Number: U-I-32/15
Date: 8 November 2018

DECISION

In proceedings to review constitutionality initiated upon the request of the National Council, following a public hearing held on 7 November 2017, at a session held on 8 November 2018, the Constitutional Court

decided as follows

1. The second paragraph of Article 91 of the National Assembly Elections Act (Official Gazette RS, Nos. 109/06 – official consolidated text, and 23/17) is not inconsistent with the Constitution.

2. The first paragraph of Article 7 and Articles 42, 43, and 44 of the National Assembly Elections Act are not inconsistent with the Constitution.

3. Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (Official Gazette RS, Nos. 24/05 – official consolidated text) is inconsistent with the Constitution.

4. The National Assembly must remedy the unconstitutionality established in the preceding Point within two years of the publication of this Decision in the Official Gazette of the Republic of Slovenia.

5. The request for a review of the constitutionality of the fifth paragraph of Article 80 of the Constitution is rejected.

REASONING

A

1. The applicant challenges Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (hereinafter AECEDNA), which determines the territories of the eight constituencies and the 88 electoral districts. It states that an analysis of the results of the National Assembly elections in 2014 showed that the number of eligible voters differed greatly among electoral districts (the ratio between the lowest and the highest number reaching 1:3.73). As a result, the challenged provision is allegedly inconsistent with Articles 1, 2, and 20 of the National Assembly Elections Act (hereinafter referred to as the NAEA), and especially with the second paragraph of Article 20 of the NAEA, which requires that constituencies be formed in such a manner that the principle that each deputy is elected per an approximately equal number of inhabitants is observed. As Article 4 of the AECEDNA allegedly allows for such great differences in the number of eligible voters per elected deputy, it is allegedly also inconsistent with Articles 3, 43, 44, 80, and 82 of the Constitution.

2. The applicant also challenges Article 7 of the NAEA, which determines that the right to vote and to stand for election as a deputy is held by citizens of the Republic of Slovenia who have reached the age of 18 by [the Slovene preposition used here, i.e. "*na*", can be understood to mean both "on" or "by"; the applicant appears to believe that it means "on"] the day of the election. It allegedly follows from this provision that the right to vote and to stand for election as a deputy is only held by those citizens of the Republic of Slovenia whose 18th birthday is on the day of the election, i.e. who come of age on that day. As a result, this provision is allegedly inconsistent with Articles 3, 43, and 44 of the Constitution.

3. In the applicant's opinion, Articles 42, 43, and 44 of the NAEA, which determine the rules for candidacies endorsed by political parties and those endorsed by voters, are also unconstitutional. The applicant alleges their inconsistency with Articles 3 and 82 of the Constitution, because they determine disproportionately different conditions for the candidacies of independent candidates in comparison to the conditions for the candidacies of candidates who enjoy the support of deputies of a parliamentary political party. It claims that a deputy's signature caries 333-times more weight than the signature of an ordinary citizen, which is allegedly unconstitutional.

4. The applicant further challenges Articles 90, 91, 92, and 93 of the NAEA, which determine the rules for establishing the results of an election and the allocation of seats. It alleges their inconsistency with Articles 3, 80, and 82 of the Constitution. It states that the challenged regulation fails to satisfy the constitutional requirement that voters shall have a decisive influence on the allocation of seats to the candidates (the fifth paragraph of Article 80 of the Constitution). It opines that in order to ensure the "proportional representation" of the electorate, every electoral district should have an elected deputy. It

alleges that the realisation of Articles 3, 80, and 82 of the Constitution is ensured only if the election results guarantee an equal distribution of deputies across the electorate. However, the analysis of the results of the National Assembly elections in 2014 allegedly showed that 21 out of the 88 electoral districts did not have an elected deputy, which allegedly entails that a quarter of Slovene voters do not have a representative in the National Assembly.

5. At the public hearing, the applicant stressed that according to the Constitution state power is vested in the people, that the deputies are representatives of all the people, and that the voters must have a decisive influence on the choice of candidates. On the contrary, the electoral legislation in force allegedly enables and even encourages the notion that political parties are the bearers of state power, that the deputies are representatives of political parties, and that a decisive influence on the choice of candidates lies with the political parties instead of the voters. The applicant drew attention to the analysis of the results of the National Assembly elections in 2014, which allegedly showed that of the deputies who were elected in their electoral districts one half had not been positioned in the first place on their lists, but in the second to seventh places, and that no deputy was elected in 21 electoral districts. It proposed that the Constitutional Court also review the constitutionality of the fifth paragraph of Article 80 of the Constitution, as it allegedly circumvented the will of the people as expressed in a referendum and enshrined the predominance of political parties at the constitutional level, thereby limiting the ability of the people to actually exercise power.

6. The Constitutional Court sent the request to the National Assembly for a reply. The National Assembly refers to Constitutional Court Orders No. U-I-128/92, dated 27 October 1992 (Official Gazette RS, No. 53/92, and OdlUS I, 75), No. U-I-226/00, dated 10 April 2003 (OdlUS XII, 35), and No. U-I-346/05, dated 4 October 2007, and claims that the Constitutional Court already decided on allegations with essentially the same substance regarding the unconstitutionality of Article 4 of the AECEDNA and held that they were unsubstantiated. With regard to Article 7 of the NAEA, it states that the restrictive linguistic interpretation offered by the applicant is contrary to all other interpretations of this provision, especially the teleological, logical, and systemic interpretations thereof, and it is particularly also manifestly unconstitutional. It likewise claims that the allegations of the unconstitutionality of the determination of the conditions for candidacies and the regulation of the allocation of seats are unsubstantiated, referring to existing constitutional case law regarding these issues (Constitutional Court Decision No. U-I-336/96, dated 4 March 1999, Official Gazette RS, No. 22/99, and OdlUS VIII, 43, and Constitutional Court Orders No. U-I-226/00 and No. U-I-346/05). It draws attention to the Constitutional Act Amending Article 80 of the Constitution of the Republic of Slovenia (Official Gazette RS, No. 66/2000 – hereinafter referred to as the CA80), which explicitly excluded the application of the so-called national lists that were in force at the time in the allocation of seats, as they were contrary to the requirement of ensuring a decisive influence of voters on the allocation of seats to the candidates.

7. At the public hearing, the National Assembly stood by the arguments put forth in its written reply to the request of the National Council. Primarily it proposed that the Constitutional Court reject the request in accordance with the second paragraph of Article 23a of the Constitutional Court Act (Official Gazette RS, Nos. 64/07 – official consolidated text and 109/12 – hereinafter referred to as the CCA), as the procedural requirements for a substantive review of the constitutionality of the challenged acts before the Constitutional Court are not fulfilled. It claimed that the National Council failed to exhaust all means to amend the provisions of the AECEDNA and the NAEA, which it considers to be unconstitutional (i.e. legislative initiative, suspensive veto). As a secondary option, the National Assembly again referred to the constitutional case law regarding the challenged provisions, which it believes has already become settled. It stressed that in its request for a review of the constitutionality of the challenged statutory regulation the National Council did not provide any new constitutional law arguments that would call for a different decision by the Constitutional Court, and that such concerns a typical political question. It denied the allegations regarding the inactivity of the National Assembly as regards changes to the electoral system.

8. On 20 November 2017, the National Assembly submitted an additional reply to the Constitutional Court presenting its position regarding the supplement, by which the National Council extended its request to also include a review of the constitutionality of the fifth paragraph of Article 80 of the Constitution, as it allegedly did not correspond to the will of the people as expressed in the referendum on the electoral system. Referring to constitutional case law (Constitutional Court Orders No. U-I-214/00, dated 14 September 2000, OdlUS IX, 201, and No. U-I-262/00, dated 13 March 2003), it proposed that the request be rejected insofar as the Constitutional Court lacks jurisdiction to review the Constitution or provisions of a constitutional character as well as to review the mutual consistency of constitutional provisions.

9. The Government submitted an opinion regarding the statements contained in the request. Relying on existing constitutional case law (Constitutional Court Decision No. U-I-354/96, dated 9 March 2000, Official Gazette RS, No. 31/2000, and OdlUS IX, 53, and Constitutional Court Order No. U-I-226/00), it states that Article 4 of the AECEDNA is not inconsistent with the principle of equal suffrage, as the different sizes of the electoral districts (even at a ratio of 1:3) do not violate equal suffrage, because the election results of the lists of candidates are calculated at the level of constituencies, among which differences in size are minimal. Likewise it is allegedly not inconsistent with Article 80 of the Constitution, as the electoral system (especially following the last amendment of the NAEA, which abolished the so-called national lists) allegedly ensures the election of those candidates who have obtained the greatest support of the voters. The Government stresses that it is practically impossible to find an ideal manner that would satisfy the objective of ensuring a decisive influence of voters on the allocation of seats to the candidates (the fifth paragraph of Article 80 of the Constitution) completely or to a greater extent. It states that it clearly follows from the first paragraph of Article 7 of the NAEA that the active right to vote and the passive right to vote are held by those citizens who have

reached the age of 18 years before an election or on the day of the election. The provision (i.e. the first paragraph, which refers to the condition of 18 years of age) has been in force without amendment since 1992 and has also been adequately applied at elections throughout this period. In the opinion of the Government, Articles 42, 43, and 44 of the NAEA are also not inconsistent with the Constitution. The Government believes that the principle of equal suffrage does not encompass the requirement that all signatures in support of a candidacy carry equal weight, and that the different weight of the signatures in support of a candidacy provided by deputies and those provided by voters also does not entail inadmissible discrimination between these two groups of persons. In this regard, it draws attention to the position expressed in Constitutional Court Decision No. U-I-336/96.

