

DECISION

At a session held on 26 September 2011 in proceedings to review constitutionality and legality initiated upon the petition of Lidija Drobnič, represented by Radovan Cerjak, lawyer in Ljubljana, the Constitutional Court

decided as follows:

Article 2 of the Ordinance on Determining and Changing the Names and Course of the Roads and Streets in the Territory of Ljubljana Municipality (Official Gazette RS, No. 44/09) is annulled.

Reasoning

A.

1. The petitioners challenge Article 2 of the Ordinance on Determining and Changing the Names and Course of the Roads and Streets in the Territory of Ljubljana Municipality (hereinafter referred to as: the Ordinance), which regulates the name and course of Titova cesta [hereinafter referred to as: Tito Street] in the territory of Ljubljana Municipality. Petitioner Jernej Vrtovec substantiates his legal interest by alleging that he lived under the communist regime in which human rights and fundamental freedoms were systematically violated. Naming the street after Josip Broz Tito therefore allegedly interferes with his right to personal dignity. Petitioner Lidija Drobnič substantiates her legal interest by alleging that in 1949 and 1950 she was arrested as an opponent of the communist regime and on that account the competent authority recognized her status as a former political prisoner by a decision in 2000. As a victim of the former totalitarian regime, the petitioner feels that she has been punished once again due to the naming of a street after Josip Broz Tito. Petitioners Franci Slak and Ignac Polajnar are councillors in the Municipal Council of Ljubljana Municipality. They are convinced that Article 2 of the Ordinance is unconstitutional, and substantiate their legal interest to challenge such by the fact that as councillors they must act in accordance with the Constitution.
2. The petitioners substantiate the unconstitutionality of the challenged provision of the Ordinance by stating the same reasons. They allege that naming the street after Josip Broz Tito, who, in their opinion, personifies the former communist regime in the Socialist Federal Republic of Yugoslavia (hereinafter referred to as: the SFRY), entails a violation of the right to personal dignity determined in Article 34 of the Constitution of the victims of this regime as well as others who lived under this regime. Article 2 of the Ordinance, in their opinion, also violates Article 63 of the Constitution, which prohibits incitement to discrimination and intolerance and prohibits incitement to violence and war. This provision of the Constitution allegedly protects constitutionally

guaranteed categories of equality, human dignity, and a democratic state governed by the rule of law. These values are allegedly the complete opposite of the values fostered in totalitarian regimes, which the communist regime in the former SFRY also was. The President of the SFRY and the leader of Yugoslav communists, Josip Broz Tito, allegedly personally controlled the communist regime and dictated its development. The petitioners are convinced that Josip Broz Tito was, regardless of certain positive elements, historically a negative person, a non-democrat, and a dictator. For him, human rights and fundamental freedoms were only empty words on paper. In the consciousness of many residents of Slovenia, he allegedly still today arouses fear and dark memories with regard to the people executed during the communist regime. In the opinion of the petitioners, naming the street after him therefore entails a particular kind of incitement to hatred and violence. The petitioners compare naming the street after Josip Broz Tito to naming a street after Adolf Hitler, Benito Mussolini, or Joseph Vissarionovich Stalin. Every such naming can violate the personal dignity of individuals and incite discrimination, intolerance, and violence. The challenged Ordinance allegedly once again humiliated people who during the communist regime were unjustifiably forced to the margins of society due to their political convictions and commitment to democracy and human rights. With reference to such, the petitioners draw attention to the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette RS, No. 1/91 – hereinafter referred to as: the BCC), the Preamble to which states, *inter alia*, that the SFRY did not function as a state governed by law and that within it human rights were grossly violated. In addition, they draw attention to the European Parliament resolution of 2 April 2009 on European conscience and totalitarianism (OJ C 137 E, 27 May 2010, p. 25), in which the European Parliament condemned all crimes against humanity and the massive human rights violations committed by all totalitarian and authoritarian regimes.

