



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Riga, 22 December 2022

in case No. 2022-09-01

The Constitutional Court, composed of Chairperson of the Court Hearing Aldis Laviņš, judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa and Jautrīte Briede,

on the basis of an application of the Administrative District Court.

on the basis of Article 85 of the Constitution of the Republic of Latvia and Paragraph 1 of Section 16, Paragraph 9 of Section 17(1), Sections 19.¹ and 28.¹ of the Constitutional Court Law,

at the hearing on 22 November 2022, in the written procedure, examined the case

"On compliance Section 23(1) of the Punishment Register Law insofar as it relates to information on acquitted persons, to Section 96 of the Constitution of the Republic of Latvia".

The Establishing Part

1. On 11 October 2001, the Saeima accepted the Punishment Register Law, which entered into force on 1 May 2002. This law established the legal framework for the operation of the Punishment Register in Latvia. The Punishment Register is

a unified information system containing information on persons subject to criminal proceedings or proceedings for the imposition of a medical, coercive or educational measure, detained, suspected, charged, tried, convicted, acquitted of criminal offences, and on persons who have committed an administrative offence.

This law was replaced by a new Punishment Register Law on 13 October 2005, which in turn was replaced by the Punishment Register Law adopted on 10 October 2013, which entered into force on 1 January 2014.

Pursuant to Section 20(2) of the Punishment Register Law of 13 October 2005, the archive database of the Punishment Register also contained information on criminal cases in which a natural person had been acquitted. Section 21 of this law provided that information would be transferred from the current database of the register to the archive database of the register if a person was acquitted by a court judgement. The Register's archive database stored information on persons who had committed criminal offences and administrative offences for 10 years after their death.

Section 22(1) of the Punishment Register Law of 10 October 2013 establishes the period for which information on a person is stored in the current database of the Punishment Register depending on his/her status, while the second paragraph of this Section provides that the data shall be transferred from the current database of the Register to the archive database of the Register if the grounds for storing the data set out in the paragraphs of the first paragraph of this Section are no longer applicable or the period for storing the data has expired. Section 23 (1) of this Law stipulates that the following information shall be stored in the archives database of the Register - 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.

2. The Applicant - the Administrative Region Court (hereinafter also - the Applicant) - holds that Section 23(1) of the Punishment Register Law, insofar as it relates to information on acquitted persons (hereinafter - the contested norm), is incompatible with Section 96 of the Constitution (hereinafter - the Constitution) of the Republic of Latvia.

The Applicant is examining an administrative case initiated on the application of a natural person regarding the declaring of the Ministry of the Interior Information Centre's actual conduct in storing the Applicant's personal data in the archive database of the Punishment Register as unlawful and the award of compensation. According to the facts established in the administrative case, the Applicant was found not guilty of the charges against him and acquitted by a court judgement of 29 September 2017, which entered into force on 18 January 2018, and information on the Applicant is stored in the archive database of the Punishment Register maintained by the Information Centre of the Ministry of the Interior. On 5 August 2021, the Applicant asked the Information Centre of the Ministry of the Interior to stop storing the data, but the decision of the Ministry of the Interior refused his request, stating that the institution stored the data lawfully on the basis of the contested norm.

The Applicant submits that the acquisition, processing and storage of data relating to a person's identity fall within the scope of the right to respect for private life.

Processing of data for the purposes of the Punishment Register restricts a person's right to private life as enshrined in Section 96 of the Constitution. Such a restriction has a legitimate aim, since the data stored in the Punishment Register are to be used for the prevention and detection of criminal offences and administrative offences, for keeping records of persons who have committed offences and for monitoring the execution of sentences and the restriction of rights imposed on them.

The fact that the personal data of the data subject are included in the Punishment Register, as well as the determination of the amount of data to be included and the storage of those data, are an appropriate means of achieving the legitimate aim. The inclusion of personal data specified in the Punishment Register Law in the Punishment Register would not only allow for the due execution of the

procedural steps provided for in the Criminal Procedure Law, which require not only information on the data subject's previous convictions, not-served sentences, etc., but also the exchange of information with EU Member States in accordance with Directive (EU) of the European Parliament and of the Council of 27 April 2016 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/TI (hereinafter referred to as the 'Police Directive').

The exchange of information between authorities at national and international level for the purpose of combating crime and preventing and detecting offences requires an electronic database, and there are therefore no other, less intrusive means of achieving the legitimate aim which could achieve it to the same degree of quality.

Article 4(1)(e) of the Police Directive obliges Member States to provide that personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed. Since a person acquitted of a criminal offence is presumed innocent of the offence, the presumption of innocence presupposes that he has not committed the offence. In fact, such a person is considered to have no criminal record, and it is therefore not proportionate to keep information on a person with no criminal record in the archival database of the Punishment Register for the entire period of his or her life. Such storage of information is incompatible with the purpose for which the Punishment Register was established and is contrary to the principles of the processing of personal data in the field of criminal law.

3. The institution which issued the contested act, the *Saeima*, holds that the contested provision complies with Section 96 of the Constitution.

The contested norm restricts the right to privacy of the acquitted person. However, this restriction of fundamental rights has a legitimate aim, since it serves archival needs. By keeping information on the acquitted person, access to such information is ensured not only for the bodies authorised by law to exercise their

functions, but also for the acquitted person himself, who can obtain from a state-maintained information system official and reliable confirmation of his acquittal in a given criminal proceeding.

The restriction of fundamental rights contained in the contested norm is appropriate to achieve the legitimate aims, and there are no other means by which the legitimate aims could be achieved with the same quality and with less restriction of the fundamental rights of a person. When storing news for archival purposes, it is of utmost importance to preserve the integrity and authenticity of the news - that it is complete and unaltered - otherwise the archival value of the news and the purpose of storing it would be lost. If the fact that a person has been acquitted in a criminal proceeding is kept for archival purposes, it would not be inherently archival to delete or amend certain types of information relating to that person and that criminal proceeding. In particular, such a situation would not comply with one of the basic principles of archival necessity, since the information would no longer be complete once deleted or amended, but would become selective and would not give a reliable picture of the overall situation. The legitimate aim could not be achieved to the same extent even if the information on the acquitted person contained in the archive database of the Punishment Register were, for example, anonymised, since in that case the archive would contain information not on a specific natural person, but on a specific event. Moreover, such anonymised information relating to a specific natural person would not be accessible to the person acquitted in the criminal proceedings, nor to anyone else, even if the statutory prerequisite for providing the information were met.

The restriction of the fundamental right is proportionate. As regards the information on acquitted persons stored in the archive database of the Punishment Register, two rather narrow basic activities of personal data processing are carried out: this information is stored in the archive database of the Punishment Register and, upon receipt of a relevant request, it is provided to the institutions (persons) referred to in the law, if the preconditions for the provision of such information as laid down in the law are fulfilled. The information on the acquitted person contained in the archive database of the Punishment Register has the status of restricted

information - this information is not available to the public and may be accessed only by the institutions (persons) referred to in the law in the cases specified in the law. Also, employees of the Information Centre of the Ministry of the Interior have access to the above-mentioned information only in such cases when it is necessary for the performance of their duties.

