



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-344/06-11
20 November 2008

D E C I S I O N

At a session held on 20 November 2008 in proceedings to review constitutionality and legality initiated upon the request of Ljubljana Higher Court, the Constitutional Court

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

The fourth paragraph of Article 33 of the Execution of Judgments in Civil Matters and Securing of Claims Act (Official Gazette RS, Nos. 3/07 – official consolidated text, and 73/07) is not inconsistent with the Constitution.

R e a s o n i n g

A.

1. Ljubljana Higher Court stayed proceedings to decide on appeals in two cases and on the basis of Article 156 of the Constitution requested that the Constitutional Court decide whether the fourth paragraph of Article 33 of the Execution of Judgments in Civil Matters and Securing of Claims Act (hereinafter referred to as the EJCMSA) is consistent with the Constitution. The fourth paragraph of Article 33 of the EJCMSA determines that if an imposed fine in cases in which a debtor is a natural person or a sole proprietor is not paid within the time limit determined by the court, it is recovered *ex officio*; if this is not possible, the sanction is exacted in a manner such that for every 10,000 SIT (41.73 EUR) of the fine, one day of imprisonment is determined, whereby imprisonment for a natural person may not exceed 30 days and for a sole proprietor it may not exceed 100 days. This is the provision of the Act which the Higher Court should apply when deciding on an appeal against an order by which the court of first instance decided that a fine be converted into imprisonment. The applicant claims that the cited provision of the fourth paragraph of Article 33 of the EJCMSA is practically identical to the (former) provision of the fifth paragraph of Article 11 of the Civil Procedure Act (Official Gazette RS, No. 26/99 et sub. – hereinafter referred to as the CPA), which the Constitutional Court abrogated by Decision No. U-I-145/03, dated 23 June 2005 (Official Gazette RS, No. 69/05 and OdlUS XIV, 62). In this decision the Constitutional Court allegedly established that the regulation of imposing sanctions in civil procedure was, indeed not in and of itself, but because of the prescribed severity of this sanction, inconsistent with the

guarantees determined in the first paragraph of Article 23 of the Constitution. In summarising the Constitutional Court decision, the applicant alleged that the CPA could determine such sanctions only if they were decided on in proceedings which were entirely in compliance with not only the guarantees determined in Article 23 of the Constitution, but also the guarantees which refer to criminal proceedings determined in Article 29 of the Constitution. In the opinion of the applicant, the regulation according to which imprisonment can be imposed in execution proceedings is inconsistent with the Constitution for the same reasons. The Higher Court proposes that the Constitutional Court abrogate the challenged provision.

2. The National Assembly replied to the requests. It claims that Article 33 of the EJCMSA does not include instances which were a basis for the Constitutional Court decision on the partial abrogation of Article 11 of the CPA. The National Assembly emphasizes that the purpose of imposing sanctions in accordance with Article 33 of the EJCMSA is to ensure the effectiveness of the execution of judgments in civil matters, as it attempts to influence the debtor's willingness to stop obstructing the execution proceedings or making such proceedings impossible. In its reply, the National Assembly refers to the Government's opinion.

3. In the opinion of the Government, the regulation of imposing sanctions in the fourth paragraph of Article 33 of the EJCMSA does not entail "deciding on a criminal charge" and therefore it is not necessary that all procedural guarantees regarding criminal proceedings determined in Articles 23 and 29 of the Constitution are met. In the opinion of the Government, the purpose of the regulation of imposing sanctions in execution proceedings is to ensure the orderliness of execution proceedings and thus it is a matter of a disciplinary sanction. The Government states that the abrogated provision of Article 11 of the CPA on imposing sanctions in civil procedure and the regulation of imposing sanctions in accordance with Article 33 of the EJCMSA cannot be compared. The purpose is allegedly essentially different; the first instance allegedly concerns sanctions for inappropriate behaviour, violations of order, or the abuse of rights. On the other hand, imposing sanctions in accordance with the EJCMSA allegedly concerns imposing a sanction due to a party's direct opposition to a court decision or due to a party obstructing or preventing the execution of a judgment. It is allegedly a different degree of a threat to values and therefore the situations are essentially different. Furthermore, the Government points out that the aim of imposing sanctions in execution proceedings is solely to ensure the execution of judgments, whereby imposing sanctions should influence the debtor's willingness to perform certain acts or allow that certain acts be performed. This concerns acts that cannot be performed other than by forcing the debtor to refrain from such acts. In the opinion of the Government, forcing the debtor to refrain from such acts entails the realization of execution proceedings, due to the fact that imposing a fine on a debtor who is already in debt does not ensure its appropriate realization.

