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**The obligation to indicate the defendant's declared place of residence in the statement of claim complies with the right to private life**

On 11 October 2018, the Constitutional Court passed the judgement in case No. 2017-30-01 "On Compliance of Section 26 (1), the First Sentence of Para 1<sup>2</sup> of Section 128 (2) and Para 6 of Section 132 (1) of the Civil Procedure Law, insofar they Set the Obligation to Indicate in the Statement of Claim the Declared Place of Residence of the Defendant, with Article 96 of the Republic of Latvia".

**The Contested Norms**

Section 26 (1) of the Civil Procedure Law: "Actions against natural persons shall be brought before a court based on their declared place of residence."

The first sentence of Para 1<sup>2</sup> of Section 128 (2) of the Civil Procedure Law provides, *inter alia*, that in the statement of claim the given name, surname, personal identity number, declared place of residence of the defendant must be indicated, but, if none, the place of residence.

Para 6 of Section 132 (1) of the Civil Procedure Law provides that a judge refuses to accept the statement of claim if the case is not within the jurisdiction of the respective court.

**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."

**The Facts**

The case was initiated with regard to an application submitted by the Department of Administrative Cases of the Supreme Court (hereinafter – the Supreme Court). The Supreme Court is reviewing a case, in the framework of which an association requests imposing an obligation upon the Office of Citizenship and Migration Affairs to provide

information on the personal data of some public persons, i.e., the declared place of residence of some former and incumbent members of the Cabinet of Ministers. The association substantiates the request of such information with the wish to submit to a court of general jurisdiction a statement of claim against these persons, claiming compensation for losses. It follows from the regulation of the Civil Procedure Law that a person, who wishes to bring a civil claim to a court, must find out the place of residence of the possible defendant, to indicate it in the statement of claim and to turn to the relevant court according to jurisdiction.

The Supreme Court holds that alongside the right to appropriate access to court, also the right of all persons to inviolability of private life must be protected. The declared place of residence is said to be important information falling within the concept of private life, whereas the contested norms, to the extent they require processing of the data on place of residence of possible defendants – natural persons, do not envisage alternatives for submitting a statement of claim. Allegedly, this violates a person’s right to inviolability of private life enshrined in Article 96 of the *Satversme*.

### **The Court’s Findings**

#### On whether the Supreme Court may contest the contested norms before the Constitutional Court

First of all, the Constitutional Court recognised that the constitutional norms were interconnected as part of the legal regulation, pursuant to which the defendant was identified and the court’s jurisdiction was determined in civil procedure. The contested norms are linked to the obligation to indicate in the statement of claim the declared place of residence of the probable defendant, and the obligation to provide information about this address follows from them, as stipulated in the provisions of Population Register Law and the Cabinet Regulation of 15 February 2011 No. 130 “Procedures for Issuing the Information included in the Population Register” (hereinafter – Regulation No. 130). Thus, in the case under review, the norms of united legal regulation are contested, the outcome of the legal dispute in the administrative case to be heard by the Supreme Court depends on these norms, and the Constitutional Court must examine the compliance of these norms with Article 96 of the *Satversme*. [9.]

On compliance of the contested norms with Article 96 of the *Satversme*

*On the existence of the restriction on fundamental rights*

The Constitutional Court found that in the case under review it was not necessary to differentiate between various probable defendants in a civil case; i.e., to differentiate between public persons and other persons. Hence, the Constitutional Court examined the impact of the contested norms on all persons, not only on some public persons. [10.]

Although the case under review had been initiated regarding the compliance of the contested norms with Article 96, the Constitutional Court had to take into consideration also other rights guaranteed in the *Satversme*, *inter alia*, a person's right to a fair trial, included in Article 92, which covers also the right to access to court. [11.1.]

