



Up-624/11
3 July 2014

DECISION

At a session held on 3 July 2014 in proceedings to decide upon the constitutional complaint of Primož Skerbiš, Slovenske Konjice, represented by Saša Jenčič, attorney in Maribor, the Constitutional Court

decided as follows:

The constitutional complaint against Supreme Court Judgment No. VIII Ips 2/2011, dated 21 February 2011, is dismissed.

REASONING

A

1. On 24 June 2004, the complainant's employer warned the complainant, in written form and on the basis of the first paragraph of Article 83 of the Employment Relationship Act (Official Gazette RS, Nos. 42/02 and 103/07 – hereinafter referred to as the ERA/02), of violations of the obligations stemming from the employment relationship. By this warning, the complainant was also warned, in conformity with the law, that his employment contract would be terminated if the violations were repeated. Due to further violations of the employment obligations, the employment contract of the complainant was terminated on 19 December 2005 for breach of obligations.

2. The court of first instance dismissed the complainant's claim that the termination of the employment contract with notice for breach of obligations was illegal. It established that the employer acted in conformity with the first paragraph of Article 83 of the ERA/02 when it warned the complainant in writing to fulfil his employment obligations and of the possibility of the termination of the employment contract in the event of a new violation. The Higher Labour and Social Court dismissed the complainant's appeal and the

Supreme Court dismissed his revision by Judgment No. VIII Ips 360/2007, dated 6 April 2009. By Decision No. Up-803/09, dated 9 December 2010 (Official Gazette RS, No. 2/11), the Constitutional Court abrogated this Judgment and remanded the case to the Supreme Court for new adjudication. In this Decision, the Constitutional Court established that at the time of the decision-making of the Supreme Court, Decision of the Constitutional Court No. U-I-45/07, Up-249/06, dated 17 May 2007 (Official Gazette RS, No. 46/07, and OdlUS XVI, 28), had already taken effect. It assessed that the complainant's right to effective judicial protection (the first paragraph of Article 23 of the Constitution) had been violated because the Supreme Court based its judgment on the first paragraph of Article 83 of the ERA/02, which the Constitutional Court had already established was inconsistent with the first paragraph of Article 23 of the Constitution by Decision No. U-I-45/07, Up-249/06 – which had been published in the Official Gazette of the Republic of Slovenia already before the revision was filed and should have been known to the Supreme Court when deciding.

3. By Decision No. U-I-45/07, Up-249/06, the Constitutional Court established that the first paragraph of Article 83 of the ERA/02 did not determine how much time after a written warning an employer could, on the basis of such warning and in the event of a new violation, terminate the employment contract of an employee. At the same time, the ERA/02 did not envisage special judicial protection against a written warning; it was only possible to claim that such written warning was unfounded in the procedure for the review of the legality of the termination of the employment contract. In such manner, the judicial protection was somewhat distant in time from when the warning was issued, therefore its effectiveness could be questionable. However, the Constitutional Court stressed that the mere fact of the passage of time does not by itself mean that such judicial protection is always ineffective. It may only be ineffective if such passage of time was so long that proving that the written warning was unfounded would be made substantially difficult. With the intention to prevent violations of the right to effective judicial protection in the procedures for terminating an employment contract with notice on grounds of a breach of obligations until the ERA/02 is harmonised with the Constitution, the Constitutional Court also determined the manner of the implementation of its declaratory decision. It determined that an employer can only terminate an employee's employment contract for breach of obligations on the basis of a written warning issued within a period of one year at most before a new violation by the employee occurs.

4. In the case at issue, the Supreme Court decided for the second time, by the challenged Judgment, on the complainant's revision and once again dismissed it. In its Judgment it explained that it did not observe Decision of the Constitutional Court No. U-I-45/07, Up-249/06 in such a manner so as to

