



The norm that regulates the right of sentenced persons to leave the territory of the institution for deprivation of liberty if a close relative has deceased is incompatible with the *Satversme*

On 18 September 2020, the Constitutional Court delivered the judgement in case No. 2019-32-01 “On Compliance of Section 49² (1) of the Sentence Execution Code of Latvia with the Second Sentence of Article 91 and Article 96 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Section 49² (1) of the Sentence Execution Code of Latvia provides:

“A convicted person who is serving the sentence at the highest level of the sentence serving regime in a partly-closed prison, an open prison or a juvenile correctional institution may, by lodging a written submission to the head of the deprivation of liberty institution, request a permission to temporarily leave the deprivation of liberty institution for up to five twenty-four hour periods due to death of a close relative or a serious illness that endangers the life of a sick person.”

Norms of Higher Legal Force

The second sentence of Article 91 of the *Satversme* of the Republic of Latvia: (hereafter – the *Satversme*): “Human rights shall be realised without discrimination of any kind.”

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

The Facts

The case was initiated by the Constitutional Court on the basis of a constitutional complaint. The Applicant is serving his prison sentence in a closed prison on the medium level of the regime for serving the sentence. While the Applicant was serving the sentence, his mother died. The applicant had requested the head of institution for deprivation of liberty permission to attend his mother’s funeral but the permission was not granted because the contested norm did not envisage this right for the Applicant.

The Applicant holds that the contested norm, which does not provide to a convicted person, who is serving his sentence in a closed prison, the right to leave temporarily the prison territory in connection with the death of a close relative infringes upon his right to private life. Moreover, it is maintained that the contested norm also violates the prohibition of discrimination on the grounds of gender because women, who are sentenced for committing a criminal offence of similar severity, serve a more lenient sentence and, in a similar case, would be able to attend the funeral of a close relative.

The Court's Findings

On terminating the legal proceedings:

The institution, which issued the contested act, – the *Saeima* – has requested termination of legal proceedings in the case because, on 23 June 2020, amendments to the Sentence Execution Code of Latvia entered into force. Section 49⁴ has been added to the law, envisaging the right to all sentenced persons to pay their last respects to a deceased relative in the prison territory.

The Constitutional Court noted that the legal proceedings had to be continued because the present case had been initiated on the basis of a constitutional complaint. Application of the contested norm had caused direct negative consequences for the Applicant – prohibition to attend his mother's funeral, and he had requested recognising the contested norm as void as of the date of its application. Moreover, although the legislator, by introducing amendments to the Sentence Execution Code of Latvia, has established the possibility to pay one's last respects to a deceased relative in the territory of the prison, even after this norm has come into effect, the possibility to temporarily leave the territory of the institution for deprivation of liberty if a close relative has died, is not envisaged for a sentenced person, who is serving the sentence in a closed or partly-closed prison on the lowest regime for serving the sentence. [9.]

On specifying the claim:

The Constitutional Court noted that it followed from the application that the Applicant was not challenging the entire contested norm but the fact that leaving the prison territory in the case of a close relative's death was not applied also to the sentenced persons who

were serving their sentences in a closed or partially-closed prison on the lowest regime for serving the sentence. Therefore, in the present case, the contested norm must be reviewed insofar it provides that only a sentenced person, who is serving the sentence on the highest level of the sentence serving regime in a partly-closed prison, an open prison or a juvenile correctional institution may temporarily leave the place for deprivation of liberty in the case of a close relative's death. [10.]

On the scope of Article 96 of the *Satversme*:

Having concluded that it followed from the arguments provided by the Applicant, the *Saeima* and the summoned persons that the basic issue in the case was related to the right to inviolability of private life, included in Article 96 of the *Satversme*, the Constitutional Court decided to examine, first and foremost, the compliance of the contested norm with Article 96 of the *Satversme*. [11.]

The Constitutional Court noted that the concept of private life was broad therefore the right to inviolability of private life included a person's autonomy and self-determination as well as the right to establish and develop interpersonal relationships. These relationships are based on human dignity and freedom. Human dignity and other general human freedoms determine that also a deceased person must be treated with dignity, *inter alia*, by burying the person.

Attending the funeral of a close relative is an important manifestation of a person's autonomy and self-determination. One of the possible aspects of the funeral is the paying of the last respects to the deceased by the family collectively, thus, allowing to develop relationships between the family members. Therefore, attending the funeral of a deceased relative falls within the scope of the right to inviolability of private life.

A person serving the sentence at a place for deprivation of liberty also retains his fundamental rights, *inter alia*, the right to inviolability of private life. Hence, attending the funeral of a close relative falls within the scope of the right to inviolability of private life, included in Article 96 of the *Satversme*, which is applicable also to a person who has been punished by a sentence of deprivation of liberty. [12.]

On the restriction on Article 96 of the *Satversme*:

The Constitutional Court noted that contested norm prohibited a sentenced person, who was serving the sentence on the lowest regime for serving the sentence at a closed or partly-closed prison, from temporary leaving the territory of the institution for deprivation of liberty to attend the funeral of a close relative. Thus, the contested norm restricts the right to the inviolability of private life of a person who is serving a prison sentence on the lowest regime for serving the sentence at a closed or partly-closed prison. [13.]

