DECISION ON THE ANNULMENT OF A JUDGEMENT OF THE ADMINISTRATIVE COURT AND REMANDING THE CASE FOR RECONSIDERATION, ON INITIATING THE PROCEEDING TO REVIEW THE CONSTITUTIONALITY OF THE SECOND PARAGRAPH OF SECTION 2 OF ARTICLE 40 OF THE LAW ON ASYLUM, ON A TEMPORARY STAYING ORDER AND ON DETERMINATION OF THE IMPLEMENTATION MEASURES

The Constitutional Court, in a proceeding to review a constitutional complaint filed by A. A. A. from Ž., Z. V., represented by B. B., attorney at law in U., on a session held on 29. June 2000

HELD:

1. Judgement of the Administrative Court in Ljubljana no. U 168/00 of 23. 2. 2000 is annulled.
2. The case is remanded for reconsideration to the Administrative Court in Ljubljana.
3. The proceeding to review the constitutionality of the second paragraph of the section 2 of Art. 40 of the Asylum Law (Official Gazette of the Republic of Slovenia, no. 61/99), is hereby initiated.
4. Pending the final decision in the proceeding stated in par. 3 of the holding, the execution of the second paragraph of section 2 of Art. 40 of the Asylum Law is stayed.
5. Pending the final decision in the proceeding stated in par. 3 of the holding, it shall be presumed that an appeal is allowed against a decision of the Administrative Court that decided on the merits of an action brought against a decision made in the asylum procedure.

REASONING:

A)

1. The appellant is challenging a decision of the Ministry of the Interior (hereinafter abbreviated as “MI”) no. 0301-15/07. XVII-210.802/99 of 13.1.2000, which denied his request for asylum in the Republic of Slovenia, and held that he must leave the country within 3 days. The Administrative Court, in judgement no. U 168/00 of 23. 2. 2000, rejected the suit against the decision of the MI. The challenged decisions were claimed to violate Art. 5, 13., 14., 22., 34. and 35. of the Constitution. The appellant stated that, despite his request, an asylum counsellor was not appointed to represent him, as guaranteed by Art. 9 and 16. of the Asylum Law (hereinafter abbreviated as AL). The challenged decision did not make any determination concerning the evidence that was supposed to prove the appellant’s claim that the criminal proceeding, which was the basis for his extradition to Z.V., was a sham. The opinion of the administrative body that the appellant did not show that his safety and integrity

would not be in endangered if he was extradited to Z.V. – within the meaning of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of the Republic of Slovenia, no. 33/94, International treaties, no. 7/94, hereinafter abbreviated as ECHR) - was unfounded. The documents that were supposed to prove his claim were kept in T., where he could not go because of the threat to his life. His claim on irregularities in the electoral campaign of Mr. C. were supposedly confirmed by an article with the title "Black treasuries of governors", which he received on the day of the decision of the Administrative Court. Since no extradition treaty was signed between Slovenia and Z.V., there could be no basis for his extradition. He is also of the opinion that he should have been released from custody ordered in the extradition procedure. The appellant requests that the Constitutional Court reviews the files of the Circuit Court in Krško, the Ministry of the Interior and the Administrative Court and forms its own view on whether sufficient reasons exist for a conclusion that his life is in danger. The appellant requests that the challenged decision of the Ministry of the Interior be rescinded, or, in the alternative, that the decision be annulled and the case remanded for reconsideration.

2. The Constitutional Court, on the basis of the third section of Art. 52 of the Rules of Procedure of the Constitutional Court of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 49/98), considered the case as a priority matter. The senate accepted the constitutional complaint as admissible with the ruling of 10.3. 2000 and ordered a stay of execution of the challenged provisions. On the basis of Art. 56 of the Law on the Constitutional Court (Official Gazette of the Republic of Slovenia, no. 15/94 – hereinafter abbreviated as LCC), the constitutional complaint and the ruling on admissibility were served to the Administrative Court. The Administrative Court did not respond to the constitutional complaint.

3. The Constitutional Court reviewed the case file of the Circuit Court of Krško no. Ks 159/99, the case files of the Administrative Court no. 168/00 and U 521/00 and the file of the MI, in the matter on which the decision was issued.

B) – I.

