The norms of the Bank of Latvia Regulation that apply to buying and selling foreign currency cash are incompatible with the Satversme

On 2 March 2016 the Constitutional Court has pronounced Judgement in Case No. 2015-11-03 "On Compliance of Para 19 and Para 20 of the Bank of Latvia Regulation No. 141 of 15 September 2014 "Requirements Regarding Prevention of Money Laundering and Financing of Terrorism in Buying and Selling Foreign Currency Cash" with Article 1 and Article 64, as well as the First Sentence in Article 91 of the Satversme of the Republic of Latvia."

The law provides exhaustive regulation on cases, where credit institutions and capital companies that are engaged in buying and selling foreign currency cash, must identify their clients. The Bank of Latvia, in adopting the contested norm, has exceeded the authorisation granted by the legislator.

The Contested Norms

The contested norms provide:

"19. If the transaction is not unusual or suspicious and business relations are not initiated, but the sum of the transaction is equal to 2 000 – 7 999.99 euro, the capital company shall identify the client or the true beneficiary as follows:

19.1. shall make copies of the client's identity documents;

19.2. shall verify, whether a client's identity documents are authentic and valid;

19.3. shall immediately inform a competent law enforcement institution, if substantiated doubts arise regarding forgery of the submitted identity document.

20. If the total sum of transactions conducted by one client referred to in Para 19 within one month reaches the sum referred to in Sub-paragraph 13.1 of this Regulation (8000 euro or more), the capital company shall identify this client in accordance with the procedure referred to in Para 18 of this Regulation (*which envisages more complicated procedure*)."

The contested norms have been issued pursuant to Section 47(3) of the law "On the Prevention of Money Laundering and Terrorism Financing"[1].

The Norms of Higher Legal Force

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

Article 64 of the Satversme: "The Saeima, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution."

The first sentence in Article 91 of the Satversme: "All human beings in Latvia shall be equal before the law and the courts."

The Facts

The case has been initiated on the basis of a constitutional complaint submitted by the limited liability company "TAVEX". The applicant is a capital company, which as part of its commercial activities is engaged also in buying and selling foreign currency cash (trading in cash). This service is provided only by capital companies, which have received licences from the Bank of Latvia, as well as credit institutions as one type of financial services. The requirements defined in law "On the Prevention of Money Laundering and Terrorism Financing" apply to both groups of subjects of law referred to above.

The submitter of the complaint notes: before the contested norms were adopted regulatory enactments provided that the capital companies, which were engaged in trading cash, and credit institutions had the obligation to identify the client in every transaction of trading cash in the amount that was equivalent to 8 000 *euro* or exceeded this sum. The contested norms, however, apply only to capital companies, which are engaged in trading cash, and do not apply to credit institutions, which provide an identical service. It is alleged that this situation

[1] The Bank of Latvia shall define binding requirements to capital companies that are engaged in buying and selling foreign currency cash with regard to fulfilment of obligations established in this Law with regard to establishing a system of internal control, identifying actual beneficiaries and verifying, whether the person, who has been indicated as the actual beneficiary, is indeed the client's actual beneficiary, as well as with regard to supervision of the transactions conducted by the client and being in the known about the client's commercial activities.

is incompatible with the principle of equality. Moreover, in adopting the contested norms the authorisation granted by the legislator has been breached, and thus are said to be incompatible with Article 1 and Article 64 of the Satversme.

The Court's Findings and Ruling

<u>On the restriction upon fundamental rights</u>

The Constitutional Court recognised that capital companies, which wee engaged in trading cash, and credit institutions, which provided the service of trading cash as one type of financial services, in providing this service were in similar and according to concrete criteria comparable circumstances. The contested norms, however, envisage differential treatment of the abovementioned groups of persons. [17 - 19]

The Constitutional Court verified, whether the differential treatment had been established by a legal norm that had been adopted in due procedure. [20]

<u>On the rights of the Bank of Latvia to issue external regulatory enactments</u>

The Constitutional Court noted that in accordance with the principle of separation of powers, adoption of laws on any issue of national politics fell with the competence of the legislator. However, to make the legislative process more effective, in particular cases also institutions of public administration, *inter alia*, autonomous institutions have the right to adopt external regulatory enactments. The Bank of Latvia has the right to issue external regulatory enactments in accordance with the authorisation granted by the Saeima only in the field of competence granted to it by law with regard to particular legal subjects. [21]

<u>On the authorisation to issue the contested norms granted by the legislator</u>

The Constitutional Court recognised that the Bank of Latvia was not allowed to issue regulation on issues that had been resolved by the legislator itself. [22.1] The law provides an exhaustive regulation on cases, when credit institutions and capital companies, which are engaged in trading cash, must identify the clients. However, the Bank of Latvia has adopted norms, which define new cases, when client must be identified. Thus, the Bank of Latvia has exceeded the authorisation granted to it by the legislator. [23.4]

The Constitutional Court recognised that the differential treatment established by the contested norms was not established by law; i.e., the Bank of Latvia, in adopting the contested norms, had acted contrary to the principle of separation of powers and had exceeded the authorisation granted by the legislator. Thus, the contested norms **are incompatible with Article 1 and Article 64, as well as the first sentence of Article 91 of the Satversme and are to be recognised as being invalid as of the moment they were adopted.** [24, 25]

The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force. The text of the judgement (in Latvian) is available on the home page of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/04/2015-11-03_Spriedums.pdf.

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