



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-213/95
January 18, 1996

DECISION

At the session held on January 18, 1996 in a procedure to evaluate the constitutionality and legality initiated at the request of the Sežana local community, the Constitutional Court

decided:

1. The procedure for the evaluation of the constitutionality of Article 109 of the Local Elections Act (Official Gazette of the RS, No. 72/93, 7/94 and 33/94) is stopped.
2. The Ordinance on the Determination of Electoral Units for the Election of Local Community Council Members and the Composition and Number of Local Community Council Members in the Municipality of Sežana (Official Gazette of the RS, No. 53/95) is abrogated.

Reasoning:

A.

1. The initiator contests the constitutionality of Article 109 of the Local Elections Act (hereinafter: ZLV), the constitutionality and legality of the Ordinance on the Determination of Electoral Units for the Election of Members to Local Community Councils and on the Composition and Number of Local Community Council Members in the Municipality of Sežana (hereinafter: the Ordinance) and the legality of Article 45 of the Statute of the Municipality of Sežana (hereinafter: the Municipal Statute). The initiator believes that ZLV provision dictating that the same provision that applies to elections to a municipal council within a municipality as a single electoral unit also applies to elections to local, village or district communities, prevents the elections from being carried out in accordance with the statute. It states that in accordance with the statute and municipal practice all election procedures for local, village or district communities are led and carried out exclusively by the municipality. Such arrangement is alleged to be unconstitutional since the decision as to whether a local community will be divided into electoral units is left to the municipal councils, which thereby decide on the internal organization and the manner of election to its bodies. In the initiator's opinion this is particularly intolerable when a local community enjoys the status of a legal entity. The independence of a local community is supposed to be unquestionable, and therefore it is intolerable and unconstitutional for someone else to be able to determine its internal structure when, according to the statute, only it can do this with its statute. Pursuant to Article 4 of the Act on the Founding of Municipalities and the Determination of Settlements, in the opinion of the initiator it would be necessary at the first elections to take into account the statute of the existing local community, which it alleges is still valid.

2. The initiator also contests the provision of Article 45 of the Municipal Statute determining that the statute of a local community becomes valid on the day the municipal council gives its consent.

3. In the opinion of the initiator the Ordinance, which does not take into account the provision of Article 109 of ZLV, is also contrary to the statute, since Articles 2 and 3 define local communities as individual electoral units while at the same time it actually redefines electoral units within the local communities. Hence in the Sežana local community there would be elections in five electoral units whose number of inhabitants varied substantially. This is allegedly contrary to Article 20 of ZLV. Any division of a local community into electoral units is allegedly contrary to Article 109 of ZLV, which is supposedly the common point for the entire electoral system valid for the local, village and district communities. If the Constitutional Court abrogates Article 109 of ZLV, in the opinion of the initiator this would create the conditions for the division of a municipality into several electoral units, and in the process of drawing

up such electoral units Article 20 of ZLV should be followed, in which it is prescribed that electoral units be formed so that one member of the municipal council (in this case the local council) is elected for an approximately equal number of inhabitants.

4. Since the holding of elections under such an ordinance is allegedly unconstitutional and illegal, the initiator proposed that the Constitutional Court suspend the implementation of the Ordinance and, if necessary, of Article 109 of ZLV, until the final decision is made.

5. With a resolution of October 5, 1995 the Constitutional Court accepted the initiative to evaluate the constitutionality of Article 109 of ZLV and the initiative to evaluate the constitutionality and legality of the Ordinance and suspended the implementation of all these provisions until the final decision is made, and dismissed the initiative to evaluate the legality of Article 45 of the Municipal Statute.

6. In connection with the initiative, after debate in the Internal Policy and Justice Committee on the basis of Article 301 of the Standards of Procedure of the National Assembly, the Secretariat for Legislation and Legal Affairs of the National Assembly reported:

- that it considered the content of the provision of the first Paragraph of Article 109 of ZLV controversial, but doubted whether the controversy or unsuitability were severe enough to be able to establish conflict with the Constitution;

- that it did not find the provision of the second Paragraph of Article 109 of ZLV to be controversial;

- that at its session on November 30, 1995 the National Assembly had already amended and supplemented the disputed provision of Article 109 of ZLV.

