



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 15 December 2022

in Case No. 2021-41-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

having regard to the constitutional complaint submitted by person H,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), as well as Section 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

on 15 November 2022, examined in written procedure the case

**“On Compliance of Para 3 of Section 55 of the Law “On Judicial Power” with the First Part of Article 101 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.**

## The Facts

1. On 15 December 1992, the Supreme Council of the Republic of Latvia adopted the law “On Judicial Power”, which entered into force on 1 January 1993. In the initial wording of this law, Para 3 of Section 55 provided that persons, who had been held criminally liable but the criminal proceedings against whom had been terminated for non-exonerating reasons could not be candidates for the office of a judge.

By the law of 18 January 2018 “Amendments to the Law “On Judicial Power”, which entered into force on 12 February 2018, Para 3 of Section 55 of the law “On Judicial Power” was expressed in new wording. Para 3 of Section 55 of the law “On

Judicial Power”, in its current wording, (hereafter – the contested norm) provides that persons against whom criminal proceedings have been terminated for non-exonerating reasons may not be candidates for the office of a judge.

**2. The applicant – person H** (hereafter – the Applicant) – holds that the contested norm infringes upon his fundamental rights, included in the first part of Article 101 and the first sentence of Article 106 of the *Satversme* [Constitution] of the Republic of Latvia (hereafter – the *Satversme*).

Allegedly, the Applicant’s set of abilities, knowledge and skills fully complies with the general requirements that the legislator has defined for a judge in order for them to discharge their official duties successfully. Moreover, the Applicant’s qualification, professional experience and age is said to be appropriate for performing the duties of a judge at a law of general jurisdiction of any level, *inter alia*, at the Supreme Court.

However, in 2001, the Applicant had been held criminally liable for an offence, which, pursuant to the legal provisions that had been in force at the time when it was committed, had been regarded as a criminal offence committed due to negligence. Following a settlement with the victim, the court had decided to satisfy the Applicant’s request and release him from criminal liability, as well as to terminate criminal proceedings. In view of the fact that releasing a person from criminal liability is a non-exonerating reason, the Applicant is to be regarded as being guilty of committing a criminal offence due to negligence more than 20 years ago. Thus, the restriction, included in the contested norm, applies to him. It is contended that the contested norm, the content of which substantially has not changes since 1992, prohibits from becoming a judge a person, who has been found guilty of committing a criminal offence, irrespective of the form of guilt, the interests protected by the Criminal Law and the degree of harmfulness of the committed offence, as well as irrespective of the period that has passed since the criminal proceedings have been terminated for any non-exonerating reason.

The Applicant does not doubt that the restriction on fundamental rights, included in the contested provision, has been established by a law, adopted in due procedure, and that it has legitimate aims – protection of a democratic state governed by the rule of law, as well as the protection of other persons’ rights.

In assessing, whether the measures, chosen by the legislator, are suitable for reaching the legitimate aims of the restriction on fundamental rights, included in the contested provision, the Applicant notes that such a restriction, undeniably, eliminates the risk that a person, whose system of values or attitude towards law might have a negative impact on cases under review, might join the community of judges. Moreover, the said restriction also prevents a situation that the established guilt of a judge in committing a criminal offence might cast a shadow on the composition of judges and influence the general public assessment of the judicial power. However, the attainment of the legitimate aim is said to be relative, i.e., it is attained only partially because the contested norm excludes the possibility to become a candidate for a judge's office also for a highly qualified lawyer with highly developed professional skills and high moral awareness who does not endanger the attainment of the aims of the contested norm.

Likewise, a restriction on fundamental rights should be necessary. The Applicant notes that information relating to a person's reputation may be inconsistent. Also after a person's guilt in committing a criminal offence has been established, a person may continue cultivating his or her moral and virtuous traits and achieve positive assessment in society. Therefore, in order to reach the aim – to protect the authority of a court and judges and promote people's trust in courts – there is no need to exclude all persons who have ever been recognised as being guilty of committing a criminal offence from the circle of candidates for a judge's office. Moreover, a situation where a criminal offence has been committed by a judge should be differentiated from a situation when it has been committed by a person who only might become a candidate for the judge's office in the future because when a judge's guilt in committing a criminal offence has been established it directly endangers other persons' rights to a fair trial, public trust in courts, whereas in the case of a potential candidate for a judge's office the contested norm is said to prevent only probable, in some cases, possibly, even illusionary risks.

The contested norm, by prohibiting from becoming a candidate for a judge's office any person who has been recognised as being guilty of committing a criminal offence, allegedly, fails to reach the legitimate aim – protection of other person's rights, because a person who once has committed a criminal offence due to negligence, perhaps, is not at all inclined to infringing law and there are no grounds

to believe that they would violate law while performing the official duties of a judge. The need to exclude from the circle of candidates for a judge's office persons who have been recognised as being guilty of a criminal offence with compound constituent elements should be assessed similarly, because in such cases the mental attitude towards the consequences of the offence had manifested itself in the form of negligence. Likewise, it is not taken into account that the public assessment of a person who has committed a criminal offence is totally different from the assessment of a person who has committed a crime. Thus, the restriction, included in the contested norm, is said to be too broad.

Moreover, it is contended that there are other measures that could be used to reach the legitimate aim. Firstly, the restriction that prohibits from taking the office of a judge could be applied only to intentional simple criminal offences. Secondly, taking into account that the term for upkeeping the criminal record, defined in the Criminal Law, is sufficiently long for a person to be able to amend his or her behaviour and, thus, improve his or her public reputation, the prohibition for a person to become a candidate for a judge's office should be linked to this period of time. Thirdly, the law "On Judicial Power" already includes the mandatory requirement of impeccable reputation, set for a judge. An individual assessment would be the best to understand whether a candidate for a judge's office, who has once committed a criminal offence, is a person who enjoys public respect and trust. This would allow due assessment of the period of time that has passed since the criminal offence was committed, as well as of the type, nature of the criminal offence and the person's attitude towards this offence and conduct following it.

Finally, the benefit that society gains from the restriction, included in the contested provision, is said to not outweigh the damage inflicted upon a person's rights and lawful interests. The contested norm is said to point to an erroneous idea, incompatible with the values of a democratic state governed by the rule of law, that, after committing a criminal offence, a person's development as a human being, a personality stops until the end of their lives. It is in public interests that qualified, competent lawyers who, in performing their duties of office, would ensure that a person's right to a fair trial is ensured, become judges. Since the termination of criminal proceedings for non-exonerating reasons, in particular, in one's early youth, is not and may not be an absolute indicator of a person's, as a possible judge's,

capacity and moral stance, the contested norm is said to limit the entire society's right to an objective, independent court where the official duties are performed by professional and honest judges.

**3. The institution, which issued the contested act, – the *Saeima* –** holds that the contested norm complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

A judge's office should be regarded as belonging to the civil service, in the meaning of Article 101 of the *Satversme*. Likewise, also Article 106 of the *Satversme* includes employment in civil service, *inter alia*, in the office of a judge. However, in view of the fact that the State must set high professional standards with respect to the persons who serve in law enforcement institutions, the legislator has the right to establish, with respect to persons who want to become candidates for a judge's office, restrictions and requirements related to the respective area.

It is not contested in the case that the restriction on fundamental rights that follows from the contested provision had been established by law.

Allegedly, the restriction, included in the contested provision, serves for several legitimate aims – to protect other persons' rights, the democratic state order, and public security. Namely, the requirement, included in this provision, is aimed at decreasing risks with respect to the authority of the judicial power, the protection of which is of particular importance, especially, in a democratic state governed by the rule of law. If a person who has committed a criminal offence and the criminal proceedings against whom have been terminated on non-exonerating grounds could take the office of a judge then, in the *Saeima's* opinion, the public trust in both judges and the State itself, as well as in the order of a democratic state governed by the rule of law would be diminished. Whereas the absence of the authority of the judicial power and public distrust in the State and its officials cause threats to both public security and to other persons' rights. Moreover, in any democratic state, the office of a judge is said to be the symbol of highest responsibility but a judge who has violated legal acts that regulate criminal liability cannot promote law-abiding attitude in society and harmonious functioning of such society, where each member of it is aware of and respects the interests of other persons, society and the State.