3. The opposing party – Ljubljana Municipality, represented by mayor Zoran Janković – in the response to the petition alleges that the petitioners did not demonstrate legal interest for the initiation of the procedure for the review of the constitutionality and legality of the Ordinance. Only individuals to whom Article 3 of the Act on Designating Areas and Naming and Marking Settlements, Streets, and Buildings (Official Gazette RS, No. 25/08 – hereinafter referred to as: the ADANMSSB) refers allegedly have legal interest therefor. Ljubljana Municipality opposes the allegations that the challenged Ordinance is inconsistent with Articles 34 and 63 of the Constitution. It alleges that the disputed street was named after a historical figure who made an important mark on the period during World War II and the decades following the War. Josip Broz Tito was allegedly an important historical figure for Slovenians, as he was commander-in-chief of the Partisan army, which in 1945 liberated the territory of present-day Slovenia from fascist occupation. Testifying to his great historical role are also numerous medals and awards which Josip Broz Tito received from other countries as well as the fact that many cities around the world have streets or squares named after him. The opposing party adds that discussions on naming streets can be a matter of democratic dialogue, however, the final decision regarding such is the democratic right of the majority in the municipal council.

4. The challenged Article 2 of the Ordinance is a regulation (i.e. a general legal act), which, in accordance with the ADANMSSB, determines that in Ljubljana a part of the existing Štajerska cesta [Štajerska Street] and a part of a newly planned street be named Tito Street and that its course be determined.¹ For the concretization of this provision, thus for the naming of the determined road section Tito Street to take effect, the ADANMSSB and the Ordinance do not envisage the issuance of any further administrative decisions or other individual acts which would be necessary for its implementation. The naming of streets and roads by an ordinance of the local community takes direct effect, and thus not only in relation to state and other authorities which must respect such new fact *ex officio* (e.g. in various public records and registers), but also in relation to individuals and other legal subjects in their daily life and business activities. Naming public spaces does not only concern residents of these areas, but also has legal effect with regard to everyone who encounters or apprehends such name. Such naming has an emphasized symbolic significance that also concerns everyone. Naming such road section Tito Street thus has *erga omnes* effects, which arise directly on the basis of the Ordinance on the day of its implementation.² Furthermore, in the case at issue questions are raised which refer to human dignity as the fundamental value and legal starting point of Slovenian democracy. These concern the most elementary questions regarding the relation of the state or authorities towards individuals, regarding the position and significance of human beings and humanity in the state, and regarding the fundamental purpose of the free and democratic state in general. In the case at issue, the petitioner Lidija Drobnič undoubtedly demonstrated legal interest; she was recognized the status of former political prisoner by the decision of the Government Commission for the Implementation of the Redressing of Injustices Act of 17 October 2000, which was issued on the basis of the Redressing of Injustices Act (Official Gazette RS, No. 59/96). The Constitutional Court therefore did not have to decide whether other petitioners demonstrated legal interest.
5. The Constitutional Court accepted the petition for consideration and, in consideration of the fact that the requirements laid down in the fourth paragraph of Article 26 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text – hereinafter referred to as: the CCA) are fulfilled, proceeded to decide on the merits.

B. – II.

6. Respect for human dignity (German: *Menschenwürde*) is the legal-ethical foundation of contemporary states based on the concept of constitutional democracy, i.e. on the presumption that authority must be restricted by certain fundamental rights and freedoms humans are entitled to due to their inherent worth. The awareness that human dignity is the highest ethical value and that respect for human dignity must be a criterion of and limitation on the functioning of state authority, has gradually been strengthening throughout the centuries.³ Human dignity was first recognised at the constitutional level as a universal value inherent to all individuals at the end of the 18th century following the adoption of the key constitutional documents in the period of the constituting of the independent United States of America and of the French Revolution.⁴ Following a certain standstill in the development of human rights in Continental Europe in the 19th and at the beginning of the 20th century, after

