



The restrictions established by the Riga City Council on establishing gaming halls in the Historic Centre of Riga comply with Article 105 of the *Satversme*

On 16 May 2019, the Constitutional Court passed the judgement in case No. 2018-17-03 “On Compliance of Para 459 of the Binding Regulation of the Riga City Council of 7 February 2006 No. 38 “Regulation on the Use of and Construction in the Territory of the Historical Centre of Riga and the Protective Zone Thereof” with the First, the Second and the Third Sentence of Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Binding Regulation of the Riga City Council of 7 February 2006 No. 38 “Regulation on the Use of and Construction in the Territory of the Historical Centre of Riga and the Protective Zone Thereof” (hereinafter – the Binding Regulation No. 38):

Para 459 provides: “It is prohibited to set up a gaming hall in the territories JC, JC1, JC2, JC3 and JC4, except for four- and five-star hotels.”

The Norm of Higher Legal Force

The first, the second and the third sentence of Article 105 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law.”

The Facts

The case was initiated on the basis of an application by the Administrative District Court (hereinafter also – the Applicant). An organiser of gambling – a limited liability company “ALFOR” – had turned to the Applicant, appealing against a decision by the Riga City

Council addressed to it, by which the Council revoked the previously issued permission to open a gaming hall and to organise gambling in Riga, 48/50 Brīvības Street – in the territory of the historic centre of Riga. The decision had been substantiated, *inter alia*, by the contested norm.

The Applicant holds that the contested norm is incompatible with the first, the second, and the third sentence of Article 105 of the *Satversme* because it prohibits the organiser of gambling from performing its business activities. The Applicant notes that the Riga City Council had not duly assessed the need for the restriction and that it is disproportional.

Following the initiation of the case, the Constitutional Court has received decisions by the Administrative District Court and the Administrative Regional Court on suspending legal proceedings in 28 more cases regarding decisions by the Riga City Council on revoking the permissions issued to merchants for opening gaming halls in the territory of the historic centre of Riga and its protection zone.

The Court's Findings

On terminating legal proceedings in the case

The Riga City Council had requested termination of legal proceedings in the case since the Applicant, allegedly, only wanted to achieve that the Constitutional Court reviewed the interpretation of the contested norm and other legal norms by the Riga City Council and the Supreme Court. Therefore the Constitutional Court, first and foremost, assessed whether circumstances making the continuation of legal proceedings in the case impossible were present.

The Constitutional Court concluded that the request by the Riga City Council was unfounded and that the legal proceedings in the case had to be continued. [13.]

On the scope of Article 105 of the *Satversme*

The Constitutional Court found that the right, acquired by a person, to engage in a certain type of business activities fell within the scope of the first sentence of Article 105 of the *Satversme*. [14.]

On whether the restriction on fundamental rights established in the contested norm had been adopted in accordance with law

The Constitutional Court found that the Spatial Plan of the Historic Centre of Riga and the Protection Zone Thereof (hereinafter – the Plan of the Historic Centre of Riga), which comprised the Binding Regulation No. 38, had been drafted and adopted in a procedure established in regulatory enactments and was accessible. [17.]

The Constitutional Court noted that a local government, within the framework of an authorisation granted to it by the legislator, enjoyed certain discretion in the area of spatial planning, *inter alia*, to envisage certain restrictions on the right to property in its spatial plan. The Constitutional Court recognised: since the contested norm applied to the historic centre of Riga and was included in the Plan of the Historic Centre of Riga, in reviewing this norm, the legal regulation on the protection of the historic centre of Riga had to be taken into account. [18.1., 18.2.]

The Constitutional Court found that alignment of interests while drafting the spatial plan, to ensure sustainable development of society, was a complex, comprehensive process and that one particular interest could not be fully examined in a separate planning document, in view of all the other interests of individuals and society co-existing within the territory. [18.2.]

The Constitutional Court found that, in the present case, the regulatory enactments that authorised the local government to draft and to adopt a spatial plan for the historic centre of Riga and its protective zone, i.e., the law “On Local Governments”, regulatory enactments on spatial planning and the Law on Preservation and Protection of the Historic Centre of Riga constituted a united system of legal regulation. These regulatory enactments should be interpreted in their interconnection and should not be set off each against the other. The local government’s right to plan the development of its territory

and to set restrictions on the use of the territory follows from them, unless the restrictions are not incompatible with laws and the Cabinet Regulations, if they have a legitimate aim and are proportional. [18.2.]

The contested norm imposes restrictions on the organisers of gambling therefore, in reviewing this norm, also the legal regulation on organising gambling should be taken into consideration. Hence, the Constitutional Court concluded that it had to establish whether the Riga City Council, in issuing the contested norm, had acted in compliance with the Law on Gambling and Lotteries; i.e., whether the regulation of this Law allowed local governments to establish restrictions in their spatial plans on setting up places for organising gambling. [18.3., 18.4.]