The *Saeima* also notes that the restriction on fundamental rights, included in the contested provision, is suitable for reaching the legitimate aims. Allegedly, termination of criminal proceedings on non-exonerating grounds does not change the fact that a person has committed a criminal offence. Committing of a criminal offence does not facilitate in any way trust in the judge and, *inter alia*, undermines the court's authority, which is an essential pre-requisite for the functioning of the judicial power and, thus, for ensuring other persons' rights and public security. The *Saeima* does not contest the Applicant's statement that, potentially, the contested norm may prohibit a person with professional experience and in-depth knowledge of legal matters from becoming a candidate for a judge's office. However, a candidate for a judge's office must prove not only that he knows the valid national legal regulation but also that he respects it and, by his example, is a model for society.

The *Saeima* holds that the alternative measures, indicated by the Applicant, do not allow reaching the legitimate aims in the same quality as the contested provision. Even sufficiently valid suspicion of a committed criminal offence may decrease the public trust and discredit the official themselves and the entire judicial power.

The legislator, by including the said requirement into the contested provision, has taken into account the special role of the court in protecting human rights, ensuring public security and a democratic state order. Therefore, neither the linking of the prohibition to become a candidate with only specific criminal offences or a specific period of time, nor an individual assessment of a person would reach the legitimate aims in equal quality because the attainment thereof is proven by general trust of persons and society in judges as law-abiding representatives of the State power. The *Saeima* is of the opinion that individual assessment would not make behaviour, incompatible with the office of a judge, non-existent and, thus, could not ensure that the legitimate aims are reached in the same quality.

In assessing the suitability of the restriction on fundamental rights, included in the contested provision, for its legitimate aims, it should be taken into account that the most recent statistical data prove: the majority of Latvia's inhabitants does not show trust in the judicial power, therefore the legislator should aim at increasing persons' trust in the State and law. Adoption of such laws that facilitate society's trust in court and, thus, a democratic state order, is said to be in public interests. The court is a model of justice, therefore its duty is to send a strong signal that, due to the court's

high standards, society may trust it and that the court will not allow any abuse of the State power or any other infringement of law. Sending of such a signal is said to be also the duty of every judge. Hence, the *Saeima* is of the opinion that commitment of a criminal offence is incompatible with the office and the role of a judge in a democratic society.

**4. The summoned person – the Ministry of Justice** – holds that the contested norm is compatible with Article 101 and Article 106 of the *Saeima*.

The Ministry of Justice notes that it fully subscribes to the arguments and conclusions included in the *Saeima*'s written reply.

Allegedly, the office of a judge imposes upon a person the obligation to discharge one of the functions of the State power – the function of administering justice, which is inseparably linked to immense responsibility and duty before society. A judge should enjoy public trust, and the legislator's obligation is to facilitate public trust in the activities of public officials because such trust is closely linked to public trust in the State and the order of a democratic state governed by the rule of law. It is contended that society expects from a judge behaviour that would meet standards of ethics that are much higher than those set for the behaviour of other members of society. I.e., the standards set for judges should be such as to ensure that only such persons whose personality does not cause any doubt as to whether the judge will treat with responsibility and respect the State power entrusted to him become judges, and this includes also unquestionable abiding by the law. Moreover, a judge not only should be actually honest but, also, his actions and conduct should be such that a reasonable external observer would not develop any doubts regarding the judge's honesty. If a judge violates legal provisions he is said to discredit the judge's office, provoke disrespect of law and undermine public trust in the judicial power.

A judge's personality and, thus, also actions in discharging the respective office are where the basic values of the judicial power are embodied – justice, rule of law and independence. If the biography of the candidate for a judge's office contains facts contrary to these values, there are valid grounds for doubting whether the particular person will be able to implement the judicial power and personify the said values. The Ministry of Justice holds that law-abiding attitude in society would not be facilitated by allowing a person, who had been punished for a criminal offence,

irrespective of the fact that the criminal record had been extinguished or set aside or the fact that the person had been released from criminal liability on non-exonerating grounds, to become a judge. The contested provision is said to guarantee that persons who themselves have not taken actions that are unacceptable in society and have been defined as criminally punishable take care of the rule of law on behalf of the State. Moreover, it should be taken into account that, in Latvia, public trust in courts is comparatively low – only 39 per cent of society have full or partial trust in courts. Lowering the requirements set for the candidate for a judge's office would not increase the reputation of the judicial power and would not promote the general trust in the court system.

The measures, indicated by the Applicant, which are less restrictive upon a person's rights would not allow reaching the legitimate aim in equal quality.

Restriction on the rights of some persons is said to be commensurate with the entire society's interests in objective, unbiased judicial power that meets high moral and ethical standards. If the pre-conditions for taking the office of a judge, defined in the law "On Judicial Power", are lowered then it would become impossible to improve the professional quality of young judges since the professional standard that every judge must meet is defined and united.

**5. The summoned person – the Ombudsman** – holds that the contested provision, complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

The Ombudsman notes that office-related restrictions for persons who fulfil functions of national importance, *inter alia*, judges, may be stricter compared to those set for persons working in other areas.

In the present case, the restriction on fundamental rights had been established by law. It has legitimate aims – protection of other persons' rights, public security and the democratic state order. Namely, a judge is said to be a reflection of justice, representing the extent to which the State is judicial and just. The office of a judge is the highest position available within the area of justice, therefore also the requirements that a person must meet to become a judge should be the most stringent. The Ombudsman is of the opinion that if the office of a judge were held by a person who in the past had been recognised as being guilty of committing a criminal offence it

would clearly have effect upon public trust in the judicial power and the State, as well as diminish the authority of each individual judge and integrity in hearing cases.

Although there may be discussions on whether in all cases referred to in the Criminal Procedure Law the decision on terminating legal proceedings should be classified as non-exonerating reason, this circumstance, allegedly, is not of decisive importance in the present case. In any case, application of the contested norm is said to ensure that a person who has been recognized as being guilty of committing a criminal offence cannot be a candidate for a judge's office, and, thus, this absolute prohibition is said to be a suitable measure for reaching the legitimate aims of the restriction on fundamental rights.

It is contended that the legitimate aims of the restriction on fundamental rights cannot be reached in equal quality by alternative measures. Firstly, regulation that would automatically allow a person, following extinguishing or setting aside of the criminal record, to become a candidate for a judge's office would not be correct as it would not guarantee appropriateness of the personal traits for the respective office. Secondly, differentiation of compound criminal offences should not be supported because, pursuant to the most recent findings of the legal doctrine, such offences are seen as belonging to those that are committed intentionally or wilfully. Thirdly, the State should ensure that a person who holds an office in the civil service acts lawfully, is loyal to the State and, in particular, to the constitutional principles it is based on. Awareness that a person who has committed a criminal offence in the past would level down the prestige of a judge's office and the concept of impeccable reputation. Thus, neither individual assessment could allow reaching the legitimate aims in equal quality.

Finally, compared to other offices within the justice system, the most stringent requirements have been set for a judge's office. Restrictions that may be admissible with respect to one vocation or office may be inadmissible with respect to another. I.e., it should be taken into account that unification of conditions within the entire legal system, without examining each individual case, would not be admissible. Only a person who can be trusted by everyone and to whom they can entrust their health, personal liberty, respect, dignity and property may become a candidate for a judge's office. Thus, the restriction on fundamental rights, included in the contested provision, is said to be proportional.

**6. The summoned person – the Judicial Council** – holds that the contested provision complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

The restriction on fundamental rights, included in the contested provision, is said to have been established by a law adopted in due procedure. Likewise, it has legitimate aims – protection of a democratic state order and other persons' rights, which, within the framework of the present case, are said to be equivalent, interconnected and mutually complementary. I.e., within the framework of separation of the State power, judges have been entrusted with a constitutional function – ensuring the rule of law, by administering justice. All major areas of human life and activity are subject to judicial review. Judges have been granted the right to adopt the final ruling with respect to a person's rights and obligations. Exercising the right to a fair trial is said to be the precondition for protecting all other rights. Therefore, society demands, literary, impeccable conduct from anyone who fulfils the function of administering justice and requirements set for judges are higher than those set for any other member of society. Judges should serve as a model of justice, objectivity and independence and prove by their entire lives that they are such and meet the defined requirements that follow from a judge's status and the established restrictions. Allegedly, the State not only has the right but also an obligation to determine measures that would promote public trust in judges and in the judicial power in general, thus, ensuring protection of the order of a democratic state governed by the rule of law.

