



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

U-I-266/95  
20.11.1995

**D E C I S I O N**

At the meeting of 16 and 20 November 1995 concerning the procedure for the evaluation of constitutionality of a request for holding a referendum, commenced upon the request of the National Assembly, the Constitutional Court

made the following decision:

I. The deciding of this case comes within the jurisdiction of the Constitutional Court.

II. The text of the request for holding a referendum as contained in the initiative of Štefan Matuš and Marijan Poljšak addressed to voters concerning the filing of a request for holding a referendums which reads:

"Are you in favour of the passing of a statute on the taking away of citizenship of the Republic of Slovenia acquired on the basis of article 40 of Citizenship of the Republic of Slovenia Act (Official Gazette of RS, Nos. 1/91-I, 30/91-I, 38/92 and 13/94), which was submitted for consideration on 2.9.1994, and by which the National Assembly will provide that:

1. those persons shall be deprived of citizenship of the Republic of Slovenia who acquired it under article 40 of Citizenship of the Republic of Slovenia Act,
2. loss of status of citizen under the said statute shall not affect property right and other rights of possession which such persons have acquired as citizens of the Republic of Slovenia,
3. persons who will in this way be divested of their status of citizen of the Republic of Slovenia be given a passport for foreigners, if they cannot obtain the passport of the country whose citizens they are."

is not in conformity with the Constitution.

**R e a s o n s:**

**A.**

1. On 30.10.1995, the National Assembly filed a request for constitutional review of the content of a request for holding prior legislative referendum as contained in the initiative addressed to voters, for collection of signatures in support of the said request, and concerns the questions to be regulated by a statute on the taking away of citizenship of the Republic of Slovenia acquired on the basis of article 40 of Citizenship of the Republic of Slovenia Act (Official Gazette of RS, Nos. 1/91- I, 30/91-I, 38/92, 61/92 - odl. US, 13/94 - hereinafter: CRSA).

The National Assembly considers that the content of the request is in disagreement with the Constitution, for it supposedly violates the basic constitutional principles and human rights and fundamental freedoms. The National Assembly proposes to the Constitutional Court, with a view to preventing the possibility of development of negative social consequences of greater dimensions and to preventing any unconstitutional incitement to inequality and intolerance, by the application, on mutatis mutandis basis, of article 16 of the Act on Referendum and Popular Initiative (Official Gazette of RS, Nos. 15/94 and 13/95 - odl US, hereinafter: the ARPI), to decide whether the content of the request is in disagreement with the Constitution.

2. The National Assembly enclosed to the submitted request the initiative referred to in section II of the adjudication hereof, together with reasons for it, a report by the Committee for Internal Policy and Judicature of the National Assembly, an opinion of the Secretariat for Legislative and Legal Matters of the National Assembly and the Bill on the taking away of citizenship of the Republic of Slovenia acquired on the basis of article 40 of Citizenship of the Republic of Slovenia Act as submitted for consideration by deputies Štefan Matuš and Marijan Poljšak.

3. Deputy Marijan Poljšak in his reply to the request of the National Assembly considers that the position of the National Assembly was adopted on the basis of voting procedure which was not in conformity with the ARPI. He also thinks that no such justified grounds exist as would justify prior determination of constitutionality of the content of the request for holding the referendum. On the basis of article 40 of CRSA, citizenship is claimed to have been acquired by approximately 171,000 persons.

Such decision should not have been made by the Parliament but by the nation itself. He thinks that the right to the acquisition of citizenship under article 40 of CRSA has not been guaranteed already in article 13 of the Enabling Statute for the Implementation of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, because the said provision allegedly only provided a temporary solution for the status of foreigners with permanent residence in Slovenia on 23.12.1990. The proposed statute is also claimed not to violate article 14 of the Constitution, because nearly all "citizens under article 40" are allegedly dual citizens and are thus in a privileged position with respect to Slovenians. By depriving the persons concerned of citizenship, the said persons would only lose citizenship of the Republic of Slovenia, but not also their original nationality. Citizenship is a status, which is also why one cannot speak about interference with acquired rights. In addition, the proposed statute does not take away from the persons concerned material goods; for its aim is only to motivate immigrants at the end of the war to return back to their country of origin.

4. Deputy Štefan Matuš in his reply thinks that in granting citizenship of the Republic of Slovenia it is necessary to take into account national interests, because citizenship is not a human right. Referendum is claimed to be the only way which would show the actual public interest, which takes precedence over the interest of individuals. Interest for acquisition of citizenship is supposedly mainly due to immigration-based and economic reasons. Also supposedly open is the question of whether the acquisition of citizenship under article 40 of CRSA was a constitutional right.

