

**Case number:**

Up-563/15

ECLI:

ECLI:SI:USRS:2017:Up.563.15

Challenged act:**Operative provisions:****Abstract:****The Right to Personal Liberty and Personal Dignity**

In Case No. **Up-563/15** (Decision dated 19 October 2017, Official Gazette RS, No. 67/17), the Constitutional Court decided on a constitutional complaint that the Ombudsperson for Human Rights filed in the name of the affected person. The Ombudsperson filed the constitutional complaint against a judicial decision issued in non-litigious civil proceedings by which the court ordered that the affected person be detained for treatment in a psychiatric hospital under special supervision on the basis of the provisions of the Mental Health Act. There were two pending non-litigious civil proceedings regarding the same subject matter (i.e. one initiated upon a motion of the family members of the affected person, and another upon a motion of the director of the psychiatric hospital). In spite of the same subject matter of the two non-litigious civil cases and although the courts applied the same substantive legal basis, the courts adopted substantively different decisions: in the first proceedings, the admission of the affected person to the psychiatric hospital for treatment under special supervision for a period of two months was ordered, while in the second proceedings the court decided that the person was to be released from treatment under special supervision in the psychiatric hospital.

In light of the allegations of the Ombudsperson for Human Rights that the conduct of the courts in this case was unacceptable from the perspective of a number of human rights and fundamental freedoms, the Constitutional Court conducted a review of whether the procedural situation at issue was acceptable from the perspective of the right to personal liberty (the first paragraph of Article 19 of the Constitution) and the right to the protection of personality and dignity in proceedings (the first paragraph of Article 21 of the Constitution).

The Constitutional Court emphasised that independent judicial control, as part of which a court verifies if all statutory conditions for the admission of a person to a psychiatric hospital for treatment under special supervision without his or her consent or his or her continued detention for treatment in such ward are fulfilled, is of fundamental importance for ensuring protection of the rights of the affected person. If this control is ineffective, this entails a failure of a key safeguard that is intended to ensure persons in pending proceedings for deciding on their admission for treatment that there will be no arbitrary interferences with their right to personal liberty, which is enshrined in the first paragraph of Article 19 of the Constitution.

In the assessment of the Constitutional Court, in such instances, in order to ensure protection of the right to personal liberty (Article 19 of the Constitution), it is necessary to prevent that two proceedings regarding the same case run at the same time. If there exist two parallel non-litigious

civil proceedings in which the admission of the same person for treatment under special supervision in a psychiatric hospital is being decided on, a constitutionally consistent interpretation of the law requires that the courts join such proceedings. As in the case at issue the courts did not act in accordance with the mentioned requirement, they created a constitutionally untenable procedural situation and rendered judicial control of the legality of the detention of persons for treatment in a psychiatric hospital ineffective. Consequently, the Constitutional Court established violations of the first paragraph of Article 19 and the first paragraph of Article 21 of the Constitution.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ustavna pritožba

Type of act:

posamični akt

Applicant:

Ombudsperson for Human Rights

Date of application:

31. 7. 2015

Date of Decision:

19. 10. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev kršitve človekove pravice

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