



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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National Council of and for Persons with Disabilities v Independent Communications Authority of SA
(581/2024) [2025] ZASCA 161 (24 October 2025)

The Supreme Court of Appeal (SCA) handed down judgment dismissing, with no order as to costs, an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

In 2021, the appellant, the National Council of and for Persons with Disabilities (NCPD), had applied to the Gauteng Division of the High Court, Pretoria, to review and set aside a decision of the respondent, the Independent Communications Authority of South Africa (the Authority), to promulgate the Code for Persons with Disabilities Regulations (the 2021 Code), in terms of section 4(3)(j) of the Independent Communications Authority Act 13 of 2000 (the ICA Act), read with sections 4(1), 4(4), and 70 of the Electronic Communications Act 36 of 2005 (the EC Act), hereafter referred to as 'the impugned decision'. The 2021 Code had set out the requirements that broadcast licensees were required to meet in order to accommodate persons with disabilities.

The basis for the review application had been that the Authority had failed to consider the NCPD's submissions made prior to the promulgation of the Code. The high court (per Tolmay J) had dismissed the review application on the ground that the NCPD had unreasonably delayed in bringing it. The appeal was before the SCA with its leave.

The issues before the SCA were:

- (a) Whether the high court had erred in its dismissal of the review application based on unreasonable delay;
- (b) Whether the high court had erred by exercising its discretion and not granting condonation; and

(c) Whether the 2021 Code was unconstitutional to the extent that it failed to make provision for mandatory “open” captioning or subtitling on news broadcasts (both taped and live) and other broadcasts of national importance.

With regard to the first issue, the SCA had outlined the test for determining whether there had been an undue delay in instituting review proceedings, namely: whether the delay (if any) was unreasonable, and once the court found that the delay was unreasonable, whether it should be condoned. The SCA held that it was not satisfied with the NCPD’s explanation for its delay and found the explanation to be manifestly unreasonable, as it did not cover the entire period of the delay. The Court held that the delay in the institution of the review application had been unreasonable, as the NCPD had failed to provide a reasonable explanation for why it had only done so six months after becoming aware of the publication of the 2021 Code and the reasons. A delay of six months, in the circumstances of the case, was deemed unduly long because the NCPD had been aware of the reasons for the decision from the outset.

Regarding the second issue on appeal, the SCA held that by the time the review application had been heard in the high court, the 2021 Code had already come into operation. The licensees would have, by that stage, incurred costs in making the necessary arrangements to comply with the 2021 Code. The prejudice they were likely to suffer by having arranged their affairs on the basis of the validity of the 2021 Code, was a factor that weighed in favour of the high court’s refusal to grant condonation. The SCA found this to be a relevant consideration. Furthermore, the SCA held that the high court had not erred in the exercise of its discretion in refusing to grant condonation. The SCA also found that the review application lacked prospects of success and, under those circumstances, found no basis to interfere with the discretion of the high court in refusing to grant condonation for the unreasonable delay in the institution of the review application.

On the third and final issue, the SCA held that the issue concerning the constitutional validity of the 2021 Code had been an entirely new issue that had not been pleaded by the NCPD in the high court, thereby making it a new issue on appeal. The SCA further held that since a declaration of invalidity of the 2021 Code had been sought for the first time in the SCA, the Authority had not been given the opportunity to raise a limitation defence, nor had the facts or policy considerations that might support such a defence been presented. It would have been, in the circumstances, unfair and prejudicial to the Authority to entertain the new relief sought by the NCPD on appeal. The Court further held that, another reason against declaring legislation, or delegated legislation, unconstitutional on appeal was that interested parties—some of whom had made written submissions on the 2021 Code—had neither been joined as respondents in the application nor been notified in terms of rule 16A of the Uniform Rules of Court of the constitutional challenge to the 2021 Code. By seeking new relief on appeal, the NCPD had effectively deprived persons or entities that might be affected by, or have a legitimate interest in, the constitutional case from taking steps to protect their interests. In addition, the SCA held that, the new relief had the potential to side-step important procedural safeguards provided by the rules. It was, therefore, not in the interests of justice to entertain the new relief for the first time on appeal.

In the result, the appeal was dismissed with no order as to costs.