B. – I.

4. The Constitutional Court joined both cases for joint consideration and deciding.

5. The EJCMSA in the first paragraph of Article 33 determines that a court imposes a fine on a debtor who (1) contrary to the court's decision hides, damages, or destroys his own property; (2) contrary to the court's decision, performs acts which could cause irreparable or difficult to remedy damage to a creditor; (3) hinders an executor from performing individual acts of execution of a judgment or of securing a claim; (4) acts contrary to an order securing a claim; or (5) does not allow an inspection or hinders the inspection of a piece of real estate or its appraisal. In accordance with the second paragraph of Article 33 of the EJCMSA, the court may impose a fine not exceeding 1,000,000 SIT (4,172.93 EUR) for a natural person or a fine not exceeding 10,000,000 SIT (41,729.26 EUR) for a legal entity or a sole proprietor. A fine is imposed by an order with a payment time limit that may not be shorter than 15 days and not longer than three months. In accordance with Article 31 of the EJCMSA, provisions on imposing sanctions also apply in cases in which a debtor does not provide full and real information regarding his property (i.e. a list of the debtor's property). In cases in which the debtor is a natural person or a sole proprietor, the fourth paragraph of Article 33 of the EJCMSA determines that if the imposed fine is not paid within the time limit determined by the court, it is recovered *ex officio*; if this is not possible, the sanction is exacted in a manner such that for every 10,000 SIT (41.73 EUR) of the fine, one day of imprisonment is determined, whereby imprisonment for a natural person may not exceed 30 days, and for a sole proprietor it may not exceed 100 days. A sanction is enforced in accordance with the provisions of the act which regulates the enforcement of penal sanctions.

6. The Constitutional Court has already dealt with the issue of imposing imprisonment in civil judicial proceedings. By Decision No. U-I-145/03 it decided on the constitutionality of Article 11 of the CPA, which (at that time) allowed imprisonment in cases of insulting the court or other participants in proceedings or in cases of the abuse of rights. The Constitutional Court in the cited decision established that the possibility to impose sanctions in civil judicial proceedings is not in and of itself necessarily inconsistent with the Constitution and that every proceedings in which a sanction may be imposed cannot be regarded as criminal proceedings (in which all procedural and substantive guarantees regarding criminal proceedings and regarding criminal offences should be fulfilled). However, in the above-cited case the Constitutional Court also adopted the standpoint that when deciding such, also the severity and the degree of the prescribed sanction must be taken into consideration. With regard to the instance determined in Article 11 of the CPA, the Constitutional Court established particularly regarding imprisonment that this evidently involves such a punitive sanction that it allows it to be concluded that this instance entails deciding on a criminal charge. Therefore, the Constitutional Court abrogated Article 11 of the CPA inasmuch as it refers to the possibility to impose imprisonment (and regarding the particularly high fine imposed on lawyers and sole proprietors).

