U-I-114/11-12
9 June 2011

D E C I S I O N

At a session held on 9 June 2010, in proceedings for the review of constitutionality initiated upon the petition of the Ankaran Local Community, the Community of Italians in Ankaran, the Initiative for the Establishment of the Ankaran Municipality, Aleks Abramovič, and others, all from Ankaran, represented by Mag. Miha Šipec, attorney in Ljubljana, the Constitutional Court

decided as follows:

1. The Municipality of Ankaran, which encompasses the Ankaran settlement, is hereby established. The seat of the Municipality of Ankaran is in Ankaran. The first Municipal Council shall consist of 13 members. One member of the first Municipal Council shall be elected by the members of the Italian national community as their representative on the basis of a special right to vote. The territory of the Ankaran settlement is hereby separated from the territory of the Urban Municipality of Koper.

2. The first elections in the Municipality of Ankaran shall be held in the framework of the regular local elections in 2014.

3. In the Municipality of Ankaran, the Italian national community and its members enjoy all rights stemming from the international-law obligations of the Republic of Slovenia and all special rights determined by Article 64 of the Constitution.

4. The Calling of Regular Local Elections in the Urban Municipality of Koper Act (Official Gazette RS, No. 39/11) and the Decree Calling Regular Elections to the Municipal Council and Regular Elections of the Mayor of the Urban Municipality of Koper (Official Gazette RS, No. 40/11) are not inconsistent with the Constitution.

Reasoning

A.

1. The petitioners allege that the purpose of the Calling of Regular Local Elections in the Urban Municipality of Koper Act (hereinafter referred to as CRLEUMKA) is not to ensure the constitutional right to elections to the local authorities of the community [at issue], but in the ultimate prevention of the implementation of Constitutional Court Decision No. U-I-137/10, dated 26 November 2010 (Official Gazette RS, No. 99/10). The challenged CRLEUMKA thus allegedly violates the principle of constitutional democracy (Article 1 of the Constitution), the principles of a state governed by the rule of law (Article 2 of the Constitution), and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution). In addition, the Act allegedly severely interferes with the constitutional position of the Constitutional Court as the guardian of the Constitution, since its decisions are binding, as is clearly determined by the third paragraph of Article 1 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text – hereinafter referred to as the CCA). The petitioners are of the opinion that by the challenged CRLEUMKA the National Assembly of the Republic of Slovenia nullified Constitutional Court Decision No. U-I-137/10.

2. In addition, the Decree Calling Regular Elections to the Municipal Council and Regular Election of the Mayor of the Urban Municipality of Koper (hereinafter referred to as the Decree Calling Elections in the UMK) is alleged to be unconstitutional, as it is based on the unconstitutional CRLEUMKA and as it calls elections in a municipality whose territory is unconstitutional.

3. The petitioners emphasise that the circumstances in which the CRLEUMKA came into force are not comparable to the circumstances in which Constitutional Court Decision No. U-I-163/99, dated 23 September 1999 (Official Gazette RS, No. 80/99, and OdlUS VIII, 209), had been issued. In that Decision, the Constitutional Court decided that the (then valid) Calling of Regular Local Elections in the Urban Municipality of Koper Act (Official Gazette RS, No. 53/99 – hereinafter referred to as the RLEUMKA) was not inconsistent with the Constitution. The crucial difference lies allegedly in the fact that the CRLEUMKA, which is challenged in the case at issue, is inconsistent with the constitutional law *rationes decidendi* of Constitutional Court Decision No. U-I-137/10, while the RLEUMKA in 1999 allegedly only altered the manner of implementation of Constitutional Court Decision No. U-I-301/98, dated 17 September 1998 (Official Gazette RS, No. 67/98, and OdlUS VII, 157). In addition, in the case at issue, the territory of the Municipality of Ankaran is alleged to be clearly determinable as it encompasses only the territory of this settlement and the establishment of the municipality was supported by the residents of this territory in a referendum. The decision to establish the Municipality of Ankaran is thus allegedly dependent exclusively

on the will of the National Assembly and is not prevented by any objective obstacles. Allegedly, no such obstacles existed at the moment of the entry into force of the RLEUMKA in 1999.