4. The appellant filed a request for asylum in the Republic of Slovenia at the time he was in custody because of the proceedings for his extradition to Z.V. The ruling of the competent court that the conditions for his extradition were fulfilled became final on 3.12. 1999. The constitutional complaint challenges two decisions made in the asylum procedure. The MI rejected the request, because it found that neither the reasons for granting asylum set by the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees (Official Gazette of the Republic of Slovenia, no. 35/92, International Treaties, no. 9/92, Official gazette of the Federal People's Republic of Yugoslavia, International Treaties, no. 7/60 and no. 17/67 –hereinafter abbreviated as the Geneva Convention), nor the reasons set forth in Art. 3 of the ECHR (second and third sections of Art. 1 of Asylum Law), exist. The appellant's assertions during the proceedings were said to be contradictory and did not establish that his life would be seriously endangered in case he returned to Z.V. The administrative authority accordingly concluded that the appellant filed the request with the intent to delay extradition and avoid trial in Z.V. The Administrative Court affirmed the opinion of the administrative authority regarding the non-existence

of reasons for granting asylum laid down in the second and third sections of Art. 1 of AL. In addition, asylum could not be granted because reasonable suspicion was said to exist that the appellant committed a serious criminal offence of non-political nature outside the country, a fact which, according to Art. 4 of AL, excludes the person from the refugee status.

5. Since the appellant is challenging the decisions issued in the asylum procedure, his claims regarding the excessive length of custody ordered in the extradition procedure, as well his claims regarding the non-existence of legal grounds for extradition, cannot be an object of review in the proceeding to decide on the merits of a constitutional complaint.

6. The claims related to the appointment of a refugee counsellor are unfounded. Art. 9 of AL grants the asylum seeker the right to choose his own legal counsel or a refugee counsellor, to help him during the proceedings. According to Art. 16, refugee counsellors advise asylum seekers on the substantive and procedural law of asylum, provide help in filing the request for asylum and general legal aid, and represent the asylum seeker in the proceedings. The appellant requested that a refugee counsellor be appointed for him on 14. 11. 1999. The MI replied that the three-month statutory period for the appointment of counsellors had not yet expired, and that the minister did not appointed them yet. The Court rejected the appellant's claim regarding a serious violation of the rules of procedure, since the appellant had chosen his own legal counsellor and legal aid had therefore been provided.

7. The position of the Administrative Court, from the equal protection of rights (Art. 22 of the Constitution) perspective, is not problematic. Art. 22 guarantees that a person claiming his rights before state authorities has an adequate and sufficient opportunity to present his case from both a factual and legal point of view. Requesting asylum is demanding in both respects. The asylum seeker finds himself in a difficulty in a foreign country, and the lack of knowledge of the legal order, as well as of the language, may in effect prevent his claim to the right of asylum. The right laid down in Art. 9 of AL provides the claimant with effective protection of his rights in the asylum procedure and as such represents a fulfilment of guarantees laid down in Art. 22 of the Constitution.

8. The mere non-appointment of a refugee counsellor does not mean that the asylum seeker was not given an opportunity to effectively request asylum. Even the AL does not formulate this right as an absolute one, but rather speaks of a right of the asylum seeker to choose his own legal counsel or a refugee counsellor. The appellant was represented by an attorney of his own choosing, and besides, he does not assert that effective protection of his rights was made impossible by the non-appointment of a refugee counsellor.

9. The claim concerning a violation of Art. 5 and Art. 13 of the Constitution is likewise unfounded. Art. 5 of the Constitution provides that the state protects human rights and fundamental liberties on its territory. Art. 13 provides that foreigners in Slovenia, in accordance with international treaties, enjoy all rights guaranteed by this Constitution and laws, with the exception of those reserved by the Constitution and laws only to the citizens of Slovenia. These are general provisions that do not

guarantee the individual additional rights to those provided by the Constitution and international treaties.

10. Art. 22 represents the application of the general principle of equality of all before the law (second section of Art. 14 of the Constitution) in the field of rights protection. This is a special case of the principle of legal equality that guarantees everyone equal protection of his rights in proceedings before courts, other state authorities, local community authorities and entities with public authority. The Constitutional Court therefore assessed the allegation regarding a violation of Art. 14 of the Constitution within the framework of the asserted violation of Art. 22 of the Constitution.