The Judicial Council is of the opinion that the measures chosen by the legislator reach the legitimate aims. A judge's role in society and the State should be examined in the context of the rule of law, separation of powers and protection of human rights. Hence, very high requirements have been set for the candidates for a judges office. Holding a person criminally liable is one of the mechanisms for protecting the democratic state order and human rights and freedoms. The prohibition, included in the contested norm, is aimed at preventing from entering the court system a person who has committed a criminal offence, even if criminal proceedings against this person have been terminated for non-exonerating reasons. This high standard that has been set for a judge's office and follows from a judge's status allows reaching the legitimate aims.

The Judicial Council subscribes to the *Saeima's* statement that, within the framework of the present case, there are no more lenient measures, including individual assessment, that would allow reaching the legitimate aims in the same quality. The prohibition, included in the contested provision, to become a candidate for a judge's office for a person, criminal proceedings against whom have been terminated for non-exonerating reasons, substantially, should be equated to a prohibition for a person with criminal record to become a candidate since both restrictions are aimed at preventing a person who has committed a criminal offence from becoming a judge. It is essential to note also that, in cases defined in law, committing a criminal offence due to negligence is criminally punishable. Negligence, which is not criminal, is not punishable. Therefore, there are no grounds for assuming that only such action by a person, which has been committed wilfully, i.e., intentionally, is condemnable and unacceptable for society.

It is contended that the Applicant can exercise his right to participate in the civil service by taking any other public office, except the offices of a judge and a prosecutor, as well as choose working in any other legal profession, *inter alia*, become an advocate. Hence, the prohibition, included in the contested provision, to become a candidate for a judge's office, is said to affect a very narrow aspect of the right to perform civil service. However, reinforcing the rule of law, by protecting democracy and increasing public trust in the judicial power, is said to be in the interests of the entire society. Judgements delivered by a court are said to affect not only the persons involved in the case but also society in general. Public trust in the judicial power is said to be the most treasured value inherent in this branch of power and it is essential for the existence and proper functioning of the system of courts. More than half of society is said to distrust courts. Therefore, participation of judges themselves and the entire judiciary in attempts to reinforce public trust in the judicial power is said to be significant. The Judicial Council notes: currently, the Latvian society is not ready to accept that justice could be administered also by a person who has been recognised, on the merits of it, as being guilty of committing a criminal offence.

**7. The summoned person – the Latvian Association of Judges** – holds that the contested provision complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

The Latvian Association of Judges subscribes to the statements made in the *Saeima's* written reply that the restriction on fundamental rights, included in the contested provision, has several legitimate aims and also that there are no other measures that would allow reaching the legitimate aims of the restriction on fundamental rights in the same quality.

The requirements set for candidates for a judge's office, established in the contested provision, are said to be valid in view of the importance of a judge's office and the fact that judges perform one function of the State power, i.e., administer justice.

Pursuant to the law "On Judicial Power", a judge examines, assesses and decides on the actions taken by other persons and compliance thereof to legal regulation. If a judge's office were held by a person, criminal proceedings against whom had been terminated for non-exonerating reasons, a court's authority could decrease in the eyes of the public. Not only the circumstances of the particular criminal proceedings, traits of the particular person and the ability to reassess one's actions in the course of time but also the impact upon the court's authority left by the fact that a judge's office can be held by a person, criminal proceedings against whom had been terminated for non-exonerating reasons, is said to be important. The authority of courts and public trust in the judicial power are essential for a state governed by the rule of law because it facilitates public certainty regarding the rule of law and, thus, also the State itself, and this certainty, in turn, promotes lawful actions. Every judge is said to be an indispensable part of the court's prestige, and therefore each judge should have high personal standard and authority.

**8. The summoned person – the Latvian Association of Administrative Judges** – holds that the contested provision complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

The Latvian Association of Administrative Judges underscores: it is not disputed in the case that the restriction had been established by a law adopted in due procedure. The legitimate aim of this restriction is also protecting the reputation of the judicial power, which complies with the other legitimate aims, – protecting other persons' rights, the democratic state order and public security. Namely, the aim of the

contested provision is to guarantee public trust in the court system and respect for it. Thus, a court's ability to function effectively in public interests is fostered.

It is contended that the restriction on fundamental rights, included in the contested provision, is suitable for reaching the legitimate aims since it helps to safeguard the reputation of the judiciary and trust in the eyes of the public.

The aim of the restriction is not only preventing from holding a judge's office a person who might reoffend. If this were the only aim of the restriction then the Latvian Association of Administrative Judges could easily uphold the Applicant's view that there are other equally effective measures for reaching this aim. However, the main aim of the restriction is promoting public trust in the judicial power and to not endangering the legitimacy of the judiciary. A judge in a criminal case, in ruling on punishment, expresses condemnation of a person's actions on behalf of the State. Likewise, in hearing criminal and administrative cases, a judge must provide legal assessment of other persons' actions. Hence, the public perception of what kind of person has the moral right to condemn or assess another person's actions should be taken into account. I.e., society expects that, in the case of a judge, the standard of impeccable reputation is much higher than in the case of an average person and even in the case of persons representing other professions of public importance and held in high public esteem. Thus, information that a person who has committed a criminal offence, irrespective of the nature of this offence, the form of the person's guilt or any other data that characterise the person, works as a judge may undermine the reputation of the judiciary in the eyes of the public. Thus, any other measures cannot be held as being as effective as the absolute prohibition, included in the contested provision.

It is important that the restriction with this content applies only to one numerically small group of officials – judges and prosecutors. It does not prohibit a person, the criminal proceedings against whom had been terminated for non-exonerating reasons, from holding other offices in the civil service and legal profession. Hence, the restriction is said to be narrow and its applicability exactly to candidates for a judge's office are justified by the special status of a judge in society and law enforcement system.

In general, prohibition for a person, who has committed the most serious offence – a criminal offence, from holding the highest office in the law enforcement system should be deemed to be a suitable measure for reaching the legitimate aim.

**9. The summoned person – *Mg. iur.* Evija Vīnkalna, lecturer at the Department of Criminal Law, the Faculty of Law of the University of Latvia, –** notes that the contested provision complies with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

A person may be recognised as being guilty of committing a criminal offence not only by a court or a prosecutor, by punishing a person, but also by the official directing the proceedings, by not punishing the person and terminating legal proceedings for non-exonerating reasons. Substantially, non-exoneration of a person should be understood as recognising them as being guilty of committing a criminal offence.

The contested provision is said to contain absolute prohibition. I.e., it envisages application of the said prohibition to all persons belonging to a specific group, without allowing for exceptions, and setting this for the rest of their lives.

In view of a judge's task, as the representative of the judicial power, to perform essential State functions in the area of public security and the importance of actions by every judge from the perspective of public trust in the judicial power, it should be recognised that the established restriction has a legitimate aim, which encompasses protection of not only other persons' rights, public security and welfare but also of a democratic state order.

Envisaging of differential approach and individual assessment is said to be inadmissible. Likewise, there are no grounds for narrowing the scope of the restriction, for example, applying it only to criminal offences committed due to negligence.

**10. The summoned person – *Mg. iur.* Gunārs Kūtris, lecturer at and Head of the Department of Criminal Law, the Faculty of Law of the University of Latvia, –** holds that the contested provision is incompatible with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

Section 55 of the law "On Judicial Power" defines the persons who may not be candidates for a judge's office and the first four paragraphs of this Section links the person to guilt of committing a criminal offence. In its initial wording of 1993, the said Section had included almost the same provisions. However, at present, Para 3 of

this Section has become broader because the Criminal Procedure Law of 2005, compared to the Latvian Criminal Procedure Code that had been prior in force, had granted the right to terminate criminal proceedings also to an investigator, not solely a prosecutor. Previously this legal provision had applied only to persons who had been held criminally liable by a prosecutor and the criminal case against whom had been terminated on non-exonerating grounds.

Also during the inter-war period, the restrictions that had prohibited a person from becoming a judge had been narrower - these had not applied to cases where a person had been held criminally liable or had been sentenced for an offence, i.e., restrictions had been applicable only to a person, against whom criminal prosecution had been initiated for committing a crime or a serious crime. Moreover, the restriction had been in effect only if criminal proceedings had been terminated on the basis of certain non-exonerating circumstances – limitation period, settlement, clemency or amnesty.

