

## Case Reports

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# Legal provisions implementing mandatory Covid-19 health checks for access to work were not in breach of the Constitution (LI)

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## Summary

The Constitutional Court of the Republic of Lithuania has recognised that the requirement for certain industries' employees to undergo a health check before work or be suspended from work without salary in cases where there was no possibility to transfer such employees to other work in the company due to their health was not in conflict with the Lithuanian Constitution.

## Legal background

Due to the Covid-19 pandemic, the Parliament and the Government of the Republic of Lithuania adopted changes to the legal acts regarding risks arising from Covid-19. In the case at hand, the following legal provisions were at issue:

- i. Article 48 of the Constitution, according to which everyone shall have the right to proper, safe, and healthy conditions at work and the right to freely choose a job and the right to receive fair pay for work.
- ii. Article 18(1) of the Law on the Prevention and Control of Communicable Diseases in Humans (the 'Law'), based on which lists were drawn up containing jobs and areas of activity where employees need

ded prior and/or periodic health checks carried out by the Government (the 'Lists').

- iii. Article 18(4) of the Law, according to which an employee who refuses to be tested for the presence of a communicable disease in due time shall be transferred to perform other work in the same job, which they are allowed to perform in accordance with the state of their health, and, if there is no such opportunity, they shall be suspended from work without payment of remuneration.

## Facts

A group of members of the Parliament (the petitioner) doubted the constitutionality of Article 18(1) of the Law as that provision entrusted the Government with the task of establishing Lists and the procedure for undergoing health checks by employees, and the provisions of the official constitutional doctrine, according to which there is no delegated legislation in Lithuania, had not been taken into account. In the opinion of the petitioner, when establishing the legal regulation that would create the legal preconditions for the implementation of everyone's right enshrined in Article 48(1) of the Constitution to have proper, safe, and healthy conditions at work, the State must establish in law effective mechanisms for the control of the implementation of this constitutional right, and not envisage the establishment of sub-statutory legal acts restricting the constitutional rights of persons obliged to undergo health checks.

The petitioner doubted the constitutionality of Article 18(4) of the Law as it did not give an individual the possibility of freely choosing a job and did not assess whether an employee would be able to perform other work to which he or she is transferred according to his or her abilities. According to the petitioner, this could restrict a person's right to freely choose a job. In the opinion of the petitioner, the legislature, taking into account the human right guaranteed in Article 48(1) of the Constitution to receive fair pay for work was not allowed to be established in Article 18(4) of the Law, such a legal regulation under which an employee who refuses to undergo a health check in due time for the presence of a communicable disease (Covid-19) is suspended from work without paying him or her remuneration.

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## Judgment

The Constitutional Court noted that the measures at issue were intended to prevent the spread of communicable diseases (Covid-19) and to ensure public health and safety, by entrusting the Government with the task of establishing the Lists, as well as the procedure for undergoing health checks by employees. It thus created preconditions for the implementation of the general requirement for the employees to undergo a mandatory health check for the presence of communicable diseases (Covid-19). Consequently, it held that, contrary to what the petitioner asserted, the legislature did not instruct the Government to lay down a legal regulation that can only be established by means of a law, but rather created the preconditions for the implementation of the requirement, mentioned in the Law, for employees to undergo a mandatory health check, to specify in which areas of work and activities this requirement is applicable due to the potential increased risk of the spread of communicable diseases (Covid-19), as well as to regulate the manner and procedural relationships for the implementation of that requirement. The Constitutional Court stated that when establishing such impugned legal regulation, the legislature fulfilled, among others, the obligation arising from Article 48(1) of the Constitution to lay down such a legal regulation that would create the legal preconditions for the implementation of everyone's constitutional right to have proper, safe, and healthy conditions at work; therefore, it was recognised that the Law was not in conflict with it.

The Constitutional Court held that, according to the Law, an employee is suspended from work without paying them remuneration only temporarily, i.e. until the date when they undergo a health check for a contagious disease (Covid-19), and that the period during which the employee does not receive remuneration due to the fact that they refused to undergo a health check for such a contagious disease in due time or did not undergo such a health check for very important reasons depends on the employee themselves, i.e. on when they will fulfil the obligation to undergo a mandatory health check. Therefore, it was also held that there is no reason to state that the legal regulation entrenched in the Law denies the nature and essence of everyone's constitutional right to freely choose a job; there is also no reason to state that there was a failure to observe the constitutional principle of proportionality and the requirement, arising from such principle, that the legislature must establish such a legal regulation that would create the preconditions for sufficient individualisation of restrictions on the rights and freedoms of persons.

health check before work did not in itself imply that certain persons are discriminated against or that certain persons are granted privileges. The obligations established in the Law were adopted with a view to achieving the constitutionally important objective of preventing the spread of communicable diseases in certain industries (for example manufacturing, public transport, health, education, public catering, leisure and entertainment) and ensuring public health and safety. Therefore, the requirements did not violate constitutional principles, rights and freedoms of persons. Moreover, considering the variety of communicable diseases (especially Covid-19) in humans, their characteristics, extent of spread and risks to health and life, their management in the workplace can be effected by both general measures (such as requiring an employee to be tested for a contagious infectious disease) and special measures, the choice of which is determined by the characteristics of a certain infectious disease.

**Subject:** Miscellaneous, Other Fundamental Rights

**Parties:** A group of members of the Seimas

**Court:** Constitutional Court of Lithuania

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## Commentary

The ruling of the Constitutional Court confirmed that the employees who were obliged to be subjected to a