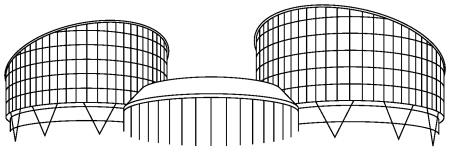

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TENCE v. SLOVENIA

(Application no. 37242/14)

JUDGMENT

STRASBOURG

31 May 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tence v. Slovenia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 May 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37242/14) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Ms Marinka Tence ("the applicant"), on 13 May 2014.

2. The applicant was represented by Mrs A. Jug, a lawyer practising in Nova Gorica. The Slovenian Government ("the Government") were represented by their Agent, Mr L. Bembič, State Attorney.

3. The applicant alleged that the overly restrictive interpretation of domestic procedural rules amounted to a violation of her right of access to a court under Article 6 of the Convention.

4. On 14 October 2014 the complaint was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

5. The applicant was born in 1950 and lives in Nova Gorica.

I. THE CIRCUMSTANCES OF THE CASE

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

7. On 29 October 2002 the applicant lodged a civil action against company X, her former employer, seeking payment of 3,285.89 euros

(EUR) and statutory default interest in respect of contributions made by her into the employee share scheme (*trajne vloge delavca*). On 24 May 2011 the Nova Gorica Local Court ("the Local Court") dismissed her claim and on 13 June 2011 the judgment was served on her lawyer.

8. The time-limit for appealing against the judgment expired at midnight on 28 June 2011. At 6.54 p.m. on that day the applicant's lawyer sent a document of six pages by fax to the Local Court. The next day, after the expiry of the time-limit, the applicant's lawyer sent the appeal against the first-instance judgment, consisting of six pages, by registered mail. On 12 July 2011 the Local Court rejected the appeal as out of time. It held that the applicant had lodged her appeal on 29 June 2011, which was after the time-limit.

9. On 30 July 2011 the applicant appealed against this decision, arguing that she had lodged her appeal by fax within the prescribed period. In this connection, she submitted a fax confirmation page according to which on 28 June 2011 at 6.54 p.m. her lawyer had sent a six-page document to the Local Court's fax number.

10. On 12 August 2011, at the request of the Koper Higher Court ("the Higher Court"), the competent judge of the Local Court enquired about the faxes received by the registry of that court on 28 June 2011 from 6 to 7 p.m. The confirmation page showed that the Local Court had received a document of six pages from the applicant's lawyer at 6.59 p.m. On 24 August 2011 the competent judge was informed that the fax from the applicant's lawyer had been saved in the fax machine's memory, but had not been printed out. Subsequently, this information was sent to the Higher Court.

11. On 14 November 2011 the Higher Court dismissed the appeal, noting that the Local Court had received the documentation that had been lodged by mail only on 29 June 2011. It held that the appeal allegedly lodged on 28 June 2011 by fax would have been regarded as within the prescribed time-limit only if it had been delivered to the court before its expiry. The burden of proof that the appeal had been lodged in due time was on the applicant. The Higher Court acknowledged that the confirmation page submitted by the applicant indeed showed that on 28 June 2011 the applicant had sent a document of six pages by fax. However, the confirmation page made no reference to the type of document sent, its content and to which case it referred.

12. On 5 June 2012 the applicant lodged an appeal on points of law. She pointed out that section 112 of the Civil Procedure Act allowed the submission of an application by fax and that according to the existing case-law of the Supreme Court an application was deemed to be submitted in due time if delivered to the competent court before the expiry of the time-limit regardless of how it was subsequently handled by the court, which was a matter of the court's internal organisation. The applicant submitted that the

Local Court had received her appeal by fax in due time but then most probably failed to print it out and the document had automatically been deleted from the fax machine's memory. Hence, she argued that the date when the fax had been sent should be considered as the date the appeal had been lodged and that she should not be made to bear the burden of proof in a case where the document had not been printed out by the court. She further emphasised that a timely delivery should not have any negative consequences for the parties to the proceedings. Furthermore, as regards her failure to prove the content of the fax that had been sent to the Local Court on 28 June 2011, the applicant submitted: firstly, that the confirmation page from her lawyer's fax machine had showed the date of the transmission, the number of pages sent and the time it had taken to deliver the document to the receiving machine; secondly, on the following day, 29 June 2011, the applicant had lodged the relevant document by registered mail which, according to her, proved that the document in question was in fact the appeal against the judgment of 24 May 2011. The applicant added that, according to information given to her by a telecommunications company and a fax-machine manufacturer, it was not possible to prove the content of a document sent by fax as those transmissions were encrypted.