On whether the restriction has been established by law

The Constitutional Court did not doubt that the restriction on rights, included in the contested norm, had been established by a law, adopted in due procedure, was sufficiently clear and accessible. Responding to the Applicant's argument that the contested norm was incompatible with the judgement of the European Court of Human Rights in the case "Ēcis *versus* Latvia", the Constitutional Court noted that this judgement had been delivered after the contested norm had come into force. Moreover, the European Court of Human Rights, in view of its competence, which differs from that of the Constitutional Court, had reviewed in it the infringement on a person's rights rather than the contested norm in general. [14.]

On the legitimate aim of the restriction

The Constitutional Court found that the restriction, which set out that the sentenced persons who served their sentences on the lowest regime for serving the sentence at a closed or partly-closed prison, had a legitimate aim – protection of public security. [15.]

On the proportionality of the restriction

The Constitutional Court noted that the contested norm, by restricting the possibility of sentenced persons to leave temporarily the prison territory, decreased the possibility of threat to the public. Hence, the prohibition to leave temporarily the prison territory is suitable for reaching the legitimate aim – protection of public security. [17.]

In stating their opinions, the Applicant, the *Saeima* and several of the summoned persons pointed to alternative measures that would allow reaching the aim of the restriction on fundamental rights. [18.]

The *Saeima* pointed to the new norm in the Sentence Execution Code of Latvia, which allowed sentenced persons to pay their last respects to the deceased relative in the territory of the institution for deprivation of liberty. Whereas the Constitutional Court recognised that paying one's last respects to a deceased relative in the territory of the institution for deprivation of liberty could not be deemed to be an alternative to attending the funeral because of the special role that funeral has in the life of an individual and society. [18.1.]

However, the Constitutional Court recognised that there was a more lenient measure that would allow reaching the legitimate aim of the restriction on fundamental rights in the same quality. It can be done by individual assessment of the request to leave temporarily the prison territory in a case of a close relative's death submitted by a sentenced person, even such who is serving the sentence on the lowest regime for serving the sentence at a closed or partly-closed prison. The sentenced persons who are serving the sentence on the lowest regime for serving the sentence at a closed or partly-closed prison have committed different criminal offences, targeting different interests. The Constitutional Court noted that the legislator, in adopting the contested norms, had not substantiated why all sentenced persons, who were generally prohibited from attending the funeral of a close relative, should be considered as being so dangerous for society that such a total prohibition to attend the funeral of a close relative should be applied to them. However, the Constitutional Court underscored that the right to private life and, thus, also the possibility to attend the funeral of a close relative, was not absolute. Whether, in such a case, the sentenced person should be granted the permission to leave the prison territory temporarily, should be assessed by taking into account both the severity of the criminal offence, committed by the person, as well as other circumstances in the case. Thus, public security and a sentenced person's right to inviolability of private life would be protected at the same time. Since a more lenient measure that would allow reaching the legitimate aim in the same quality exists the Constitutional Court found that the contested norm was incompatible with Article 96 of the *Satversme*. [18.2.]

On the restriction on Article 91 of the *Satversme*:

The Constitutional Court noted that since the contested norm had been recognised as being incompatible with Article 96 of the *Satversme* it was no longer necessary to examine the compliance of this norm with Article 91 of the *Satversme*. At the same time,

the Court reminded that, already in its judgement in case No. 2018-25-01, it had recognised that legal regulation, which, only on the basis of the criterion of gender, without taking into account the individual needs and risks of a sentenced person, established stricter regime for serving the sentence as well as different rights and restrictions that followed from it (in particular, restrictions on the right to inviolability of private life) for men compared to women did not ensure respect for the rights of sentenced men. [19.]

On the date as of which the contested norm becomes void

The Constitutional Court decided that, in order to eliminate, to the extent possible, the adverse consequences caused for Applicant by the application of the contested norm, with respect to him it had to be recognised as being void as of the moment when the infringement on his fundamental rights occurred. With respect to other persons, the contested norm becomes void on the date when the judgement is published. In examining requests by sentenced persons, who serve their sentences on the lowest regime for serving the sentence at a closed or partly-closed prison, to leave temporarily the territory of the institution for deprivation of liberty in connection with the death of a close relative, Article 96 of the *Satversme* and the findings expressed in this judgement are directly applicable, likewise, the same procedure as when examining the requests received from the sentenced persons who serve their sentences at the highest level of the sentence serving regime in a partly-closed prison, an open prison or a juvenile correctional institution. [20.]

The Constitutional Court held:

1. To recognise Section 49² (1) of the Sentence Execution Code of Latvia, insofar it does not envisage for sentenced persons who serve their sentences on the lowest regime for serving the sentence at a closed or partly-closed prison, to leave temporarily the territory of the institution for deprivation of liberty in connection with the death of a close relative, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia.

2. With respect to the submitter of the constitutional complaint Juris Krasovskis, to recognise Section 49² (1) of the Sentence Execution Code of Latvia,

insofar it does not envisage for sentenced persons who serve their sentences on the lowest regime for serving the sentence at a closed or partly-closed prison, to leave temporarily the territory of the institution for deprivation of liberty in connection with the death of a close relative, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia and void as of the date when the infringement on his fundamental rights occurred.

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

The text of the judgement is available on the homepage of the Constitutional Court:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/12/2019-32-01_Spriedums.pdf

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.

Zanda Meinarte

Public relations specialist
of the Constitutional Court

Zanda.Meinarte@satv.tiesa.gov.lv

+ 371 67830759, + 371 26393803