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## **Article 35 Section 2 of the Act on the Local Referendum<sup>2</sup> in the Light of the Constitutional Principle of Proportionality**

**Keywords:** principle of proportionality, local referendum, right to court, Constitutional Tribunal

**Słowa kluczowe:** zasada proporcjonalności, referendum lokalne, prawo do sądu, Trybunał Konstytucyjny

### **Abstract**

The subject of the article is the analysis of the provisions of the Art. 35 (2) of the Act on Local Referendum against the background of the Art. 31 (3) of the Constitution of the Republic of Poland, creating the conditions for admissibility of formulating restrictions on the use of constitutionally specified provisions the rights and freedoms of the individual. The aim of the study is to determine whether the statutory regulation under review remains compliant with the constitutional principle of proportionality regarding the citizen's right to a court. The main thesis is that the disposition of the Art. 35 (2) of the Local Referendum Act does not infringe the individual's rights related to the pursuit of claims related to unreliable referendum campaigns.

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<sup>2</sup> Act on Local Referendum of 15 September, 2000, i.e. (Dz.U. 2019, item 741).

**Streszczenie****Artykuł 35 ustęp 2 ustawy o referendum lokalnym  
w świetle konstytucyjnej zasady proporcjonalności**

Przedmiotem artykułu jest analiza postanowień art. 35 ust. 2 ustawy o referendum lokalnym na tle wynikających z art. 31 ust. 3 Konstytucji RP przesłanek dopuszczalności formułowania ograniczeń w zakresie korzystania z konstytucyjnie określonych praw i wolności jednostki. Celem opracowania uczyniono ustalenie, czy badana regulacja ustawowa pozostaje w zgodzie z konstytucyjną zasadą proporcjonalności w zakresie przysługującego obywatelowi prawa do sądu. Główną tezę prowadzonych rozważań uczyniono stwierdzenie, że dyspozycja art. 35 ust. 2 ustawy o referendum lokalnym nie narusza uprawnień jednostki związanych z dochodzeniem roszczeń odnoszących się do nierzetelnego prowadzenia kampanii referendalnej.

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**I.**

The functioning of an individual within a community implies the need to perceive his freedoms and rights against the background of other people's rights and the need to respect the public interest. To avoid potential or real conflicts arising from collisions of individual and group rights, and to prevent the abuse of certain freedoms and rights in result of their relations, it becomes necessary to set boundaries in the use of rights granted to the individual<sup>3</sup>. Rules for formulating the admissibility of restrictions on the rights and freedoms of individuals in regulations constitutional changes have undergone significant transformations: from omitting the indicated problem, resulting from the recognition that it was based on rational premises, the limitation in the discussed area results from the essence of things by introducing formulas of general, expressing the need to respect the public interest, and the rights and freedoms of others, ending with on the detailed determination of the conditions of admissible restrictions when drafting specific rights and freedoms.

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<sup>3</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, p. 176.

The introduction of general provisions is characteristic of the presently binding Basic Laws, relating to the scope and conditions of restrictions on the exercise of constitutional rights and freedoms, combining in formal and material elements, as well as a ban on interfering with the essence of a given entitlement<sup>4</sup>. Pursuant to the provisions of the Art. 31 section 3 of the Polish Constitution of 2 April 1997<sup>5</sup>, which is an expression of the conviction of impossibility to assign absolute rights to individual freedoms and rights, “restrictions on the use of constitutional freedoms and rights can be established only by statute<sup>6</sup> and only when they are necessary in a democratic way the state for its security or public order, or for the protection of the environment, public health and morals, or the freedoms and rights of others<sup>7</sup>. These limitations shall not violate the essence of freedoms and rights”<sup>8</sup>.

<sup>4</sup> L. Garlicki, *Art. 31*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, Warsaw 2002, p. 12.

<sup>5</sup> Dz.U. No. 78, item 483 as amended.