Additional conditions are said to exist for adopting a decision on terminating criminal proceedings for non-exonerating reasons, i.e., a person's consent to such termination of proceedings is required as a safeguard for a person's right to have the case tried in court. A person may not consent to termination of criminal proceedings and demand reviewing of the case in court; however, if a person has consented to termination of criminal proceedings it means that the person has admitted his or her guilt of committing the offence. Admission of guilt may have legal consequences, *inter alia*, also the restriction to be reviewed in the present case, which prohibits from holding a certain office.

It is not disputed in the present case that the restriction had been established by law and has a legitimate aim – protecting other persons' rights, a democratic state order and public security, because this restriction is related to the prestige of the State and the judiciary, as well as people's trust in a court, which might decrease if justice were administered by a person who had violated the Criminal Law. The measure chosen by the legislator is said to be suitable for reaching these legitimate aims.

However, there are valid doubts as to whether the public benefit from the fact that individual assessment is not envisaged and an experienced, qualified lawyer with very good reputation is not allowed to work as a judge is sufficiently great. The opinion that previous offences would significantly impact the public trust in the

judicial power cannot be upheld. The data, referred to by the *Saeima*, revealing that the public trust in the judicial power is not particularly high cannot be linked to validity of the provision that is contested in the present case. Society is said to assess the State bodies by the work done and decisions made. Undeniably, higher standards may be set for a judge as the model of justice. However, in any case, people assess the court by the judges' actions and fairness of judgements.

*Mg. iur.* Gunārs Kūtris points out that it would be possible to not apply this restriction to criminal offences or apply it only to such cases where a person already has been held criminally liable (the prosecutor has brought charges) and only afterwards the criminal proceedings had been terminated for non-exonerating reason because the totality of evidence, acquired in this stage, is much more stable for proving the person's guilt. Likewise, there are grounds for assessing whether only restrictions related to an intentional offence should not be applied to all professions because negligence is not a person's wilful actions. Moreover, the laws of Estonia and Lithuania are said to be commensurate because in both these states restrictions of this nature are valid only after a person has been sentenced.

## **The Findings**

**11.** The Applicant requests reviewing the compliance of the contested provision with the right to perform civil service, included in the first part of Article 101 of the *Satversme*, and the right to freely choose one's employment, included in the first sentence of Article 106.

If the compliance of the contested provision with several superior legal provisions is contested then the Constitutional Court, by taking into account the merits of the case, must determine the most effective approach to this compliance review (*see, for example, Judgement by the Constitutional Court of 4 November 2021 in Case No. 2021-05-01, Para 10*).

Hence, in the present case, the Constitutional Court must examine, first and foremost, the scope of the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.

**11.1.** The first part of Article 101 of the *Satversme* provides: “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.”

Civil service is a public legal status, held by persons entrusted with discharging duties of the State. Therefore employment in the civil service differs from the work to be done in the private sector both in the legal aspects of establishing legal relations and the purpose of the work to be done. Persons in civil service are in special relations with the State, i.e., the rights of these persons are restricted and special obligations are imposed upon them (*compare, see Judgement by the Constitutional Court of 18 October 2007 in Case No. 2007-03-01, Para 10*).

The Constitutional Court has found that the civil service includes all public offices that have been established in the legislative, executive and judiciary institutions (*see Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 31.1.*). In administering justice, a judge performs one of the functions of the State power – the judicial power. Hence, the first part of Article 101 of the *Satversme* includes also the right to perform the civil service in a judge’s office (*see Judgement by the Constitutional Court of 18 October 2007 in Case No. 2007-03-01, Para 13*).

The right to perform the civil service means also the right to equal access to the civil service (*compare, Judgement by the Constitutional Court of 18 October 2007 in Case No. 2007-03-01, Para 13*). However, Article 101 of the *Satversme* does not impose the obligation upon the State to the possibility to perform the civil service ensure to each person wishing it. The right to perform the civil service should be exercised “in way provided for in law” (*see Judgement by the Constitutional Court of 10 May 2007 in Case No. 2006-29-0103, Para 17*). This means that the legislator has the right to define also the requirements set for the candidate for a judge’s office.

Thus, the first part of Article 101 of the *Satversme* protects the right of a person – a Latvian citizen – to perform the civil service in a judge’s office in the way provided for in law.

**11.2.** The first sentence of Article 106 provides: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

The Constitutional Court has repeatedly recognised that the first sentence of Article 106 of the *Satversme* does not guarantee directly the right to work but guarantees the right to freely choose one's employment and workplace (*see, for example, Judgement by the Constitutional Court of 25 March 2021 in Case No. 2020-36-01, Para 12*).

Likewise, the Constitutional Court has found that the concept of "employment", included in the first sentence of Article 106 of the *Satversme*, should be understood as such type of work that requires appropriate preparedness and is the source of a person's subsistence, as well as vocation that is closely related to an individual's personality in general. In other words – a person may choose employment, by taking into account the totality of all those abilities, knowledge and skills that characterise the preparedness and suitability of the particular person for performing specific work, taking into account both education and practical experience in the specific work, as well as other knowledge, skills and competences that the respective person has acquired and developed (*see, for example, Judgement by the Constitutional Court of 1 November 2007 in Case No. 2007-08-01, Para 7*).

The right, included in the first sentence of Article 106 of the *Satversme*, is applicable to employment in both private and public sphere, moreover, it is applicable also to such professions, in which legal labour relations are not established on the basis of an employment contract, regulated by the Labour Law (*see Judgement by the Constitutional Court of 23 February 2006 in Case No. 2005-22-01, Para 6, and Judgement of 22 November 2011 in Case No. 2011-04-01, Para 11*). I.e., this right applies also to a judge's office.

The right to freely choose one's employment protects a person against the State's actions that restrict this freedom. However, this does not prohibit the State from defining requirements that a person must meet in order to carry out the specific employment. The legislator enjoys discretion to advance requirements with respect to specific professional activities, insofar it is necessary for public interests. At the same time, the State has the obligation to refrain from creating such direct or indirect circumstances that would hinder a person in exercising the right to freely choose one's employment (*compare, see Judgement by the Constitutional Court of 25 March 2021 in Case No. 2020-36-01, Para 12*).

Thus, a person's right to freely choose one's employment, which comprises the right to hold the office of a judge, falls within the scope of the first sentence of Article 106 of the *Satversme*; however, the legislator may define the requirements related to this office, abiding by the *Satversme* and the general legal principles.

**11.3.** Pursuant to the Constitutional Court's judicature, the *Satversme* is a unified whole and the provisions, included in it, should be interpreted in a systemic way (*compare, see Judgement by the Constitutional Court of 2 November 2006 in Case No. 2006-07-01, Para 14*).

When the Constitutional Court has to examine the compliance of the contested provision both with Article 101 of the *Satversme* and Article 106 of the *Satversme* then the restriction established on the right, included in Article 101 of the *Satversme*, should be examined in conjunction with Article 106 of the *Satversme* (*compare, see Judgement by the Constitutional Court of 10 May 2007 in Case No. 2006-29-0103, Para 16*).

It follows from the reasoning, included in the application, and other materials in the case that the basic matter in the case is whether the State has the right to prohibit from becoming a candidate for a judge's office and, thus, performing the civil service a person, against whom criminal proceedings had been terminated for a non-exonerating reason. Hence, in the present case, the assessment of the compliance of the first part of Article 101 of the *Satversme* is of special importance.

Therefore, the Constitutional Court will review the compliance of the contested provision with the first part of Article 101 of the *Satversme* in conjunction with the first sentence of Article 106 of the *Satversme*.

**12.** Within the Latvian legal system, Section 55 of the law "On Judicial Power" defines those person who may not be candidates for a judge's office. The contested provision determines, in a negative way, the requirements that a candidate for a judge's office must meet. Moreover, the prohibition established in the contested provision applies to all candidates for a judge's office. I.e., a person may not become a candidate for a judge's office if criminal proceedings against him or her had been terminated on the basis of any of the non-exonerating reasons, referred to in Section 380 of the Criminal Procedure Law and different as to their content.

One of the non-exonerating reasons in a case when the criminal proceedings are terminated, by releasing a person from criminal liability, is settlement with the victim, envisaged in Para 2 of Section 379 (1) of the Criminal Procedure Code. Similar legal regulation had been included in the previously valid Latvian Criminal Procedure Law, the settlement, envisaged in Para 2 of its Section 5<sup>3</sup> (1), had been the grounds for terminating the criminal proceedings against the Applicant.