4. The petitioners allege that the challenged CRLEUMKA forces the residents of the Ankaran settlement to exercise the right to local self-government contrary to their already expressed will and contrary to a Constitutional Court decision. They stress that in Decision No. U-I-137/10 the Constitutional Court adopted the position that local elections in existing municipalities that are unconstitutional are also unconstitutional and therefore entail a violation of Article 2 of the Constitution. The petitioners are of the opinion that there must exist a link between the unconstitutionality of the territory of a municipality and the unconstitutionality of elections to the authorities of such a municipality. The denial of such a link would result in the lasting and final denial of the constitutional right of the residents of the Ankaran settlement to local self-government and not perhaps only an unconstitutional situation for a fixed period of time. Another reason for such allegedly also lies in the fact that an amendment of the Act regulating local self-government determined that it is not possible to establish a municipality with fewer than 5,000 inhabitants.

5. The petitioners propose an abrogation or annulment of the challenged regulations. In addition, they propose that the Constitutional Court suspend the implementation of both challenged regulations until its final decision. Subsequently, if the Constitutional Court established that there exist reasons under constitutional law to allow the elections in the Urban Municipality of Koper (hereinafter referred to as the UMK), the petitioners propose that the Constitutional Court establish the unconstitutionality of the CRLEUMKA and the Decree Calling Elections in the UMK at least insofar as they refer to the Ankaran settlement, as the residents of this settlement reject the right to [participate in] elections to the authorities of the UMK. Following the elections, the authorities of the UMK will allegedly be permitted to adopt decisions that concern the rights, interests, and area of the Ankaran settlement only with the consent of the Ankaran Local Community.

6. On 6 June 2011, the petitioners supplemented their petition with photographic documentation that allegedly proves that the UMK is neglecting the development of the Ankaran settlement.

7. The National Assembly replied to the allegations contained in the petition; it is of the opinion that the petition is unsubstantiated and that the challenged regulations are not inconsistent with the Constitution. The intention of the challenged Act is allegedly to carry out elections to the authorities of the UMK as soon as possible in order to ensure the right to vote of the residents of this Urban Municipality. The National Assembly is of the opinion that the time limit that the Constitutional Court determined for the postponement of local elections in Decision No. U-I-137/10 and that it assessed entailed an admissible interference with the right to vote has already expired. Therefore, any further delay of such elections would allegedly have to be deemed an

inadmissible interference with the right to vote. It emphasises that the challenged regulations do not nullify the cited Constitutional Court Decision, as they allegedly do not interfere with the established inconsistency of the Establishment of Municipalities and Municipal Boundaries Act (Official Gazette RS, No. 108/06 – official consolidated text – hereinafter referred to as the EMMBA) with the Constitution. The challenged Act only amends the manner of implementation of the Constitutional Court Decision, determined on the basis of the second paragraph of Article 40 of the CCA, which is admissible according to constitutional case law. With regard to such, the National Assembly refers to Constitutional Court Decision No. U-I-163/99 and concludes that the argumentation in this Decision is also relevant in the case at issue, which is allegedly similar. It states that by Decision No. U-I-137/10 the Constitutional Court set the right to vote as a fundamental human right against the constitutional right to local self-government, whereby it allegedly applied the right to vote in determining the manner of implementation [of its Decision] in order to support the implementation of the right to local self-government, and in light of the assessment that such allegedly entailed a short delay in the periodicity of elections. As the National Assembly, despite making several attempts, did not succeed in adopting an Act by which it would have remedied the EMMBA's inconsistency with the Constitution and the time limit for its harmonisation with the Constitution had already expired, it assessed that any further postponement of elections would not only continue the unconstitutional state of affairs, but even deepen it. It is of the opinion that in such a situation the right to vote as a human right must be given preference over the right to local self-government in a municipality that is not entirely consistent with the Constitution.

