



The norm on publishing the data of debtors of maintenance payments complies with the Satversme with regard to debtors' fundamental rights, but places disproportional restrictions upon children's fundamental right to inviolability of private life

On 16 June 2016 the Constitutional Court passed the judgement in Case No. 2015-18-01 "On Compliance of Section 5¹ of "Maintenance Guarantee Fund Law" with Article 96 of the Satversme of the Republic of Latvia".

A child's right to full development should be given priority over the rights to inviolability of private life of a person, who does not fulfil the imposed obligation to make maintenance payments

The Contested Norm

Section 5¹ of "Maintenance Guarantee Fund Law" provides:

"(1) The Administration of the [Maintenance Guarantee] Fund shall publish the information about the debtor (name, surname, the second part of the personal identity code and the year of birth) on the home page of the Fund's Administration, if:

- 1) the submitter has agreed to it and the Fund's Administration has not received information from state or local government institution that the publishing of the respective data could harm the interests of the child;
- 2) the debtor is not a disabled person or a person, who, due to temporary loss of capacity for work, has not worked for more than six months, and the incapacity for work has been discontinued, or one year within the period of three years, when the incapacity for work reoccurs intermittently;
- (2) Information about the debtor shall be published with the aim of protecting the rights of the child and promoting fulfilment of parents' obligation – paying the child support, as well as responsible and honest fulfilment of commitments.
- (3) The Cabinet of Ministers shall establish the procedure, in which the Fund's Administration shall publish and delete information on a debtor."

The Norm with 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 of the Case

The case has been initiated upon the application submitted by the Ombudsman. The Ombudsman had requested the Saeima, both prior to and following the adoption of the contested norm, to

eliminate deficiencies in the contested norm, since it, allegedly, places disproportional restrictions upon persons' right to the inviolability of private life.

The Court's Findings and Ruling

The Constitutional Court recognised that the right to inviolability of private life comprised also the protection of a natural person's data. [10] Moreover, the contested norm restricts not only the rights of parents – debtors of maintenance payments, but also the rights of children. [11.1, 11.2]

The Constitutional Court recognised that with regard to debtors of maintenance payments the restriction upon fundamental rights was justifiable. The Court, in examining the restriction, recognised that it had been established by law and that the restriction had legitimate aims – protection of other persons' rights and protection of public welfare. I.e., the norm furthers a situation, where the child receives means necessary for his or her development from parents, and also that the State recovers the resources that the Fund has provided for child maintenance. [13, 14.2]

The Constitutional Court took into account information provided by the Fund, which proved that application of the contested norm had furthered a situation, where parents better fulfilled their obligation to support their child. At the same time the contested norms are also facilitating the protection of public welfare, since they ensure that a child's fundamental rights are respected, which is in the interests of the whole society, and balancing the contributions to and disbursements from the Fund. [16]

The Court noted, *inter alia*, that in balancing the rights of the child and the rights of a person, who is not fulfilling his obligations, the child's fundamental rights should be given the priority. [18.3] Thus, the Constitutional Court concluded that with respect to the rights of debtors of maintenance payments the restriction should be recognised as being proportional.

However, the Constitutional Court recognised that the contested norm placed disproportional restrictions upon children's right to private life. The Court noted, *inter alia*, that as the result of identifying a debtor's child, information accessible to third persons might indicate, whether a child's parent had had a dispute concerning maintenance of the particular child or another child, that the parent is not performing a court's judgment voluntarily and that means of maintenance are paid by the State instead of him. The fact that such information comes at the disposal of third persons could cause adverse consequences for the child, for example, subject the child to the risk of emotional abuse, cause a feeling of discomfort for the child, promote social exclusion. The Constitutional Court found that in the course of adopting the contested norm, alternatives that

would be less restrictive upon children's rights were not examined and assessed, however, such alternatives existed. [19.1 – 19.6]

Thus, the Constitutional Court recognised the contested norm **as being incompatible with Article 96 of the Satversme**. The Court noted that in recognising the contested norm as being incompatible with Article 96 of the Satversme, insofar it applies to a debtor's child, the publishing of debtors' data would not be discontinued and it would continue to restrict the fundamental rights of a debtor's child. Thus, the Constitutional Court arrived at the conclusion that protection of the fundamental rights established for a debtor's child in Article 96 of the Satversme could be ensured only by recognising the whole regulation included in the contested norm as being incompatible with the Satversme. [19.7]

In deciding on the date, as of which the contested norm becomes invalid, the Constitutional Court recognised that in this case the legislator should observe a balance between different fundamental rights of a child, i.e., the right to development and the right to inviolability of private life. The legislator needs time to assess the ways of balancing these rights. Therefore the Constitutional Court ruled that **the contested norm would become invalid as of 1 February 2017**.

The Judgement by the Constitutional Court is final and not subject to appeal. The Judgement will enter into force on the day it is published in the official journal "Latvijas Vēstnesis". 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/2015/07/2015-18-01_Spriedums.pdf

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.

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