



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-406/06
29 March 2007

D E C I S I O N

At a session held on 29 March 2007 in proceedings to review constitutionality instituted by the petitions of Ivan Križamančič of Trieste, Italy, and others, Ebin Tavčar of Dutovlje, and Suzana Mirošič of Lokva and others, all represented by Igor Trebec, attorney at law in Križ, the Constitutional Court

d e c i d e d a s f o l l o w s :

1. The text of Art. 5.5 of the Act on the Amendment to the Lipica Stud Farm Act (Official Gazette RS, No. 79/06) which reads as follows: "with the exception of provisions which regulate the preparation and adoption of a state detailed area plan," is annulled.
2. The petitions for the commencement of proceedings for the review of the constitutionality of Art. 3, Art. 7.1, Arts. 9 and 10 of the Act on the Amendment to the Lipica Stud Farm Act are rejected.
3. The petitions for the commencement of proceedings for the review of the constitutionality and legality of the Program of Protection and Development of Lipica Stud Farm for 2006–2019 No. 32201-1/2006/6 of 13 April 2006 are rejected.

R e a s o n i n g

A.

1. The petitioners challenged Arts. 3, 5, 7.1, 9, and 10 of the Act on the Amendment to the Lipica Stud Farm Act (hereinafter ZKL-A). They substantiated their legal interest by their status as owners of land within the area affected by a cultural monument, as ZKL-A had allegedly determined that their land was in the area affected by the cultural monument and thereby limited their property right. The area affected by the cultural monument is allegedly five times larger than the cultural monument itself. Without any substantiated reasons the

challenged law allegedly regulated the protected area of the cultural monument of Lipica Stud Farm completely differently than it applies to other types of spatial regulation. By the challenged regulation they were allegedly deprived of the possibility of participating in the preparation and adoption of a state detailed area plan. They asserted that the challenged law was inconsistent with Arts. 44, 71, 73, and 74 of the Constitution, with the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Official Gazette RS, No. 62/04, MP, No. 17/04 – hereinafter MKDIOZ), and with systemic laws such as: the Cultural Heritage Protection Act (Official Gazette RS, No. 7/99 – hereinafter ZVKD), the Spatial Planning Act (Official Gazette RS, No. 110/02 et seq. – hereinafter ZUreP-1), and the Agricultural Land Act (Official Gazette RS, No. 55/03 – hereinafter ZKZ-UPB1). The state is allegedly obliged to protect a cultural monument of state significance in a manner as is determined by the legal system. ZKL-A allegedly deviated from that protection. The deviation from the systemic regulation was allegedly not proportional since the challenged law gives the Government the freedom to decide without the participation of the public and the relevant professionals in the performance of certain works in the protected area, and such in a manner that allegedly completely excludes the procedures adopted that regulate such deciding. [Decisions regarding] this cultural monument of national significance, which has been developed for five centuries, are allegedly left to the current political will of the Government and one only minister, in a manner such that this will is allegedly not limited either by the rules of the [relevant] profession or by the public. The provision of Art. 6 of ZKL-A allegedly did not envisage the adoption of a management plan. The prescribed content of the plan allegedly introduced the explicit presumption that the spatial regulation plan is considered to be a state detailed area plan with the exception of provisions that regulate the preparation and adoption of the state detailed area plan. That provision was allegedly inconsistent with the principle of legality. The management plan was allegedly prepared by the manager of Lipica Stud Farm himself. Thereby the profession and the public services in the area of cultural heritage protection were allegedly excluded from such. The implementers of spatial planning, the public, and the local community were all allegedly excluded. Due to such exclusion of the public the challenged law was allegedly inconsistent with MKDIOZ. By leaving cultural heritage protection to the manager and the Government, the national heritage could not be protected and its endangerment prevented. ZKL-A allegedly did not consider the mandatory uniform system of protection, which requires consideration of professional conceptions, opinions on cultural protection, conditions, and consensuses, which is why it was allegedly inconsistent with the provisions of Art. 44 to Art. 47 of ZVKD. The petitioners also challenged Art. 7 of ZKL-A as it was allegedly inconsistent with Art. 73 of the Constitution and Art. 48 of ZVKD, since in the protected area it prohibits any act or omission of any act which would entail endangerment, damage to, or worsening of a cultural monument, and at the same time allows for exceptions to be determined by a management plan. This allegedly entails that by means of the adopted management plan some act or omission of some act could be enabled that endanger the cultural monument itself. According to Art. 3 of ZKL-A, the decision to place the group of foals into the category of movable cultural heritage was allegedly within the exclusive competence of the Professional Council of Lipica Stud Farm. Such a regulation was allegedly inappropriate as in such a manner the herd could be reduced by half only by a decision of the Professional Council without considering the opinion of the cultural-protection and stockbreeding professions. The regulation of Art. 3 of ZKL-A was allegedly also inconsistent with the provisions of the Stockbreeding Act (Official Gazette RS, No. 18/02 – hereinafter Zživ). The petitioners also challenged Art. 10 of ZKL-A due to its inconsistency with the provisions of Chapter IV of ZKZ-UPB-1, which regulates the lease of farmland completely differently, and Art. 9 of ZKL-A, which allows that the state perform

