



Strasbourg, 21 June 2010

CDL-UD(2010)039

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with
the Swiss Federal Department of Foreign Affairs
and
the “Executive Campus HSG of St Gallen University”

in the framework of the Swiss Chair
of the Committee of Ministers of the Council of Europe

CONFERENCE

on “Democracy and decentralisation -
Strengthening democratic institutions through participation”

St Gallen, Switzerland, 3-4 May 2010

**REFERENDUM ON THE LOCAL LEVEL
WITH A SPECIAL REFERENCE TO
THE SLOVENIAN CONSTITUTIONAL CASE-LAW**

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Date: 17/3-2010

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The paper was prepared for the International Conference "Democracy and Decentralisation", St. Gallen, 3-4 May 2010, organised by the Venice Commission in co-operation with the Swiss Federal Department of Foreign Affairs and the Executive Campus HSG of the University of St. Gallen in the framework of the Swiss Presidency of the Committee of Ministers of the Council of Europe.

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SUMMARY:

The Slovenian local referendum carried out in local self-government units is provided by law. It provides three kinds of referenda: a referendum on an act or other decision of the municipal council, a deliberative referendum on important individual municipal issues and a referendum on the territorial formation and reformation of the units of local-self-government. When certain problems arise, they may be disputed before the Constitutional Court. Accordingly, dealing with certain local self-government issues imposed to the Constitutional Court Act by the Local Self-Government Act, the Court may upon a request of the municipal council also decide on a request of a municipal council e.g. to review the constitutionality and legality of a request to call a referendum as well as to decide on the conditions for the establishment of a municipality or a change in its territory.

1. LOCAL LEVEL - DECENTRALIZATION AND DECONCENTRATION

1.1 GENERAL

Two basic characteristics of local self-government in Slovenia from the mid-50s to 1991 were:

- the formation of very large municipalities (averaging more than 30,000 inhabitants and spreading over more than 300 km²), and

- authorisation the municipalities to deal with administration and implementing laws. These communities imitated the solutions at the former federal and republican level on many issues regarding organization, method of functioning, and financing. So, typically local duties were mainly discharged by local communities established within the municipalities.

1.2 THE SYSTEM IN FORCE

The autonomy of local government in Slovenia is guaranteed by Article 9 and Article 138 of the Constitution, which defines a municipality as a basic local community (Art. 139, Constitution). However, it is rather restrictive in defining the powers of municipalities and in vesting state matters in municipalities and regions, which are actually only a form of cooperation between municipalities. Local self-government is also exercised through other kinds of local community, whether larger (regions) or smaller (village, local or “quarter” communities). The territory of a municipality comprises a settlement or several settlements bound together by common needs and interests (Art. 139(2), Constitution).

Local interests are generally represented within the National Council, whose members include 22 councillors representing local interests (Art. 96, Constitution). Slovenia also signed the European Charter on Local Self-Government and joined the Permanent Conference of Local and Regional Authorities.

1.3 INTERNAL STRUCTURE

The most important body in a municipality is the municipal council, whose members' number from 7 in the smaller municipalities to 45 in the largest urban municipalities. In smaller municipalities (up to 3,000 inhabitants) the municipal council is elected on the basis of a majority electoral system and in other municipalities on the basis of a proportional voting system. In the multinational areas of Slovenia there are also representatives of the Hungarian and Italian national communities respectively. Their position is similar to that of the representatives of these communities in the National Assembly (Art. 64(3), Constitution). A municipality is represented by a mayor, who implements the decisions of the municipal council. The mayor is elected directly, which can result in deadlock when parties whose candidates have failed in their bid for the office of mayor are in the majority on the council. Municipalities also have a supervisory board, which oversees financial issues.

1.4 FINANCING

Local government bodies fund the performance of their respective duties and functions from taxes and other mandatory charges levied by them and from any other income they may derive from their assets (Art. 146(1), Constitution). They disclose the extent of their assets and liabilities through appropriate financial statements (Art. 146(2), Constitution). Local communities levy taxes as provided by the Constitution and by law (Art. 147, Constitution). All revenues raised and all monies spent by local government bodies for public purposes must be accounted for in their respective budgets (Art. 148(1), Constitution). Where the budget of the local government body has not been officially adopted as and when due, its expenditure is temporarily financed in accordance with the terms of the preceding budget of the body concerned (Art. 148(2), Constitution).

Municipalities raise their own revenues. Those financially disadvantaged municipalities that are unable to meet all the financial requirements for the performance of their duties and functions are eligible for additional financial assistance from the state in accordance with principles and criteria prescribed by law (Art. 142, Constitution).

