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**The norms, which establish the obligation of state and local government institutions to publish on their homepages and keep for at least eight years the remuneration of their officials and employees, are incompatible with the *Satversme***

On 6 March 2019, the Constitutional Court passed the judgement in case No. 2018-11-01 “On Compliance of Para 1 and Para 2 of Section 3 (9<sup>2</sup>) of the law “On Remuneration of Officials and Employees of State and Local Government Authorities” with Article 96 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Para 1 and Para 2 of Section 3 (9<sup>2</sup>) of the law “On Remuneration of Officials and Employees of State and Local Government Authorities”:

“To ensure that the human right to the freedom of speech, enshrined in Article 100 of the *Satversme*, including openness of information, is respected and effectively exercised as conveniently as possible for private persons, the remuneration of all employees of the state and the local governments shall be made totally transparent to the public in the following procedure:

1) the remuneration and other amounts of money that they are entitled to of all officials and employees of an institution shall be published every month on the Internet homepage of the institution, indicating the name, surname, position and the calculated amount, unless the law provides otherwise;

2) the information about the calculated remuneration and other amounts of money that they are entitled to of the officials and employees of the institution shall available on the Internet homepage of the institution for at least eight years. If the institution is liquidated, the accessibility of this published information until the expiry of the set term shall be ensured on the Internet homepage of a higher institution.”

## **The Norm of Higher Legal force**

Article 96 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*):  
“Everyone has the right to inviolability of his or her private life, home and correspondence”.

## **The Facts**

The case has been initiated on the basis of an application by the employees of a number of state established higher education institutions. The contested norms envisage that the information about the remuneration calculated for the employees of state established institutions of higher education, as well as other monetary amounts that they are entitled to must be published on the Internet homepages of the respective higher education institutions and that this information must be kept on the homepage for at least eight years. The applicants hold that such publishing of information and its prolonged availability on the Internet restrict their fundamental right to inviolability of private life included in Article 96 of the *Satversme*.

The applicants hold that the restriction included in the contested norms had not been introduced by a law adopted in due procedure because in the adoption of the law the objections made by the President of the State as well as other institutions and persons regarding the incompatibility of the restrictions included in the contested norms with Article 96 of the *Satversme* and the requirements set for data protection had not been taken into account. The restriction is said to lack a legitimate aim, and it is contended that the restriction is not proportionate.

## **The Court’s Findings**

On terminating legal proceedings in the case

First and foremost, the Constitutional Court examined the issue, whether the legal proceedings in the case should not be terminated since the contested norms had not been applied to some of the applicants. The Constitutional Court recognised: the fact that the legal consequences of the contested norms had not set in for some of the applicants due to reasons beyond their control did not mean that they did not fall within the scope of these norms. Due to the imperative nature of the contested norms, the infringement on the applicants' fundamental rights occurred at the moment when these norms entered into force. Therefore the Constitutional Court concluded that the legal proceedings in the case should be continued. [14., 15.3.]

On the scope of Article 96 of the *Satversme*

The Constitutional Court recognised that the right to inviolability of private life, included in Article 96 of the *Satversme*, protected, *inter alia*, also the personal data. [16.1.]

In establishing the content thereof, also the legal acts of the European Union must be taken into account, specifically, – Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter – the Data Regulation). Pursuant to Para 1 and Para 2 of Article 4 of the Data Regulation, publishing and storing of the information specified in the contested norms regarding the applicants must be considered as the processing of personal data. [16.2.]

On whether the restriction on fundamental rights has been established by law

First of all, the Constitutional Court examined, whether the restriction on fundamental rights included in the contested norms had been established by law. The Constitutional Court noted that the *Saeima*, in exercising the right to legislate, enjoyed discretion insofar the general legal principles and other norms of the *Satversme* were not infringed upon. One of the general principles of law, which is derived from the basic norm of a democratic state governed by the rule of law, is the principle of a state governed by the rule of law. Certain requirements regarding the process of legislation also follow from it. [18., 18.1.]

In the process of legislation, the general legal principles, the pre-requisites and requirements defined in the *Satversme* and the *Saeima* Rules of Procedure, also with respect to the course of adopting draft laws that are linked to the state budget, must be abided by. [18.1.]

The legislator must examine compliance of the envisaged legal norms with the legal norms of higher legal force and the alignment thereof with the legal system. Where necessary, the envisaged legal regulation should be substantiated by explanatory research. In the creation of legal norms, in particular, in cases where the fundamental rights are restricted, the legislator must have as the basis the social impact study of the intended legal regulation and must consider the measures required for introducing and enforcing the said legal regulation, as well as risk estimates provided by the experts of the fields. Moreover, the legislator must inform the society about the intended legal regulation in a timely and due manner. [18.1.]