food, hotel, and tourist services in a public institute, which is allegedly inconsistent with Art. 74 of the Constitution.

2. The petitioners also challenged the Program of Protection and Development of Lipica Stud Farm for 2006–2010 (hereinafter PVR), as by that act the professional foundations from 2000 and the system of protection of the cultural monument were allegedly modified and on the basis of the changed system of protection conditions for the preparation of the spatial regulation were formulated. PVR allegedly regulated the use of farmland for a golf course inconsistently with Arts. 4 and 7 of ZKZ-UPB1, which determine the use of farmlands in conformity with their purpose (in the last five hundred years, for horses). The farmlands were allegedly intended for agricultural production and not for playing golf. The public institute of Lipica Stud Farm has allegedly already prepared a project which was elaborated by a foreign designer of golf courses. Furthermore, heavy machinery was allegedly already being used in the area of the cultural monument. Damage to the cultivated Karst landscape has allegedly already been initiated by extending the golf course. By the challenged acts the state and Lipica Stud Farm have allegedly changed the protective systems, excluded the competent professional cultural heritage protection service from decision-making, and at the same time also the public and the local community.

3. In the opinion of the National Assembly, the petitioners did not demonstrate a legal interest to initiate a constitutional review. Concerning the contents of the assertions, the National Assembly in its reply stated that it entirely agreed with the reasons provided by the Government in its opinions of 19 October 2006 and 24 October 2006. Additionally, it emphasized that the [necessity of the] different regulation of the cultural monument of Lipica Stud Farm cannot be disputed. ZVKD allegedly presupposes that a system of protection is already determined by the act declaring a monument. Such different regulation allegedly stemmed from the character of cultural monuments which a "general" act cannot take into consideration. The basic principles allegedly apply to all monuments. The National Assembly stated that the petitioners tried to substantiate their petition particularly concerning Arts. 5 and 7 of ZKL-A. The assertion of the petitioners that according to Art. 11 of ZKL-A, PVR has the nature of a state detailed area plan is allegedly unsubstantiated. Art. 11 of ZKL-A allegedly only determined that PVR would apply until the adoption of a plan of management which would also be the basis for potential interferences with the protected area of the cultural monument.

4. In its opinion of 19 October 2006 the Government explained that ZKL-A is a special law that regulates the cultural landscape of the Karst, the herd of Lipizzaner horses, as well as the built and artistic heritage as the protected area of Lipica Stud Farm. The general provisions of ZVKD allegedly also applied to Lipica Stud Farm where ZKL-A as a *lex specialis* does not determine otherwise. Art. 2 of ZKL-A allegedly also determines the area affected by the cultural monument, and such to the same extent as was prior to that determined by the Ordinance on the Determination of the Area Affected by Lipica Stud Farm (Official Gazette RS, No. 62/05). The Government allegedly had statutory authorizations to adopt spatial implementing plans which also include the spatial regulation plan as a composite part of the management plan. The Government asserted that as the highest authority of executive power it must ensure the effective implementation of an adopted developmental policy and other policies in the area of a cultural monument of state significance. In the part in which the cooperation of the professional public is necessary, such cooperation was allegedly not excluded. The professional public and the public cultural heritage protection service were allegedly included in the adoption of the spatial regulation plan in a manner such as it is