1.5 DISTRIBUTION OF POWERS BETWEEN THE STATE AND MUNICIPALITIES

Municipalities are self-governing local communities (Art. 139(1), Constitution). They may comprise a single community or a number of communities whose inhabitants are bound together by common needs and interests (Art. 139(2), Constitution). A municipality may be established by law following a vote in favour of its establishment at a referendum conducted to ascertain the will of the people in the area affected. The territorial boundaries of a municipality are those prescribed by law (Art. 139(3), Constitution).

The field of activities of a municipality is determined by the Constitution and is quite limited, a municipality being empowered to regulate local matters only. The range of duties and functions performed by a municipality include those local matters which affect only the people of that municipality and which the municipality may independently determine. Local matters are not specified by the Constitution but by the Local Self-Government Act and special statutory regulations respectively. Autonomous bodies may be empowered by law to carry out specific functions of public administration (Art. 121(2), Constitution).

The state may by law vest duties and functions that fall within its competence in municipalities and wider self-governing local communities, subject to the prior consent of the municipalities and other bodies concerned and to the provision of the means for the performance of these duties and functions (Art. 140(2), Constitution). With regard to the above tasks, the state oversees the proper and efficient performance by municipalities and wider self-governing local communities of all the duties and functions vested in them by law (Art. 140(3), Constitution).

The Constitution also stipulates that a town or city may attain the status of an urban municipality in accordance with the procedure and conditions prescribed by law (Art. 141(1), Constitution). Specific duties and functions relating to urban development may by law be vested by the state in urban municipalities (Art. 141(2), Constitution).

Municipalities are at liberty to join with other municipalities in establishing wider self-governing local communities or regional local communities to exercise administrative powers and to deal with matters of wider common interest (Art. 143(1), Constitution). The state may, by agreement with wider self-governing local communities and regional local communities, vest within the original competence of these communities' specific duties and functions that otherwise fall within the jurisdiction of the state. The state regulates the manner in which these communities recommend the vesting of state duties and functions in them and the manner in which they perform them (Art. 143(1), Constitution). The principles and criteria governing the vesting of the above duties and functions are regulated by law (Art. 143(2), Constitution).

Citizens may join together and form self-governing associations to further their common interests (Art. 145(1), Constitution). The authority to manage specific matters falling within the competence of the state may by law be granted to citizens joined together in self-governing associations (Art. 145(2), Constitution).

1.6 SUPERVISION

As regards matters under the original competence of local communities, state bodies only supervise the constitutionality of the activities of the bodies of the respective communities (Art. 144, Constitution). The Constitution binds the state to respect the autonomy of local self-government and to transfer particular state powers to local communities. In addition, the Constitution ensures that local communities have the opportunity to initiate proceedings before the Constitutional Court to protect and

to acquire their original powers (Art. 160(1), seventh bullet, Constitution; Art. 91, Local Self-Government Act). The Constitution also guarantees a clear separation between state functions and original functions of a self-governing community, and also prohibits state intervention in the autonomous fields of local self-government (Art. 140, Constitution). The Constitution explicitly determines the starting points for the statutory regulation of particular questions regarding local self-government (Arts. 139, 142, 141, 140, 143 and 147, Constitution).

Acts and actions of local government bodies must be based on a law or regulation adopted pursuant to law (Art. 153(4), Constitution). Local government bylaws must be published in the official publications specified by the local government body concerned (Art. 154(2), Constitution). A court that has jurisdiction to review administrative acts decides the legality of final individual acts with which local community authorities decide on the rights or obligations and legal entitlements of individuals and organizations (Art. 157(1), Constitution). The Constitution makes provision for the appointment by law of an ombudsman responsible for the protection of human rights and fundamental freedoms in matters involving local government bodies (Art. 159(1), Constitution). The Constitutional Court is empowered to adjudicate matters relating to the conformity of local government bylaws with the Constitution and with laws (Art. 160(4), Constitution).

2. THE REFERENDUM AS A FORM OF DIRECT DEMOCRACY

The Constitution of 1991 introduced the referendum in the Process of Amending the Constitution (Article 170) and the legislative referendum (Article 90). The Constitution regulates the referendum only generally, while the respective detailed procedure is regulated by the Referendum and Public Initiative Act and the Referenda on the Establishment of Municipalities Act. In addition, the Slovenian system also includes the referendum within the local-community (introduced by the Local Self-Government Act) as well as the deliberative referendum (introduced by the Referendum and Public initiative Act).

2.1 THE REFERENDUM IN THE PROCESS OF AMENDING THE CONSTITUTION

A referendum for the process of amending the Constitution may be conducted after the adoption of an act of revision in the National Assembly, but before the proclamation of the act. This *post constitutionem* referendum has the character of the ratification of a constitutional amendment from the side of the people. This referendum is anticipated only as a constitutional possibility for the decision-making right of voters on the confirmation of the amending of the Constitution; therefore it can be implemented at each, at certain, or none of the revisions of the Constitution (Article 4 of the Referendum and Public initiative Act).