10. At the public hearing, the Government also stood by the arguments put forth in its written opinion and again highlighted that the electoral system entails an adequate implementation of the constitutional principles referred to in Article 80 of the Constitution, as the electoral system ensures the election of those candidates who have obtained the greatest support of the voters. In the opinion of the Government, the review of constitutionality should above all take into consideration the fact that the CA80 from 2000 precisely determined the substantive changes to the electoral system that were transposed into electoral legislation in 2006 by the Act Amending the National Assembly Elections Act (Official Gazette RS, No. 78/06 – hereinafter referred to as the NAEA-B). The CA80 did not determine any further changes to the electoral system, which can be understood as entailing that they are not necessary. The Government also stressed that it had already suggested amendments to the electoral legislation in the past, namely in the quest for more appropriate implementation of the constitutional provision that refers to the personalisation of elections or ensuring a decisive influence of voters on the allocation of seats to the candidates. A draft that determined the introduction of an absolute preferential vote allegedly failed to gain sufficient support in the National Assembly. However, in the opinion of the Government, such does not entail that the regulation in force is unconstitutional.

11. The Constitutional Court sent the reply of the National Assembly and the opinion of the Government to the applicant, who did not reply thereto.

12. The Constitutional Court requested information on the number of citizens of the Republic of Slovenia with permanent residence in the different electoral districts on 31 December 2011, 31 December 2013, and 31 December 2014 from the Ministry of the Interior (hereinafter referred to as the MI). The MI clarified that it did not possess such information; it did, however, possess information on the number of citizens of the Republic of Slovenia who are voters by electoral district that were applied in the establishment of the electoral registers for the National Assembly elections in 2011 and 2014.

Public Hearing

13. On 7 November 2017 the Constitutional Court held a public hearing (Article 35 of the CCA). In addition to the applicant and the opposing party, it also invited other persons whose attendance at the public hearing it deemed to be necessary, i.e. representatives of the Government and the National Electoral Commission (hereinafter referred to as the NEC), and Prof. Dr Franc Grad, Prof. Dr Saša Zagorc, Prof. Dr Jurij Toplak, and Prof. Dr Tone Jerovšek, legal scholars from the field of electoral law (the first paragraph of Article 36 in conjunction with the second paragraph of Article 28 of the CCA). All invited persons attended the public hearing, with the exception of Prof. Dr Tone Jerovšek, who justified his absence. His non-attendance did not prevent the Constitutional Court from carrying out the proceedings and deciding on the case (the second paragraph of Article 36 of the CCA).

14. Prof. Dr Grad outlined the historical circumstances of the drafting of the electoral legislation. He explained that in 1992 a group of experts, of which he was a member, received the starting points for the preparation of the electoral legislation, i.e. that the electoral system should be proportional, that it should ensure the influence of voters on the selection of candidates, and that it should ensure stability. These three requirements were allegedly in conflict and could not all be realised to an equal extent; the challenged regulation was allegedly an attempt to reconcile them. The most sensitive was allegedly the issue of ensuring the influence of voters on the selection of candidates, which included a number of options. The expert group opted for a system wherein constituencies are divided into electoral districts, which are solely intended to show how much support candidates from different lists of candidates enjoy among voters. Such support was to be decisive in the allocation of seats, which are firstly allocated to lists on the level of the constituencies, and secondly at the level of the state as a whole. Prof. Dr Franc Grad explained that since the outset there has existed incomprehension of the fact that voting at the level of electoral districts does not entail the election [of deputies]. He stressed that under the electoral system in force no one is elected in an electoral district, as the votes cast in an electoral district are merely a criterion for the allocation of seats to individuals. Election in an electoral district would entail a majoritarian electoral system, which would be directly contrary to the fact that the Constitution requires a proportional electoral system. Prof. Dr Franc Grad clarified that the constitutional amendments of 2001 constitutionalised the three above-mentioned requirements, which would allow for the conclusion that both the electoral system in force before the constitutional amendments and the electoral system that was adopted pursuant to such and which is currently in force are consistent with the Constitution. With regard to the review of constitutionality at hand, he believes that it is even more important that Section II of the CA80 determined the manner of implementation of Section I of the constitutional amendment, which was subsequently incorporated into the NAEA. This is important, as the CA80 did not determine that the electoral legislation has to be harmonised with the constitutional amendment within a certain period of time, which is the usual practice, but simply enacted the amendment in its Section II, as should have been done by a law. It merely determined

that the regulation under Section II of the CA80 shall remain in force until the electoral legislation is amended. All of the above allegedly entails at the least that Section II of the CA80 is consistent with the Constitution. Prof. Dr Franc Grad further explained that in his opinion both elements determined by the fifth paragraph of Article 80 of the Constitution (i.e. a proportional electoral system and a decisive influence of voters on the allocation of seats) are equally important and that the electoral system in force entails one of the possible combinations thereof, which, however, he does not claim to be the best possible constitutionally consistent regulation. However, in his opinion, such does not entail that it is not consistent with the Constitution. He expressed the position that the challenged regulation satisfies the constitutional requirement that voters have a decisive influence on the allocation of seats, and explained that a decisive influence of voters can only be consistently taken into account in a majoritarian electoral system or in a system with a single transferable vote, which is a proportional electoral system, as otherwise only a relative influence of voters may be taken into account. He clarified that the word *decisive* is an open-textured legal term, the content of which has already been determined by existing regulation, and the Constitutional Court will have to decide whether the content determined in such manner is consistent with the Constitution. In his opinion, the choice of electoral system is a typical political question and the review of the Constitutional Court should thus be as restrained as possible. With regard to the size of the electoral districts, he highlighted that from the perspective of carrying out an electoral campaign it is desirable that they are as equal as possible as regards the number of voters; however, such is not directly connected to the election of candidates. As seats are allocated at the level of constituencies, the principle of equal suffrage is also expressed at the level of constituencies (and at the level of the state as a whole); from the perspective of the principle of equal suffrage, the size of the electoral districts is allegedly completely irrelevant.

15. Prof. Dr Saša Zagorc clarified that the amendment of the fifth paragraph of Article 80 of the Constitution was the result of conciliation and a quest for a political compromise, whereby even at that time there were clashes of opinions as to whether the changes to the electoral system sufficiently satisfied the requirement that voters have a decisive influence. In his opinion, it would be premature to conclude that the statutory regulation in force is consistent with the fifth paragraph of Article 80 of the Constitution merely due to the fact that it is a copy of the regulation under Section II of the CA80. Even provided that the regulation under Section II of the CA80 had been consistent with the Constitution in 2000, as a result of dynamic interpretation it is not necessarily true that such is still the case today. He stressed that, in his opinion, the requirement that voters have a decisive influence is not a reflection of the principle of equal suffrage, but a component of the electoral system, which is the basis for deciding which candidate from which electoral district has been elected in a constituency. Therefore, the regulation of electoral districts in force cannot be considered inconsistent with the principle of the equal (active) right to vote; from a voter's perspective, the active right to vote is allegedly tied to a constituency, within which the votes of all voters should have the same weight. Prof. Dr Saša Zagorc explained that he understands the requirement that voters have a decisive influence as

the requirement that the electorate as a whole has a decisive influence and not that an individual voter does. In his opinion, the elements referred to in the fifth paragraph of Article 80 of the Constitution (i.e. a proportional electoral system and a decisive influence of voters) are not equally important, as the requirement that voters have a decisive influence – which [in the original text] is contained in a subordinate clause introduced by a locative pronoun – carries less weight. The choice of an electoral system that satisfies this requirement is allegedly a political question, which the Constitutional Court should review with restraint. He explained that the statutory regulation in force defines the decisive influence of voters, although in a minimal manner. As a result, in his opinion, the regulation in force is not inconsistent with the Constitution, and the decisive influence of voters on the allocation of seats could be reinforced by political means.

16. Prof. Dr Jurij Toplak explained that, as regards the size of the electoral districts and the number of voters per district, scholars in the field of electoral law around the world are unanimous that equal suffrage is violated if with his or her vote one voter can improve the result of a candidate by one *per mille*, while another voter can improve it by three *per mille*, and such is the difference that has been observed in the Republic of Slovenia. There allegedly also exists inequality among candidates (the passive right to vote), as two candidates from the same political party fighting for the same seat allegedly have different opportunities to address voters during the campaign period. He drew attention to the Judgment of the Supreme Court of the USA in *Baker v. Carr*, dated 26 March 1962, by which the Court changed its position in the Judgment in *Colegrove v. Green*, dated 10 June 1946, according to which the establishment of electoral districts entailed a political question. In connection with the decisive influence of voters on the allocation of seats, Prof. Dr Jurij Toplak stated that the intent of the framer of the constitutional amendment of 2000 is of decisive importance for the review of the constitutionality of the statutory regulation from the perspective of this constitutional requirement. It allegedly follows from the legislative materials of the Constitutional Commission regarding the constitutional amendment that the current electoral system gives voters an influence that is not decisive. In the opinion of Prof. Dr Jurij Toplak, Section II of the CA80 from 2000, which enacted the current electoral system, is not inconsistent with the Constitution, as it is on the same level as the Constitution. It is allegedly not essential whether the elements referred to in the first paragraph of Article 80 of the Constitution (i.e. a proportional electoral system and a decisive influence of voters) are equally important, but whether they are mutually exclusive. In his opinion, they are not, and thus they can both be observed. Allegedly, such systems are in place in one half of European states (e.g. Latvia), which have open list systems that allow a voter to first choose a party and then also a candidate from this party. Prof. Dr Jurij Toplak expressed the position that the electoral system in force only satisfies the criterion of proportional representation, but it does not give voters the possibility to choose within a party, but forces upon them a preferential vote. If voters do not have the possibility to choose among a party's candidates, he alleges that we can hardly speak of a decisive influence of voters on the selection of candidates. Prof. Dr Jurij Toplak further drew attention to the fact that there exist many systems that give voters a decisive influence on the allocation of seats and

that enable the establishment of electoral districts in such a manner that the weight of the votes of voters from different districts is the same.