13. On 20 June 2013 the Supreme Court dismissed the applicant's appeal on points of law. It referred to its decision of 4 April 2013 (II Ips 603/2009 and II Ips 718/2009) in which it had held that proof that a fax was sent did not necessarily mean proof of receipt of the document. In the Supreme Court's opinion, there was a possibility that the court would not receive the relevant document in due time because of faults in the telecommunications network or similar technical reasons (lack of paper, an empty ink cartridge, the machine shutting down, and so on). Such a risk was borne by the applicant in the same manner as if the document were sent by regular – as opposed to registered – mail, whereby the risk of late receipt of a motion was borne by the sender. Since the applicant had failed to prove the content of the document sent by fax on 28 June 2011, the Supreme Court confirmed that the Higher Court had correctly taken into consideration only the appeal sent by registered post the next day.

14. On 18 October 2013 the applicant lodged a constitutional complaint in which she reiterated the arguments raised before the Supreme Court.

15. On 11 November 2013 the Constitutional Court dismissed the constitutional complaint for lack of significant disadvantage and for not raising an important constitutional question. On 15 November 2013 this decision was served on the applicant.

16. Meanwhile, on an unspecified date, the applicant requested that the Local Court reinstate her case. On 7 February 2012 the Local Court dismissed the applicant's request. The applicant lodged an appeal which she subsequently withdrew.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant provisions of the Civil Procedure Act *(zakon o pravdnem postopku*, Official Gazette no. 73/07, as amended*)* state:

Section 105.b

"Applications shall be submitted in writing. An application in writing is an application which has been written or printed, and signed in person (application in physical form), or an application submitted in electronic form and signed by a secure electronic signature supported by a qualified certificate. An application in writing shall be submitted by mail, by electronic means, by use of means of communication technology, delivered directly to the authority, or by a person, who is engaged in serving applications as his or her activity (business supplier). An application in electronic form shall be submitted by electronic means to the information system. Receipt of the application shall be confirmed automatically by the information system.

An application can also be made on a prescribed or otherwise pre-prepared form. Irrespective of any provisions of other regulations, documents in electronic form shall have the same content as the documents prescribed in physical form only.

A uniform information system shall be set up for courts by the competent authority.

The Minister of Justice shall prescribe the conditions and the manner for submission of applications in electronic form, or by electronic means, the form of the application in electronic form, and the organisation and performance of the information system.

Irrespective of the provisions of the first and second paragraphs of the present Section, the Minister of Justice shall specify the applications that can also be made by telephone, or by electronic means without a secure electronic signature supported by a qualified certificate, and the means of identification of the parties in any such case ..."

Section 112

"If an application is subject to a time-limit, it shall be deemed to have been lodged in due time if delivered to the competent court prior to the expiry of the time-limit.

If an application is sent by registered mail or by telegraph, the date of posting shall be deemed the day of delivery to a court concerned.

If an application is submitted by electronic means, the time of receipt by the information system shall be deemed to be the time of submission of the application to the court concerned ..."

18. The Court Rules (Official Gazette no. 17/1995, in force from 26 March 1995, as amended) state, as far as relevant:

Rule 99

"The court shall consider the parties' applications sent by telegram or telefax within the context of the relevant procedural rules.

Telegraph messages and applications of the parties may not derogate from the time-limits as defined by procedural rules."

Rule 100

"Messages and applications sent by parties by telefax shall be deemed written applications of the parties if they comply with the procedural laws and if the telefax allows the time of sending and the sender to be identified."

19. In a decision of 13 October 2004 (II Ips 69/2004) the Supreme Court reiterated that applications lodged by electronic means were covered by the first paragraph of Section 112 of the Civil Procedure Act according to which an application was deemed to have been lodged in due time if delivered to the competent court prior to the expiry of the time-limit regardless of how it was subsequently handled by the court (which was a matter of the court's internal organisation). In that case the appellant had lodged an application by fax in due time and, a day after the expiry of the time-limit, by registered mail. In rejecting the appellant's motion as after the time-limit, the Higher Court did not take into account the confirmation page submitted by the appellant as evidence of timely delivery of the second-instance appeal. The Supreme Court quashed the decision for lack of reasoning and remitted the case for re-examination.

