



Open Court Principle and Respecting Privacy: Granting Anonymity and Restricting Access to Case Files in Constitutional Court Review Procedure

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ABSTRACT

This paper discusses the right to privacy in the context of a constitutional review procedure that typically enjoys a high degree of publicity. In presenting how the Constitutional Court of Latvia is balancing the open court principle against the parties' right to remain anonymous and to have restricted access to case files in the constitutional review procedure (which might be capable of disclosing the parties' identities), the point of departure is that the open court principle is crucial in raising awareness of court proceedings and promoting public trust in courts. However, any individual filing a constitutional complaint with the Constitutional Court is seeking protection of his or her fundamental rights. In this context, the Constitutional Court must, as far as possible, vindicate infringed fundamental rights of the person while at the same time refraining from causing applicants and third parties any new infringements of fundamental rights, especially the right to privacy.

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The open court principle is both a well-known principle of law applicable in courts as well as a subject of research in legal science.¹ The open court principle provides that anybody should be able to enjoy free access to courts and is entitled to attend any court hearing.² The principle is also considered to rest upon the idea that justice can “only be truly done if it is seen to be done”.³ The significance of the open court principle is commonly seen in the light of its consequences, such as courts being open to public scrutiny,⁴ disseminating information about the judicial process,⁵ educating the public,⁶ and increasing public confidence.⁷ Also, the European Court of Human Rights has underlined the importance of the principle in light of its consequences, stating, for example, that the public character of court hearings “protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] – namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society”.⁸

In the authors’ view, the open court principle substantially has both an administrative perspective as well as an adjudication perspective. The administrative perspective relates, for example, to the use or misuse of taxpayers’ money, or to the access to public information when society requests information about courts’ general administrative work. Whereas the adjudication perspective relates directly to courts’ adjudicatory functions, which are more sensitive since they involve parties to the dispute. Both perspectives lead to the same aim: rendering the administration of justice visible, raising awareness about the work of courts, promoting fair and transparent decision-making, and consequently increasing the public trust in the judiciary.

However, the open court principle is often linked to the exposure of private life within the context of court proceedings. Therefore, case law and legal literature often discuss

1 See, for example, Charles Lysaght, “Publicity of Court Proceedings,” *Irish Jurist* 38 (2003): 34–57, <http://www.jstor.org/stable/44026525>, Shauna Hall-Coates, “Following Digital Media into the Courtroom: Publicity and the open court principle in the information age,” *Dalhousie Journal of Legal Studies* 24 (2015): 104–107, <https://digitalcommons.schulichlaw.dal.ca/djls/vol24/iss1/4/>, Sujoy Chatterjee, “Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity,” *Dalhousie Journal of Legal Studies* 23 (2014): 97, <https://digitalcommons.schulichlaw.dal.ca/djls/vol23/iss1/5/>.

2 Shauna Hall-Coates, “Following Digital Media into the Courtroom: Publicity and the open court principle in the information age,” 104.

3 Ibid.

4 Ibid., p. 105.

5 Sujoy Chatterjee, “Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity,” 98.

6 Jane Bailey and Jacquelyn Burkell, “Revisiting the open court principle in an era of online publication: Questioning presumptive public access to parties’ and witnesses’ personal information,” *Ottawa Law Review* 48 (2016): 151, <https://ssrn.com/abstract=2959794>.

7 Sujoy Chatterjee, “Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity,” 98.

8 *Straume v. Latvia*, no. 59402/14, §124, 2 June 2022.

how to properly balance the protection of private life against the need for public scrutiny and the right of society to be informed about court proceedings.⁹

From a methodological point of view, personal data is protected in Latvia by Article 96 of the Constitution (which includes the right to inviolability of private life). This article is similar to Article 8 of the European Convention on Human Rights in this respect, and the Constitutional Court interprets both articles consistently. Therefore, the authors believe that the conclusions also refer to Article 8.

The purpose of this article is to present concisely one particular exception to the principle of open court: the granting of anonymity to the parties and the restricting of access to case files in the constitutional review procedure. First, this article will present the constitutional court review mechanism and the importance of the open court principle in Latvia. Second, this article will demonstrate the approach of the Constitutional Court of Latvia to the balancing of the open court principle with the right to inviolability of private life in particular cases when questions of granting anonymity and restricting access to case files were decided.

