



The norms that set the threshold values of environmental noise of open-air moto racing tracks are incompatible with a person’s right to health and the right to live in a benevolent environment

On 19 December 2017, the Constitutional Court passed the judgement in case No. 2017-02-03 “On Compliance of Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 “Procedure for Assessing and Managing Noise” with Para 7 of Section 3 and Section 18¹ (3) of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia, as well as Sub-para 2.4. of this Regulation, insofar it Applies to Public Auto and Moto Sports Events which are Held in Open-air Auto and Moto Racing Tracks Located in a Populated Area (City or Village) and for which a Permit for Organising a Public Event has been Issued in the Procedure set out in the Law on Safety of Public Entertainment and Festivity Events with Para 7 of Section 2 of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 “Procedure for Assessing and Managing Noise” (hereinafter – the Regulation No. 16) defines the threshold values of environmental noise of open-air moto racing tracks in populated areas. The admissible range of noise is from 65 dB (A) to 75 dB (A). The contested norm also provides that the noise caused by an open-air auto and moto racing tracks is assessed by using only the threshold values of environmental noise, without assessing noise indicators inside premises.

Para 2.4. of the Regulation No. 16 provides that Regulation No. 16 is not applicable to public events, which have been approved by the local government pursuant to Law on Safety of Public Entertainment and Festivity Events, i.e., a permission has been obtained for organising such events.

Norms of Higher Legal Force

Article 111 of the Satversme: “The State shall protect human health and guarantee a basic level of medical assistance for everyone.”

Article 115 of the Satversme: “The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.”

Para 7 of Section 2 of the law “On Pollution” provides that the purpose of this Law is to prevent or reduce harm caused to human health, property or the environment due to pollution, to eliminate the consequences of harm caused, as well as to prevent or reduce the effects of environmental noise upon human beings.

Section 18.¹ (3) of the Law “On Pollution”:

“The Cabinet shall determine:

- 1) the noise indicators, the procedures for the application thereof and assessment methods;
- 2) the requirements and time periods for the noise mapping, as well as the development of strategic noise maps and action plans for noise reduction;
- 3) the assessment methods for the harmful consequences of environmental noise;
- 4) the procedures by which co-operation with neighbouring states in the assessment and reduction of environmental noise shall be implemented (if a transboundary impact has been observed);
- 5) the information to be issued to the public and the European Commission regarding environmental noise, the procedures for the issuing thereof and time periods, as well as the procedures by which the public shall be involved in the development of action plans for the reduction of noise.”

The Facts

The Constitutional Court received two applications, which contained similar considerations and similar legal substantiation. Therefore, to facilitate comprehensive and swift adjudication of cases, the case, which was initiated on the basis of an

application submitted by the Administrative District Court, and the case, which was initiated on the basis of an application by the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman), were joined and examined in one case.

A person, living in the vicinity of Kandava karting circuit, had turned to the Administrative District Court. She requested, *inter alia*, revoking of the decision by the Kandava Regional Council to renew operation of the circuit, maintaining that the noise caused by the activities performed in the circuit had adverse impact upon the living conditions of the inhabitants in its vicinity and significantly infringed upon persons' right to live in a benevolent environment and also had a harmful effect on persons' health.

The operation of the Kandava karting circuit was suspended in 2014, as it did not meet the requirements on admissible level of noise defined by the Regulation No. 16 that was in force at the time. However, in 2015 amendments were introduced to the Regulation No. 16, envisaging higher threshold values of admissible noise, as the result of which the operations of the karting circuit were renewed.

The Ombudsman, in the framework of a verification case, also had identified deficiencies in the legal regulation on evaluating and managing environment. The Ombudsman had repeatedly turned to the Cabinet and recommended elimination of the identified deficiencies with a set term; however, these deficiencies had not been eliminated.

Both Applicants hold that the Cabinet has not implemented due measures for limiting noise. Moreover, the Ombudsman holds that the Cabinet, by Sub-para 2.4 of the Regulation No. 16, insofar it applies to public auto and moto racing events held in an open-air auto and moto racing tracks located in a populated area and for the holding of which a permission has been issued for organising public events, has not implemented due measures to ensure protection of a person's fundamental rights. The Ombudsman also noted that the Cabinet, by defining the admissible threshold values of environmental noise in Para 2 of Annex 2 to the Regulation No. 16, exceeded the authority granted to it by the legislator.

