

Latvia

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In the last three years, the domestic courts have delivered several notable decisions and judgments regarding human rights questions. The most notable cases have dealt with freedom of expression, different aspects of the right to private life, as well as the right to a fair trial.

1. Supreme Court of the Republic of Latvia

The Supreme Court is the highest instance in administrative, civil and criminal proceedings. It adjudicates individual cases. In June of 2016, the Supreme Court faced an important question regarding the right to private and family life of same-sex couples.¹ Several same-sex couples had submitted an applications to a civil registry office to be wed; however, the registry refused because the law explicitly prohibits same-sex marriage. The District Administrative Court found the appeal inadmissible because the couples lacked subjective rights to ask for the registration of the marriage. The Supreme Court, however, reversed this decision. The Court decided to evaluate the claims in a wider context, namely, as applications for the legal registration of a same-sex family relationship. It is necessary to ascertain if the impossibility to register these relationships infringes the rights to private and family life. As it is impossible in the admissibility stage, there is no reason to find that the applicants have no subjective rights. One of the cases was adjudicated in a plenary session, where two judges gave a separate opinion on the decision. As the cases were later initiated, the Administrative Court submitted an application to the Constitutional Court regarding the lack of regulation; however, it refused to initiate proceedings due to a lack of sufficient legal argumentation.² The administrative proceedings are still continuing.

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1 As the cases were adjudicated in closed proceedings, the court has not revealed the case number or the date of the decisions, but only a short summary of the case – 'Augstākās tiesas un citu tiesu atsevišķu nolēmumu apskats: 2016.gada 1.pusgads', p. 3. Available at: <http://at.gov.lv/lv/par-augstako-tiesu/informativie-materiali/augstakas-tiesas-biletens/biletena-pielikumus/> (last accessed 28 March 2018).

2 E.g., decision of 17 February 2017 by a panel of judges of the Constitutional Court on the application No. 2/2017.

Another important case regarding the right to private life dealt with the issue of name transcription in Latvian.³ National legislation stipulates that the name of a person in Latvian identification documents must be written in a manner that conforms to standards of the Latvian language, in the Latvian alphabet and with an inclinable ending, so that it can be used in Latvian grammatical structures. In certain cases, there is also an option to separately indicate the transliterated form of the name from the original language. In this case, parents wanted to add a Latin alphabetical transliteration of the name from Russian in the birth register and on the birth certificate of their son.

The Court concluded that according to the Official Language Law, such transliteration is only possible if there are original civil registration records in another language. In this case, there were no such original records, therefore, the applicants could not ask for the transliteration of their child's name. The aim of the provisions is to balance the need to ensure the identification of a person who has a differing registration record and the need to protect the Latvian language and promote integration in the society. In this case, no problems with identification can arise, the family is not prevented from using the name in their native language, and there aren't any other arguments outweighing the interests of the society. In result, the Court found that there is no basis to add a transliterated version of the name.

In February 2017, the Supreme Court of Latvia faced the balancing of freedom of expression and the right to data protection.⁴ The case dealt with a request by a person who requested the removal of her personal data from the internet archive of a newspaper; however, the newspaper refused. So the person applied to the Data State Inspectorate, which in turn ordered the removal of the person's data from the article. After the newspaper appealed this decision in court, the first and the second instances both denied the claim. The Supreme Court analysed the Personal Data Protection Law, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and case law of the European Court of Human Rights. The Court found that there is a special need to protect the online news archives; however, the appellate court had not taken that into account. As a result, the case was referred back to the appellate court to balance the interests of freedom of speech and privacy using criteria established in the practice of the European Court of Human Rights, i.e. whether the information contributes to a debate of general interest; the notoriety of the person concerned and the subject matter of the report; the prior conduct of the person concerned; the method of obtaining the information and its veracity; the content, form and consequences of the publication and the severity of the sanction imposed. There has not been a final judgment yet.

3 Judgement of 18 February 2016 by the Supreme Court in case SKA-27/2016 (A420643111), later clarified in judgement of 18 January 2017 by the Supreme Court in case SKA-516/2017 (A420643111).

