Austrian citizenship on 28 November 1955 or were based in the territory of the Republic of Austria on 15 May 1945 and 28 November 1955. As a prerequisite for being entitled to the compensation determined by this law, it had to be established that the property was nationalised in accordance with the second paragraph of Article 27 of the AST, which was communicated to the Austrian authorities by the Yugoslav powers. The competent authorities of the former Yugoslavia determined whether property was nationalised under the second paragraph of Article 27 of the AST on the basis of the Decree on the Liquidation of Austrian Property on the Basis of the AST (Official Gazette FPRY, No. 6/57 – hereinafter referred to as the Decree) and the Instructions for the Implementation of the Decree (Official Gazette FPRY, No. 4/67). (See points 26 and 27 of the reasoning of Decision of the Constitutional Court No. Up-547/02.)

[8] The regulation in question is the Law on the Nationalisation of Private Economic Enterprises (Official Gazette FPRY, Nos. 98/46, 35/48).

[9] The Agreement with the USA regulated the question of compensation for American property due to nationalisation and other property seizures between 1 September 1939 and the day of the conclusion of this agreement, according to which only those persons were entitled to compensation who had American citizenship at the time of nationalisation or other seizures.

[10] In the mentioned decision, the Constitutional Court also highlighted that by the first paragraph of Article 3 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette RS, No. 1/91-I), the Republic of Slovenia explicitly regulated the legal succession of international treaties concluded by the former Yugoslavia. Therefore it is also obliged and entitled under Article 8 and under the second paragraph of Article 153 of the Constitution to take these treaties into consideration in legislative regulation.

[11] In this regard, the Constitutional Court referred by way of example to the second paragraph of Article 5 of the Agreement between the FPRY and the Swiss Confederation, which concerns the compensation of Swiss interests in Yugoslavia affected by nationalisation, expropriation, and limitation measures (Official Gazette FPRY, No. 16/49 – hereinafter referred to as the Agreement with Switzerland), and to Article 6 of the Protocol on Compensation for Turkish Property and for Property Interests in Yugoslavia (Official Gazette FPRY, No. 23/50 – hereinafter referred to as the Protocol with Turkey).

[12] In the mentioned decision, the Constitutional Court held that this position places persons who were considered Yugoslav citizens upon nationalisation and who were Austrian citizens at the time the AST came into force in an unequal position with regard to exercising the right to denationalisation compared to those entitled persons who, as Yugoslav citizens, are recognised the right to denationalisation under the DenA. Due to a violation of the right to equality before the law under the second paragraph of Article 14 of the Constitution, the Constitutional Court annulled the challenged court decisions.

[13] In accordance with Article 3 of the DenA, persons entitled to denationalisation are natural and legal persons whose property was nationalised on the basis of the regulations enumerated in this Article. In accordance with Article 4 of the DenA, natural and legal persons whose property was nationalised without payment on the basis of a regulation adopted before the Constitution of the SFRY from 1963 came into force that is not listed in Article 3 of the DenA or on the basis of a measure of a state body without a legal basis are also entitled to denationalisation. In accordance with Article 5 of the DenA, a natural or legal person whose objects or property became state property on the basis of a legal transaction concluded due to a threat, force, or contrivance of a state body or a representative of state power also count as persons entitled to denationalisation.

[14] See, e.g., Articles 1 and 3 of the Treaty with the Republic of Austria from 1980, Article 1 of the Agreement with the USA, Articles 1 and 3 of the Agreement with Switzerland, and Articles 5 and 9 of the Protocol with Turkey.

[15] See, e.g., the third paragraph of Article 79 of the Peace Treaty with Italy (Official Gazette FPRY, No. 104/47), the second sentence of the second paragraph of Article 27 of the AST, and Article 5 of the Treaty with the Republic of Austria from 1980.

[16] Article 12 of the PILPA provides:

"(1) The court or another competent authority shall ascertain *ex officio* the content of the foreign law applicable.

(2) The authority referred to in paragraph one of this Article may request information on the foreign law from the ministry responsible for justice or may ascertain the content in any other appropriate manner.

(3) In the course of proceedings, parties may produce a public or other document on the content of the foreign law issued by a competent foreign authority or institution.

(4) If regarding a particular relationship the content of a foreign law cannot be established, the law of the Republic of Slovenia shall apply."

[17] Meaning the general rules on the interpretation thereof also defined by the Vienna Convention on the Law of Treaties (Official Gazette SFRY, MP, No. 30/72, and the Official Gazette RS, No. 35/92 – hereinafter referred to as the Vienna Convention), the new translation of which was published in the Official Gazette RS, No. 87/11, Mp, No. 13/11. In accordance with the first paragraph of Article 31 of the Vienna Treaty, a treaty must be interpreted (1) in good faith, (2) in accordance with the ordinary meaning to be given to the terms of the treaty, (3) in their context, and (4) in the light of its object and purpose. The context comprises, *inter alia*, any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (point b) of the third paragraph of Article 31), and any relevant rules of international law applicable in the relations between the parties (point c) of the third paragraph of Article 31). In accordance with the explicit provision of Article 4 of the Vienna Convention, the Convention applies only to treaties which are concluded by states after the entry into force of the Convention with regard to such states. The Convention was signed on 23 May 1969 in Vienna and it entered into force on 27 January 1980. Customary international law applies to treaties concluded before the Convention came into force (thus also with regard to the SDFIT). Such law comprises principles and interpretation rules that were developed in case law and legal theory and which in terms of content do not depart from the rules of interpretation determined by the Vienna Convention (*Cf.* point 20 of the reasoning of Decision No. Up-547/02).

