



REPUBLIKA SLOVENIJA  
USTAVNO SODIŠČE

Case No.: U-I-146/07-34  
Date: 13 November 2008

DECISION

At a session held on 13 November 2008 in proceedings to review constitutionality initiated upon the petition of Evgen Bavčar, Ajdovščina, represented by Jože Hribernik, lawyer in Ljubljana, the Constitutional Court

decided as follows:

- 1. The Civil Procedure Act (Official Gazette RS, Nos. 26/99, 96/02, 12/03 – official consolidated text, 2/04, 36/04 – official consolidated text, 52/07 and 73/07 – official consolidated text, 45/08) is inconsistent with the Constitution, as it does not regulate the right of blind and partially sighted persons to access court documents and written applications of parties and other participants in proceedings in a form that they are capable of perceiving.**
- 2. The National Assembly is obliged to remedy the established inconsistency within a period of one year from the publication of this decision in the Official Gazette of the Republic of Slovenia.**
- 3. Until the established inconsistency is remedied, courts in civil proceedings must ensure blind and partially sighted persons access on their request to court documents and written applications of parties and other participants in proceedings in a form that they are capable of perceiving. Costs that are so incurred are to be paid from the funds of the court.**

Reasoning

A.

1. The petitioner challenges Article 102 of the Civil Procedure Act (hereinafter referred to as the CPA), which regulates the right of participants in proceedings to use their language at hearings and during other oral procedural acts. The petitioner alleges that the challenged provision is inconsistent with the Constitution, as it does not regulate the right of blind persons to a transcript in Braille of court documents and written applications of parties and other participants in proceedings. He explains that he has been blind since the age of twelve and therefore in the civil proceedings pending against him he requested that a transcript of the claim and other documents be made in Braille at the expense of the opposing party. The court of first instance

allegedly dismissed his request, stating that the CPA does not provide a legal basis that requires courts to ensure transcripts of written applications in Braille to blind persons. The court stated that Article 102 of the CPA ensures participants to proceedings only the right to use their language at hearings and during other oral procedural acts, however, not also in written applications which must be drawn up in the official language of the court. The court allegedly dismissed the petitioner's allegations regarding his unequal position in proceedings by stating that he is indeed ensured an equal position due to the fact that he is represented by a lawyer. It allegedly also informed the petitioner that he himself could pay in advance for the production of a Braille transcript of the disputable written applications. In the petitioner's opinion, the above-described conduct of the court proves that blind persons are subject to indirect discrimination in civil proceedings. Therefore, the challenged regulation is allegedly inconsistent with the principle of equality before the law within the meaning of Article 14 of the Constitution. The petitioner furthermore states that the obligation of the state to guarantee the equal protection of rights in proceedings to everyone also follows from Article 22 of the Constitution. Therefore, he also claims the violation of the above-mentioned provision. Furthermore, he states that the challenged statutory regulation does not guarantee blind persons effective communication with the court and with the opposing party, and therefore it is allegedly inconsistent also with the right to judicial protection (Article 23 of the Constitution) and with the right to an effective legal remedy (Article 25 of the Constitution). The fact that the legislature did not envisage a special regulation for blind persons on the basis of which they could effectively exercise their rights in judicial proceedings is allegedly constitutionally disputable also taking into consideration that the legislature has already appropriately regulated the special position of certain categories of persons with disabilities in proceedings before courts and other state authorities. The petitioner draws attention to the fact that in accordance with the Slovene Sign Language Act (Official Gazette RS, No. 96/02 – hereinafter referred to as the SSLA), deaf persons have the right to use Slovene sign language in proceedings before state authorities, whereby the payment of costs for an interpreter must be provided by state authorities. In the petitioner's opinion, the positions of blind and deaf persons in proceedings before state authorities are essentially similar. Therefore, in his opinion there exist no sound reasons for their different treatment. This is another reason that there allegedly exists an inconsistency with Article 14 of the Constitution.

2. The National Assembly replied that the regulation contained in Article 102 as well as in Articles 103 and 104 of the CPA entails an implementation of the right to use one's language and script determined in Article 62 of the Constitution. The National Assembly draws attention to the fact that the legislature has a broad field of discretion when determining the manner of the implementation of the above-mentioned right. What is allegedly crucial is that it fulfils the purpose which the above-stated provision pursues, i.e. to ensure a fair trial. Therefore, in the opinion of the National Assembly, the right to use one's language and script applies particularly to oral procedural acts. When regulating the right to use one's script in written procedural acts, the legislature allegedly has an especially broad field of discretion. This is allegedly understandable due to the fact that a party who does not understand the language is at a severe disadvantage during proceedings, whereas he or she may draw up written applications also with the assistance of other persons. According to the National Assembly, the same, *mutatis mutandis*, also applies for

blind persons. As the nature of their disability allegedly does not prevent them from following the oral part of proceedings and actively participate therein, thus active participation at hearings due to their disability is allegedly not made impossible. In addition, they allegedly can (the same as other persons) understand written applications with the assistance of third persons. The National Assembly emphasizes that when interpreting the content of the above-mentioned constitutional provision, also Article 11 of the Constitution must be taken into consideration, which determines that in Slovenia the official language is Slovene. The Slovene language is thus allegedly privileged in relation to other languages already pursuant to the Constitution. Moreover, the right to use one's language allegedly in principle does not ensure the parties to proceedings the right to free-of-charge assistance from an interpreter.

3. In the opinion of the National Assembly, blind persons are ensured the right to a fair trial regarding written procedural acts by other procedural provisions. The National Assembly assesses that blind persons can conduct written procedural acts with the assistance of an authorized representative. Provided that they cannot pay the costs of such a representative due to their unfavourable financial situation, they may, in the opinion of the National Assembly, request that the court appointed them a free-of-charge lawyer (Article 170 of the CCA) or they may request free-of-charge legal aid in accordance with the rules determined in the Free-of-Charge Legal Aid Act (Official Gazette RS, No. 96/04 *et sub.* – hereinafter referred to as the FCLAA). The constitutionally consistent interpretation of Article 102 of the CCA allegedly also allows the courts to provide blind persons the assistance of an interpreter for Braille in conducting written procedural acts. With reference to such, the National Assembly points out that it is not at all necessary that a blind person has been trained to read Braille. The National Assembly is furthermore of the opinion that an authorized representative or an interpreter can assist a blind person also to review the content of a document which is produced at a hearing for evidentiary purposes. If a blind person does not have an authorized representative or does not motion that an interpreter be appointed to them, the National Assembly is of the opinion that also a court may inform them of the content of a document (Article 12 of the CCA) or may appoint an interpreter *ex officio* (Article 102 of the CCA). The National Assembly also draws attention to the fact that the legislature must, when regulating civil procedure, take into consideration the requirements of expeditious, economical, and effective proceedings, the aim of which is to ensure the right of (both) parties to be tried without undue delay and with as little cost as possible.

