



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-312/94
Feb. 16, 1996

RESOLUTION

At a session held on Feb. 16, 1996, during the proceedings for examining the initiative of Branko Gradišnik, of Ljubljana, the Constitutional Court passed the following

resolution:

The initiative for commencing the proceedings evaluating the constitutionality of the Political Parties Act (Official Gazette of the RS, No. 62/94) is dismissed.

Reasoning:

A.

1. The initiator states that the Political Parties Act as a whole is not in compliance with the Constitution, since it respects neither the equal protection of rights which is guaranteed by Article 22 of the Constitution, nor the right to the due process of law which is guaranteed by Article 23 of the Constitution, and similarly, not the right to legal remedies guaranteed by Article 25 of the Constitution. The initiator states that the challenged statute prescribes in Article 4 that a party may be founded by at least 200 adult citizens, what is inconsistent with Article 42 of the Constitution bestowing anyone the right freely to associate with others. This (Article of the Statute), namely, means that less than two hundred citizens do not have the right to associate in a political party. He also states at the same time that Article 26 of the challenged Statute, which determines that a party shall receive a monthly payment of a maximum of 30 tolar for each vote obtained in municipal elections for a municipal council or a mayor, is inconsistent with Articles 9 and 43 of the Constitution. The right to local self-government, which is defined in Article 9 of the Constitution, is according to the claim of the initiator violated because it places non-party members of a municipal council in an unequal position. Their possibility for obtaining legal and professional assistance is thus diminished, which reduces the capacity of a local community to be self-governing. At the same time, this is also inconsistent with the equality of voting rights under Article 43 of the Constitution, since non-party representatives do not obtain the same funds as party ones. The initiator has standing in that because at the time of the local elections of 1994, when he lodged the initiative, he was a member of the voting list "I love Ljubljana - list of Branko Gradišnik".

B.

2. The initiator does not provide the grounds for the general claim that the Political Parties Act does not respect the constitutional rights to equal protection of rights, to due process of law and to appeal.

3. The right to free association under Article 42 of the Constitution may be exercised in organised or non-organized forms of association. The fact that a statute for an organized form prescribes a minimum number of members of an organization does not signify a restriction of this right, since on the one hand any citizen is still allowed to non-organised forms of association, and on the other hand, he is enabled with an appropriate number of other citizens to exercise this right in the properly determined organized form.

4. The initiator's reasoning in relation to the payment of electoral votes of parties is also clearly unfounded. Payment for electoral votes obtained is not a constituent part of the right to vote and does not derive from it, but is a means of financing parties from public funds. In view of this, Article 26 of the Political Parties Act does not signify a violation of the equality of the right to vote because it does not

refer to its constituent parts. The reasoning of the initiator is similarly unfounded in the claim that such financing of parties signifies a restriction of the right to local self-government, since the challenged provision of the Political Parties Act in no way restricts the possibility of non-party members of a municipal council or a mayor from performing their function and thus participating in the administration of local affairs.

C.

5. The Constitutional Court passed this resolution on the basis of the second Paragraph of Article 26 of the Constitutional Court Act (Official Gazette of the RS, No. 15/94), in the following composition: President Dr. Tone Jerovšek and Judges Dr. Peter Jambreč, Mag. Matevž Krivic, Mag. Janez Snoj, Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič. The resolution was passed by eight votes against one. Judge Krivic dissented.

President of the Constitutional Court:
Dr. Tone Jerovšek