The controller and holder of the Punishment Register is obliged to comply with all data protection measures resulting from Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) ('the General Data Protection Regulation') in respect of the data stored in the archive database of the criminal record, including data on acquitted persons. Under Article 24(1) of the Regulation, the controller is obliged to implement appropriate technical and organisational measures to ensure and be able to demonstrate that the processing of personal data is carried out in accordance with the Regulation. The Information Centre of the Ministry of the Interior has developed a privacy policy in accordance with the Regulation, which implies, for example, that the institution implements administrative, technical and physical security measures insofar as they are proportionate to the potential risks, implements measures to regularly train and inform its employees on personal data protection issues in order to reduce the likelihood of incidents, and implements internal control procedures to reduce the likelihood of security incidents and their consequences. In addition, according to Article 3(1) and Article 38 of the Law on Data Processing of Natural Persons personal data processing activities are supervised by the Data State Inspectorate, which is also competent to impose penalties for personal data processing infringements committed by an official of a legal person governed by public law. Thus, the law both regulates the use of data stored in the archive database of the Punishment Register and provides for a number of measures to ensure the protection of data stored in this database, as well as the possibility of imposing a proportionate penalty in cases of infringements.

It should also be borne in mind that the acquittal of a person in criminal

proceedings does not mean that the situation can never change. In particular, criminal proceedings may be reopened due to newly discovered circumstances; a court decision that has entered into force may be reconsidered due to a substantive infringement of material or procedural rules of law. Moreover, there is no time limit for lodging an application or a protest on the grounds of a substantive or procedural infringement of a provision of law. It is also possible to commit criminal offences in Latvia that are not time-barred. This means that the information about a person who has once been acquitted in criminal proceedings can still change, with a corresponding change not only in the place where such information is stored - from the archive database to the current database - but also in the reason for which such information is stored in the first place.

Having assessed the public benefit from the restriction included in the contested norm in comparison with the harm caused to the Applicant in the administrative case, it can be concluded that the public benefit is greater than the harm caused to the person concerned. Moreover, the harm caused to the person is relatively minor. In the present case, the only harm caused to the person is that the information on that person is stored in the archive database of the Punishment Register, and is stored in such conditions that not only is there protection preventing unauthorised persons from accessing that information, but also the law regulates the release and use of such information, minimising the number of persons (institutions) who have access to such information at all. This harm to the person is all the less serious because the person himself has rights under the General Data Protection Regulation with regard to the processing of his data in the criminal records archive database, including the right to access the relevant data stored in the criminal records archive database himself, if necessary.

4. The invited party - the State Data Inspectorate points out that if personal data were initially processed on the basis of the Police Directive, then the processing of such data for archiving purposes would also be subject to the provisions of the Police Directive and the On Processing of Personal Data in the Criminal Proceedings and Administrative Offence Proceedings.

According to Section 8(2) of the Police Directive, Member State law must specify at least the purposes of the processing, the personal data to be processed and the purposes of the processing. It follows from the Police Directive that the purpose of data processing must be included in the legislation. This implies that if personal data are processed for archiving purposes, the legislator, before providing for such processing, should, *inter alia*, assess whether and why the processing of personal data in question is necessary for archival purposes and whether the documents in question have archival value in accordance with the criteria of archival value of documents set out in Section 8(1) of the Law on Archives.

The restricted status of the information cannot be regarded as a factor mitigating the restriction of privacy, since, irrespective of the status of the information, the regulation on the processing of personal data is applicable in the case of processing of personal data. Accordingly, personal data should be processed only to the extent necessary and in accordance with the stated purpose. Accordingly, the following conclusion may be drawn: if personal data are processed for archival purposes, access to them must be provided for that purpose, and the status of the information is not decisive in the present case. The interference with a person's right to privacy could be mitigated by establishing a procedure for access to information on a acquitted person contained in the criminal record archive database, as well as the conditions under which this information can be obtained. A person would then be entitled to obtain information from the archive database of the Punishment Register only in specific cases provided for by law, where there is a reasoned request by the person and the information is necessary for a purpose that is proportionate to the nature of the information requested.

The Punishment Register Law does not define the purpose and purpose of the creation and maintenance of the archive. This could be inferred from the common understanding of the term "archive", i.e. that personal data are generally processed for archiving purposes in order to reflect past activities, events and facts for future generations. The processing of personal data for archiving purposes is necessary for the purpose of attesting and proving legal facts, scientific discoveries, historical events, cultural events, events in a person's life. It is information that reflects the lives

and events of individuals and society, and that needs to be processed in an archive to preserve it and make it accessible to future generations.

According to the contested norm, in the case when information on the death of a particular person has been received, the data of that person shall be erased one year after the establishment of that fact, whereas in the case when information on the death of a particular person has not been received, the data of that person shall be stored for a maximum period of 100 years from the birth of the person. The time limit for the storage of data in the archive database is linked to the person's life expectancy. As the data are kept for only one year in the event of the death of a person, there can be no assurance that the purpose of keeping the data for archiving purposes would be achieved in such a case. That is to say, for archival purposes, including statistics, research and the recording of historical events, it is irrelevant whether a person is alive or dead - what matters is the preservation of information about a past event for a certain period of time. Thus, in order for the information contained in an archive to serve archival purposes, it would be reasonable to require that it be kept for a certain period of time, regardless of the fact of the person's death, e.g. 50 or 75 years from the time the information was entered in the archive's database.

If the duration of the retention is linked to the lifetime of the person, this may mean that the purpose of the archiving is also linked to a specific person and the exercise of his status or rights, rather than to the general purpose of archiving, which is to preserve information about past events. Therefore, it is important to understand the opinion of the controller, in this case - the Information Centre of the Ministry of the Interior, on the purpose of the processing of the personal data in question. Only a clear understanding of the purpose of the processing of personal data can determine the correct and appropriate retention period.

When assessing compliance of the contested norm with Section 96 of the Constitution, not only the period of data storage is important, but also whether appropriate guarantees are provided to the data subject. Pursuant to Section 4(2) of the Law On Processing of Personal Data in the Criminal Proceedings and Administrative Offence Proceedings, the same or another controller may process

personal data for an initially unintended purpose if the processing of personal data is considered to be archiving in the public interest for the purposes referred to in Section 2 of that Law and the data subject's right to the protection of his or her personal data is adequately safeguarded. The Police Directive does not contain an exhaustive list of the rights that would be considered as adequate for the data subject, but recital 37 of its preamble states that adequate safeguards for the rights and freedoms of data subjects could include the possibility to collect those data only in relation to other data concerning the natural person concerned, the possibility to keep the data collected in adequate security, stricter rules on the access of competent authority staff to the data and the prohibition to transmit those data. Among others, properly implemented technical and organisational measures, such as data minimisation and pseudonymisation, can be considered as adequate safeguards of the data subject's rights. However, in the case of information systems or registers, it is to be assessed whether all data fields of the information system are to be retained also in the archive part, if the purpose of the processing has already been achieved and the personal data do not need to be used for archival purposes. Those data fields (personal data) that do not require further retention in the archive because the data are used temporarily and for a specific purpose should be separated and deleted at the time of archiving, while only the data necessary for the purpose of archiving should remain in the information system part of the archive.

