(IN)CONSISTENT PRACTICE OF THE SERBIAN CONSTITUTIONAL COURT IN SELECTED CASES OF PROTECTION OF PROPERTY (CASE STUDY)

Slobodan P. ORLOVIĆ[1]

ABSTRACT

To illustrate the work of the Constitutional Court in the protection of the right to property, we specify a few of the decisions used as samples in this research. Accompanying them, we present and describe the ECtHR judgements referred to by the Constitutional Court. The decisions provide indication of the Constitutional Court's and the ECtHR's working styles and the impact of the international judicial practice on the Constitutional Court's legal reasoning. In the studied decisions concerning the right to property, the Constitutional Court demonstrated socially responsible behaviour on the one hand, and a degree of inconsistency, even of politicization, on the other hand.

KEYWORDS

Constitutional Court
ECtHR
right to the protection of property
human rights

1. Introduction

Seen in the European circumstances, Serbia has a long tradition of constitutional justice. In 1963, a federal constitutional court of the then SFR Yugoslavia was established—the first one in the socialist countries—with the republics (federal units) each subsequently setting up their own constitutional courts. The Constitutional Court of the Socialist Republic (SR) of Serbia was formed in the same year; however, there was no genuine guarding of the constitution or protection of constitutionality. In the existing political system with all powers vested in a single political party, an effective constitutional judicial review was not even possible. It was the political party that had actual control over the work of public authorities and their acts, thus rendering constitutional judiciary as superfluous or just one ornament of the political system. Control over political trends and legal acts and actions was virtually exercised within the Communist Party.

1 | Professor, Department of Public Law, Faculty of Law, University of Novi Sad, Serbia, sorlovic@pf.uns.ac.rs.

https://doi.org/10.55073/2022.1.141-160

The Constitutional Court, undoubtedly, had powers to protect constitutionality and legality, and assess whether general legal acts are constitutional and legal; and there also existed a constitutional complaint in some form for a certain period. The problem was that constitutional judicial review was more a matter of 'agreement' than of law. When a law was found unconstitutional, it was not to be eliminated from the legal order; rather, the parliament would be left an instructive time limit to make the law compatible with the constitution.

The foundations of the existing concept of constitutional judicial power, under which it constitutes an independent organ that protects the constitution, were laid down in the 1990 Constitution of the Republic of Serbia. The Constitutional Court, on a proposal by authorised petitioners or on self-initiative, assesses the compliance of general acts with the constitution and law. Subject to constitutionality and legality review are all general legal acts, including the acts with sub-legal force and even those of local significance (enacted within the local self-government). When found unconstitutional or unlawful, they cease to be effective, with no right of appeal. Decisions of the Constitutional Court in the constitutionality and legality review procedure are final, enforceable, and generally binding (*erga omnes*), while decisions on constitutional complaints affect *inter partes*.

In addition to its primary power to protect constitutionality and legality, the Constitutional Court also performs numerous other duties, standing out among which is deciding on constitutional complaints. The constitutional complaint system in Serbia was initially influenced the most by the German constitutional judiciary.[2] However, unlike Serbian law, German law allows constitutional complaints to be lodged against any measure issued by public authorities, including the acts amending the constitution. Another difference is that the German Constitutional Court rarely annuls court decisions,[3] whereas these are by far the most common subject of constitutional complaints in Serbia (over 90% of the cases).

Over time, human and minority rights protection has become the most important activity of the Constitutional Court in terms of scope. Citizens attach special importance to the constitutional complaint, perceiving it as a legal means (remedy) to eliminate the injustice caused to them by the acts of state bodies.[4] Constitutional complaints are lodged to protect human rights once all available legal remedies are exhausted. This means that the constitutional complaint institution is conceived as a separate and specific remedy used only in exceptional circumstances, namely, significant human rights violations. However, in practice, the constitutional complaint evolved to be a regular remedy, lodged almost always by a party who legally loses a dispute. This 'regular occurrence' of the constitutional complaint can be explained by the fact that court judgements violated some specific constitutionally guaranteed human right. Thus, the Constitutional Court became a regular last instance court (superior even to the Supreme Court of Cassation) annulling court decisions for the sake of protecting human rights. However, broadly viewed, the decision of the Constitutional Court is also not final when it comes to human rights protection. Citizens who believe that their constitutional human rights were violated can file an application to the European Court of Human Rights (ECtHR). The ECtHR decisions

2 | Stanić, 2019, p. 54.
3 | Simović, 2019, pp. 13 and 23.
4 | Manojlović Andrić, 2019, p. 136. Number of cases of constitutional complaints: 13,164 in 2020, 14,112 in 2019, 15,150 in 2018, *Pregled rada*.

are binding, which made the ECtHR practically the last instance court regarding human rights protection in Serbia.

For the Constitutional Court to fit with its powers and, in particular, the duty to protect human rights, specific preconditions must be met. First, the Constitutional Court must actually rather than just nominally enjoy constitutional guarantees of independence and autonomy, as the letter of the Constitution says (Art. 166). This means that no one, referring, first of all, to the bodies of political power or political organisations, may exert influence over the work of the Constitutional Court. Should this be the case, however, the same subject violating a human right (public authority) would also influence the decision on whether the respective human right was violated. In a rule of law system, such as Serbia, as constitutionally proclaimed, these pressures must not exist. The practice of the Constitutional Court must repeatedly confirm their absence, simply by being impartial.

For the Constitutional Court to suit the role of an authoritative human rights protector, the law requires that its judges must be reputable lawyers, who have rich knowledge of the law and act with professional and personal integrity. The Constitution increased the number of judges to 15 (formerly, there were nine), which proved to be justified given the number of cases tried by the Constitutional Court and, in particular, the abundance of constitutional complaints. For an individual to become a Constitutional Court judge, they must be a 'prominent lawyer' (a term lacking more precise determination) of at least 40 years of age and with at least 15 years of experience practising law. The assumption that judges will be independent human rights protectors is further supported by the prohibition to perform other public or professional functions or duties, except for the professorship at a law faculty in Serbia (Art. 173). This way, Constitutional Court judges avoid interactions that would cause a conflict of interest. If we add to this mix the prohibition of membership in political parties, the constitutional guarantees for judicial immunity (Arts. 55 and 173 of the Constitution), and the nine-year term of office, the Constitutional Court with such personnel meets the conditions of being an independent human rights protector. Even if their work does not 'please' the political power (the ruling party), Constitutional Court judges are protected from being replaced because the conditions for their dismissal from office are enumerated in the Constitution, and not an inferior regulation.