World War II the principle of respect for human dignity developed as a special universal principle, first in some of the most important international documents, and later as the fundamental constitutional principle in the constitutions of new democracies, which, by codifying human rights, placed the individual at the centre of the constitutional order.⁵ The Preamble to the Charter of the United Nations of 1945, for instance, stresses that it was adopted by the people of the United Nations, who were determined to reaffirm “faith in fundamental human rights, in the dignity and worth of the human person”. This was followed by the Universal Declaration of Human Rights of 1948, the Preamble to which opens by stressing that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, while the normative part already in Article 1 determines that “all human beings are born free and equal in dignity and rights”. Furthermore, the International Covenant on Civil and Political Rights of 1966 (which entered into force on 23 March 1976) in its Preamble emphasizes that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and that the rights determined in this Covenant “derive from the inherent dignity of the human person”. The European Convention on Human Rights (hereinafter referred to as: the ECHR) does not explicitly mention human dignity, however, the contracting parties in the Preamble expressed “their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world” and looked for the inspiration for the adoption of the Convention in “a common heritage of political traditions, ideals, freedom and the rule of law”. In alliance with such spirit of commitment to human rights, also the European Court of Human Rights in its judgments clearly upheld that the very essence of the ECHR is respect for human dignity.⁶ Also the Charter of Fundamental Rights of the European Union, which became binding law for the European Union⁷ by the entry into force of the Treaty of Lisbon, in its Preamble states that “conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.” The Charter protects human dignity also as a special human right, as already in Article 1 it determines that human dignity is inviolable and must be respected and protected.

7. Human dignity is also at the centre of the constitutional order of the Republic of Slovenia. Its ethical and constitutional significance already proceeds from the BCC, which is not only the constitutional foundation of Slovenian statehood, as also certain principles that demonstrate the fundamental legal and constitutional quality of the new independent and sovereign state are outlined therein. In its Preamble the BCC first proclaimed the fact that the SFRY did not function as a state governed by law and that within it human rights were grossly violated, while Section III, as the antipode to the above-mentioned, emphasized that the Republic of Slovenia would guarantee the protection of human rights and fundamental freedoms to all persons in the territory of the Republic of Slovenia irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the treaties in force. This new constitutional quality of the new state is even more clearly demonstrated in the Declaration of Independence (Official Gazette RS, No. 1/91), which was adopted together with the BCC (on 25 June 1991), and in which the former Assembly of the

Republic of Slovenia emphasized the commitment of Slovenia to respect human rights and fundamental freedoms and its orientation towards joining international organisations which are based on respect for human dignity and which in their acts determine the fundamental international standards of human rights protection. Thus, by adopting these independence documents not only the fundamental the fundamental relationship entailing state sovereignty between the Republic of Slovenia and the SFRY was severed, but there was also a fracture with the fundamental value concept of the constitutional order.

8. Differently than the former SFRY, the Republic of Slovenia is a state governed by the rule of law whose constitutional order proceeds from the principle of respect for human rights and fundamental freedoms already on the basis of the basic constitutional documents. From the BCC, the Preamble to the Constitution, and numerous constitutional decisions there proceeds the fact that human dignity is the fundamental value which permeates the entire legal order and therefore it also has an objective significance in the functioning of authority not only in individual proceedings but also when adopting regulations. In its substance, human dignity entails the presumption that every human being has equal and absolute inner worth because he or she is a human being. Respect for human dignity therefore entails the protection of the inherent worth of the individual against unjustified interferences by and requirements of the state and society.
9. As the fundamental value, human dignity has a normative expression in numerous provisions of the Constitution; it is especially concretized through provisions which ensure individual human rights and fundamental freedoms; they are intended precisely for the protection of different aspects of human dignity.⁸ Among them, those that are especially strongly connected with the individual as a person with absolute inherent worth can be pointed out: the prohibition of discrimination (the first paragraph of Article 14), the inviolability of human life (Article 17), the prohibition of torture (Article 18), the protection of personal liberty (Article 19), the protection of human personality and dignity in legal proceedings (Article 21), the legal guarantees in criminal proceedings (Article 29), the right to personal dignity and safety (Article 34), freedom of expression (Article 39), and freedom of conscience (Article 41).⁹
10. As a special constitutional principle, the principle of respect for human dignity is directly substantiated in Article 1 of the Constitution, which determines that Slovenia is a democratic republic. The principle of democracy (with which also other constitutional principles are most tightly connected, such as the principle of a state governed by the rule of law determined in Article 2 of the Constitution and the principle of the separation of powers determined in the second sentence of the second paragraph of Article 3 of the Constitution¹⁰) in its substance and significance exceeds the definition of the state order as merely a formal democracy in which laws and other regulations are adopted in accordance with the rule of the majority. On the contrary, the principle of democracy substantively defines the Republic of Slovenia as a constitutional democracy, thus as a state in which the acts of authorities are legally limited by constitutional principles and human rights and fundamental freedoms, precisely because individuals and their dignity are at the centre of its existence and functioning. In a constitutional democracy the individual is a subject and not an object of the functioning of the authorities, while his or her (self)realization as a human being is the fundamental purpose of the democratic order. Only such state order is truly democratic in which respect