There may only be one option - the National Assembly must present the proposal for the amendment to the Constitution to the electorate at a referendum if the same is demanded by no less than thirty Deputies (Article 170.1 of the Constitution; Article 5 of the Referendum and Public initiative Act). An amendment is deemed to have been carried at such a referendum if a majority of all voters eligible to vote, voted at the referendum and a majority of those voters were in favour of the same (Article 170.2 of the Constitution; Article 6 of the Referendum and Public initiative Act). The National Assembly is bound by such a referendum; it may not adopt any act for amendment of the Constitution which would be contrary to the results of the referendum within two years after the referendum (Article 8 of the Referendum and Public Initiative Act).

2.2 THE LEGISLATIVE REFERENDUM

A legislative referendum is only optional, just as is the referendum for constitutional revision. The National Assembly may call it on its own initiative (Article 90.1 of the Constitution; Article 11.1 of the Referendum and Public initiative Act; Article 20 of the Referendum and Public initiative Act, Articles 230-232 of the Rules of Procedure of the National Assembly) but it must hold such a referendum if the same is demanded by no less than one third of the Deputies, by the National Council, or by forty thousand voters (Article 90.2 of the Constitution; Article 12 of the Referendum and Public initiative Act; Articles 19 and 22 of the Referendum and Public initiative Act). The Constitution differentiates between the introduction of a referendum requested by the National Assembly (the proposal can be submitted by any Deputy - Article 11.2 of the Referendum and Public initiative Act - and on this proposal the National Assembly decides by a majority of those Deputies present and voting) and the introduction of a referendum requested by one third of the Deputies, by the National Council or by forty thousand voters. In the first case, the National Assembly can accept or refuse the request, in the second case the

National Assembly is obliged to hold a referendum. While the referendum for constitutional revision is only subsequent, the legislative referendum may be preliminary (*ante legem*) or subsequent (*post legem*). At a preliminary referendum the voters declare themselves on questions regulated by statute, while at a subsequent one they confirm a statute already passed by the National Assembly (Article 9 of the Referendum and Public initiative Act). The Constitution does not limit the questions to be decided by referendum. But the Referendum and Public initiative Act exclude from decision-making by the referendum all laws passed through the accelerated procedure (in case of the extraordinary needs of the State, defence interests, or acts of God), laws implementing the accepted State budget, as well as laws implementing ratified international agreements (Article 10 of the Referendum and Public initiative Act). A subsequent referendum is provided only as a confirming one and not as an annulling one whereby the voters could directly annul an already effective statute (Article 9 of the Referendum and Public initiative Act). A decision is passed at a referendum if a majority of all voters voting at the referendum voted in favour of the same (Article 90.4 of the Constitution; Article 23 of the Referendum and Public Initiative Act). In cases where some are of the opinion that the contents of the request to hold a referendum is contrary to the Constitution, the National Assembly can request a decision to be made by the Constitutional Court. The Court must decide on the matter within 30 days (Article 16 of the Referendum and Public initiative Act). The National Assembly shall be bound by the results of the referendum (Article 25.1 of the Referendum and Public initiative Act). When passing a law, the National Assembly must take into consideration the results of any previous referendum (Article 25.2 of the Referendum and Public initiative Act). For one year after a referendum, the National Assembly may not enact any statute in contradiction with the results of the referendum, nor repeat a referendum on the same issue (Article 25.3 of the Referendum and Public initiative Act).

2.3 THE DELIBERATIVE REFERENDUM

A deliberative referendum may be called by the National Assembly on the initiative of any Deputy in the National Assembly (Articles 26 and 27 of the Referendum and Public initiative Act). The issues at a referendum are questions within the power of the National Assembly which are of major importance for citizens. A deliberative referendum may only be preliminary (Article 28 of the Referendum and Public initiative Act) and the National Assembly is not bound by its results (Article 29 of the Referendum and Public initiative Act).

2.4 THE LOCAL REFERENDUM

A local referendum carried out in units of local self-government is provided by statute (the Local Self-Government Act). It provides three kinds of referenda: a referendum on an act or other decision of the municipal council (Article 46 of the Local Self-Government Act), a deliberative referendum on important individual municipal issues (Article 47 of the Local Self-Government Act) and a referendum on the territorial formation and reformation of the units of local-self-government (Articles 14 and 15 of the Local Self-Government Act). In this group the referendum on the establishment of a municipality can be listed. This referendum is already prescribed by the Constitution, but the respective procedure was regulated by the Referenda on the Establishment of Municipalities Act, valid until 23 August 1996. At present, the respective field is regulated by the Procedure for the Establishment of Municipalities and for the Determination of their Areas Act. This referendum can only be preliminary, because the National Assembly passes laws concerning the area of municipalities. This referendum is an obligatory step, and is called and exercised on the bases of the Constitution itself (Article 139.3 of the Constitution). The National Assembly cannot pass a law in this area without the respective referendum being held, which does not necessarily mean that the National Assembly is legally bound by the decision of citizens (consequently, this referendum is a deliberative referendum) (Article 139.3 of the Constitution).

