



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Rīga, 24 October 2024

Case No. 2023-44-01

The Constitutional Court composed of the chairperson of the court Irēna Kucina, judges Jānis Neimanis, Anita Rodiņa, Jautrīte Briede, Veronika Krūmiņa, and Mārtiņš Mits,

on the basis of the application of the Senate,

pursuant to Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 1, Section 17, Paragraph one, Clause 9, Section 19.¹, and Section 28.¹ of the Constitutional Court Law,

on 25 September 2024, in the written procedure, examined the following case:

“On conformity of Section 13, Paragraph two, Clause 3 of the Insolvency Law, insofar as it establishes the prohibition to hold the position of an insolvency administrator for a person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, with Article 101, Paragraph one and the first sentence of Article 106 of the Constitution of the Republic of Latvia”.

Establishing Part

1. On 26 July 2010, the *Saeima* adopted the Insolvency Law whereby Section 13, Paragraph two, Clause 4 thereof stipulated that a person who has been found guilty of committing an intentional criminal offence or against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person may not hold the position of an insolvency proceedings administrator (hereinafter – the administrator). According to Paragraph 8 of the law “Amendments to the Insolvency Law” of 6 January 2017, the abovementioned prohibition was reworded and included in Section 13, Paragraph two, Clause 3 of the Insolvency Law thus stipulating that a person who has been convicted of committing an intentional criminal offence or against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person may not hold the position of the administrator. Such wording of the legal norm is effective also during examination of the present case.

2. **The applicant, i.e. the Senate**, (hereinafter – the applicant) considers that Section 13, Paragraph two, Clause 3 of the Insolvency Law, insofar as it establishes the prohibition to hold the position of the administrator for a person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, (hereinafter – the contested norm) fails to conform to Article 101, Paragraph one and the first sentence of Article 106 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

There are pending proceedings of the applicant in administrative case No. A420290219 concerning the annulment of an administrative act by which a person was removed from the position of the administrator. The administrative act is based on the contested norm.

The applicant indicates that the person who is the applicant in the administrative case has held the position of the administrator for several years, but in 2019 the Insolvency Control Service obtained information that this person was

held criminally liable at the age of 16 and the criminal proceedings against the person for committing an intentional criminal offence were terminated for reasons other than exoneration of the person. Accordingly, the person is restricted from continuing to hold the position of the administrator.

Administrators are, in their official capacity, equivalent to public officials and have the obligation to ensure the efficient and lawful conduct of insolvency proceedings and the achievement of their objectives. The right to hold a position in the civil service contained in Article 101, Paragraph one of the Constitution may be extended to administrators.

The contested norm does not provide for a time limit, thus the restriction is to be regarded as a permanent prohibition. The restriction is established by law. It has a legitimate objective, i.e. the protection of the democratic structure of the state. The contested norm is appropriate for the achievement of the legitimate objective, as it ensures that the position of the administrator is held only by persons who are not guilty of criminal conduct and do not undermine the authority of the institution of the administrator.

However, such restriction excludes the presumption that a person is capable of change. This is justified only if the offence committed by the person is incompatible with holding a position in the civil service. There are various circumstances which do not qualify as non-exonerating circumstances, but the contested norm applies to any case where criminal proceedings have been terminated for reasons other than exoneration of the person. Without taking into account these different circumstances or other considerations, persons who do not undermine the legitimate objective may also be excluded from the circle of administrators. The contested norm precludes an individual assessment of each case, therefore such restriction is manifestly disproportionate, in particular in cases where the criminal offence was committed long ago and when the person was a minor.

When being a minor, the person who is the applicant in the administrative case committed a criminal offence of the lowest degree of harm. There are no reports of new offences committed by the person. Thus, 20 years have passed since the criminal offence was committed. Therefore, the person should have the right

to an assessment of whether the decision to terminate the criminal proceedings for reasons other than exoneration is detrimental to the institution of the administrator. The legitimate objective of the restriction can be achieved to an equivalent degree by an individual assessment. Moreover, Section 13, Paragraph two, Clause 3 of the Insolvency Law does not provide for the continuation of such prohibition even after extinguishing or expungement of the criminal record in respect of persons convicted of a deliberate criminal offence.

The applicant points out that the person has been performing the duties of the administrator for several years and has ensured the lawful conduct of insolvency proceedings. The certificate of the administrator issued to the person had been renewed several times and thus had not been found to be professionally unsuitable for the position. Consequently, the benefit to society of such restriction is insignificant in relation to the restriction on the fundamental rights of the individual.