for human dignity is the principle guideline for the functioning of the state. In a substantive democracy based on respect for human dignity of every person it therefore cannot be said, as was erroneously stated by the opposing party, that adopting regulations in representative bodies at the state or local level entails the exercise of “a democratic right of the majority” of the elected members of the representative body. The principle of democracy determined in Article 1 of the Constitution in fact envisages free and periodic elections to representative bodies, thereby, however, it does not grant rights to the elected majority, but imposes a duty on all authorities – first of all on those that issue general legal acts – to respect the boundaries which proceed from the constitutional order, whose central principle is precisely the principle of respect for human dignity, when exercising their constitutional and statutory powers.

11. Regardless of the above-described constitutional regulation, a firm and complete *a priori* definition of human dignity is not possible, as, in addition to constitutional and international standards, the notion is filled with historical and ethical substance that has been developing and expanding over time. The substantive openness of this principle (as well as individual human rights and freedoms) therefore entails that individual aspects of human dignity are realised in individual legal proceedings, whereby the courts and the Constitutional Court play a key role in determining the possible violations thereof. The boundaries of the admissible conduct of state authorities are developed through the decisions of the courts and the Constitutional Court, which take into consideration the specific circumstances of individual cases. In such manner an abstract but fundamental constitutional value becomes living law.
12. In the case at issue, the question is raised whether Article 2 of the Ordinance which reintroduced a Tito Street in Ljubljana¹¹ is inconsistent with the principle of respect for human dignity. With reference to such, the Constitutional Court stresses that the objective of these proceedings is not a review of the personality and individual actions of Josip Broz Tito, nor a historical review of facts and circumstances. The Constitutional Court is a guardian of the Constitution and consequently a guardian of the values on which the Constitution is based. Its task is to establish constitutionally important circumstances taking into consideration the constitutional order in force and on such basis decide on the constitutionality of the challenged regulation.
13. In the case at issue, a symbolic dimension of Article 2 of the Ordinance is constitutionally relevant. When reviewing the constitutionality of regulations of local communities by which streets, roads, squares, parks, or other public spaces are named, namely not only the practical (i.e. informative) purposes of such naming can be taken into consideration (e.g. to enable easier orientation, greater transparency and accessibility of data in public records and registers, and demonstrating residence or place of business). When naming public spaces the public interest is indeed in the foreground, so that easier everyday functioning in personal and public life is ensured. However, it cannot be overlooked that such naming also bears clearly evident symbolic significance and therefore demonstrates the manner of symbolic conduct of the public authority concerned. Naming public spaces always emphasizes the significance of important historical events or historical figures,¹² and consequently inevitably emphasizes or exposes social values that mark such events or figures. Due to the fact that naming public spaces is an official act, this entails that the authority gives such values recognition, supports them, or

identifies with them.¹³ Naming public spaces after certain individuals thus undoubtedly expresses public recognition of their work, achievements, or the values that they encouraged. Due to its symbolic expressive power, such naming can also contribute to spreading and strengthening certain opinions, ideas, and values.

