



The norm that provides that a decision by the Prison Administration on increasing a sentenced prisoner's regime of serving the sentence is not subject to appeal is incompatible with the *Satversme*

On 18 May the Constitutional Court has passed judgement in Case No. 2016-12-01 "On Compliance of Section 50²¹ (5) of the Sentence Execution Code of Latvia with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The Contested Norm

Section 50²¹ of the Sentence Execution Code of Latvia establishes the procedure for appealing against decisions by the evaluation committee. The fifth part of this Section provides: "A decision by the Prison Administration shall not be subject to appeal."

The Norm of Higher Legal Force

The first sentence of Article 92 of the *Satversme*: "Everyone has the right to defend his or her rights and lawful interests in a fair court."

The Facts of the Case

The case has been initiated on the basis of an application submitted by the Department of Administrative Cases of the Supreme Court. The applicant is examining a case that has been initiated on the basis of an ancillary complaint submitted by a prosecutor of Jelgava Prosecutor's Office. I.e., in the particular case the evaluation committee of Jelgava Prison adopted a decision on increasing a sentenced prisoner's the regime of serving the sentence. The Prison Administration (hereinafter also – the Administration) has left this decision unchanged. An application with respect to the Administration's decision was submitted to the Administrative District Court, and an ancillary complaint has been submitted to the Supreme Court with respect to the court's refusal to accept the application.

The Applicant notes that the decision by the evaluation committee on increasing the regime for serving the sentence significantly affects the sentenced prisoners right to private life. Since the contested norm denies access to court to appeal against the decision on reinforcing the regime of serving the sentence, it restricts a person's rights, the

protection of which falls within the scope of the first sentence of Article 92 of the *Satversme*.

The Court's Findings and Ruling

On the issue of terminating legal proceedings

The *Saeima* holds that the court, in examining the prosecutor's right to turn to court in the particular case, did not need to apply the contested norm of the case under review. [9]

The Constitutional Court found that the applicant in the case under review had to apply the contested norm; therefore the submitted application meets the requirements set in the Constitutional Court Law. Thus, in the case under review no grounds for terminating legal proceedings defined in Para 3 of Section 29(1) are present, and legal proceedings must be continued. [9]

On the limits of reviewing the case

In view of the actual circumstances of the administrative case indicated in the application and the fact that the applicant sees incompatibility of the contested norm with the first sentence of Article 92 of the *Satversme* with respect to increasing the sentenced prisoner's regime for serving the sentence, as well as the fact that the *Saeima* has examined constitutionality of the contested norm on the basis of arguments regarding increasing the regime for serving the sentence, the Constitutional Court will examine compatibility of the contested norm with the first sentence of Article 92 of the *Satversme*, to the extent this norm applies to the decision by which a sentenced prisoner's regime of serving the sentence is reinforced. [10.2]

On the right to a fair trial

A sentenced prisoner's obligations and restrictions upon rights at the institution for deprivation of liberty is a legal tool to perform educational function as part of serving the sentence and to make the person law-abiding also after he has served his sentence. [12.1]

Progressive enforcement of sentence is based upon differentiation of sentenced persons within each type of institution and regime. [12.2] Thus, during progressive enforcement of

sentence the sentenced prisoner, in accordance with his behaviour, may exercise a certain scope of rights. Differences in the scope of rights mainly affect possibilities with respect to private life. [13.1]

The Constitutional Court holds that in adopting a decision on changing the regime of serving the sentence, the evaluation committee of the institution for deprivation of liberty (hereinafter - the evaluation committee), essentially decides on issues related to conditions, in which a sentence linked to deprivation of liberty is served. By increasing the regime of serving the sentence, the scope of rights to private life that can be exercised in the institution for deprivation of liberty is decreased for the sentenced person. [13.2]

The Constitutional Court found that the contested norm, insofar it applied to a decision by which the regime for serving the sentence was increased, restricted such right of a person the protection of which should be ensured in a fair trial; thus, a person's right, the protection of which falls within the scope of the first sentence of Article 92 of the *Satversme*, is being restricted. [13.2]