2. Constitutional complaint and right to property

Fundamental human rights form an indispensable part of the constitutions of modern states. Given that constitutional courts guard the constitution, that is, all its provisions, it logically follows that they also protect constitutional human rights. A legal remedy used in constitutional judicial protection procedure is the constitutional complaint,[5] and its effect is general—it protects all human rights guaranteed by the Constitution. Ordinary (regular) courts also protect human rights; however, it was found that this protection was often inadequate and that constitutionally guaranteed rights must be protected by a separate remedy apart from the already existing ordinary and extraordinary ones. A constitutional court's primary power—to protect the constitution, that is, constitutionality

5 | Elsewhere termed differently, for example, d'Amparo lawsuit (Spain, Mexico), state-law appeal (earlier in Austria).

as a legal order with the rule of law— is made complete only with the constitutional complaint. It also guarantees the constitutional legal status of citizens, who are typically an objectively weaker party in judicial disputes against the State. The right to lodge constitutional complaints remained a remedy not only in the hands of natural persons who are the subjects of all human rights but also in the hands of legal entities, for protection of the rights of which they are potential holders. One of these rights is the property right, or specifically, the protection of the right to property.

A constitutional complaint is lodged by one whose rights have been violated (it is not *actio popularis*) or another person who has received authorisation to do so on behalf of the person believing that their human rights have been violated. According to the subsidiarity principle, Serbian law requires prior exhaustion of all remedies for human rights protection before the courts (some states, like Spain, do not have this requirement). The number of lodged constitutional complaints is potentially reduced this way, although it remains too high in reality.

The effect of the decision on a constitutional complaint is limited to the concrete dispute (*inter partes* effect), with the decision not to resolve the case on the merits; rather, if a constitutional complaint is found admissible, the contested decision of the court or other authority is invalidated and the case is sent back for retrial. However, Serbian law allows the Constitutional Court to award compensation for damages within the limits of the claim (or to determine how its decision will be enforced), for example, in the property rights protection proceedings, which would, to some extent, constitute ruling on the merits. This provision further deepens the relationship between the Constitutional Court and the judicial branch of power—the one relationship that remained unspecified by the Constitution—only to take on a highly intensive form through the institution of a constitutional complaint. The Constitutional Court, here, controls the judicial branch with respect to human rights protection, although the Constitution specifies that a judicial decision can be reconsidered only by an authorised court and that it cannot be subjected to extrajudicial control (Art. 145 of the Constitution). This means that it also cannot be a subject of control by the Constitutional Court, given that the latter, according to the Constitution, does not form part of the judicial branch. However, the theory points out, and we agree with it, that a constitutional complaint is an exceptional legal remedy that makes it possible for all branches of power, including the judicial, to conform to the Constitution.[6] The practice, as we see, confirms this point.

However, human rights protection does not stop with the Constitutional Court, and with it does not end the reconsideration of judicial decisions, as there exists the right to apply to the ECtHR. There are conditions and time limits prescribed for filing an application to the ECtHR, one of which is that the specific human right in question must be protected by the ECHR.

John Locke claimed that the right to property is one of the essential rights, or specifically, that together with the rights to life and liberty, it constitutes one of the three natural rights of men.[7] This doctrine was another factor likely to have contributed to the property right finding its way in the French Declaration of the Rights of Men and Citizens (*La Déclaration des droits de l'homme et du citoyen*, 1789) as a 'sacred and inviolable' right.

6 | Simović, 2019, p. 18.
7 | Simović and Zekavica, 2020, p. 261.

Subsequently, this right found its way in the acts of international law, the UN Universal Declaration, and the ECHR.

The right to property is classified under economic human rights (a group of economic, social, and cultural rights) and guaranteed both by the Constitution of Serbia and the ECHR. Under the right to property (Art. 58), the Constitution guarantees the enjoyment of property rights, the most important of which is the ownership right, which includes the rights to use and dispose of property (*usus, fructus, abusus*).[8]

In the Constitution, the right to property reads as follows:

> 'Right to property
> Article 58
> Peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed.
> Right of property may be revoked or restricted only in public interest established by the law and with compensation which cannot be less than market value.
> The law may restrict the manner of using the property.
> Seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law'.

Moreover, in the further provisions (Arts. 86–88), the Constitution specifies some additional property-related issues, namely the equality of all forms of ownership (private, cooperative, and public), with separate provisions dealing with public assets and land.

The Protocol (1952) to the ECHR also protects the right to property and contains three rules. It first lays down the general principle of the peaceful enjoyment of property (first sentence of the first para.). The second rule covers expropriation (second sentence of the first para.). The third rule recognises the possibility of controlling the use of property according to the general interest (second para.):[9]

> 'Article 1:
> Protection of property
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties'.

With the right to property being protected both by the Constitution and ECHR, preconditions are set for the protectors of these regulations—the Constitutional Court and the ECtHR—to act. They enter into a legal relationship with the same goal of protecting human rights. Both acts enshrine guarantees for the peaceful enjoyment of property, but it does not mean that this right is unlimited. Both acts also provide that the right to property and the use of property may be restricted in a manner specified by law and in the general (public) interest, in accordance with the general rules of international law.

8 | Marković, 2021, p. 116.
9 | Mickonytė, 2020, p. 3.

The relationship between the Constitutional Court and the ECtHR is one in which the former accepts the latter's legal views and applies them as a source of law. This reliance on the practice of the ECtHR is especially true of the 'pilot judgements' that it uses as a means to resolve a case on the basis of which it then resolves similar 'clone cases'.[10] The practice of the ECtHR is referred to as a 'subsidiary' source of law (rather than a formal one); although its increasingly rich jurisprudence has influenced that in concrete constitutional human rights disputes, due regard is given to the standards of that court.[11] The Constitutional Court accepts the jurisprudence of the ECtHR as *res iudicata* and uses the argumentation of the ECtHR as *res interpretata*.[12] The ECtHR has gained the role of an authority figure to the Constitutional Court, primarily for opportune, practical reasons. If the Constitutional Court fails to act in observance of the ECtHR practice from previous cases with appropriate (similar) factual circumstances, its decisions on constitutional complaints have every prospect of being annulled. Sometimes, the signal to the Constitutional Court about the need to apply or harmonise practice with the ECtHR also comes from a political body, the Committee of Ministers of the Council of Europe.[13]

Nevertheless, over time, and in keeping with the social developments, even the ECtHR was changing its views on violations of some human rights and on the specific substance of those rights (e.g. the right to change sex), as did the practice of the Constitutional Court. Moreover, the examples that follow will also show that the Constitutional Court repeatedly, on a self-initiative, departed from the previous practice regarding the protection of the right to property (and the right to a fair trial), only to return to it again, although the views of the ECtHR have never changed in this respect.