<sup>6</sup> The constitutional expression “in a statute” shall be understood both as regulation of the full extent of limitations in a single statutory act, and as legislator’s permission for regulating only the key elements of the limitation introduced, at the same time allowing for the possibility of adding details of said limitation in a legal act on a basic level, if it is not possible to have the statutory, detailed formulation of the catalogue of limitations. It is not possible to allow the governmental bodies other than legislator to individually shape the introduced limitations and to regulate their scope. See K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Cracow 1999, pp. 110 et seq.; the judgment of the Constitutional Tribunal of January 12, 2000, P11/98, OTK 2000, No. 1, item 3; W. Skrzydło, *Konstytucyjny katalog wolności i praw jednostki*, [in:] *Konstytucyjne wolności i prawa w Polsce. Zasady ogólne*, vol. I, Cracow 2002, p. 58.

<sup>7</sup> In the judgment of February 25, 1999 (K 23/98, OTK 1999, No. 2, item 25), the Constitutional Tribunal has expressed an opinion that the indicated values form a closed catalogue, not subject to extensive interpretation.

<sup>8</sup> The provisions of the Art. 31 sec. 3 of the Constitution of the Republic of Poland, were largely based on the provisions of Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Dz.U. 1993, issue 61, item 284), and the International Covenant on Civil and Political Rights of 19 December 1966 (Dz.U. 1977, issue 38, item 167). Pursuant to the provisions of the Art. 8 of the Convention (with slight modifications repeated in Art. 9–11), restrictions on an individual’s exercise of his/her rights and freedoms may only be introduced by means of a statute, insofar as they are necessary in a democratic society for reasons of national security, public security or economic well-being of the country, protection of order and prevention of crime, protection of health and morals, or protection of the rights

Although the cited regulation did not have an equivalent in previous Polish Constitutions (similarly as legal protection in general human freedom, normalized in the Art. 31 section 1 of the Polish Constitution), in the achievements of attempts can be made to determine the conditions determining the admissibility of introducing restrictions in the area of rights and freedom of the individual, even in the period preceding the adoption of the applicable Basic Law. In the resolution of 2 March 1994<sup>9</sup>, the Tribunal took the view that limiting rights and freedoms (only permitted by law) is possible, provided that the following conditions are met: 1) statutory restrictions of freedoms and rights are only permitted in when constitutional provisions allow, or when the purpose of restrictions is to harmonize a particular freedom with other norms, rules or values arising from the Basic Law; 2) restrictions are of a nature necessary, are treated in the categories of an exception and are not based on a presumption, but result from clearly worded provisions and 3) the restrictions introduced do not violate the essence of a specific constitutional freedom or law<sup>10</sup>. In the period preceding the adoption of the Constitution

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and freedoms of others. Basically, similar requirements follow from Art. 12 sec. 3, 14 sec. 1, 18 sec. 3, 19 sec. 3, 21 and 22 sec. 2 of the International Covenant on Civil and Political Rights.

<sup>9</sup> Dz.U. 1994, No. 36, item 137.

<sup>10</sup> The Tribunal has already in its previous rulings has repeatedly expressed the view that “laws may specify or supplement the provisions of the Constitution on the rights and freedoms, but may not violate the essence of these rights”. K 6/90, OTK 1991, p. 21; K 1/91, OTK 1991, p. 91; U 6/92, OTK 1992, part I, p. 204 and the judgment of January 12, 2000 (P 11/98, OTK 2000, No. 1, item 3), in which the Tribunal stated that the restrictions introduced could not transform the subjective right into a semblance of law, as it would constitute violation of its essence. In the science of constitutional law, two ways of understanding the term “the essence of the law or freedom” have evolved. According to the former, which is called the theory of absolute essence, there always is the unchanging, absolute essence of a given right or freedom, in isolation from a specific case. According to the latter, referred to as the theory of relative essence, the essence of entitlement should always be determined, considering all aspects of a particular situation. Generally, it should be stated that the encroachment on the essence of the right or freedom occurs when, as a result of the interference of competent authority, a given right is not formally abolished, but the restrictions introduced make it impossible to use it in practice. See also: B. Banaszak, *op.cit.*, p. 180; A. Śledzińska-Simon, *Analiza proporcjonalności ograniczeń konstytucyjnych praw i wolności. Teoria i praktyka*, Wrocław 2019, pp. 53–63; L. Wiśniewski, *Zakres ochrony prawnej wolności człowieka i warunki jej dopuszczalnych ograniczeń w praktyce*, [in:] *Wolności i prawa jednostki oraz ich gwarancje w praktyce*, ed. L. Wiśniewski, Warsaw 2006, p. 29.

