



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-48/98-14
1 June 2000

D E C I S I O N

At a session held on 1 June 2000 in the proceedings to review constitutionality instituted by the petition of the Slovenian Christian Democrats party, Ljubljana, represented by its president Lojze Peterle, and Peter Urbanc, of Canada, the Constitutional Court

decided as follows:

1. It is not in conformity with the Constitution that the Voting Rights Register Act (Official Gazette RS, No. 48/92) does not provide for a permanent register of those qualified voters who permanently reside abroad. The National Assembly must remedy this lack of conformity with the Constitution in one year from the publication of this Decision in the Official Gazette of the Republic of Slovenia.
2. If the unconstitutionality established in Point 1 of this disposition is not remedied by the next call for elections to the National Assembly, the competent authorities must inform the Slovenian citizens permanently residing abroad of the election and the possible methods of exercising their right to vote on the basis of existing registers.

R e a s o n i n g

A.

1. The petitioners argued that Art. 17 of the Voting Rights Register Act (Official Gazette RS, No. 48/92 - hereinafter ZEV) was not in conformity with Art. 14 of the Constitution, since it made those Slovenian citizens permanently residing abroad unequal to Slovenian citizens who permanently reside in Slovenia.
 2. The challenged Art. 17 of ZEV regulates the creation of a special list of voters comprising citizens who do not permanently reside in Slovenia in a manner such that voters are put on this list if and when they so request. On the other hand, the creation of the permanent register of voters (the list of citizens who permanently reside in Slovenia) is an official obligation. The petitioners therefore concluded that such a different regulation entailed unconstitutional discrimination.
- They argued that citizens permanently residing abroad must inform themselves in a timely manner about elections in Slovenia, whereas other citizens do receive such information about the day of the voting.
3. Also, the petitioners asserted that Art. 17 of ZEV is not in conformity with Art. 2 of the same Act. Art. 2 determines four types of voting registers: the general voters' list and three special voters' lists (for citizens of Italian nationality, citizens of Hungarian nationality and citizens permanently residing abroad). Among the qualified voters put on special voters' lists, citizens permanently residing abroad are the ones who must take it upon themselves to be put on such a voters' list.
 4. The petitioners opined that Art. 17 of ZEV was unnecessary since for Slovenian citizens with no permanent residence in Slovenia Art. 2 of ZEV should suffice.
 5. The petitioners asserted that Art. 17 of ZEV prevented a large part of the total constituency from exercising the right to vote, or that this part of the constituency was made unequal in the exercising of their right to vote. The Constitutional Court understood this assertion as asserting a lack of the

conformity of Art. 17 of ZEVP with the constitutional provisions on the right to vote (Art. 43 of the Constitution) and Art. 14.2 of the Constitution on equality before the law.

6. In the petitioners' opinion, State bodies must keep a permanent register of qualified voters permanently residing abroad, whom they must inform of the voting prior to the election as their official duty.

7. The National Assembly Secretariat for Legislation and Legal Affairs replied to the petitioners that the challenged statutory regulation was in conformity with Art. 15.2 of the Constitution, which allows that statute regulate the manner of exercising fundamental rights and freedoms if required by the character of the individual right or freedom. The character of the right to vote held by Slovenian citizens permanently residing abroad allegedly required a special regulation for putting such citizens on a voters' list. According to the Secretariat, the register of those citizens who have moved out of the Republic of Slovenia cannot be the basis for construing a permanent register of qualified voters, since said citizens do not communicate to the authorities changes concerning their personal status.

Furthermore, no register is kept of Slovenian citizens who have never registered their permanent residence in the Republic of Slovenia. Thus, the present regulation is indispensable for the exercise of their right to vote. Only in such a manner can all those Slovenian citizens who want to participate in an election be informed of the election and the manner they can exercise their right to vote. On the other hand, sending voting materials to unknown and unchecked addresses does not allegedly guarantee the exercise of the right to vote. Therefore, the Secretariat considered the petitions unsubstantiated.