abrogate or modify the final judgment just because the termination of the employment contract with notice was not communicated within the time limit of one year after the initial written warning was issued. It is of the opinion that due to its action after the [expiration of the] one-year time limit one cannot reproach the employer for acting unlawfully, because in 2005 the employer was not able to expect that in 2007 the unconstitutionality of the statutory regulation would be established. In its judgment, the Supreme Court assessed that a decision of the Constitutional Court that would have retroactive effects is not recognised by either the Constitution or the Constitutional Court Act (Official Gazette RS, Nos. 64/07 – official consolidated text and 109/12 – hereinafter referred to as the CCA). In conformity with the first paragraph of Article 161 of the Constitution and on the basis of Article 43 of the CCA, an abrogation of a law only has *ex nunc* effect, i.e. from the day following the publication of the decision of the Constitutional Court in the Official Gazette of the Republic of Slovenia or from the expiration of the time limit imposed by the Constitutional Court. In accordance with the position of the Supreme Court, all that applies regarding a Constitutional Court decision on abrogation allegedly also applies regarding a declaratory decision of the Constitutional Court. Therefore, Decision of the Constitutional Court No. U-I-45/07, Up-249/06, which established the unconstitutionality of the first paragraph of Article 83 of the ERA/02, allegedly cannot affect the legality of the termination of an employment contract that was communicated two years before this Decision was adopted. The Supreme Court is of the opinion that it would be contrary to the principle of legal certainty (Article 2 of the Constitution) if decisions on the establishment of an unconstitutionality applied without time limitations, i.e. also for all the past relations that were based on the statutory provision that was later established to be inconsistent with the Constitution. In [such] labour disputes, courts assess whether the employer's conduct was in conformity with the law that was in force when it adopted the decision to terminate the employment contract; subsequent legislative amendments, as well as how a decision of the Constitutional Court determines its manner of implementation, cannot have an influence on the decision-making in a labour dispute. In the opinion of the Supreme Court, in accordance with literal and teleological interpretations, also the manner of implementation determined by Decision of the Constitutional Court No. U-I-45/07, Up-249/06 can only refer to future relations, i.e. it can only apply to those employers who are yet to terminate the employment contracts of their employees. The application of the mentioned manner of implementation in the judicial proceedings at issue would allegedly entail conduct contrary to the prohibition of the retroactive validity of legal acts determined by the first paragraph of Article 155 of the Constitution and the principle of finality determined by Article 158 of the Constitution.

5. Regardless of the above, the Supreme Court adds that it observed Decision of the Constitutional Court No. U-I-45/07, Up-249/06 in such manner that it

based its decision on the reasons from that Decision and in conformity therewith assessed whether it was substantially difficult for the complainant to challenge the written warning in the judicial proceedings. It assessed that the complainant's right determined by the first paragraph of Article 23 of the Constitution had been not violated, because the passing of time had no influence on his right to effective judicial protection, and in addition it established that in the judicial proceedings the complainant did not even allege that the written warning was unfounded.

6. In his constitutional complaint, the complainant claims a violation of the right to judicial protection (the first paragraph of Article 23 of the Constitution) and the right to the equal protection of rights (Article 22 of the Constitution) as the procedural expression of the general principle of equality before the law (the second paragraph of Article 14 of the Constitution). His right to judicial protection was allegedly violated due to the length of the period (18 months) that passed between the [issuance of the] written warning issued due to the violation of employment obligations and the termination of the employment contract due to new violations. Allegedly, due to the fact that too much time had passed since the events, he was not able to effectively challenge before the courts the well-foundedness of the written warning. He also warns that at the time when he received the written warning there existed no statutory possibility to challenge it and also the case law did not allow it. Allegedly, his right to the equal protection of rights was violated, because the Supreme Court failed to observe Decision of the Constitutional Court No. U-I-45/07, Up-249/06, by which the Constitutional Court established the inconsistency of Article 83 of the ETA/02 with the right to effective judicial protection. The complainant is of the opinion that the manner of implementation determined by this Decision of the Constitutional Court should also apply to him, because his case allegedly concerns an equal state of the facts and statutory basis. He also refers to the Act Amending the Employment Relationships Act (Official Gazette RS, No. 103/07 – ERA-A), by which also the legislature determined the period that still ensures effective judicial protection to be one year.

7. By Order of a panel of the Constitutional Court No. Up-624/11, dated 25 April 2012, the Constitutional Court accepted the constitutional complaint for consideration. It informed the Supreme Court thereof.

