



The Constitutional Court terminates legal proceedings in case regarding compliance of granting the status of public official to administrators of insolvency proceedings with the equality principle

On 6 April 2017 the Constitutional Court adopted a decision to terminate legal proceedings in Case No. 2016-10-01 “On Compliance of the Second Sentence of Section 9(1) of Insolvency Law and Para 26 of Section 4(1) and Para 22² of Transitional Provisions of the Law “On Prevention of Conflict of Interest in Activities of Public Officials” with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia”.

Contested Norms

The second sentence of Section 9(1) of Insolvency Law provides: “Administrators of insolvency proceedings in their official activities shall be equalled to public officials.”

Pursuant to Para 26 of Section 4(1) of the law On Prevention of Conflict of Interest in Activities of Public Officials” public officials are, *inter alia*, insolvency administrators. Para 22² of Transitional Provisions of this Law provides that for insolvency administrators, who are concurrently also advocates, the deadline for submitting a declaration of a public official, which is submitted upon assuming the office, is to be counted from 1 September 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”.

Facts of the Case

The application was submitted by a number of administrators of insolvency proceedings, who combine the office of administrator with work in other fields, *inter alia*, provision of legal advice and performing the duties of sworn auditors. The applicants note that, similarly to sworn advocates, qualified lawyers working in a number of other positions have the obligation to fulfil certain duties and abide by certain restrictions, which cannot be combined

with the status of a public official and the requirement to submit the declaration of a public official. It is maintained that the regulation, which envisages differential treatment of administrators, who are concurrently also sworn advocates, compared to other concrete groups of administrators is incompatible with the equality principle.

The Court's Findings and Decision

Following the applicants' request to expand the scope of the claim [12], the Constitutional Court found that the contested norms were closely linked to Section 24 (1¹) of the law "On Prevention of Conflict of Interest in Activities of Public Officials". This legal norms sets out special rules with respect to scope of information to be provided in the declaration of a public official for those public officials, who are concurrently also advocates. The Constitutional Court decided that within the framework of the case under review compliance of Section 24 (1¹) of the law "On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Article 91 of the *Satversme* should also be examined. [12.2] The Constitutional Court found that the contested norms regulated two discrete issues of law, i.e., granting the status of a public official and the procedure for submitting the declaration of a public official. Therefore in the case under review these two issues must be examined separately. [14]

On granting the status of a public official

The Constitutional Court underscored that the *Satversme* does not prohibit the legislator from deciding, which persons are public officials in the meaning of the law "On Prevention of Conflict of Interest in Activities of Public Officials". Thus, the legislator had the right to provide that all administrators of insolvency proceedings in their official activities were to be equalled to public officials. Taking into consideration that the second sentence of Section 9(1) of Insolvency Law and Para 26 of Section 4(1) of the law "On Prevention of Conflict of Interest in Activities of Public Officials" provide that all administrators of insolvency proceedings have the status of a public official, it is impossible to examine compliance of these norms with the equality principle enshrined in the first sentence of Article 91 of the *Satversme*. These norms do not infringe upon the applicants' fundamental rights enshrined in the first sentence of Article 91 of the *Satversme*, and, thus, it is impossible to continue legal proceedings regarding this part of the claim. [15]

On the procedure for submitting the declaration of a public official

Through systemic interpretation of the equality principle established by the *Satversme* and examination of the contested norms in interconnection with findings expressed in previous rulings by the Constitutional Court, the Court found that administrators of insolvency proceedings, who are concurrently also advocates, and administrators of insolvency proceedings, who combine their professional activities with other vocations of the private sector, *inter alia*, qualified lawyers and sworn auditors, are in different and incomparable circumstances. In the case under review the obligation to envisage equal treatment of persons, who are in different and incomparable circumstances, does not follow from the equality principle, and, thus, it is impossible to continue legal proceedings regarding this part of the claim. [16]

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: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/06/2016-10-01_Lemums_izbeigsana.pdf

The press release was prepared with the aim to facilitate understanding cases heard by the Constitutional Court. It shall not be regarded as part of a ruling 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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