



The Constitutional Court terminates legal proceedings in case regarding establishing the status of state officials for administrators of insolvency proceedings, who simultaneously are also tax (financial) advisors or are board members at capital companies

On 22 February 2016 the Constitutional Court adopted a decision to terminate legal proceedings in Case No. 2015-04-01 “On Compliance of Section 2 of the Law “Amendments to the Insolvency Law” of 25 September 2014 and the Law “Amendments to the Law On Prevention of Conflict of Interest in the Activities of Public Officials” of 30 October 2014 with Article 1 and the first sentence of Article 106 of the Satversme of the Republic of Latvia.”

The Contested Norms

Section 2 of the law “Amendments to the Insolvency Law” of 25 September 2014 added a second sentence to Section 9(1) of the Insolvency Law, worded as follows: “The administrators of insolvency proceedings in performing their activities of office shall be equalled to public officials.” The norm entered into force on 1 March 2015.

Whereas the law “Amendments to the Law On Prevention of Conflict of Interest in Activities of Public Officials” of 30 October 2014 envisages supplementing the enumeration of public officials set out in Section 4(1) of the Law On Prevention of Conflict of Interest in Activities of Public Officials with a new paragraph, Para 26 “administrator or insolvency proceedings”. These amendments entered into force on 1 July 2015.

The Norms of Higher Legal Force

Article 1 of the Satversme: “Latvia is an independent democratic republic.”

The first sentence of Article 106 of the Satversme: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

The Facts

A number of administrators of insolvency proceedings, who at the same time are also tax (financial) advisors or board members at capital companies, turned to the Constitutional

Court regarding the constitutionality of the contested norms. The applicants hold that the status of a public official, established by the contested norms, prohibits them to act as administrators of insolvency proceedings, at the same time continuing their professional activities in other fields (tax advice, serving on the boards of commercial companies, etc.). Allegedly, this restricts the applicants' right to freely choose their employment and workplace, established in the first sentence of Article 106 of the Satversme and is incompatible with the principle of legal certainty.

The Court's Findings and Ruling

The Constitutional Court already examined a case and on 21 December 2015 passed a judgement, by which the contested norms, to the extent they do not ensure to administrators of insolvency proceedings, who are at the same time also advocates, guarantees for professional activities in order to maintain their chosen vocation, were recognised as being incompatible with the first sentence in Article 106 of the Satversme (Judgement in Case No. 2015-03-01).

In Case No. 2015-03-01 the Constitutional Court already recognised that the Satversme did not prohibit the legislator to define, which persons are state officials in the meaning of the law "On Prevention of Conflict of Interest in the Activities of Public Officials". At the same time, in establishing restrictions, prohibitions and obligations, which are binding upon state officials, it must be assessed, whether the restrictions imposed upon a person's fundamental rights, *inter alia*, the rights established in Article 106 of the Satversme, are not disproportional [15]

In this case the Constitutional Court assessed, whether the contested norms restricted the fundamental rights of those persons, who combined the office of the administrator of insolvency proceedings with the work of a tax (financial) advisor or are board members at capital companies. [15.2]

The Constitutional Court recognised that the restrictions, prohibitions and obligations established by the contested norms did not prohibit the applicants to act as administrators of insolvency proceedings and at the same time perform their professional activities as tax (financial) consultants and to be board members at capital companies [18.1. - 18.4]

The Constitutional Court, *inter alia*, pointed to the differences between the regulation with regard to an advocate and a tax (financial) advisor or a board member at a capital company. The Court recognised that advocates as persons belonging to the court system had authorisation of a different nature and special requirements for performing their duties of office compared to both tax (financial) advisors and board members of capital companies. [18.1, 18.3]

The Constitutional Court concluded that **the contested norms did not restrict the applicants' rights to keep their present occupation.** [18.4]

The Constitutional Court recognised that it was impossible to assess compliance of the contested norms with the principle of legal certainty that followed from Article 1 of the Satversme, since the contested norms did not restrict the applicants' fundamental right established in the first sentence of Article 106 of the Satversme to keep their present occupation. [20]

Thus, the Constitutional Court recognised **that legal proceedings in the case should be terminated.**

The decision by the Constitutional Court is final and not subject to appeal. The decision (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 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 home page of the Constitutional Court www.satv.tiesa.gov.lv.

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