REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

Up-301/96
15 January 1998

DECISION

At a session held on 15 January 1998 in proceedings to decide upon the constitutional complaint of IDZ-DDI [*Istrski Demokratski Zbor – Dieta Democratica Istriana*], after a public hearing held on 12 January 1998, the Constitutional Court

decided as follows:

1. Supreme Court Judgment No. U-1262/95, dated 12 September 1996, and Decision of the Ministry of the Interior No. 0001-2/1-S-28/533-95, dated 17 July 1995, are annulled.

2. The fourth paragraph of Article 3 of the Political Parties Act (Official Gazette RS, No. 62/94) is abrogated.

Reasoning

A

1. By the Decision dated 17 July 1995, the Ministry of the Interior (hereinafter referred to as the Ministry) rejected the complainant's application for registration in the register of political parties. By its Judgment dated 12 September 1996, the Supreme Court rejected the complainant's lawsuit in the proceedings for the judicial review of administrative acts. The complainant believes that the challenged decision violates its right to equality before the law, its right of association, and its acquired rights. The complainant states that it had already been entered into the register of political organisations before the Political Parties Act was adopted. According to the complainant, the finding of the Supreme Court and the Ministry that a part of the party's programme was unconstitutional is unacceptable. The complainant, as a political party, is seeking redress for injustices which were inflicted upon those individuals who lived on the territory of the Slovene part of Istria during the post-war period. The complainant has fought for the recognition of the continuity of SIovene citizenship of these persons, the return of their property, and the recognition of all other rights that derive from their civic status, i.e. including the right of domicile. In particular, the complainant asserts that its right to equality before the law has been violated because it was prevented from being registered in the register of political parties despite having already been registered as a political organisation in the same way as other parties that, in contrast, did not have any problems with registration. According to the complainant, the decisions of the Supreme Court and the Ministry resulted from an arbitrary interpretation of part of the party's programme and the completely unsubstantiated designation of this programme as unconstitutional. The

complainant argues that the right of association has been violated because the party's completely legitimate programme, i.e. the fight to redress injustices suffered by persons who lived on the territory of the Slovene part of Istria, is being misinterpreted to its detriment, thereby preventing a group of people from organising themselves in an association in order to seek redress of injustices. In its opinion, the acquired rights of the complainant have been violated by denying it, as a political organisation, the right to continuity and the right to exist as a political group.

2. In its Decision, the registration authority (the Ministry) found that the complainant's political programme, according to which "the party will endeavour to secure immigration priority for those persons who have left Istria as political or economic emigrants, and their descendants and relatives ...", is contrary to the provisions of Article 12 of the International Covenant on Civil and Political Rights and Article 32 of the Constitution regarding freedom of movement and the freedom to choose one's place of residence. Furthermore, it was established in the Decision that the provision of Article 14 of the Constitution on equality before the law irrespective of personal circumstances had also been violated. Therefore, on the basis of Articles 13 and 33 of the Political Parties Act (Official Gazette RS, No. 62/94 – hereinafter referred to as the PPA), the registration authority rejected the complainant's application for registration in the register of political parties on the grounds that it had not fulfilled the condition of the fourth paragraph of Article 3 of the PPA. In the reasoning of the Decision, the party's name (i.e. simply the translation of the name of a foreign party) was also found to be inconsistent with the law, and that amendments to the party's Statute were not adopted by the authorised body (i.e. not by the party's assembly or its council but, in fact, by its extended executive committee). These statements were, however, written as findings in relation to the party's complaints against an alleged delay in the proceedings, and not as justification for refusing the application for the registration.

3. In the challenged Judgment, the Supreme Court stated that the principal condition for registering a party in the register is determined by the fourth paragraph of Article 3 of the PPA. If this condition is not fulfilled, the registration authority must refuse the application for the registration. Moreover, according to the Supreme Court, the programme objective that accords immigration priority to the former inhabitants of a specific part of the country (Istria), or their descendants and relatives, is unconstitutional because it placed these persons in an unequal (i.e. privileged) position when compared to persons who had emigrated from other areas of Slovenia for the same (political or economic) reasons. However, Article 14 of the Constitution does not permit such different treatment. In the opinion of the Supreme Court, it is irrelevant to the refusal of the application for registration in the register of political parties whether such programme objective is also contrary to any other constitutional right, or whether, in addition to a party's intention to be engaged in unconstitutional activities, there exists any additional statutory restriction on registering the political party in the register.