7. In its reply to the initiative, among other things the municipal council of the Municipality of Sežana states that pursuant to Article 109 of ZLV the contested Ordinance defined local communities as electoral units, whereby it considered the role of individual settlements such that it prescribed the number of local community council members elected in particular settlements within an individual local community. It states that it decided not to form separate electoral units solely for the reason of simplifying the procedure, claiming that if it were to form electoral units by settlements "it would be necessary in each settlement to determine a voting place, appoint an electoral board and draw up a ballot paper and appoint an electoral commission for the entire local community", and goes on to list the difficulties which might arise, concluding that "this was really just a simplification of the procedure, which cannot lead to a final result that is different from the result if each settlement were a separate electoral unit".

B-I.

8. Article 109 of ZLV, which is contested in the initiative and whose implementation was delayed by the Constitutional Court with the resolution of October 5, 1995, was substantially amended with the changes to the statute (ZLV-C, Official Gazette of the RS, No. 70/95 of December 8, 1995). Even if the initiator had informed the Court that it considered these new provisions to be constitutionality controversial (which it did not), this would have to be considered as a new initiative and a separate decision would have to be made on its acceptance - the initiated procedure to evaluate the constitutionality of Article 109 of ZLV in the text which ceased to be valid or was changed substantially, needed to be stopped in any case. According to Article 47 of the Constitutional Court Act (Official Gazette of the RS, No. 15/94), in cases when a contested law ceases to be valid the Constitutional Court may nevertheless make a declaratory decision to the effect that it was not in accordance with the Constitution if at the time when the contested provisions ceased to be valid the consequences of their possible unconstitutionality had not been removed, but in this case this was not deemed to be necessary. The implementation of the contested provisions was temporarily suspended - if any consequences occurred before that, i.e if elections were held following the contested provisions, any possible harmful consequences (for instance, unsuitable composition of local community councils elected in that way) can be remedied in a different manner, including by a constitutional complaint affected citizens due to a violation of their constitutional right under Article 44 of the Constitution. For this reason the Constitutional Court stopped the procedure.

B-II.

9. After the contested Article 109 of ZLV had been amended, the conformity of the contested ordinance with the now valid provision of Article 109 of ZLV had to be evaluated.

10. Pursuant to the fifth and sixth Paragraphs of the now valid text of Article 109 of ZLV, the electoral units and the number of local community council members should as a rule be prescribed by the local community councils, and only exceptionally by a municipal ordinance (if the local community is not functioning, if the area of the local community was changed following the statutory establishment of municipalities at the end of 1994 or if the local community is newly founded). It is clear from the third Paragraph of Article 6 of the municipal statute it is clear that the new municipal statute preserves the former local communities; in other words, it re-establishes them, but on the territory of the "local communities of the same name that were founded on the territory of the Municipality of Sežana prior to the enactment of the Municipal Statute". In view of this the municipal ordinance should be allowed to regulate these questions only for those local communities in which councils do not operate, and not for all local communities in the municipality.

11. The substance of the contested ordinance is clearly contrary to the seventh Paragraph of the now valid text of Article 109 of ZLV, which reads as follows: "The electoral units shall be determined so as to ensure the representation of the inhabitants of individual settlements or parts of local, village or district communities in the council of this community." The contested ordinance does not divide local communities into electoral units at all. In its preliminary examination, when the initiative was accepted, the Constitutional Court believed that Article 3 actually divided the areas of individual local communities into several electoral units for the Article states how many local community members are elected from an individual settlement, but from the reply to the initiative by the municipal council it is clear that the meaning of Article 3 is different. The provisions on how many local community council members are elected from individual settlements could in fact mean that these settlements thereby actually became electoral units only if the voters in these settlements themselves at separate voting places and on special ballot papers chose their representatives to the local community council - which was categorically denied by the municipal council in its reply (see the summary in Item 7 of the reasons). The provisions of Article 3 therefore mean that all voters in a particular local community would receive the same ballot paper listing separately the candidates for council members from individual settlements, and in compliance with the provision of Article 6 those who received most votes, i.e at least a relative majority, would be elected. The claim of the municipal council in its reply to the initiative that such arrangement cannot "lead to any different final result than if each settlement were its own electoral unit" is obviously incorrect, since under the contested ordinance all voters in the local community would decide with their votes on the representative for an individual settlement, including inhabitants from other settlements.

12. From these reasons the Constitutional Court entirely abrogated the contested ordinance.

C.

13. The Constitutional Court decided the case on the basis of Article 6 and the third Paragraph of Article 45 of the Constitutional Court Act, at a session composed as follows: President Dr. Tone Jerovšek and Judges Dr. Peter Jambrek, Matevž Krivic M.Law, Janez Snoj M.Law. Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen and Dr. Lojze Ude. The decision was made unanimously.

President of the Constitutional Court
Dr. Tone Jerovšek