

**THE REPUBLIC OF SLOVENIA
THE CONSTITUTIONAL COURT**

No: U-I-284/94

Date: February the 4th, 1999

DECISION

Following the procedure for verification of constitutionality, based on the initiative of Blagoje Miković and Vojislav Tomić from Ljubljana, the Constitutional Court on its session of 4 February 1999:

HELD:

1. The Law on Foreigners (Official Gazette of the RS, No. 1/91-I, 44/97 and 50/98 – decisions of the Constitutional Court) is inconsistent with the Constitution, as it does not define the conditions for acquiring a permanent residence permit for the persons mentioned in the 2nd paragraph of Article 81, upon expiry of the term within which they could have applied for the citizenship of the Republic of Slovenia, if they failed to do so, or after the date when their decision on rejection of their application for the citizenship of the Republic of Slovenia became final.
2. The stipulation of the first paragraph of Article 16 of the Law on Foreigners is not inconsistent with the Constitution.
3. The inconsistency, stated in the 1st item of this indictment, has to be removed by the legislator within six months from the issuance of this Decision in the Official Gazette of the Republic of Slovenia.
4. Until the inconsistency, mentioned in the 1st item of this indictment is removed, no decision on forcible removal of a foreigner, as defined in Article 28 of the Law on Foreigners, may be passed, when the person in question had a registered permanent residence in the Republic of Slovenia on December the 23rd 1990 – the day of the plebiscite, and is actually living in Slovenia.

REASONING:

A.

1. By its Decision No. U-I-284/94, dated June the 24th 1998, the Constitutional Court adopted the initiative for starting a procedure for verification of constitutionality of the first paragraph of Article 15 and the second paragraph of Article 81 of the Law on Foreigners (hereinafter referred to as: the LoF) in order to estimate, whether the disputed legislative regulation is in accordance with the principle of the rule of law (Article 2 of the Constitution) and the principle of equality (Article 14 of the Constitution). During the verification of the initiatives the Court stated, that Article 81 of the LoF does not precise the status of the SFRY citizens, who

were citizens of other republics at the moment of Slovenia's becoming independent, and did not apply for the citizenship of the Republic of Slovenia or were issued negative decisions (hereinafter referred to as: citizens of other republics). The Constitutional Court also stated, that according to the stipulation of Article 13 of the Constitutional Law on Implementation of the Basic Constitutional Paper on Autonomy and Independence of the Republic of Slovenia, a question arises regarding the correct interpretation and the resulting application of the stipulations of the first paragraph of Article 16 in relation to the second paragraph of Article 81 of the LoF in practice.

2. In its answer, dated October the 8th 1998, the Parliamentary Secretariat for legislation and legal matters, stated that the LoF does not contain any specific provisions that would regulate the legal status of residence of former citizens of the SFRY who have not applied for the citizenship of the Republic of Slovenia or who were issued negative decisions. However, based on the Government's opinion, the provisions of the LoF were applied in such a way that, in practice, the permanent residence of concerned persons was taken into account, and therefore they were not in a worse legal position than the foreigners who were in possession of a permanent residence permit at the time of the introduction of the Law. This gap in the LoF did not affect the legal security of concerned persons and thus the valid legislation should not be seen as contradictory to the principles of the rule of law. In addition within the assessment of these persons' legal status, the actual implementation of the law in individual legal procedures should be considered, because the disputed law was implemented in accordance with its purpose as well as the legal protection of individuals.
3. The explications issued by the Government on September the 10th 1998 show, that on February the 26th 1992, the municipal administrative bodies (presently referred to as the administrative units) erased all the citizens of other republics who had registered permanent residence in the Republic of Slovenia but had not applied for the citizenship of the Republic of Slovenia, from the register of permanent residents and transferred them into the register of foreigners. The said transfer was supposedly based on Article 5 of the Regulations on the Application Form for Registration or Cancellation of a Permanent Residence, on the Form of the Personal Card and the Household Card and on the Manner of Keeping of Permanent Residents Register, defining that only data of the citizens of the Republic of Slovenia with registered permanent residence in the territory of the municipality in question are kept in the register and that 'the transfer of these persons from the Permanent Residents Register into the Foreigners Register was performed only in order to establish due records in accordance with these Regulations'. Since February the 26th 1992, the persons in question were obliged to regulate their foreigners status in accordance with the LoF, while their residence could only be registered upon submission of a previously issued residence or work permit. As the citizens of other republics were unable to fulfil the condition of an uninterrupted three-year stay in the territory of Slovenia, to be proved by a temporary residence permit, according to the first paragraph of Article 16 of the LoF, the Government adopted a Decision No. 260-01/91-2/5-8 on its 18th session, held on September the 3rd, 1992, according to which, in deciding about applications for permanent resident permits, it should be considered that the