The Constitutional Court recognised that the Head of Administration is the only person, who reviews the legality and validity of a decision by the evaluation committee. Moreover, the evaluation committee consists only of persons subordinated to the Administration; i.e. the decision on increasing the regime for serving the sentence is adopted within the framework of institutions subordinated to the Administration. This procedure does not create confidence in the independence of proceedings. [14.2, 14.3]

The Constitutional Court finds that neither the Sentence Execution Code of Latvia, nor the Cabinet Regulation that regulates the internal rules of procedure of an institution of deprivation of liberty, the procedure in which the evaluation committee works and the evaluation criteria, impose an obligation upon the institution's administration to submit a proposal to the evaluation committee to increase the regime for serving the sentence, if any grounds for submitting it are established. Submitting of such a proposal and the criteria for evaluating it, essentially, very much depend upon the opinion held by the institution's administration on severity of the committed offence and the sentenced prisoner's behaviour. Thus, the practice with respect to cases, when the administration of an institution for deprivation of liberty has to turn to the evaluation committee with a

proposal to increase the regime for serving the sentence, may differ in different institutions for deprivation of liberty. [14.4]

A decision of the evaluation committee by which the regime for serving the sentence is increased is closely linked to disciplinary sanctions that have been applied to the sentenced prisoner. I.e., the evaluation committee may decide on increasing the regime for serving the sentence only if the sentenced prisoner has been disciplinary punished for a single gross violation of the prison regime or systemic violations of the regime. [14.5]

The sentenced prisoner has the right to appeal against the disciplinary punishment at least in one instance. However, the legislator has not envisaged the possibility for a sentenced prisoner to protect his right that has been infringed upon in a fair court in those cases, where the evaluation committee and the Administration have decided to increase the regime for serving the sentence. Reviewing the decision on imposing a disciplinary punishment in court does not ensure control over increasing the regime for serving the sentence; moreover, as to their essence and consequences these should be separated. The Constitutional Court finds that the decision on increasing the regime for serving the sentence restricts such rights of a sentenced prisoner that should be defended in court. [14.5]

The established legal remedy, i.e., increasing the regime for serving the sentence and reviewing of the respective decision only within structures of the executive power, irrespectively of the procedure that is implemented, cannot be considered as such that can be designated as “court”. A legal remedy like this does not prevent all risks linked to assessing the validity of the decisions and, thus, creates doubts as to the independence and objectivity of the party adopting the decision [14.6]

To ensure to the sentenced prisoner protection of his rights that have been infringed upon, he must be ensured at least a minimum right to turn to court; i.e. the right to have the case examined at least in one judicial instance. Thus, the legality and validity of the decision would be reviewed only in cases, where rights are infringed upon. [14.6]

On the procedure, in which the contested norms become invalid

The Constitutional Court found that if the contested norms were recognised and being invalid as of the moment of their adoption or any other date in the past, it would impose an

obligation upon courts to re-examine the already established legal relations. To ensure the principle of legal security, the contested norm cannot be granted general retroactive force. [15.1]

The Constitutional Court recognised that the legislator needed time to eliminate deficiencies in legislation identified in this judgement. [15.2]

The Constitutional Court decided:

The recognise the contested norm, insofar it applies to a decision on increasing a sentenced prisoner's regime for serving the sentence, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and invalid as of 1 January 2018.

With respect to the sentenced prisoner, for the protection of whose right an application was submitted by a prosecutor to the Administrative District Court, the contested norm is recognised as being invalid as of the moment when his right was infringed upon. [15.3]

The judgement by the Constitutional Court is final and is not subject to appeal, it has entered into force on the day of its publication.

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/2016/07/2016-12-01_Spriedums.pdf

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 ruling 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.

Ketija Strazda

Assistant to the President of the Constitutional Court
Ketija.Strazda@satv.tiesa.gov.lv

+371 67830737, + 371 26200580