4. The National Assembly furthermore explains that the regulation of civil procedure is not different from other procedural regulations. The General Administrative Procedure Act (Official Gazette RS, No. 80/99 *et sub.* – hereinafter referred to as the GAPA) in Article 62 indeed determines that parties who cannot use the language in which the proceedings are conducted due to their disability, have the right to follow the course of proceedings with the assistance of an interpreter. However, in accordance with Articles 113 and 115 of the GAPA, each party should allegedly pay their own costs in advance. Furthermore, the National Assembly explains that the Criminal Procedure Act (Official Gazette RS, No. 63/94 *et sub.* – hereinafter referred to as the CrPA) in Article 70 indeed determines that a defence conducted with the assistance of a legal representative is obligatory also in instances in which a defendant is mute, deaf, or otherwise unable to conduct his or her own defence, and

that in accordance with Article 92 of the CrPA, the costs and payment for the appointed legal representative are first paid from the funds of the authority which is conducting the criminal proceedings. However, the National Assembly does emphasize that these costs are later recovered from those who must pay them in accordance with the law. Moreover, in the opinion of the National Assembly, it must also be taken into consideration that the Constitution in Article 29 ensures defendants in criminal proceedings additional legal guarantees in criminal proceedings which should ensure them a fair trial.

5. As regards the allegations regarding the unequal regulation of the procedural position of blind persons in comparison to deaf persons, the National Assembly replied that their positions are not comparable due to the different nature of their disabilities. The National Assembly explains that the right to a free-of-charge sign language interpreter, which is guaranteed to deaf persons, is ensured due to the fact that these persons are not capable, neither alone nor with the assistance of an authorized representative, of effectively following the oral part of proceedings and effectively participating therein. The position of blind persons is allegedly different, as the nature of their disability does not prevent them from following the oral part of proceedings and actively participate therein. In contrast, in written communication with the court the constitutional procedural guarantees are allegedly (as already explained above) ensured by other measures. The National Assembly moreover draws attention to the provisions of civil procedure which allow the audio recording of a hearing and thereby provide for the possibility that a blind person has access to such audio recordings also after the hearing was conducted. In view of the above mentioned, the National Assembly is of the opinion that the regulation of civil procedure is also for this reason not inconsistent with Article 14 of the Constitution.

6. In the opinion of the Government, Article 102 of the CPA is not inconsistent with the Constitution. The disputable provision allegedly does not put anyone in a less favourable position, nor does it give anyone a particular advantage, but, on the contrary, it guarantees the equal treatment of all persons in accordance with Article 14 of the Constitution. Moreover, the Government does not agree with the petitioner that blind persons do not have the right to use Braille already on the basis of Article 102 of the CPA. Therefore, in the opinion of the Government, the challenged provision is also not inconsistent with Articles 22, 23, and 25 of the Constitution. However, the Government is of the opinion that the petition does justifiably open a question whether a special law should also ensure blind persons certain financial entitlements (e.g. payment of the cost of producing transcripts in Braille) in proceedings before state authorities such as the SSLA ensures deaf persons with reference to the right to use Slovene sign language. The Government adds that the Ministry of Justice will strive to provide the appropriate technical possibilities in order to enable also blind persons to be able to follow hearings themselves.

7. The petitioner replied that his requests are based on the Convention on the Rights of Persons with Disabilities (Official Gazette RS, No. 37/08, IT, No. 10/08 – hereinafter referred to as the CRPD), which is also binding on Slovenia. He states that the idea of a lawyer as a mediator of records and the idea of “interpreting Braille” (the latter is allegedly also complete nonsense) have been endorsed without being assessed first by the experts. He emphasizes that blind persons who are capable of reading Braille are independent, whereas in cases in which it is read to them, they

are dependant. And nobody has the right to force dependency on them. The standpoint that it is possible to interact with him as a blind person only orally, allegedly put puts him in a position of someone who can only speak, i.e. an illiterate citizen. He emphasizes that such attitude is degrading to the rehabilitation of blind persons and to the two hundred year old tradition of literacy programmes for blind persons, which gave them the opportunity to have a dignified and independent life.

#### B. - I.

8. By Order No. U-I-146/07, dated 13 March 2008, the Constitutional Court accepted the petition for consideration and decided to consider the case with absolute priority.

9. The petitioner claims that Article 102 of the CPA is inconsistent with the Constitution as it does not explicitly regulate the right of blind persons to free-of-charge access to court documents and written applications of parties and other participants in proceedings in Braille. The challenged statutory provision reads as follows:

“(1) The parties and other participants in the proceedings may use their language at hearings and during other oral procedural acts before the court. If the proceedings are not conducted in the language of a party or of other participants in the proceedings, they shall be provided, upon a motion filed to this effect or when the court finds that they do not understand the Slovene language, an oral translation of statements made at the hearing and an oral translation of documents used as evidence at the hearing.

(2) The parties and other participants in the proceedings shall also be advised of their right to follow the oral proceedings in their own language through an interpreter. They may waive the right to translation by declaring that they understand the language in which the proceedings are being conducted. The advice provided to the parties concerning their rights in respect of the language and their statements in this regard shall be entered into the minutes of the hearing.

(3) The translations shall be made by interpreters.”

10. The challenged statutory provision regulates only the right of participants in civil proceedings to use their language in oral (and not written) communication with the court. Therefore, the allegations put forward by the petitioner cannot substantiate its unconstitutional nature. Due to the alleged existence of a so-called unconstitutional gap in the law, the Constitutional Court had to establish whether the right of blind persons to transcripts in Braille is regulated by some other statutory provision, and if it is not, whether the mandatory provision of such follows from the Constitution.

11. As regards written communication between the court and parties in proceedings, the CPA in Article 103 determines that summons, decisions, and other court documents shall be sent to the parties and other participants in proceedings in the language officially being used by the court. In accordance with Article 104 of the CPA, the same applies for applications that the parties (or other participants) send to the court. A clear answer to the question whether the court in civil proceedings should order a Braille transcript of court documents and the written applications of participants in proceedings upon the motion of the party on the basis of, *mutatis*

*mutandis*, application of the above-cited statutory provisions, cannot be determined from the statutory text. Most of all, however, it is of essential importance that in the provisions of the CPA the basis for the interpretation that, at the expense of the court, blind persons are ensured transcripts of court documents and written applications of other participants in proceedings in a form that they are capable of perceiving cannot be found. Article 152 of the CPA determines that (as a general rule) each party shall provide in advance the payment for costs resulting their acts. In the final analysis, what applies is the criterion that a party who does not succeed in the litigation bears the costs of proceedings (Article 154 of the CPA), which is supplemented by the principle of guilt (Article 156 of the CPA), which has a corrective nature, and individual special rules (Articles 158 to 161 of the CPA), which are not relevant to the case at issue. If blind persons are not ensured a Braille transcript of court and other documents in proceedings at the expense of the state, we cannot speak of the right to use Braille. Thus, the right of blind persons to free-of-charge access to court and other documents in proceedings in a form that they are capable of perceiving cannot be deduced from the existing civil procedure provisions by means of interpretation. Such right of blind persons is also not regulated by any other regulation. Therefore, the same rules apply for them as for all other participants in civil proceedings.

