

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the four-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the “Notes for filling in the application form”.

E. Statement of the facts

58.

1. On July 1, 2022, the Government submitted to the National Assembly the Draft Act on Amendments and Additions to the Slovenian Radio and Television Act (ZRTVS-1E) [1] and proposed to deal with it under an urgent procedure in order to avoid irreversible consequences for the functioning of the state [2]. The National Assembly followed the proposal and adopted the Act on Amendments and Additions to the Slovenian Radio and Television Act (hereinafter: ZRTVS-1B) [3] in its 13th extraordinary session on July 21, 2022, after it was reconsidered at the request of the National Council. Subsequently, a referendum on ZRTVS-1B was held, in which the majority of voters who participated in the referendum (on November 27, 2023) voted in favour of its entry into force (Official Gazette RS, No. 157/22). The Slovenian National Assembly informed about the decision of the referendum on ZRTVS-1B, at its session on December 23, 2022. The National Assembly declared that ZRTVS-1B was not rejected in the referendum (Official Gazette of RS, No. 161/22). As a result, ZRTVS-1B was promulgated and published in the Official Gazette of the Republic of Slovenia on December 27, 2022 (Official Gazette of RS, No. 163/22, Document 1).

2. With the entry into force of ZRTVS-1B, the regulation of the management, administrative and supervisory bodies of public broadcasting organization Radio and Television Slovenia (hereinafter: RTVS) was amended. Pursuant to Article 27 of ZRTVS-1B, the new regulation of the management, administrative and supervisory bodies of RTVS entered into force immediately on the day following the publication of ZRTVS-1B in the Official Gazette (Article 22(1) of ZRTVS-1B), i.e. without observing the constitutionally required 15-day *vaccatio legis* pursuant to Article 154 of the Constitution of the Republic of Slovenia (hereinafter: Constitution). On that date, i.e., the date of entry into force of the ZRTVS-1B, the mandate of the members of the Programme Council and the Supervisory Council, the mandate of the committees attached to them, and the mandate of the Director General, the Director of Radio Slovenia and the Director of Television Slovenia terminated *ex lege* on the basis of Article 22(1) of ZRTVS-1B.

3. The real and only objective of ZRTVS-1B, as can be seen from the statements of the government representatives attached to the petition to the Constitutional Court (Document 2, paragraphs 80-88), was to replace the current management and members of the management and supervisory bodies of RTVS because the Government and the representatives of the journalists' unions are politically opposed to them and want to replace them with other, politically sympathetic employees. The aim of ZRTVS-1B is therefore a political purge, carried out through an abuse of the legislative procedure and in violation of a number of other elements of the rule of law, including the right to effective judicial protection and the right to protection of private life under Articles 6(1) and 8 of the ECHR.

4. Therefore, on December 28, 2022, five petitioners submitted to the Constitutional Court of the Republic of Slovenia (hereinafter: CCt) a request to initiate proceedings to review the constitutionality of ZRTVS-1B (Document 2) pursuant to Article 24 of the Constitutional Court Act. The first petitioner was Dr. Peter Gregorčič, the Chairman of the Programme Council, who was appointed as a member of the Programme Council by the National Assembly on December 27, 2021, pursuant to Article 17(6)(7) of ZRTVS-1 for a period of four years (hereinafter: the first petitioner). The second petitioner was: Andrej Grah Whatmough, Director General of RTVS, who was appointed by the Programme Council of RTVS at its second ordinary meeting on March 17, 2022, for a period of four years with effect from March 18, 2022, pursuant to Articles 16 and 21 of the Act on Radio Television Slovenia (ZRTVS-1) and Articles 44 and 45 of the Statute of the Public Service Institution RTVS (Statute of RTVS) (hereinafter: the second petitioner). The third petitioner was: Dr. Tamara Besednjak Valič, Deputy Chairwoman of the Supervisory Board of RTVS, who was appointed by the National Assembly on December 27, 2021, pursuant to Article 26(1) of the RTVS Act-1, as a member of the Supervisory Board for a period of four years (hereinafter: the third petitioner). The fourth petitioner was: mag. Uroš Urbanija, Director of Television Slovenia, who was appointed by the Director General of RTVS pursuant to Article 21 of ZRTVS-1 and Article 52 of the Statute of RTVS on July 18, 2022 for a term of four years (hereinafter: the fourth petitioner). The fifth petitioner was: Radio and Television Slovenia, a public institution represented by its Director General, Andrej Grah Whatmough.

