



Satversmes tiesa

Press release

Case No 2021-07-01

02.12.2021.

Regulation that does not allow for officials with special service ranks working in institutions of the system of the Ministry of the Interior and the Prisons Administration to receive appropriate remuneration for their work on public holidays does not comply with the Constitution

On 2 December 2021, the Constitutional Court adopted a judgment in case No 2021-07-01 “On the compliance of Article 14(6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities with Articles 91 and 107 of the Constitution of the Republic of Latvia”.

THE CONTESTED PROVISION

- Article 14(6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities (hereinafter – the contested provision):

“Officials (employees), except for soldiers and officials with special service ranks of the institutions of the system of the Ministry of the Interior and the Prisons Administration, shall receive a supplement for overtime work or for work on holidays in the amount of 100 per cent of the hourly salary rate determined for them, or shall be compensated for overtime work by granting paid rest time on another weekday according to the number of overtime hours worked.”

PROVISIONS WITH A HIGHER LEGAL FORCE

- The first sentence of Article 91 of the Constitution of the Republic of Latvia (hereinafter – the Constitution):

“All human beings in Latvia shall be equal before the law and the courts.”

- Article 107 of the Constitution:

“Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.”

THE FACTS OF THE CASE

This case was initiated on the basis of an application of the District Administrative Court. That court is examining a case on issuing a favourable administrative act by which an official of the Prisons Administration with a special service rank would be compensated for the material damage incurred due to not receiving supplements for work done on public holidays. According to the District Administrative Court, the contested provision does not comply with the principle of legal equality laid down in the first sentence of Article 91 of the Constitution and unduly restricts the individual's rights provided for in Article 107 of the Constitution to receive commensurate remuneration for their work.

THE CONCLUSIONS OF THE COURT

As regards how the constitutionality of the contested provision is to be assessed

The key issue of the case are the rights of the officials with special service ranks working in institutions of the system of the Ministry of the Interior and the Prisons Administration (hereinafter – service officials) to receive appropriate remuneration for their work on public holidays. To this end, the Constitutional Court first assessed the compliance of the contested provision with Article 107 of the Constitution. [13.2 and 14]

On the scope of Article 107 of the Constitution

The Constitutional Court stated that Article 107 of the Constitution provides for two fundamental employee's rights, namely, the right to receive remuneration

for work and the right to rest. These fundamental rights referred to in Article 107 of the Constitution apply to all employees. Meanwhile, the concept of work remuneration contained in Article 107 of the Constitution must be understood broadly also with respect to service officials – it connotes remuneration for work, and this remuneration can be composed of different elements. [15, 16.3]

At the same time, when specifying fundamental rights listed in Article 107 of the Constitution for persons holding public office it must be taken into consideration the discretionary power that the legislator has with respect to the organisation of the work of officials. [15]

The Constitutional Court pointed out that public holidays are an important component of the life of the society, safeguarding values which unite the society. Public holidays are essential in strengthening Latvia as a democratic state governed by the rule of law. It is exactly public holidays that highlight the most important events which make up the country, thereby maintaining and enhancing the common historical remembrance and national awareness of Latvians. Public holidays emphasise the values common for the society as a whole. Honouring public holidays and passing down celebratory traditions from generation to generation strengthens the national identity. [16.1]

It follows from Article 107 of the Constitution in conjunction with Latvian international obligations that public holidays should in principle be holidays which, in turn, enables the objective of public holidays to be attained. Furthermore, public holidays must be paid holidays. Working on public holidays is acceptable only in particular cases. [16.2]

The Court held that the work on public holidays has to be distinguished from the work on other days, considering that the employee, unlike other citizens, is not able to honour public holidays and to take rest. To this end, remuneration for work on public holidays carried out by service officials cannot be the same as that established for work on other days. Thus, it means that the work on public holidays should be further compensated. Pursuant to Article 107 of the Constitution, the legislator has an obligation to set up a system that would remunerate service officials for their work and provide for appropriate remuneration for working on public holidays. In terms of appropriate

remuneration for working on public holidays, it must not just exercise a function of remunerating for work, but also a function of compensatory nature. [16.4]