3. CONSTITUTIONAL CASE-LAW CONCERNING THE LOCAL SELF-GOVERNMENT ISSUES

3.1 CONSTITUTIONAL COURT POWERS REGARDING LOCAL-SELF GOVERNMENT ISSUES

Constitutional Court Powers are determined by the Constitution (Art. 160, Constitution) and by law. Pursuant to Art. 160(1) of the Constitution and Art. 21(1) of the Constitutional Court Act (Official Gazette RS, No. 64/07) the Court's jurisdiction also includes:

- abstract or concrete review of constitutionality and legality of local self-government regulations initiated by governmental bodies or individuals (Art. 160 (1), forth bullet, Constitution; Arts. 22, 23a and 24 of the Constitutional Court Act;
- the adjudication of jurisdictional disputes between the state and local communities, between local communities themselves... (Art. 160(1), seventh –ninth bullet, Constitution; Arts. 61 and 62, Constitutional Court Act);
- reviewing the constitutionality and legality of National Assembly decisions finding that conditions for the establishment of a municipality or a change in its territory have not been met (Art. 14(a), Local Self-Government Act);

- requests from municipalities or regions to review the constitutionality and legality of legal acts violating the constitutional position and rights of local communities (Art. 91, Local Self-Government Act, Official Gazette RS, No. 72/93 et sub.: Art. 23(1),(9), Constitutional Court Act);
- decides on the admissibility of a National Assembly decision not to call a referendum on the confirmation of constitutional amendments (Art. 5č, Referendum and People's Initiative Act, Official Gazette RS, No. 15/94 et sub.);
- decides on a request of the National Assembly to review the constitutionality of consequences which could occur due to the suspension of the implementation of a law or due to a law not being adopted (Art. 21, Referendum and People's Initiative Act);
- decides on a request of a municipal council to review the constitutionality and legality of a request to call a referendum (Art. 47a(2), Local Self-Government Act);
- reviews the constitutionality of a National Assembly decision to dissolve a municipal council or dismiss a mayor (Art. 90c(4), Local self-Government Act).

3.2 APPLICANTS

- complaint of local self-government authorities concerning constitutional position and rights of local communities (Art. 91, Local Self-Government Act, Nos. 72/93 with amendments);
- conditions for the establishment of a municipality or a change in its territory: government, any deputy, at least 5000 voters, municipal council (Art. 14.a(3), Local Self-Government Act).
- dissolution a municipal council – dismissal a mayor: municipal council, mayor (Art. 90.c(4), Local Self-Government Act).
- constitutionality and legality of a request to call a referendum: municipal council (Art. 47.a(2), Local Self-Government Act).
- review the constitutionality of consequences due to the suspension of the implementation or adoption of a law: National Assembly (Art. 21, Referendum and People's Initiative Act).
- decision not to call a constitutional amendment referendum: at least thirty deputies (Art. 5.č, Referendum and People's Initiative Act).

3.3 DECISIONS

- annulment of a decision by the National Assembly on the conditions for the establishment of a municipality or a change in its territory, decision (Art. 14.a, Local Self-Government Act);
- annulment of a legal act violating the constitutional position and rights of a local community, decision, (Art. 91, Local Self-Government Act, Art. 23(1)(9), Constitutional Court Act);

- constitutionality of consequences which could occur due to the suspension of the implementation of a law or due to a law not being adopted, declaratory decision (Art. 21, Referendum and People's Initiative Act);
- constitutionality and legality of a request to call a referendum, declaratory decision (Art. 47.a(2), Local Self-Government Act);
- annulment of a National Assembly decision not to call a referendum on the confirmation of constitutional amendments, decision, (Art. 5.č, Referendum and People's Initiative Act);
- annulment of a National Assembly decision to dissolve a municipal council or dismiss a mayor, decision, (Art. 90.c(4), Local Self-Government Act).

3.4 CONSTITUTIONAL CASE-LAW WITH A SPECIAL REFERENCE TO THE REFERENDUM ON THE LOCAL LEVEL

The constitutional case law concerns particular issues e.g. : The Constitutional Court Jurisdiction – Formal Reasons, The Local Referendum Procedure - Conformity with the Law, Establishment of Municipality – Fullfillment of Formal Reasons and Deciding on Local Matters.

