

DECISION

At the meeting held on 7 April 1994 and concerned with the procedure for assessment of constitutionality proposed by the Trade Union of Government and Social Bodies of Slovenia, Ljubljana, and the Police Trade Union of Slovenia, Ljubljana, the Constitutional Court

made the following decision:

The provisions of Article 98.b of the Internal Affairs Act (Official Gazette of the Socialist Republic of Slovenia, nos. 28/80, 27/89 and Official Gazette of the Republic of Slovenia, nos. 8/90, 19/91, 4/92 and 58/93), of Article 122.a of the Punitive Sanctions Enforcement Act (Official Gazette of the Socialist Republic of Slovenia, no. 17/78 and Official Gazette of the Republic of Slovenia, nos. 8/90, 12/92, 58/93), of Article 35.a of the Customs Service Act ((Official Gazette of the Republic of Slovenia, nos. 1/91 and 58/93) and of Article 147.a of the Air Services Act (Official Gazette of the SFRY, nos. 45/86, 24/88, 80/90, 29/90 and Official Gazette of the Republic of Slovenia, no. 58/93), are not in conflict with the Constitution and the ratified international agreements.

REASONS:

A.

1. The Trade Union of Government and Social Bodies of Slovenia proposed to the Constitutional Court to start the procedure for assessment of constitutionality of all of the four Act referred to in the adjudication in connection with the provisions introduced in the said Acts with the last statutes on amendments and supplements to these Acts and concerning the restricting of strikes. Police Trade Union of Slovenia proposed the starting of the procedure for assessment of constitutionality of the Internal Affairs Act. The Constitutional Court joined both cases to consider them at the same time.

The first proposer claims that the disputed Acts forbid a certain category of employed workers the right to strike, supposedly in violation of Article 76 of the Constitution which ensures the freedom of Trade Unions without any restrictions whatsoever. The right to strike is a constitutional right. The Constitution, it is true, allows its restricting, but the proposer claims that in the case of restricting this right by statute, the lawgiver should have based his action on the principle of freedom of Trade Unions, taking into consideration international legal documents, in particular the International Pact on Economic, Social and Cultural Rights and the International Pact on Civil and Political Rights, as well as the Conventions no. 87, 98 and 135 of the International Labour Organization. In the opinion of the proposers, the possibilities for restricting a strike are provided already in the Act on Strikes (Official Gazette of the SFRY, no. 22/91), for which reason the disputed Acts are supposed to be quite superfluous. The other proposer claims that the Act on Supplementing the Internal Affairs Act of the lawgiver has in fact prohibited strikes and not just restricted the right to strike, although Article 77 of the Constitution is said only to allow the restricting of such a right. This proposer also points out that the disputed Act is not in conformity with international legal documents, that is, with both of the above mentioned International Pacts and the Convention of the ILO no. 87.

2. As the opposite party involved, the National Assembly did not reply to the proposals. Opinions in this connection were sent to the Constitutional Court by the Ministry of Internal Affairs and the Ministry of Transport and Communications.

The Ministry of Internal Affairs claims that the Act on Strikes leaves the regulating of the conditions applying to the exercising of the right to strike in the police to a special statute. Such regulation by a special statute has not yet been used in Slovenia, and the passing of the Act on Supplementing the Internal Affairs Act is said to have filled a legal void. The reasons dictating the supplementing of the Act are claimed to include in particular the fact that police strikes involve major problems concerning the ensuring of national safety and affect the fulfilling of international obligations of the state. It is claimed that the tasks relating thereto must be performed at all times, continuously and effectively.