regulated by the regulations and standards for including the professional public in spatial regulation procedures, including the provisions of Arts. 40 to 47 of ZVKD and of the Nature Preservation Act (Official Gazette RS, No. 56/99 et seq. – hereinafter ZON) in the part relating to the preservation of natural assets, and of the Environmental Protection Act (Official Gazette RS, No. 41/04 – hereinafter ZVO-1) in the part relating to environmental protection. The procedure for preparing and adopting the spatial regulation plan has allegedly not commenced yet. In accordance with Art. 5 of ZKL-A, the institution of a management plan was allegedly introduced, which is to be adopted by the Government as the basis for securing the public benefit of the protection of the cultural monument and the breeding of Lipizzaner horses. What was allegedly emphasized in that provision was the public benefit that the Government pursues in making decisions for the area of Lipica Stud Farm. By adopting these developmental documents the general regime in the area affected by the cultural monument was allegedly determined, which also included the right of pre-emption of the state. The exercise of the right of pre-emption allegedly enabled the widening of areas for the carrying out of the public service of the protection of the cultural monument and the breeding of Lipizzaner horses. The management plan for the cultural monument was allegedly prepared on the basis of Art. 5 of ZKL-A, whereby in the elaboration of such the Government allegedly considered all regulations that deal with the management of property owned by the Republic of Slovenia. The provision of Art. 7 allegedly regulated the general prohibition of detrimental treatment of a cultural monument. Concerning the exceptions that would be regulated by the management plan, it was allegedly too early to make any conclusions with regard to the fact that such issues would be resolved contrary to the protection of the cultural monument. Furthermore, the provision of Art. 3 of ZKL-A, which in extraordinary cases enables the selective exclusion of foals prior to the completion of their fourth year of age, was allegedly not inconsistent with the Constitution. The Government explained that the competence to carry out such selection upon the proposal of a commission composed of experts in the area of stockbreeding pertains to the Professional Council of Lipica Stud Farm, which is allegedly composed of all experts who are important for this cultural monument. This Professional Council allegedly exceptionally decides on the selective exclusion of a foal before it reaches four years of age only if such is not appropriate for further breeding. The decision is thus allegedly entirely made by the profession capable of dividing foals into the categories of above average, average, and below average foals. Regarding the challenged provisions of Art. 10 of ZKL-A, which regulates such lease and sublease, the Government explained that ZKL-A is a *lex specialis*, which due to the purpose of the law (the protection of a cultural monument of national significance) gives priority to those activities that are necessary for the carrying out of the public service. The challenged provision of Art. 9 of ZKL-A was not allegedly inconsistent with Art. 74 of the Constitution, as the public institute of Lipica Stud Farm, in addition to the public service, also carries out food, hotel, and tourist services, which is allegedly enabled by Art. 18 of the Institutes Act (Official Gazette RS, No. 12/91 et seq. – ZZ). Pursuant to Art. 31 of the Realization of the Public Interest for Culture Act (Official Gazette RS, No. 96/02 – ZUJIK), public institutes are allegedly financed also from non-public sources which providers of services acquire by performing other activities.

5. The Government stated that PVR was adopted on the basis of ZKL, by which the program of the protection and development of Lipica Stud Farm has been regulated for the medium-term period from 2006 to 2010. According to the transitional provision of Art. 11 of ZKL-A, PVR was allegedly to be applied until the adoption of a management plan. PVR allegedly neither substantively nor formally corresponds to the management plan, which is to contain a spatial regulation plan. In Chapter 7 of PVR the Government allegedly determined the regime of the cultural monument's protection. ZVKD allegedly prescribed professional conceptions

only for the procedure of preparing spatial acts. PVR was in terms of its character allegedly a programmatic-developmental document. Its implementation was allegedly subjected to concrete acts which are issued in special procedures, in which not only the authorities which are to make administrative acts participate but also the competent Institute for the Protection of the Cultural Heritage of Slovenia. In preparing PVR the drafters allegedly considered the professional conceptual outline of the Institute for the Protection of Cultural Heritage of 2000 and the Program of the Protection and Development of Lipica Stud Farm, which applied from 2000 until 2005, in the parts which it evaluated were still relevant. PVR allegedly did not have only the character of a spatial act but only determined the concept of the development of Lipica Stud Farm.

