

**Slovenia, Constitutional Court of the Republic of Slovenia,
Decision U-I-192/23-13, constitutional, 1 February 2024,
ECLI:SI:USRS:2024:U.I.192.23**

Member State

 Slovenia

Topic

Rule of law

Sector

Predictive Justice

Deciding Court Original Language

Ustavno sodišče Republike Slovenije

Deciding Court English translation

Constitutional Court of the Republic of Slovenia

Registration N

U-I-192/23-13

Date Decision

1 February 2024

ECLI (if available)

ECLI:SI:USRS:2024:U.I.192.23

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

The Constitutional Court reviewed the constitutionality of Articles 61(2) and 62(5) of the Enforcement and Security Act, assessing claims of unequal procedural burdens between creditors and debtors in enforcement proceedings based on authentic instruments, and found no violation of the right to equality before the law.

Legal issue(s)

The key legal issues in this case are whether the procedural requirements in enforcement proceedings, particularly the heavier burden placed on debtors to submit evidence when objecting to enforcement orders based on authentic instruments, violate the right to equal treatment under Article 22 of the Constitution. Additionally, the Court examined whether the different procedural burdens imposed on debtors in enforcement proceedings, compared to creditors and parties in litigious proceedings, breach the right to equality before the law as guaranteed by Article 14 of the Constitution.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Constitution, Articles 14 (paragraph 2), 22, 156,

Constitutional Court Act, Article 23 (paragraph 1)

Enforcement and Security Act, Articles 23, 29 (paragraphs 2 and 7), 40.c (paragraphs 3 and 4), 41 (paragraphs 2 and 5), 44, 45 (paragraph 2), 53, 54, 61, 62

Civil Procedure Act, Articles 63 (paragraph 1), 226 (paragraph 3), 227, 228, and Title 29

Rules on Forms, Types of Enforcements, and the Course of the Automated Enforcement Procedure, Articles 3 (paragraph 4), 4, 4.a, 5, 12, 26 (paragraph 1)

Constitutional Court decisions:

U-I-139/14 of 26 March 2015, para. 7

U-I-286/12, U-I-266/12 of 4 June 2014, para. 10

Up-597/14 of 5 May 2016, para. 8, 9

Up-854/05 of 7 February 2007, para. 5

Up-1264/10 of 17 May 2012, para. 5

Up-39/95 of 16 January 1997, para. 10

U-I-48/11, Up-274/11 of 16 January 2014, para. 9, 10, 12

U-I-146/07 of 13 November 2008, para. 12

Up-232/99 of 17 February 2000, para. 6, 8

Up-259/03 of 20 September 2004, para. 4

Up-220/05 of 29 March 2007, para. 9-11

Up-599/04 of 24 March 2005, para. 21
U-I-246/13 of 21 April 2016, para. 22
U-I-201/19 of 12 May 2022, para. 23
U-I-780/21 of 1 December 2022, para. 23

Supreme Court decisions:

II Ips 751/2006 of 28 January 2009
II Ips 24/2013 of 13 March 2014
III Ip 183/2018 of 21 February 2018
II Ip 172/2023 of 23 August 2023
I Ip 469/2023 of 9 May 2023
I Ip 794/2020 of 5 August 2020

Facts of the case

The case concerns a request from the Maribor Higher Court to assess the constitutionality of the second paragraph of Article 61 and the fifth paragraph of Article 62 of the Enforcement and Security Act that govern enforcement based on the authentic instrument. Applications for enforcement based on an authentic instrument are submitted via the e-Sodstvo web portal. If the application is complete and the fee is paid, an enforcement order, which only bears a machine imprint of the court seal is issued automatically within 48 hours. This process relies on the presumption of the application's validity, without verifying the creditor's claims. The Higher Court of Maribor argued that this creates an imbalanced position between creditors and debtors, potentially violating constitutional rights

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Constitutional Court reviewed the constitutionality of Articles 61(2) and 62(5) of the Enforcement and Security Act, following a request from the Maribor Higher Court. The Higher Court raised concerns about the fairness of the enforcement procedure based on authentic instruments (i.e. an invoice, bill of exchange, cheque, etc.). The key issue was whether requiring debtors to provide evidence when objecting to enforcement orders, without imposing a similar obligation on creditors when initiating enforcement, created an unjust and unconstitutional imbalance, violating the right to equality before the law (Article 14) and the right to equal treatment in legal proceedings (Article 22) of the Constitution. The applicant argued that, unlike creditors, who can secure an enforcement order simply by providing the statutorily required information without needing to propose or submit evidence (not even the authentic instrument), debtors must provide evidence to substantiate any objections. If the debtor does not submit evidence, the court of first instance rejects a debtor's objection, as it is deemed unsubstantiated and unfounded. The main concern raised was that if the debtor's objection is rejected without proper justification, the enforcement order becomes final without any substantive examination of the creditor's claim. This leads to the creation of a new enforceable title based solely on the creditor's unilateral information, which the court does not verify when issuing the order based on an authentic instrument. If the objection is immediately dismissed without substantive examination, the debtor effectively loses the right to participate meaningfully in the process, which may result in an unjust outcome. This system, the applicant argued, compromises the debtor's right to procedural fairness and equality of arms and places a heavier procedural burden on debtors, putting them in a weaker position compared to creditors.

