



Satversmes tiesa

Press release

Case No. 2020-59-01

07.10.2021

Constitutional Court Adopts a Judgement in the Case Regarding the Norm Establishing the Obligation of the Owner of Immovable Property to Cover the Costs of Movement of Road Engineering Structures or Technical Means of Traffic Organisation

On 7 October 2021, the Constitutional Court adopted a judgement in Case No. 2020-59-01 “On Compliance of Section 7¹, Paragraph Three of the Road Traffic Law with the First, Second and Third Sentences of Article 105 of the Satversme of the Republic of Latvia”.

THE CONTESTED NORMS

- Section 7¹, Paragraph Three of the Road Traffic Law (hereinafter referred to as – the contested norm):

“Movement of the existing road engineering structures or technical means of traffic organisation upon reasonable request of an owner of immovable property shall be performed at the expense of the owner of immovable property.”

NORMS WITH A HIGHER LEGAL FORCE

- The first, second and third sentences of Article 105 of the Satversme of the Republic of Latvia (hereinafter referred to as – the Constitution):

“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 OF THE CASE

The case was initiated on the basis of an application of the Supreme Court. Its records contain an administrative case in which the applicant, a legal entity, has requested to amend an administrative act – a building permit issued by the Riga City Construction Board. The proposed construction was the demolition of a

garage located on the applicant's property adjacent to the road engineering structure of the LLC (SIA) "Rīgas satiksme". LLC (SIA) "Rīgas satiksme", legal possessor of the road engineering structure located on the applicant's immovable property – overhead catenary support providing the public transport movement – had issued technical regulations which set out a number of requirements for the demolition of the garage. Since these requirements could not be met, the technical regulations required rebuilding (relocation) of the overhead catenary support, which, according to the contested norm, had to be carried out at the applicant's own expense.

According to the Supreme Court, the contested norm, insofar as it provides for the obligation of the owner of immovable property to relocate a road engineering structure at its own expense in order to demolish a structure included in the immovable property, is non-compliant with the first three sentences of Article 105 of the Satversme. Namely, it allegedly disproportionately restricts the right to property of the owner of immovable property included in Article 105 of the Satversme.

CONCLUSIONS OF THE COURT

On boundaries of the proceedings

The Constitutional Court indicated that the contested norm applied to both road engineering structures and technical means of traffic organisation (hereinafter jointly referred to as – road or traffic object), moreover, to all of them – not only to those related to public transport services. Similarly, the obligation contained in the contested norm applies not only to cases where the owner of immovable property wishes to demolish a structure within his ownership, but also to all the other cases where a road or traffic object in the immovable property may be relocated. [15]

At the same time, the Constitutional Court established that a justified request to relocate a road or traffic object could be such that resulted from a specific subjective wish of the owner of immovable property, which the owner of immovable property has clearly identified. Similarly, a justified request may arise when a road or traffic facility needs to be moved due to objective circumstances. [15.3]

Taking into account the broad content of the contested norm and the different range of situations covered, the Constitutional Court assessed the constitutionality of the contested norm in relation to all the above-mentioned cases. [15.3]

On the scope of Article 105 of the Satversme

The Constitutional Court indicated that the contested norm imposed a requirement which was binding on the owner of immovable property if he/she wished to dispose of his/her property in a manner which could affect the road or traffic object. In particular, such a requirement imposes financial expenses on the property owner. Thus, the obligation of the owner of immovable property to cover the costs of relocation of a road or traffic object in the event of a substantiated claim, included in the contested norm, restricts the right to property included in the first three sentences of Article 105 of the Satversme. [16]

On whether the restriction is imposed by law and has a legitimate aim

The Constitutional Court concluded that the restriction on fundamental rights contained in the contested norm had been established by a law adopted in due procedure. [18]

The Constitutional Court indicated that the aim of the contested norm was to relieve the state, local government or their capital companies from additional financial burden that would inevitably arise if a road or traffic object had to be relocated in case of a substantiated claim of the owner of immovable property. The contested norm shifts the duty to cover the costs from the public to the real estate owner in question, thus ensuring that public funds are not diverted for the implementation of real estate owner's individual intent. Furthermore, it consequently ensures accessibility of roads, safety thereon and continuity of essential public services. Consequently, the restriction has a legitimate aim – the protection of public welfare. [19]

On whether the measures selected are suitable to achieve the legitimate aim

The Constitutional Court concluded that the mean chosen by the legislator was appropriate for achieving the legitimate aim of the restriction on fundamental rights included in the contested norm, since the obligation to cover the expenses was not imposed on the society, but on the owner of the immovable property in question. This prevents from spending financial resources that could be used for the implementation of publicly important functions. [21]

On whether there are less restrictive (more lenient) means of protection of person's fundamental rights

Although the Constitutional Court found that there were other solutions which would restrict the fundamental rights of an individual to a lesser extent, these solutions could in any case affect the amount of financial resources necessary

for the performance of public functions. If the restriction of the fundamental right contained in the contested norm did not exist, then at least a part of the financial resources of the state, local government or capital company performing the specific function should be allocated to cover the costs of relocation of the road or traffic objects. The number of objects covered by the contested norm is sufficiently large. Covering some of the costs of relocation could be a drain on financial resources, with a natural impact on public services and a need for the provider to find ways to ensure that public functions are carried out.