12. The petitioner claims that blind persons, due to such equal treatment which does not take into consideration their special needs, do not have equal opportunities to review the content of court and other documents in proceedings as does the opposing party, and that therefore they do not have equal opportunities to effectively communicate with the court and with the opposing party. The content of the petitioner's above-mentioned allegations is that blind persons do not have equal opportunities to exercise their right to an adversarial procedure and the right to the equal treatment of parties in civil proceedings. The right to an adversarial procedure entails that courts treat parties as active participants in proceedings and enable them to effectively defend their rights and thereby give them the opportunity to actively influence decisions in cases which interfere with their rights and interests. The significance of this right is thus to ensure that parties are subjects and not merely objects to proceedings.<sup>i</sup> In this respect, it is important that a party cannot effectively exercise the right to be heard in proceedings if they are not given the opportunity to review the entire procedural material prior to that.<sup>ii</sup> The essential element of the right to the equal treatment of parties to civil proceedings is the requirement of the equality of arms, which entails that the parties to proceedings before the court must be guaranteed equal procedural positions. The parties must thus be ensured equal opportunities to review procedural materials, to present their positions, including evidence, as well as when defending themselves against the allegations of the opposing party. In accordance with the established constitutional case-law, both above-mentioned rights follow from the right to the equal protection of rights determined in Article 22 of the Constitution. In view of the fact that this is a central provision of the Constitution which refers to the right to a fair trial,<sup>iii</sup> the Constitutional Court herein also reviewed whether blind persons are discriminated against in exercising the rights which stem from the above-mentioned constitutional provision due to receiving equal treatment. The right to use one's language and script in judicial proceedings is specifically protected within the framework of Article 62 of the Constitution,<sup>iv</sup> however, (as the Constitutional Court has emphasized many times)<sup>v</sup> the constitutional framework of this right follows exactly from the constitutional standards of a fair trial. Therefore, a review of the position of blind persons in

exercising their constitutional procedural guarantees determined in Article 22 of the Constitution also encompasses a review of their position from the viewpoint of the enjoyment of the above-mentioned human right.

13. In view of the fact that the position of blind persons when conducting oral procedural acts in proceedings is not disputable for the petitioner, the Constitutional Court limited its review only to the question whether blind persons are discriminated against in exercising their right to a fair trial when conducting written procedural acts.

## B. – II.

### **The Prohibition of Discrimination due to Personal Circumstances**

14. The first paragraph of Article 14 of the Constitution determines that in Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance. The above-cited constitutional provision thus prohibits discrimination with regard to guaranteeing, exercising, or protecting human rights and fundamental freedoms regardless of the individual's personal circumstances. With reference to such, it is important that in order to determine a violation of the constitutional prohibition against discriminatory treatment, it is sufficient to establish the existence of inadmissible discrimination in the enjoyment of any human right, whereas a petitioner does not need to demonstrate an interference with this human right.<sup>vi</sup>

15. The principle of non-discrimination (as a fundamental element of the principle of equality) within the meaning of the first paragraph of Article 14 of the Constitution is established in an essentially different manner than in the second paragraph, since non-discrimination with regard to guaranteeing human rights, regardless of the individual's personal circumstances, supersedes the usual formal frameworks of equality.<sup>vii</sup> The standpoint that not only the requirement of formal equal treatment follows from the requirement of non-discriminatory treatment, but also *de facto* equal treatment, has also been adopted in recent (Slovene and comparative) constitutional case-law<sup>viii</sup>, as well as in the case-law of the ECtHR.<sup>ix</sup> A substantive approach to understanding and exercising equality indicates that the (formal) equal treatment of individuals in equal (relevantly similar) positions does not ensure the *de facto* equality of those (formally) equally treated individuals who, due to individual circumstances (e.g. due to a marginal social position, prejudice, and stereotypes silently lurking in the social morals of the majority, due to past discrimination, due to under-representation in certain areas of social life) are in a *de facto* less privileged position.<sup>x</sup> Therefore, the principle of equality allegedly also has a normative power in the sense that the law should legitimately create certain differences in order to abolish differences which are a result of traditional and long-lasting discrimination between people.<sup>xi</sup> This is the implementation of the principle of equal opportunities. The Constitutional Court has already recognized such positive aspect of equality (*cf.* Constitutional Court Decision No. U-I-298/96, dated 11 November 1999, Official Gazette RS, No. 98/99 and OdlUS VIII, 246).

16. By implementing the concept of substantive equality, a differentiated manner of exercising equality is implemented which within a certain scope and under certain conditions includes the prevention of de facto or indirect discrimination.<sup>xii</sup> Such concept of equality was also adopted in the Implementation of the Principle of Equal Treatment Act (Official Gazette RS, No. 61/07 *et sub.* – hereinafter referred to as the IPETA), which defines equal treatment as the absence of direct or indirect discrimination on the grounds of any of the personal circumstance referred to in Article 2 of the same Act (Article 4 of the IPETA). In accordance with the third paragraph of Article 4 of the IPETA, indirect discrimination exists when a person with a certain personal circumstance was, is, or would be in a less favourable position compared with other persons in equal or similar circumstances and conditions due to an apparently neutral regulation, criterion, or practice, unless these provisions, criteria, or practices are objectively justified by a legitimate aim and if the means of achieving this aim are appropriate and necessary. Discrimination thus exists also in cases in which individuals or social groups are indeed formally ensured equal rights or an equal scope of rights, while the individuals who are thereby de facto in a less favourable position are deprived with reference to exercising their rights or fulfilling obligations.<sup>xiii</sup>

17. The requirement of substantive equality follows from the first paragraph of Article 14 of the Constitution. It is thus not sufficient that only formal equality is ensured, since such understanding of equality has already been surmounted in constitutional case-law, as explained above. In cases of alleged indirect discrimination, it must be established whether inequality exists in the effects of a legal regulation and not in the legal regulation itself. In preventing indirect discrimination, the protection of the affected interests or expected benefits namely refers to the result or the consequences of the legal regulation (differentiation). Such protection requires that the consequences of the adopted legal norms be analysed and that the possible discriminatory effects of the legal regulation be abolished.<sup>xiv</sup>

