



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT in the name of the Republic of Latvia

**Riga, February 23, 1998**

**on case Nr.04 - 04 (97).**

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Romāns Apsītis, Ilma Čepāne, Andrejs Lepse, Ilze Skultāne, Anita Ušacka and the secretary of the Court session Inese Rimdžus

in the presence of the representatives of the party that has submitted the application, namely, the Chairman of the Aizkraukle city Dome (Council) of municipality A.Antāns and the Chairman of the Ādaži pagasts Council N. Breidaks

as well as the head of the Department of Taxes, the assistant of the director of the Taxes Policy Department D.Robežniece ,who represented the Ministry of Finance -the institution that issued the normative act which is disputed,

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

in a public hearing on February 11, 1998 reviewed the case

**” On Conformity of Regulations of the Cabinet of Ministers No. 322 of 16 September 1997 ”Regulations on the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997” with the law ” On Budget and Financial Management””.**

The Constitutional Court established:

The applicant questions conformity of Regulations No. 322 "Regulations on the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997"(hereinafter referred to as Regulations No. 322), passed by the Cabinet of Ministers on September 16, 1997 with the first part of Article 41 and the first part of Article 42 of the law "On Budget and Financial Management".

Regardless of the fact, that the disputed Regulations No. 322 are already null and void at the moment of the review of the case, the Constitutional Court has all the rights to review the case on its merit.

Article 2 (part 1, paragraph 3) of the law " On Equalisation of Municipality Finances", adopted on December 19, 1996 establishes, that net income of the Equalisation Fund of Municipalities is constituted also from "property income, namely, 31,85 % of it i.e. about 4 300 000 lats".

On February 20, 1997 the law " Amendments to the law "On Property tax"" was passed. The second part of Article 5 of the law "On Property Tax" was expressed in the following wording: "Property tax payment is to be included into the budget of that city or pagasts municipality where the property is located and into the Equalisation Fund of Municipalities under procedure set by the Council of Ministers and according to the law: "On Equalisation of Municipality Finances in 1997". The above law " Amendments to the law " On Property Tax" " establishes that the Regulations shall be applied when drawing up and paying property taxes from January 1, 1997.

On September 16,1997, on the basis of the second part of Article 5 of the law "On Property Tax", the Cabinet of Ministers passed Regulations No.322, that determined the procedure of payment of part of property tax income into the Municipal Finance Equalisation Fund. Paragraph 2 of the Regulations establishes, that the Territorial Department of the State Revenue Service, before transferring the payment of part of property tax income into the budget of the respective Municipality, shall withhold the sum, set by Paragraphs 5 and 6 of the Regulations, to be transferred into the Fund. Paragraph 5 of the above Regulations envisaged, that in September of 1997, 70,3% of all the property taxes, actually collected in September, shall be transferred into the Fund. Paragraph 6, in its turn, established that the ratio of the sum to be transferred into the Fund during the last three months of the year shall be announced by the Minister of Finance by the 15.th date of every month.

The Ministry of Finance in its official announcement of October 8, 1997 established, that 70,3 % of the property tax income shall be transferred into the Fund in October. However, in his official announcements of November 10 and December 9, the Minister of Finance declared, that the payment of part of income from the above tax for November shall be 43,7%, but in December - 65%.

On October 9, 1997 the law "Amendments to the law "On Equalisation of Municipal Finance in 1997"" was passed. Article 2 (part 1, paragraph 3) of the law "On Equalisation of Municipal Finance in 1997" was expressed in the following wording: "part of property tax income, namely, 16,63%, but not more than 3 857 512 lats". At the same time Article 3 was supplemented with part 6, establishing that "procedure of transferring the payment of part of property tax income into the Municipal Finance Equalisation Fund and allocation of tax among Municipalities and the Municipal Finance Equalisation Fund shall be determined by the Cabinet of Ministers."

On November 27, 1997 the **Aizkraukle** city Dome (Council) of municipality, but on December 12, 1997 the **Ādaži** pagasts Council submitted an application to the Constitutional Court of the Republic of Latvia, petitioning to abrogate Regulations No. 322, considering that the Regulations are at variance with the first part of Article 41 and the first part of Article 42 of the law "On Budget and Financial Management".

