REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-78/93
18.10.1995

DECISION

At a session held on 18.10.1995, in a proceeding for assessing constitutionality after a public hearing on 31.5.1995, the Constitutional Court

reached the following decision:

1. The provisions of the first, second, fourth and fifth paragraphs of article 14 of the Law on the Fund of agricultural lands and forests of the Republic of Slovenia (Official Gazette RS, no. 10/93 - hereinafter: ZSKZ) are not in conflict with the Constitution.

2. The third paragraph of article 14 ZSKZ is not in compliance with the Constitution insofar as it respects only spatial implementation plan of spatial implementation documents.

3. The provision of the first paragraph of article 17 ZSKZ is not in conflict with the Constitution insofar as it is understood that the Fund of agricultural lands and forests of the Republic of Slovenia or a municipality are bound in compliance with legal conditions and in compliance with reasons cited in the reasoning of this Decision to conclude a purchase or other suitable contract with current holders of rights, or to award them a concession.

4. ZSKZ is not in compliance with the Constitution insofar as it does not regulate the duration of the transitional period to the conclusion of a leasing or other suitable contract or until the award of a concession and the manner of resolving disputes in connection with this.

5. The provision of the second paragraph of article 74 of the Cooperatives Act (Official Gazette RS, no. 13/92) is not in conflict with the Constitution.

6. The National Assembly is bound to remove the discordances with the Constitution cited in points 2 and 4 of the Disposition by 31.12.1995.

Reasoning

A. Proceedings

1. The proceedings in this case were commenced by the submisison of a proposal by the company Lek d.d., Ljubljana, of 30.3.1993, on the basis of article 7 of the Constitutional Law for Implementing the Constitution (Official Gazette RS, no. 33/91) in connection with point 7 of the second paragraph of article 411 of the Constitution of 1974 and the first indent of article 11 of the Law on Proceedings before the Constitutional Court SRS (Official Gazette SRS, no. 39/74 and 28/76).[1]

2. To this case were joined:

- a proposal from the Executive Council of the Municipal Assembly of Koper of 8.4.1993 - by resolution of the Constitutional Court of 22.4.1993,

- a proposal from the Executive Council of the Municipal Assembly of Izola of 20.4.1993 - by resolution of the Constitutional Court of 6.5.1993,

- a proposal of the company Bayer-Pharma d.o.o., Ljubljana, of 28.5.1993 - by resolution of the Constitutional Court of 17/6- 1993,

- a proposal of the Assembly of the Municipality of Tržič of 26.11.1993 - by resolution of the Constitution of 20.1.1993,

- an initiative from the Ruše hunting society of 6.1.1994 - by resolution of the Constitutional Court of 20.1.1994, - an initiative from the building land Fund of the municipality of Kočevje of 1.4.1994 - by resolution of the Constitutional Court of 15.4.1994,

- an initiative from Gozdno gospodarstvo Ljubljana, p.o., Ljubljana, of 23.6.1994 - by resolution of the Constitutional Court of 30.6.1994;

and

- an initiative from Soško gozdno gospodarstvo Tolmin, p.o., Tomin; Gozdno gospodarstvo Postojna p.o., Postojna; Gozdno gospodarstvo Kočevje p.o.; Gozdno gospodarstvo Nono mesto n.sub.o., Novo mesto; Gozdno gospodarstvo Maribor p.o., Maribor of 4.7.1994 - by resolution of the Constitutional Court of 14.7.1994.

3. Lek d.d., Ljubljana, Bayer Pharma d.o.o., Ljubljana and all seven forest managements (gozdno gospodarstvo) with identical applications propose a judgement of the constitutionality of articles 13, 14 and 16 ZSKZ for the same reasons as article 5 of the Privatisation of Companies Act (Official Gazette RS, no. 55/92, 7/93 and 31/93 - hereinafter: ZLPP). The executive council of the Assembly of the municipalities of Koper and Izola proposed a judgement of the constitutionality of article 14 ZSKZ, Lovška družina (hunting society) Ruše a judgement of the first paragraph of article 14 ZSKZ, the building land Fund of the municipality of Kočevje the third paragraph of article 14 ZSKZ, and the Assembly of the municipality of Tržič the fourth paragraph of article 14 ZSKZ and the second paragraph article 74 of the Cooperatives Act (Official Gazette RS, no. 13/92 - hereinafter: ZZad).

4. All the proposers submitted proposals for an assessment of constitutionality prior to the validation of the Constitutional Court Act (Official Gazette RS, no. 15/94 - hereinafter: ZUstS) and under the provisions of its article 81 retain the position of proposers.[2]

The initiators show legal interest in submitting an initiative on the basis of the second paragraph of article 24 ZUstS.[3]

5. The Constitutional Court heard the case at sessions on 1.12.1994, 8.12.1994, 1.6.1995, 30.6.1995, 6.7.1995 and 5.10.1995.

6. The National Assembly answered to the proposal of 6.1.1994.

To the answer was appended the opinion of the Government, or Ministry of Agriculture and Forestry.

7. The president of the Constitutional Court, on the basis of the second paragraph of article 35 ZUstS [4], called a public hearing, to which on the basis of the first paragraph of article 36 ZUstS[5] were invited representatives or (agents) and authorised participants in the proceedings, as well as other persons of which the Constitutional Court believed that their particpation in the public hearing was necessary.

8. At the public hearing on 31.5.1995, the Constitutional Court heard oral statements of representatives or agents and authorised participants as well as the statements of representatives of other invited persons and answers to the questions of the president and judges.

B. Valid legal arrangement

9. From the point of view of a constitutional judgement in the concrete case, of first rank importance is article 14 ZSKZ, articles 13 and 16 of the same law are consequential or contain implementing provisions to article 14 ZSKZ, as well as to article 5 ZLPP and article 74 ZZad.

10. Article 14 ZSKZ determines:

"Agricultural lands, farms and forests in social ownership which did not become the property of the Republic of Slovenia or municipalities according to the Privatisation of Companies Act (Official Gazette RS, no. 55/92) or according to the Cooperatives Act (Official Gazette RS, no. 13/92), and agricultural lands and forests which basic organisations of cooperants obtained for management and disposal in a manner without payment, shall become the property of the Republic of Slovenia or municipalities on the day of validation of this law and, according to its condition on the validation of this law, shall be transferred to the Fund or to a municipality.

