



**REPUBLIKA SLOVENIJA**  
**USTAVNO SODIŠČE**

U-I-94/93-16  
16.2.1995

**D E C I S I O N**

At the meeting of 16 February 1995 concerning the proceedings for evaluation of constitutionality commenced on the proposal of the Executive Council of the Izola Municipal Assembly, represented by the Public Attorney's Office of Koper, the Constitutional Court

made the following decision:

The Ordinance of the Government of the Republic of Slovenia on default interest balancing remittance relating to taxes, dues, duties and other import charges (Official Gazette of RS, No. 47/92) shall be abrogated.

**R e a s o n s:**

**A.**

On 24 June 1993, the Executive Council of the Izola Municipality had filed an initiative - for its content and the status of the applicant in fact a proposal - for evaluation of constitutionality and legality of the Ordinance referred to in the adjudication hereof. Since in accordance with the legislation then in force the applicant had been entitled to file a proposal, the Constitutional Court considered the application, on the basis of the the Constitutional Court Act having in the meantime come into force (Official Gazette of RS, No. 15/94), hereinafter: "the LCC") to be a request in the sense of Article 22 of the same.

The proposer claims that the disputed regulation has retrospective effect and is thus in conflict with Article 155 of the Constitution.

The Ordinance provides that the default interest relating to taxes, dues, duties and other import charges shall, for the period between 7 December 1991 and 27 March 1992, when these had been governed by the ordinance of the Executive Council published in the Official Gazette of RS, Nos. 28/91 and 1/92, be calculated by using the default interest rate having been introduced on 28 March 1992 by the Default Interest Rate Act ((Official Gazette of RS, No. 14/92, hereinafter: "the Act"); outstanding default interest which have not been paid by that time shall be decreased by the corresponding amount; however, if they have already been paid, the balance shall be settled within the framework of other obligations of persons under such obligations, or returned. This ordinance came into effect on 1 October 1992.

The Government, as the opposite party, explains that, prior to the coming into force of the Act and on the basis of the competence granted to the Executive Council under seven substantive laws the prescribed interest rate (initially 2.2%, then 1.2% for each day of delay) was so high that it exceeded a reasonable level of default interest rate as an instrument used to encourage the payment of charges in due time. This is why the Government decided with the disputed Ordinance to prescribe more favourable interest rates in reference with the parties under obligation, regardless of the fact that it was not expressly authorised by statute to do so.

**B.**

The disputed regulation is formally still in effect, but is no longer applied: according to Articles 4 and 5 of the Ordinance, rightful claimants had to submit the required documentation and balance remittance approval, or to request within 30 days the repayment of the balance, that is, not later than by 1

November 1992, and the competent authorities were obliged to return the balance in 15 days from receipt of the request (Article 7 of the Ordinance). According to the information of the opposite party, the last cases of the application of the Ordinance ended by the end of 1993 at the latest.

Article 155 of the Constitution provides that no statute, regulation or other legislative measure shall have retrospective effect. A particular statute shall only be given retrospective effect when so required by the statute concerned, when in the public interest and provided that no accrued rights are infringed thereby. Being a non-statutory regulation, the disputed Ordinance regulates the matter, from the viewpoint of content, with reference to a period which had already expired at the moment of its coming into effect, that is, with retrospective effect, which is not in conformity with the above mentioned constitutional provision, which prohibits retrospective effect of legal acts.

According to the provision of Article 45 of the LCC, unconstitutional and illegal non-statutory regulations shall be abrogated or set aside by the Constitutional Court. They shall be set aside by the Constitutional Court when it discovers that harmful consequences arising from this unconstitutionality or illegality have to be abolished. This setting aside shall be retrospective.

The initiative for evaluation of constitutionality was given by the Municipality in the defence of its own interests and the interests of municipalities as opposed to those of the State and its executive authorities. The direct consequence of the disputed Ordinance was that smaller amounts deriving from default interest flowed into Municipal accounts and were credited to the accounts of single-service budgets. In the line with the nature of the obligation concerned, revenues were unpredictable, and were thus not included either in Municipal budgets or financial plans of institutions. Due to the method of assessment and balance remittance with respect to Municipal public consumption by means of financial balancing funds, the enforcement of the Ordinance could not have had any impact, at least not a significant one, on public consumption in Municipalities.

Undoubtedly, the removal of the consequences arising from the enforcement of the disputed Ordinance would further deteriorate the position of the parties under the obligation.

After being rightfully convinced of having settled their obligations, for this was ascertained with respect to them by competent government authorities, which also acted accordingly, they would again find themselves in the position of debtors. This would seriously injure their belief in legal security and their trust in law. And if such were the case, it would be right to assume that government authorities are not conscientious enough in as far as the use of their authorizations and powers is concerned.

From the viewpoint of constitutional protections, then, a substantial part of reasons speak against the request for the removal of the consequences of the disputed Ordinance, after the latter has been found to be unconstitutional by the Constitutional Court. This is why the Constitutional Court decided not to set aside, but to abrogate the disputed Ordinance.

### C.

This Decision was made on the basis Articles 21 and 45 of the LCC by the Constitutional Court in the following composition:

Dr. Tone Jerovšek, President, and Dr. Peter Jambreč, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič, the judges. The Decision was reached by five votes in its favour and four votes against it. The votes against were cast by the judges Krivic, Šinkovec, Ude and Zupančič, of whom the first three gave negative separate opinions.

P r e s i d e n t:  
Dr. Tone Jerovšek