



Satversmes tiesa

Press release

Case No. 2020-50-01

11.06.2021

Norms That Prevent a Person Who Has Been Convicted of an Intentional Criminal Offence, Irrespective of the Expungement or Setting Aside of the Conviction, from Serving in the State Police, are Compliant with the Satversme

On 11 June 2021, the Constitutional Court adopted a judgement in Case No. 2020-50-01 "On Compliance of Section 4, Clause 4 of the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration with Article 101 and Article 106 of the Satversme of the Republic of Latvia".

THE CONTESTED NORM

Section 4, Clause 4 of the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration (hereinafter referred to as – the Law on the Course of Service):

"Such person may serve who has not been punished for an intentional criminal offence — irrespective of expungement or setting aside of the conviction."

NORMS WITH A HIGHER LEGAL FORCE

- Article 101, Paragraph One of the Satversme of the Republic of Latvia (hereinafter referred to as – the Satversme): "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service."
- 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 OF THE CASE

The case was initiated based on the application submitted by the Person G (hereinafter referred to as – the Applicant). The Applicant was retired from the service in the State Police because he was found guilty of committing an intentional criminal offence.

The Applicant referred to the Constitutional Court because he considered that the contested norm infringed his right to perform public service and the right to choose an occupation and workplace in accordance with his abilities and qualifications.

According to the Applicant, the Saeima, when adopting the contested norm, has not assessed the necessity of the prohibition to serve included therein, its essence and consequences of its application. The legislator has allegedly failed to state reasons of necessity of such a prohibition to the extent in question and that, by providing for exceptions to that prohibition, the legitimate aim of the restriction on the fundamental right would not be achieved to an equivalent degree.

The Applicant considers that the restriction of his fundamental rights is not proportionate, i.e., the benefit obtained by society does not outweigh the harm caused to the rights and legitimate interests of a person. Moreover, the prohibition in question is allegedly substantial, affecting the whole life of a person and often having consequences far more serious than the criminal penalty imposed.

CONCLUSIONS OF THE COURT

On the extent to which the constitutionality of the contested norm is to be assessed

The contested norm has been applied to the Applicant as a person who served in the institution of the system of the Ministry of the Interior – the State Police. Thus, in the present case, the Constitutional Court assessed compliance of the contested norm with the Satversme insofar as it precludes from performance of service in the State Police. [10]

In the present case, the Constitutional Court assessed compliance of the contested norm with Article 101, Paragraph One of the Satversme in conjunction with the first sentence of Article 106 of the Satversme. [11.3]

On the scope of Article 101, Paragraph One, and first sentence of Article 106 of the Satversme

The Constitutional Court concluded that the State Police officers with special ranks were to be regarded as belonging to the state service within the meaning of Article 101 of the Satversme. [11.1]

The Constitutional Court also noted that the first sentence of Article 106 of the Satversme protected the right of a person to freely choose and maintain an occupation and also covered employment in the State Police [11.2]

On the restriction of fundamental rights

The Constitutional Court concluded that the contested norm restricts the right to join the service and to continue to perform service in the State Police regardless of the expungement or setting aside of conviction, and this restriction is valid for an indefinite period. Thus, the contested norm restricts the right established in Article 101, Paragraph One and first sentence of Article 106 sentence of the Satversme. [12.2]

On the legislator's discretion in determining access to public service employment

The Constitutional Court noted that, according to Article 101, Paragraph One of the Satversme, the State had a much wider margin of discretion in determining access to employment in the public service than in regulating other types of employment. This discretion includes, inter alia, the right to impose specific requirements on persons entrusted by the state with the exercise of its authority and the performance of specific duties necessary for the exercise of state functions. The State must ensure public confidence in public authority and, by extension, in the actions of public officials acting on behalf of the state. Thus, in order to ensure the protection of the values of a democratic state governed by the rule of law in accordance with the general principles of law and other provisions of the Satversme, the State may impose specific requirements on persons who wish to perform or are performing public service. [13]

The Constitutional Court noted that, taking into account the specific role and status of the public service, as well as the legislator's wide discretion in this area, in the present case, the assessment of a restriction on fundamental rights is not subject to the methodology of assessing the constitutionality of an absolute prohibition. [13]

On whether a restriction on fundamental rights is imposed by a law duly enacted

Having analysed the regulatory enactment governing employment with the State Police, the Constitutional Court concluded that the restriction on fundamental rights contained in the contested norm had been established by a law adopted in due procedure. [14]

On whether the restriction of fundamental rights included in the contested provision has a legitimate purpose

The Constitutional Court noted that the main task of the State Police was to control the observance of laws in society, to ensure that society complies with the requirements established in regulatory enactments. If a person who has been convicted of an intended criminal offence could become a State Police officer, regardless of whether the conviction has been expunged or set aside, public confidence in State Police officers as enforcers of state authority would be undermined and, consequently, the democratic rule of law. Moreover, a person who has committed a deliberate criminal offence, even if his or her conviction has been expunged or set aside, would not promote a law-abiding attitude in society. Thus, the restriction of fundamental rights included in the contested norm has a

legitimate aim – protection of the democratic order of a state governed by the rule of law. [16.1]