8. The constitutional complaint was sent to the opposing party in the labour dispute, which proposes that the Constitutional Court dismiss the constitutional complaint, because the alleged violation of Article 23 of the Constitution is not demonstrated. It alleges that the complainant used judicial protection to admit before the courts the violations alleged in the written warning, whereas he could have challenged the validity of the written warning as regards the passage of time since its issuance by means of at least three proceedings,

which he did not initiate. In the opinion of the opposing party, the complainant's allegation of a violation of the right to effective judicial protection after seven years of judicial proceedings entails an abuse of rights. By finding for the [complainant's] constitutional complaint, also the principle of legality would be violated, in the opinion of the opposing party, because the opposing party acted in conformity with the legislation in force at the time. The subsequent amending of legislation should not retroactively affect its past conduct. The complainant did not reply to the allegations of the opposing party.

B – I

9. In the case at issue, the complainant substantiates the allegation regarding the violation of Article 22 and the first paragraph of Article 23 of the Constitution by alleging that the Supreme Court did not act in conformity with Decision of the Constitutional Court No. U-I-45/07, Up-249/06, by which the inconsistency of Article 83 of the ERA/02 with the right to effective judicial protection was established. In light of that, two important constitutional questions arise in the case at issue that the Constitutional Court must provide answers to: (1) what would the constitutionally consistent conduct of regular courts be when they are faced with a so-called declaratory decision of the Constitutional Court and (2) what, in concrete judicial proceedings, are the legal effects of the manner of implementation that the Constitutional Court can determine in its decisions on the basis of the second paragraph of Article 40 of the CCA.

10. The Constitution contains no provisions on declaratory decisions of the Constitutional Court.[1] They were only introduced by the CCA, whose Article 48 determines that if an unconstitutional or unlawful regulation does not regulate a certain issue which it should regulate or it regulates such in a manner which does not enable annulment or abrogation, the Constitutional Court shall adopt a declaratory decision on such.[2] There are no special provisions in the CCA on the legal effects of declaratory decisions; however, the Constitutional Court has adopted several decisions on that matter. In Decision No. Up-758/06, dated 6 December 2007 (Official Gazette RS, No. 119/07, and OdlUS XVI, 118), the Constitutional Court stressed that a declaratory decision that refers to statutory provisions cannot have more strict (more severe) legal consequences than those of a decision on abrogation determined by Article 44 of the CCA.[3] In the same Decision, the Constitutional Court also repeated the position from the previous constitutional case law that the determination of the unconstitutionality of a statutory provision does not entail that in (administrative and judicial) procedures such a provision may no longer be applied.[4] The establishment of unconstitutionality entails that such a provision must be applied in such a manner that its

application will not be contrary to the reasons that led the Constitutional Court to establish its inconsistency with the Constitution. When reviewing the constitutionality of regulations, the operative provisions and the reasoning of the decision form a whole, therefore not only are the operative provisions binding, but also the reasons and positions contained in the reasoning. With respect to declaratory decisions, this also applies in the event the operative provisions of the decision do not explicitly refer to the reasons contained in the reasoning.[5] Therefore, a declaratory decision entails the duty of the courts to interpret the law in a constitutionally consistent manner, which is what on the constitutional level follows already from Article 125 of the Constitution, in accordance with which judges are not only bound by law when judging, but also and foremost by the Constitution. From the above it follows that with regard to statutory provisions, declaratory decisions – as is the case regarding decisions on abrogation – do not have retroactive (*ex tunc*) effects such as the annulment of an implementing regulation, but only have *ex nunc* effects. *Ratione temporis*, the effects of a declaratory decision are the same as the effects of an abrogation. This also means that Article 44 of the CCA, which explicitly determines only the legal effects of the abrogation of a law, is *mutatis mutandis* also applicable regarding declaratory decisions.[6] In such context, the hitherto positions of the Constitutional Court that otherwise were adopted with regard to the effects of decisions on abrogation must also be *mutatis mutandis* observed with regard to declaratory decisions.[7]

11. On the basis of the above, it is possible to establish that from Article 125 of the Constitution and *mutatis mutandis* application of Article 44 of the CCA it follows that a declaratory decision of the Constitutional Court applies to all relations that had been established before the day such declaratory decision took effect if by that day such relations had not been finally decided. Therefore, in all proceedings that have not hitherto been finally decided, the courts must observe the declaratory decision of the Constitutional Court, namely in such a manner that they apply the unconstitutional statutory provision in such a manner that its application is not contrary to the reasons that led the Constitutional Court to establish its unconstitutionality.