The Applicants hold that restricting and controlling the level of noise fall within the scope of Article 111 and Article 115 of the *Satversme*; moreover, that the State has a positive obligation to ensure such environmental conditions that would guarantee a person's right to health.

The Applicants hold that the Cabinet, contrary to the World Health Organisation's guidelines, has set such threshold values of noise that cause high risks with respect to persons' health. Thus, the contested norms are said to restrict a person's right to health and the right to live in a benevolent environment that have been enshrined in the *Satversme*.

The Court's Findings and Ruling

On examining the contested norms as a united legal regulation

The Constitutional Court pointed out that Sub-para 2.4. of the Regulation No. 16 and Para 2 of Annex 2 to the Regulation No. 16 were linked to threshold values of noise allowed in populated areas or an exception to application of these threshold values, therefore, to the extent possible, the Constitutional Court examined the contested norms as a united legal regulation. [15.]

On the scope of Article 111 and Article 115 of the *Satversme*

The Constitutional Court found that the right to health, included in Article 111 of the *Satversme*, comprised, *inter alia*, also the right to healthy environmental conditions. Noise, as environmental pollution, influences the quality of environment, in which a person resides. By spreading in environment, it can inflict damage upon a person's health. Therefore, the right to live in a benevolent environment comprises also the right to healthy environmental conditions. [16.]

Article 115 of the *Satversme*, similarly to Article 111, defines also the obligation of the State to protect a person's health. Although these norms define the State's obligation in

the field of protecting a person's health differently, both these fundamental rights are applicable to protecting a person's health against environmental pollution – noise. [16.]

The Constitutional Court concluded that the constitutionality of the contested norms should be assessed by examining Article 111 and Article 115 in their interconnection. [16.]

On assessing the positive obligations of the State

In verifying, whether the State has performed the positive obligations, which followed from a person's right to health and the right to live in a benevolent environment, the Court examined, whether the State had implemented measures aimed at ensuring and protecting these fundamental rights, and also if these obligations had been performed in due procedure.

Whereas in examining, whether these measures had been implemented in due procedure, it is assessed, whether in protecting a person's right to health, principles of environmental law had been abided by and whether the interests of all stakeholders had been balanced. [17.]

The legislator has granted to the Cabinet of Ministers the competence to regulate the threshold values of noise in open-air auto and moto racing tracks located in populated areas, as well as to define the methods for assessing noise indicators. The Cabinet, in issuing Para 2 of Annex 2 to the Regulation No. 16, has acted within the authorisation granted by the legislator. The Court also found that the contested norms had been adopted and made publicly accessible in accordance with requirements set in regulatory enactments. [18.1.1., 18.1.2., 18.2.]

The Constitutional Court noted that the legislator and the Cabinet had implemented measures aimed at ensuring and protecting a person's right to health and the right to live in a benevolent environment. [18.3.]

On legal principles

In a democratic state governed by the rule of law, positive measures, duly implemented by the State, which follow from a person's right to health and the right to live in a benevolent environment, are such, where the assessment made by the institution adopting the legal norm, first and foremost, is aimed at protecting the human being as the supreme value. It comprises also human dignity, which has to be protected and ensured simultaneously. The right to live in a benevolent environment primarily protects a person, his interests, i.e., the possibilities for a person to live in an environment, in which he can function and develop in full, in conformity with human dignity. [19.1.]

The Constitutional Court drew attention to the fact that the Cabinet has set higher admissible threshold values of noise for open-air moto racing tracks compared to other sources of noise that are less harmful. However, the Cabinet has considered and substantiated on its merits, why this obligation set for the owners or possessors of such moto racing tracks - to ensure appropriate noise silencers and to zone off the territories with increased noise with noise silencing objects – since the coming into force of Para 2 of Annex 2 to the Regulation No. 16 is linked to already elevated threshold values of environmental noise. [19.3.]

