

U-I-22/93-10
1.7.1993

DECISION

At the meeting held on 1 July 1993 the Constitutional Court discussed the initiative for assessment of constitutionality filed by the Executive Council of Ljubljana Town Assembly, and

made the following decision:

1. The provisions of Article 17.a of the Public Consumption Financing Law (Official Gazette of the Republic of Slovenia, no. 7/93) shall be abrogated.
2. This Decision shall have legal effects under Article 414, paragraphs 1 and 2, of the Constitution of 1974.

Reasons:

With its proposal of 4 February 1993, the Executive Council of Ljubljana Town Assembly started the procedure for assessment of constitutionality of Article 17.a of the Public Consumption Financing Law (Official Gazette of the Republic of Slovenia, nos. 48/90, 34/91, 30/92 and 7/93), which came into effect on 5 February 1993.

The proposer claims that the revised Article 17.a of the impugned Law is also in conflict with the Constitution for the same reasons as had been established by the Constitutional Court in its Decision no. U-I-55/92 of 1 October 1992, which abrogated Articles 17.a and 17.b of the said Law. The legal provision which is currently in force is in the opinion of the proposer in conflict with the provision of the second paragraph of Article 148 of the Constitution, because it stipulates that in the case of failure to adopt a budget within 60 days of the adoption of the budget of the Republic of Slovenia, the Government of the Republic of Slovenia may, until the time when the municipal budget will be adopted, appoint a temporary municipal budget administrator to whom all the competencies regarding the disposal of the funds of the municipal budget shall on the date of his appointment be transferred from municipal authorities. In addition to these reasons, the proposer further says that the State must supervise the proper and efficient performance by local government bodies of all duties and function vested in them by the State. The proposer thus thinks that financial supervision and competencies based on the impugned legal provisions exceed the powers stipulated by the Constitution. And in accordance with Article 144 of the Constitution, State authorities are only empowered to supervise the lawful performance by the local government bodies of their work.

In connection with the impugned legal provisions, the proposer has proposed that a temporary injunction be issued, to stay the implementation of the legal provisions, which this Decision should abrogate, until a final decision has been made, but the proposer has at the same time failed to provide evidence of the likelihood of irreparable damage occurring in the event of implementation of these provisions.

In the opinion of a temporary working body of the National Assembly of the Republic of Slovenia, it is in the interest of the State to ensure a controlled system of municipal public consumption. Whenever it may find that budgetary funds are used outside the framework of their designed use, the State has no other alternative but to stop the co-financing ensured by the State budget. According to the revised Article 17.a, the temporary administrator does not have unlimited competencies, but must act strictly in accordance with Article 17 of the Law.

The Constitutional Court abrogated the legal provision referred to in the disposition of this Decision.

In accordance with the first paragraph of Article 139 of the Constitution, municipalities shall be self-governing local government bodies. The range of duties and functions performed by a municipality shall include such local matters affecting only the people of that municipality, as the municipality may independently control (Article 140). Municipalities shall raise their own revenue. Those financially-

disadvantaged municipalities which are unable to meet all expenditures required of them in the performance of their duties and functions shall be eligible to receive additional financial assistance from the State in accordance with principles and criteria prescribed by statute (Article 142). All revenues raised, and all monies expended, for public purposes by the State and by local government bodies shall be accounted for in their respective budgets. Where the budget of the State or of a local government body has not been officially adopted as and when due, the expenditures of the State or the local government bodies shall be financed in accordance with the terms of the last preceding budget of the State or the body concerned (Article 148). The State shall supervise the proper and efficient performance by local government bodies of all duties and function vested in them by the State (Article 140).

State authorities shall only be empowered to supervise the lawful performance by the local government bodies of their work (Article 144).

Article 148 of the Constitution does not limit temporary financing to a definite period of time, neither does it set any conditions for such financing, but allows temporary financing in accordance with the terms of the last preceding budget without any time limits whatsoever, which is in conformity with the principles of a state governed by the rule of law, and of a social state (Article 2). From the said provision of the Constitution follows not only the principle of temporary financing without any time limits; in fact, in it, the content of such temporary financing is expressly defined as financing "in accordance with the terms of last preceding budget" - in the case of a local government body, of course, in accordance with its last budget. Only temporary financing in accordance with the last preceding budget, without any time limit, ensures continuous financing of self- governing local bodies, and, consequently, of a portion of public consumption, and the exercising of human rights and fundamental freedoms.

