



A case initiated with respect to a norm that determines the status of a public lake to the Kamenka Lake

On 30 November 2020, the 2nd Panel of the Constitutional Court initiated the case “On Compliance of Para 34 of Part 1 of Annex I (to Section 1102) to the Civil Law “List of Public Lakes and Rivers” with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Section 1102 of the Civil Law provides that the littoral zone as well lakes and rivers listed in the Annex to this Section (Annex I) are included in public waters. All other waters are private. Whereas Para 34 of Part I of Annex I (to Section 1102) to the Civil Law “List of Public Lakes and Rivers” provides that the Kamenka Lake, located in Salienu rural municipality of Daugavpils region, with the area of 11 hectares, is a public lake.

The Norm of Higher Legal Force

Article 1 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*): “Latvia is an independent democratic republic.”

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 an application by the Latgale Regional Court (hereafter – the Applicant). The Applicant is hearing a civil case, in which the Prosecutor’s Office of Daugavpils, in the interests of the State, has brought a claim against, *inter alia*, several private persons regarding termination of the right to property with respect to the Kamenka Lake and amending the respective entries into the Land Register. After restoration of the independence of the Republic of Latvia, these persons had legally obtained the title to immovable property, which consists also of the Kamenka Lake. Although initially the Kamenka Lake had not been included in “List of Public Lakes and Rivers” of Annex I (to Section 11002) of the Civil Law (hereafter – the List), by the law of 14 May 1998 “Amendments to the Civil law”, which entered into force on 10 June 1998, the Kamenka Lake, nevertheless, had been included in the List and became public waters, i.e., the State’s property.

It follows from the application that the contested norm must be applied in the respective civil case. However, it is alleged that this norm is incompatible with the principle of justice, which is derived from the basic norm of a democratic state governed by the rule of law and falls within the scope of Article 1 of the *Satversme*, as well as Article 105 of the *Satversme*. The Applicant holds that, in adopting the contested norm and including the Kamenka Lake in the list, the proper procedure for expropriation of immovable property had not been implemented, a part of which would have been hearing and assessing the opinion of the defendant in the case that the Applicant is hearing, i.e., the owners of the Kamenka Lake. Moreover, the legislator has not fulfilled the obligation to grant fair compensation for expropriation of the Kamenka Lake for public needs.

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 1 February 2021.

The term for preparing the case is 30 April 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/2020/12/2020-63-01_Lemums_par_ierosinasanu.pdf

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.

Zanda Meinarte

Public relations specialist
of the Constitutional Court
+ 317 67830759, + 371 26393803