17. The representatives of the NEC stressed that the NEC cannot discuss whether the regulation of the electoral system currently in force should be amended or improved, as it is only charged with ensuring its lawful exercise. In the opinion of the Director of the NEC, it cannot be said that voters have no influence on elections in the system in force; however, such influence is small. He drew attention to the fact that a voter may not choose among the candidates of a political party. These are determined by political parties, within which fierce battles are allegedly fought over which candidate will stand for election in which electoral district. In the opinion of the Director of the NEC, candidates from different political parties in a constituency do not compete against each other, but against candidates from their own (i.e. the same) political party.

18. On 21 November 2018 the NEC submitted to the Constitutional Court the information that the Director of the NEC had been asked to provide at the public hearing, i.e. information on the number of eligible voters according to electoral district and an analysis of the allocation of seats broken down by electoral district at the National Assembly elections in 2011 and in 2014 as well as a table with concrete data on the allocation of seats to the individual lists of candidates.

19. The Constitutional Court sent the information provided by the NEC to the National Council and the National Assembly, who did not submit their positions regarding such.

B – I

20. In its reply, the National Assembly claims that the procedural requirements for a substantive review of the constitutionality of the challenged laws before the Constitutional Court are not fulfilled as the National Council failed to exhaust all options to amend the provisions of the AECEDNA and the NAEA, which it considers to be unconstitutional (i.e. legislative initiative, suspensive veto). It thus proposed that the Constitutional Court reject the request in accordance with the second paragraph of Article 23a of the CCA.

21. In accordance with the first sentence of the second paragraph of Article 162 of the Constitution, the law determines who may lodge a request for the initiation of proceedings before the Constitutional Court. In accordance with the third indent of the first paragraph of Article 23a of the CCA, a request for a review of constitutionality may be lodged by the National Council. In the second paragraph of Article 23a of the CCA, the legislature determined a restriction on lodging a request. According to such, applicants may not lodge a request for a review of the constitutionality or legality of regulations that they themselves adopted. From this provision it follows, *inter alia*, that the National Assembly as the legislative body may not lodge a request for a review of the constitutionality of a law. The restriction determined by the second paragraph of Article 23a of the CCA is

grounded in the position that by exercising its basic competence the drafter of a norm can by itself ensure that the Constitution is observed by amending or supplementing at any given time a regulation it deems to be inconsistent with the Constitution or a law.[1, 2]

22. The competences of the National Council are defined by Article 97 of the Constitution. The first paragraph of Article 97 of the Constitution determines that the National Council may propose that the National Assembly adopt laws, convey to the National Assembly its opinion on all matters within the competence of the National Assembly, require the National Assembly to decide again on a given law prior to its promulgation, and require inquiries on matters of public importance as referred to in Article 93 of the Constitution. In accordance with the second paragraph of Article 97 of the Constitution, where required by the National Assembly, the National Council must express its opinion on an individual matter.

23. According to the Constitution, the National Council may only perform initiative, suspensive, and advisory roles in relation to the National Assembly when the latter exercises its constitutionally determined legislative competences. However, the National Council may not (independently) adopt laws, as according to the Constitution this competence is vested exclusively in the National Assembly as the bearer of legislative power. In light of the above, the National Council cannot be denied the power to submit a request for a review of the constitutionality of laws adopted by the National Assembly on the basis of the second paragraph of Article 23a of the CCA.

B – II

The Decisive Influence of Voters on the Allocation of Deputy Seats

24. The applicant challenges Articles 90, 91, 92, and 93 of the NAEA, which determine the manner of establishing the results of elections to the National Assembly and the allocation of deputy seats; however, in light of the applicant's allegations, it was only necessary to review the constitutionality of the second paragraph of Article 91 of the NAEA. The applicant claims that the regulation of the allocation of seats is inconsistent with Article 3, the fifth paragraph of Article 80, and the first paragraph of Article 82 of the Constitution. Although the applicant did not substantiate its allegations with reference to

[1] For a similar view, see: F. Testen in: L. Šturm (Ed.), Komentar Ustave Republike Slovenije [Commentary on the Constitution of the Republic of Slovenia], Fakulteta za podiplomske državne in evropske študije, Ljubljana 2002, pp. 1138–1139, who in connection with such speaks of legal interest as a fundamental procedural requirement for a request for a review of constitutionality.

[2] The same applies, *mutatis mutandis*, to instances when a review of constitutionality is requested by a group of deputies if their number exceeds the absolute parliamentary majority and the adoption of the law at issue does not require a more qualified majority than a simple absolute majority (see Constitutional Court Order No. U-I-249/14, dated 1 December 2016).

individual provisions of the Constitution, it follows from its statements taken in their entirety that its main allegation is that the statutory regulation of the allocation of seats does not correspond to the requirement determined by the fifth paragraph of Article 80 of the Constitution, i.e. that voters shall have a decisive influence on the allocation of seats to individual candidates. The challenged regulation allegedly leads to a situation where such decisive influence is in the hands of the proposers of candidates, which are generally political parties, and not the voters. The applicant believes that this constitutional requirement would only be satisfied if "election results guaranteed an equal distribution of deputies across the electorate," which entails that "every electoral district would have to have an elected deputy."

25. The decisive question in the case at hand is thus whether the regulation of the allocation of deputy seats in the NAEA corresponds to the constitutional requirement that voters have a decisive influence on the allocation of seats to the candidates.

26. The Constitutional Court already adopted certain positions with regard to the decisive influence of voters on the allocation of seats to the candidates (*cf*. Orders No. U-I-226/00 and No. U-I-346/05); however, these positions were scattered and closely linked to the claims of the individual petitioners, which more or less referred to the drawing up and size of electoral districts and the observance of a relative rather than the absolute number of votes in the allocation of seats and the allegedly ensuing unequal suffrage. By Order No. U-I-346/05, the Constitutional Court adopted the position that "within the regulation of constituencies and electoral districts currently in force and in accordance with the principle of equal suffrage, a direct influence of voters on the allocation of seats to the candidates can only be ensured by taking into account a relative election result." However, in none of the cited cases did the Constitutional Court adopt a comprehensive position regarding the interpretation of the fifth paragraph of Article 80 of the Constitution or the question of whether the system of personalisation that takes into account the relative election result of a candidate in an electoral district is as such consistent with the Constitution.

27. In 2000, the CA80 supplemented Article 80 of the Constitution by introducing a new fifth paragraph, by which the Constitution framer regulated at the constitutional level (i.e. constitutionalised) three fundamental elements of the electoral system: deputies (except for the deputies of the national communities) are elected (1) according to the principle of proportional representation (2) with a four-percent threshold required for election to the National Assembly, (3) with due consideration that voters have a decisive influence on the allocation of seats to the candidates. Considering that at the most fundamental level electoral systems are divided into two groups (i.e. proportional and majority systems), it is clear that the Constitution framer determined an allocation of deputy seats according to the principle of proportional representation (i.e. a proportional system) as the primary element of the electoral system. Within this fundamental constitutional framework, it determined two additional elements (i.e. an electoral threshold and a decisive influence of voters on the allocation of seats to the candidates), which function as corrective factors of

the proportional system and thus narrow the field of what is constitutionally admissible. In the case at hand, the Constitutional Court did not consider the electoral threshold (i.e. a prohibitive clause), which is generally intended to prevent fragmentation of the political composition of the National Assembly as the representative body and thus ensure a more stable and effective government.[3, 4] The interpretation of the elements of proportional representation and a decisive influence of voters on the allocation of seats as well as their mutual relationship was decisive for these proceedings. It is clear that the statutory implementation of the requirement that voters have a decisive influence must not alter the fundamentally proportional nature of the electoral system. It would be unconstitutional if a majoritarian electoral system were introduced in order to ensure "a decisive influence of voters". Therefore, the applicant's statements that this requirement would only be satisfied if "election results guaranteed an equal distribution of deputies across the electorate," which entails that "every electoral district would have to have an elected deputy," are manifestly unsubstantiated. This could only be ensured in a majoritarian electoral system.

28. The constitutional concept of proportional representation entails a system of allocating seats that is characterised by the fact that the political composition of parliament reflects the political structure of society or that the seats are allocated in proportion to the support that individual groups of voters express at elections.[5] The concept of proportional representation thus defines the electoral system in its narrower sense, i.e. the system for allocating seats, the essence of which is that seats are allocated to candidates or lists of candidates in such a manner that the allocated number of seats is proportionate to the support given to candidates by voters at elections. It is characteristic of proportional systems that voters choose among a number of candidates (as a general rule, among lists of candidates) in plurinominal constituencies (in contrast to majoritarian systems, where individual candidates are elected in uninominal constituencies). There exist different forms of proportional electoral systems, which differ from each other particularly as regards the size of the constituencies, the manner in which votes are cast (for candidates or for lists of candidates), and the manner of the allocation of seats; however, the Constitution makes no mention of such. From the perspective of the fifth paragraph of Article 80 of the Constitution (the principle of proportional representation), any electoral system that in principle ensures a proportional allocation of deputy seats according to their electoral success is therefore constitutionally admissible.

