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**The Constitutional Court terminates legal proceedings in a case with respect to norms that set the obligation to abide by the building standards of the former USSR**

On 18 April 2019, the Constitutional Court has adopted a decision in case No. 2018-13-03 “On Compliance of Para 4 and Para 5 of the Cabinet Regulation of 21 April 1998 No. 139 “Regulation on the Latvian Building Standard LBN 205-97 “The Standards of Designing Masonry and Reinforced Masonry Constructions”” with Article 90 of the *Satversme* of the Republic of Latvia.”

**The Contested Norms**

Para 4 and of the Cabinet Regulation of 21 April 1998 No. 139 “Regulation on the Latvian Building Standard LBN 205-97 “The Standards of Designing Masonry and Reinforced Masonry Constructions””<sup>1</sup> (hereinafter – Regulation No. 139):

“Until the Latvian Building Standard LBN 004 “Loads and Impacts. The Basic Principles of Design” is approved, the value of loads and impacts, coefficient of safety and combinations of loads shall be taken in accordance with the requirements of SNIp 2.01.07-85.”

Para 5 of Regulation No. 139:

“Until the Latvian Building Standard LBN 204 “The Design Standards of Steel Constructions” is approved, the calculations of inserted metal pieces shall be done in accordance with SNIp II 23-81\* “Steel Constructions. Design Standards”.

**The Norm of Higher Legal Force**

Article 90 of the *Satversme*: “Everyone has the right to know about his or her rights.”

**The Facts**

The case was initiated on the basis of an application submitted by a person, whose certificate of building practice had been annulled, *inter alia*, on the basis of the contested norm.

The applicant notes that the building standards of the former USSR, which he had to abide by pursuant to the contested norms, had not been promulgated and were not accessible in the

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<sup>1</sup> The Regulation has become void as of 1 June 2015.

procedure defined in regulatory enactments. Thus, the Applicant holds that the contested norms infringe upon his fundamental right defined in Article 90 of the *Satversme* to know about his rights.

### **The Court's Findings**

#### On terminating legal proceedings in the case because the contested norms have become void

First and foremost, the Constitutional Court examined the issue, whether the legal proceedings in the case should be terminated because the contested norms had become void. The Court recognised: the fact that the contested norms have become void *per se* is not always the grounds for terminating legal proceedings. The need to protect persons' fundamental rights established in the *Satversme* should be taken into account. The case under review had been initiated on the basis of a constitutional complaint, and the applicant had requested the Constitutional Court to recognise the contested norms as being void with respect to him as of the moment of their adoption. Therefore there are no grounds for terminating legal proceedings in accordance with Para 2 of Section 29 (1) of the Constitutional Court Law. [10.–11.]

#### On the infringement on a person's fundamental rights and the moment of its occurrence

Since it might be necessary to continue legal proceedings in the case to ensure the protection of a person's rights, which might have been infringed upon, first of all, the infringement on the applicant's fundamental rights and the moment it occurred must be established. This matter had been assessed by the Panel in deciding on the initiation of the case; however, the Panel had been limited in this assessment as regards the materials at its disposal. Therefore the Constitutional Court, in hearing the case, examines repeatedly the infringement on a person's rights and the moment it occurred, taking into account the materials collected during the preparatory stage of the case. [12.]

The Constitutional Court noted that Article 90 of the *Satversme* provided for a person's subjective public right to be duly informed about his rights and also obligations. Article 90 of the *Satversme* comprises, *inter alia*, the quality criteria for legal norms, in accordance with which each legal norm should be accessible and also should be sufficiently clear and foreseeable. Persons should have received adequate instructions about the legal regulations applicable in the particular case. The accessibility of the legal norm depends, *inter alia*, on the particular regulatory enactment, the sector it belongs to, as well as the number and status of the subjects it regulates. [12.1.]

The applicant holds that his fundamental rights, established in Article 90 of the *Satversme*, have been infringed upon since an obligation followed from the contested norms, in designing a part of a building structure, to comply with the requirements of SNIp; however, these norms are said not to be sufficiently accessible and clear. The applicant indicates in the constitutional complaint as the moment when his fundamental rights had been infringed upon the moment when the contested norms had been applied in the administrative proceedings regarding the annulment of his building practice certificate. However, the Constitutional Court noted that the case, where the legal norm was applied, was only one of the instances, where a legal norm could infringe upon a person's fundamental rights in the meaning of Section 19<sup>2</sup> of the Constitutional Court Law. [12.2.]

The Constitutional Court established that the applicant, in designing the part of a building structure, had to act in accordance with the contested norms and that, at the time, he had been aware of his obligation to both implement the contested norms and SNIp, referred to by these norms. [12.2.]

The Constitutional Court underscored that, in certain sectors, professional activities could be linked to the safety risk for other person, therefore, it was of particular importance for the specialists employed in these sectors to have as comprehensive as possible understanding of the content of their obligations and to approach these with appropriate care. A person, who has to perform his professional activities in accordance with the contested norms, must act in

due time upon establishing that these norms are not accessible to him. Hence, the Constitutional Court recognised: if the State had imposed imperative obligations on a person by the contested norms then the infringement upon a person's fundamental rights established in Article 90 of the *Satversme* regarding the accessibility of these norms occurred at the moment when the person had to perform the obligation defined in the contested norms. [12.2.]

#### Using the general legal remedies and the term for submitting the application

The applicant did not have at his disposal general legal remedies that would allow him to prevent the violation of his fundamental rights envisaged in Article 90 of the *Satversme* as regards the accessibility of the contested norms. Therefore, pursuant to Section 19<sup>2</sup> (4) of the Constitutional Court Law, he had the right to submit a constitutional complaint within six months as of the moment, when he became aware that at the time of designing a part of a building structure he had a mandatory obligation to implement norms that had not been accessible to him. [12.3.]

The applicant had designed the project of a part of a building structure where he had the obligation to implement the contested norms until 7 June 2010, which is proven by the explanatory note for the project of a part of a building structure prepared by the applicant. However, he turned to the Constitutional Court on 21 June 2018. Hence, the Constitutional Court found that the applicant had not abided by the term for submitting the constitutional complaint set in Section 19<sup>2</sup> (4) of the Constitutional Court Law. [12.3.]

#### **The Constitutional Court decided:**

to terminate legal proceedings in case No. 2018-13-03 “On Compliance of Para 4 and Para 5 of the Cabinet Regulation of 21 April 1998 No. 139 “Regulation on the Latvian Building Standard LBN 205-97 “The Standards of Designing Masonry and Reinforced Masonry Constructions”” with Article 90 of the *Satversme* of the Republic of Latvia”.

The decision is not subject to appeal.

The text of the decision is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-13-03\\_Lemums\\_izbeig%C5%A1ana.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-13-03_Lemums_izbeig%C5%A1ana.pdf#search=)

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