This case study uses several cases to describe the practice of the Constitutional Court, which has a significant influence on Serbian social relations. This influence is more intensive and socially more severe with respect to the right to property (the peaceful enjoyment of property), referring to the outstanding and unpaid dues (salaries and social insurance benefits) to employees of social (and state) companies undergoing insolvency (liquidation) or restructuring procedure. What is essential (revolutionary) about it is that this debt, according to the ECtHR, and the decision of the Constitutional Court, should be paid by the State as the owner at that time. Put differently, the State is responsible for the debts of companies with majority socially-owned capital. This is a specific situation that arose from the collapse of the socialist socio-economic system when many companies had gone bankrupt before the process of their respective privatisation was finalised under new and still unsteady business market conditions. It is in this and similar cases that a 'positive activism' of the Constitutional Court came into play in support of broader human rights protection.[14]

The remaining three decisions of the Constitutional Court concern cases neither typical of a socio-political system nor so common in the practice of the Serbian Constitutional Court. These cases involve customs offences—a topic of potentially increasing relevance in the context of Europe—currently massively re-establishing rigid state borders. In other words, the passengers, sometimes without even being aware of the

10 | Ribičič, 2012, p. 97.
11 | Simović et al, 2018, p. 75.
12 | Krstić and Marinković, 2016, p. 266.
13 | Plavšić, 2019, p. 260.
14 | Nastić, 2019, p. 302.

customs regulations, carry money exceeding the amount of EUR 10,000 across the border without reporting it. Doing so, they commit a misdemeanour (could be a crime elsewhere) and a customs offence, which implies the imposition of a sanction and a measure to confiscate the money in the amount exceeding the allowed limit. The Constitutional Court would subsequently revoke the imposed measure and order the return of confiscated money, adhering to the views and practice of the ECtHR. Nevertheless, what makes the Constitutional Court cases described here distinctive is that within a short time span, the Constitutional Court completely changed its approach to almost identical facts by providing merely some general and more political rather than legal arguments.

In the specified cases, constitutional complaints were also lodged due to violations of the right to a fair trial; however, in these cases, it constitutes an accessory issue. Invoking violation of the right to a fair trial often 'accompanies' violation of another human right in the constitutional complaint, the protection of which is primarily sought, due to a party being dissatisfied with the decisions of previous instances, regarding them as unfair. Most frequently, previous decisions violated the right to adjudication within a reasonable time. The reasons are either the excessive length of the proceedings or the enforceable judgement execution procedure taking too long or never being conducted. The examples that follow also confirm that 'the Constitutional Court has crossed a long path to develop the substance, guarantees, criteria, and standards of human rights, in large part owing to the ECtHR'.[15]

3. Right to a fair trial and right to property

The **Constitutional Court**, in the case of **Už – 775/2009** (19.4.2012) upheld the constitutional complaint and established a violation of the complainant's rights to trial within a reasonable time and the peaceful enjoyment of property guaranteed under Art. 32 (1) and Art. 58 (1) of the Constitution of the Republic of Serbia, respectively. The Court also established the right of the complainant to the compensation for pecuniary damage in the amount determined in the writ of execution and paid from the budget.

Regarding the assessment of constitutional complaint allegations on the violation of the right to trial within a reasonable time, the Constitutional Court found that the enforcement proceedings had lasted for three years and four months and that the enforcement had not been carried out.

As the 'notion of reasonable duration of court proceedings is a relative category, dependent on a range of factors, and primarily the complexity of legal issues and the facts of a particular case, behaviour of the complainant, actions by courts in charge of the proceedings, as well as the relevance of the stated right to the complainant, the Constitutional Court examined whether and to what extent the stated criteria influenced the excessive length of the proceedings' and found that in the enforcement proceedings before the municipal court, the complainant's right to trial within a reasonable time, guaranteed by the provision of Art. 32 (1) of the Constitution, had been violated.

With respect to the second right stated in the constitutional complaint, the Constitutional Court also found a violation, since 'the omission by competent authorities

15 | Šurlan, 2019, p. 255.

to execute the final and enforceable judgment made in favour of the complainant for a period longer than three years also constitutes a violation of the complainant's right to the peaceful enjoyment of property acquired by that judgment, which right is guaranteed by the provision of Article 58 (1) of the Constitution'. Here, it is the State that omits to enforce the final judgement, thus violating the right to the peaceful enjoyment of property, which was also confirmed in the judgements of the European Court of Human Rights in the cases of *Vlahović v Serbia* of 16 December 2008 and *Kačapor and others v Serbia* of 15 January 2008. Equally important is the legal view that 'any monetary claim awarded by a final court decision becomes the property of the creditor' and that, accordingly, failure to enforce the court decision adjudicating that claim constitutes a violation of the right to the peaceful enjoyment of property'.

The major importance of this decision is practical and concerns the possibility of collecting the awarded monetary claim, that is, the exercise of the right to property by the very use of that property. The Constitutional Court has here accepted the case law of the European Court of Human Rights (judgement *Grišević and others v Serbia* of 21 July 2009, *Kačapor and others v Serbia* of 15 January 2008, *Crnišanin and others v Serbia* of 13 January 2009) and confirmed the state's liability for the debts of companies with majority social capital (social ownership). As these include companies that ceased to operate and lack sufficient assets to pay off their debts, such as this monetary claim (unpaid salaries), the state must pay those companies' debts and settle the material damage resulting from violation of the right to the peaceful enjoyment of property, also guaranteed under Art. 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Another view the Constitutional Court accepted from the European Court of Human Rights (case *Milunovic and Čekrlić v Serbia*) is that in cases where it is reasonable, the comprehensive constitutional compensation should also include a compensation for pecuniary and non-pecuniary damages. The Constitutional Court had, in this specific case where the enforcement proceedings had been instituted to settle an employment claim, ruled that the constitutional compensation also include the compensation for pecuniary damage, to be paid from the state budget, besides the established violation of rights.

This outcome is essential for a positive assessment of the effectiveness of the remedy—constitutional complaint—as it resulted in a pecuniary (monetary) payment to the complainant whose right to the peaceful enjoyment of property had been violated.