29. In addition to the electoral threshold, the legislature is only limited by the constitutional requirement that voters have a decisive influence on the allocation of seats when

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[3] *Cf*. F. Grad, Volitve in volilni sistemi [Elections and Electoral Systems], Uradni list Republike Slovenije, Ljubljana 2004, pp. 133 and 134.

[4] With regard to the electoral threshold, see Constitutional Court Decision No. U-I-44/96, dated 13 June 1996 (Official Gazette RS, 36/96, and OdlUS V, 98).

[5] *Cf*. F. Grad, *op. cit.*, p. 60.

deciding on the individual elements of the proportional electoral system. It is clear that this requirement cannot be satisfied already by the fact that all deputies are elected by the voters (i.e. that we do not have appointed or hereditary members of parliament upon whom the voters would have no influence). In such a sense, a "decisive influence of voters" is ensured in all democratic systems and follows already from the second paragraph of Article 80 of the Constitution, which states that (all) deputies are elected by universal, equal, direct, and secret voting. The requirement that voters have a decisive influence on the allocation of seats must therefore entail more than simply that deputies are elected by the voters, as it would otherwise prove unnecessary. When interpreting this constitutional requirement the Constitutional Court proceeded from established methods of legal interpretation, particularly from the linguistic meaning of the text of the Constitution and also considering the intention of the Constitution framer as follows from the materials for the adoption of the CA80 (i.e. historical interpretation).

30. On the basis of interpretation, the following conclusions may be drawn from the text of the Constitution, according to which "voters have a decisive influence on the allocation of seats to the candidates." The fact that the Constitution refers to the influence of voters on "the allocation of seats to the candidates" – and not, for example, the allocation of seats to lists of candidates (or political parties) – clearly points towards the conclusion that the Constitution does not refer to the influence of voters on how many seats an individual list of candidates will obtain in a constituency, but to the influence of voters on which of the candidates on a list will obtain a seat. Although it is inherent in elections that the influence of voters is ensured in more or less all stages of an election (e.g. in the allocation of seats to lists of candidates or even already during the nomination of candidates), the Constitution requires that voters have a specific influence in the last stage of the election process when seats are allocated to concrete persons (i.e. personalisation). The Constitution thus gives the legislature a certain margin of appreciation with regard to how it will regulate the influence of voters in the preceding stages of the election process, and only puts a special emphasis on such influence with regard to personalisation. The Constitution refers to voters in the plural (and not to an individual voter in the singular). Such is understandable, as elections are a process during which the otherwise individual (personal) right to vote is exercised in a collective manner,[6] and therefore the influence of voters on the allocation of seats to the candidates is also exercised in the same manner. The Constitution thus determines not only that deputies are elected by voters (which is a given in a democratic system), but also that the voters from a constituency taken as a

[6] The Constitutional Court already stressed that the right to vote can only be exercised by all voters together in an organised manner and according to a procedure that has been determined in advance and whose goal is to establish representative bodies in a lawful manner in Decision No. Up-304/98, dated 19 November 1998, OdlUS VII, 240, paragraph 11 of the reasoning, and subsequently also, e.g. in Order No. U-I-100/13, Up-307/12, dated 10 April 2014, paragraph 8 of the reasoning. *Cf.* also J. Sovdat, *Volilni spor* [Electoral Disputes], GV Založba, Ljubljana 2013, p. 31.

whole have an influence on which of the candidates will be allocated a seat, thereby requiring the personalisation of deputy seats within the proportional electoral system.

31. The essential question is what it means for the influence of voters on the allocation of seats to individual candidates to be decisive. According to the *Slovar slovenskega knjižnega jezika* [Dictionary of the Slovene Literary Language], something is decisive when it "causes something to happen in a specific manner, to become such as it is." At the level of general linguistic use, decisiveness thus means that something is the reason for the creation (realisation) of something else. It thus concerns the causal relationship between two elements. When interpreting the fifth paragraph of Article 80 of the Constitution, such an understanding of the word decisive entails that it is the voters who "cause" the allocation of seats to individual candidates. The collective expression of the will of the voters must be the exclusive and direct reason for the allocation of deputy seats to individual persons. A decisive influence of voters on the personalisation of deputy seats therefore entails that the allocation of seats is in the hands of the voters, and not in the hands of other subjects, also not in the hands of the proposers of the lists of candidates (i.e., as a general rule, political parties). The composition of the National Assembly must depend on the collective will of the voters.

32. In light of the specific legal nature of the right to vote (i.e. the collective exercise thereof) and the text of the Constitution, which refers to voters in the plural, the constitutional requirement that voters have a decisive influence cannot be interpreted in the sense of the greatest possible influence of every individual voter. This requirement is namely not an element of the right to vote as a human right (if this were the case, it would be included already in the second paragraph of Article 43 of the Constitution and the question would arise as to why its special regulation in the chapter on the organisation of the state was necessary), but constitutes an objective element of the electoral system. If it were an element of the right to vote, the legislature would also be substantially limited in the choice of electoral system within the constitutional requirements, as, provided it wanted to act consistently, it would have to provide each and every voter with an opportunity to influence the selection of the candidates for each and every of the 88 deputy seats. Therefore, the relationship between the principle of proportionality and the decisive influence of voters is not one of contradiction, which would occur if two human rights of equal rank clashed and where in accordance with the principle of proportionality the highest possible degree of the realisation of both would be required (i.e. a so-called practical concordance). The decisive influence must be understood as an objective and collective element of the allocation of deputy seats in the framework of the proportional electoral system, and therefore it cannot be reviewed from the perspective of the individual voter. Namely, if from the fifth paragraph of Article 80 of the Constitution there followed the requirement to "maximise" the constitutionally determined elements of the electoral system, this question could also arise with regard to the question of proportional representation – i.e. whether the statutory regulation currently in force ensures the best possible balance between the share of votes and the share of allocated seats, which could in turn raise questions regarding the number of constituencies (and consequently

the number of deputies elected in the individual constituencies), electoral coefficients, the electoral threshold, etc.[7]

33. Voters express their will at elections by casting their votes. Their decisive influence must be reflected in the outcome of the vote. On the one hand, the constitutional principle of proportional representation requires that seats be allocated in proportion to the support of individual groups of voters. On the other hand, the constitutional requirement that voters have a decisive influence requires that voters express their support for (one or more) individual candidates by casting their votes, as otherwise it cannot be ensured that the personalisation is "in the hands of" the voters. If understood in this manner, these general constitutional requirements enable the legislature to choose different kinds of proportional electoral systems, which are characterised by the fact that voters vote for candidates,[8] not only for lists of candidates. However, the Constitution does not determine how voters vote for candidates.[9] Such entails that the fifth paragraph of Article 80 of the Constitution also does not require that voters as individuals must have the possibility to choose among different candidates from the same list or among candidates from different lists within a constituency. Different systems, which ensure a voter's influence in a different manner, and perhaps also to a greater extent, would be constitutionally admissible, as they are not prohibited by the Constitution. However, they are not constitutionally required by the fifth paragraph of Article 80 of the Constitution. The choice among them is therefore a question of the appropriateness of the statutory regulation and a political question *par excellence.* Hence, it falls within the legislature's margin of appreciation.[10]

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[7] By Decision No. U-I-354/96 (paragraph 9 of the reasoning), which was adopted before the enactment of the CA80, the Constitutional Court, albeit in connection with the principle of equal suffrage, already adopted the position that the Constitution does not limit the legislature's own political assessment to such an extent that it would have to ensure the best possible balance between the share of votes and the share of allocated seats.

[8] However, subject to the condition that the electoral system fulfils all constitutionally determined elements referred to in the fifth paragraph of Article 80 of the Constitution.

[9] From the perspective of comparative law, the influence of voters on the selection of candidates in proportional electoral systems is ensured through different forms of preferential voting, *panachage*, ranking within a system with a single transferable vote, etc.

[10] The requirement that voters have a decisive influence in the personalisation stage is not incompatible with additional (secondary) rules that are required for the allocation of seats to candidates when the number of seats gained by individual candidates does not completely correspond to the number of seats gained by the list as a whole. In a preferential vote system, for example, depending on whether candidates are more or less known, it is possible that a lower number of candidates gain a seat on the basis of preferential votes (also subject to the statutory conditions for the consideration of preferential votes) than the total number of seats obtained by the list of candidates on the basis of the system for the allocation of seats. Such can be imagined in connection with parties or lists where very well-known individuals "draw preferential votes to themselves," thus preventing the dispersion of votes among a sufficient number of candidates. In

34. As regards the applicant's statements that link the decisive influence of voters with an equal territorial representation of the voters in the National Assembly in the sense that every electoral district should have its own deputy, the Constitutional Court additionally notes (see also paragraph 27 of the reasoning of this Decision) that, within the current system of allocating seats and their personalisation, a positive characteristic of the electoral districts lies precisely in the fact that they bring the candidates closer to the voters and to a certain extent ensure the territorial dispersion of seats, although it is not guaranteed that every electoral district will have a deputy. It must be noted that other means of personalisation, although they do ensure individual voters a greater possibility to influence the choice of candidates (e.g. preferential voting within the same list), do not guarantee greater territorial dispersion of deputy seats, but in fact rather lesser dispersion, as they enable the concentration of seats in regional centres within individual constituencies.

