



**REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE**

U-I-301/98
17.9.1998

DECISION

At a session held on 17 September 1998, in a proceeding for assessing constitutionality commenced on the initiative of Danijel Starman from Koper and others ("Citizen's initiative of Slovene Istria"), the Constitutional Court

reached the following decision:

1. The second point of article 3 of the Founding of Municipalities and Determining their Regions Act (Official Gazette RS, no. 60/94, 69/94 and 56/98) is in conflict with the Constitution for reasons cited in the reasoning of this decision.
2. The National Assembly must amend and supplement the Founding of Municipalities and Determining their Regions Act, not later than in one year after this decision taking effect, such that municipalities are founded in the region of the current urban municipality of Koper in compliance with the Constitution.
3. The term of office of bodies of the urban municipality of Koper shall be extended until the commencement of the terms of office of bodies of the new municipalities which will be founded in compliance with the second point of this judgement proper.

Reasoning

A.

1. The initiators impugn the second point of article 3 of the Founding of Municipalities and Determining their Regions Act (Official Gazette RS, no. 60/94, 69/94 and 56/98 - hereinafter: ZUODNO) and article 2 of ZUODNO insofar as new municipalities were not founded by it in the region of the urban municipality of Koper. The initiators claim that the Amending and Supplementing ZUODNO Act (Official Gazette RS, no. 56/98) founded the urban municipality of Koper over a region which is territorially too extensive, so that such a municipality does not correspond to the constitutional basis of a municipality and statutory conditions. The initiators refer to decisions of the Constitutional Court no. U-I-90/94 of 20.5.1994 (OdlUS III, 58) and no. U-I-183/94 of 9.11.1994 (OdlUS III, 122). In these two decisions, the initiators state, the Constitutional Court found that the urban municipality of Koper, by territorial extent, number of settlements and inhabitants included and as a result of its internal heterogeneity, so greatly and clearly deviates from the constitutionally determined concept of a municipality that it does not correspond to a region in which it would be possible to found a single municipality. The initiators also propose restraint of implementation of the impugned provisions of the law.

2. The National Assembly did not specifically respond to the initiative but sent material which contained a recording of the 23rd exceptional session (point 3 of the Agenda) and some other materials which relate to decision making on the Amending and Supplementing ZUODNO Act.

B.

3. By the Amending and Supplementing ZUODNO Act, the National Assembly changed the territorial network of municipalities by the previously performed procedure, as determined by the Procedures for Founding Municipalities and Determining their Regions Act (Official Gazette RS, no.

44/96 - hereinafter: ZPUO). This involved founding new municipalities and altering the boundaries between municipalities. A large number of municipalities remained territorially unchanged; this also applied to the urban municipality of Koper. The statement of the initiators that the urban municipality of Koper was "founded" with the Amending and Supplementing ZUODNO Act is mistaken. The Urban municipality of Koper was founded with ZUODNO, and it was left in unchanged territorial extent. The legislator decided on such a nomethical solution of supplementing and amending articles 2 and 3 ZUODNO in entirety, not merely in those points which were supplemented or amended - but it is not, nevertheless, possible to conclude that municipalities which were founded with ZUODNO in 1994 were then re-founded.

4. The Constitutional Court first decided on the constitutionality of the region of the urban municipality of Koper in case no. U-I-90/94. It found then that the referendum region for the founding of the municipality of Koper "by envisaged territorial extent, number of settlements and inhabitants included and by the consequences of its internal heterogeneity so greatly and clearly deviates from the constitutional concept of a municipality that it does not correspond to a region in which it would be possible to found a single municipality". The National Assembly again called a referendum in the same region, except that it was determined that the result must be established for the region of each local community individually. Over the entire region, and in the region of each local community individually, the voters declared in favour of the founding of a municipality over the entire referendum region. By ZUODNO (second point of the third paragraph) the urban municipality of Koper was founded in the same region as embraced by the applicable provision of point 73 of the first section of the decree on determining referendum regions for the founding of municipalities (Official Gazette RS, no. 22/94).

5. In case no. U-I-183/94, the Constitutional Court found the anti-constitutionality of articles 2 and 3 ZUODNO and charged the National Assembly to remove the anti-constitutionality not later than six months prior to the calling of the next local elections. The Constitutional Court did not judge only individual points of articles 2 and 3 ZUODNO to be anti-constitutional, since the removal of the anti-constitutionality of individual points of the impugned articles, or even only individual parts of the points, would also effect the regions of other municipalities, whose constitutionality was not in dispute. The Constitutional Court indicated the reasons for the anti-constitutionality of articles 2 and 3 ZUODNO. Among these reasons, it also stated such as would directly relate to the urban municipality of Koper. In the reasoning of the decision it explicitly found that the second point of article 3 of the Law (the point under which the urban municipality of Koper was founded) is not in compliance with the Constitution (OdlUS III, 9. 554). In this it referred as a whole to the decision in case no. U-I-90/94 and additionally stated: " Rural settlements cannot normally be included in an urban municipality, and it is further necessary to respect the fact that an urban municipality is a territorial unit in which the exercise of local government must be guaranteed. From the determination of the region in which territorial linkage will additionally be guaranteed, on the basis of which shall be created a network of inter-personal and neighbourly relations and an awareness of membership of (in this case) an urban municipality, the legislator may deviate only insofar as this is necessary because of specific natural tasks and problems of an urban municipality, which are determined in the first paragraph of article 16 ZLS."

