



**A case initiated with respect to norms of the law “On Control of Aid for Commercial Activity”, which restrict the right of a creditor of subordinated liabilities to receive repayment of the principal amount of the loan**

On 9 September, the 1<sup>st</sup> Panel of the Constitutional Court initiated the case “On Compliance of the First Part of Section 8 and the Second and the Third Part of Section 8<sup>1</sup> of the Law “On Control of Aid for Commercial Activity” with Article 1, Article 91, Article 92 and Article 105 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Section 8 (1) of the law “On Control of Aid for Commercial Activity”:

“If a commercial company which is facing financial difficulties receives aid in accordance with the laws and regulations governing aid for commercial activities, from the moment of granting aid for commercial activities until the end of the provision of aid, observing the provisions laid down in the decision of the European Commission or a national laws and regulations on granting aid and irrespective of the effective legal obligations of a commercial company, the commercial company is prohibited from fulfilling subordinate obligations (including the prohibition to repay a loan, calculate, accumulate or pay out an interest or other remuneration for such loan) irrespective of the moment when the subordinate obligations were established.”

Section 8<sup>1</sup> (2) of the law “On Control of Aid for Commercial Activity”:

“(2) Within the framework of the liquidation procedure initiated in accordance with Paragraph one of this Section, the subordinate liabilities shall be fulfilled only when the aid for commercial activity received has been fully repaid. Until the aid for commercial activity is repaid:

1) the inability to repay the aid for commercial activity and the non-fulfilment of the subordinate liabilities shall not constitute a basis for initiating insolvency proceedings;

2) the claim of the creditor of the subordinate liabilities shall not be secured, and also the creditor of the subordinate liabilities shall not be entitled to request depositing their claim amounts or the fulfilment of any other liabilities;

3) it shall be prohibited to pay liquidation quotas to members of the commercial company (shareholders, members, owners).”

Section 8<sup>1</sup> (3) of the law “On Control of Aid for Commercial Activity”:

“The Enterprise Register shall exclude a commercial company from the public register even if, within the liquidation carried out in accordance with the conditions specified in this Section, the aid for commercial activity has not been repaid or the subordinate liabilities have not been fulfilled.”

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

Article 1 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*):

“Latvia is an independent democratic republic.”

Article 91 of 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.”

Article 92 of the *Satversme*

“Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”

Article 105 of 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. Expropriation of property for public purposes shall be

allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

## **The Facts**

The case was initiated on the basis of two applications submitted by Rems Kargins. He is a creditor of subordinated liabilities of the joint stock company “Reverta”, which has received aid for commercial activity. Wishing to regain from this joint stock company the principal amount of the loan he turned to a court of general jurisdiction, which dismissed this claim.

The applicant has turned to the Constitutional Court because he is of the opinion that the procedure, established by the contested norms, which denies him, a creditor of subordinated liabilities, right to receive the principal amount of the loan, restrict his right to property.

The contested norms are said to violate also the principle of legitimate expectations because they had been adopted after the credit agreement had been concluded, without establishing a lenient transition to the new regulation or compensation.

The applicant holds that the contested norms also violate the principle of separation of powers and the right to a fair trial because they had been adopted at the time, when the applicant already had submitted to the court the claim for recovery of the principal amount of the loan. Substantially, by adopting the contested norms, the State had resolved a civil case, which was heard by the court, and which the State would have lost otherwise.

The applicant also considers that the contested norms envisage differential treatment of him as a creditor of the subordinated liabilities of a commercial company, which had received aid for commercial activity, compared to the creditors of subordinated liabilities of a credit institution, which has received such aid, for whom the law has envisaged a lenient transition to the new regulation.

### **The Legal Proceedings**

The Constitutional Court has requested the *Saeima* to submit a written reply on the facts of the case and the legal reasoning by 9 November 2020.

**The term for preparing the case is 9 February 2021.** The Court will decide on the type of procedure and the date for hearing the case after it has been prepared.

**The decision on initiation of the case is available here:**

[https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-49-03\\_Lemums\\_par\\_ierosinasanu-1.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-49-03_Lemums_par_ierosinasanu-1.pdf)

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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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