2. CONSTITUTIONAL COURT REVIEW MECHANISM

In Latvia, since 1996, the issue of constitutionality of laws (conformity of laws and other legislative acts with the Constitution) is subjected to a specialized Constitutional Court called *Satversmes tiesa*, which has the power to invalidate existing legislation if it contravenes the Constitution or international treaties binding on Latvia.¹⁰ This Constitutional Court corresponds to the traditional European model of constitutional review of laws,¹¹ and its rulings have a generally binding force (*erga omnes*).¹²

The jurisdiction of the Constitutional Court consists of both abstract and concrete review of the constitutionality of legal norms. The right to submit applications of abstract constitutional review is reserved for various state authorities, such as, for example, the President of the State, at least twenty members of the Parliament, the Prosecutor General, the Ombudsman, etc. Whereas the concrete review of legal norms can be initiated either by 1) ordinary courts (civil, criminal, or administrative) or by 2) private individuals who are entitled to submit individual constitutional complaints.¹³

Both abstract and concrete reviews of legal norms can lead to the invalidation of the existing legislation affecting wider society. Thus, generally, the public has an increased interest in the constitutional review process, and the openness of the Constitutional

⁹ Sujoy Chatterjee, "Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity," 92.

¹⁰ See, Constitution of the Republic of Latvia, Article 85; Constitutional Court Law, Article 16.

¹¹ Ján Mazák, "The European model of constitutional review of legislation," Exchange of views between the Southern African Judges Commission and the Venice Commission on constitutional review in common law countries and countries with specialised constitutional courts (2006), https://www.venice.coe.int/sacjf/2006_02_venice_strasbourg/report_mazak.htm.

¹² Janis Pleps, Edgars Pastars, and Ilze Plakane. *Constitutional Law (Latvijas Vēstnesis, 2022)*, https://juristavards.lv/wwwraksti/JV/BIBLIOTEKA/GRAMATAS/KT_ENG.PDF.

¹³ Constitutional Court Law, Article 17.

3. OPEN COURT PRINCIPLE

Latvian courts,¹⁵ including the Constitutional Court,¹⁶ within the context of the constitutional review procedure, follow the open court principle. This, in relation to the Constitutional Court of Latvia, includes, for example, public reports on the Court's work; communication with media representatives; providing public access to the Court's administrative documents as well as holding public hearings within constitutional review proceedings; providing access to case files to the participants to a case; public pronouncement of judgments and publication of full judgment versions in the national Official Journal (gazette), etc. All departures from the open court principle are seen as exceptional.

In this regard, the Constitutional Court follows the practice that personal data of the parties to cases (such as names, surnames, etc.), as a general rule, are known to the public and not anonymized in publicly available judgments. Namely, while national general and administrative courts do anonymize personal data in their judgments before they are published on the Internet,¹⁷ the Constitutional Court does not: this is linked to the core function of the Constitutional Court to decide over abstract legal norms that have a potential to affect many individuals and thus attracts a particular public interest.

As for the open court principle and Article 6 § 1 of the European Convention on Human Rights, the European Court of Human Rights has developed very important case law. The Court has underlined, for example, that “the public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to achieving the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society”.¹⁸ However, also the European Court of Human Rights recognizes that this principle is subject to exceptions. For example, in relation to the requirement to hold a public hearing, the Convention itself permits excluding the press and public “from all or part of the trial where the interests of juveniles or the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.¹⁹ Moreover, it is established in the Court's case law that, “even in a criminal-law context

¹⁴ Supreme Court of Latvia, Decision of 24 September 2021 in case No. SKA-669/2021, para. 11. <https://at.gov.lv/downloadlawfile/7985>.

¹⁵ Law on Judicial Power, Article 19.

¹⁶ Constitutional Court Law, Article 27.

¹⁷ Regulation No 123 of 10 February 2009 “Rules for publishing court information on the website and processing court rulings before they are issued”, Cabinet of Ministers, 2009, <https://likumi.lv/ta/id/187832-noteikumi-par-tiesu-informacijas-publicesanu-majaslapa-interneta-un-tiesu-nolemumu-apstradi-pirms-to-izsniegšanas>.

¹⁸ *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 36, 24 April 2001, *Osinger v. Austria*, no. 54645/00, § 44, 24 March 2005.

¹⁹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 6 § 1. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

where there is a high expectation of publicity, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses or to promote the free exchange of information and opinion in the pursuit of justice.”²⁰

Similarly, in the practice of the Constitutional Court, the open court principle is subjected to exceptions in circumstances where publicity would prejudice the inviolability of the private life of individuals seeking protection of their fundamental rights before the Constitutional Court. Namely, the solution chosen by the Constitutional Court is to grant anonymity to individuals and to restrict access to the materials of the case if the publicity would prejudice the inviolability of private life.