4 Judgement of 22 February 2017 by the Supreme Court in case No SKA-276/2017 (A420471613).

Another important case dealt with the problem of municipality newspapers.⁵ In this case, a regional newspaper complained that the actions of the municipality newspaper in the press market are harming other private newspapers and asked for the operation of this newspaper to be stopped. The District Administrative Court found the appeal inadmissible; however, the Supreme Court overturned the decision. The Court concluded that press editions that are issued or financed by public bodies must further the interests of the whole society and cannot be used to promote the interests of some particular groups or political forces; these press editions must comply with the highest journalistic standards. These newspapers can act in the advertising market only if it does not substantially affect private media companies. If the actions of a public media entity substantially affect the existence of a private company, it has the subjective right to request these actions to be stopped. Later on the proceedings were initiated to establish the influence of the public newspaper on the market, but there has been no decision on the merits yet.⁶

2. Constitutional Court of the Republic of Latvia

The Constitutional Court implements constitutional review, namely, it adjudicates the compliance of legal norms with norms of higher legal force. In this regard, various bodies can submit a constitutional complaint. A private person can only submit a complaint if he argues a violation of his fundamental rights that are included in the Constitution of the Republic of Latvia (*Satversme*).

In a recent case, the Constitutional Court assessed the constitutionality of the procedure for cancelling the special permit for accessing official secrets.⁷ The proceedings were initiated on the basis of a constitutional complaint by a person who was dismissed from his post due to a cancellation of his special permit to access official secrets. He appealed against the decision of the Security Police; however, the Director of the Constitution Protection Bureau and later the Prosecutor General both dismissed his complaints. The decision of the Prosecutor General was not subject to appeal. The applicant argued that the procedure of contesting the cancelling of his special permit violated his right to privacy, right to work and right to a fair trial.

The Constitutional Court found that there was no interference with the applicant's right to privacy; however, regarding his right to work, the Court reiterated that Article 106 of *Satversme* does not guarantee work, but the right to freely choose a vocation and workplace. It also protects the right to retain one's current vocation and workplace, and the right to continue practicing this vocation. The legal norms in question restricted these rights by not allowing the person to retain his current work or to freely choose a workplace in the future. The Constitutional Court concluded that the legitimate aim of the interference was protecting public safety, i.e. the legislator's purpose had been to prevent the possibility

5 Decision of 13 February 2017 by the Supreme Court in case No SKA-613/2017.

6 Decision of 27 February 2017 by the District Administrative Court in case No A420167817.

7 Judgement of 10 February 2017 by the Constitutional Court in case No 2016-06-01.

that a person, who might put national safety interests at risk, had access to official secrets.

The Constitutional Court concluded that the restriction, which provides that, in case the special permit was cancelled, the person had to be transferred immediately to a job that was not linked with official secrets, was appropriate for reaching the legitimate aim. The interests of the state and society outweigh the restrictions on the person's rights. Therefore, the Court ruled that the legal norms in question comply with the first sentence of Article 106 of the *Satversme* of the Republic of Latvia. However, there are less restrictive means available regarding the prohibition from receiving the special permit in the future, e.g. a statutory term for reapplication for the special permit. Thus, this indefinite prohibition is unconstitutional.

Regarding the right to a fair trial, the Court established that a person, whose right to work is restricted by cancelling the special permit, should have the possibility to defend his rights in a way that is compatible with the right to a fair trial. The Court established that the procedure in question does not ensure a person's access to 'court' in its institutional meaning. The Court found that a person's procedural rights were significantly restricted and part of this procedure was not regulated by generally binding and publicly accessible acts. Thus, the procedure in question is unconstitutional.

In a notable case, the Constitutional Court determined the constitutionality of Section 51 of the Maintenance Guarantee Fund Law, which stipulated the publication of data on debtors of child support payments.⁸ The Constitutional Court recognized that personal data protection is enshrined in the right to private life and the norms in question restrict not only the rights of parents – debtors of child support payments, but also the rights of their children.