#### B. - I.

5. The Constitutional Court first examined whether the procedural conditions for consideration of the request of the National Assembly were satisfied from the viewpoint indicated already by the National Assembly itself: can the Constitutional Court evaluation constitutionality of the content of a request already in the phase when voters have been addressed with a view to obtaining their support for the said request, and while signatures are still being collected, or whether procedural conditions for evaluation of constitutionality are fulfilled only after the request has been submitted together with the 40 thousand signatures.

6. According to the provision of indent 11 of paragraph 1 of article 160 of the Constitution, the Constitutional Court shall decide upon matters coming within its jurisdiction on the basis of constitutional provisions, but also upon such other matters as are vested in it by statute. The provision of article 16 of the ARPI provides that the Constitutional Court shall decide the request of the National Assembly for evaluation of constitutionality of a request for holding a referendum.

According to the provision of paragraph 2 of article 90 of the Constitution and article 12 of the ARPI, the National Assembly must call a legislative referendum (relating to statute), if this is demanded by forty thousand voters. According to article 13 of the ARPI, request on the part of the voters shall be lodged by their representative, and at the same time not less than 40 thousand signatures shall be submitted. The initiative to voters for the purpose of lodging a request, which may be taken by any voter, shall in accordance with the provision of paragraph 3 of article 13 of the ARPI be notified by the initiator to the President of the National Assembly. According to the said provision, the initiative shall

comprise a reasoned request in accordance with article 14 of the said statute and must be supported by not less than 200 signatures of voters.

Article 14 the ARPI in its turn provides that in the request the question which will be the object of the referendum must be clearly stated. The provision of article 13 of the ARPI, thus, uses the notion of "request" in two legal meanings. In paragraph 1 of article 13 of the ARPI, this term is used to denote a request in procedural sense, that is, an application on the basis of which the procedure for calling a referendum can be initiated; in paragraph 3, on the other hand, the request is used in the sense of substantive law - that is, it refers to the subject matter of the request to be decided at a referendum and which should thus be included already in the initiative addressed to voters. Article 16 expressly provides that the Constitutional Court shall examine the subject matter of the request for its constitutionality.

7. Concerning the question of whether it is possible already in the phase of collection of signatures in support of the request for holding a legislative referendum to decide the matter, the Constitutional Court took as its basis the content of article 16 of the ARPI. This article empowers the Constitutional Court to determine whether the content of a request for holding a referendum is in conflict with the Constitution. At the moment when the President of the National Assembly sets the deadline for collection of signatures, citizens are invited to declare whether they are for the content of the request. In this way, the question has been addressed to all citizens with the voting right. The question asked in this phase of procedure for holding a legislative referendum is identical to the question that would be asked at the referendum if it were given sufficient support.

Both in the former and in the latter case, the same target population is being addressed. This is why the question emerges of whether it is necessary, just because the collecting of signatures in this phase of procedure is not of the nature of the request in accordance with article 12 of ARPI, while being a request defined with regard to its content, which only requires the support of voters, to wait for it to become such also formally, when it is already in this situation obvious that it will not be allowable for this question to be addressed to the target population later on. The Constitutional Court considers that such interpretation of a statute is inadmissible in a democratic and law-governed state.

#### B. - II.

8. As the procedural requirements for consideration of the request were satisfied, the Constitutional Court proceeded to decide on constitutionality of the content of the request stated in section II of the adjudication hereof.

9. According to the content of the request, the statute that would be passed upon the completion of the legislative referendum would deprive of citizenship of the Republic of Slovenia all persons having acquired it on the basis of article 40 of CRSA. In spite of being divested of citizenship, such persons would retain property right and other rights of possession which they acquired as citizens of the Republic of Slovenia; their status, however, would be that of foreign nationals.

10. The content of the request is not in agreement with the Constitution for interfering inadmissibly with the right to personal dignity and safety under article 34 of the Constitution, and with the protection of the right to privacy and of personal rights under article 35 of the Constitution, as well as for its being in conflict with the principles of law- governed state.

11. A state governed by the rule of law must comply with the principle of confidence in the law, legal security and with other principles of law-governed state. The principle of confidence in the law demands that individual decisions which are in conformity with statute and passed without any reservation made in advance and are not transitory in nature be enduring. Law may exercise its function of regulation of the life of a society if it is stable and permanent in as far as possible. Such law, as well as the whole conduct of all State bodies, should be foreseeable, because this is required for reasons of legal security. The safety of citizens also depends on the durability of acts. In this way, confidence of the citizen in law and law-governed state is ensured.

