



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, December 9, 1998

on case No.04-06(98)

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session A.Endziņš, the justices R.Apsītis, I.Čepāne, A.Lepse, I.Skultāne and A.Ušacka, with the secretary of the Court session L.Vīnkalna

in the presence of the representative of the applicant – advisor of the Chairman of the Riga Dome (Council) on economic issues Sanita Šķiltere and the sworn advocate Varis Klotiņš

and the head of the Office of the Budget Department of the Ministry of Finance supervising the financial activity of local authorities Signe Zeikate - the representative of the institution that issued the normative act which is disputed – the Cabinet of Ministers,

under Article 85 set by the Satversme (Constitution) as well as Article 16, paragraph 4 and the second part of Article 17, paragraph 6 of the Constitutional Court Law

in a public hearing on November 27, 1998 reviewed the case

”On Conformity of the Cabinet of Ministers of the Republic of Latvia August 4,1998 Regulations No. 294 ”On the Procedure of Compensation for the Unrealised Forecasted Real Estate Tax to Self-Governments” with Article 14 (the First Part, Second Paragraph) of the Law ”The Structure of the Cabinet of

Ministers” and Paragraph 9 of the Transitional Provisions of the Law ”On the Equalisation of Local Government Finances””.

The Constitutional Court established:

1. On March 5,1998 the Saeima of the Republic of Latvia passed the law ”On the Equalisation of Local Government Finances”, establishing the procedure by which the equalisation of self-governments finances shall be accomplished in order to create equal possibilities for self governments to execute the functions established by law. The objective of equalisation of finances was to encourage initiative and independence of local authorities to create their financial resources and to assure the protection of the financial activities of self-governments.

Paragraph 7 of the Transitional Provisions of the Law envisages that the Cabinet of Ministers shall adopt Regulations on self-government finance in 1998 within 2 weeks after announcement of the Law.

On the bases of the norm of the above Law, on March 31,1998 the Cabinet of Ministers passed Regulations No. 120 ” Regulations on Revenues of the Fund of the Equalisation of Local Authority Finances and the Procedure of Distribution” (henceforth – Regulations No. 120). The Regulations established that the self-government is entitled to receive subsidies from the Equalisation Fund of Finances. Besides it was determined that self-governments shall deposit fixed payments into the Fund.

Supplement No.3 to Regulations No. 120 ” Division of the Forecasted for 1998 Residents’ Income Tax, Property Tax, Real Estate Tax among the Self –Governments” anticipates forecasted property tax. Item 9 of the Transitional Provisions of the above law establishes, that ”self-governments for whom, because of conditions independent from their activity, it is not possible to collect the real estate taxes, anticipated in the forecast for 1998, shall submit to the Ministry of the Finance a substantiated application for compensation for the unrealised forecasted real estate tax. Regulations by the Cabinet of Ministers determine the procedure for submitting and reviewing applications as well as the procedure of compensation for the unrealised forecasted real estate tax. . If it is necessary, the Cabinet of Ministers shall submit to the Saeima ”Amendments to the Law ” On the State Budget for 1998””. On the bases of it, the Cabinet

of Ministers on August 4, 1998 passed Regulations No.294 "On the Procedure of Compensation for the Unrealised Forecasted Real Estate Tax" (henceforth, disputable Regulations).

2. On September 25, 1998 the **Riga Dome (Council)** submitted application to the Constitutional Court on initiating a case, petitioning to declare the disputable Regulations null and void, as the above Regulations contradict Article 14(the first part, paragraph 2) and the second part of the Law "The Structure of the Cabinet of Ministers" as well as Item 9 of the Transitional Provisions to the Law "On the Equalisation of Local Government Finances".

