

**Case number:**

U-I-196/17

**ECLI:**

ECLI:SI:USRS:2019:U.I.196.17

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

The first sentence of the second paragraph of Article 39 of the Mass Media Act, which determines that an appeal shall not be served on the opposing party for a reply thereto, entails an interference with the right to be heard, which is a constituent part of the right determined by Article 22 of the Constitution. As the right to correction, which is a constitutionally guaranteed right, can only be effectively exercised and achieve its aim by means of a quick and prompt response to a published notification, the Constitutional Court held that by excluding the service of an appeal on the opposing party and consequently shortening the proceedings, the legislature pursued a constitutionally admissible and legitimate objective. However, the Constitutional Court, without also having to address whether such measure is appropriate and necessary, found that the challenged regulation is not proportionate in the narrow sense. In reviewing the proportionality of an interference in the narrow sense, the Constitutional Court reviews whether the weight of the consequences of the reviewed interference with the affected human right is proportionate to the benefits that will ensue therefrom. The time saved in the proceedings due to the fact that the appeal is not served on the opposing party for a reply thereto is not significant. The Constitutional Court held that the benefits of the contested regulation with regard to the promptness of the publication of the correction do not outweigh the consequences of the contested regulation for an affected individual from the viewpoint of the right to be heard. As the statutory regulation at issue excludes the possibility of replying to an appeal, it narrows the right to be heard in proceedings for publishing a correction to such an extent that in the narrow sense it is disproportionate to the benefits such regulation pursues. The second sentence of the second paragraph of Article 39 of the Mass Media Act determines that the court of first instance must send a timely and admissible appeal including all the files to the court of second instance within two days of the day the appeal was filed. After the abrogation of the first sentence of the second paragraph of Article 39 of the Mass Media Act the court will have to serve the appeal on the opposing party for a reply thereto; therefore, it will be unable to send it to the court of second instance within two days of the day it was filed. The first and second sentences of the second paragraph of Article 39 of the Mass Media Act form a logical whole; therefore, the abrogation of the first sentence requires the abrogation of the second sentence of the second paragraph of Article 39 of the Mass Media Act as well. The service of an appeal on the opposing party for a reply thereto does not affect the

duration of the decision-making of the Higher Court on the appeal, and, furthermore, the applicant did not demonstrate that in the case at issue it is unable to adopt a decision consistent with the Constitution without a decision of the Constitutional Court determining the unconstitutionality of the third paragraph of Article 39 of the Mass Media Act; therefore, the Constitutional Court rejected the request in this part.

**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:**

The Supreme Court of the Republic of Slovenia

**Date of application:**

28. 12. 2017

**Date of Decision:**

20. 6. 2019

**Type of decision adopted:**

odločba

**Outcome of proceedings:**

razveljavitev ali odprava  
zavrženje

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