The Concurring Opinion of Judge Dr. Ribičič

1. I have voted for the disposition of the Opinion on the conformity of the Agreement between the Republic of Slovenia and the Republic of Croatia on Border Traffic and Cooperation with the Basic Constitutional Charter and the Constitution. I do not dispute the grounds for the disposition. I have acted in such a manner despite the fact that, in my opinion, the Constitutional Court should not have recognized the position of rightful proposers to the deputies who signed the proposal since their application is an inappropriate basis for deciding on the constitutionality of the Agreement.

2. I agree with Paragraph 14 of the reasoning, which reads as follows: "Despite having a different name such opinion is a decision of the Constitutional Court, which has essentially the same effects as other decisions of the Constitutional Court." But such a position implies that as a basis for deciding the Constitutional Court must be submitted a proposal that asserts the unconstitutionality of a treaty, as applies in the case of the subsequent constitutional review of legal acts. In my opinion the President of the Republic, the Government, or one third of the deputies may request the opinion of the Constitutional Court, which is binding on the National Assembly, when they opine that the treaty in the process of ratification is inconsistent with the Constitution. Thus, a rightful proposer must argue before the Constitutional Court that the treaty or a part of it is inconsistent with the Constitution and provide appropriate arguments to support such a position, and not vice versa. The Government proposal in case Rm-1/97 was also disputable for this reason, however, for the recognition of the status of rightful proposer at that time there existed certain special reasons that I do not find in this case. It was the Government that proposed the ratification of the treaty since otherwise it could not have requested an opinion from the Constitutional Court; one of the Government parties asserted the unconstitutionality of the treaty, which meant that inside the Government there existed doubts concerning the treaty's conformity with the Constitution.

In this case, the proposing deputies did not assert the unconstitutionality of the border Agreement. These deputies did not question the constitutionality of this Agreement at all.

Moreover, on the two explicit requests of the Constitutional Court to state which provisions of the Constitution the Agreement violated, and for what reasons, they replied (on 2 March 2000) that "for us the substance of the Agreement is not disputable - however, for those who do oppose, only Art. 1 is disputable," and (on 5 April 2000) that, according to those who opposed the ratification of the Agreement, Art. 1 was inconsistent with Sect. II of the Basic Constitutional Charter. They added that: "We, the proposers, are not of the same opinion." Evidently the proposers do not challenge before the Constitutional Court the constitutionality of the Agreement but only wish for the Constitutional Court to issue a politically-motivated advisory opinion to confirm the correctness of their own position that the Agreement is in conformity with the Basic Constitutional Charter and the Constitution. In such a manner they would like to misuse the authority of the Constitutional Court as if it were a consultative body at their disposal to increase their political chances in their efforts to have the Agreement ratified.

3. The record of the vote on whether the National Assembly should immediately vote on the ratification of the Agreement, or whether it should postpone it (so that the disputed issues concerning its conformity with the Constitution might be studied), demonstrates that on 11 December 1999 at 4.27 p.m. all the present signatories voted for an immediate vote on the ratification and that none of them supported the proposal for the postponement of the voting.

Therefore, it follows that the signatories consider the Agreement to be in conformity with the Constitution. They did not request an opinion from the Constitutional Court on the ground that it was inconsistent with the Constitution, or even question its constitutionality.

4. No deputy who in the previous debate had questioned the constitutionality of the Agreement joined the proposal of the signed thirty deputies. Thus, the deputies who had not doubted the constitutionality of the Agreement requested that the Constitutional Court issue an opinion on the constitutionality thereof, however, the deputies who had been convinced that it was inconsistent with the Constitutional did not request the same.

What a strange world| Accordingly, the Constitutional Court was provided a completely inappropriate basis for decision-making.

On the one hand, the supporters of the ratification of the Agreement intentionally unconvincingly presented, or rather simulated, the arguments of those who really opine that the Agreement is unconstitutional; on the other hand, by their proposal they prevent or at least limit the possibilities of other deputies to request an opinion of the Constitutional Court.

5. The Constitution grants one third of deputies, who in the National Assembly are a minority asserting the unconstitutionality of a treaty, the right to request an opinion of the Constitutional Court. Thus the request in this case would be less disputable if the composition of the signatories was at least "mixed", i.e. composed of both the supporters and the opponents of the ratification. However, such cooperation is unusual in the National Assembly. The practice established in the National Assembly is that the co-signatories of a certain proposal are only those who support it. Concerning such, according to a new interpretation of the Standing Orders of the National Assembly, adopted on 8 March 2001, the subsequent signing of the proposal of a statute is "only possible with the written consent of all the proposers of the statute".

6. It is interesting that after the subsequent election of the National Assembly no newly elected deputy thought it sensible and necessary to join the signatories of the request for an opinion of the Constitutional Court. Thus, the number of such decreased far below the prescribed minimum of one third of the deputies.

It was enough for the Constitutional Court that at the submission of the proposal at least one third of the deputies had signed it. The Court knowingly neglected the fact that at the time of making its decision many of those signatories were no longer deputies. Does this mean that the Court will proceed in the same manner in all future cases when, for various reasons (e.g. due to the withdrawal of a signature), the number of the proposing deputies falls below thirty?

7. These are the reasons why, in my opinion, the position in Paragraph 16 of the reasoning is erroneous. It namely asserts that the proposers' position concerning the constitutionality of a treaty is irrelevant to their status as proposers. Not only the application and its basis, but also the disposition, the reasoning and the effects of an opinion of the Constitutional Court would be essentially different if the Agreement had been challenged before the Constitutional Court by those deputies who supported the position asserting its unconstitutionality, and not by those who supported the as-soon-as-possible ratification. An opinion based on such weak foundations can in no manner relieve the National Assembly of responsibility in deciding on the ratification of the border Agreement.

Dr. Ciril Ribičič