



**A case initiated with respect to the prohibition to persons, who have been punished for certain criminal offences, to work in institutions where children are staying**

On 15 July 2020, the 1<sup>st</sup> Panel of the Constitutional Court initiated the case “On Compliance of Para 1 of Section 72 (5) of Law on the Protection of the Children’s Rights with the First Sentence of Article 91 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Para 1 of Section 72 (5) of Law on the Protection of the Children’s Rights (hereafter – the contested norm) provides that persons, who have been convicted of criminal offences that are related to violence or threats of violence, may not work in child care, educational, health care, and other such institutions where children are staying, at events for children and such events in which children take part, may not perform voluntary work, as well as may not provide services according to an agreement entered into, irrespective of whether or not the conviction is extinguished or set aside (except persons who provide extraordinary or temporary services, as well as services which are provided in the absence of a child).

**The Norms of Higher Legal Force**

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

The first sentence of Article 106 of the *Satversme*: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

## **The Facts**

The case was initiated on the basis of an application by the Supreme Court. It is hearing a civil case, in which a claim has been brought to recognise the dismissal, which had been substantiate, *inter alia*, by the contested norm, as invalid, to reinstate the person in his job and to collect the average earnings for the period of forced absence from work.

The Supreme Court holds that the contested norm is incompatible with the first sentence of Article 106 of the *Satversme* because the restriction on fundamental rights, included in it, i.e., the prohibition for persons, who have been punished for criminal offences related to violence or threats of violence (irrespective of whether the conviction has been extinguished or set aside), to work in institutions where children are staying, is not necessary. The legitimate aim of this restriction on fundamental rights could be reached by measures that would restrict a person’s rights to a lesser extent, for example, by allowing an individual assessment of each case.

Likewise, the contested norm is said to be incompatible also with the principle of legal equality, included in the first sentence of Article 91 of the *Satversme*, because differential treatment is allowed with respect to the plaintiff in the particular civil case, compared to other groups of persons, for example, persons who may not work as a teacher if they have been punished for committing an intentional criminal offence and persons who may not become an adopter of a child if they have been punished for a criminal offence related to violence or

threats of violence. A case-by-case assessment is admissible in the cases referred to above, whereas the contested norm does not envisage a possibility like this.

### **The Legal Proceedings**

The Constitutional Court has requested the *Saeima* to submit a written reply on the facts of the case and the legal reasoning by 15 September 2020.

The term for preparing the case is **15 December 2020**. The Court will decide on the type of procedure and the date for hearing the case after it has been prepared.

### **The decision in Latvian on initiation of the case is available here:**

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-36-01\\_Lemums\\_ierosinasana.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-36-01_Lemums_ierosinasana.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 judgement 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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