Review of the Second Paragraph of Article 91 of the NAEA

35. Although the applicant challenged a number of Articles of the NAEA that regulate the allocation of deputy seats (Articles 90, 91, 92, and 93 of the NAEA), in light of its allegation the Constitutional Court only reviewed the constitutionality of the second paragraph of Article 91 of the NAEA, which refers to the constitutional requirement that voters have a decisive influence on the allocation of seats to the candidates.

36. The statutory regulation in force ensures the principle of proportional representation by allocating deputy seats to the candidates at two levels – at the level of the eight constituencies and at the level of the state as a whole, whereby lists that fail to obtain at least four percent of the total number of votes at the state level (i.e. the electoral threshold) do not participate in the allocation. The Droop quotient is applied in the allocation of seats in the constituencies.[11] The seats not allocated in the constituencies are allocated at the state level according to the d'Hondt formula.[12]

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such instances, it would be admissible to take into account a decisive influence of the proposer of the list with regard to the remaining seats (e.g. the order of the candidates on an individual list).

[11] Such is calculated by dividing the total number of votes cast for all lists of candidates in a constituency by the number of deputies to be elected in the constituency, increased by one, which is rounded up to the next full number. The number of votes cast for a list is divided by this quotient. The list is allocated the number of seats equal to the number of times the quotient divides into the number of votes for the list (the first paragraph of Article 90 of the NAEA).

[12] In the allocation of seats the sums of all the votes that the individual lists have obtained in the entire state are taken into account. Lists of candidates are allocated as many seats as amount to the difference between the number of seats which they would have been allocated on the basis of the sum of the votes received at the state level and the number of seats they already received in the allocation in constituencies (the first paragraph of Article 92 of the NAEA). The seats received by lists submitted by the same proposers at the state level are allocated to the lists in the

37. The starting point for the allocation of seats to individual candidates (i.e. personalisation) in the challenged statutory regulation is the fact that each of the eight constituencies is divided into eleven electoral districts (the first and fifth paragraphs of Article 20 of the NAEA). Only one candidate from a list of candidates stands for election in an electoral district (the fifth paragraph of Article 20 and the second paragraph of Article 49 of the NAEA), and, when determining a list of candidates, the proposer of the list also determines the electoral district in which the individual candidates are to stand for election (the first paragraph of Article 49 of the NAEA). Rolls of confirmed lists of candidates and of the candidates standing for election in the individual electoral districts are published before an election (Articles 61 and 62 of the NAEA), and, in addition to the name and family name of each candidate, the ballot paper includes the name of the list of candidates that individual candidates belong to (the third indent of the second paragraph of Article 73 of the NAEA). Voters cast their vote by circling the serial number in front of the name and family name of the candidate they wish to vote for (the third paragraph of Article 73 of the NAEA). While expressing their will, voters thus have in front of them a ballot paper containing a list of candidates accompanied by the names of the lists they belong to, which is determined by the proposers of the individual lists of candidates. When a voter circles the serial number in front of the name and family name of a candidate, he or she casts a vote for that candidate and thereby inevitably also for the list of candidates that the candidate belongs to (the third indent of the second paragraph of Article 73 and the third paragraph of Article 73 of the NAEA). With one action the voter votes for a specific candidate on a list and expresses his or her support for that list of candidates as a whole (i.e. for all candidates on the list). The votes cast in favour of an individual list of candidates from all electoral districts in a constituency are added up and therefore the individual candidates from a list are in fact elected with the support of the voters from the entire constituency. An individual candidate is thus not elected solely by the votes of the voters from the electoral district wherein he or she stood for election, but a sufficient level of support enjoyed by the list of candidates in all electoral districts in a constituency is a precondition for each seat obtained. Only after such support has been established are the obtained seats allocated to the individual candidates according to the results in the electoral districts. Candidates from a list of candidates are elected according to their rank calculated on the basis of the share of their votes in the total number of votes cast in the electoral district (the second paragraph of Article 91 of the NAEA). This applies to candidates elected in constituencies on the basis of the Droop quotient as well as candidates who obtain their seats in the allocation at the state level on the basis of the d'Hondt formula.

38. Within the electoral system in force, the influence of voters on the allocation of seats to the candidates is thus ensured by the fact that (1) voters vote for individual candidates in electoral districts (and thus also vote for the lists of candidates they belong to) and that

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constituencies with the highest remainder of votes in proportion to the Droop quotient in the constituency (Article 93 of the NAEA).

(2) from an individual list of candidates seats are allocated to those candidates who obtained the greatest shares of votes in the total number of votes cast in the electoral districts; during the stage of seat allocation to individual candidates, candidates from lists submitted by the same proposer compete with one another through a comparison of their relative success in their electoral districts. The question at issue is thus whether such manner of personalisation of deputy seats corresponds to the constitutional requirement that voters have a decisive influence on the allocation of seats to the candidates.

39. The rule that within lists of candidates submitted by the same proposer seats are allocated to individual candidates according to their relative success in their electoral district compared to the success of the candidates of the list of the same proposer in other electoral districts excludes the possibility that seats are allocated according to the order as determined by the proposer of the list at the level of the constituency. As the decisive influence of voters on the allocation of seats determined by the fifth paragraph of Article 80 of the Constitution entails the collective influence of voters, which excludes the direct influence of the proposers of the lists, it must be concluded that the challenged statutory regulation ensures such influence of voters. In the system currently in force, proposers of lists (i.e., as a general rule, political parties) do not have a decisive influence on which of their candidates will become a deputy in the National Assembly. Their influence entails merely the determination of the electoral district in which individual candidates will stand for election. They can only make an educated guess about the electability of the candidates on the basis of the results of past elections and an *a priori* assessment of the support that individual candidates enjoy among the voters in a specific district. Such guesses will always be inherently linked to the functioning of political parties, as it is common knowledge that, in this regard, they adapt accordingly to every electoral system. In accordance with the challenged regulation, the final and therefore decisive vote on who will obtain a deputy seat lies with the voters. That it is precisely the voters who have a decisive influence on the composition of the National Assembly clearly follows from a comparison of every actual composition of the National Assembly to its hypothetical compositions that would have occurred if voters could only have voted for lists (and not also for a specific candidate) and the seats would have been allocated to the candidates in accordance with the order as determined by the proposers of the list. In such event, the composition of the National Assembly would have been substantially different. Therefore, it cannot be denied that the challenged regulation fulfils the condition that voters have a decisive influence on the allocation of seats to the candidates.

40. That the regulation currently in force is not inconsistent with the fifth paragraph of Article 80 of the Constitution is also supported by a teleological interpretation of the fifth paragraph of Article 80 of the Constitution, which can be obtained by taking into account the text of Section II of the CA80, and its historical interpretation as follows from the materials underlying the adoption of this constitutional act.

41. When adopting the fifth paragraph of Article 80 of the Constitution, the Constitution framer determined some new elements of the electoral system in Section II of the CA80.[13] These were intended to apply to the parliamentary elections in 2000 and to all subsequent elections until the enactment of amendments to the NAEA. With regard to all other aspects, the Constitution framer determined that elections be carried out in accordance with the NAEA/95 in force at the time, which ensured personalisation to essentially the same extent and in the same manner as the NAEA currently in force even before the enactment of the CA80. It did, however, abolish the so-called national lists, which excluded the influence of voters on the allocation of seats to the candidates, as a certain proportion of deputies of the National Assembly (i.e. up to a maximum of one half of the seats allocated at the level of the state) was dependent exclusively on the will of the proposers of the lists of candidates.

42. In Section II of the CA80 the Constitution framer (1) abolished national lists[14] and upheld personalisation by means of consideration of candidates' relative success in electoral districts; however, (2) instead of explicitly requiring an (additional) consolidation of the NAEA with the fifth paragraph of Article 80 of the Constitution, it determined that the provisions of this Section would apply to all elections to the National Assembly "until the enactment of amendments to the NAEA," but (3) it did not set a deadline by which the legislature was to enact amendments to the NAEA, as is the usual practice in instances where section II of a constitutional act merely determines a transitional regulation thus

[13] It determined that:
– candidate lists which receive less than four percent of all votes in the country shall not be considered in the allocation of seats;
– the Droop quotient shall be applied in the allocation of seats in constituencies in accordance with Article 90 of the National Assembly Elections Act (Official Gazette RS, No. 44/92 and 60/95 – hereinafter referred to as the NAEA/95);
– in the allocation of seats at the state level in accordance with Article 92 of the NAEA/95, the sum of the votes cast for the lists of candidates submitted by the same proposer shall be considered, provided that such lists were on the ballot in two or more constituencies, whereby the lists of candidates submitted by the same proposer are allocated as many seats as amount to the difference between the number of seats which would have been allocated on the basis of the sum of the votes received at the state level, and the number of seats received in constituencies;
– in the allocation of seats at the state level, the second paragraph of Article 93 of the NAEA/95 shall not apply (so-called national lists).

[14] The other elements introduced by Section II of the CA80 did not directly affect the realisation of the constitutional requirement that voters have a decisive influence, but influenced the "math" behind the allocation of seats, thus resulting in a somewhat different realisation of the primary element of the fifth paragraph of Article 80 of the Constitution – the principle of proportional representation.

requiring the consolidation of legislation with the constitutional amendment.[15] Such also allows the interpretation that the Constitution framer deemed that Section II of the CA80 satisfies the requirements referred to in the fifth paragraph of Article 80 of the Constitution.