residence condition had also been fulfilled when the person from the second paragraph of Article 81 had registered residence in the Republic of Slovenia for at least three years and had actually been living in Slovenia before the LoF stipulations came into force. Based on this a total of 4893 permanent residence permits were issued in the following order: 1458 in 1992, 763 in 1993, 361 in 1994, 312 in 1995, 640 in 1996 and 1259 in the year 1997. These explanations further show, that in 1991, 568 permanent residence permits that had been issued according to the Law on Movement and Residence of Foreigners were issued to foreigners, i.e. the people, who had been granted the foreigner status even before the LoF was adopted.

4. According to the Government's opinion, the Ministry of the Interior (hereinafter referred to as the MI) correctly applied the stipulation of the first paragraph of Article 16 of the LoF in practice, when deciding about issuing permanent residence permits, therefore the Law was not violated and the principle of equality, as compared to the foreigners whose permanent residence permits were extended by the Law, was not violated either. The Government therefore suggests, that the Constitutional Court rejects the initiatives and further stresses, that these persons were given an opportunity to regulate their legal status upon the independence of Slovenia, by acquiring the citizenship and that permanent residence could be acquired only by an application and not *ex officio*. In the Government's opinion there are many individuals who had not applied for the citizenship of the Republic of Slovenia, because they were unwilling to acquire a permanent residence permit and lose some rights in their own states, while some individuals who had registered their permanent residence in Slovenia were actually not living in the Republic of Slovenia.

B. – I.

5. When new states were established in the territory of the former Socialist Federal Republic of Yugoslavia (hereinafter referred to as the SFRY), the legal status of individuals who were not living in the republic of which they actually had the citizenship changed. Within the SFRY, Slovenia was the republic into which the citizens of other republics arrived mostly due to economical reasons – for a short or a long period of time, and had therefore registered temporary or permanent residence. The citizens of other republics, being the Yugoslav citizens, enjoyed all the rights in Slovenia regardless the republic citizenship they actually had, if they had their permanent residence registered in the territory of Slovenia. Considering their situation upon the independence of Slovenia, the Independence Acts also contained special stipulations, regulating their status in the newly formed state. The Constitutional Law on Implementation of the Basic Constitutional Paper on Autonomy and Independence of the Republic of Slovenia (The Official Gazette of the Republic of Slovenia, No. 1/91 – hereinafter referred to as the BCPAI) in its Article 13 especially defined, that the citizens of other republics who had a permanent residence in the Republic of Slovenia on the date of the plebiscite on autonomy and independence (December the 23rd, 1990) and were actually living in Slovenia at the time, had equal rights and obligations as the citizens of the Republic of Slovenia (except for the cases defined in Article 16) until acquiring the citizenship of the Republic of Slovenia according to Article 40 of the Law on

Citizenship (hereinafter referred to as the LoC) or until the terms defined in Article 81 of the LoF expire. According to Article 40 of the LoC the citizens of other republics who had registered permanent residence in the Republic of Slovenia and were actually living here, could acquire the Slovene citizenship if within six months from the introduction of the LoC they submitted their application to the administrative body, competent for internal affairs in the territory of their permanent residence. By the amended LoC (The Official Gazette of the RS, No. 30/91) exceptions were defined by the second and the third paragraph of Article 40, referring to citizens of other republics who could not acquire the citizenship of the Republic of Slovenia in spite of fulfilling the above stated conditions, as follows: if the person in question was sentenced for particular crimes after June the 26h, 1991, or when the conditions of item 8 of the first paragraph of Article 10 are fulfilled, namely: endangering public order, security or defence of the state.

