



**REPUBLIKA SLOVENIJA**  
**USTAVNO SODIŠČE**

U-I-77/91  
6/2-1992

**DECISION AND RESOLUTION**

In the proceeding of evaluation of the legality of Resolutions of the Executive Council of the Executive Council of the Assembly of the Republic of Slovenia regarding the determination of the basis for the calculation of personal income of employees and officials in state agencies of the Republic of Slovenia, on request by the Executive Council of the Municipal Assembly of Domžale, the Executive Committee of the Police Trade Union of Slovenia, the National Committee of the Trade Union of Judges of Slovenia and on the initiative of the National Committee of the Trade Union of the State and Social agencies and bodies, at the meeting on Feb. 6, 1991, the Constitutional Court

**I.**

**d e c l a r e d :**

1. The Resolution on Determining the Bases for the Calculation of Personal Income of Employees and Officials in State Agencies of RS passed by the Executive Council of the Assembly of the Republic of Slovenia on Jan. 10, 1991 (Official Gazette of RS, No. 2/91) was not in conformity with statute in the period May 5 to 30, 1991.

Pursuant to Art. 7 of the Enabling Statute for the Implementation of the Constitution, the disposition in the foregoing paragraph has legal effects according to Art. 415 of the 1974 Constitution.

2. The Resolution on Determining the Bases for the Calculation of Personal Income of Employees and Officials in State Agencies of RS passed by the Executive Council of the Assembly of the Republic of Slovenia on Sept. 20, 1991 (Official Gazette of RS, No. 14/91, year I) was not in conflict with statute.

**II.**

**p a s s e d t h e f o l l o w i n g r e s o l u t i o n :**

The Resolution on Determining a Temporary Basis for the Calculation of Personal Income of Employees and Officials in State Agencies of RS passed by the Executive Council of the Assembly of the Republic of Slovenia on July 19, 1991 (Official Gazette of RS, No. 7/91-year I) is hereby stayed.

**R e a s o n s**

The Executive Council of the Municipal Assembly of Domžale, the Executive Committee of the Police Trade Union of Slovenia and the National Committee of the Trade Union of the State and Social Agencies and Bodies requested an evaluation of the legality of the Resolution of the Executive Council of the Republic of Slovenia regarding the determination of a temporary basis for the calculation of personal income of employees and officials in state agencies of the Republic of Slovenia passed on July 19, 1991 (Official Gazette of RS, No. 7/91, year I). In their opinion, the impugned Resolution is not in conformity with the provisions of the then current Art. 6, Para 1 and Art. 20a of the State Officials Act and of Art. 60, Para 1 and Art. 80a of the State Agencies Employees Act. They claim that it is contrary to the above-mentioned statutory provisions if the Executive Council determines, by a resolution, a temporary basis is used until a new basis is determined and if the impugned resolution determines the average personal income per employee in the business sector of the Republic of Slovenia for the month of April 1991 as the basis in determining the basis of personal income. For the same reasons the National Committee of the Trade Union of Judges of Slovenia requested an

evaluation of legality of the same Resolution and, in addition, of the Resolutions of the Executive Council of the Assembly of the Republic of Slovenia regarding the determination of a basis for the calculation of personal income of employees and officials in state agencies dated Jan. 10, 1991 (Off. Gazette of RS, No. 2/91) and Sept. 20, 1991 (Official Gazette of RS, 14/91, year I). In the Committee's opinion the Resolution of January 1991 is contrary to the then effective provisions of Art. 6, Para 1 of the State Officials Act and Art. 60, Para 1 of the State Agencies Employees Act, according to which the Executive Council may determine, considering the budget, only a percentage reduction of the basis which is an average personal income of an employee in the business sector in Slovenia for the previous month, but in no case it can determine a fixed amount of the personal income basis. Such a fixed basis in the Resolution applicable until June 1991, inclusive, means an ever increasing percentage of reduction in relation to the average personal income in the business sector of the Republic of Slovenia. In the Committee's opinion, the Resolution is not in conformity with the subsequent amendments of both Acts. Further, the Committee's opinion is that the Resolution of September 1991 by which the Executive Council determined the basis for the calculation of personal income for the month of September 1991, is contrary to the amended provisions of both above-mentioned Acts according to which the average of the preceding month must be applied. Further, the Executive Council ought to have decided what is meant by the temporary nature of the Resolution of July 1991.

The Constitutional Court joined the above-mentioned cases together for joint discussion and decision.

