



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-225/96
15.1.1998

DECISION

At the meeting of 15 January 1998 concerning the procedure for the evaluation of constitutionality commenced upon the request of the Supreme Court, the Constitutional Court

m a d e t h e f o l l o w i n g d e c i s i o n :

It is not in disagreement with the Constitution for the Denationalization Act (Official Gazette of RS, Nos. 27/91 and 31/93) not to regulate legal succession of legal persons in so far as denationalization claimants.

R e a s o n s :

A.

1. In three case ((U 703/94, U 1040/94 and U 1327/94), in which denationalization request had been lodged on the basis of the decision of the Constitutional Court no. U-I-25/92 of 4.3.1993 (OdiUS 23/II, Official Gazette of RS, No. 13/93), the Supreme Court by a resolution interrupted the proceeding pending the decision of the Constitutional Court and filed requests for commencement of the proceeding for the evaluation of the Denationalization Act (hereinafter: "the ZDen"). In the request, the petitioner maintains that the decision of the Constitutional Court on the basis of which legal persons have also become parties entitled to denationalization has created a gap in the law in the sense that the Act does not regulate the legal succession of such persons. It is supposedly impossible to fill this gap merely by appropriate interpretation of the law. The provision of paragraph 2 of article 15 of the ZDen is also claimed to be accommodated to the restitution just to natural persons, which is why, in the opinion of the petitioner, the same cannot be applied to legal persons whose status changed all the time for various reasons and in various ways. In its opinion, the application of statutory and legal analogy in such proceedings is inadmissible. This is why the petitioner considers that in such cases it does not have at its disposal a statutory basis for filling the said gap by appropriate legal interpretation and that it is consequently unable to evaluate the objections made in the lawsuits.

2. The petitioner in its requests describes the actual status in the three denationalization cases in which it had interrupted the proceeding pending a decision of the Constitutional Court on the request for the evaluation of constitutionality in this reference:

- The Insurance Company Generali of Trieste is, according to its assertions, the legal successor to the Insurance Company Generali d.d. Zagreb. The Ministry of Finance dismissed its application for denationalization, invoking in this connection the position of the Constitutional Court in the above mentioned decision, according to which the criterion under articles 9 and 14 of the ZDen can be applied also to other legal persons. At the time when the property was nationalized, the party which lodged the request for denationalization did not have the status of domestic legal person, and at the time of the coming into force of the ZDen it also did not operate on the territory of the Republic of Slovenia.

- Pivovarna Union d.d. Ljubljana lodged a request for denationalization of real property having been nationalized on the basis of the Act on Agrarian Reform and Resettlement in the People's Republic of Slovenia. The Ministry of Agriculture and Forestry dismissed as unfounded its appeal against the resolution of the first-instance authority on dismissal of the request, because there was supposedly no legal continuity between Pivovarna Union d.d. Ljubljana and the former joint stock company.

- The Town of Ljubljana in the framework of denationalization proceeding filed a request for the return of real property of Ljubljana Urban Municipality in reference with which by a Decree on registration of property right regarding State-owned real property the property which comprises the complex of Mladika with pertaining buildings and building land was in the land register entered as public property. The Ministry of Culture dismissed the application, for there is no evidence of the legal succession of the present Town of Ljubljana to the former Ljubljana Urban Municipality.

3. As the legislator did not in the law regulate the rights and obligations of legal persons, this has made it possible for the law to be applied differently in practical cases, and this is in the opinion of the petitioner a violation of the constitutional provision on equality before the law (article 14 of the Constitution) and of the principle of law-governed state (article 2 of the Constitution). The petitioner proposes to the Constitutional Court to find, in the sense of article 48 of Constitutional Court Act (Official Gazette of RS, No. 15/94 hereinafter: "the ZUstS") that the ZDen is not in conformity with the Constitution because it has not regulated the said questions, which it should have regulated following the coming into force of the decision of the Constitutional Court no. U-I- 25/92 of 4.3.1993, and to set a suitable time limit for the National Assembly of the Republic of Slovenia do to away with the said instances of disagreement with the Constitution.

4. The Constitutional Court joined the three cases for the purpose of joint consideration.

5. The National Assembly as the opposite party did not reply to the request.

B.