12. Due to the institute of constitutional complaints[8], in conformity with which it is possible, in conformity with the Constitution and the CCA, to affect final decisions[9], an established position of the Constitutional Court with regard to the legal effects of decisions to abrogate adopted in proceedings for the review of the constitutionality and legality of regulations is that the abrogation of a statutory provision must also be observed in constitutional complaint proceedings[10] and consequently – due to the fact that in order to file a constitutional complaint also the formal and substantive exhaustion of all (including extraordinary) legal remedies is required[11] – also in extraordinary legal remedy proceedings.[12] Extraordinary legal remedies filed in conformity

with the conditions determined by procedural laws and a constitutional complaint filed in conformity with the conditions determined by the CCA ensure that the effects of abrogation also extend to final cases.

13. What applies to decisions to abrogate also applies to declaratory decisions of the Constitutional Court. In constitutional complaint proceedings, the Constitutional Court can penalise failure to observe its declaratory decisions – especially if the unconstitutionality was established due to an inadmissible interference with human rights and fundamental freedoms. Due to the fact that in a state governed by the rule of law it is necessary to ensure the effectiveness of legal remedies, including the constitutional complaint, it is clear that declaratory decisions apply to constitutional complaint proceedings, and consequently they also must be observed appropriately in legal remedy proceedings before regular courts. Therefore, what is at issue with regard to observing the decisions of the Constitutional Court is not the issue of whether certain conduct was legal at the time when it was performed (i.e. whether it was in conformity with the law in force at that time), but the question of whether such conduct was in conformity with the Constitution. In conformity with Article 125 of the Constitution, the assessment of this question also falls within the jurisdiction of the regular courts. In assessing legality, courts must also observe the Constitution, i.e. they must interpret laws in conformity with the Constitution and always keep questioning themselves whether the legislation in conformity with which they adjudicate is consistent with the Constitution.[13] Consequently, what is at issue with regard to the effects of the decisions of the Constitutional Court (those to abrogate and declaratory decisions) is also the question of the effectiveness of legal remedies (regular and extraordinary legal remedies, as well as constitutional complaints) regarding constitutional issues. In fact, in the case at issue, the position of the Supreme Court that a declaratory decision adopted two years before the employment contract was terminated has no effect on the legality of such conduct is indeed correct; however, what is key in this context is that it can have an effect on the constitutionality of such conduct. Due to the fact that the termination of the employment contract was based on a law that the Constitutional Court subsequently established was unconstitutional because it inadmissibly interfered with the right to judicial protection, in addition to [the question of] legality, also the question of whether the termination of the employment contract was at that time in conformity with the Constitution arises. When assessing this question, the courts on all levels should also take into consideration the reasons from Decision of the Constitutional Court No. U-I-45/07, Up-249/06, regardless of which phase the judicial proceedings were in when this Decision took effect. The position of the Supreme Court that this would be contrary to the principles of a state governed by the rule of law is thus unconstitutional.

14. In addition to adopting a decision by which it assesses the constitutionality of a law (or the constitutionality and legality of another regulation), the Constitutional Court may, on the basis of the second paragraph of Article 40 of the CCA, determine the manner of the implementation of a decision.[14] In conformity with the established constitutional case law, it also may adopt, on this legal basis, a temporary legal regulation in conformity with which its addressees (individuals or state authorities) must act until the legislature regulates such question by law in an equal or some other constitutionally consistent manner.[15] The Constitutional Court has already adopted the position that the part of the operative provisions by which the manner of the implementation of its decision is determined has the [binding] power of a statutory norm.[16] Therefore, on the basis of the authorisation determined by the second paragraph of Article 40 of the CCA, the Constitutional Court can temporarily regulate a certain question by the same legal power as if it were regulated by the legislature.

15. The CCA does not determine what are, in concrete (judicial) proceedings, the legal effects of the manner of implementation by which a certain question is temporarily legally regulated. The manner of implementation undisputedly has an influence on the legal relations that only emerge after the decision of the Constitutional Court takes effect. However, whether and how the manner of implementation has an influence on ongoing legal proceedings (non-final or concluded with finality) depends on the factual and legal circumstances of the concrete proceedings. In accordance with the established position of the Constitutional Court, the regulation determined by the manner of implementation has the same legal power as law. Such entails that the interpretation and the implementation of such regulation are subject to established methods of legal interpretation that otherwise apply to the interpretation and implementation of laws, and also to certain fundamental constitutional principles that represent constitutional limitations with regard to the interpretation of laws (e.g. the prohibition of retroactive effects determined by Article 155 of the Constitution).