3. The authority which issued the contested act, i.e. the *Saeima*, considers that the contested norm conforms to the first sentence of Article 106 of the Constitution, whereas the proceedings in the case in the part concerning conformity of the contested norm with Article 101, Paragraph one of the Constitution should be terminated.

The contested norm restricts the right of a person arising from the first sentence of Article 106 of the Constitution; however, this restriction is proportionate.

Administrators perform important functions for the country. It is important that the society is convinced that administrators contribute to the prestige of the profession and build trust in the profession. Only persons who are capable of exercising the protection of the rights of others, the welfare of society, and a democratic state governed by the rule of law may perform the respective functions.

If the criminal proceedings are terminated for reasons other than exoneration of the person, the person is essentially found guilty of the criminal offence. If such person were allowed to hold the position of the administrator, his

or her authority, impartiality, and law-abidingness, and that of any other administrator, could be called into question. This would not only jeopardise the lawful and efficient conduct of the respective insolvency proceedings, but also undermine public confidence in the insolvency proceedings as a whole. The contested norm ensures the protection of the democratic structure of the state.

The restriction on fundamental rights provided for in the contested norm is appropriate to achieve the legitimate objective. This restriction ensures that only persons who have not been held criminally liable are appointed as administrators and that the society has no doubts as to their ability to perform the duties of the administrator. However, the basis for such doubts could be previous criminal record of the person.

The legitimate objective of the restriction cannot be achieved to the same quality by individual assessment. Conduct unsuitable for the position of the administrator cannot be undone by other means. Also, possible change over time of the attitudes and value system of the person does not necessarily mean that he or she is suitable for a particular position, as it is also important to strengthen public confidence in a particular position by personal example. There are no other, more lenient measures by which the legitimate objective of the restriction could be achieved at least to the same degree.

The legislator has assessed in which of the cases where criminal proceedings have been terminated for reasons other than exoneration of the person, the circumstances are such as to allow the respective person to hold the position of the administrator. A specific form of guilt, i.e. a criminal offence which has been committed deliberately (intentionally), has been established, and it prevents a person from holding the position of the administrator in cases where the criminal proceedings against him or her have been terminated for reasons other than exoneration. If the fault of the person is manifested as negligence, then the person may hold the position of the administrator. This balances the rights of individuals and the public interest.

The *Saeima* considers that the concept of civil service is not applicable to persons who are not citizens of Latvia, because according to Article 101 of the Constitution, only citizens of Latvia may perform civil service. Neither the

Insolvency Law nor other regulatory enactments require administrators to hold Latvian citizenship. Consequently, the position of the administrator does not fall within the scope of the concept of “civil service” covered in Article 101 of the Constitution. The proceedings in the case in the part concerning conformity of the contested norm with Article 101, Paragraph one of the Constitution should be terminated.

4. The Ministry of Justice, i.e. the invited party, argues that administrators ensure the performance of the functions of a public authority and that, therefore, the standards of integrity of administrators must be higher than the usual standards of conduct and ethics in society. It should be ensured that only a person whose personality does not give rise to doubts as to the integrity of the exercise of the powers entrusted to him or her may hold the position of the administrator. The fact that persons who are guilty of criminal conduct are excluded from the circle of candidates for the position of the administrator gives confidence that the conduct of the respective person to date has been of a high standard. Confidence in the profession of the administrator ensures public involvement in insolvency proceedings and cooperation of creditors with the administrator.

The legislator did not extend the restriction to criminal offences committed as a result of negligence and thus balanced the rights of individuals and the public interest.

The contested norm was adopted at a time when serious irregularities had been found in the activities of administrators and several administrators had been held liable for abuse of powers. In the context of the reform of the profession of the administrator, administrators are treated as public officials. Thus, the contested norm was necessary in the given circumstances to achieve the legitimate objective.

The number of infringements detected in the activities of administrators has now decreased and will continue to decrease. This has a positive impact on public confidence in the profession of the administrator. It is possible that the restriction on fundamental rights laid down in the contested norm is no longer proportionate.

The Ministry of Justice joins the opinion expressed in the reply by the *Saeima* on conformity of the contested norm with Article 101 of the Constitution. Administrators are not engaged in civil service.

5. The Insolvency Control Service, i.e. the invited party, considers that the contested norm conforms to Article 101, Paragraph one and the first sentence of Article 106 of the Constitution.

The restriction on fundamental rights contained in the contested norm ensures the protection of the democratic structure of the state and public confidence in the insolvency proceedings as a whole. The public benefit outweighs the restriction on the fundamental rights of the individual established by the contested norm.

