



Satversmes tiesa

Press release

Case No. 2021-27-01

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Requirement to obtain a second level higher education in order to retain the right to independent practice is compatible with the Satversme, but extending such a requirement to only some specialists is not

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On 21 April 2022, the Constitutional Court adopted a judgement in Case No. 2021-27-01 “On Compliance of the First Sentence of Paragraph 4 of Transitional Provisions of the Construction Law with Article 1, the First Sentence of Article 91 and the First Sentence of Article 106 of the Satversme of the Republic of Latvia”.

#### THE CONTESTED NORM

- First sentence of Paragraph 4 of the Transitional Provisions of the Construction Law (hereinafter referred to as – the contested norm):

“Persons who, until the day of coming of this Law into force, have obtained the right to an independent practice in the field of construction in the profession of a construction engineer and who have acquired the first level vocational higher education in the study programme of a construction engineer are entitled to continue an independent practice in engineering research without time limitation, but in design or building expert-examination – not longer than until 31 December 2020.”

#### NORMS WITH A HIGHER LEGAL FORCE

- Article 1 of the Constitution of the Republic of Latvia (hereinafter referred to as — the Satversme):

“Latvia is an independent democratic republic.”

- First sentence of Article 91 of the Satversme:

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

- 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 has been initiated based on the application submitted by Rūdolfs Liberts (hereinafter referred to as – the Applicant).

The Applicant has obtained a certificate of construction practice and the right of independent practice in the designing of water supply and sewerage systems in 2009. Whereas, on 9 July 2013, the legislator adopted a new Construction Law, Section 13, Paragraph Five of which provides for, inter alia, that the right to independent practice in designing requires a second level vocational higher education. According to the contested norm, since 1 January 2021, the Applicant has lost the right of independent practice in designing of water supply and sewerage systems, as he has not acquired the aforementioned education.

The Applicant considers that the legislator has not duly considered the necessity for persons with first-level professional higher education, who have previously acquired the right of independent practice, to set a requirement for second level vocational higher education to retain that right. Also, the time limit laid down in the contested norm allegedly is not proportionate. Furthermore, in a comparable situation – with regard to engineering research – the right to pursue an independent practice without a time limit is provided for. Thus, the contested norm allegedly disproportionately restricts his right to freely choose and employment contained in the first sentence of Article 106 of the Satversme and infringes the principle of legitimate expectations contained in Article 1 and the principle of legal equality contained in the first sentence of Article 91 of the Satversme.

### CONCLUSIONS OF THE COURT

#### On the scope of Article 106

The Constitutional Court concluded that the right of independent practice meant an additional right of a designer to work in his profession in a self-sufficient

manner and, as a fundamental aspect of the profession, it should be separately protected. Thus, the first sentence of Article 106 of the Satversme protects the right of a person to engage in independent practice in designing and to preserve this right in the future. [15.2]

#### On the legitimate aim of the restriction laid down in the contested norm

The restriction on the fundamental right laid down in the contested norm is aimed at increasing the level of education, as well as the resulting skills, competences and knowledge of persons who have completed the first level vocational higher education and are engaged in independent designing practice. The quality of that person's work depends, among other things, on his or her education. Thus, the contested norm serves to ensure quality of the construction design and compliance thereof with the laws and regulations and, consequently, the quality and safety of the structure, as well as the rights of other people, including the right to life, health and a favourable environment. [19]

#### On the appropriateness of the restriction laid down in the contested norm for achieving a legitimate aim

Certain skills, competences and knowledge can only be acquired through completion of study programmes of the second level vocational higher education. Improving a person's level of education contributes to his or her ability to perform the work assigned thereto in a quality manner, thus ensuring respect for the rights of other individuals and the protection of public safety interests.

Therefore, the measure selected by the legislator is suitable for achieving legitimate aims. [21.3]

#### On the necessity of the restriction laid down in the contested norm for achieving legitimate aim

Civil engineering is a regulated profession in the construction sector, while designing is one of the specialities where the right of independent practice may be obtained.

