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**A case initiated regarding a norm of the Sentence Execution Code of Latvia that prohibits appealing against the decision by the Head of the Prison Administration by which a convicted person has been refused mitigation of the regime for serving a sentence**

On 3 August 2017 the 1<sup>st</sup> Panel of the Constitutional Court initiated case “On Compliance of Section 50<sup>21</sup>(5) of the Sentence Execution Code of Latvia, insofar it Applies to a Decision to Refuse Mitigating the Regime for Serving a Sentence, with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**Contested Norm**

Section 50<sup>21</sup>(5) of the Sentence Execution Code of Latvia: “The decision by the Head of Prison Administration is not subject to appeal.”

**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.”

**Facts of the Case**

The case has been initiated with respect to applications by the Department of Administrative Cases of the Supreme Court (hereinafter – the Supreme Court). The Supreme Court is reviewing administrative cases, in which ancillary complaints regarding refusals of the Administrative District Court to accept for examination applications by convicted persons are examined. In one of these applications a convicted person requested to recognise as being unlawful a decisions by the head of the institution for deprivation of liberty, refusing to transfer an application by the convicted person regarding mitigating regime for serving a sentence to the evaluation committee of this institution. In the second application the convicted person requested revoking of a decision by the evaluation committee to refuse mitigating the regime for serving the sentence.

The Department of Administrative Cases of the Supreme Court expresses the opinion that the contested norm, insofar it applies to a decision, by which mitigation of the regime for serving a sentence is refused, places disproportionate restrictions upon persons' right to a fair trial. However, this right may be denied only in exceptional cases, when an institution adopts an internal decision with respect to person, which is especially subordinated to it. The Supreme Court notes that in each regime for serving a sentence the scope of rights granted to a convicted person differs, in accordance with the progressive system of sentence execution established in the state, therefore a decision on mitigating the regime for serving a sentence may broaden the scope of a convicted person's right to private life. In a situation, where a convicted person has been refused mitigation of the regime for serving a sentence, the contested norm, which prohibits from appealing this decision to court, is said to be incompatible with the first sentence of Article 92 of the *Satversme*.

### **Legal Proceedings**

The Constitutional Court has requested the *Saeima* to provide a reply on the facts of the case and legal substantiation by 4 October 2014.

The term for preparing the case is 3 January 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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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 home page of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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