

**Case number:**

U-I-89/15

**ECLI:**

ECLI:SI:USRS:2018:U.I.89.15

**Challenged act:****Operative provisions:****Abstract:****The Right to Judicial Protection regarding Limitations of Personal Liberty**

In case No. **U-I-89/15** (Decision dated 30 November 2017, Official Gazette RS, No. 3/18), upon the request of the Slovenj Gradec Local Court, the Constitutional Court decided on the constitutionality of the third and fifth paragraphs of Article 24 of the Road Traffic Rules Act and the second paragraph of Article 108 of the Minor Offences Act. The fifth paragraph of Article 24 of the Road Traffic Rules Act, in conjunction with the fourth sentence of the second paragraph of Article 108 of the Minor Offences Act, determines the time limit for lodging an appeal against an order imposing police custody on a motor vehicle driver due to (the suspicion of) psychoactive substances in the driver's body. The time limit is determined by the phrasing "until the end of custody". The applicant stated that such determination of the time limit interferes disproportionately with the right to legal remedies determined by Article 25 of the Constitution.

The Constitutional Court reviewed the challenged statutory regulation from the perspective of the right to judicial protection determined by the first paragraph of Article 23 of the Constitution. In judicial proceedings deciding on an appeal against a police custody order on the basis of Article 24 of the Road Traffic Rules Act, the person in custody exercises not only his or her right to a legal remedy, but mainly his or her right to judicial protection. As police custody on the basis of the mentioned Article entails an interference by the executive branch of power with one of the most basic human rights, that is the right to personal liberty determined by the first paragraph of Article 19 of the Constitution, judicial review is of utmost importance. Anyone deprived of his or her liberty must be ensured the possibility to demand an independent judicial review of the existence of the conditions that are essential for the legality and constitutionality of such deprivation of liberty. Moreover, effective protection of the right to personal liberty also requires that the affected person have the possibility to obtain a court decision regarding an interference with this human right even if the interference has already ceased.

The Constitutional Court decided that the challenged statutory regulation regulates the right to judicial protection in an overly restrictive manner. It namely enables the person in custody to demand a judicial review of the custody only in the extremely short period (i.e. a minimum of three hours and a maximum of twelve hours) he or she is deprived of his or her liberty. In the framework of the review of whether the challenged statutory regulation constitutes an interference with the right to judicial protection, the Constitutional Court also reviewed whether a person in custody, in addition to an appeal, also has access to other possible means of effective judicial protection of the right to personal liberty. It established that the legal order does not provide for such protection. In light of the above, it decided that the challenged statutory regulation entails an interference with the right to judicial

protection determined by the first paragraph of Article 23 of the Constitution. A fundamental precondition for an admissible interference with human rights and fundamental freedoms is that such interference follows a constitutionally admissible aim. The Constitutional Court established that there is no constitutionally admissible aim for limiting the period for appeal that would be evident from the opinion of the Government, the challenged acts, or the preparatory legislative materials. Therefore, it held that the statutory regulation is inconsistent with the right to judicial protection under the first paragraph of Article 23 of the Constitution.

**Thesaurus:**

**Legal basis:**

**Cases joined:**

**Full text:**

**Type of procedure:**

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

**Type of act:**

zakon

**Applicant:**

Local Court of Slovenj Gradec

**Date of application:**

19. 6. 2015

**Date of Decision:**

30. 11. 2017

**Type of decision adopted:**

odločba

**Outcome of proceedings:**

razveljavitev ali odprava

zavrženje

**Published:**

Official Gazette RS, No. 3/2018

**Document:**

AN03883