Only a person who, among other things, has obtained qualification of the required level attested by an appropriate document may work in a regulated profession. Thus, the legitimate aim of the restriction on fundamental right laid down in the contested norm cannot be achieved through the supervision of practice and the improvement of qualifications, as they cannot be defined as part of a person's qualifications.

Similarly, permission to construction professionals with a first level higher vocational education to continue exercising the right of independent practice without additional examinations is not to be considered a less restrictive measure. The educational requirements are set with the aim to ensure the quality and safety of construction works, therefore it is not permissible to postpone these requirements until the moment when persons who will be subject to the increased requirements as new specialists replacing previous specialists will commence their employment in the industry.

However, an individual examination, which would test the knowledge of each specialist and determine whether he or she needs to complete a second level higher vocational education, not only would prevent from achieving the legitimate aim at the same quality and would not be in line with the nature of regulated profession, but would also impose a disproportionate burden on the state's financial and other resources. [22.2-22.3]

#### On the possibility to acquire the necessary education within the time limit laid down in the contested norm

The Constitutional Court concluded that persons had access to several study programmes where they could acquire the necessary education.

Between 1 October 2014 and 31 December 2020, a person had the possibility to commence studies at a later stage if the results achieved in their previous education or professional experience were recognised. Whereas, since 17 August 2018, a person has also been able to commence studies at later stages also in case if the knowledge, skills and competences acquired beyond the framework of formal education and obtained through professional experience were recognised. Recognition of competences acquired beyond the framework of formal education or obtained through professional experience and the study results achieved during the previous education is also possible after the matriculation.

Consequently, the transitional period provided for in the contested norm was sufficiently long for a person to have a real chance to obtain the required education, provided that he or she actively used the provided opportunities and defended his or her rights. [24; 25.2-25.4]

#### On compliance of the contested norm with the first sentence of Article 91

Decision on the occupations to be mutually grouped has been made by the legislator. Section 13 of the Construction Law, and, for a long period of time, also the contested norm stipulate equal regulation for engineering research, designing and building expert-examination with regard to the acquisition of the right to independent practice as compared to building supervisors and construction work

managers, who are also subject to lower permissible educational requirements. Thus, persons who had obtained a first level higher vocational education and wished to pursue an independent practice in engineering research, designing or building expert-examination, were in equal and, according to certain criteria, comparable circumstances. [30.2]

The right of civil engineers with first level vocational higher education in a civil engineering study programme to pursue an independent practice in engineering research without a time limit was not specifically substantiated. On the contrary – during the Commission's hearings, explanation contrary to the content of the norm was given, substantiating only reference of the amendments to other subjects.

Also, the argument that the contested norms are necessary to eliminate the shortage of construction specialists (including persons entitled to carry out engineering research) cannot be regarded as a legitimate aim of the differential treatment, as it clearly contradicts the initial objective of the contested norm – protection of the rights of other individuals and public safety – and no longer permits achieving it, and, in any case, it would be only the objective of adoption of the norm or amendments, and not the objective justifying the differential treatment.

Thus, the difference in treatment contained in the contested norm does not have a legitimate aim. [32.1-32.2]

#### On the moment of expiry of the legal norms

In order to prevent infringement of the principle of legal equality, the legislator needs to carry out an in-depth and complex study and make certain conceptual choices. The legislator therefore needs a reasonable period of time to establish new regulation.

#### The Constitutional Court ruled the following:

1. To recognise the first sentence of Paragraph 4 of the Transitional Provisions of the Construction Law as being compatible with Article 1 and the first sentence of Article 106 of the Satversme of the Republic of Latvia.
2. To recognise the first sentence of Paragraph 4 of the Transitional Provisions of the Construction Law as being incompatible with the first

sentence of Article 91 of the Satversme of the Republic of Latvia and null and void as of 1 January 2023.

The judgement of the Constitutional Court is definitive and not subject to appeal, it shall enter into force on the day of its publication.

Text of the Judgement is available on the website of the Constitutional Court:  
[https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/06/2021-27-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/06/2021-27-01_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](http://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](#).

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A video on the Constitutional Court.