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A Case regarding Norms of the Law On Solidarity Tax Initiated

On 21 July 2016 the 2nd Panel of the Constitutional Court initiated a number of cases regarding compliance of the norms of the law On Solidarity Tax with the Satversme.¹

The Contested Norms

Section 3, 5, 6, 7 and 9 of the law On Solidarity Tax:

Section 3. Taxable Object

The tax object shall be the income, which has been defined in Section 14 and Section 20² of the law On State Social Insurance and exceeds the maximum amount³ of the object of mandatory state social insurance contributions (hereinafter – object of mandatory contributions).

Section 5. Taxpayers

Taxpayers shall be employers, employees, domestic employees at a foreign employer, foreign employees at a foreign employer and self-employed persons, who are subject to state social insurance and whose income in the respective taxation year exceeds the maximum amount of the object of mandatory contributions as defined in the law On State Social Insurance.

Section 6. Tax Rate

¹ Case No.2016-14-01 “On Compliance of Section 3, 5, 6, 7 and 9 of the Law On Solidarity Tax with the First Sentence of Article 91 and Article 109 of the Satversme”;
Case No. 2016-15-01 “On Compliance of Section 3, 5, 6, 7 and 9 of the Law On Solidarity Tax with the First Sentence of Article 91 and Article 109 of the Satversme”;
Case No. 2016-16-01 “On Compliance of Section 3, 5, and 6 of the Law On Solidarity Tax with the First Sentence of Article 91 of the Satversme”;
Case No. 2016-17-01 “On Compliance of Section 3, 5, and 6 of the Law On Solidarity Tax with the First Sentence of Article 91 of the Satversme”.

² [...] The object of mandatory contributions by an employer and an employee is all income calculated in paid employment, from which personal income tax must be deducted, without deducting untaxable minimum, tax reliefs and eligible expenditure, for which the tax payer has the right to decrease the taxable income. [...]

³ 48 600 *euro* annually (Para 5 in the Cabinet Regulation of 17 December 2013 No. 1478 “Regulation on the Minimum and Maximum Amount of the Object of Mandatory and Voluntary State Social Insurance Contributions).

The tax rate shall correspond to the rate of mandatory contributions defined pursuant to Section 18 of the law On State Social Insurance⁴.

Section 7. Calculation of the Tax

- (1) The State Social Insurance Agency, on the basis of information provided by the State Revenue Service, shall aggregate the object of mandatory contributions of a socially insured person and the mandatory state social insurance contributions that have been made. The State Social Insurance Agency shall record the actually paid solidarity tax, after the maximum amount of the object of mandatory contributions, defined in the law On State Social Insurance, has been reached.
- (2) The State Social Insurance Agency shall calculate the solidarity tax once per month.

Section 9. Transferring the tax into the Basic Budget of the State

The State Social Insurance Agency shall transfer the actually paid tax for the reporting month into the account of the revenue of the state basic budget until the fifteenth date of the month following the reporting month.

The contested norms are in force since 1 January 2016.

Norms of Higher Legal Force

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

Article 109 of the Satversme: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

The Facts of the Cases

The cases have been initiated on the basis of constitutional complaints submitted by a number of natural persons, as well as by commercial companies. The applicants are employees and employers, who, pursuant to the contested norms, have the obligation to pay the solidarity tax.

Commercial companies note that they are employing highly qualified specialists and are paying to them remuneration that is adequate for the labour market. Whereas the obligation to

⁴ [...] The rate of mandatory contributions, if the employee is insured for all types of social insurance, is 34.09 per cent, of which 23.59 per cent are paid by the employer and 10.50 per cent – by the employee.

pay the solidarity tax, allegedly, decreases the possibilities for attracting high-level specialists. Thus, these employers are said to be placed in a more disadvantageous situation compared to those employers, who are not employing specialists of this level, and their competitiveness in labour market is decreased. It is contended that this situation is incompatible with the principle of equality. Moreover, commercial companies also point to differential treatment of different employers, who now have the obligation to pay the solidarity tax, since a different rate of the payable tax is applied depending upon employees' status (for example, to those employers, who employ persons that have reached the retirement age, a lower rate of solidarity tax is applied with respect to these employees).

The employees, who have submitted constitutional complaints, hold that the contested norms are incompatible with the principle of equality and place disproportional restrictions upon their right to social security. As to its nature, the solidarity tax is said to be similar to social insurance contributions. Before introduction of the solidarity tax, social insurance contributions from income that exceeded 48 600 *euro* annually was not calculated. Currently this tax must be paid in the same procedure and amount as social insurance contributions, whereas the disbursements of social insurance (if an insurance case sets it) are not proportional to the income, from which social insurance contributions have been made.

Legal Proceedings

The Constitutional Court has requested the Saeima to submit to the Constitutional Court a written reply, presenting the facts of the case and legal substantiation, by 21 September 2016.

The term for preparing the case is 21 December 2016. The Court shall decide on the type of procedure and the date for hearing the case after the case has been prepared.

Additional Information

The Constitutional Court has received tens of constitutional complaints regarding compliance of norms of the law On Solidarity Tax with the Satversme. The Constitutional Court, in reviewing a number of applications, found that they did not comply with the provisions of the Constitutional Court Law. The submitters of a constitutional complaint must substantiate the way in which the contested norms infringe upon their fundamental rights defined in the Satversme. The Applicants have noted that, in view of the existing labour relationships, as

well as the revenue of previous years, the infringement upon fundamental rights is expected in the future, i.e., at the moment when the obligation to pay the solidarity tax arises for them.

The Constitutional Court has already recognised that an infringement upon fundamental rights may be such as is expected in the future. This means that a valid and credible possibility exists that application of the contested norms might cause adverse consequences for the submitter of a constitutional complaint. In the case of an infringement to be expected in the future, it is obvious that the person will definitely experience it, sooner or later.

The Constitutional Court noted that in this case application of the contested norms depended upon the fact, whether the income of the concrete applicants within the taxation period would exceed 48 600 *euro*. The Court concluded that currently there were no grounds to recognise that the contested norms definitely would be applied to applicants and would create an infringement upon their fundamental rights in the future. Thus, in examining these applications, the Constitutional Court decided to refuse to initiate a case, since the applicants did not have the obligation to pay the solidarity tax yet.

Moreover, the Constitutional Court refused to initiate cases with regard to a number of applications, which did not provide legal substantiation that could be recognised as being sufficient for satisfying the claim.

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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