Up-84/94
11 July 1996

D E C I S I O N

At a session held on 11 July 1996 in proceedings to decide the constitutional complaint of B.P from Ljubljana, represented by dr. P.Č. and R.Č., attorneys in G., the Constitutional Court

d e c i d e d :

1. Supreme Court judgement No. U 494/93-8 from 1 June 1994 and decision of the Ministry of Interior No. 0011/11-XVII-170.233 from 11 March 1993 are abrogated ab initio.

2. The case is remanded to the Ministry of Interior.

R e a s o n i n g :

1. In a constitutional complaint lodged on 1 September 1994 the complainant contested the Supreme Court judgement cited in the holding, which rejected an action lodged against a decision by the Ministry of Interior (MI). In the decision the MI rejects the complainant's application for citizenship of the Republic of Slovenia. The complainant states that the reasons explaining the MI's decision include the following statement: "It is not disputed that in addition to staffing up the officer corps of the former Yugoslav People's Army, the complainant was responsible for staffing the security service of the Yugoslav Army. With regard to the composition, command and functioning of the former Yugoslav Army, the range and nature of this work could only be entrusted to a person reliable and loyal to the former Yugoslav Army, which, in the assessment of the court, presents a danger to the Republic of Slovenia irrespective of the complainant's individual actions directed against the Republic of Slovenia." The complainant states that the court of jurisdiction which ruled on the right to a military pension established, on the basis of an expert investigative procedure, that his participation in the aggression against the Republic of Slovenia was not proven. In the complainant's opinion, his action was rejected solely because he had been a colonel in the Yugoslav Army (YA), where he held an office. He alleges that this is an infringement of his right under Article 22 of the Constitution to equal protection of his rights before the court.

2. In its decision the Ministry of Interior established that "during active military service, at the time of the aggression against the Republic of Slovenia this person acted against Slovenia and its independence, which he was undoubtedly able to do because of the rank and position he held within the YA structure". On the basis of this the MI concluded: "With regard to what was said earlier, and in particular taking into account the documentation kept in the administrative file, the MI has assessed that if P.B. were to be granted citizenship of the Republic of Slovenia it would present a danger to national defence, and hence on the basis of Paragraph 3 of Article 40 of the Citizenship of the Republic of Slovenia Act his application is rejected."

3. In the action in the administrative lawsuit lodged on 19 April 1993 the complainant claimed primarily that the MI decision was "so sweeping and so indeterminate that neither an appeal nor an action against it were possible".

4. In the contested judgement the Supreme Court established in connection with the findings cited in Item 1 that just because the actual actions by the complainant against the interests of the Republic of Slovenia were not specifically determined or cited, did not mean that the accused (the MI) had incompletely established the actual situation. The Supreme Court does not doubt that there are actual grounds for the application of Paragraph 3 of Article 40 of the Citizenship of the Republic of Slovenia Act (Official Gazette of the RS, Nos. 1/91-I and 30/91- I, 38/92 and 13/94 - hereinafter: ZDRS), nor does it doubt the compliance of the MI's decision with the purpose for which authorization to deny citizenship was granted, and therefore it rejected the action.

5. Upon an invitation to send a reply to the constitutional complaint, the Supreme Court gave notification that it has already explained its decision in the contested judgement.

B.-I.

6. Pursuant to Paragraph 1 of Article 40 of the ZDRS, citizens of other Yugoslav republics who, on the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia (23 December 1990), had permanent residence registered in the Republic of Slovenia and also actually resided here, acquire citizenship of the Republic of Slovenia if, within six months of the enactment of the ZDRS, they submit an application to the competent administrative body. In an amendment to the statute (Official Gazette of the RS, No. 30/91-I), Paragraphs 2 and 3 were added to Article 40 that specify the exceptions to the cases under Paragraph 1. Pursuant to Paragraph 2 of Article 40 of the ZDRS, an application for Slovene citizenship is rejected if, since 26 June 1991, the applicant has committed a criminal offence under Chapters 15 or 16 of the Penal Code of the Socialist Federal Republic of Yugoslavia against Slovenia or other values which in accordance with the provision contained in Paragraph 1 of Article 4 of the Enabling Statute for the Implementation of the Basic Charter on the Sovereignty and Independence of the Republic of Slovenia are protected by the criminal law of the Republic of Slovenia, irrespective of where such an act was committed.

