

**Case number:**

U-I-164/14

**ECLI:**

ECLI:SI:USRS:2017:U.I.164.14

**Challenged act:****Operative provisions:****Abstract:**

The Site Selection for Spatial Projects of National Importance Act, which regulates national spatial plans, does not entail an exemption from the field of spatial management and spatial planning; on the contrary, it forms a part of the statutory regulation of this field.

The term “local public matter” is a legitimate criterion for differentiating the competences of a municipality from those of the state in the field of spatial management and spatial planning. Matters that are of interest to the state and therefore to all of its inhabitants are not matters that, according to the Constitution, fall within the competence of a municipality, but matters that fall within the competence of the state.

According to the first paragraph of Article 140 of the Constitution, the defence of the state does not fall within the competence of municipalities. Therefore, a municipality cannot have the right to co-decide with regard to the adoption of the national spatial plan for ensuring the defence of the state.

However, as space is an indivisible natural good, a municipality must be able to exert a certain influence in the course of the adoption of national spatial plans although it is not competent to adopt such plans. While the role of the municipality in the adoption of national spatial plans must not be omitted, such role does not ensure that the municipality’s opinions and spatial interests will prevail. A municipality’s competences in the field of spatial management cannot prevail over or even exclude the competences of the state in this field.

A municipality is neither competent nor responsible for all matters in relation to the protection of the environment and the protection of water sources in its territory, but only for those that are determined as such by a law. In accordance with the Waters Act, the protection of bodies of water used for abstraction or intended for the public supply of drinking water falls within the competence of the state. On the basis of Article 216 of the Waters Act, in the transitional period until the enactment of the implementing regulations required by this Act, the regulations of local communities adopted pursuant to the statutory regulation previously in force shall continue to apply. The application of the previously enacted municipal regulations is lawful as such has been determined by a law.

Laws provide information that is important from the perspective of exercising a municipality’s original task of supplying safe drinking water, and it is not important by which law this issue is regulated.

The requirements determined for the planning of spatial projects by sector-specific regulations must always be taken into account.

In the course of spatial planning, the observance of the requirements determined by sector-specific regulations in the selection of sites for spatial projects is also ensured through guidelines and the opinions of the agents responsible for spatial management. With regard to the drafting of national spatial plans, the requirement that opinions be obtained is also reflected in the obligation to provide reasoned positions regarding such opinions.

**Thesaurus:**

**Legal basis:**

**Cases joined:**

**Full text:**

Publisher's Note: The full text of this Decision/Order is available only in Slovene. The text published below is a summary prepared for the annual report.

By Decision No. **U-I-164/14**, dated 16 November 2017 (Official Gazette RS, No. 75/17), the Constitutional Court decided on a request of the Municipal Council of the Municipality of Postojna to review the constitutionality of the Site Selection for Spatial Projects of National Importance Act (the SSSPNIA) and the Water Act (the WA-1) and to review the constitutionality and legality of the Decree on the National Spatial Plan for the Postojna Central Training Range of the Slovene Armed Forces (the Decree). It decided that the challenged laws were not inconsistent with the Constitution; however, it abrogated the Decree, as during its adoption procedure the opinion of the agent responsible for spatial management in charge of water conservation was not adequately taken into account. The abrogation is to take effect one year following the publication of the Decision in the Official Gazette of the Republic of Slovenia.

The Constitutional Court held that the term “local public matter”, which only concerns the residents of a municipality, is a legitimate criterion for differentiating the competences of a municipality from those of the state in the field of spatial management and spatial planning. According to the first paragraph of Article 140 of the Constitution, the defence of the state cannot fall within the competence of municipalities. Therefore, in the assessment of the Constitutional Court, the division of competences between the state and municipalities in the field of spatial plans intended for the defence of the state is not inconsistent with the constitutionally determined field of the competences of local self-government. The SSSPNIA grants municipalities whose territory is included in the area of a national spatial plan the position of local agents responsible for spatial management and as such includes them in the procedure for drafting the relevant national spatial plan, so that their statutorily guaranteed role and influence in such procedure are observed. While the municipality plays an important role in the adoption of national spatial plans, which must not be omitted, such role does not ensure that the municipality’s spatial interests will prevail. Therefore, from the perspective of spatial management and spatial planning, in the assessment of the Constitutional Court, the SSSPNIA and the Decree are inconsistent with neither Article 138 nor the first paragraph of Article 140 of the Constitution.

The Constitutional Court further held that the WA-1 and the SSSPNIA are not inconsistent with Article 72 of the Constitution (the right to a healthy living environment). A municipality is neither competent nor responsible for all matters in relation to the protection of the environment and the protection of water sources in its territory, but only for those that are determined as such by a law. In accordance with the WA-1, the protection of bodies of water used for abstraction or intended for the public supply of drinking water falls within the competences of the State. The exercise of state competences in the

field of environmental protection and water management, as long as it remains within the limits of these competences, cannot inadmissibly interfere with the constitutionally protected position of local self-government.

In the third part of the reasoning, the Constitutional Court reviewed the Decree with regard to the procedure by which it was adopted. It adopted the position that, in the light of the overall role of the national agents responsible for spatial management in the drafting of a national spatial plan, the statutorily determined obligation to send a draft to the national agents responsible for spatial management so that they may submit an opinion regarding such is, naturally, mirrored in the obligation of the drafter to take the submitted opinions into consideration. In the assessment of the Constitutional Court, the requirement that opinions be obtained cannot be satisfied merely by the fact that the agents responsible for spatial management adopt such opinions, but reasoned positions regarding these opinions have to be adopted in the procedure for the adoption of the national spatial plan. The Constitutional Court established that in the case at issue these statutory requirements were not fulfilled and decided that the Decree is inconsistent with the law and consequently also with the third paragraph of Article 153 of the Constitution, which determines that regulations and other general acts must be in conformity with the Constitution and laws.

**Type of procedure:**

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

**Type of act:**

zakon

podzakonski akt

**Applicant:**

Municipal Council of the Municipality of Postojna

**Date of application:**

16. 7. 2014

**Date of Decision:**

16. 11. 2017

**Type of decision adopted:**

odločba

**Outcome of proceedings:**

ugotovitev - ni v neskladju z Ustavo/zakonom  
razveljavitev ali odprava

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