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**The Constitutional Court terminates legal proceedings in a case pertaining to norms that determine environment protection requirements that must be met while reloading cargos in ports**

On 7 October 2019, the Constitutional Court adopted the decision in case No. 2018-19-03 “On Compliance of Para 100 and Para 139 of the Binding Regulation of the Ventspils City Council of 2 March 2012 No. 9 “Ventspils Free Port Rules” with Article 64 and the First and the Third Sentence of Article 105 of the *Satversme*”.

**The Contested Norms**

Para 100 of the Binding Regulation of the Ventspils City Council of 2 March 2012 No. 9 “Ventspils Free Port Rules:

“100.1. When loading on a vessel oil products or chemical substances with steam pressure (according to Raid method) is equal to or exceeding 27.6 kilopascals (at 37.8C), or heavy fuel, crude oil or benzol, cargo vapour emission control systems (pursuant to the definition determined in Clause 1.2.13 of the International Maritime Organization Shipping Safety Committee Circular No. 585 “Standards for Vapour Emission Control Systems”), which comply with the solution of the best available technical method, shall be used. If a vessel shall not be equipped properly for the connection to the abovementioned systems, requirements laid down in Sub-clause 100.5 of these Regulations shall be complied with.

100.2. Volatile organic compounds (hereinafter referred to as VOC) emissions from cargo vapour emission control system shall not exceed 10 g/Nm<sup>3</sup>, and the terminal operator shall perform adequate monitoring, providing online data transmission to the Freeport Harbour Master office.

100.3. The terminal operator, which handles the substances specified in Sub-clause 100.1 of these Regulations, shall establish an odour monitoring system, providing online data transmission to the Freeport Harbour Master office. The Port Control shall assess

the data received from VOC emissions and odour monitoring, and, if VOC limit specified in Sub-clause 100.2 or odour concentration  $5 \text{ ouE/m}^3$  on the border of the terminal territory shall be exceeded, the Port Control shall demand the terminal operator to take the necessary measures, including reduction of loading intensity. Prior to commencement of loading works of each tanker, the terminal operator shall send electronically the following information to the Harbour Master – the name of vessel, berth No., the copy of safety data sheet of the chemical substance or mixture and volume of loading.

100.4. The terminal operator, which performs discharging of heavy fuel from wagon tanks on the elevated railway structures, shall be obliged to provide that the odour indications caused thereby are not exceeding  $5 \text{ ouE/m}^3$  on the border of the terminal territory.

100.5. If, during cargo handling operations, VOC emission shall exceed the limit specified in Sub-clause 100.2. or odour concentration shall exceed  $5 \text{ ouE/m}^3$  on the border of the terminal territory, the terminal operator shall immediately take the necessary measures to comply with the norms, including reduction of loading intensity.

Para 139 of Regulation No. 9: “The terminal operator shall provide compliance with the requirements specified in Sub-clause 100.1., 100.2., 100.3. and 100.4. of these Regulations on 31 May 2018, at the very latest.”

### **The Norms of Higher Legal Force**

Article 64 of the *Satversme*: “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this *Satversme*.”

The first and the third sentence of Article 105 of the *Satversme*: “Everyone has the right to own property. [...] Property rights may be restricted only in accordance with law.”

### **The Facts**

The case has been initiated with respect to an application by the stock company “Ventbunkers”. The applicant is engaged in commercial activities with oil products in the territory of Ventspils Free Port.

The applicant notes that compliance with these requirements is linked to the investment of substantial financial resources. Hence, its further existence is jeopardised. Likewise, in accordance with the contested norms, the Port Control may demand the applicant to reduce the loading intensity, which would immediately cause financial losses to it since it would require additional resources for reloading the particular cargo. Hence, it is alleged that the contested norms restrict the applicant’s right to property, enshrined in Article 105 of the *Satversme*.

The applicant holds that the contested norms had been issued *ultra vires*. I.e., the legislator had authorised the Cabinet rather than a local government to regulate any issues pertaining to limiting smells caused by polluting activities.

### **The Court’s Findings**

#### On using general legal remedies and the principle of subsidiarity

While preparing the case for adjudication, the Constitutional Court received information that, after the case had been initiated at the Constitutional Court on the basis of the applicant’s submission, the applicant had begun defending its rights at the administrative court. On 9 January 2019, the Administrative District Court had initiated an administrative case but, on 21 June 2019, decided to suspend legal proceedings because the applicant had already turned to the Constitutional Court on 10 August 2018 and a case had been initiated on the basis of its application. [13., 14.]

The Constitutional Court recognised that the applicant had to abide by the principle of subsidiarity that aimed to ensure that a court, upon hearing cases on their merits, first of all would use the legal methods at its disposal to reach an outcome that was compatible with the

*Satversme*. Hence, in complying with the principle of subsidiarity, prior to turning to the Constitutional Court a person must exhaust all real and effective possibilities to defend its fundamental rights that have been infringed upon by general legal remedies, whereas a constitutional complain is, predominantly, an additional mechanism in those instances where it is impossible to eliminate an infringement on fundamental rights by other legal remedies. [15.1.]

The Constitutional Court recognised that it was possible to reach in the administrative legal procedure such substantial law outcome that could eliminate the probable infringement of the applicant's fundamental rights. Hence, in the applicant's situation, the administrative proceedings in a court are a real and effective legal remedy. [15.2.]

Since the applicant has not exhausted all possibilities to protect its rights by general legal remedies legal proceedings in the present case must be terminated. [16.]

**The Constitutional Court decided:**

to terminate legal proceedings in case No. 2018-19-03 “On Compliance of Para 100 and Para 139 of the Binding Regulation of the Ventspils City Council of 2 March 2012 No. 9 “Ventspils Free Port Rules” with Article 64 and the First and the Third Sentence of Article 105 of the *Satversme*”.

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/2018/09/2018-19-03\\_Lemums\\_izbeigsana.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/09/2018-19-03_Lemums_izbeigsana.pdf#search=)

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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 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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