11. According to the Constitution, the right to asylum is guaranteed only to persons who are persecuted because of their commitment to human rights and fundamental liberties (Art. 48 of the Constitution). The constitutional basis for a review of the decision of the competent body on the (non)granting of asylum by reasons of the third section of Art. 1 of AL (hereinafter referred to as: asylum for humanitarian reasons) is Art. 18 of the Constitution. The provision prohibits torture, inhuman and degrading treatment and punishment. This is a special provision in relation to Art. 34 of the Constitution that gives everyone a right to personal dignity and safety, and in relation to Art. 35 that guarantees inviolability of physical and spiritual human integrity. The Constitutional Court therefore assessed appellant's allegations regarding violations of Art. 34 and Art. 35 within the framework of guarantees of Art. 18 of the Constitution.

12. In interpreting this provision, the Constitutional Court considered the positions taken by the European Court of Human Rights (hereinafter referred to as: ECourHR) regarding the substance of Art. 3 of the ECHR relating to decisions regarding asylum and extradition of individuals to another state or their deportation. Art. 3 of the ECHR, in a similar fashion as Art. 18 of the Constitution, prohibits torture, inhuman and degrading treatment and punishment. In addition, the Court took into account provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Official Gazette of the Republic of Slovenia, no. 24/93, International Treaties, no. 7/94 – hereinafter referred to as: The United Nations Convention).

13. The United Nations Convention explicitly prohibits prosecution, deportation or extradition of a person to another state, if reasonable suspicion exists that he or she may be tortured (first section of Art. 3). The substance of Art. 3, according to the interpretation of the ECourHR, is similar. The provision prohibits extradition of an individual to another state, when substantial grounds are shown to justify a conclusion that real risk exists that this person will be exposed to torture or inhuman or degrading treatment or punishment.[1] The decision whether risk exists requires a finding with respect to the situation in the country that demands extradition of a person, or which is the cause of that person's seeking asylum. According to the

[1] See judgements in cases Soering v. United Kingdom of 7.7.1989, Publ. ECHR, Ser. A, Vol. 161, §§ 88 – 91, Cruz Varas and others v. Sweden of 20.3.1991, Publ. ECHR, Ser. A, Vol. 201, § 69, Vilvarajah and others v. United Kingdom of 30.10.1991, Publ. ECHR, Ser. A, Vol. 215, § 103, Chahal v. United Kingdom of 15.11.1996, Reports 1996-V, Vol. 22, §§ 73-74, Ahmed v. Austria of 17.12.1996, Reports 1996-VI, Vol. 26, § 39.

United Nations Convention, this involves taking into account all relevant circumstances, including whether systematic serious, obvious or mass violations of human rights take place in the country in question (second section of Art. 3).

14. In the Constitution, just as in the ECHR, the provision on the prohibition of torture stands among the first provisions on human rights, immediately after the provision on the inviolability of human life (Art. 17) and before the provisions guaranteeing personal freedom (Art. 19 and 20). A temporary annulment or restriction of Art. 18 rights in a state of war or martial law is not permitted (second section of Art. 16). Just as the ECHR and the United Nations Convention, the Constitution prohibits extradition or deportation of a person, if a real possibility exists that in that case the person would be exposed to inhuman treatment, but it does not guarantee a right to asylum. The decision to grant asylum for humanitarian reasons - as requested by the appellant - and under what circumstances, lies within the discretion of the legislator. Art. 18 only prohibits an extradition or deportation of a person, regarding whom a real risk of inhuman treatment exists, should he return to the country from which he came.

15. The Constitutional Court emphasised several times that the purpose of the Constitution is not a formal or theoretical recognition of human rights, but rather that the Constitution demands a guaranteed possibility of their effective and actual enforcement (decision no. Up-275/97 of 16.7.1998 – OdlUS VII, 231). If the guarantees of Art. 18 are to be actually implemented, an individual must not bear too heavy a burden of proof concerning danger. An assessment regarding the existence of risk that the person would be exposed to inhuman treatment is very demanding. Naturally, it is the person concerned who must show the circumstances of him being endangered. This is followed by an assessment whether the subjective fear is objectively corroborated to such an extent that the person is really at risk. This calls for a consideration of both the situation of the person concerned and the circumstances in the country from which the person comes or to which he would be deported.

