



Satversmes tiesa

Press release

Case No. 2021-43-01

03/11/2022

The Legal Norm Preventing Persons Serving a Custodial Sentence
from Participating in Local Government Elections is
Unconstitutional

On 3 November 2022, the Constitutional Court adopted a judgement in the case “On Compliance of Section 6, Clause 2 of the Law on the Election of Local Government Councils with the First Sentence of Article 101, Paragraph Two of the Constitution of the Republic of Latvia (Satversme)”.

THE CONTESTED NORM

Para 2 of Section 6 of the Law on the Election of Local Government Councils determines that in the Republic of Latvia, persons who are serving a sentence in places of deprivation of liberty have no right to elect the council.

NORM WITH A HIGHER LEGAL FORCE

The first sentence of Article 101(2) of the Constitution of the Republic of Latvia (hereinafter – the Constitution) is the following: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia.”

FACTS OF THE CASE

The Applicant is serving a custodial sentence. In accordance with the contested provision, he was not entitled to vote in the local government elections held in Latvia on 5 June 2021.

The Applicant believes that the prohibition established by the contested provision restricts the right of a person to participate in the election of local government by voting as set forth in the first sentence of Article 101(2) of the Constitution.

The legislator has failed to observe the principle of good law-making, as it has not taken into account the findings of the Constitutional Court and the case-law of the European Court of Human Rights on the right to vote of prisoners and has failed to reassess the necessity of the limitation on the fundamental right contained in the contested provision.

The Applicant maintains that the limitation on fundamental rights contained in the contested provision has no legitimate purpose. If the facilitation of the work of public administration institutions could be considered as its legitimate purpose, then the limitation on fundamental rights would be recognised as disproportionate, as the same purpose can be achieved by means less limiting on the rights of a person. Moreover, such a limitation on a fundamental right does not provide any benefit to society. As the contested provision deprives any person serving a custodial sentence of the right to participate in local government elections, this limitation on fundamental rights would be recognised as disproportionate even if it did provide some benefit to society.

CONCLUSIONS OF THE COURT

Regarding non-compliance with the first sentence of Article 101, Paragraph Two of the Constitution

The Constitutional Court concluded that the suffrage guaranteed by the first sentence of Article 101, Paragraph Two of the Constitution has decisive importance in establishment and retention of such efficient and meaningful democratically elected institutions which are guided by the principles of the rule of law. Universal suffrage is a principle corroborated both in the legal system of Latvia and international law and implying that it is important for each citizen to be able to exercise their voting rights without unfounded restrictions. Automatic exclusion of any group of society serving sentence at a place of deprivation of liberty from

participation in local government elections contradicts the principle of universal suffrage [13.2].

The Constitutional Court recognised, inter alia, that the contested norm caused a general and automatic restriction on the fundamental right to elect local government for a group of persons, based solely on the fact that the person serves a custodial sentence at a place of deprivation of liberty. Thus, the contested norm does not take into account whether there is a detectable and sufficient link between restriction on suffrage and the criminal offence committed by the person in question, and the circumstances of the case. Whereas, the persons serving a custodial sentence at the places of deprivation of liberty should not be exposed to greater restrictions than those necessary because of the committed criminal offence and nature of the type of the imposed punishment [13.2].

The Constitutional Court also pointed out that imposition of restriction on suffrage for each person serving a sentence at the place of deprivation did not motivate in general the persons in questions to participate civically and reintegrate into society after their release. Such a general restriction on suffrage also contradicts the aim of the criminal punishment to resocialise the punished person [13.2].

The Constitutional Court stressed, inter alia, that any restrictions on suffrage are also to be assessed within the context of the democratic development of the state. Namely, the necessity of these restrictions must also be periodically considered, balancing them against the degree of democratic development of the society and the state at the particular moment. However, since 13 January 1994, neither the restriction included in the contested norm, nor necessity thereof have been reviewed on their merits [13.2].

Thus, the Constitutional Court concluded that it was not possible to establish that the general and automatic restriction on fundamental rights with respect of a group of persons serving the basic punishment related to deprivation of liberty would protect any significant, important interests of the society. Thus, the restriction on fundamental rights established in the contested norm does not

have a legitimate aim, and it does not comply with the first sentence of Article 101, Paragraph Two of the Constitution.

On the moment of expiry of the legal norms

With regard to the Applicant, the contested norm should be recognised as null and void as of the moment of occurrence of infringement of his fundamental rights. Whereas, with regard to other persons – as being null and void as of the date of publication of the Constitutional Court's Judgement.

The Judgement is final and not subject to appeal, it enters into effect 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/2021/12/2021-43-01_Spriедумс.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 Court's *Twitter* account for more information.[@Satv_tiesa](#) and the Court's *YouTube* [channel](#).

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