Statement of the facts (continued)

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5. The immediate ex lege termination of the mandates would have terminated the employment of the second and fourth petitioners; the first petitioner and the third petitioner would have lost their right to participate in the management of public affairs, and the right to protection of private life under Article 8(1) ECHR would have been violated for all of them. They would all also be deprived, at the individual level, of the function of ensuring the independence, autonomy and self-reliance of RTVS, without which the institutional independence of RTVS required by their right under Article 39 of the Constitution (Freedom of expression) would also cease to exist.

6. It is crucial for the present appeal that the first four petitioners before the CCt have consistently alleged, inter alia, a violation of Article 6(1) ECHR (Document 2, paragraphs 10-13, 18, 21, 26, 58; and Document 5). Since the mandates of all four petitioners were terminated ex lege, i.e. by the ZRTVS-1B Act itself, the request to initiate proceedings to review the constitutionality of the ZRTVS-1B before the CCt was the only remedy available to the petitioners in the Republic of Slovenia as a result of the ex lege termination of their mandates. For this reason, the petitioners also requested the CCt to decide on the case with absolute priority (Document 2, paragraphs 113-114) and to suspend the implementation of ZRTVS-1B (Document 2, paragraphs 105-112).

7. Since ZRTVS-1B not only ex lege terminates the mandates of the first four petitioners, but also abolishes the bodies in which they previously served, guaranteeing the institutional independence of RTVS, and replaces them with a completely new structure of governance, management and supervision of RTVS, without the suspension of the implementation of ZRTVS-1B it would no longer be possible to effectively protect their rights, even if the CCt were to confirm it later, since their bodies would no longer exist at all. The request for interim measures was further justified by the need to protect human rights in fact and not just in theory. Since the mandates of the members of the Programme and Supervisory Councils and the committees assigned to them expire irrevocably with the constitution of the new Council, the suspension of ZRTVS-1B is the only element of effective legal protection, since a later finding of unconstitutionality due to violation of the alleged human rights would merely represent a formal recognition of constitutional rights, which in practise is completely irrelevant for the individual affected in the present case.

8. On February 20, 2023, the CCt issued Decision No. U-I-479/22-25 of February 16, 2023 (Document 3), granting the petitioners' request for interim measures and suspending the implementation of Article 23(1), (2), (4) and (5) and Articles 24 and 25 of ZRTVS-1B pending a final decision on the merits. In paragraph 25 of the Decision, it states that it only suspended the implementation of those transitional provisions of ZRTVS-1B that regulate the final constitution of the new Council and, consequently, of the other new bodies of RTV Slovenia (Articles 23(1), (2), (4) and (5), and Articles 24 and 25 of ZRTVS-1B). Thus, the CCt has ensured that until the final decision of the CCt, the management, operation and control of RTVS will be regulated to the extent and under the conditions stipulated in Articles 22(2), (3) and (4) and 26 of ZRTVS-1B, and that the procedures for appointing the (new) members of the Council can be carried out on the basis of Articles 5 and 6 of ZRTVS-1B, while at the same time the final entry into force of the new regulation is suspended.

9. On May 16, 2023, Peter Gregorčič filed a Request to the CCt requesting that the CCt grant him the right to be heard under Article 6(1) ECHR on the factual and legal circumstances of the case before the possible lifting of the interim measures. This Appeal also included a remark that such lifting of interim measures would result in the loss of all available remedies for the petitioners and would consequently be contrary to case law and result in a violation of Article 6(1) ECHR. He also suggested that the CCt refer the case to the ECJ if it has any doubts about the correct interpretation of EU law - in particular about case C 288/12. The CCt did not even respond to this request and the CCt's Decision of 26 May 2023 does not contain this information either.

Statement of the facts (continued)

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10. On May 26, 2023, without hearing the parties, despite their request, the CCt issued a new Decision U-I-479/22-63, which overturned the previous Decision U-I-479/22-25 of February 16, 2023. The previous Decision had suspended the implementation of the first, second, fourth and fifth paragraphs of Article 23, as well as Articles 24 and 25 of ZRTVS-1B, pending a final decision. The new Decision orders that the new Council of RTV Slovenia must be constituted no later than seven days after the publication of the (new) CCt's Decision in the Official Gazette of the Republic of Slovenia. Within this period, the acting Director General or the person replacing him shall convene the first session of the new Council of RTV Slovenia. If the acting Director General (or the person replacing him) fails to convene the session, at least one third of the members of the new Council of RTVS may convene the first session. The provisions of the second, third and fourth paragraphs of Article 22 as well as Articles 23, 24, 25 and 26 of ZRTVS-1B shall apply mutatis mutandis to other matters of temporary management, administration and supervision of RTVS until all new bodies are appointed.