14. It can be stated that a regulation or other act of the authorities which has symbolic significance is unconstitutional in cases in which such symbol, through the power of the authority, expresses values which are incompatible with fundamental constitutional values, such as human dignity, freedom, democracy, and the rule of law. Official acts of state and municipal authorities which have a symbolic significance can namely not be considered to be equivalent to a situation in which individuals or groups express different opinions and convictions; their right to express opinions and standpoints that can even be contrary to the fundamental constitutional values is within the framework of a free and pluralistic society supported in the constitutional provisions on freedom of conscience and freedom of expression. However, when authorities express certain values it is not a matter of freedom of expression, as it is in the nature of this human right that only individuals and associations are entitled to it, and not authorities. Authority must always act in the public interest, whereby it must respect the constitutional restrictions which proceed from constitutional principles and from human rights and fundamental freedoms. Due to the fact that expressing values that are contrary to the fundamental constitutional values cannot be in the public interest, the review of the constitutionality of the acts of authorities is not subject to the principle of proportionality (i.e. weighing between the public interest and the affected constitutional values), but such acts are in and of themselves unconstitutional. From the constitutional point of view, there is a great difference if certain unconstitutional values are defended and supported by individuals due to their personal convictions or if authority identifies with such values through symbols.¹⁴

15. A symbolic dimension of Tito Street is inseparably connected with the symbolic significance of the name Josip Broz Tito, Marshal of Yugoslavia and later President for life of the SFRY. The name Tito does not only symbolize the liberation of the territory of present-day Slovenia from the Fascist occupation in World War II, as alleged by the opposing party, it also symbolizes the post-war totalitarian communist regime, which was marked by extensive and gross violations of human rights and fundamental freedoms, especially in the decade directly following World War II. Historical facts recorded in numerous documents and scientific historical works bear witness also to extrajudicial post-war executions, political criminal proceedings,¹⁵ executions of persons fleeing across the state borders, and to abuses of authority in order to preserve the one-party system and to prevent democracy. The fact that Josip Broz Tito was the leader of the former state entails that it is precisely his name that to the greatest extent symbolizes the former totalitarian regime. Tito's symbolic significance cannot be divided such that only the significance of the actions that the opposing party attributes to his historical role and personality are considered. Once again naming a street after Josip Broz Tito, who is a symbol of the Yugoslav communist regime, can be understood as support not only for him as a historical figure or his individual actions, but also as support for the entire historical period of his rule and for his rule as such. Therefore, it is not important what the municipal authority wished to achieve by introducing Tito Street or which objectives it pursued; it is important that the challenged Ordinance must objectively be

understood as a form of recognition conferred on the former undemocratic regime.