Agricultural lands, farms and forests which became the property of the Republic of Slovenia or municipalities according to other regulations shall also be transferred to the Fund or municipalities in a manner, time limit and by procedures determined by this law. These agricultural lands, farms and forests shall be transferred to the Fund or municipalities according to the condition on the day of validation of these regulations.

Unbuilt building land for which there is no valid spatial implementation (building) plan or no executed purchase or transfer to a building land fund shall also be considered agricultural lands and forests under article 74 ZZad, article 5 ZLPP and according to this article. The part of these agricultural lands and forests which on the day of validation of this law are administered by municipalities shall become on the day of validation of this law the property of the municipality in which they lie, and the remaining agricultural lands and forests shall become the property of the Republic of Slovenia on the day of validation of this law.

According to article 5 of ZLPP and according to the first paragraph of this article, agricultural lands, farms and forests which lie in the territory of a municipality and were the property of the municipality on 6 April 1941, shall be the property of the municipality.

The Fund or municipality is the legal successor to the holders of rights to agricultural lands, farms and forests in social ownership under the first and second paragraphs of this article in the part that refers to transferred agricultural lands, farms and forests."

11. The first, second and third paragraphs of article 74 ZZad determine:

"The assets of existing cooperatives and working organisations of cooperants, and basic organisations in cooperatives, whose decision on separation has not become valid, composite cooperatives and cooperative associations, shall become cooperative assets.

Irrespective of the provision of the previous paragraph, agricultural lands and forests which organisations under the previous paragraph obtained without payment shall become the properyt of the Republic of Slovenia on the day of validation of this law and shall be transferred to the Fund of agricultural lands and forests of the Republic of Slovenia.

The transfer of assets from social ownership to the property of cooperatives or the Republic of Slovenia under the previous paragraphs shall not encroach on the rights of the former owners and their legal successors under regulations on the ownership transformation (privatisation) of companies and on denationalisation".

12. From the above cited provisions, it follows:

- that on the day of validation ZSKZ, all agricultural lands, farms and forests in social ownership which had not become the property of the State under ZLPP or ZZad, became their property, according to ZLPP agricultural lands and forests became the property of the State or municipalities irrespective of whether they had been obtained with or without payment, and according to article 74 ZZad those

agricultural lands and forests that existing cooperatives and working organisations of cooperants, basic organisations in cooperatives whose decision on separation had not taken effect, composite cooperatives and cooperative associations had obtained without payment, became the property of the State and were transferred to the Fund;

- that agricultural lands and forests over which basic organisations had been granted management and disposal without payment also became the property of the State.;

- that also unbuilt building land for which there was no valid spatial implementation (building)plan, or whose purchase or transfer to a building land fund had not been executed became the property of the State, which means that all building land on which no object had been built, or which a temporary or subsidiary object had been built, became its property, as well as land on which no object had been completed to the third phase (wind and water tight), and land in excess of functional land area (third paragraph of article 2 of the Law on building lands, Official Gazette SRS no. 18/84 - hereinafter: ZSZ), if there was no valid spatial implementation plan for it (thus irrespective of whether infrastructural facilities existed for it, which are the second group of spatial implementation documents in addition to the spatial implementation plan - article 21 of the Law on arranging settlements and other spatial interventions, Official Gazette SRS, no. 18/84 - hereinafter: ZUNDPP) and if they have not already been transferred or purchased by the Fund for building land.

13. Only the following became the property of municipalities in cases under the previous point:

- those agricultural lands and forests under article 5 ZLPP and agricultural lands and forests of basic organisations of cooperants who were granted management and disposal without payment which lie on the territory of the municipality and were the property of the municipality on 6 April 1941,

- such unbuilt building lands as lie on the territory of the municipality and were managed by the municipality on the day of validation ZSKZ.

C. Statements of participants

14. Lek d.d., Ljubljana, believes that the impugned provisions are in conflict with the Constitution because they encroach on valid relations to material assets under property law, which Lek in compliance with then valid regulations formed by concluding legal business against payment and which were also executed by inscription in the land register in (Lek's) name. The lands which it obtained in this way are transferred to the ownership of the State with the impugned provisions. In the opinion of Lek, state property has thus been formed without a constitutional basis, without it being named in and in a manner which is not envisaged by law. The impugned provisions are thus claimed to encroach on rights obtained by valid legal business and with legally valid decisions, and they have even been alienated without any kind of compensation, which is in conflict with article 69 of the Constitution; and the provision of its article 2, that Slovenia is a state governed by the rule of law, is also claimed to have been violated. The impugned provisions are claimed to be in conflict with article 155 of the Constitution, which determines that no statute or other regulation shall have retroactive effect except in cases in which this is required for the public good, although on the condition that they do not thus encroach on obtained rights.

Lek, in its proposal for assessing the constitutionality of the impugned provisions, stresses that it is a company that obtained the rights in compliance with valid legislation, a legal person that is responsible for its obligations with all its assets, which are composed of material assets, rights and money. It obtained the same ownership rights as with all assets - use, management and disposal. In its opinion, these are already obtained rights of the company and are inscribed in the court register (the company has all authority in legal traffic and is responsible with all its assets) and in the land register (the company is the holder of the right of use). With its alienation, it has been prevented from participating with its full assets in the process of ownership transformation.

Since Lek obtained part of the agricultural lands (against settlement of debt) by legal decision of a state organ, the impugned provisions in Lek's opinion also represent a violation of article 158 of the Constitution.

15. Bayer Pharma d.o.o., Ljubljana, adopts the claims of Lek in its proposal and adds that because of the impugned article 14, the share of private capital of foreign investors, which amounts to 49% of the total capital of the company, is also reduced.

This is claimed also to be in conflict with the Agreement between SFRY and FR Germany on mutual security and encouragement of investment, which is binding on the Republic of Slovenia under article 3 of the Constitutional Law for Implementing the Basic Charter on the Sovereignty and Independence of the Republic of Slovenia.

The proposers Lek and Bayer Pharma also impugn article 5 ZLPP (Official Gazette RS, no. 55/92) in their proposals, a constitutional ruling on which was the subject of case number U- I-77/93.