20. In a decision of 4 April 2013 (II Ips 603/2009 and II Ips 718/2009) the Supreme Court dismissed an appeal on points of law challenging the rejection of the documentation sent by fax on the last day of the time-limit, whereby the receipt was recorded in the court's fax machine the day after the expiry of the time-limit. The Supreme Court held that proof that the fax was sent was not proof of receipt of the document by the addressee. In the Supreme Court's view, there existed a possibility that the court would not receive the relevant document in due time on account of faults in the telecommunication network or similar technical reasons. Such a risk was to be borne by the party sending the application by fax.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained that due to an overly restrictive interpretation of the domestic procedural rules she had been deprived of access to a court as provided in Article 6 § 1 of the Convention. The relevant part of the provision reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

22. The Government contested that argument.

A. Admissibility

23. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

24. The applicant stated that the lodging of applications by fax had been in place since 1999 and was quite common. She further asserted that according to the existing domestic case-law (namely the Supreme Court's decision of 13 October 2004, II Ips 69/2004, see paragraph 19 above) her application lodged by fax should have been treated as lodged in due time and that the Supreme Court's interpretation of the domestic procedural rules in her case had been arbitrary and unreasonable.

25. In particular, according to the applicant, the imposition of the requirement that the applications must also be printed out by the relevant court placed the risk of faulty functioning of the court's fax machine on the parties to the proceedings, which was unreasonable and impracticable. The applicant submitted that the court was in the position to simply not print out such an application, thus depriving the parties of their statutory right to choose the manner in which an application was made.

26. The applicant stated that she had sent her application by fax in due time, as apparent from the Local Court's confirmation page submitted by the Government confirming the time of delivery and the sender's identity. The applicant maintained that neither her fax machine nor that of the Local Court had shown any error in the transmission of the relevant document which means that both machines had functioned without fault. The Local Court had thus received the application in question but failed to print it out.

(b) The Government

27. The Government submitted that the risk of faults in the telecommunication network or similar technical reasons leading to potential non-receipt of an application by a court had to be borne by the person submitting the application. The Government acknowledged that the applicant's documentation had been received in the fax memory but had not been printed out by the machine. Hence, the applicant had not been able to prove the content of the faxed document.

28. The Government further asserted that the President of the Local Court had informed them that it was not a large court; usually parties did

not lodge applications with the court by fax; if they did, an employee in the mail room housing the fax machine examined the application with diligence and then handed it over to the legal officer of the competent department. Thus, every application lodged by fax was examined twice before being handed over to the judge. The caseload was steady and on a scale that made it possible to determine from the content of an application – even if incomplete – to which case it referred. The Local Court further noted that before this incident the fax machine had never displayed an "OK" sign without printing out the document. The Local Court did not know the reason why this had occurred.

29. In the Government's view, the Local Court could not have taken into consideration the appeal sent by the applicant's lawyer by fax, as the document had not been printed out and the court was not able to anticipate the content or to which party the document related. Accordingly, the appellate court had deemed correctly that the applicant's appeal lodged one day after the time-limit had to be rejected.

2. The Court's assessment

30. The Court reiterates at the outset that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; further, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII).

31. Furthermore, the rules on time-limits for appeals are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Those concerned must expect those rules to be applied. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy (see *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII).

32. As regards the instant case, the Court notes, based on the confirmation pages submitted by the parties, that the applicant's lawyer successfully transmitted by fax a document consisting of six pages to the Local Court at 6.54 p.m. on 28 June 2011, the last day of the time-limit for appealing. The document was received by the Local Court's fax machine on the same day at 6.59 p.m., but it was not printed out for reasons which could not be explained by the Government. The following day, when the time-

limit had already expired, the applicant sent an appeal (likewise consisting of six pages) by registered mail. The applicant's appeal was rejected as out of time, as were her subsequent objections that it had been sent by fax within the prescribed time-limit. The domestic courts only took into account the document sent by registered mail, noting that the applicant was unable to prove the content of the document sent by fax. Furthermore, the Supreme Court emphasised that any faults in the transmission of a document sent by fax, even if attributable to the court, had to be borne by the party submitting such a document.