7. The fourth paragraph of Article 33 of the EJCMSA is, as the applicant correctly determined, essentially similar to the abrogated provision of Article 11 of the CPA. Nonetheless, the applicant's simplified argumentation, which in essence refers to the reasons for the above-mentioned Constitutional Court Decision No. U-I-145/03, is not correct. The Constitutional Court namely determined already in the reasoning of that decision the limitation that the positions regarding imposing a sentence of imprisonment outside the scope of criminal proceedings and the positions regarding the amount of a fine refer to cases such as imposing sanctions on participants in

proceedings for insulting applications in civil proceedings. With reference to such, it explicitly emphasized that it is not necessary that the standpoints of the Constitutional Court are the same in cases in which imposing sanctions on participants in proceedings at the same time also pursues the aim of ensuring the execution of a judgment in a narrower or broader sense, most of all in cases in which imposing sanctions is a means intended to influence the willingness of a certain person to perform certain acts (as is the case of, for example, imposing a sanction on a witness who refuses to answer particular questions for reasons considered unjustified, the second paragraph of Article 241 of the CPA). In the case at issue, the Constitutional Court, as already emphasized, did not adopt a standpoint on such cases. The Constitutional Court thus already in the above-mentioned decision indicated that determining a sanction for insulting applications in civil proceedings cannot be equated with determining a sanction as means of ensuring the execution of a judgment.

8. In the above-cited decision the Constitutional Court already dismissed the argument that every imposition of a sanction, even though a law names it “a penalty” must be regarded as deciding on a criminal “charge”, which would at the same time exclude the possibility that such is decided within the scope of some other proceedings, for example, civil proceedings. Every definition of prohibited acts (and sanctions for violations of such prohibitions) cannot be regarded as a definition of a criminal offence for which procedural guarantees, which are particularly determined by the Constitution for such, would have to be fulfilled. In addition, deciding on imposing sanctions for violations of such prohibitions cannot always be regarded as criminal proceedings, in which all constitutional procedural guarantees which particularly refer to criminal proceedings should be fulfilled (the same Constitutional Court Decision No. U-I-220/03, dated 13 October 2004, Official Gazette RS, No. 123/04 and OdlUS XIII, 61). When examining imposing sanctions for insulting applications, the Constitutional Court therefore had to review whether such imposition of a sanction is closer to a disciplinary sanction or is it the imposition of a sanction for a criminal offence. In such review the Constitutional Court (taking into consideration the case-law of the European Court of Human Rights) applied a test in accordance with which the severity and the nature of a sanction must also be taken into consideration. On the basis of such test, the Constitutional Court reasoned that a sanction of imprisonment, taking into consideration its severity and its nature, cannot entail only a disciplinary sanction, but that deciding on the sanction of imprisonment entails such a strong interference with the rights of the affected person that it is a matter of “a criminal charge”.

9. However, regarding the nature and severity of a sanction, the above-mentioned test is applicable in cases in which the purpose of the sanction is primarily punitive. It is not disputable that this aspect is in the foreground in cases involving sanctions for insulting the court and other participants in proceedings. It is a punitive, authoritarian reaction to an act that has already been committed which may threaten the authority and dignity of the court and the orderly course of proceedings. The question was only whether it is a punitive sanction that has more the nature of a disciplinary sanction, or is it a sanction which may be imposed only in criminal proceedings. However, in instances of imposing sanctions within the scope of execution proceedings for acts determined in Article 31 and the first paragraph of Article 33 of the EJCMSCA the situation is different. It is not only that the protected value is different (i.e. the