16. In accordance with the above, failure to observe a determined manner of implementation can primarily entail a violation of "statutory" law. However, ignoring the manner of implementation may also reach the level of a violation of the Constitution.[17] Refusal to apply the manner of implementation determined by a decision of the Constitutional Court must, above all, be substantiated, especially if the party to proceedings expressly refers thereto. The absence of reasons can entail that the court acted arbitrarily or that the ignoring of a decision of the Constitutional Court was manifestly erroneous, which in itself entails a violation of Article 22 of the Constitution. However, if the court does state reasons why it considers the manner of implementation of a decision of the Constitutional Court to not be relevant to the concrete case,

those reasons must, on the one hand, follow from established rules and methods of legal interpretation or from constitutional limitations that otherwise are applicable regarding the interpretation and implementation of laws. On the other hand, it is clear that when interpreting and implementing a certain manner of implementation it is also necessary to meticulously take into consideration the reasons due to which the Constitutional Court adopted the decision that the law [at issue] is inconsistent with the Constitution, because the reason for a "legislative" intervention by the Constitutional Court is precisely the unconstitutionality of the statutory regulation. It is admissible to ignore the manner of implementation if such does not entail a violation of human rights and fundamental freedoms or if the court can adopt, by taking into consideration the constitutional reasons from the decision of the Constitutional Court, a decision consistent with the Constitution. Otherwise a decision adopted contrary to the manner of implementation may be challenged before the Constitutional Court by a constitutional complaint.

B – II

17. In the case at issue, the complainant opposes the position of the Supreme Court that the period of 18 months that passed from [the issuance of] the written warning due to the violation of employment obligations until the termination of the employment contract due to new violations is not so lengthy as to render effective judicial protection impossible with regard to the assessment of whether the written warning was well founded. In the opinion of the complainant, such position violates his right to effective judicial protection determined by the first paragraph of Article 23 of the Constitution. The complainant refers to Decision of the Constitutional Court No. U-I-45/07, Up-249/06.

18. The complainant's understanding of Decision No. U-I-45/07, Up-249/06, insofar as it refers to the one-year time limit that the Constitutional Court determined in the manner of implementation of its Decision, is not correct. From this Decision it does not follow that there exists a violation of the right to effective judicial protection already because more than one year passed from the issuance of the written warning to the termination of the employment contract. In every concrete case, "the effectiveness of judicial protection" is the constitutional standard for the assessment of a [possible] violation of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. The Constitutional Court determined the one-year time limit by its own discretion and as a temporary regulation until the legislature eliminates the unconstitutional situation consisting of the fact that the law did not determine any time limit. The purpose of the manner of execution determined in such manner was to prevent possible violations of the right to effective judicial

protection in procedures for the termination of an employment contract with notice for breach of obligations. However, the Constitution does not provide for a precisely determined time limit in such cases, therefore this one-year time limit as such is not an integral part of the right to effective judicial protection. As the Constitutional Court emphasised in Decision No. U-I-45/07, Up-249/06, the fact that judicial protection is ensured after a long period of time does not in itself entail that such judicial protection is always ineffective. It would only be ineffective if such period of time was so long that proving that the written warning was unfounded would be rendered substantially difficult. From the above it follows that the mere fact that more than one year passed between the [issuance of the] written warning and the termination of the employment contract does not necessarily mean that there was also a violation of the right to effective judicial protection. Precisely the question of whether the judicial protection of the complainant with regard to the written warning was rendered substantially difficult and thus ineffective must be at the centre of the [relevant] court's assessment.