6. The LoC, therefore, defined special conditions and procedures for the citizens of other republics who wished to acquire the citizenship of the Republic of Slovenia. The citizens of other republics who decided to apply for the citizenship of Slovenia and whose applications for citizenship were not rejected, became the citizens of the Republic of Slovenia.¹ Until the decisions on granting the citizenship of the Republic of Slovenia to the citizens of other republics became final, the stipulations of the LoF (the first paragraph of Article 81) were not applied for the citizens of other republics, meaning that they were practically given the same legal status as before Slovenia's independence. Therefore, Slovenia's becoming independent represented no difference in the legal status for the citizens of other republics who were granted the citizenship of the Republic of Slovenia.
7. But, the legal status of the citizens of other republics who have not decided to apply for the citizenship of the Republic of Slovenia or whose applications were rejected, was substantially changed. The LoF, which in a similar way as the LoC, belongs to the group of regulations that were adopted within the package of the independence legislation, contains no particular stipulations referring to this group of citizens. The second paragraph of Article 81 only defines, that the stipulations of the LoF become valid for the a.m. persons upon the expiry of a two-month period, within which they were entitled to apply for the citizenship of the Republic of Slovenia, or from the date of the issuance of a final decision on citizenship.
8. The *travaux préparatoires* papers (the Bill of LoF dated May the 24th, 1991, ESA 357) indicate that a proposal was made during the discussion of the bill to have a special provision regulating the temporary legal status of citizens of the SFRY who will decide not to apply for the citizenship of the Republic of Slovenia. This proposal was not accepted, followed by an explanation, that this question should not be regulated by the LoF, but by bilateral agreements (commentary, page 3, item 6). This demonstrates that the legislator had not regulated the legal status of the citizens from other republics residing in the territory of the Republic of

¹ According to Article 40 of the LoC about 170,000 citizens of other republics were granted Slovene citizenship (Nada Končina, The Law on the Citizenship of the Republic of Slovenia with Commentary, MI, 1993).

Slovenia, as it presumed that this will be the matter of international agreements to be signed with other new states established in the territory of the former SFRY according to the rules of international law. As no such agreement have been signed – mostly due to the war conditions in the Republic of Croatia and in the Republic of Bosnia and Herzegovina, their legal status remained unregulated.

9. The Government's explanations and the proofs submitted by the initiators, show that the discussed legal void was filled-in in practice in various manners and that it had various consequences for the citizens of other republics.

10. One of the first consequences of such non-regulated legal status of citizens of other republics, as defined in the second paragraph of Article 81 was in the fact, that on the date of coming into force of the LoF, referring to such persons, the competent administrative bodies reacted by transferring these persons from the permanent residence register to the record of foreigners. This transfer was performed following the official duty without duly informing the citizens of other countries about the transfer and without advising them regarding their newly acquired legal status. The Government explains, that the right to permanent residence expired to these persons 'ex lege', based on the Law on Registering the Residence of Citizens and the Register of the Population. The competent bodies, only upon a request of applicants, issued certificates on erasure from the records themselves. Thus one of the initiators, Mr. Blagoje Mikovic, was issued the certificate No. 10/3-11656/93, dated May the 24th, 1993, by the Municipal Secretariat for Internal Affairs of the Municipality of Ljubljana, in which it was stated that the initiator had registered permanent residence in Ljubljana since December the 15th 1978 until February the 26th 1992 and that since the application of Article 81 of the LoF he had registered temporary residence since September the 16th, 1992, as a foreigner and that he still resides in the Republic in Slovenia based on his residence permit, the validity of which expired on October the 22nd, 1993 (a temporary residence permit). The enclosed decision issued by the Administrative Unit in Ljubljana, No. 10/20-T-ZB-1188/93, dated May the 3rd, 1995, and shows that the initiator was registered in the record of temporarily registered foreigners (the first paragraph of Article 63 of the LoF).