3.4.1 The Constitutional Court Jurisdiction – Formal Reasons

Ruling No. U-I-121/09 of 27 May 2009, published in the Official Gazette RS, No. 43/09:

The Constitutional Court can review the constitutionality of a request to call a referendum only if it is specially authorised to do so by the Constitution or a law. The special power of the Constitutional Court to review the constitutionality or legality of a request to call a referendum in a local community is provided for in the second paragraph of Article 47a of the Local Self-Government Act. This power does not allow that, on the basis of a petition to initiate the procedure for the review of the constitutionality or legality of an ordinance to call a referendum, the Constitutional Court reviews the constitutionality or legality of a request to call a referendum. Due to the fact that the petitioners are not challenging the ordinance itself as regards its contents, but rather the constitutionality of the request to call a referendum, which the Constitutional Court could review only within the framework of the request determined in Article 47a of the Local Self-Government Act, the Constitutional Court rejected their petition as it does not have the jurisdiction to decide such.

Ruling No. 223/98 of 18 November 1999, published on www.us-rs.si:

The Constitutional Court rejected the mayor's request, since the matter at issue did not concern such review of the content of a request for calling a referendum as determined under Art. 16 of the Referendum and Popular Initiative Act.

According to Art. 18 of the Local Self-government Act (hereinafter: ZLS), only a consultative referendum may be held on the basis of which the municipal council establishes the interest of inhabitants living in the municipality in which smaller units are to be founded. An initiative for carrying out a consultative referendum may also be filed by a certain number of inhabitants of a part of the municipality which is determined by the charter. If the mayor opines that such initiative is not in conformity with statute, the

initiator must proceed in accordance with Art. 47 of ZLS, which provides that the initiator may request that the administrative court examine the mayor's decision.

Ruling No. U-I-151/94 of 3 November 1994, published on www.us-rs.si:

The Constitutional Court is not empowered to evaluate the constitutionality and legality of the report on results of the referendum for the establishment of municipalities because such document can not be deemed, on the basis of its content and examination of complaints about irregularities of the procedure before the national electoral committee and the court within whose competence fall administrative lawsuits, to be of the nature of a general act.

3.4.2 The Local Referendum Procedure - Conformity with the Law

Decicion No. 309/97 of 4 November 1999, published in the Official Gazette, No. 99/99:

The Constitutional Court annulled the decision reached at the referendum, since in the procedure of calling the referendum for the introduction of a self-imposed contribution the provisions of Arts. 30.1, 33 and 34.1 of the Referendum and Popular Initiative Act were violated. The established violation had a substantial impact on the exercise of the right under Art. 44 of the Constitution, which vests in every citizen the right, subject to statute, to participate, either directly or through their elected representatives, in the management of public affairs.

Decision No. U-I-269/99 of 9 March 2000, published in the Official Gazette RS, No. 17/2000 and in the Official Gazette RS, No. 31/2000:

The Act on the Amendment to the Local Self-Government Act determined a stricter majority for reaching a decision on the introduction of a self-imposed contribution than determined in the Referendum and Popular Initiative Act for reaching other decisions at a referendum. An absolute majority, i.e. a majority of all voters in a municipality or part of the municipality for which a self-imposed contribution is introduced, is necessary for the reaching of a decision on the introduction of the self-imposed contribution.

Since it follows from the report of the Electoral Commission that there had been no majority of voters required for the introduction of a self-imposed contribution pursuant to the Local Self-Government Act, the Constitutional Court annulled the challenged Order on the introduction of the self-imposed contribution, which was thus issued on the basis of the unlawful decision of the Electoral Commission.

Note: There were many decisions adopted of similar contents (the self-imposed contribution in money)

Decision No. U-I-272/99 of 9 March 2000, published in the Official Gazette RS, No. 31/2000:

One of the basic characteristics of a referendum is that voters decide themselves by their vote on questions directly affecting them. If a person to which the referendum decision refers did not have the opportunity to cast their vote, there is a violation of the right to vote. The right to vote at a referendum is protected by Art. 44 of the Constitution, which vests in every citizen the right to directly or through their elected representatives participate in the management of public affairs in accordance with statute. Since the local community had not enable those persons to vote at the referendum, the Constitutional Court annulled the challenged Order in the part which obliged to the payment of a self-imposed contribution also the persons who had not have the opportunity to case their vote at the referendum.