Consequently, in order to perform processing for archiving purposes, the chosen retention period should be adequate and appropriate for the purpose pursued and certain safeguards should be provided to the data subject, such as who is entitled to access the archived information, who can receive the information and what are the preconditions for receiving the information. The legislation provides for guarantees of the rights of the individual as a matter of principle, but there is no confirmation that the time-limit laid down for the storage of data in the archive database is appropriate to achieve the objectives pursued. Information should be retained for archiving purposes for a certain period of time, taking into account that the retention of relevant information is necessary both for statistical purposes and for various studies. As the controller determines the purpose of the processing and carries out

the necessary assessment for the choice of the retention period, it is also for the controller to assess whether the retention of the data in the archive database for 100 years would be appropriate for the purpose pursued. However, in any event, the State Data Inspectorate is of the opinion that the retention period of the acquitted person's data contained in the archive database of the Punishment Register cannot be based on the archival purpose, since for archival purposes personal data should be kept for a certain period of time, regardless of the fact of the death of the person.

5. The invited party - the Ombudsman - considers that the contested norm restricts the fundamental right of a person, namely the right to privacy, but such restriction has a legitimate aim and is proportionate.

It is in the interest of society as a whole to have a uniform system of recording, so that information on acquitted persons can be found not only in the current database of the Punishment Register, but also in its archival database. The availability of the information in the archives enables the person himself to obtain proof that he has been acquitted in a criminal case. Thus, a person has the possibility to exercise his or her statutory rights, for example, to apply to a court for compensation. For certain purposes, access to this information may also be necessary for law enforcement authorities, for example, in cases where criminal proceedings are reopened due to newly discovered circumstances or the case is re-examined due to a material or procedural infringement of the law. It is therefore in the public interest to ensure that information on acquitted persons remains available for a certain period of time after an acquittal has entered into force. Therefore, the Ombudsman considers that the restriction of fundamental rights has a legitimate aim - the protection of the rights of others.

For acquitted persons who have been found not guilty of a criminal offence and have been rehabilitated, there are no obstacles which would prevent them from standing for certain posts and occupying the posts they desire. In other words, the mere fact that information on an acquitted person is stored in the archive database of the Punishment Register does not necessarily mean that negative consequences are caused to the person. However, the fact that personal data identifying an acquitted

person are processed to a large extent in that database constitutes a significant interference with the private life of a person. Therefore, the harm caused to the acquitted person should not be assessed as relatively minor.

The personal data of acquitted persons are processed in the archive database of the Punishment Register by an official body, which also controls the disclosure of these data. Thus, information on acquitted persons may be provided only to persons and authorities who have provided adequate justification for the need for such information, for example, to law enforcement authorities to facilitate the detection of criminal offences, as well as to the acquitted person himself in order to enable him to exercise his rights under the law. The Ombudsman has no information to doubt that the processing of personal data of an acquitted person in the archive database of the Punishment Register complies with the principles of processing of personal data enshrined in Article 5 of the General Data Protection Regulation. Moreover, for archiving purposes, it is important to ensure that the information contained in the archive database of the Punishment Register is accurate and complete. Consequently, it would not be permissible to exclude a category of information from the database on the grounds of the principle of data minimisation. Moreover, the limited access information on the acquitted person is only provided to the extent necessary for the achievement of specific objectives. However, the Ombudsman draws attention to the fact that the Punishment Register is not the only information system where information on acquitted persons may be available. For example, the Criminal Procedure Information System (KRASS) includes information based on procedural documents, procedural decisions adopted in the framework of criminal proceedings. Court decisions and information on the legal classification of a criminal offence are also available in the Court Information System (CIS), which reflects the progress of proceedings in cases. Consequently, the requirement to keep information on acquitted persons in the archive database of the Punishment Register is proportionate.

However, contrary to the very fact of the storage of the information, the duration of its storage is not proportionate. The consideration that the processing of personal data which is justified will not potentially have negative consequences for

that person in the long term is not a sufficient argument to restrict a fundamental right of a person, namely the right to respect for private life, in the long term. It is important to emphasise that in the present case the contested norm is to be assessed precisely in relation to an acquitted person.

Comparing the period of storage of data provided for in the contested norm with the period provided for in Section 23(3) of the Punishment Register Law, it is established that the period of 10 years is recognised as the appropriate duration of data processing in Paragraph 3, moreover, it is related to the termination of the proceedings and the limitation period. No objective justification can be discerned as to why the legislator has not considered the possibility of setting the time limit contained in the contested norm in conjunction with the time limits for criminal liability provided for in Section 56 of the Criminal Law, which are applicable to the majority of criminal offences. It would also be necessary to consider the possibility of adapting the time limit to the time limits laid down in the Criminal Procedure Law for the restoration of criminal proceedings due to newly discovered circumstances and to the period during which the acquitted person has the right to bring an action for compensation before a court. Thus, the legislator would ensure that the data on the acquitted person are not processed in the archive database of the Punishment Register for longer than is strictly necessary for the achievement of the legitimate aim.

6. Invited party – *Dr. iur. Irēna Barkāne* - points out that the contested norm is incompatible with Section 96 of the Constitution, because the time limit established therein for storage of information on acquitted persons included in the archive database of the Punishment Register is not proportionate.

The European Court of Human Rights has recognised that data relating to criminal offences, criminal proceedings, convictions or related preventive measures constitute a category of data that requires enhanced protection. Any processing of personal data relating to a person against whom charges have been dropped, who has been warned, convicted and sentenced, or who has been subject to a related

preventive measure, such as detention in a police station, constitutes an interference with the data subject's right to respect for private life.

The prevention of crime and the detection of criminal offences must be recognised as a legitimate aim justifying the processing of personal data in the Punishment Register relating to criminal convictions and offences.

The European Court of Human Rights has held that the systematic storage of punishment register data in central registers means that they are available for disclosure long after the event in question, when all but the person concerned may have forgotten about it. As the accusation itself recedes into the past, it becomes part of a person's private life and is therefore in itself respectable. Keeping personal identification data, fingerprints and identity-revealing photographs in police records can have serious consequences, making the person's daily life more difficult.

The State is entitled to store personal data only to the extent that is consistent with the legitimate purpose of the processing and with the existence of adequate legal remedies, but the adequacy of those remedies depends on the amount of personal data stored, the duration of the storage, and the rules governing the use and destruction of the data.

