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

Up-40/94-12
3.11.1995

D E C I S I O N

In the process of deciding the constitutional complaint of A.A. ..., represented by his lawyer, the Constitutional Court at its meeting of 3 November 1995

made the following decision:

1. The constitutional complaint of A.A. against the resolution of the Supreme Court of Slovenia, no. I Ips 133/93, of 30.6.1993 shall be rejected.

2. Each party to the proceedings shall bear its own costs of proceedings.

R e a s o n s:

A.

1. The complainant disputes the verdict of the Supreme Court, by which his request for extraordinary review of final decision of the Higher Court of Ljubljana, no. 93/93 of 15.3.1993, in reference with the verdict of the Lower Court of Ljubljana, Kranj Office, no. K 273/92 of 26.10.1992, by which the complainant was sentenced to imprisonment for having committed a criminal offence of money forging under paragraph 2 of article 168 of Penal Law of SFRY (Official Gazette of SFRY, Nos. 44/76, 34/84, 74/87, 57/89, 3/90 and 38/90; hereinafter: PL SFRY) was rejected. The complainant claims that his sentencing was unjustified, because during criminal proceedings it was allegedly established that he had not come into possession of money - tolars, but of a greater quantity of the so called token money, which was in the period subsequent to the gaining of independence in circulation for a certain period of time as substitute for "real" money. The complainant claims that by incorrect application of substantive law the court violated his right to personal liberty by founding him guilty of committing a criminal offenses which he did not commit.

2. The complainant claims that only money as such - concrete monetary unit - can be the object of criminal offence of money forging, but not its temporary substitute. Money is claimed not to be an abstract and general means of payment but a concrete means of payment with quite specific name to it, and that the name of the monetary unit is designated on such money. Article 168 of PL SFRY does not make any reference to token money, and in the opinion of the complainant PL SFRY also could not have had token money in mind, because the said law made reference to former Yugoslav law on money. This is why it is claimed to be impossible by present-day interpretation of the term money to additionally introduce new content, for the law of that time could not have foreseen that Slovenia would gain independence.

The complainant claims that provisions of criminal law should always be interpreted restrictively only, and that blanket provisions should also be interpreted in the same way. The complainant proposes to the Constitutional Court to accept his constitutional complaint, to ensure equality in the protection of rights of parties in proceedings and to prevent incorrect encroachment upon a basic human right - that of personal liberty.

3. Legal counsel of the complainant submitted a report on costs relating to the filing of constitutional complaint, which amounted to 235 points in accordance with legal tariff rates, that is, to SIT 14,100.

4. At the meeting of the Senate of the Constitutional Court of 15.3.1995, the constitutional complaint was accepted for consideration and was referred, in accordance with article 56 of the Constitutional

Court Act (Official Gazette of RS, No. 15/94, hereinafter: CCA) to the Supreme Court with a view to obtaining its reply. The Supreme Court considers that legal reasons for the decision are evident from the disputed verdict; concerning the claims in the constitutional complaint, that PL SFRY could not have envisaged the gaining of independence by the Republic of Slovenia and the issuance of token money, the Supreme Court draws attention to the provision of article 20 of the Enabling Statute for the Implementation of the Basic Constitutional Charter, according to which provision of article 168 of PL SFRY also had to be applied as one used with a view to protecting the legal system of the Republic of Slovenia, including the monetary system of the new State. This is why the concept of money under paragraph 8 of article 113 of PL SFRY should in the opinion of the Supreme Court be interpreted in accordance with paragraph 1 of article 4 and article 20 of the said Enabling Statute. In this connection, the replacement of dinar as the means of payment in SFRY by token money as lawful means of payment in the new State did not represent any unlawful extensive interpretation of this concept, because in the opinion of the Supreme Court it did not signify any extension of the zone of criminality from the viewpoint of content.

5. The Constitutional Court examined the criminal proceedings file of the Lower Court of Kranj, Kranj Unit, no. K273/92.

B.

6. In the period when the complainant committed the criminal offence for which he was sentenced by the said final judgement, provisions of PL SFRY applied in Slovenia as national legislation on the basis of paragraph 1 of article 4 of the Enabling Statute for the Implementation of the Basic Constitutional Charter, by which the legal system of the Republic of Slovenia was made to incorporate federal legislation in so far as this was not in conflict with the legal system of the Republic of Slovenia, and unless provided otherwise by the said Statute. Only with respect to the application of provisions of PL SFRY as one piece of the said federal legislation, the Enabling Statute in article 20 especially and expressly prescribed, precisely with a view to complying with the principle of legality, the manner of application of its provisions in the Republic of Slovenia.

7. The definition of the concept of money, which is the object of criminal offence under paragraph 2 of article 168 of PL SFRY, was thus determined in accordance with paragraph 8 of article 113 of PL SFRY, based on the explanation that such money shall be deemed to include coins and paper currency having been put into circulation in the Republic of Slovenia or a foreign country on the basis of applicable statute. At the time of the coming into force of PL SFRY, the legislator, of course, could not have envisaged the gaining of independence or new Slovenian money, but from this one cannot conclude, as is claimed by the complainant, that, when it had to be applied to the complainant, the provision of article 168 of PL SFRY did not comprise Slovenian Tolars - or the token money of that time. It was precisely by the provision of paragraph 1 of article 20 of the Enabling Statute for the Implementation of the Basic Constitutional Charter, that by means of a legal norm - and one ranking even higher than statutory provision in the hierarchy of legal norms - it was clearly and expressly provided that the concept of money referred to Slovenian money. The provision of article 168 of PL SFRY could thus subsequent to 25.6.1991 be applied is such a way that the concept of money referred to paper currency or coins having been in circulation in the Republic of Slovenia on the basis of statute. Until 8.10.1991, these were banknotes and coins denominated in dinar as monetary unit; after the said date, the term referred to token money until the time when this was substituted by banknotes and coins denominated in tolar as the monetary unit.