16. Gozdno gospodarstvo (forest management - hereinafter GG)

Ljubljana believes that the provisions of articles 13, 14 and 16 ZSKZ nationalise the assets of legal persons without a legal basis, or that they are in conflict with the Constitution, which does not recognise nationalisation. It believes that in the system of self-management socialism, calling assets or resources of legal persons (organisations of associated labour or companies) social had only ideological significance, in the substantive sense, the legal persons were and are the owners of the assets. These, in other words, represent their material base, they are the conditions for their existence, performing registered activities and for which responsible in legal traffic.

Article 67 of the Constitution is claimed to have been violated because the transfer of agricultural and forest lands does not guarantee their economic and social function, or it guarantees it to a reduced extent. Its article 69 is claimed to have been violated because, under its terms, an encroachment on ownership rights to real estate is possible only in the public benefit, against compensation in kind or reimbursement. The Constitution does not recognise nationalisation. According to article 71 of the Constitution, the Law shall, for expedient exploitation, define special conditions for the use of land, and Law shall also determine special protection for agricultural land. So in the opinion of the initiator, it is not acceptable that the state should alienate or nationalise ownership or rights (to use) which under social property had all the elements of ownership rights.

In the view of the initiator, the rights that forest managements had as legal persons are obtained rights for them, and an encroachment on them a violation of article 155 of the Constitution. Such an encroachment is also claimed to undermine legal security - security in legal traffic, which would be in conflict with article 2 of the Constitution, which determines that Slovenia is a state governed by law. The initiator also believes that the implementation of the disputed provisions would threaten the social security of workers in forest managements, which would be in conflict with article 50 of the Constitution.

17. The General Association of Forestry of Slovenia lodged an initiative on behalf of seven members (Soško GG Tolmin, GG Lubljana, GG Postojna, GG Novo mesto, GG Kočevje, GG Nazarje, GG Maribor). The initiative is the same as the above cited initiative of GG Ljubljana.

18. The Executive Council of the Assembly of the Municipality of Koper and the Executive Council of the Assembly of the Municipality of Izola proposes the annulment of article 14 ZSKZ, because it is claimed to be in conflict with article 142 in connection with article 146 of the Constitution. The executive councils claim that these are lands which the municipalities obtained in settlement of debt as successor to municipal agricultural land communities or directly on the basis of regulations valid at the time of obtaining it. Among such ways, they mention in particular:

- obtained under the heading of surplus over the agricultural land maximum (a municipality had to pay compensation under regulations on dispossession - article 23 of the Law on agricultural lands (Official Gazette SRS, no. 1/79, hereinafter ZKS) for land which was transferred to a municipality in such a way as a result of inheritance),

- obtained by purchase of private agricultural lands and forests on the basis of valid purchase rights (articles 24 and 25 of ZKS),

- obtained on the basis of contracts of deed of gift under condition of lifetime enjoyment,

- obtained on the basis of transfer into social ownership of inheritances without heir (article 9 of the Law on inheritance, Official Gazette SRS, no. 15/76).

All lands so obtained were transferred to agricultural organisations on the basis of article 60 of ZKS, or longterm leases granted. The result of this in the proposer's opinion is that munical lands are transferred to state ownership by article 14 ZSKZ in conflict with the Constitution.

19. The Assembly of the Municipality of Tržič impugns in its proposal for the assessment of constitutionality, the fourth paragraph of article 14 ZSKZ. On its basis, those agricultural lands which were the property of the municipality on 6.4.1941 shall become the property of the Republic of Slovenia. For this reason, the impugned provision is claimed to be in conflict with article 2 of the Constitution, whereby Slovenia is a state governed by the rule of law, since the principle of legal security is violated. In addition, there is claimed also to be an encroachment on the obtained rights of the municipality and thus a violation of article 155 of the Constitution.

The proposer also impugns the second pargarph of article 74 ZZad, whereby agricultural lands and forests which existing cooperatives and other subjects under the first paragraph of the same article obtained without payment, becomes the property of the Republic of Slovenia and shall be transferred to the Fund for agricultural lands and forests of the Republic of Slovenia.

It claims that the provision violates the constitutional principle of justice when the mentioned assets are not transferred to the ownership of municipalities insofar as subjects under the first paragraph of article 74 received them from the municipality without payment, and they were their property or they were obtained on payment, even though by the payment of compensation.

20. Lovska družina Ruše impugns in its initiative the first paragraph of article 14 ZSKZ because it is claimed to place hunting societies which obtained agricultural lands on payment, in an unequal position. In other words, in 1976, the initiator obtained the right of use to specific agricultural lands by leasing contract. The impugned provision allows lands obtained by payment only to basic organisations of cooperants.

21. The building land fund of the Municipality of Kočevje in its initiative impugns the third paragraph of article 14 ZSKZ, in the part which determines that land for which there is no valid spatial implementation plan or there has been no purchase by or transfer to the Fund of building land shall be considered agricultural land. In the opinion of the initiator, the impugned provision thus hands to the Fund of building lands, building land and thus the resources of citizens which have been invested in this land through the fund. In the view of the initiator, this is especially problematic in the case of Kočevska Reka, which was a closed area, and it was thus entirely impossible to produce regional planning acts. In addition, it was not possible in this region to transfer building land in the municipal fund of building lands and it was also not possible to issue planning permission. This is claimed to place the citizens of Kočevje in an unequal position to citizens of other municipalities, which would be a violation of article 14 of the Constitution. In the opinion of the initiator, it should have been necessary to respect article 1 of the Law on building lands (Official Gazette SRS, no. 18/84 - hereinafter ZSZ) according to which building land shall be considered to be that which is purposed for building in the medium term plan, and that on which objects have been built for which there is or will be issued the prescribed building permits.

22. The National Assembly clarified their standpoints in relation to the impugned articles ZSKZ, in an answer from 4/1- 1994, to which was attahed also the opinion of the Government of 21/9-1993. The Ministry of Agriculture and Forestries communicated its point of view by a note of 29/7-1993, and stated that it had also been agreed with the Ministry of Economic Relations and Development.

23. The National Assembly states in its answer that with the adoption of constitutional amendment XCIX (Official Gazette RS, no 7/91), the constitutional basis was given for transforming social property into public and other forms of ownership (third point of the amendment). It stresses that social ownership was based on a non-ownership concept and that from it, in relation to this, only specific legally determined entitlements, which in the opinion of the National Assembly cannot mean automatic legal title to classical ownership rights, as an entirely different institution. In relation to this, it is not in its opinion possible to accept the claim that in the case under dispute there is expropriation or the forced transfer of the right to use.