7. The complainant's application for citizenship was rejected on the basis of Paragraph 3 of Article 40 of the ZDRS, which reads as follows: "Irrespective of whether the conditions under Paragraph 1 of this article have been satisfied, an application from a person for whom the reasons under Item 8 of Paragraph 1 of Article 10 of this statute exist, may be rejected." Item 8 of Paragraph 1 of Article 10 of the ZDRS lays down one of the conditions for citizenship through naturalization. The provision reads as follows: "A person who has made an application for citizenship of the Republic of Slovenia may acquire citizenship through naturalization only if he satisfies the following conditions: ... 8. that his acceptance as a citizen of the Republic of Slovenia does not present a danger to public order, safety or national defence."

8. The provision contained in Paragraph 3 of Article 40 of the ZDRS is a combination of indefinite legal terms and authorizations to adopt a discretionary decision. The legislator uses one or the other when it cannot envisage in advance all the possible situations that could be created in a certain area of legal regulation. Both concepts - indefinite legal terms and discretion - raise the question of the degree of restriction imposed on the administration in their application and the related issue of the scope of the court's assessment of actual administrative acts.

9. By laying down the possibility of discretion the legislator authorized an administrative body to apply the valid legal norm on the basis of the established state of facts without the valid legal system prescribing in advance the substance of a specific decision. But this does not mean that administrative acts issued upon discretion are completely unrestricted from the legal aspect.

10. The Constitution contains several provisions that directly or indirectly set out the principle of administration bound by statute. The part on the administration of the state (Paragraph 2 of Article 120 in the chapter on public administration) sets out the principle that duties and functions associated with public administration are conducted independently on the basis of the Constitution and the statute. Paragraph 3 of Article 120 lays down the right to judicial review of acts and decisions passed by administrative bodies and authorities. In the part on constitutionality and legality (Paragraph 3 of Article 153) it is provided that regulations and other legislative measures must conform with the Constitution and the statute. And Paragraph 4 of Article 153 provides that individual acts and actions by state bodies, local government bodies and authorities must be founded in statute or in regulations made pursuant to statute.

11. The binding of the administration to the Constitution and the statute is set out directly in the constitutional provision on a state governed by the rule of law (Article 2), the separation of powers (Paragraph 2 of Article 3) and on the protection of human rights and basic freedoms (Paragraph 1 of Article 5). Of the constitutional provisions contained in the part on human rights and basic freedoms, we should mention the equality of protection of rights under Article 22, the right to due process under Article 23, and the right to legal remedy under Article 25. Of special importance in the application of discretion are respect for the principle of equality under Article 14 and respect for the general

constitutional principle of proportionality as an executive principle embraced by a state governed by the rule of law.

12. The boundaries to discretionary decision-making are laid down by the General Administrative Procedure Act (Official Gazette of the SFRY, No. 47/86 - fair copy - hereinafter: the ZUP) in Article 4, which defines the principle of legality. In administrative matters where a body is authorized to adopt a decision at its discretion by a statute or a regulation based on a statute, the decision must be issued within the limits of the authorization and in compliance with the purpose for which the authorization was issued (Paragraph 2 of Article 4). The discretion applies to cases in which an administrative body is authorized to make discretionary decisions in an administrative matter. Clearly these administrative acts too must be passed in a legal procedure. The authority to make a discretionary decision must be specified by statute (in Decision No. U-I-98/91 of 10 December 1992-CCDec I, 101, the Constitutional Court ruled that the part of the provision contained in Paragraph 3 of Article 209 of the ZUP, which allowed the authorization to be provided for discretionary decisions to be made by regulation, did not became part of the legal system of the Republic of Slovenia).

13. A judicial review of all these acts is guaranteed. The jurisdiction of the court to rule on an administrative lawsuit is set out in the Administrative Lawsuit Act (Official Gazette of the SFRY, Nos. 47/77 and 60/77 - hereinafter: the ZUS). An administrative act may be contested if a statute or other general rule was incorrectly applied in that act (Item 1 of Paragraph 1 of Article 10). But in its assessment of the acts passed at their discretion by administrative bodies, a court is restricted more severely than the second instance administrative body. Pursuant to Article 243 of the ZUP, a second-instance body may order the overturning of a decision made by a first-instance body and resolve the matter itself if it concludes that after a discretionary deliberation a different decision should have been passed. On the other hand, pursuant to the provision contained in Paragraph 2 of Article 10 of the ZUP, a rule is not applied incorrectly if the competent body decided at its discretion and on the basis of authorization it held in compliance with valid regulations, within the limits of its rights and in compliance with the purpose for which it was granted.