Applicants pointed out that by implementing the demands of Regulations No. 322, passed on September 16, 1997, that is three months before the end of the year, big sums of money have been deducted from the budgets of the respective municipalities and transferred into the Municipal Finance Equalisation Fund, thus creating unforeseen financial difficulties for the above municipalities. Besides, deductions for the payment of part of property tax income into the Municipal Finance Equalisation Fund exceeded 16,63% set by law. 19,4% of the Aizkraukle city Dome of municipality property tax income and 21,86% of the Ādaži pagasts municipality property tax income have been transferred into the Municipal Finance Equalisation fund.

At the Court session the representative of the Aizkraukle city Dome stressed, that the fact that the Minister of Finance determined the percentage of payment of property tax income for the last three months of the year, had not allowed them to plan their monthly income and expenditure and, to his opinion, was at variance with the first part of Article 41 of the law "On Budget and Financial Management" and with the basic principles of the law "On Municipality Budgets".

Besides, he pointed out, that Regulations No.322 give the Minister of Finance the right to determine the part of property tax to be transferred into the Municipal Finance Equalisation Fund in the last quarter of the year. And this is not in compliance with the law "On Property Tax" as the law establishes that only the Cabinet of Ministers shall determine the above procedure.

Representatives of the complainants also pointed out, that up to September 16, 1997, the only indicator on payment of part of property tax income into the Equalisation Fund of Finance was the phrase of Article 2 (part 1, paragraph 3) of the law:"On Equalisation of Municipal Finance in 1997", namely: " 31,85% of the property tax income i.e. 4 300 000 lats.

They were also of the opinion, that the above norm could not be referred to all municipalities, because the first supplement of the law (Chapter 1, paragraph 2) establishes that when prognosticating financial income of municipalities "in 1997 every municipality shall prognosticate income from income tax, land tax and property tax". As concerns income tax of the inhabitants, Article 7 of the law " On 1997 State Budget" determines that 71,6% of the income tax is to be transferred into the pagasts or city budget. Nothing has been determined as to the percentage of the property tax income. Representatives of the applicants also pointed out that only on October 9, 1997, the first supplement of the law " Amendments to the law "On Equalisation of Municipal Finance in 1997"" (Chapter 1, paragraph 2) established that for needs of financial estimates every municipality is prognosticated to receive the land tax income, part (71,6%) of the income tax of the inhabitants and part (83,37%) of the property tax income."

At the Court session the representatives of the applicants explained that under the existing procedure of tax assessment, municipalities themselves did not settle payment of part of property tax income into the Municipal Finance Equalisation Fund. Property tax was transferred into the assessment fund, indicated by the State Revenue Service. In its turn, the State Revenue Service divided the property tax in conformity with the existing laws. Thus, municipalities had all the rights to consider that they had received only that part from the Property Tax Assessment Fund that was their due.

The representative of the Ādaži pagasts Council expressed a viewpoint, that laws, establishing rights and amount of the municipality budget, as well as Regulations passed on the bases of the above laws shall not have retrospective rule.

**The Cabinet of Ministers** in its written replies stresses the fact that Regulations 322 were worked out on the basis of two laws, namely- the law "On Equalisation of Municipal Finance in 1997" (Article 2, part 1) , passed on December 19, 1996, and on Article 4 of the law "Amendments to the law "On Property Tax"", passed on February 20 , 1997. The latter established, that the property tax shall be transferred into the budget of that city or pagasts municipality where the property is located and into the Municipal Finance Equalisation Fund under procedure set by the Cabinet of Ministers.

It is also pointed out that the Saeima has authorised the Cabinet of Ministers to determine the procedure of transferring property tax into the Municipal Finance Equalisation Fund ("Amendments to the law "On Property Tax"") for the whole 1997.