effectiveness of the execution of judgments and thereby ensuring the right to judicial protection determined in the first paragraph of Article 23 of the Constitution), but also the aim of imposing sanctions is different. This case namely does not concern the reaction to conduct which has already taken place (i.e. an insulting application or statement in judicial proceedings), but an attempt to influence the debtor's willingness regarding the performance of the acts which are necessary for the effective protection of a creditor or the debtor's willingness to refrain from acts which would prevent such protection. It is not a sanction that has a punitive nature (the Constitutional Court decided in the same manner regarding imposing a sanction as a means of ensuring execution regarding the obligation [of a debtor] to refrain from certain acts or the obligation [of a debtor] to perform non-substitutable acts already in Decision No. U-I-339/98, dated 21 January 1999, Official Gazette RS, No. 11/99 and OdlUS VIII, 13) and therefore the comparison with imposing sanctions for criminal offences is not substantiated. A test to review the severity of a sanction, which the Constitutional Court carried out in Decision No. U-I-145/03 in order to delineate between a disciplinary sanction and a sanction imposed due to a criminal offence in a substantive sense, is in this case not applicable. In instances of sanctions imposed in accordance with Article 33 of the EJCMSA, their punitive nature is completely in the background. The sense and the purpose of imposing sanctions in accordance with Article 33 of the EJCMSA, as already mentioned above, is that the debtor's willingness regarding the performance of certain acts is influenced in cases in which the success of execution proceedings depends on acts which are controlled by the debtor (e.g. disclosing his property, enabling the inspection and appraisal of his real estate, refraining from acts which are contrary to the content of a temporary injunction or other means of securing claims). Despite the use of the term "a penalty", it is in fact not the imposition of a sanction but a means of ensuring execution in a broader sense.

10. Due to the fact that the deprivation of liberty in accordance with the fourth paragraph of Article 33 of the EJCMSA is not a punitive sanction, regardless of the severity and nature of such sanction, it cannot be considered to be criminal proceedings and the guarantees which refer to criminal proceedings and criminal offences do not apply. Therefore, the fourth paragraph of Article 33 of the EJCMSA is not inconsistent with the guarantees determined in Article 29 of the Constitution and the first paragraph of Article 23 of the Constitution, inasmuch as they refer to procedures regarding "criminal charges".

B. - II.

11. The enforcement of imprisonment in accordance with the fourth paragraph of Article 33 of the EJCMSA is undoubtedly an interference with the right to personal liberty determined in the first paragraph of Article 19 of the Constitution. With reference to such, it must be emphasized that it does not follow from the Constitution that a person may be deprived of his liberty only as a result of criminal proceedings or if he is suspected of having committed a criminal offence. The standpoint that the deprivation of liberty should always, regardless of the nature and purpose of this measure, be decided in criminal proceedings or in proceedings which ensure the guarantees determined in the Constitution regarding criminal proceedings, does not follow from the Constitution.ⁱ However, the Constitution ensures special guarantees regarding all instances of the deprivation of liberty, thus also those which are not

connected to proceedings dealing with criminal offences. A general guarantee, which the Constitution provides with reference to the limitation of the right to personal liberty, is determined in the second and third paragraphs of Article 19. In accordance with the second paragraph of Article 19 of the Constitution, no one may be deprived of his liberty except in such cases and pursuant to such procedures as are provided by law. In addition, the third paragraph of Article 19 of the Constitution ensures additional guarantees to persons subject to the deprivation of liberty (i.e. he is informed of the reasons for being deprived of his liberty and of certain rights), however, they are not relevant to the case at issue. The same applies also to the guarantee that human personality and dignity must be respected during the deprivation of liberty and to the prohibition of violence on any person whose liberty has been restricted (the first and second paragraphs of Article 21 of the Constitution).

12. For the constitutional review of this matter, it is thus essential whether the regulation that the sanction of imprisonment in civil execution proceedings may be imposed and enforced is consistent with the guarantee determined in the second paragraph of Article 19 of the Constitution. The requirement determined in the second paragraph of Article 19 of the Constitution that only the law may determine the cases and procedures for the deprivation of liberty is therefore met. The first paragraph of Article 33 and Article 31 of the EJCMSA determine the cases in which liberty may be deprived, whereas the third and fourth paragraphs of Article 33 of the EJCMSA determine the procedure for implementing such. However, this is still not enough for the review of the Constitutional Court. Even though the Constitution provides that only the law may determine a limitation of human rights, this namely does not entail that the legislature is not restricted when determining such limitations. It must be taken into consideration that the deprivation of liberty is an interference with the human right determined in the first paragraph of Article 19 of the Constitution and that in accordance with the established constitutional case-law as regards the third paragraph of Article 15 of the Constitution, human rights and fundamental freedoms may be limited only in such cases as are provided by the Constitution or by the rights of others.