18. In the event of the review of the legal position (due to a certain personal circumstance determined in the first paragraph of Article 14 of the Constitution) of a disadvantaged social group, what may also prove to be constitutionally inadmissible is that an exception to the general norm is not determined, if such general norm has discriminatory effects for this social group. The requirement of the prohibition of discrimination namely in certain instances entails also the requirement of the implementation of a special legal position or special rights, including certain positive measures which should prevent a less favourable position or marginalization of the weakest links of society, and as well promote and create equal opportunities for such categories of people in order to ensure their participation in social life on an equal basis.<sup>xv</sup> Positive measures which are adopted with such an intention do not entail an interference with the principle of equality,<sup>xvi</sup> but are intended precisely to enable its implementation. The standpoint that from the requirement of the prohibition of discrimination there also follows the requirement of the prevention of indirect discrimination and consequently also the requirement that appropriate reasonable accommodations be implemented which should ensure de facto equal treatment of disadvantaged social groups, has also been adopted by the ECtHR.<sup>xvii</sup>



## The Prohibition of Discrimination due to Disability

19. Numerous international instruments have increasingly emphasized that persons with disabilities as an objectively disadvantaged social group must be ensured de facto equal treatment. Such requirements are a consequence of the changing social attitude towards persons with disabilities: from a person with a disability as an object to a person with a disability as a bearer of rights, thus, from a situation in which others decide on their behalf, to a situation in which they decide independently for themselves.<sup>xviii</sup> The Standard Rules on the Equalization of Opportunities for Persons with Disabilities,<sup>xix</sup> in addition to the prohibition of discrimination within the meaning of implementing formal equality, promote the idea that society must ensure equal opportunities for persons with disabilities by taking active measures. They explicitly emphasize also the overall importance of accessibility (also to information and communication) in the process of the equalization of opportunities in all spheres of society (Rule 5). The increasingly greater social awareness that persons with disabilities must be integrated equally in the activities of the society is also reflected in the amended Article 15 (The right of persons with disabilities to independence, social integration, and participation in the life of the community) of the European Social Charter, which was amended when the European Social Charter was revised, to which a new third paragraph was added. The third paragraph explicitly states that it is necessary to promote the full social integration and participation in the life of the community of persons with disabilities.<sup>xx</sup>

20. Also in the legal order of the European Union it has been increasingly underlined that a legislature may not take into account only the prohibition of discrimination, but that it must be active in ensuring the equal treatment of persons with disabilities by encouraging them, as members of society, to participate in all forms of social life.<sup>xxi</sup> Within the framework of the European Year of Persons with Disabilities, a European Action Plan (2004 - 2010): "Equal opportunities for people with disabilities" was adopted, in accordance with which two-year action plans are adopted. In 2006 the European Parliament resolution on the situation of people with disabilities in the enlarged European Union: the European Action Plan 2006 - 2007 (2006/2105(INI)) was adopted,<sup>xxii</sup> which, *inter alia*, draws attention to the fact that it is necessary that documentation produced by European institutions should always be made available on demand in accessible formats, particularly as regards forms being fully accessible to blind and partially sighted people (paragraph 31).<sup>xxiii</sup> Within the framework of the European Year of Persons with Disabilities, Slovenia has also adopted an Action Plan for Persons with Disabilities 2007 – 2013,<sup>xxiv</sup> which among the general principles and obligations emphasises the obligation to accept disabilities as part of human diversity, the obligation to ensure equal opportunities, the obligation to ensure their full and effective participation and integration in the society, the obligation to respect their personal dignity and independence, including the right to their free choice and independence, as well as accessibility, as the fundamental conditions for exercising their rights and ensuring their social integration. Moreover, the Charter of Fundamental Rights of the European Union (OJ C 303, 14 December 2007) emphasizes that persons with disabilities must be ensured not only formal (legal) equality, but also de facto (substantive) equality, which should ensure equal opportunities and equality as regards results in order to eliminate de facto inequalities. The first paragraph of Article 21 of the Charter namely not only

emphasized that discrimination based on disability is prohibited, but Article 26 (Integration of persons with disabilities) explicitly recognises and ensures persons with disabilities the right to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community.

21. Another reflection of the ever greater social awareness of the significance of ensuring equal opportunities for persons with disabilities is the amendment to the first paragraph of Article 14 of the Constitution,<sup>xxv</sup> by which the right to non-discriminatory treatment was extended,<sup>xxvi</sup> such that now disability is explicitly mentioned among the personal circumstance which may not be a basis for discrimination.<sup>xxvii</sup> Prior to this disability was undoubtedly also considered one of the personal circumstances which may not be a basis for discriminatory treatment, however, such symbolic emphasis in the Constitution with regard to the protection of persons with disabilities against discrimination gives it even greater significance at the symbolic level.<sup>xxviii</sup>

22. Moreover, it must be taken into consideration that in 2008 the CRPD<sup>xxix</sup> and its Optional Protocol came into force, which is the first binding instrument of the UN in the field of the human rights of persons with disabilities. State signatories have, *inter alia*, undertaken to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability and to adopt all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention (Article 4 of the CRPD). According to the CRPD, discrimination on the basis of disability also includes the denial of necessary and appropriate modifications and adjustments which do not impose a disproportionate or undue burden, where needed in a particular case, in order to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2 of the CRPD). The CRPD, *inter alia*, explicitly requires that state signatories ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as (direct and indirect) participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages (*cf.* Article 13 – “Access to Justice”). Also Slovenia has ratified the CRPD.<sup>xxx</sup> This entails that in accordance with the second paragraph of Article 153 with reference to Article 8 of the Constitution, from the day of its coming into force, its provisions are binding on the National Assembly when adopting laws. The duty to adopt appropriate accommodations which would enable blind persons to (by themselves) effectively participate in proceedings before courts is thus imposed on the legislature also by this binding treaty.

#### B. – IV.

#### **The Position of Blind and Partially Sighted<sup>xxxi</sup> Persons in Civil Proceedings**

23. The Constitutional Court, taking into consideration all the above-mentioned, notes that the existing regulation of civil procedure which does not ensure special rights to blind persons, but, notwithstanding the fact that they are an objectively disadvantaged social group, treats them equally as other participants in proceedings,

interferes with their right to non-discriminatory treatment (the first paragraph of Article 14 of the Constitution). Preventing access to court and other documents in civil proceedings in a form that blind persons are capable of perceiving namely entails a significant obstacle for blind persons, which (in comparison with other persons in the same position) makes exercising their right to fair treatment significantly more difficult. In order to eliminate this disadvantaged position of blind persons in civil proceedings, certain appropriate accommodations would be necessary. The National Assembly namely did not demonstrate that blind persons are ensured an equal position in exercising their rights in civil proceedings with other, already existing, procedural institutions.