4. By the Order dated 2 December 1996, the panel of the Constitutional Court accepted the constitutional complaint for consideration and, upon the complainant's petition, issued a temporary injunction according to which no legal consequences resulting from the final decision on the refusal of registration should arise for the complainant until a final decision is adopted.

5. In the proceedings to decide on the constitutional complaint, acting on the basis of the second paragraph of Article 59 in conjunction with Article 30 of the Constitutional Court Act (Official Gazette RS, No. 15/94 – hereinafter referred to as the CCA), the Constitutional Court initiated proceedings for a review of the constitutionality of the provisions of the PPA, on which the challenged Judgment is based.

6. Regarding the disputed statutory regulation, the Secretariat of the National Assembly for Legislation and Legal Matters explains that the relevant subject matter is regulated by the PPA and the CCA. The former determines the rules that apply in the establishment and registration procedures, and the latter regulates the manner in which the unconstitutionality of the acts and activities of political parties is determined after a party has already begun to operate as such. The Secretariat deems that Article 160 of the Constitution and Article 68 of the CCA do not grant the Constitutional Court direct power to decide in the procedure for establishing a political party before the party is registered. Such was the reason for the refusal of the initial proposal for a regulation, according to which the registration authority had the authority to suspend a registration procedure and request a Constitutional Court decision whenever it deemed that the submitted acts of a political party were unconstitutional. The Secretariat further deems that the registration procedure includes regular procedural rules for exercising rights or freedoms and, at the same time, respects the judicial protection of human rights and freedoms and the right to a legal remedy. In the Secretariat's opinion, the provision of the fourth paragraph of Article 3 of the PPA is somewhat imprecise in the part that reads as follows: "or it nevertheless intends to operate unconstitutionally, or has already been operating in such way". However, it is allegedly only possible to understand this provision in the context of the whole text, and, in the opinion of the Secretariat, it is therefore not unconstitutional.

B–I

7. Owing to the painful historical experience endured by Slovene society during the former totalitarian system, the historical mission of the Slovene Constitution also included its fundamental aim – to prevent any attempt to restore a totalitarian regime. The right of free association constitutes one of the fundamental constitutional values that must be afforded particular respect and consistently implemented. This is even more important due to the fact that, after assuming power in 1945, the communist regime fictitiously assured freedom of association, including the establishment of political parties and their freedom to pursue their activities, on the constitutional level and also through statutory regulation; however, in reality, the communist authorities completely suppressed the activities of opposition parties through repressive measures, thereby excluding them from the political process. In its Decision OdlUS I, 102, the Constitutional Court already established that the then government had prevented political parties from carrying out their activities after the war, and that, contrary to the legal order in force at that time, it had removed political opponents using pseudo-legal proceedings and distorted legal remedies. The prevention and suppression of the opposition was not only inconsistent with the Constitution in force at that time but also explicitly unlawful, and resulted in a permanent and severe violation of human rights and fundamental freedoms.