43. Taking into account a historical and teleological interpretation, the legislature's conviction that the constitutional requirement that voters have a decisive influence referred to in the fifth paragraph of Article 80 of the Constitution is satisfied already by the amendments determined in Section II of the CA80 also follows from the explanatory memorandum of the Draft of the Constitutional Act Amending Article 80 of the Constitution of the Republic of Slovenia (hereinafter referred to as the Draft CA80), which was prepared by the Commission for the Electoral System and Constitutional Amendments (hereinafter referred to as the Commission) as the proposer of this constitutional amendment. In the memorandum to Section I of the CA80, i.e. regarding the new constitutional text, the Commission wrote that this amendment to the Constitution "enables the introduction of all forms of proportional representation or proportional electoral systems. However, it excludes the possibility of allocating seats according to the order as determined on a list of candidates by the proposer of the list (i.e. a political party or a different proposer of a list), as well as the possibility of applying so-called national lists, as it requires that voters have a decisive influence on the allocation of seats to the candidates." In the memorandum to Section II of the CA80, the Commission noted that this Section "ensures the implementation of the proposed amendment of the Constitution and the transition to its application" and that "seats are, as previously, allocated to the candidates who have obtained the highest share of votes in their electoral district, which ensures a decisive influence of voters on the allocation of seats to the candidates".[16] It is evident that the legislature understood the constitutional amendment in the same manner when it adopted the NAEA-B in 2006, which entailed the transposition of the provisions of Section II of the CA80, as it stated in the legislative materials regarding such that the first reason underlying the adoption of the amendment was the consolidation of the NAEA with the CA80 or "the transposition of the legal regulation from the operative part of the CA80, which is typical statutory substance matter, into the [NAEA]".[17]

44. In light of the above, the Constitutional Court held that, although it is not comparable to some forms of voters' decisive influence on the allocation of seats to the candidates in proportional electoral systems as known from comparative law, it cannot be claimed that within the framework of the required system of proportional representation the challenged regulation does not ensure that voters have a decisive influence on the allocation of seats

[15] See the first and second paragraphs of Section II of the Constitutional Act amending Articles 90, 97, and 99 of the Constitution of the Republic of Slovenia (Official Gazette RS, No. 47/13 – CA90, 97, 99).

[16] Gazette of the National Assembly, No. 52/00.

[17] Gazette of the National Assembly, No. 35/06.

to the candidates.[18] Therefore, the second paragraph of Article 91 of the NAEA is not inconsistent with the fifth paragraph of Article 80 of the Constitution (Point 1 of the operative part). Within the limits of the outlined constitutional requirements, the choice of a concrete electoral system, including the manner of personalisation (also such that would ensure a greater influence of individual voters), falls into the legislature's margin of appreciation and is not a matter to be reviewed by the Constitutional Court.[19]

45. The applicant also alleges that the second paragraph of Article 91 of the NAEA is inconsistent with Articles 3 and 82 of the Constitution, but it does not substantiate these allegations, therefore the Constitutional Court could not verify them.

B – III

Review of the Mutual Consistency of Article 4 of the AECEDNA and the Third, Fourth, and Fifth Paragraphs of Article 20 of the NAEA from the Perspective of the Principles of a State Governed by the Rule of Law

46. The applicant claims that Article 4 of the AECEDNA is inconsistent with Articles 1, 2, and 20 of the NAEA. Article 1 of the NAEA determines that deputies of the National Assembly are elected on the basis of universal and equal suffrage in free and direct elections by secret ballot. In accordance with Article 2 of the NAEA, deputies are elected in constituencies, namely according to the principle that one deputy is elected per an approximately equal number of inhabitants and the principle that political interests are proportionately represented in the National Assembly.

47. According to Article 160 of the Constitution, the Constitutional Court is only competent to review the mutual consistency of two laws if their inconsistency would entail a violation of the principles of a state governed by the rule of law (Article 2 of the Constitution); otherwise it only has jurisdiction to review the consistency of a law with the Constitution. In instances of potential inconsistencies within a law or inconsistent laws, it is the task of courts and other authorities who decide on the rights, obligations, and legal interests of natural persons or legal entities to apply different rules of interpretation that are commonly accepted in legal doctrine and applied in legal practice, in order to establish which law has to be applied in an individual case. As long as inconsistencies between laws can be resolved through the application of rules of interpretation, their existence

[18] *Cf.* note No. 9 of this Decision.

[19] As held by the Constitutional Court in Orders No. U-I-128/92, No. U-I-226/00, and No. U-I-346/05.

does not entail an inconsistency with the principles of a state governed by the rule of law.[20]

48. Article 20 of the NAEA is divided into six paragraphs. It regulates the division of the state into constituencies and electoral districts and determines their importance and the criteria that the legislature has to consider when establishing them. In accordance with the fifth paragraph of Article 20 of the NAEA, every constituency is divided into eleven electoral districts and every electoral district includes an approximately equal number of inhabitants. In each electoral district voters vote for one candidate. The third and fourth paragraphs of Article 20 of the NAEA lay down additional criteria that the legislature has to consider when establishing constituencies and electoral districts, i.e. the geographical integrity and common cultural and other characteristics of these territories; an electoral district may encompass the territory of one municipality, the territory of two or more municipalities, or the territory of part of a municipality. On the basis of these criteria, Article 4 of the AECEDNA, which is the implementing law for the exercise of the mentioned provisions of the NAEA, determines the territories of the individual constituencies and electoral districts.

49. In terms of substance, the applicant only asserts an inconsistency of Article 4 of the AECEDNA with Article 20 of the NAEA. It states that at the National Assembly elections in 2014 the ratio of the difference in the size of electoral districts according to the number of eligible voters already amounted to 1:3.73. Consequently, the Constitutional Court only conducted a review within this scope.

50. The Constitutional Court already reviewed the assertion that Article 4 of the AECEDNA and Article 20 of the NAEA are inconsistent (as regards the requirement that electoral districts be of [approximately] equal size) in Order No. U-I-128/92. At that time, the Constitutional Court assessed that observance of the criteria referred to in the third and fourth paragraphs of Article 20 of the NAEA (i.e. geographical integrity and other common characteristics of the territories, the highest possible overall integrity of municipalities) necessarily leads to greater deviations – of even up to 50 percent – from the average size of electoral districts according to the number of inhabitants and thus in extreme cases even to a ratio of 1:3 as regards their size. It held that such great deviations entail that we are no longer concerned with electoral districts of approximately equal size. If we compare Article 4 of the AECEDNA solely and in isolation with the fifth paragraph of Article 20 of the NAEA, their inconsistency would be evident; however, in the review, the Constitutional Court also took into account the criteria from the third and fourth paragraphs of Article 20 of the NAEA. As consistent observation of the criterion referred to in the fifth paragraph of Article 20 of the NAEA would necessarily lead to a violation of the third and particularly the fourth paragraphs of the same Article, it

[20] *Cf.* Constitutional Court Decisions No. U-I-244/14, dated 10 September 2015 (Official Gazette RS, No. 69/15), paragraph 10 of the reasoning, and No. U-I-303/08, dated 11 February 2010 (Official Gazette RS, No. 14/10), paragraph 4 of the reasoning.

interpreted these mutually irreconcilable provisions “in accordance with the legislature’s intent or with the purpose of the law [i.e. the NAEA] as a whole.” By means of such a comprehensive review, it rejected the assertion that Article 4 of the AECEDNA and Article 20 of the NAEA are inconsistent as unsubstantiated.

51. In light of the applicant’s assertions regarding the difference in the sizes of the electoral districts, which were confirmed by enquiries at the MI and the NEC, the Constitutional Court decided to reassess the position it adopted in Order No. U-I-128/92.

52. As the fifth paragraph of Article 20 of the NAEA determines the number of inhabitants as the criterion for establishing electoral districts, the Constitutional Court requested information on the number of citizens of the Republic of Slovenia with permanent residence in the different electoral districts as of 31 December 2011, 31 December 2013, and 31 December 2014 from the MI. As the MI clarified that it did not posses these data, the Constitutional Court could not study the difference in the sizes of the electoral districts according to the criterion determined by the fifth paragraph of Article 20 of the NAEA. It follows from the data of the NEC, which also do not refer to the number of inhabitants but to the number of eligible voters according to electoral district, that for the elections in 2011 on average 19,428 voters were entered in the electoral registers in the individual electoral districts. In the smallest electoral district (i.e. Hrastnik), 8,527 voters were entered in the electoral register, which amounts to only 43.89 percent of the average number of voters in all 88 electoral districts. In the largest electoral district (i.e. Grosuplje), 30,381 voters were entered in the electoral register, which amounts to 156.37 percent of the average number of voters in electoral districts. The difference in the sizes of the electoral districts according to the number of voters was even greater for the elections in 2014. On average, 19,467 voters were entered in the electoral register in an individual electoral district. In the smallest electoral district (i.e. Hrastnik), there were 8,301 voters, which amounts to 42.64 percent of the average number of voters in electoral districts. In the largest electoral district (i.e. Grosuplje), there were 30,991 voters, which amounts to 159.20 percent of the average number of voters in electoral districts. The difference in the sizes of the electoral districts has thus been increasing in comparison to the situation in 1992 (1:3), when the legislation was enacted. In 2011, the ratio between the smallest and largest electoral districts amounted to 1:3.56, and in 2014 even 1:3.73. Given the data at its disposal, which do not refer directly to the statutory criterion as to the number of inhabitants, but to the number of eligible voters in the individual electoral districts, the Constitutional Court considered these data in its review, taking into account that the ratios between the sizes of the electoral districts would also be very similar if the number of inhabitants were considered.

