



Satversmes tiesa

Press release

Case No. 2020-24-01

29.09.2022

The Constitutional Court terminates proceedings in the case regarding the norm providing for the application of value added tax to the compulsory lease of land

On 29 September 2022, the Constitutional Court adopted a decision on termination of legal proceedings in Case No. 2020-24-01 "On Compliance of Section 1, Clause 14, Sub-clause "c" of the Value Added Tax Law, Insofar as it Applies to the Leasing of Land in Cases of Compulsory Lease, with the First Sentence of Article 91 and the First, Second and Third Sentences of Article 105 of the Satversme of the Republic of Latvia".

THE CONTESTED NORM

Section 1, Clause 14, Sub-clause "c" of the Value Added Tax Law:

"For the purposes of this Law the leasing of property shall also be considered the supply of services."

NORMS WITH A HIGHER LEGAL FORCE

- The first sentence of Article 91 of the Constitution of the Republic of Latvia (hereinafter – the Constitution): "All human beings in Latvia shall be equal before the law and the courts."
- First, second and third sentences of Article 105 of the Satversme: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law."

THE FACTS OF THE CASE

The case has been initiated on the basis of applications by the Joint-Stock Company "Pilsētas zemes dienests" and the Joint-Stock Company "Zemes īpašnieku gilde" (hereinafter referred to also as – the applicants). The applicants are registered in the State Revenue Service's register of value added tax payers, and state that they own land on which structures belonging to other persons are located, thus creating a legal relationship of compulsory lease of land. According to the contested norm, compulsory lease relations are to be regarded as a service subject to value added tax. As the applicants were unable to reach an agreement with the owners of the structures on the compulsory lease fee of the land, they applied to the court for the recovery of the lease rent and the value added tax due thereon from the owners of the structures. The court dismissed the claim in the part of recovery of value added tax from the owners of the structures.

The applicants are of the opinion that they, as owners of land, cannot be obliged to pay value added tax on the remuneration for compulsory lease of land, since in such case the contested norm would significantly reduce the total income which the owner of the land gains from the lease of their own property. Such a procedure also violates the principle of legal equality, since persons who are not registered in the State Revenue Service register of value added tax payers are not obliged to pay value added tax on compulsory lease of land under comparable circumstances. There is allegedly no objective and reasonable basis for such a difference in treatment, and it is allegedly not proportionate.

CONCLUSIONS OF THE COURT

The Constitutional Court concluded that the main issue in the case was the obligation to pay value added tax on land lease. Therefore, the Constitutional Court first of all assessed compliance of the contested norm with the first, second and third sentences of Article 105 of the Satversme, and subsequently examined whether the contested norm complied with the first sentence of Article 91 of the Satversme.

The Constitutional Court established that the Saeima had indicated in its replies considerations which could be grounds for termination of legal proceedings in the case. In particular, the Saeima stated that:

1) The infringement of the applicants' right to property does not arise directly from the contested norm;

- 2) The applicants have not exercised all the possibilities to defend their fundamental rights infringed by means of general legal remedies;
- 3) the Joint-Stock Company "Zemes īpašnieku gilde" have allegedly missed the deadline for submitting a constitutional complaint to the Constitutional Court.

The Constitutional Court concluded that the contested norm resulted in a restriction of the fundamental rights included in the first, second and third sentences of Article 105 of the Satversme, as well as the submission of an application to the administrative court in the present case could not be regarded as a possibility to defend one's rights by means of general legal remedies. Consequently, the Constitutional Court recognised the first two considerations indicated by the Saeima on termination of legal proceedings in the case unfounded.

However, the Constitutional Court recognised that the argument of the Saeima that the Applicants had missed the deadline for filing a constitutional complaint was well-founded. Namely, the Constitutional Court concluded that the contested norm was imperative and formulated in an unambiguous manner, it did not allow for exceptions, and the Applicants were in a typical situation for its scope. From the case file and the Court Information System the Constitutional Court concluded that the Applicants had provided services within the framework of compulsory land lease relations and were aware that the land lease fee was subject to value added tax for more than six months before they applied to the Constitutional Court.

Taking into account the aforementioned, the Constitutional Court terminated the proceedings in the case in the part concerning compliance of the contested norm with the first, second and third sentences of Article 105 of the Satversme.

When assessing compliance of the contested norm with the first sentence of Article 91 of the Satversme, the Constitutional Court concluded that the contested norm did not entail such legal consequences that were indicated by the Applicants, and did not infringe the Applicants' right to legal equality.

Thus, the Constitutional Court terminated the proceedings in the case also in the part concerning compliance of the contested norm with the first sentence of Article 91 of the Satversme.

- The Constitutional Court resolved:

To terminate legal proceedings on compliance of Section 1, Clause 14, Sub-clause "c" of the Value Added Tax Law, insofar as it applies to the leasing of land in cases of compulsory lease, with the first sentence of Article 91 and the first, second and third sentences of Article 105 of the Satversme of the Republic of Latvia".

The decision is not subject to appeal.

Text of the decision is available on the website of the Constitutional Court:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/05/2020-24-01_lemums_par_tiesvedibas_izbeigsanu.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. More detailed information on the latest developments, cases opened and examined by the Constitutional Court is available on the website of the Constitutional Court www.satv.tiesa.gov.lv. We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and the Court's *YouTube* **channel**.

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A video on the Constitutional Court.