The budget of the year which serves as the basis for determining the scope of finances designed for public consumption in the current year in accordance with Article 17 of the Public Consumption Financing Law also defines the designed use of these funds. Arbitrary decisions concerning the disposal of budgetary funds, allowed to the temporary administrator on the basis of the impugned legal provision, would imply negating of democratic procedures and principles, according to which all decisions shall be reached in the representative organ of the local government body. A provisional budget which were based on budget of the last year, or the year when the budget was still adopted by the Municipal Assembly, would represent a framework of a budget adopted through a local organ, and would reflect democratic and legal elements. It would also reflect a social function, which was incorporated in the budget of the last year (or the one before that) by the representative organ of the local government.

According to the impugned legal provision, with the date of appointing a temporary municipal budget administrator, all the competencies regarding the disposal of the funds of the municipal budget shall be transferred from municipal authorities to the temporary administrator. Which means that the impugned provision withdraws from competent municipal authorities the power of disposal of the funds also within the framework prescribed by law - reduced precisely because of failure to adopt the budget before the beginning of the year.

The revenues to which the municipality is entitled for the purpose of financing public consumption are listed in Article 6 and, for the proposer, also in Article 41 of the Public Consumption Financing Law. The State and municipalities shall be independent in the use of their revenues (Article 2). The budgetary funds of the State and municipalities shall be used for such purposes as will be specified by special statutes or decrees of Municipal Assemblies (Article 12). The implementation of the budget shall be the responsibility of the Executive Council. The Executive Council shall ensure that during each year the revenues shall be distributed in accordance with their inflow (Article 22). The Executive Council may, within the limits of total budgetary funds (including those referred to in Article 17), alter the designed use and scope of funds assigned within the budget for individual purposes, if this will not substantially endanger the implementation of the task for which such funds have been raised (Article 24). According to the provision of Article 40, lawful use of budgetary funds and legality of individual enactments adopted with a view to implementing the budget, as well as of financial plans of budgetary users, shall be supervised by a special supervisory department. Until such special supervisory

department, referred to in Article 40 of this Law, will be established, however, the lawful use of budgetary funds and legality of individual enactments adopted with a view to implementing the budget, as well as of financial plans of budgetary users, shall be supervised by the Public Audit Service of the Republic of Slovenia (Article 46).

In the case under consideration, the provisions of Articles 21, 28, 31, 41 and 56 of the Public Audit Service Act (Official Gazette of the Socialist Federative Republic of Yugoslavia, nos. 70/83, 16/86, 72/86, 74/87, 37/88, 61/88, 57/89 and 79/90) also provide the Public Audit Service with a legal basis for effective control of lawful and designed use of budgetary funds.

According to the above mentioned provisions of the new Constitution, as well as of the former Constitution of 1974, the municipality shall be independent as regards financing of matters within its competence. Supervision of the work of the municipality by State authorities shall only concern the suitability, competence and legality of its work, but not the method of financing the task of the municipality. The institute of temporary administrator of municipal budget is foreign to our constitutional system. It is acceptable only in those legal systems in which municipalities are not entirely financially independent and are subordinated to State- controlled financial authorities which directly perform such financial functions.

According to Article 161 of the Constitution, the Constitutional Court may only abrogate a Law. As such abrogation can only have subsequent effect, the Constitutional Court decreed that the first and second paragraph of Article 414 of the previous Constitution be applied on the basis of Article 7 of the Law on Execution of the Constitution of the Republic of Slovenia.

The Constitutional Court made this Decision on the basis of the first paragraph of Article 161 of the Constitution, of Article 7 of the Constitutional Law on Execution of the Constitution of the Republic of Slovenia and by applying sub- paragraph 2 of the third paragraph of Article 25 of the Law of Procedure at the Constitutional Court of the Republic of Slovenia (Official Gazette of the Socialist Republic of Slovenia, nos. 39/74 and 28/76) in the following composition:

Dr. Peter Jambrek, President, and Dr. Tone Jerovšek, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Janez Šinkovec and Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič, the judges. The Decision was made with seven votes in its favour and two against it. A negative separate opinion was expressed by Mr. Ude and Mr. Šinkovec.

P r e s i d e n t:
Dr. Peter Jambrek