4. CASES WHEN THE OPEN COURT PRINCIPLE WAS LIMITED: ANONYMITY AND RESTRICTING ACCESS TO CASE FILES

4.1. CONCEPTUAL FRAMEWORK FOR BALANCING THE RIGHT TO PROTECTION OF PERSONAL DATA (AND PRIVACY) WITH THE OPEN COURT PRINCIPLE

As mentioned above, the public aspect of the open court principle, while bringing a number of benefits to society as a whole, also has implications for the protection of personal data and the right to privacy²¹ (protected under Article 96 of the Constitution of Latvia and Article 8 of the European Convention on Human Rights). The legal literature does not provide a single solution to prevent the tension between the two interests; it only urges to strive towards a fair or proper ‘balance’ (between the protection of privacy and the need for public scrutiny and the right of society to be informed about court proceedings) which is dependent on the wisdom of a judge.

Conceptually, the ‘balancing’ means that there is no absolute protection of privacy on the one hand, and the transparency derived from the open court principle on the other hand; it involves the alignment of the two. When performing the balancing exercise, it is noteworthy that, according to Article 6 § 1 of the Convention, the publicity of judicial proceedings is the rule, while giving priority to the protection of the privacy of the parties is the exception.²² In addition, ‘balancing’ includes the judge’s responsibility to understand the vulnerability and the need to protect children, health, victims of crime, sensitive aspects of private life etc., from exposure.²³ Finally, it involves the recognition of the increasing consequences of exposure in the information and digital age.²⁴

²⁰ *Osinger v. Austria*, no. 54645/00, § 45, 24 March 2005.

²¹ See, for example: Sabreen Ahmed, “Online courts and private and public aspects of open justice: Enhancing access to court or violating the right to privacy?,” *The Age of Human Rights Journal* 20 (2023): 14, <https://doi.org/10.17561/tahrj.v20.7516>.

²² Mihai Poalelungi, “The right to privacy and the transparency of justice: two weighing exercises,” *Revista Institutului National Justitiei*. 3. No. 42 (2017), <https://www.europub.co.uk/articles/-A-230226>.

²³ Sujoy Chatterjee, “Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity,” 104.

²⁴ Sabreen Ahmed, “Online courts and private and public aspects of open justice: Enhancing access to court or violating the right to privacy?,” 17, David S. Ardia, “Privacy and Court Records: Online Access and the Loss of Practical Obscurity,” *University of Illinois Law Review*, no. 4 (2017): 1450, <https://ssrn.com/abstract=3013704>.

4.2. IN THE ABSENCE OF A REGULATORY FRAMEWORK THE COURT HAS TO PROTECT THE PRIVACY OF INDIVIDUALS

Neither the Constitutional Court Law nor the Rules of Procedure of the Constitutional Court regulate when, if ever, anonymity can be granted to the parties or access to case files can be restricted.²⁵ However, in order to protect the inviolability of the private life of individuals who refer to the Constitutional Court, the Constitutional Court introduced a case law-based procedure for granting anonymity to individuals and restricting access to case materials in the absence of a regulatory framework.

According to the Constitutional Court, any individual who files a constitutional complaint with the Constitutional Court is seeking protection of his or her fundamental rights as stipulated in the Constitution.²⁶ The Constitutional Court must, as far as possible, prevent or rectify violations of fundamental rights, without at the same time causing the applicants or any third parties any infringement of other fundamental rights, especially the right to privacy.²⁷

In such situations, the Constitutional Court is aware that once the information about an applicant is disclosed, it is very difficult to restrict its further distribution. Moreover, the disclosure of such information by the Constitutional Court itself may infringe the applicants' right to the inviolability of private life. Therefore, the Court must decide the issue and prevent any possible damage to a person's rights and legal interests which could arise from the disclosure of information about a person's private life at the earliest possible procedural stage.²⁸ Besides, restricting access to case files in order to protect the rights and legal interests of an individual must be performed effectively. Namely, the Court has to establish a procedure that would ensure the principle of a fair trial, on the one hand, and would simultaneously balance the right to inviolability of private life with the right of society to be informed about constitutional proceedings, on the other hand.²⁹

Conceptually, the Court performs the balancing function in the following manner: when deciding upon requests from individuals, the Court assesses whether accepting applicants' requests will truly protect their right to the inviolability of private life, including the right to protection of personal data; will not negatively affect their right to a fair trial and impartial court proceedings; and will not violate the public interest to obtain information on constitutional proceedings.³⁰ In practice, the Constitutional

25 Constitutional Court, Decision of 4 October 2016 in case No. 2016-15-01, paras. 3.1. and 3.2. https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-14-01_Citi_Ricibas_sedes_lemums.pdf.

26 This also follows from Article 17(1)(11) of the Constitutional Court Law which provides that individuals may only submit applications to the Constitutional Court in case of an interference with their fundamental rights guaranteed by the Constitution.