If the person against whom criminal proceedings have been terminated for reasons other than exoneration of the person has committed a deliberate (intentional) criminal offence, this means that he or she was aware of the harm of his or her conduct, foresaw its harmful consequences, and wished to achieve them, or knowingly allowed those consequences to occur. Hence, at the time of committing the criminal offence, the person must have understood the factual circumstances of the offence and must have been aware of the harm of his or her conduct.

6. The Ombudsman, i.e. the invited person, considers that the restriction on fundamental rights established in the contested norm is not proportionate.

The Ombudsman points out that administrators exercise public authority and are to be regarded as part of civil service within the meaning of Article 101 of the Constitution.

The contested norm stipulates that a person who essentially has been found guilty of committing a criminal offence may not hold the position of the administrator. The prohibition is therefore appropriate to achieve the legitimate objective of the restriction on fundamental rights, namely the protection of the democratic structure of the state.

Not all criminal offences are of the same degree of harm in terms of their nature and the interests at stake. In the present case, the criminal offence incriminating the administrator was a criminal offence which did not significantly undermine the interests of others. Non-exonerating circumstances also cover situations where the breach of the public interest is not significant and the degree of harm of the offence is low. In addition, the criminal offence was committed when the person was a minor. The contested norm fails to integrate children who have committed an intentional criminal offence into society and the labour market.

The objective of the restriction on fundamental rights contained in the contested norm could be achieved to an equivalent degree by other alternative means, i.e. individual assessment.

7. The Latvian Association of Certified Insolvency Proceedings Administrators, i.e. the invited person, considers that the contested norm fails to conform to Article 101, Paragraph one and the first sentence of Article 106 of the Constitution.

The Association points out that in the present case the person committed the criminal offence when the person was a minor, and therefore it should be assessed whether the restriction established in the contested norm is proportionate and necessary to the extent established. Although the criminal proceedings against the person were terminated for reasons other than exoneration, the person initially had the opportunity to hold the position of the administrator. The person could rely on the fact that the requirements for the position of the administrator were fulfilled.

8. *Mg. iur.* Gaidis Bērziņš, i.e. the invited person, points out that the restriction on fundamental rights included in the contested norm is not proportionate.

In ensuring the conduct of insolvency proceedings, administrators act not only in the interests of creditors, but also in national interests. The restriction on fundamental rights established by the contested norm is related to implementing important societal functions in good faith.

The contested norm contains a presumption that if the position of the administrator is held by the person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, the prestige of the profession may be affected in all cases. Such restriction would be justified on grounds of public interest only if the nature of the offence was such as to be incompatible with the performance of the duties of the administrator. The restriction contained in the contested norm allows to achieve the legitimate objective only partially, as it excludes even highly qualified specialists who do not jeopardise the achievement of the legitimate objective from applying for the position of the administrator.

The legitimate objective can be achieved by less restrictive measures. For example, the restriction could be linked to the length of the conviction, rather than being established permanently. An individual assessment would also be regarded as a less restrictive measure, for example, by ascertaining the attitude of the person towards the committed criminal offence, his or her lifestyle after committing the offence, and the possible threat to the democratic structure of the state.

Section 13, Paragraph two, Clause 3 of the Insolvency Law allows a person who has been convicted of a criminal offence to apply for the position of the administrator after extinguishing or expungement of the criminal record. Thus, the person against whom criminal proceedings have been terminated for reasons other than exoneration is placed in a less favourable position than the person who has been convicted.

Concluding Part

9. Article 101, Paragraph one of the Constitution stipulates 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.”

Article 101, Paragraph one of the Constitution provides for the right of every citizen of Latvia on equal grounds to hold a position in the civil service and

to continue to hold such position. Civil service is a public legal position involving the exercise of public authority.

The legislator has expressly provided in the regulatory enactments that certain positions are part of the civil service. However, if it is not provided for in regulatory enactments, in order to determine whether a position is part of the civil service within the meaning of Article 101 of the Constitution, both the functions performed by persons when performing the duties of the relevant position, as well as the restrictions imposed on them in connection with the performance of the duties of the position should be assessed (*cf. Paragraph 7 of the concluding part of the judgment of the Constitutional Court of 11 April 2006 in Case No. 2005-24-01*).

The applicant considers that the right to hold a position in the civil service, contained in Article 101, Paragraph one of the Constitution, is applicable to administrators. The *Saeima*, however, points out that according to this norm, only citizens of Latvia may hold a position in the civil service. No regulatory enactment requires administrators to hold Latvian citizenship. Thus, the position of the administrator does not fall within the scope of Article 101 of the Constitution and the proceedings in the part concerning conformity of the contested norm with Article 101, Paragraph one of the Constitution should be terminated.