In assessing the proportionality of the restriction, the principles of the protection of personal data must be taken into account. The purpose limitation principle requires that personal data are collected for specified, explicit and legitimate purposes and that their further processing is not carried out in a manner incompatible with those purposes. The principle of data minimisation requires that personal data are adequate, relevant and include only what is necessary for the purposes of their processing. The principle of data minimisation imposes an obligation to assess whether the data are necessary for the purpose and whether it is possible to reduce the amount of data processed. This implies the application of the proportionality or proportionality principle, so that the legitimate purposes identified above are fulfilled with the minimum amount of data necessary. The principle of retention limitation provides that personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data concerned are processed.

A person acquitted is presumed innocent of the offence. The presumption of innocence presupposes that such a person has not committed a criminal offence and is, in fact, to be considered to have been unpunished. However, the data of an acquitted person contained in the archive database of the Punishment Register may be used in certain cases in the field of criminal law. Criminal proceedings may be reopened due to newly discovered circumstances (Chapter 62 of the Criminal Procedure Law); a court decision that has entered into force may be reconsidered due to a material breach of substantive or procedural law (Chapter 63 of the Criminal Procedure Law). However, a retrial of an acquittal and of a decision to discontinue criminal proceedings is allowed only within the statutory limitation period for criminal liability and not later than one year from the date on which the newly discovered circumstances were established (Section 656(1) of the Criminal Procedure Law). Consequently, it is not possible to review an acquittal after the expiry of the statute of limitations for the offence in question, which in turn depends on the gravity of the offence (Section 56 of the Criminal Law). It may therefore not be possible to review the court's decision in a particular case. Moreover, according to Section 662(1) of the Criminal Procedure Law, a court decision that has entered into force may be reconsidered only if it has not been reviewed in cassation or if the court has not previously refused to initiate cassation proceedings, following an application or protest by the persons referred to in Section 663 of the Criminal Procedure Law.

The fact that information on a acquitted person is kept throughout his or her life is incompatible with the legitimate aim for which the Punishment Register was established, namely to facilitate the prevention and detection of criminal offences and administrative offences and to monitor the execution of sentences and restrictions of rights imposed on a person for those offences. The legitimate aim of the restriction of fundamental rights could be achieved in the present case by other means which are less restrictive of fundamental rights. The time limit for the retention of personal data in the case of an acquitted person should be determined taking into account the period of time for which, in each specific case, the data can be used to achieve the legitimate aim pursued.

7. The State Police has provided information that it uses information from the archive database of the Punishment Register on a person acquitted in criminal proceedings to decide on the application of a security measure, to raise versions about the persons involved in the event in the future, to submit information to the prosecutor for a decision on the applicable punishment, to establish the person's links to the criminal environment, etc. Similarly, the State Police uses such information in the application of Section 7(1)(3.¹) of the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration and in the assessment of their the reputation of candidates who have expressed their wish to be employed by the State Police.

8. The Prosecutor General's Office has provided information that the information from the archive database of the Punishment Register is obtained through the Prosecution Information System. It does not separate the data fields on persons acquitted in criminal proceedings from the data fields on convicted persons. In order to request the necessary information, it is only necessary to enter the name, surname and personal identification number of the person in the Prosecutor's Office information system. The Prosecutor's Office uses information from the archive database of the Punishment Register when deciding whether to reopen criminal proceedings due to newly discovered circumstances.

9. The Ministry of the Interior has provided information that the information on a person acquitted in criminal proceedings contained in the archive database of the Punishment Register serves to enable the subjects of operational activities and investigative authorities to perform the function of prevention and detection of criminal offences. These authorities need to have access to as much information as possible in order to be able to carry out an in-depth examination of the person. The information on a person acquitted in criminal proceedings is also stored in the archival database of the Punishment Register for the purpose of providing that person

with information necessary for the exercise of his or her rights, for example, to apply for a pension, to claim compensation, to obtain the status of a politically repressed person, to preserve historical heritage (historical facts), to use scientific or statistical research, and for archival functions. The 100-year retention period was chosen because the justification for the need for the information would no longer be apparent later on - the person might already be dead or his or her danger to the public would be very unlikely.

Concluding Part

10. Section 96 of the Constitution provides that everyone has the right to inviolability of his or her private life, home and correspondence. The scope of the right to inviolability of private life includes the right of a person to protection of his/her data (*see Paragraph 13 of the judgement of the Constitutional Court of 14 March 2010 in Case No 2010-51-01*).

Personal data means any information relating to an identified or identifiable natural person. Such data shall include a person's name and any other information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as that person's name, identification number, location data, an online identifier or to one or more factors specific to that natural person's physical, physiological, genetic, mental, economic, cultural or social identity.

The right to the protection of personal data is ensured by performing various activities with personal data, including obtaining, processing and storing data characterising the physical and social identity of a person (*see Paragraph 15.1 of the judgement of the Constitutional Court of 12 May 2016 in Case No 2015-14-0103, Paragraph 11.2 of the judgement of 11 October 2018 in Case No 2017-30-01 and Paragraph 15.1 of the judgement of 13 November 2021 in Case No 2018-18-01*).

The right to the protection of personal data therefore applies to different areas of life - including the acquisition, processing and storage of personal data in the context of criminal proceedings. This right continues even after the criminal proceedings have been concluded or terminated.

Thus, Section 96 of the Constitution protects the right of a person to privacy both during criminal proceedings and after their completion or termination.

The contested norm establishes for how long the information shall be stored in the archive database of the Punishment Register. According to the contested norm, the information on the acquitted person is kept in the archive database of the Punishment Register for one year after the information on the death of the person is received from the Register of Natural Persons, but not longer than 100 years after the birth of the person.

According to Section 22(2) of the Punishment Register Law, information on an acquitted person enters the archive database of the Punishment Register by transferring it from the current database of the Punishment Register when the person ceases to be an accused person. The person loses the status of accused person and acquits upon acquittal. Section 519 of the Criminal Procedure Law provides that the court shall draw up an acquitting judgement if: (1) no criminal offence has been committed or the offence committed by the accused does not contain the elements of a criminal offence; (2) the participation of the accused in the criminal offence has not been proven.

Pursuant to Section 7 of the Punishment Register Law, the current database of the Punishment Register includes information on the accused person, such as his or her name, patronymic, personal identification number, gender, nationality, place of residence, as well as information on the criminal proceedings, such as the legal classification of the criminal offence, detention, recognition as a suspect, security measures imposed on the person, the progress of the criminal proceedings in pre-trial proceedings and at court, and the decisions rendered. After the entry into force of an acquittal judgement, such data shall be considered as data of the acquitted person, and the processing and storage of such data, as well as their storage in the archive database of the Punishment Register and their subsequent disclosure, shall be considered as processing of data of an identifiable person acquitted in criminal proceedings.