On 23 July 2021, the Applicant turned to the Court Administration, indicating that he was considering the possibility of becoming a candidate for one of the vacant judge's offices (*see Case Materials, Vol.1, p. 35*). In the answer sent to him, attention was drawn to the requirements set for the candidates for a judge's office (*see Case Materials, Vol. 1, p. 36*).

Since the criminal proceedings against the Applicant had been terminated for non-exonerating reason the contested provision denies the Applicant the right to become a candidate for a judge's office and to perform the civil service.

**Thus, the contested provision restricts the Applicant's rights, included in the first part of Article 101 and the first sentence of Article 106 of the *Satversme*, to join the civil service in the office of a judge.**

**13.** In verifying, whether the restrictions on the Applicant's rights, established by the contested provision is justifiable, the Constitutional Court must examine:

- 1) whether the restriction on fundamental rights has been established by law;
- 2) whether the restriction has a legitimate aim;
- 3) whether the restriction is proportional to its legitimate aim (*compare, see Judgement by the Constitutional Court of 11 June 2021 in Case No. 2020-50-01, Para 14*).

**14.** To examine, whether the restriction on fundamental rights, included in the first part of Article 101 and the first sentence of Article 106 of the *Satversme*, had been established by a law, adopted in due procedure, the Constitutional Court must establish:

- 1) whether the law was adopted in compliance with the procedure set out in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments;

3) whether the law has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations that follow from it and to foresee the consequences of application thereof (*see, for example, Judgement by the Constitutional Court of 17 December 2020 in Case No. 2020-18-01, Para 16, and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 14*).

A restriction on fundamental rights must be established in such legislative procedure that complies with the principle of good legislation (*see Judgement by the Constitutional Court of 28 January 2021 in Case No. 2020-29-01, Para 19, and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 14*).

The prohibition to become a candidate for a judge's office for a person who had been held criminally liable but the criminal case against whom had been terminated on non-exonerating grounds, was established already in the initial wording of the law of 15 December 1992 "On Judicial Power".

By the amendments of 18 January 2018, which entered into force on 12 February 2018, Para 3 of Section 55 of the law "On Judicial Power" was expressed in new wording providing that persons, criminal proceedings against whom had been terminated for non-exonerating reasons, may not be a candidate for a judge's office. The amendments were based on the need to harmonise the terminology used in the law "On Judicial Power" and the Criminal Procedure Law (*see Initial impact assessment (annotation) of the draft law No. 898/Lp12 "Amendments to the Law "On Judicial Power". Available: saeima.lv*).

The proposal to express Para 3 of Section 55 of the law "On Judicial Power" in new wording was examined both by the *Saeima* Legal Affairs Committee and the Judicial Policy Subcommittee. The draft law was examined at the *Saeima* sittings in three readings and after its reconsideration, which was not related to revision of the contested provision, the law was adopted on 18 January 2018. The law was promulgated on 29 January 2018, published in the official journal "Latvijas Vēstnesis" No. 20, and entered into force on 12 February 2018.

Participants in the case have not objected to the procedure, in which the contested norm was adopted and promulgated, and the Constitutional Court does not doubt either that the contested norm was adopted and promulgated in the procedure

set out in the *Satversme* and the Rules of Procedure of the *Saeima*, is accessible in accordance with the requirements set out in regulatory enactments and has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations derived from it and foresee the consequences of application thereof.

**Thus, the restriction on fundamental rights, included in the contested provision, has been established by a law, adopted in due procedure.**

15. Any restriction on fundamental rights should be based upon circumstances and arguments related to necessity for it, i.e., the restriction is established for the sake of important interests – a legitimate aim (*see, for example, Judgement by the Constitutional Court of 22 November 2011 in Case No. 2011-04-01, Para 16*).

The *Saeima* points out that the restriction, included in the contested provision, is directed at decreasing risks with respect to the authority of the judicial power – to disallow diminishing of public trust both in judges and the State itself, as well as in the democratic state order. The *Saeima* underscores that lack of judiciary's authority and distrust in the State and its officials would endanger both public security and other persons' rights. Thus, allegedly, the contested provision protects the democratic state order, public security, and other persons' rights. The Applicant has also noted that protection of the democratic state order and other persons' rights could be the legitimate aim of the restriction.

The Constitutional Court has recognised that the State has the obligation to ensure proper functioning of its institutions, as well as establish such regulation that would ensure that the State power were exercised in public interests. One of the ways for attaining this is setting qualification and objectivity requirements for persons who have been entrusted with performing functions, important for the State or society. Such restrictions have a legitimate aim and, in a broader sense, it pertains both to the democratic state order and public security (*see Judgement by the Constitutional Court of 23 February 2006 in Case No. 2005-22-01, Para 9*).

In performing civil service, a judge fulfils one of the functions of the State power – administering justice. In a democratic state governed by the rule of law, administration of justice is seen as being of great importance because it ensures protection of the constitution and democracy itself (*see: Barak A. The Judge in a Democracy. Princeton: Princeton University Press, 2006, p. 11*). Judges are expected,

in the process of administering justice, to ensure protection of rights, principles and values included in the *Satversme*, laws and other legal acts. Thus, the State must ensure that this power is transferred only in the hands of such persons who comply with the nature of the office and are able to ensure protection of a democratic state governed by the rule of law.

All institutions that are embodying the State power but, in particular, courts must fulfil their functions in a way to ensure that they enjoy public trust. A judge, in administering justice, adopts the final ruling on a person's rights and obligations, ensuring that every person's right to a fair trial is implemented. Likewise, every court's ruling is important not only for the persons, involved in the particular proceedings, but also for the entire society. Such values, important for a person and society, as, for example, establishing the truth, justice, freedom, can be protected by judges who not only discharge their obligations in compliance with the highest professional standards but also enjoy public trust. Public trust in courts is an element of a democratic state governed by the rule of law, as well as of fair and harmonious society. In other words – the function of administering justice can be implemented in full only if the judicial power and judges enjoy public trust.

Various considerations impact trust in the judicial power, *inter alia*, public opinion about the moral authority and integrity of a judge. Judges' authority in society depends on judges themselves, the content of their work and values that reinforce trust in courts and in Latvia as a state governed by the rule of law (*see: Krūmiņa V. Tiesnešu vērtības un atbildība. Jurista Vārds, 14.04.2015., Nr. 15, 8.–10. lpp.*). Likewise, it is important that the judges themselves also respect and honour the office of a judge and would try to reinforce and maintain people's reliance on the court system (*see: Bangalore Principles of Judicial Conduct, 27 July 2006, United Nations Economic and Social Council resolution 2006/23, Preamble*). A judge must ensure that society would assess his or her actions as impeccable, and such actions and conduct must justify person's trust in the judge's integrity. This means the need not only to ensure actual justice but also create conviction in society that it is ensured (*see: Bangalore Principles on Judicial Conduct, Value 3.1, 3.2*). Moreover, a judge must reckon with the fact that due to the importance of his or her office and legal effects of the rulings by them they often come into the focus of society's attention.

A criminal offence, substantially, differs from other offences by greater inflicted harm or the possible degree of severity of the harm, and the legislator has envisaged using criminal law measures to provide for the most important and significant interests (*compare, see: Krastiņš U., Liholaja V. Krimināllikuma komentāri. Pirmā daļa (I–VIII<sup>2</sup> nodaļa). Otrās papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2018, 14. lpp.*). I.e., the legislator has envisaged in the Criminal Law such criminal offences in the form of actions and failure to act that have such degree of harmfulness that criminal punishment is envisaged for committing these as the consequences of a person's unlawful actions.

As noted by several summoned persons, if criminal proceedings that have already been initiated are terminated for non-exonerating reasons a person is not acquitted (*see Case Materials, Vol. 5, pp. 17 and 24*). Section 610 (1) of the Criminal Procedure Law allows concluding that if criminal proceedings have been terminated for non-exonerating reasons a person, substantially, has been recognised as being guilty of committing a criminal offence. It has been also noted in legal science that, in Latvia, actually, a person may be recognised as being guilty of committing a criminal offence: 1) if the court or the prosecutor, in compliance with the second and third part of Section 1 of the Criminal Law, recognises a person as being guilty and punishes them; 2) if the official directing the proceedings terminates legal proceedings for non-exonerating reasons, without punishing a person (*see: Baumanis J. Personu nereabilitējošie apstākļi kriminālprocesā jeb kriminālprocesuālā dekoherence. Jurista Vārds, 02.01.2018., Nr. 1, 27.–29. lpp.*). Likewise, it has been recognised in judicature that, upon terminating legal proceedings on grounds that are non-exonerating for the person, it should be established whether the person is guilty of committing the criminal offence with respect to which criminal proceedings had been initiated, otherwise a person's right to have the case heard at a fair trial would be violated (*see Judgement by the Senate of 27 December 2016 in Case No. SKK-J-507/2016 (11200034307)*).

