

**Case number:**

Up-804/14

**ECLI:**

ECLI:SI:USRS:2017:Up.804.14

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

In accordance with the established constitutional case law, the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution requires that essentially equal situations be treated equally. In the event equal situations are regulated differently, reasonable grounds that follow from the nature of the matter must exist for the differentiation. This principle is binding not only on the legislature, but also on the executive and judicial branches of power.

In view of the position of the Supreme Court referring to the interpretation of this statutory right, i.e. the principle of *beneficium cohaesionis*, the position of a defendant who does not file a request for the protection of legality and the position of a defendant who files such legal remedy but does not succeed therewith must be compared in the case at issue. Their positions are essentially equal, as neither invoked grounds due to which the Supreme Court would grant the request for the protection of legality. Hence, in accordance with the constitutional case law, reasonable grounds following from the nature of the matter would have to exist in order for their essentially equal positions to be treated differently. The mere fact that they filed (or not) a request for the protection of legality cannot entail such grounds for differentiation. The opposing position of the Supreme Court is thus inconsistent with the second paragraph of Article 14 of the Constitution.

**Thesaurus:****Legal basis:****Cases joined:****Full text:****Type of procedure:**

ustavna pritožba

**Type of act:**

posamični akt

**Applicant:**

Mitja Bohak, Maribor

**Date of application:**

27. 10. 2014

**Date of Decision:**

19. 1. 2017

**Type of decision adopted:**

odločba

**Outcome of proceedings:**

razveljavitev ali odprava

**Published:**

**Document:**

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