



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

No.: U-I-73/91

Date: 13.02.1992

DECISION

In the proceeding of evaluation of the legality of the Ordinance on the Compensation for the Use of Building Land in the Municipality of Krško, initiated by Elektrogospodarstvo Slovenije, razvoj in inženiring d.d., Maribor, represented by Jožef Šubic, an attorney at law in Bled, the Constitutional Court, at the meeting on Feb. 13, 1992,

took the following decision:

The provisions of Art. 17b of the Ordinance by the Municipal Assembly of Krško on the Compensation for the Use of Building Land in the Municipality of Krško (Skupščinski Dolenjski list No. 3/86 and Official Gazette of SRS No. 1/87, 17/87, 43/87 and 21/89).

Reasons

By its request of July 24, 1991, Elektrogospodarstvo Slovenije, razvoj in inženiring d.d., Maribor commenced the proceeding of evaluation of constitutionality and legality of the provision of Art. 17b of the Ordinance of the Municipal Assembly of Krško on the Compensation for the Use of Building Land in the Municipality of Krško, adopted by Art. 1 of the Ordinance on Amendment and Supplement to the Ordinance on the Compensation for the Use of Building Land in the Municipality of Krško (Official Gazette of SRS, No. 17/87). Pursuant to this provision, organizations which in their activity use radioactive elements due to which a special protection system is prescribed and which condition the behaviour of other land users beyond the area serving directly for the activity in question, have to pay a fifteen times higher compensation for the use of building land, computed according to Art. 17 and 17a of the impugned Ordinance.

Elektrogospodarstvo Slovenije, razvoj in inženiring d.d., Maribor is of the opinion that the provision of Art. 61 of the Building Land Act (Official Gazette of SRS No. 18/84, 32/85 and 33/89) does not give a municipal assembly a legal basis for such regulation. In its opinion, the statutory criteria for determining the compensation for the use of building land are, primarily, the advantages offered by such land like: availability of urban facilities, location, the purpose of such land, exceptional advantages for gaining profit offered by such land, and not the punishment of industrial polluters by prescribing increased compensation for the use of building land due to excessive environmental disturbances.

According to the provision of Art. 71 of the Constitution, special conditions for the use of land shall be determined by statute with a view of expedient exploitation thereof. According to Art. 58 of the Building Land Act, compensation is payable for the use of building land. A compensation for the use of building land is payable in cities and towns and other places having the characteristics of a city or town, in areas planned for housing and other complex construction, in areas for which a land use plan has been adopted other areas where a water and power distribution system has been constructed. Areas where a compensation for the use of building land is payable are determined by municipal assemblies.

The amount of the compensation for the use of building land is, pursuant to Art. 61 of the Act, determined by the respective municipal assembly in accordance with the Agreement for the Adjustment of Areas in Which Compensation Payable and of Criteria for Determining the Compensation for the Use of Building Land which (Agreement) is to be made by and between the municipalities. When determining the amount of the compensation, a municipal assembly has to

consider, especially, the availability of urban facilities on such building land, the location and the purpose of the land, expedient exploitation of such building land, exceptional advantages for gaining profit and the criteria for exemption from payment of compensation for the use of building land.

According to Art. 7 of the Act, the basis for payment of compensation is the collection of the increased value of building land resulting directly or indirectly from public investments, from the location and from other advantages of such land. The compensation belongs to the municipality in which such building land is situated. The same Article provides that the increased value is determined in transactions with such building land and in the use of the building land pursuant to the provisions of the Act and according to the ordinance of the respective municipal assembly based on the Act. So, this is a compensation for the use of land and not a tax as a charge imposed on the user of the building land because of the use of the land. According to Art. 7, Para 3 of the Act, the municipal assembly determines the amount and the manner of collection of the increased value of the building land and must allocate these funds for the acquisition and preparation of building land.

The criteria for determining the compensation for the use of building land set forth in Art. 61 of the Act are especially the following: availability of urban facilities, location, purpose of the land, and exceptional advantages for gaining profit. Obviously, the Act has not foreseen the situation that a municipal ordinance would determine disturbances caused by the user's use of land as a criterion for determining the amount of the compensation. Similarly, the Agreement for the Adjustment of the Criteria for Determination of Areas in which Compensation is Payable and of the Criteria for Determining the Compensation for the Use of Building Land cannot be understood to provide that major disturbances caused by the user should be taken into consideration as criterion for an increase of the compensation payable. The criterion of multiplication which was prescribed in this case by the opposite party for determining the compensation for the use of building land, is illegal. The application of such a criterion brings those who are subject to pay the compensation for the use of building land into a position of inequality because the basic point value system, as determined in Articles 17 and 17a of the impugned Ordinance in accordance with Articles 3 thru 8 of the above-mentioned Agreement, has already determined the amount of the compensation according to the above-mentioned criteria. Therefore, any increase of the compensation to individual payers with a multiplication system means a differentiation of compensation payers contrary to the prescribed and agreed-to criteria. A rent for the use of building land can be collected according to the increased value of such land, its location and other advantages the use of the land offers to the user. Adverse effects caused by the user's activity on such land, however, cannot be considered criteria for determination of such rent. A compensation for pollution of the environment according to the quantity and type of special waste and for air pollution is payable by enterprises and working people pursuant to the provision of Art. 5 of the Provision and Use of Environmental Protection Funds Act (Official Gazette of SRS No. 2/90).

This does not mean, however, that, using the criteria of usefulness, location, special advantages for gaining profit and exceptional nature of the environment for a specific activity, the municipal assembly could not have determined a value of the use of land higher than that determined by the Ordinance.

Pursuant to Art. 7 of the Enabling Statute for the Implementation of the Constitution of the Republic of Slovenia, the Constitutional Court works pursuant to this Constitution, whereas regarding the legal consequences of a decision of the Constitutional Court which are not regulated by the Constitution, the Court is using, *mutatis mutandis*, the previous constitutional provisions and the statutes currently in effect. The Court abrogated the impugned Ordinance pursuant to Art. 161 of the Constitution which enables the Constitutional Court to abrogate the impugned general act with or without retroactive effect. In making decision the Court respected provision of Art. 23 of the Law on the Procedure in the Constitutional Court of SR Slovenia (Official Gazette of SRS No. 39/74 and 28/76), especially the circumstances relevant to the economic, social and legal safety of the users of the funds collected by the municipality of Krško pursuant to the impugned provision since 1987. The abrogation of the impugned Ordinance becomes effective as of the date of publication of this Decision. The provisions of Art. 415 of the previous Constitution cannot be applied in this case. For the reasons given above the Constitutional Court, pursuant to Art. 161, Para 1 and applying the provisions of Art. 6 and the provisions of Art. 25, Para 3, Item 2 of the Law on the Procedure in the Constitutional Court of SR Slovenia, decided, at a meeting, as stated in the disposition of this Decision.

The Constitutional Court took this Decision at a meeting of the following judges: President Peter Jambrek, PhD. and the judges Tone Jerovšek, LL.D., Matevž Krivic, LL.M., Anton Perenič, LL.D., Janez Šinkovec, LL.D. and Lovro Šturm, LL.D.

P r e s i d e n t
Peter Jambrek, PhD.