The National Assembly further states in its answer that, under Constitutional Amendments IX to LXXXIX to the previous Constitution, local communities became only temporary holders of rights to lands the administration of which was transferred to them under these (constitutional amendments), with the termination of the agricultural lands communities. Since after the transformation of the present municipalities into local communities, these will lose the attribute of a state nature, in the opinion of the National Assembly, there is no reason that in the context of ownership reform they should be treated any differently than other legal subjects. The specific arrangement in connection with them is defined by the provisions of ZSKZ, taking into consideration the historical circumstances (paragraph 4 of article 14).

The disputed provision of ZSKZ is claimed also not to have retroactive effect, except in the part which relates to resources obtained by administering and disposing of lands and forests in the period from 1/1-1993 to its validation, which is claimed by the National Assembly to have been necessary as the law was formed and adopted from July 1991, because of which the possibilities for taking previous advantage of its provisions were great. However, according to the claims of the National Assembly, this did not thus encroach on obtained rights, since the right to administration and disposal of assets in social ownership is not the same as the right to ownership, which is only being established, also by ZSKZ. Equally, these are claimed not to have been obtained right of disposal of financial resources that social legal persons obtained from the administration and disposal of social land. For these, namely, the law determines an owner. Even in cases in which agricultural lands were awarded in unpaid use by legally binding decision of a state organ, in compliance with the then valid regulations, the impugned provisions are claimed not to violate article 158 of the Constitution, since that determines that rights so obtained may be removed, annulled or changed by law.

In view of the aove mentioned, the National Assembly believes that the impugned provisions of ZSKZ are not in conflict with the Constitution.

24. The government, in its opinion which is attached to the answer of the National Assembly, accepts in entirety the opinion of the Ministry of Agriculture and Forestry. It states the reasons which the National Assembly summarised in its answer, and because of which the impugned provisions of ZSKZ are claimed not to be in conflict with the Constitution.

It states, too, the reasons which led to the legislative solutions which are the subject of assessment of constitutionality. Of these reasons, the most important are: - preventing the fragmentation of areas of agricultural lands and forests and ensuring suitable protection and management of them, especially in improving and maintaining their quality, which requires suitable investment;

- preventing the taking advantage of legislation which arranges the protection, trade and management of agricultural lands (e.g., by the spatial plans of municipalities in which there are large areas of agricultural land among building land - in some more than 1000 hectares, although only around 500 hectares has been built on in the last 1000 years), and thus charging a higher price for such land, which are not fitted with communal infrastructure and are more or less intensively farmed;

- equal treatment of agricultural lands which organisations initially obtained in unpaid use (while they had been formerly nationalised), and after the adoption of the Law on Associated Labour they obtained the right to administration and disposal, and lands which companies bought with funds obtained from cultivating the former; these could not namely be defined as social capital, so purchased agricultural lands share also the same fate as those which were obtained in unpaid use;

- municipalities obtained agricultural lands for temporary administration after the termination of agricultural lands communities (article 12 of the Constitutional Law for implementing constitutional amendments IX to LXXXIX), until an appropriate arrangement in Law; since the law which should have regulated this field was not adopted, until the adoption of ZSKZ municipalities temporarily performed the task of agricultural lands communities;

- with the agricultural lands, they also administered forests and thus managed organisations which were not agricultural or forest managment organisations, and thus even under the previous regulations would have had to transfer them to the Fund of agricultural lands (including agricultural lands which they did not themselves cultivate) or to forest management organisations;

- the Republic of Slovenia provided to agricultural organisations and agricultural lands communities (and later municipalities as their temporary legal successors) money from budget funds for the purchase of agricultural lands to a level of 100% of the purchase price established by an assessor, and also withdrew some sources of financing from the latter.

The government stresses that companies may, if they operate themselves as good managers, continue to cultivate agricultural lands or carry out work in forests, which they managed or with which they disposed, until the validation of the impugned provisions of ZSKZ and the Privatisation Act (article 5). In this, the purchase price for such land, if a company purchases it, is reconciled with the rental price or compensation for a concession. Because of the establishment of state ownership, therefore, companies did not lose rights to the further cultivation of land. The Government claims that the problems are primarily in those organisations and municipalities in which there was the most disorganised state, worse management of land and, above all, the use, administration and disposal of land in conflict with the valid legislation.

D. Relevant decisions of the Constitutional Court

25. The Constitutional Court decided on the constitutionality of article ZLPP by decision U-I-77/93 of 6.7.1995. In this decision. the standpoint of the Constitutional Court in relation to social ownership and social-legal persons which administered such, the positions or rights of such legal persons on the basis of the valid Constitution, has already been reasoned. So in the case under consideration, this standpoint is not repeated, although it refers or is bound to it in entirety.

26. By decision no. U-I-83/92 of 23.6.1993, the Constitutional Court found that the provisions of article 74 of the Cooperatives Act is not in conflict with the Constitution, whereby subjects under the first paragraph of article 74 ZZad (cooperatives) impugned it in that it refers to laws which do not yet exist, which is in conflict with article 1 of the Constitution; the Constitutional Court found that during the time in which it was reaching a judgement on the matter, the necessary legislation had already come into existence. The same provision was therefore impugned from the aspect of the legal interest of subjects from whom property had been dispossessed, while in the case under consideration it is impugned by a subject who believes that this property should have passed to him.

By the same decision, the Constitutional Court found that the provision of article 72 ZZad[6] is not in conflict with the Constitution, for the following basic reasons: "The legislator, together with taking into consideration the origins of basic organisations and working communities composing a cooperative, the special character of ownership relations to their property and the particularities of their status in this connection, and on the basis of authority to transform social property into other forms of ownership defined by amendment 99 to the previous Constitution, may determine ways of transforming the cited basic organisations and working communities directly by law".

27. In case U-I-161/93, the Constitutional Court heard the initiative of a number of workers in forest management companies who impugned article 82 of the Forests Act. By resolution of 31.3.1994, the initiative was not accepted because the initiators did not demonstrate legal interest. In the view of the Constitutional Court, the impugned legislative provision which changes the status of legal persons does not have a direct influence on the rights, interests and legal benefits of initiators such as employees of these legal persons (forest management organisations).

