

**Case number:**

Up-550/14

ECLI:

ECLI:SI:USRS:2017:Up.550.14

Challenged act:**Operative provisions:****Abstract:****The Principle of Legality with Regard to Minor Offences**

In Case No. **Up-550/14** (Decision dated 13 April 2017, Official Gazette RS, No. 24/17), the Constitutional Court decided on the constitutional complaint of a complainant who was punished for a minor offence under the Gaming and Betting Act, as he, acting as the statutory representative of the legal entity Krim Handball Team, allegedly permitted this legal entity to promote the website of bet-at-home.com, an organiser of gaming and betting, at international handball matches although the organiser did not have a license issued by the Government of the Republic of Slovenia to organise gaming and betting activities in the Republic of Slovenia. Throughout the course of the proceedings the complainant alleged that the conduct described in the decision did not contain the elements of a minor offence, as permission to advertise entails neither advertising nor carrying out other services in connection with the organisation of gaming and betting.

The first paragraph of Article 28 of the Constitution determines that no one may be punished for an act which had not been declared a criminal offence under law or for which a penalty had not been prescribed at the time the act was committed. On the basis of this provision, a court may only convict an individual of a criminal offence if his or her conduct fulfils the statutory elements determined in accordance with the mentioned criteria. If a defendant is convicted for an act that does not fulfil all of the statutory elements of a criminal offence, such violates the principle of legality in the sense of the defendant's right determined by the first paragraph of Article 28 of the Constitution. The position that a court may only convict an individual for an act that fulfils the statutory elements of a criminal offence also logically presupposes that the judgment (either in the operative provisions or in the reasoning) must establish the legally relevant facts of the concrete case in light of the alleged criminal offence. Syllogistic reasoning is not possible unless the criminal offence is described in a concrete manner. Assessment of whether the act that the defendant allegedly committed fulfils the statutory elements of a criminal offence is only possible if the act is expressed in terms of concrete circumstances. It follows from Constitutional Court Decision No. Up-332/98, dated 18 April 2002 (Official Gazette RS, No. 39/02), that the first paragraph of Article 28 of the Constitution also applies in the field of minor offence law.

In the case at issue, the Constitutional Court found that it does not follow from either the decision on the minor offence or the court judgment by what conduct the complainant, acting as the person in charge of the legal entity, allegedly fulfilled the statutory elements of the minor offence under the Gaming and Betting Act. Not only did the decision on the minor offence not define the complainant's act of commission in terms of concrete circumstances (the decision only lists the place and time of the minor offence, the advertised website, and the organiser of gaming and betting, but not the conduct

by which the complainant allegedly fulfilled the elements of the minor offence), it was also not possible to deduce from the decision whether the complainant's conduct entailed advertising or merely permission to advertise. The complainant was thus convicted for conduct that was not defined in terms of concrete circumstances and in an unequivocal manner. A conviction for a minor offence on the basis of such a definition of the relevant conduct entails a violation of the defendant's right determined by the first paragraph of Article 28 of the Constitution.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ustavna pritožba

Type of act:

posamični akt

Applicant:

Goran Dujić, Ljubljana

Date of application:

14. 7. 2014

Date of Decision:

13. 4. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

razveljavitev ali odprava

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