

Preface

In Latvia under current law persons who have been convicted of criminal offences that are related to violence or threats of violence, or criminal offences against morals and sexual inviolability - irrespective of whether or not the conviction is extinguished or set aside - are forbidden to work in child care, educational, health care, or preform any other work with children¹. This applies to every person without any individual evaluation.

The Supreme Court of Latvia has challenged the norm that prohibits to employ persons who have been convicted of criminal offences that are related to violence or threats of violence (Law on the Protection of the Children's Rights, Section 72 part 5.1.) to the Constitutional Court of Latvia with non-compliance with the first sentence of Section 91² and the first sentence of Section 106³ of the Constitution of the Republic of Latvia⁴.

Ombudsman was asked to provide his view on the challenged norm and its compliance with the Constitution. In so far as it does not provide for an individual assessment of the concerned person, in Ombudsman's view, the norm does not comply with Constitution's first sentence of Section 91 and the first sentence of Section 106. One of the arguments for such opinion is that there are possible other more proportionate means how to secure the safety of the children, by individually evaluating persons and their suitability to work with children.

Ombudsman has asked the members of the European Network of Ombudspersons for Children (ENOC) to share their national regulations that prevent the risks of employing persons who would be dangerous for children, thus seeking to find out what methods for protection of children from potentially dangerous employees are used in other European nations. In total Ombudsman looked through the national experience of 13 ENOC members.

Below are the obtained summary and conclusions.

Comparative overview

When assessing the responses provided by national experts, there can be four different ways how national states may regulate the employment of previously convicted people with children.

¹ Law on the Protection of the Children's Rights, Section 72 part 5.1. and 5.2. Available at: <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

² All human beings in Latvia shall be equal before the law and the courts.

³ Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.

⁴ The Constitution of the Republic of Latvia. Available at: <https://likumi.lv/ta/en/id/57980-the-constitution-of-the-republic-of-latvia>

1. Applying general norms without exemptions (this is also the regulation of Latvia)

In this case, the persons are not assessed individually. For specified offences concerned persons are prohibited to work with children. There are differences between national practices on what kind of offences are considered as barring and whether the prohibition is for a limited period or not.

In **Island** only sexual offences, irrespective of the time when the offence has been committed, without exemption prohibits to work with children. There are provisions in different laws, concerning children, such as the child protection Act, the Youth act, different legislation on the education system, where employers are forbidden from hiring individuals to work with children, who have been convicted for violations against the sexual crime chapter of the General Penal Code. These provisions are applied generally so there are no considerations for any individual factors. Similar regulations are also in the **Republic of Srpska**: the law imposes restrictions on persons who have committed sexual offences but does not impose restrictions on persons who have committed other types of offences. In **Croatia**, certain laws impose restrictions on persons who have committed sexual crimes and, in some cases, other crimes, to work with children.

In **Lithuania**, working with children is prohibited for persons who have committed offences related to sexual offences of any kind, distribution or viewing of child pornography, child exposure to prostitution, child trafficking. The ban lasts regardless of whether the criminal record has been extinguished.⁵

In **Estonia** restrictions for working with children are laid down by listing criminal offences, these criminal offences are divided into two groups. First group of criminal offences (§ 20 subsection 1 of the Child Protection Act) result in more severe restriction - the person who has been convicted for one of these criminal offences may not work with children neither when the conviction is in criminal records nor when the conviction is extinguished from the records. This group includes sexual crimes, trafficking in human beings, prostitution, child pornography and some offences against life. The second group of criminal offences (§ 20 subsection 2 of the Child Protection Act) result in the restriction till the conviction is deleted from the criminal records database. These are severe offences against the person, offences against liberty related to minors, offences against family and minors, offences against public health related to minors.⁶ The norms are applied generally to all persons in the same manner. The suitability of every individual person is not assessed.

⁵ Law on Fundamentals of Protection of the Rights of the Child, Article 30.

⁶ *Child Protection Act, Par.20* Available at: <https://www.riigiteataja.ee/en/eli/511012019009/consolide>

2. The employer individually assesses the suitability of a person to work with children.

In this case, it is the employer who assesses the suitability of a person to work with children. The employer makes his decision based on available information which can be obtained through different national registers.

Such arrangements exist in **Sweden**. Employers have the right and, in some cases, the obligation (educational establishments, institutions hosting children, persons working with children with disabilities, etc.) to verify the person's previous records. Based on the obtained information on the potential employee, it is the employer's decision whether the person can or cannot be recruited. There are no specific rules in the country that would prohibit a person from working with children for committing certain offences. However, if a person has committed an offence against a child, then, according to the Swedish national practice and the doctrine of the legal system, in such cases the employer hardly ever employs the concerned person. A person is entitled to appeal to a court the decision of the employer.

Also, in **Belgium**, persons wishing to work with children must submit his/her personal record to the employer, which includes details of previous penalties (including administrative). The employer must then evaluate the person's suitability for the position individually.

The regulatory framework in **Ireland** sets out the employer's obligation to ensure that children using employer's services are in a safe environment. This obligation requires an individual assessment of employees.⁷ In addition National Vetting Bureau operates in Ireland, which gathers information on a person's criminal record and provides this information to employers. The employer then uses this information to make its own assessment of the person's suitability for employment.⁸

3. An independent national authority assesses the suitability of a person to work with children.

In such cases, the employer or the person wishing to apply for the job refer to the responsible institution which provides its conclusion on the suitability of the person to work with the children. Such an institution does not act solely as an information provider but makes an individual assessment, indicating potential risks associated with the possible employment of that person or barring him/her from the work with children. Although it is still upon the employer to would take the decision of the employment, however, the employer is influenced by the assessment of this institution.

