



The norm, which prohibits a judge as a public official to be an assistant to a disabled member of his family, while living in a shared household, is incompatible with the Satversme

On 27 June 2016 the Constitutional Court passed a judgement in Case No. 2015-10-01 “On Compliance of Section 7(3) of the law “On Preventing Conflict of Interest in Activities of Public Officials” with the first sentence of Article 110 and the first sentence of Article 91 of the Satversme of the Republic of Latvia”.

Contested Norm

Section 7(3) of the Law “On Preventing Conflict of Interest in Activities of Public Officials” defines the offices and types of occupation, with which the office of a public official (also that of a judge) may be combined.

The Norms of Higher Legal Force

The first sentence in Article 91 of the Satversme: “All human beings in Latvia shall be equal before the law and the courts.”

The first sentence in Article 110 of the Satversme: “The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. “

The Facts

The constitutional complaint was submitted by a judge, who lives in a shared household with her mother, who is a person with disability. She considers that the family has the right to use the state support for ensuring an assistant’s services to her mother. Such support would make it easier for the family to care for a person with disability.

Everybody, irrespectively of the number of family members, income of the family or the field, where a person is employed, has the obligation to care for their disabled family members. A person, who holds the office of a judge, in case of necessity may provide an assistant’s services to his or her family member. However, the contested norm, due to the prohibition established for a judge to combine offices, prohibits the applicant from being

her mother's assistant. Allegedly, this violates the principle of equality established in the first sentence of Article 91 of the Satversme and the right established in the first sentence of Article 110 of the Satversme to protection of the family.

The applicant holds that judges should have equal rights to provide an assistant's services to a disabled family member, if they live in a shared household.

Court's Findings and Rulings

The Constitutional Court established that the legal reasoning in the case under examination is identical to the one provided in Case No. 2015-10-01. Therefore the findings expressed in the judgement in Case No. 2015-10-01 are applicable to it. [14]

The Constitutional Court noted that it had already reviewed constitutionality of the contested norm and had recognised it as being incompatible with the first sentence of Article 91 of the Satversme with respect to a judge, who needed to provide an assistant's services to her disabled child. [16]

The Constitutional Court recognised that the applicant's situation in the case under review on its merits did not differ, since she as a judge was subject to the same prohibition to provide an assistant's services to a family member, who was a person with disability, when living in a shared household with this person. Thus, even though the contested norm has a legitimate aim – protection of other persons' rights and of democratic state order, in the applicant's situation the norm is not appropriate for reaching the legitimate aim. [17]

Hence, the contested norm is incompatible with the first sentence of Article 91 of the Satversme.

The Constitutional Court noted that the system of social and economic support intended for a family, which included a person with disability, should be improved so that public officials could receive the support established by the State. [18]

The Judgement by the Constitutional Court is final and is not subject to appeal. It shall 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/2015/10/2015-22-01_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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