8. The Communist Party used the political system to deal with the bourgeois opposition and subordinate its wartime political allies. The party in power used judicial proceedings against the potential opposition. The main purpose of politically motivated proceedings was to deal with class enemies and confiscate their property. These politically motivated judicial proceedings shared many of the characteristics of show trials instigated by Stalin. Politicians viewed the courts as their “battle agency” who fought the class enemy (Zdenko Čepič *et al.*, *Ključne značilnosti slovenske politike v letih 1929 do 1955: Znanstveno poročilo* [Basic Characteristics of Slovene Politics between 1929 and 1955: A Scientific Report], Inštitut za novejšo zgodovino, Ljubljana 1995, p. 89). By March 1945, the Politburo of the Central Committee of the Communist Party of Slovenia had already decided (J. Vodušek Starič, *Prevzem oblasti* [Assuming the Power], pp. 170, 331) that it would not allow the restoration of political parties in Slovenia but would instead preserve the unity of the Liberation Front (unlike, for example, in Serbia where Grol's Democratic Party, the Radicals, Jovanović's Peasant Party, etc., operated). The OZNA [the Department of National Security] monitored the relationships between these politicians and the leaders of parties abroad (J. Vodušek Starič, *Prevzem oblasti*, pp. 164–169). A series of events, such as the fate of the Tito-Šubašić Agreement, electoral manipulation (manipulation of electoral registers), the resignation first of the deputy, M. Grola, and then the Minister of Foreign Affairs, I. Šubašić (*Ibidem*, pp. 331, 351, 353), as well as the presence of OZNA at polling stations (*Ibidem*, p. 364), all indicated that there was no future for political parties in Yugoslavia. Nevertheless, attempts were made in Ljubljana at that time to increase interparty connections and contacts with the Yugoslav opposition, with OZNA monitoring events closely – it designated smaller opposition groups by a common name: the “reaction” (*Ibidem*, pp. 351–352). In order to combat the internal enemy, OZNA created a special service – Section II, which included the notorious Subsection 2, which was responsible for the fight against the interior reaction that also included the so-called remnants of bourgeois political parties (J. Pučnik, *Iz arhivov slovenske politične policije* [From the Archives of Slovene Political Police], Veda, Ljubljana 1996).[1] The post-war Yugoslav authorities strived to prevent domestic Yugoslav and Slovene politicians from establishing contact with politicians who emigrated in 1945 or remained abroad.[2]

9. Immediately after the end of the Second World War, the Slovene political elite demanded that the UDV [the State Security Administration] carry out detailed monitoring of the activities of all political parties in Slovenia. After a first wave of brutal methods, the UDV began to apply significantly subtler methods: multiple interrogations, psychological pressure, threats of court action, blackmail with pressure on family members, professional colleagues, or friends, tailing, and, in particular, the denunciation among people belonging to the same group, ideology, or party, which was referred to as differentiation (J. Vodušek Starič, *Prevzem oblasti po vojni in vloga OZNE - obračun* [Assuming the Power after the War and the Role of the OZNA - Settlement of Accounts], in: *Slovenija v letu 1945, Zbornik referatov* [Slovenia in 1945, Collection of Papers], Zveza zgodovinskih društev Slovenije, 1996, pp. 93–110). In this regard, the UDV was influencing or directing activities within specific groups and, at the same time, informing its superiors and leading political fora (the Central Committee of the Slovene Communist Party, the Politburo, and the Supreme Committee of the Liberation Front) of the activities and atmosphere in the former political groups, church circles, ministries, etc. (*Ibidem*, p. 96).

10. The UDBA[*] [the State Security Administration] and the Slovene Communist Party perceived Christian Socialism as a threat. In 1949 the UDBA carried out two reports on Christian Socialism, and began to closely monitor the activities of individuals from the Christian-Socialist group (*Ibidem*, p. 100). They had been gathering information on Kocbek from 1946 onwards (*Ibidem*, p. 101). In 1951, the Slovene Party leadership decided to “eliminate” the Faculty of Theology from the university. On 20 January 1952, they poured gasoline on Ljubljana's Archbishop, Anton Vovk, and set fire to him when he was on his way to Novo Mesto (*Ibidem*, p. 107). At the Party's plenary meeting, in 1952, the then Minister of the Interior and a member of the Politburo, Boris Kraigher, considered lawyers, various writers, artists, and scientists, who were considered to be Catholic (the Academy of Sciences, the University, Institutes, in particular those with a humanistic orientation), and “the espionage centre of our predominantly bourgeois emigrants in Trieste and Klagenfurt” to constitute reactionary circles, i.e. those “who represent, in my opinion, the most dangerous attempt to organise activities directed against us” (*Ibidem*, p. 108). On 19 July 1952, the Slovene UDV prepared a plan of proceedings to be initiated against Dr Jakob Šolar, a member of the Slovene Academy of Sciences and Arts. They accused him of treason (*Ibidem*, p. 110). The arrest was thoroughly prepared by the Committee for the Remnants of Bourgeois Parties (RBP) of the Slovene UDV. On 24 November 1952, the UDBA first arrested Dr Janez Fabijan and then, on 11 December 1952, Dr Jakob Šolar, for their alleged intention to destroy the state and the social order of the Federal People's Republic of Yugoslavia (FPRY) (*Ibidem*, p. 111). The court sentenced Dr Šolar to ten years and Dr Fabijan to six years in prison. During that time, Edvard Kocbek was relieved of all his political offices (*Ibidem*, p. 113). This concluded the fight against the Christian Socialists as a political group.