6. In June 1997, the Government submitted to the National Assembly "A proposal for the founding of municipalities and for determining their regions by the prior determination of the Government RS". In this act, the Government declared itself in favour of proposals, initiatives and other submissions for the founding of municipalities and for the changing of their regions, and in addition, on the basis of article 6 ZPUO, itself proposed some territorial changes. Among others, it also proposed the founding of three new municipalities in the region of the urban municipality of Koper: Ankaran - Škofije, Dekani and Šmarje - Marezige. On the basis of article 11 ZPUO, on 15.1.1998, the Government submitted to the National Assembly its opinion on proposals for founding municipalities and for changing their regions. The Government proposed to the National Assembly that it find that the conditions for founding the municipalities of Ankaran - Škofije, Dekani and Šmarje - Marezige determined by the Constitution and law were fulfilled and that referendums be held in these regions.

7. The National Assembly called a referendum by decree (Official Gazette RS, no. 21/98) in the regions Ankaran - Škofije, Dekani and Šmarje - Marezige. In the referendum, which took place on 19.4.1998, the majority of voters in all three referendum regions declared against the founding of a municipality.

8. By the Amendments and Supplements ZUODNO, the National Assembly did not intervene in the region of the urban municipality of Koper, but retained this urban municipality in unchanged extent.

9. The urban municipality of Koper covers 311 square kilometres and has 46,763 inhabitants. It includes 105 settlements. The region of the urban municipality of Koper far exceeds the region of town and town environment (suburbs). The urban municipality of Koper deviates from the constitutional provision that "a town may obtain the status of an urban municipality" (first paragraph of article 141 of the Constitution) and from the provision of the second paragraph of article 16 ZLS, by which an urban municipality shall be a "dense and continuous settlement or number of settlements, linked in an unitary spatial organism and urban environment which is connected by the daily migration of the population". An urban municipality is a municipality which is founded because of the specific administrative problems of a town, which relate to traffic, protection of the environment, safety of people, spatial planning, etc. An urban municipality, therefore, can only embrace those suburban settlements which are connected with the town in a unified spatial organism, thus continuously urban.

10. The joining of a town and settlements unconnected to it into a single municipality is thus not only in conflict with the constitutional basis of an urban municipality, but also with the constitutional basis of a municipality in general. In the second paragraph of article 139, the Constitution determines that the region of a municipality shall embrace a settlement or number of settlements which are connected by the common needs and interests of the inhabitants. The basic common (public) needs, consciousness of links and membership of a narrower local community link the inhabitants into a municipality as a basic local community. These elements cannot exist in a region which includes such a large number of settlements, and by the character of these settlements so heterogeneous as is the region of the present urban municipality of Koper. It is not possible to speak of the common needs and interests which are characteristic of a narrower local community on a territory which includes in addition to the town and its immediate environment (suburbs) additionally the deeper hinterland of the town - settlements which do not belong in the suburban region.

In these regions, other needs and interests are created than in the town itself and its suburbs.

11. The measures for founding a municipality under the second paragraph of article 139 do indeed give fairly wide latitude for the legislator's own judgement, but they do not allow such clear deviations as in the case of the urban municipality of Koper.

The anti-constitutionality of the region of the urban municipality of Koper is not changed by the fact that the voters in the referendum regions declared themselves against the new municipalities of Ankaran - Škofije, Dekani and Šmarje - Marezige. ZPUO also enables the founding of a municipality irrespective of the result of a referendum. This law determines in article 26 that a municipality may be founded or the region of municipalities changed by law if in the appropriate referendum region the majority of voters who have voted have declared themselves in favour, but it also allows exceptions: irrespective of the cited provision, a municipality may be founded or the regions of municipalities changed by law "if the National Assembly considers that the region of municipalities require to be changed to accord with the conditions determined by the Constitution and law".

12. The Constitutional Court remained in entirety of the standpoint which it had adopted in relation to the urban municipality of Koper in the cited decisions. It found that the second paragraph of point 3 ZUODNO is in conflict with the Constitution. The Constitutional Court thus charged the National Assembly to remove the anti-constitutionality, within a time limit of one year of this decision taking effect. At the same time, on the basis of the second paragraph of article 40 of the Constitutional Court Act (Official Gazette RS, no. 15/94 - hereinafter: ZUstS) it decided to extend the term of office of the bodies of the urban municipality of Koper, so that regular elections may be held in the regions of the new municipalities founded in compliance with the Constitution.

C.

13 The Constitutional Court adopted this decision on the basis of article 21 and the second paragraph of article 40 of ZUstS, composed of: president Dr. Lovro Šturm and judges Dr. Miroslava Geč-Korošec,

Dr. Peter Jambreč, Dr. Tone Jerovšek, Mag. Matevž Krivic, Franc Testen, Dr. Lojze Ude and Dr. Dragica Wedam-Lukič. The resolution was adopted by five votes against three. Judges Dr. Dragica Wedam-Lukič, Mag. Matevž Krivic and Dr. Lojze Ude voted against and announced a dissenting opinion. Judge Jambreč announced a concurring opinion.

P r e s i d e n t:
Dr. Lovro Šturm