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**The norm that establishes the procedure, in which the obligation to pay additional immovable property tax rate for agricultural land that is not being farmed, complies with the *Satversme***

On 18 October 2018, the Constitutional Court passed the judgement in the case No. 2018-04-01 “On Compliance of Section 7 (3) of the Law “On Immoveable Property Tax”, insofar it does not Provide for Cessation of the Duty to Pay Additional Immoveable Property Tax Rate for Agricultural Land that is not being Farmed, with Article 105 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Section 7 of the law “On Immoveable Property Tax” defines when the duty to pay the immovable tax sets in and ceases. The third part of this Section provides that that the duty to pay immovable property tax ceases in the next taxation year following the termination of property rights or possession rights and also envisages exceptions to the aforementioned duty.

**The Legal Norm of Higher Legal Force**

The first three sentences of Article 105 of the *Satversme* of the Republic of Latvia (hereinafter – 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 was initiated on the basis of an application by the Supreme Court. The Supreme Court is hearing a case, in which the applicant requests recognising as unlawful a decision by a local government’s council. By this decision, an additional immovable tax rate had been calculated for the applicant for unfarmed agricultural land (hereinafter – an additional tax rate) for the whole year of 2011, although the immovable property had been sold already in March 2011. The applicant holds that she cannot be responsible for the fact that

the agricultural land was not farmed because, in fact, only the new owner of the real estate could farm it.

The contested norm provides that the duty to pay additional tax rate for agricultural land that is not being farmed ceases beginning with the next year following alienation of the immovable property, without assessing the period, when the immovable property had been alienated, or the fact, which of the owners is, actually, responsible for farming this land. It is alleged that this situation could cause adverse financial consequences for the person, who is no longer responsible for the farming of the agricultural land. The Supreme Court holds that the obligation to pay the additional tax rate and the restriction on the property right that follows from the contested norm have a legitimate aim – protecting the public welfare. However, the Supreme Court is of the opinion that the measures chosen by the legislator are not appropriate for reaching the legitimate aim. Thus, it is contended that the contested norm is incompatible with a person’s right to property enshrined in Article 105 of the *Satversme*.

### **The Court’s Findings**

#### On the scope of review

The Constitutional Court recognised that in the framework of the case the contested norm could not be examined in the context of the fourth sentence of Article 105 of the *Satversme* because, substantially, the case did not pertain to expropriation of property in public interests. Hence, the Court examined the compliance of the contested norm with the first three sentences of Article 105 of the *Satversme*. [13.]

The Constitutional Court, referring to its own case law, recognised that Article 105 of the *Satversme* envisaged a comprehensive guarantee of property rights. “The right to property” should be understood as all rights pertaining to property, which a person may exercise on his own behalf and use at his own discretion, as well as various economic interests. [14.]

The State has the obligation, in the interests of public welfare, to set up an effective system for tax collection. Moreover, in defining and implementing taxation policy, the State enjoys broad discretion. This means that the legislator has the right, abiding by the general principles of law and other provisions of the *Satversme*, to define the procedure and terms for calculating, deducting and paying taxes, as well as the rights, obligations and liability of taxpayers and the tax administration. [14.]

On the existence of restriction on a person's fundamental rights

For a person, the duty to pay a tax always means a restriction on the right to property. In the year, when the immovable property was alienated, the owner of unfarmed agricultural land has the duty to pay not only the immovable tax rate but also the additional tax rate. Hence, the Constitutional Court found that the contested norm restricted a person's right to property. [14.]

*On whether the restriction on fundamental rights had been established by law and on the legitimate aim thereof*

The Constitutional Court found that the restriction on fundamental rights included in the contested norm had been established by law. [15.]

In assessing, whether the restriction on fundamental rights included in the contested norm had a legitimate aim, the Constitutional Court underscored that sustainability was one of the principles directed at the protection of aims and values included in the *Satversme* as well as the implementation thereof. Sustainable development is an integrated and balanced development of public welfare, environment and economy, which satisfies the current social and economic needs of inhabitants and ensures that the requirements regarding environmental protection are met [16.]

The Constitutional Court drew attention to the fact that agricultural land was one of the most important natural resources for the national economy. It has a significant influence on a benevolent living environment, is an important natural treasure and valuable economic resource. In order to maintain it and preserve it for the future generations, appropriate requirements regarding orderliness need to be set. The obligation to ensure preservation of agricultural land, effective use and farming thereof, which includes preservation of the biological diversity typical of Latvia, follows from the sustainability principle. [16.]

Thus, the Constitutional Court found that the legitimate aim of the restriction on fundamental rights established by the contested norm was the protection of public welfare. [16.]