of 1997 as a key judgment for determining the conditions for introducing restrictions in the sphere of rights and freedoms, the judgment of the Constitutional Tribunal of 26 April 1995<sup>11</sup> should be recognized, the theses of which remain valid under the current Basic Law. In the cited ruling, the Constitutional Tribunal expressed the view that for achieving any borderline it must speak of axiological calculus, and the narrowing of individual rights can only happen in case of absolute necessity. This prohibition of undue interference is understood by the Court as the impossibility of establishing restrictions exceeding a certain degree of nuisance for the individual, disturbing the proportions between the rank of the subject the protection of the public interest and the extent of the violation of a specific right or freedom. Prohibition of excessive interference in the sphere freedom and human and citizen rights is one of the requirements set by a democratic state today the rights of its organs as an element of building citizens' trust in the state and its norms<sup>12</sup>. Determining if as a result of the statutory violation of the right or freedom of the individual, there has been no excessive interference in this sphere, requires get answers to the following questions:

1. whether the regulation is able to lead to the intended by it effects?;
2. is the regulation necessary to protect the public interest with which it is associated?;
3. whether the effects of regulation remain in proportion to the burden imposed on the citizen?<sup>13</sup>.

A constitutional instrument for balancing the interest of public and individual is the principle of proportionality<sup>14</sup>, requiring the search for a solution that respects as much as possible to the greatest extent the interests of all par-

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<sup>11</sup> K 11/94. See also: the ruling of the Constitutional Tribunal of February 25, 1999, K 23/98.

<sup>12</sup> The judgement of the Constitutional Tribunal of April 26, 1995, op.cit., p. 6.

<sup>13</sup> The CT ruled on the premise of proportionality in the strict sense in its judgment of 26 January 1993, U10/92, OTK 1993, p. 32. A. Łabno, *Ograniczenie wolności i praw człowieka na podstawie art. 31 Konstytucji III RP*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warsaw 2002, p. 705.

<sup>14</sup> The principle of proportionality, together with the concept of the essence of rights and freedoms, belong to the category of the so-called restrictions, intended to delimit boundaries, beyond which the restriction of a specific freedom or right will not be allowed. L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2014, p. 103.

ties, and in case of the need to limit certain rights, seeking to a state in which neither party will be deprived of the opportunity to exercise its rights to an extent greater than necessary for exercising the rights of others<sup>15</sup>. Although not expressed *expressis verbis* in any recipe constitutional principle, the principle of proportionality has the strongest connections with the mentioned Art. 31 section 3 of the Constitution Republic of Poland, which the Constitutional Tribunal recognized as creating the discussed principle in a complete and independent manner<sup>16</sup>, at the same time proving its presence in the political system as a consequence of the fact that the principle of proportionality can also be derived from other constitutional regulations, including to restrictions: property rights (Art. 21 (2) and Art. 64 (3)), freedom of economic activity (Art. 22), acquisition, collection and sharing of personal data (Art. 51 (2)), manifesting religion (Art. 53 (5)), the right to information on the activities of state organs and persons discharging functions public (Art. 61 (3)), or from Art. 228 (5)), formulating guidelines as to the purpose and direction of the state's activities under the conditions of emergency<sup>17</sup>.