14. In an assessment of a discretionary decision, the court tests whether the decision is in compliance with the purpose and within the limits of legal authority. This is not only about (1) cases of abuse of authority, when an administrative body knowingly or mistakenly uses an authority contrary to the sense of the statute, or when it follows motives and interests other than those prescribed by statute; and (2) cases of exceeding authority when an administrative body erroneously concludes that it may make decisions at its own discretion or when it opts for a legal consequence that is not envisaged by statute. An administrative body is bound by the equality obligations under Articles 14 and 22 of the Constitution to adopt the same decisions as in previous comparable cases. Without a justified reason it may not make different decisions in subsequent comparable cases. The Constitutional Court has (including Decision No. U-I-18/93 of 11 April 1996 - Official Gazette of the RS No, 16/94) stressed several times that state bodies, i.e. the administration and the judiciary, are bound by the principle of proportionality as a general constitutional principle deriving from the principle of a state governed by the rule of law (Article 2 of the Constitution).

15. In order for an injured party to be able effectively to contest a decision adopted by an administrative body and for a court to test the regularity of the application of discretion, the reasons for the decision of the administrative body must be given. From the reasons it must be clear whether the administrative body determined the state of facts appropriately and in sufficient detail. The considerations that guided the administrative body in its discretionary decision-making must be stated. It is not enough to state only that the body acted at its discretion. The more a judicial decision is restricted and demanding the more detailed and elaborate the reasoning must be. The basic criterion is how essential something is; an administrative body must give reasons for every case separately. The reasoning may be short but it may not be general. This is an explicit derivation from the ZUP. Pursuant to the provision contained in Paragraph 2 of Article 209, the reasons must set out the state of facts and give the reasons that prevailed in the assessment of the evidence; the legal regulations and reasons that in view of the state of facts dictate the decision cited in the holding must be given as well. In cases of discretionary decisions the reasons must cite the regulation that gives the authority to make such a decision, and the reasons for the decision (Paragraph 3 of Article 209 of the ZUP).

16. Unlike discretion, where the legislator sets out the framework of permissible legal consequences, indefinite legal terms denote statutory description. In the framework of its statutory description the statute may apply more or less definite terms. Within the context of a decision on the matter in question we will use, as an example, the basis for the acquisition of citizenship through naturalization under Paragraph 1 of Article 10 of the ZDRS. The statute uses (1) definite terms, such as 18 years of age or a ban on residence; (2) indefinite terms that may obtain a specific meaning through interpretation, such as actual residence or having a permanent source of income enabling financial and social security; and (3) indefinite terms that cannot be interpreted in one way alone, such as danger to public order, security and national defence as well as the entire syntagma of "not presenting a danger to the ..." (See Šturm, Vezanost uprave pri prostem preudarku, Javna uprava, Vol. 32, No. 2/1996, pp. 165-166).

17. Pursuant to the ZUP and in accordance with Supreme Court practice, an administrative body must always (and hence also in cases involving authorization for discretionary decision-making) fully establish the state of facts. In the decision the facts of importance for a lawful and correct decision must be cited, and evidence given corroborating the existence of such facts, and an examination of conflicting evidence made. The principle of discretionary assessment of evidence (Article 9 of the ZUP) does not absolve an administrative body of these obligations.

Judicial practice insists on a full assessment of the accuracy of the established state of facts. Irrespective of how the legislator used definite terms in the statutory description, the court must fully assess the accuracy of the assessment of the statutory description.

18. The situation with an assessment of the compliance of a state of facts established in such a manner with the statutory description, i.e. the subsuming of a state of affairs in a legal norm using indefinite legal terms, is slightly different. Here a full assessment may be too rigid in some cases. In certain cases the legislator uses indefinite legal terms because it cannot in advance envisage all the situations that it wishes to regulate.

So even indefinite terms - as with the vesting of authority to make discretionary decisions - can be used to leave to the administration some room for judgement in order to be able to make a decision in the most appropriate manner, taking into account all the significant circumstances of the actual case.