*On the proportionality – suitability – of the restriction on fundamental rights*

The Constitutional Court recognised that the immovable property tax performed a fiscal function and ensured revenue into the local governments' budgets. This tax can be used, for example, to facilitate the development of a territory and bringing it into order, by ensuring rational and sustainable use of immovable property, *inter alia*, land, to support entrepreneurship and to reach other aims. At the same time, the additional tax rate has also a regulating function in fostering the farming and use of land for agricultural needs or, at least, taking minimal actions to maintain the land in good environmental and agricultural condition. [18.]

The Constitutional Court underscored that the additional tax rate had been established to foster more effective use of the unfarmed agricultural land and to prevent degradation thereof. The application of the additional tax rate has a positive impact on the farming of agricultural land – it facilitates putting into order of this land and maintaining it constantly in a good agricultural and environmental conditions Likewise, the additional tax rate is also an incentive for the land owner to be interested in producing agricultural products and using the land for agricultural purposes. [18.]

The Constitutional Court found that the additional tax rate ensured also the regulating function of the immovable property tax and therefore could no be regarded as being a punishment in the meaning of the general legal principle *ne bis in idem*. [18.]

*On the proportionality – necessity – of the restriction on fundamental rights*

The Constitutional Court noted, first and foremost, that the owner, in the meaning of the law “On Immovable Property Tax”, was the person, whose property right had been corroborated in the Land Register at the beginning to the taxation year. It follows from this Law that the additional tax rate is linked to the rate of the immovable property tax. I.e., the immovable property tax has a united procedure of administration, one taxpayer within the framework of the taxation year, uniform terms of calculation, on the basis of cadastral values, as well as a regular and predictable procedure of collection. [19.]

The Constitutional Court emphasized that within the tax law it was essential to ensure certainty in the administration thereof and to provide for an effective procedure for collecting taxes, which was important not solely for the taxpayer but also for society in general. Establishing of exemptions, by differentiating between the payers of the immovable property tax depending on the time when the immovable property had been alienated, would hinder tax calculation, would increase the costs of administration, decreasing the effectiveness. Hence, identification of the person responsible for the failure to farm the land would create an additional financial and administrative burden and would also jeopardise tax collection. [19.]

The Constitutional Court found that there were no more lenient measures that would ensure as effective and clear calculation and collection of the additional tax rate without causing an additional financial and administrative burden. [19.]

*On the proportionality – compliance – of the restriction on fundamental rights*

The Constitutional Court underscored that obligation of public persons to care for preservation and improvement of environment complied with every person's right to live a benevolent environment. The environment, which is constituted by various environmental elements and the interaction thereof, is the foundation for the existence of society, on which the long-term survival and welfare of the society and each member thereof depends. The State's obligations in ensuring the right to a benevolent environment have been specified in the norms of environmental law. Not only the norms that apply directly to environment but also such that help to reach the aims of the national environmental policy – to preserve, safeguard and improve environmental quality, to use sustainable natural resources and ensure high quality living environment – are to be recognised as being such. In many ways, the possibilities of the present generation and of the future generations to live in a benevolent environment depend on the State's readiness to implement sustainable development. [20.]

By referring to the third sentence in the fifth paragraph in the Preamble to the *Satversme*, the Constitutional Court recognised that it reflected the obligations of an individual in the Latvian society or a person's place and role in connection to it, *inter alia*, to treat the environment and nature responsibly. Responsible treatment means not only refraining from activities that might be hazardous for the environment but also positive actions, which are required to prevent the hazard. [20]

The Constitutional Court underscored that the owner of immovable property had to reckon with obligations that might follow from the property right, *inter alia*, obligations with respect to agricultural land. *Inter alia*, in compliance with the sustainability principle a person must facilitate, with due care, the use, farming and preservation for the future generations of this land. Treating responsibly this natural resource is the interest of not only each individual but of the society in general. Within the framework of the private law

autonomy, the owner of agricultural land must be aware of his duties. Hence, the owner can predict the application of the additional tax rate and agree on it and pay it in private law procedure. [20.]

**The Constitutional Court held:**

to recognise Section 7 (3) of the law “On Immoveable Property Tax”, insofar it did not provide for cessation of the duty to pay additional immovable property tax rate for agricultural land that was not being farmed as being compatible with Article 105 of the *Satversme* of the Republic of Latvia.

The judgement of the Constitutional Court is final and not subject to appeal, it shall enter into force on the day of its publication. The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

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

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/01/2018-04-01\\_Spriedums.pdf#search=2018-04-01](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/01/2018-04-01_Spriedums.pdf#search=2018-04-01)

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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](http://www.satv.tiesa.gov.lv).

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