Satversmes tiesa

Press Release | Case No. 2020-66-03 | 28.10.2021.

The Constitutional Court terminates legal proceedings in the case regarding the highest special service rank set for a college director

On 28 October 2021, the Constitutional Court decided to terminate legal proceedings in case No. 2020-66-03 "On compliance of Annex 1 to Cabinet Regulation No 810 of 13 December 2016 on classification of offices of officials with special service ranks working in institutions of the Ministry of the Interior and the Prisons Administration, insofar as it requires a Group 2.1, Level VII college director to hold a higher special service rank – colonel, 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

- Annex 1 to Cabinet Regulation No 810 of 13 December 2016 on classification of offices of officials with special service ranks working in institutions of the Ministry of the Interior and the Prisons Administration, which sets out that the office of Group 2.1, Level VII college director requires the highest special service rank – colonel.

Norms of Higher Legal Force

- The first sentence of Article 91 of the *Satversme* of the Republic of Latvia (hereinafter – the *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 has been initiated on the basis of an application submitted by Ainars Penčs. The applicant served in the State Fire and Rescue Service until 2011. After that an employment agreement was signed with the applicant on performing the duties of the office of the Director of the Fire Safety and Civil Defence College; however, the employment agreement was terminated in 2019 on the grounds that only a person with a special service rank could perform the duties of a college director.

The Applicant has appealed to the Constitutional Court because, in his opinion, the contested provision defines, without grounds, the position of a college director as an office of a public official with a special service rank and, thus, unfoundedly restricts a person's right, included in the first sentence of Article 106 of the *Satversme,* to freely choose one's employment and workplace according to one's abilities and qualifications, whereas the principle of legal equality, included in the first sentence of Article 91 of the *Satversme*, has been violated because such a restriction has not been applied to other, in his opinion, comparable offices.

The court's Findings and Ruling

The court concluded that the basic matter in the case wasthe compliance of the contested norm with the first sentence of Article 106 of the *Satversme*. The matter of the contested norm's compatibility with the first sentence of Article 91 of the *Satversme* is subordinated to the main one. Thus, the Court decided that, first and foremost, compliance of the contested norm with the first sentence of Article 106 of the *Satversme* should be reviewed. Whether it is necessary to examine in the case also compliance of

the contested norm with the first sentence of Article 91 of the *Satversme* depends on the way the basic matter in the case is resolved. [11.]

The Court found that the contested norm defined the highest special service rank, i.e., that of a colonel, for the office of director of a college belonging to the system of the Ministry for the Interior. The applicant, however, does not object to the fact that this particular highest special rank of service has been defined for this office. He notes that the contested norm defines the office of a director of a college belonging to the system of the Ministry of the Interior as an office of a public official with a special service rank and considers this classification of the office as being incompatible with the *Satversme*. Whereas the Cabinet, as well as several summoned persons hold: the fact that the office of a director of a college belonging to the system of the Ministry of the Interior is an office of a public official with a special service rank does not follow from the contested norm but from the provisions of the law "On the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration (hereafter – the Law on the Course of Service). Consequently, the Constitutional Court had to ascertain, whether, in the particular case, it was the contested norm, which directly infringed upon a person's fundamental rights, included in the first sentence of Article 106 of the *Satversme*. [12.]

The Court noted that the first sentence of Article 106 of the *Satversme* protected a person's right to freely choose and retain employment and included also employment in public service. To ascertain, whether it is the contested norm that defines the office of a director of a college belonging to the system of the Ministry of the Interior as the office of a public official with a special service rank and, thus, infringes upon a person's fundamental rights, included in the first sentence of Article 106 of the *Satversme* as specified by the applicant, the content of the contested norm needs to be elucidated, *inter alia*, by interpreting it in conjunction with others, systemically connected legal norms, which are included in the Law on Remuneration of Officials and Employees of State and Local Government Authorities (hereafter – the Law on Remuneration) and the Law on the Course of Service. [13., 14.]

The Constitutional Court clarified the content of the provisions of the Law on Remuneration and of the Law on the Course of Service and concluded that the legislator had not provided in the Law on the Course of Service a definition of a public official with a special service rank and had not defined the criteria for establishing, whether a particular office in an institution belonging to the system of the Ministry of the Interior or the Prisons Administration should be considered as being an office of a public official with a special service rank. However, the Law on the Course of Service provides for a special regulation with respect to appointing to the office and the course of service of a head of an institution belonging to the Ministry of the Interior, *inter alia*, colleges of this system, and the head of the Prisons Administration. [15.]

The Constitutional Court noted that the legislator had directly defined the appointment of candidates to these offices in the second and third part of Section 9 of the Law on the Course of Service. Examination of these provisions in conjunction with Article 1 and Article 2 of the Law on the Course of Service, which provide that this law regulates the course of service of the officials with special service ranks in institutions of the system of the Ministry of the Interior and the Prisons administration, allows deducing the legislator's decision that the aforementioned offices are offices of public officials with special service ranks. Thus, the office of the head, the director, of a college belonging to the system of the Ministry of the Interior is defined as the office of a public official with a special service rank by Section 9 (3) of the Law on the Course of Service, in conjunction with Section 1 and Section 2 of the same Law, and not by the contested norm, which only reflects the legislator's decision on the nature of this office, included in the provisions of the law. Even if the contested norm were not in force, the office of the head of a college belonging to the system of the Ministry of the Interior would be an office of a public official with a special service rank in accordance with the aforementioned provisions of the Law on the Course of Service. [16.]

Thus, the Constitutional Court concluded that the contested norm did not infringe upon a person's fundamental rights included in the first sentence of Article 106 of the *Satversme* as indicated by the applicant and that its compatibility with this norm of the *Satversme* was not to be reviewed in the particular case. Since the contested norm does

not infringe upon a person's fundamental rights included in the first sentence of Article 106 of the *Satversme*, as indicated by the applicant, in the particular case, it does not cause an infringement on a person's fundamental rights, included in the first sentence of Article 91 of the *Satversme*, either. Hence, legal proceedings in the case regarding the compliance of the contested norm with the first sentence of Article 91 and the first sentence of Article 106 of the *Satversme* cannot be continued. [16., 17.]

The Constitutional Court also examined whether the limits of the claim in this case could and should be broadened. The applicant has not linked the infringement on his fundamental rights with the provisions of the Law on the Course of Service, from which the fact that the office of a director of a college belonging to the system of the Ministry of the Interior is an office of a public official with a special service rank follows, has not contested the constitutionality of these provisions and, thus, has not provided legal reasoning regarding the incompatibility of these provisions with the *Satversme*. Whereas the *Saeima*, the institution, which adopted the Law on the Course of Service, is not a participant in the present case and has not provided its opinion on the constitutionality of these legal provisions. Hence, in the present case, the limits of the case cannot be broadened and legal proceedings cannot be continued. [18.]

The Constitutional Court Held:

to terminate legal proceedings in case No. 2020 66 03 "On compliance of Annex 1 to Cabinet Regulation No 810 of 13 December 2016 on classification of offices of officials with special service ranks working in institutions of the Ministry of the Interior and the Prisons Administration, insofar as it requires a Group 2.1, Level VII college director to hold a higher special service rank – colonel, with the first sentence of Article 91 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia".

The decision is not subject to appeal.

The text of the decision is available on the Constitutional Court's homepage: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/12/2020-66-03_lemums_par_tiesvedibas_izbeigsanu.pdf

Zanda Meinarte
Public relations specialist
of the Constitutional Court

Latvijas Republikas Satversmes tiesai 25