11. The LoF offers various possibilities of residing in Slovenia to foreigners. According to the first paragraph of Article 13, a foreigner can reside in the territory of Slovenia for three months as a rule, or for the period indicated on the issued visa, unless otherwise agreed by an international agreement. If a foreigner wishes to reside in Slovenia for a longer period of time, he/she is bound to submit an application for a temporary residence permit. Pending the decision on his application, the foreigner is still allowed to reside in Slovenia, as according to the third paragraph of Article 13, it is considered that his/her certificate of submitted application serves as a temporary residence permit pending the issuance of the final decision. The second paragraph of Article 13 defines cases in which a foreigner can be issued a temporary residence permit (studying, employment, medical treatment, professional activity, marriage, ownership of real estate in Slovenia, enjoying the rights deriving from previous employment or any other justified reasons). Article 16 of the LoF regulates the situation when a foreign

wishes to reside permanently in Slovenia. A foreigner can acquire a permanent residence permit only when he/she fulfils the conditions, defined in the first paragraph of Article 16 and unless no other negative (exclusive) reasons exist according to the third paragraph of Article 19. The first paragraph of Article 16 stipulates, that a permanent residence permit can be issued to a foreigner who has constantly been residing in Slovenia for at least eight years (prior to the amended LoF, the required period was three years) holding a temporary residence permit and fulfils the conditions stated in the second paragraph of Article 13, justifying his/her permanent residence in the territory of the Republic of Slovenia. The third paragraph of Article 19 stipulates, that a temporary or a permanent residence permit can not be issued to a foreigner who has no means for supporting him/herself, or for whom no other supporting means are ensured in any other manner, who has entered the state contrary to the stipulations of Article 13, or for whom there are other valid reasons, stipulated in the first, the second, the sixth or the seventh indent of Article 10 (if he/she has been expelled from the state; if he/she is registered as an international delinquent; if he/she has no documents for proving his/her identity or if such documents are not valid; if he/she comes from territories affected with contagious diseases and has no vaccination certificate).

12. Due to the unsettled legal status of citizens of other republics the competent administrative bodies – at least until the Government’s decision was adopted on September the 3rd 1992, that a three-year residing period before implementation of the LoF can also be considered as permanent residence – applied the stipulation of Article 13 and issued temporary residence permits to such persons, or considered them as applicants for temporary residence. Disregarding whether the competent administrative bodies applied the stipulations of Article 13 on issuance of temporary residence permit, or stipulations of the first paragraph of Article 16 on temporary residence permit in accordance with the Government’s decision, the persons in question had to prove the fulfilment of at least one among the conditions stated in the second paragraph of Article 13, justifying longer stay in the state and they also had to prove that they had sufficient financial means for supporting themselves. In case that such a person did not fulfil any of the stipulated conditions or could not prove the existence of any other justified reason for a longer stay in the Republic of Slovenia, the competent administrative body was entitled to reject such an application for temporary or permanent residence permit. With the issuance of such a final decision, a citizen of other republic lost the right to reside in the territory of the Republic of Slovenia (Article 28 of the LoF). The citizens of other republics were also unable to acquire temporary or permanent residence permits due to some other reasons. One of the reasons for the persons in question to be unable to regulate their foreigner status was the fact, that due to war conditions in the country of their origin or due to some other reasons they were unable to acquire passports or other certificates that had to be enclosed to the application for issuance of temporary or permanent residence permit according to Article 64 of the LoF.
13. The above shows, that the LoF stipulates the procedure for acquiring temporary or permanent residence permits for foreigners, but that this kind of stipulation does not correspond the actual situation of the concerned group of citizens of other republics and can also not be applied for such persons based on legal and lawful

analogy.² These persons had had registered permanent residence in Slovenia, in accordance with the valid regulations and were actually residing in the territory of Slovenia. The permanent residence and actual residence in the territory of the Republic of Slovenia are the essential circumstances, giving a special legal status to the concerned persons, therefore the stipulations of the LoF, stipulating the granting of permanent or temporary residence, are unsuitable for them. The legislator should have regulated the status of the concerned persons or their transition into the foreigner status, in a special manner, by transitional provisions of the LoF or by a special law. Namely, the stipulations, regulating various legal statuses of foreigners, are based on the presumption, that a foreigner enters the Republic of Slovenia with an intention to remain here for a shorter or a longer period of time and therefore gradually starts to regulate his/her legal status as a foreigner, in accordance with the stipulations of the LoF (starting with a temporary residence permit, followed by a permanent residence permit). In the light of the latest development of contemporary protection of human rights, the status of persons with permanent residence in countries that have disintegrated after the year 1990 and had the citizenship of predecessor countries without acquiring citizenship of the successor state, have become a subject of international agreements.³