Decision No. U-I-13/98, published in the Official Gazette RS, No. 99/99:

The Constitutional Court annulled the challenged resolution in the part on the basis of which also the persons who did not have the opportunity to cast their vote at the referendum were obliged to pay the self-imposed contribution. One of the basic characteristics of a referendum is that voters decide on questions directly affecting them themselves by means of casting their vote. If a person to whom the decision reached at the referendum refers did not have the opportunity to state themselves and cast their vote at the referendum, the right to vote was thereby violated. The right to cast one's vote at a referendum is protected under Art. 44 of the Constitution, which vests in every citizen the right, subject to statute, to participate, either directly or through their elected representatives, in the management of public affairs.

Decision No. U-I-43/02 of 12 September 2002, published in the Official Gazette RS, No. 28/02, Official Gazette RS, No. 83/02 and in the Official Gazette RS, No. 85/02 (correc.):

A decision of voters at a subsequent referendum is binding for a municipality council, as it may not adopt the same regulation until the end of its term of office. As the challenged Ordinance is in its contents not the same as the Ordinance on Granting a Concession (which was not confirmed at the subsequent referendum), it is not inconsistent with Art. 90 in connection with Art. 44 of the Constitution, and Art. 46 of the Local Government Act.

3.4.3 Establishment of Municipality – Fulfillment of Formal Reasons

Decision No. U-I-90/94 of 20 May 1994, published in the Official Gazette of RS, No. 29/94:

If settlements are not linked by the common needs and interests of their inhabitants in a way that would encompass the territory of a municipality as the basic local self-governing community, but are nevertheless included in a referendum area for defining the area of a municipality, then we cannot speak about the territory of a municipality defined in accordance with the Constitution and the law.

Decision No. U-I-28/01 of 28 June 2001, published in the Official Gazette RS, No. 62/01:

Pursuant to Art. 46.2 of Local Government Act (ZLS) a municipal council calls a referendum. With the introduction of local self-government and the establishment of the new municipalities, the newly established local communities were no longer independent local communities, and their role and position were significantly limited. Established narrower parts of a municipality do not have in advance determined competences, except for those granted to them by the municipality by the statute. Pursuant to Art. 19b of ZLS, the tasks which may be transferred are merely determined as examples, and it is explicitly emphasized that it is a delegation for implementation to the narrower parts of a municipality. On the basis of the stated provision, the legislative function cannot be transferred onto the narrower parts of the municipality, i.e. the function of reaching basic decisions in the form of municipal regulations (Art. 65 of ZLS).

Since the Municipal Council Pertoča was not competent to call a referendum and to issue an order to introduce local assessment, the Constitutional Court established that the challenged order does not exist as a regulation, and therefore may not be applied.

Ruling No. U-I-88/99 of 15 April 1999, published on www.us-rs.si:

The called elections of LC Medvode-Center Council members represent a direct exercise of the right to local self-government (Art. 9 of the Constitution). By electing a council, as the highest decision-making

body in a local community, the inhabitants will be enabled to exercise their right to local self-government through their representatives in the LC Medvode - Center Council. The calling of a consultative referendum concerns a fully separated procedure, which is not connected with the calling of elections to local communities councils in the area of Medvode Municipality. Thus, the petitioners' assertions that their right to local self-government was violated, since the consultative referendum was held on the same day as the elections to local communities councils, were evidently unfounded.

Art. 18 of the Local Self-Government (hereinafter: ZLS) may only be violated by the adoption of a charter or by an amendment to the charter, if the municipal council does not respect Arts. 1 and 4 of this article. ZLS in Art. 18 leaves the internal fragmentation of a municipality to one's independent normative regulation. It only obliges them to consider with the internal fragmentation certain characteristics of an area (geographical, historical, economic, administrative, cultural and other), and to establish at assemblies of inhabitants or at a referendum, to be held prior to establishing smaller parts of the municipality, the interest of the inhabitants living in particular areas of the municipality in which smaller parts are to be established.

Therefore, the petitioners' assertions that by the act of the mayor on the calling of elections to the councils of newly established local communities Art. 18 of ZLS was violated, were evidently unfounded.

However, the Constitutional Court did not review the assertion in the petition that Art. 32 of the Carter Resolution was violated, since it lacks jurisdiction to review the mutual conformity of municipal regulations (Art. 160.1 of the Constitution).

Ruling No. U-I-288/98 of 14 October 1998, published on www.us-rs.si:

By disregarding the voters' will in the referendum area for establishing the municipality of Lenart, the National Assembly avoided the disrespect of the voters' will in three other referendum areas. They considered the best solution for the settlements of Sveti Jurij, Sveta trojica in Voličina to remain part of the Municipality of Lenart. Thereby the National Assembly took into consideration the fact that Lenart is a central settlement and that it had before been the seat of the municipality extending over a large area (the argument for preserving the existing state of affairs). The National Assembly could also have acted differently in the situation where it was not able to avoid the disregard of the will of the people expressed at the referendum, at least in one area (e.g. so that it would have established the Municipality of Lenart in a narrower extent, and besides it also one more municipality in the disputed three areas). However, its decision falls within the framework of political discretion the National Assembly is entitled to in such cases. The National Assembly did not act arbitrarily in the case at issue, this entailing the challenged provision to pass constitutional muster.