The ECtHR (Court) in the case of ***Kačapor and others v Serbia*** (15.1.2008) established a violation of the right to a fair trial (from Art. 6, para. (1) of the Convention), the right to the protection of property (guaranteed under Art. 58, para. (1) of the Constitution of the Republic of Serbia, and Art. 1 of Protocol No. 1 to the ECHR), and, importantly, that the respondent state must, from its own funds, pay the respective applicants the sums awarded in the final domestic judgements rendered in their favour.

This judgement made it possible to effectively protect the right to property in many similar cases conducted before public authorities (primarily the courts) in Serbia. This effective protection means debt collection—pecuniary and non-pecuniary damage claims—from the state (plus legal costs and interest) and, therefore, from the budget, when it is not possible to do so from the debtor, a company in bankruptcy.

The applicants were employed in the social company (with 'social capital' in the political system of 'self-governance') against which a bankruptcy proceeding was instituted. Their claims had been recognised in the final court judgement but, in the enforcement

proceedings (which is considered a 'trial', see *Hornsby v Greece*, the judgement of 19 March 1997), the debtor could not make the payment due to lack of assets.

The Court first found that the applicants did not have access to effective remedies (under Art. 35 (1) of the Convention) in the enforcement proceedings and, hence, rejected the government's objection in that respect. The Court also rejected the government's argument that it could not be held responsible for companies in social ownership.

The key view for property rights protection presented in this case is that the debtor, despite being a separate legal entity, does not enjoy 'sufficient institutional and operational independence from the State' and that it had mainly been controlled by the Privatisation Agency as a state authority. On this basis, the obligation was established of the State to pay the outstanding debts to the applicants. The Court further holds that the State cannot cite the lack of its own or the debtor's funds as an excuse for non-enforcement in the present case.

The Court concludes that the Serbian authorities had not taken the necessary measures to enforce the final judgements in question. Therefore, there had been a violation of the right to a fair trial. Omission by the State to enforce the judgements of its own bodies in the present case constitutes an unjustified interference with the applicants' right to the peaceful enjoyment of property, which means the restriction of that right (see *Burdov v. Russia*, No. 59498/00, § 40, ECHR 2002-III).

As the applicants' claims must be accepted, the government will pay each of the applicants the sums awarded in the final judgements (pecuniary damage), the sum determined by the length of the periods of non-enforcement of the final judgements in question (non-pecuniary damage), and the costs of the procedure and the default interest.

4. Right to property and right to a fair trial

(I)

The Constitutional Court, in the case of **Už – 367/2016** (7.6.2018) upheld the constitutional complaint filed for violation of the right to property (Art. 58, para. 1 of the Constitution; Art. 1 of Protocol No. 1 to the Convention) and the right to a fair trial (Art. 32, para. 1 of the Constitution).

The complainant (A. A.) committed a customs offence by failing to declare money (over EUR 10,000) when entering Serbia. The detected cash exceeding the allowed limit was temporarily seized from him (EUR 10,000) at the border crossing as an object of offence. In the first instance, the Misdemeanour Court found him guilty of the offence (under Art. 63, para. 1, item 14 of the Act on Foreign Exchange Transactions), and imposed a fine (RSD 30,000) and a protective measure of confiscation of the object of the offence—cash of a value of EUR 10,000. The first-instance judgement was affirmed by the decision of the Misdemeanour Court of Appeal.

The complainant holds that the imposed protective measure—the confiscation of EUR 10,000—exceeds the purpose of protective measures application because it is manifestly disproportionate to the substance of the offence charged. It is further stated that the confiscated money is of lawful origin and incurs no loss to the state, and that due regard had to be given to the balance between the general interest and the right to the peaceful enjoyment of property, which was grossly upset in this case.

The Constitutional Court, in keeping with the practice of the European Court of Human Rights (*Ismayilov v Russia*, no. 30352/03, 6 November 2008, *Gabrić v Croatia*, no. 9702/04, 5 February 2009, and *Grifhorst v France*, no. 28336/02, 26 February 2009), examined whether the three cumulative conditions were satisfied for the seizure of property.

Assessing the existence of the first condition—whether the deprivation of possessions is provided for by law, the Constitutional Court finds that the protective measure, that is, confiscation of the object of the offence, is recognised in the laws of the Republic of Serbia. Examining the second condition—whether there is a justified and necessary public interest to deprive the complainant of his property rights, the Constitutional Court concludes that, by law, money can be brought in or taken out of the Republic of Serbia if the sum exceeding EUR 10,000 is declared and the confirmation receipt thereof obtained, which, in the present case, had not been declared. In assessing the fulfilment of the third condition—whether, in the deprivation of property rights, a fair balance is struck between the public interest and the interest of the individual whose possessions are being confiscated, the Constitutional Court starts by referring to the ECtHR case law that the fair balance or the required proportionality between the public interest and the private interest will not be achieved if the person concerned bears an individual and excessive burden (see, among others, the judgements in the cases of *Ismayilov v Russia* of 6 November 2008, § 38; *Gabrić v Croatia* of 5 February 2009, § 39; *Grifhorst v France* of 26 February 2009, § 94; *Boljević v Croatia* of 31 January 2017, § 41).

The Constitutional Court concludes that the interference with the peaceful enjoyment of property is proportionate if it corresponds to the severity of the violation, and the sanction to the gravity of the committed offence and the consequence it produces. The Court must also be mindful of whether the commission of the offence incurs any loss to the state. The Constitutional Court holds that, in the present case, there had been a breach of proportionality between the sanctioning of the infringement of public interest and the constitutionally guaranteed right of an individual to the peaceful enjoyment of property.

The Constitutional Court further concludes that the confiscation of the object of the offence, in whole, along with the imposed fine, constitutes an excessive burden on the complainant, and that, accordingly, the protective measure—as a measure aimed at protecting the public interest—had not been proportionate to the protection of the complainant's right to the peaceful enjoyment of property. Hence, the Constitutional Court established a violation of the complainant's right to property guaranteed in Art. 58(1) of the Constitution.

In deciding on the violation of the right to a fair trial, the Constitutional Court proceeds from the guarantees of the right to a fair trial set by the European Court of Human Rights, starting from the court's duty to state the reasons for its decisions (see *Ruiz Torija v Spain* of 9 December 1994, § 29). The explanation must contain clear, precise, and understandable reasons, appropriate to the circumstances of a particular case, and cannot be of a lapidary (arbitrary) character (see *Georgiadis v Greece* of 29 May 1997, § 43, and *Higgins and others v France* of 19 February 1998, § 43).

