

Case number.:	U-I-89/99¹
Challenged act:	Republic of Slovenia Citizenship Act (Official Gazette RS, Nos. 1/91-I, 30/91-I, 38/92 and 13/94) (ZDRS), Arts. 10, 40.3
Operative provisions:	Art. 40.3 of the Republic of Slovenia Citizenship Act is annulled, insofar as related to the reason of a threat to the public order determined in Art. 10, It. 8 of this Act.
Abstract:	Since the legislature did not have any reason based on a prevailing and legitimate public interest that would outweigh the protected trust in the law to prescribe an additional condition concerning a threat to the public order, the Constitutional Court annulled Art 40.3 of the Republic of Slovenia Citizenship Act, insofar as related to the reason of a threat to the public order.
Thesaurus:	Citizenship, the acquisition of citizenship, exceptional naturalization criteria, a threat to the public order, the security or defense of the State. Principles of a State governed by the rule of law. Principle of the protection of trust in the law. Retroactivity, statute. Principle of proportionality. Dissenting opinion of a Constitutional Court judge.
Legal basis:	Constitution, Art. 2 Constitutional Act for the Implementation of the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (UZITUL), Art. 4 Constitutional Court Act (ZUstS), Art. 43
Notes:	In the reasoning of its decision the Constitutional Court refers to its cases No. U-I-206/97, dated 17 June 1998 (DecCC VII,134), and No. U-I-147/92, dated 6 May 1993 (DecCC II,45).
Full text:	U-I-89/99 10 June 1999 D E C I S I O N At a session held on 10 June 1999 in proceedings to review constitutionality instituted by the petition of Ivan Šulc from Piran, represented by Ervin Dokić, attorney at law in Piran, the Constitutional Court d e c i d e d: Art. 40.3 of the Republic of Slovenia Citizenship Act (Official Gazette RS, Nos. 1/91-I, 30/91-I, 38/92, 61/92 - DecCC and 13/94) is annulled, insofar

¹ Source: <http://odlocitve.us-rs.si/>

as related to the reason of a threat to the public order determined in Art. 10, It. 8 of this Act.

Reasoning

A.

10. The petitioner applied for Republic of Slovenia citizenship, according to Art. 40 of the Republic of Slovenia Citizenship Act (Official Gazette RS, Nos. 1/91-I, 30/91-I, 38/92, 61/92 - DecCC and 13/94 - hereinafter: ZDRS). The public administration body denied his application for the reasons determined in Art. 40.3 of ZDRS. This decision was confirmed by the Supreme Court in a judicial review proceeding. The petitioner filed a constitutional complaint with the Constitutional Court. In the complaint he stated that he had applied for citizenship before Art. 40 of ZDRS was amended, i.e. at the time when the Act in Para. 3 did not determine special conditions for the acquisition of citizenship. So it allegedly sufficed at that time that the applicant was a registered permanent resident of Slovenia and that he actually lived in Slovenia on the day of the plebiscite. Concerning the principle of legal certainty and legality, which requires legal regulations to have prospective effect, in the petitioner's opinion, the challenged decisions should not have based on Art. 40 of ZDRS. To this effect, the petitioner further raised the question of the constitutionality of Art.

40.3 of ZDRS.

2. The National Assembly did not respond to the petition.

3. In its response of 20 May 1999, the Government referred to international law, which allegedly provides that citizenship is in the domain of a the relevant sovereign State. Therefore, every State is allegedly free to determine who may be its citizens. This includes prescribing the manners and conditions required for acquiring citizenship. At the time it gained independence, the Republic of Slovenia could not regulate citizenship by a treaty entered into with the predecessor State. That is why this area was regulated by ZDRS. The question of the citizenship of citizens of other Republics was regulated by Art. 40 of ZDRS (exceptional naturalization as a consequence of the disintegration of the former State). As a transitory provision this ZDRS article made possible the acquisition of citizenship without any limiting circumstances. Due to the well-know events which immediately followed Slovenia gaining independence (i.e. the armed aggression against the Republic of Slovenia) Art. 40.3, which refers to Art. 10.8, was added to the original Act by the Act on the Amendment to ZDRS.

The challenged provision encompasses elements of the protection of national interests, either for the reason of the defense, security or public order of the State, the citizenship of which the petitioner applied for. Citizenship as a relationship between the State and the individual is a status that can not be acquired if the applicant does not fulfill the statutory determined requirements. According to the Government, the amended Act does not have retroactive effect. The amendment became effective on the day of its publication in the Official Gazette, thus the Ministry of the Interior was obliged in the case of every decision on Art. 40 adopted after 14 December 1991 to also consider the provision of the challenged Para. 3. Last but not least, the correctness of such a decision was confirmed by Constitutional Court Rulings No. U-I-147/92, dated 6 May 1993 (DecCC II,45) and No. Up-115/94, dated 2 December 1996.

