



Satversmes tiesa

Press Release

Case No 2020-36-01

29 March 2021

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The absolute prohibition on individuals previously convicted of violent criminal offences working in contact with children is incompatible with the Constitution

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On 25 March 2021, the Constitutional Court passed a judgment in Case No 2020-36-01 “On the compliance of paragraph 1 of Section 72(5) of the Law on the Protection of the Children’s Rights with the first sentence of Article 91 and the first sentence of Article 106 of the Constitution of the Republic of Latvia”.

#### CONTESTED PROVISION

- Paragraph 1 of Section 72(5) of the Law on the Protection of the Children’s Rights provides:

Individuals who have been convicted of criminal offences that are related to violence or threats of violence may not work in child care, educational, health care, and other institutions where children are staying, at events for children and events in which children take part, may not perform voluntary work, as well as may not provide services under an agreement entered into, irrespective of whether or not the conviction is expunged or set aside (except for individuals who provide one-time or temporary services, as well as services which are provided in the absence of a child).

#### PROVISIONS OF SUPERIOR LEGAL FORCE

- First sentence of Article 91 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):

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

- First sentence of Article 106 of the Constitution:

“Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

#### FACTS OF THE CASE

The case was initiated on the basis of an application filed by the Supreme Court. The applicant is hearing a civil case in which a claim was brought to recognise a notice of dismissal, which had been *inter alia* substantiated by the contested provision, as invalid, to reinstate the individual in their job and to collect the average earnings for the period of forced absence from work.

In the opinion of the Supreme Court, the contested provision does not comply with the first sentence of Article 106 of the Constitution, as the restriction it imposes on fundamental rights is not necessary. The legitimate aim of the said restriction of fundamental rights can allegedly be achieved by means that are less restrictive on the individual's rights, for example, by allowing for an assessment of each particular situation. It is also alleged that the contested provision does not comply with the principle of legal equality as enshrined in the first sentence of Article 91 of the Constitution, since differential treatment is allowed to the claimant in the respective civil case compared to other groups of individuals, for example, those who may not work as teachers if they have been punished for committing an intentional crime, and those who may not be adopters of a child if they have been punished for a criminal offence related to violence or threats of violence. While a case-by-case assessment is admissible in the situations referred to above, the contested provision does not provide for such a possibility.

### THE COURT'S FINDINGS

#### On the scope of the first sentence of Article 106 of the Constitution

The Constitutional Court noted that the first sentence of Article 106 of the Constitution protects every individual's right to choose and maintain their occupation, including the individuals wishing to work, do voluntary work, or be employed under a services agreement at an institution where children are staying or at an event in which children take part. [12]

#### On the content of the contested provision and on the restriction it imposes on fundamental rights

The Constitutional Court concluded: even though the contested provision is no longer applicable in respect of the individual's right to work as a teacher, it does restrict the right to freely choose another occupation for every individual who has been convicted of an offence which is to be defined as that related to violence or threats of violence but is not an offence against morality and sexual integrity – regardless of whether the conviction has been expunged or set aside. [12.5]

On whether the restriction of fundamental rights established by the contested provision has a legitimate aim and whether the means chosen are appropriate for achieving the legitimate aim

The Constitutional Court stressed that any kind of violence against children is impermissible, regardless of its character. The state has an obligation to take all the appropriate measures to fully implement every child's rights. Furthermore, in protecting a child from violence, the principle of precaution has to be observed. All kinds of violence against a child should first and foremost be prevented through proactive and preventive measures. [15]

Considering the above, the Constitutional Court acknowledged that the restriction contained in the contested provision, which proactively and pre-emptively protects every child from individuals who have committed violent crimes, serves the legitimate aim – to protect the rights of children, i.e., other people – and is appropriate for achieving this aim. [15–17]

On the absolute nature of the restriction contained in the contested provision

The Constitutional Court concluded that the prohibition imposed by the contested provision is absolute. Even though the restriction of fundamental rights established by the contested provision does not apply to the individuals providing one-time or temporary services, as well as services that are provided in the absence of a child, the contested provision does not allow for exceptions in respect of a sufficiently clearly defined scope of individuals subject to the restriction, and this restriction is imposed for life. [18]

On the incompatibility of the absolute prohibition with the first sentence of Article 106 of the Constitution

In evaluating the proportionality of the prohibition, the Constitutional Court examined whether the legislator had:

- 1) substantiated the need for the absolute prohibition;
- 2) evaluated the substance of the absolute prohibition and the consequences of its application;
- 3) presented an argument for the fact that if exceptions from this absolute prohibition had been allowed, the legitimate aim would not have been achieved at the same quality level.