33. As regards the submission of applications by means of fax, it is noted that the Slovenian Civil Procedure Act does not contain any specific provisions thereon; however, it is a matter of settled domestic case-law that the parties may lodge their applications by fax in addition to written and electronic correspondence. Accordingly, it was not in dispute in the present case that the applicant had been entitled to lodge her appeal by fax. However, their opinions differed as to whether an application successfully transmitted to the Local Court's fax machine could be considered delivered if it was not printed out and, consequently, no conclusive proof existed of its content, and to who was to bear the risk of any error or malfunction of the Local Court's fax machine resulting in the failure to print. The applicant took the view that, since the confirmation pages showed that the document in question had been received by the Local Court's fax machine, she should not have borne this risk. By contrast, the Government argued that any risks of technical failure in the transmission of documents by fax should be borne by the person submitting such a document.

34. The Court notes that the Government's view reflects the view expressed by the Supreme Court in its 2013 decision in which it held that any risk of a fault in the telecommunication network or similar technical issue was to be borne by the party sending the application by fax (see paragraph 20 above). However, it cannot be overlooked that this view was adopted subsequent to the date on which the applicant lodged her application by fax; in its initial 2004 decision on the issue, the Supreme Court limited its findings to the issue of whether an application submitted by fax was to be treated as duly lodged (see paragraph 19 above). The court confirmed that such applications should be accepted and considered as delivered if they were submitted within the prescribed time-limit. However, the question of what constituted successful delivery of an application by fax was not addressed in that first decision. Accordingly, at the time of the applicant's appeal there was no basis for her to consider that what was recorded as a successful and timely fax transmission could nonetheless result in the rejection of the appeal as out of time.

35. The Court is of the view that a party should bear the consequences of an appeal that arrives after the time-limit, where the errors are attributable to that party (see *Pérez de Rada Cavanilles v. Spain*, cited above, § 47, and

Platakou v. Greece, no. 38460/97, § 39, ECHR 2001-I; contrast *Rodriguez Valin v. Spain*, no. 47792/99, § 28, 11 October 2001). However, in the present case the parties did not dispute that a document of six pages had reached the Local Court on 28 June 2011. It appears that the applicant's properly dispatched fax was saved in the memory of the Local Court's fax machine, which was borne out by the confirmation pages from both the sending and receiving fax machines and by the registry of the Local Court (see paragraph 10 above). In view of these circumstances, the Court considers that the applicant had good reason to believe that the document was submitted to the Local Court in accordance with the rules of domestic civil procedure on time-limits. As to the subsequent handling of the document in question by the Local Court, the applicant had no influence on whether it would be printed out or indeed whether the fax machine functioned properly.

36. It is further noted that the Government, relying on the grounds for the rejection of the applicant's appeal given by the domestic courts, argued that she could not prove that the document she had sent by fax was in fact the appeal in question. However, according to her undisputed information, fax transmissions are encrypted and thus their content cannot be proved (see paragraph 12 above). While a direct analysis of the content of the document in question was thus not possible, the applicant submitted to the domestic courts the confirmation page showing that on 28 June 2011 her lawyer had faxed a document of six pages to the competent court. She further pointed out that the document was the same size as the appeal lodged the next day by registered post. Notwithstanding the fact that it is primarily the role of the competent national authorities to decide upon the admissibility and relevance of evidence (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140, and *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22), the Court considers that the above considerations, coupled with the fact that the technical issue resulting in the incomplete delivery of the document in question to the Local Court was not attributable to the applicant but to the Local Court, render the domestic courts' approach of placing the entire burden of proof on the applicant overly rigid.

37. In the Court's view, this approach taken by the domestic courts made it practically impossible for the applicant to be successful in her appeal. It follows that the applicant has been made to bear a disproportionate burden (see, *mutatis mutandis*, *Pérez de Rada Cavanilles*, cited above, § 49; *Tricard v. France*, no. 40472/98, § 33, 10 July 2001; and *Zedník v. the Czech Republic*, no. 74328/01, § 33, 28 June 2005).

38. Having regard to the circumstances taken as a whole, the Court finds that the domestic courts' decisions deprived the applicant of her right of access to a court, and, consequently, of her right to a fair trial, within the meaning of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

40. The applicant claimed 12,500 euros (EUR) in respect of pecuniary damage corresponding to her civil claim which had not been examined on the merits by the domestic courts, as well as non-pecuniary damage corresponding to the distress she suffered as a result of the breach of the Convention at issue.

41. The Government contested the amount of the claim. In their view, the applicant had not provided any evidence that she would have succeeded with her claim in the civil proceedings.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Nor can it speculate on what the outcome of the proceedings would have been if the applicant's appeal had been examined on the merits by the domestic courts. Accordingly, the Court makes no award under this head.