24. The Constitutional Court has already emphasized<sup>xxxii</sup> that in determining the constitutional frameworks of the right to use one's language or script in judicial proceedings, it must be taken into consideration that in Slovenia the official language is Slovene (and in certain areas also Italian and Hungarian).<sup>xxxiii</sup> Furthermore, the Constitutional Court has already adopted the standpoint that the fact that a party to civil proceedings must himself or herself provide for the translation of court and other documents into a language that he or she understands, is in and of itself not inconsistent with the right to use one's language in proceedings as the party is, notwithstanding, ensured a fair trial.<sup>xxxiv</sup> However, the position of blind persons cannot be treated the same as the position of persons who do not understand the Slovene language. A copy of judicial or other documents in proceedings in Braille is namely still a document in Slovene and not in a foreign language. Therefore, the position of blind persons can only be compared with the position of persons who, the same as blind persons, understand the Slovene language. As regards the above-mentioned, there is no doubt that blind persons are in a disadvantaged position in comparison with other persons with regard to the possibility of reviewing the content of court documents or written applications of parties and other participants in proceedings. Notwithstanding the fact that there are literacy programmes adapted to their disability, which enables that they can, regardless of the obstacles caused by their blindness, review, by themselves, the content of court and other documents in proceedings in the Slovene language, the state does not ensure them appropriate accommodations.

25. As regards the possibility of reviewing the content of the written procedural acts of the court and participants in proceedings, blind persons are not in a disadvantaged position only in comparison with persons who do understand the Slovene language, but they are also in a substantially more difficult position in comparison with persons who do not understand the Slovene language. Blind persons namely cannot provide themselves with court or other documents in proceedings in a form that they can understand, as can persons who do not understand the Slovene language. As noted by the petitioner, interpreters for Braille do not exist *per se*. In order to ensure a transcript in Braille, the form of a document must be "translated" in another form by technical means. This can be done either by printing documents in Braille or by converting documents to Braille using an electronic Braille pad (or into a spoken form using a speech synthesizer). However, in order to use either method, blind persons must be ensured an electronic form of a document. It is thus made substantially more difficult for blind persons to provide themselves with a transcript of documents in a form that they are capable of perceiving if court or other documents in proceedings are served on them [only] in a printed form.

26. Moreover, also the institution of authorized representation cannot ensure blind persons an equal position in exercising their rights in civil proceedings. Provided that it is required only of blind persons that they exercise their rights with the assistance of an authorized representative, this would namely (also if such representation was provided at the expense of the state) not entail a special benefit for blind persons, but their discrimination, as they cannot exercise their rights in judicial proceedings under the same conditions as others (who may choose freely [whether to have the assistance of an authorized representative]). The above-mentioned would namely entail that blind persons are not recognized the capacity to give legally relevant form to procedural acts already in the first and second instance, which other persons (who have the contractual capacity or the capacity to sue or be sued) are recognized. Moreover, the institution of authorized representation would not eliminate the unequal position of blind persons in civil proceedings even if obligatory representation by a lawyer were prescribed equally for all parties to proceedings.<sup>xxxv</sup> Blind persons would still be in a disadvantaged position in comparison with others notwithstanding the fact that the capacity to give legally relevant form to procedural acts would be equally limited for all. Access to transcripts of court and other documents in a form that blind persons are capable of perceiving would namely still be substantially more difficult in comparison with other persons (as follows from the above paragraphs of the reasoning).

27. Taking into account what has been explained above, also the existing regulation of the exemption from paying for the costs of proceedings (which also includes the costs of lawyers) cannot by itself remedy the less favourable position of blind persons in civil proceedings when exercising their rights determined in Article 22 of the Constitution. Not only because the institution of representation by a lawyer cannot in itself as a general rule ensure a blind person an equal position in proceedings, but also because free-of-charge representation by a lawyer, even if a blind person freely decides that he or she wishes to exercise his or her rights in proceedings only in such manner, is not ensured in every case. In accordance with the provisions of the FCLAA,<sup>xxxvi</sup> only persons whose financial situation is unfavourable are entitled to exemption from the payment of the costs of proceedings.<sup>xxxvii</sup> The above-mentioned regulation does not envisage any other reason for which the right to free-of-charge legal aid could be exercised. As already emphasized above, the right to access court and other documents in proceedings in a form that blind persons are capable of perceiving exists only if such is ensured to them at the expense of the state.

28. In view of the fact that the Constitutional Court established that the omission of the legislature with regard to ensuring blind persons necessary and appropriate accommodations which would enable them to exercise their right to fair treatment in civil proceedings on an equal basis, entails an interference with their right to non-discriminatory treatment (the first paragraph of Article 14 of the Constitution), it had to review if such interference is constitutionally admissible. An interference with human rights is constitutionally admissible if it is based on a constitutionally admissible, i.e. objectively substantiated aim (the third paragraph of Article 15 of the Constitution) and if it is in accordance with the general principle of proportionality as one of the principles of a state governed by the rule of law (Article 2 of the Constitution). The review of the consistency of the challenged regulation with the general principle of proportionality is carried out by the Constitutional Court on the basis of a strict

proportionality test, which comprises a review of three aspects of the interference, i.e. a review of the necessity, appropriateness, and proportionality of the interference in the narrow sense if it is established beforehand that the limitation is based on a constitutionally admissible aim (see, 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).

29. The Constitutional Court first reviewed whether there existed any constitutionally admissible reason for denying necessary and appropriate accommodations. The National Assembly, *inter alia*, objected that when regulating civil procedure the requirements of expeditious, economical, and effective proceedings must be taken into consideration, the aim of which is to ensure the right of (both) parties to be tried without undue delay and with as little cost as possible. The objection that the requirement of expeditious proceedings must be respected could be important from the viewpoint of the constitutional requirement of the prohibition of excessive interferences with the right to (effective) judicial protection determined in the first paragraph of Article 23 of the Constitution. However, by merely stating general allegations that also this human right should be taken into consideration, the National Assembly did not demonstrate that for this reason the right of blind persons to access court and other documents in proceedings in a form that they are capable of perceiving cannot be regulated in any (reasonable) manner. It is the obligation of the legislature to regulate the position of blind persons in civil proceedings within the frameworks of its field of discretion, so that it does not excessively interfere with the human rights of other participants in proceedings. In addition, it must be taken into consideration that there already exists a statutory basis for introducing electronic operations in civil proceedings,<sup>xxxviii</sup> which will significantly facilitate the possibility of ensuring reasonable accommodations for blind persons. Furthermore, the National Assembly did not demonstrate the existence of a constitutionally admissible reason for the established interference with this human right by alleging that it is its duty to prevent excessive costs for the parties. As the Constitutional Court already explained, blind persons must be ensured access to court and other documents in proceedings in a form that they are capable of perceiving at the expense of the state and not at the expense of the parties. The National Assembly did not even claim that the costs of appropriate accommodations would be so unreasonably high that such positive measures could not be carried out. Within the frameworks of its field of discretion, the legislature can provide appropriate accommodations in a manner such that the state budget will be burdened as little as possible. Due to the fact that according to the above-mentioned the National Assembly did not demonstrate that denying necessary and appropriate accommodations which would enable blind persons to exercise their rights to fair treatment in civil proceedings on an equal basis is justified by any constitutionally admissible aim, the first condition, which is required by the Constitution in order for the limitation of human rights to be allowed, is not fulfilled.