The Cabinet of Ministers explains that adoption of Regulations has been delayed by the prolonged elaboration of the law "On Equalisation of Municipal Finance in 1997". As the Regulations envisaged to cut down the payment of part of property tax income into the Municipal Finance Equalisation Fund and repeatedly to authorise the Cabinet of Ministers to confirm the procedure of transferring payment of part of property tax, established by the law, into the above fund, elaboration of the Regulations was subordinated to adoption of Amendments to the law.

The Cabinet of Ministers points out that percentage of deduction depended on the fact if any or what amendments to the law "On Equalisation of Municipal Finance in 1997" were passed by the Saeima . Therefore the Cabinet of Ministers, when adopting Regulations, established the part of property tax income to be transferred into the Municipal Finance Equalisation Fund only for September, envisaging to change the percentage of deduction, taking into consideration the real income from the property tax payment as compared to the estimated one and changes in the established percentage of payment of part of property tax income, determined by the law "On Equalisation of Municipal Finance in 1997."

The Cabinet of Ministers stresses that just the law "On Budget and Financial Management", the applicants used to refer to, in its Article 41 (part 3) establishes: "Rights and amount of the municipality budget shall be established by special laws". Thus it is binding for any municipality, when drawing up its budget, to take into consideration not only the general legal norms of the law "On Budget and Financial Management", but other laws, considered to be particular legal norms, as well e.g. law "On Equalisation of Municipal Finance in 1997".

The Cabinet of Ministers is of the opinion, that by passing the law "On Equalisation of Municipal Finance in 1997", the legislator in the first part of Article 2 of the law has in fact stated that any municipality-in the time of the financial year- has to transfer part of its budget- part of property tax income, namely, 31,85% into the Municipal Finance Equalisation Fund. To their mind, it means that any municipality had to provide for special expenses- payment (deduction) from property tax income into the Municipal Finance Equalisation Fund.

In an answer to the objection expressed by the representatives of applicants, who pointed out that deductions from property tax income into the Municipal Finance Equalisation Fund in 1997 have exceeded 16,63% (established by law), the Ministry of Finance in its letter has explained that the exceeded sum will be paid back in proportion to payment. The representative of the Cabinet of Ministers stressed that the State Revenue Service was summing up information to estimate what part of the transferred payment from property tax income had to be paid back into the municipality budget in 1998.

The representative of the Cabinet of Ministers explained, that municipalities, when drawing up its budget and to the moment of the "Amendments to the law "On Property Tax"" becoming effective i.e. up to March 6,1997 should have planned deductions from the property tax income either on the income side or on expenditure side, and the Amendments becoming effective - as decrease of income.

**The Constitutional Court**, evaluating compliance of Regulations No. 322 with the first part of Article 41 and the first part of Article 42 of the law "On Budget and Financial Management" as well as with other laws,

**came to the conclusion:**

1. Article 41 (part 1) of the law "On Budget and Financial Management" establishes that " municipalities have the right to independently draw up and confirm their budget", but the first part of Article 42 determines that " municipalities have the right to budget income, based on laws, to provide for regular and safe income, meeting the demands of macro-economic stability."

The above norms provide for the principles of independence and stability of municipality budget rights. The same principles are expressed in the law "On Municipality Budgets". Article 3 of the law states, that municipalities draw up, confirm and realise their budgets independently, taking into consideration laws and Regulations by the Cabinet of Ministers. The second part of Article 7 establishes, that institutions of the

State Administration have no right to interfere in the process of elaboration and realisation of the municipality budget, if the law does not consider it otherwise. Thus, municipalities, when exercising the principles of independence and stability as to budget rights, have to observe the existing laws.

Municipality budget rights are established not only by the law "On Budget and Financial Management", but also by laws "On Municipality Budget", "On Municipalities (Local Authorities)", "On Equalisation of Municipal Finance in 1997", "On Property Tax" and other laws. All the above laws shall be considered as a whole and applied, taking into account the law "On the Procedure of Proclaiming, Publishing, Becoming Effective and Being Valid of the Laws and Other Acts Passed by the Saeima, the President of the State and the Cabinet of Ministers".