Decision No. U-I-144/94 of 15 July 1994, published in the Official Gazette RS, No. 45/94:

Article 13 of the Local Self-Government Act is contrary to the Constitution for allowing in the process of formation of new municipalities the preparation of proposals which are obviously not in conformity with the constitutional concept of local government bodies. Criteria for determination of a municipal area are left to arbitrary selection, which would lead to the creation of functionally incompatible municipalities.

Article 14 of the Local Self-Government Act, also, does not correspond to the constitutional purpose of the referendum as a form of expression of the will of the population concerning the establishing of a municipality, which obliges the National Assembly to determine a municipal area by statute in accordance with the will of the inhabitants of full age who have cast their votes at such referendum. Paragraphs 1 and 3 of this Article prescribe that the results of a referendum shall be binding, since the

National Assembly may only exceptionally make corrections relating to municipal boundaries in the cases when referendum decisions are found to be in conflict.

The Constitutional Court considers that a process, which is based on legally prescribed procedures, is going on in Slovenia, which would lead to the creation of local government bodies which fail to satisfy the constitutional criteria applying to the establishing of local government bodies, and which also fail to conform to the European concept of local self-government. In this connection, the Court considers, that what is involved is the question of implementation of the constitutional concept of local self-government, which has also been harmonised with the European charter on local self- government. In this connection it is the duty of the state governed by the rule of law to make it possible for its citizens to express their interests and to exercise their will in appropriate form on the basis of a legally regulated and predictable way in conformity with the Constitution.

In the formation of municipalities the question of the areas where an urban municipality can be established should also be considered. This is why Article 5 of the Act on Referendum Concerning the Establishing of Municipalities provides for simultaneous meetings of citizens in local communities for the purpose of arriving at proposals concerning the establishing of rural and urban municipalities. For it is inadmissible that an area which fails to satisfy the criteria applying to the urban municipality should subsequent to the creation of a town withdraw and then remain an area within which a rural municipality would be established, without making sure that such a "remainder" satisfies the criteria set for establishing the municipality.

Since the Constitutional Court has abrogated the above mentioned provisions of the Local Self-Government Act, and due to the fact that referendum is consultative in nature and does not bind the National Assembly to establish municipalities solely in accordance with referendum results, the question as to constitutionality of both of the disputed Ordinances has become void of meaning, which is why the Constitutional Court decided to stop the proceedings for evaluation of their constitutionality.

The Constitutional Court finds it admissible by the Constitution in the formation of a municipal area and the establishing of a municipality by statute to base such a decision of the National Assembly on the will of inhabitants as expressed at referendums already carried out, or at repeated referendums.

Decision, No. U-I-304/94 of 9 November 1995, published in the Official Gazette RS, No. 73/95:

The name and seat of a municipality, in addition to the territory, are crucial constitutive elements of any local community which is bound by the common needs and interests of the inhabitants (first paragraph of article 139 of the Constitution), as well as (of a) municipality as a person in public law (article 7 of the Local Government Act).

In compliance with the third paragraph of article 139 of the Constitution, the legislator may define the name and seat of newly founded municipalities only after the prior holding of a referendum, whereby the will of the inhabitants is determined.

So the provisions of paragraphs 9 and 5 of article 16 of the Local Government Act are not in compliance with the third paragraph of article 139 of the Constitution, because they do not determine that the name and seat of a municipality shall be defined by law only after the prior holding of a referendum.

Because the Law on founding municipalities and on deciding their territories also determines the name and seat of each new municipality, without there having previously been held a referendum whereby the will of the inhabitants of specified regions be established, also in relation to the name and seat of the

municipalities, the Constitutional Court found that the names and seats of municipalities were not determined in compliance with the third paragraph of article 139 of the Constitution.

The principle of a state governed by the rule of law (article 2 of the Constitution) requires that the criteria and procedures for deciding or changing the name and seat of a municipality be specified in Law.

Decision No. U-I-119/98 of 17 April 1998, published in the Official Gazette RS, No. 35/98:

It is in conflict with the Constitution that the Decree on holding referendums and determining referendum regions for founding municipalities and for determining or changing their regions and holding referendums for changing the name and seats of municipalities (Official Gazette RS, no. 21/98) does not contain provisions on holding a referendum in the region of the municipality of Destrnik - Trnovska vas in relation to the seat of the municipality. The National Assembly must rectify this conflict with the Constitution not later than 20 May 1998 such that a referendum is held in the region of Destrnik - Trnovska vas.

