



The norm in the binding regulation of the Riga City Council, which sets the procedure for calculating the real estate tax for buildings, which have not been sub-divided into apartment properties, complies with the *Satversme*

On 18 October 2018, the Constitutional Court passed the judgement in the case No. 2017-35-03 “On Compliance of Sub-para 3.2.1. of the Binding Regulation of the Riga City Council of 9 June 2015 No. 148 “On the Real Estate Tax in Riga” with the First Sentence of Article 91 and the First Sentence of Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Pursuant to Sub-para 3.2.1. of the Binding Regulation of 9 June 2015 of the Riga City Council No. 148 “On the Real Estate Tax in Riga” (hereinafter – the contested norm) the tax rates in the amount of 0.2, 0.4 or 0.6 per cent of the cadastral value of the property (hereinafter – the reduced tax rates) are applied to the taxpayer – a natural person – for a multi-apartment building, which has not been sub-divided into apartment properties, or a group of premises in a non-residential building the purpose of which is residence, for that part of the building, which at 0:00 on 1 January of the taxation year has been declared as a person’s place of residence, assuming that each person, who has declared his place of residence, is eligible to 30 m² of the part of the building, the purpose of which is residence, and for the part of premises of common use eligible for this part. For the remaining part of the premises, a real estate tax rate in the amount of 1.5 % of the cadastral value of the object is applied. The contested norm is not applicable to the objects owned or possessed by the State, the local government or municipal capital companies.

Norms of Higher Legal Force

The first sentence of 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.”

The first sentence of Article 105 of the *Satversme*: “Everyone has the right to own property.”

The Facts

The case has been initiated with respect to an application submitted by the Ombudsman. The Ombudsman, in the framework of a verification procedure, found that the contested norm envisaged, without grounds, a different amount and calculation of the real estate tax for a person, who owned an apartment property or a single-apartment building, and for a person, who owned a multi-apartment building that had not been sub-divided into apartment properties. The Ombudsman had proposed to the Riga City Council amending the contested norm to eliminate the differential treatment and the restriction on a person's right to property. However, the Riga City Council has not eliminated these deficiencies within the term set by the Ombudsman.

The Court's Findings

On the way the constitutionality of the contested norm will be examined

The basic question in the case under review is whether the possible restriction on the rights of payer of the real estate tax – a natural person, to whom a tax is applied for a multi-apartment building, which has not been sub-divided into apartment properties, or a group of premises in a non-residential building the purpose of which is residence, complies with the principle of legal equality. Hence, the Constitutional Court decided to examine the compliance of the contested norm with the first sentence of Article 91 of the *Satversme* in interconnection with the first sentence of Article 105 of the *Satversme*. [8.]

On the content of the first sentence of Article 91 and the first sentence of Article 105 of the *Satversme*

The Constitutional Court noted that the first sentence of Article 91 of the *Satversme* in interconnection with the first sentence of Article 105 of the *Satversme* prohibited from issuing such legal norms that without objective and reasonable grounds allowed differential treatment of taxpayers who were in similar and comparable circumstances. Hence, in the case under review, the Constitutional Court established: 1) whether and which persons (groups of persons) were in similar and, according to concrete criteria, comparable circumstances; 2) whether the contested norm envisaged an equal or a differential treatment of these persons (groups of persons); 3) whether such treatment had been established by a legal norm adopted in a procedure set out in regulatory

enactments; 4) whether such treatment had objective and reasonable grounds, i.e., whether it had a legitimate aim and whether the principle of proportionality had been adhered to. [9.]

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) the payers of the real estate tax – natural persons –, who had to pay the tax for a part of the building belonging to an apartment property, the use of which was residence, and a single-apartment building, if in the aforementioned objects at 0:00 on 1 January of the taxation year the place of residence of at least one person had been declared; 2) the payers of the real estate tax – natural persons –, who had to pay the tax for a multi-apartment building, which had not been sub-divided into apartment properties, or a group of premises in a non-residential building, the purpose of which was residence, if at 0:00 on 1 January of the taxation year the number of persons declared in these objects was equal to the number of taxpayers. [10.2., 10.3.]

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

Pursuant to the contested norm, to the taxpayer – a natural person – for a multi-apartment building, which has not been sub-divided into apartment properties, or a group of premises in a non-residential building, the purpose of which is residence, the reduced tax rates are applied for that part of the building, which at 0:00 on 1 January of the taxation year has been declared as the place of residence of a person, assuming that each person, who has declared his place of residence, is eligible to 30 m² of the part of the building, the purpose of which is residence, and for the part of premises of common use eligible for this part. For the remaining part of the premises, a real estate tax rate in the amount of 1.5 % of the cadastral value of the object is applied to the taxpayer. Whereas if the taxpayer owns an apartment property or a single-apartment building, then the reduced tax rate is applied to him, irrespectively of the premises eligible to a person, who has declared the place of residence in this property. Hence, the contested norm envisages differential treatment of groups of persons, who are in similar and comparable circumstances. [11.]

