

**Case number:**

U-I-255/13

ECLI:

ECLI:SI:USRS:2016:U.I.255.13

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

With regard to the possibility to register a civil partnership outside the official premises of the administrative unit, the Civil Partnership Registration Act does not grant administrative authorities the authorisation to carry out discretionary decision-making such as administrative authorities are granted by the Marriage and Family Relations Act when deciding on whether a marriage may be entered into outside such premises. Due to the absence of any reasonable and objective grounds for such differentiation, the principle of equality determined by the second paragraph of Article 14 of the Constitution is violated. An administrative authority may adopt a decision at its discretion only if the legislature grants it an explicit or indirect authorisation to adopt such decisions.

Thesaurus:**Legal basis:****Cases joined:**

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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.

Registration of Same-Sex Partnerships

By Decision No. U-I-255/13, dated 18 February 2016 (Official Gazette RS, No. 18/16), upon the request of the Administrative Court, the Constitutional Court decided that the Civil Partnership Registration Act was unconstitutional, as it did not enable same-sex couples to request the registration of their partnership outside the premises designated for such by the administrative unit, although the Marriage and Family Relations Act grants such an option to future marital partners when they enter into marriage. The Constitutional Court reviewed the alleged inequality of same-sex couples in comparison with marital partners as regards the possibility to register a civil partnership or enter into marriage outside the designated premises from the perspective of the general principle of equality before the law determined by the second paragraph of Article 14 of the Constitution. The general principle of equality requires the legislature to regulate positions that are essentially the same in the same manner, and different positions accordingly differently, unless the different treatment of positions that are essentially the same is justified by reasonable and objective grounds that follow from the nature of the matter.

When comparing the statutory regulations, the Constitutional Court found that in the Slovene legal system the possibility to enter into marriage and to register a same-sex partnership outside the designated premises are not regulated in the same manner for same-sex couples and different-sex couples. As regards marital partners (i.e. married different-sex couples) the Marriage and Family Relations Act determines that marriage may also be entered into outside the designated premises if the future marital partners request such and state significant reasons for such. Administrative authorities decide on their request at their discretion. In contrast to the regulation with regard to marital partners, the Civil Partnership Registration Act contains no provisions on the implementation of the procedure for registration outside the designated premises. While it thus does not prohibit such registration, the Constitutional Court stressed that an administrative authority may only adopt a decision at its discretion if a law authorises it do so. However, the Civil Partnership Registration Act contained no authorisation for administrative discretion regarding a request for the registration of a civil partnership outside the designated premises.

The Constitutional Court concluded that the Civil Partnership Registration Act is inconsistent with the principle of equality determined by the second paragraph of Article 14 of the Constitution, as it does not grant administrative authorities the authorisation to carry out discretionary decision-making such as administrative authorities are granted when deciding on whether a marriage may be entered into outside the designated premises. It required the National Assembly to remedy the established unconstitutionality within a period of six months. It further determined the manner of the implementation of the Decision, whereby it established that, until an appropriate statutory regulation is adopted, the procedure for registering a civil partnership shall be carried out on the premises designated for such by an administrative unit, but it may also be carried out on other premises if the future partners request such and state significant reasons for such.

Type of procedure:

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

Type of act:

zakon

Applicant:

Administrative Court, Republic of Slovenia

Date of application:

4. 11. 2013

Date of Decision:

18. 2. 2016

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev – je v neskladju z Ustavo/zakonom

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