



A norm on ceasing disbursement of interest payment from a commercial company, which experiences financial difficulties and is receiving state aid, complies with the Satversme

On 13 October 2015 the Constitutional Court passed the judgement in Case No. 2014-36-01 “On Compliance of Section 8(1) of the Law On Control of Aid for Commercial Activity with Article 105 of the Satversme of the Republic of Latvia”.

The aim of suspending fulfilling of subordinated liabilities of a commercial company, which experiences financial difficulties, is to achieve that commercial companies, which have received aid for commercial activities, would first of all repay the received aid

The Contested Norm

Section 8(1) of the Law on Control of Aid for Commercial Activity: “If a commercial company, which experiences financial difficulties, in accordance with regulatory enactments that regulate aid for commercial activity, receives aid then from the moment when aid for commercial activity is granted until the moment when the provision of aid is completed, abiding by the provisions set out in the decision by the European Commission or a national regulatory enactment on granting aid and irrespectively of the valid legal commitments of the commercial company, the commercial company is prohibited from fulfilling subordinated liabilities” (including, prohibition to repay debt, to calculate, accrue or disburse interest or other type of indemnification), irrespectively of the time when the subordinated liability was established.” The norm is in force since 1 July 2014.

The Norm of Higher Legal Force

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. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

Two cases have been joined in this case: the case, which was initiated on 4 December 2014 with regard to a constitutional complaint submitted by Maksims Kargins, and the case, which was initiated on 16 January of the current year by Viktors Krasovickis. The submitters of constitutional complaints note that in accordance with the agreements on term deposits they were entitled to interest payments from the joint stock company “Reverta”, which was the successor in rights of AS “Parex Banka”. However, with the coming into force of the contested norm not only the disbursement of monthly interest had been discontinued, but also calculation and accumulation thereof. The right to income from interest is said to be property right. Allegedly the contested norm expropriates this property.

The Court Findings and Ruling

On the limits for reviewing this case

The Constitutional Court noted that the contested norm sets out restrictions on using property for the time period from granting the aid for commercial activities until the provision of it ended. Thus, the contested norm did not deprive of property rights substantively, but only temporarily restricted the applicants’ right to receive interest payments. The applicants’ property, i.e., the right to claim interest payment, is retained, since the State, after the contested norm was adopted, did not take it over in its possession, as would have happened in the case of coercive expropriation of property for public needs. Thus, the restriction upon the fundamental rights envisaged in the contested norm does not fall within the scope of the fourth sentence of Article 105 of the Satversme, since it cannot be considered as coercive expropriation of property for public needs. [15.2]

The Constitutional Court reviewed compliance of the contested norm with the first, the second and the third sentence of Article 105 of the Satversme. [15.2]

On restriction upon the right to own property

The Constitutional Court, in reviewing the constitutionality of a restriction upon fundamental rights, establishes:

- 1) whether the restriction has been established by law,
- 2) whether the restriction has a legitimate aim,

3) whether the restriction complies with the principle of proportionality. [16]

The Constitutional Court recognised that the restriction upon fundamental rights had been established by law. [17] The legitimate aim of the restriction upon fundamental rights is ensuring public welfare; i.e., the purpose of the contested norm is to achieve that the commercial companies, which have received aid for commercial activities, would first of all repay this aid. This would ensure that the public financial resources that have been invested in the form of aid return back to the state budget as soon as possible. This is consistent with interests of society in general. [18]

The Constitutional Court found that the restriction upon fundamental rights was proportional. The Constitutional Court noted that the contested norm was appropriate for reaching the legitimate aim. Moreover, the contested norm followed from the commitments that Latvia had assumed in order to comply with the EU legal norms when providing state aid to a commercial company, which experienced financial difficulties. [20] The Constitutional Court recognised that no other means existed allowing to reach the legitimate aim in the same quality. [21] Whereas the benefit that society gains from the adoption of the contested norm exceeds the damage inflicted upon the rights and lawful interests of the applicants. The Constitutional Court noted that interest payments, which were received from subordinated liabilities, directly depended from successful operations of the commercial company. Whereas the submitters of complaints as subjects of subordinated liabilities had themselves assumed the risk of commercial activity upon concluding term deposit agreements, which includes also potential restrictions upon the property rights or even loss thereof, in case the commercial activity is unsuccessful. Likewise, the Constitutional Court pointed out that the contested norm should be regarded as a measure that the state could use to achieve that the invested resources were, to the extent possible, used in public interests, as well as to ensure that the subjects of subordinated liabilities, who have assumed the risk of commercial activities themselves, would not gain unjustified benefit from the aid provided by the state. [22]

The Constitutional Court recognised the contested norm as being compatible with Article 105 of the Satversme.

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the day it is officially published. The text of the judgement (in Latvian) is available from the home page of the Constitutional Court.

The press release was prepared with the aim to facilitate understanding of the cases that are adjudicated by the Constitutional Court. 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 home page of the Constitutional Court www.satv.tiesa.gov.lv.

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