16. Authorities expressing recognition of the totalitarian regimes which in the 20th century shook Europe and led to millions of victims and systematic violations of human rights is contrary to promoting respect for human dignity, human rights and fundamental freedoms, and other values which contemporary European constitutional democracies share. In past years, various European institutions adopted documents condemning the totalitarian regimes, including those of Nazism, Fascism, and Communism. The following documents must be mentioned: Resolution No. 1481 of the Parliamentary Assembly of the Council of Europe of 26 January 2006 on the need for international condemnation of crimes of totalitarian Communist regimes, and the European Parliament resolution of 2 April 2009 on European conscience and totalitarianism. In these resolutions the emphasis is most of all on honouring the memory and faiths of the individuals who in totalitarian regimes, including the communist regime under the leadership of Josip Broz Tito, experienced violations of human rights in criminal and other proceedings or were inflicted with great sadness and pain due to the unlawful suffering of those close to them. Authorities at all levels must show the victims of all totalitarian regimes, if not active sympathy, understanding, and recognition of their suffering, at least passive respect by refraining from acts which are not in compliance with the fundamental constitutional values and for which it can be foreseen and expected that they will cause new pain. Also the National Assembly of the Republic of Slovenia in its Declaration of awareness of the European Parliament resolution of 2 April 2009 on European conscience and totalitarianism (Official Gazette RS, No. 84/09) stated, *inter alia*, that by adopting this Declaration it expresses "respect for all victims of totalitarian regimes" and that it will "strive that the tragic acts and divisions during World War II and during the one-party socialist system following the War and their consequences be remembered as historical facts which should not cause new divisions, opposition, or hatred."
17. The incompatibility of the former communist regime with the European standards for the protection of human rights and fundamental freedoms, to which the Republic of Slovenia is committed, has also been established several times by the Constitutional Court. In Decision No. U-I-69/92, dated 10 December 1992 (Official Gazette RS, No. 61/92 and OdlUS I, 102), the Constitutional Court held that the former state was "a state whose authorities of that period had after the war conducted mass executions of former military and current political opponents, legally unacceptable criminal trials followed by death penalties, illegal seizures of property, the obstruction and liquidation of political parties in violation of its own legal system, etc., thus making the injured parties afraid, with good reason, for their lives in case they resided in such a country." In the same spirit, in Decision No. U-I-158/94, dated 9 March 1995, the Constitutional Court wrote that "the former Yugoslav system of constitution and government institutions, as well as the former Slovenian system within its framework, did not put human rights in the first place and did not define any clear legal restrictions applying to state authorities and their violence. Thus, it made possible arbitrary government, and its Constitution was not a legal instrument in the full sense as understood by modern European legal civilization." The Constitutional Court emphasized the difference between the former totalitarian regime and the new system, which is based on the protection of individual human rights as well as on free democratic elections, in Decision No. Up-301/96, dated 15 January 1998

(Official Gazette RS, No. 13/98 and OdlUS VII, 98) as follows: “Due to the painful experience of Slovenian society during the period of governance by the former totalitarian system, one of the most fundamental goals of the Slovenian Constitution is to prevent any attempt at restoring the totalitarian regime; this was included in its historical mission.” Furthermore, mention must be made of Decision No. U-I-248/96, dated 30 September 1998 (Official Gazette RS, No. 76/98 and OdlUS VII, 176), in which the Constitutional Court stressed that a free democratic society can be spoken of only in a system “which, by excluding any kind of violence and arbitrariness, represents the social order of a state governed by the rule of law which is grounded on the self-determination of its people respecting the will of the majority, freedom, and equality. In the basic principles of such an order at least the following key presuppositions should be included: respect for the human rights determined in the Constitution, the right of the individual to life, the inviolability of personality rights, the sovereignty of the people, the separation of powers, the responsibility of the Government and the lawful functioning of the executive branch of power, the independence of the courts, a multiparty political system, and equal opportunities for all political parties, including the right to form an opposition and participate therein according to the Constitution.” In complete opposition to the above-mentioned, the Constitutional Court continued in the Decision, in Slovenia the post-war authorities were ready to enforce their power “by also using violence, by violating the law in criminal proceedings, and by systematically and severely violating human rights. Statutes were not only applied with the intent to punish collaborationists, but also to destroy the class enemy, to assume power, and to consolidate the totalitarian system. A free social system was established in Slovenia only in 1990, after the first free elections to the multiparty parliament had been held.”

18. In Slovenia, where the development of democracy and free society based on respect for human dignity began with the break up with the former system, whereby this break-up is clearly evident also at the constitutional level (first with the amendments to the Constitution of the Socialist Republic of Slovenia and subsequently with the adoption of the BCC and the Constitution, as the fundamental constitutional documents), the glorification of the communist totalitarian regime by the authorities by naming a street after the leader of such regime is unconstitutional. Such new naming of a street no longer has a place here and now, as it is contrary to the principle of respect for human dignity, which is at the very core of the constitutional order of the Republic of Slovenia. Naming a street after Josip Broz Tito namely does not entail preserving a name from the former system and which today would only be a part of history. The challenged Ordinance was issued in 2009, eighteen years after Slovenia declared independence and established the constitutional order, which is based on constitutional values that are the opposite of the values of the regime before independence. Not only the victims or opponents of the former regime, but also other members of the public can understand such act of the authority at issue in the present time as newly emerged official support for the former communist regime. Such act is contrary to the values on which the Constitution is based.
19. On the basis of the above-mentioned, the Constitutional Court decided that Article 2 of the Ordinance is unconstitutional as it violates the principle of respect for human dignity. This principle is substantiated in Article 1 of the Constitution and entails a limitation on the deciding of democratically elected representative bodies. The Constitution binds the state as well as municipalities when exercising their competences. The decision of the