8. The Government also replied to the petitioners, arguing that the register of citizens who have moved out of the Republic of Slovenia is not updated and that a question might be raised about the meaning of sending voting materials to their foreign addresses where they might not live anymore. It opined that the present register of citizens who have moved abroad cannot be the basis for a permanent register of qualified voters living abroad. Moreover, it argued that a request for issuing a voting card and being put on a special register of voters do not encroach on the right to vote, but only determines the manner one may cast one's vote or exercise the right to vote.

9. In examining the petition in terms of the fulfillment of procedural requirements, the Constitutional Court did not inquire whether the Slovenian Christian Democrats political party demonstrated standing to challenge ZEVP provisions. Such inquiry was not necessary since standing was clearly demonstrated by Peter Urbanc.

B. - I.

10. The universal and equal right to vote is guaranteed by the Constitution (Art. 43.1 of the Constitution). The principle of the universality of the right to vote means that such right must be guaranteed to every citizen, allowing for certain permissible restrictions (e.g. the age minimum). For the statutory regulation of the right to vote in conformity with the principle of universality, it is not enough that such right is formally recognized. The overall legal regulation of elections must be such as to enable the actual exercise of the right to vote.

Setting impediments in the way of exercising the otherwise formally recognized right to vote may entail an inadmissible encroachment on the principle of the universality of the right to vote.

11. The constitutional right to equality before the law (Art. 14.2 of the Constitution) prohibits the legislature from treating legal subjects unequally without there existing sound and substantial reasons for such treatment. Factual situations which are equal in their crucial components must under law be treated equally.

12. ZEVP regulates the register of qualified voters as an official register which alleviates the difficulty of carrying out an election and, thereby, the exercising of the right to vote. Art. 1 of the same determines that a permanent register of qualified voters of Slovenian citizens shall be kept based on permanent residence registers, the central citizens' register and supplemental registers. In accordance

with Art. 7 of ZEPV, a citizen's right to vote shall be put on a permanent residence register as an official duty.

13. Voters' lists are composed for a particular election or voting. There are general and special voters' lists (Art. 2 of ZEPV). Citizens who permanently reside in Slovenia are put on general voters' registers. Such registers are composed as the official duty of the competent public administration body (administrative division). Special voters' registers are composed for citizens of Italian and Hungarian nationalities and citizens who do not permanently reside in Slovenia.

14. The challenged Art. 17 of ZEPV determines that a voters' list of citizens without permanent residence in the Republic of Slovenia is created on the basis of citizens' request to be put on such list. Citizens must file such request with the Republic Electoral Commission (hereinafter RVK) 30 days at the latest prior to the day of the voting. The request consists of the citizen's personal data, data on the last permanent residence of the citizen or one of their parents in the Republic of Slovenia or, if this cannot be established, a declaration by the citizen on which constituency they intend to exercise the right to vote in; proof of citizenship also needs to be enclosed with such request.

15. Pursuant to ZVDZ, a Slovenian citizen permanently residing abroad may exercise their right to vote at the polls in Slovenia, by mail, or at a Slovenian diplomatic or consular office. If the voter wants to cast their vote by mail or at a diplomatic or consular office, they must notify RVK of that 30 days at the latest prior to the day of the voting. Based on such notification, the voter is sent voting materials with a voting card, which ensures that the voting materials have reached the right person and, at the same time, prevents abuses (multiple voting by the same voter). In practice, RVK considers a request to be put on the special voters' list also a notification of the voter's wish to send their vote by mail, save the voter expressly states that they will cast their vote at the polls in Slovenia. Only in this second case are they not sent voting materials by mail.

16. The Constitutional Court received from RVK the answers to some questions in connection with the practical aspects of Slovenian citizens permanently residing abroad exercising the right to vote. RVK stated that the time limit determined in Art. 17.2 of ZEPV is in practice not considered a preclusive time limit. It also stated that a special voters' list as well as general voters' lists are completed six days prior to the day of the voting, when they are delivered to the electoral bodies.