27 Constitutional Court, Decision of 22 November 2016, para. 4. <https://likumi.lv/ta/id/286784-par-kartibu-kada-pieteikuma-izskatisanas-stadija-izlemjams-lugums-ierobezot-pieteikuma-ietvertas-informacijas-pieejamibu>.

28 Ibid.

29 Ibid, see also: Constitutional Court, Decision of 4 October 2016 in case No. 2016-15-01, para. 3.2. https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-14-01_Citi_Ricibas_sedes_lemums.pdf.

30 For example: Constitutional Court, Decision of 28 May 2020 in case No. 2020-30-01, para. 9.1. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/05/2020-30-01_Lemums_ierosinasana.pdf.

Court verifies what type of personal data is claimed by the individual as sensitive and whether this information falls within the scope of the concept of “private life” under the Constitution. Also, the Court takes into account whether this sensitive information, taken together with an individual’s name, surname, and personal identification code forms “personal data” and whether the “processing” of personal data is taking place within the meaning of the General Data Protection Regulation (GDPR), which is binding in the European Union. Particular attention is given to the following articles of the GDPR: Article 9 (“Processing of special categories of personal data”); Article 10 (“Processing of personal data relating to criminal convictions and offences”) as well as Article 5(1)(c) (“Principles relating to the processing of personal data”) and Article 6(1)(c) (“Lawfulness of processing”).³¹

Finally, in its assessment and decisions, the Constitutional Court concludes whether including the applicant’s personal data in Court decisions and the final judgment, which is consequently published in the National Official Journal (gazette), would cause greater harm to the applicant’s rights compared to the public benefit of publishing such information.³²

4.3. CASES WHEN THE INTERESTS OF PRIVATE LIFE HAVE PREVAILED OVER PUBLIC INTEREST

The case law of the Constitutional Court shows that the Constitutional Court has found it possible to grant anonymity to individual applicants and to restrict access to case materials in seven groups of situations, when personal data related to criminal convictions and offences, health of children, sexual orientation, sensitive aspects of family ties, political opinions or philosophical beliefs, personal data related to remuneration, and, finally, when the core purpose of the constitutional complaint was preserving privacy in public register.

4.3.1. Personal data relating to criminal convictions and offences

In most cases, anonymity was granted and access to case materials were restricted due to personal data being related to criminal convictions and offences. Namely, even though in these cases the disputed provisions were of a general nature, the case materials still contained personal data related to criminal convictions or offences of the applicants. The notion of “criminal convictions and offences” was further clarified by the Court in relation to the stage of the criminal proceedings and the outcome of the proceedings (conviction or acquittal).

For example, it was clear that such notion includes the personal data of a person who has been charged and convicted by a final judgment³³ or even cases where a person has been convicted by a judgment and the sentence imposed has been served.³⁴

³¹ Ibid., para. 9.2.

³² Ibid., para. 9.2.

³³ Constitutional Court, Judgment of 11 June 2021 in case No. 2020-50-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-50-01_spriedums.pdf, Constitutional Court, Judgment of 2 December 2022 in case No. 2021-42-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/10/2021-42-01_Judgment.pdf, Constitutional Court, Judgment of 17 December 2020 in case No. 2020-18-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/03/2020-18-01_spriedums.pdf.

³⁴ Constitutional Court, Judgment of 3 November 2022 in case No. 2021-43-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/12/2021-43-01_Judgment.pdf.

The notion of personal data relating to criminal convictions and offences was also extended to situations when criminal proceedings had been initiated but subsequently terminated³⁵ and where the accused was acquitted in a criminal case.³⁶ Similarly, personal data was anonymized in the Court's cases where a settlement between victims and suspects or accused persons had been concluded and consequently the latter have been released from criminal liability.³⁷

The notion was also applied to demerit points in traffic law violations.³⁸ In this particular case, the applicant had penalty points registered and entered into the State Register of Vehicles and Drivers. These sensitive personal data, pursuant to the contested legal provision, were generally accessible to the public. The Court considered that due to the sensitive nature of these personal data, the identity of the applicant should be hidden in the course of constitutional review.³⁹

4.3.2. Health of children

The protection of privacy/vulnerability is particularly recognized in relation to children in legal proceedings.⁴⁰ The Constitutional Court has addressed this group in relation to health, where case materials contained personal data about children's health. These cases were related to different areas of law: social security, prevention of conflicts of interest, and the reform of the language of education. For example, in a case about parental and the childcare benefits payable to parents, the files contained health data about a prematurely born child.⁴¹ In a case concerning a prohibition for judges to be paid as caregivers of their own children with a disability, the files contained data about the health of a child with a disability.⁴² Finally, the health of children was also a reason for granting anonymity and restricting access to case files in a general education language reform case in national minority education programs, since the case materials contained information about children with special learning needs.⁴³ When reasoning on a balancing of interests in the recent case, the Court stated that "the disclosure of the applicant's health data would cause damage to the applicant's

35 Constitutional Court, Decision of 30 May 2023 in case No. 2022-19-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/06/2022-19-01_lemums_par_izbeigšanu.pdf.

