

**Case number:**

Up-349/14

ECLI:

ECLI:SI:USRS:2019:Up.349.14

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

In situations such as at the one at issue, local courts not only perform the role of appellate authorities, but in a uniform administrative and punitive procedure also ensure judicial protection as referred to in the first paragraph of Article 23 of the Constitution. Such entails, *inter alia*, ensuring an effective and comprehensive substantive review.

Taking into account the relevant claims made by the complainants in the proceedings for a request for judicial protection, and having established in advance that the minor offence authority did not state relevant and sufficient grounds for imposing a minor offence sanction because it did not carry out its assessment in accordance with the requirements pointed out already several times by the Constitutional Court, the European Court of Human Rights, and the Court of Justice of the European Union in their decisions, the Constitutional Court held that by merely referring to the challenged positions of the minor offence authority the local court at issue did not remedy the mentioned deficiency. When ensuring judicial protection as determined by the first paragraph of Article 23 of the Constitution, the local court should also have assessed by itself, taking into account the relevant criteria and concrete circumstances of the case, whether the complainants' conduct has the constituent elements of the alleged minor offence, and then, by weighing the rights in collision, it should have responded to the question of whether the publication of personal data at issue was excessively restrictive for the exercise of the right to the protection of personal data determined by the first paragraph of Article 38 of the Constitution. In doing so, it also should have taken into account that the complainant's responsibility for the minor offence was established by the decision of the minor offence authority, that a fine was imposed on her, and that in the decision of the minor offence authority no reasons were stated, which should be particularly convincing considering the punitive interference with the complainant's right to freedom of expression determined by the first paragraph of Article 39 of the Constitution.

As the Local Court substantiated its decision-making entirely on an assessment that does not take into account the constitutional criteria for the protection of the right to freedom of expression, it violated the right of the complainant as a journalist and of the other two complainants to freedom of expression determined by the first paragraph of Article 39 of the Constitution. The Constitutional Court therefore abrogated the challenged judgment

and remanded the case to the court for new adjudication.

Thesaurus:

Legal basis:

Cases joined:

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Full text:

Type of procedure:

ustavna pritožba

Type of act:

posamični akt

Applicant:

Petra Janša, Polhov Gradec and others

Date of application:

5. 5. 2014

Date of Decision:

16. 5. 2019

Type of decision adopted:

odločba

Outcome of proceedings:

razveljavitev ali odprava

Published:

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Document:

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