The text of the third and the sixth part of Section 42 of the Law on Gambling and Lotteries, as well as the discussions between the members of the parliament regarding the wording of these norms that had taken place, prove that the legislator both had wanted to alleviate the possibilities of local governments to curb the spread of gambling but had not authorised *expressis verbis* local governments to issue such binding regulations, including the spatial plans, by which organising of gambling would be permitted or prohibited in its administrative territory or a part thereof. The Constitutional Court had to verify, whether the text and history of drafting the respective norms of the Law on Gambling and Lotteries could be considered as being sufficiently important factors to deny a local government the right to establish, in its spatial plan, restrictions on setting up places for organising gambling. [18.5.]

The Constitutional Court found that, in practice, there were two ways, in which a local government could curb the spread of places for organising gambling within its territory: firstly, the local government could establish respective restrictions on the use of territory in the spatial plan, and, secondly, pursuant to the third or the sixth part of Section 42 of the Law on Gambling and Lotteries, adopt an individual decision not to issue a permission or to revoke an already issued permission for opening a place for organising gambling. [18.5.]

The Constitutional Court, interpreting the legal regulation, found that setting restrictions on organising gambling in the local government's spatial plan and the adoption of individual decisions with respect to particular places for organising gambling were not mutually exclusive but rather mutually complementary solutions. In the contemporary situation, both these solutions can operate in parallel and ensure a system for controlling the spread of places for organising gambling. [18.5.]

In view of the substance and principles of spatial planning, it was recognised: if a local government had been granted the right to prohibit setting up places for organising gambling in its territory by individual decisions then the local government had even more rights to establish in its spatial plan respective restrictions on the use of the territory in accordance with the legal regulation on spatial planning. Moreover, the spatial plan is subject also to the judicial review. [18.5.]

In view of the purpose of the Law on Preservation and Protection of the Historic Centre of Riga and Latvia's international commitments, the Constitutional Court found that, in examining the legal regulation on gambling, the status of special protection granted to the historic centre of Riga and the planning of the historic centre, subordinated to it, should be taken into consideration. [18.5.]

In the particular situation, by establishing restrictions on setting up gaming halls in the historic centre of Riga and by adopting individual decisions in accordance with Section 42 (6) of the Law on Gambling and Lotteries, the most expedient and fairest outcome can be reached, moreover, one that complies with the legal system the best. Thus, the Constitutional Court found that the contested norm was not incompatible with the Law on Gambling and Lotteries. [18.5.]

The Constitutional Court concluded that the contested norm was sufficiently clear and comprehensible to understand that the restriction on fundamental rights established in it applied also to the gaming halls that already had been opened. [18.6.]

The Constitutional Court found that the restriction on fundamental rights defined in the contested norm had been established by law. [18.6.]

On the legitimate aims of the restriction on fundamental rights established in the contested norm

The Constitutional Court found: to identify the legitimate aim of the restriction established in the contested norm, the purposes of the Law on Preservation and Protection of the Historic Centre of Riga and the Plan of the Historic Centre of Riga, as well as of the Law on Gambling and Lotteries should be taken into consideration. [19.1.]

The historic centre of Riga as such is a cultural monument protected by UNESCO and the State – a complex object that needs to be examined in its totality. The architectonic form of the urban environment cannot be separated from its social meaning and use. Hence, the Constitutional Court found that the special rules on the preservation, protection and development of the historic centre of Riga applied not only to the part of the city and cultural-historical values located in it that was visually perceptible but also to its content, the intangible aspect of it. [19.2.]

The Constitutional Court found that, in urban environment, in particular, in the historic centres of cities, the spatial planning should be used to ensure that cultural values located therein were respected and that the diverse public interests and needs were balanced, thus, making these territories as suitable (friendly) to society as possible. [19.3.]

Likewise, the Constitutional Court found that the legislator had been aware that the services offered by the gambling sector comprised an increased risk for an individual and the society in general, therefore various restrictions had been set in regulatory enactments, and the procedure for licensing organisers of gambling and places for organising gambling was strictly regulated. [19.4.]

The Constitutional Court found that the restriction on fundamental rights set in the contested norm had been established for a number of protected rights and interests: preservation and protection of the historic centre of Riga and its cultural-historical values, an individual's right to live in a benevolent environment, *inter alia*, the right to a benevolent cultural environment and the right to the protection of culture heritage, the

society's right to sustainable development and the society's right to be protected against the adverse impact of gambling, as well as the rights of gamblers and their next of kin. All these protected rights and interests are interconnected and partially overlap, therefore they cannot be examined in isolation. In general, these can be covered by two legitimate aims: firstly, protection of other persons' interests, and, secondly, protection of public welfare. [19.5.]

The public interests that are protected by the restrictions established in the contested norm cannot be viewed narrowly, attributing these only to that part of society that resides in the territory of the historic centre of Riga, because it is visited also by other residents of Riga and the whole of Latvia, and also tourists, whose perception of Riga is shaped by getting to know the central part of the city. [19.5.]