In respect of non-compliance with Article 107 of the Constitution

The Constitutional Court was assessing whether the legislator has complied with the positive obligation contained in Article 107 of the Constitution to set up a system that would remunerate service officials for their work by providing for appropriate remuneration for working on public holidays. [17]

The Constitutional Court held that the legislator has taken measures and set up a system which remunerates service officials for their work on public holidays. [18]

However, the Constitutional Court concluded that the remuneration in question is not adequate, namely, it is not serving its compensatory purpose with a view to the work performed precisely on public holidays. The Constitutional Court established that the regulatory framework covered by the contested provision has been a long-standing one. At the same time, a number of persons summoned in the case indicated that, in spite of the contested provision indeed not providing a compensatory remuneration for service officials for their work on public holidays, the remuneration system for service officials must be assessed as a whole. Assessing this argument, the Constitutional Court concluded that other social guarantees, supplements or other benefits granted to service officials do not relate to the remuneration for work performed on precisely public holidays specified in Article 107 of the Constitution. The Constitutional Court indicated that service officials performing their duties on public holidays allow for other employees, among other things, to enjoy paid rest. The fact that service officials are not compensated for their work on public holidays can in no way contribute to the national security or to the welfare of society or to promote an uninterrupted performance of service duties. The fact in itself that service officials are the ones ensuring a continuity of vital national functions relates solely to work organisation and to the discretionary power of the legislator to lay

down preconditions of employment of service officials on public holidays contained in Article 101 of the Constitution; however, it does not relate to matters of remuneration. [20, 21, 22]

Consequently, the contested provision does not comply with Article 107 of the Constitution in so far as it does not provide for the right of service officials to receive appropriate remuneration for their work on public holidays. [22.]

Taking into account that the contested provision is declared incompatible with Article 107 of the Constitution, the Constitutional Court did not assess its compliance with the first sentence of Article 91 of the Constitution. [23]

On the date the provision shall cease to have effect

As regards persons that have started the protection of their rights, the Constitutional Court declared that the contested provision is invalid, in so far as the provision does not provide for the rights of service officials to receive appropriate amount of their work on public holidays, starting from the date when the interference with their fundamental rights started for these persons. While as regards other persons, the contested provision, in so far as it does not provide for the rights of the service officials to receive appropriate remuneration for their work on public holidays, shall cease to have effect starting from 1 January 2023. [22]

The Constitutional Court ruled the following:

1. To declare that Article 14(6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities, in so far as it does not provide for the rights of officials with special service ranks working in institutions of the system of the Ministry of the Interior and the Prisons Administration to receive commensurate remuneration for their work done on public holidays does not comply with Article 107 of the Constitution of the Republic Latvia and is invalid starting from 1 January 2023.

2. As regards persons that have started the protection of their fundamental rights with the help of general judicial remedies, to declare that Article 14(6) of

the Law on Remuneration of Officials and Employees of State and Local Government Authorities, in so far as it does not provide for the rights of officials with special service ranks working in institutions of the system of the Ministry of the Interior and the Prisons Administration to receive commensurate remuneration for their work done on public holidays does not comply with Article 107 of the Constitution of the Republic of Latvia and is invalid starting from the date when the interference with their fundamental rights started for these persons.

The judgment of the Constitutional Court is definitive and not open to appeal, it shall take effect on the day of its publication.

Text of judgment is available (in Latvian) on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/02/2021_07_01_Spriedums.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 examined by the Constitutional Court is available on the website of the Constitutional Court www.satv.tiesa.gov.lv. We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and the Court's *Youtube* [channel](#).

Zanda Meinarte
The Constitutional Court's
Public Relations Specialist
Zanda.Meinarte@satv.tiesa.gov.lv