E. First, second and fifth paragraphs of article 14 ZSKZ

28. The impugned article 14 ZSKZ enables the privatisation of agricultural lands, farms and forests in social ownership which are not covered by the provisions of article 5 ZLPP and the second paragraph of article 74 ZZad, and at the same time also determines the criteria for division between state property which shall be transferred to the Fund, and municipal property which shall be transferred to the ownership of municipalities.

29. ZSKZ defined in article14 the state or municipalities as owners of agricultural lands and forests. In this, the administrators to date even retained the right to administration and the right to use (article 17 ZSKZ) and the same "price" for agricultural lands and forests was determined as determined in article 248 (206) of the Associated Labour Act, that is - "the level of the value of investment in these lands or forests", since leasing relations shall be established or a concession granted for it for at least the time "which corresponds to the amortization period of the investment in the land or long-term planting". In addition, along with the payment of rental or compensation for the award of a concession, the purchase price for obtaining land by payment ensures that the payment of the purchase price is reconciled with the rental or compensation.

This means that the impugned provisions to not place current users of social assets in such a position that it be a cause for ceasing their activities, or the liquidation of the legal person.

It is true that ZSKZ (similarly as ZLPP) retains the right of use and management of agricultural lands and forests only to the extent to which the current user cultivates or exploits it himself, and cares for it as a good manager, but such a provision is also dictated by the obligation of the State, which derives indirectly from the Constitution (e.g., article 71) to ensure the expedient exploitation of land. They are thus measures of the legislator which are based on the intention to ensure expedient exploitation of agricultural lands and forests. In the case under consideration,, in other words, it is not a legal provision which restricts in general or excludes the right of ownership of agricultural lands, since only on its basis is ownership constituted. In defining ownership of material objects, the legislator is bound to respect the properties of the material object and its intention.

30. It is not possible to speak of a violation of the constitutional principle of equality before the law if the law determines a different method of privatising a part of social property for which a different legal regime has applied throughout. In this, in the view of the Constitutional Court, already adopted in case U-I-95/91, the principle of equality binds the legislator insofar as in preparing norms he derives (them) from an average treatment and in this relies on predominating cases. The legislator cannot be restricted by untypical cases, since he is creating general and abstract standards. A legal provision which does not take into consideration such untypical cases is not in conflict with the Constitution.

31. The position of forest management organisations in relation to possible privatisation of forests is different from that of agricultural organisations. The Constitutional Law for implementing the Constitution (historically relying on amendment XCIX to the previous Constitution) signifies the constitutional basis of the legislator to arrange the transformation of social ownership into real ownership - which consequentially means also the basis for determining the manner and procedures of ownership transformation of companies and other social legal persons as holders of rights to social property. The fact that ownership transformation was not a "one-off" event but a process which is still taking place means that social-legal persons still exist (along with still existing social property) with all the rights of holders of rights to this social property. With the validation of the new Constitution, existing social legal persons did not automatically become the bearers of all constitutional rights, e.g., the right to private property under article 33 of the Constitution, although their legal position enjoys specific constitutional protection - e.g., in relation to the right to continued existence on the basis of article 74 of the Constitution.

32. This constitutional protection does not prevent the legislator, in the context of privatisation, from prescribing by law the obligatory transformation of status of social legal persons who, under the new constitutional arrangement of property and a market economy, cannot remain any longer in such a form of status, and as such, holders of rights as under the previous socio-economic system. The Constitutional Court has already argued in case no. U-I-77/93 (especially the reasoning in point 58 of

the decision of 6.7.1995), why such a solution would not be in conflict with the Constitution - on condition of course that the envisaged measures do not encroach excessively or disproportionately to constitutionally allowable aims, on the constitutionally protected position of social legal persons.

33. Forest management organisations were transformed under the Forests Act (Official Gazette RS, no. 30/93) such that from the validation of the Forests Act, they continue work as executing forestry companies in compliance with article 82 of this law.

These companies shall conclude with the Government a contract on the division of resources and obligations in relation to sources of funds (assets) and employees. Under article 83 of the Forests Act, the assets of forest management organisations intended for performing activities which shall be performed on the basis of this law by the Institute for Forestry, and the assets of hunting management organisations of associated labour within forest management working organisations, shall be transferred to the ownership of the Republic of Slovenia on the basis of contract. By article 82 are determined the criteria in relation to the division of assets, as well as of employees, and the obligations to sources of funds. Similarly, the law regulates the question of redundant employees and their rights after division.

34. For the reasons cited, in weighing the public benefit which the legislator wished to achieve, and the authorisations of legal subjects on the basis of constitutionally guaranteed freedom of business initiative, the Constitutional Court judged that the legislator's encroachment was in understandable relation to his aims and that the measures determined by article 14 ZSKZ are thus appropriate and not in conflict with article 74 of the Constitution.

For the reasons already cited in the reasoning of case U-I- 77/93, authoristaions (rights) which derive from the right to private property cannot be recognised to social legal persons who had the use of forests and land in social ownership. So article 14 ZSKZ, or the measures prescribed by it, is not in conflict with article 33 of the Constitution, not can the proposers or initiators successfully call on the provisions of articles 67 and 69 of the Constitution in impugning this article.

35. In addition to the particularities in relation to social ownership authorisations (rights) which applied to land, and especially to forests and which reduce the firmness of the constitutionally protected position (deriving) from title to the use of lands and forests in social ownership, in ascertaining the proportionality of the intervention, the court also took into consideration that the intervention is mitigated by the provisions of the fifth paragraph of article 5 ZSKZ. This determines that the Fund of agricultural lands and forests of the Republic of Slovenia, or municipalities, are the legal successors of holders of rights to agricultural lands, farms and forests in social ownership in the part that refers to agricultural lands, farms and forests which have been transferred to them. It is necessary to interpret the cited provision such the Fund is also responsible for all the obligations created in connection with agricultural lands, farms and forests which have been transferred to it under article 14 ZSKZ (the same as applies to land transferred under article 5 ZLPP). Such an arrangement, which the Law on obligatory relations also recognises in the dispossession of assets, to a large extent reduces the gravity of the intervention reprepresented by the impugned legal arrangement.