Consequently, the Constitutional Court will first verify whether the proceedings in this part of the case should be terminated.

Article 101, Paragraph one of the Constitution mentions a citizen of Latvia as the subject of the relevant right. Thus, a person who is not a citizen of Latvia has no right to demand from the country to guarantee him or her the right to hold a position in the civil service. Whereas the legislator may decide whether a particular position requires citizenship as a link to the country. However, the requirement of Latvian citizenship as such is not a criterion for determining whether a particular position is related to the civil service. Thus, the argument of the *Saeima* that the right to hold a position in the civil service contained in Article 101 of the Constitution does not apply to administrators simply because the regulatory enactments do not require them to hold Latvian citizenship is unfounded. In order to determine whether the position of the administrator is part

of the civil service, it is necessary to assess the rights conferred and the duties imposed on the administrator.

Insolvency proceedings are an essential element of the legal environment for commercial activity, the task of which is to provide solutions for persons in financial difficulties (*see Cabinet Order No. 527 of 21 September 2016, Regarding the Development Guidelines for Insolvency Policy 2016–2020 and Implementation Plan Thereof*). Insolvency proceedings are aimed primarily at the protection of the rights of creditors and debtors and the purpose thereof is to settle the claims of creditors against the debtor to the fullest extent possible (*see Paragraph 9.4 of the decision on termination of proceedings of the Constitutional Court of 20 April 2010 in Case No. 2009-100-03 and Paragraph 15 of the decision on termination of proceedings of 7 October 2013 in Case No. 2012-25-01*).

The Insolvency Law provides for different rights and different obligations for the administrator. According to the provisions of this Law, upon the declaration of insolvency proceedings, the administrator acquires the right to dispose of all property belonging to the legal person or natural person and in the possession or control thereof, and to administer the property of the debtor, managing it as an honest and careful proprietor. After declaration of insolvency proceedings of a legal person, the administrator has also all the rights, duties, and responsibilities of administrative bodies provided for in laws and regulations, the articles of association of the debtor, or in contracts. The Constitutional Court has already recognised that the Insolvency Law provides the administrator with extensive powers, including the power to take over and dispose of the property of the debtor, to take decisions affecting the interests of creditors, as well as to become, during the insolvency proceedings of a legal person, the sole legal manager (official) of the insolvent undertaking with the most extensive rights to take decisions and conclude transactions (*see Paragraph 24.2 of the judgment of the Constitutional Court of 21 December 2015 in Case No. 2015-03-01*).

The rights and duties of the administrator are directly aimed at the efficient administration of the property of the debtor and the settlement of the claims of the creditors to the fullest extent possible. However, the nature of these rights and obligations does not imply that they are related to the exercise of public authority.

The case also presents the view that the administrator exercises public authority because he or she has the right to take decisions binding on the parties. However, the right to take binding decisions as such does not imply that the persons taking those decisions hold a position in the civil service. The taking of binding decisions can also be delegated to private individuals. The administrator shall not take a binding decision on behalf of the state in relation to the recognition, non-recognition, or partial recognition of the claims of creditors. Also, the auctioning of the property of the debtor is not carried out on behalf of the state. The administrator acts as the person administering the property of the debtor in order to ensure that the claims of creditors are settled to the fullest extent possible.

Although the Insolvency Law lays down the amount of remuneration for the administrator, the administrator may also agree on a different amount of remuneration with the body of creditors in the cases provided for by the law. Such an agreement constitutes a private legal transaction between the administrator, as the administrative body of the insolvent undertaking, and the body of creditors (*cf. Paragraph 7 of the decision of the Senate of 30 April 2015 in Case No. C27170214 (SPC-9/2015)*). This also shows that there is no relationship of public authority between the administrator and the persons involved in the insolvency proceedings.

The Constitutional Court has already previously recognised that the administrator performs functions of importance for the state (*see Paragraph 19.4 of the judgment of the Constitutional Court of 22 November 2011 in Case No. 2011-04-01*). However, taking into account the nature of the rights and obligations imposed on the administrator and the insolvency proceedings regulation as a whole, it can be concluded that the activity of the administrator is not related to the exercise of public authority. Hence, it is recognised that the administrator is not part of the civil service within the meaning of Article 101, Paragraph one of the Constitution.

Consequently, the proceedings in the case in the part concerning conformity of the contested norm with Article 101, Paragraph one of the Constitution should be terminated.

10. The applicant requests the Constitutional Court to recognise that the contested norm fails to conform to the first sentence of Article 106 of the Constitution.