Municipal Council of Ljubljana Municipality that a street in Ljubljana be once again named after Josip Broz Tito is therefore subject to substantive limitations which proceed from the Constitution, especially if the case concerns the protection of the fundamental values of the constitutional order, among which human dignity holds the central position. As Article 2 of the Ordinance is inconsistent with the principle of respect for human dignity, the Constitutional Court annulled it.

C.

20. The Constitutional Court reached this Decision on the basis of the second paragraph of Article 45 of the CCA, composed of President Dr. Ernest Petrič, and Judges Dr. Mitja Deisinger, Dr. Dunja Jadek Pensa, Mag. Marta Klampfer, Dr. Etelka Korpič – Horvat, Mag. Miroslav Mozetič, Jasna Pogačar, Mag. Jadranka Sovdat, and Jan Zobec. The Decision was reached unanimously. Judges Jadek Pensa, Korpič – Horvat, Sovdat, Petrič, and Zobec submitted concurring opinions.

Dr. Ernest Petrič
President

¹ The challenged provision of the Ordinance reads as follows:

“In the territory of Ljubljana Municipality, in the settlement of Ljubljana:

- the name of the following street is hereby changed thusly:

A part of Štajerska cesta [Štajerska Street] in the part of the northern artery from the roundabout at the northern ring road at Tomačevo to the intersection with Zasavska cesta [Zasavska Street] and Dunajska cesta [Dunajska Street] is renamed Tito Street.

- the following street is hereby newly named thusly:

A part of the planned “new Tomačevska cesta [Tomačevo Street]” from the roundabout at Plečnikove Žale to the intersection with Kranjčeva ulica [Kranjčeva Street] and in the extension of the newly planned northern artery to the north and northeast to the roundabout at the northern ring road at Tomačevo is hereby named Tito Street.

- the course of the following street is determined and changed thusly:

The newly named Tito Street runs from the roundabout at Plečnikove Žale to the north and northeast along the route of the newly planned northern artery towards and over the Tomačevo roundabout to the intersection with Zasavska cesta [Zasavska Street] and Dunajska cesta [Dunajska Street].

The course of Štajerska cesta [Štajerska Street] is changed so that it runs from the intersection of Zasavska cesta [Zasavska Street] and Dunajska cesta [Dunajska Street] to the municipal border with Trzin Municipality.”

² With reference to such, it is not relevant that the ADANMSSB and the Ordinance envisage certain substantive acts after the naming is implemented – the Surveying and Mapping Authority of the Republic of Slovenia must register the change in the register of spatial units, the street must be marked by a street sign indicating the name of the street, while buildings along the street must be assigned house numbers (Sections VI and VII of the ADANMSSB, Article 5 of the Ordinance). The direct effect of the ordinance by which a street is renamed or newly named is also not influenced by the fact that the natural persons who reside on the street or legal entities which

have their registered office thereon must consequently in relevant proceedings change or in some other manner adapt their personal documents or documents used in business operations.

³ Among the pivotal historical documents, certain key English documents must be mentioned, i.e. *the Magna Carta* (The Great Charter) of 1215, the Habeas Corpus Act of 1679, and the Bill of Rights of 1689. The beginnings of the modern structure of human rights can be traced back to the Age of Enlightenment, to the legal-philosophical thought of numerous authors of the 17th and 18th centuries.