36 Constitutional Court, Judgment of 5 March 2021 in case No. 2020-30-01, para. 2, www.satv.tiesa.gov.lv/wp-content/uploads/2020/05/2020-30-01_spriedums.pdf.

37 Constitutional Court, Judgment of 15 December 2022 in case No. 2021-41-01, para. 2, https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/10/2021-41-01_Judgement.pdf.

38 Constitutional Court, Judgment of 13 November 2021 in case No. 2018-18-01, www.satv.tiesa.gov.lv/wp-content/uploads/2018/08/2018-18-01_Spriedums.pdf.

39 Ibid.

40 Jacquelyn Burkell and Jane Bailey, "Equality at Stake: Connecting the Privacy/Vulnerability Cycle to the Debate about Publicly Accessible Online Court Records." *Canadian Journal of Comparative and Contemporary Law* 4 (2018): 96, <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1247&context=fimspub>.

41 Constitutional Court, Judgment of 19 November 2020 in case No. 2020-13-01, www.satv.tiesa.gov.lv/wp-content/uploads/2020/02/2020-13-01_spriedums.pdf.

42 Constitutional Court, Judgment of 23 November 2015 in case No. 2015-10-01, https://www.satv.tiesa.gov.lv/web/viewer.html?file=wp-content/uploads/2015/04/2015-10-01_Spriedums_ENG.pdf.

43 Constitutional Court, Decision of 19 May 2023 in case No. 2023-16-01, para. 11, https://www.satv.tiesa.gov.lv/wp-content/uploads/2023/05/2023-16-01_lemums_par_ierosinasanu.pdf.

rights and legal interests that would be greater than the public benefit. The Court does not consider it necessary to disclose those data in order to exercise the Court's jurisdiction and fulfil its obligations under the law".⁴⁴

Even though there have been no examples of granting anonymity due to health data of adults, such situations are covered by the existing case law of the European Court of Human Rights. For example, in the case "Panteleyenko v. Ukraine", the European Court of Human Rights ruled that obtaining confidential information regarding the mental state and relevant medical treatment from a psychiatric hospital, as well as operating with this data and reading it out by a judge at one of the hearings constituted an interference with the individual's right to private life.⁴⁵ Thus, also such categories of personal data must be protected in any judicial proceedings.

4.3.3. Data concerning sexual orientation

In the same manner the Constitutional Court treated personal data concerning sexual orientation very carefully, thus acknowledging the vulnerability of this group.⁴⁶ In this regard, the Constitutional Court reviewed two cases: one case concerning the right of a mother's same-sex partner to obtain a parental leave in relation to the birth of a child according to the Labor Law,⁴⁷ and another case concerning a state fee applied to the deceased's same-sex partner for registering the ownership rights to an inherited property in the Land Register.⁴⁸ Both cases related to the lack of legal recognition of families formed by same-sex partners. Given the fact that in both cases family relationships were directly related to sexual orientation, the identity of individuals had to be protected in order to safeguard their private life.⁴⁹ In its reasoning, the Court concisely and directly ruled that "the Court does not consider it necessary to disclose the personal data in order to exercise the Court's jurisdiction and fulfil its legal obligations".⁵⁰

4.3.4. Sensitive aspects of family ties

In a very similar manner, the Constitutional Court treated another sensitive aspect of family relationships – the right to challenge the paternity of a child, in a case similar to the European Court of Human Rights' case "Rasmussen v. Denmark".⁵¹ Namely, the national regulation stipulated that the paternity of a child may be contested by the father, but within the time-limit stated by law: two years calculated from the day the circumstances precluding paternity became known. The Court initiated proceedings

⁴⁴ Ibid., para 11.

⁴⁵ *Panteleyenko v. Ukraine*, no. 11901/02, 29 June 2006.

⁴⁶ Jacquelyn Burkell and Jane Bailey, "Equality at Stake: Connecting the Privacy/Vulnerability Cycle to the Debate about Publicly Accessible Online Court Records," 106.

⁴⁷ Constitutional Court, Decision of 16 December 2019 in case No. 2019-33-01, para. 8.2, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/12/2019-33-01_Lemums_ierosinasana.pdf.