The first sentence of Article 106 of the Constitution stipulates that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.

The Constitutional Court has previously recognised that the right established in the first sentence of Article 106 of the Constitution is applicable to administrators (*see Paragraph 14.1 of the judgment of the Constitutional Court of 21 December 2015 in Case No. 2015-03-01*). However, the legislator may establish requirements for a specific professional activity to the extent necessary in the public interest (*see Paragraph 11.2 of the judgment of the Constitutional Court of 15 December 2022 in Case No. 2021-41-01*).

Section 13 of the Insolvency Law sets out the requirements and restrictions for the position of the administrator. The contested norm provides that the person against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person may not hold the position of the administrator.

It is established from the materials of the case that the person on whose right to hold the position the applicant has to decide in the administrative case has held the position of the administrator since 2007, but in 2019 the Insolvency Control Service established that the person is subject to the prohibition established in the contested norm, because the person, being a minor, was held criminally liable, but the criminal proceedings for intentional criminal offence were terminated for reasons other than exoneration of the person. On the basis of the contested norm, the person was removed from the office of the administrator. Hence, the contested norm restricts the person from continuing to hold the position of the administrator.

Consequently, the contested norm restricts the right of the person to freely choose employment as stipulated in the first sentence of Article 106 of the Constitution.

11. In assessing the constitutionality of the restriction on fundamental rights, it must first be ascertained whether the restriction was imposed by a legal norm adopted according to appropriate procedures and in a legislative process which complies with the principle of good legislation.

On 26 July 2010, the *Saeima* adopted the Insolvency Law whereby Section 13, Paragraph two, Clause 4 thereof was supplemented with the prohibition for the person against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person to hold the position of the administrator. However, by Paragraph 8 of the law “Amendments to the Insolvency Law” of 6 January 2017, the abovementioned prohibition in the same wording was included in Section 13, Paragraph two, Clause 3 of the Insolvency Law. The Law was promulgated on 5 January 2017 in the official gazette *Latvijas Vēstnesis* No. 5 and entered into force on 6 January 2017.

The parties to the case have not expressed any objections regarding the procedures for the adoption and promulgation of the contested norm, and the Constitutional Court also has no doubts that the contested norm has been adopted and promulgated in accordance with the procedures laid down by the Constitution and the Rules of Order of the *Saeima*, is available in accordance with the requirements of regulatory enactments, and is sufficiently clearly formulated to enable a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of the application thereof.

However, the matter of whether the legislator, in the process of developing the draft law, has assessed the fact that the restriction is imposed permanently is essentially related to the matter of whether the legislator, in adopting the contested norm, has complied with the principle of proportionality. Thus, the Constitutional Court will verify the relevant considerations by assessing the proportionality of the restriction on fundamental rights included in the contested norm.

Therefore, the restriction on fundamental rights contained in the contested norm is established by a legal norm adopted according to appropriate procedures.

12. Any restriction on fundamental rights must be based on the circumstances and the reasons why it is necessary, because the restriction is imposed for an important interest, i.e. a legitimate objective.

The *Saeima* points out that the administrator plays an important role in the insolvency proceedings and it is unacceptable that his or her authority, impartiality, and obedience to the law could be called into question. The restriction contained in the contested norm is established primarily in order to ensure that a person whose conduct has the elements of a criminal offence under the Criminal Law which has been committed intentionally does not harm the insolvency proceedings and the authority of administrators. Thus, the legitimate objective of the contested norm is the protection of the democratic structure of the state. The applicant also agrees with this.

Conversely, the Constitutional Court has already concluded that the restriction on fundamental rights, the purpose of which is to promote the efficient and lawful conduct of insolvency proceedings and public confidence in the effectiveness of the legal regulation of insolvency proceedings, has the following legitimate objectives: the protection of the rights of others and the welfare of society (*see Paragraph 24.3 of the judgment of the Constitutional Court of 21 December 2015 in Case No. 2015-03-01*). As mentioned above, the administrator must ensure that the insolvency proceedings of legal and natural persons are conducted in an efficient and lawful manner and achieve their objectives. The administrator plays a key role in protecting the rights of creditors and debtors. Therefore, the position of the administrator should not be held by persons who undermine the confidence of both the persons involved in the particular proceedings and public confidence as a whole in the insolvency proceedings and the position of the administrator.

Consequently, the restriction on fundamental rights established in the contested norm has legitimate objectives, i.e. the protection of the rights of others and the welfare of society.