8. An opinion was submitted by the Government of the Republic of Slovenia, which is also of the opinion that the petition is not substantiated. It states that it proposed to the National Assembly the adoption of a law implementing Constitutional Court Decision No. U-I-137/10, but it adopted neither that nor two subsequent [draft] laws with [essentially] the same content. It also states that in connection with the challenged Act, the draft of which the National Assembly sent to it for comment, it assessed that the manner of implementation determined by the above-cited Constitutional Court Decision lost its foundation and purpose after the time limit for the harmonisation of the EMMBA with the Constitution expired. As it is allegedly not possible to foresee the moment and manner in which the above-cited Decision will be implemented with regard to its content, the Government did not oppose the draft of the challenged Act in the legislative procedure. [The Government] is of the opinion that the challenged Act does not diminish the obligations and conditions for the implementation of the above-cited Constitutional Court Decision, however, it guarantees to the residents of the UMK the exercise of the right to vote and the right to participate in the management of public affairs. The Government further opines that the periodicity of elections is an integral part of local self-government guaranteed to all inhabitants of Slovenia by the Constitution. It states that the right of the residents to exercise local self-government in a municipality through elected authorities in the manner

that is determined by law must not be threatened due to the process of establishing the Municipality of Ankaran. In its opinion, this right has precedence over other rights in the field of local self-government.

B.

9. The Constitutional Court accepted the petition to initiate proceedings to review the constitutionality of the CRLEUMKA and the Decree Calling Elections in the UMK. As the conditions under the fourth paragraph of Article 26 of the CCA were fulfilled, it proceeded to decide on the merits of the case.

10. By Decision No. U-I-137/10, the Constitutional Court decided that the EMMBA is inconsistent with the Constitution. It deemed that the National Assembly acted arbitrarily by not establishing the municipalities of Ankaran and Mirna. Such conduct entailed a violation of the principles of a state governed by the rule of law (Article 2 of the Constitution), the general principle of equality before the law (the second paragraph of Article 14 of the Constitution), and consequently also a violation of the constitutional provisions regarding local self-government (Articles 138 and 139 of the Constitution). Thereby the Constitutional Court emphasised that the establishment of a municipality in a procedure determined by the Constitution and the law is an essential condition for the exercise of the constitutional right to local self-government. While this constitutional right does not ensure an abstract right to one's own municipality in whatever territory, it guarantees the right of the residents living in a particular territory who are connected by common needs and interests to govern local affairs by themselves. In accordance with the Constitution, the legislature has the power to establish municipalities. However, the National Assembly itself limited its autonomy with regard to the establishment of municipalities when it determined the conditions and procedure for the establishment of municipalities by law and provided judicial protection within this procedure. It follows from the principles of a state governed by the rule of law (Article 2 of the Constitution) that the legislature must respect the statutory regulation it adopted itself and at the same time the second paragraph of Article 14 of the Constitution requires that it treat all residents who would like to establish a municipality in a particular territory equally and following the prescribed procedure. The general principle of equality requires that the National Assembly apply the prescribed conditions in all cases equally. If it establishes that a particular territory fulfils the statutory conditions, it must act in the same manner as it acted in other cases where it established that the conditions had been fulfilled. On the basis of such starting points, in Decision No. U-I-137/10 the Constitutional Court rejected the objection that the proposed Municipality of Ankaran does not fulfil the constitutional and statutory conditions. All questions in relation to the fulfilment of the conditions namely had to be resolved in the procedure leading to the calling of the referendum, also through the application of the available procedure for judicial protection against decisions of the National Assembly. Even the National Assembly itself determined that those conditions had been

fulfilled and called a referendum on the establishment of the Ankaran Municipality on such basis. Except for two instances that are not applicable to the case at issue, the National Assembly is bound by the will of the voters expressed in a referendum that it called after it had already established that the proposed municipality fulfilled the conditions [for its establishment].[1]