Thus, the contested norm restricts the right of the acquitted person to respect for private life.

11. In order to assess the constitutionality of the restriction of fundamental rights contained in Article 96 of the Constitution, the Constitutional Court must be ascertained whether:

- 1) the restriction is established by law;
- 2) the restriction has a legitimate aim;
- 3) the restriction is proportionate (*see, for example, Paragraph 16 of the Judgement of the Constitutional Court of 13 November 2021 in Case No 2018--18--01*).

12. When assessing whether a restriction of fundamental rights is established by law, the Constitutional Court examines whether:

- 1) the law has been adopted in compliance with the procedures provided for in laws and regulations;
- 2) the law has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;
- 3) the wording of the law is sufficiently clear to allow a person to understand the content of the rights and obligations arising therefrom and to predict the consequences of the application thereof (*see judgement of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, Paragraph 17*).

The contested norm is included in the Punishment Register Law. The draft law in question has been submitted by the Cabinet of Ministers in accordance with Section 65 of the Constitution. The draft law has been considered by the Saeima in three readings (*see information on draft law No 641/Lp11 "Punishment Register Law". Available at: saeima.lv*). The law was adopted on 10 October 2013. In accordance with Section 69 of the Constitution, the law has been proclaimed (*see the official publication Latvijas Vēstnesis No 211, 29 October 2013*). The law entered into force on the deadline set by the law - 1 January 2014.

Thus, the contested norm has been adopted and proclaimed in accordance with the procedure established by the Constitution and the Rules of Procedure of the

Saeima, and is accessible in accordance with the requirements of the Constitution. The parties to the case have not raised any objections and the Constitutional Court has no doubts that the contested norm is clearly formulated.

The Constitutional Court has derived the principle of good law-making from the fundamental principle of the rule of law and has concluded that it is also relevant in the process of establishing a restriction on a fundamental right (*see, for example, Paragraph 15 of the judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01*). In this context, taking into account Latvia's obligations arising from the Treaty on the European Union, the Constitutional Court has concluded that the legislator is obliged to ensure harmonisation of the Latvian legal system with the law of the European Union by timely and qualitatively transposing into the national legal system the European Union law to be implemented and ensuring that the compatibility of national regulation with the law of the European Union is assessed (*see Paragraph 18.4.1 of the judgement of the Constitutional Court of 6 March 2019 in Case No 2018-11-01 and Paragraph 13.2 of the judgement of 7 June 2019 in Case No 2018-15-01*).

As indicated in the annotation to the draft Punishment Register Law of 10 October 2013 containing the contested norm, the draft law was elaborated in order to approximate the legislation of the Member States on police and judicial cooperation in criminal matters and to transpose into Latvian law the provisions of the Council of the European Union Framework Decision 2009/315/JHA of 26 February 2009 on organisational measures and the content of the exchange of information extracted from criminal records between Member States. The annotation also indicates that the draft law is also to be considered as harmonised with the Law on the Protection of Personal Data applicable back then (*see Section I, paragraph 2 and Section V of the Initial Impact Assessment Report (Annotation) of draft law No 641/Lp11 "Punishment Register Law". Available at: saeima.lv*).

The materials for the drafting of the contested norm do not explicitly indicate that, at the time of its adoption, particular attention was paid to the provisions of European Union law which regulated the processing of personal data at the relevant time. The contested norm has not been amended since the adoption and entry into

force of the General Data Protection Regulation and the Police Directive. The Police Directive has been implemented by the Law on the Processing of Personal Data in Criminal Proceedings and Administrative Offences, while the basic principles of personal data processing can be integrated into the national legal system without direct reference to European Union law. Therefore, whether the lack of detail in the examination of the compliance of the contested norm with the norms of European Union law has resulted in an impermissible infringement of the fundamental rights of a person is to be ascertained by assessing the substantive impact of the contested norm.

Therefore, the restriction of fundamental rights contained in the contested provision is established by a law adopted in due procedure.

14. Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, i.e., the restriction may be imposed for the sake of important interests – a legitimate aim (*see, e.g., Paragraph 18 of the judgement of the Constitutional Court of 13 October 2015 in Case No 2014-36-01*).

The legitimate aim of the restriction of a fundamental right is also relevant in the case of processing of personal data. Article 4 of the Police Directive states that one of the basic principles of the processing of personal data is the collection of personal data for specified, explicit and legitimate purposes and the retention of personal data for no longer than is necessary for the purposes for which they are processed. In accordance with Article 8(2) of the Police Directive member State law regulating the processing of personal data within the scope of the Police Directive should specify at least the purposes of the processing, the personal data to be processed and the purposes of the processing.

14.1. According to Section 1 of the Punishment Register Law, the Punishment Register shall, in general, provide a uniform record of persons who have committed criminal offences and administrative offences in order to facilitate the prevention and detection of such offences and offences, as well as the control of the execution of the sentence and the restrictions of the rights imposed on the person. In particular, the current database of the Punishment Register is designed to facilitate the prevention

and detection of such offences and infringements, as well as the control of the enforcement of the sentence and restrictions of the rights imposed on a person for them. Chapter II of the Punishment Register Law also defines the personal data to be processed.

Section 22(2) of the Punishment Register Law specifies the cases when information is transferred from the current database to the archive database of the register because the grounds for keeping the information have expired or the period for keeping it has expired. Thus, the purposes for which personal data are stored in the archive database of the Punishment Register are different from the purposes for which they are stored in the current database of the Punishment Register.

The text of the Punishment Register Law does not specify for which purposes the data of acquitted persons shall continue to be processed and stored in the archive database of the Punishment Register. In its reply to the Constitutional Court, the Saeima indicated that the purpose of the storage of data of an acquitted person was archiving for public purposes and for ensuring the rights of the data subject.

14.2. In general, it is in the public interest to maintain archives. Archives provide authentic, reliable and accessible creation, accumulation, evaluation, preservation, accessibility and use of the national documentary heritage (*see also Section 2 of the Law on Archives*). Documents with archival value, which are given context and structure in the archive, contribute to understanding historical events and their interconnectedness and serve as evidence for relevant conclusions. The legislator and the executive are obliged, inter alia, to protect the existence of a democratic state order and the continuity of national identity in this way - by storing and categorising truthful information. Archives are also important at an individual level: for certain interests, a specific group of people have the right to consult the information they hold, to use it as evidence of certain facts, such as their ancestry or family history, or to use it for scientific purposes.

Thus, in general, the establishment and maintenance of archives may be a data processing purpose related to the sustainability of a democratic state governed by the rule of law and the protection of the rights of others.

14.3. According to Section 655(1) of the Criminal Procedure Law, criminal proceedings in which an acquittal has entered into force may be reopened due to newly discovered circumstances. Also, pursuant to Section 662(1) of the Criminal Procedure Law, an acquittal that has entered into force may be reconsidered if it has not been reviewed in cassation or if the court has not previously refused to initiate cassation proceedings on the grounds of material breaches of certain provisions of the law.