6. In its opinion of 24 October 2006 the Government stated that the petitioners who are owners or co-owners of real estate in the area affected by the cultural monument perhaps do have an actual interest, however, they do not have a legal interest, which must be fulfilled in order to challenge acts of general importance before the Constitutional Court. ZKL-A was allegedly a special law which determines the area of Lipica Stud Farm (this includes the entire protected area of Lipica Stud Farm with the cultural landscape of the Karst, the herd of Lipizzaner horses, and the built and artistic heritage) and the area affected by the cultural monument. PVR was allegedly a general act adopted on the basis of ZKL, not on the basis of ZKL-A, and as such it cannot be considered the legal basis for interferences with the environment that are considered to be buildings.

7. On 26 October 2006 the Ministry of Culture (hereinafter the Ministry) also sent its explanations. It explained that ZKL-A had been adopted on 14 July 2006, however, executive regulations have not yet been adopted. For a majority of cultural monuments there is allegedly no need to adopt a special law as for the protection of a cultural monument ZVKD provisions suffice. Notwithstanding that, for Lipica Stud Farm such would allegedly be necessary due to its special character. The Government allegedly adopted PVR on the basis of ZKL, and not pursuant to the provisions of the challenged law. By ZKL-A and PVR the business operation and management of the public institute of Lipica Stud Farm were allegedly transparently regulated. PVR allegedly regulated the management of the property of Lipica Stud Farm. In cooperation with competent ministries and the Government, Lipica Stud Farm allegedly planned important projects exactly on the basis of ZKL-A, PVR, and other acts which were still to be adopted in connection with such. In reaching strategic decisions the competent ministries and the Government allegedly respected the position of the professional public.

8. Upon the request of the Constitutional Court, Lipica Stud Farm explained that, on the basis of location information, the Municipality of Sežana was renovating the golf course, arranging the pastures, and reconstructing the grain elevators and the walls below the mansion. For these works a building permit was not necessary, which was allegedly established by a building inspector and a cultural heritage protection inspector.

B. – I.

9. By Order No. U-I-406/06 dated 26 October 2006, pending its final decision the Constitutional Court suspended the implementation of the part of Art. 5.5 of ZKL-A which reads as follows: "with the exception of provisions that regulate the preparation and adoption of a state detailed area plan," and at the same time decided that, pending the final decision by the Constitutional Court, PVR must not be applied as the basis for issuing permits to interfere with the environment.

10. The Constitutional Court joined the petitions of Etbin Tavčar and Ivan Križmančič and others due to joint consideration and deciding, and sent them for a reply to the National Assembly. Then it joined with them also the petition of Suzana Mirošič and others with the same contents, which is why it did not send this petition for reply to the opposing party as it already had all opportunities to respond to all the asserted inconsistencies of ZKL-A with the Constitution. According to the established case law of the Constitutional Court, the petitioners who are owners of land in the area affected by the cultural monument concerning which interferences with the environment have been envisaged, demonstrate a legal interest to challenge ZKL-A. As the assertions in the petitions do not vary essentially in terms of contents, the Constitutional Court did not address the issue of the legal interest of the other petitioners. The Constitutional Court accepted the petitions and with regard to the fact that the conditions determined in Art. 26.4 of the Constitutional Court Act (Official Gazette RS, No. 15/94 – hereinafter ZUstS) were fulfilled, it proceeded to decide the case on its merits.

11. By the challenged ZKL-A a spatial regulation plan for the protected area as a composite part of the management plan was envisaged. According to Art. 5 of ZKL-A, this plan of spatial regulation is considered a state detailed area plan as determined by spatial planning regulations, with the exception of the provisions that regulate the preparation and adoption of the state detailed area plan. By such a plan the purpose, function, location, size, and design of buildings are determined, and as such it is the legal basis for a permit to interfere with the environment.