30. The Constitutional Court therefore established that the challenged regulation of civil proceedings which does not take into consideration the special position of blind (and partially sighted) persons who participate therein and are therefore not ensured an equal position in exercising their right to fair treatment (Article 22 of the Constitution) is inconsistent with the first paragraph of Article 14 of the Constitution (paragraph one of the disposition). The Constitutional Court namely established that there exists a gap in the law in the regulation of civil proceedings which cannot be

filled and is in its substance deficient to the extent that filling it when necessary would be arbitrary due to the fact that there exist no predictable and legally reliable criteria governing how to proceed in individual cases.<sup>xxxix</sup> The equal protection of rights in authoritative procedures can namely be ensured only in a manner such that the rules of procedure, which authorities must respect when deciding the rights, duties, and legal interests of individuals, are precisely determined in advance. In view of the nature of this right, it is thus necessary that the law prescribe the manner of its implementation (the second paragraph of Article 15 of the Constitution).<sup>xl</sup> Due to the fact that in the case at issue the legislature did not regulate a certain issue which it should have regulated, the abrogation is not possible. Therefore, on the basis of the first paragraph of Article 48 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text – hereinafter referred to as the CCA) the Constitutional Court adopted a declaratory decision. On the basis of the second paragraph of Article 48 of the CCA, it requires that the legislature remedy the established inconsistency within a period of one year from the publication of this decision in the Official Gazette of the Republic of Slovenia (paragraph two of the disposition).

31. In order to satisfy the constitutional and convention requirements of the equal treatment of blind (and partially sighted) persons in civil proceedings, the legislature will have to regulate in an appropriate manner their right to access court and other documents in proceedings in a form that they are capable of perceiving. Thereby, from the perspective of the right of blind persons to personal dignity, it is of essential importance that they are (within the framework of reasonable possibilities) ensured the possibility to choose in which manner they wish to review the content of documents (whether through the physical form of a Braille version of the document, through a digital form of the document, or through a reading with the assistance of another person, etc.). The possibility to participate in proceedings on equal terms regardless of blindness namely depends on the particular capabilities of the individual. In the assessment of the Constitutional Court, obligatory representation by a lawyer as a manner of ensuring that blind persons exercise their right to a fair trial on equal terms could be constitutionally admissible only in cases in which blind persons, due to their personal circumstances, cannot be ensured effective protection of their rights by other appropriate accommodations. However, in such cases blind persons should be ensured representation by a lawyer at the expense of the state and regardless of their financial situation or income.

32. Regardless of the fact that in the case at issue the Constitutional Court reviewed only whether the regulation of civil procedure ensures blind persons the opportunity to exercise on equal terms their right to fair treatment in civil and other judicial proceedings in which the provisions of the CPA are applied *mutatis mutandis*,<sup>xlii</sup> the Constitutional Court draws attention to the fact that the question regarding the necessity of the appropriate regulation of the equal rights of blind persons also in other judicial proceedings and proceedings before other state authorities is raised. Therefore, a uniform statutory regulation for all judicial proceedings (and also for other proceedings before state authorities, local community authorities, and bearers of public authority in which an individual's rights, obligations, or legal interests are decided on) should be considered, as has already been adopted, for example, for deaf persons. Regardless of the fact that the Constitutional Court established the constitutional inconsistency of the CPA, this does not entail that within the

frameworks of its field of discretion the legislature is not allowed to regulate the inconsistency established in this decision by a special law (as was adopted for deaf persons) or in the Equalisation of Opportunities for Persons with Disabilities Act,<sup>xliii</sup> in the Courts Act (Official Gazette RS, No. 19/94 *et sub.*), or in any other act.

33. Due to the fact that the Constitutional Court established that the challenged regulation of the civil procedure is inconsistent with the principle of non-discriminatory treatment within the meaning of the first paragraph of Article 14 of the Constitution, it did not review the allegations of the unequal treatment of blind persons in comparison with deaf persons (i.e. the alleged violation of the principle of equality before the law or in the law on the basis of the second paragraph of Article 14 of the Constitution).

34. In order to ensure blind persons a position which enables them on an equal and effective basis to exercise their rights in civil and other judicial proceedings in which the CPA is applied *mutatis mutandis* until the established inconsistency is remedied, the Constitutional Court determined on the basis of the second paragraph of Article 40 of the CCA the manner of the implementation of the decision. In accordance with the above-mentioned provision, the courts must ensure blind persons access on their request to court documents and written applications of parties and other participants in proceedings in a form that they are capable of perceiving, whereby the costs that are so incurred are to be paid from the funds of the court (paragraph three of the disposition). The Constitutional Court is aware that due to the complexity of the issue which the legislature will have to regulate, it will not be possible to fully ensure the equal position of blind persons in civil proceedings until the adoption of the appropriate statutory regulation. Until the appropriate technical solutions are adopted, the courts will namely not be able to ensure in every case that blind persons can review the procedural materials in a manner that they choose. However, in order to ensure blind persons at least minimal procedural guarantees in this transitional period, the courts will have to provide blind persons on their request transcripts in Braille at least regarding the more important procedural materials (i.e. materials which are served on parties). A different manner of reviewing the content of procedural materials (e.g. by reading, by appropriate oral summary of the relevant content of the procedural materials, or in some other appropriate manner) can be applied in cases in which due to the circumstances of the individual case (either because of the format of the information so recorded – e.g. a photograph or a sketch – or because of other, e.g. technical obstacles), this right of blind persons cannot be ensured with transcripts of documents in Braille. Until the adoption of the appropriate legislation, it will be particularly important that blind persons be ensured access to court and other documents in proceedings in a form that they are capable of perceiving within a scope which will guarantee them effective protection of their rights in proceedings.

### C.

35. The Constitutional Court reached this decision on the basis of Article 48 and the second paragraph of Article 40 of the CCA and the fifth paragraph of Article 46 of the Rules of Procedure of the Constitutional Court (Official Gazette RS, No. 86/07), composed of: Jože Tratnik, President, and Judges mag. Marta Klampfer, 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

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<sup>i</sup> The Constitutional Court stated this already in Decision No. Up-39/95, dated 16 January 1997 (OdlUS VI, 71), in which, regarding the right determined in Article 22 of the Constitution, it wrote that “[...] it is based on respect for human personality, since it ensures everyone the possibility to be heard in proceedings which affect their rights and interests, and thus prevents a person from becoming simply an object of the proceedings.”

