



**The norm that regulates the procedure for applying the reduced tax rate to the payer of the real estate tax in Riga, if the person, who is declared as residing at the property, is a foreigner, is incompatible with the *Satversme***

On 29 June 2018, the Constitutional Court passed the judgement in case No. 2017-28-0306 “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, 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.”

**The Norms of Higher Legal Force**

Article 91 of the *Satversme* of the Republic of Latvia (hereinafter – 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 (hereinafter – TFEU): “Within the scope of application of the Treaties, 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 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 of the Case**

The case has been initiated with respect to an application submitted by the Ombudsman. The Ombudsman, in the framework of a verification procedure, established that the contested norm violated the principle of prohibition of discrimination on the grounds of citizenship, as well as restricted the right to free movement of a citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland. The applicant requested the Riga City Council to delete the contested norm from the Binding Regulation No. 148. However, the Riga City Council has refused to eliminate the deficiencies identified by the Ombudsman.

**The Court’s Findings**

*On the sequence, in which the compliance of the contested norm with the legal norms of higher legal force will be examined*

The Constitutional Court recognised that the contested norm pertained to foreigners<sup>1</sup> with diverse legal statuses and grounds for residing in the Republic of Latvia. The first part of Article 18 and the first part of Article 21 of TFEU apply only to a part of persons who are affected by the contested norm. However, Article 91 of the *Satversme* guarantees the existence of a united legal order and comprehensive effect of law upon all persons in Latvia. Therefore the Constitutional Court decided, first of all, to examine the compliance of the contested norm with Article 91 of the *Satversme*. [8.]

*On the content of Article 91 of the Satversme*

Two closely interconnected principles are included in Article 91 of the *Satversme*: the principle of equality – in the first sentence of the Article, and the principle of prohibition

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<sup>1</sup> In the judgement, this term will be used to denote citizens of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland, or persons who have received permanent residence permits in the Republic of Latvia.

of discrimination – in the second sentence. The principle of equality allows and even requires differential treatment of persons who are in different circumstances, and also allows differential treatment of persons in similar circumstances, if there are objective and reasonable grounds for it. Whereas the aim of the principle of prohibition of discrimination is to eliminate differential treatment, which is based on an inadmissible criterion. [9.]

In view of the arguments presented in the Ombudsman's application and other materials in the case, the Constitutional Court decided to examine the compliance of the contested norm with the whole Article 91 of the *Satversme*. In order to do that, however, the Constitutional Court had to establish, whether citizenship was a criterion that was included in the content of this Article. [9.]

It follows from the norms of international human rights binding upon Latvia that citizenship is to be considered as one of the criteria, on the basis of which discrimination is prohibited. However, establishing differences, on the basis of the aforementioned criterion, should not be considered as being absolutely prohibited, i.e., in certain cases the use of this criterion can be justified. From the commitments that Latvia has assumed by acceding to the European Union, in turn, it follows that the citizenship is a criterion, on the basis of which discrimination is prohibited. [10.1.,10.2.]

Hence, the Constitutional Court recognised that citizenship was one of the criteria that were included in the content of Article 91 of the *Satversme*. [10.2.]

*On examining the constitutionality of the contested norm*

In examining the compliance of the contested norm with Article 91 of the *Satversme*, the Constitutional Court established: 1) whether and which persons (groups of persons) were in similar and according to certain criteria comparable circumstances; 2) whether the contested norm envisaged similar or differential treatment of these persons; 3) whether such treatment was established by a legal norm adopt in the procedure provided for in regulatory enactments; 4) whether this treatment had objective and reasonable grounds; i.e., whether it had a legitimate aim and whether the principle of proportionality had been complied with. [11.]

*On groups of persons, who are in similar and comparable circumstances*

The Constitutional Court found that the following were in similar and comparable circumstances: 1) payers of the real estate tax, in whose property the residence of a Latvian citizen, non-citizen or a foreigner that complied with the requirement set in the contested norm had been declared; 2) payers of the real estate tax, in whose property the residence of a foreigner that did not comply with the requirement set in the contested norm had been declared. [12.]

*On whether the contested norm envisages equal or differential treatment of these persons*

A reduced tax rate is applied to the payer of the real estate tax, in whose property the residence of a Latvian citizen, non-citizen or a foreigner that complies with the requirement set in the contested norm has been declared. Whereas to the payer of the real estate tax, in whose property the residence of a foreigner that does not comply with the requirement set in the contested norm had been declared, the basic rate of the real estate tax is applied. Thus, the contested norm establishes differential treatment of persons, who are in similar and comparable circumstances. [13.]