The Ministry of Transport and Communications points out that in the text of Article 147.a of the Act on Supplementing the Air Services Act the reference to strikes is not made expressly clear, for which reason the disputing of the said Articles is claimed to be meaningless. But even if this Article referred to strikes, it would not be unconstitutional, nor contrary to international legal documents, in the opinion of the Ministry. The supplements to the Air Service Act are claimed to have been imperative since, in the absence of a detailed specification of tasks of control centres and other air transport safety services, Article 7 of the Act on Strikes, which prescribes that during a strike in some branches of activities a minimum work process should be ensured, could not be applied. Regarding international legal documents relating to the right to strike, the Ministry holds that they do not expressly refer to the right to strike and that the Constitution is more restrictive than the said documents in as far as the restricting of the right to strike is concerned. The Ministry proposes that the Constitutional Court should refuse to accept the proposal for assessment of constitutionality of the Act on Supplementing the Act on Air Services Act, since the latter does not contain any provision restricting or prohibiting a strike. It also considers as unjustified the disputing of other Acts considered by the Constitutional Court within the framework of this case.

B.

The Constitutional Court found that the disputed provisions of the Internal Affairs Act, the Punitive Sanctions Enforcement Act, the Customs Service Act and the Air Services Act were not in conflict with the Constitution.

The right to strike is a constitutional one and is granted in Article 77 of the Constitution, which makes it possible for the lawgiver to restrict this right where such restrictions are in the public interest, having regard to the type and nature of the activity. Thus, the lawgiver has decided to apply restrictions on the basis of an objective criterion, that is, to apply restrictions with regard to the type of activity, and not on the basis of a subjective criterion, which would allow the denial of the right to strike to particular categories of workers.

In justification of such an interpretation of paragraph 2 of Article 77 of the Constitution reference can be made to the regulation specified in relation to the determination of the right to strike by the International Pact on Economic, Social and Cultural Rights (Official Gazette of the SFRY, no. 7/71), which is the sole international legal document referred to by both proposers that expressly regulates the right to strike.

Article 8 of this Pact proclaims the freedom of Trade Unions and at the same time stipulates that "in connection with the exercising of this right only those restrictions are allowed which are stipulated by statute; in democratic societies, such restrictions refer to the measures taken in the interest of national security or public order, or to those required for the protection of the rights and freedoms of others." Clause d) of the same Article of the Pact obliges the states to ensure "the right to strike, which shall be exercised in accordance with the laws of each particular state." The second paragraph of this Article stipulates: "This Article shall not be deemed to represent any obstacle to legally prescribed restrictions concerning the exercising of these rights, when members of the armed forces, police or civil servants are concerned." In accordance with the Pact, then, the right to the freedom of Trade Unions, in which the right to strike is also explicitly included, can be restricted by statute of each particular state both on the basis of objective and subjective criteria.

In the same way, the right to assembly and association is also regulated by the International Pact on Civil and Political Rights; in Article 22 it allows restrictions on the basis of objective criteria, but also on the basis of a subjective criterion (in reference with members of armed forces and police).

The strike is an organized interruption of work of the workers, used in exercising economic and social rights and interests arising from work" (Article 1 of the Act on Strikes). This right may, in accordance with Article 77 of the Constitution, be encroached upon by the lawgiver, when this is in the public interest, with reference to a particular kind of activity, having regard to the nature of such activity. In allowing restrictive measures of the lawgiver the Constitution distinctly uses flexible concepts, thus giving the lawgiver ample space for evaluation and decisions concerning the scope of restricting the

right to strike for each particular activity. But it allows the restricting of the right to strike not on the basis of a subjective, but only on the basis of an objective criterion.

In case of some types of activities, however, it is hard to make a sharp distinction between objectively and subjectively based restricting of the right to strike. Restricting of the right to strike based on substantial criteria, with clear identification of the tasks requiring to be performed during a strike in the public interest, may result in the fact that a certain number of workers in some services will in fact be prohibited from going on strike. This applies in particular if the restricting of strikes by specifying the crucial tasks that need to be carried out during a strike applies to representatives of holders of powers in some services.

