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On Tuesday, March 15, the Supreme Court *en banc* issued a judgment that has an important role in clarifying the relation between the Estonian Constitution and European Union law and ensuring the equal treatment of people with disabilities.

The provisions of the regulation of the government, which obliged the prison officer with hearing impairment to be dismissed from service and did not allow the hearing loss to be corrected, for example, with a hearing aid or the duties of the officer to be changed, if necessary, were declared unconstitutional and invalid by the Supreme Court in the case at issue.

Beyond the scope of specific case, the judgment of the Supreme Court is also important in clarifying the relation between the Estonian Constitution and EU law, as the provisions of the regulation of the government that treated the hard-of-hearing persons unequally were at the same time in contradiction with both the Estonian Constitution and EU legislation. Therefore, the court had to decide whether to simply disapply the provisions due to the contradiction with EU law in a particular case or to declare these unconstitutional and invalid.

Taking into account the developments in the European judicial area, the *en banc* supplemented the current positions of the Supreme Court concerning the constitutional review of Estonian legal norms related to EU law. The Supreme Court *en banc* took the position that in most cases the court has the freedom to choose for which, whether for EU law or the constitution, the verification of compliance will be carried out in order to resolve the case. However, in making this choice, the court should consider that the constitutional review procedure should not jeopardize the primacy, unity or effectiveness of EU law.

The Supreme Court *en banc* explained that the verification of compliance with EU law and the constitutional review procedure may complement each other, and the latter may also sometimes ensure better protection of fundamental rights. If the court does not apply the Estonian legal norm due to the contradiction with EU law, the result of the case concerns only a specific applicant, but with the help of constitutional review it is possible to repeal the norm violating fundamental rights and thus remove it from the legal order.

The judgment of the Supreme Court has also a wider impact on ensuring the rights of people with disabilities in Estonia. The Supreme Court *en banc* pointed out that both the Estonian Constitution and the European Union and international law emphasize the need to take reasonable measures to ensure equal treatment of persons with disabilities. Therefore, before dismissing a person due to a disability, the state has an obligation to look for solutions that would allow him or her to continue working, provided that this does not impose a

disproportionate burden on the employer.

The applicant was able to work despite her hearing loss

The case at issue concerned a woman who had been working as a guard in Tartu Prison since 2002 and who was released from service in 2017 when a medical examination revealed that the hearing of one of her ears did not meet the health requirements of prison officers established by the regulation of the government in 2013.

The woman applied to the court to declare her dismissal illegal and to award compensation. The administrative court dismissed her appeal, but the district court cancelled the decision and awarded her the compensation of 60 months' salary. As regards the amount of the compensation, the court took into account that the norms had been established more than ten years after the applicant's employment, that her previous service had been impeccable and that she would have been entitled to a special pension in a few years. The district court also instituted constitutional review proceedings in the Supreme Court against the norms which had led to the applicant's dismissal.

The Supreme Court *en banc* found in the judgment published on Tuesday, March 15, that the provisions of the regulation of the government violate the freedom to choose an occupation and the right to equal treatment guaranteed by the constitution and are also in contradiction with the principle that the persons with disabilities are under special protection of the state.

The Supreme Court *en banc* noted that the applicant had allegedly suffered a hearing loss already as a child, she had worked in prison for more than 14 years and she had never been accused of improper performance of her duties. Her job also did not require frequent direct contact with prisoners. Therefore, the applicant's dismissal was not necessary for the safe and full performance of her duties or for ensuring the security of the prison.

The Supreme Court emphasized that even if the hearing impairment had prevented the applicant from working, she should not have been necessarily dismissed. The state has just an obligation to take reasonable measures to enable the people with disabilities to continue working. The decision on reasonableness should take into account, inter alia, the extent to which these measures impose additional burdens and costs on the employer. In the present case it would have been possible, for example, to use a hearing aid or to change the applicant's duties.

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