The Court found that the restriction was established by law and served to achieve legitimate aims – the protection of other persons', namely the children's, rights and the protection of public welfare. The Court further concluded that the restriction was suitable to achieve these aims (it followed from the data provided by the Maintenance Guarantee Fund that in the first four months of 2016 the fund had recovered 29% more of the child support funds in comparison to the first four months of 2015). The Court noted that the rights of the child take precedence over the rights of a person, who is not fulfilling his obligations. Thus, the Court concluded that with respect to the rights of debtors of child support payments the restriction is proportional. However, with regard to the children's rights the Constitutional Court found that the norm in question placed disproportional restrictions upon their right to private life. The Court noted that from the publication of the debtors' data third persons might infer that there is a dispute over the maintenance of a child and a child's parent is not fulfilling his or her obligation towards the child, etc. This might cause adverse consequences for the child, such as emotional distress and social exclusion. The Constitutional Court *inter alia* found that the fact that the child's representative has agreed to the publication of the debtor's data does not sufficiently protect the child's inter-

8 Judgement of 16 June 2016 by the Constitutional Court in case No 2015-18-01.

ests. Moreover, given the nature of the internet, even if the data would later be erased, the harm could have been already done. There are alternatives that would be less restrictive upon children's rights, for example, if the data were published only after the Fund has received information from state and municipality institutions that the publication of the data won't harm the child's interests. Thus, the legal norms in question are unconstitutional.

In another case regarding data protection, the Court partially struck down the norms on collecting and including biological material in the National DNA Database.⁹ The applicant in this case had been recognized as a suspect in criminal proceedings. In connection with these proceedings, the applicant had refused to provide biological material for inclusion into the National DNA Database, so proceedings of an administrative violation had been initiated. They ended with an oral admonition from a court. The criminal proceedings, in turn, were later terminated on the grounds that there were no elements of criminal offence in the offence committed by the applicant.

The Constitutional Court established that personal data are protected by the right to privacy. The DNA profile and the biological material that is collected and investigated for establishing the DNA profile are the specially protected data of a natural person. Thus, the legal regulations stipulating how the biological material is taken, how the DNA profile is determined and how it is kept in the National DNA Database create an interference with the applicant's right to private life. This interference had been established by law and also had a legitimate aim – public safety and the protection of other persons' rights (by facilitating crime prevention and detection of criminal offences). Regarding the collection of biological material and the creation of a DNA profile, the Constitutional Court recognized that the norms were appropriate for reaching the legitimate aim, and no more lenient measures were available that would allow reaching the legitimate aim in the same quality, as identification of the DNA profile in some cases may be the only means of investigation. As the benefits for the society outweighed the inconvenience for the individual, these norms were found to be proportional. However, regarding the storing of data, the Constitutional Court noted that after a person has lost their status in the criminal proceedings, his or her data are still being stored, until an application from the person regarding the deletion of the data has been received. This interference is disproportional, and the legislator has not established sufficient safeguards for the protection of a person's rights.

In another notable case, the Constitutional Court evaluated the obligation to raise the national flag of Latvia on residential buildings on certain dates.¹⁰ In this case, the first and the second part of Section 7 of Law on the National Flag of Latvia provided that the national flag of Latvia should be raised, inter alia, on residential buildings on 1 May, 4 May, 21 August, 11 November and 18 November; and on 25 March, 14 June, 17 June, 4 July, and on the first Sunday of December the national flag should be raised half-mast in mourning. Section 201⁴³ of the Latvian Administrative Violations Code provided a sanction if this obligation

9 Judgement of 12 May 2016 by the Constitutional Court in case No 2015-14-0103.

10 Judgement of 02 July 2015 by the Constitutional Court in case No 2015-01-01.

should not be fulfilled. The applicant in the case had complained that the contested norms violate her right to freedom of speech, as it takes away the choice of if and how to express her views.

