



**The norms on collecting and including biological material in the National DNA Database  
are partially compatible with the Satversme**

On 12 May 2016 the Constitutional Court pronounced judgement in Case No. 2015-14-0103 “On the Compliance of Para 2 and Para 6 of Section 1, Section 4, Section 10, Section 18(1) of Law on Development and Use of the National DNA Database, as well as Para 2 and Para 13 of the Cabinet of Ministers Regulation of 23 August 2005 No. 620 “The Procedure of Providing Information to be Included in the National DNA Database, as well as the Procedure for Collecting Biological Material and Biological Trace”, insofar as these apply to persons suspected, with Article 96 of the Satversme of the Republic of Latvia.”

*Collecting of DNA material of suspects for identifying DNA profiles to be included in the National DNA Database complies with Article 96 of the Satversme. However, further storage of the biological material and DNA profile is not proportional and is incompatible with Article 96 of the Satversme, if the criminal proceedings are terminated as a whole or against the particular person on the basis of exonerating circumstances or the decision by which the respective person has been recognised as being a suspect is revoked on the same grounds, as well as in the case, where an exonerating judgement has entered into force.*

**Contested Norms**

Law on Development and Use of the National DNA Database

Para 6 of Section 1: “[The following terms are used in this Law] **comparative samples** – the biological material taken from victims, persons arrested, suspected, accused or convicted, from unidentified bodies, biologically close relatives of missing persons (children, parents) to ascertain the source of the biological traces, identify a missing person or an unidentified body.”

Section 4: “Information regarding DNA profiles and that concerning persons who are suspected, have been accused or have been convicted, regarding unidentified bodies, persons

missing in the Republic of Latvia and biological traces shall be compiled and kept within the National DNA database.”

Section 10: “The following information shall be included within the National DNA database regarding a suspect, person convicted or accused of commission of a criminal offence:

- 1) the given name (names) and surname of the person;
- 2) the personal identity number (for foreigners and stateless persons - the date of birth);
- 3) nationality and the type thereof;
- 5) the criminal case number (numbers);
- 5) the name of the institution from which the comparative sample has been withdrawn and the type of the sample;
- 6) the given name (names) and surname of the person who has withdrawn the comparative sample; and
- 7) the DNA profile.”

The first part of Section 18: “DNA profiles and information about suspected or accused persons, if the criminal proceedings are terminated as a whole or against the particular person on the basis of exonerating circumstances or the decision by which the respective person has been recognised as being a suspect is revoked on the same grounds, as well as in the case, where an exonerating judgement has entered into force, DNA shall be stored in the National Database for 10 years as of the day when the Forensic Service Department has received the decision or the judgement, or the aforementioned information is deleted from the National DNA Database after the Forensic Service Department has received a written application from the person concerned.”

Cabinet Regulation of 23 August No. 620

Para 2: “Biological material shall be collected from close relatives of missing persons, suspects, accused persons, persons on trial or persons convicted for committing a criminal

offence and from victims (hereinafter – sample donors), as well as from unidentified dead bodies and from dead bodies of persons who have died a violent death.”

### **The Norm of Higher Legal Force**

Article 96 of the Satversme: “Everyone has the right to inviolability of his or her private life, home and correspondence.”

### **Contested norms, with regard to compliance of which legal proceedings before the Constitutional Court were terminated.**

Law on Development and Use of the National DNA Database Para 2 of Section 1:

“[The following terms are used in this Law]: **biological traces** – biological material collected at the crime scene, at the place of residence of a missing person, from the victim, person arrested, suspected, or accused or clothes thereof, from a corpse, as well as from other types of material evidence.”

Cabinet Regulation of 23 August No. 620 “Procedures for the Provision of Information to be Included in the National DNA Database, as well as the Collection of Biological Material and Biological Traces”, Para 13: “Biological traces at the scene of a criminal offence, from the clothing of a victim or a suspect, from a dead body, as well as other material evidence shall be collected according to the procedures prescribed in the Criminal Procedure Law.”

The Constitutional Court recognised that these norms were not applied and were not attributable to the Applicant’s situation. [16.2.]

### **The Facts**

The applicant Lato Lapsa notes that in 2014 he had been recognised as being the suspect in criminal proceedings. The official in charge of the criminal proceedings prepared an act on collecting biological material from the applicant for inclusion into the National DNA Database. The applicant had refused to provide the biological material, with regard to it an

administrative violation report was drawn up and proceedings of administrative violation had been initiated.

