



REPUBLIKA SLOVENIJA  
USTAVNO SODIŠČE

**Concurring Opinion of Judge Dr Ude**

1. I voted for the operative provisions of the Decision because I believe that the fourth paragraph of Article 3 of the Political Parties Act is contrary to the Constitution insofar as it allows an administrative authority to review the constitutionality of the acts and activities of a political party during the procedure for the party's registration. Only a decision of the Constitutional Court may abrogate an unconstitutional act of a political party or prohibit a party's unconstitutional activities. For this reason, it was also necessary to annul Supreme Court of the Republic of Slovenia Judgment No. U 1262/95 and Decision of the Ministry of the Interior No. 0001-2/1-S-28/533-95.

I do not agree, however, with the reasoning of the Decision, especially the reasoning in Paragraphs 7 to 10, under Section B–I of the Decision. The point of this reasoning is to establish that after the Second World War the regime in power introduced a one-party system.

2. I believe that this part of the reasoning is irrelevant for the Decision of the Constitutional Court because it has no direct link with its content. Such a part of the reasoning is also rare in constitutional decisions, and it would be difficult to find a decision of another constitutional court that would consider issues that were not the subject of discussion and decision-making to such an extent and through such extensive citing of historical sources. In fact, none of the participants to the proceedings referred to a historical evaluation of the period after the Second World War or the regime in power at that time, which was undoubtedly undemocratic and responsible for gradually establishing a one-party system. The mentioned part of the Decision is solely the contribution of the Constitutional Court to the discussion on the issue of the registration of political parties. As such, it is also part of a general heated discussion that is currently ongoing in our country. It could also be viewed as support to a specific political group.

In relation to this issue, it would, in my opinion, have been possible to only briefly establish that the registration of political parties and the assessment of the unconstitutionality of their acts and activities is a particularly sensitive issue in our legal system, because the experiences of Slovene society with political association in the past, i.e. before the Second World War and thereafter, were not democratic.

3. A more comprehensive discussion of these historical experiences might also have been relevant if there was a risk in our society that the state authorities would attempt to introduce a one-party system by prohibiting some parties or not registering them in the register of political parties. It is evident that none of the participants in the proceedings considered that risk. Why should historical evaluations then be included in the reasoning of the judicial decision?

4. If, however, history is being discussed, the experiences of Slovene society with the pre-war political system were also not democratic. In the Kingdom of Yugoslavia in 1920, an *Obznana* [public pronouncement] was adopted that prohibited the workers'

party. In 1931, the Electoral Act prohibited the activities of political groups that did not enjoy royal support. Article 13 of the Constitution of the Kingdom of Yugoslavia from 1931 prohibited association “on the basis of religion, tribal affiliation, or region for party and political purposes”. Even this short sentence demonstrates that the political regime of the time did not even recognise nations, since it referred to tribal affiliation, and that the *Istrski demokratski zbor – Dieta Democratica Istriana* would not have had any possibilities to be registered or to pursue its activities.

There was therefore no democratic system in place before the Second World War. To continuously emphasise the undemocratic nature of the political system after the Second World War, however, gives the impression that it was only after the war that the system departed from the previously democratic order and practice.

Dr Lojze Ude