



Satversmes tiesa

Press release

Case No 2021-12-03

03.12.2021.

Restrictions on the amount of Riga real estate tax relief granted on the basis of special criteria and for a definite period of time do not comply with the Constitution

On 3 December 2021, the Constitutional Court adopted the judgement in case No 2021-12-03 “On the compliance of Clause 11 of the Riga City Council Biding Regulation No 111 of 18 December 2019 “Procedures for Granting the Real Estate Tax Relief in Riga” (wording effective until 31 December 2020) with Article 1 and first sentence of Article 105 of the Constitution of the Republic of Latvia”.

THE CONTESTED PROVISION

- Clause 11 of the Riga City Council Biding Regulation No 111 of 18 December 2019 “Procedures for Granting the Real Estate Tax Relief in Riga” (wording effective until 31 December 2020) (hereinafter — the contested provision):

“Amount of relief granted to one legal entity, except for the State and local government capital companies and organizations of public benefit, shall not exceed EUR 10 000 in the taxation year.”

PROVISIONS WITH A HIGHER LEGAL FORCE

- Article 1 of the Constitution of the Republic of Latvia (hereinafter — the Constitution):

“Latvia is an independent democratic republic.”

- First sentence of Article 105 of the Constitution:

“Everyone has the right to own property.”

THE FACTS OF THE CASE

The case was initiated on the basis of an application of the District Administrative Court. The applicant in the case pending before the Court received the real estate tax relief from 2018 for renovating and illuminating the facade of the building, moreover, such relief was granted to her for five years. In turn, the contested provision came into force on 30 January 2020, providing for that an amount of such relief in the taxation year shall not exceed EUR 10 000. Consequently, the real estate tax was recalculated for the applicant for the period from February 2020 to December 2020. The District Administrative Court holds that the contested provision does not comply with Article 1 and the first sentence of Article 105 of the Constitution, as it unreasonably restricts the property rights of persons who have made investments in the renovation of buildings and who have had a legitimate expectation to receive such real estate tax relief for five years.

THE CONCLUSIONS OF THE COURT

The provisions governing tax relief are an expression of favour or support for certain individuals because of their situation or specific conduct. However, even when adopting legal provisions that determine tax relief, the issuer of these provisions shall observe the general legal principles and other provisions of the Constitution. Moreover, such obligation concerns the amendment of the amount of the tax relief or the application provisions to the detriment of the person or the cancellation of such relief. [6.1-6.2]

On the basis of the contested provision, the real estate tax was recalculated in a manner unfavourable to the applicant from the moment the contested provision came into force. The contested provision did not affect the already concluded relations, but had an immediate effect on the previously established legal relations. [7.1-7.2]

The legal framework for the real estate tax relief in question was fixed and in force for more than six years, and the persons had already benefited from the relief for several years. In addition, this relief was granted on the basis of certain criteria — renovation and lighting of buildings and their facades — and was limited in time from the beginning, determining that it shall be applied for five years. Consequently, the persons had a protected legitimate expectation to receive real estate tax relief for five years in accordance with the work they performed. [8.1-8.3]

When analysing the materials for the adoption of contested provision, the Constitutional Court concluded that the contested provision was adopted for the purpose to ensure the increase of tax relief applicable to other persons. Also the Riga City Council did not establish the financial benefit created by the contested provision, that would allow the facilitation of the public welfare. Finally, it was not considered which persons would be affected by such provision and in what manner. Thus, the Riga City Council did not fully and comprehensively ascertain the impact of the contested provision on the already existing legal relations. Consequently, the contested provision does not comply with the principle of legitimate expectation included in the scope of Article 1 of the Constitution in conjunction with the first sentence of Article 105 of the Constitution. [9.1-9.4]

The Constitutional Court ruled the following:

To declare that Clause 11 of the Riga City Council Biding Regulation No 111 of 18 December 2019 “Procedures for Granting the Real Estate Tax Relief in Riga” (wording effective until 31 December 2020) does not comply with Article 1 and the first sentence of Article 105 of the Constitution of the Republic of Latvia, and as regards those persons who have commenced their right protection with general remedies, it shall be invalid from the date of its entry into force.

The judgement of the Constitutional Court is definitive and not open to appeal, it shall take effect on the day of its publication.

Text of judgement is available on the website of the Constitutional Court:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/04/2021-12-03_Spriedums.pdf