

**Case number:**

U-I-84/15

ECLI:

ECLI:SI:USRS:2017:U.I.84.15

Challenged act:**Operative provisions:****Abstract:****Sworn Interpreters and Sworn Expert Witnesses or Appraisers**

In Decision No. **U-I-84/15**, dated 18 May 2017 (Official Gazette RS, No. 40/17), in proceedings initiated upon the request of the National Council, the Constitutional Court reviewed the first paragraph of Article 85 of the Courts Act, which determined when persons who are sworn expert witnesses or appraisers may invoke their status. The Constitutional Court reviewed the challenged statutory provision with regard to the freedom of work, free economic initiative, personal dignity, the general freedom of action, as well as with regard to the principles of equality and trust in the law. It held that the first paragraph of Article 85 of the Courts Act is not inconsistent with the Constitution.

The Constitutional Court adopted the position that the right to freedom of work (Article 49 of the Constitution) and the right to free economic initiative (the first paragraph of Article 74 of the Constitution) do not guarantee the right to carry out work or economic activities in a specific form or in a specific manner. Therefore, the challenged statutory regulation does not extend to the fields protected by the mentioned human rights and fundamental freedoms. Furthermore, the challenged provision cannot interfere with the right to personal dignity (Article 34 of the Constitution), as it neither restricts sworn expert witnesses and appraisers in the performance of their work or activity, nor prevents them from acquiring new skills and obtaining further education.

As part of the review with regard to the right to the general freedom of action (Article 35 of the Constitution), the Constitutional Court clarified that not every measure of the legislature that could influence the conduct of individuals hence entails an interference with the general freedom of action. The general freedom of action does not guarantee individuals the right to require that they may act in any way whatsoever at any time. By regulating the acquisition of the status of a sworn expert witness or appraiser, the Courts Act regulates neither the right to be a sworn expert witness or appraiser, nor the right to use the status of a sworn expert witness or appraiser as a special title. Therefore, the challenged provision does not extend to the field protected by the right to the general freedom of action.

The Constitutional Court further held that differentiating between sworn expert witnesses or appraisers and sworn interpreters with regard to use of their status does not violate the principle of equality before the law as determined by the second paragraph of Article 14 of the Constitution. Due to the different nature of their work and the manner in which they carry it out, as well as in order to ensure effective exercise of the rights of individuals in the Republic of Slovenia and abroad, the legal position of sworn interpreters is different than that of sworn expert witnesses or appraisers. The Constitutional Court also reviewed the position of parties to proceedings that obtain an expert opinion

or appraisal on their own behalf and parties that obtain an expert opinion or appraisal on the basis of an order of a court or another state authority with regard to the principle of equality. It adopted the position that their positions differ and therefore the legislature may treat them differently.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

Type of act:

zakon

Applicant:

National Council of the Republic of Slovenia

Date of application:

11. 6. 2015

Date of Decision:

18. 5. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev - ni v neskladju z Ustavo/zakonom

Published:

Official Gazette RS, No. 40/2017

Document:

AN03874