13. When assessing the proportionality of the restriction on fundamental rights, the Constitutional Court must verify whether the measures chosen are

appropriate for achieving the legitimate objectives, i.e. whether such objectives can be achieved by the measures chosen.

In order to build trust in the profession of the administrator, it is necessary to attract persons with good reputation and high ethical standards. Previous criminal record of a person may affect perceptions of the personal qualities and ethical standards of the administrator. If such person holds the position of the administrator, this may cast doubts and undermine confidence in the insolvency sector and in the authority of administrators as a whole. The contested norm restricts any person against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person to hold the position of the administrator.

Consequently, the restriction on fundamental rights provided for in the contested norm is appropriate to achieve the legitimate objectives.

14. When assessing whether the measures chosen are necessary to achieve the legitimate objectives, the Constitutional Court verifies whether such objectives could be achieved by other measures which would be less restrictive of the rights of the individual and would be equally effective.

The applicant considers that the legitimate objective can be achieved by a less restrictive measure on the fundamental rights of the individual, i.e. an individual assessment of each case, taking into account also the nature and degree of harm of the threat to the interests of a person or society caused by the committed criminal offence, as well as the time that has passed since the offence. The *Saeima* disagrees with this view and points out that the achievement of the legitimate objective is evidenced by the general confidence of individuals and society in administrators and that conduct unsuitable for the position of the administrator cannot be undone by other means.

14.1. The restriction laid down in the contested norm applies to all cases where a person has committed an intentional criminal offence, but the criminal proceedings have been terminated for reasons other than exoneration of the person. The prohibition does not provide for an individual assessment of each case, does not provide for exceptions, and it is permanent.

Permanent restrictions exclude the presumption that a person can change and modify his or her behaviour during life. Such restriction essentially stigmatises a person permanently, but this is not consistent with the requirement of a democratic state governed by the rule of law to build an inclusive society in which every member of society is treated with dignity. In other words, the past of a person should not have a lasting impact on his or her future. Lifetime restrictions not only prevent a person from exercising his or her rights, but also bind him or her in the eyes of society to what he or she has done in the past, without regard to his or her later life. This can naturally affect the desire of a person to further develop himself or herself and to fulfil his or her potential in a way that can contribute to society. Such restrictions are justified only in specific cases where the harm previously caused is intrinsically incompatible with the exercise of the respective rights (*see Paragraph 18.3 of the judgment of the Constitutional Court of 15 December 2022 in Case No. 2021-41-01*).

It cannot be established from the development materials of the Insolvency Law that the legislator has assessed the necessity of maintaining the restriction included in the contested norm permanently, as well as the consequences of its application and whether the legitimate objectives could be achieved by other, less restrictive measures of the fundamental rights of the individual.

Moreover, it can be established that Section 13, Paragraph two, Clause 3 of the Insolvency Law, in addition to the contested norm, also provides for the restriction which restricts a person who has been convicted of an intentional criminal offence from holding the position of the administrator. In 2016, it was envisaged to amend this paragraph and to provide that a person who has been convicted of an intentional criminal offence may also not hold the position of the administrator, irrespective of extinguishing or expungement of the criminal record (*see the abstract of draft law No. 753/Lp12 “Amendments to the Insolvency Law”*. Available at: saeima.lv). However, a proposal was submitted for the second reading of the draft law to delete the words “irrespective of extinguishing or expungement of the criminal record”. This was justified on the grounds that the restriction which restricts holding a position even after extinguishing or expungement of the criminal record may apply, for example, to judges and

prosecutors, but not to administrators (*see proposals for the second reading of draft law No. 753/Lp12 "Amendments to the Insolvency Law"*). This proposal was supported and the words "irrespective of extinguishing or expungement of the criminal record" were not included in Section 13, Paragraph two, Clause 3 of the Insolvency Law.

Thus, a convicted person is prohibited from holding the position of the administrator only until his or her criminal record is extinguished or expunged. Meanwhile for a person against whom criminal proceedings have been terminated for reasons other than exoneration, the restriction has more severe consequences, i.e. permanent prohibition. Thus, the approach of the *Saeima* is contradictory. On the one hand, the *Saeima* states that only persons who have not been convicted of a criminal offence may hold the position of the administrator, so that the public has no doubts as to their ability to perform the duties of the administrator, but on the other hand, it allows persons whose criminal record has been extinguished or expunged to hold this position. There is no adequate justification for imposing permanent restriction specifically on persons against whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration.

14.2. It follows from the case materials that in the case pending before the applicant, a person was removed from the position of the administrator, as information had been received that criminal proceedings had been initiated against this person for the use of a forged travel ticket and this offence was qualified as a criminal offence. The criminal proceedings were terminated because special circumstances of committing the criminal offence were determined and such information was obtained about the personality of the minor which mitigated his liability.