6. With its decision no. U-I-25/92 of 4.3.1993 the Constitutional Court annulled the word "natural" (in appropriate grammatical case) in paragraph 1 of article 3, in articles 4 and 5 and in paragraph 2 of article 10 of the ZDen. It also annulled paragraph 2 of article 3 and paragraph 2 of article 13 of the ZDen. The Constitutional Court annulled the said provisions of the law with a view to making equal as denationalization claimants all entities - both natural and legal persons. And it is for the legal person to prove in denationalization proceeding its legal continuity.

7. In the reasons for the above cited decision of the Constitutional Court a position is stated that the criteria under articles 14 and 9 of the ZDen can be applied analogically also to other legal persons - "that is, the criterion of whether at the time when their property was nationalized they had the status of domestic legal person, and whether at the time of the coming into force of this law, that is, on 7.12.1991, they themselves, or their legal successors operated on the territory of the Republic of Slovenia".

8. On the basis of the above described decision of the Constitutional Court, it is in the case of the enforcing of the rights arising from denationalization necessary to make equal natural and legal persons, from which it logically follows that this applies also to legal persons between themselves. As the law originally envisaged denationalization just for religious communities in so far as legal persons, it determined the criteria for acquiring the status of rightful claimants just for these, with the said status belonging just to those religious communities operating on the territory of the Republic of Slovenia at the time of the coming into force of the ZDen. With the decision of the Constitutional Court no. U-I-25/92, which has extended the right to denationalization to all legal persons, the question arises of whether because of the said extension the ZDen should be amended. When deciding the said case, the Constitutional Court did not instruct the legislator to amend the law but itself postponed the abrogation for the period of two months, to "make it possible for the legislator to pass such amendments to this act as might be required, in particular concerning the enforcement of the rights of rightful claimants." The legislator did not act so. The Supreme Court considers that the application of statutory or legal analogy in administrative proceeding is inadmissible and that in this case the gap in the law cannot be filled by appropriate interpretation of the law. It invokes paragraph 2 of article 120 and paragraph 4 of article 153 of the Constitution.

9. An administrative authority which applies law and for this reason interprets laws and regulations must in every case of the application of a law or regulation ascertain its meaning and aim or intention - and it achieves this by means of various ways of interpreting the law. Classical methods used for filling

gaps in the law are the legal and statutory analogy. One speaks of statutory analogy when from an instance which is regulated individually one infers a non-regulated instance which, in its components does not entirely correspond to the characteristics typical of an abstract actual case, which, however, is so similar to these that it corresponds to these in essential characteristics. And one speaks of legal analogy when a particular legal rule is generalized and applied to social relationships of other kind, if they correspond to it from value-point of view. The only exception as regards the application of analogy exists in criminal law, where it is only admissible to reach conclusions based on similarity within the framework of a particular norm of criminal law which already by itself comprises explicit enough criteria regarding the defining of its content.¹

10. The provision of paragraph 2 of article 120 of the Constitution, which provides that duties and functions associated with public administration shall be conducted independently and at all times pursuant to, and consistent with, the Constitution and the law, does not imply the prohibiting of the application of analogy. The provision of paragraph 4 of article 153 applies to acts and activities of all State bodies, not just of administrative bodies. Each and every act and activity of State bodies, local government bodies and statutory authorities must be founded in statute or in regulations made pursuant to statute, and the application of analogy is not in disagreement with this provision.

11. The Supreme Court has applied analogy in deciding administrative lawsuits several times already exactly in cases relating to denationalization. Thus, for example, the Supreme Court in its verdict no. U 235/94-14 of 19.9.1996 took up a position that the rightful claimant under article 25 of the ZDen cannot be in an inferior position from that of the rightful claimant under paragraph 1 of article 72 of the ZDen, which is why substantial increase in value should be deemed to be one reaching or exceeding 30% of the value of the nationalized real property at the time of the nationalization. In its verdict no. U 1113/93-5 of 6.9.1995, again, the Supreme Court is of the opinion that the gap in the law relating to the manner of valorization of the compensation received for nationalized property under paragraph 1 of article 72 of the ZDen can be filled by analogical application of the injunction issued on the basis of paragraph 5 of article 44 of the ZDen, in which the valorization of the value of nationalized companies ascertained on the occasion of the nationalization is defined.