⁴⁸ Constitutional Court, Decision of 7 July 2020 in case No. 2020-34-03, para. 7, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-34-03_Lemums_ierosinasana.pdf.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ *Rasmussen v. Denmark*, no. 8777/79, 28 November 1984.

and reviewed the national provision, granting anonymity to the applicant affected by the legal provision.⁵²

4.3.5. Political opinions and or philosophical beliefs

In an unprecedented way, the Constitutional Court was faced with the protection of personal data relating to political opinions and philosophical beliefs. The case was related to a legal ban for professional service soldiers to become members of political parties. The applicant requested the Constitutional Court to grant anonymity since in the application the soldier expressed views against mandatory vaccinations and was afraid that these views could result in forced retirement from professional service. In its decision to grant anonymity, the Constitutional Court referred both to the need to protect private life as well as freedom of expression, which were closely interrelated in the request of the applicant. In conclusion, the Constitutional Court was of the view that special circumstances required granting anonymity to the applicant and it was possible for the Court to fulfil its constitutional review functions without disclosing the personal data of the applicant.⁵³

4.3.6. Remuneration, including employment contracts and their terms

In a series of cases concerning solidarity tax, several applicants contested the tax rates set in the Solidarity Tax Law, which was applicable when salaries of individuals exceeded specific thresholds. The applicants (legal and natural persons) requested *inter alia* to restrict access to case files in order to protect information about salaries of the employees, their contracts, and other information that may identify these individuals. The Constitutional Court was of the view that data about remuneration falls within the scope of the concept of “private life” and that the disclosure of such information may infringe upon fundamental rights. In addition, such information was classified as a commercial secret by the employers. Taken together, these considerations led to the decision of the Constitutional Court to restrict access to this information.⁵⁴ However, this case must be distinguished from the ones mentioned above. Namely, in the first-mentioned cases the Court’s reasoning was rather more related to particularly sensitive personal data (“special categories of personal data”) under Article 9 of the GDPR, while in this last case it could be seen as an extended protection.

4.3.7. The core purpose of the constitutional complaint is to preserve privacy

Finally, the Constitutional Court granted anonymity in a case where the core purpose of the constitutional complaint was to preserve privacy. Namely, in this case, several individuals challenged a legal provision that obligated the Enterprise Register to obtain and publish information about shareholders of joint stock companies. According to

52 Constitutional Court, Judgment of 3 June 2009 in case No. 2008-43-0106, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/11/2008-43-0106_Spriedums_ENG.pdf.

53 Constitutional Court, Decision of 18 August 2022 in case No. 2022-33-01, para. 9, https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/08/2022-33-01_lemums_par_ierosinasanu.pdf.

54 Constitutional Court, Decision of 4 October 2016 in case No. 2016-14-01, para 5., 6, https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-14-01_Citi_Ricibas_sedes_lemums.pdf.

the contested provision, such personal data was classified as generally accessible information. According to the applicants, the legislative provision infringed upon their private life.⁵⁵ Even though the case has not yet been decided, the Constitutional Court was of the view that special circumstances required granting anonymity within the context of constitutional review procedure.⁵⁶

4.4. WHO HAS THE RIGHT TO INITIATE GRANTING ANONYMITY AND RESTRICTING ACCESS TO CASE MATERIALS?

From the cases mentioned above, one may question who has the right to initiate the granting of anonymity and the restricting of access to case materials. From the existing case law it is possible to conclude that both the applicant to the Constitutional Court may request that their anonymity be ensured and the access to case files be restricted⁵⁷ as well as the Constitutional Court itself is entitled to determine the issue on its own initiative to protect the privacy of applicants.⁵⁸ Moreover, from the wording of the decisions of the Constitutional Court, it is quite evident that the Constitutional Court treats the protection of privacy within the constitutional review procedure as a matter of state liability. Namely, the Constitutional Court treats anonymization and restricting access to case materials within the constitutional review procedure as a means to “prevent possible damage to a person’s rights and legal interests that could arise from disclosing information about a person’s private life”.⁵⁹

5. CONCLUSION

The case law presented in this article demonstrates how the Constitutional Court of the Republic of Latvia balances the principle of an open court and the right of society to be informed about constitutional proceedings, on the one hand, and the right to the inviolability of the private life of parties to cases before it, on the other. Such a protective approach rests on the maxim that an individual at the Constitutional Court is seeking protection of his or her fundamental rights. Therefore, the Court is obligated to avert existing violations of the fundamental rights without causing the applicants and third parties any new infringements of fundamental rights, especially the right to privacy.