The applicant points out, that, when passing the disputable Resolution, the Cabinet of Ministers has exceeded its authority, determined in Article 14 (the first part, paragraph 2) of the Law "The Structure of the Cabinet of Ministers". Namely, the Cabinet of Ministers may only issue normative acts- regulations if the law specifically authorises the Cabinet of Ministers to do so. Besides, the authorisation shall formulate the main directions of the regulations' content. The applicant is of the opinion that the Law "On the Equalisation of Local Government Finances" has authorised the Cabinet of Ministers to determine only procedural issues of compensation, but not to elaborate different principles of compensating tax forecasts.

In the application it is stressed that Item 9 of the Transitional Provisions envisages compensation (to self-governments) of the difference between the anticipated Real Estate Tax and the actual realisation of the forecast for 1998. At the same time the disputable Regulations envisage compensating the difference between the initial forecast on Real Estate Tax and the specified forecast on Real Estate Tax, but not the difference between the planned Real Estate Tax revenues and its actual fulfilment.

In the application it is pointed out that the fixed amount of payment by the Riga Dome (Council) to the Equalisation Fund has been determined on the bases of Item 9 of the Transitional Provisions, which guarantees compensation for the unrealised Real Estate Tax. The Riga Dome has come to the conclusion that by passing the disputable Resolution, the Cabinet of Ministers has created the situation in which the Riga Dome is losing the envisaged guarantees to compensation.

At the Court session the authorised representative of the applicant – advisor of the Chairman of the Riga Dome on economic issues Sanita Šķiltere backed the claim. She pointed out that already before adoption of the Law "On the Equalisation of Local Government Finances" self-governments had objected to determination of the Forecast of Real Estate Tax. Reasons had been different: the really rapid process of cadastral evaluation, during which many mistakes had been made, alterations in the Tax Law and inaccurate registration of objects not to be taxed. Taking into consideration that it was the very first year of the Law being in effect, that officials were inexperienced and cadastral evaluation of estate was done in a hurry, the Cabinet of Ministers had suggested to guarantee the forecast of the tax.

The representative of the applicant pointed out that guarantee of the forecast of tax had been a necessity, because, just on the bases of the above forecast calculations on equalisation of self-government finances had been made. At the moment of adoption of the law "On the Equalisation of Local Government Finances", a constant subsidy to the Equalisation Fund had been envisaged in the already confirmed State Budget. If a really feasible forecast on tax to self-governments was established, then the subsidy from the State Budget should increase, demanding amendment of the Law "On the State Budget". Not to do it, Item 9 of the Transitional Provisions was passed.

At the Court session the witness- head of the Tax Office of the Riga Dome Department of Finances Valentīna Krompāne certified that the forecast of Real Estate Income Tax to self-governments had been mathematically inaccurate, infeasible and without the encashment coefficient.

Another witness – the Chairman of the Union of Municipalities- Andris Jaunsleinis- stressed that according to law, self-governments were not allowed to have budget deficit. When applying the disputable Resolution, deficit would arise, because "conditions independent from the activity of local authorities", which could influence realisation of the self-government budget, should be taken into consideration. At the Court session the witness enumerated "conditions independent from the activities of self-governments" which – to his mind – had not allowed to collect the Real Estate Tax: the state land reserve; free plots and

land without the owner; property from which the owners had relinquished; lands of insolvent and bankrupt owners; state enterprises to be privatised (and which in compliance with the law are not to be taxed), as well as state budget institutions.

- 3. The Cabinet of Ministers** in its written reply to the Constitutional Court points out, that in accordance with the law "On the Equalisation of Local Authority Finances" – Item 9 of the Transitional Provisions – the Cabinet of Ministers is entitled to determine the procedure of compensation for unrealised forecasted real estate tax

It is declared in the written reply that paragraph 6 of the disputable Resolution envisages to compensate the difference between initial forecast on Real Estate Tax and the specified forecast on Real Estate tax. It is stressed that the law does not stipulate compensating the difference between the forecast on the tax and its actual realisation. When establishing compensation for unrealised tax, the actual realisation of the Real Estate Tax shall not be taken into consideration as –in compliance with the Law "On Real Estate Tax" the self-government calculates the tax. Thus, the actual realisation of the tax forecast depends only on the activity of the self-government.