36. Above all, the intervention is not in conflict with the principle of proportionality if the provision of the first paragraph of article 17 ZSKZ is understood such as is defined in point 3 of the Disposition of this Decision. The Constitutional Court has accepted (similarly as in the case of the provisions of the second and third paragraph of article 5 ZLPP) an interpretation of this provision conforming to the Constitution, since the latter is formulated such that in itself it is possible also to understand it such that affected companies - on the condition of good management under its own administration - are guaranteed the performance of activities as executive forestry companies in exploiting forests (unless returned to rightful claimants to denationalisation) only "until the award of a concession or the conclusion of a leasing or other suitable contract in compliance with the law", which (namely a concession or contract relations) may be concluded under the same conditions with such a company or with any other (company). Such a content of this provision would be constitutionally acceptable only in the case of the position of the affected company not enjoying any kind of constitutional protection. Since this is not the case, the Constitutional Court recognised as complying with the Constitution only such an interpretation of this provision as under the conditions already cited, affected companies are

guaranteed the establishment of concessionary or contract relations and in this way enabled continued management of such land - of course in compliance with the legal arrangement adopted by the legislator on the basis of article 71 of the Constitution.

37. On such an interpretation of this provision, therefore, article 17 ZSKZ retains for forest management companies the right to further management and use and thus the establishment of concessionary or contract relations for performing executing works in state forests, at least for a period corresponding to the amortisation period of investment in the land or longterm planting.

In addition, in payment of rental or compensation for the award of a concession, the purchase price for obtaining the land by payment shall be considered, so that until the settlement of this purchase price, the rental or compensation shall be adjusted. This means that the impugned provisions increase the costs of conducting business, and that those users of social resources who are capable of doing business under conditions of a market economy, are not placed in a position which could be the cause for the termination or liquidation of the legal person.

38. The arranegment of ZSKZ and the Forests Act in this way ensures and protects the ongoing basic social security of workers employed in the companies of the initiators or proposers, and it protects these companies also in relation to the right to continued use of land. The cited laws retained the right to work with former social property, now state property, in a way which enables the position of those who wish to continue their activities as good managers not to be essentially affected.

39. In addition, the finding in point 4 of the Disposition of this Decision, that ZSKZ is in conflict with the Constitution insofar as it does not regulate the duration of the transitional period to the establishment of contract or concessionary relations and the manner of resolving disputes in this connection, was necessary. Since the State may calculate the rental or compensation for a concession only from the establishment of such relations onwards, a company could of course be interested in the transitional period to the establishment of such relations lasting as long as possible. The Denationalisation Act and the Housing Act arranged the similar question differently: by a provision that an appropriate relation is created by the law itself and that its content, if not by contract, shall be defined by the courts in civil proceedings. Since there is no such provision in ZSKZ (nor in ZLPP) the legislator should subsequently (in a set time limit) have regulated the question of how the cited transitional period established by article 17 ZSKZ shall end when there is not and will not be the establishment of contractual or concessionary relations between an affected company and the Fund or municipality, and how to resolve possible disputes in this connection.

40. The provision of article 14 ZSKZ, in the part which determines that agricultural lands and forests shall become the property of the Republic of Slovenia or municipalities, thus signifies an encroachment into the constitutionally protected position of subjects who used agricultural lands and forests as resources in social ownership. However, this encroachment is appropriate and necessary to achieve the legitimate aims of the legislator and for protecting the public interest, and is thus also in compliance with the Constitution.

41. The position was similar also in cases in which agricultural land communities, on the basis of ZKZ or other regulations obtained agricultural lands and forests in social ownership.

According to ZKZ, the bearer of agricultural policies in a municipality was an agricultural lands community (hereinafter: KZS) as a self-management community of agricultural, foodstuffs and forest management organisations of associated labour, hunting organisations, local communities and municipalities and those self-management organistaion and communities which because of their activities were directly interested in the use of land for agricultural purposes, and in its protection (articles 5 and 6 ZKZ). A KZS had its own legally defined sources of finance, and they were also co-financed by agricultural, forest management and foodstuffs organisations of associated labour (article 7 ZKZ). A KZS disposed of land (obtained it, transferred it without payment, sold or leased it) through the agricultural lands fund in municipalities. Even in cases in which compensation was paid for land which was transferred to the fund on the basis of the decree of municipal administrative organs (e.g., compensation for agricultural land which was transferred into social ownership as surplus to the land

maximum, which occurred because of inheritance), it was paid to the KZS (fifth paragraph of article 24 ZKZ).

42. A KZS was therefore not a municipal organ but a form of self-management interest community with its own system of management, planning and financing. It could not, therefore, work on behalf or on the account of municipalities, but as an independent legal person in the interests of its members, according to self-management general acts which it adopted in order to realise its (own) interests.

43. KZS were terminated with the adoption of amendments IX to LXXXIX to the Constitution SRS of 1974. It was determined in the constitutional law for its implementation (Official Gazette SRS, no. 32/89) that the provisions which determine the obligation of founders of self-management interest communities and the provisions on planning in all laws in which they are enumerated, including ZKZ (article 11, point 23) shall cease to apply on the day of its validation.

The cited constitutional law determined in the fourth paragraph of article 12, among other things, that from 1/1-1990, temporarily until the validation of a legal arrangement complying with the Constitution, the performance of the tasks of agricultural lands communities shall be transferred on the municipal level to the municipal executive council. KZS thus transferred working communities into the composition of appropriate republican and municipal administrative organs, which took over with this, therefore, also personnel, working resources and financing of these working communities. On this basis, therefore, municipal ownership or ownership by the Republic, of agricultural lands and forests in social ownership, was still not determined. The constitutional law, namely, determined only taking over the working resources and financing of working communities of ZKZ, which does not include land.

44. Equally, it is not possible to claim that protecting and ensuring expedient exploitation of agricultural lands and forests is a matter which affects only the inhabitants of a municipality - thus a local matter.

45. As a second issue, from the point of view of a possible violation of the prohibition of encroachment into obtained rights, the question is raised of whether the impugned provisions of article 14 ZSKZ encroach on rights which were not obtained in the basis of the right to work with social resources but on the basis of decisions which had become legally binding, or on the basis of legal busines performed for payment.