12. According to the provision of paragraph 1 of article 40 of CRSA, any citizen of any other republic who had permanent residence in the Republic of Slovenia and actually lived there on the day of the referendum on independence and sovereignty of the Republic of Slovenia, on 23 December 1990, acquired citizenship of the Republic of Slovenia if within six months from the coming into force of CRSA he filed an application with the competent administrative authority. In the two paragraphs that follow, the legislator provided for two exceptions from this general rule.

13. On the basis of the provision of article 40 of CRSA, then, individual persons were by personal administrative acts granted citizenship of the Republic of Slovenia in a way prescribed by statute, and in this connection the legislator in no way specified that this might be a transitional or provisional solution, or a solution accompanied by special conditions to be fulfilled by individual person, so that acquisition of citizenship would depend on such conditions. This means that in the statute there is no basis whatsoever on which the persons affected could foresee that the decision concerning their citizenship was only temporary. By personal legal act on acquisition of citizenship, legal relationship was established between individual person and the Republic of Slovenia, and the citizenship acquired in this manner is from this viewpoint an acquired right. And it is because of the nature of citizenship, by which the status of individual person with respect to the State is defined, that citizenship is characterized by durability. A statute that would take away citizenship would do it with prospective effect - that is, from the coming into effect of the said statute onwards. Such statute, however, would interfere significantly with legal relations and rights having been established on the basis of previous regulation by statute. Such regulation by statute, it is true, would not have retrospective effect in the sense of the individual provisions of the statute having express retrospective effect, but its enactment would have effects similar to retrospective effect - interference with acquired rights. Revocation of personal administrative acts by which citizenship was acquired would constitute a violation of the principle of legal security and the principle of confidence in the law. Thus, citizenship is a right acquired on the basis of a personal administrative act, and as such, if acquired on the basis of the Constitution and statute, enjoys the protection of law-governed state - regardless of the position on whether citizenship is also a human right which deserves special constitutional protection.

14. The taking away of citizenship by statute would constitute interference with the protection of the right to privacy and of personal rights guaranteed by article 35 of the Constitution, and with the right to personal dignity and safety guaranteed under article 34 of the Constitution. Citizenship creates a comprehensive relation between an individual person and the State in which he lives. An important part of personal rights are linked with citizenship by legal system. Already the Constitution itself grants some human rights exclusively to its citizens. Thus, only citizens are entitled to voting rights, the right to participation in administration of public affairs, the right to petition, the right of a citizen not to be extradited to a foreign country. The Constitution grants the right to social security only to its citizens, and this right has been linked by the legislator with accessibility of accommodation, with various forms of social assistance etc. The legislator has significantly restricted the possibility of employment with respect to persons who are not citizens of the Republic of Slovenia. The taking away of citizenship would thus significantly restrict the possibilities for the development of individual as a personality, and would thus constitute inadmissible interference with his personal rights granted to him under article 35 of the Constitution. For the persons who have acquired citizenship on the basis of article 40 of CRSA have relied on their statuses of citizen. And law-governed state, for its part, must protect human rights, and in a state governed by the rule of law everybody must enjoy the right to safety - that is, also to legal security. If an individual person cannot rely on durability of rights acquired on the basis of statute, with respect to which he was initially informed that they are of durable character, he cannot feel safe against arbitrary interference, on the part of the State, with the so acquired rights. And this also is the meaning of the human right to safety granted in article 34 of the Constitution.

15. On the basis of the foregoing it is evident that the regulation by statute as comprised in the content of the request would be in conflict with articles 2, 34 and 35 of the Constitution, which is why such decision as is contained in section II of the adjudication hereof had to be made. Competent State bodies shall after the publication of the decision act in compliance with the content of the same.

C.

16. This Decision was made on the basis of article 16 of the ARPI by the Constitutional Court in the following composition:

Dr. Tone Jerovšek, President, and Dr. Peter Jambreč, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič, the judges. Section I of the adjudication hereof was adopted with six votes in its favour and three votes against it (votes against were cast by judges Krivic, Snoj and Testen); section II of the adjudication hereof was adopted unanimously. A partially dissenting/concurring opinion was given by judges Krivic and Testen. Concurring opinions were given by judges Šturm and Zupančič.

P r e s i d e n t  
Dr. Tone Jerovšek