The existing case law demonstrates that personal data that is seen as particularly sensitive by the Constitutional Court generally coincides with the “special categories of personal data”⁶⁰ and “personal data relating to criminal convictions and offences”

55 Constitutional Court, Decision of 26 January 2024 in case No. 2024-01-01, https://www.satv.tiesa.gov.lv/wp-content/uploads/2024/01/2024-01-01_lemums_par_ierosinasanu.pdf.

56 Ibid.

57 Constitutional Court, Decision of 28 May 2020 in case No. 2020-30-01, point 9, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/05/2020-30-01_Lemums_ierosinasana.pdf.

58 Constitutional Court, Decision of 7 July 2020 in case No. 2020-34-03, point 7, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-34-03_Lemums_ierosinasana.pdf.

59 Constitutional Court, Decision of 22 November 2016, point 4, <https://likumi.lv/ta/id/286784-par-kartibu-kada-pieteikuma-izskatisanas-stadija-izlemjams-lugums-ierobezot-pieteikuma-ietvertas-informacijas-pieejamibu>.

60 Namely, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation.

stipulated in Articles 9 and 10 of the GDPR. However, the Constitutional Court does not limit its decisions about anonymity only to these categories. Depending on the specific circumstances of the case and the reasoning provided to the Court by applicants, the Constitutional Court can extend the scope of granting anonymity and restricting access to case materials in favor of the protection of private life, such as granting anonymity in a dispute concerning solidarity tax in which the private-life aspect was related to salaries of employees, or where the core purpose of applicant's complaint was to preserve privacy in administrative databases or registers.

Assessment as to the reasonableness of protecting public access to the court proceedings, or instead protecting privacy, is never abstract. The Constitutional Court in such situations pays particular attention to the nature of personal data, the disclosure of which could potentially cause harm; whether accepting applicants' requests will truly protect the right to the inviolability of private life and whether disclosing an applicant's personal data would result in a restriction of fundamental rights that would be greater than the public benefit from the disclosure. Thus, the proper balance struck by the Court ensures that the principle of an open court and the right of society to be informed about constitutional proceedings are not only of abstract value but truly serve their special purpose in society without bringing unnecessary harm to individuals seeking protection of the Court.

COMPETING INTERESTS

The authors have no competing interests to declare.

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REFERENCES

LITERATURE

- Ardia, David S. "Privacy and court records: Online access and the loss of practical obscurity." *University of Illinois Law Review* 2017, no. 5 (2017): 1385–1454. <https://ssrn.com/abstract=3013704>.
- Bailey, Jane, and Jacquelyn Burkell. "Revisiting the open court principle in an era of online publication: Questioning presumptive public access to parties' and witnesses' personal information." *Ottawa Law Review* 48, no. 1 (2016): 143–183. <https://ssrn.com/abstract=2959794>.
- Burkell, Jacquelyn, and Jane Bailey. "Equality at stake: Connecting the privacy/vulnerability cycle to the debate about publicly accessible online court records." *Canadian Journal of Comparative and Contemporary Law* 4 (2018): 1–45. <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1247&context=fimspub>.
- Chatterjee, Sujoy. "Balancing privacy and the open court principle in family law: does de-identifying case law protect anonymity." *Dalhousie Journal of Legal Studies* 23 (2014): 91–104. <https://digitalcommons.schulichlaw.dal.ca/djls/vol23/iss1/5/>.

- Lysaght, Charles. "Publicity of Court Proceedings." *Irish Jurist* 38 (2003): 34–57. <http://www.jstor.org/stable/44026525>.
- Hall-Coates, Shauna. "Following Digital Media into the Courtroom: Publicity and the open court principle in the information age." *Dalhousie Journal of Legal Studies*. 24 (2015): 101–139. <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1317&context=djls>.
- Mazák, Jan. "The European model of constitutional review of legislation." Exchange of views between the Southern african judges commission and the Venice commission on constitutional review in common law countries and countries with specialised constitutional courts. (2006). https://www.venice.coe.int/sajf/2006_02_venice_strasbourg/report_mazak.htm.
- Pleps, Janis, Pastars, Edgars, and Plakane Ilze. *Constitutional law*. Latvijas Vestnesis, 2022. https://juristavards.lv/wwwraksti/JV/BIBLIOTEKA/GRAMATAS/KT_ENG.PDF.
- Poalelungi, Mihai. "The right to privacy and the transparency of justice: two weighing exercises." *Revista Institutului National Justitiei* 3 no. 42 (2017): 26–33. <https://www.europub.co.uk/articles/-A-230226>.
- Sabreen, Ahmed. "Online courts and private and public aspects of open justice: Enhancing access to court or violating the Right to Privacy?" *The Age of Human Rights Journal* 20 (2023): e7516. <https://doi.org/10.17561/tahrj.v20.7516>.