*On whether such treatment was established by a legal norm adopt in the procedure provided for in regulatory enactments*

The Constitutional Court, in examining the regulation included in the contested norm from the perspective of tax rates, found that the tax rates chosen by the Riga City Council were within the framework of the real estate tax rates established by the legislator. Thus, the Riga City Council has not exceeded the authorisation granted to it by the legislator. [14.2.]

The pre-requisite for applying the reduced real estate tax rates included in the contested norm has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations that follow from this norm and to predict the consequences of its application. [14.2.]

Thus, the Constitutional Court recognised that the differential treatment had been established by a legal norm that had been adopted in a procedure envisaged by regulatory enactments. [14.2.]

*On whether the differential treatment has a legitimate aim*

The Constitutional Court noted that applying a reduced real estate tax rate to such tax objects, where the residence of a person has been declared, in certain cases could facilitate the performance of the local government's functions and tasks. [15.3.]

However, pursuant with the contested norm, the reduced tax rates can be applied to the object, where a foreigner's address of residence has been declared, only if the foreigner had declared his residence in Latvia on 1 January seven years before the respective taxation year. [15.4.]

The Constitutional Court drew attention to the rights of a citizen of the European Union to freely move and reside in the territory of other EU Member States, as well as the content of the principle of prohibition of discrimination in the European Union law. Within the European Union, equal rights must be ensured also to the citizens of the European Economic Area or the Confederation of Switzerland<sup>2</sup>. [10.2., 15.4.1.]

The Constitutional Court recognised that the requirement included in the contested norm *per se* was incompatible with the essence of the right to free movement and violated the principle of prohibition of discrimination on the grounds of citizenship. The contested norm envisages differential treatment of taxpayers exactly depending on the citizenship of the person, who has declared his residence in the property owned by the taxpayer. However, in the space of the European Union law, the criterion of citizenship may not be used to establish differential treatment of taxpayers. [15.4.1.]

Hence, the differential treatment of taxpayers, in whose property the residence of a citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland has been declared, cannot be justified. [15.4.1.]

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<sup>2</sup> Pursuant to the Agreement on the European Economic Area of 13 December 1993, as well as the Agreement between the European Community and its Member States on the one part, and the Swiss Confederation on the other, on the free movement of persons.

In addition to this, the contested norm applies also to those taxpayers, in whose property a foreigner, who is not a citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland, has been declared. Judging by the considerations provided by the Riga City Council, it might be assumed that the contested norm had been issued with the aim to ensure the availability of residential premises for rent or to decrease the tax burden for Latvian citizens and non-citizens. However, essentially, the Riga City Council has not indicated such considerations that would substantiate what exactly the legitimate aim of the differential treatment envisaged by the contested norm is, nor that such objective differences between the taxpayers existed that would require establishing the differential tax rates. [15.4.2.]

The Constitutional Court was not provided a reasonable explanation on the way in which the requirement that the foreigner should have his residence declared in Latvia – not in the property owned by the taxpayer – on 1 January seven years before the respective taxation year (which is considered to be met even if the residence had been declared in Latvia only for a single day) could ensure more extensive availability of residential premises or reduce the tax burden for the citizens and non-citizens of Latvia. [15.4.2.]

Hence, the differential treatment established by the contested norm of the taxpayers, in whose property the residence of a foreigner, who is not the citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland, has been declared, lacks a legitimate aim. [15.4.2.]

*On compliance of the contested norm with the first part of Article 18 and the first part of Article 21 of TFEU*

In view of the fact that the contested norm is incompatible with Article 91 of the *Satversme*, the Constitutional Court recognised that it was not necessary to examine its compatibility with the first part of Article 18 and the first part of Article 21 of TFEU. [16.]

**Hence, the Constitutional Court ruled to recognise the contested norm as being incompatible with Article 91 of the *Satversme*.**

Pursuant to Section 32 (3) of the Constitutional Court Law, the legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, is to be recognised as being invalid as of the date when the judgement by the Constitutional Court is published, unless the Constitutional Court has provided otherwise.

The judgement by the Constitutional Court is final and not subject to appeal. The judgement will be published within five days following its adoption in the official journal “Latvijas Vēstnesis”.

The text of the judgment [in Latvian] is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/11/2017-28-0306\\_Spriedums.pdf#search=2017-28-0306](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/11/2017-28-0306_Spriedums.pdf#search=2017-28-0306)

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The press release was prepared with the aim to facilitate understanding of the cases heard by the Constitutional Court. It shall not be regarded as part of the ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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