It is in conflict with the Constitution that the Decree does not contain provisions on holding a referendum in the region of the settlement of Prihova in relation to separation from the municipality of Mozirje and inclusion in the municipality of Nazarje. The National Assembly must rectify this conflict with the Constitution not later than 20 May such that a referendum is held in the appropriate regions.

It is in conflict with the Constitution that the Decree does not contain provisions on holding a referendum on separating parts of the municipalities into independent municipalities in the following regions: Benedikt, Cerkvenjak, Lenart, Sveta Ana v Slovenskih Goricah, Sveti Jurij v Slovenskih Goricah, Sveta Trojica v Slovenskih Gorica, Voličina, Sveti Andraž v Slovenskih Goricah, Velika Polana, Šmarjeta, Mirna Peč, Horjul, Trzin, Žirovnica, Lipnica, Podlehnik, Žetale and Dobje. The National Assembly must rectify this conflict not later than 20 May 1998, such that it adopts a decree whereby a referendum will be held in the appropriate regions.

Point I/23 of the Decrees is not in conflict with the Constitution if it is interpreted such that in the referendum on founding municipalities and for changing their regions which is called for Sunday, 19 April 1998, in the referendum regions under point I/23 of the cited decree, the referendum result is established individually for the region of the settlement of Globoka.

Decision No. U-I-85/94 of 20 May 1994, published in the Official Gazette RS, No. 29/94:

The provisions of the Decree on Defining Referendum Areas for the Founding of Municipalities which refer to individual referendum areas in connection with the provision of Chapter II do not conflict with the Constitution and the law, provided that the provision of this chapter is understood such that in the referendum areas referred to the voting is carried out in such manner as will enable the establishment of the referendum results for an individual part of the referendum area.

In the search for and decision on the most effective methods of implementing local-self government, the decisions of the Constitutional Court cannot replace the legislator, and in cases of proceedings before the Constitutional Court the said court shall adjudicate exclusively from the aspect of accordance of the decisions with the Constitution and the law, and not also by establishing their reasonableness and suitability.

3.4.4 Deciding on Local Matters

Ruling No. U-I-140/92 of 8 April 1993, published on www.us-rs.si:

A decree of a municipal assembly on naming and renaming streets is not in violation of the Constitution and law if citizens were given an opportunity before the adoption of the decree, in their councils and bodies of the local council, to provide initiatives and make suggestions on the naming and renaming, or if they were enabled to promulgate such proposals submitted.

Decision No. U-I-112/00 of 10 May 2001, published in the Official Gazette RS, No. 100/00 and in the Official Gazette RS, No. 43/01:

It is not inconsistent with statute if a municipal charter determines a stricter majority for reaching certain municipal council decisions than the one determined as a general rule by statute. It is not inconsistent with statute if a municipal charter determines that the carrying out of a subsequent referendum is mandatory for adopting certain general municipal acts.

Decision No. U-I-111/04 of 8 July 2004, published in the Official Gazette RS, No. 51/04, Official Gazette RS, No. 62/04 (corr.) and in the Official Gazette RS, No. 77/04:

A local community resolution by which a referendum is called is a general act by which entitled persons are called to express their will on a specific date concerning the subject of the referendum question. On the request of an entitled proposer, the Constitutional Court has jurisdiction to review the constitutionality of such.

The right to freely profess a religion, which is determined in Art. 41.1 of the Constitution includes the right of individuals and religious communities to individually or collectively profess their religion in buildings that are typical and generally accepted for the profession of their religion and the practice of their religious rites. Deciding on land use conditions in a referendum whose intention is to prevent the building of a mosque would not only entail deciding on the placement of the object into the area, but also deciding on whether members of the Islamic religious community can profess their religion in a mosque or not. A resolution calling such a referendum interferes with the right to freely profess a religion.

If an interference with a human right is intended to restrict such without thereby the intention to protect the rights of others, such is inadmissible with regard to Art. 15.3 of the Constitution, according to which human rights can be limited only by the rights of others and in such cases as are provided by the Constitution. The resolution calling a referendum whose goal of which is to limit the right to freely profess a religion as ensured by the Constitution without thereby protecting the rights of others, is thus inconsistent with the Constitution.

The request submitted by the mayor of a municipality for the review of the constitutionality of the Local Self-Government Act, who does not have authorization in the municipal charter to commence proceedings for the review of the constitutionality of a state regulation, is rejected by the Constitutional Court. The Constitutional Court rejects petitions for the commencement of proceedings for the review of the constitutionality of a statute, if the granting of the petition would not improve the petitioner's legal position.

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