12. In the opinion of the Constitutional Court, in deciding in administrative proceedings, application of analogy is admissible as a method of filling gaps in the law, and also invokes such application in its decision no. U-I-25/92 of 4.3.1993. Having regard to the fact that in the reasons for its decision the Constitutional Court invokes analogical application of the criteria under articles 9 and 14 of the ZDen, it is thus in the first place necessary to determine whether the status of denationalization claimant can for legal persons be ascertained on the basis of analogical application of the criteria which apply to natural persons and religious communities in so far as legal persons and to legal succession of legal persons on the basis of the general rules of law relating to legal status.

13. Business corporations are established by signing or adopting a memorandum of association, and they acquire the characteristics of a legal person on the basis of registration in the register of companies. Status-related changes would be involved in the cases where assets and liabilities of an entity have been divided among several entities, when a part of an entity has split off, with this resulting in two entities or a new entity, or when one entity has joined another. In such cases, status-related changes of business corporation would be involved such as would dictate the application of the rules on legal succession. From the foregoing it follows that the founding or registration of a company in the register of companies creates a new person governed by civil law.

14. The character of legal person is determined by the defining of its status. Regardless of the fact that property is constitutive element, from legal viewpoint, for the formation of a legal person, it is not possible to maintain that legal succession of legal persons is involved already because they are successors to the same property. Even if what is involved is the founding of a legal person at the same location or (territory when local government units are concerned), having the same property and possibly even the same name, this still does not mean that what is involved is legal succession in the sense of the status.

15. From the foregoing it follows that a person which has been established at the same location, with the same assets and the same name as the nationalized company is not entitled to the status of denationalization claimant. Those entitled to the return of nationalized companies or capital can only be (on the basis of article 13 of the ZDen) the former owners of stocks or shares of the nationalized company. If the said former owners were legal persons they are of course rightful claimants, if they fulfil the criteria under articles 9 and 14 of the ZDen. If applying these criteria analogically, this would mean that the legal persons should have been deemed to be domestic legal persons² at the time of the nationalization, and that they must at the time of the returning of property be operating on the territory of the Republic of Slovenia³. Also fulfilled must be the condition of legal continuity of the legal person from the moment of its nationalization until the return of property, which is ascertained on the basis of entries in the register of companies.

16. Municipalities belong to legal persons governed by public law, which are founded by statute. According to article 139 of the Constitution, municipality is a local self-government unit.

Reorganization of local self-government is based on the setting up of a new state and political system, that is, the system of parliamentary democracy with classical self-government. This system has replaced the former system of the socialist State, in which the so called communal system was operating at the local level. The Constitution provides the principles for the establishing of municipalities in the framework of the reestablishing of classical local self-government, but this does not mean that there is a continuity between the present municipalities and the municipalities from the period prior to 1945.

17. One can speak about the development of local self-government in Slovenia from 1849 till 1945. The emergence of the socialist Yugoslavia was a major turning point - both as regards the political system of the country as well as the local self-government.⁴ The Act on Administrative Division of the People's Republic of Slovenia (Official Gazette of PRS, No. 26/46) divided Slovenia into departments, districts and places. And territorial division implied the corresponding division of local authorities as well as administrative division. Territorial division of Republics corresponded to areas under people's committees. The Basic Law on People's Committees (Official Gazette of FPRY, No. 43/46) provided that people's committees were bodies of State authorities (article 1) and that general public property of local importance must be managed by the people's committee as legal person (article 20). Also the Basic Law on People's Committees - the rectified text of 1949 (Official Gazette of FPRY, No. 49/49) provided in article 17 that people's committees were entitled to manage the general national property of local importance and were allowed to use it and dispose with it in accordance with statute. In article 19, the said statute explicitly provided that local and town people's committees were entitled to manage on their territory the buildings and land owned by the State.

18. As departments, districts and places were parts of State organization, their property was also deemed to be, in accordance with the constitutional system of that time, general national property. For in legal theory, general national property was divided into federal (of the federal State), that of Republics (or of provinces) and local (property of people's committees).⁵ On the basis of the Decree on registration of property right regarding State-owned real property (Official Gazette of FPRY, No. 58/47), general national property was registered in land registers as general national property, with the designation of the body to which the management of the said property was entrusted. So, this piece of legislation did not change the legal character of property but only determined the manner of registration. Thus, the said decree in article 5 provided that in cases where a piece of real property had already been registered as owned by the State, the land register court just "ex officio corrected the entry", regardless of whether it comprised the clauses: State property, property of FPRY, property of PRS, property of the people's committee, property of former self-management bodies and similar. This means that the present municipalities are still in possession of title to the property to which the said decree applied, unless on the basis of any other legal grounds the said property has been transferred to another person.