Thus, the restriction that prohibits a person, against whom criminal proceedings have been terminated for a non-exonerating reason, from becoming a candidate for a judge's office primarily has been established to prevent a person, whose conduct had had the degree of harmfulness that has made this conduct comply with the constituent elements of a criminal offence, envisaged in the Criminal Law,

from harming the judicial power and its authority. In this way, protection of democratic state order is ensured. The fact that the contested provision protects also other persons' rights and public security is a side-effect of this provision.

**Hence, the restriction on fundamental rights, included in the contested norm, has a legitimate aim – protection of the democratic state order.**

**16.** In examining the proportionality of a restriction on fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are suitable for reaching the legitimate aim or if the legitimate aim can be reached by the chosen measure;

2) whether such action is necessary or whether the legitimate aim could be reached by measures that are less restrictive upon an individual's rights;

3) whether the restriction is appropriate or whether the benefit gained by society outweighs the damage inflicted upon an individual's rights.

If, in the course of examining a legal provision, it is recognised that it is incompatible with even one of this criteria, it does not meet the proportionality criteria and is unlawful (*see, for example, Judgement by the Constitutional Court of 21 December 201. in Case No. 2015-03-01, Para 25*).

**17.** Measures chosen by legislator are suitable for reaching the legitimate aim if this aim is reached by the particular regulation (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 13*).

The Applicant notes that the restriction, included in the contested provision, allows reaching the legitimate aim only partially because it excludes the possibility for even highly qualified lawyers, who do not endanger the reaching of the legitimate aim, of becoming a candidate for a judge's office.

The *Saeima*, in turn, is of the opinion that the restriction, included in the contested provision, reaches its legitimate aim because a candidate for a judge's office must prove that he or she complies with the valid legal regulation and can serve as a model for society. I.e., the function of administering justice requires the judge to have not only appropriate professional experience and in-depth legal knowledge but also conduct fitting for a judge's office.

The Constitutional Court has concluded that only a highly qualified and honest lawyer with impeccable reputation may hold a judge's office (*see Judgement by the Constitutional Court of 26 October 2017 in Case No. 2016-31-01, Para 22.2.*). The requirements set for a judge within the system of courts are included in the law "On Judicial Power" and, in general, are aimed at ensuring that persons who meet these requirements could hold a judge's office. To attract to the office of a judge knowledgeable professionals, mature and socially competent persons, an age limit has been set for a judge's office and special requirements regarding the candidate's for a judge's office professional experience (*see Judgement by the Constitutional Court of 26 October 2017 in Case No. 2016-31-01, Para 22.2.*). The requirements relating to proving one's professional qualification are the ones that have to ensure that a person who can be regarded as being a highly qualified lawyer would hold a judge's office. Whereas other requirements, also the requirements included in Section 55 of the law "On Judicial Power", have been set to ensure that only an honest person with impeccable reputation would become a judge.

As recognised in the judicature of the European Court of Human Rights, it follows from the nature of their work that judges are guarantors of the rule of law in the State, therefore also their conduct outside work should be such that would maintain and enhance public trust in the judicial power (*see Judgement by the European Court of Human Rights of 9 February 2021 in Case "Xhoxhaj v. Albania", Application No. 15227/19, Para 407*). Thus, a judge must meet high standards of conduct both in professional and private life. If a judge condemns publicly, in a judgement, what he himself does privately, he may lose public trust and, thus, influence also public trust in the judicial power in general (*see: United Nations Office on Drugs and Crime, Commentary on Bangalore Principles of Judicial Conduct, September 2007, para. 103*).

This does not apply solely to a person who already holds a judge's office. The fact that a person who previously has committed a criminal offence enters into a judge's office may have a negative impact upon the public trust in the judicial power. In general, public trust into the judicial power or an individual judge is to be linked with several aspects, and each of them should be considered as being of major importance. I.e., a person's and society's trust in the judicial power influences not only persons' wish to turn to a court in seeking help but also to enforce a court's

rulings. Since a person's wish to turn to a court, as well as incentives for enforcing court rulings are directly linked to a person's trust in the judicial power, the legislator has not only the right but also an obligation to act in order to ensure that each judge and the judicial power as a whole would enjoy public trust.

The Constitutional Court concludes that the restriction, included in the contested provision, promotes public trust in the judicial power. By envisaging this prohibition, it is ensured that society will not develop doubts regarding a person's ability to discharge the duties of a judge if such doubts are based on previous criminal conduct of the respective person.

Thus, the contested norm promotes the protection of a democratic state order, preventing a person whose guilt in committing a criminal offence had been, substantially, established, by terminating the criminal proceedings against this person for a non-exonerating reasons, from becoming a candidate for a judge's office.

**Hence, the measure chosen by the legislator is suitable for reaching the legitimate aim of the restriction on fundamental rights, included in the contested provision.**

**18.** In assessing whether the chosen measures are necessary for reaching the legitimate aim, the Constitutional Court verifies whether the legitimate aim could not be reached by other measures that would be less restrictive upon an individual's rights but would be as effective (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 14*). The Court has the jurisdiction to verify whether no other alternative measures exist that would infringe upon a person's rights to a lesser extent (*see, for example, Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 19*). Upon establishing that at least one less restrictive measure exists, there are grounds for recognising that the contested provision places disproportional restrictions on fundamental rights (*see Judgement by the Constitutional Court of 23 April 2009 in Case No. 2008-42-01, Para 17.2.*).

The Applicant holds that the legitimate aim could be reached by measures that are less restrictive upon a person's fundamental rights. Legal regulation that would apply the restriction of this kind only to intentional simple criminal offences would be a less restrictive measures. Likewise, prohibition to a person to become a candidate for a judge's office for the period of maintaining the criminal record, as envisaged in

the Criminal Law, rather than establishing the restriction for the entire lifetime would be a less restrictive measure. Finally, individual assessment of each particular case would be a less restrictive measure.

The *Saeima*, in turn, is of the opinion that the legitimate aim of the restriction cannot be reached in the same quality by the alternative measures, pointed out by the Applicant. The *Saeima* notes that also general trust of persons and society in judges as law-abiding representatives of the State power proves that the legitimate aim has been met. Other measures cannot render conduct, incompatible with a judge's office, non-existent.

**18.1.** To ensure that the tasks of the civil service are performed appropriately, requirements, similar to the ones included in the contested provision, are included in the regulatory enactments that regulate the legal status of all persons who are in this service and, in particular, persons belonging to the system of courts. For example, Para 13 of Section 13 of the Law on Bailiffs provides that persons who have criminal proceedings against them regarding commitment of an intentional criminal offence terminated for reasons other than exoneration may not be sworn bailiffs. The same legal provision is included on Para 5 of Section 15 of the Advocacy Law of the Republic of Latvia and Para 4 of Section 10 of the Notariate Law. A restriction, which, as to its content, is the most similar to the restriction, included in the contested provision, is included in the Office of the Prosecutor Law, Para 6 of its Section 37 (1) providing that a person who had been held criminally liable but the criminal proceedings against whom had been terminated for reasons other than exoneration may not be prosecutors and candidates for the office of a prosecutor.

Considering amendments to legal regulation with respect to restrictions related to a previously committed criminal offence, the Ministry of Justice has noted that, with respect to judges, the restriction included in the contested norm should be retained. The Ministry substantiates this opinion by the importance of a judge's office, i.e., that a judge is fulfilling the function of administering justice, which entails enormous responsibility and obligation to society. A judge's personality may cause doubts about the lawfulness of his decision and, thus, diminish the general public trust in the system of courts. The Ministry of Justice, considering the possible alternatives, for example, proposals to apply the prohibition only to intentional criminal offences, only some criminal offences, not to apply it to all groups of criminal offences, to take

into account the qualification degrees of a criminal offence, to determine a fixed-term prohibition or provide for individual assessment, has noted that the requirement of impeccable reputation, set for a judge's office, does not allow such solutions (*see Case Materials, Vol. 5, p. 95*).