The noise, which is allowed by the contested norms, is not only close to noise that causes harmful consequences to a person's health, but in some cases even higher than that and is higher than the threshold noise values set by the World Health Organisation. Although specific rules apply to auto and moto sports and activities, in accordance with the contested norms, a person living in the vicinity of racing tracks may be subject for the whole week to the noise of such level that has a harmful effect upon his health. Whereas during competitions, which are held on holidays, the level of noise is not restricted at all. [19.3.]

It does not follow from materials related to drafting and adopting Para 2 of Annex 2 to the Regulation No. 16, in interconnection with Sub-para 2.4. of these Regulations, that the Cabinet, in defining the regulation on assessing and managing noise with respect to

open-air auto and moto racing tracks located in populated areas, had considered the possible harmful consequences caused by the respective noise. [19.3.]

In a democratic state governed by the rule of law the precautionary principle requires that real and actual harm caused to human health should not be awaited for and that substantiated doubt regarding possibility of such harm is sufficient for the State to take timely, effective and proportionate measures to prevent the occurrence of harm. Thus, the Cabinet, by adopting the contested norms has not acted in compliance with the precautionary principle, ensuring and protecting human dignity as the supreme value of a democratic state governed by the rule of law. [19.3.]

On balancing the stakeholder's interests

In assessing, whether the stakeholders' interests have been balanced, the Court found that the Cabinet had issued Para 2 of Annex 2 to the Regulation No. 16 mainly to facilitate organising of international auto and moto sports competitions in Latvia. [20.]

Whereas due assessment that complies with the principle of justice and is aimed at protecting human dignity means that the interests of stakeholders have been considered and balanced, perceiving each person as the supreme value in a democratic state governed by the rule of law. In adopting legal norms, which can have substantial impact on a person's right to health and the right to live in a benevolent environment, the Cabinet has the obligation to consider, in the framework of due procedure, not only economic and other lawful interests, but also the possible harmful impact upon human health. [20.]

The Constitutional Court drew attention to the fact that noise assessment and management was a set of issues that required complex solution and of measures that could not be aimed only at the prevailing interests of one group of persons. [20.]

Duly implemented measures for ensuring and protecting a person's right to health and the right to live in a benevolent environment are such that comprise not only preventive assessment by the Cabinet that complies with human dignity and the precautionary

principle and is aimed at predicting harmful consequences and possible reduction of these, but also fair balancing of the stakeholders interests. [20.]

The Constitutional Court recognised that the Cabinet had not implemented in due procedure the measures that were required to ensure that a person's right to health and the right to live in a benevolent environment were protected. [20.]

The Constitutional Court found that the contested norms were incompatible with Article 111 and Article 115 of the *Satversme*, therefore compliance of the contested norms with Para 7 of Section 2 of the law "On Pollution" was not examined. [20., 21.]

At the same time, the Constitutional Court also provided that Para 2 of Annex 2 to the Regulation No. 16 was to be recognised as being invalid with respect to the applicant – Elza Freiberga – as of the moment, when the violation of her fundamental rights occurred, i.e. as of the date when Para 2 of Annex 2 to the Regulation No. 16 was applied. [22.]

The Constitutional Court decided:

To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 "Procedure for Assessing and Managing Noise" as being compatible with Section 18¹ (3) of the Law "On Pollution".

To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 "Procedure for Assessing and Managing Noise", as well as Sub-para 2.4. of this Regulation, insofar it applies to public auto and moto sports events which are held in open-air auto and moto racing tracks located in a populated area (city or village) and for which a permit for organising a public event has been issued in the procedure set out in the Law on Safety of Public Entertainment and Festivity Events as being incompatible with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia.

To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 "Procedure for Assessing and Managing Noise" with respect to the applicant in the

administrative case No. A420346615 – Elza Freiberga – as being incompatible with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia and invalid as of the date when the infringement on her fundamental rights occurred.

The Judgement by the Constitutional Court is final and not subject to appeal, it enters into force on the day it is published.

The text of the Judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/01/2017-02-03_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court: www.satv.tiesa.gov.lv.

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