In comparison with the laws "On Equalisation of Municipal Finance in 1997", and "On Property Tax", the law "On Budget and Financial Management" is not the legal norm of higher force. The first part of Article 41 and the first part of Article 42 of the law "On Budget and Financial Management", include general legal norms, but the laws "On Equalisation of Municipal Finance in 1997" and "On Property Tax" - norms that are considered to be specific legal norms.

The amount of the budget income, the municipalities have the right to receive from the property tax, is established by the laws "On Property Tax" and "On Equalisation of Municipal Finance in 1997".

At the beginning of the financial year two laws contradicted one another: the second part of Article 5 of the law "On Property Tax"(wording of March 30, 1995) established, that the whole property tax was to be transferred into the budget of that municipality where the property was located, but Article 2 (part 1, paragraph 3) of the law "On Equalisation of Municipal Finances in 1997", passed on December 19,1996 determined that income of the Municipal Finance Equalisation Fund was constituted also from payment of property tax income , namely, 31,85% of the property tax income. In compliance with the second part of Article 8 of the law "On the Procedure of Proclaiming, Publishing, Becoming Effective and Being Valid of the Laws and Other Acts Passed by the Saeima, the President of the State and the Cabinet of Ministers", the norms of the most recent law are to be applied. Therefore municipalities, while independently drawing up and confirming their budgets for 1997, had to take into consideration Article 2 (part 1, paragraph 3) of the law " On Equalisation of Municipal Finance in 1997".

The law "Amendments to the law "On Property Tax"", adopted on February 20, 1997, that became effective on March 6, 1997, eliminated the above contradiction. The law established, that property tax was to be transferred into the budget of that city or pagasts municipality, where the property was located, and into the Municipal Finance Equalisation fund in compliance with the law "On Equalisation of Municipal Finance in 1997". The above law envisages that Regulations shall be applied when estimating and paying the property tax for the period, starting with January 1.st, 1997. Thus, the Saeima had passed the law with a retrospective force. However, that is not in variance with the law "On the Procedure of Proclaiming, Publishing, Becoming Effective and Being Valid of the Laws and other Acts, Passed by the Saeima, the President of the State and the Cabinet of Ministers", as Article 9 of the above law permits -in special cases foreseen by law - to apply laws with a retrospective force.

Thus, the municipalities, when drawing up their budget for 1997, were not authorised- either up to March 6, 1997 or after that - to plan to include the whole income from the property tax into their budget. They had to plan payment of part of property tax income -31,85% - into the Municipal Finance Equalisation Fund. However, on April 10, 1997, the Aizkraukle City Dome (Council), when confirming the city budget and the Ādaži pagasts Council, when confirming the pagasts budget on February 19, planned to make use of the whole income from the property tax payment for the needs of the municipality.

The above law "Amendments to the law " On Property Tax"" establishes that the procedure of transferring the property tax income into the city or pagasts municipality budget and into the Municipal Finance Equalisation Fund shall be determined by the Regulations of the Cabinet of Ministers

However, the Cabinet of Ministers delayed promulgation of the Regulations up to September 16, 1997 and up to that date, the whole income from the property tax was transferred into municipality budgets. Still, the fact did not give municipalities the right to consider that they shall not have to transfer part of property tax income into the Municipal Finance Equalisation Fund. Besides, in compliance with Article 5 of the law " On Municipality Budget", municipality budget is to be drawn up for a financial year, not for separate months.

The law "Amendments to the law " On Property Tax"" did not set a certain date up to which the Cabinet of Ministers had to determine the procedure of transferring property tax payment into the city or pagasts municipality budget and into the Municipal Finance Equalisation Fund. At the same time, that does not mean that the Cabinet of Ministers had the

right to delay adoption of the respective Regulations. The Cabinet of Ministers - as an executive institution -had the obligation to see to immediate implementation of the law and, as the law refers to the whole year of 1997, to pass the respective Regulations in the shortest possible time.

Reference by the Cabinet of Ministers to the fact, that elaboration of the above Regulations has been subordinated to the draft law "Amendments to the law " On Equalisation of Municipal Finance"" that had to be discussed at the Saeima, is to be considered as a lame excuse, as the duty of the Cabinet of Ministers is to implement all the existing laws.