This applies in particular to final and prognostic decisions in the sphere of commerce and finance, in planning and environmental regulation and in participatory procedures. In such cases, a full judicial review would not always guarantee the highest degree of protection of legal regularity. A judicial review in such cases is much more restrictive and limited essentially to an assessment of whether the administrative body has applied the rules for specifying indefinite legal terms in a manner contrary to the value definitions of the statute (see Šturm, op. cit. p. 165, p. 175 and following pages, and p. 205). They have to be that much stricter in such cases involving an assessment of respect for procedural rules. This includes the demand for reasons explaining administrative decisions, which must be more considered and convincing the more restrictive the court's assessment.

19. Item 8 of Paragraph 1 of Article 10 of the ZDRS, which Paragraph 3 of Article 40 of the same statute refers to, specifies one of the prerequisites for the acceptance of an application for citizenship through naturalization. The competent administrative body must assess whether the granting of citizenship to an applicant would present a danger to public order, security or national defence. This provision encompasses the elements that represent loyalty and allegiance to the country of which citizenship is requested. In order to be granted citizenship, a person must provide a guarantee that he will act in accordance with the legal order of the Republic of Slovenia and, consequently, that he will not act against the political, security, defence, economic and other vital interests of the state. He must accept the constitutional and legal order of the country in which he intends to live and work. The grounds for the granting of citizenship are the existence of two interests: the applicant's interest, which in the case of naturalization is proven with an application for citizenship, and the interest of the state that its citizens accept the foundations it has laid down as essential for its development.

The latter include the interest of the state not to grant citizenship in cases representing an exceedingly high risk to the preservation of public order, security and national defence.

20. Article 40 of the ZDRS regulates the option of acquiring citizenship by persons who, at the time the Republic of Slovenia became independent, were citizens of other republics but had permanent residence in the Republic of Slovenia and actually lived here. This provision is an exception to regular naturalization. An application for citizenship from a person who meets the conditions under Paragraph 1 of Article 40 may only be rejected in the event that reasons under Item 8 of Paragraph 1 of Article 10 of the ZDRS pertain. The existence of other conditions specified in Paragraph 1 of Article 10 of the ZDRS for the acquisition of citizenship through regular naturalization does not need to be established.

21. An assessment of whether the granting of citizenship would present a danger to the public order, security or national defence contains certain elements of predicting how the person in question will react in the future. In this decision there is no "burden of proof"; the applicant does not have to submit the required assurances nor must the administrative body prove that the applicant does not meet this requirement. The significance of an assessment of the existence of the reasons under Item 8 of Paragraph 1 of Article 10 of the ZDRS lies only in the fact that the administrative body, when it makes its ruling, is uncertain as to whether granting citizenship to an applicant would endanger the public order, security or defence of the Republic of Slovenia. Such a stance must be suitably justified in the decision. When it makes its decision, the administrative body has a specific case before it and bases that decision on numerous circumstances, which vary from case to case, and on its own judgement. This not merely a matter of establishing individual actions, i.e. actions and omissions on the part of the applicant, but involves a prediction of the consequences of the decision taken by the administrative body, expressed in an administrative decision. If, in the assessment of the administrative body, there is no assurance that granting citizenship to an applicant will not endanger the public order, security or national defence, then it may reject the applicant's request.

22. The nature of the decision on the acceptance of a citizenship application as described so far calls for a certain conservative approach by the court in the assessment of the decision. This conservative approach is consolidated further by the fact that it is discretionary decision-making that is involved. With "the reasons under Item 8 of Paragraph 1 of Article 10 of the ZDRS" the legislator set out on the one hand the limits to statutory description, and on the other hand it used them to lay down the framework and purpose of the authorization to make a discretionary decision.