19. In the challenged Judgment, the Supreme Court assessed that a period of one and a half years, which was the period of time that passed from the issuance of the written warning to the termination of the employment contract, is not so long as to render impossible the effective judicial review of whether the written warning was well founded. The Supreme Court carried out such assessment by observing the constitutional reasons stated in Decision No. U-I-45/07, Up-249/06. With regard to the question of whether the complainant was ensured an actual and effective possibility of proving that the written warning was unfounded, the Supreme Court accepted the finding of the court of first instance that at the main hearing the complainant admitted violations of employment obligations (repeatedly coming late to work and disrespecting safety at work instructions). The Supreme Court assessed that the complainant did not even challenge whether the written warning was well founded and did not allege that due to the length of time that had passed he did not have the possibility to prove it was unfounded. Therefore, the Supreme Court decided – with regard to the reasons from Decision of the Constitutional Court No. U-I-45/07, Up-249/06 – that in the case at issue the question of effective judicial protection does not even arise. The complainant does not concur with the allegation that he did not challenge whether the written warning was well founded, but he does not explain in what point the position of the Supreme Court is allegedly inconsistent with the right to judicial protection. The Constitutional Court has already explained a number of times that mere disagreement with a decision does not of itself suffice to conclude that a violation of a [particular] right has occurred.

20. With regard to the allegation that the Supreme Court did not observe the manner of implementation determined by point 3 of the operative provisions of

Decision of the Constitutional Court No. U-I-45/07, Up-249/06, the Constitutional Court assesses that it cannot be alleged that such conduct was arbitrary, which would entail a violation of Article 22 of the Constitution. The Supreme Court presented sound (constitutional) legal reasons for its decision. It assessed that the manner of implementation – such as determined by the Constitutional Court in Decision No. U-I-45/07, Up-249/06 – can only refer to future relations and that its application in the complainant's case would entail conduct contrary to the principle of legal certainty determined by Article 2 of the Constitution, the prohibition of the retroactive validity of legal acts determined by the first paragraph of Article 155 of the Constitution, and the principle of finality determined by Article 158 of the Constitution. Furthermore, by such positions the Supreme Court did not violate the complainant's right to effective judicial protection. Precisely such a violation would have a decisive influence on [deciding] whether the Supreme Court observed the Constitution when deciding. As stated above, the Supreme Court assessed whether effective judicial protection was ensured and established – by taking into consideration the reasons stated in Decision No. U-I-45/07, Up-249/06 – that this right of the complainant was not violated.

21. With regard to the above, the Constitutional Court dismissed the constitutional complaint.

C

22. The Constitutional Court adopted this Decision on the basis of the first paragraph of Article 59 of the CCA, composed of: Mag. Miroslav Mozetič, President, and Judges Dr Mitja Deisinger, Dr Dunja Jadek Pensa, Dr Etelka Korpič – Horvat, Dr Ernest Petrič, Jasna Pogačar, Dr Jadranka Sovdat, and Jan Zobec. The decision was reached unanimously.

Mag. Miroslav Mozetič
President

Endnotes:

[1] The first paragraph of Article 161 of the Constitution determines that the Constitutional Court abrogates an unconstitutional law in whole or in part. Such abrogation takes effect immediately or within a period of time determined by the Constitutional Court, with regard to which this period of time may not exceed one year. The Constitutional Court can abrogate or annul *ab initio* implementing regulations. The third paragraph of Article 161 of the Constitution determines that the legal consequences of Constitutional Court decisions shall

be regulated by law. The Constitution does not contain other provisions on the types of decisions of the Constitutional Court and the legal effects thereof.

[2] Article 47 of the CCA envisages a special declaratory decision. Such declaratory decision is adopted if a regulation ceased to be in force before or during the proceedings, and the consequences of its unconstitutionality or unlawfulness were not remedied. With respect to statutory provisions, such declaratory decision has the effect of abrogation, whereas with respect to implementing regulations, the Constitutional Court decides whether its decision has the effect of abrogation or annulment.

[3] The legal consequences of the abrogation of a law are regulated by the CCA. Article 43 of this Act envisages that such abrogation takes effect the day following the publication of the decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court (i.e. abrogation with suspended effect), whereas Article 44 determines that the abrogation of a law or a part thereof by the Constitutional Court applies to relations that had been established before the day such abrogation took effect, if by that day such relations had not been finally decided. The Constitutional Court can abrogate or annul an implementing regulation. The legal consequences of the abrogation of an implementing regulation are, *mutatis mutandis*, the same as with respect to laws (the third paragraph of Article 45 of the CCA). The legal consequences of the annulment of an implementing regulation are determined by Article 46 of the CCA.