The said requirements are the main but not only elements that specify the principle of good legislation that follows from the principle of the state governed by the rule of law. These, *inter alia*, provide the possibility to understand why a restriction on fundamental rights established by the legislator is admissible in a democratic state governed by the rule of

law. These requirements must be met whenever a restriction of fundamental rights is established. [18.1.]

*On the link between the contested norms and the state budget*

The contested norms were included in a law, the draft of which was included in the package of draft laws accompanying the annual state budget law. The Constitutional Court noted that the legislator had the right and also the obligation to include in annual state budget law and the package of draft laws accompanying it only such matters that pertained to the particular fiscal year and were closely linked to the use of the fiscal resources of the state. If a draft law or a proposal fails to meet these criteria the *Saeima* must exclude it from the package of draft budget laws. [18.2.]

The Constitutional Court noted: solely the fact that the contested norms determined the use of the budget of state and local government institution in relation to the freedom of information did not mean that these norms had to be adopted to regulate the financial operation of the state within the framework of the respective fiscal year. A draft law should be considered as applicable to the particular fiscal year if it envisages regulation that influences the fiscal operations of the state in the respective fiscal year. The contested norms do not establish regulation of the kind. Therefore the Constitutional Court concluded that the legal regulation included in the contested norms could not have been included in the package of draft laws accompanying the state budget law. [18.2.]

*On assessing the objections made by the President*

The Constitutional Court examined whether the *Saeima*, in adopting the contested norms, had to assess the objections made by the President upon requesting reconsideration of legal regulation similar to the contested norms – the law adopted on 22 June 2017

“Amendments to the State Administration Structure Law” (hereinafter – amendments to the State Administration Structure Law) – by the *Saeima*. [18.3.]

The Constitutional Court found that the aim of the legal institution of reconsidering a law, established in Article 71 of the *Satversme*, was to foster the internal alignment of the legal system. If the President has expressed objections regarding the envisaged legal regulation the *Saeima* may not evade assessment of the constitutionality of such legal regulation and of its compliance with the internal alignment of the legal system by including the said regulation in another draft law. A situation like this would be incompatible with the principle of good legislation, the principle of inter-institutional loyalty and the principle of good faith. [18.3.1.]

The amendments to the State Administration Structure Law had envisaged a restriction on the right to inviolability of private life, included in Article 96 of the *Satversme*, which, substantially, was similar to the one established by the contested norms. Therefore, in the course of adopting the contested norms, the *Saeima* had the obligation to examine also the objections against the amendments to the State Administration Structure Law expressed by the President. The *Saeima*, however, had not examined these objections on their merits. [18.3.]

#### *On complying with the Data Regulation*

At the moment when the contested norms were adopted, the Data Regulation had entered into force but had not become enforceable yet. In this period, the Member States had to take the legislative measures necessary to ensure compliance of the national legal norms with the legal norms of the European Union and to prepare for the application of the legal norms of the European Union. [18.4.1.]

In accordance with the principle of good legislation, the *Saeima*, in the process of adopting the contested norms, had to examine the requirements regarding data protection set in the Data Regulation. An assessment like this was necessary to ensure that the measure chosen by the *Saeima* would not be contrary the loyalty principle of the Member States of the European Union and would not hinder reaching the aims of the European Union. However, the Constitutional Court found that the *Saeima* had not examined the compliance of the contested norms with the Data Regulation and their alignment. [18.4.2.]

*On the substantiality of the infringements made in the course of legislation*

The Constitutional Court found that the principle of good legislation had not been complied with in the course of legislation. The infringements referred to above, in particular, – in the interconnection thereof, had to be recognised as being substantial. The Constitutional Court noted that valid doubts existed that if, in the course of legislation, the legislator had examined the objections and opinions expressed with respect to the restriction on fundamental rights included in the contested norms then a different decision would have been adopted as the outcome of the legislative process. Hence, the Constitutional Court found that the restriction on fundamental rights included in the contested norms had not been established by a law adopted in due procedure and these norms were incompatible with Article 96 of the *Satversme*. [18.5.]

On the date as of which the contested norms become void

The Constitutional Court noted that, in a democratic state governed by the rule of law, the principle that a legal norm, which had not been adopted in due procedure, could not cause legal consequences was abided by. Therefore the Constitutional Court found that the contested norms became void as of the moment they had entered into force. [19.]

**The Constitutional Court held:**

to recognise Para 1 and Para 2 of Section 3 (9<sup>2</sup>) of the law “On Remuneration of Officials and Employees of State and Local Government Authorities” as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia and void as of the moment they entered into force.

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the day it is published. The judgment will be published in the official journal “Latvijas Vēstnesis” within the term defined in Section 33 (1) of the Constitutional Court Law.

The text of the judgement 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/2018/07/2018-11-01\\_Spriedums.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/07/2018-11-01_Spriedums.pdf#search=)

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

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