From the point of view of this article, the essential importance should be attached to the content of Art. 31 section 3 of the Polish Constitution, referring to the admissibility criteria for restricting rights and freedoms unit, analyzed in connection with the provisions of the Art. 35 section 2 of the Act on the local referendum.

The assumption was made that the invoked statutory regulation is compliant with the constitutional principle of proportionality, without constituting a violation of the individual's right to a court in pursuing claims relating to the dissemination of false information during the campaign. The basic research method is the formal and dogmatic method, using the axiological method as an auxiliary one.

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<sup>15</sup> R. Małajny, *Polskie prawo konstytucyjne na tle porównawczym*, Warsaw 2013, p. 225.

<sup>16</sup> The judgement of the Constitutional Tribunal of January 12, 1999, P2/98, OTK 1999, No. 1, item 2.

<sup>17</sup> R. Małajny, *op.cit.*, p. 226.

## II.

In the content of the Art. 35 section 1 of the Act on the local referendum<sup>18</sup>, a catalog of activities prohibited during the campaign was specified in connection with which the right is entitled to a court order to protect its personal rights. In case of posting false information in posters, slogans and leaflets of referendum or including their statements and other forms of agitation and propaganda, anyone interested has the right to submit an application to the district court, including the request for:

- confiscation of such materials,
- prohibiting them publishing,
- order rectification of information,
- order to apologize to the defendant,
- order a participant in the proceedings to pay an amount of up to PLN 10,000 to a charity,
- award from participant in the proceedings for the benefit of the applicant up to PLN 10,000 in damages.

According to the Art. 35 para. 2 Act on Local Referendum, the court examines the submitted application within 24 hours, in non-litigious proceedings. The provision allows for the consideration of the submission in case of an excused absence of the applicant or participant in the proceedings provided that they have been duly notified about the date of the hearing. An order closing the case subjects to immediate delivery to the applicant and the person obliged to perform it. By a court order, the district may be appealed to the court of appeal within 24 hours of its issuing. Court decision of appeal is subject to immediate execution and there is no cassation appeal against it (Art. 35 (3) of the Act).

The problem of the constitutionality of the provisions of Art. 35 of the Act on Local Referendum has become the subject of a constitutional complaint lodged by the plenipotentiary of the initiator of the municipal referendum on the dismissal of the bodies of the constitutive and executive unit local government<sup>19</sup>. In her petition, the applicant raised, for instance, non-compliance of

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<sup>18</sup> Further: uorl.

<sup>19</sup> Constitutional complaint of January 31, 2014, SK 16/14.

Art. 35 (1) and (2) the Act with Art. 45 section 1 (right to court)<sup>20</sup> in relation to the Art. 31 para. 3 of the Polish Constitution, proving that the 24-hour time limit of the initiated proceedings, provided in the Act pursuant to Art. 35 (1), in the Act on Local Referendum constitutes a disproportionate and excessive restriction of the right to a fair trial, hindering a comprehensive and reliable hearing of the case by a court and preventing the participant from being properly prepared to attend the trial, and defend his position. In the justification of the complaint, the view was expressed that the introduction of a special mode of protection of personal rights during the referendum campaign narrows down in a fundamental way the participant's ability to gather evidence, read the rules and case law, conditioning the effective pursuit of his rights in court proceedings, and does not take into account the need to guarantee the party adequate time to rationally appoint a legal representative, and does not provide the representative sufficient time for a detailed analysis of the case<sup>21</sup>. Attention was also drawn to the illogicality of Art. 35 section 2, allowing the possibility of considering a case in the absence of a participant, if it is justified, and in the absence of such an eventuality in the case of unjustified absence – in this way the procedural situation of the party who has duly justified its failure to deteriorate significantly. It was also postulated to extend the time for consideration of a case pursuant to the Art. 35 of the Act on Local Referendum due to the complexity of referendum issues, arguing that the 24-hour term makes it impossible for the court to thoroughly familiarize itself with the facts; and forces the panel to operate in conditions of extreme rush. The complaint raised in support of the complaint limitations on procedural rights of a participant in the proceedings were considered not to be in proportion to the purpose regulations<sup>22</sup>: the condition of limiting constitutional rights and freedoms only in the necessary cases and to the least extent disturbing for the individual, was not met in the applicant's opinion; so the Art. 35 of the Ordinance – contrary to the intentions of the legislator – does