The Constitutional Court has already admitted that the protection of public safety as a legitimate aim of restriction of fundamental rights is related to the protection of the democratic structure of the State system and is recognised as admissible mainly in cases where issues concerning threats to national or public safety are touched upon. In such a case, an objectively existing or potentially possible link must be established between the adoption of a specific legal framework and the strengthening of public safety, prevention or reduction of safety threats (*see, e.g., Paragraph 13 of the judgement of the Constitutional Court of 28 June 2019 in Case No 2018-24-01*). Effective criminal proceedings are also linked to strengthening public security. More specifically - within the framework of criminal proceedings, criminal offences must be detected, perpetrators must be quickly and fully identified, and the correct application of legal norms must be ensured, so that each person who has committed a criminal offence is justly punished, while no innocent person is held criminally liable and convicted (*see Paragraph 14.1 of the judgement of the Constitutional Court of 14 April 2022 in Case No 2021-38-01*).

Thus, the information on a acquitted person contained in the archive database of the Punishment Register may be necessary in order to ensure further criminal procedural activities in these cases and, consequently, to protect public security.

14.4. The Saeima also points out that the data of an acquitted person are stored in the archive database of the Punishment Register in order to ensure the data subject's own rights, for example, the possibility to obtain from a state-maintained information system an official and reliable confirmation of his or her acquittal in a particular criminal proceeding, i.e. the legitimate aim of data processing is the rights and legitimate interests of the person himself or herself.

The third sentence of Section 92 of the Constitution provides that in case of unjustified infringement of a right a person has the right to adequate compensation. According to Section 4(1) of the Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offence Proceedings, a natural person has the right to compensation for damage if a court ruling of acquittal has come into effect by which the person has been recognised to be innocent and justified in all accusations brought against him or her. To obtain compensation for damage caused in criminal proceedings, a person must submit an application and attach supporting documents, which can also be obtained from the Punishment Register. The institution itself can also obtain information on the progress of the criminal proceedings in question in the process of determining compensation.

Protection of human rights is a fundamental value and an integral part of any democratic state governed by the rule of law (*cf. Paragraph 10.6 of the judgement of the Constitutional Court's of 29 April 2016 in Case No 2015-19-01*). This means that the practical safeguarding of the right to adequate compensation for unjustified infringements of rights is also linked to the protection of the democratic order.

It follows from all the above that the processing of the data of an acquitted person in the archive database of the Punishment Register may be necessary for the protection of public security, as well as for the protection of the rights of the acquitted person himself.

Consequently, the legitimate aims of the restriction of fundamental rights contained in the contested norm are the protection of the democratic state order, public security and the rights of other persons.

15. The Saeima has also pointed out that the processing of data is carried out for the purpose of ensuring the activities of law enforcement authorities. The State Police has provided information that law enforcement authorities use the data on a person acquitted in criminal proceedings contained in the archive database of the Punishment Register to, for example, decide on the application of a security measure, to raise theories about the persons involved in an event in the future, to establish links with the criminal environment, to provide information on a person's reputation or to

carry out an in-depth examination of personal data in the framework of an operational activity.

The European Court of Human Rights has recognised that, in general, the prevention of crime and the detection of criminal offences are legitimate aims justifying the retention of sensitive personal data (*see Paragraph 100 of the judgement of the Grand Chamber of the European Court of Human Rights of 4 December 2008 in S. and Marper v. the United Kingdom, Application No 30562/04 etc., and Paragraph 40 of the decision of 4 June 2013 in Peruzzo and Martens v. Germany, Application No 7841/08 etc.*). However, in the context of the present case, it should be noted that the archive database of the Punishment Register processes the data of an acquitted person.

15.1. Second sentence of Article 92 of the Constitution states that everyone shall be presumed innocent until his or her guilt has been established in accordance with law. In particular, this sentence contains the principle of the presumption of innocence.

The presumption of innocence protects people from being found guilty until proven guilty according to the law. In particular, this principle is binding on the initiators of criminal proceedings: the investigator, the prosecutor, the judge (*see Paragraph 69 of the judgment of the European Court of Human Rights of 22 April 2021 in the case "Avaz Zeynalov v. Azerbaijan", Application no. 37816/12 etc.*). The presumption of innocence also protects persons who have been acquitted or found not guilty in criminal proceedings from the possibility of being treated as if they were guilty by public officials and authorities (*see Paragraph 94 of the judgement of the Grand Chamber of the European Court of Human Rights of 12 July 2013 in Allen v. the United Kingdom, Application No 25424/09*). As the European Court of Human Rights has pointed out, once criminal proceedings are over, a person's reputation and the way in which he or she is perceived by society are also affected, and in this context the presumption of innocence interacts with a person's right to privacy (*cf. ibid., Paragraph 103*). Of particular importance is the risk of stigmatisation arising from the fact that persons who have not been convicted of a criminal offence and who are entitled to the presumption of innocence are treated in the same way as

convicted persons (*cf. Paragraph 31 of the judgement of the European Court of Human Rights of 21 March 2000 in Rushiti v. Austria, Application No 28389/95*). In this respect, the presumption of innocence extends beyond the end of the criminal proceedings to ensure that the innocence of the person concerned is respected in respect of any charge that has not been proved (*cf. Paragraph 103 of the judgement of the Grand Chamber of the European Court of Human Rights of 12 July 2013 in Allen v. the United Kingdom, Application No 25424/09*).

The presumption of innocence does not per se preclude the establishment of temporary restrictions on a person related to his or her reputation, insofar as such restrictions are permitted by other norms of the Constitution and are not of a punitive nature (*cf. Paragraph 5.3 of the judgement of the Constitutional Court of 23 February 2006 in Case No 2005-22-01*). Similarly, the presumption of innocence does not preclude the restriction of a person's liberty by detention as a precautionary measure (*see ibid.*). However, such cases relate to situations where the guilt of the person has not yet been proven and the imposition of the relevant restrictions is essential to ensure the fair conduct of criminal proceedings, rather than situations where the person has been found not guilty and is therefore in the same position as any person against whom criminal proceedings have not been brought.

15.2. In this case, the data of acquitted, i.e. innocent, persons are processed in the same system as the data of those found guilty, and for the same duration. Such treatment can only be justified on the basis of overriding reasons which are not in themselves linked to the guilt or innocence of the person, i.e. are objective. The European Court of Human Rights has also recognised that the retention of a person's private data cannot in itself and automatically be equated with a suspicion of guilt, but that the effect of such processing is reinforced by the fact that the data of acquitted persons are held in the same way as those of convicted persons (*cf. Paragraph 122 of the judgement of the Grand Chamber of the European Court of Human Rights of 4 December 2008 in S. and Marper v. the United Kingdom, Application No 30562/04 etc.*).

