

**Case number:**

U-I-477/18, Up-93/18

ECLI:

ECLI:SI:USRS:2019:U.I.477.18

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

When the statutory regulation of a measure that entails an interference with the right to personal freedom of a person due to his or her mental disorder is at issue, it is not sufficient for the legislature to concretise the execution of the measure by merely referring to the protective objective of the measure, as it must also strive, by determining the conditions for the execution of the measure, to attain the therapeutic objective of such measure.

The conditions for the execution of the measure must already at the statutory level be determined in such a manner that a factual connection is established between the legal basis, i.e. the reason for authorising the deprivation of liberty, on the one hand, and the location (i.e. the institution) and the conditions of detention, on the other. The determination of the conditions for the execution of the measure directed towards attaining both the protective and therapeutic objectives entails a safeguard ensuring that the duration of the measure will be limited to the period strictly necessary for the committed person's health condition to improve to the extent that he or she will be capable of living independently, or to prevent his or her condition from deteriorating. In this sense, this requirement entails an element of the admissibility of the interference, as it ensures that the measure will be ordered for the shortest period possible and therefore in accordance with the constitutionally imposed criterion of urgent necessity. A statutory regulation that does not satisfy the aforementioned requirements as to the precision of the legal basis and the conditions for enforcing the measure is inconsistent with the second paragraph of Article 19 of the Constitution.

In conformity with the constitutional requirement that the judicial branch of power be the only branch of power that has the right to order a deprivation of liberty that is longer than merely momentary, the legislature left to the courts the decision-making in each individual case as to the constitutional admissibility of the commitment of a person to a secure ward of a social care institution without consent, and thereby imposed on the courts the obligation to determine the concrete social care institutions that will execute the ordered measures. However, the constitutional requirement that the courts must decide on the admissibility of such measure loses its purpose if the law excludes the requirement that the courts must decide on the admissibility of ordering such measure in each individual case, proceeding from the requirements of the principle of proportionality.

The reviewed statutory regulation enables courts to merely weigh the necessity of the measure from the viewpoint of ensuring the attainment of that part of the protective objective that is to be attained by excluding the persons concerned from the environment outside secure wards of social care institutions. It, however, excludes the possibility of the courts assessing, prior to determining the concrete institution charged with executing the measure, the appropriateness of that institution from the viewpoint of ensuring security within a secure ward and whether the therapeutic objective of the

measure will be attained in the phase of execution. A regulation that does not allow for such an assessment by the courts or even prevents it is not an appropriate means to achieve the constitutionally admissible objective or objectives of the measure and is therefore inconsistent with the right determined by the first paragraph of Article 19 of the Constitution.

The reviewed statutory regulation, which (1) disregards the requirement of a clear and precise determination of the conditions of detainment that are such that they dispel any doubt regarding the appropriateness of the institution that will execute a measure involving the deprivation of liberty, taking into account the constitutional requirements and the requirements of the ECHR regarding the detention of persons suffering from a mental disorder, and which (2) during the ordering of the measure by a court excludes the possibility of the court assessing the appropriateness of the concrete institution in which the measure is to be executed and thus even tolerates that by ordering such measure additional burdens are imposed on the committed person apart from the strictly necessary limitation of his or her personal liberty, despite the obvious shortcomings in the phase of the execution of the measure, is also inconsistent with the right of such persons determined by the first paragraph of Article 21 of the Constitution.

Thesaurus:

Legal basis:

Cases joined:

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Full text:

Type of procedure:

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov
ustavna pritožba

Type of act:

zakon
posamični akt

Applicant:

A. B. C., Č.

Date of application:

30. 1. 2018

Date of Decision:

23. 5. 2019

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev – je v neskladju z Ustavo/zakonom
ugotovitev kršitve človekove pravice

ugotovitev kršitve človekove pravice

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