<sup>ii</sup> See also the Constitutional Court Decision No. Up-108/00, dated 20 February 2003 (Official Gazette RS, No. 26/03 and OdlUS XI, 49).

<sup>iii</sup> See, A. Galič, *Ustavno civilno procesno pravo*, GV Založba, Ljubljana 2004, p. 219.

<sup>iv</sup> Article 62 of the Constitution reads as follows: “Everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other bodies performing a public function.”

<sup>v</sup> See, the Constitutional Court, *inter alia*, in Order No. Up-43/96, dated 30 May 2000 (OdlUS IX, 141) and in Decision No. Up-404/05, dated 21 June 2007 (Official Gazette RS, No. 64/07 and OdlUS XVI, 101).

<sup>vi</sup> Also the European Court of Human Rights (hereinafter referred to as the ECtHR) in its recent case-law superseded a dependant, ancillary nature of the right to equality in accordance with which the violation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, IT, No. 7/94 – hereinafter referred to as the ECHR) could be successfully enforced only in connection with the violation of one of the convention rights (regarding the older case-law compare, P. Mahnič, *Enakost in enakopravnost*, in: *Javna uprava, Inštitut za javno upravo*, no. 3, vol. 38, Ljubljana 2002, p. 362). In its recent decisions the ECtHR namely emphasizes that the application of Article 14 of the ECHR no longer presupposes a breach of other convention rights and that therefore Article 14 of the ECHR is to this extent autonomous. For Article 14 to become applicable, it suffices that the facts of a case fall within the ambit of another substantive provision of the ECHR or its Protocols (*cf.* *Thlimmenos v. Greece*, Judgment dated 6 April 2000, No. 34369/97, paragraph 40).

<sup>vii</sup> M. Cerar, *Nekateri (ustavno)pravni vidiki načela nediskriminacije*, in: D. Zagorc (editor), *Enakost in diskriminacija, Sodobni izzivi za pravosodje*, Mirovni inštitut, Ljubljana 2005, p. 46.

<sup>viii</sup> *Cf.* L. Šturm, *Article 14 (The Principle of Equality)*, in: L. Šturm (editor), *Komentar Ustave Republike Slovenije, Fakulteta za podiplomske državne in evropske študije*, Ljubljana 2002, p. 181. See also, P. Mahnič, *ibidem*, p. 358.

<sup>ix</sup> The ECtHR has in recent years made a shift from a formal understanding of the requirement of the prohibition of discrimination which follows from Article 14 of the ECHR and Article 1 of the Protocol No. 12 to the ECHR (Slovenia has not yet ratified this Protocol and therefore it is not binding on Slovenia) to an understanding of its content. In accordance with the recent case-law of the ECtHR, the right to non-discriminatory treatment in enjoying convention rights is violated not only in cases in which a state without an objective and sound reason treats persons in similar situations differently, but also in cases in which a state without an objective and sound reason does not treat persons whose positions are relevantly different differently (*cf.* the above cited case of *Thlimmenos v. Greece*; for a more detailed consideration of this question, see O. De Schutter, *Reasonable Accommodations and Positive Obligations in the European Convention on Human Rights*, in: A. Lawson & C. Gooding (editor), *Disability Rights in Europe: From Theory to Practice*, Hart, Oxford and Portland, Oregon 2005, p. 52). *Cf.* K. Reid, *A Practitioner’s Guide to the European Convention on Human Rights*, 3<sup>rd</sup> edition, Thomson, Sweet & Maxwell Ltd, London 2008, p. 273.

<sup>x</sup> B. Flander, *Pozitivna diskriminacije, Univerza v Ljubljani, Fakulteta za družbene vede*, Ljubljana 2004, p. 66.

<sup>xi</sup> P. Mahnič, *ibidem*, p. 367.

<sup>xii</sup> B. Flander, *ibidem*, p. 72.



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<sup>xiii</sup> *Ibidem*, p. 71.

<sup>xiv</sup> *Ibidem*.

<sup>xv</sup> For this legal instrument, legal theory uses the expression “positive discrimination in a broader sense”. On the other hand, in legal theory “positive discrimination in a narrower sense” is a legal instrument which implements the unequal (priority) legal treatment of certain categories of persons when exercising rights which are as a general rule ensured to the same extent and under the same conditions to all legal addressees in order to promote or create equal opportunities, in order to promote more equal representation in the political, economic, social, and other areas of social life, and in order to abolish or prevent indirect discrimination and the consequences of past discrimination. Positive discrimination in a narrower sense exists in cases in which certain categories of persons are exceptionally and temporarily treated differently/with priority when exercising their rights which are as a general rule ensured to members of different social groups or to all persons under the same conditions and to the same extent (for more see, B. Flander, *ibidem*, pp. 101-102).

<sup>xvi</sup> The Constitutional Court in Decision No. U-I-283/94, dated 12 February 1998 (Official Gazette RS, No. 20/98 and OdlUS VII, 26) indeed adopted the standpoint that ensuring a certain social group special rights entails a withdrawal from the principle of equality. However, the cited case is different from the case at issue. The Constitutional Court namely in the cited case reviewed the constitutional admissibility of the special right of the members of autochthonous national minorities to a so-called double right to vote as a form of positive discrimination in a narrower sense.

<sup>xvii</sup> *Cf.* D. H. and Others v. the Czech Republic (Grand Chamber Judgment, dated 13 November 2007): the Grand Chamber established that the Czech Republic violated Article 14 (the Prohibition of Discrimination) of the ECHR, read in conjunction with Article 2 (the Right to Education) of Protocol No. 1 to the ECHR, as it did not attempt to abolish the discriminatory effect caused by the legislation in the sphere of education which was the same for all children by means of different (accommodated) treatment of the members of the Roma community.

<sup>xviii</sup> *Cf.* Malaga Ministerial Declaration on People with Disabilities: “Progressing towards full participation as citizens”, which was adopted in 2003 at the Second European Conference of Ministers Responsible for Integration Policies for People with Disabilities, organized by the Council of Europe. The text of the Declaration is published on the website: [http://www.mdds.gov.si/si/delovna\\_podrocja/invalidi/malaska\\_deklaracija\\_o\\_invalidih/](http://www.mdds.gov.si/si/delovna_podrocja/invalidi/malaska_deklaracija_o_invalidih/).

<sup>xix</sup> The above-mentioned Rules, which were adopted by Resolution No. 48/96, dated 20 December 1993, were not adopted as a binding international instrument, nevertheless in the introduction it is stated that although the Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law.