In the present case, the Constitutional Court fails to observe that the Misdemeanour Court of Appeal used due regard in considering the motives and circumstances under which the offence had been committed, and that it applied and interpreted the said legal provision in its entirety, that is, whether the protective measure of confiscation of the object of the offence would equally fulfil its purpose through partial confiscation. The

Constitutional Court concludes that the contested misdemeanour judgement contains no constitutionally and legally acceptable explanation of the grounds on which, in the present case, it was assessed that the purpose of the protective measure would not be fulfilled by partial confiscation of the object of offence, under the applicable law.

Therefore, the Constitutional Court established a violation of the complainant's right to a reasoned judicial decision as an element of the right to a fair trial guaranteed in Art. 32(1) of the Constitution.

In **the ECtHR** (the Court) case of ***Boljević v Croatia*** (31.1.2017, Application no. 43492/11) the applicant complained under Art. 1 of Protocol No. 1 that the decision to confiscate EUR 180,000 from him for having failed to declare that sum to the customs had been excessive and, thus, in violation of his right to property. The applicant also complained of a violation of his right to a fair trial.

On 6 February and 4 March 2009, the applicant entered Croatia from Montenegro and deposited—on each occasion—the sum of EUR 90,000 with a commercial bank in Dubrovnik, without declaring these amounts to the customs authorities. On 30 March 2009, the applicant ordered a transfer of EUR 95,000 from his bank account to the account of a certain Mr S. K. in a bank in the United Arab Emirates. The Money Laundering Prevention Office stated that the funds had originated from the two above-mentioned cash deposits of EUR 90,000 each. On 2 June 2009, administrative offence proceedings were instituted against the applicant before the Administrative Offences Council of the Ministry for his failure to declare the sum of EUR 180,000 while entering Croatia, an administrative offence as defined in Section 40(1) of the Foreign Currency Act and Section 74 of the Prevention of Money Laundering and Financing of Terrorism Act. On the same day, the Administrative Offences Council ordered the bank to transfer EUR 180,000 from the applicant's account to the Ministry's account, to be kept there until the conclusion of the administrative offence proceedings.

By a decision of 19 October 2009, the Administrative Offences Council found the applicant guilty of the administrative offence in question and fined him 10,000 Croatian kunas (HRK) and imposed a protective measure, confiscating EUR 180,000. By a decision of 23 December 2009, the High Court for Administrative Offences dismissed the applicant's appeal and upheld the Administrative Offences Council's decision. By a decision of 9 December 2010, the Constitutional Court declared the applicant's constitutional complaint inadmissible on the grounds that the case did not raise a constitutional issue.

It was not disputed between the parties that the decision to confiscate EUR 180,000 from the applicant constituted an interference with his right to property. The Court initially finds that interference with the applicant's property right was provided by law.

The Court had to specifically examine whether the interference struck the requisite fair balance between the demands of the general interest of the public and the requirements for the protection of the applicant's right to property (see *Ismayilov v Russia*, no. 30352/03, § 29, 6 November 2008, § 30; *Gabrić v Croatia,* no. 9702/04, 5 February 2009, § 33; *Grifhorst v France*, no. 28336/02, §§ 85–86, 26 February 2009; and *Moon v France*, no. 39973/03, § 45, 9 July 2009). The Court considers that requisite balance will not be achieved if the applicant has had to bear an individual and excessive burden (see *Ismayilov v Russia*, cited above; *Gabrić v Croatia*, cited above).

The Court importantly notes that the act of bringing foreign currency in cash into Croatia was not illegal under Croatian law. Moreover, there was nothing to suggest that the authorities sought to forestall any criminal activities, such as money laundering, by

confiscating the money. The only illegal (but not criminal) conduct attributed to him with respect to the money was his failure to declare it to the customs authorities.

In the instant case, the confiscation measure in question was not intended to be pecuniary compensation for damage, as the State had not suffered any loss as a result of the applicant's failure to declare the foreign currency, but was deterrent and punitive in its purpose. The applicant was fined for the administrative offence of failing to declare money at customs. It has not been convincingly shown or argued by the government that the fine alone was not sufficient to achieve the desired deterrent and punitive effect, and prevent future breaches of the declaration requirement. In these circumstances, the Court concludes that the confiscation of the entire amount of money that should have been declared as an additional sanction to the fine was disproportionate in that it imposed an excessive burden on the applicant. Accordingly, there has been a violation of Art. 1 of Protocol No. 1.

Without relying on any Article of the Convention, the applicant complained of a violation of his right to a fair trial; he contended that he had not been informed of his right to be represented by counsel. The Court notes that this complaint was raised for the first time in the applicant's reply on 5 March 2015 to the government's observations, more than four years after the Constitutional Court's decision. Accordingly, the complaint had been submitted out of time and was rejected in accordance with Art. 35 §§ 1 and 4 of the Convention.

(II)

The Constitutional Court, in the case of **Už – 1202/2016** (18.11.2018) upheld the constitutional complaint alleging violation of the right to property (Art. 58(1) of the Constitution, Art. 1 of Protocol No. 1 to the Convention), while dismissing it in part claiming violation of the right to a fair trial (Art. 32(2) of the Constitution).

The complainant (E. K.) committed a customs offence by failing to declare money (over EUR 10,000) when entering Serbia. The detected money in the amount exceeding the allowed limit was temporarily seized from him (EUR 8,900) at the border crossing as an object of the offence. In the first instance proceeding, the Misdemeanour Court found him guilty of the offence (under Art. 63, para 1, item 14 of the Act on Foreign Exchange Transactions), fined him (RSD 15,000), and imposed a protective measure of confiscation of the object of the offence—cash of a value of EUR 8,900. The judgement made in the first instance was affirmed by the decision of the Misdemeanour Court of Appeal.

The complainant holds that the imposed measure—the confiscation of EUR 8,900—is dramatically disproportionate to the substance of the offence charged, that is, the very act of not declaring money. It is further stated that the imposed fine (RSD 15,000) served the purpose of punishment, of general and specific prevention, and, therefore, full protection of the public interest, that the money comes from a lawful source, that it does not incur any damage to the state, and that the court grossly upset the balance between the general interest and the right to the peaceful enjoyment of property.

Observing the case law of the European Court of Human Rights (*Ismayilov v Russia*, no. 30352/03, 6 November 2008, *Gabrić v Croatia*, no. 9702/04, 5 February 2009, and *Grifhorst v France*, no. 28336/02, 26 February 2009), the Constitutional Court examined whether the three cumulative conditions for property seizure were satisfied.