14. The Constitutional Court hereby states, that the stipulations of the second paragraph of Article 13 and the first paragraph of Article 16 of the LoF should not have been applied in cases of citizens of other republics, who had not acquired the citizenship of the Republic of Slovenia, nor should the competent bodies transfer these persons from the existing permanent residents register into the record of foreigners as an official duty, without any decision or notice to the person in question. There was no legal basis for such action. The Law on Records of Citizens Residence and on the Register of Population, to which the Government refers in its explanations, does not recognise any deletion of permanent residence based on the Law itself. The Government also does not have the legal authority to define the manner of execution of legal stipulations by a decision, issued as an

² 'The administrative body, applying the law and interpreting the legal regulations accordingly, is bound to establish the significance, the goal and the intention of each particular practical application of the regulation – all of that has to be established through application of various methods of interpretation of the law. The classical methods for filling-in the legal gaps are legal and lawful analogy. We are dealing with the lawful analogy, when a regularly solved individual case serves as a base for settling an irregular case, which – due to its characteristics – does not totally comply with the typical characteristics of the abstract actual status, but nevertheless resembles to the typical cases to such an extent, that it has similar essential characteristics. The legal analogy is the term used, when a legal rule is generalised and applied to social relations of another kind, when their validity complies with the legal rule. The only exception regarding the application of analogy refers to the penal code, where similar conclusions can only be drawn within the same legal/lawful norm, that contains criteria, which are specific enough for defining its essential contents.' (Decision no. U-I-225/96 dated January the 15th, 1998, OdIUS VII, 7).

³ The European Convention on Citizenship, issued by the Council of Europe on November the 6th, 1997, which has not been signed by Slovenia (and has not yet entered into force), defines the principles for regulating legal status of persons, who had not acquired the citizenship of the country, where they permanently reside. The International Law Commission of the United Nations, within the topic of citizenship as an aspect of succession of states, is also discussing this question. (The Commissions report of the 49th session, held from May the 12th until July the 18th, 1997).

individual act. Pursuant to Article 120 of the Constitution, the administrative bodies perform their tasks independently, within the framework and according to the Constitution and the laws. As soon as the Government established, that the LoF could not be applied in practice for the citizens of other republics, it should have proposed to the legislator to regulate their legal status instead of issuing a decision interfering with the legislative authority.

15. Due to the above reasons, the LoF, failing to regulate the legal status of citizens of other republics as foreigners in the Republic of Slovenia who had been permanently and actually residing in its territory, in its Transitional Provisions, represents a violation of the principle of the rule of law, as expressed in Article 2 of the Constitution. Therefore, upon expiry of terms, defined in the second paragraph of Article 81, the citizens of other republics were put into uncertain legal position. The text of the transitional provisions referring to application of the provisions in the LoF, did not enable these persons to understand what was their actual status as foreigners and which provisions of the LoF are applicable in their case. Therefore, the Constitutional Court concludes, that due to the irregular legal status of the citizens of other republics, as foreigners in the Republic of Slovenia, the principle of protection of confidence in the law, as one of the basic principles of the rule of law, was violated.

16. The principle of protection of confidence in the law guarantees an individual, that the state shall not impair his/her legal status without a justified reason. The citizens of other countries, who had not decided to apply for Slovene citizenship, where quite justified not to expect to have the same status as foreigners, who had just arrived to the Republic of Slovenia and they had no reason to expect to lose their permanent residence without due notice. In its Independence Acts, Slovenia, as a new country, obliged itself to ensure protection of human rights and fundamental freedoms to all the persons in the territory of the Republic of Slovenia, regardless of their nationality, without any discrimination and in accordance with the Constitution of the Republic of Slovenia and the valid international law (Item III of the Basic Constitutional Paper on Autonomy and Independence of the Republic of Slovenia, The Official Gazette of the RS, No. 1 – 4/91). According to the a.m. Independence Acts, the citizens of other republics, who had not applied for the citizenship of the Republic of Slovenia or whose applications were rejected, were quite justified to expect, that this circumstance should not essentially impair their status and that they should be permitted to continue their permanent residing in the Republic of Slovenia if they wish to do so. Furthermore, these persons were quite justified to expect the conditions for their further permanent residence in the Republic of Slovenia to be no stricter than those, which had been required by Article 13 of the BCPAI, or by Article 40 of the LoF and that they legal status would be regulated according to the international law. Thus, Article 12 of the International Covenant on Civil and Political Rights (The Official Gazette of the SFRY, No. 7/71 and the Official Gazette of the RS, No. 35/92) stipulates, that all the persons who are legally residing in a territory of a state, have the right to move freely in the territory and to chose their residence freely, and that this right can only be limited due to specific reasons, stipulated in the third paragraph of Article 12 (limitations foreseen by the law, such as: protection of national security, public order, public health or morale, other