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<sup>20</sup> P. Sarnecki, *Art. 45*, [in:] *Konstytucja...*, pp. 1–7; B. Banaszak, *op.cit.*, pp. 238–243; A. Ławniczak, *Uwagi do art.45*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. M. Haczkowska, Warsaw 2014, pp. 71–72.

<sup>21</sup> *Constitutional...*, pp. 13–14.

<sup>22</sup> L. Garlicki, *Polskie prawo...*, p. 103. See also the judgement of the Constitutional Tribunal of July 2, 2009, K 1/07.



not protect a fair campaign, but distorts its course, constituting an institution often used by participants in the proceedings with weaker procedural positions than the applicant, who in fact decides on the date of the case, having the opportunity to submit the application in the least convenient time for the other party. In addition, no possibility of lodging a cassation appeal limits the participant in the proceedings to assert his rights, despite substantive legal identity of claims with protection of personal rights implemented in procedural proceedings, on the basis of Code of Civil Procedure. The conclusion states that the protection of the personal rights of participants in the referendum campaign can be guaranteed by means less painful for the party than establishing an extraordinary procedure, violating the individual's right to a fair trial and contrary to the constitutional principle of proportionality<sup>23</sup>.

### III.

Referring to the raised allegations of unconstitutionality of the Art. 35 of the Act on Local Referendum, it should be stated, first of all, that the comments mainly relate to the relationship between the Art. 35 (2) of the Act on Local Referendum and Art. 45 (1) 1 in connection with the Art. 31 section 3 of the Polish Constitution<sup>24</sup>. That treatment was based on the following assumptions: first, the applicant, despite having contested compliance of the Art. 35 para. 1 of the Act on Local Referendum with Art. 45 (1) in connection with the Art. 31 (3) of the Constitution, did not justify in what way unconstitutionality would exist.

The arguments cited in the content of the constitutional complaint refer to an attempt to prove violation of the right to a fair trial through disproportionate, excessive interference with the constitutional right an entity expressing itself in setting a too short 24-hour time limit for individual actions in the

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<sup>23</sup> Constitutional..., p. 28.

<sup>24</sup> According to the position of the Constitutional Tribunal, Art. 31 (3) of the Constitution may not constitute an independent model for constitutional review – it must be supplemented with an indication of a specific right or freedom which has been limited due to excessive interference by the legislator. See judgments of the Constitutional Tribunal: from October 19, 2010, P 10/10, OTK ZU No. 8 / A / 2010 and from October 23, 2012, SK 11/12, OTK ZU No. 9 / A / 2012.

proceedings conducted pursuant to the Art. 35 (1) of the Act; secondly, pursuant to the Art. 79 (1) of the Polish Constitution, a constitutional complaint may concern only the normative act on the basis of which the court or public administration body finally ruled the applicant's rights and freedoms<sup>25</sup>. The constitutional review covers a specific provision on the basis of which it was determined the legal status of the individual<sup>26</sup>. In the analyzed case, the Art. 35 (3) of the Act on Local Referendum did not constitute the legal basis of the final resolution of the case, hence it cannot be the subject of further considerations as a defective basis of a constitutional complaint – it can only be considered to the extent that it provides for 24-hour term for the appeal court's decision to be examined by the court of appeal.