11. In accordance with the second paragraph of Article 48 of the CCA, the Constitutional Court determined that the National Assembly shall remedy the established unconstitutionality of the EMMBA within a time limit of two months. In accordance with the second paragraph of Article 40 of the CCA, it determined that its Decision be implemented in such manner that within a time limit of 20 days following the entry into force of the law by which the National Assembly establishes the Municipalities of Ankaran and Mirna the President of the National Assembly shall call the elections of municipal councils and the elections of mayors of all four affected Municipalities. It also extended the term of office of the members of the municipal councils and the mayors of the UMK and the Municipality of Trebnje until the first session of the newly elected municipal councils. With regard to the Municipality of Mirna, the National Assembly responded to Constitutional Court Decision No. U-I-137/10.[2] With regard to the Ankaran settlement, however, thus far the National Assembly has not adopted a law that harmonises the EMMBA with the Constitution in accordance with the reasons put forth in the above-cited Constitutional Court Decision, which exposes its selective and arbitrary respect for Constitutional Court decisions. The two-month time limit that the Constitutional Court determined for harmonising the EMMBA with the Constitution expired on 7 February 2011 and has thus already been greatly exceeded.[3] Due to the National Assembly's actions, the unconstitutional state of affairs regarding local self-government in the Ankaran settlement continues and has in fact even deepened because, as a consequence of the failure to take appropriate legislative action, elections could not be held also in the UMK within the time limits determined by Decision No. U-I-137/10. Therefore, with any further delay in the elections in the UMK that exceeds the postponement determined by Decision No. U-I-137/10 also the exercise of local self-government by the residents of the UMK is affected. It is precisely the fact that voters choose their representatives in the authorities of local self-government on a periodic basis that is essential for the exercise of local self-government.[4]

12. The National Assembly attempted to partially remedy the disregard of Constitutional Court Decision No. U-I-137/10 – at least insofar as it refers to the exercise of local self-government in the UMK – by the challenged CRLEUMKA, which was adopted on 17 may 2011 and determined the regular local elections to the authorities of the UMK. On the basis of this law, the President of the National Assembly called elections in the UMK on 10 July 2011. However, such a chain of events in the National Assembly has entailed that Constitutional Court Decision No. U-I-137/10 remains unimplemented insofar as it refers to Ankaran. In the case at issue, the Constitutional Court therefore had to reply to the petitioners' allegations that by adopting the CRLEUMKA the National Assembly severely interfered with the constitutional

position of the Constitutional Court and thereby violated the principles of the separation of powers, of a state governed by the rule of law, and of constitutional democracy.

13. Constitutional Court decisions are binding. While this rule derives already from the principle of the separation of powers (the second paragraph of Article 3 of the Constitution), it is also explicitly determined by the third paragraph of Article 1 of the CCA. The content of such binding effect entails that all authorities of the state are required to respect and implement decisions adopted by the Constitutional Court as the highest body of the judicial power for the protection of constitutionality, legality, and human rights and fundamental freedoms. Taking into account the constitutionally determined competences of the Constitutional Court (Article 160 of the Constitution), within this framework it also falls into its field of competence to interpret the Constitution and to give its provisions the meaning by which the rule of law and a free and democratic society are guaranteed. It follows from fundamental constitutional principles that the Republic of Slovenia is a democratic republic (Article 1 of the Constitution) and a state governed by the rule of law (Article 2 of the Constitution) in which power is exercised in accordance with the principle of the separation of powers (the second paragraph of Article 3 of the Constitution), that the Republic of Slovenia is a constitutional democracy and not a state in which any state authority (including the legislature) could regard Constitutional Court decisions as non-binding, i.e. as merely some sort of guidelines. The interpretation of law falls within the fundamental and inherent competence of the courts; precisely this gives the judiciary the position of power required by the constitutional principle of the separation of powers because these legal interpretations are final and authoritative. Such applies – with even greater intensity – to the Constitutional Court's competence to provide final and authoritative interpretations of the Constitution and thereby exercise the power granted to it in the constitutional system. Only if its decisions are binding and as such also actually effective, can the Constitutional Court respond to constitutional complaints and petitions for the review of constitutionality and legality and ensure to individuals and legal entities effective protection of their position under constitutional law. Denial of the binding effect of Constitutional Court decisions thus also entails denial of legal protection to the affected complainants and petitioners. Respect for judicial decisions, including decisions of the Constitutional Court, is one of the fundamental postulates of a state governed by the rule of law and the core of constitutional democracy (held by the Constitutional Court in Decision No. U-I-248/08, dated 11 November 2009, Official Gazette RS, No. 95/09).