B–II

11. The right of assembly and association referred to in Article 42 of the Constitution is a fundamental human right that allows for the free expression of opinion, the formation of political will, and self-organisation. The right of association, which also encompasses the right to establish political parties and that they carry out their activities, is the starting-point of a multiparty political system, without which a free democratic society cannot exist.

12. A free democratic society is a constitutional system, which, by excluding any violence and arbitrariness, represents the social order of a state governed by the rule of law based on the self-determination of its people according to the will of the majority, freedom, and equality. In addition, at least the following key predispositions have to be included among the underlying principles of such an order: respect for human rights as determined by the Constitution, an individual's right to life, the inviolability of personality rights, the sovereignty of the people, the separation of powers, the accountability of the Government and the lawfulness of the activities of the executive branch of power, the independence of the courts, a multiparty political system, and equal opportunities for all political parties, including the right to establish an opposition and participate in it according to the Constitution. These principles

were expressed in point V of the Declaration of Independence, which was adopted by the first democratic parliament on 25 June 1991 (Official Gazette RS-I, No. 1/91).

13. A system of legally determined rules of conduct established on the basis of the aforementioned principles during the course of a long period of historical development in accordance with the democratic heritage of the European legal civilisation ensures the functioning of the free democratic system. Political freedom of opinion, expression, the formation of political will and association, which is guaranteed in various ways, leads to a multiparty system and an organised political opposition. Free elections held at relatively short intervals guarantee that people have control over the use of power by the political majority. The government is accountable to the parliament. The implementation of the principle of the separation of powers, which ensures that the different branches of power check and balance each other, prevents an excessive concentration of power in one place within the state. Every citizen is provided a sphere of freedom of conduct through the recognition of fundamental human rights and extensive protection ensured by independent courts. The protection of the entire system is above all entrusted to the Constitutional Court.

14. As a free social order may also be jeopardised due to its openness and the fact that it guarantees various types of rights, freedoms, and influences, its protection against forces that may seriously threaten its fundamental values, fundamental order, and rules of conduct is justified. A constitutional or statutory limitation of the right to free association constitutes a very sensitive interference with fundamental constitutional freedoms, which may only be justified through the protection of the free democratic society as a whole. In this respect, a statute cannot go beyond the limitations determined by the third paragraph of Article 42 of the Constitution – i.e. for reasons of national security (if an association is acting against the constitutional order, the state's territorial integrity, and sovereignty) or public safety – or if such is necessary for the protection of the rights of others (the third paragraph of Article 15 of the Constitution).

15. The essential element of every association is a common purpose reflected in the fundamental constitutive acts of the association: a statute or programme. The constitutionality of the association’s activities is assessed according to the decisions and actions of its bodies or members. When defining the concept of “unconstitutional activity” tolerance is required. It is not sufficient for an association to reject, contradict, or not recognise the constitutional order. Active operation with the intention of destroying (eliminating) the existing constitutional order is required. Mere criticism, regardless of whether it is real and substantiated, is not enough. A serious threat to the underlying principles of a free democratic society has to be established.

16. Owing to the special significance of political parties for the existence of a free democratic state, it is not possible to exclude them from political life as long as they employ legal means to fight specific regulations or even specific constitutional institutions. Such exclusion is only permitted if these parties intend to undermine the fundamental values of a free democratic constitutional state.