13. The aim which the legislature wanted to achieve in envisaging imprisonment for the violations mentioned in the first paragraph of Article 33 of the EJCMSA and for violations regarding the duty to disclose one's property in accordance with Article 31 of the EJCMSA is clear: to enable creditors in execution proceedings to obtain payment of their claims, thus to exercise their right to judicial protection within the meaning of the first paragraph of Article 23 of the Constitution (see paragraph 9 of the reasoning of this decision). Such aim is undoubtedly constitutionally admissible. The purpose of imposing a sentence of imprisonment in accordance with Article 33 of the EJCMSA is to make the debtor, under the threat of imprisonment, comply with his obligations imposed by a final judicial decision. On the other hand, for a creditor such entails that he can secure quickly and with as little cost as possible what he was awarded by a final judicial decision and thereby the effective implementation of the right to (effective) judicial protection determined in the first paragraph of Article 23 of the Constitution. The purpose of judicial protection is, as a general rule, achieved by the implementation of a certain right (or legal relation), and not only by a decision on its existence. Therefore, a party recognised a certain right in a dispute by a final decision must be given the possibility and means to actually assert this right (Constitutional Court Decision No. Up-181/99, dated 18 December 2002, Official

Gazette RS, No. 7/03 and OdlUS XI, 292). Execution proceedings are instituted with the intention of ensuring a forcible implementation of final judicial decisions in which creditors, if debtors do not fulfil their obligations voluntarily, achieve the implementation of such decisions. Effective execution proceedings are thus an inseparable element of the right to judicial protection. Finally, ensuring that final decisions of courts are enforced and respected plays an important role also in the implementation of the principles of a state governed by the rule of law determined in Article 2 of the Constitution.

14. In addition to the fact that an interference with human rights may be based only on a constitutionally admissible, i.e. objectively substantiated aim, in accordance with the established constitutional case-law, it must also always be reviewed whether such is consistent with the principles of a state governed by the rule of law (Article 2 of the Constitution), and thus with that constitutional principle which prohibits excessive interferences by the state also in cases in which a legitimate aim is pursued therewith (the general principle of proportionality). The review whether an interference is excessive is carried out by the Constitutional Court on the basis of a strict proportionality test. The test comprises a review of three aspects of the interference: (1) whether the interference is at all necessary (needed); (2) whether the evaluated interference is appropriate for achieving the pursued aim; (3) whether the weight of the consequences of the reviewed interference with the affected human right is proportionate to the value of the pursued aim, i.e. to the benefits which will result therefrom (the principle of proportionality in a narrower sense or the principle of proportionality). Only if the interference passes all three aspects of the test is it constitutionally admissible (Constitutional Court Decision No. U-I-18/02, dated 24 October 2003, Official Gazette RS, No. 108/03 and OdlUS XII, 86, paragraph 25 of the reasoning).

15. Within the framework of the review of the necessity of the interference, the Constitutional Court reviews whether the interference is at all necessary (needed) in the sense that the aim in question cannot be achieved without an interference in general (i.e. by means of any interference) or that the aim cannot be achieved without the reviewed (concrete) interference but by means of some other interference which would be less severe in nature. These requirements are met as regards the regulation of imposing a sanction in accordance with the fourth paragraph of Article 33 of the EJCMSA. In cases in which the effectiveness of the execution of a judgment depends on cooperation, i.e. on the willing conduct of the debtor, and in cases in which such cannot be fulfilled by anyone else but the debtor, the effectiveness of the execution without a repressive interference with the debtor's sphere which should make him perform the required act, cannot be ensured. In addition, such effect cannot be achieved by less severe means. Fines, at most, could be considered to be such a less severe means, however, in cases of debtors who are avoiding execution or are in debt such would often not be effective. Furthermore, enforcing fines (which are paid into the state budgetary fund) would even further endanger the creditors' position and make it increasingly more difficult, as the debtor would have even less disposable property which could be taken in the execution.