The Court recognized that raising or refraining from raising the national flag on a residential building owned by a natural person is a manifestation of the freedom of speech. Thus, the contested norms restricted the applicant's freedom of speech. The Court acknowledged that the national flag was a symbol of the state and is fundamental in creating and consolidating the awareness of statehood. Thus, raising the national flag of Latvia on residential buildings promoted the protection of a democratic state order. Analysing the proportionality of the interference, the Court noted that raising the flag on residential buildings involved the residents of the particular building, as well as the whole society, as a reminder of historic events significant for the state of Latvia. The Court recognized that there were no more lenient measures for reaching the legitimate aim as effectively as an obligation to display the flag, and that the civic duty to raise the national flag of Latvia on residential buildings gives significant benefit to the whole of society, whereas the interference with an individual's rights is smaller. Thus, the obligation to raise the national flag of Latvia on residential buildings owned by natural persons was proportional. However, it is not the case regarding the sanction for failing to fulfil this obligation. The Constitutional Court concluded that a sanction to ensure that obligations of a civic nature are met should be established only in exceptional cases, thus, only in exceptional cases can it be found proportional. As the state had not provided sufficient reasons for the necessity of such sanctions, this interference is unconstitutional. The Constitutional Court recognized that legal norms prescribing punishment for not raising the national flag of Latvia on buildings owned by natural persons were incompatible with freedom of speech.

In a notable case, the Constitutional Court had to determine whether the state has an obligation to ensure childbirth services free of charge outside inpatient facilities.¹¹ The case was initiated on the basis of an application submitted by the Ombudsman of the Republic of Latvia. The norms in question established a tariff of payment for childbirth services; however, it did not prescribe a tariff for scheduled childbirth outside hospital facilities, and the Ombudsman argued that such treatment is discriminatory.

The Court found that the right to health care includes the obligation of the state to ensure the existence and accessibility of health care services. However, the state has broad discretion in this regard. The Court recognized that the legislator had established a framework in which all women could receive existing and accessible health care services free of charge in case of childbirth. The state does not have a positive obligation to guarantee this service in another place and form desirable to a person or outside of this system. The women who chose to receive obstetric care outside the aforementioned system are not in a comparable situation with the women who choose the state-guaranteed system. Hence, the Consti-

11 Judgement of 12 February 2015 by the Constitutional Court in case No 2014-08-03.

tutional Court found that the contested norms comply with the first sentence of Article 91 of the *Satversme*.

3. Human Rights Events

As regards human rights events, various stakeholders – academia, professionals and civil society – must be mentioned.

There are two annual events that take place each year. One of them is the Discussion of human rights topicalities in Latvia, organized by the Riga Graduate School of Law and the Ministry of Foreign Affairs of the Republic of Latvia. Traditionally, it takes place in the spring and involves the presentation of the most relevant decisions of the European Court of Human Rights regarding Latvia¹² and presentations of the opinions of the current judge from Latvia in the European Court of Human Rights and the government agent in the Strasbourg Court. An indispensable part of this event comprises discussions of issues raised by the previously mentioned speakers and others. Although the event usually is of a general nature, in 2017 it was devoted to the 20th anniversary of the accession of the Republic of Latvia to the European Convention on Human Rights.¹³

Another human rights event that assembles human rights professionals and activists is the annual conference of the Ombudsman of Latvia. It takes place around the 10th of December (International Human Rights Day) every year and lasts for 2-3 days. The conference covers topics and topicalities related to human rights and good governance. Besides the report of the Ombudsman on his work in that particular year and general discussions, each year several topics are in focus. In 2015 the main topics of the conference were independence and pluralism of the media and the rights of the child.¹⁴ In 2016, the conference covered issues related to hate speech, the social and medical rehabilitation of children and good governance in relation to environmental law,¹⁵ but one of the topics that will be covered in the 2017 conference will be the removal of human organs. Besides the annual conferences, the Ombudsman's office also organizes conferences on specific topics. For example, in 2016 the office, in cooperation with an organization of people with disabilities and their friends 'Apeironi' (an NGO) and the National

12 See for example, V. Anastrate, 'Latvija ECT lietās – starp centieniem laboties un miljonu tērīņiem kompensācijām', 12 April 2016, Latvian Public Broadcasting English-language service, available at: www.lsm.lv/raksts/zinas/zinu-analize/latvija-ect-lietas--starp-centieniem-laboties-un-miljonu-terinjiem-kompensacijam.a177762/ (last accessed 28 March 2018).

