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**A case initiated regarding a norm in the binding regulation of the Riga City Council, which sets the rate of real estate tax, if a person, who is a citizen of a Member State of the European Union, of a state of the European Economic Area or of the Confederation of Switzerland, is declared as residing at the property**

On 8 November 2017, the 3<sup>rd</sup> Panel of the Constitutional Court initiated the case “On Compliance of Para 3<sup>1</sup> of the Binding Regulation of 9 June 2015 of the Riga City Council No. 148 “On the Real Estate Tax in Riga” with Article 91 of the *Satversme* of the Republic of Latvia and the First Part of Article 18 and the First Part of Article 21 of the Treaty on the Functioning of the European Union.”

**The Contested Norm**

Para 3<sup>1</sup> of the Binding Regulation of 9 June 2015 of the Riga City Council No. 148 (hereinafter – the Binding Regulation No. 148) “On the Real Estate Tax in Riga”: “If at the object of real estate the residence of a citizen of other Member State of the European Union, of the European Economic Area or the Confederation of Switzerland or of a person, who has received a permanent residence permit in the Republic of Latvia, has been declared, to apply the real estate tax rates referred to in Para 3 of the Introductory Part of the binding regulation<sup>1</sup>, the residence of the aforementioned persons has to be declared in Latvia 7 years prior to 1 January of the relevant taxation year. Once compliance of the person with this criterion has been established, it is not re-examined in the subsequent taxation years and is considered as having been met.”

**Norms of Higher Legal Force**

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<sup>1</sup> Para 3 of the Binding Regulation of 9 June 2015 by the Riga City Council No. 148 “On the Real Estate Tax in Riga” defines particular categories of real estate objects, to which a reduced rate of real estate tax may be applied. The reduced real estate rates, in accordance with the cadastre value of the property, are as follows:

- 0.2% of the cadastre value if it does not exceed 57 000 euros,
- 0.4% of the cadastre value for the amount that exceeds 57 000 euros, but does not exceed 107 000 euros,
- 0.6% of the cadastre value for the amount exceeding 107 000 euros.

Article 91 of the Satversme: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

The first part of Article 18 of the Treaty on the Functioning of the European Union”: “Within the scope of application of the Treaties<sup>2</sup>, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.”

The first part of Article 21 of the Treaty on the Functioning of the European Union:

“Every citizen of the Union<sup>3</sup> shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”

### **The Facts**

The case has been initiated with respect to an application submitted by the Ombudsman. The applicant, in the framework of a verification procedure, identified deficiencies in the norm of the Binding Regulation No. 148, which defines application of differential real estate tax rates in cases, if the place of residence of a person, who is a citizen of other Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland, has been declared at the property. The contested norm comprises a provision that the differential real estate tax rate may be applied only if the person had been declared in Latvia on 1 January 7 years prior to the relevant taxation year. The applicant had asked the Riga City Council to eliminate these deficiencies within a set term. The Riga City Council did not eliminate the identified deficiencies within the set term.

The applicant holds that the local government does not have the right to set such criteria for applying real estate tax rates, which violate the principle of prohibition of discrimination enshrined in the *Satversme* and in the Treaty on the Functioning of the

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<sup>2</sup> The word “Treaties” denotes Treaties, upon which the European Union is founded and that have equal legal force. These are:

- Treaty on the Functioning of the European Union;
- Treaty on European Union.

<sup>3</sup> The word “Union” in the Treaty on the Functioning of the European Union denotes the words “European Union”.

European Union. Moreover, it is alleged that the contested norm infringes upon the right to freedom of movement of citizens of other Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland, enshrined in the Treaty on the Functioning of the European Union.

### **Legal Proceedings**

The Constitutional Court has requested the Riga City Council to provide a reply on the facts of the case and legal substantiation by 8 January 2018.

The term for preparing the case is 8 April 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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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 homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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