It is explained that the Law "On the Equalisation of Local Authority Finances" as well as the disputable Resolution envisages that self-governments together with the State Land Commission specify the initially forecasted Real Estate Tax, i.e. calculate and state cases which have groundlessly – and not depending on the activities of the self-governments– increased the forecast on tax for the self-government. Thus, the self-government receives compensation, namely, the difference between the initial forecast on the Real Estate Tax and the specified forecast.

At the Court session the representative of the Cabinet of Ministers – the head of the Office of the Budget Department of the Ministry of Finance supervising the financial activity of local authorities Signe Zeikate backed the viewpoint that the application was ungrounded and shall be rejected.

The representative of the Cabinet of Ministers stressed, that the Cabinet of Ministers, when passing the disputable Resolution has determined the procedure of submitting substantiated applications and the process of their reviewing, as well as the procedure of

compensation for unrealised forecasted tax. The Cabinet of Ministers in the disputable Resolution has especially envisaged determination of the specified forecast, because the actual realisation of the tax cannot be assessed during the financial year. In compliance with Item 2 of the disputable Resolution, on September 15 the local authorities shall submit a substantiated application for compensation for unrealised forecasted tax. Up to that time it is not possible to indicate the actual realisation of tax, as the time limit for paying tax is November 15.

The representative of the Cabinet of Ministers explained that the Law "On the Real Estate Tax" determines "conditions independent from the activity of the self-governments".

Evaluating conformity of the disputable Resolution with the first part, paragraph 2 and the second part of Article 14 of the Law "The Structure of the Cabinet of Ministers" and Item 9 of the Transitional Provisions of the Law "On the Equalisation of Local Government Finances"

The Constitutional Court concluded:

1. On the bases of Article 14, paragraph 2 of the Law "The Structure of the Cabinet of Ministers", the Cabinet of Ministers may issue normative acts- regulations, if the law specifically authorises the Cabinet of Ministers to do so. The authorisation shall formulate the main directions of the regulations' content. Thus, Regulations by the Cabinet of Ministers shall be passed on the bases of a specific authorisation, i.e. in compliance with the respective legal norm, which states that, the Cabinet of Ministers is entitled to pass regulations, required for application of the law.

Just such specific authorisation is included in Item 9 of the Transitional Provisions of the Law "On the Equalisation of Local Authority Finances". The legal norm of the above Law authorises the Cabinet of Ministers to issue Regulations and formulates the main directions of the regulations' content, namely:

1. The Regulations shall refer to self-governments, from which - because of conditions independent from the activities of the self-government- it is not possible to collect the Real Estate Tax anticipated in 1998 forecast.

The Regulations shall regulate the procedure of submitting substantiated applications to the Ministry of Finance and their reviewing;

2. The Regulations shall determine the procedure of compensating the unrealised forecasted Real Estate Tax.

Besides, in compliance with the second part of Article 14 of the Law "The Structure of the Cabinet of Ministers", the regulations shall not contradict the Satversme and the laws.

2. The Law "On the Equalisation of Local Government Finances" determines the general principles and the procedure of equalising local government finances. In conformity with Article 2 of the Law, the self-government finance equalisation system shall accomplish the equalisation of self-governments finances in order to create equal possibilities for self-governments to execute the functions established by law. At the same time socio-economic differences of self-governments shall be taken into consideration. The system shall encourage the initiative and independence of self-governments to create their own financial resources and to assure the protection of the financial activities of self-governments.

This objective shall be taken into consideration when interpreting the norms of the above law. Besides, when interpreting the Transitional Provisions, it shall be taken into account that features of application of the law, included in the Provisions, have been determined considering socio-economic conditions in the sphere of assessment of Real Estate tax.