⁴ The Virginia Declaration of Rights of 1776 can be deemed to contain the first definition of universal human rights in positive constitutional law. It was followed by the Declaration of Independence of the USA of 1776, the Constitution of the USA of 1787 – the Bill of Rights to the Constitution was adopted the same year, and the French Declaration of the Rights of Man and of Citizen of 1789. For more on the historical development of fundamental rights, see: L. Pitamic, *Država, Cankarjeva založba*, Ljubljana 1996, pp. 188 – 207, and V. Simič, *Temeljne pravice kot pravnocivilizacijska dediščina*, in: M. Pavčnik, A. Polajnar-Pavčnik, D. Wedam-Lukić (Editor), *Temeljne pravice, Cankarjeva založba*, Ljubljana 1997, pp. 21 – 51.

⁵ Jens Meyer-Ladewig (*Menschenwürde und Europäische Menschenrechtskonvention*, *Neue Juristische Wochenschrift*, Year 57, No. 14 (2004), p. 982), stated that in the case of the Federal Republic of Germany, human dignity was “a symbolic formula of the new democracy”. Article 1 of the German Federal Constitution (i.e. *Grundgesetz* – the Basic Law) namely determines that human dignity is inviolable and that it is the duty of all state authorities to respect and protect it.

⁶ See, for instance, paragraph 65 of the reasoning in *Pretty v. The United Kingdom* (judgment dated 29 July 2002).

⁷ The Treaty of Lisbon refers to the Charter of Fundamental Rights of the European Union in the first paragraph of Article 6 of the Treaty on European Union, the first sentence of which reads as follows: “The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”

⁸ This is precisely the reason why in constitutional theory human dignity is defined as the origin of human rights and as a precondition for respect for other human rights. See, for instance, L. Šturm in: L. Šturm (Editor), *Komentar Ustave Republike Slovenije, Fakulteta za podiplomske državne in evropske študije*, Ljubljana 2002, p. 362.

⁹ The constitutional significance of human dignity is clearly evident also from Article 3a of the Constitution, which determines that the exercise of part of the sovereign rights can be transferred only to international organisations which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the rule of law (the same applies for the state entering into a defensive alliance). The ratification of the Treaty of Lisbon and Slovenia’s support for the Charter of Fundamental Rights of the European Union to become binding EU law thus also emphasized the commitment of the Republic of Slovenia to respect human dignity.

¹⁰ As regards the principle of the separation of powers, in Decision No. U-I-158/94, dated 9 March 1995 (Official Gazette RS, No. 18/95 and OdlUS IV, 20), the Constitutional Court stressed that its role is, *inter alia*, to protect and ensure the freedom of individuals.

¹¹ On 8 October 1991, the former Assembly of the City of Ljubljana renamed sections of Tito Street as Dunajska cesta [Dunajska Street], Štajerska cesta [Štajerska Street], and Slovenska cesta [Slovenska Street] (Articles 2 and 3 of the Ordinance

on Determining, Changing, and Terminating Names or Courses of Streets and Squares in the Territory of the City of Ljubljana, Official Gazette RS, No. 21/91).

¹² The second paragraph of Article 20 of the ADANMSSB determines that the name of a street is determined in accordance with a geographical name, the name of an event or date connected to history, or after a person who significantly contributed to the development of the settlement or is important in the broader social environment, or in accordance with the cultural heritage.

¹³ Numerous historical experiences confirm this. During important social changes, foreign occupation, or changes of the state order, the names of streets, roads, squares, and other public spaces, as a general rule, were extensively changed, which was undoubtedly a direct consequence of the change in values which were expressed through these names and for which the authorities of relevant periods had preference.

¹⁴ Cf. The European Court of Human Rights in *Vajnai v. Hungary* (judgment dated 8 October 2008), in which the Court held that the prohibition on wearing the red star is an inadmissible interference with Article 10 of the ECHR, which guarantees freedom of expression. In its judgment the Court pointed out that there is an important difference if an individual wears such red star during a political speech or if a bearer of public authority when exercising power identifies with such symbol (paragraphs 48 and 49 of the reasoning).

¹⁵ The Constitutional Court dealt with this topic in Decision No. U-I-247/96, dated 22 October 1998 (Official Gazette RS, No. 76/98 and OdlUS VII, 195).