The State Officials Act (Official Gazette of RS, No. 30/90) provided in its Art. 6, Para 1, that the basis for the calculation of the personal income of an official is the average personal income of an employee in the business sector of the Republic of Slovenia for the previous month according to the official information of the Statistical Office of the Republic of Slovenia, which may be reduced by a percentage to be determined by the Executive Council of the Assembly of the Republic of Slovenia, considering the budget. The same was provided by Art. 60, Para 1 of the State Agencies Employees Act (Official Gazette of RS, No. 15/90) for employees in state agencies. By the impugned Resolution of Jan. 10, 1991 (Official Gazette of RS, No. 2/91) which was applicable from Jan. 1, 1991 onwards, the Executive Council of the Assembly of the Republic of Slovenia determined the basis for the calculation of personal income of employees and officials in state agencies in terms of an amount. By such a decision the growth of personal income of employees and officials in state agencies of the Republic of Slovenia was not following the growth of personal income in the business sector of the Republic of Slovenia. But the Act also provided that the basis for the calculation of personal income may be reduced by a percentage to be determined by the Executive Council of the Assembly of the Republic of Slovenia considering the budget. And the Executive Council estimated that the budget did not allow the personal income in state agencies to follow the growth of personal income in the business sector, considering, in particular, that according to the Law on Temporary Financing of the Needs from the Budget in the first Quarter of 1991, in the period of temporary financing the expenditure from the Budget could not exceed a quarter of the budget receipts in 1990. Since the Executive Council is authorized by statute to determine the basis according to what the Budget allows, the determination of the basis in percentage would not change the situation occurred by determining the basis in January in amount. For the above-mentioned reasons, the Constitutional Court found that the impugned Resolution of January 1991 had not been in disharmony with the then effective Act. On the other hand, the impugned Resolution was not in conformity with the amendments of the two above-mentioned Acts (Official Gazette of RS, No. 18/91) which took effect on May 5, 1991 and which amended the first Paragraph of Article 6 of the State Officials Act and the first Paragraph of Art. 60 of the State Agencies Employees Act, according to which the Executive Council is not allowed to reduce the basis for the calculation of personal income by more than 40 % until May 31, 1991 when the two new amendments of both Acts (Official Gazette of RS, No. 22/91) according to which the application of the above-mentioned provision was postponed to July 1, 1991, became effective. It is not possible here to follow the position of the Executive Council that the personal income - which is always paid out for the previous month - for May 1991 was paid out on May 31, 1991, i.e. when the application of the amended Act was already postponed. The amendments of the two Acts which took effect on May 5, 1991 determined a basis of personal income and its maximum reduction of 40%. That entitled the employees in the state agencies to the foregoing personal income basis from the effective date of the above-mentioned amendments of the two Acts until the effective date of the amendment of the Acts which prescribed a postponement of the application thereof, irrespective of the time at which personal

income is paid out. Any other effectiveness of the statutory provision on the postponement of the application thereof would be retroactive because it would infringe an acquired right.

Contrary to Art. 20a of the amended State Officials Act and Art. 80a of the amended State Agencies Employees Act (Official Gazette of RS, No. 2/91, year I), the Executive Council by the impugned Resolution of July 19, 1991 (Official Gazette of RS, No. 7/91, year I) determined the basis for July 1991 to be the average personal income of the employees in the business sector of the Republic of Slovenia for the month of April 1991 reduced by 55%, and not as provided by the Acts i.e. to the amount of the personal income in the business sector for the month of May 1991. By its Resolution, the Executive Council determined a temporary basis, but the Constitutional Court realizes that the Acts does not regulate such a determination of a temporary basis. Pursuant to the Acts, the personal income of employees and officials in state agencies is based on: the average personal income of employees in the business sector of the Republic of Slovenia, personal income coefficients, a percentage allowed for experience and a percentage for working results and additional commitments. Pursuant to the provision of Art. 7, Para 1 of the State Officials Act and Art. 62, Para 1 of the State Agencies Employees Act, during the year personal income is determined and paid out as monthly payment on account or several times in a month for work done, but the personal income basis, as a fundamental element of personal income, is bound by statute to personal income in the business sector of the Republic in the previous month (except for the month of July 1991 where personal income is exceptionally bound by the amendment of the Acts to the month of May 1991). This is the only way to ensure the realization of the purpose of the Acts, i.e. constant harmonization of personal income in state agencies with personal income paid out in the business sector of the Republic. Contrary to the purpose of the Acts is a determination of any temporary basis and any delayed settlements.

By the Resolution of Oct. 31, 1991 (Official Gazette of RS, No. 22/91, year I), the Executive Council replaced the temporary basis for the calculation of salaries for the month of July by applying the average salary of employees in the business sector of the Republic of Slovenia for May 1991. Considering this, the Constitutional Court estimates that the consequences of the illegality have been eliminated. Therefore, it stayed the proceedings in this part, i.e. the evaluation of the legality of the above-mentioned Resolution of July 1991.

By the Resolution of Sept. 20, 1991 (Official Gazette of RS, No. 14/91, year I), the Executive Council determined the basis for the calculation of salaries of employees and officials in state agencies for September 1991: the average personal income of employees in the business sector of the Republic for July 1991, reduced by 50%. The statute provides that the basis of personal income is the average personal income of employees in the business sector of the Republic for the previous month, but it also provides, in Art. 6, Para 1 of the amended State Officials Act and in Art. 60, Para 1 of the amended State Agencies Employees Act (Off. Gazette of RS, No. 2/91, year I), that the adjustment of the amount of the basis for the current month is to be made no later than at the time when the ratio of the basis to the average personal income of employees in the business sector drops by further five percent. According to the information of the Statistical Office of the Republic of Slovenia (Official Gazette of RS, No. 19 and 23/91, year I), the basis of personal income in state agencies for September 1991 in comparison with the average personal income of employees in the business sector of the Republic in the previous month did not drop by more than five percent. Therefore, the Constitutional Court judges that the impugned Resolution is not in conflict with statute.

This Decision and Resolution of the Constitutional Court were passed on the basis of Art. 161, Para 1 of the Constitution under application of Art. 25, Para 2, Item 4 and Para 3, Item 2 of the Law on the Procedure in the Constitutional Court of SRS (Official Gazette of SRS, No. 39/74 and 28/76), at a meeting of the following judges: President Dr. Peter Jambrek, PhD. and the judges: Tone Jerovšek, LL.D, Matevž Krivic, LL.M, Anton Perenič, LL.D, Janez Šinkovec, LL.D and Lovro Šturm, LL. D

P r e s i d e n t :  
Dr. Peter Jambrek