



**REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE**

Številka: U-I-22/98

Datum: 22.1.1998

D E C I S I O N

At the meeting of 22 January 1998 concerning the procedure of adjudicating the initiatives of the Society of Tax Consultants of Slovenia from Ljubljana, represented by its president Ivan Simič, and the company Kontrakt & Plus d.o.o., Ljubljana, the Constitutional Court

made the following decision:

1. Article 8 of the Act on Amendments and Supplements to Social Security Contributions Act (Official Gazette of RS, No. 3/98) shall be abrogated.

2. The Act on Amendments and Supplements to Social Security Contributions Act came into force on the day following its publication in the Official Gazette of the Republic of Slovenia. 3. This decision shall come into effect on the date of its promulgation.

R e a s o n s:

A.

1. The Society of Tax Consultants of Slovenia and the company Kontrakt & Plus d.o.o., Ljubljana, dispute the Act on Amendments and Supplements to Social Security Contributions Act (hereinafter: "the ZPSV-B"). As the Act was published on 17.1.1998 and came into force on 1.1.1998, it is claimed to be in conflict with articles 154 and 155 of the Constitution. The initiators propose to the Constitutional Court to abrogate the Act. They also propose to the Constitutional Court, pending final decision of the Court, to stay the disputed Act.

2. By way of reply, the National Assembly sent two opinions of the Committee for Finance and Monetary Policy and the Secretariat for Legislative and Legal Matters given by the same on the occasion of their reconsideration of the disputed law.

The provision of article 8 of the ZPSV-B is claimed not to have been conceived, either regarding its text or meaning, so as to have retrospective effect. From the viewpoint of article 154 of the Constitution, the provision has supposedly become controversial after the National Assembly had to reconsider the ZPSV-B as the result of the veto by the National Council. Both bodies of the National Assembly, thus, adopted a position that in connection with the coming into force of the ZPSV-B, the provision of article 154 of the Constitution should be applied, according to which a statute, regulation or by-law shall come into effect fifteen days after its proclamation, unless otherwise provided in the same.

B.

3. The Constitutional Court accepted the initiative and, with conditions specified in paragraph 4 of article 26 of Constitutional Court Act (Official Gazette of RS, No. 15/94 - hereinafter: "the ZUstS") fulfilled, proceeded to decide on the merits of the case.

4. The initiators dispute the entire statute, but they have only substantiated the claim of disagreement of the provision of article 8 of the ZPSV-B with the Constitution. For this reason, in the process of adjudication the Constitutional Court confined itself to the evaluation of constitutionality of the said provision.

5. The provision of article 8 of the ZPSV-B violates article 154 of the Constitution, according to which laws and regulations must be proclaimed prior to their coming into force. The ZPSV-B was published in the Official Gazette of RS, No. 3/98, of 17.1.1998 and came into force, in accordance with the provision of article 8, on 1.1.1998. As in article 8 of the ZPSV-B a day when the Act was not published yet had been set as the date of the coming into force of the Act, by this the provision of article 154 of the Constitution was violated.

6. With the abrogation of the final provision of the ZPSV-B, which set the effective date, the question arose of when did the Act come into force. From article 8 of the Act it unambiguously follows that the intention of the legislator was not to set as effective date the 15th day following the publication but that he made use of the possibility granted by the Constitution to himself provide otherwise. Thus, the Constitutional Court followed the intention of the legislator, that the Act should apply throughout the year 1998, and, consequently, abrogated the provision of article 8 only in so far as this provided that the ZPSV-B should come into effect prior to its publication, that is, prior to 17.1.1998. 18.1.1998 as the effective date, thus, is not in disagreement with article 154 of the Constitution, according to which a law or regulation may come into effect the day following its publication.

7. The fact that what is involved is a statute by which additional funds should supposedly be secured for the 1998 national budget (Journal, No. 59/97) and, that, as the result, the statute was considered in expedited procedure, justifies the conclusion that the legislator wanted the ZPSV-B to come into effect as soon as possible. In accordance with the principle of minimum interference with the acts of the legislator, the Constitutional Court abrogated the provision of article 8 of the ZPSV-B and set as the effective date of the Act the first day following its publication in the Official Gazette of the Republic of Slovenia. The aim of the legislator, that is, the coming into force of the ZPSV-B as soon as possible, is undoubtedly reasonable and legitimate. What is in disagreement with the Constitution is just the means used by the legislator, that is, the effective date of amendment of the statute. This is why just this means had to be excluded from the legal system.

8. Thus, the Constitutional Court did not set the effective date of the Act. Namely, the ZPSV-b was in force from 1.1.1998, for an unconstitutional provision is also in force until annulled in accordance with the prescribed procedure of the Constitutional Court. As, having regard to article 154 of the Constitution, a statute cannot come into force prior to being published, the Act had to be abrogated by the Constitutional Court for the period until the day set by the Constitution as the first possible effective date of a statute. The decision of the Constitutional Court thus only means that prior to that date the Act could not have been in force. The Constitutional Court just deprived the Act of its validity in the period from 1.1.1998 until 17.1.1998.

9. Since the Constitutional Court abrogated the provision of article 8 of the ZPSV-B if only because the same was in disagreement with paragraph 1 of article 154 of the Constitution, constitutional review of this provision from the viewpoint of prohibition of retrospective effect of legal acts (article 155 of the Constitution) was unnecessary.

C.

10. This Decision was made on the basis of article 43 of Constitutional Court Act by the Constitutional Court in the following composition: Dr. Lovro Šturm, President, and Dr. Miroslava Geč - Korošec, Dr. Peter Jambrek, Dr. Tone Jerovšek, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Lojze Ude, Franc Testen, and Dr. Boštjan M. Zupančič, the judges. Item 1 of the adjudication was adopted by unanimous decision, item 2 was adopted with five votes in its favour and four against it (votes against were cast by judges Krivic, Snoj, Testen and Ude), and item 3 of the adjudication was adopted with seven votes in its favour and two against it (votes against were cast by judges Snoj and Krivic). A partly dissenting opinion was given by judge Ude, while judge Krivic gave a partly dissenting and a partly concurring opinion.

P r e s i d e n t:
Dr. Lovro Šturm