14. The National Assembly hence should have responded to Decision No. 137/10 by adopting an appropriate law establishing the Municipality of Ankaran. The legislative unresponsiveness of the National Assembly regarding the obligation imposed on it by a Constitutional Court decision therefore undoubtedly entails a violation of the principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution).

As the National Assembly failed to respond to the Constitutional Court Decision, the petitioners in case No. U-I-137/10 remained without effective constitutional protection against the National Assembly's arbitrary conduct. Thus, in the case at issue such protection had to be ensured by the Constitutional Court.

15. In order to ensure effective constitutional protection of the petitioners' right to exercise the right to local self-government, as proceeds from Decision No. U-I-137/10, the Constitutional Court should have intervened in the elections called in the UMK and abrogated the challenged CRLEMKA. Instead, it decided to adopt an approach that effectively protects not only the right to elections and the right to local self-government of the residents of the UMK, but also the right to local self-government of the residents of Ankaran. In Decision No. U-I-137/10 the Constitutional Court already underlined the functional connection between the constitutional right to local-self-government and the right to vote as a human right. Therefore, in the case at issue the Constitutional Court decided to ensure all affected persons the exercise of both constitutional rights by determining a new manner of implementing Decision No. U-I-137/10. Only if local elections to the authorities of the UMK are treated in a manner that does not interfere with the exercise of the right to local self-government by the residents of the settlement of Ankaran does the challenged CRLEMKA have constitutionally admissible effects.

16. The substance of Constitutional Court Decision No. U-I-137/10 cannot be implemented in a different manner than through the establishment of the Municipality of Ankaran.[5] Regarding such, the Constitutional Court again emphasises that the establishment of the Municipality of Ankaran has to be considered in accordance with the criteria and settled case law regarding the establishment of municipalities as were in force until the Act Amending the Self-Government Act (Official Gazette RS, No. 51/10 – LSA-R), which amended the criteria for the establishment of municipalities, but determined by means of a transitional regulation that proposals for new municipalities that had already been submitted and regarding which a referendum had already been carried out are to be considered under the regulation previously in force. In the light of this, the Constitutional Court decided to establish the Municipality of Ankaran and determined everything necessary to carry out the first local elections in this municipality (point 1 of the operative provisions). In such manner, on the basis of the second paragraph of Article 40 of the CCA, the Constitutional Court determined a new manner of implementation of Decision No. 137/10 and, most importantly, it definitively protected the constitutional law position of the petitioners.[6] Taking into account that hitherto legislative procedures for the implementation of this Decision in the National Assembly have been unsuccessful, such is – at the moment – the only manner to ensure that it be respected and implemented. Such also does not depart from other decisions of the legislature in the hitherto regulation of the system of local self-government, which enabled the National Assembly to establish more than 200 municipalities in which the residents exercise local self-government. It does, however, fall within the National Assembly's

competence to regulate the functioning and financing of local self-government in a systematically different manner and accordingly reorganise the existing network of municipalities, thereby creating territorially larger municipalities by joining existing municipalities, which will also apply to the Municipality of Ankaran under the same conditions.