Such institution can be found in **Great Britain**. The suitability of the potential employee is assessed individually by employer, however the decision is guided by

⁷ Children First Act 2015. Available here: <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/html>

⁸National Vetting Bureau (Children and Vulnerable Persons) Act 2012, available here: <http://www.irishstatutebook.ie/eli/2012/act/47/enacted/en/print.html>, and the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, available here: <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/print.html>.

Disclosure and Barring Service (DBS). DBS navigates employers to make safer recruitment decisions by processing and issuing DBS checks. The DBS webpage states that it “maintains the adults' and children's Barred Lists and makes considered decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity”⁹. Persons are brought to the attention of DBS barring team in one of three ways: 1) automatic – also known as auto-bar is when someone has been newly convicted or cautioned for a serious offence and they are considered for immediate barring, either with or without the opportunity to make representations; 2) disclosure - when someone applies for an enhanced DBS check to work with children or adults in certain circumstances, such as those in receipt of healthcare or personal care, and the check reveals relevant information that results in the individual being considered for inclusion on one or both of the barred lists; 3) referral - when an employer, volunteer manager or other organisation has concerns that someone has either caused harm or has the potential to cause harm to vulnerable groups and submits a referral to the DBS¹⁰. In the second and third case DBS carries out individual assessment of the concerned person. Persons on the children's barring list may not be employed to work with children. The concerned persons can provide representations to DBS as to why they feel it would be inappropriate or disproportionate to include them in one or both of the barred lists¹¹.

4. The ruling of the court provides the barring of person to work with children.

In such cases, there are no general national provisions that would prohibit to work with children. However, the court may rule a ban on the person if his/her committed offenses are considered dangerous for children.

Such arrangements can be found in **Moldova**, but they only apply to restrictions on teaching. The court may order a prohibition to work as an educator, if it considers that the committed offences are dangerous for children.

Similar arrangements partly exist in **Poland**, the court may prohibit work with children if the conviction is for an intentional offence against life or health of a minor. The court prohibits work with children if the conviction is for an intentional offence against sexual freedom of a minor. However, there are specialised legislation for certain employments that lay down specific criteria, for example by providing that a person must not be previously convicted, must have been subjected to health checks, must be of good reputation, must not have been deprived of parental custody rights, and so on.

⁹ Disclosure and Barring Service, <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

¹⁰ Barring. Available at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about#barring>

¹¹ Ibid.

5. Combination of the regulations

Some countries use a combination of these regulations. For example, in the **Netherlands**, the employer carries out both an individual assessment and there are general rules providing that persons who have committed sexual offences should not work with children. Such offences prevent the person to be employed to work with children regardless of the time when the offence has been committed. The Netherlands' existing arrangements also provide that employers may ask a person to submit a “certificate of conduct” (VOG). Such a certificate of conduct is issued by the Ministry of Justice of the Netherlands on an individual basis.¹² However, not all institutions require such information, and usually after the employee has been recruited, no re-checks are carried out. A mandatory request for a VOG document is required in educational establishments and institutions which care for or provide health services to children. Regular checks of the employees are carried out only for workers in childcare and pre-school education institutions.

Ombudsman for the Basque Country provide that, in **Spain**, a clear criminal record with respect to sexual offences against children, child trafficking and exploitation is an indispensable prerequisite to access and to exercise professional or otherwise activities involving regular contact with children¹³. The Central Register of Sexual Offenders operates and provides information on the identity of persons convicted for sexual offences against children, child trafficking and exploitation as well as information on their DNA genetic profile. This register aims at facilitating follow-up and control of convicted persons not only in Spain but also in other countries.¹⁴ Other legislation does not establish prohibitions or exclusions on grounds of sentences for any other crimes, however, the Criminal Code (Article 45) allows the possibility to impose penalties consisting in the prohibition to exercise certain professions or activities determined and justified by the sentencing judge. This penalty is expressly foreseen in the Criminal Code for certain crimes, some of which are related to violence (Art. 152). This penalty is limited in time.¹⁵ Sentences for these crimes are not included in the Central Register of Sexual Offenders.

Conclusion

Almost all of the reviewed national regulations have established procedures for assessing the appropriateness of the individuals to work with children, if they have been convicted for committing offences. Most countries apply individual assessments, with an exception to the offences that are committed against children, especially sexual offences. In almost all countries, sex offenders are subject to a non-terminated ban to work with children. Regarding other violence-related crimes,

¹² Certificate of Conduct. Available at: <https://www.justis.nl/producten/vog/certificate-of-conduct.aspx>

¹³ Organic Act 1/1996 on the Legal Protection of Minors. Available at: <https://www.boe.es/buscar/act.php?lang=es&id=BOE-A-1996-1069&tn=&p=>

¹⁴ Royal Decree 1110/2015. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2015-14264>

¹⁵ Criminal Code. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&p=20190302&tn=1#s5>

national regulation is not so strict and is largely based on the person's individual assessment or the timing of the committed offence.

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