people's rights and freedoms), in accordance with other rights recognised by the Covenant. Application of the LoF's provisions for acquisition of temporary or permanent residence permits, in cases of persons mentioned in the second paragraph of Article 81 of the Law, prevented these persons to acquire temporary or permanent residence unless being able to prove at least one of the justified reasons for a longer stay in the country (the second paragraph of Article 13 of the LoF). The finality of the decision on rejection of an application for temporary or permanent residence, caused illegality of such a person's staying in the country, therefore the person was bound to leave the territory of the Republic of Slovenia in a certain term, or the person was threatened with a forcible removal (Article 28 of the LoF). The legally unregulated status of citizens of other republics can lead towards violation of the European Convention of Human Rights (The Official Gazette of the RS, No. 33/94 – hereinafter referred to as the ECHR), which – among other rights - in its Article 8 protects the right to family life and only permits interventions, that are specified by the law and are deemed necessary in a democratic society due to the reasons of state security, public security or economic welfare of the country, in order to prevent disturbances or crime, to protect health or morale and to protect the rights and freedoms of other people. The European Court of Human Rights already adopted the position, that an expulsion of a foreigner (deportation) can be considered as a violation of Article 8 of the ECHR (Moustaquim v. Belgium, the decision dated February the 18th, 1991, Series A, No. 193, Beldjoudi v. France, the decision dated March the 26th, 1992, Series A, No. 234-A, Nasri v. France, the decision dated July the 13th, 1995, Series A, Vol. 320).

17. The principle of equality, as defined in the second paragraph of Article 14 of the Constitution, does not stipulate only the equality before the law for the citizens of the Republic of Slovenia, but also refers to all the persons, whose legal status is determined by the law. Article 13 of the Constitution stipulates, that according to international agreements, foreigners in Slovenia are granted all the rights recognised by the Constitution and the law, except for those, that according to the Constitution and the laws are granted only to the citizens of Slovenia. The principle of equality can be considered respected, only when the law equally regulates equal actual conditions or equal legal situations. For each differentiation of such regulations, the legislator is bound to have material and sensible reasons. This means, that the legislator can not act in an arbitrary manner when regulating legal relations. Therefore, there has to exist a sensible reason, based on the material nature of matters, in order to justify such differentiation. Pursuant to the second paragraph of Article 14 of the Constitution the legal differentiation is permitted only in such an extent, that a norm can refer all and only such subjects, who are in the same situation according to the purpose of the law (see, for example: OdlUS II, 69 and OdlUS V, 96).
18. After the independence of Slovenia, persons who were granted the status of foreigners according to the federal Law on Movement and Residence of Foreigners (The Official Gazette of the SFRY, No. 56/80, 53/85, 30/90 and 26/90), which was valid for the whole territory of Slovenia until its independence, i.e. the coming into force of the LoF, were also residing in the territory of the Republic of Slovenia. The LoF in the third paragraph of Article 82 regulated the

legal status of such persons, who were considered foreigners even before Slovenia became independent. The latter stipulated, that permanent residence permits that had been issued to foreigners in accordance with the previous law, remain valid for all the foreigners who had permanent residence in the territory of the Republic of Slovenia at the moment of coming into force of the LoF. According to this decision, all the foreigners who had valid permanent residence permits were allowed to remain in our country without any further requirements. The previous legal status of citizens of other republics who had been legally residing in the territory of Slovenia and also had registered permanent residence had not been regulated, thus putting them in a much worse legal condition than the foreigners, who had already been granted the status before the Republic of Slovenia became independent. As no materially justified reason can be found for justifying why should the previous legal status of the citizens of other republics with registered permanent residence in the Republic of Slovenia who had been legally residing in the territory, be considered as specially different than the legal status of persons, who had been granted the foreigner status with permanent residence before the independence of Slovenia, therefore this failure to legally regulate the status of such persons also represents a violation of the principle of equality, as defined in the second paragraph of Article 14 of the Constitution.