16. The legislative regulation of the extradition procedure, relevant in the appellant's case, makes the observance of the above described constitutional safeguards possible. The extradition procedure is made up of a decision by a court that statutory conditions for extradition have been met and a decision by the minister of justice on the (im)permissibility of extradition. The minister of justice does not permit extradition if the person was granted asylum (Art. 528 to 530 of the Code of Criminal Procedure, Official Gazette of the Republic of Slovenia, no. 63/94 et seq., hereinafter abbreviated as "CCP"). The subsequently adopted AL provided two kinds of decisions that prevent extradition: a decision on granting asylum and a decision on permitting stay in the country. Asylum for humanitarian reasons is granted under two conditions: (1) that humanitarian reasons are present (i.e. risk of inhuman treatment or a threat to safety or physical integrity) and (2) that none of the excluding reasons exist (e.g. existence of reasonable suspicion that a serious criminal offence of non-political nature had been committed outside the country before entry). In the event that only the first condition was satisfied, the person concerned may, after the decision to deny asylum became final, request a permit to stay in the Republic of Slovenia (Art. 6 and 61 of AL). Neither CCP nor AL provide how a permit to stay in the Republic of Slovenia influences the decision of the minister of justice on the (im)permissibility of extradition of a person to a country that requested it. Regardless

of the position that will be adopted, the stay in the Republic of Slovenia cannot be understood otherwise except that it prevents any forcible removal or return of a person and therefore also extradition. That, in fact, is its only meaningful purpose.

17. From the perspective of Art. 18 of the Constitution, it is important to look at the decision on the existence of humanitarian reasons in the asylum procedure and the decision on the (non)granting of permission for a stay in the Republic of Slovenia. The competent authority must assess, in both procedures, (1) whether circumstances that led the person to seek asylum or the permission to stay are such as would make him feel threatened, and (2) whether such fear is objectively reasonable. In assessing the first element, all of the claims made by the person concerned must be taken into account, as well as other possible evidence, and a reliable assessment must be made regarding the credibility of those claims. The assessment of the second element must include an analysis of the situation in the country to which the seeker claimant would have to return in case the decision rejects his request. If the decision does not include an assessment of all circumstances and evidence relevant for the competent authority's reliable judgement regarding the existence of both elements, it contravenes Art. 22 of the Constitution (equal protection of rights).

18. Considering the appellant's claims, the criterion for reviewing a decision on the existence of excluding reasons in the asylum procedure is the equal protection of rights guarantee (Art. 22 of the Constitution). Under this provision, a court reviewing a decision of a lower court or an administrative authority has a duty to consider a party's allegations, assess their relevance, and make a finding regarding the essential points in the reasoning of the decision.

19. The challenged administrative decision and judgement deny the appellant's claim that a return to Ž could endanger his safety or physical integrity. The appellant substantiates his request for asylum with the fact that he knows about corruption and other illegalities committed by Mr. C in the process of election for governor of C., who was later in fact elected, that he has documents that can prove this, and that the criminal proceeding which is the basis for Z.V.'s request for extradition is a sham. He claims that he was threatened with death. The administrative and court decisions explain the ruling that the asylum request is unfounded by rejecting the credibility and reasoning of the appellant's allegations as being inconsistent. The court, in addition, ruled itself that a reason for exclusion provided in the second paragraph of section one of Art. 4 of AL can be found, i.e. that reasonable suspicion exists that the appellant committed a serious criminal offence of non-political nature outside of the Republic of Slovenia before he entered the country. This ruling was substantiated with data from the administrative case-file, obtained from the criminal case-file regarding the appellant's extradition. The court said that fraud, which is the reason for criminal prosecution of the appellant in Z.V., is a classical criminal offence. Since he is charged with improper use of budget funds in the amount of 10 million Rubles, this was a serious criminal offence.

20. The majority of findings in both challenged decisions regarding appellant's contradictory claims have no basis in the data found in the case file. The certificate of citizenship and passport do not lead to the certain conclusion that the appellant was in T. at the time in question. In the month of November in 1998, criminal proceedings were initiated against the appellant, and on 2.2.1999, a warrant was issued. It is