In addition, the Constitutional Court noted that the prohibition included in the contested norm is aimed at promoting the protection of public safety by guaranteeing that public safety is taken care of on behalf of the state by persons who have not themselves committed acts that are unacceptable in a democratic state governed by the rule of law. The State Police performs the state functions delegated thereto – protecting the life, health, rights and freedoms of persons, property, public and state interests from criminal and other unlawful threats. Actions that undermine trust in the State Police as a representative of public authority may harm public safety. **Consequently, the restriction of fundamental rights included in the contested provision has another legitimate aim – protection of public safety** [16.2]

On whether the measures selected are suitable to achieve the legitimate aims

The Constitutional Court noted that the presence of a person in the service of the State Police who had committed an intentional criminal offence, even if the conviction has been expunged or set aside, could create an impression that representatives of the state power may not respect the provisions of the regulatory enactments and act contrary to the values which these officials are obliged to protect. Consequently, the contested norm promotes public confidence in the system of a democratic state governed by the rule of law and in the officials who represent it. [18]

The Constitutional Court also concluded that the contested norm contributed to the protection of public safety, as it prevented persons who had committed intentional criminal offences from being in the service of the State Police, regardless of whether the convictions have been expunged or set aside. [18]

Therefore, the Constitutional Court concluded that the measure selected by the legislator was suitable for achieving the legitimate aims included in the contested provision. [18]

On the duties of the State Police

The Constitutional Court emphasised that the State Police performed one of the most important functions of the state by protecting the constitutional principles which the democratic legal system of the state was based on. [19.2]

Consequently, State Police officers are obliged to ensure the rule of law and order in society, to respect and protect the fundamental rights and freedoms of individuals, and to detect, prevent and combat crime. [19.4]

On whether there are less restrictive (more lenient) means of protection of person's fundamental rights

The Constitutional Court concluded that the state had not only the right, but also the duty to establish measures that would promote public confidence in the representatives of the state power and thus ensure protection of the democratic legal state system. By entrusting State Police officers with the functions of national security and protection, the legislator has imposed on the persons concerned a requirement consistent with the purpose and tasks of the State Police service – not to have any convictions of an intentional criminal offence, regardless of the expungement or setting aside of such convictions. This requirement was set in view of the special role of the State Police in protecting human rights and freedoms and ensuring public order. Consequently, it can be concluded that an individual assessment of persons in the given situation would not achieve the legitimate aim of the restriction of fundamental rights – protection of the democratic state order governed by the rule of law – to an equal quality, since its achievement is characterised, inter alia, by a general trust of persons and the public in the State Police officials as law-abiding representatives of the state authority. [19.4]

The Constitutional Court further noted that, in the situation when a person who had committed an intentional criminal offence would perform service in the State Police, a conflict of values would arise. Consequently, the legitimate aim of the restriction on fundamental rights – protection of the democratic order of a State governed by the rule of law – cannot be achieved to an equal quality by making the prohibition to serve conditional on the existence of a previous conviction or on the commission of specific criminal offences. [19.4]

Consequently, the Constitutional Court recognised that there were no other, more lenient means by which the legitimate aim of the restriction of fundamental rights – protection of the democratic state system governed by the rule of law – could be achieved at least to the same quality. [19.4]

On whether the benefit which society derives from the restriction of an individual's fundamental rights provided for in the contested norm outweighs the damage caused to the individual's rights and legitimate interests

The Constitutional Court concluded that the restriction of fundamental rights established in the contested norm affected only persons who had committed an intentional criminal offence, irrespective of the expungement or setting aside of the conviction, but the rights and public interests protected by the legitimate aim were essential for the state and, consequently, for the whole society.

Therefore, benefit of the society of prohibiting a person who has been convicted of an intentional criminal offence from serving in the State Police outweighs the harm caused to the rights of the individual. Thus, the contested norm complies with Article 101, Paragraph One, and the first sentence of Article 106 of the Satversme. [20]

- The Constitutional Court resolved:

To declare Section 4, Clause 4 of the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration, insofar as it prohibits a person who has been convicted for committing an intentional criminal offence from being in the service of the State Police, irrespective of the expungement or setting aside of the conviction, compliant with Article 101, Paragraph One, and the first sentence of Article 106 of the Satversme of the Republic of Latvia.

The Constitutional Court's judgement is final and not subject to appeal, it enters into effect on the day of its publication.

The judgement will be published in the official gazette publication "Latvijas Vēstnesis" within the time limit established in Section 33, Paragraph One of the Constitutional Court Law.

Text of the Judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-50-01_spridums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. **More detailed information on the latest developments, cases opened and adjudicated by the Constitutional Court is available on the [website](#) of the Constitutional Court.** We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](#) and the Court's *YouTube* [channel](#).

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