17. In the assessment of the Constitutional Court, however, the establishment of the Municipality of Ankaran does not also require the immediate operative constitution of the authorities of this Municipality. The Constitutional Court followed the regulation of the establishment of municipalities determined by the first paragraph of Article 15b of the Local Self-Government Act (Official Gazette RS, Nos. 94/07 – official consolidated text, 76/08, 79/09, and 51/10 – LSA), according to which elections to the municipal council and of the mayor of a new municipality are to be held at the next regular elections following its establishment. In the light thereof, the Constitutional Court determined that the first elections in the Municipality of Ankaran shall be held within the framework of the regular local elections in 2014 (point 2 of the operative provisions). Until these elections, the residents of Ankaran shall exercise their right to local self-government within the UMK. In the transitional period, the competent authorities will be able to make all necessary preparations for the beginning of the functioning and financing of the Municipality of Ankaran.

18. Regardless of the fact that in the procedure for the establishment of the Municipality of Ankaran the National Assembly found that all conditions for the establishment of this Municipality were fulfilled, namely also the conditions for safeguarding the special position and rights of the autochthonous Italian national community and its members in the new municipality, and that the Constitutional Court established such already in Decision No. U-I-137/10, the Constitutional Court accorded special attention to this question also in the case at issue. As it established the Municipality of Ankaran, the Constitutional Court gave the Italian national community and its members residing in its territory the explicit assurance that in the new Municipality of Ankaran they enjoy all rights under Article 64 of the Constitution and the laws adopted on its basis as well as under the Treaty between the SFRY and the Republic of Italy (Official Gazette RS, No. 40/92, MP, No. 11/92), also taking into account point 7 of the Special Statute annexed to the Memorandum of Understanding regarding the Free Territory of Trieste signed by the Governments of Italy, the United Kingdom, the United States, and Yugoslavia in London, Official Gazette FPRY, MP, No. 6/54 (point 3 of the operative provisions). The explicitly highlighted obligation of the new Municipality of Ankaran to protect those rights shows that the purpose of establishing the Municipality of Ankaran is in no way to endanger in any manner the ethnic composition or rights of the members of the Italian national community residing in the Ankaran settlement linked to such. This finding is supported by the fact that the members of the Italian national community residing in Ankaran have been participating actively in the process of establishing the Municipality of Ankaran and have also explicitly expressed their support for this project before the Constitutional Court.[7]

19. By the challenged CRLEUMKA the National Assembly enabled the calling of local elections in the UMK before the establishment of the Municipality of Ankaran and before the harmonisation of the EMMBA with the Constitution in relation to such. Thereby, it acted contrary to its obligation under point 1 [of the operative provisions] of Constitutional Court Decision No. U-I-137/10 and altered points 4 and 5 of the operative provisions of that Decision, which determined that elections in the UMK shall be called within 20 days following the harmonisation of the EMMBA with the Constitution, while the terms of office of the members of the municipal council and the mayor were to be extended until the first session of the newly elected municipal council. The Constitutional Court has itself protected the constitutionally guaranteed position of the petitioners, therefore the challenged Act is not inconsistent with the Constitution. As a result, the Decree Calling Elections in the UMK is also not inconsistent with the Constitution (point 4 of the operative provisions).

C.

20. The Constitutional Court adopted this Decision on the basis of Article 21, and the second paragraph of Article 40 of the CCA, composed of: President Dr. Ernest Petrič and Judges Dr. Mitja Deisinger, Dr. Etelka Korpič – Horvat, Mag. Miroslav Mozetič, Jasna Pogačar, Mag. Jadranka Sovdat, Jože Tratnik, and Jan Zobec. Points 1 through 3 of the operative provisions of the Decision were adopted by seven votes against one. Judge Sovdat voted against. Point 4 of the operative provisions was adopted unanimously. Judge Sovdat submitted a partially dissenting and partially concurring opinion. Judges Deisinger and Petrič submitted concurring opinions.

Dr. Ernest Petrič

President

Endnotes:
[1] Already in Decision No. U-I-294/98, dated 12 October 1998 (Official Gazette RS, No. 72/98, and OdlUS VII, 185), the Constitutional Court adopted the position that the National Assembly is not bound by a referendum when respecting the will of the voters expressed therein would lead to the establishment of a municipality that would not be in accordance with the constitutional and statutory provisions on municipalities and when it is objectively not possible to respect the will of the voters expressed in a referendum due to the conflicting results of referenda.
[2] The Act Amending the Establishment of Municipalities and Municipal Boundaries Act (Official Gazette RS, No. 9/11 – EMMBA-G).