19. From the foregoing it follows that changes in land register entries cannot, even notionally, be deemed to be the nationalization in the sense of provisions of the ZDen. For the said statute regulates denationalization of nationalized property and in paragraph 2 of article 8 defines that the expression nationalized property means private property having become, by a denationalization act, general

public property, State, socially-owned or cooperatives' property. The essence of this provision is in that private property is considered to have been nationalized where it has been transferred from private property to the above mentioned forms of property. This is why the Constitutional Court finds that in connection with the position of municipalities in denationalization proceeding the question of a gap in the law regarding legal succession, as claimed by the Supreme Court in its request, is not involved.

20. Societies are legal persons established in accordance with laws and regulations relating to societies. Also legal persons are hunters' clubs, fishermen's clubs and other organizations established in accordance with special laws or regulations.

Their legal succession, then, can be ascertained on the basis of the said laws and regulations. The status of legal person is not enjoyed by agrarian communities, but the denationalization of their property is regulated by a special statute.

21. The Constitutional Court in the process of considering the request for the evaluation of constitutionality of the ZDen obtained information on the cases in which denationalization requests were filed on the basis of the decision of the Constitutional Court no. U-I-25/92. From the data, information and decisions of competent administrative authorities submitted it is evident that also in those denationalization proceedings existence of legal succession and the fulfilling of the criteria for the acquisition of the status of rightful claimant under articles 9 and 14 of the ZDen were considered, and in this reference special problems were not identified such as would justify the claim of the Supreme Court that a gap in the law in disagreement with the Constitution is involved. The Supreme Court, also, in its verdict no. U 1478/94 of 26.9.1996 considered that rightful claimants with respect to the denationalization of nationalized property are "legal persons (on the analogy of churches, religious communities etc. under article 14 of the ZDen), on condition that at the time when their property was nationalized they had the status of domestic legal person, and that at the time of the coming into force of the ZDen, that is, on 7.12.1991, they themselves, or their legal successors operated on the territory of the Republic of Slovenia".

22. Thus, the decision of the Constitutional Court by which the same made equal legal persons to natural persons has not created a gap in the law in disagreement with the Constitution, for the said gap can be filled by the application of general rules of the legal system in force and by analogical application of provisions of articles 9 and 14 of the ZDen, in spite of the fact that the legislator has not passed any amendments to the ZDen regarding the enforcement of the rights of the said rightful claimants. While the Constitutional Court, by abrogating - with deferred effect - the provisions of the ZDen in its decision no. U-I-25/92, made it possible for such amendments to the law as might be necessary to be passed, it did not identify the existence of a gap in the law in disagreement with the Constitution. Thus, for the purpose of ascertaining the legal succession of legal persons it is not necessary to prescribe special criteria. For legal succession of legal persons can be ascertained, in denationalization proceedings also, on the basis of applicable rules of law relating to legal status for each particular kind of these entities.

C.

23. This Decision was made on the basis of paragraph 1 of article 40 of the ZUstS by the Constitutional Court in the following composition: Dr. Lovro Šturm, President, and Dr. Miroslava Geč - Korošec, Dr. Peter Jambrek, Dr. Tone Jerov ek, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Lojze Ude and Dr. Boštjan M. Zupančič, the judges. The decision was reached with eight votes in its favour and one against it. Vote against was cast by judge Zupančič, who gave a dissenting opinion. Judges Jambrek, Krivic and Ude gave concurring opinions.

P r e s i d e n t:
Dr. Lovro Šturm

Notes:

1Marjan Pavčnik, Argumentacija v pravu, 1991, pp. 146-151

2Article 9 of the ZDen sets Yugoslav citizenship of natural persons at the time of the nationalization as a conditions for the recognition of the status of denationalization claimant.

3Article 14 of the ZDen

4Janez Šmidovnik, Lokalna samouprava, Ljubljana 1995 (pp. 151- 152)

5Ivo Krbek, Osnovi upravnog prava FNRJ, 1950, p. 527