



Satversmes tiesa

Press Release

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Storing the personal data of an acquitted person in the archives
of the Punishment Register for their entire lifetime is
incompatible with the *Satversme*

On 22 December 2022, the Constitutional Court of the Republic of Latvia delivered its judgement in case No. 2022-09-01 “On compliance of Para 1 of Section 23 of Punishment Register Law, insofar it applies to information about an acquitted person, with Article 96 of the *Satversme* of the Republic of Latvia”.

THE CONTESTED NORM

Pursuant to Para 1 of Section 23 of Punishment Register Law, information regarding a person whose criminal record has been set aside or extinguished, against whom the initiated criminal proceedings have been terminated, regarding an acquitted person, regarding a person on whom the imposed compulsory measure of correctional nature has been executed, a person on whom the imposed compulsory measure of medical nature has been revoked – for one year after information has been received from the Register of Natural Persons regarding the death of the person, however, not longer than 100 years after birth of the person, is stored in the archives database of the Punishment Register.

THE NORM OF HIGHER LEGAL FORCE

Article 96 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*):
“Everyone has the right to inviolability of his or her private life, home and correspondence.”

THE FACTS

The case has been initiated on the basis of an application by the Administrative District Court. The Administrative District Court is reviewing a case, initiated on the basis of an application by a person who had been acquitted in a criminal case. The acquitted person requests the Administrative District Court to recognise as unlawful the actual actions by the Information Centre of the Ministry of the Interior, i.e., storing information about this person in the archive database of the Punishment Register, and to compensate to the person non-pecuniary damages.

The Administrative District Court notes that, pursuant to the contested norm, information about an acquitted person must be stored in the archive database of the Punishment Register for the entire lifetime of this person. It is alleged that such legal regulation disproportionately restricts a person's right to inviolability of private life, included in Article 96 of the *Satversme*, since it is incompatible with the aims for which the Punishment Register had been established and the principles of processing a natural person's data in the area of criminal law.

THE COURT'S FINDINGS

The Constitutional Court found that the storing of personal data of an acquitted person in the archive database of the Punishment Register for their entire lifetime was to be recognised as the processing of personal data and, thus, restricts the person's right to inviolability of private life, included in Article 96 of the *Satversme*. [10.]

A restriction like this is aimed, first of all, at protecting public security because the data stored in the archive database of the Punishment Register may be used in deciding on renewing criminal proceedings due to newly discovered circumstances or re-examination of rulings that have entered into force. Secondly, these data can be used also by persons themselves to receive official confirmation that this person has been acquitted and demand compensation for the harm inflicted on them during criminal proceedings. [14.3., 14.4., 17.2.]

However, these two aims can be reached by measures that are less restrictive upon a person.

Firstly, renewal of criminal proceedings due to newly discovered circumstances is possible only within the prescription period, defined in Criminal Law, which, in the majority of cases, is from two to fifteen years as of the date when the crime was committed, depending on the severity of the crime. Thus, by storing the data of an acquitted person in the archive database of the Punishment Register for their entire lifetime means that these data are being processed for longer than it is necessary. A ruling that already has come into force is reviewed on the basis of an application by an advocate or a prosecutor; however, to consider such an application, the advocate or the prosecutor should have information at their disposal on particular serious violations of substantive or procedural legal provisions. Hence, the processing of information stored in the archive database of the Punishment Register is not of crucial importance. Moreover, such cases are extremely rare, being exceptional in nature. [18.]

Secondly, the protection of the infringed personal rights of a person, *inter alia*, in relation to damages inflicted in the course of criminal proceedings, basically, depends upon the decision made by persons themselves. A person may choose not to exercise their rights, as well as to demand expungement of their data. Hence, a person has the right to make decisions in relation to their data, even if later they encumber the possibilities to exercise one's rights. Thus, in the absence of any other justified aim for storing the data, the State has no grounds for storing a significant amount of personal data upon the pretext that these data, at some point, might be useful for the person. [18.]

Therefore, the Constitutional Court found that the restriction on fundamental rights, included in the contested norm, is not proportionate.

Finally, in the course of reviewing the case, the Constitutional Court also found that law enforcement institutions use the data related to a person who has been acquitted in criminal proceedings, stored in the archive database of the Punishment Register, for example, to advance, in the future, versions regarding the person's involvement in an incident, to clarify a person's links to the criminal environment, provide information about a person's reputation or conduct an in-depth examination of a personal data as part of operational activities. However,

taking such actions with respect to acquitted persons is inadmissible because, actually, this presumes an innocent person's involvement in a criminal offence, although an exonerating court's judgement exists. [15.]

With respect to persons who have already begun to defend their rights by general legal remedies, the contested norm shall be recognised as being void as of the moment when the infringement on their rights occurred. Whereas with respect to other persons, as of 1 July 2023, because the legislator needs time to adopt legal regulation, founded on the basic principles of personal data processing, that would allow processing personal the data of a person who has been acquitted in criminal proceedings if such were necessary. [19.]

- The Constitutional Court held:

1. To recognise Para 1 of Section 23 of the Punishment Register Law, insofar it applies to data of an acquitted person, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia and void as of 1 July 2023.

2. With respect to persons who have already begun to defend their rights by general legal remedies, to recognise Para 1 of Section 23 of the Punishment Register Law, insofar it applies to data of an acquitted person, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on their rights occurred.

The judgement is final and not subject to appeal and it enters into force on the day it is delivered.

The text of the judgement is available on the Constitutional Court's homepage:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/03/2022-09-01_Spriedums.pdf

The press release was prepared to inform society about the Constitutional Court's work. More detailed information about recent developments, cases initiated and heard by the Constitutional Court is available on the Constitutional Court's webpage www.satv.tiesa.gov.lv. Please follow also information published on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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