53. The AECEDNA determines the territories of the constituencies and the electoral districts on the basis of the criteria laid down by the NAEA. In doing so, it takes into consideration the organisation of the municipalities and local communities on the day of the enactment of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (Official Gazette RS, No. 46/92 – hereinafter referred to as the

AECEDNA/92).[21] It follows from the legislative materials that the AECEDNA/92 (as well as the National Assembly Elections Act, Official Gazette RS, No. 44/92 – hereinafter referred to as the NAEA/92) took into account the principle that every constituency shall include an approximately equal number of inhabitants as the fundamental principle underlying the determination of the constituencies (whereas it did not consider this principle as regards electoral districts).[22] In addition, the AECEDNA/92 also observed the principle that in determining constituencies the smallest territory shall be a municipality, and in determining electoral districts the smallest territory shall be a local community. In accordance with the fourth paragraph of Article 20 of the NAEA/92, the territory of an electoral district was determined to be the territory of one or more municipalities and, if the territory of a municipality was too large, by the territory of a part of the municipality, i.e. the territory of a local community. With regard to constituencies as well as electoral districts, the AECEDNA/92 took into consideration that such entail adjacent territories that are connected (i.e. geographical integrity).

54. It follows from the legislative materials concerning the adoption of the AECEDNA-A in 2004 that the establishment of the electoral districts in 1992 was grounded in the then existing system of local self-government of 62 municipalities, and an electoral district most frequently encompassed the territory of one municipality (39), in three instances the territories of two municipalities, and 17 municipalities with a larger number of inhabitants were divided into more than one district. In 1994, during the first wave of establishing new municipalities, the Act Establishing Municipalities and Municipal Boundaries (Official Gazette RS, No. 108/06 – official consolidated text, 9/11, and 31/18 – the AEMMB) established 136 municipalities and 11 urban municipalities (amounting to a total of 147). Their territories were transformed in 1998 by the establishment of a further 45 new municipalities, and another new municipality between 1998 and 2004.[23] In the AECEDNA-A, the legislature followed the hitherto changes made during the transformation of the system of local self-government only to a very limited extent, namely by amending the territories of the fifth and sixth electoral districts in the second

[21] Until the present day, the AECEDNA was only amended in 2004 (The Act Amending the Act Establishing Constituencies for the Election of Deputies to the National Assembly, Official Gazette RS, No. 80/04 – hereinafter referred to as the AECEDNA-A), and the hitherto changes in the system of local self-government and the complete transformation of the network of municipalities (as compared to 1992) were only considered to a very limited extent.

[22] The initial draft of the AECEDNA (Gazette of the National Assembly, No. 14/92) also laid down this principle for the establishment of electoral districts, but the principle was no longer included in the explanatory memorandum of the draft law in the draft for the second reading in the legislative procedure, which stated that this principle did not have to be enacted "as in electoral districts votes in favour of specific candidates are merely cast, but the results are established at the level of the constituency."

[23] Gazette of the National Assembly, No. 57/04, p. 21.

constituency.[24] However, it follows from the legislative materials that at that point the legislature was already aware (evidently due to the inconsistency with the criteria referred to in the third and fourth paragraphs of Article 20 of the NAEA) that, due to the requirement of geographical integrity and the requirement that electoral districts encompass the territory of one or more municipalities or a part of the territory of a municipality,[25] the boundaries of the electoral districts would have to be adapted to the boundaries of the new municipalities.[26]

55. Considering the data regarding the number of eligible voters per electoral district for the elections in 2011 and 2014, the disparity between the largest and smallest electoral districts at the state level has been increasing. There thus exist even greater differences in the size of the electoral districts than in 1992 (see paragraph 52 of the reasoning of this Decision). In light of the fundamental transformation of the system of local self-government in 1994 and considering all subsequent changes in the number and territories of municipalities,[27] the territories of the electoral districts are also not adapted to the boundaries of the new municipalities and they no longer fulfil the requirement of geographical integrity or the consideration of common cultural and other characteristics (the third and fourth paragraphs of Article 20 of the NAEA).

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[24] The transformation of the municipalities of Sežana and Koper due to the movement of certain local communities was followed by the corresponding transformation of two electoral districts.

[25] The principle of respect for the integrity of municipalities prohibits that an electoral district encompasses one municipality and part of another municipality, as held by the Constitutional Court in Order No. U-I-128/92 (the last paragraph of the reasoning). It evidently follows from the legislative materials that this prohibition is not being observed at the moment and that parts of individual municipalities are attached to electoral districts that encompass, as a whole or in part, parts of other municipalities.

[26] The legislature explained the amendment of the territories of the electoral districts by stating "that, due to the establishment of new municipalities or the reorganisation of the system of local self-government, it would be reasonable to also reorganise the territories of the electoral districts in order to observe the principle of geographical integrity. The territories of the individual electoral districts are namely a consequence of the strict adherence to municipal boundaries during the establishment of the electoral districts in 1992, which, however, no longer correspond to the boundaries of the current municipalities. And if we want to ensure that the principle referred to in the AECEDNA that electoral districts encompass the territory of one or two municipalities or parts of one municipality is consistently observed, the boundaries of the electoral districts must be adapted to the boundaries of the new municipalities." (Gazette of the National Assembly, No. 57/04, p. 22)

[27] Up until the Act Establishing Municipalities and Municipal Boundaries (Official Gazette RS, No. 9/11 – AEMMB-G), which changed the territories of the municipalities of Mirna and Trebnje by establishing the Mirna municipality, and Constitutional Court Decision No. U-I-114/11, dated 9 June 2011 (Official Gazette RS, No. 47/11, and OdlUS XIX, 23), which established the Ankaran municipality.

56. The circumstances are thus completely different than they were at the time of the review conducted by the Constitutional Court in Order No. U-I-128/92. At that time, the Constitutional Court adopted the position that Article 4 of the AECEDNA is not inconsistent with Article 20 of the NAEA, even though it established that the criterion of the equal size of the electoral districts had not been observed. It substantiated such with a comprehensive review of Article 20 of the NAEA, as it deemed that it was only by means of consistent adherence to the criterion of equal size that also the criteria referred to in the third and fourth paragraphs of Article 20 of the NAEA could be realised. It hence arrived at such conclusion on the basis of a weighing of the criteria for establishing electoral districts, which are difficult to reconcile. However, it has to be taken into account that after 26 years and with a completely different organisation of municipalities, the electoral districts no longer comply with any of the criteria referred to in Article 20 of the NAEA. The differences in the size of the electoral districts have been increasing, and neither the boundaries of the existing municipalities nor the criterion of geographical integrity have been observed. Therefore, the third and fourth paragraphs of Article 20 of the NAEA can no longer relativise the importance of the fifth paragraph of Article 20 of the NAEA concerning the equal size of electoral districts. The inconsistency between the criteria referred to in Article 20 of the NAEA and Article 4 of the AECEDNA is such that it results in a hollowing out of the requirement referred to in the fifth paragraph of Article 20 of the NAEA, which requires that "every electoral district includes an approximately equal number of inhabitants." Article 4 of the AECEDNA is therefore not formulated within the limits of the room to manoeuvre that the legislature determined for itself. In our legal system there thus exist two statutory regulations that are in such conflict that regular methods of interpretation do not enable their content to be construed in a manner that would resolve this conflict. Such conflicts between statutory provisions result in an inconsistency with the principles of a state governed by the rule of law (Article 2 of the Constitution).

57. For the outlined reasons and proceeding from the same legal standpoints, the Constitutional Court assessed, differently than in Order No. U-I-128/92, that the inconsistency between Article 4 of the AECEDNA and the third, fourth, and fifth paragraphs of Article 20 of the NAEA is such that it amounts to an inconsistency with Article 2 of the Constitution. If the Constitutional Court finds that the principles of a state governed by the rule of law are violated as a result of the mutual inconsistency of two laws, it may interfere with the provisions of one of the laws or even both of them.[28] As Article 4 of the AECEDNA, which determines the territories of electoral districts, failed to observe the criteria referred to in Article 20 of the NAEA, which the applicant did not challenge, the Constitutional Court established the unconstitutionality of that statutory provision.

[28] By Decision No. U-I-227/00, dated 14 February 2002 (Official Gazette RS, No. 23/02, and OdlUS XI, 23), it, for example, abrogated both challenged laws (paragraph 19 of the reasoning).

58. When the Constitutional Court establishes the unconstitutionality of a statutory provision, as a general rule, it abrogates such. The abrogation of Article 4 of the AECEDNA would entail that the territories of the electoral districts would not be determined. In a system where voting is conducted in electoral districts, such would entail that elections could not be held. Electoral districts have to be established and the abrogation of their regulation could result in an unconstitutional legal gap from the perspective of the fundamental constitutional principles of democracy (Article 1 of the Constitution) and of the principle that citizens exercise power through elections (the second sentence of the second paragraph of Article 3 of the Constitution). Therefore, on the basis of the first paragraph of Article 48 of the CCA, the Constitutional Court adopted a decision establishing that Article 4 of the AECEDNA is inconsistent with the Constitution (Point 3 of the operative provisions). In accordance with the second paragraph of Article 48 of the CCA, it required the legislature to remedy the established unconstitutionality within a period of two years (Point 4 of the operative provisions). When setting this deadline, the Constitutional Court considered that modification of fundamental elements of the electoral system as a general rule entails the complex and internally intertwined regulation of individual issues for the enactment of which the legislature must have at its disposal an adequately greater amount of time than the Constitutional Court usually grants thereto in order to respond to an established unconstitutionality.