[4] The Constitutional Court stated this already in paragraphs 9, 10, and 11 of the reasoning of Order No. U-I-168/97, dated 3 July 1997 (OdlUS VI, 103), and in Paragraph 24 of the reasoning of Decision No. U-I-92/96, dated 21 March 2002 (Official Gazette RS, No. 32/02, and OdlUS XI, 45).

[5] See also Paragraph 6 of the reasoning of Decision of the Constitutional Court No. Up-2597/07, dated 4 October 2007 (Official Gazette RS, No. 94/07, and OdlUS XVI, 108).

[6] Cf. Order of the Constitutional Court No. Up-2436/08, U-I-42/08, dated 26 March 2009, Paragraph 10 of the reasoning.

[7] Also interpretation by analogy confirms such an approach, because from Article 47 of the CCA it clearly follows that declaratory decisions adopted with regard to laws that ceased to be in force have the effect of an abrogation.

[8] On the basis of the sixth indent of the first paragraph of Article 160 of the Constitution, the Constitutional Court has jurisdiction to decide on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts.

[9] Article 158 of the Constitution determines that legal relations regulated by the final decision of a state authority may be annulled *ab initio*, abrogated, or amended only in such cases and by such procedures as are provided by law.

[10] See, e.g., Decisions No. Up-252/96, dated 30 September 1999 (Official Gazette RS, No. 86/99, and OdlUS VIII, 293), Para. 6 of the reasoning, and No. Up-295/97, dated 13 October 1999 (OdlUS VIII, 294), Para. 6 of the

reasoning. See also, e.g., Decisions No. Up-425/03, dated 20 October 2005 (Official Gazette RS, No. 96/05, and OdlUS XIV, 101), No. Up-699/05, dated 5 July 2007 (Official Gazette RS, No. 65/07, and OdlUS XVI, 102), No. Up-791/10, dated 8 December 2011 (Official Gazette RS, No. 4/12), and No. Up-1136/11, dated 15 March 2012 (Official Gazette RS, No. 26/12).

[11] The third paragraph of Article 160 of the Constitution determines that unless otherwise provided by law, the Constitutional Court decides on a constitutional complaint only if legal remedies have been exhausted. On such basis, the first paragraph of Article 51 of the CCA determined that a constitutional complaint may be lodged only after all legal remedies have been exhausted. The second paragraph of Article 51 of the CCA determines an exception that allows for the lodging of a constitutional complaint before all extraordinary remedies have been exhausted.

[12] See, e.g., Order No. U-I-249/00, dated 19 September 2002 (OdlUS XI, 181), Para. 2 of the reasoning, and Decision No. U-I-201/99, dated 30 January 2003 (Official Gazette RS, No. 15/03, and OdlUS XII, 3), Para. 10 of the reasoning.

[13] Article 156 of the Constitution determines that if a court deciding some matter deems a law which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision.

[14] The CCA does not determine the conditions that should be fulfilled in order for such authorisation to be exercised; this is left to the assessment of the Constitutional Court in each individual case (such is stated in Decision No. U-I-163/99, dated 23 September 1999, Official Gazette RS, No. 80/99, and OdlUS VIII, 209). The determination of the manner of implementation is most often connected with declaratory decisions of the Constitutional Court, although the Constitutional Court also exercises this authorisation in other types of decisions (see, for instance, Decision No. U-I-313/13, dated 21 March 2014, Official Gazette RS, No. 22/14).

[15] Decision No. U-I-163/99, Para. 10 of the reasoning; Order No. U-II-3/03, dated 22 December 2003 (OdlUS XII, 101), Para. 24 of the reasoning.

[16] *Ibidem*.

[17] By Order No. Up-901/08, dated 24 February 2009 (Official Gazette RS, No. 20/09, and OdlUS XVIII, 188), the Constitutional Court explained that when deciding on constitutional complaints due to an alleged violation of the manner of implementation determined by the Constitutional Court it is necessary to distinguish between an "ordinary" violation of the manner of implementation of a decision of the Constitutional Court (which substantively equals a violation of law) and a violation that at the same time is also a violation of human rights and which may be successfully claimed in constitutional complaint proceedings.