12. In 1992 the Municipality of Sežana declared the area of Lipica Stud Farm together with the basic herd to be a regional park, by the Ordinance on the Declaration of Natural Parks and Cultural Monuments in the Area of Sežana Municipality (Official Reports of Primorske novice, No. 13/92). By ZKL this area, together with the herd of Lipizzaner horses, the area of cultivated Karst landscape, and the parts of the cultural monument represented by the building and artistic heritage, was declared to be a cultural monument of national significance and, simultaneously, the ownership of this protected area was transformed. The goals and principles of ZKL were particularly that the entire Lipica estate with the herd of horses, the cultivated landscape, the artistic and building heritage, as well as the tourist and sports objects, constituting a cultural and economic whole, should be preserved, and that Lipica Stud Farm, the Lipizzaner horses, and Slovenia become more recognizable in the world. For the entire protected area of Lipica Stud Farm the elaboration of a spatial implementation act was envisaged for which the Program of Preparation of a State Detailed Area Plan for the Protected Area of Lipica Stud Farm (Official Gazette RS, No. 82/03 – hereinafter the Program of Preparation) had already been adopted. It was determined in the Program of Preparation that variant solutions should be made, together with a comparative study in which these various solutions would be compared from the aspects of protection, functionality, economy, and their acceptability for the local environment. However, the procedure for the preparation and adoption of the spatial implementing act has not been concluded.

13. The area of Lipica Stud Farm was included in the Regulation on Special Protected Areas (the Natura 2000, Official Gazette RS, No. 49/04 et seq. – hereinafter Natura 2000). According to the Rules on the Determination and Protection of Natural Resources (Official Gazette RS, No. 111/04 et seq.), pastures and woods in the framework of Lipica Stud Farm are natural resources of local significance. This entails that the cultivated Karst landscape is not only a cultural monument but is also considered to be a cultivated natural resource.

14. The petitioners alleged that the challenged law regulated without substantiated reasons the protected area of the cultural monument of Lipica Stud Farm completely differently than it applies to other spatial regulations in accordance with ZUreP-1. Therefore, by such regulation they were allegedly deprived of the possibility to participate in the preparation and adoption of the state detailed area plan. They opined that the challenged provision of Art. 5 of ZKL-A was inconsistent with MKDIOZ.

15. Pursuant to ZKL-A, the spatial regulation plan is only an integral part of the management plan of Lipica Stud Farm, which is prepared by the management itself and adopted by the Government, given that ZKL-A does not determine the form of such an act (be it a regulation, ordinance, or a business operation act). The spatial regulation plan is considered to be a state detailed area plan in accordance with spatial planning regulations, with the exception of provisions on the preparation and adoption of such a plan. This entails that the procedure for preparing and adopting the spatial regulation plan is not carried out in accordance with ZUreP-1, although such is considered to be a state detailed area plan, and by ZKL-A the procedure is not prescribed at all. From the legislative documents (EPA 939-IV), which the Constitutional Court examined, it follows that the procedure for the preparation and adoption of the state detailed area plan – as it applies to the spatial planning of large infrastructural buildings (e.g. highways, railways, or power plants) which deal with sensitive questions of placing such objects into the environment – is inappropriate as regards Lipica Stud Farm. The reason for such is, first, in that this protected area is entirely owned by the state and, second, in that the matters concern the directing of changes which lead to the improvement of monument values and of the carrying out of a public service. Thus, such procedure as determined by the spatial planning regulations would be an obstacle to active protection. From the legislative documents it does not follow how the participation of the public would be ensured in the adoption of the spatial regulation plan.

16. In its opinion the Government explained that as the highest authority of executive power it must provide for the effective implementation of a developmental policy in the area of a cultural monument of national significance, however, it does not exclude the participation of the professional public where necessary. The National Assembly replied that different regulation of the cultural monument cannot be disputable since ZVKD prescribes the basic principles of the protection of cultural monuments, and the system of protection is regulated by an act of declaration. Art. 12 of ZVKD determines that a monument acquires its legal status by the act of declaration. In general, acts declaring monuments of national significance are adopted by the Government. ZKL-A is an act of declaration and at the same time prescribes the special spatial regulation of the protected area, the management of real estate and movable property, and the transformation of the public institute's status. The Ministry of Culture explained that for most cultural monuments there is no need to adopt a special law since ZVKF provisions suffice, however, for the cultural monument of Lipica Stud Farm such is necessary due to its specific nature. In the case at issue it is not disputable that the area of Lipica Stud Farm is protected by law, the petitioners' allegations only refer to the procedure for the preparation and adoption of the spatial regulation plan that is not determined according to ZKL-A, although it is considered to be a state detailed area plan.

