

## DECISION

At a session held on 12 December 1996 in proceedings to decide upon a constitutional complaint made by D. R. from M. represented by N. G., lawyer in M., the Constitutional Court

### decided:

The constitutional complaint of D. R. against the judgement of the Supreme Court of the RS No. II Ips 409/93 from 9 March 1994, in conjunction with the judgement of the Superior Court of Maribor No. Cp 1491/92 from 2 March 1993 and the judgement of the Basic Court of Maribor, Maribor Office, No. III P 445/92 from 14 September 1991, is dismissed.

### Reasoning:

#### A.

1. The complainant challenged as unfounded the Supreme Court judgement dismissing the revision that he requested of the first and second instance judgements. According to these judgements, he was ordered to empty the apartment that the Headquarters of the Yugoslav People's Army's Šhereinafter: YPA] Garrison in Maribor allotted him by its decision of 1 August 1992.

2. The first two judgements and the challenged judgement of the Supreme Court rest on the legal viewpoint that on 1 August 1991 the provision of Para. 3 of Item 1 of the Basic Constitutional Charter on the Independence and Sovereignty of the RS and the provision of Para. 1 of Article 9 of the Enabling Statute for the Implementation of this Basic Constitutional Charter (Official Gazette of the RS, No. 1/9) applied, as a consequence of which organs of the SFRY operating in the RS ceased to hold rights and competencies that had been previously conferred upon them by the RS Constitution and the SFRY Constitution; and the property in the territory of the RS that was formerly managed by federal organs, headquarters and institutes of the Yugoslav People's Army was at the time in issue managed by the Republic of Slovenia.

3. The complainant predominantly criticizes the challenged judgements with misapplication of substantive law. He argues that Article 9 of the already cited statute does not entail in the immediate transfer of the management of property but provides for a general take over, which on 1 August 1991 had not yet occurred; besides, the rules to which the judgement refers had not taken effect yet due to 90-day moratorium, applying from 10 July 1991 on.

4. The complainant repeats his objection on the improper application of procedural law: as plaintiff in the lawsuit the Ministry of Defense was allegedly not authorized to participate, what also occurs in other similar cases where the Ministry of the Environment and Physical Planning takes part.

5. The complainant objects to the challenged judgement as a violation of his right to equal protection of rights (Article 22 of the Constitution) and the violation of the prohibition on retroactive application of rules.

He proposes to the Court to abrogate the judgement ab initio and to remand the case to the first instance court to be decided anew.

6. By an order of 6 March 1996, a Senate of the Constitutional Court accepted the complainant's constitutional complaint for consideration.

#### B.

7. Apparently, there is no violation of the principle of equal protection of rights pursuant to Article 22 of the Constitution: the complainant had judicial protection and also took advantage of it, and, on the

other hand, he does not state that in similar cases (as to claims to eviction made by the Republic of Slovenia) the courts would decide differently than in the case considered.

8. In the process of making an particular decision, the legal principle prohibiting the retroactivity of rules must be respected both to substantive and procedural law.

9. The Constitutional Court does not form a part of the regular judiciary so that the alleged improper use of substantive and procedural law by itself cannot be the subject of a constitutional complaint.

10. Due to the number of cases like this one, due to their social importance and the sensitivity of contents, and since the courts apply the rules of constitutional magnitude to these case directly, the Constitutional Court nevertheless accepted the complaint, and explained its acceptance ruling by the important legal questions presented by the so-called Joint Declaration (Official Gazette of the RS, No. 1/91), which the Assembly of the RS adopted on 10 July 1991, and by the application of principles of a social state and a state governed by the rule of law to concrete cases that emerged from the process of attaining independence of the Republic of Slovenia, or in connection therewith.

11. In spite of all the obstacles that are stated in Point 8, the Constitutional Court nevertheless established that the Basic Constitutional Charter and the Enabling Statute for the Implementation does not allow an interpretation different from the one that is reasoned by the challenged judgements: Para. 3 of Item 1 of the Basic Constitutional Charter entails the immediate transfer of rights and obligations of the Republic of Slovenia upon this again; Para. 1 of Article 9 of the Enabling Statute for the Implementation of this Constitutional Charter entails the immediate transfer of legal authority over this mentioned property to the Republic of Slovenia, and the provisions of Para. 2 and 3 of this article regulates only the process of the take over of actual control of this property.

12. By the adoption of the Joint Declaration (Resolution of the SRS Assembly from 10 July 1991), the Republic of Slovenia bound itself for three months to terminate or delay the further implementation, realization or supplementing of its constitutional acts on attaining independence, but, however, not to suspend or even derogate legal and actual relations that the adoption of the Basic Constitutional Charter and Enabling Statute for its implementation established as a whole; only certain points of Enclosure 1 that refer expressly to particular narrow areas of operation and to concrete measures respectively are of a suspensive nature.

Thus, the contents of legal regulation provided for in Para. 1 of Article 9 of the Enabling Statute for the Implementation of the Basic Constitutional Charter did not change during the period from 7 July to 7 October 1991, and this was due to undoubted binding nature of the Joint Declaration that originated from the mentioned Resolution of the RS Assembly on the adoption of this declaration.

13. Also in a practical sense, the challenged judgement does not bring about such consequences as would cause an individual to become a victim of the country's attaining independence. The housing conditions enjoyed by the complainant prior to the allocation of the apartment were not worsened due to illegality of that allocation. The illegal possession of an apartment is a proper basis for asserting a claim requesting eviction - the system in this respect did not change. Everyone can put forward social and other entitlements for the allocation of an apartment at the same time and equally with others within the framework of housing policy of the Republic of Slovenia. A clear result of the process of attaining independence itself, and events connected therewith, was the allocation of the controversial apartment to the complainant: this and numerous other such allocations occurred predominantly because the YPA left the Slovenian territory, which freed military housing funds. Due to the challenged judgement, the complainant was deprived only of the improvement of his housing conditions that he expected in connection with extraordinary circumstances and events, yet which did not occur, for the necessary statutory basis was lacking.

14. According to the above-said, the constitutional complaint is unfounded and was to be dismissed.

C.

15. The Constitutional Court, composed of Justices: dr. Tone Jerovšek, President, and dr. Peter Jambrek, mag. Matevž Krivic, mag. Janez Snoj, dr. Lovro Šturm, Franc Testen, dr. Lojze Ude, and dr. Boštjan M. Zupančič, made this decision on the basis of Article 59 of the Constitutional Court Act (Official Gazette of the RS, No. 15/94). The decision was reached by a vote of seven in favor to one against. Justice Krivic, who voted against, wrote also a dissenting opinion.

President of the Constitutional Court:  
dr. Tone Jerovšek