According to Regulations of the Ministry of Finance (paragraph 2.2.1.), one of its basic functions as to the tax policy is " to elaborate projects of normative acts for improvement of the tax and duty system in compliance with the economic and fiscal interests of the state". In this case, the Ministry did not accomplish the task.

The Ministry of Finance and the State Revenue Service had to take into consideration, that the laws " On Equalisation of the Municipal Finance in 1997" and " On Property Tax" establish the fact, that property tax income shall be transferred both into the municipality budget and the Municipal Finance Equalisation Fund. The State Revenue Service, ignoring the above laws, transferred the whole property tax income into the municipality budgets.

The fact, that the Cabinet of Ministers delayed implementation of the law " On Property Tax" in due time, did not provide for regular payment of part of the property tax income into the Municipal Finance Equalisation Fund.

Even though idleness of the Cabinet of Ministers in delaying adoption of the respective Regulations is inadmissible, it does not give any right to the municipalities to ignore the legal norms and make use of the whole income from the property tax. Besides, the above idleness by no means serves as a reason to consider that the Cabinet of Ministers had lost their right to determine the procedure of transferring the property tax into the municipality budget and into the Municipal Finance Equalisation Fund in September of 1997.

The legislator has repeatedly expressed its will on distribution of property tax, when passing the law "Amendments to the law " On Equalisation of Municipal Finance"" on October 9, 1997. By the same law the payment of part of property tax income into the Municipal Finance Equalisation Fund was reduced.

Thus, there is no reason to regard, that Regulations No.322 are not in compliance with the first part of Article 41 and the first part of Article 42.

2. Article 14 (part 1, paragraph 2) of the law "The Structure of the Cabinet of Ministers" establishes, that the Cabinet of Ministers is authorised to pass normative acts - Regulations - in case if the law entitles them to do so. The law "On Property Tax" determined that "property tax shall be transferred into budget of that city or pagasts where the property is located, but into the Municipal Finance Equalisation Fund in accordance with the law "On Equalisation of Municipality Finance in 1997" under procedure, set by the Cabinet of Ministers.

In conformity with the above norms, the Cabinet had both - the right and the obligation to establish the procedure, but it had no right to authorise any other institution to determine the procedure of payment, as the law did not envisage it. The Latvian legal science points out, that "only the institution that is authorised by law to do so, shall pass regulations, but it cannot hand over the right to any other institution". (K.Dišlers. Introduction into the Science of Administrative Law, R., 1938, page 207).

However, paragraph 6 of Regulations 322 envisaged, that "up to the 15<sup>th</sup> date of every month of the last quarter of the year, the Minister of Finance shall determine the percentage of payment of property tax income into the Fund". Thus the Cabinet of Ministers authorised the Minister of Finance to pass a normative act, although only the Cabinet itself was authorised to do it.

The act, establishing procedure of transferring payment of part of property tax income into the Municipal Finance Equalisation Fund, is a normative act. Article 15 of the law "The Structure of the Cabinet of Ministers" establishes that a minister has the right to pass normative acts - binding instructions or recommendations - binding only to subordinated institutions.

Thus, paragraph 6 of Regulations No. 322 was in variance with the second part of Article 5 of the law "On Property Tax" and Article 15 of the law "The Structure of the Cabinet of Ministers".

At the same time, it cannot serve as a reason of not observing the established procedure of distribution of property tax, set by laws "On Property Tax" and "On Equalisation of Municipality Finance in 1997".

**On the basis of Articles 30.-32. of the Constitutional Court Law**

## the Constitutional Court

### decided:

1. Regulations of the Cabinet of Ministers No. 322 of September 16, 1997 " Regulations on the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997" **are in compliance** with the first part of Article 41 and the first part of Article 42.

2. Paragraph 6 of Regulations No. 322 of the Cabinet of Ministers of September 16, 1997 " Regulations on the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997 " **is at variance** with Articles 14 (part 2) and 15 of the law " The Structure of the Cabinet of Ministers" and Article 5 (part 2) of the law "On Property Tax" and **is declared null and void** from the moment of its adoption.

The Judgment becomes effective from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on February 23, 1998.

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