Criminal offences vary depending on the nature and harm of the threat to the interests of a person or the society. The Criminal Law divides criminal offences into criminal violations and crimes (less serious crimes, serious crimes, and especially serious crimes). They threaten various interests protected by the Criminal Law, e.g. life of a person, health of a person, inviolability of home, liberty, property, general security and public order, administrative order. The

Constitutional Court has also recognised that the termination of criminal proceedings for reasons other than exoneration applies to different criminal offences committed by a person. There are also such non-exonerating circumstances of a person which cover situations where the threat to public interests related to the offence of a person is relatively low and the degree of harm of this offence is the same (*see Paragraph 18.4.1 of the judgment of the Constitutional Court of 15 December 2022 in Case No. 2021-41-01*).

The *Saeima* notes that it has already assessed and determined in which cases public confidence in administrators and the insolvency proceedings as a whole is not seriously undermined and it is permissible for a person to hold the position of the administrator, and in which cases it is not permissible. In particular, the restriction is linked to a specific form of fault, i.e. a criminal offence which has been committed deliberately (intentionally). If a person has committed a criminal offence negligently and the criminal proceedings against him or her have been terminated for reasons other than exoneration of the person, the contested norm does not restrict him or her from subsequently holding the position of the administrator.

However, the fact that a person committed a criminal offence intentionally does not mean that this person could not later mend his or her ways and successfully integrate into society (*cf. Paragraph 20.1 of the judgment of the Constitutional Court of 23 May 2024 in Case No. 2023-34-01*). Moreover, when prohibiting a person from working in a profession, it is not only the interests of the person that are at stake when committing the respective criminal offence, but also the criteria that characterise the person, for example, the attitude of a person towards the committed offence and the way of life after committing the offence. It should also be taken into account that the attitude of a person towards the criminal offence committed by him or her, as well as the value system, may change over time (*see Paragraph 19.2.2 of the judgment of the Constitutional Court of 24 November 2017 in Case No. 2017-07-01*).

According to the applicant, the circumstance that a person has committed a criminal offence while being a minor should also be taken into account. The Ombudsman also points out that the contested norm does not contribute to the

integration of a child who has previously committed a criminal offence into society and the labour market.

Adolescence and early youth are times of experimentation, risk-taking, testing of social norms and more of a search for personal identity than of purposeful mature personal action. As people grow up, delinquent behaviour and breaking social norms become less common (*see: Zavackis A., Linde I., Sviķe I., Zemzars U. "Solis ceļā uz kriminālsodu politikas reformu un nepilngadīgo kriminālatbildības pārskatīšanu" [A step towards the reform of the criminal sanctions policy and review of juvenile criminal liability]. Jurista Vārds, 24.05.2022, No. 21, pp. 14–26*). It is possible that the minor has not yet reached a sufficient level of maturity and, consequently, a proper understanding of the consequences of his or her actions, therefore, in such case the fact of committing a criminal offence as such should not affect the rest of life of that person (*cf. Paragraph 19.3.2 of the judgment of the Constitutional Court of 25 March 2021 in Case No. 2020-36-01*).

By establishing the prohibition contained in the contested norm, the legislator has presumed that any person who has committed an intentional criminal offence and criminal proceedings which have been terminated for reasons other than exoneration of the person could always raise doubts and undermine confidence in the effectiveness of the insolvency sector and the profession of the administrator. However, the legislator has not taken into account the fact that the degree of harm of criminal offences, as well as the non-exonerating circumstances may vary and that behaviour of a person, especially if he or she committed a criminal offence when being a minor, may change over time. Moreover, as mentioned above, the legislator has allowed that the position of the administrator may be held by a person with a previous criminal record after extinguishing or expungement of the criminal record.

The prohibition laid down in the contested norm is directly related to the presumption about a person and his or her characteristics. Thus, it is an individual assessment, taking into account both the severity of the offence and the non-exonerating circumstances, as well as the time that has passed since the offence and the attitude and behaviour of the person after the offence, that may provide an

alternative measure that is less restrictive of the fundamental rights of the individual. This could be one of the measures ensuring that only those persons who undermine public confidence in the insolvency sector and the profession of the administrator are excluded from the circle of administrators.

The Insolvency Control Service has not indicated that there are many cases where persons subject to the restriction laid down in the contested norm wish to apply for the position of the administrator. The applicant has also not provided any information that it has before it other administrative cases in which the contested norm would be applicable. Thus, there is no reason to believe that the number of persons who should be assessed individually would be large and would require significant resources from the state.