According to the position formed in the jurisprudence of the Constitutional Tribunal, the right to a court arising from the Art. 45 (1) of the Act Fundamental, includes 3 basic elements: a) right of access to a court, b) right to properly shaped judicial procedure, according with the requirements of justice and openness, c) the right to a judgment<sup>27</sup>. In the examined case, it does not submit a doubt that the first and third conditions are met – considerations therefore focus on the question of whether the mode of the proceeding arising from the Art. 35 (2) of the Act on Local Referendum has been shaped according with the principle of procedural justice.

It should be noted that the accelerated procedure resulting from the challenged provision is not an isolated solution in Polish constitutional law: the same regulations exist both on the basis of the Electoral Code<sup>28</sup> (Art. 111) and the Act on National Referendum<sup>29</sup> (Art. 44), constituting

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<sup>25</sup> J. Trzeciński, *Art. 79, [in:] Konstytucja...*, p. 12; Z. Czeszejko-Sochacki, *Skarga konstytucyjna w prawie polskim*, "Przeгляд Sejmowy" 1998, No. 1, p. 38.

<sup>26</sup> The judgements of the Constitutional Tribunal of March 10, 2010, Ts 221/08, OTK ZU, issue 3/B/2010, item 171, and of June 14, 2010, Ts 123/09, OTK ZU, No. 6/B/2010, item 442.

<sup>27</sup> M. Wyrzykowski, *Zasada demokratycznego państwa prawnego, [in:] Zasady podstawowe polskiej Konstytucji*, ed. W. Sokolewicz, Warsaw 1998, p. 82. See also the Constitutional Tribunal judgements of: June 9, 1998, K28/97; March 14, 2005, K 35/04 and July 21, 2009, K 7/09.

<sup>28</sup> Act of 5th January 2011 – Election Code, i.e. (Dz.U. 2019, item 684 as amended).

<sup>29</sup> Act on National Referendum of 14th March 2003, i.e. (Dz.U. 2019, item 1444 as amended).

a permanent and a typical element of the Polish legal order<sup>30</sup>. The purpose of this group of provisions was – derived from the formula of a democratic state of law – to protect the reliable and fair course of the election campaign, aimed at providing citizens with truthful information about candidates, enabling the free formation of election decisions. The establishment of short procedural terms is closely related to the specifics of the campaign – a quick legal process allows citizens to get acquainted with the results of the proceedings before the voting day, and the time of political debate free from pathologies related to the dissemination of false information, disturbing the process of voting is extended. The discussed provisions protect the honor and good name of candidates, while on the other hand they set the limits of freedom of expression in the course of political debate, securing the process of social communication and limiting the possibility of manipulation of voters<sup>31</sup>.

The need for ensuring standards of procedural justice, which is a key to these considerations, has repeatedly been the subject of the CT's interest – despite acknowledging that there is no single ideal procedural model, applicable in all types of proceedings<sup>32</sup> – pointed to the inherent features of a fair trial, expressed in the right to be heard, disclosing the reasons for the court's decision in a legible manner, ensuring predictability for the participant in the proceedings and granting him an appeal<sup>33</sup>. Having that said, it should be stated that despite the fact that the short, 24-hour term for procedural steps (provided in the Art. 35 of the Act on local referendum) may affect the possibility of the court seeking material truth, it cannot be presumed that the constitutional rights of the individual have been violated as a result of the shortened procedure<sup>34</sup>. For this to happen, it is necessary to violate the essence of this

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<sup>30</sup> Statement of Sejm of the Republic of Poland of February 5, 2015, regarding the constitutional complaint SK16/14, BAS-WPTK-1183/14, p. 15. See also the Constitutional Tribunal judgement of May 11, 2016, SK 16/14, OTK-A 2016/21.

<sup>31</sup> See cited judgement of the Constitutional Court K 7/09, p. 11.

<sup>32</sup> Ibidem, p. 14.