[18] In this respect, the courts state that the persons entitled to the compensation defined by point A of Annex 1 of the SDFIT are persecuted and displaced persons who are Austrian or German citizens or who have German nationality, in particular those persons whose citizenship is not clear who had permanent residence in Austria on 1 January 1960, or who returned or came to Austria after 1 January 1960 in order to reunite with family, or to return to their homeland and who had been there at least six months at the time of filing a request, or who after having lived at least six months in Austria moved from Austria before 1 January 1960 to the Federal Republic of Germany and had a permanent residence there on 1 January 1960. The first paragraph of point B of Annex 1 of the SDFIT, however, as the courts state, defines persecuted persons as Austrian citizens, German citizens, or persons of German nationality without any of these citizenships who had permanent residence in territory outside the Republic of Austria and outside the borders of the German Reich according to the legal status of the territory on 31 December 1937 and who, in connection with the events of World War Two or due to the consequences of these events, lost this permanent residence due to persecution or deportation.

[19] See point 15 of the reasoning of the challenged judgment of the Administrative Court and point 24 of the reasoning of the challenged judgment of the Supreme Court.

[20] See point 12 of the reasoning of the challenged judgment of the Administrative Court and points 22 and 23 of the reasoning of the challenged judgment of the Supreme Court.

[21] See point 38 of the reasoning of the judgment of the Supreme Court.

[22] *Cf.* Constitutional Court Decisions No. U-I-68/04, dated 6 April 2006 (Official Gazette RS, No. 45/06, and OdlUS XV, 26), point 14 of the reasoning; No. U-I-275/05, dated 6 December 2007 (Official Gazette RS, No. 118/07, and OdlUS XVI, 85), point 7 of the reasoning; No. U-I-218/07, dated 26 March 2009 (Official Gazette RS, No. 27/09, and OdlUS XVIII, 12), point 22 of the reasoning; No. U-I-287/10, dated 3 November 2011 (Official Gazette RS, No. 94/11), point 12 of the reasoning; and Nos. U-I-57/15, U-I-2/16, dated 14 April 2016 (Official Gazette RS, No. 31/16), point 9 of the reasoning.

[23] *Cf.* Constitutional Court Decisions No. U-I-18/11, dated 19 January 2012 (Official Gazette RS, No. 9/12), point 9 of the reasoning; No. U-I-149/11, dated 7 June 2012 (Official Gazette RS, No. 51/12), point 7 of the reasoning; No. Up-109/12, dated 23 October 2014 (Official Gazette RS, No. 81/14), point 13 of the reasoning; and No. U-I-177/15, dated 5 May 2016 (Official Gazette RS, No. 36/16), point 8 of the reasoning.

[24] *Cf.* Constitutional Court Decisions No. Up-336/03, dated 10 February 2005 (Official Gazette RS, No. 18/05, and OdlUS XIV, 34), point 7 of the reasoning; and No. Up-1727/08, dated 1 April 2010 (Official Gazette RS, No. 33/10), point 10 of the reasoning.

[25] *Cf.* Decision of the Constitutional Court No. Up-492/11, dated 9 May 2013 (Official Gazette RS, No. 47/13), point 6 of the reasoning.

[26] See point 15 of the reasoning of the challenged judgment of the Administrative Court and point 36 of the reasoning of the challenged judgement of the Supreme Court.

[27] The mentioned decision was issued in a procedure initiated upon a petition by which the petitioner claimed that the regulation was inconsistent with the Constitution as it allegedly excluded the possibility of entitled persons proving by themselves legally relevant facts relating to the existence of the right to compensation for seized property from a foreign state.

[28] In this respect, the Constitutional Court referred to Article 163 of the then valid General Administrative Procedure Act (Official Gazette SFRY, No. 47/86 – ZUP/86). The regulation determined by Article 168 of the currently valid General Administrative Procedure Act (Official Gazette RS, Nos. 24/06 – official consolidated text, 126/07, 65/08, 8/10 and 82/13 – ZUP) is the same in terms of content.

[29] In accordance with the UVEG, the entitled persons were granted compensation in the amount calculated on the basis of a special point system (determined in the Annex to the UVEG), according to which points were allocated to individual household objects or residential equipment and to objects necessary for performing a profession.

[30] In the first paragraph of Article 11 the Damage Registration Act determined an income threshold in the amount of at least 72,000 schillings as a prerequisite for the registration of damage giving rise to rights on the basis of the UVEG.

[31] The second paragraph of Article 6 of the UVEG determined that persons whose income exceeded 72,000 schillings in the year 1955 are not entitled to compensation on the basis of this Act.