B-II

19. On the basis of first paragraph of Article 48 of the Law on Constitutional Court, the Constitutional Court issues a declaratory decision when it establishes that the law, or any other general legal rule concerning the implementation of public authority is unconstitutional or unlawful because questions that should be regulated within that legal rule/law were left out. In this constitutional review the court found that the challenged law is unconstitutional because it does not regulate the legal status of persons who became foreigners after the expiration of the deadline defined in the second paragraph of Article 81. This led to the breach of the principle of rule of law and equality and in certain cases (deportation and expulsion) it might also constitute a violation of human rights and freedoms which are granted by the constitution and international law to all persons legally residing in the country regardless of their citizenship. For this reason, the constitutional court decided in the first point of its ruling that the LoF is not in accordance with the Constitution and stipulated, in point 3, a six month period in which the legislator has to redress the ascertained contradiction.
20. The provisions of the LoF became applicable to citizens from other republics as of 26 February 1992. Therefore, the citizens of other republics could have, in the time until the entry into force of the LoF, fulfilled the required three years of uninterrupted stay in the Republic of Slovenia on the basis of temporary residence permit (first paragraph of Article 16) - inasmuch as they have not already obtained a permanent residence when arranging the first residence and their permanent residency before 26 February 1992 was taken into account (as per the Government instruction). In order to acquire a permanent residence permit, the citizens of other republics had to fulfil, in addition to the three years of uninterrupted stay in the Republic of Slovenia, also other conditions justifying their longer stay in the country (second paragraph of article 13). Furthermore they had to show sufficient means of subsistence (2. *alinea* of third paragraph of Article 19). If the competent

administrative body (which has the discretionary power when deciding about temporary or permanent residence) assesses that the required conditions are not fulfilled, it will reject the application with a decision against which a petitioner has the right to appeal in three days. With this in mind, there is a likelihood that citizens of other republics were not able to fulfil these other conditions (i.e. because unemployed) and thus could not obtain temporary or permanent residence permit although they would comply with a requirement of three years of uninterrupted stay in the country and the fact that they actually live in the territory of the Republic of Slovenia. In addition, not all citizenship applications were processed or became final and not all the applicants settled their legal status for which they have applied (temporary or permanent residence permit). Hence, the legal consequences arising from the unsettled legal status of citizens from other republics of former SFRY still exist and the legislator should take into consideration all the different legal situations in which these persons are due to this fact (unsettled legal status).

21. The probability that citizens of other republics as defined in the second paragraph of Article 81 do not have a settled legal status although they had a registered permanent residency on the territory of the Republic of Slovenia on the day of the plebiscite - 23 December 1990 and actually lived in it, the Constitutional Court on the basis of second paragraph of Article 40 of the Law on Constitutional Court decided that these persons cannot be subject to a measure of forced removal of a foreigner as per Article 28 of LoF until the legislator redresses the unconstitutionality established with this decision.

B - III

22. Following the petitioner request, the Constitutional Court initiated also the review of constitutionality of the first paragraph of Article 16 of the LoF. The court established that this provision is targeting only those foreigners who came or will come to our country and therefore, the use of analogy to settle the legal position in which were put the citizens from other republics after Slovenia's independence is not acceptable. In this regard, the constitutional Court decided that the first paragraph of Article 16 of LoF in the view of this constitutional review is not in contradiction with the Constitution.

C.

23. The Constitutional Court adopted this decision on the basis of article 21, second paragraph of article 40 and Article 48 of the Law on the Constitutional Court in the following panel: the president Franc Testen and judges dr. Zvonko Fišer, dr. Miroslava Gec-Korosec, Lojze Janko, Milojka Modrijan, dr. Mirjam Škrk, dr. Lojze Ude and dr. Dragica Wedam Lukič. The decision was adopted unanimously. Judge Ude wrote a supportive opinion.