17. Political parties have to be guaranteed freedom of establishment, with regard to their programmes, the pursuit of their activities, and the exertion of influence on the

formation of political will. The state has to guarantee the effective implementation of these predispositions; in other respects, however, it must abstain from interfering with or influencing the sphere of political parties.

18. Compared to other associations, political parties have a special position because only the Constitutional Court may decide that their activities are unconstitutional (the tenth indent of the first paragraph of Article 160 of the Constitution). This so-called parties' privilege protects the existence of a party until the Constitutional Court establishes the unconstitutionality of its acts or activities. By a decision the Constitutional Court abrogates the unconstitutional act of a political party or prohibits its unconstitutional activities (the third paragraph of Article 68 of the CCA). The establishment of the unconstitutionality of acts or activities does not, however, simultaneously entail that the party must be removed from the register, i.e. prohibited from operating. Pursuant to the fourth paragraph of Article 68 of the CCA, the Constitutional Court must decide on that issue separately by a two-thirds majority vote of all judges. The first indent of the first paragraph of Article 17 of the PPA may therefore only be interpreted in such a way that a mere decision on the unconstitutionality of an act of a political party, without a special order of removal from the register, cannot constitute the basis for removing a party from the register.

19. Therefore, there is no doubt that only the Constitutional Court can decide on the prohibition of the functioning of a political party (i.e. its removal from the register), by a two-thirds majority vote of all the judges, provided it finds that the acts or activities of the party contradict the Constitution so severely that the mere abrogation of the unconstitutional act or the prohibition of the unconstitutional activity does not suffice, and it is necessary to eliminate the party from political life.

20. It is evident from the legislative procedure and the statements made by the National Assembly representative at the public hearing that the intention underlying the inclusion of the fourth paragraph of Article 3 in the PPA was primarily to prohibit the registration of political parties whose acts or activities were unconstitutional. In this way, the Act determined a substantive condition for the registration of a party, the fulfilment of which is decided on by administrative authorities.

21. An affected party has the possibility to initiate proceedings for judicial review of administrative acts and to lodge a constitutional complaint against a registration authority's decision on the refusal of the party's registration (as the petitioner did in the case at issue). In constitutional complaint proceedings, if paragraph 4 of Article 3 of the PPA were still applicable, the Constitutional Court could also have considered whether the acts and activities of the association were really unconstitutional. However, the question that was raised is whether it is constitutionally admissible for the administrative authority to decide on the fulfilment of such substantive constitutional conditions for the establishment of a political party, as such could entail that the establishment and activities of a party were unacceptably dependent on the prior authorisation of an administrative authority.

22. A registered party cannot be impeded in its political activities until the Constitutional Court, which is the only authority that can prohibit a party's activities, reaches a decision on such. As a result, administrative interference with the existence of a political party is excluded, regardless of how hostile its actions are with

regard to a free democratic constitutional order. In this way, the activities of each party are allowed to continue until their unconstitutionality is established in order to guarantee the highest possible degree of political freedom. A party still operates within the framework of the constitutionally admissible tolerance, even if it propagates aims that are hostile (contrary) to the Constitution in a constitutionally admissible manner.

23. The refusal to register a party due to the alleged unconstitutionality of its acts or its allegedly intended unconstitutional activities is, in terms of its content, the same as the prohibition of the functioning of the party. If an administrative authority establishes the unconstitutionality of a party's act, it must refuse its registration. However, the Constitutional Court has the possibility to initially only abrogate a specific unconstitutional act without also ordering, at the same time, the removal of the party from the register. Furthermore, the Constitutional Court may prohibit a specific activity of the party without ordering, at the same time, its removal from the register.