8. The complainant claims that token money was not money, and that, consequently, its forging, or putting into circulation of forged token money could not be punishable as money forging. On 8.10.1991, the Act on the Monetary Unit of the Republic of Slovenia (Official Gazette of RS, No. 17/91-I; hereinafter: AMU) was passed and enacted, by which tolar was introduced as the monetary unit; at the same time, paragraph 1 of article 2 of AMU provided that banknotes and coins denominated in the monetary unit of the Republic of Slovenia were the only lawful means of payment in the territory of the Republic of Slovenia. At the same time, the Act on the Use of the Monetary Unit of the Republic of Slovenia (Official Gazette of RS, No. 17/91-I; hereinafter: AUMU) was passed and enacted, which in articles 2 through 5 provided the kind of money to be used in the Republic of Slovenia until the issuing of banknotes and coins under the provisions of the AMU. The AUMU in article 2 provided that, until

banknotes and coins denominated in tolars would be issued, token money issued on behalf of and for the account of the Bank of Slovenia by the Republic of Slovenia should be used as lawful means of payment. By providing that over a certain period of time token money shall be the only lawful means of payment, the AUMU declared it to be money. On the basis of paragraph 2 of article 4 of the same Act, token money was put into circulation on the basis of statute.

9. Token money, then, was money in objective sense - not abstract money but actual paper money with denomination markings and some of the most important design features, including the notice that forgery shall be subject to punishment. As such, it could be the object of criminal offence of money forging under article 168 of PL SFRY, where, and the complainant is right in this respect, what is incriminated is not the forging of some abstract and general money, but the forging of specific exemplars of coins and paper money. And this is precisely what was involved in the instant case. The complainant obtained a greater quantity of forged token money (banknotes) at the time when these was on the basis of the AUMU the only (paragraph 1 of article 2 of AMU) lawful means of payment in the territory of the Republic of Slovenia, in circulation on the basis of statute. This is why the said token money exhibited all characteristics of money determined within the framework of the meaning of this term in paragraph 8 of article 113 of PL SFRY.

10. It is precisely by the provision of paragraph 8 of article 113 of PL SFRY that the legal norm under criminal law prohibiting money forging was made to comprise a blanket clause which referred to the applicability of another statute, and a statutory provision which regulated circulation of money, in this case the applicable provisions of the AUMU. The principle of legality and restrictive interpretation, however, applies to the legal norm under criminal law as a whole, which is why in interpretation it is necessary that provisions of the AUMU, too, be examined for their legality. On the basis of the reasons already stated above, it may be established that the legislator determined that over a certain period of time token money would be used as money - that is, as the general means of payment.

Such was also the subjective viewing of token money, both on the part of the institutions in whose competence it was to take care of monetary affairs (as can also be inferred from expert opinions of the Bank of Slovenia in the criminal proceedings file concerned), as well as on the part of the people in general. For paper token money was the general means of payment, in which people were paid their wages, they could exchange it for money - banknotes or coins - of any other country; in case of its lending, they could demand payment of interest; in a word, in the awareness of people this token money represented money in the same sense as the banknotes of tody, which are also in circulation on the basis of statute and which are also the only lawful currency in the State. They only differ with regard to their design, and by the fact that on the latter the monetary unit is clearly designated, while on token money, which was put into circulation concurrently with the coming into force of the new monetary unit, the said unit could not be marked yet. But this is not a reason for one to claim that courts used extensive interpretation when they determined token money to be money in accordance with article 168 of the PL SFRY, because at that time that was the only (paper) money the State had. Extensive interpretation would mean, as pointed out by the Supreme Court, the extending of the zone of criminality in the sense that, in addition to the criminal offence in reference with the paper money, which in this particular sense plays the role of lawful currency in accordance with statute, something else or, in line with possible lexical meaning, something quite different would also be subject to punishment. Lexical meaning of token money - that is, that it was the lawful currency and thus money - was in this case determined by the legislator himself in the AUMU, which is why it was not possible to agree with the claims in the complaint, that the courts did not comply with the principle of legality when applying a norm of criminal law that prohibited money forging and prescribed sanctions for such acts.

11. Imprisonment on the basis of final judgment of criminal court, in reference with which the principle of legality in criminal law was not violated by the application, on the part of the court, of the provision of paragraph 2 of article 168 of PL SFRY, which is why there was no such violation of the complainant's rights as are claimed to have taken place, is in agreement with provisions of paragraph 2 of article 19 of the Constitution, which is why the constitutional complaint of the complainant had to be rejected as unfounded.

12. Decision concerning the costs of proceedings relating to the constitutional complaint was made by the Constitutional Court on the basis of paragraph 1 of article 34 of CCA used in reference with article 49 of the same.

C.

13. This Decision was made on the basis of paragraph 1 of article 59 and paragraph 1 of article 34 used in reference with article 49 of CCA by the Constitutional Court in the following composition: Dr. Tone Jerovšek, President, and Dr. Peter Jambrek, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen and Dr. Boštjan M. Zupančič, the judges. The Decision was reached with five votes in its favour and three against it. Votes against were cast by judges Šinkovec, Šturm and Zupančič. Judge Zupančič gave a dissenting opinion.

P r e s i d e n t
Dr. Tone Jerovšek