B. - I.

4. By Ruling No. [U-I-89/99](#), dated 15 April 1999, the Constitutional Court accepted the petition for the review of the constitutionality of Art. 40. 3 of ZDRS, to establish whether the challenged statutory regulation was consistent with the principle of trust in the law as one of the principles of a State governed by the rule of law (Art. 2 of the Constitution), and with other constitutional provisions.

5. The original ZDRS (Official Gazette RS, 1/91-I), which came into force on 25 June 1991, in Art. 40.1 prescribed conditions under which citizens of other Republics may acquire Slovenian citizenship in the following manner: "Any citizen of another (Yugoslav) Republic who was on the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia, dated 23 December 1990, a registered permanent resident in the Republic of Slovenia, and who actually resides in the country, may acquire Republic of Slovenia citizenship, if he or she submits an application to the internal affairs administration body of the municipality where he or she is a permanent resident is within six months from the date of this Act coming into force."

6. By the amended Act (Official Gazette RS, No. 30/91), which became effective on 14 December 1991, the legislature subsequently, by additional Paras. 2 and 3, determined exceptions to the cases under Para. 1. According to Art. 40.2 of ZDRS, an application for the acquisition of Republic of Slovenia citizenship will be rejected if the individual has, after 26 June 1991 committed a crime as determined under Chapter 15 or 16 of the Penal Code of SFRY, aimed at endangering the foundations of the Republic of Slovenia and other values that are in accordance with Art. 4.1 of the Constitutional Act for the Implementation of the Basic Constitutional

Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette RS, No. 1/91 - hereinafter: UZITUL) protected by the penal legislation of the Republic of Slovenia, irrespective of the place where the crime was committed. If criminal proceedings are instituted in order that the court may adjudicate on such a crime, the acquisition of citizenship procedure is stayed until the final completion of the criminal proceedings. Pursuant to Art. 40.3 of ZDRS, regardless of whether the requirements of Para. 1 of this article are fulfilled, the application may be rejected if the applicant does not meet the requirements of Art. 10.1.8 of this Act. Art.

10.1.8 of ZDRS, which prescribes one of the requirements for the acquisition of citizenship by naturalization, reads as follows: "Republic of Slovenia citizenship may be granted by naturalization to any individual who applies for it, if he or she meets the following requirements: ... 8. that the granting of his or her Republic of Slovenia citizenship does not pose a threat to the public order, security or defense of the State." B. - II.

7. In Art. 2 the Constitution declares that Slovenia is a law- governed and social State. A State governed by the rule of law must respect the principle of trust in the law, legal certainty and other principles of a law-governed State. The principle of trust in the law requires individual decisions based on statute and reached without any subsequent reservation, and which do not have a transitory character, to be stable. The law is able to implement its function of regulating society only if it is as constant and durable as possible. Not only laws but also the activities of all State bodies must be foreseeable, for this is required by legal certainty. The principle of trust in the law ensures to the individual that the State will not harm his or her legal position without a reason based on a prevailing public interest. Because the matter concerns a general legal principle and not directly one of the constitutional rights which are, according to Art. 15 of the Constitution, insured greater protection against possible restrictions, this principle is not absolute. Thus, the principle of trust in the law is to a greater extent than individual constitutional rights subject to certain restrictions, to the effect that in the case of a conflict or collision between these and other constitutional principles or values it is, following the so-called weighing of values, necessary to judge which of the constitutionally protected values is to be given priority in a particular case at dispute (See Decision No. U-I-206/97, dated 17 June 1998, Official Gazette RS, No. 50/98 and DecCC VII, 134).

8. In establishing whether the issue concerns an encroachment on the constitutional principle of trust in the law, it is necessary to consider on the one hand the significance of the expectation of a particular right for the life of the affected individual and the significance of the change, and, on the

other hand, whether the changes in the legal field concerned are relatively foreseeable so that the affected individuals could take such change into consideration in advance. In the case at issue the changes refer to the area of the regulation of citizenship in connection with State succession.

9. By the creation of new States on the territory of the former State of the Socialist Federative Republic of Yugoslavia (hereinafter: SFRY), what was changed was the legal position of persons who did not live in the Republic whose Republican citizenship they had. In Slovenia citizens of other Republics had enjoyed, as Yugoslav citizens, all rights regardless of their Republican citizenship, if they were registered there as permanent residents. Concerning the particular situation following Slovenia gaining independence, the independence acts also contained special provisions which regulated the position of such individuals in the newly created State.