Similar conclusions follow from the basic principles of data processing. The Police Directive requires that any processing of personal data must be lawful, fair

and transparent in relation to the natural persons concerned and must be carried out only for the specific purposes provided for by law (*see recital 26 of the preamble to the Police Directive*). Personal data should be collected for specified, explicit and legitimate purposes and should not be processed for purposes incompatible with the aim of preventing, investigating, detecting or prosecuting criminal offences or the execution of criminal penalties, including the protection against and prevention of threats to public security. Where personal data are processed by the same or another controller for a purpose falling within the scope of the Police Directive other than the purpose for which the data were collected, such processing should be permitted provided that it is authorised in accordance with the applicable legal provisions and is necessary and proportionate for that other purpose (*see recital 29 and Article 4 of the preamble to the Police Directive*). Such processing by the same or another controller may include archiving in the public interest, use for scientific, statistical or historical purposes, for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the protection against and prevention of threats to public security, subject to appropriate safeguards with regard to the rights and freedoms of data subjects (*see Article 4 of the Police Directive*). This means that the processing of personal data is permissible for specific law enforcement purposes, but that further processing is only possible after those purposes have been achieved if there is another purpose for the processing. In other words, a person who has been found not guilty cannot be treated in exactly the same way as he or she was before the relevant ruling.

A criminal record is the legal consequence of the conviction or sentence of a person who has committed a criminal offence, which remains in force for the duration of the sentence imposed by a court judgement or a prosecutor's order, and thereafter until the criminal record is expunged or removed in accordance with the procedure laid down by law. The fact of a criminal record can lead to certain restrictions, for example on employment relationships or the need for supervision of the execution of a sentence. If acquitted, a person is presumed innocent of the offence and has no criminal record. Law enforcement authorities cannot infer the circumstances necessary to protect rights from the mere fact that a person is innocent.

In addition, the type of personal data processed is relevant in the present case. That is to say, it is not data collected in the context of criminal proceedings, such as fingerprints, which could be relevant for the subsequent work of law enforcement authorities (*cf. Paragraph 10 of the judgement of the Grand Chamber of the European Court of Human Rights of 4 December 2008 in S. and Marper v. the United Kingdom , Application No 30562/04 etc.*). The collection and storage of information in the archive database of the Punishment Register depends on the course of the criminal proceedings.

15.3. From the opinions of the Ministry of the Interior and the State Police, it follows that the data contained in the archive of the Punishment Register are used "to provide as much information as possible for carrying out a thorough examination of a person" or "to check a person's reputation". In particular, the data are used for the individual assessment of a person in the context of an employment or public service relationship. However, first of all, these are not specifically law enforcement purposes. Secondly, such processing cannot in any event be recognised as taking place on the basis of the law, i.e. the law does not expressly provide for the right of law enforcement authorities to carry out the processing of legitimate personal data in this way. Thirdly, such processing of personal data and the consequent inference or even denial of an opportunity effectively presupposes the involvement of an innocent person in a criminal offence. Also, the basis for such use of data is not specified in the legal provisions and cannot be relied upon by the persons acquitted.

It follows that such processing is not carried out for law enforcement purposes and is not related to an objectively identifiable threat to public security.

Thus, the processing of the above-mentioned personal data of the acquitted person in this respect is not compatible with the objective of protecting public security.

16. In ascertaining whether the restriction of fundamental rights included in the contested provision is proportionate, the Constitutional Court examines:

- 1) whether the restriction is appropriate to achieve the legitimate aim;

2) whether the aim can be achieved by other means less restrictive of fundamental rights of persons;

3) whether the benefit to society of the restriction outweighs the harm to the individual.

If, upon assessment of a legal provision, it is recognised that the restriction of fundamental rights contained therein does not comply with at least one of these criteria, then the contested provision does not comply with the principle of proportionality and is unlawful (*see Paragraph 20 of the judgement of the Constitutional Court of 28 September 2020 in Case No 2019--37--0103*).

17. The means selected by the legislator are appropriate for achieving a legitimate aim contained in the contested provision, if the aim is achieved by the specific framework (*see, for example, Paragraph 20 of the judgement of the Constitutional Court of 13 November 2021 in Case No 2018-18-01*).

17.1. According to the Law on Archives, before any document is recognised as an archival document, its archival value, or the informational significance of the document, or the probative value of the document, is assessed. Such assessment shall be carried out in accordance with criteria established by law, including, inter alia, the document's ability to reflect the activities of public administration, the formulation and implementation of public policy; the document's continuing usefulness for the exercise and protection of the duties and rights of an institution or individual; the historical, public, cultural or scientific or other significance of the document (*see Section 8(1) of the Law on Archives*). The archive database of the Punishment Register automatically includes all data that were previously included in the current database of this register. In other words, data is transferred automatically, in the form of registry entries, rather than by storing the underlying data and supporting documents. This does not assess the relevance of the information to be stored in achieving the archiving objectives. The lack of verification of the archival value of such documents has also been pointed out by the State Data Inspectorate.

For archival purposes, including statistics, research and the recording of historical events, it is important to preserve information about a past event for a certain period of time, regardless of whether the person associated with that event is

still alive. In contrast, the contested norm links the storage of personal data to the life of the person concerned and provides for their storage only for one year after the person's death.

Such a storage period does not achieve the purpose of the storage of the data - for general archiving purposes - and, accordingly, the contested norm is inappropriate in that respect for the purposes of the democratic state order and the protection of the rights of others.

17.2. As already mentioned above, an acquittal can be reviewed in the cases mentioned in the Criminal Procedure Law. In the event of the restoration of criminal proceedings, the data of the acquitted person contained in the archive database of the Punishment Register are transferred back to the current database of the Punishment Register and used in the further conduct (documentation) of criminal proceedings. The Prosecutor General's Office has also indicated that the archive database of the Punishment Register is used in such situations. Therefore, the retention of personal data of an acquitted person for a certain period of time might be appropriate to ensure the continuation of the criminal proceedings.

Similarly, data on the conduct of criminal proceedings contained in the archive database of the Punishment Register may be used to protect the rights of the person concerned in the event of acquittal.

Consequently, the contested norm is aimed both at the protection of public security and at ensuring the rights of the individual, thus also protecting the democratic state order in this respect.

18. When examining whether the selected means are necessary to achieve the legitimate aim, the Constitutional Court assesses whether the legitimate aim cannot be achieved by other, less restrictive means which would be equally effective (*see, for example, Paragraph 19 of the judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01*).

The Constitutional Court has previously concluded that the storage of data of an acquitted person may be necessary to ensure the conduct of criminal proceedings if the acquittal or the decision to discontinue criminal proceedings needs to be

reconsidered due to newly discovered circumstances or due to a material or procedural infringement of the substantive or procedural norms of law.

