

**Case number:**

U-I-78/16, Up-384/16

ECLI:

ECLI:SI:USRS:2019:U.I.78.16

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

Judges who are re-elected to judicial office after a certain period and those who perform such office continuously are in different positions; therefore, the legislature may treat them differently. The principle of trust in the law ensures individuals that the State will not arbitrarily worsen their legal position, i.e. without a reason based on the prevailing public interest. The Judicial Service Act (or any other act) does not determine (and never did) that judges whose office terminated and who are later re-elected to judicial office are entitled to the same salary grade or judicial title as that which they had reached by promotion before their judicial office terminated. Therefore, such a position cannot be considered an acquired right in the sense of Article 2 of the Constitution. The requirement that promotion obtained during a first term of office be taken into consideration in re-election to judicial office does not follow from the Constitution either. The classification into salary grades upon re-election to judicial office (and the regulation of the rights of judges upon re-election in general) falls within the legislature's discretion. The challenged provisions of the Judicial Service Act are not directly applicable. In such cases, the condition for filing a petition is for the petitioner to substantively exhaust all legal remedies, which signifies that the petitioner must make claims regarding the alleged unconstitutionality of the regulation on the basis of which the decision in his or her case was adopted already in proceedings before the competent courts. As the petitioner did not claim the inconsistency of the challenged regulation with the prohibition of discrimination (on the basis of age) already in the proceedings before regular courts, although she had the opportunity to do so (by an action or an appeal to the Supreme Court), she did not substantively exhaust all legal remedies. Despite the constitutional complaint that she filed, the petitioner did not demonstrate a legal interest for a review of the challenged provisions from the viewpoint of the prohibition of discriminatory treatment.

Due to the reasons that the Constitutional Court stated in its review of the challenged regulation, it also cannot be claimed that the position on which the challenged judgments are based violates the complainant's right determined by the second paragraph of Article 14 of the Constitution. The Constitutional Court could only assess that the court in question acted arbitrarily if the court had not substantiated its decision with legal arguments and it could therefore be assumed that it did not decide on the basis of law but on the basis of criteria that are irrelevant in decision-making. The challenged judgments cannot be claimed to be such, as they contain reasonable and convincing statements of reasons, including the linguistic and systematic interpretation of the relevant acts (i.e. the Judicial Service Act and the Salary System in the Public Sector Act). According to the first paragraph of Article 51 of the Constitutional Court Act, a constitutional complaint may be lodged only after all legal remedies have been exhausted. The requirement that all legal remedies be exhausted, which follows from the stated provision, does not entail only formal exhaustion (i.e. the filing of a legal remedy), but also substantive exhaustion (i.e. claiming violations of human rights substantively in the filed legal remedies).

Thesaurus:**Legal basis:****Cases joined:**

⌘

Full text:**Type of procedure:**

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov
ustavna pritožba

Type of act:

zakon
posamični akt

Applicant:

Tadeja Zima Jenull, Ljubljana

Date of application:

4. 5. 2016

Date of Decision:

5. 6. 2019

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev - ni v neskladju z Ustavo/zakonom
zavrnitev

Published:

Official Gazette RS, No. 46/2019

Document:

AN03941