In compliance of Article 7 of the Law in order to execute the equalisation of self-governments finances, the income valuation of each self-government is estimated. Besides, " Real Estate Tax for each self-government is forecast in accordance with official data of the State Land Survey on the cadastral value of the real estate within the territory of the self-government and is co-ordinated with the particular self-government in the procedure determined by the Cabinet of Ministers". However, forecast of Real Estate Tax for 1998 was not co-ordinated with self-governments as envisaged in Article 7 of the Law. And that is one of the reasons of establishing an inaccurate forecast.

3. Item 9 of the Transitional provisions of the Law "On the Equalisation of Local Government Finances" envisages

subsidies to compensate the unrealised - because of conditions independent from the activity of Local Government - forecasted real estate tax.

In the disputable Resolutions the Cabinet of Ministers has stressed that conditions independent from the activity of the Local government shall be non-taxable as regards the Real Estate Tax properties, which are determined in the second part of Article 1 of the Law "On Real Estate Tax". Thus, the Cabinet of Ministers, by interpreting the order of the legislator, expressed in Article 9 of the Transitional Provisions, in a narrow manner has not taken into consideration other normative acts, regulating collection of real estate tax. The above are legal norms, referring to all self-governments or to particular self-governments, e.g. both – Article 25 of the Law "On Taxes and Duties", that regulates paying off the taxes and duties and Article 30 of the Law "On Liepāja Specific Economic Zone", regulating discount of taxes in the Liepāja specific economic zone.

Besides, the disputable Regulations do not envisage the procedure of reviewing substantiated applications, during which to detect and, when calculating the amount of compensation, take into consideration conditions independent from the activity of the self-government, which do not permit to collect the real estate tax. Thus, the basic criterion for calculation of the real estate taxes anticipated in the forecast for 1998, and fixing compensation is not being taken into consideration.

Besides, when passing the disputable Regulations, the Cabinet of Ministers has violated authorisation stated in Article 9 of the Transitional Provisions of the Law "On the Equalisation of Local Government Finances". It has determined the procedure of compensating the difference between the initially calculated Real Estate Tax income anticipated in the forecast and the specified revenues anticipated in the tax forecast. However, it has not established the procedure of granting compensation for the unrealised forecasted real estate tax.

The Saeima, when on November 26, 1998 reviewing "Amendments to the Law "On the State Budget for 1998"", submitted by the Cabinet of Ministers and making decision on compensation for the unrealised forecasted real estate tax to self-governments, did not back the wording suggested by the Cabinet of Ministers. It envisaged calculating the difference between the initial forecast of tax and the

specified forecast to determine the compensation. Anticipating compensation for the unrealised forecasted real estate tax in the sum of 4,5 million lats, that ” was calculated to be the sum of unrealised real estate tax because of conditions independent from the activity of the self-government”, the legislator has once again affirmed the notion and objective of Article 9 of the Law ”On the Equalisation of Local Government Finances”, i.e. to compensate unrealised forecasted real estate tax because of conditions independent from the activity of the self-government.

Under Articles 30-32 set by the Constitutional Court Law

the Constitutional Court

DECIDED:

to declare the Cabinet of Ministers of the Republic of Latvia August 4, 1998 Regulations No. 294 ”On the Procedure of Compensation for Unrealised Forecasted for 1998 Real Estate Tax to Self-governments” **as not being in compliance** with the first part (paragraph 2) and the second part of Article 14 of the Law ”The Structure of the Cabinet of Ministers” and Item 9 of the Transitional Provisions of the Law ” On the Equalisation Of Local Government Finances” **and null and void from the moment of their adoption.**

The Judgment takes effect from the moment of its adoption. The Judgment is final and allowing of no appeal.

The Judgment was announced on December 9, 1998.

The Chairman of the Court Session of the Constitutional Court	A.Endziņš
Justice of the Constitutional Court	R.Apsītis
Justice of the Constitutional Court	I.Čepāne
Justice of the Constitutional Court	A.Lepse
Judge of the Constitutional Court	I.Skultāne
Judge of the Constitutional Court	A. Ušacka