16. In order to achieve the desired aim, the interference is also appropriate. A prescribed (and in a concrete case, possibly also enforced) sanction of imprisonment influences the debtor's willingness. Such threat entails a circumstance for which it

can reasonably be expected that it will make a debtor refrain from acts which make the execution proceedings and payment of a creditor impossible or more difficult.

17. In order for the challenged provision to pass the test of proportionality, the condition of proportionality in a narrower sense must also be fulfilled. The proportionality in a narrower sense concerns a review whether the weight of the consequences of the reviewed interference with the affected human right is proportional to the value of the pursued aim or to the benefits which will result due to the interference. In view of the fact that the case concerns a review of the provision regarding execution proceedings in which two individuals are in dispute with one another and not a review of an interference of the state with the individual's rights, the content of proportionality in a narrower sense is different. It concerns a comparison of two constitutionally protected positions. If it is established that the implementation of the creditor's right to judicial protection, which is the objective of the interference, outweighs the importance of the debtor's right affected by the interference, the interference passes this aspect of the proportionality test. With reference to such, the specific nature and special importance of execution proceedings must be taken into consideration. Execution proceedings, due to the essentially different quality of the positions of the parties is not comparable to, for example, civil procedure, in which the parties must at the outset be in a balanced position. The parties in execution proceedings are, on the one hand, a creditor who has already been awarded, as a general rule, a final and executable judgment, and on the other hand, a debtor who by a title of execution is imposed a certain obligation. The balance in execution proceedings can be spoken of only in the sense of defining the appropriate relation between the protection of the creditor and the position of the debtor and not in the sense of the equal consideration of the interests of both parties. In execution proceedings, differently as, for example, in substantive civil law, it is not that the law should ensure the balance of the positions of the parties when regulating this field of law in its substance. The purpose of execution proceedings, in accordance with the constitutional requirement that the right to judicial protection must be effective, is to ensure the fulfillment of the obligation which in general stems from a final judgment. In view of the purpose of execution proceedings, it is thus necessary that the law which regulates this field must first of all consider the creditor's interests in order to ensure the effectiveness of execution and thereby the final implementation of the creditor's human right to judicial protection (Constitutional Court Decision No. U-I-339/98, dated 21 January 1999, Official Gazette RS, No. 11/99 and OdlUS VIII, 13). Moreover, the constitutional significance of the principle of equality and the proportionality test must have a different meaning in execution proceedings than, for example, in the regulation of civil proceedings or in the regulation of substantive civil law. When weighing the proportionality of the matter, on the one hand, the creditor's position and, on the other hand, the debtor's position in execution proceedings are compared, and the privileged position of the creditor in execution proceedings must therefore be taken as the foundation (Constitutional Court Decision No. U-I-93/03-26, dated 18 November 2004, Official Gazette RS, No. 132/04 and OdlUS XIII, 77). The limitation of the creditor's right to effective execution may be considered only if the fundamental rights of the debtor are significantly affected.¹¹ Taking into consideration the criteria regarding the constitutional protection of the debtor's rights in execution proceedings, which follow from the privileged position of the creditor in such proceedings, an interference with the creditor's right to effective judicial protection determined in the first paragraph of

Article 23 of the Constitution is, with regard to the protection of the debtor's rights, substantiated only in cases in which execution entails a disproportional burden for the debtor and that his human rights are significantly affected.

