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**The norms that establish the liability for late tax payments of a legal person comply with the Satversme**

On 15 November 2016 the Constitutional Court passed the judgement in Case No. 2015-25-01 “On Compliance of Section 60, Section 61 and Section 62 of the Law on Taxes and Fees with the First Sentence of Article 91, Article 92 and Article 105 of the Satversme of the Republic of Latvia”.

*A member of the board should act as an honest and careful manager to perform the duty of paying taxes in public interests*

**Contested Norms**

Section 60 of the Law on Taxes and Fees defines the basis and the procedure of administrative proceedings regarding repayment of late tax payments of a legal person into the State budget by a person, who has been a member of the board of this legal person during the period, when the respective late tax payments formed.

Section 61 of the Law on Taxes and Fees establishes the procedure, in which the State Revenue Service adopts a decision on repayment of the late tax payments of a legal person by the board member of the respective legal person.

Whereas Section 62 of the Law on Taxes and Fees establishes the procedure, in which the decisions by the State Revenue Service on repayment of late tax payments of a legal person is to be enforced.

**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 92 of the Satversme: “Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has

been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”

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 application was submitted to the Constitutional Court by twenty members of the Saeima. It is alleged that the contested norms restrict the rights of a legal person to engage in commercial activities in the form of a company that is liable for its commitments only with its property. The contested norms are said to impose a restriction upon the property right also with respect to a natural person – a member of the board, which is manifested as the obligation imposed upon the member of the board to repay the taxes that the legal person has failed to pay.

The applicants hold that the contested norms are incompatible also with Article 92 of the Satversme, since they envisage the presumption of a board member’s guilt regarding late tax payments of a legal person and the obligation of a board member to prove his innocence. Thus, disproportional restrictions are placed upon the principle of presumption of innocence. Moreover, the contested norms are said to be incompatible with the principle of equality enshrined in the first sentence of Article 91 of the Satversme.

### **The Court’s Findings and Ruling**

#### On restriction upon the right to own property

The Constitutional Court found that the contested norms restricted neither the property right enshrined in Article 105 of the Satversme of legal persons, nor those of the founders thereof, but restricted the property rights of the board member of a legal person as a natural person. The restriction upon fundamental rights included in the contested norms has been established by law [11.1.] and it has a legitimate aim – protection of public

welfare [11.2.]. In examining compliance of the contested norms with Article 105 of the Satversme, the Court recognised the restriction upon fundamental rights as being proportional. The Court took into consideration, *inter alia*, facilitation of voluntary paying of taxes and improving the business environment. The Constitutional Court recognised that the contested norms created significant benefit to society. [11.3.]

#### On the right to a fair trial

The Constitutional Court has noted in the judgement that the presumption of innocence enshrined in the second sentence of Article 92 of the Satversme is one of the fundamental principles of a state governed by the rule of law. Thus far the Constitutional Court has examined the presumption of innocence as an element of the right to a fair trial in criminal cases and cases of administrative violations. [13.]

To evaluate compliance of the contested norms with the principle of the presumption of innocence, the Constitutional Court first of all established, whether the contested norms regulated those fields of law to which the presumption of innocence was applicable, by examining:

- 1) qualification of the particular offence, by linking it to criminal law;
- 2) nature and severity of the offence;
- 3) severity of the imminent sanction to the respective person for the offence. [13., 14.]

The Constitutional Court recognised that the contested norms applied to an offence, for which a sanction was applied, i.e., if the board member has not duly performed his obligations defined by law, as the outcome of administrative procedure, on the basis of the contested norm, an obligation may be imposed upon the board member to repay the late tax payments of the legal person (tax debt) from his own personal resources, and that would include the basic sum of the debt, and also penalty payments and late payment fees. [16.]

The Constitutional Court recognised that the contested norms pertained to the scope of the second sentence of Article 92 of the Satversme and, thus, their compliance with the principle of the presumption of innocence had to be examined. [17.]

The Court noted that the essence of the presumption of innocence was to ensure that the party bringing the charges had to ensure evidence of the person's guilt, and it was not the obligation of the accused. However, that does not mean that the presumption of innocence was absolute. In certain cases the legislator has the right to envisage in legal norms the so-called legal presumption, i.e., refutable presumption of the actual circumstances pointing to a person's guilt or liability. [19.]

The Constitutional Court established that the legal presumption envisaged in the contested norms was established for the protection of public welfare. [19.2.] The Court recognised that legal presumption was compatible with the principle of proportionality, *inter alia*, by taking into consideration that it was envisaged to apply the contested norms within the framework of administrative procedure, applying the principle of objective investigation. Thus, the board member has been ensured an opportunity to substantiate and prove that he is not responsible for the late tax payments of the legal person, but has acted as an honest and careful manager. [19.3.]

The Constitutional Court recognised that in the case under review the legal presumption has been established in law in due procedure and is unequivocally applied to specific situations that are precisely defined, it is established for the protection of public welfare, and also that the person (board member) is ensured the possibility to refute the presumption that the contested norms comprise. Thus, the Court recognised that the contested norms were not incompatible with the principle of presumption of innocence and complied with the second sentence of Article 92 of the Satversme. [19.3.]

#### On the principle of equality

The Constitutional Court recognised the contested norms as being compatible with the principle of equality included in the first sentence of Article 91 of the Satversme. The Court noted, *inter alia*, that in engaging in commercial activity in any of the forms that the Commercial Law envisaged for commercial activity, a person should always act in a way to perform the obligation of paying taxes in public interests. [21.1.]

Thus, the Constitutional Court **recognised the contested norms as being compatible with the first sentence of Article 91, Article 92 and Article 105 of the Satversme.**

The judgement by the Constitutional Court is final and not subject to appeal, it will enter into force on the day of its official publication. The text of the judgement [in Latvian] is available on the home page of the Constitutional Court: [www.satv.tiesa.gov.lv/wp-content/uploads/2015/12/2015-25-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/12/2015-25-01_Spriedums.pdf).

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The press release was prepared with the aim to facilitate understanding of the cases examined 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](http://www.satv.tiesa.gov.lv).

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