In its reasoning, the Constitutional Court emphasized that procedural equality as set out in Article 22 of the Constitution does not mean identical treatment for all parties in every situation. Instead,

the Court pointed out that differences in procedural obligations are permissible, provided they do not place one party at a substantial disadvantage. Therefore, there is no interference with the right to equality of arms where the parties are in fact not in a substantially identical position, nor where the asymmetry of the rights and obligations of the parties is not significant or substantial. The Court noted that if a debtor acknowledges the existence of the legal basis for the claim and the authenticity of the authentic instrument, they are required to provide evidence to support their objection, even if they contest the legal correctness of its content. However, if the debtor does not recognize the claim's legal basis, they can file an objection based on lack of legal grounds or ignorance, and in such cases, they are not required to provide evidence. The requirement for debtors to submit evidence when they acknowledge the legal basis serves to prevent the filing of manifestly unfounded or frivolous objections against enforcement orders. Conversely, if a creditor acts in a clearly unreasonable manner, such as filing an enforcement application based on a non-existent authentic instrument or one with fictitious content, the debtor can easily achieve the annulment of such enforcement order by raising objections related to the lack of a legal basis or ignorance. Additionally, if the debtor chooses to recognize the legal basis for the claim, they can meet the standard for a substantiated objection relatively easily by presenting at least one piece of evidence related to the asserted facts, which could even be their own testimony. Therefore, the Court found that the procedural framework does not violate Article 22 of the Constitution. The system provides adequate safeguards for debtors while preventing the abuse of the enforcement process, thereby maintaining a fair balance between the rights and obligations of both parties. The Court also examined the applicant's claims that the parties involved in the current enforcement proceedings were treated differently than they would be in litigious proceedings, specifically in relation to the principle of equality outlined in the second paragraph of Article 14 of the Constitution. In addressing this claim, the Court determined that the statutory provisions in question are consistent with Article 14(2) of the Constitution, as they do not result in unequal treatment of individuals in substantially similar positions. The legislature treats individuals with obligations based on authentic instruments uniformly. The differences in procedural burdens arise from the creditor's discretion to pursue either a lawsuit in litigious proceedings or an application for enforcement based on an authentic instrument.

In conclusion, the Court decided that the challenged provisions of the Enforcement and Security Act do not place the debtor in a significantly weaker position than the creditor and, therefore, do not interfere with Article 22 of the Constitution. The Court also maintained that the provisions are consistent with the principle of equality before the law, as outlined in Article 14(2) of the Constitution. The procedural differentiation between creditors and debtors in enforcement proceedings, the Court held, is proportionate and justified by the nature of authentic instruments, which are presumed reliable.

Judge Knez dissented, arguing that the enforcement based on an authentic instrument can in some cases unjustly disadvantage the debtor compared to the creditor, especially when the debtor cannot provide evidence because it lies with the creditor or because the creditor holds the burden of proof. Unlike in a litigious proceeding, where the debtor can (ex post) respond to specific claims, in the enforcement process, the debtor may be forced to raise objections prematurely (ex ante) without having legal grounds or access to necessary evidence. This way, when a debtor raises independent objections but cannot provide supporting evidence, these objections will likely fail. The judge criticized the Court's suggestion for the debtor to simply request a hearing, arguing that it does not address the core issue of the debtor's unequal position, as the debtor can only state that they were unable to provide evidence, which does not contribute to expedition of the process, a key objective of this process. While hearing might prevent the debtor's objection from being dismissed, the judge criticised the current approach and emphasised the necessity of amending the enforcement system. He advocated for including exceptions for independent objections, evidence under the creditor's control and cases where the creditor holds the burden of proof,

which would lead to a faster and constitutionally compliant enforcement process. Despite the dissenting opinion, the Court's majority upheld the constitutionality of the provisions in question.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

Consistent interpretation (of national laws with constitutional principles)

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Constitutional Court, as the highest court in Slovenia, conducted a constitutional review of the Enforcement and Security Act. In its decision, the Court referenced several of its own prior rulings to substantiate its arguments regarding the balance of procedural burdens between creditors and debtors. This reliance on established jurisprudence highlights the Court's role in shaping and upholding constitutional standards, particularly the principles of equality before the law and equal treatment in legal proceedings. By engaging with its own previous decisions, the Court ensured a consistent interpretation of legal principles.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

Strategic use of judicial interaction technique (purpose aimed by the national court)

The Court conducted a constitutional review aimed to clarify whether the provisions of the Enforcement and Security Act constituted an unconstitutional regulation. While the Maribor court believed that the law was inconsistent with constitutional rights, the Constitutional Court ultimately concluded that no unconstitutionality was present. By conducting this review, the Constitutional Court resolved a conflict of norms and judicial interpretation, determining that the provisions of the law are not inconsistent with the Constitution.

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

The Higher Court of Maribor submitted an almost identical request for a constitutional review of Articles 61(2) and 62(5) of the Enforcement and Security Act. The Constitutional Court dismissed the request in orders U-I-11/24, U-I-12/24, and U-I-13/24, dated 14 March 2024, as it had already ruled on the constitutionality of these provisions in Case U-I-192/23. Three orders from the Higher Court of Maribor (II Ip 595/2023, II Ip 451/2023, and II Ip 756/2023) awaited the outcome of this constitutional review. These cases were subsequently resolved, citing the Constitutional Court's decision in U-I-192/23.

(Link to) full text

[us-rs.si](#) (in Slovenian)

[us-rs.si](#) (English summary)

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Maribor Higher Court, order no. II Ip 309/2023 of 9 August 2023
 2. Constitutional Court, decision no. U-I-192/23-13 of 1 February 2024
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