unlikely that the appellant would not have been arrested had he stayed in T. after the warrant was issued. In addition, in the extradition procedure the court demanded submission of a form on the basis of which a passport was issued. Authorities of Š. did not submit such a document. On the other hand, a copy of the passport issued in March 1999, and a copy of a letter from the Internal Affairs Bureau of the city of Norilsk no. 6162 of 3.9.1999, make it possible to conclude that a change of citizenship from the former Union of Soviet Socialist Republics to the citizenship of Z.V. was effected by statute and therefore required no submission from the person concerned. This passport was, anyway, not signed by the appellant. The circumstances regarding the place of issue of the visa for travel to R. are less clear. In the extradition procedure, the appellant stated that he obtained it in S., but in the asylum procedure he said that it was issued in T. The visa was issued in August 1999, i.e. at the time the warrant was already issued and the appellant was in R. Notwithstanding this fact, it is impossible to imagine a good reason why the administrative authority refers to the appellant's assertions instead of asking the competent authorities to submit the visa and reviewing it itself. The claims regarding the number of children are not inconsistent, and their credibility is entirely confirmed by the reply of the State Prosecution Office of Z.V. of 20.3.2000. This reply states that one of the appellant's four children is adopted. Even the appellant's alleged contradiction as regards his profession are not such as to definitely refute his credibility and justify a denial of the request for asylum. The period when the appellant was supposed to have worked for the Leningrad Turbine Factory, and the period when he supposedly worked in an administrative authority of P. are different. The mere fact that he held a state office and was an owner of several companies around the world does not mean that his claims regarding his profession prior to his escape to R. are inconsistent. The appellant submitted several documents explaining his function in the administrative organisational structure of P. The assertions concerning the fact that he was escorted by policemen upon his departure from the country, and that he received a summons of the Economic Crimes Bureau, were said by the appellant to have occurred in 1997, not in November 1998, when he was supposed to have escaped from Ž because of threats which are the cause of his seeking asylum. It is, likewise, unclear how could the fact that the appellant was himself involved in the electoral campaign of C. contradict his allegations concerning him being endangered due to his knowledge of irregularities in that campaign. By denying the credibility of allegations made by the appellant because he did not submit documents which were supposed to be kept in a bank safe in T., and evidence of the fact that he was already shot at, the administrative authority and court place on the defendant a burden of proof that cannot be met. It is, moreover, unclear what further evidence the appellant was supposed to submit to prove his claim that it was he who notified the authorities about the crime that he is prosecuted for. In his submissions of 4.10.1999 and 14.1.2000, the appellant provided several documents, including correspondence between him and a bank, as well as between him and public prosecutor of M., which corroborate his claims. Some documents were, it is true, submitted after the administrative decision was issued, but this does not relieve the court of the duty to consider them when making a decision (third section of Art. 39 of AL and Art. 14 of the Law on Administrative Dispute).

21. The challenged decisions interpret certain facts to the detriment of the appellant without at least implicitly making clear why another equally possible or even more likely interpretation shouldn't be taken into account. The administrative authority

concluded that the appellant filed his request for asylum merely to prevent extradition from the fact that he filed his request a month after arriving to the country and that he was travelling to R. The appellant's behaviour represents a reasonable reaction in the situation when he was arrested while travelling to R., where he sought refuge from threats once before. It is also reasonable, moreover, that he needed some time to find representation. Even the statements that his wife and child were held hostage in an apartment, though he received his wife's letter, were convincingly explained by the appellant in the sense that the expression "hostages" only meant that they could not leave Ž. It is, furthermore, unclear why the fact that the appellant submitted a document dated 9.2.1999 for the case file should prove that he was in T. at the time.

22. The challenged decisions are, in the part where they justify the existence of the appellant's subjective sense of being threatened, without reasoning, and therefore contravene the equal protection of rights guarantee (Art. 22 of the Constitution). Since the challenged decisions lack both an assessment with respect to the existence of subjective sense as well as of the objective fact of being threatened, the Constitutional Court could not decide whether Art. 18 was violated as well.

23. The equal protection of rights guarantee (Art. 22 of the Constitution) was also violated with the decision that excluding reasons of Art. 4 of AL exist. The court reasoned that reasonable suspicion exists that a serious criminal offence had been committed and that the alleged criminal offence was not of political nature. The reasoning of the challenged judgement, on the other hand, lacks an assessment regarding the existence of the third condition for deciding that an excluding reason exists, i.e. that reasonable suspicion can be found that the appellant committed the alleged criminal offence.

24. One of the conditions for a decision of the competent court that legal conditions for extradition are satisfied (line 7 of Art. 522 of CCP), is the existence of sufficient evidence for reasonable suspicion to be found that the person whose extradition is being sought committed a criminal offence. The standard of proof "sufficient evidence for reasonable suspicion to be found" is at least equal to the evidentiary standard "existence of reasonable suspicion" required in the asylum procedure. A decision regarding the fulfilment of the aforementioned condition in the extradition procedure also includes an assessment of possible claims by the person concerned that the criminal proceedings initiated against him are a sham. A final judgement regarding the fulfilment of conditions for extradition is therefore sufficient for a decision regarding the existence of "reasonable suspicion" in the asylum procedure.