10. Even before Slovenia gained independence or before the plebiscite, held on 23 December 1990, at which the permanent residents of Slovenia expressed their common will that the Republic of Slovenia become an independent State, at a joint session of the parliament the parliamentary parties had ensured by the "Declaration on Good Intentions" (Official Gazette RS, No. 44/90 - I) to those permanent residents who had had citizenship of other Republics of the former SFRY the possibility of acquiring Slovenian citizenship. "... Moreover, it (i.e. the Slovenian State) guarantees to all members of other nations and nationalities the right to universal cultural and language development and, to all permanent residents in Slovenia, the possibility of acquiring Slovenian citizenship, if they wish." In Art. 13 UZITUL specifically determined that citizens of other Republics who were registered permanent residents in the Republic of Slovenia on the day of the plebiscite on independence and sovereignty (23 December 1991), and who actually lived in Slovenia at that time, have equal rights and duties as citizens of the Republic of Slovenia (except in cases determined in Art. 16 - regarding the acquisition of real property rights to real estate in Slovenia) to acquire Republic of Slovenia citizenship according to Art. 40 of ZDRS or until the expiration of the time limits determined in Art. 81 of the Foreigners Act (Official Gazette RS, Nos. 1/91-I, 44/97, 50/98 - DecCC and 14/99 - DecCC). In Decision Up-38/93, dated 6 July 1995 - DecCC IV,130, the Constitutional Court adopted the view that, since Art. 13 of UZITUL determines the acquisition of citizenship under the same conditions as Art. 40 of ZDRS, and came into force at the same time as UZITUL, the right to acquire citizenship under these conditions gained constitutional significance, or was elevated to the level of a right guaranteed by a regulation of constitutional rank.

However, it should be emphasized that in the cited case a completely

different question was reviewed, i.e. the question of establishing the criterion of actually residing in Slovenia as one of the basic criteria for the acquisition of citizenship, for this embodies the strongest internationally recognized element of a genuine connection between the State and the individual. This element is, as well, included in Art. 13 of UZITUL as a criterion when guaranteeing vested rights. From the fact that the condition of permanent residence is a joint criterion for both the enjoyment of the rights pursuant to Art. 13 of UZITUL as well as the acquisition of citizenship determined in Art. 40 of ZDRS, it does not therefore follow that the right to acquire citizenship is elevated to the level of a right guaranteed by a regulation of constitutional rank. UZITUL and ZDRS are so-called independence acts and belong to the regulations which Slovenia had to adopt in order to establish its independence. At the time SFRY was disintegrating and at the moment of establishing independence, the Slovenian State was also required to regulate the question of citizenship, since population is one of the constitutive elements of the creation of statehood. The State solved this problem by the adoption of ZDRS, in which it defined a crucial element of its sovereignty, i.e. its citizenry, and at the same time determined the manner and conditions for the acquisition and deprivation of citizenship. For those permanent residents of the Republic of Slovenia who were citizens of other Republics of the former SFRY the State provided the possibility of acquiring citizenship under special conditions prescribed in Art. 40 of ZDRS. In contrast, Art. 13 of UZITUL, which has the character of a transitory provision, regulated only the status of the mentioned group of people until they acquired Republic of Slovenia citizenship pursuant to Art. 40 of ZDRS, or until the expiration of the time limits determined in Art. 81 of the Foreigners Act.

By providing these individuals equal rights and obligations with regard to the acquisition of Republic of Slovenia citizenship, according to Art. 40 of ZDRS or until the expiration of the time limits of Art. 81 of the Foreigners Act, as for citizens of the Republic of Slovenia, the State ensured them in this transitory period social, economic and political rights, except the possibility of acquiring title to property or other real property rights to real estate situated on the territory of Slovenia (Art. 16), but not the right to acquire citizenship.

11. The original provision of Art. 40 of ZDRS, which was designed on the basis of the aforementioned Statement on Good Intentions, thus gave citizens of other Republics of the former SFRY having permanent residence in Slovenia on 23 December 1990, who actually resided there, the possibility of acquiring Republic of Slovenia citizenship subject to only one condition, i.e. to the condition of filing a required application on time (in the time limit of six months from the day the Act came into force). The State of

Slovenia granted the right to acquire citizenship by single extraordinary naturalization to the said group, to which also the petitioner belongs, because of their special position at the time of the disintegration of the former SFRY. These people could rely on such regulation as determined by statute and pursuant to it they could legitimately coordinate their activities and expectations. By the amended Act, after many affected individuals had already filed applications for the acquisition of citizenship and thereby fulfilled the requirement, the State changed this regulation and determined additional conditions (the challenged Art. 40.3) to the detriment of such affected individuals. Thereby, the State interfered with the principle of trust in the law, however this does not necessarily mean that the interference was unconstitutional. It is necessary to judge whether there exist prevailing reasons in the public interest to adopt such an amendment, otherwise the constitutional principle of trust in the law must be applied.