17. In the procedure for the preparation and adoption of spatial acts the participation of the public has been established as a standard for more than forty years. The public's participation in such is also regulated in other laws [protecting the environment]: i.e. ZVO-1, ZON, the Forests Act (Official Gazette RS, No. 30/93 et seq. – ZG), and the Waters Act (Official Gazette RS, No. 67/02 et seq. – ZV-1).

18. The Republic of Slovenia signed the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters – the Aarhus Convention – on 25 June 1998 during the fourth ministerial conference "The Environment for Europe" in Aarhus, Denmark. It entered into force in international law on 30 October 2001[1]. The National Assembly ratified it on 20 May 2004. This entails that, in accordance with Art. 153.2 in conjunction with Art. 8 of the Constitution, from the day it entered into force [in domestic law] its provisions have been binding on the National Assembly regarding the adoption of laws. This convention is entirely intended to encourage the development of participative democracy, and recognizes to every person of the present generation and future generations the right to live in an environment that is appropriate for his or her health and well being. MKDIOZ provides for the right to access information on the environment, the possibility to participate in decision-making procedures, and free access to legal remedies. MKDIOZ introduced minimum standards that must be considered by signatory states in ensuring the mentioned three groups of rights. Art. 7 of it determines the participation of the public in plans, programs, and policies in connection with the environment. Art. 8 determines the participation of the public in preparing executive regulations and legally binding normative acts of general validity. According to this provision, every state must strive to encourage the effective participation of the public in the preparation of executive regulations by public authorities which can have an important impact on the environment. In order to do this it is necessary to determine a period of time which is long enough for effective participation, to publish a draft act or announce it in some other manner, and to give the public the possibility to express its opinion directly or through its representative consultative bodies. The result of public participation must be taken into consideration as much as possible. The petitioners alleged that by the challenged regulation their participation in the procedure for preparing and adopting the spatial regulation plan was prevented although their land is located in the area affected by the cultural monument. In its opinions the Government asserted that the principle of the mandatory consideration of the opinions of owners of neighboring land does not apply in the event of a spatial regulation plan. The petitioners did not in fact allege that, but argued that due to such regulation they were prevented from participating in decision-making, which is a well-established standard in environmental issues and which the state obliged itself to do upon ratifying MKDIOZ. The National Assembly did not comment at all on this allegation of the petitioners. Similarly, the Government did not explain in what manner the participation of the affected and other public was ensured in the procedure for adopting the spatial planning plan.

19. In accordance with MKDIOZ, the general purpose of the participation of the public is that it is given the possibility to influence the selection of the proposed contents [of the plan]. Environmental protection and spatial regulation are areas which affect all community members. Public participation does not only entail determining rules, but also requires that the authority inform the interested public of certain issues, enable its participation, and consider its opinion to a certain extent in reaching the final decision. Therefore, procedural rules for the inclusion of the public should be determined. The procedure for the preparation and adoption of a spatial regulation plan is not prescribed by the challenged provision, and the procedure that is conducted according to spatial planning regulations is explicitly excluded although the spatial regulation plan is considered to be a state location plan.

20. Merely the fact that it concerns the spatial regulation of state property for which European funds will be used cannot be a justified reason to exclude the public from decision-making.

Similarly, the prescribed procedure cannot be an obstacle to the active protection of a cultural monument, as is stated in the legislative documents. It follows from the Government's opinion that in the elaboration of the spatial regulation plan it will consider all applicable regulations that deal with the management of property owned by the Republic of Slovenia. Irrespective of the ownership of land, spatial planning always concerns a conflict of interests between development and protection, and for this very reason the procedure for preparing and adopting a regulation must be transparent such that procedural rules on the inclusion of the public in the procedure (the making of comments and the debating of such) are determined. Therefore, the procedure for the adoption of the spatial regulation must be determined and the professional, affected, and other public must be involved in such so that an optimal solution is reached in order to pursue sustainable spatial development and not the dominance of one activity over another. This concerns a conflict of interests between cultural heritage protection and the economic development of the public institute of Lipica Stud Farm.

21. By the challenged regulation of the spatial regulation plan Lipica Stud Farm is ensured complete autonomy in the planning of its spatial development without public participation, thus it is free to pursue its own interests. However, such spatial planning enables the dominance of certain interests at the expense of a balance of developmental and protective needs and other requirements of sustainable spatial development. Thus the only correct place to harmonize different spatial interests is an act which provides for active public participation in the preparation and adoption procedure, not a spatial regulation plan as prescribed by Art. 5 of ZKL-A.