11. Since the CCt revoked its first decision on the interim suspension of ZRTVS-1B, the consequence is that all the mandates of the management, administrative and supervisory bodies of RTVS have ex lege and irrevocably lapsed, without their holders having an effective remedy. The only judicial remedy was a petition to initiate proceedings to review the constitutionality of ZRTVS-1B (Document 2) in conjunction with the interim suspension of the challenged regulation (Document 3), but the interim suspension was lifted by the CCt (Document 6) without, as it openly admits, being able to provide the petitioners with an effective remedy within a reasonable time (Document 6, paragraph 8). Moreover, the CCt considered that, in accordance with the principle of separation of powers, it was necessary to protect the position of the legislator against the rights of the petitioners, who are the real bearers of human rights, and therefore the CCt annulled the original Decision on interim measures of 16. 2. 2023 (Document 6). The CCt clearly stated the reasons to annulate the interim suspension, saying that "when the implementation of an Act is suspended in whole or in part, this prevents the execution of the will of the legislator." Therefore, with its Decision of May 26, 2023, the CCt has protected the power of state against individuals (Document 6, paragraph 8), which is fundamentally contrary to the idea of protecting human rights. The essence of this protection is to protect individuals from abuse of power. The position taken by the CCt raises the important question of whether human rights are still effectively protected in Slovenia.

12. Since the petitioners in the present case were deprived of any effective legal protection, they bring this complaint against the Republic of Slovenia for violation of Article 6(1) ECHR.

[1] Draft of ZRTVS-1B, EPA: 153 - IX, EVA: 2022-3340-0039, dated 1. 7. 2022

[2] EVA: 2022-3340-0039, No 00704-242/2022/4, dated 1. 7. 2022.

[3] Adopted Act ZRTVS-1B, of 14 July 2022, EPA: 153 - IX, No. 010-02/22-30/

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
ARTICLE 6-1 RIGHT TO A FAIR TRIAL	<p>1. According to the ECtHR, the ex lege termination of the mandate under the new legislation does not mean that the right to invoke the conditions for early dismissal that were in force when the mandate entered into force is also retroactively abolished. For example, in <i>Baka v. Hungary</i> (20261/12) and <i>Grzeda v. Poland</i> (43572/18), the ECtHR considered cases in which the office of the President of the Hungarian Supreme Court and that of a judge who was a member of the Polish Judicial Council were terminated ex lege. The ECtHR ruled that both holders of these offices are entitled to complete their term of office, provided that the grounds for early dismissal under the applicable legislation do not exist. The new legislation with the ex lege effect of premature termination of the mandate and deprivation of any judicial protection (<i>Baka v. Hungary</i> 20261/12, para. 110) thus also constituted an interference with the right to a fair trial under Article 6(1) ECHR.</p> <p>2. The ECJ ruled the same in Case C 288/12, in which the Hungarian Basic Law on December 31, 2011, ex lege abrogated the mandate of the Hungarian Information Commissioner, which should have lasted until September 2014, thus interfering with the autonomy and independence of the mandate holder (C 288/12, paras. 54, 55).</p> <p>3. The CCt of the Republic of Poland (Case K 4/06, cited in ECtHR, <i>Grzeda v. Poland</i> 43572/18, paras. 79-80) also ruled as early as 2006, in a case with the same subject matter (as in Slovenian ZRTVS-1B), that the early termination of mandates ex lege constitutes a violation of the principles of the rule of law and legality. On December 29, 2005, the Polish legislature adopted a law amending the division of tasks and powers of state bodies responsible for communications and broadcasting, by which it immediately and prematurely terminated ex lege the terms of office of members of the National Broadcasting Council.</p> <p>4. It follows from the ECHR, EU law, comparative constitutional law and the established case law of the Slovenian Constitutional Court that any interference by the legislator ex lege with the duration of the mandates of the autonomous and independent members of the bodies of the institutions, which must be relatively independent and, above all, stable: is highly questionable from a constitutional point of view; cannot be justified solely by the need to modify and restructure the existing governance model; that the new governance model can only be implemented if it respects the autonomy and independence of the mandate holders of the institutions under the existing legislation, so that their mandate can only be terminated prematurely in compliance with the rules and guarantees established in the existing legislation and taking into account transitional measures that ensure compliance with the duration of the existing mandate; that the new legislation also cannot retroactively abolish the right to invoke the conditions for early dismissal in force at the time of taking office, otherwise the right to a fair trial enshrined in Article 6(1) of the ECHR would be violated.</p> <p>5. On this basis, the Slovenian CCt was therefore obliged to grant the petitioners an effective judicial remedy within a reasonable period of time against an ex lege interference by the legislature with their rights protected by the Slovenian Constitution, the ECHR and EU law.</p>
ARTICLE 6-1 RIGHT TO AN EFFECTIVE JUDICIAL REMEDY	<p>6. Since the mandates of all four petitioners were terminated ex lege by the Act itself, the request to initiate proceedings to review the constitutionality of the Act before the CCt was the first and only legal remedy available to the petitioners in the Republic of Slovenia based on the termination of their mandates ex lege. However, legal protection based on this remedy would be effective only if an interim measures were issued against the challenged law, giving absolute priority to the merits of the case. The request for an interim measures was further justified by the need to protect human rights in practice and not only in theory, which is why the petitioners also requested the CCt to give absolute priority to the case and to suspend the implementation of the Act (Document 2).</p>