46. The fact itself that legal persons, whether companies or municipalities, obtained agricultural or forest land by legally binding decision, still does not mean that this land enjoys a different ownership, or management or disposal status. Such land was equated under social ownership with other land. The award (of it) could have been on the basis of payment or not. With unpaid award there is no reason to be found which would demand different treatment for this land than other land in the process of transforming social property. With paid award on the basis of decree, the question is raised of whether it is an obtained right. It is stressed in legal theory that the legally binding nature of an administrative act does not shield the ban against a new decision on the same matter but is an obtained right in which it is not permissible to encroach with a new administrative act. Even the legislator, on the grounds of legal security, is not as a rule permitted to encroach on it. But of course the legislator may encroach on existing legally binding legal relations if this is required by the public interest. The transfer to the State as owner, of land from former holders of rights to use, can be of such justified interest when the state, in the process of transforming social property, follows specific agrarian policies. No support can be found for impugning the constitutionality of transforming the former non-ownership system into one based on ownership. According to the principle of obtained rights, at the most only those could be obtained such as had already been obtained, thus the right to use and management of land, but not an ownership right. ZSKZ did not remove the right to use, since it determines in article 17 that the transfer of agricultural lands, farms and forests shall not effect the rights of those holding rights to continue to use and manage agricultural lands and forests if they cultivate them as good managers, until the award of a concession or the conclusion of a leasing contract in accordance with the law. The fact that ZSKZ determines in article 17 that leasing relations shall be established or a concession awarded for at least the time which corresponds to the amortisation period of the investment in land or long-term planting demonstrates that the legislator protected in entirety the obtained rights and that he ddid not in any way encroach on them. It is additionally necessary to draw attention to the fact that it is not legally permissible to judge the legal

position of social ownership according to the new Constitution, which does not recognise it, except under regulations on its transformation.

47. Even the fact that some companies obtained land by payment does not alter the nature of social ownership. Also in such cases, the law does not determine constitutionally impermissible encroachments, since it ensures compensation for invested resources, thus also the purchase price, with the establishment of leasing relations for the time which corresponds to the amortisation period of investment into land. According to article 17 ZSKZ, the Fund shall determine the amortisation period of investment into land and longterm planting, and measures for calculating the purchase price into the rent payable.

48. The status of hunting societies was regulated and still is regulated by the Law on the protection, rearing and hunting of game and on managing game reserves (Official Gazette SRS, no. 25/76 and 29/86 - hereinafter ZVGLD). A hunting society is a hunting organisation which, among other things, manages game reserves and also deals with other recreational activities connected with hunting (article 57 ZVGLD). A hunting society is a legal person (article 61 ZVGLD) and manages game reserves which have been founded by a municipality or the Government or other authorised organ (article 22 ZVGLD). Hunting societies are social organsiations, and their business shall be governed by regulations on societies (article 57 ZVGLD). In the third paragraph of article 57 of ZVGLD, it is specifically determined that: "hunting societies ... may obtain resources or specific rights to resources and shall use these resources as social (resources) for realising their aims and shall dispose of them in compliance with the Law and their own statutes". It is determined in article 29 that "hunting organisations ... may purchase or rent agricultural land under regulations by which agricultural organisations purchase or lease such land...".

49. The position of so-called social organisations in relation to resources is based on article 60 of the Constitution SFRY of 1974, and article 75 of the Constitution SRS, which both equally determine that social organisations specified by law may obtain resources or specific rights to resources and use such resources for realising their aims, and dispose of them in compliance with their statute and Law. These organisations could, under conditions specified by the law, organise economic and other activities in compliance with their aims and participate in income achieved through these activities, for the realisation of these aims.

50. From the above mentioned, it follows that a hunting society managed and used agricultural lands in social ownership for the needs of their activities. They did not have ownership rights to them. ZSKZ nationalised this land, the same as it did all other social agricultural land, irrespective of which resources (from whatever source) were used for its purchase or irrespective of the manner in which it had been obtained. Since the position of hunting societies in relation to rights to social agricultural land was the same or similar to the position of agricultural organisations which administered and used social agricultural land, the provisions of article 17 ZSKZ also apply to hunting societies: the right to further use and administration of agricultural land until the issue of a legally binding decision on denationalisation, or until the award of a concession or conclusion of a leasing contract in compliance with the law.

Equally, the provisions on the shortest duration of a concession or rental contract and provisions on adjusting the rental or compensation by the purchase price for land obtained by payment, also apply to hunting societies.

51. The legislator will have to arrange the matter of privatisation of other fixed and movable assets of hunting societies with an appropriate law (e.g., in a law on hunting or in a law on societies). This is the privatisation of social resources which hunting societies used for realising their aims, but not also a change of owners of the assets or resources of hunting societies which have been their own property under regulations to date.

F. Third paragraph of article 14 ZSKZ

52. The impugned article 14 ZSKZ determines in paragraph 3 that unbuilt building land for which there is no valid spatial implementation plan or there has not been executed purchase by or transfer to the

Fund of building land shall also be considered to be agricultural lands and forests under article 74 ZZad, article 5 ZLPP and article 14 ZSKZ. According to ZSZ,, unbuilt building land is land on which no object has been built or a temporary or auxiliary object has been built on it, as well as land on which no object has been built to building phase three (wind and water tight), and land which exceeds the area of functional land/third paragraph of article 2).

53. According to ZUN, the region of a municipality for which the production of spatial implementation plans is not envisaged and regions for which the production of spatial implementation plans is envisaged but these plans will not be adopted in the current planning period, shall be regulated by regional planning conditions (first paragraph of article 25 ZUN). Regional planning conditions shall be prepared for individual spatial and functionally rounded regions outwith arranged regions of settlement, for arranged regions of settled or individual functionally rounded regions within settlements (second paragraph of article 25 ZUN).

54. The Constitutional Court found that the arrangement whereby all unbuilt building land for which there is is valid spatial implementation plans or there has been no purchase by or transfer to the building land fund carried out shall be considered agricultural lands and forests under article 74 ZZad, article 5 ZLPP and article 14 ZSKZ, is unconstitutional. With this, namely, the State also transfers to its own or to municipal ownership unbuilt building land within arranged regions of settlements and within individual functionally rounded regions within settlements which shall be regulated by regional planning conditions under ZUN. There is no difference in relation to the legal position or in relation to the transfer back to agricultural land, between this land and land which is arranged by spatial implementation plans. In removing the conflict with the Constitution found, the legislator should judge whether and to what extent unbuilt building land outwith arranged regions of settlements, for which valid regional planning conditions exist, should in addition to this land be considered building land.