This precisely is the case of restricting the strikes under the Internal Affairs Act and the Punitive Sanctions Enforcement Act. The restrictions in Article 98.b of the Internal Affairs Act, which was incorporated in this Act with the last statute on amendments and supplements to the existing Act (Official Gazette of the Republic of Slovenia, no. 58/93) refer to the tasks of the official holders of powers of the Ministry of Internal Affairs. They are identical with the matters relating to public security referred to in Article 2, clause 2, of the Internal Affairs Act; the only difference is that in Article 98.b reference is made to the protection of national border, while in clause 2 of Article 2 the protection of the national border is specified in more detail. But internal affairs also include national security issues administration of internal affairs and other matters. Thus, by defining, on the basis of substantial criteria, the tasks in the area of internal affairs which must be performed during a strike, the complete list of such tasks has not been given at all. All workers of the Ministry of Internal Affairs are thus not prohibited from going on strike; the latter is indirectly prohibited only in the case of holders of powers responsible for carrying out activities in reference with public security during the strike. These activities include in part those which official holders of powers are required to carry out, in accordance with Article 47 of the Act, even when they are not on duty, and even if they are not assigned to them. This, also, proves that public interest in reference with continuous implementation of these tasks has been stressed in particular.

The restrictions specified in Article 122.a of the Punitive Sanctions Enforcement Act, which was incorporated in this Act with the last statute on amendments and supplements to the existing Act (Official Gazette of the Republic of Slovenia, no. 58/83), also apply to official holders of powers exclusively. The latter are required during a strike to carry out all the work and tasks referred to in Article 144, paragraphs 2 and 3. However, these restrictions do not apply to other workers and employees in penitentiaries and correction centres. During a strike, official holders of powers shall be responsible for ensuring the security, protection, order and discipline in such institutions, perform guard duty and escort the convicts outside the premises of the institution, supervise the latter on external working locations (provisions of Article 114, paragraph 2). At the same time, official holders of powers are obliged to track down runaway convicts or persons under detention regardless of whether they are on duty or not, or assigned such tasks or not (provision of Article 114, paragraph 3). On the one hand, then, not all the workers in penitentiaries and correction centres are prohibited from going on strike; on the other hand, it is in the nature of all of the tasks and work required to be performed by official holders of power also during a strike, that in the public interest they must be performed without interruptions.

Concerning the restricting of the right to strike in the Customs Service, the restrictive provision of Article 35.a of the relevant Act, which has also been incorporated in the latter with the last statute on amendments and supplements to the existing Act (Official Gazette of the Republic of Slovenia, no. 58/93), in defining the tasks to be performed by customs officers also during a strike, does not even make reference to all of the issues comprised in the area of activities of the National Customs Administration in accordance with Article 5 of the Customs Service Act. Thus, the restrictive provision of Article 35.a does not list the tasks relating to the processing and monitoring of registered and statistical import and export data. Evidently, this analytical task is not such as would require the ensuring of its uninterrupted performance also during a strike. Other tasks whose performance during a strike is required refer to customs inspection, customs clearance with reference to goods and services, foreign exchange control, prevention and detection of customs service offenses etc. It is evident that, in the public interest, all of these tasks must also be performed during a strike.

Thus, with the provisions of the Internal Affairs Act, the Punitive Sanctions Enforcement Act and the Customs Service Act, which list the work and tasks required to be performed by official holders of powers of the Ministry of Internal Affairs, those working in penitentiaries and correction centres and employees of Customs Service also during a strike, the lawgiver has not prohibited the strike in reference with all workers and employees of these services in violation of Article 77 of the Constitution.

In the same way, it is not possible to claim as unconstitutional the provisions of Article 147.a of the Air Services Act introduced in the latter, together with other disputed provisions, by the last statute on amendments and supplements to the existing Act of 1993. These provisions do not refer to the strike at all; they only specify the tasks of the staff working in the air services in general, and not only during the strike. In this case the rules of linguistic interpretation of legal documents do not allow the use of teleological interpretation, to give the provisions of the lawgiver a meaning that is totally excluded by the linguistic interpretation.

C.

This Decision was reached on the basis of Article 21, paragraph 1, sub-paragraphs 1 and 2, of the Constitutional Court Act (Official Gazette of the Republic of Slovenia, no. 15/94) by the Constitutional Court at its meeting in the following composition: Dr. Peter Jambrek, President, Dr. Anton Jerovšek, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Janez Šinkovec and Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude, the judges. The Decision was reached with seven votes in its favour and one vote against it. (The Judge Krivic voted against and expressed an negative separate opinion).

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