Even prior to the completion of the special voters' list (and also the general list in the case of emigrants) there are constant operative contacts between the composer of the voters' list and the competent commission for reason of sending voting materials by mail, save if the emigrant has expressly stated that they want to cast their vote at the polls in Slovenia. To the question of whether a citizen permanently residing abroad who comes to Slovenia on the day of the voting may cast their vote irrespective of the fact that they have not been put on the voters' list, RVK answered that they can. In such a case Art. 71.5 of the National Assembly Elections Act (Official Gazette RS, No. 44/92 - hereinafter ZVZD) is applied, which provides that: "If a person is by error not put on a voters' list, they may cast their vote on the basis of a confirmation by the competent body that they have been put on the list as a voter in that constituency in which they want to cast their vote."

B. - II.

17. The legislature could find a better solution for voters permanently residing abroad by introducing a permanent register of qualified voters kept by the competent public administration body on the basis of reports (and updates) by Slovenian citizens who permanently reside abroad. On such a basis voters' lists could be created as an official duty in the same way as are the lists of voters permanently residing in Slovenia. This possibility of a more favorable solution for such citizens would differ from the existing one in that the voters residing abroad would not need to "renew" their entry into the list prior to every election and voters who move out of Slovenia could notify the competent body of that anytime, not only prior to the election. Simultaneously, a permanent register would enable the competent body, after the calling of an election, to inform voters who reside abroad of the election and the possible ways to cast one's vote.

18. For the review of the conformity of the challenged regulation with the principle of the universality of the right to vote it was necessary to answer the question of whether the legislature's decision to adopt the challenged regulation (and not whether such would be more favorable for Slovenian citizens residing abroad) falls within the field of its political discretion, or violates the right to vote of voters who permanently reside abroad.

19. The Constitutional Court holds that the statutory requirement that voters residing abroad put themselves on the special voters' list prior to an election does not make impossible or aggravate the exercising of the right to vote.

The challenged regulation requires of a voter a certain degree of care and active participation, however such requirement is minimal. Thus, it is impossible to hold that it aggravates or even prevents the right to vote from being properly exercised.

It suffices that the voter sends to RVK a request to be put on a voters' list.

20. However, the challenged regulation violates the principle of equality before the law. It makes voters who permanently reside abroad unequal in exercising the right to vote in comparison with voters who permanently reside in Slovenia. There is no sound reason for such differentiation. The difference in factual situations that ZVZD treats is not crucial, since the fact that someone lives abroad is not an obstacle for their right to vote to be registered in a permanent register and such register to be updated on the basis of new information provided. The statements on obstacles to the keeping of such a register, to which the Secretariat and the Government refer, are unsubstantiated; present voters' lists are also based on the presumption that voters themselves must contact the competent body in Slovenia.

21. The challenged regulation is thus inconsistent with Art.14.2 of the Constitution. The Constitutional Court could not annul the challenged Art. 17 for, concerning the keeping of a register of Slovenian citizens with the right to vote living abroad, there would occur a gap in the law. It imposed on the National Assembly the duty to eliminate the unconstitutionality within one year from the publication of this Decision in the Official Gazette of the Republic of Slovenia. Simultaneously, on the basis of Art. 40.2 of the Constitutional Court Act (Official Gazette RS, No. 15/94 - hereinafter ZUstS), the Constitutional Court imposed on the competent bodies the duty to inform, on the basis of the existing registers, Slovenian citizens permanently residing abroad of elections and the possible ways to exercise the right to vote in case the statutory regulation is not made to conform with the Constitution by the first calling of any election to the National Assembly.

C.

22. The Constitutional Court reached this Decision on the basis of Art. 40.2 and Art. 48 of ZUstS, composed of: Franc Testen, President, and Judges: Dr. Janez Čebulj, Dr. Zvonko Fišer, Lojze Janko, Milojka Modrijan, Dr. Mirjam Škrk, Dr. Lojze Ude and Dr. Dragica Wedam-Lukić. The Decision was reached unanimously. Judge Testen gave a concurring opinion.

P r e s i d e n t:
Franc Testen