



**REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE**

The Concurring Opinion of Judge Dr. Wedam - Lukić

1. I have voted for the disposition of the Opinion on the Conformity with the Constitution of the Agreement between the Republic of Slovenia and the Republic of Croatia on Border Traffic and Cooperation. Furthermore, I entirely agree with the reasoning thereof. However, in my separate opinion, I would like to present my position concerning certain issues raised both during the discussion and in some separate opinions.

2. First, I would like to explain my position as regards the procedural requirements. As Judge Testen already mentioned in his dissenting opinion, the Constitutional Court dealt with that question extensively. In this respect I also had a problem with the idea that the rightful proposers may be deputies who are no longer deputies. However, in search of suitable solutions the Constitutional Court did not find any to be persuasive enough to receive the necessary support. Thus, the position prevailed that it is enough that the procedural requirement concerning the rightful proposer be fulfilled at the submission of the proposal. I was also concerned with the fact that the deputies participating in these proceedings as rightful proposers had not opposed the substance of the Agreement (see also Judge Ribičič's concurring and Judge Testen's dissenting opinions). Finally, I was persuaded by the position expressed in the discussion that also deputies who themselves did not oppose the constitutionality of the proposed treaty cannot be denied the right to request an opinion of the Constitutional Court, and thereby avoid criticism for their vote in favor of an unconstitutional treaty. I still find the doubts of Judge Ribičič (in his concurring opinion) and Judge Testen (in his dissenting opinion) crucial on the appropriateness of such a solution and agree with their opinion that it would be a much more appropriate basis for the Constitutional Court's adjudication if the Agreement was "challenged" by those who in fact doubted its constitutionality. I am afraid, however, that, concerning Art. 160.2 of the Constitution and the practically identical Art. 70 of ZUstS, which do not draw any difference between the individual proposers, this problem cannot be resolved by interpretation.

Therefore, despite my doubts on the fulfillment of the mentioned procedural requirement, I have decided to participate in the decision on the merits.

3. In such a situation the Constitutional Court was undoubtedly put in an unusual position, since it had to search by itself for reasons for the possible unconstitutionality of the Agreement.

The question might be raised whether those who doubted the constitutionality of the Agreement but did not propose its review are more responsible for that. Nevertheless, I opine that the Constitutional Court succeeded in defining the disputed question and answering it appropriately as well. It is certain that it could address the question of "prejudicing the border" only from the view of whether the Agreement was, according to its substance at ratification, in conformity with the Constitution, and not from the view of the impact of its future implementation on the negotiating position of our State in the final determination of the land and sea borders with the Republic of Croatia in the framework of bilateral negotiations or before international institutions. This will have to be addressed by the National Assembly when deciding on the ratification of the Agreement, for which it takes whole responsibility. In this part I join Judge Ude's separate opinion and, regarding the subject and scope of the review, entirely support Judge Škrk's position in her concurring opinion.

Dr. Dragica Wedam - Lukić