



The norm in the binding regulation of the Riga City Council on not repaying part of the infrastructure fee is incompatible with the Satversme

On 12 February 2016 the Constitutional Court passed the judgement in Case No. 2015-13-03 “On Compliance of the First Sentence in Para 24 of the Riga City Council Binding Regulation of 19 February 2013 No. 211 “On the Municipal Fee for the Maintenance and Development of the Municipality Infrastructure in Riga” with Article 105 of the Satversme of the Republic of Latvia.”

Regulatory enactments do not grant to a local government the right not to repay the part of infrastructure fee that has been paid in those cases, when the construction concept is not realized

The Contested Norm

The contested norm provides:

“If the building permit is revoked (annulled, etc.), the part of the fee that has been paid [for the maintenance and development of municipal infrastructure within the administrative territory of Riga] shall not be repaid, but, on the basis of an application by the initiator of the construction project, shall be counted as the part of the paid fee, when receiving another building permit for a new construction process in the same real estate object.”

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.”

The Facts

The case was initiated with regard to an application by the Administrative District Court. An entrepreneur has turned to the Administrative District Court, upon receiving a building permit, he had paid a fee for the maintenance and development of municipal infrastructure within the administrative territory of Riga City (hereinafter – the infrastructure fee). However, the entrepreneur did not commence construction and requested the Riga City Council to revoke

the building permit that had been issued to him. However, the part of infrastructure fee that had been paid was not repaid to the entrepreneur on the basis of the contested norm.

The Administrative District Court expressed the opinion that the contested norm restricted the right to own property of those persons, who had paid part of the fee and had not commenced construction.

The Court's Findings and Ruling

On the restriction on fundamental rights

The Constitutional Court noted that a person's right to recover the part of infrastructure fee that has been paid, if the construction concept was not realized, fell within the scope of Article 105 of the Satversme. [12] Hence, the contested norm restricts a persons right to own property. [13]

On establishing a restriction on fundamental rights in regulatory enactments

Article 105 of the Satversme provides that property rights may be restricted, but only in accordance with law. The word "law" comprises not only laws adopted by the Saeima, but also other external regulatory legal acts, if these have been adopted in accordance with law, have been published in the established procedure, are sufficiently clearly worded, and also comply with the principles of a judicial state. [14]

The Constitutional Court noted that the legislator could also transfer the decisions on some issue into the competence of a local government. [14.1] However, a local government has the right to issue binding regulation only in cases prescribed in law and within the scope of authorisation. The binding regulations issued by local governments may not be incompatible with the norms of the Satversme and other legal norms with higher legal force [14.3].

On whether the restriction upon property right was established by law

The Constitutional Court assessed, whether the Riga City Council in issuing the contested norm has acted within the authorisation granted by the legislator. The contested norm has been issued on the basis of the law "On Local Governments", the law "On Taxes and Fees", as well as the Cabinet of Ministers Regulation of 28 June 2005 No. 480 "Regulations on the Procedure, in Which Local Governments May Impose Local Government Fees" (hereinafter also CM Regulation No. 480). [14.2]

Regulation No. 480 provides a more detailed regulation on the procedure for applying fees to construction concepts. It provides, *inter alia*, that the fee for receiving a building permit is not repaid in those cases, when the building permit is not realized. However, the Cabinet Regulation does not provide that in case if the construction concepts are not realized the part of infrastructure fee should not be repaid. [15.1]

The participants of the case expressed the opinion that, by analogy with the fee for receiving a building permit, also the part of the infrastructure fee that had been paid should not be repaid. However, the Constitutional Court noted that applying a restriction upon fundamental rights by analogy was inadmissible. Moreover, the duty to pay any fee should be assessed as a restriction upon a person's property rights. CM Regulation No. 480 does not grant to a local government the right not to repay the part of infrastructure fee that has been paid, if the construction concept is not realized. Therefore such restriction upon fundamental rights is inadmissible. [15.2]

Thus, the Constitutional Court recognised that the Riga City Council, in issuing the contested norm, did not abide by the authorisation granted to it. Hence, it must be recognised that the restriction upon fundamental rights established by the contested norm, was not set out in law. Therefore, **the contested norm is incompatible with Article 105 of the Satversme** [15.3, 16] and is to be recognised as being invalid **as of the moment of its adoption** [17].

The Judgement by the Constitutional Court is final and not subject to appeal. The judgement shall enter into force on the day it is published in the official journal "Latvijas Vēstnesis". The text of the judgement (in Latvian) is available on 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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