59. As the Constitutional Court established the inconsistency of Article 4 of the AECEDNA with the principles of a state governed by the rule of law (Article 2 of the Constitution), it did not have to adopt a position regarding the allegation of the inconsistency of the challenged regulation with the principle of equal suffrage (Article 43 of the Constitution).

B – IV

Review of Articles 42, 43, and 44 of the NAEA

60. The applicant also alleges the unconstitutionality of Articles 42, 43, and 44 of the NAEA, which determine the rules for determining candidates endorsed by political parties and “non-party” candidates. The applicant alleges that the statutory regulation under which the signature of a deputy carries 333 times the weight of the signature of an ordinary citizen, determines such disproportionate conditions for candidacies that it is inconsistent with the principle of the sovereignty of the people enshrined in the first paragraph of Article 3 of the Constitution and the first paragraph of Article 82 of the Constitution, according to which deputies are the representatives of all the people.

61. In accordance with Article 42 of the NAEA, candidates may be nominated by political parties or voters. Article 43 of the NAEA[29] determines the conditions for the nomination of

[29] Article 43 of the NAEA determines as follows:

candidates who are endorsed by political parties, and Article 44[30] the conditions for the nomination of candidates who are endorsed by voters. A political party may *inter alia* submit a list of candidates in every constituency if its lists of candidates are supported by the signatures of at least three deputies of the National Assembly (the second paragraph of Article 43 of the NAEA). In an individual constituency a list of candidates may be submitted by the signatures of a group of at least one thousand voters with permanent residence in the constituency (the second paragraph of Article 44 of the NAEA). Non-party lists of candidates may thus be introduced in all constituencies with the signatures of at least 8000 voters.

62. The applicant claims that the challenged regulation is disproportionate. It follows from established constitutional case law that the general principle of proportionality (Article 2 of the Constitution) cannot be an independent criterion for the review of constitutionality, but such depends on the established interference with an individual human right (*cf*. Constitutional Court Decisions No. U-I-219/03, dated 1 December 2005, Official Gazette RS, No. 118/05, and OdlUS XIV, 88, and No. U-I-178/10, dated 3 February 2011, Official Gazette RS, No. 12/11, and OdlUS XIX, 17). The applicant does not allege that the challenged regulation interferes with a human right, and the allegation of

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"A political party shall nominate candidates in accordance with the procedure determined by its rules. The list of candidates shall be determined by secret ballot.
A political party may submit a list of candidates in every constituency, provided its lists are supported by the signatures of at least three deputies of the National Assembly. The signatures of the deputies shall be submitted to the National Electoral Commission on the prescribed forms.
A political party may submit a list of candidates in a constituency provided the list of candidates has been determined by members of the political party who have the right to vote and permanent residence in the constituency, and that the list of candidates is supported by the signatures of at least fifty voters who have permanent residence in the constituency.
A political party may submit a list of candidates in a constituency also in the event the list of candidates has not been determined in the manner described in the preceding paragraph provided the list of candidates is supported by the signatures of at least one hundred voters who have permanent residence in the constituency.
Two or more political parties may submit a joint list of candidates.
Each gender must not comprise less than 35% of the total actual number of female and male candidates on the list.
The provision of the preceding paragraph shall not apply to candidate lists with only three candidates, whereby a candidate list with only three candidates must contain at least one representative of each gender."

[30] Article 44 of the NAEA determines as follows:
"Voters shall support the nomination of a list of candidates by signature.
A list of candidates in a constituency shall be nominated if it is supported by the signatures of at least one thousand voters who have permanent residence in the constituency.
The provisions of paragraphs six and seven of Article 43 of this Act shall apply for the lists referred to in this Article."

disproportionality cannot of itself substantiate the alleged inconsistencies of Articles 42, 43, and 44 of the NAEA with the Constitution.

63. Insofar as the applicant's statements that the challenged regulation determines disproportionately different conditions for the candidacies of non-party candidates in comparison with candidates endorsed by political parties, who may be nominated with the support of three deputies, can be understood as an allegation of inconsistency with the principle of equality before the law enshrined in the second paragraph of Article 14 of the Constitution, they are unsubstantiated. The Constitutional Court has repeatedly stressed that the differentiation between the weight of the signature of a deputy and that of a voter in connection with the determination of lists of candidates is (reasonably) substantiated by grounds that are objectively connected to the regulated subject matter. Already by Decision No. U-I-336/96 it clarified that this regulation "does not entail a differentiation based on personal circumstances (i.e. nationality, race, gender, language, religion, political or other conviction, etc.), but a differentiation that is justified due to the different positions of these actors within the political system. Political parties are organisations that bring together citizens in order to attain political objectives (in particular by nominating candidates at elections), and it is therefore justified that the legislature accords them a special role in the nomination procedure. Deputies of the National Assembly are elected at direct and general elections, and therefore they enjoy – regardless of the electoral system according to which they were elected – the support of a significant part of the electorate. The differentiation of the weight of the signature of a deputy and that of a voter (i.e. the signatures of three deputies outweigh the signatures of up to 800 voters) is objectively justified."[31] The fact that this differentiation has become more severe following the NAEA-B, as the signatures of three deputies now outweigh the signatures of 8000 voters,[32] does not change the decision of the Constitutional Court.

64. It follows from the outlined reasons that the allegations of an inconsistency with the second paragraph of Article 14 of the Constitution are unsubstantiated. The applicant asserts the inconsistency of the challenged regulation with the second paragraph of Article 3 and the first paragraph of Article 82 of the Constitution, but did not substantiate these allegations, therefore the Constitutional Court did not review them.

65. In light of the above, the challenged regulation determined by Articles 42, 43, and 44 of the NAEA is not inconsistent with the Constitution (Point 2 of the operative provisions).

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[31] *Cf*. Constitutional Court Decision No. U-I-220/97, dated 29 October 1997 (Official Gazette RS, No. 70/97, and OdlUS VI, 137), and Orders No. U-I-114/09, dated 27 May 2009, and No. U-I-291/11, dated 5 April 2012.

[32] This amendment raised the number of voters' signatures required for non-party lists of candidates in a constituency from 100 to 1000.

B – V

Review of the First Paragraph of Article 7 of the NAEA

66. The applicant also alleges the unconstitutionality of the first paragraph of Article 7 of the NAEA, which determines that the right to vote and to stand for election as a deputy is held by citizens of the Republic of Slovenia who have reached the age of 18 by [the Slovene preposition used here, i.e. "*na*", can be understood to mean both "on" or "by"; the applicant appears to believe that it means "on"] the day of the election. In the applicant's opinion, it follows from this provision that the right to vote and to stand for election as a deputy is only held by those citizens of the Republic of Slovenia whose 18th birthday is on the day of the election, i.e. who come of age on that day.

67. The interpretation of the first paragraph of Article 7 of the NAEA provided by the applicant is not substantiated by logical, systemic, or teleological interpretation. Furthermore, this interpretation evidently contradicts the text of the second paragraph of Article 43 of the Constitution, according to which every citizen who has attained the age of 18 years has the right to vote and to stand for election. The right to vote is thus enjoyed by any citizen who attained the age of 18 years before an election or on the day of the election at the latest. An interpretation that is not consistent with the Constitution and at the same time contradicts all established methods of legal interpretation is irrelevant. Such an interpretation cannot substantiate the unconstitutionality of a law. Therefore, the allegation of the inconsistency of the first paragraph of Article 7 of the NAEA with Articles 3, 43, and 44 of the Constitution is unsubstantiated (Point 2 of the operative provisions).

B – VI

68. At the public hearing, the applicant extended the application for the review of constitutionality to include the fifth paragraph of Article 80 of the Constitution. It believes that the National Assembly should have respected the will of the people regarding the electoral system as expressed in the 1996 referendum. As it failed to do so, the possibility of the people actually exercising state power (the second paragraph of Article 3 of the Constitution) is allegedly limited.

69. The fundamental procedural requirement for the initiation of proceedings before the Constitutional Court is the jurisdiction of the Constitutional Court. The jurisdiction of the Constitutional Court is regulated by Article 160 of the Constitution and, on the basis of the eleventh indent of the first paragraph of Article 160 of the Constitution, by certain laws. Neither the Constitution nor any laws determine the power of the Constitutional Court to review the mutual consistency of different constitutional provisions. As the Constitutional Court thus lacks the power to review the mutual consistency of constitutional provisions, it

rejected the request for a review of the constitutionality of the fifth paragraph of Article 80 of the Constitution (Point 5 of the operative provisions).[33]

C

70. The Constitutional Court adopted this Decision on the basis of Articles 21 and 48 and the first paragraph of Article 25 of the CCA, composed of: Dr Jadranka Sovdat, President, and Judges Dr Matej Accetto, Dr Dunja Jadek Pensa, Dr. Dr. Klemen Jaklič, Dr Rajko Knez, Dr Etelka Korpič – Horvat, Dr Špelca Mežnar, Dr Marijan Pavčnik, and Marko Šorli. Point 1 of the operative provisions was adopted by six votes against three. Judges Korpič – Horvat, Jaklič, and Šorli voted against. Point 2 of the operative provisions was adopted unanimously. Points 3 and 4 of the operative provisions were adopted by eight votes against one. Judge Mežnar voted against. Point 5 of the operative provisions was adopted by eight votes against one. Judge Jaklič voted against. Judge Šorli submitted a dissenting opinion. Judges Korpič – Horvat and Jaklič submitted partly dissenting and partly concurring opinions. Judges Jadek Pensa and Sovdat submitted concurring opinions.

Dr Jadranka Sovdat
President

[33] *Cf*. Constitutional Court Orders No. U-I-214/00 and No. U-I-262/00.