43. The Court, however, considers that the applicant suffered non-pecuniary loss arising from the breach of the Convention found in this case. Therefore, ruling on an equitable basis, it awards the applicant EUR 2,500 in that respect. Moreover, while the Slovenian legislation does not explicitly provide for reopening of civil proceedings following a judgment by the Court finding a violation of the Convention (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 27, ECHR 2015), the Court has already stated that the most appropriate form of redress in cases where it finds that an applicant has not had access to court in breach of Article 6 § 1 of the Convention would be for the legislature to provide for the possibility of reopening the proceedings and re-examining the case in keeping with all the requirements of a fair hearing (see, *mutatis mutandis*, *Kardoš v. Croatia*, no. 25782/11, § 67, 26 April 2016; and *Perak v. Slovenia*, no. 37903/09, § 50, 1 March 2016).

B. Costs and expenses

44. The applicant also claimed all costs and expenses incurred before the domestic courts without, however, specifying this claim.

45. The Government contested that claim as unfounded.

46. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings as unsubstantiated.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage.

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajo
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge E. Kūris is annexed to this judgment.

A.S.
F.A.

CONCURRING OPINION OF JUDGE KŪRIS

1. The applicant was unable to prove the content of the document sent by fax. The Government expressed doubts as to whether the document sent by fax was in fact the appeal in question. A conspiracy theory could be put forward whereby the applicant's lawyer, not yet ready to lodge the *final* version of the appeal in due time, faxed some *other* six pages in order to gain time for finalising the requisite document, which he subsequently sent by registered mail. This, however, would be mere speculation, and the Government did not resort to it. Instead, they argued that the burden of proof that the fax transmission was indeed the same document which was sent by registered mail on the following day ought to be borne by the applicant.

2. Given that that the content of documents sent by fax is encrypted and cannot be proved, it would not be unreasonable for courts to require that the sender take measure which, in the event of a dispute, could prove that the document submitted by fax had a particular content. A mobile-telephone photograph of a fax-sent document, with an indication of the date and time, would probably suffice. Or a document could be scanned and sent by electronic mail to a fax server. There must also be other possibilities. Which would be the most appropriate, or the most efficient, is not for me to suggest.

3. However, the Slovenian authorities had to have been aware of the technological peculiarity that the content of documents sent by fax cannot be proved. Consequently, they could reasonably have foreseen that disputes as to the content of such a document could arise. Nevertheless, the Court Rules (see paragraph 18 of the judgment) took no account whatsoever of the realistic possibility of such a turn of events and did not oblige the senders to take any precautionary measures in this regard. Hence, the placement of the burden of proof on the applicant was not only "overly rigid" (as is rightly stated in paragraph 37), but also legally unsubstantiated and unfair.

4. More generally, Rules 99 and 100 lag behind life. They mention telegrams and telefax, but keep silent on their Internet-based alternatives, which have displaced these older versions of communication. The use of fax machines is steadily decreasing, but they are still employed. As to telegraph messages, many countries discontinued their telegram services years ago. This is how Wikipedia describes telegraph services in Slovenia:

> "[Slovenian Post] provides a telegram service still commonly used for special occasions such as births, anniversaries, condolences, graduations, etc. ... Telegrams are usually printed in a typewriter font on greeting or condolences cards delivered in a specific yellow envelope. It is also possible to send gifts (e.g. chocolates, wine, plush toys, flowers) together with a message. The telegrams can be sent from local post offices, over the phone or online to addresses in Slovenia only." (https://en.wikipedia.org/wiki/Telegraphy, accessed 13 May 2016).

In *this reality*, imagination fails me when trying to envisage what an appeal sent by telegram to a Slovenian court by someone endeavouring to avail himself or herself of Rules 99 and 100 would look like.

5. I began this opinion by putting forward a conspiracy theory. As I have already made clear, this theory is mere speculation with regard to the applicant and his lawyer, and I do not wish to be misunderstood on this count. But as long as Rules 99 and 100 remain as they stand today, this theory may serve, to my regret, as a tip for someone who *indeed* might seek to benefit dishonestly from the lawmakers' oversight or slowness. Intervention by the legislature would be welcomed, not least by Slovenian taxpayers, especially if it occurs before a similar application is lodged with this Court – with a more or less (but rather more) predictable outcome.