Assessing the existence of the first condition, that is, whether the deprivation of possessions is provided for by law, the Constitutional Court finds that the protective measure—confiscation of the object of the offence—is recognised in the laws of the

Republic of Serbia. Examining the second condition, that is, whether there is a reasonable and necessary public interest in depriving the complainant of his property rights, the Constitutional Court concludes that, by law, money can be brought in or taken out of the Republic of Serbia if the sum exceeding EUR 10,000 is declared and the confirmation receipt thereof obtained, which money, in the present case, had not been declared. In assessing the fulfilment of the third condition, that is, whether, in the deprivation of property rights, a fair balance is struck between the public interest and the interest of the individual whose possessions are being confiscated, the Constitutional Court concludes that interference with the peaceful enjoyment of property is proportionate if it corresponds to the severity of the violation and the sanction to the gravity of the committed offence and the consequence it produces. Additionally, the Court must be cautious of whether the commission of an offence incurs any loss to the state.

The Constitutional Court assessed that confiscation of the object of the offence in its entirety (while the law also provides for partial seizure), together with the imposed fine, posed an excessive burden on the complainant. Therefore, the imposed protective measure, as one aimed at protecting the public interest, was not proportionate to the protection of the complainant's right to the peaceful enjoyment of property. Hence, the Constitutional Court established that the complainant's right to property had been violated.

As for the part of the constitutional complaint alleging violation of the right to a fair trial due to the impossibility of using one's own language (Turkish), the Constitutional Court dismissed it because the complainant did use his native language in the proceedings with the assistance of an interpreter.

In a separate concurring opinion (a single judge), among others, it was stated that the Constitutional Court had made a shift in its reasoning relative to its first upholding decision in the matter of violation of human rights manifested in the misdemeanour courts' judgements, with respect to foreign currency offences (Už-367/2016). Although the two mentioned upholding decisions were rendered in a closely related time frame by the same judicial panel on the constitutional complaints lodged by the same lawyer invoking violation of the same human rights, they received different responses from the Constitutional Court. The first decision (Už-367/2016) found a violation of Art. 58(1) and Art. 32(1) of the Constitution, while the second found a violation of Art. 58(1) and dismissed the complaint with respect to Art. 32.

In **the ECtHR** (the Court) case of ***Gabrić v Croatia*** (5.2.2009, Application no. 9702/04), the applicant complained under Art. 1 of Protocol No. 1 that the authorities had unlawfully taken away the money she had obtained through a housing loan. Further, the applicant complained under Art. 6 § 1 of the Convention that the administrative offences proceedings were unfair and that the domestic courts involved were not impartial, and under Art. 14 that she had been discriminated against on the basis of her nationality and ethnic origin (Serbian).

When the applicant (Darinka Gabrić), on her way from Bosnia and Herzegovina to Germany, was stopped by the Croatian customs officers, they found undeclared goods and 30,500 German Marks (DEM), which she had failed to declare under the Foreign Currency Act and the Prevention of Money Laundering Act. The customs officers seized DEM 20,000 while allowing the applicant to keep the remaining DEM 10,500 as the sum she was not required to declare pursuant to the mentioned legislation. The applicant informed the customs officers that she had obtained the money through a bank loan in Germany and had been carrying it back there.

The Ministry of Finance found the applicant guilty of having committed an administrative offence and fined her HRK 6,000. At the same time, the Ministry imposed a protective measure of confiscating DEM 20,000. The High Court for Administrative Offences dismissed the applicant's appeal and upheld the Ministry's decision. Finally, the Constitutional Court dismissed her complaint.

In the explanation of its decision, the Court first reiterates its consistent approach that a confiscation measure, even though it involves a deprivation of possessions, nevertheless constitutes control of the use of property (within the meaning of the second para. of Art. 1 of Protocol No. 1, see *Riela and Others v Italy* (dec.), no. 52439/99, 4 September 2001; *Arcuri and Others v Italy* (dec.), no. 52024/99, ECHR 2001-VII; *C.M. v France* (dec.), no. 28078/95, ECHR 2001-VII, etc.).

The Court further notes that the parties were also in agreement that the interference was lawful, as the confiscation was based on Croatian law.

However, the Court had to specifically examine whether the interference struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the applicant's right to property. In other words, the Court examines whether the confiscation of money imposed a disproportionate and excessive burden on her.

The Court considers that, to be proportionate, the interference should correspond to the severity of the infringement and the sanction to the gravity of the offence it is designed to punish—in the instant case, the failure to comply with the declaration requirement—rather than to the gravity of any presumed infringement which has not, however, actually been established (such as an offence of money laundering or evasion of customs duties). The confiscation measure in question was not intended as pecuniary compensation for damage, as the State had not suffered any loss because of the applicant's failure to declare the money, but was deterrent and punitive in its purpose (compare *Bendenoun v France*, 24 February 1994, § 47, Series A no. 284). In the instant case, the applicant had already been fined for the administrative offence of failing to declare the money at the customs. It has not been convincingly shown or argued by the government that sanction alone was not sufficient to achieve the desired deterrent and punitive effect and prevent future breaches of the declaration requirement. In these circumstances, in the Court's view, the confiscation of the entire amount of the money that should have been declared as an additional sanction to the fine was disproportionate, in that it imposed an excessive burden on the applicant. Accordingly, there has been a violation of Art. 1 of Protocol No. 1.

Regarding other alleged violations of the Convention, the Court considers that those complaints are inadmissible under Art. 35 § 3 as manifestly ill-founded and must be rejected pursuant to Art. 35 § 4 of the Convention.

(III)

In the case of **Už – 5214/2016** (24.10.2019) **the Constitutional Court** rejected the constitutional complaint alleging violation of the right to property (Art. 58(1) of the Constitution, Art. 1 of Protocol No. 1 to the Convention), while dismissing it in part claiming violation of the right to a fair trial (Art. 32(2) of the Constitution).

The complainant (A. O.) committed a customs offence by failing to declare money (over EUR 10,000) when entering Serbia. The detected money in the amount exceeding the allowed limit was temporarily seized from him (EUR 19,000) at the border crossing as an object of the offence. In the first instance proceeding, the Misdemeanour Court found

him guilty of the offence (under Art. 63, para. 1, item 14 of the Act on Foreign Exchange Transactions), fined him (RSD 40,000), and imposed a protective measure of confiscation of the object of the offence—cash of a value of EUR 19,000. The judgement made in the first instance was affirmed by the decision of the Misdemeanour Court of Appeal.