The proceedings of administrative violation were terminated, when the applicant received oral admonition from the court. The criminal proceedings, in turn, were later terminated on the grounds that there were no elements of criminal offence in the offence committed by the applicant.

The applicant holds that the contested norms restrict his right to inviolability of private life. This right, *inter alia*, are said to disallow interference by the State in a person's private life by collecting and storing personal data without legal grounds.

### **Court Findings and Rulings**

#### On personal data

The Constitutional Court noted that the right to inviolability of private life protects, *inter alia*, also personal data. [15.1] Both the biological material of an identified person, which is collected and analysed for establishing DNA profile, and the DNA profile<sup>1</sup> are specially protected data of a natural person. [15.3.]

#### On the restriction upon fundamental rights

The Constitutional Court recognised that the contested norms envisaged a restriction upon fundamental rights. To establish whether the restriction upon fundamental rights was admissible, the Constitutional Court assessed, whether the restriction had been established by a law adopted in due procedure, whether the restriction had a legitimate aim and whether the restriction was proportional. [18]

The Constitutional Court recognised that the restriction upon fundamental rights had been established by law, i.e., the contested norms had been adopted in the procedure established by

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<sup>1</sup> DNA profile is computer readable result of the genetic analysis of DNA.

regulatory enactments, they had been promulgated and are publicly accessible, and were also sufficiently clear and foreseeable. [20, 21]

The legitimate aim of the contested norms is public safety and protection of other persons' rights, i.e., the norms, *inter alia*, facilitate prevention of crime and detection of criminal offences. [22]

In assessing compliance of the contested norms with the principle of proportionality, the Constitutional Court recognised that the norms were appropriate for reaching the legitimate aim. [23.1] The Court also noted that no more lenient measures were available that would allow reaching the legitimate aim in the same quality. Identification of the DNA profile is a unique method of investigation, which in some cases may be the only means of investigation. The Constitutional Court established that the restriction provided for in Para 6 of Section 1, Section 4, Section 10 of the Law and Para 2 of Regulation gave to society benefits that exceeded the damage inflicted upon the rights of an individual. Therefore these norms are to be recognised as being proportional. [23.2., 23.3.1.]

However, in assessing the first part of Section 18 of the Law, the Constitutional Court found that in case if the storing of data no longer had a legitimate aim, then all necessary guarantees were not provided to a person, who had had the status of a suspect, with regard to deleting his sensitive data. The status of a person in criminal proceedings is the only criterion laid down by the contested norms for storing the DNA profile. If the purpose of storing the DNA profile no longer exists (for example, a person is exonerated or the criminal proceedings are terminated on exonerating grounds), but an application from the person regarding deletion of the data has not been received, the storage of the data continues. In this case the harm inflicted upon an individual's rights exceeds the benefit gained by society. [23.3.1., 23.3.2.]

The legislator should establish such mechanism for protecting personal data that would ensure that the rules on their storage fully comply with the purpose of data processing. The Constitutional Court holds that with regard to the rules on storing and deleting biological

material and DNA profiles of suspected persons the legislator has not fulfilled its duty.  
[23.3.2.]

Thus, the Constitutional Court recognised that the first part of Section 18 of Law on Development and Use of the National DNA Database, insofar it applies to suspects, **as being incompatible with Article 96 and invalid as of 1 January 2017.**

Whereas the other contested norms – Para 6 of Section 1, Section 4, Section 10 of Law on Development and Use of the National DNA Database, as well as Para 2 of the Cabinet of Ministers Regulation of 23 August 2005 No. 620 “The Procedure of Providing Information to be Included in the National DNA Database, as well as the Procedure for Collecting Biological Material and Biological Trace”, insofar these apply to persons suspected, **are compatible with Article 96 of the Satversme.**

The Judgement by the Constitutional Court is final and is not subject to appeal, and it has entered into force. The text of the Judgement [in Latvian] is available on the home page of the Constitutional Court: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/06/2015-14-0103\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/06/2015-14-0103_Spriedums.pdf).

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The press release was prepared with the aim to facilitate understanding of the cases examined by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the home page of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

**Līna Kovalevska**

Assistant to the President of the Constitutional Court

[Lina.Kovalevska@satv.tiesa.gov.lv](mailto:Lina.Kovalevska@satv.tiesa.gov.lv)

(+371) 67830748, (+371) 29813216