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**The Constitutional Court terminates legal proceedings in a case regarding a norm of the Sentence Execution Code of Latvia that prohibits appealing against the decision by the Head of the Prison Administration by which a convicted person has been refused mitigation of the regime for serving a sentence**

On 20 June 2018, the Constitutional Court decided to terminate legal proceedings in case No. 2017-19-01 “On Compliance of Section 50<sup>21</sup>(5) of the Sentence Execution Code of Latvia, insofar it Applies to a Decision to Refuse Mitigating the Regime for Serving a Sentence, with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Section 50<sup>21</sup>(5) of the Sentence Execution Code of Latvia (in the wording that was in force until 20 December 2017) which provided that the decision by the Prison Administration, adopted with regard to a complaint by a convicted person regarding the decision by the evaluation committee of the institution for deprivation of liberty, was not subject to appeal.

**The Norm of Higher Legal Force**

The first sentence of Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

**The Facts**

The case was initiated with respect to two applications by the Supreme Court. The Supreme Court is reviewing administrative cases, in which ancillary complaints regarding refusals of the Administrative District Court to accept for examination applications by convicted persons are examined. In one of these applications, a convicted person requested to recognise as being unlawful a decision by the head of the institution for deprivation of liberty, refusing to transfer an application by the convicted person regarding mitigating regime for serving a sentence to the evaluation committee of this institution. In the second application, the convicted person

requested revoking of a decision by the evaluation committee to refuse to mitigate the regime for serving the sentence.

The Supreme Court notes that, in the framework of a progressive system for serving the sentence, the change of the regime for serving the sentence – both aggravating and mitigating the regime for serving the sentence – *per se* significantly impacts the convicted person's right to private life. The protection of this right of a convicted person should be ensured at a fair trial; however, the contested norm prohibits from it. Thus, it restricts the fundamental right of the convicted person that is established in the first sentence of Article 92 of the *Satversme*. This restriction is said to have a legitimate; however, it is not proportionate. Hence, the contested norm is said to be incompatible with the first sentence of Article 92 of the *Satversme*.

### **The Court's Findings and Decision**

The Constitutional Court found that the contested norm, essentially, had become void because since 21 December 2017 Section 50<sup>21</sup> of the Sentence Execution Code of Latvia granted to a convicted person the right to appeal against the decision by the evaluation committee to the Head of the Prison Administration, and to appeal against the decision by the Head of the Prison Administration in court, as well as to appeal against the respective judgement by the first instance court in the cassation procedure. [6.]

Since in the particular case there are no circumstances that would require continuing legal proceedings in the case under review, the Constitutional Court found that, pursuant to Para 2 of Section 29 (1) of the Constitutional Court Law, legal proceedings in case No. 2017-19-01 shall be terminated. [7.]

### **The Constitutional Court decided:**

to terminate legal proceedings in case No. 2017-19-01 “On Compliance of Section 50<sup>21</sup>(5) of the Sentence Execution Code of Latvia, insofar it Applies to a Decision to Refuse Mitigating the Regime for Serving a Sentence, with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The decision is not subject to appeal.

The text of the decision [in Latvian] is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/08/2017-19-01\\_Lemums\\_izbeigsana-1.pdf#search=2017-19-01](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/08/2017-19-01_Lemums_izbeigsana-1.pdf#search=2017-19-01)

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The press release was prepared with the aim to facilitate understanding of the cases heard by the Constitutional Court. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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