24. According to the PPA, a political party is an association of individuals organised with the intention of realising their political aims. It is left to the founders of an association to define it as a political party. Yet the PPA prescribes the mandatory registration of political parties. In this way, a political party becomes a legal entity, and only from the day of its registration may it commence operation as a political party (the first paragraph of Article 3 and the third paragraph of Article 12 of the PPA). This entails that a political party is created on the day of its establishment but that it cannot operate as such until its registration, except in proceedings and activities intended for its registration (including its active standing to lodge legal remedies against a decision to refuse registration). The registration authority issues an administrative decision on the registration of a party in the register (the first paragraph of Article 12 and Article 13 of the PPA). In such a decision, the registration authority may merely establish whether a political party has met the formal conditions prescribed by statute; however, only the Constitutional Court may decide on the fulfilment of the substantive conditions, i.e. on the conformity of the acts and activities of a political party with the Constitution.

25. As a political party comes into existence before its registration, the Constitutional Court may, pursuant to Article 68 of the CCA, also decide on the unconstitutionality of its acts during the period between its establishment and its registration, provided a petition or request for such a review is submitted (e.g. a request by the Government as an applicant who may submit a request pursuant to Article 23 of the CCA). If the party had already been entered into the register by the time the Constitutional Court decision was reached, the Constitutional Court could also have ordered its removal from the register on the basis of the fourth paragraph of Article 68 of the CCA; however, only if it had found that the party's acts exceed the limits of constitutionally admissible tolerance (particularly in the sense of Paragraphs 14, 15 and 22) to the extent that the mere abrogation of the unconstitutional parts of these acts would not suffice, and that the party has to be eliminated immediately from the legal order. If by the time the Constitutional Court reached a decision the party had not yet been registered, in such an extreme case, the Constitutional Court could have applied the fourth paragraph of Article 68 of the CCA *mutatis mutandis* to prohibit its registration, instead of ordering its removal from the register. Certainly, such extreme cases in which the contents of a party's acts would require the immediate use of the strictest

measure possible are less probable. In all other cases, the Constitutional Court has the possibility, pursuant to the third paragraph of Article 68 of the CCA, to merely abrogate a party's unconstitutional acts or their parts, and to prohibit the party, perhaps even in advance, from operating in such a direction as indicated by these acts, especially if the party or its members had already unlawfully begun such activities before its registration, when their party activities were still prohibited.

26. In the case at issue, the registration authority had decided on the question of the constitutionality of the programme as a condition for registration on the basis of the statutory provision that the Constitutional Court abrogated as unconstitutional. Therefore, the challenged individual acts had to be annulled. The registration authority will have to decide again on the application of the complainant for registration in the register of political parties, without taking into account the abrogated fourth paragraph of Article 3 of the PPA. It will be allowed to review only the fulfilment of the formal statutory conditions and, if it finds that these are fulfilled, it will have to register the party.

27. It was necessary to abrogate the fourth paragraph Article 3 of the PPA in the part where this statutory provision refers to the administrative registration of a party, on the grounds that have been explained in the previous paragraphs of this reasoning. If only the words “must not be registered (either)” were abrogated in this statutory provision, the prohibition would still apply to the activities of parties which “advocate violence, the subversion of the constitutional order, or request the separation of some part of Slovenia, or intend to operate or have already been operating unconstitutionally.” This statutory prohibition had to be abrogated because the first part thereof was not consistent with the hierarchy of values as established by the Constitution and the second part thereof was not sufficiently clear and could, with such a sensitive topic, easily lead to an erroneous understanding of which political parties' activities are really prohibited, which political parties' activities may be prohibited by the Constitutional Court with a decision pursuant to Article 68 of the CCA, or which activities would cause the Constitutional Court to order the removal of a party from the register. More specifically, a party, as has already been stated above in Paragraph 22, “operates within the framework of the constitutionally admissible tolerance, even if it propagates aims that are hostile (contrary) to the Constitution in a constitutional manner.” Article 63 of the Constitution is the only constitutional provision that explicitly declares incitement to national, racial, religious, or other discrimination, and the inflaming of national, racial, religious, or other hatred or intolerance, and incitement to violence and war, as unconstitutional; however the aforementioned statutory provision has chosen to only include “the propagation of violence” in its wording and, instead of the other unconstitutional activities determined by Article 63 of the Constitution, refers to the propagation of the subversion of the constitutional order and the request for the secession of part of Slovenia, and therefore the first part of the statutory provision is inconsistent with the constitutional hierarchy of values. The issue of whether, on the basis of the aforementioned criteria, some other political party activity of this kind could be and should be prohibited as unconstitutional or whether the removal of the political party from the register should be ordered due to such activity, is to be, according to the Constitution, decided on by the Constitutional Court in concrete cases. For these reasons, the fourth paragraph of Article 3 of the PPA had to be abrogated in its entirety.