On the proportionality of the restriction on fundamental rights established in the contested norm

In examining, whether the restriction on fundamental rights established in the contested norm is appropriate for reaching the legitimate aim, it should be taken into consideration that the restriction on fundamental rights established in the contested norm has two legitimate aims and that they comprise a number of interconnected interests. [20.1.]

The contested norm is an appropriate measure for reaching the legitimate aim – to preserve and to protect the historic centre of Riga and its cultural-historical values, in the tangible and intangible aspect thereof, because it allows avoiding the architectonic and advertising solutions that are typical of gaming halls in the historic centre of Riga. Hence, the sense of public security is increased and the historic centre of Riga is made more attractive in the eyes of its residents and visitors, who can use and enjoy the urban environment in full. [20.1.]

Likewise, the restriction on fundamental rights established in the contested norm protect persons from access to gaming halls and, thus, potential gambling addiction since the accessibility of gaming halls is one among factors facilitating addiction. [20.1.]

The Constitutional Court found that the restriction on fundamental rights established in the contested norm allowed protecting the rights of other persons and public welfare. This restriction is appropriate for reaching the legitimate aims. [20.1.]

The restriction on merchants' rights established in the contested norm is not absolute. They can continue organising gambling outside the historic centre of Riga and elsewhere in Latvia. [20.2.1.]

The exception envisaged in the contested norm, i.e., that it is allowed to set up gaming halls in the historic centre of Riga in four- and five-star hotels, does not place the gaming halls operating in these hotels in a privileged situation but points to the fact that the local government had assessed the restriction and recognised that an exception to it was admissible. [20.2.1.]

The Constitutional Court found that restrictions on the visual presentation of gaming halls and on advertising would not be as effective and would not allow reaching the legitimate aims of the restriction on fundamental rights established in the contested norm in the same quality as the one ensured by the contested norm. [20.2.2.]

The local governments' right, envisaged in Section 42 (6) of the Law on Gambling and Lotteries, cannot be considered as being an alternative measure, less restrictive on a person's rights. This right has already been granted to a local government in law, and the local government can exercise it, in the particular case, in parallel to or in addition to the regulation established in the spatial plan. A local government, in its decision to revoke a permission to open a gaming hall in the territory of the historic centre of Riga, may, in substantiating an infringement on residents' significant interests, refer, *inter alia*, also the Plan of the Historic Centre of Riga, during the drafting of which the interests of individual persons and society already had been aligned. Moreover, the establishment of a restriction on the right to property in the spatial plan is a more favourable solution for merchants since it ensures the predictability of the business environment and enables them to plan their business activities in the particular territory better. [20.2.3.]

Hence, the Constitutional Court found that there were no such alternative measures that would be less restrictive on a person's fundamental rights than the restriction established in the contested norm and would allow reaching the legitimate aim of this restriction at least in the same quality. Hence, the restriction on fundamental rights established in the contested norm is necessary for reaching the legitimate aims. [20.2.3.]

The Constitutional Court found that, in the present case, the rights of a merchant – an organiser of gambling – to engage in business activities and benefit from it, on the one hand, and, on the other hand, the rights and interests included in the legitimate aim of the restriction on fundamental rights established in the contested norm, had to be compared. [20.3.]

In view of the possible adverse consequences of gambling that affect an individual and the society in general, the State has been given greater discretion in regulating this sector compared to other sectors. [20.3.]

The Riga City Council has assessed and balanced the comparable interests both in drafting and adopting the Plan of the Historic Centre of Riga and also previously – in drafting the binding regulation No. 97 “On Prohibition to Organise Gambling in Riga”. [20.3.]

The restriction on fundamental rights established in the contested norm affects some merchants, whereas the rights and interests protected by the legitimate aim pertain to a much broader circle of persons and the society in general benefits from such restrictions. Moreover, the valid legal regulation allows merchants to mitigate the adverse consequences of the restriction on property right and respects their legal expectations. [20.3.]

The public benefit from the restriction on fundamental rights established in the contested norm outweighs the adverse consequences incurred by a person because of this restriction. Hence, the Constitutional Court found that the restriction on fundamental rights established in the contested norm was appropriate for reaching the legitimate aims. [20.3.]

In view of the above, the Constitutional Court found that the restriction on fundamental rights established in the contested norm to set up a gambling hall in the historic centre of Riga had been established by law, it had a legitimate aim, and it was proportional. [21.]

The Constitutional Court held:

to recognise Para 459 of the Binding Regulation of the Riga City Council of 7 February 2006 No. 38 “Regulation on the Use of and Construction in the Territory of the Historical Centre of Riga and the Protective Zone Thereof” as being compatible with the First, the Second and the Third Sentence of Article 105 of the *Satversme* of the Republic of Latvia.

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the date of its publication. The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

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

http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/08/2018-17-03_Spriedums.pdf#search=

The press release was prepared with the aim to facilitate understanding of 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 at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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