The complainant holds that the imposed protective measure—the confiscation of EUR 19,000—is dramatically disproportionate to the substance of the offence charged, that is, the very act of not declaring money. It is further stated that the imposed fine (RSD 40,000) served the purpose of punishment, of general and specific prevention, thereby affording complete protection of the public interest, that the money comes from a lawful source, that there is no loss to the state, and that the court grossly upset the balance between the general interest and the right to the peaceful enjoyment of property.

Observing the case law of the European Court of Human Rights, the Constitutional Court examined whether the three cumulative conditions for property seizure were satisfied. Assessing the existence of the first condition, that is, whether the deprivation of possessions is provided for by law, the Constitutional Court finds that the protective measure—confiscation of the object of the offence—is recognised in the laws of the Republic of Serbia. Examining the second condition, that is, whether a reasonable and necessary public interest exists in depriving the complainant of their property rights, the Constitutional Court concludes that, in the present case, the confiscation 'facilitates the implementation of monetary and exchange rate policies and thus the provision of the financial stability of the Republic of Serbia, public order protection or prevention against its breaches, as well as influencing the offender to never commit an offence again'. Evaluating the fulfilment of the third condition, that is, whether, in the deprivation of property rights, a fair balance is struck between the public interest and the interest of the individual whose possessions are being confiscated, the Constitutional Court concluded that complete confiscation of the object of the offence does not pose an excessive burden on the complainant. The protective measure imposed, as a measure aimed at protecting the public interest, is proportional to the protection of the complainant's right to the peaceful enjoyment of property.

On these grounds, the Constitutional Court rejected this part of the complaint. In the part concerning violation of the right to a fair trial due to the lack of possibility to use own language (Turkish), the Constitutional Court dismissed the constitutional complaint because the complainant used his native language during the proceedings with the assistance of an interpreter.

The Constitutional Court particularly emphasised that, in making this decision, it recalled the decisions of the European Court of Human Rights (*Ismayilov v Russia*, no. 30352/03, 6 November 2008, *Gabrić v Croatia*, no. 9702/04, 5 February 2009, and *Grifhorst v France*, no. 28336/02, 26 February 2009), but found that circumstances of this case differed from those of the aforementioned cases in that the complainant was indisputably aware of the obligation to declare cash, that he divided the money and hid it in multiple spots, that he had been giving false statements on the amount of money in his possession, and that he failed to submit relevant proof of its lawful origin.

In a separate opinion (two judges), it is stated that, with its rejecting decision, the Constitutional Court made another shift in its approach in the matter of protection of property rights with respect to foreign currency offences: it first upheld the constitutional complaint claiming violation of the right to a fair trial and the right to property (Už – 367/2016 of 7 June 2018), in the second decision, it upheld the complaint regarding the violation of

the right to property, while dismissing it in respect of the alleged violation of the right to a fair trial (Už – 1202/2016 of 8 November 2018), and in the third instance involving this decision, it rejected the protection of property rights and dismissed the protection of the right to a fair trial. The separate opinion further stated that the Constitutional Court failed to show the property seizure as justified given the necessity imposed by the public interest and that, considering the circumstances of the case, in line with the ECtHR case law (*Gyrlyan v Russia,* of 9 October 2018), the total sum seized through the enforcement of the protective measure should have been returned.

In **the ECtHR** (the Court) case of ***Ismayilov v Russia*** (6.11.2008, Application no. 30352/03) the applicant complained under Art. 1 of Protocol No. 1 that the authorities had unlawfully taken away the money he had obtained from the sale of his inherited flat. The applicant further complained under Art. 6 §§ 1 and 3 of the Convention that his right to a fair trial within a reasonable time and his right to question witnesses for the defence had been breached. Relying on Art. 8 § 2 of the Convention, he maintained that his offence had not impaired any interests of the State or public.

When the applicant (Ismailov) arrived in Moscow from Baku, he only reported 48 US dollars on the customs declaration, while he was carrying USD 21,348 (representing the proceeds from the sale of his ancestral flat in Baku). Russian law required that any amount exceeding USD 10,000 be declared to the customs. A customs inspection uncovered the remaining amount in his luggage, and the applicant was charged with smuggling, a criminal offence (Art. 188 § 1 of the Criminal Code). The applicant's money was appended to the criminal case as physical evidence.

The applicant was punished with a criminal conviction and a suspended sentence of imprisonment. The applicant submitted that the confiscation measure had been unlawful because, on the one hand, Art. 188 of the Criminal Code did not provide for confiscation as a sanction for smuggling and, on the other hand, Art. 81 of the Code of Criminal Procedure allowed the authorities to confiscate only criminally acquired money. The money taken from him was not criminally acquired, and was the lawful proceeds from the sale of his late mother's flat in Baku.

It was not in dispute between the parties that the confiscation order amounted to an interference with the applicant's right to peaceful enjoyment of his possessions and that Art. 1 of Protocol No. 1 was, therefore, applicable. It remained to be determined whether the measure was covered by the first para. (any interference by a public authority with the peaceful enjoyment of possessions should be 'lawful') or second para. (the States have the right to control the use of property by enforcing 'laws') of that Convention provision.

In general, the Court finds that the measure (confiscation of money) had a basis in domestic law and was sufficiently foreseeable in its application and that this measure conformed to the general interest of the community.

It is important to note that the act of bringing foreign currency in cash into Russia was not illegal under Russian law, and the lawful origin of the confiscated cash was not contested. It followed that the only criminal conduct which could be attributed to him was the failure to make a declaration to that effect to the customs authorities.

The Court considers that it has not been convincingly shown or argued by the government that sanction alone was not sufficient to achieve the desired deterrent and punitive effect and prevent violations of the declaration requirement. Nevertheless, the applicant had not avoided customs duties or any other levies or caused any other pecuniary damage to the State.

In these circumstances, the imposition of a confiscation measure as an additional sanction was, in the Court's assessment, disproportionate, in that it imposed an 'individual and excessive burden' on the applicant. Therefore, there has been a violation of Art. 1 of Protocol No. 1.

Regarding other alleged violations of the Convention, the Court considers that these complaints have not been made out and rejects them as manifestly ill-founded.