Providing information on a natural person's declared place of residence on the basis of an application, which is substantiated by the need to submit a civil claim to a court, as well as receipt of these data and indication thereof in the statement of claim (in accordance with the contested norms) is to be considered as processing of personal data. Information about a natural person's declared place of residence is data that are linked to a person's private life, and the processing of these data is interfering into the person's private life. Hence, the Constitutional Court found that the contested norms restricted the probable defendant's right to inviolability of private life established in Article 96 of the *Satversme*. [11.]

*On whether the restriction on fundamental rights has been established by law and whether it has a legitimate aim*

The Constitutional Court recognised that the restriction on fundamental rights included in the contested norms had been established by law. [13.]

In the present stage of the development of legal system, the restriction on fundamental rights established in the contested norms ensures to a person the right to turn to the court that has the jurisdiction, in accordance with the procedure established in the Civil Procedure Law, with a claim against a concrete person, who can be identified, *inter alia*, by the address of his place of residence. The restriction on fundamental rights established in the contested norms protects the defendant's rights, ensuring his communication with the court and that the judicial proceedings take place closer to his place of residence.

Therefore the Constitutional Court found that the restriction on fundamental rights included in the contested norms had a legitimate aim – protecting the rights of other persons, established in Article 116 of the *Satversme*. [14.]

*On the proportionality of the restriction on fundamental rights*

The Constitutional Court noted that the restriction on fundamental rights not only facilitated allocation of civil cases according to the territorial jurisdiction but also allowed identification of the probable defendant in a civil case, at the same time ensuring both a person's right to submit a civil law claim to the court with appropriate jurisdiction and also that it would be more convenient for the defendant to exercise his procedural rights because the court, which is closer to his place of residence, has the jurisdiction. An indication of the address of the defendant's place of residence ensures convenient and private receipt of the court's correspondence. Hence, the measure chosen by the legislator is appropriate for reaching the legitimate aim. [16.]

The Constitutional Court underscored: there were no grounds to consider that the alternative proposed by the Supreme Court to submit a claim in accordance with the address of a person's work or study place would be a more lenient measure than submitting a claim in accordance with the declared place of residence. A system has been established in the state, in the framework of which the addressee has the obligation to be reachable at the address of the declared place of residence or at the additional address indicated in the declaration. A person does not have the obligation to be reachable at his place of work or studies, and if the address of this place were known, there would be a risk that the content of the dispatch could become known to third persons. Civil law liability is personal liability, and, if the claim is submitted against a concrete person, then this person and not his or her workplace has the procedural rights and obligations. Moreover, persons do not always have one definite address of the workplace and the official address of the employer not always is the place, where the employee constantly stays and performs his work duties. [17.1.]

A regulation, pursuant to which the court, on its own initiative, would establish the court with the appropriate jurisdiction and would transfer the statement of claim to it, before the matter of accepting it and initiation of a civil case has been decided, cannot be recognised as being an alternative measure that would allow reaching the legitimate aim by measures that are less restrictive on a person's rights. Legal grounds are required for the initiation

of a civil case – a statement of claim that has a particular form and content, and the plaintiff is responsible for drawing it up. Therefore a civil case cannot be initiated on the basis of a court’s initiative, whereas the plaintiff has the obligation to provide the factual material, *inter alia*, on the participants of the case and to submit the claim to the court that has jurisdiction over it. Moreover, even if the court itself established the declared place of residence of the probable defendant and the court with jurisdiction over it and then would transfer the statement of claim to it, the plaintiff, upon familiarising himself with the case materials, would find out the defendant’s address anyway. [17.2.]

The Constitutional Court, adhering to the principles of data protection (lawfulness, fairness, minimality and anonymity), assessed, whether the benefit gained by society as the result of restricting a person’s fundamental rights outweighed the harm inflicted on the fundamental rights of a probable defendant in a civil case. [18.]

The case under review did not contain a dispute on whether the data could be used on the basis of a law, i.e., the contested norms, and whether these were linked to the need to provide the data of a probable defendant in accordance with the norms of Population Register Law and Regulation No. 130. Hence, such data processing complies with the principle of lawfulness. [18.1.]