In view of the above, the Constitutional Court concludes that the legitimate objectives of the prohibition contained in the contested norm could be achieved to the same degree by other, more lenient measures. Individual assessment could be one of them, but other alternative measures are also possible. It is for the legislator to choose the most appropriate measure to achieve the legitimate objectives without disproportionately restricting the fundamental rights of individuals. If it is established that there is at least one less restrictive measure, there are grounds to recognise that the contested norm disproportionately restricts fundamental rights. The Constitutional Court is not required to list all possible more lenient measures in the judgment (*see Paragraph 21 of the judgment of the Constitutional Court of 4 November 2021 in Case No. 2021-05-01*).

Consequently, the contested norm fails to conform to the first sentence of Article 106 of the Constitution.

15. In accordance with Section 32, Paragraph three of the Constitutional Court Law, a legal norm that the Constitutional Court has declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the judgment of the Constitutional Court, unless the Constitutional Court has determined otherwise.

When deciding on the moment when the contested norm would lose validity, the Constitutional Court proceedings must balance the public interest and

the fundamental rights of particular individuals. Moreover, the court must ensure that the situation that might arise from the moment when the contested norm loses validity does not lead to new infringements of the fundamental rights established in the Constitution and also does not cause significant damage to national and public interest (*see Paragraph 25 of the judgment of the Constitutional Court of 17 December 2020 in Case No. 2020-18-01*).

Declaring the contested norm invalid from the date of publication of the judgment of the Constitutional Court could undermine the legitimate objectives for the protection of which the restrictions were established in relation to the profession of the administrator, since in such case the prohibition contained in the contested norm would lose its full force and, consequently, the rights of others and the welfare of society would be undermined. The legislator must establish a new legal framework, choosing measures which would be less restrictive of the fundamental rights of an individual. Therefore, in this case it is necessary and permissible that the unconstitutional norm remains in force for a certain period of time in order to allow the legislator to adopt a new legal framework. Consequently, the contested norm should be declared invalid as of 1 June 2025.

The applicant requests that, in respect of the applicant in the administrative case pending before it, the contested norm is declared invalid from the date of its entry into force.

In accordance with Section 250, Paragraph two of the Administrative Procedure Law, the legal norms on which the administrative act is based shall be of significant importance in the examination of the application for the revocation of an administrative act. Consequently, for the result of this judgment to affect the legal situation of the person who submitted the application for the protection of his rights in administrative case No. A420290219, the contested norm should be declared invalid in respect of the applicant in the present case from the moment of the infringement of his fundamental rights, i.e. from the moment of its application by the Insolvency Control Service. In the abovementioned administrative case, the applicant must individually assess the risks associated with the respective person holding the position of the administrator and, for that purpose, directly apply the Constitution and the findings contained in this judgment.

The Constitutional Court has not received any information on other administrative cases in which the court should apply the contested norm. However, in order to protect the fundamental rights of all individuals to whom the contested norm could have been applied and who, on the date of entry into force of this judgment, could have commenced and continue to defend their fundamental rights by means of general judicial remedies, the contested norm shall also be declared invalid from the moment of the infringement of the fundamental rights of the respective individuals.

Substantive Part

Pursuant to Section 29, Paragraph one, Clause 6 and Sections 30 to 32 of the Constitutional Court Law, the Constitutional Court

decided as follows:

1. It is hereby determined to terminate the proceedings in the case in the part concerning conformity of Section 13, Paragraph two, Clause 3 of the Insolvency Law, insofar as it establishes the prohibition to hold the position of an insolvency administrator for a person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, with Article 101, Paragraph one of the Constitution.

2. It is hereby recognised that Section 13, Paragraph two, Clause 3 of the Insolvency Law, insofar as it establishes the prohibition to hold the position of an insolvency administrator for a person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, fails to conform to the first sentence of Article 106 of the Constitution and shall be declared invalid as of 1 June 2025.

3. In respect of the individuals who have commenced to defend their fundamental rights by means of general judicial remedies, it is hereby

recognised that Section 13, Paragraph two, Clause 3 of the Insolvency Law, insofar as it establishes the prohibition to hold the position of an insolvency administrator for a person in respect of whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person, fails to conform to the first sentence of Article 106 of the Constitution and shall be declared invalid from the moment of the infringement of the fundamental rights of the respective individuals.

The judgement is final and not subject to appeal.

The judgement shall enter into force as of the date of its publication.

Chairperson of the court hearing

Irēna Kucina