



Satversmes tiesa

Press Release

• Case No 2020-21-01 •

18 January 2021

The prohibition for a convict to meet with a family member who has received permission to briefly leave another prison is incompatible with the Constitution

On 15 January 2021, the Constitutional Court passed a judgment in case No 2020-21-01 “On compliance of the first sentence of Section 45(5) of the Sentence Execution Code of Latvia with Article 96 of the Constitution of the Republic of Latvia”.

CONTESTED PROVISION

- First sentence of Section 45(5) of the Sentence Execution Code of Latvia:

“Convicted persons shall not be permitted to meet arrested persons and the persons who are serving a sentence in other deprivation of liberty institutions.”

PROVISIONS OF SUPERIOR LEGAL FORCE

- Article 96 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):

“Everyone has the right to inviolability of their private life, home and correspondence”.

FACTS OF THE CASE

The case was initiated by the Constitutional Court on the basis of an application filed by Artjoms Zablockis. While serving a sentence in an institution for deprivation of liberty, the Applicant requested permission from the head of the institution to meet with his [the Applicant’s] mother, who was serving her sentence in another prison but had received permission from the head of the respective prison to leave its territory. Such permission was not granted, and the refusal was based on the contested provision. The Applicant was of the opinion that the contested provision, which did not provide for the right of a convict serving a sentence in a deprivation of liberty institution to meet with a family member – mother, infringed on his right to inviolability of private life.

THE COURT'S FINDINGS

Clarifying the claim

The Constitutional Court observed that the contested provision applied to a wide body of different situations but concluded that in the case in question it would only be evaluated insofar as it provided that a convict is not allowed to meet with a family member if this family member is an individual serving a sentence in another prison and has received from the head of the respective institution permission to briefly leave the territory of that institution. [8]

Considering that the case in question did not concern situations when none of the individuals has received permission to briefly leave the prison territory, the Constitutional Court pointed out that the case did not involve a dispute about the positive obligations of the State, that is, the obligation to make it possible for the individuals serving sentences in two different prisons to meet by transporting one to the other, covering the cost of transport tickets, or in any other way. [8.3]

On the scope of Article 96 of the Constitution

The Constitutional Court indicated that the notion of private life was wide, therefore, the right to inviolability of private life included, inter alia, the right to establish and develop relationships with other people. [9]

Meeting with other individuals, family members in particular, is an important prerequisite for the implementation of an individual's right to private life, as such meetings allow people to restore and strengthen mutual relationships, including those within a family. The same fundamental human rights, as enshrined in the Constitution, are inherent to a convict and to other individuals. Therefore, the scope of the right to inviolability of private life, as enshrined in Article 96 of the Constitution, includes the right of a convict to build and maintain a relationship with a family member, including when this family member is serving a sentence in another place of deprivation of liberty. [9.1]

On the restriction of the rights enshrined in Article 96 of the Constitution

The Constitutional Court indicated that the contested provision was restricting the fundamental rights established by Article 96 of the Constitution for a convict wishing to

meet a family member who is serving a sentence in another place of deprivation of liberty. [10]

On whether the restriction had been established by law and had a legitimate aim

The Constitutional Court recognised that the restriction of fundamental rights contained in the contested provision had been established by law and had a legitimate aim – to protect public safety. [11, 12]

On the proportionality of the restriction

The Constitutional Court concluded that the application of the contested provision, that is, the restriction of a convict's right to meet with the family members who are serving sentences in other places of deprivation of liberty, ensured that the possible threat to public safety was prevented, as contacts between such individuals, at least in a percentage of cases, increased the risk of repetition of offences after the sentence had been served, did not contribute to the correction of the individual, and posed a threat to the internal order of the place of deprivation of liberty. Therefore, the prohibition of such meetings is an appropriate means of achieving the legitimate aim – to protect public safety – of the restriction of fundamental rights. [14]

The Applicant pointed out that it would be possible to achieve the legitimate aim by means that are less restrictive of the individual's fundamental rights. Specifically, it would be a less restrictive means if the circumstances of each situation were evaluated individually to decide whether such a meeting should be permitted. The Constitutional Court pointed to the dissimilar nature of different offences, as well as to the fact that the prohibition for any prisoner to meet with their family member who is serving a sentence in another place of deprivation of liberty did not allow for an evaluation of the type and severity of the offences committed by the two individuals, of whether the particular offence had been committed jointly by the family members, of both individuals' behaviour in prison, the length of the sentence served, and other circumstances. [15.1]

The Constitutional Court recognised that such a prohibition, i.e. one that does not allow for an individual evaluation, could only be permissible if such meetings always endangered public safety. The Court, however, did not find confirmation for the fact that each and every convict should automatically be considered as so substantial a threat to public safety that the prohibition for them to meet with a family member serving a sentence in another prison would be reasonable even without any individual evaluation. [15.1]

The Constitutional Court paid special attention to the aspect of resocialisation of a convicted individual, pointing out that there were no grounds for holding that the

prohibition of such meetings was always supportive of resocialisation. Although in some situations such meetings could delay the process of resocialisation, there is no reason to believe that a meeting with a family member who is serving a sentence in another place of deprivation of liberty could not possibly have a positive effect on the convict. Thus, resocialisation, considering its aims, should include an individual evaluation of specific cases. [15.2]

Given that there were more lenient means allowing to achieve the legitimate aim at the same quality level, the Constitutional Court concluded that the contested provision was incompatible with Article 96 of the Constitution. [15.3]

On the moment when the contested provision becomes void

The Constitutional Court ruled that, to rectify to the extent possible the adverse consequences caused for the Applicant by the contested provision, in respect of the Applicant this provision should be recognised as void as of the moment when the infringement on his fundamental rights occurred. In respect of other individuals, the contested provision is void as of the date when the judgment is published. In considering convicts' requests for permission to meet with their family members who are serving the sentence in another institution of deprivation of liberty, if one of the convicted individuals has received permission from the head of the prison to briefly leave the prison territory, Article 96 of the Constitution and the conclusions contained in this judgment are to be applied directly. [16]

The Constitutional Court held:

1. To recognise the first sentence of Section 45(5) of the Sentence Execution Code of Latvia, insofar as it, without an individual evaluation, forbids a convict to meet with a family member who is serving a sentence in another institution of deprivation of liberty and has received permission to briefly leave the territory of that institution, as being incompatible with Article 96 of the Constitution of the Republic of Latvia.
2. In respect of the complainant Artjoms Zablockis, to recognise the first sentence of Section 45(5) of the Sentence Execution Code of Latvia, insofar as it, without an individual evaluation, forbids a convict to meet with a family member who is serving a sentence in another institution of deprivation of liberty and has received permission to briefly leave the territory of that institution, as being incompatible with Article 96 of the Constitution of the Republic of Latvia and void as of the moment when the infringement of his fundamental rights occurred.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment comes into force on the day it is published. The text of the judgment is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/04/2020-21-01_Spriedums.pdf

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the website of the Constitutional Court at www.satv.tiesa.gov.lv. You are also invited to follow the information on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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