**18.2.** Public respect and trust is an essential aspect of impeccable reputation. This aspect is even more important for a judge, whose rulings can acquire authoritative force only if the judge enjoys public respect and trust (*see Decision by the Disciplinary Court of 15 February 2019 in Case No. DT-2/2019, Para 7.1.*). The requirement of impeccable reputation is not applied solely to judges but also to representatives of several other professions, for example, such a requirements is included in the Office of the Prosecutor Law (*see Para 5 of Section 33 (1) of the Office of the Prosecutor Law*) and the Advocacy Law of the Republic of Latvia (*see Para 2 of Section 14 of the Advocacy Law of the Republic of Latvia*). Moreover, as noted by the Latvian Association of Administrative Judges, society expects, in the case of a judge, to have a much higher standard of impeccable reputation compared to that of an average member of society and even in the case of other professions, important for and highly appreciated by society (*see Case Materials, Vol. 5, p. 118*). This can be explained by the fact that judges are the ones, authorised by the State and entire society, to guarantee to other members of society law-based justice; moreover, also by the great power, vested in judges, to decide, within the framework of their official duties, on other people's lives (*see: Osipova S. Tiesneša ētika. Komunikācijas ētikas dimensija: nodotās informācijas skaidrība. Latvijas Republikas Augstākās tiesas biļetens, 2016. gada oktobris, Nr. 13, 57. lpp.*).

The concept of "impeccable reputation" should be examined systemically in conjunction with other provisions of the law "On Judicial Power". In Section 55 of the law "On Judicial Power", the legislator has defined, in a negative way, the requirements that are incompatible with a judge's office. The contested provision included in one of these. I.e., the legislator holds that termination of criminal proceedings for non-exonerating reasons proves that a person's reputation is incompatible with a judge's image in the eyes of society and does not create public respect and trust.

**18.3.** The restriction, included in the contested provision, has been defined for a person's lifetime. As to their nature, such restrictions, established for lifetime, are

particularly severe as they exclude the presumption that, in the course of one's life, a person might change and alter one's behaviour. Substantially, as the result of such restriction, a person is stigmatised for ever but this is incompatible with the requirement of a democratic state governed by the rule of law to create such inclusive society where each member of society is treated with respect. I.e., a person's past should not influence forever a person's future (*see: Herzog-Evans M. Bifurcation and Redemption in France. In: O'Loughlin A., Annison H., Meijer S. (Eds.) Fundamental Rights and Legal Consequences of Criminal Conviction. Oxford: Hart Publishing, 2019, p. 213*). The Council of Europe Commission for Democracy through law (the Venice Commission) has noted that lifetime restrictions could be provided only in very extreme cases – if the committed crime, as to its nature, is very serious (*see Report by the European Commission for Democracy through law (the Venice Commission) of 23 November 2018 CDL-AD(2015)036cor, Para 155*).

If a lifelong restriction is established then the person is not only prohibited from exercising his or her right to perform civil service but also, in the eyes of society, is linked to the previous offence, without taking into account the person's further course of life. This, naturally, may impact a person's wish to continue self-development and fulfil one's abilities in a way that might bring contribution to society.

The Constitutional Court finds that restrictions established for lifetime are justifiable only in special cases when the previous offence, substantially, is incompatible with exercising of the particular right, *inter alia*, the right to perform civil service. Hence, the Constitutional Court must verify whether the restriction, included in the contested provision, is, indeed, necessary in the defined scope. I.e., whether, indeed, in all cases where criminal proceedings against a person had been terminated for non-exonerating reason, it can be concluded that if such a person were to become a candidate for a judge's office it would create the risk that public trust in the judicial power might diminish and whether such prohibition is the only measure allowing to reach its aim and, thus, is justifiable.

**18.4.** Termination of criminal proceedings for non-exonerating reasons applies to different criminal offences committed by a person.

**18.4.1.** The Special Part of the Criminal Law comprises an extensive range of such criminal offences that entail criminal punishment. Pursuant to Section 7 (1) of the Criminal Law, criminal offences are divided into criminal violations and crimes,

whereas crimes are divided as follows: less serious crimes, serious crimes and especially serious crimes. These criminal offences endanger various interests, protected by the Criminal Law, e.g. a person's life, health, inviolability of home, freedom, property, general security and public order, order of governance. Criminal offences may differ as to the nature and degree of threat they cause to the interests of a person or society. Moreover, they can be committed both intentionally and due to negligence.

The criminal law regulation provides for several cases when criminal proceedings may be terminated for a non-exonerating reason. The legislator has defined the considerations that the party who is applying legal provisions must take into account, in deciding on terminating criminal proceedings, e.g. the nature and degree of harmfulness of the threat to a person's or society's interests, caused as the result of the criminal offence, the offender's age and attitude towards the offence. Hence, a person is not exonerated if criminal proceedings are terminated in connection with mental disorders and coercion, minority, a person's death, the time factor, settlement with the victim, harmlessness or lesser seriousness of the offence (*see: Baumanis J. Personu nereabilitējošie apstākļi kriminālprocesā jeb kriminālprocesuālā dekoherence. Jurista Vārds, 02.01.2018., Nr. 1, 27.–29. lpp.*).

The contested provision provides, irrespective of the non-exonerating reason, automatic prohibition for a person to become a candidate for a judge's office in all instances when criminal proceedings have been terminated on these grounds.

A non-exonerating reason is, for example, termination of criminal proceedings pursuant to Para 1 of Section 379 (1) of the Criminal Procedure Law, is committing of a misdemeanour, i.e., an offence that has resulted in property loss which at the time of committing the criminal offence has been less than half of the minimum monthly wage specified at the time or the endangering of the interests protected by law caused thereby is small (*see Law "On the Procedures for the Coming into Force and Application of the Criminal Law", Section 19<sup>2</sup>*). Thus, the legislator has included in Para 1 of Section 379 (1) of the Criminal Procedure Law, the right of the person directing the proceedings to terminate criminal proceedings by releasing a person from criminal liability and has admitted, substantially, that there are criminal offences with so low degree of harmfulness that it is admissible to not apply criminal punishment. However, pursuant to Section 58 (1) of the Criminal Law, releasing a

person from criminal liability is not imperative, i.e., establishing that the offence has been a misdemeanour does not create the obligation to release a person from criminal liability – the person directing the proceedings must decide on applying Section 58 (1) of the Criminal Law, taking into account all facts of the case and information that characterises the person. For example, upon establishing that a person had already committed prior criminal offences or, for instance, already previously had been released from criminal liability due to the offence being a misdemeanour, it is possible to continue criminal proceedings against a person, even if the criminal offence can be deemed to be a misdemeanour (*see Initial impact assessment (annotation) of the law No. 427/Lp13 “Amendments to the Criminal Procedure Law”*. Available: [saeima.lv](http://saeima.lv)).

This is also reflected in judicature, for example, when the courts, in the case of a criminal offence against property, assess the scope of the offence and whether the person had not already committed criminal offences against property previously (*see, for example, Judgement by the Vidzeme Suburb Court of Riga City of 25 May 2021 in Case No. 11094077219*). Thus, in those cases where criminal proceedings against a person had been terminated for this non-exonerating reason, the person directing the proceedings would always have examined all circumstances and only afterwards decided to release the person from criminal liability.

However, in any such case of terminating criminal proceedings, the contested provision prohibits the person from becoming a candidate for a judge’s office. I.e., the contested norm, even in the case of a misdemeanour, prohibits from taking into account such considerations as, for example, the form of a person’s guilt, the time that has passed since the offence had been committed, or from verifying whether the person by becoming a candidate would, indeed, create the risk that the public trust in the judicial power might diminish.