25. At the time the challenged judgement was issued the decision that conditions for extradition were satisfied was already final, although the challenged judgement does not refer to this. Since the challenged decision does not explain what specific circumstances were considered to find that "reasonable suspicion" exists, and does not take a position regarding the appellant' claims that the criminal proceedings were a sham, it contravenes Art. 22 of the Constitution.

26. In the event that the Constitutional Court rules in favour of the constitutional complaint, it rescinds the individual act fully or in part or annuls it and remands the case to the competent authority (first section of Art. 59 of LCC). If the competent authority in the asylum procedure finds the existence of an excluding reason of Art. 4

of AL, a decision on the existence of humanitarian reasons becomes unnecessary. Since it was only the part of the judgement that decided on the existence of the excluding reason, and not the decision of the MI, that violated a constitutional right, and since the Administrative Court has the competence to rescind a decision in order to remedy violations of constitutional rights, the Constitutional Court only annulled the judgement and remanded the case for reconsideration to the Administrative Court. When reconsidering the case, the Administrative Court has a duty, if it rescinds the challenged decision of the MI, to take into account the reasoning of this decision.

B) - II

27. Under the second paragraph of second section of Art. 40 of LA, the procedure to grant asylum is final when the decision of the Administrative Court is served. It follows from this provision that a decision of the Administrative Court may not be appealed to the Supreme Court. The legislator thus provided a different rule from the one regulated in the first section of Art. 70 of the Law on Administrative Disputes (Official Gazette of the Republic of Slovenia, no. 50/97 and no. 65/97 – a correction – hereinafter abbreviated as LAD). This law provides that a judgement issued in the administrative dispute in the first instance may be appealed, except where provided otherwise by this law. The case considered here is not mentioned.

28. The Constitutional Court, on the basis of the second section of Art. 59 of LCC and Art. 30 of LCC extended the proceeding to a review of the conformity of the second paragraph of second section of Art. 40 of AL with the Constitution. In the proceeding, it will adjudge whether the challenged decision violates the right to appeal provided in Art. 25 of the Constitution and whether such a provision conforms to the principles of the rule of law provided in Art. 2 of the Constitution.

29. The Constitutional Court, pending a final decision, also stayed the implementation of the aforementioned statutory provision. Under the provision of Art. 39 of LCC, the Constitutional Court may, pending a final decision, wholly or partly stay the implementation of a regulation or a general act for execution of public authority, if its implementation could produce damaging consequences that could only be reversed with difficulty.

30. When deciding on a temporary stay of execution of a regulation, the Constitutional Court weighs the damaging consequences that implementation of a possibly unconstitutional regulation might cause, and the damaging consequences that would occur if the challenged provision is not implemented. The asylum seeker, whose request was denied, can, after the judgement of the Administrative Court is served, be forcibly removed from the territory of the Republic of Slovenia (first and second section of Art. 40 of AL), which might mean that it would lead to irreparable damaging consequences. On the other hand, the staying of implementation of the second paragraph of second section of Art. 40 of AL does not produce damaging consequences. It is only the effect of finality that is being postponed until the moment provided by the general rules of LAD.

31. In order not to produce unnecessary complications concerning the question of finality pending the final decision in a case, the Constitutional Court held that, during

the staying period, it is to be presumed that a decision of the Administrative Court that decided on an action against a decision issued in the asylum procedure, can be appealed. According to the provisions of LAD, which are, during the staying period of the relevant provision of AL, temporarily applicable in the asylum procedure, a decision becomes final when the appeal against a judgement of the first-instance court is exhausted and the judgement is served. If an appeal against a first-instance judgement is not filed or is too late, finality takes place when the deadline for appeal has passed.

C)

32. The Constitutional Court adopted this decision on the basis of Art. 30, Art. 39, second section of Art. 40 and the first and second sections of Art. 59 of LCC, in a panel composed of president Franc Testen and judges dr. Janez Èebulj, dr. Zvonko Fišer, Lojze Janko, Milojka Modrijan, dr. Mirjam Škrk, dr. Lojze Ude and dr. Dragica Wedam-Lukiæ The decision on paragraphs 1 and 2 was unanimous, while paragraphs 3, 4 and 5 was adopted with seven votes to one. Judge Ude voted against their adoption. Judge Fišer and judge Škrk wrote concurring opinions with respect to paragraphs 1 and 2, while judge Ude wrote a dissenting opinion with respect to paragraphs 3, 4 and 5.

No. Up-78/00

Ljubljana, 29 June 2000.

Franc Testen
President