22. As Art. 5.5 of ZKL-A is inconsistent with MKDIOZ in the part in which for the preparation and adoption of a spatial regulation plan it excludes the procedure determined by spatial planning regulations, the Constitutional Court annulled it. As the Constitutional Court annulled the challenged regulation already on the basis of the finding that such was inconsistent with MKDIOZ, it did not need to review the petitioners' other allegations (Item 1 of the operative provisions).

B. – II.

23. The petitioners challenged Art. 9 of ZKL-A in the part in which it provides that an individual department of the public institute (the Tourism Department) also performs the activity of selling goods and a public service on the market, the provision of Art. 10 of ZKL-A, which provides that Lipica Stud Farm may lease real estate that is not intended for carrying out the activities of a public service, the provision of Art. 3 of ZKL-A, which enables the selective exclusion of an individual stallion from the herd of Lipizzaner horses, and Art. 7.1 of ZKL-A, which allows that the management plan determines exceptions to the prohibitions stated as examples.

24. In conformity with Art. 162.2 of the Constitution, anyone who demonstrates legal interest may request the initiation of proceedings before the Constitutional Court. Art. 24.2 of ZUstS determines that legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with his rights, legal interests, or legal position. According to the established case law of the Constitutional Court, the legal interest must be direct and concrete,

and the possible granting of a petitioner's proposal must lead to an improvement of his or her legal position. The petitioners cannot demonstrate their legal interest for the review of the conformity of ZKL-A with the Constitution merely by generally pursuing a different normative regulation of cultural heritage protection, the lease of land, and the status of the regulation of the public institute of Lipica Stud Farm. Therefore, the Constitutional Court rejected the petitions in this part (Item 2 of the operative provisions).

B. – III.

25. According to Art. 160 of the Constitution, the Constitutional Court is inter alia empowered to decide on the conformity of laws with the Constitution, on the conformity of executive regulations of local communities with the Constitution and laws, and on the conformity of general acts issued for the exercise of public authority with the Constitution, laws, and executive regulations.

26. The petitioners challenged PVR since, on the basis of Art. 11.1 of ZKL-A, it applies until the adoption of a management plan determined in Art. 5. Thus, they opined that on the basis of Art. 11 of ZKL-A it is already possible to interfere with the environment in the area of the cultural monument. According to the Government's opinion, PVR does not have the character of a spatial act and also does not contain a location or other spatial regulation.

27. PVR does not have the character of a spatial act and as such it cannot be considered to be the legal basis for interferences with the environment. PVR is only a programmatic document of Lipica Stud Farm, and cannot be a legal basis for changing the status of agricultural and forest land into land intended for recreational purposes. Pursuant to Art. 11.1 of ZKL-A, PVR applies until the adoption of the management plan, a constitutive part of which is also the spatial regulation plan for which the Constitutional Court already established an inconsistency with MKDIOZ. Already in terms of its contents, PVR is not a state location plan. Thus, the mere extension of its validity on the basis of ZKL-A does not entail that it becomes a regulation and may be applied as such.

28. As the Program is neither a regulation, nor a general act issued for the exercise of public authority, the Constitutional Court is not empowered to review it. Accordingly, it was necessary to reject the petitions in this part (Item 3 of the operative provisions).

C.

29. The Constitutional Court reached this Decision on the basis of Arts. 43 and 25 of ZUstS and Art. 46.3.3 of the Rules of Procedure of the Constitutional Court (Official Gazette RS, Nos. 93/03 and 98/03 – corr.), composed of: Dr. Janez Čebulj, President, and Judges Dr. Zvonko Fišer, Lojze Janko, Milojka Modrijan, Dr. Ciril Ribičič, Dr. Mirjam Škrk, Jože Tratnik, and Dr. Dragica Wedam Lukić. Judge Marija Krisper Kramberger, LL.M., was recused from deciding in this case. The Decision was reached unanimously.

Dr. Janez Čebulj

President

Note:

[1] Multilateral treaties deposited with the Secretary-General-Treaty I-XXVII-43. asp, (www.unece.org/env/pp/ctreaty.htm, 22. 3. 2007).