12. From legislative documents it follows that the proposer of the Act filed the proposal to supplement Art. 40 due to the events directly following the Republic of Slovenia gaining independence (the armed aggression launched against the Republic of Slovenia). In particular, the proposer established that among the individuals who had applied for citizenship according to Art. 40 there were also persons who had directly participated in the aggression, or had obviously acted in a disloyal manner against the State of Slovenia. Moreover, the proposer of the Act established that these individuals want to acquire Slovenian citizenship only because of certain material benefits (e.g. the purchase of an apartment for a lower price than the market price under the Housing Act scheme, the payment of military pensions). However, they are allegedly resistant to accepting citizenship as their essential relationship with the State, that is, to subordinate themselves to its sovereignty as loyal citizens. The new Art. 40.3 provided a way to deny the granting of citizenship to those individuals who had clearly acted in a disloyal manner against Slovenia, or collaborated with the aggressors, during the aggression (The Bill on the Amended ZDRS, dated 21 October 1991).

13. From the abovesaid it follows that the reason in the public interest, which called for the adoption of the challenged Para. 3, was the protection of the State, or its safety and defense.

Before gaining independence the State had promised to grant Slovenian citizenship to all citizens of other Republics of the former SFRY living in Slovenia, but at that time it could not have foreseen the events which followed the gaining of independence. Thus, a subsequently prescribed condition which refers to a threat to the security and defense of the state does not embody an unconstitutional encroachment on the principle of

trust in the law. The individuals who participated in the aggression and were not loyal to Slovenia cannot successfully appeal to the principle of trust in the law against the State whose interests they impaired.

14. However, those applicants, including the petitioner, who cannot acquire citizenship because of a subsequently determined reason of a threat to the public order, may nevertheless successfully appeal to the principle of trust in the law. From legislative materials it unambiguously follows that the goal of the challenged provision was to enable administrative bodies to refuse to grant citizenship to those individuals who had participated in the aggression, or acted against the State, but not to those applicants who are *šonly* a potential threat to the public order. Concerning these individuals, no new circumstances developed *š*after the adoption of Art. 40 of ZDRS \acute{C} , which would justify possible changes *š*in ZDRS \acute{C} . At the time of the adoption of the Act it was already possible to envisage that among the applicants for citizenship pursuant to Art. 40 there would also be individuals potentially dangerous for the public order. The legislature did not have any reason based on a prevailing and legitimate public interest that would outweigh the protected trust in the law to prescribe this additional condition. Therefore, it was necessary to annul Art. 40.3 of ZDRS, insofar as related to the reason of a threat to the public order.

15. Such a decision signifies that when deciding on the granting of citizenship according to Art. 40.3 of ZDRS, applications cannot be denied for the reason of a threat to the public order. 16. Regarding the petitioner's appeal concerning the retroactivity of the challenged provision, the Constitutional Court refers to Ruling No. U-I-147/93, dated 6 May 1993 (DecCC II,45), where it decided that in the Act on the Amendment to ZDRS the legislature had not determined that this Act to have retroactive effect. The petitioner had filed his application for acquiring citizenship before the provision, whose constitutionality he challenged, came into force, however ZDRS in Art. 15 explicitly provides that applicants for citizenship pursuant to Art. 40 of ZDRS do not become citizens until the day they are served the decision granting citizenship. The decision denying the petitioner's application was issued on 27 June 1994, which is after the challenged provision took effect. Thus, the decision did not interfere with the petitioner's right by means of having retroactive effect, but was based on the statutory provision which came into force before the end of the administrative procedure.

C.

17. The Constitutional Court reached this Decision on the basis of Art. 43 of the Constitutional Court Act (Official Gazette RS, No. 14/94 - ZUstS),

composed of: Franc Testen, President, and Judges: Dr. Janez Čebulj, Dr. Zvonko Fišer, dr. Miroslava Geč Korošec, Lojze Janko, Milojka Modrijan, Dr. Lojze Ude, Dr. Mirjam Škrk and Dr. Dragica Wedam Lukić. The Decision was reached by seven votes against two. Judges Čebulj and Ude gave dissenting separate opinions.

P r e s i d e n t:

Franc Testen

Type of document:	review of constitutionality and legality of regulations and other general acts
Type of act:	statute
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