55. ZSKZ includes as criteria only one of a series of spatial implementation documents, although from both, the final effect for individuals or legal persons is to create the same rights and obligations, that is permission to build an object. Under ZUN, namely, the spatial implementation documents are regional planning conditions and spatial implementation plans (article 21). The building of new facilities can be planned and the conditions for their construction or renovation determined also with regional planning conditions, the same as with spatial implementation plans (articles 25 and 26 ZUN). The only difference for investors which the laws envisage as a result of one or the other, is that in the case in which a spatial implementation plan is produced, location planning permission is issued directly on its basis, while in the case in which only regional planning conditions are adopted, prior to the issue of location planning permission on its basis, location documentation shall be produced (articles 54 and 55 ZUN). In relation to the cited provisions, no fundamental reason can be seen for the impugned provision of the third paragraph of article 14 to create a different position in relation to unbuilt building land, and thus of their users and municipalities which have obtained this land through funds of building land. In some cases, such as for example the renovation of old town cores or densely built up regions of settlements, namely, renovation and sanation, including additional building, normally took place on the basis of regional planning conditions.

56. On such building land, therefore, the state cannot envisage selective purposes, so dealing with them differently under these laws is unjustified and in conflict with the principle of a state governed by the rule of law. The aim which the law follows is not founded on differences in relation to such building land, and because, as has been stated, there are no such differences, the legislative aim is shown to be outwith justifiable distinction and thus a comprehensible approach to the social value of the aim.

G. Fourth paragraph of article 14 ZSKZ and second paragraph of article 74 ZZad

57. The provision of the fourth paragraph of article 14 ZSKZ which determines that agricultural lands, farms and forests which lie in the region of a municipality and which were the property of the municipality on 6 April 1941 was also impugned, since in the opinion of some of the initiators it encroaches on the assets of municipalities in relation to land which they obtained after the cited date. At the same time, the provision of the second paragraph of article 74 ZZad is also impugned for the same reasons, with the clarification that it violates the principle of justice.

58. ZSKZ determines the date 6.4.1941 as a criterion for distinguishing between state and municipal ownership of agricultural lands and forests, and allows municipalities only such agricultural lands and forests as were the property of the municipality on that date. In the view of the Constitutional Court, the choice of appropriate criteria belongs within the field of free judgement of the legislator. In the concrete case, the choice of nationalising the majority of agricultural lands and forests in the legislative procedure is grounded on the more successful or more effective implementation of the process of denationalistaion, at the end of which additional agricultural lands and forests should be determined by law, which will be transferred to the ownership of local communities (article 22 ZSKZ).

59. Lands and forests in social ownership are not something which should belong to municipalities on the transformation of ownership, at least not in the sense that the legislator offended against the principle of justice when he did not decide that they should become their property: between municipalities in 1994 and municipalities in 1941, there is not such identity that it would be necessary to give to the former or return that to which another could be entitled; in the period after the war, municipalities could obtain agricultural lands and forests on payment only with resources in social ownership; when they obtained them, such agricultural lands and forests also became social property, municipalities only had the right to management of them. In view of the above mentioned, the choice of criteria for distinguishing between state and municipal ownership of material things is well founded and complies with the aims or intentions of the impugned legal provisions.

H. Articles 13 and 16 ZSKZ

60. The proposers and initiators do not specifically argue how the provisions of articles 13 and 16 are claimed to be in conflict with the Constitution and with which of its provisions. The provisions of article 13 impose on the Fund the obligation to establish and administer the necessary records on agricultural lands, farms and forests in the ownership of the Republic of Slovenia, which cannot be constitutionally disputable. Together with the finding that article 14 ZSKZ complies with the Constitution, there is also no reason to be found for an intervention into the provisions of article 16 ZSKZ.

I.

61. The Constitutional Court adopted this decision on the basis of articles 21 and 48 of ZUstS, composed of: president Dr. Tone Jerovšek and judges Dr. Peter Jambrek, Mag. Matevž Krivic, Mag. Janez Snoj, Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič. The resolution was adopted: in relation to the first paragraph of article 14 by five votes against four (judges Krivic, Šinkovec, Ude and Zupančič voted against); in relation to the second paragraph of article 14 by six votes against three (judges Šinkovec, Ude and Zupančič voted against); in relation to the fourth paragraph of article 14 by five votes against four (judges Krivic, Šinkovec, Ude and Zupančič voted against); in relation to the fifth paragraph of article 14 by eight votes against one (judge Šinkovec voted against) and in relation to points 2, 3, 4, 5 and 6 of the Disposition unanimously. Judges Krivic, Šinkovec and Ude provided separate opinions.

President
Dr. Tone Jerovšek

Notes:
[1] Article 17 of the Constitutional Law: "The Constitutional Court shall operate according to this Constitution, in relation to questions of procedure before the Constitutional Court ... which are not regulated with the Constitution, until the adoption of the Constitutional Court Act the Constitution and legal provisions to date shall be used". The second paragraph of article 411 of the Constitution of 1974: "Proceedings before the Constitutional Court shall commence with a proposal: ...
7. by companies or other organisations, ..., if it affects their rights defined by the Constitution or Law".
Article 11 of the Law on Proceedings before the Constitutional Court: "Proceedings before the Constitutional Court shall commence: - with the submission of a proposal ... by an organisation ... which the Constitution defines as a proposer of proceedings".

[2] Article 81 ZUstS: "Proceedings commenced up to the validation of this law shall be continued according to the provisions of this law, such that proposers under the previous regulations shall retain the position of proposers".
[3] The second paragraph of article 24 ZUstS: "Legal interest in lodging an initiative shall be shown if the regulation or general act for exercising public authority, the assessment of which the initiator proposes, directly encroaches on their rights, legal interest or legal position".
[4] The second paragraph of article 35 ZUstS: "The president of the Constitutional Court may call a public hearing on his own initiative or at the proposal of a participant in the proceedings. The president of the Constitutional Court must call a public hearing on the proposal of three judges".
[5] The first paragraph of article 36 ZUstS: "To a public hearing of the Constitutional Court shall be invited participants in the proceedings, representatives and authorised participants in the proceedings and other persons the participation of whom is believed necessary at the public hearing".
[6] Article 72 ZZ reads: "Basic organisations and working communities within the composition of cooperatives or working organisations of cooperants, from the day of validation of this law shall become organisational units of cooperatives or working organisations of cooperants with authority in legal traffic, which shall be inscribed in the court register; such authority shall be exercised on behalf of and on the account of the cooperative or working organisation of cooperants".