



Satversmes tiesa

Press Release

• Case No. 2020-63-01 •

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**The Constitutional Court terminates legal proceedings in the case regarding norms that establish the status of a public lake to lakes**

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On 15 October 2021, the Constitutional Court of the Republic of Latvia decided to terminate legal proceedings in case No. 2020-63-01 “On Compliance of Para 34, Para 53 and Para 56 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”.

#### CONTESTED NORMS

- Para 34 of Part 1 of Annex I (to Section 1102) to the Civil Law “List of Public Lakes and Rivers” provided that the Kamenka Lake, located in Saliena rural municipality of the Daugavpils Region, is a public lake in the area of 11 hectares.
- Para 53 of Part 1 of Annex I (to Section 1102) to the Civil Law “List of Public Lakes and Rivers” provided that the Skirna Lake (the part in Latvia), located in Demene rural municipality of the Daugavpils Region, is a public lake in the area of 31.8 hectares.
- Para 56 of Part 1 of Annex I (to Section 1102) to the Civil Law “List of Public Lakes and Rivers” provided that the Šķirnote or Kimbarcišķu Lake (in the part of Latvia), located in Demene rural municipality of the Daugavpils Region, is a public lake in the area of 10 hectares.<sup>1</sup>

#### NORMS OF HIGHER LEGAL FORCE

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<sup>1</sup> By the law of 16 September 2021 “Amendments to the Civil Law”, which entered into force on 11 October 2021, Chapter 1 of Annex I (to Section 1102) of the Civil Law has been expressed in a new wording and, accordingly, the numbering of subparagraphs in this Chapter has changed. I.e. the Kamenka Lake (the part in Latvia) has been designated as a public lake in Para 19, the Skirna Lake (the part in Latvia) – in Para 42, and the Šķirnote Lake (in the part of Latvia) – in Para 45.

- 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 Latgale Regional Court submitted three applications to the Constitutional Court.

The applicant is reviewing civil cases, in which the prosecution office, in the interests of the State, has submitted a claim, *inter alia*, with respect to several private persons, to terminate property rights to land under the Kamenka, Skirna and Šķirnate Lakes and to change entries into the Land Register accordingly.

The applicant turned to the Constitutional Court because it considered that after a lake had been included in the List of Public Lakes included in Chapter 1 of Annex I (to Section 11002) of the Civil Law “List of Public Lakes and Rivers” (hereafter – the List of Public Lakes) only the State has the title to it. However, the legislator, in adopting these norms, had not performed the procedure of expropriation of immovable property in accordance with the *Satversme*. The applicant held that persons’ legitimate expectancies had been violated without grounds because the right to property regarding the respective lakes already had been corroborated in the Land Register.

#### THE COURT’S FINDINGS AND RULING

In view of the considerations expressed in the case that the contested norms do not envisage expropriation of immovable property for public needs and, thus, do not cause an infringement of persons’ rights, included in the *Satversme*, the Constitutional Court, first and foremost, assessed whether there were grounds for terminating legal proceedings in the case [13.]

Taking into account the facts of the cases that the applicant is reviewing and the legal reasoning provided in the application, the Constitutional Court concluded that the basic matter in the case was whether the contested norms could be considered as being legal grounds for expropriating land under the Kamenka, Skirna and Šķirnate Lakes. Hence, in the framework of this case, the Constitutional Court assessed whether the contested norms envisaged expropriation of immovable property for public needs in the meaning of the fourth sentence of Article 105 of the *Satversme*. To establish this,

the Constitutional Court examined the purpose and the genuine meaning of the contested norms and other norms, closely related to them. [14., 15.]

The Constitutional Court concluded that lakes of great national significance that were needed for the entire society, in view of the purpose and type of their use, were included in the List of Public Lakes. For example, lakes are significant for the national defence, they are of great importance for preserving biodiversity or fisheries, and are also needed for obtaining drinking water or for recreation. The status of public lakes has been defined for the lakes referred to in the contested norms because they are necessary for defending the State's border, i.e., the State border either crosses or passes by these water bodies. [17.]

The Constitutional Court also concluded and it follows from materials in the case that the legislator, in adopting the law of 14 May 1998 "Amendments to the Civil Law", had been aware that the land under a lake that was included in the List of Public Lakes might be in the property of private persons whose title to this property had been corroborated in the Land Register, and the legislator had no intention to expropriate such land. [17.]

The Constitutional Court recognised that the Civil Law envisaged two forms of ownership with respect to public water bodies: the State's or a private person's property. Hence, a public lake may be owned both by a private person and the State. [18.]

The Constitutional Court underscored that the legislator should respect private persons' right to property, which had been corroborated in the Land Register because such rights enjoyed legal protection and the principle of public credibility was applicable to it. [18.]

Inclusion of a lake in the list *per se* is not the grounds for changing the entry regarding the acquired right to property in the Land Register. However, the Constitutional Court also noted that the legal circumstances, in which this title to land under the public lakes had been acquired, were essential; i.e., whether a private person had acquired this right before or after a lake was included in the List of Public Lakes. Unless, in accordance with the principle of public credibility, a private person's title to land under the lake has been corroborated in the Land Register, after inclusion of the respective lake in the List of Public Lakes it becomes the State's property. [18.]

The Constitutional Court concluded that, by including a lake in the List of Public Lakes, it is granted the status of a public property. It shows that the lake is needed for the entire society and points to its significance. [19.]

The Constitutional Court noted that an aligned system of regulatory enactments had been set up to ensure the State's interests, it also defines the use of public waters as a resource and defines the procedure, in which the State may acquire the title to the land under public waters. The Land Management Law provides that if a private person owns the land under public waters and it is being sold, then the State has the pre-emptive right to the land to be alienated. The procedure, in which the State acquires this right to property, is specified in a Cabinet Regulation. [20.]

In view of the fact that the contested norms do not provide for expropriation of property for public needs and, thus, do not cause an infringement on fundamental rights included in the fourth sentence of Article 105 of the *Satversme*, the Constitutional Court decided that legal proceedings in the present case had to be terminated in accordance with Para 6 of Section 29 (2) of the Constitutional Court Law. [21.]

The Constitutional Court held:

to terminate legal proceedings in case No. 2020-63-01 "On Compliance of Para 34, Para 53 and Para 56 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 decision is not subject to appeal.

The text of the decision is available on the Constitutional Court's homepage: [https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/12/2020-63-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/12/2020-63-01_Spriedums.pdf)

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The press release was prepared to inform society about the Constitutional Court's work. More detailed information about recent developments, cases initiated and heard by the Constitutional Court is available on the Constitutional Court's webpage [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv). Please follow also information published on the Court's *Twitter* account [@Satv\\_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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