



**REPUBLIKA SLOVENIJA**  
**USTAVNO SODIŠČE**

U-I-71/91  
13/2-1992

**R E S O L U T I O N**

At the meeting on Feb. 13, 1992, the Constitutional Court discussed the initiative lodged by Gvido Mikec, Izola and

**p a s s e d t h e f o l l o w i n g r e s o l u t i o n :**

The Constitutional Court refuses to accept the initiative and will not institute the proceedings of evaluation of the legality of Art. 12, Item 4, of the Rules by the Executive Council of the Municipal Assembly of Izola on the conditions, manner and procedure of sale of residential houses, lodgings, business premises, buildings and other parts of buildings (Official Publications of the municipalities: Ilirska Bistrica, Izola, Koper, Piran and Sežana, No. 27/91).

**R e a s o n s**

The initiator requests an evaluation of the legality of Art. 12, Item 4 of the above-mentioned Rules according to which the sale of business premises, garages and other real property (cellars, attics, wash houses, drying rooms and the like) is initiated by a citizen. The initiator thinks it illegal that the sale may be initiated by any citizen, although such business premises are being used by somebody else who, unfortunately, has not enough money to buy business premises. The initiator further thinks that this provision could possibly apply to the citizens of a specific municipality in which the business premises are located. The initiator also thinks that a tenant should be given the opportunity to exercise first refusal for a certain period after the auction.

The initiative is unfounded.

The Business Buildings and Premises Act (Official Gazette of SRS, No. 18/74 and 34/88) has no provisions relating to the sale of business premises.

According to the Real Estate Transactions Act (Official Gazette of SRS, No. 19/76 and 42/86), transactions with land, buildings and parts of buildings are free, subject to the conditions provided by statute. Transactions with real property are defined as a transfer of right of use and/or of title *inter vivos*. An agreement of conveyance of real property must be in writing (Art. 1, 3 and 5). Citizens cannot acquire the right of use and/or title to real property in social ownership without payment. Legal entities in social ownership may, unless otherwise provided by statute, sell buildings and parts of buildings, in which right of ownership is allowed, to citizens, societies and clubs and other legal entities in private ownership only by auction (Art. 6, Para 1 and Art. 8).

The above-mentioned regulation shows that a municipality as user of business premises in social ownership may sell business premises in social ownership to a citizen by auction. A citizen may buy business premises at an auction as the highest bidder. Therefore, it is not possible to agree with statute that any citizen may initiate the sale of business premises. A tenant is protected by the rental agreement, by a fixed time for giving notice and by first refusal. This means that under equal conditions he has the right of first refusal of such business premises. Such transactions being free, no citizen of the Republic of Slovenia may be excluded from a purchase under equal conditions and the purchase cannot be limited to the population of a specified municipality only. It is a matter of the tenant's interest and his pecuniary circumstances if he will decide for the purchase. Monthly rent paid by the tenant is a consideration for the use of the business premises and this fact has no influence on the status regarding property. After the auction, a contract of sale is signed with the highest bidder, so

the point of view that a tenant may exercise his right of first refusal some time after the auction is unfounded.

The Constitutional Court passed this Resolution on the basis of Art. 15 of the Law on the Procedure in the Constitutional Court of SR Slovenia (Official Gazette of SRS, No. 39/74 and 28/76).

P r e s i d e n t :  
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