For example, a settlement also is a non-exonerating reason. Para 9 of Section 377 of the Criminal Procedure Law provides that criminal proceedings may not be initiated but initiated criminal proceedings must be terminated if a settlement between a victim and a suspect or accused had taken place in criminal proceedings, which may be initiated only on the basis of an application of a victim, and the harm inflicted by the criminal offence has been completely eliminated or reimbursed. It is possible, for example, in the case provided for in Section 131 of the Criminal Law when the bodily injuries, referred to in this provision, have been inflicted due to

negligence. Whereas pursuant to Para 2 of Section 379 (1) of the Criminal Procedure Law, the official directing the proceedings may terminate criminal proceedings if the person who has committed a criminal violation or a less serious crime has reached a settlement with the victim or his or her representative in the cases set out in the Criminal Law. Namely, a settlement is a way for resolving the conflict in cases where the perpetrator has understood the harmfulness of his criminal offence, has admitted his guilt and regrets the offence, as well as is ready to compensate to the victim for the inflicted damage (*see: Kazaka S. Izlīgums krimināltiesisko konfliktu risināšanā. Administratīvā un Kriminālā Justīcija, 2012, Nr. 3, 25. lpp.*). In the case of a settlement, recognising it as the grounds for terminating criminal proceedings, both the degree of harmfulness of the committed criminal offence is taken into account because criminal proceedings in such cases cannot be terminated if a serious or a particularly serious crime has been committed, as well as the fact that a person has admitted his or her guilt and eliminated or reimbursed for the damages, thus clearly demonstrating his or her attitude towards the offence. In view of the fact that releasing from criminal liability is the right rather than the obligation of the person directing the proceedings, also in this case a decision is made by complying with the general legal principles and examining all facts established in the case in their entirety and interconnection (*see Decision by the Senate of 19 December 2007 in Case No. SKK-713/2007 (11270034106)*).

However, even if criminal proceedings have been terminated because the person has reached a settlement with the victim or his or her representative, the legal effects of the contested provision, irrespective of other considerations, will always be such that this person will never be able to become a candidate for a judge's office.

These examples serve as illustration, showing that in some cases non-exonerating reasons exist that cover also situations when the danger to public interests, related to the person's offence, is comparatively low and such is also the degree of harmfulness of this offence. These examples, in conjunction with other considerations, point to the fact that in order to reach the aims of criminal proceedings, referred to in Section 1 of the Criminal Procedure Law, *inter alia*, fair regulation of criminal legal relations without unjustified intervention in the life of a person, not always sentencing of a person or determination of punishment is required.

**18.4.2.** In view of the status and significance that a judge's office has, the fact that a person's attitude to his or her own offence has changed over time does not always mean that the person could be suitable for a judge's office.

For example, if a person, criminal proceedings against whom had been terminated for a non-exonerating reason, has committed a criminal offence intentionally (wilfully), this means that the person had been aware of the harmfulness of his or her offence, had foreseen the consequences of one's actions or failure to act and had willed them to set it or had consciously allowed them to set it. Being aware of the harmfulness of actions or failure to act means that, at the moment of committing the criminal offence, the person is aware of the actual circumstances of the offence and its harmfulness (*see: Krastiņš U. Noziedzīgs nodarījums. Rīga: Tiesu namu aģentūra, 2000, 96. lpp.*). If a person who once has committed a criminal offence intentionally (wilfully) or whose offence has reached a high degree of harmfulness were to become a judge, a conflict between values might arise, i.e., a conflict between the fact that a judge should be a guarantor of justice and the fact that he himself had taken the liberty to act in a way that is incompatible with a judge's office. In such a case, a prohibition for the respective person to become in the future a candidate for a judge's office is justified.

The situation is different if the criminal proceedings against the person had been terminated for a non-exonerating reason but the person's guilt had manifested itself as negligence, i.e., if the person had foreseen the possibility that adverse consequences of his or her actions or failure to act might set in, however, had thoughtlessly relied that these could be eliminated or had not foreseen the possibility of the adverse consequences of one's actions or failure to act setting it, although, judging by the actual circumstances of the offence, he or she should have and might have foreseen the aforementioned adverse consequences. This, in conjunction with other considerations, for example, that the degree of harmfulness of the criminal offence committed by the person is sufficiently low and that a sufficiently long period of time has passed, calls into the question the assumption that in all cases where this person would become a candidate for a judge's office public trust in the judicial power would be endangered.

The Constitutional Court does not doubt that the termination of criminal proceedings for a non-exonerating reason, in particular, in the case where an

intentional criminal offence has been committed, could be set as a criterion that prohibits a person from becoming a candidate for a judge's office. The restriction, included in the contested norm, serves for the protection of a democratic state order because the greatest part of situations, to which the contested provision is applicable, are, indeed, such that demand such a restriction. However, the choice made by the legislator to deny in all cases the right to become a candidate for a judge's office to all persons, the criminal proceedings against whom had been terminated for a non-exonerating reason, without taking into account the diversity of non-exonerating reasons or any other considerations, for example, the nature or the degree of harmfulness of the danger to a person's or society's interests, caused by the criminal offence, the form of a person's guilt, as well as the time that has elapsed since the offence, points to the fact that such persons who would not endanger public trust in the judicial power or a democratic state order could be excluded from the circle of candidates for a judge's office. Moreover, the right to become a candidate for a judge's office does not guarantee to any person the right to become a judge.

Hence, the legitimate aim of the restriction, included in the contested norm, could be reached in equal quality by alternative measures.

The legislator has the possibility to review and determine in which cases where criminal proceedings had been terminated for a non-exonerating reason the circumstances are such that would allow a person to become a candidate for a judge's office without endangering public trust in the judicial power. However, the legal regulation should be such that would ensure, at the same time, that only a person suitable for the office – a highly qualified lawyer with highly developed professional abilities and skills, impeccable reputation and suitable personal traits – would become a candidate for a judge's office.

Upon establishing the existence of even one less restrictive measure, there are grounds for recognising that the contested provision restricts fundamental rights disproportionately. All possible more lenient measures must not be enumerated in the Constitutional Court's judgement (*see Judgement by the Constitutional Court of 4 November 2021 in Case No. 2021-05-01, Para 21*).

**Hence, the contested provision is incompatible with the first part of Article 101 and the first sentence of Article 106 of the *Satversme*.**

**19.** Pursuant to Section 32 (3) of the Constitutional Court Law, a legal provision, which has been recognised by the Constitutional Court as being incompatible with a superior legal provision, must be considered as being void from the day when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. Para 11 of Section 31 of the Constitutional Court Law provides that the Constitutional Court may indicate in its judgement the date as of which the legal provision that has been recognised as being incompatible with a superior legal provision becomes void.

In Section 32 (3) of the Constitutional Court Law, the legislator has granted to the Constitutional Court broad discretion to decide on the date as of which the contested provision that has been recognised as being incompatible with a superior legal provision becomes void. To recognise the contested provision as being void from another date rather than the date, on which the judgement is published, the Constitutional Court must substantiate its opinion (*see Judgement by the Constitutional Court of 28 November 2014 in Case No. 2014-09-01, Para 21, and Judgement of 27 October 2022 in Case No. 2021-31-0103, Para 43*).

Defining the requirements set for the candidates for a judge's office is an important and essential matter because these requirements decide which persons will be entrusted with administration of justice. As the Constitutional Court has found in Para 18.4.2. of this judgement, the restriction, included in the contested norm, in major part of it is necessary for the protection of a democratic state order. Therefore a situation, where a legal provision that is incompatible with the *Satversme* were to become legally void as of the date when the judgement was published, without being replaced by new legal regulation, would be inadmissible. Thus, in this case, it is necessary and admissible that a legal provision that is incompatible with the *Satversme* remains in force for a certain period of time to give the legislator the possibility to adopt new legal regulation.

The Constitutional Court has recognised that the legislator has broad discretion in choosing the most appropriate regulation for exercising the fundamental rights, envisaged in the *Satversme*. The Constitutional Court may not replace the body's that issues legal provisions discretion by its own opinion on the most rational solution (*see, for example, Judgement by the Constitutional Court of 19 December 2011 in Case No. 2011-03-01, Para 20, and Judgement of 2 May 2012 in Case No. 2011-17-03,*

*Para 16*). The legislator itself must decide on the regulation on this important and significant matter in the life of the State, the adoption of which calls for a conceptual discussion. The choice of the most appropriate solution falls within the legislator's discretion.

The Constitutional Court finds that, in the particular situation, the legislator needs a reasonable period of time to assess the best way for balancing the interests of a person and society and to determine new legal regulation. Hence, the contested provision shall be recognised as being void from 1 January 2024.

### **The Substantive Part**

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

**held:**

**to recognise Para 3 of Section 55 of the law “On Judicial Power” as being incompatible with the first part of Article 101 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia and void as of 1 January 2024.**

The judgement is final and not subject to appeal.

The judgement enters into force on the day it is published.

Chairperson of the court hearing

Aldis Laviņš