

**Case number:**

Up-1033/17

ECLI:

ECLI:SI:USRS:2018:Up.1033.17

Challenged act:**Operative provisions:****Abstract:****Elections to the National Council**

In case No. **Up-1033/17** (Decision dated 30 November 2017, Official Gazette RS, No. 72/17), the Constitutional Court decided on the constitutional complaint of a cultural interest group against a Supreme Court judgment that dismissed its appeal against a decision of the State Electoral Commission confirming the list of electors for the sports interest groups that constitute a joint electoral college together with the electors of the cultural interest groups.

The Constitutional Court established that the possibility to lodge an appeal against the decision of the State Electoral Commission confirming the lists of electors of another professional interest group under the conditions of the statutory regulation primarily intended for the protection of the voting right in the procedure for confirming candidacies (Article 105 of the National Assembly Elections Act) is exceptionally difficult or even impossible. Therefore, in the view of the Constitutional Court, the challenged position of the Supreme Court that put the burden of claim and proof regarding the alleged irregularities concerning the determination of the number of electors of other professional interest groups solely on the complainant violated the complainant's right to an effective legal remedy determined by Article 25 of the Constitution, which in the light of this case also refers to the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. Consequently, the right to vote of the members of the complainant organisation determined by the first paragraph of Article 43 of the Constitution was thereby also violated. The Constitutional Court therefore abrogated the challenged judgment of the Supreme Court.

As it was necessary, in the interest of ensuring the prompt constitution of the National Council in accordance with the law, to resolve the electoral dispute as quickly as possible and as the State Electoral Commission is the electoral authority that must verify whether the number of elected representatives of an individual professional organisation is determined in accordance with the law, the Constitutional Court also annulled the challenged decisions of the State Electoral Commission determining the number of electors for sports organisations and remanded the case to this Commission for a new decision thereon. After looking into the files of cases in which the challenged decisions of the State Electoral Commission were issued, the Constitutional Court namely established that in the mentioned procedure the number of members of such organisations who are professionally active in the field of sports was not directly determined.

The Constitutional Court decided on the constitutional complaint at issue on the basis of the standpoint adopted in Decision No. Up-3564/07, dated 6 December 2007 (Official Gazette RS, No. 116/07), that the procedure for confirming electors is a constituent part of the candidacy procedure

and that in the framework of National Council elections, the protection of the right to legal remedies determined by Article 25 of the Constitution requires that Articles 103 and 105 of the National Assembly Elections Act be interpreted in such a manner that they also ensure an appeal against decisions of the State Electoral Commission to (not) confirm the list of representatives in the electoral body. In deciding on the constitutional complaint, the Constitutional Court established that the appeal determined by Article 105 of the National Assembly Elections Act in disputes concerning the determination of electors in the framework of elections to the National Council is not an effective legal remedy for the protection of the right to vote of the members of professional organisations when they choose their representatives in the common electoral body, as it does not ensure adequate time and opportunity to lodge an effective appeal. Furthermore, in the view of the Constitutional Court, a multiplicity of legal remedies regarding the process of deciding on lists of electors is untenable for the legal system as it obstructs the goal of such elections, i.e. the regular election of the members of the National Council in due time, and in addition endangers the principle of periodic elections. Due to the reasons set out above, the Constitutional Court decided to depart from its position adopted in Decision No. Up-3564/07 that the procedure for confirming lists of representatives in the electoral body is a constituent part of the candidacy procedure, and instead required, for future elections to the National Council, that Articles 103 and 105 of the National Assembly Elections Act be interpreted in such a manner that they also ensure an appeal against decisions of the State Electoral Commission to (not) confirm the mentioned list of representatives in the electoral body.

A decision of the electoral authority in the procedure for confirming lists of electors can thus be challenged only after the elections end in an electoral dispute on the basis of the third paragraph of Article 10 of the National Council Act, which determines that the affected person has fifteen days to lodge an appeal against a decision of the National Council not confirming his or her mandate. Due to the objective importance of electoral disputes, only those established irregularities concerning elections can be taken into account that influenced or could have influenced the results of the elections.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ustavna pritožba

Type of act:

posamični akt

Applicant:

Designers Society of Slovenia, Ljubljana

Date of application:

21. 11. 2017

Date of Decision:

30. 11. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

razveljavitev ali odprava

razveljavitev ali odprava

začasno zadržanje

Published:**Document:**

AN03882