23. In its Decision No. U-I-98/91 of 10 December 1992 (CCDec I, 101), the Constitutional Court states that the use of the word "may" combined with the legislator's clear intent, reconfirmed in the reasons for the proposed statute, suffice for the granting of authorization to make a discretionary decision. As regards the provision contained in Paragraph 3 of Article 40 of the ZDRS, these elements do exist. The provision contains the word "may". From the material submitted during the legislative process it is clear that the legislator wanted to grant the authorization to make a discretionary decision. The proposed statute submitted into the legislative process envisaged that the provision contained in Article 28 of the ZDRS be applied accordingly. For certain cases of discretionary decision-making pursuant to the ZDRS this envisaged that the administrative body would not have to state the reasons that guided it in the decision-making. That the legislator laid down the authorization for discretionary decision-making with the provision contained in Paragraph 3 of Article 40 is demonstrated by the text of the provision itself. The provision does not say about a condition which, if satisfied, would be grounds for rejecting an application for citizenship but of the existence of reasons. In the aforementioned decision from 1992 the Constitutional Court ruled on whether the words "if such solution is required for reasons of security or national defence" along with the use of the word "may" should be interpreted as a condition or as authorization for discretionary decision-making. Despite the use of the word "if", which by its very meaning introduces a conditional element, the provision was interpreted as setting out the framework for discretionary decision-making. With the provision contained in Paragraph 3 of Article 40, which introduced discretion with the words "for which reasons exist", there is that much less reason for any different interpretation.

24. In the definition of the limits and the purpose of the authorization for discretionary decision-making, there is a need to take into account in addition to the text of the provision, its context, other legal provisions and possible regulation in other statutes covering a comparable field. The provisions contained in Paragraphs 2 and 3 of Article 40 were adopted simultaneously. Pursuant to Paragraph 2 of Article 40 of the ZDRS, people who, since the Republic of Slovenia became independent, have

committed certain crimes against the existence and security of the constitutional order of the country, are refused citizenship. The provisions could not be applied in practice because one of the elements of these crimes was not met (Končina, Zakon o državljanstvu Republike Slovenije s komentarjem, Ljubljana, 1993 p. 136). Despite this, the legislator's intent, clearly expressed in this provision, can serve as an important guideline in decision-making under Paragraph 3 of Article 40. In determining the content of an authorization to make a discretionary decision under Paragraph 3 of Article 40 we need to take into account the definition in the statute itself as to what is considered to be an action harmful to the international or other interests of the Republic of Slovenia (Paragraph 2 of Article 16). If a certain action - provided that other conditions are satisfied - is a reason for revoking citizenship then it is that much more justifiable to assume that the same action can be cause for not granting citizenship to an applicant

25. If while deciding on citizenship on the basis of Article 40 of the ZDRS the administrative body establishes incontestably that the granting of citizenship to the applicant would present a danger to the public order, security and national defence, then it must reject the application. It may also reject it within the scope of its own judgement as to the meaning of the phrase "that it presents a danger to the public order, security and national defence". If an administrative body is not able to reliably establish whether granting an applicant citizenship would present a danger to the public order, security and national defence, or that the person is trustworthy to such a degree that granting him citizenship would not present a danger to the preservation of the public order, security and national defence, it then decides at its discretion, on the basis of the application and the information gathered on the applicant, whether or not the applicant is to be granted citizenship.

B-II.

26. The complainant claims that the provision of equality in the protection of rights under Article 22 of the Constitution has been violated. His action was allegedly rejected solely because he held a certain position in the Yugoslav Army. The essence of the complainant's statement in the administrative lawsuit was that the decision passed by the administrative body was a blanket decision and indefinite to such a degree that an action against this decision was not possible.

27. The complainant only contests the judgement by the Supreme Court and not also the decision by the Ministry of Interior.

Since the complainant disagrees with the content of the reasons for the rejection of his application, and the court ruling only reconfirms the decision of the administrative body, the Constitutional Court adjudicated on the decision by the Ministry of Interior. If the decision by the Ministry of Interior cannot be accused of what the complainant claims in respect of the judgement, then the accusation would obviously be unjustified as far as the judgement is concerned as well.

28. The complainant's accusation that the Supreme Court rejected the action solely because he was a colonel in the Yugoslav Army, where he held a certain office, is unjustified. The court states that he also worked for the Security Service of the YA. The YA Security Service operated on the basis of regulations that were not published in the public Official Gazette nor in a special secret Official Gazette. Pursuant to Article 199 of the General People's Defence Act (Official Gazette of the SFRY, No. 21/82), the Presidency of the SFRY issued a set of Regulations on the Security Service Bodies of the Armed Forces of the Socialist Federal Republic of Yugoslavia. Pursuant to Article 195 of the General People's Defence Act, the Federal Secretary for People's Defence issued a set of Instructions on the Methods and Means for the Work of the Security Bodies of the YA. The statute allowed the Federal Secretary for People's Defence, the army commander and other YA officers of appropriate rank to make decisions for the implementation of measures that departed from the principle of the inviolability of the secrecy of letters and other means of communication (Article 195) under authorization from the Federal Secretary for reasons of state security. Based on this statutory provision and the above-mentioned secret regulations, the commander of the General Staff of the YA, his Deputy, the Undersecretary and the Assistant Federal Secretary for People's Defence, the Army Commander and certain other top YA officers were allowed to order secret bugging and recording of premises, means of transport, means of communication (telephone, telegraph, radio communications) and of persons at the proposal of an officer of the security body of the Army command or an equal-