LEGISLATION

- Cabinet of Ministers. 2009. Regulation No 123 of 10 February 2009 "Rules for publishing court information on the website and processing court rulings before they are issued." <https://likumi.lv/ta/id/187832-noteikumi-par-tiesu-informacijas-publicesanu-majaslapa-interneta-un-tiesu-nolemumu-apstradi-pirms-to-izsniegšanas>.
- Saeima. Law on Judicial Power. 1993. <https://likumi.lv/ta/en/en/id/62847-on-judicial-power>.
- Saeima. Constitutional Court Law. 1996. <https://likumi.lv/ta/en/en/id/63354-constitutional-court-law>.

CASE LAW

- B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, 24 April 2001.
- Constitutional Court. Decision of 26 January 2024 in case No. 2024-01-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2024/01/2024-01-01_lemums_par_ierosinasanu.pdf.
- Constitutional Court. Decision of 30 May 2023 in case No. 2022-19-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/06/2022-19-01_lemums_par_izbeigšanu.pdf.
- Constitutional Court. Decision of 19 May 2023 in case No. 2023-16-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2023/05/2023-16-01_lemums_par_ierosinasanu.pdf.
- Constitutional Court. Judgment of 15 December 2022 in case No. 2021-41-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/10/2021-41-01_Judgment.pdf.
- Constitutional Court. Judgment of 2 December 2022 in case No. 2021-42-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/10/2021-42-01_Judgment.pdf.
- Constitutional Court. Judgment of 3 November 2022 in case No. 2021-43-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/12/2021-43-01_Judgment.pdf.
- Constitutional Court. Judgment of 13 November 2021 in case No. 2018-18-01. www.satv.tiesa.gov.lv/wp-content/uploads/2018/08/2018-18-01_Spriedums.pdf.
- Constitutional Court. Judgment of 11 June 2021 in case No 2020-50-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-50-01_spriedums.pdf.

- Constitutional Court. Judgment of 5 March 2021 in case No. 2020-30-01. www.satv.tiesa.gov.lv/wp-content/uploads/2020/05/2020-30-01_spriedums.pdf.
- Constitutional Court. Judgment of 17 December 2020 in case No. 2020-18-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/03/2020-18-01_spriedums.pdf.
- Constitutional Court. Judgment of 19 November 2020 in case No. 2020-13-01. www.satv.tiesa.gov.lv/wp-content/uploads/2020/02/2020-13-01_spriedums.pdf.
- Constitutional Court. Decision of 18 August 2022 in case No. 2022-33-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/08/2022-33-01_lemums_par_ierosinasanu.pdf.
- Constitutional Court. Decision of 7 July 2020 in case No. 2020-34-03. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-34-03_Lemums_ierosinasana.pdf.
- Constitutional Court. Decision of 28 May 2020 in case No. 2020-30-01. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/05/2020-30-01_Lemums_ierosinasana.pdf.
- Constitutional Court. Decision of 16 December 2019 in case No. 2019-33-01. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/12/2019-33-01_Lemums_ierosinasana.pdf.
- Constitutional Court. Decision of 22 November 2016. <https://likumi.lv/ta/id/286784-par-kartibu-kada-pieteikuma-izskatisanas-stadija-izlemjams-lugums-ierobezot-pieteikuma-ietvertas-informacijas-pieejamibu>.
- Constitutional Court. Decision of 4 October 2016 in case No. 2016-14-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-14-01_Citi_Ricibas_sedes_lemums.pdf.
- Constitutional Court. Decision of 4 October 2016 in case No. 2016-15-01. https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-14-01_Citi_Ricibas_sedes_lemums.pdf.
- Constitutional Court. Judgment of 23 November 2015 in case No. 2015-10-01. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/04/2015-10-01_Spriedums_ENG.pdf.
- Constitutional Court. Judgment of 3 June 2009 in case No. 2008-43-0106. https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/11/2008-43-0106_Spriedums_ENG.pdf.
- Osinger v. Austria*, no. 54645/00, 24 March 2005.
- Panteleyenkov v. Ukraine*, no. 11901/02, 29 June 2006.
- Rasmussen v. Denmark*, no. 8777/79, 28 November 1984.
- Straume v. Latvia*, no. 59402/14, 2 June 2022.
- Supreme Court of Latvia. 2021. Decision of 24 September 2021 in case No. SKA-669/2021. <https://at.gov.lv/downloadlawfile/7985>.

INTERNATIONAL TREATIES

- Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. 1950. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

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