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked	Explanation
	<p>7. The CCt did so in a Decision dated 16. 2. 2023 (Document 3), but then revoked its Decision on 26. 5. 2023 (Document 6). It stated that the matter had been discussed in 10 closed sessions up to that date, but that with the exception of May 22, 2023, when the decision on the matter had already been voted on, but later revoked (sic!), the CCt was unable to form the required absolute majority of 5 judges to decide on the merits of the complainants' legal remedy. As the CCt stated, "this has put the CCt in a position where it cannot determine when it will be able to make a final decision on the merits of the case." Since the CCt stated that "it is not possible to exclude the possibility that such a situation will change only with (the first or subsequent) change in the composition of the constitutional judges" and because "it could not clearly predict when the CCt would be in a position to make a final decision on the merits, which is its constitutional duty," the CCt decided, albeit contrary to its established judicial practice, to make a procedural decision by a relative majority of four votes in favor and one against and revoked its Decision from 16. 2. 2023.</p> <p>8. In a situation where, in the words of the CCt, "the suspended provisions of the challenged law cannot be implemented and, at the same time, the CCt cannot exercise its constitutional role in accordance with the principle of effective judicial protection within a reasonable period of time," the CCt considered that, in accordance with the principle of separation of powers, it was necessary to protect the position of the legislature against the rights of the petitioners, who are the actual bearers of human rights, and therefore CCt annulled the original Decision on temporary suspension of 16.2.2023 (Document 6).</p> <p>9. By annulling the Decision on the temporary suspension of ZRTVS-1B, the CCt ex lege and irrevocably terminated all the mandates of the management, administrative and control bodies of RTVS, without their holders having any effective legal protection against this intervention, contrary to the established case law in the European constitutional space. The only legal protection was the request to initiate the procedure for reviewing the constitutionality of ZRTVS-1B in conjunction with the interim suspension of the contested regulation, which, however, was annulled by the CCt because, as CCt frankly admits, it was unable to provide the petitioners with effective legal protection within a reasonable period of time. The CCt thus deprived the petitioners of their only legal remedy, which includes the suspension of the challenged regulation. As the ECtHR has already explained in <i>Gebremedhin v. France</i> (25389/05), suspendability is an integral part of the right to an effective remedy. In this case, where the petitioners had no other remedy than a petition to the CCt, the role of suspendability was taken over by the interim suspension. Since the CCt annulled it, the petitioners in the present case were left without any effective remedy, in violation of Article 6(1) ECHR.</p>
ARTICLE 6-1 RIGHT TO A FAIR TRIAL	<p>10. It should be added that the first signatory petitioner, Peter Gregorčič, submitted a request to the CCt on May 16, 2023 (Document 5), requesting that the CCt grant him the right to be heard on the factual and legal circumstances of the case, in accordance with Article 6(1) of the ECHR, before the possible annulment of the interim imeasures. Peter Gregorčič also suggested that the CCt refer the case to the ECJ if it has doubts about the correct interpretation of EU law. The CCt did not even respond to the request made, but, contrary to its established case law, decided to lift the interim measures without the complainant being able to comment on it, even though the CCt was assessing a question of fact (weighing the adverse consequences) and, given the totality of the circumstances of the case, was effectively acting as a court of first instance. Thus, by its Decision of May 26, 2023 (Document 6), the CCt also violated the complainant's right to be heard and to an adversarial proceeding, which is at the core of the right to a fair trial under Article 6(1) ECHR.</p>