ranking or superior officer in the hierarchy of the security body. The Instructions issued by the Federal Secretary for People's Defence also permitted a secret search for articles and objects. The secret search of an apartment was a violation of the 1974 Constitution of the SFRY as well as the Constitution of the Socialist Republic of Slovenia. Article 52 of the Federal Constitution and Article 226 of the then Slovene Constitution limited the issuing of permits for a breach of the inviolability of the secrecy of letters and other means of communication to cases when it was in the interests of national security, which did not apply to a violation of the inviolability of an apartment.

This was not permitted either by the statute or the aforementioned Regulations of the Presidency of the SFRY. Unlike the current Constitution, which requires a court authorization for any invasion of privacy (Article 37), an invasion of the privacy of communications and of the inviolability of apartments was permitted on the basis of a decisions come to by the competent body. These actions could be ordered for a limited period; permanent surveillance was possible as well. Organized work with the security service was based on voluntary cooperation and secrecy. Exceptionally, cooperation could be forced by putting a person in a compromising situation. The officer in charge selected the assistants, used them to build a network, directed their work and consulted with them on individual tasks. The work of the YA and its secret service in emergency situations was regulated by equally-secret Guidelines on the Prevention of a State of Emergency and on Action in a State of Emergency. The Guidelines were adopted by the Presidency of the SFRY and the Presidency of the Central Committee of the League of Communists of Yugoslavia. The basis for such cooperation by the Yugoslav League of Communists was laid down in the Constitution of the SFRY as a specific responsibility of the League of Communists of Yugoslavia for the defence of the SFRY as a whole and of each of its constituent parts, as well as for the protection of the social order as set out in the Constitution. Pursuant to the General People's Defence Act, in wartime, when there was a direct threat of war or other state of emergency, the Yugoslav League of Communists was at the forefront of the combat and general people's resistance and, as the fundamental ideological and political force, directed and coordinated all social factors in the implementation of general people's defence and social self-protection (Article 12). Pursuant to Article 94 of the same statute, the League of Communists of Yugoslavia bore a special responsibility for the construction and development of the armed forces and, through its ideological and political activity within the armed forces and the direct participation of representatives of the organs of the League of Communists in the bodies and organs of the armed forces, unyieldingly fought for the consolidation of their class, revolutionary and generally popular character, for moral and political unity, combat readiness and effective performance of the duties of the YPA in times of peace and war. Establishing the activities of members of such organizations can serve as the basis for an assessment of the danger to the public order in the process of ruling on a citizenship application.

29. In this regard the complainant states in his action that his superior, General Marjan Vidmar, was granted citizenship and asked what kind of logic was it that his superior worked for Slovenia, while he as his subordinate allegedly did not. During the investigation at the Ministry of Interior the Constitutional Court learned that Vidmar was born in Idria, where he was registered in the register of citizens. He was granted citizenship by birth (both parents).

30. The complainant's statement that the court that ruled on the proposal to pay him a military pension after all the evidence had been taken established that his part in the attack on the Republic of Slovenia was not proven, and was of no consequence in the decision on the matter. Neither the administrative body which made the decision on citizenship nor the Supreme Court, which rules on citizenship in an administrative procedure, are bound by an ascertainment made by the court of jurisdiction in the procedure to adjudicate on the payment of a military pension. From the above points (especially points 19, 21 and 25) it is clear that the substance of the decision by the administrative body on the granting of citizenship is different.