[3] Constitutional Court Decision No. U-I-137/10 was published in the Official Gazette of the Republic of Slovenia on 7 December 2010.
[4] Already in Decision No. U-I-163/99 the Constitutional Court adopted the position that “the right of voters to vote for their representatives in local self-government at certain time intervals is not in constitutional terms determined in a manner such that elections are required to be carried out exactly every fourth year. The legislature could also determine a longer term of office for local self-government bodies. Thus, for the aforementioned reasons, also the Constitutional Court could determine their term of office as the manner of implementation [of a decision of the Constitutional Court]. However, for reason of the general principle of equality (the second paragraph of Article 14 of the Constitution) such a state of affairs may not be maintained for an unlimited period of time. This would lead to a situation in which the exercise of local self-government, which citizens exercise by periodic selection of representatives to local self-government authorities, would be substantially threatened.”
[5] Decisions No. U-I-246/02, dated 3 April 2003 (Official Gazette RS, No. 36/03, and OdlUS XII, 24), and No. U-I-248/08, dated 11 November 2009 (Official Gazette RS, No. 95/09), for example, concerned a similar legal situation where a Constitutional Court decision could not be implemented any differently than by the manner determined by the Constitutional Court. By Decision No. 246/02, the Constitutional Court established the unconstitutionality of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (Official Gazette RS, Nos. 61/99, and 64/01) and determined the only possible manner of implementing its Decision in point 8 of the operative provisions. The Constitutional Court also acted in the same manner in point 3 of the operative provisions of Decision No. U-I-248/08, wherein it partially abrogated the National Council Act (Official Gazette RS, No. 100/05 – official consolidated text) and the Act Amending the National Council Act (Official Gazette RS, No. 76/05). *Cf.* also point 4 of the operative provisions of Constitutional Court Decision No. U-I-294/98, dated 12 October 1998 (Official Gazette RS, No. 72/98, and OdlUS VII, 185), and point 4 of the operative provisions of Constitutional Court Decision No. U-I-285/98, dated 17 September 1998 (Official Gazette RS, No. 67/98, and OdlUS VII, 160), by which the Constitutional Court determined in which municipality the affected settlement or settlements were to be included.
[6] The German Federal Constitutional Court has the same mandate as that determined by the second paragraph of Article 40 of the CCA. On the basis of Article 35 of the Federal Constitutional Court Act (BVerfGG), the Court may in its decision determine who is to implement it; in an individual case it may, furthermore, determine the nature and manner of its implementation. Hitherto, the German Federal Constitutional Court interpreted this competence very broadly not only with regard to the range of measures it may adopt for the implementation of its decisions, but also regarding the time frame for imposing the measures. The German Federal Constitutional Court thus held that, if the need to determine the manner of implementing a decision arises only after the adoption of the decision, it is possible to impose appropriate measures for its implementation in a separate order, either on the basis of a proposal or *ex officio*. For further information, see G. Lübbe-Wolff, R. Mellinghoff, and R.

Gaier, The National Report of the German Federal Constitutional Court (in particular pp. 40 *et seq.*), prepared for the XV Congress of the Conference of European Constitutional Courts on the topic “Constitutional Justice: Functions and Relationship with the Other Public Authorities”, which was held from 23 to 25 May 2011 in Bucharest, Romania. The Report may be accessed at:
<http://www.confcoconsteu.org/reports/rep-xv/GERMANIA%20germ.pdf>.

[7] In the process of adopting Constitutional Court Decision No. U-I-137/10, the members of the Italian national community residing in Ankaran submitted to the Constitutional Court a statement entailing that they do not oppose the establishment of the Municipality of Ankaran; the Community of Italians in Ankaran is also one of the petitioners in the case at issue.