



Satversmes tiesa

Press release

• Case No. 2021-32-0103

• 05.05.2022

The Regulation Establishing the Objects which an Arrested Person has the Right to Keep is Constitutional

On 5 May 2022, the Constitutional Court adopted a judgement in Case No. 2021-32-0103 "On Compliance of Section 13, Paragraph One, Clause 10 of the Law on the Procedures for Holding under Arrest and Paragraph 10 of Annex 4 to Regulation of the Cabinet of Ministers No. 800 of 27 November 2007 "Internal Rules of Conduct of Investigation Prison" with the first sentence of Article 101 and the first sentence of Article 106 of the Satversme of the Republic of Latvia".

THE CONTESTED PROVISIONS

Section 13, Paragraph One, Clause 10 of the Law on the Procedures for Holding under Arrest states that the an arrested person has the right to use personal small-scale household appliances - TV set (the size of the screen up to 50 cm diagonally) and the video games to be connected thereto, and also a refrigerator, water heating appliances, transistor radio (without the possibility of voice recording). The total weight of the household appliances to be in individual use shall not exceed 30 kilograms."

Paragraph 10 of Annex 4 to the Regulation of the Cabinet of Ministers No. 800 of 27 November 2007 "Internal Rules of Conduct of Investigation Prison" (hereinafter referred to as – Regulation No. 800) provides for that an arrested person has the right to keep a small-size television (screen size up to 50 cm diagonally), video games to be connected thereto, a small-size refrigerator and a transistor radio.

PROVISIONS WITH A HIGHER LEGAL FORCE

- The first sentence of Article 101 of the Constitution of the Republic of Latvia (hereinafter – the Constitution) is the following:
“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 on the application of Mr Aivars Lembergs. By a judgement of the court of first instance, which has not entered into legal force, the Applicant was sentenced, inter alia, to a custodial sentence, and he was imposed restraint measure custody. While in custody, he asked the for permission of the Chief of the investigation prison to use his personal computer equipment with internet access. The Applicant's request was rejected, as the contested norms did not provide for the right of the arrested person to use such an object. Thus, the Applicant was allegedly deprived of the right to perform remotely the duties of a member of the local government council. According to the Applicant, the contested norms have infringed the fundamental right guaranteed to him in the first sentence of Article 101 of the Satversme, namely, the right to participate in the activities of the state and local governments. The Applicant is of opinion that the contested norms also unjustifiably restrict the fundamental right established in the first sentence of Article 106 of the Satversme, namely, the right to choose an occupation and workplace according to his abilities and qualifications.

CONCLUSIONS OF THE COURT

On the scope of norms of the Constitution and how the constitutionality of the contested norms should be assessed

The Constitutional Court concluded that a member of local government council takes decisions in the interests of residents of the municipality. Performance of the duties and exercise of the rights of a member of local government council mean exercise of public authority for the benefit of the public, and the office of a member of local government council is a public office. Thus, if a person has been elected to a local government council, Article 101 of the Satversme should also be applied to the right to hold the office of a member of local government council. [12.1]

The Constitutional Court also concluded that the concept of “occupation” was applicable to employment both in the public and private sectors, furthermore, also to professions where employment relations are not established on the basis of an employment contract regulated by the Labour Law. Thus, Article 106 of the Satversme protects also the right of a person to hold the office of a member of local government council. [12.2]

Since the rights established in the first sentence of Article 101 and the first sentence of Article 106 of the Satversme cover also the right to hold the office of a member of local government council, in the present case, the Constitutional Court assessed compliance of the contested norms with the first sentence of Article 101 in conjunction with the first sentence of Article 106 of the Satversme. [12.3]

On compliance of the contested norms with the first sentence of Article 101 and the first sentence of Article 106 of the Satversme

Denial to an arrested person to use personal computer equipment with internet access has been established in the interests of society to

prevent threats of order and safety, as well as to ensure smooth course of criminal proceedings. The restriction on fundamental rights contained in the contested norms protects both public safety and the rights of other people. [16]

The Constitutional Court concluded that a general prohibition imposed on arrested person to use personal computer equipment with internet access prevents any risk of such equipment being used for the performance of such actions which may be directed against the order of the investigation prison or the objectives of the restraint measure applied – detention. [18]

The Constitutional Court recognised that there were no more merciful means to achieve the legitimate aims of the restriction on fundamental rights included in the contested norms, since transfer of computer equipment with internet access to the use of arrested person may contradict the aim of the restraint measure – detention. In such a case, other restrictions determined for the arrested persons would also lose their meaning, for example, limitation of the arrested person's contacts with persons outside the investigation prison. Similarly, the right of the prison administration to decide on the authorisation of the controlled use of personal computer equipment with internet access at the request of the detainee would require the provision of both customised computer equipment and applications, as well as real-time and follow-up monitoring and control of the arrested person's activities. Such an arrangement would require significant financial and human resources. [19.3]

In the present case, the right of a person to hold the office of a member of local government council had to be balanced against the interests of the protection of the rights of other persons and public safety. Thus, taking into account both the fact that detention, as well as restrictions on other rights resulting therefrom, are of a limited duration and the necessity of their application is reviewed on regular basis, as well as the fact that a member of local government council cannot fully exercise all

of his rights and obligations while being in custody, the Constitutional Court recognised that the adverse consequences that a person may suffer as a result of a restriction on fundamental rights contained in the contested norms do not outweigh the overall benefit of society as. [20, 20.4]

The Constitutional Court ruled the following:

To recognise Section 13, Paragraph One, Clause 10 of the Law on the Procedures for Holding under Arrest and Paragraph 10 of Annex 4 to Regulation of the Cabinet of Ministers No. 800 of 27 November 2007 “Internal Rules of Conduct of Investigation Prison” as being compatible with the first sentence of Article 101 and the first sentence of Article 106 of the Satversme of the Republic of Latvia.

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 judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/07/2021-32-0103_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 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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