31. The complainant's accusation is justified in the part where it talks about a blanket and indefinite decision adopted by the administrative body. The Constitution in Articles 22 and 23 lays down a basic guarantee of due process of law. Article 23 sets out the right of individuals to have all issues relating to their rights and obligations and any criminal charges laid against them decided without undue delay by an independent, impartial court. Article 22 guarantees equality in the protection of rights. The Constitutional Court has already ruled that the constitutional right under Article 22 guarantees that an

individual in an administrative procedure must be given an opportunity by the administrative body to make a statement as to the facts and circumstances that are of importance in the decision (Decision No. Up-17/95 of 4 July 1996). Fair (administrative) procedure demands that a person whose rights, obligations and legal interests are being adjudicated upon by an administrative body must be informed of the reasons for the decision made.

32. Every decision made by an administrative body is subject to a subsequent review of its correctness. In cases of discretionary decision-making and in some cases of indefinite legal terms an administrative body has a certain room to apply its own judgement. But even these decisions must be made within the framework of and in compliance with the purpose of legal authorization. In order for the court to be able to assess the legality of a decision made by an administrative body at its discretion, the decision must contain an assessment of the statutory description, and the state of matters of importance for a lawful and correct decision, the evidence corroborating the existence of these facts and the considerations that guided the administrative body in the decision-making. When the administrative body has been granted the authority to make a decision at its discretion, an individual does not have the right to request a decision with a certain content. The individual does have the right to demand from the competent body to make a correct and legal decision concerning his rights, obligations or legal interest. Hence he has the right to know the reasons why the competent body decided in a certain manner.

If the reasons are incomplete, then legal remedies can only be superficial. The level of detail with which the reasons for the decision must be explained is therefore determined by the demand for effective legal remedy against the decision in each individual case.

33. The decision by the Ministry of Interior to reject the complainant's application for citizenship does not contain the aforementioned elements. The decision only states that it was established in the procedure that while on active service with the military, the complainant worked against Slovenia and its independence at the time of the aggression against the Republic of Slovenia and that his rank and the office he held in the structure of the Yugoslav Army undoubtedly enabled him to do so. Based on this and the documents which are allegedly ept in the administrative file, the administrative body assessed that granting the complainant citizenship would present a danger to national defence. The administrative body states no facts from which it made a conclusion as to the complainant's activities against Slovenia nor any evidence that would corroborate such facts. Mere reference to the ascertainment from the procedure is insufficient. The administrative body did not cite what content it gave to the indefinite legal terms used in the statute to specify the state of facts. By referring to the documents kept in the administrative file the administrative body fails to satisfy the requirement of citing the considerations that guided it in its discretionary decision-making. The decision by the Ministry of Interior thus violates the constitutional provision of equality in the protection of rights. (Article 22).

34. The complainant contested the decision due to an incomplete and blanket explanation in the administrative lawsuit. Despite the omission described above, the Supreme Court upheld the contested decision. It only added that the complainant, as a colonel in the former YA, was in command of the personnel department of the XIV Ljubljana Corps and of staffing up officers of the Yugoslav Army as well as its security service.

Then it established that the real situation was not established incompletely even though the administrative body did not cite any actual action which could be the basis for the conclusion that he operated against the interests of the Republic of Slovenia and its independence. The Supreme Court can be reproached for determining itself, on the basis of the reply by the Ministry of Interior, the two decisive facts and then making a decision on the legality of the discretion used. The provision on equality in the protection of rights under Article 22 of the Constitution was thus infringed by the Supreme Court ruling as well. In a decision issued at its discretion and on the basis of a provision where the statutory description is set out in indefinite legal terms, the decisive facts and considerations which guided the administrative body in its decision-making must be cited in the reasoning of the decision by the administrative body.

35. On this basis the Constitutional Court abrogated ab initio the contested judgement by the Supreme Court and the decision by the Ministry of Interior and sent the matter to the competent administrative body for reconsideration (Paragraph 1 of Article 59 of the Constitutional Court Act, Official Gazette of the RS, No. 15/94). The administrative body will have to issue a decision in new proceedings which satisfies the requirements set out in this Decision.

C.

36. The Constitutional Court made this Decision on the basis of Para. 1, Article 59 of the Constitutional Court Act, composed of: dr. Tone Jerovšek, President, dr. Peter Jambrek, mag. Matevž Krivic, mag. Janez Snoj, dr. Janez Šinkovec, dr. Lovro Šturm, Franc Testen, dr. Lojze Ude and dr. Boštjan M. Zupančič, the Judges. The Decision was come to unanimously. Judges Krivic, Šinkovec and Ude concurred in the opinion of the Court.

President of the Constitutional Court:
dr. Tone Jerovšek