

**Case number:**

Up-998/15

ECLI:

ECLI:SI:USRS:2018:Up.998.15

Challenged act:**Operative provisions:****Abstract:****The Liability of the State for Damages**

In case No. **Up-998/15** (Decision dated 30 November 2017, Official Gazette RS, No. 5/18), the Constitutional Court decided on the constitutional complaint of a complainant who filed an action against the state for damages caused by an allegedly illegal action of the State authorities. The complainant claimed that two inspectorate decisions (the first, verbal, one prohibited the sale of drinks until appropriate approvals had been obtained, and the second, issued in writing, prohibited the addition of cannabinoid components into drinks) prevented him from starting a commercially interesting business of brewing beer with the addition of a cannabis extract.

Regarding the verbal decision, the Constitutional Court agreed with the interpretation of the Higher Court and the Supreme Court. It established that the latter decision was issued as the complainant commenced the production of drinks prior to obtaining the required approvals or proofs that the drink in question complied with the regulatory requirements for consumer foodstuffs. In the view of the Constitutional Court, the legal argument that the inspectorate can justifiably prohibit the production of a foodstuff until the producer proves that it has obtained all the approvals or proofs required by law is not inconsistent with a human right or fundamental freedom.

The assessment of the Constitutional Court is, however, different with regard to the second, i.e. written, inspectorate decision. The viewpoint of the Supreme Court, and also of the Higher Court, was that the written inspectorate decision is not illegal as in its operative provisions it only repeated what is stated already in the law ("the addition of cannabinoid components is prohibited") and that the written decision did not prohibit the addition of a given essence nor any essential cannabis oil (including the one referred to). Therewith, the Supreme Court and the Higher Court stated basically the following: if in fact the substance added to the drink by the complainant (cannabis extract) did not contain cannabinoid substances, this decision did not limit the complainant in any way with regard to the use of the mentioned extract or to the production and sale of products containing this extract. In the view of the two courts, an administrative (inspectorate) decision that in its operative provisions only repeats the description of an action prohibited on the basis of the law cannot be illegal and therefore it also cannot constitute a basis for the liability of the state for damages.

The Constitutional Court, however, emphasised, that it is often not possible to understand the meaning of an administrative or judicial decision just from its operative provisions, the latter thus always need to be read in conjunction with the introduction of the decision and its reasoning, which should contain a description of the legally relevant facts of the concrete case together with the legal consequences and the underlying reasons for the decision. It must therefore be borne in mind that the

definitive meaning of a legal ruling contained in the operative provisions of a decision can be determined to its full extent only in relation to the decision as a whole. It evidently follows from the sequence of events that unfolded in the inspectorate procedure that the controversial inspectorate decision was adopted because the drink, according to the findings of the inspectorate at that time, contained prohibited cannabinoid substances. It would be illogical that everyone – the complainant, the administrative authorities, and the court in the proceedings for a judicial review of administrative acts – would deal with the issue of ascertaining what the particular extract contained and what methods were used for its analysis if this issue were not important for this particular procedure, as the inspectorate decision allegedly did not prohibit the use of this particular substance, but only repeated what is already determined in the law.

The operative provisions of a decision that only repeats what a law already requires of a party does not entail a merely abstract (“pedagogical”) instruction on the issue of the statutory regulation. When the operative provisions of a decision, be it administrative or judicial, literally repeat only what is already determined in the law, the reasoning of such decision must also be taken into account for an understanding of its true meaning. Such operative provisions namely implicitly convey, unless the reasoning shows otherwise, that the activities of the party in the particular case, the allegations of the opposing party, or the facts on the basis of which the procedure was initiated are contrary to that requirement of the law that has been repeated in the operative provisions.

In the view of the Constitutional Court, the interpretation of the Higher Court and the Supreme Court that in fact entails that an administrative decision can never be illegal if it only “repeats the norm already determined by the law” and that completely excludes from their review the reasoning of this decision, the circumstances under which it was adopted, and the fact that the administrative decision at least implicitly reproaches the affected person for acting unlawfully, prevents the effective exercise of the right to compensation for damage determined by Article 26 of the Constitution.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ustavna pritožba

Type of act:

posamični akt

Applicant:

Zemir Begić, Semič

Date of application:

29. 12. 2015

Date of Decision:

30. 11. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

razveljavitev ali odprava

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