According to Section 656(1) of the Criminal Procedure Law, a retrial of an acquittal or a decision to discontinue criminal proceedings due to newly discovered circumstances shall be allowed only within the statutory limitation period for criminal liability and not later than one year from the date of the discovery of the newly discovered circumstances. However, the limitation period for criminal liability under Section 56(1) of the Criminal Law is basically two to fifteen years from the date of commission of the crime, depending on the gravity of the crime. Where the offence is directed against the morals and sexual integrity of a minor or causes serious bodily injury involving genital mutilation or loss of reproductive capacity, or trafficking in human beings or coercion to have an abortion, the statute of limitations shall run from twenty years after the victim has reached the age of eighteen years. The only exceptions for which the statute of limitations does not apply are crimes punishable by law by life imprisonment and crimes against humanity, crimes against peace, war crimes or participation in genocide.

Thus, in the case of several types of offence, it would not be possible to retry an acquittal after the expiry of a certain time limit.

However, the contested norm provides that data on acquitted persons are stored without differentiating them according to the original offence. That is, in all cases, the data of an acquitted person are kept for the same length of time, regardless of whether the offence for which the person has been acquitted is already time-barred, i.e. whether the data are still usable for the purposes specified. According to the contested norm, even the data of persons acquitted of criminal offences are kept for one year after the death of the person. In such a case, the processing is clearly not necessary for the achievement of the stated purpose.

Pursuant to Section 662(1) and Section 665(1) of the Criminal Procedure Law, a decision which has entered into force due to a material breach of substantive or procedural provisions of law, including an unlawful composition of the court or the failure of a judge to participate in the decision, may be reconsidered if it has not been considered in cassation or if the court has not previously refused to initiate

cassation proceedings. However, such cases are extremely rare and essentially exceptional. Moreover, according to Section 665(1) of the Law on Criminal Procedure, the filing of an application for a substantive infringement of material or procedural provisions of law is possible only if the subject referred to in Section 663 of the Law on Criminal Procedure, who files the application, already has access to information on specific infringements that occurred in the criminal proceedings in question. Such information could normally be obtained from the files of the criminal proceedings or the content of the relevant decision, rather than from the archive database of the Punishment Register. In other words, the information stored in the archive database of the Punishment Register is not actually required for an application for reconsideration of a decision due to a substantive infringement of material or procedural provisions of law.

According to Sections 4 and 20 of the Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offence Proceedings, a person may claim compensation for damage within six months from the date of entry into force of the acquittal. The protection of the subjective rights of the person concerned depends essentially on his or her own decision. The individual may also choose not to exercise his or her rights or to have his or her data erased. Thus, the individual has the right to take decisions concerning his or her own data, even if these decisions subsequently make it more difficult for him or her to exercise his or her rights. Accordingly, in the absence of another legitimate purpose for keeping the data, there is no reason for a State to keep a substantial amount of personal data with the proviso that the data might at some point be useful to the individual. Such processing can only take place with the consent of the individual and should therefore no longer be regarded as a restriction of a fundamental right.

The archive database of the Punishment Register cannot be the only source of personal data necessary for the restoration of criminal proceedings, the retrial of a judgement or the protection of a person's rights. In particular, institutions also manage criminal case files on the basis of the Cabinet of Ministers Regulation No 748 "Regulations on the Management of Documents and Archives" of 6 November 2012, in compliance with the principles of personal data processing. The information

system of the Ministry of the Interior contains information on closed criminal cases, which have been deposited in the archives of the Information Centre of the Ministry of the Interior.

This means that the material necessary for the achievement of the aforementioned objectives, in so far as the principles of processing of personal data enshrined in Section 96 of the Constitution and the provisions of European Union law are respected, should be accessible, but the additional duplication and storage of data of an acquitted person in the archive database of the Punishment Register for 100 years from the birth of the person or one year after the death of the person is not necessary for the achievement of the legitimate objectives.

Consequently, the contested provision is incompatible with Section 96 of the Constitution.

19. In accordance with Section 32(3) of the Constitutional Court Law, a legal provision that the Constitutional Court has declared not conforming to a provision of higher legal force shall be regarded as not in effect from the day of publication of the Constitutional Court judgement, unless the Constitutional Court has determined otherwise. According to Section 31(11) of the Constitutional Court Law, the Constitutional Court has the exclusive competence to decide on another moment from which the contested legal provision declared as not conforming to the provision of higher legal force ceases to have effect. In deciding on the moment when the contested provision would lose its force, the Constitutional Court procedure must balance the principle of legal certainty and the fundamental rights of certain persons. Moreover, the court must ensure that the situation that might arise from the moment when the contested provision loses its force does not lead to new infringements of the fundamental rights established in the Constitution and does not cause significant damage to the interests of the society (*see Paragraph 25 of the judgment of the Constitutional Court of 17 December 2020 in Case No 2020--18--01*).

The legislator needs time to adopt a legal framework based on the basic principles of processing personal data, which would allow processing of personal data justified in criminal proceedings, if necessary. However, until such a regulation comes into force, within the framework of the assessment of the applications for

deletion of the data or, where applicable, on its own initiative, the administrator of the archive database of the Punishment Register is obliged to ensure the right of a acquitted person to the deletion of data, by directly applying the second sentence of Section 92 and Section 96 of the Constitution, as well as the findings of this judgement. In fulfilling this obligation, particular attention should be paid to the existence of a discernible legitimate aim for the continued processing of personal data and that the processing remains proportionate to that aim.

In addition, when examining a case initiated on the basis of a court application, the Constitutional Court must always assess what impact its judgement will have on the case. The Constitutional Court has previously held that when deciding on the moment when the contested provision (act) becomes void, it should be borne in mind that its task is to prevent, as far as possible, the infringement of the fundamental rights of the persons (*see Paragraph 25 of the judgement of the Constitutional Court of 5 December 2019 in Case No 2019-01-01*). In the case under review, the aforementioned finding of the Constitutional Court is applicable to those persons who have already initiated the protection of their rights by means of general legal remedies and to whom the contested norm is applicable. On the basis of the contested norm, the processing of data of certain acquitted persons is carried out, as well as the erasure of data is refused. In order to protect the fundamental rights of the acquitted persons who have initiated the protection of their rights by means of general legal remedies, it is necessary to declare the contested norm null and void in respect of those persons from the moment when the infringement of their fundamental rights occurred.

Awarding Part

On the basis of Sections 30-32 of the Constitutional Court Law, the
Constitution Court

decided:

1. To declare Section 23(1) of the Punishment Register Law, insofar as it relates to information on acquitted persons, as incompatible with Section 96 of the Constitution of the Republic of Latvia and null and void as of 1 July 2023.

2. In relation to acquitted persons who have started protection of their fundamental rights through general legal remedies, to declare Section 23(1) of the Punishment Register Law, insofar as it relates to information about the acquitted person, as incompatible with Section 96 of the Constitution of the Republic of Latvia and null and void from the moment when the infringement of the fundamental rights of the person occurred.

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*

Aldis Laviņš

**The document is signed with a secure electronic signature and contains a time stamp.*