

**CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA
BEETHOVNOVA ULICA 10, PoBox 1713**

1001 LJUBLJANA

Injured parties:

- 1. Terezika Bučar Omahen, Aličeva ulica 2, 1261 Ljubljana-Dobrunje**
- 2. Zadnikar Jožefa Ižanska cesta 418, 1000 Ljubljana**
- 3. Magda Lovec Trtnik, Pot heroja Trtnika 26, 1261 Ljubljana Dobrunje**
- 4. Tomaž Zajc, Črtomirova 21 A, Ljubljana**
- 5. Staša Briški Bailey, Baixada de Viladecols 1, Ent. 1., 08002 Barcelona, Spain**
- 6. Jože Hartman, Vodovodna 11, 1000 Ljubljana**
- 7. Jewish Community of Slovenia, Tržaška cesta 2, 1000 Ljubljana, represented by President Boris Čerin-Levi**
- 8. Associations of the National Liberation Movement of Slovenia, Einspielerjeva 6, 1000 Ljubljana, represented by President Marijan Križman,**
all of the above represented by law firm Završek & Šnajder, Ltd.,
Roman Završek, M.A., Attorney at Law

**CONVEYING OF INSTRUMENT AND PROPOSAL
TO ADOPT COMPLAINT AND DECISION**

Of the complainants

2 x
1 x instrument
Authorisation filed

I.

The constitutional complainants are filing in the adjudication of the Distric Court in Ljubljana, No. VII K 3425/2014 dated 25 September 2020, that was delivered to them on 5 October 2020, in which the court has, based on Article 139 of the Criminal Procedure Act, closed the proceeding against the defendant Leona Rupnik.

The decision to discontinue the proceedings in the retrial is in itself lawful, and it will not be possible to challenge it successfully with either regular or extraordinary legal remedies. There will be no substantive assessment of the complainants' arguments at all, as the proceedings against a dead person cannot be conducted. With the annulment of the judgment by the Supreme Court of the Republic of Slovenia and the termination of the proceedings against the defendant, the presumption of his innocence would be irreversibly established (Article 27 of the Constitution). Thus, the rights of the complainants set out in Article 25 of the Constitution (right to a legal remedy) and in Article 13 of the ECHR (right to an effective legal remedy) are irreparably violated.

2

It is therefore obvious that the execution of the judgment of the Supreme Court of the Republic of Slovenia, against which the constitutional complainants are appealing, has irreparable consequences for them. Namely, the complainants as injured parties were not able to participate and exercise their rights in the certiorary before the Supreme Court, of which they were not informed at all; nor will they be able to assert their rights in the repeated proceedings at first instance court that were closed. If the Constitutional Court does not accept their constitutional complaint for consideration, the victims will be completely denied the right to effective judicial protection according to Para 1 of Article 23 of the Constitution. The complainants are therefore of the opinion that the Constitutional Court is obliged to accept the constitutional complaint for decision under Para 2 of Article 51 of the Constitutional Court Act, based on the fact that they do not have any legal remedy left at their disposal, since the repeated proceedings were denied based on the fact that the defendant is dead.

Moreover, many among the complainants and others who experienced the horrors of the Second World War for which Leon Rupnik is responsible are elderly and ill. Time is not

their ally; even with the possible mere formal exhaustion of legal remedies, they could be dead due to their age and ill health before they could have lodged the constitutional complaint. It is therefore of particular importance that decision-making does not drag on, all the more so as an appeal to the ECtHR cannot be ruled out. Postponing the decision would further damage Slovenia's international reputation which, thanks to the National Liberation War, is on the side of the victorious Allied Forces in the historic fight against Fascism and Nazism. In addition, the ruling of the Supreme Court of the Republic of Slovenia met with protests not only from the part of Slovenian politicians, the general public and the Jewish community of Slovenia, but also from the international community, which negatively affects Slovenia's international reputation. Therefore, postponing a decision in this case would be particularly detrimental, both from the point of view of the injured parties affected, and from the point of view of public interest.

In view of the above, after receiving the decision of the District Court on the termination of the proceedings, the appellants propose to the Constitutional Court effectively considers the appeal in advance of the actual exhaustion of all legal remedies before regular courts, which can be merely formal rather than substantive.

Exhaustion of legal remedies cannot be considered from a strictly formalistic point of view; rather, it is necessary to take into account the special circumstances on account of which the appellants are not obliged to exhaust them before filing with the ECtHR, as such a condition would be disproportionate given their circumstances (see the decision of the ECtHR in *Reed v. United Kingdom*).

The complainants are therefore submitting the following

m o t i o n :

1. That the Constitutional Court accepts the constitutional complaint for consideration and, in accord with Article 46 of the Rules of Procedure of the Constitutional Court, orders a priority consideration of the case;
2. That in accord with Article 58 of the Constitutional Court Act, the Constitutional Court suspends the execution of the judgment of the Supreme Court No. I Ips 3425/2014 of 8 October 2019 pending its decision on this constitutional complaint;
3. That the Constitutional Court, on the basis of Para 2 of Article 35 of the Constitutional Court Act, considers a public hearing of the constitutional complaint;

4. That the Constitutional Court grants the application of the constitutional complaint and, on the basis of Para 1 of Article 60 of the Constitutional Court Act, nullifies the judgment of the Supreme Court no. I Ips 3425/2014; and that, regarding the filing against the judgment of the Military Court of the Armada IV, No. I Sod 117/46 of 30 August 1946 with regard to the decision of the Supreme Court of the Yugoslav Army, No. II 882/46 of 1 September 1946, the Constitutional Court itself rejects on the basis of the special nature of human dignity and other rights of the complainants;

a n d i n s e c o n d o r d e r, that the Constitutional Court, in accord with Article 59 of the Constitutional Court Act, grants the constitutional complaint and nullifies the judgement of the Supreme Court No. I Ips 3425/2014 and returns it to reconsideration to the Supreme Court of the Republic of Slovenia which, in the procedure, is to take into consideration the standpoints of the Constitutional Court.

Ljubljana, 5 October 2020

Complainants:

Terezika Bučar Omahen

Zadnikar Jožefa

Magda Lovec Trtnik

Tomaž Zajc

Staša Briški Bailey

Jože Hartman

Jewish Community of Slovenia

**Associations of the National Liberation
Movement of Slovenia**

**Law firm Završek & Šnajder, Ltd.,
Roman Završek, M.A., Attorney at Law**