13 Programme of the discussion is available at: www.rgsi.edu.lv/lv/zinas/notiks-ikgadeja-cilvektiesibu-diskusija-ipasi-veltita-latvijas-pievienosanas-eiropas-cilveka-tiesibu-un-pamatbrivibu-aizsardzibas-konvencijas-20-gadadienai (last accessed 28 March 2018).

14 Programme of the conference is available at: www.tiesibsargs.lv/news/lv/sakta-registracija-tiesibsarga-2015-gada-konferencei (last accessed 28 March 2018).

15 Programme of the conference is available at: www.tiesibsargs.lv/news/lv/tiesibsarga-ikgadeja-konference-papildinats-ar-konferences-materialiem (last accessed 28 March 2018).

Library of Latvia, held a conference on access to education.¹⁶ The Ombudsman's office also promotes human rights advocacy among law students and has organized human rights moot courts in 2016 and 2017.¹⁷

Additionally, the universities have been and are very active in the field of human rights. For example, the Riga Graduate School of Law has organized not only the annual human rights discussion, but also other events concerning human rights. One of the most significant such event was the Annual Conference of European Society of International Law in 2016, which, among other topics of international law, discussed the rights of the refugees and cybersecurity and privacy.¹⁸ Human rights topicalities are also often discussed by the annual conferences of the University of Latvia. In 2017, the conference touched on the topics connected with the rights of the child, discrimination, data protection and freedom of expression.¹⁹

There have been various human rights events carried out by the civil society and non-governmental organizations in Latvia. Notably, in 2015 the First Baltic Human Rights Education Conference, organized by the Baltic Human Rights Society (an NGO), brought together national and international actors from the state, as well as non-governmental and academic sectors working with aspects of human rights education.²⁰ Latvian Centre for Human Rights, an NGO active in the promotion of human rights held various conferences and seminars, such as training for civil servants on 'Migration, Development and Human Rights' (2016)²¹ and international conferences 'Effective Ways of Addressing Hate Crimes and Hate Speech' (2015)²² and 'Global, Regional and National Mechanisms for the Prevention of Torture and Inhuman or Degrading Treatment: Learning from One Other' (2014).²³

16 'Latvijas Republikas tiesībsargs aicina uz konferenci "Izglītības pieejamība", 09 November 2016, Latvijas Nedzirdīgo Savienība. Available at: <https://www.lns.lv/lat/?doc=15561> (last accessed 28 March 2018).

17 More information is available at: www.tiesibsargs.lv/lv/pages/tiesu-procesa-izspele-cilvektiesibas-2017 (last accessed 28 March 2018).

18 Programme of the discussion is available at: www.esil-sedi.eu/node/1060 (last accessed 28 March 2018).

19 Programme of the discussion is available at: <https://www.lu.lv/konference/programma/> (last accessed 28 March 2018).

20 'First Baltic Human Rights Education Conference Brings Together Representatives from the State, Non-governmental and Academic Sectors', 16 December 2015, Riga Graduate School of Law, available at: www.rgsl.edu.lv/en/news/first-baltic-human-rights-education-conference-brings-together-representatives-from-the-state-non-governmental-and-academic-sectors (last accessed 28 March 2018).

21 'Training for Civil Servants "Migration, Development and Human Rights" Launched in Riga', 10 May 2016, Latvian Centre for Human Rights, available at: <http://cilvektiesibas.org.lv/en/news/training-for-civil-servants-migration-development-391/> (last accessed 28 March 2018).

22 'International Conference "Effective Ways of Addressing Hate Crimes and Hate Speech"', 22 October 2015, Latvian Centre for Human Rights, available at: <http://cilvektiesibas.org.lv/en/news/international-conference-effective-ways-of-address-348/> (last accessed 28 March 2018).

23 'International Conference "Global, Regional and National Mechanisms for the Prevention of Torture and Inhuman or Degrading Treatment: Learning from One Other"', 21 November 2014, Latvian Centre for Human Rights, available at: <http://cilvektiesibas.org.lv/en/news/international-conference-global-regional-and-natio-307/> (last accessed 28 March 2018).