5. Conclusion

A uniform conclusion drawn on the basis of these cases is that the ECtHR acts as a precedent court to the Constitutional Court regarding the protection of human rights or, more specifically, the right to property. Methodologically, this means that the ECtHR's legal views are crucial to the application of the law by the Constitutional Court in a concrete case. Essentially, the ECtHR's views constitute decisive arguments for the Constitutional Court. Even when it changes its practice, as was evident in the three sample cases related to customs offences, the Constitutional Court cites the ECtHR decisions. The practice of the ECtHR did not have a decisive impact on the Constitutional Court decision in all three cases; rather, it served as a legal façade. As for the ruling on the merits, which is distinct, it is logical for decisive arguments to be different; however, the problem is that they are more (daily) political than legal.

Examining the first case, we conclude that the Constitutional Court fully protected the right to property (the peaceful enjoyment of property), aware of the social responsibility of a decision of this type. It concerns a substantial number (thousands) of similar cases when masses of employees were left without salaries and other benefits they were owed from social companies during the transition period.

A basis for making the State liable for that property of (former) employees was found and with it the problem of enforcement or, specifically, the collection of those claims resolved. Instead of being settled from the bankruptcy or liquidation estate—with some even being suspended in full (in companies in restructuring)—these claims have easily been settled from the state budget. The ECtHR's views constituted a crucial factor influencing these decisions of the Constitutional Court. Further, this practice usually confirmed that until the decision of the Constitutional Court has been passed, the courts have been violating the right to a fair trial, primarily in that they delayed the enforcement procedure.

The remaining three decisions of the Constitutional Court show somewhat unethical and even legally illogical behaviour. In the first case, **Už – 367/2016,** the Constitutional Court, complying with the rule of international law (the practice of the ECtHR) requiring that due regard must be taken of the balance between the general interest of the public and the right to the peaceful enjoyment of property,[16] concludes that the confiscation of the object of the offence in its entirety (EUR 10,000), along with the imposed fine, poses an excessive burden on the complainant. Therefore, this measure imposed to protect public interest is disproportionate to the protection of the right to the peaceful enjoyment of

16 | See Kizlova, 2019, p. 78., Kriebaum and Reinisch, 2009, p. 10.

property. It was also found that the actions taken by misdemeanour courts violated the right to a fair trial.

In the second case, **Už– 1202/2016**, the Constitutional Court starts from the same rule of international law (the practice of the ECtHR) that a balance must be struck between the general interest and the right to the peaceful enjoyment of property and, thus, like in the first case, decides that the right to the peaceful enjoyment of property was violated. However, although the misdemeanour courts previously acted in an analogous way, the Constitutional Court makes a completely different decision with respect to violation of the right to a fair trial, dismissing the complaint in that part on account that the complainant 'only formally invokes a violation of a constitutional right'.

In the third case with similar factual circumstances, **Už– 5214/2016,** the Constitutional Court once again starts from the required balance between the public interest and the right to the peaceful enjoyment of property; however, it makes a contradictory decision. This time, it notes that it considered the decisions of the ECtHR, but that the circumstances differ. Here, it takes the view that confiscation of the object of the offence (EUR 19.000), as a measure to protect the public interest, is proportionate to the protection of the right to the peaceful enjoyment of property. This confiscation had the primary purpose of dissuasion and protection rather than compensation for damages sustained by society. Together with prevention, the Constitutional Court reasons this decision by political views that are not easily defendable: 'facilitating the implementation of monetary and exchange rate policies, providing financial stability of the Republic of Serbia, public order protection or prevention against its breaches (...)'. With respect to the protection of the right to a fair trial, the constitutional complaint was, once again, dismissed.

Bibliography

Kizlova, O. S. (2019) 'Protection of Property Rights in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Practice of the ECtHR' in Andreichenko, S. S. (ed.) *Juridical Scholarly Discussions as a Factor for the Sustainable Development of Legal Doctrine and Legislation: Collective Monograph*. 1st Lviv-Toruń: Liha-Pres, pp. 67–83.

Krstić, I., Marinković, T. (2016) *Evropsko pravo ljudskih prava*. 1st Beograd: Savet Evrope.

Manojlović-Andrić, K. (2019) 'Odnos Vrhovnog kasacionog suda I Ustavnog suda – konflikt koji i dalje traje' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 136–158.

Marković, G. (2021) *Ustavno pravo*. 1st Istočno Novo Sarajevo: Zavod za udžbenike i nastavna sredstva.

Mickonytė, A. (2020) *The right to (acquire?) property: Social security rights before the ECtHR, Graz Law Working Paper Series*, 9, pp. 1–20 [Online]. Available at: https://rewi.uni-graz.at/en/research/working-paper-series/ (Accessed: 17 October 2021).

Nastić, M. (2019) 'Uticaj prakse Evropskog suda za ljudska prava na odlučivanje Ustavnog suda Srbije u postupku po ustavnoj žalbi' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 282–304.

Plavšić, N. (2019) 'Primena prakse Evropskog suda za ljudska prava od strane Ustavnog suda u postupcima po ustavnim žalbama' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 256–281.

Ribičič, C. (2012) *Ljudska prava i ustavna demokratija: ustavni sudija između negativnog i pozitivnog aktivizma*. 1st Beograd: Službeni glasnik.

Simović, D. (2019) 'Institucionalna fizionomija ustavne žalbe u Republici Srbiji u svetlosti uporednopravnih rešenja' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 9–50.

Simović, D., Zekavica, R. (2020) *Ljudska prava*. 1st Beograd: Kriminalističko-policijski univerzitet.

Simović, D., Stanković, M., Petrov, V. (2018) *Ljudska prava*. 1st Beograd: Univerzitet u Beogradu, Pravni fakultet.

Stanić, M. (2019) 'Ustavna žalba u Nemačkoj kao uzor ustavne žalbe u Srbiji – izvor problema, ali i rešenja' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 51–70.

Šurlan, T. (2019) 'Primena međunarodnog prava u postupcima po ustavnoj žalbi Ustavnog suda Republike Srbije' in Šarčević, E., Simović, D. (eds.) *Ustavna žalba u pravnom sistemu Srbije*. 1st Sarajevo: Fondacija Centar za javno pravo, pp. 219–255.

Pregled rada [Online]. Available at: http://www.ustavni.sud.rs/page/view/137-101100/pregled-rada (Accessed: 14 September 2021).

Kriebaum, U., Reinisch, A. (2009) *Property, Right to, International Protection, Max Planck Encyclopedia of Public International Law*, pp. 1–15 [Online]. Available at: https://deicl.univie.ac.at/fileadmin/user_upload/i_deicl/VR/VR_Personal/Reinisch/Publikationen/Propertyright_int_protec.pdf (Accessed: 17 October 2021).