Thus, it cannot be considered that other solutions would achieve the legitimate aim in the same quality as the restriction contained in the contested norm. [22]

On how compliance of the restriction of fundamental rights contained in the contested norm with the principle of proportionality should be assessed

The Constitutional Court indicated that the contested norm provides for a substantiated request of the owner of immovable property to relocate a road or traffic object as a precondition for the obligation to cover the costs of relocation. This requirement may arise in different cases. Within the context of the contested norm, it is important to establish the reason for which the road or traffic object is moved. [23.2]

The Constitutional Court concluded that in cases where there was no objective necessity to relocate a road or traffic object, but the relocation was related only to the subjective wishes of the owner of the immovable property, financing potential expenses to the extent desired by the owner of the immovable property at the expense of the whole society would not be permissible. For example, if owner of the immovable property seeks to have a road or traffic facility relocated for the sole purpose of increasing the value of his/her real estate or enjoying some other special benefit, then in such a situation he/she should bear the costs of the relocation himself, as it depends on the initiative of the property owner to bring about the change to his real estate. [23.2].

However, the second group of situations to which the contested norm applies are those cases where a substantiated request for relocation of a road or traffic object is based on objective necessity and does not depend on the subjective wishes of the owner of the immovable property. These may include a wide range of situations, such as when a structure has lost its original physical characteristics over time and requires certain types of action. Other laws and regulations may also impose an obligation on the owner of immovable property to dispose of his/her property in such a way as to avoid endangering others and incurring legal liability himself/herself, and thus to avoid adverse consequences.

In such a situation, it is not substantiated to impose on the owner of immovable property, who is already burdened with other obligations related to the object in question, the full responsibility for bearing the costs resulting from the relocation of the road or traffic object, without the possibility of agreeing on another solution. There may also be other cases where a property owner objectively needs to make changes to his or her property and therefore needs to relocate a road or traffic facility. At the same time, the objective need to relocate a road or traffic object may also be the result of a negligent behaviour of the property owner, either by failing to treat his/her property with due care or by deliberately bringing it to a condition that requires alterations. [23.2]

On whether the restriction on the fundamental rights of the owner of immovable property outweighs the public benefit

The contested norm not only precludes the assessment of the reason as to why the owner of the immovable property has made a justified request for relocation of the road or traffic object, but also precludes the assessment of other circumstances. It also does not take into account the amount of relocation costs, the financial situation of the property owner, and the type of property. Moreover, it does not set criteria or limits for such an obligation. [23.2]

The legislator, by including in the contested norm a mandatory obligation and not providing for the possibility to assess each specific factual situation, but applying to all cases one legal framework, according to which all the costs of relocation of a road or traffic object are borne solely by the owner of the immovable property in question, has not balanced the interests of the owner of the immovable property and the public. Such a legal framework cannot lead to achieving the fairest result in each case. [23.2]

On the moment of expiry of the contested norm

The Constitutional Court ruled that the contested norm in respect of the applicant – the Supreme Court – in the administrative case pending before the Court should be recognised as null and void from the moment when the infringement of fundamental rights has occurred.

In order to protect the rights of other persons in a comparable situation, the Constitutional Court held that the contested norm, with regard to persons who had already started protection of their fundamental rights by means of general

legal remedies, would lose its effect from the moment when the infringement of the fundamental rights of those persons had occurred.

At the same time, the Constitutional Court established that, up to the moment when the legislator has adopted a solution ensuring compliance of the model of covering the costs of relocation of road or traffic objects with the principle of proportionality, the first three sentences of Article 105 of the Satversme, as well as the findings included in this judgement, were directly applicable both in institutions and courts, ensuring a solution complying with the principles of justice and proportionality. [24]

The Constitutional Court resolved:

1 To declare Section 7¹, Paragraph Three of the Road Traffic Law, insofar as it does not provide for individual assessment in cases where there is an objective necessity to relocate a road engineering structure or a technical means of traffic organisation, non-compliant with the first, second and third sentences of Article 105 of the Satversme of the Republic of Latvia.

2 In respect of the applicant in administrative case No. A420194117 and other persons who have initiated protection of their fundamental rights by means of general legal remedies, in cases where the conditions set out in Clause 1 of ruling part of this Judgement exist, to declare Section 7¹, Paragraph Three of the Road Traffic Law non-compliant with the first, second and third sentences of Article 105 of the Satversme and invalid from the moment of the infringement of the fundamental rights of those persons.

The Constitutional Court's judgement is final and not subject to appeal, it enters into effect on the day of its publication.

Text of the Judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/10/2020-59-01_Spriedums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. **More detailed information on the latest developments, cases opened and adjudicated by the Constitutional Court is available on the [website of the Constitutional Court](#)** We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](#) and the Court's *YouTube* channel [channel](#).

Zanda Meinarte

The Constitutional Court's
Public Relations Specialist

Zanda.Meinarte@satv.tiesa.gov.lv
67830759, 26393803