<sup>33</sup> The judgements of the Constitutional Tribunal of: January 16, 2006, SK 30/05, OTK ZU No. 1/A/2006 and February 26, 2008, SK 89/06 OTK ZU No. 1/A/2008.

<sup>34</sup> According to the view expressed by the Supreme Court in its judgment of 16 July 2009, I CSK 30/09, consideration of the speed of proceedings cannot limit the principle of material truth.

right or to violate the principle of proportionality of restrictions<sup>35</sup>. Article 35 sec. 2 specifying a short term for the case to be heard – the term being dependent upon the functions of the procedure which goal is rapid settlement of the dispute that affects the voting decisions<sup>36</sup> – governs the conduct of the hearing, despite there is no such obligation in non-litigious proceedings. The consequence is to guarantee the litigants the core of procedural justice: the right to be heard and to know the motives of the final decision, excluding arbitrariness in the action of the court.

The term provided is of disciplinary character not only for participants, but also for the court, and due to possible difficulties in determining the truth, the findings may be subject to verification in appeal proceedings, which the legislator – despite having introduced a shortened way of proceeding – did not abandon. As to the appellate proceedings against the decision of the regional court, we have to formulate an opinion consistent with the remarks listed below: the 24-hour period for filing an appeal to the court of appeal<sup>37</sup> does not constitute a disproportionate limitation of the right to a properly formed court procedure. Setting a short term – related to the specificity and to objectives of shortened proceedings in matters of protection of personal rights during the referendum campaign – although forces the litigants to maintain discipline in complying with terms for the exercise of their procedural rights, does not, however, exclude the possibility of seeking material truth, and thus it does not imply any incorrect formation of the appeal procedure.

Considering the specified findings, we have to follow an opinion of the Constitutional Tribunal, according to which the Art. 35 sec. 2 of the Act on Local Referendum meets the requirements specified in the test of propor-

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<sup>35</sup> The Constitutional Tribunal judgement SK 16/14, p. 19.

<sup>36</sup> In the jurisprudence of the Constitutional Tribunal, the sheer speed of proceedings in electoral and referendum cases did not raise any doubts – the Tribunal was even in favor of shortening and simplifying the procedure due to its functions – however, it was pointed out that there was no possibility of moving a final ruling affected by a defect due to its incompatibility with material truth. The Tribunal postulated the admissibility of resumption of proceedings, regardless of the election campaign, in order to determine the truth. See the judgment of the Constitutional Tribunal of May 13, 2002, SK 32/01, OTK-A 2002/3/31.

<sup>37</sup> The right to appeal against a decision rendered at first instance is an indicator of procedural justice. See the judgment of the Constitutional Tribunal of January 13, 2015, SK 34/12, OTK ZU No. 1 / A / 2015, item 1.

tionality of the restrictions on the rights and freedoms of an individual, in the following form: the need for legal regulation in order to ensure the proper conduct of the referendum campaign; effectiveness, as reflected in the settlement of the case before the date of voting, and adequacy, understood as maintaining an appropriate proportion between the purpose of the proceedings and the narrowing of the rights of its participants, resulting from the speed of court action.

In the context of the findings, the position of the Constitutional Court, according to which the Art. 35(2) of the Act on Local Referendum fulfils the conditions laid down in the proportionality test of the limitations of the rights and freedoms of the individual<sup>38</sup>, in the following forms: the necessity of regulation to ensure the proper conduct of the referendum campaign; effectiveness, expressed in the settlement of the case before the day of voting and the adequacy, understood as maintaining the appropriate proportion between the purpose of the proceedings and the narrowing of the powers of its participants, resulting from the speed of action of the court<sup>39</sup>.

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<sup>38</sup> A broad discussion on the requirements for the restrictions of constitutional rights and freedoms of an individual can be found in A. Śledzińska-Simon, op.cit., p. 129 and following.

<sup>39</sup> See the Constitutional Tribunal judgement 16/14, p. 19.

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