The Constitutional Court indicated that the State could require contribution from the parties to make the particular civil proceedings at all possible. The plaintiff has the obligation to indicate the parties so that the court would know who is suing whom. First of all, the defendant and his address must be indicated in a sufficiently concrete manner so that the statement of claim could be forwarded to him. The plaintiff’s obligation to identify the defendant, *inter alia*, by indicating the address of the probable defendant and to submit the claim to the court that has jurisdiction over the particular dispute, is inextricably linked with the substance of the civil procedure. [18.2.1.]

The Constitutional Court has analysed the case law of the courts of general jurisdiction, pursuant to which a person, upon turning to the court, must either submit information about the declared place of residence of the probable defendant known to him (in the case of an erroneously indication the court may indicate the correct address of the probable defendant’s declared place of residence and the court to which the claim should be submitted) or submit a reasoned application to the Office of Citizenship and Migration Affairs (in specific cases annexing to it a court’s decision that proves that a person has

turned to court and the defendant's address is required to initiate legal proceedings). Such practice of applying the contested norms with respect to the plaintiff's obligation to indicate in the statement of claim the address of the probable defendant's declared place of residence, as well as with respect to the court's role in becoming involved in the civil procedural legal proceedings and indicating the respective address complies with the principles on which the civil procedure is based on and, thus, also with the right to access to court in civil procedure, included in Article 92 of the *Satversme*, since it offers mechanisms that can help to identify the address of the probable defendant's declared place of residence or to ensure evidence prior to submitting a claim to court. [18.2.2.]

The Constitutional Court held that the information about the probable defendant's declared place of residence, as to its content, was the minimum that ensured the possibility to submit the civil claim to the court with jurisdiction over it. Due to objective reasons, the principle of anonymity in data processing could not be applied to it, since submitting a claim in accordance with the defendant's declared place of residence is the general principle for determining a court's jurisdiction in civil procedure. [18.2.3.]

The Constitutional Court found that the fundamental right of a probable defendant in a civil case to his data protection collided with another person's fundamental right to protection of his rights in the framework of a fair civil procedure. The consequences that set in for the probable defendant in a civil case as a data subject as the result of restriction on the fundamental rights guaranteed in Article 96 of the *Satversme* are disclosure of his data in a limited scope and only to a concrete person, who has duly substantiated the request of the data and for who liability has been envisaged for unlawful processing of these data. However, looking from the perspective of the consequences that could arise for the plaintiff if the data linked to declared place of residence of the probable defendant were not processed, then, in the particular case, it has to be admitted that the plaintiff would be substantially denied the right to access to court for defending his rights in the framework of civil procedure. In the case under review, having assessed the consequences referred to above and examined the collision of the indicated fundamental rights, the Constitutional Court recognised that the benefit that society gained from the restriction on the probable defendant's fundamental rights outweighed the damage inflicted on his fundamental rights. Hence, the restriction on a person's fundamental rights established by the contested norms is proportionate and complies with Article 96 of the *Satversme*. [18.3.]

The Constitutional Court drew attention to the fact that as the result of rapid IT development, the courts' possibilities to access various databases have significantly expanded; however, the regulation included in the contested norms with respect to a court's role in the civil procedure, essentially, has not changed for a certain period of time. As the result of development in technologies, the court system and the legal relationships between members of society, the legal regulation that once complied with norms of higher legal force, may become out-dated and, eventually, even violate a person's fundamental rights. [19.]

**The Constitutional Court held:**

to recognise Section 26 (1), the first sentence of Para 1<sup>2</sup> of Section 128(2) and Para 6 of Section 132 (1) of the Civil Procedure Law, insofar they set the obligation to indicate in the statement of claim the declared place of residence of the defendant as being compatible with Article 96 of the *Satversme* of the Republic of Latvia.

The judgement of the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication. The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/11/2017-30-01\\_Spriedums.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/11/2017-30-01_Spriedums.pdf#search=)

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. 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 homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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