



Satversmes tiesa

Press Release

Case No 2020-29-01

29 January 2021

Prohibition on alcohol addicts becoming security guards

On 28 January 2021, the Constitutional Court passed a judgment in case No 2020-29-01 “On compliance of Para 8 of Section 15 of the Security Guards Activity Law with the first sentence of Article 106 of the Constitution of the Republic of Latvia”.

CONTESTED PROVISION

- Section 15(8) of the Security Guards Activity Law:

“It is prohibited to issue the security guard certificate to an individual who has been diagnosed with mental disorders, addiction to alcohol, narcotic, psychotropic, or toxic substances, or behavioural disorders.”

PROVISIONS OF SUPERIOR LEGAL FORCE

- First sentence of Article 106 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):

“Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

FACTS OF THE CASE

The case was initiated by the Constitutional Court on the basis of an application filed by the Administrative Regional Court. The Applicant is examining an administrative case, which was initiated on the basis of an application by a private individual regarding issuance of a favourable administrative act, by which the individual would be issued with the security guard certificate. The said individual had been diagnosed with addiction to alcohol, therefore, pursuant to the contested provision, the authority had refused to issue the security guard certificate to the individual. The first instance court, by reference to the contested provision, had dismissed the individual’s application requesting the issuance of a favourable administrative act. The Applicant established

that the particular individual had been in remission from alcohol addiction for several years; however, the contested provision stipulated an absolute prohibition on issuing the security guard certificate. The Applicant holds that the contested provision is disproportionate and incompatible with the first sentence of Article 106 of the Constitution.

THE COURT'S FINDINGS

Clarifying the claim

The Constitutional Court observed that the contested provision applied to a wide body of different situations, and concluded that in the case in question it would only evaluate compliance of the contested provision with the Constitution in respect of individuals diagnosed with addiction to alcohol. [16]

On the scope of Article 106 of the Constitution

As the Constitutional Court observed, if an individual has the necessary skills and qualification for working as a security guard but has been diagnosed with addiction to alcohol, the contested provision, regardless of the individual's state of health and remission from the condition, prohibits the issuance of the security guard certificate to this individual and thus prohibits the individual from working as a security guard. Therefore, the contested provision restricts the individual's rights as enshrined in the first sentence of Article 106 of the Constitution. [17]

On whether the restriction of fundamental rights established by the contested provision has a legitimate aim and whether the means chosen are appropriate for achieving the legitimate aim

The Constitutional Court recognised that, in view of the security guards' competence and the specifics of their work, higher requirements had been set for these individuals in respect of obtaining the security guard certificate in order to achieve the aim set by the legislator. Thus, the prohibition, as established by the contested provision, on issuing the security guard certificate to an individual diagnosed with addiction to alcohol regardless of remission is aimed at promoting public safety by ensuring that public security is taken care of by individuals with proper skills and qualification. [20]

The Constitutional Court also concluded that the means chosen by the legislator were appropriate for achieving the legitimate aim of the fundamental rights restriction contained in the contested provision. The restriction contained in the contested provision ensures that no individual diagnosed with addiction to alcohol, regardless of the progress of their condition, including remission, will work as a security guard. This prevents a threat to public safety, which might occur in the event of a security guard

addicted to alcohol failing to perform their employment duties properly and thus, indeed, threatening public safety instead of protecting it, e.g., by unreasonable use of force or weapon. [22]

On the absolute nature of the restriction contained in the contested provision

The Constitutional Court concluded that the prohibition, as established by the contested provision, on issuing the security guard certificate applied to every individual who had been diagnosed with addiction to alcohol, and thus fully forbade such an individual from working in security. The prohibition contained in the contested provision does not provide for an individual evaluation in each particular case, thus not allowing any exceptions. Furthermore, this prohibition is imposed for life – it remains in force even when the state of the individual’s condition has changed, and the individual is no longer using alcohol. [23]

On the incompatibility of the absolute prohibition on issuing the security guard certificate to an individual diagnosed with addiction to alcohol with the first sentence of Article 106 of the Constitution

In evaluating the proportionality of the prohibition, the Constitutional Court examined whether the legislator had:

- 1) substantiated the need for the absolute prohibition;
- 2) evaluated the substance of the absolute prohibition and the consequences of its application;
- 3) presented an argument for the fact that if exceptions from this absolute prohibition had been allowed, the legitimate aim would not have been achieved at the same quality level.

The Constitutional Court also added that the above considerations essentially served to make more specific the content of the principle of good legislation in cases when the legislator was deciding on the inclusion of an absolute prohibition in a legal provision. [24]

The Constitutional Court concluded that the legislator had not evaluated the restriction contained in the contested provision as an absolute prohibition, and, consequently, had not substantiated the need for the absolute prohibition. [24.1]

The Constitutional Court did not find that the legislator, in imposing the absolute prohibition on individuals diagnosed with alcohol addiction working in security, had given a substantive consideration to the possibility that an individual’s behaviour and the manifestations of their medical condition might change over time in such a way that

the public safety would no longer be exposed. Thus, the legislator had not evaluated the substance of the absolute prohibition and the consequences of its application. [24.2]

At the same time, the Constitutional Court noted that, in defining exceptions and specifying the way of carrying out the individual evaluation, it must be taken into account that the restriction on issuing the security guard certificate to an individual diagnosed with addiction to alcohol should remain one of the means of securing the public interest – protection of its safety. [24.3]

The Constitutional Court came to the conclusion that it was possible to achieve the legitimate aim of the absolute prohibition, as contained in the restricted provision, at an equal quality level by alternative means, namely, by providing for exceptions to this prohibition; the legislator, however, had not considered such exceptions. Hence, the absolute prohibition established by the contested provision does not comply with the principle of proportionality. [24.3.2]

On the moment when the contested provision becomes void

The Constitutional Court ruled that the contested provision was void as of the day the Constitutional Court judgment was published. The contested provision, insofar as it imposes an absolute prohibition on anyone diagnosed with addiction to alcohol from working in security without an individual evaluation as to whether the established diagnosis “addiction to alcohol” causes behavioural disorders and whether the respective individual threatens public safety when performing the employment duties of a security guard, is incompatible with the first sentence of Article 106 of the Constitution.

For the application of the Security Guards Activity Law not to be causing infringements of the fundamental rights, as enshrined in the Constitution, of individuals who were diagnosed with alcohol addiction and wish to obtain the security guard certificate before the contested provision has been amended or a new regulation has been developed, the contested provision is to be applied to these individuals through the direct application of the Constitution, the Security Guards Activity Law and the conclusions contained in this judgment – this, inter alia, includes ensuring that an individual evaluation of the person’s state of health is carried out and the probability of a threat to public safety is examined. [25]

The Constitutional Court ruled to recognise Section 15(8) of the Security Guards Activity Law, insofar as it established an absolute prohibition on issuing the security guard certificate to an individual diagnosed with addiction to alcohol, as incompatible with the first sentence of Article 106 of the Constitution.

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/2020/05/2020-29-01_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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