28. In the opinion of the Supreme Court the part of the IDZ programme that reads as follows: “The party will endeavour to secure immigration priority to those persons who had left Istria as political or economic emigrants, as well as their descendants and relatives” is contrary to Article 14 of the Constitution, because it places some individuals (i.e. political and economic emigrants from the territory of Istria) in an unequal, i.e. privileged, position when compared to persons who had emigrated from other parts of Slovenia for political or economic reasons.

29. The prohibition of the functioning of the complainant as a political party is therefore based on the assessment that a single sentence from its programme declaration was unconstitutional. Such a decision is unacceptable from the start. If such a programme provision were found to be unconstitutional, the Constitutional Court could also merely abrogate it, without ordering, at the same time, the removal of the party from the register. The review of the unconstitutionality of the acts and activities of the complainant as a political party is not a subject of review in these constitutional complaint proceedings; however, it could be the subject of review in the proceedings pursuant to Article 68 of the CCA, if and when they are initiated.

C

30. The Constitutional Court adopted this Decision on the basis of Article 59 of the CCA, composed of: Dr Lovro Šturm, President, and Judges Dr Miroslava Geč-Korošec, Dr Peter Jambrek, Dr Tone Jerovšek, Mag. Matevž Krivic, Mag. Janez Snoj, Franc Testen, Dr Lojze Ude, and Dr Boštjan M. Zupančič. The decision was reached unanimously. Judges Krivic, Šturm, and Ude submitted concurring opinions.

Endnotes:
[*] Translator’s note: UDBA is the Serbian translation of UDV, i.e. the State Security Administration.
[1] Among the first Slovene politicians who were charged collectively were the politicians of *Mladina JNS* [the Youth section of the Yugoslav National Party], who were sentenced at the Christmas Trial in December 1945 (J. Vodušek Starič, *Prevzem oblasti*, p. 415; Vodušek Starič, *Dosje Mačkovšek* [The Mačkovšek File], pp. 15, 33, 42, 52). Before the elections to the Slovene Constitutional Assembly, connections between the Slovene opposition and the opposition-circles in Zagreb and Belgrade had been established (L. Sirc, *Med Hitlerjem in Titom* [Between Hitler and Tito]; CZ, Ljubljana 1992, pp. 253, 257–9, 269, 273); because of these attempts the Nagode-Furlan group was also put on trial in 1947 (L. Sirc, *Sodba* [The Judgment], pp. 471–505). In a series of smaller scale judicial proceedings, some leading politicians were tried, such as Dr Jože Pučnik, one of the leading politicians of the JNS, in 1946, Vinko Vrhunec (J. Vodušek Starič, *Dosje Mačkovšek*, pp. 23, 43), and others. All these proceedings were prepared by the OZNA, which also interrogated the accused (J. Vodušek Starič, *Prevzem oblasti*, p. 257).
[2] Those were led by Dr Miha Krek, who founded the multiparty Slovene National Committee in Rome (J. Vodušek Starič, *Prevzem oblasti*, p. 342). In order to prevent these contacts, the OZNA or UDBA also kidnapped some of these politicians in Trieste or Zone A of the Free Territory of Trieste: Dr Albin Šmajd (a member of the Slovene National Committee in Rome) at the beginning of 1946 (J. Vodušek Starič,

Dosje Mačkovšek, p. 53), Andrej Uršič in 1947 (J. Vodušek Starič, *Dosje Mačkovšek*, p. 35), and others. These individuals have never been tried; they disappeared without a trace.

President:
Dr Lovro Šturm