



The Constitutional Court terminates legal proceedings in the case with regard to annulment of certificate of an administrator of insolvency proceedings

On 23 November 2016 the Constitutional Court adopted a decision on terminating legal proceedings in Case No. 2016-02-01 “On Compliance of Section 17(3¹) of the Insolvency Law with the First Sentence in Article 106 of the Satversme of the Republic of Latvia”.

Contested Norm

The contested norm provides: “A decision on the annulment of an administrator’s certificate shall be taken if during the last two years of the validity of the administrator’s certificate the Insolvency Administration has identified violations of legal acts in the operations of the administrator twice.”

Norm of Higher Legal Force

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

The Facts

The case has been initiated on the basis of a constitutional complaint submitted by Zigurds Aumeisters. The Applicant has been an administrator of insolvency proceedings, whose certificate could have been annulled pursuant with the contested norm. The submitter of the complaint held that the contested norm placed disproportional restrictions upon his right to retain an employment of his choice.

The Court’s Findings and Decision

The Saeima requested termination of legal proceedings, as it held that the contested norm had not been applied and could not have been applied to the applicant, because he himself had chosen to discontinue being an administrator and had not applied for re-certification. Therefore the Constitutional Court examined, whether the contested norm pertained to such rights that were included in the scope of the first sentence in Article 106 of the Satversme and

whether the contested norm was the one that infringed upon the applicant's rights established in the Satversme. [5]

The Court's decision found that the contested norm pertained to such rights that were included in the scope of the first sentence in Article 106 of the Satversme. [6]

The Constitutional Court reminded of the fact that a violation of fundamental rights was a mandatory pre-requisite granting a person the right to submit a constitutional complaint to the Constitutional Court. Thus, in examining a case that had been initiated on the basis of a constitutional complaint, the Constitutional Court had to assess, whether a violation of a person's rights already had occurred or could occur in the future. The Court also recognised that in examining a case such a set of actual circumstances could be established due to which it would be impossible to continue legal proceedings in the case, because a person's fundamental rights had not been violated and it would be perfectly clear that such a violation would not occur. [7]

The constitutional complaint provides arguments why the case should be initiated at the Constitutional Court before a violation of the applicant's rights had occurred. [9] However, in examining the case, it was concluded that the applicant's certificate of an administrator had been annulled on the basis of another legal norm and not that of the contested norm. Therefore the Constitutional Court found that the contested norm had not been applied to the applicant, had not caused adverse consequences to him and, thus, his rights established in the first sentence of Article 106 of the Satversme had not been violated. [11]

Upon examining additional explanations submitted by the applicant, the Court found that such a set of actual circumstances was established in the case, due to which the applicant's fundamental rights could not be violated also in the future. **Thus, legal proceedings in the case cannot be continued.** [12]

The decision by the Constitutional Court is final and not subject to appeal. The decision [in Latvian] is available on the home page of the Constitutional Court: www.satv.tiesa.gov.lv/wp-content/uploads/2016/01/2016-02-01_Lemums_izbeigsana.pdf

The press release was prepared with the aim to facilitate understanding of decision by the Constitutional Court. It shall not be regarded as part of the decision and is not binding to the Constitutional Court. The judgements, decisions

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Līna Kovalevska

Assistant to the President of the Constitutional Court

Lina.Kovalevska@satv.tiesa.gov.lv

(+371) 67830748, (+371) 29813216