<sup>xx</sup> The third paragraph of Article 15 of the revised European Social Charter (Official Gazette RS, No. 24/99, IT, No. 7/99) reads as follows: “With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular: to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

<sup>xxi</sup> At the level of the European Union, a general principle of the prohibition of discrimination has been introduced in the Treaty Establishing the European Community (hereinafter referred to as the Treaty EC) with the Treaty of Amsterdam. *Cf.* Article 13 of the Treaty EC (OJ C 340, 10 November 1997 and Official Gazette RS, No. 27, IT, No. 7/04 – consolidated text). The provision speaks of “appropriate action to combat discrimination.” This can also be understood as the possibility to adopt positive measures.

<sup>xxii</sup> OJ C 316 E, 22 December 2006, pp. 370 – 378.

<sup>xxiii</sup> In 2007, Europol adopted the Rules for Access to Europol Documents (OJ C 072, 29 March 2007, pp. 37 - 40), which in Article 10 (Access following an application) determines, *inter alia*, that documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print, or tape) and in one of the available linguistic versions in accordance with the applicant's preference.

<sup>xxiv</sup> An Action Plan is published on the website: <http://www.mdds.gov.si/si/splosno/novice/novica/article/1939/5367/?cHash=075eded6b1>.

<sup>xxv</sup> *Cf.* The Constitutional Act Amending Article 14 of the Constitution of the Republic of Slovenia (Official Gazette RS, No. 69/04).

<sup>xxvi</sup> In recent years, such extension of the principle of non-discriminatory treatment has been adopted

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also in certain other European countries. In 1994, the German Bundestag adopted an amendment to Article 3 of the Basic Act, which now explicitly determines that no one may be placed at a disadvantage because of their disability (*cf.* Maunz-Dürig, Grundgesetz Kommentar, Band I, GG-Text, Art. 3, Verlag C. H. Beck München, p. 353a).

<sup>xxvii</sup> In Slovene legal regulation there is no uniform definition of disability. Disability and the status of a person with a disability depend on the individual fields of legal regulation (*cf.* M. Kalčič, Invalidnost kot osebna okoliščina, in: Prepoved diskriminacije, Med varstvom človekovih pravic in konkurenčnostjo delodajalca, Inštitut za delo pri Pravni fakulteti Univerze v Ljubljani, Ljubljana 2007, p. 361). The second paragraph of Article 1 of the CRPD defines persons with disabilities as persons who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The notion of disability is, however, explicitly determined in the Preamble. Disability is defined as an evolving concept and as a result from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others (paragraph e). From both definitions it clearly follows that they establish a connection between an individual – a person with disabilities – and the environment. Thereby, both definitions indirectly bind the state signatories to remove barriers in the environment that cause discrimination and make equal opportunities impossible (*ibidem*, p. 359).

<sup>xxviii</sup> *Cf.* L. Šturm, Ustavnopravni vidiki načela enakosti, in: Človekove pravice in invalidi, Za 14. člen – od ideje do ustavnega zakona, p. 43, published on the website: [http://www2.arnes.si/~ljzdis1/books/ZDIS\\_zbornik\\_2005.pdf](http://www2.arnes.si/~ljzdis1/books/ZDIS_zbornik_2005.pdf).

*Cf.* M. Cerar, Ustavna razprava pred prehodom v drugo fazo, Pravna praksa, no. 44/2003, Uvodnik, pp. 3 - 4.

<sup>xxix</sup> The Convention and the Optional Protocol thereto were adopted by the General Assembly of the UN in December 2006 by Resolution No. A/61/611. In accordance with Article 45 of the Convention, it entered into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession, i.e. on 30 May 2008.

<sup>xxx</sup> Slovenia signed the CRPD, together with the Optional Protocol on 30 March 2007. The National Assembly ratified it on 4 April 2008.

<sup>xxxi</sup> Partially sighted persons may also be in the same position as blind persons. In this decision, hereinafter, the Constitutional Court refers to all such persons as blind persons.

<sup>xxxii</sup> *Cf.* already cited Order No. Up-43/96, paragraph 18 of the reasoning.

<sup>xxxiii</sup> *Cf.* T. Jerovšek, Člen 62 (pravica do uporabe svojega jezika), in: L. Šturm (editor), *ibidem*, p. 615.

<sup>xxxiv</sup> See, Constitutional Court Order No. Up-1378/06, dated 20 May 2008 (Official Gazette RS, 59/08).

<sup>xxxv</sup> As already prescribed (the exception is determined only in the fourth paragraph of Article 86 of the CPA) in proceedings with extraordinary legal remedies (*cf.* the third paragraph of Article 86 of the CPA).

<sup>xxxvi</sup> Article 170 of the CPA, which regulated the right of a party to be appointed a free-of-charge lawyer, was repealed on 1 October 2008 by the coming into force of the Act Amending the Civil Procedure Act (Official Gazette RS, No. 45/08). Since that time, this right is decided on only in accordance with the rules determined in the FCLAA.

<sup>xxxvii</sup> The first paragraph of Article 1 of the FCLAA reads as follows: "In accordance with this Act, free-of-charge legal aid entails allowing persons to exercise their right to legal protection in line with the principle of equality, taking into account their social circumstances, where they would otherwise be unable to do so without harming their ability to maintain themselves and their family."

<sup>xxxviii</sup> *Cf.* The Act Amending the Civil Procedure Act (Official Gazette RS, No. 52/07), which already contains provisions on electronic operations of courts, which have, however, not yet been implemented due to the fact that appropriate executive regulations must still be adopted and appropriate technical conditions fulfilled.

<sup>xxxix</sup> M. Pavčnik, Argumentacija v pravu, Od življenjskega primera do pravne odločitve, 2. spremenjena in dopolnjena izdaja, Cankarjeva založba, Ljubljana 2004, pp. 123 *et sub.*

<sup>xl</sup> F. Testen, Člen 22 (enako varstvo pravic) in: L. Šturm, *ibidem*, p. 240.

<sup>xli</sup> The provisions of the CPA namely do not apply only in civil, but (*mutatis mutandis*) also in other judicial proceedings. *Cf.* Article 15 of the Execution of Judgments in Civil Matters and Securing of Claims Act (Official Gazette RS, 51/98 *et sub.*), Article 37 of the Non-litigious Civil Procedure Act (Official Gazette SRS, No. 30/86 *et sub.*).

<sup>xlii</sup> From the legislative materials of the draft Act on the Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities No. EVA 2007-1811-0110, dated 21 February 2008, it follows that the Ministry of Labor,

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Family, and Social Affairs is drafting the text of the draft Act on the Equalization of Opportunities for Persons with Disabilities, which in the field of the protection of persons with disabilities should, in addition to the IPETA, regulate as *lex specialis* the prohibition of discrimination due to disability and measures for the equalization of opportunities of persons with disabilities.