18. When reviewing the relationship between a creditor and a debtor in execution proceedings, or the debtor's position in execution proceedings, we must differentiate between positions in which objective reasons (e.g. an unfavourable financial situation) prevent the debtor from fulfilling his obligations entirely and without endangering his existence, on the one hand, and positions which concern merely the debtor's decision not to perform acts which are required from him by a title of execution, on the other (which is as a general rule a final judgment). In the first instance it follows from the principles of a social state that in execution proceedings the principle of the protection of a debtor must also be respected. Following these starting points, the Constitutional Court has ensured the protection of the debtor, for example, regarding the question whether the circumstance that a debtor must support certain persons must be taken into consideration when determining the part of his salary which may not be garnished (Constitutional Court Decision No. U-I-339/98, dated 21 January 1999, Official Gazette RS, No. 11/99 and OdlUS VIII, 13) and regarding a situation in which a creditor himself purchases the debtor's real estate in execution proceedings, however, for less than its appraised value (Constitutional Court Decision No. U-I-93/03-26, dated 18 November 2004, Official Gazette RS, No. 132/04 and OdlUS XIII, 77). However, as regards the sanctions prescribed for conduct determined in Article 31 and in the first paragraph of Article 33 of the EJCMSCA, the position is different. It does not concern a review of the protection of the debtor's existence or his property right, but merely of his conscious decision not to refrain from certain acts which endanger the effectiveness of the execution. The sanction of imprisonment as such is indeed difficult for a debtor, however, it is connected with the debtor refraining from acts which he could carry out any time without difficulty. The debtor had the possibility to prevent the deprivation of his liberty at all time; all that he needed to do was to respect the judicial decision which refers to fulfilling obligations stemming from the title of execution. The conduct of a debtor who consciously does not want to comply with the obligations imposed on him by a judicial decision, does not need to be protected at the constitutional level. Furthermore, a debtor can prevent the enforcement of imprisonment by paying a fine. As regards the above-mentioned, it is demonstrated that the prescribed interference with the debtor's right to personal liberty determined in Article 19 of the Constitution, which may occur by the imposition and enforcement of a fine in accordance with the fourth paragraph of Article 33 of the EJCMSCA is not disproportionate with the creditor's right to effective judicial protection determined in Article 23 of the Constitution.ⁱⁱⁱ

19. The case does not concern a debtor who is not able to fulfill his civil obligations because he is protecting his other assets, but a debtor who does not wish to fulfill his obligations. The deprivation of a debtor's liberty who is not able to fulfill his civil obligations would be inadmissible. This follows from Article 11 of the International Covenant on Civil and Political Rights (Official Gazette SFRY, No. 7/71 and Official Gazette RS, No. 35/92, IT, No. 9/92) and from Article 1 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, IT, No. 7/94). It follows, *inter alia*, from the above-mentioned that the debtor's conduct due to which imprisonment is imposed in accordance with

Article 33 of the EJCMSCA must be willing and intentional. This is logical also because the aim of imposing a sanction, as explained above, is to influence the debtor's willingness. The court must consider these aspects in concrete judicial proceedings, in addition, it must naturally also consider all procedural guarantees which refer to civil judicial proceedings.

20. As regards the above-mentioned, the challenged provision is not inconsistent with the right to personal liberty determined in Article 19 of the Constitution.

C.

21. The Constitutional Court reached this decision on the basis of Article 21 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text), composed of: Jože Tratnik, President, and Judges mag. Marija Krisper Kramberger, mag. Miroslav Mozetič, Dr. Ernest Petrič, Jasna Pogačar, Dr. Ciril Ribičič, and Jan Zobec. The decision was reached unanimously.

Jože Tratnik
President

ⁱ Cf. Constitutional Court Decision No. U-I-60/03, dated 4 December 2003 (Official Gazette RS, No. 131/03 and OdlUS XII, 93).

ⁱⁱ Rosenberg, Gaul, Schilken, Zwangsvollstreckungsrecht, Beck, München 1997, p. 806.

ⁱⁱⁱ The same conclusion was reached by the German Federal Constitutional Court, which reviewed the constitutionality of paragraph 901 of the Zivilprozessordnung, which allows a sanction of imprisonment against a debtor in cases in which he does not act in accordance with an order to disclose his property (Order dated 19 October 1982 – 1 BvL 34, 55/80, BverfGE 61, pp. 126 et sub).