On whether the differential treatment has been established by a legal norm adopted in a procedure set out in regulatory enactments

The Constitutional Court found that the Riga City Council had not exceeded the authorisation granted to it by the legislator. The Court also recognised that the procedure for calculating the real estate tax that was included in the contested norm was worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from this norm and to forecast the consequences of application thereof. Hence, the differential treatment has been established by a legal norm adopted in a procedure set out in regulatory enactments. [12.2.]

On the legitimate aim of the differential treatment

The Constitutional Court found that the Riga City Council had pointed to objective differences of the taxpayers in connection with the selected tax object. [13.3.]

The regulation that envisages paying of a certain tax is established to ensure the formation of the state and local government budget, thus, fostering public welfare. If a person declares his place of residence within the territory of a certain local government then the government gains revenue also from the personal income tax paid by this person. Whereas the local government is able to perform its functions with the help of revenue from the real estate tax and the personal income tax. Hence, the differential treatment established by the contested norm is aimed at protecting public welfare. [13.4.]

On the suitability of the chosen measures for reaching the legitimate aim of the differential treatment

The Constitutional Court noted: in examining the proportionality of the differential treatment in interconnection with the first sentence of Article 105 of the *Satversme*, the impact of the specificity of tax law on the scope of constitutional review should be taken into consideration. [15.]

By defining the area of premises that one person who has declared his place of residence is eligible to, the Riga City Council had used statistical data. Hence, there is a reasonable explanation for the chosen principle for calculating the tax. [15.2.]

If the taxpayer wishes to have the reduced tax rates applied to him he should either declare his own place of residence at the particular tax object or offer it for residence

to other persons and allow them to declare their place of residence there. The revenue that the local government gains from the personal income tax paid by the persons declared in its administrative territory, respectively, increases. Thus, the chosen measures are suitable for reaching the legitimate aim of the differential treatment. [15.2.]

On whether the legitimate aim could be reached by other measures, less restrictive on a person's rights and lawful interests

The Constitutional Court recognised that the information about the premises that a person used could not always be considered as being an objective criterion for calculating the real estate tax. Whereas requesting information from taxpayers or imposing the obligation on persons to submit certain information for the tax calculation needs would create additional commitments to persons and would increase the administrative burden, compared to the regulation of the contested norm. Hence, there are no other more lenient measures allowing to reach the legitimate aim in at least the same quality. [16.2.]

On whether the benefit that society gains from the differential treatment outweighs the harm inflicted on a person's rights and lawful interests

It should be taken into consideration that in those cases, where at least one person has declared his place of residence in a multi-apartment building that has not been subdivided into apartment properties, the rate in the amount of 1.5 per cent is applied to the taxpayer only for that part of the area of property, which "is not covered" by the area to which the persons declared in the building are eligible to. The Constitutional Court found that there were no grounds to consider that the payment of the tax calculated in accordance with the contested norm would be a disproportionate burden for the addressee. [17.1.]

The Constitutional Court also noted that the contested norm had a regulatory function – to encourage taxpayers to declare their place of residence in Riga or to allow the persons living in the tax object to declare their place of residence therein. Hence, the taxpayer can adjust his behaviour in a way to ensure that reduced tax rates are applied to him. [17.2.]

In examining the impact of the contested norms on the persons, who were in the legal relationship of joint ownership, the Constitutional Court recognised that the institution of joint ownership *per se* caused such consequences that the actions of one joint proprietor could to a certain extent influence the other joint proprietors. The persons, who are in the legal relationship of joint ownership, should be aware of the legal consequences following from it. [17.3.]

The public benefit from the differential treatment established by the contested norm is revenue into the budget of the local government, allowing it to perform its functions in public interests. Moreover, society benefits also from effective tax administration, since the contested norm allows calculating the tax payment by using the information that the local government already has at its disposal. In addition to this, the contested norm also facilitates declaring of the place of residence by persons, for example, tenants, at the place where they actually reside, and, thus, fosters a person's reachability in the legal relationships with the State and the local government. Hence, the benefit gained by society outweighs the harm inflicted on a person's right to property. The principle of proportionality has been complied with in establishing the differential treatment. [17.4.]

Additionally, the Constitutional Court drew attention to the fact the local government had the obligation to consider regularly, on its own initiative, whether the criteria it had established for applying different tax rates were proportional, continued to comply with the social reality and a person's right to housing, and whether the valid legal regulation in this area did not require any improvements. [18.]

The Constitutional Court decided to recognise the contested norm as being compatible with the first sentence of Article 91 and the first sentence of Article 105 of the *Satversme*.

The judgement of the Constitutional Court is final and not subject to appeal, it will enter into force on the day of its publication. The judgement will be published in the official journal "Latvijas Vēstnesis" within five days following its adoption.

The text of the judgement [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/2017/12/2017-35-03_Spriedums-1.pdf#search=2017-35

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.

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