

**Case number:**

U-I-21/16

ECLI:

ECLI:SI:USRS:2018:U.I.21.16

Challenged act:**Operative provisions:****Abstract:**

[Publisher's Note: The full text of this Decision/Order is available only in Slovene. The text published below is a summary prepared for the annual report.]

Statutory Maintenance in Enforcement or Bankruptcy Procedures

By Decision No. **U-I-21/16**, dated 5 December 2018 (Official Gazette RS, No. 82/18), the Constitutional Court, upon the request of the Koper District Court, decided on the constitutionality of Articles 371 and 390 of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (the FOIPDA), which refer to the order of repayments from the common and special distribution estates in the personal bankruptcy procedure of a maintenance debtor. In the request the court claimed that the challenged regulation is unconstitutional, as the FOIPDA, in contrast to the Claim Enforcement and Security Act (the CESA), in the event of a mortgage (or a right granting separate satisfaction in bankruptcy proceedings) does not grant a maintenance creditor who is a child priority in repayment from a special distribution estate, whereas in the event of the attachment of mortgaged real property the CESA gives priority to a child as regards statutory maintenance due one year prior to the adoption of the order to deliver the real property to the buyer.

The Constitutional Court reviewed the challenged regulation from the viewpoint of the second paragraph of Article 14 (the principle of equality), the first paragraph of Article 54 (the rights and duties of parents), and the first paragraph of Article 56 (the rights of children) of the Constitution. It again stressed that both the claim based on statutory maintenance and the claim protected by the right granting separate satisfaction are private law situations that are protected within the framework of the right to private property (Article 33 of the Constitution). However, the proposer did not allege that the challenged regulation concerns a violation of the mentioned right of this child, who is a maintenance creditor. Hence, the Constitutional Court had to assess whether the legislature sufficiently took into consideration the special protection of and care for children, which are guaranteed by the Constitution, when determining the order of repayment in personal bankruptcy procedures. It held that by granting the status of a priority claim to a claim based on statutory maintenance in the process of repayment from the common distribution estate and due to the fact that the final obligation discharge did not apply to that claim in the personal bankruptcy procedure, the legislature sufficiently took into consideration the special protection of and care for children.

When reviewing the conformity of the challenged regulation with the second paragraph of Article 14 of the Constitution, the Constitutional Court stressed that the objectives of an enforcement procedure are different than the objectives of a personal bankruptcy procedure, which is also reflected in the differences in the regulation of the repayment of claims on the basis of statutory maintenance and in

the different positions of the creditor and the debtor in these procedures. The regulation of priority repayment on the basis of statutory maintenance in an enforcement procedure and the regulation thereof in personal bankruptcy procedure can differ, as these two legal situations differ in their essential characteristics, i.e. as regards the scope of the property to which the priority repayment extends and as regards the institute of obligation discharge, which is only possible in a personal bankruptcy procedure.

Thesaurus:

Legal basis:

Cases joined:

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Full text:

Type of procedure:

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

Type of act:

zakon

Applicant:

Koper District Court

Date of application:

26. 1. 2016

Date of Decision:

5. 12. 2018

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev – ni v neskladju z Ustavo/zakonom

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