The Constitutional Court concluded that, in the situation in question, the legislator had justified the need for the absolute prohibition by the obligation to protect children from

violence. Also, in the given situation, the legislator had evaluated the substance of the absolute prohibition and the consequences of its application. [19.1–19.2]

However, as the Constitutional Court concluded, the legislator had not substantiated that if exceptions from the respective prohibition had been allowed, its legitimate aim would not have been achieved at the same quality level. [19.3.1–19.3.5]

In the case in question, the legislator had considered all violent crimes as being so dangerous that the individuals previously punished for any of them should be prohibited for life from being employed at institutions where children are staying or at events in which children participate. [19.3.2]

In this regard, the Constitutional Court emphasised: the fact that an individual was once punished for committing a violent offence is not always a sufficient ground for finding that this individual poses a long-term threat to society and children. In establishing a prohibition which restricts fundamental rights of a person, one must facilitate, as much as possible, the attainment of individual justice rather than go by general presumptions. The situations covered by the scope of the contested provision may vary considerably. Both the interests threatened by the offence and the time which has passed since it was committed may differ. Also, the degree of the individual's maturity and their understanding of the consequences of a criminal offence may differ significantly depending on whether the individual is a minor or an adult. [19.3.2]

Furthermore, the Constitutional Court observed that the rights of individuals who commit violent criminal offences as minors are protected by the principle of the priority of the child's best interests. It is possible that a child of this age has not yet reached a sufficient degree of maturity and thus has no proper understanding of the consequences of their actions, therefore, in such a situation, the fact that a violent crime has been committed must not by itself determine the whole remaining life of the individual. In other words, the legislator must not presume that every individual who committed a crime as a minor will be violent also in adulthood and remain so for the rest of their life. [19.3.2]

Thus, the Constitutional Court concluded that the absolute prohibition, as imposed by the contested provision, on any individual previously convicted of a violent criminal offence being employed at institutions where children are staying or at events in which children participate has no reasonable foundation. [19.3.2]

The Constitutional Court found that the legitimate aim of the respective restriction of fundamental rights can be achieved at an equivalent quality level by means that are less restrictive on the individual's rights and would not demand disproportionate investment from the state and society. Namely, the right of a person previously

convicted of a violent criminal offence to work in contact with children can be individually assessed by the head of the institution, the employer, or the event organiser, in consultation with the State Inspectorate for Protection of Children's Rights if necessary. This additional responsibility can also be conferred on the State Inspectorate for Protection of Children's Rights, which already has wide competence in matters relating to children's rights protection and in controlling compliance with the Law on the Protection of the Children's Rights. The said assessment can also be performed by a general jurisdiction court as part of the consideration of employment disputes in accordance with the procedures set out in the Civil Procedure Law. [19.3.5]

Thus, the Constitutional Court found that the restriction of fundamental rights established by the contested provision does not comply with the principle of proportionality and therefore also with the first sentence of Article 106 of the Constitution. [19.3.5]

#### On the compatibility with the first sentence of Article 91 of the Constitution

If a contested provision has been found to be incompatible with at least one provision of superior legal force, this contested provision is to be recognised as being unlawful and void. Therefore, the Constitutional Court did not additionally evaluate the compliance of the contested provision with the first sentence of Article 91 of the Constitution. [20]

#### On the moment when the contested provision becomes void

The Constitutional Court noted that recognising the contested provision as being void in respect of the claimant in the particular civil case as from the moment when the infringement of the fundamental rights occurred is the only possibility to protect the claimant's fundamental rights. For this reason, the Court decided to recognise the contested provision as being void in respect of the claimant in the particular civil case as from the day when the employment relationship with that claimant was terminated pursuant to the contested provision. [21]

In view of the need to protect children's rights, the Constitutional Court found it to be necessary and permissible that a contested provision which is incompatible with the Constitution would remain in force for a certain time, allowing the legislator to establish a carefully thought-through legal regulation that will be in accord with the Constitution and the findings laid down in the Constitutional Court's judgment and ensure proportionality between the restriction of the individual's rights and the protection of a child from violence. [21]

**The Constitutional Court ruled:**

1. To recognise paragraph 1 of Section 72(5) of the Law on the Protection of the Children's Rights as being incompatible with the first sentence of Article 106 of the Constitution of the Republic of Latvia and void as from 1 January 2022.

2. In respect of the claimant in civil case No C12173819, to recognise paragraph 1 of Section 72(5) of the Law on the Protection of the Children's Rights as being incompatible with the first sentence of Article 106 of the Constitution of the Republic of Latvia and void as from the moment when the infringement of the respective individual's fundamental rights occurred.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment enters into force on the day it is published.

The text of the judgment is available on the website of the Constitutional Court: [https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-36-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-36-01_Spriedums.pdf)

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This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the website of the Constitutional Court at [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv). You are also invited to follow the information on the Court's *Twitter* account [@Satv\\_tiesa](https://twitter.com/Satv_tiesa) and *YouTube* [channel](#).

**Zanda Meinarte**

Public Relations specialist  
at the Constitutional Court  
[Zanda.Meinarte@satv.tiesa.gov.lv](mailto:Zanda.Meinarte@satv.tiesa.gov.lv)

