



Satversmes tiesa

Press Release

Case No. 2021-22-01

24.02.2022.

The norms of the Civil Procedure Law, which do not provide to a legal person of private law the right to request a court to release it from paying the security deposit for submitting an ancillary complaint, are incompatible with the *Satversme*

On 23 February 2022, the Constitutional Court delivered the judgement in case No. 2021-22-01 “On compliance of the second sentence of Section 444¹(3) of the Civil Procedure Law (in the wording which was in force from 1 March 2018 until 19 April 2021) with the first sentence of Article 92 of the Constitution of the Republic of Latvia”.

THE CONTESTED NORM

- The second sentence of Section 444¹(3) of the Civil Procedure Law (in the wording which was in force from 1 March 2018 until 19 April 2021):

“A court or a judge, having taken into account the financial situation of a natural person, may completely or partly release the person from payment of the security deposit.”

THE NORM OF HIGHER LEGAL FORCE

- The first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*):

“Everyone has the right to defend their rights and lawful interests in a fair court”.

THE FACTS

The case has been initiated on the basis of a constitutional complaint, submitted by limited liability company “WINNER”, which is undergoing liquidation. During the stage, in which the court’s ruling was enforced, the applicant submitted an ancillary complaint regarding the decision by a first instance court. Upon submitting this complaint, the applicant also requested to be released from paying the security deposit in the amount

of 70 euro because it was experiencing financial difficulties and lacked the financial resources for paying the security deposit. The court, however, dismissed this request because the contested norm did not permit releasing a private law legal person from paying the security deposit for submitting an ancillary complaint.

The applicant holds that the contested norm is incompatible with the first sentence of Article 92 of the *Satversme* because it does not provide for the right of a private law legal person to request the court to release it from the obligation to pay the security deposit for submitting an ancillary complaint. If this person does not have sufficient financial resources for paying the security deposit then, in the process of appealing against a decision by a lower instance court, the right to a fair trial is not ensured.

THE COURT'S FINDINGS

On the scope of Article 92 of the *Satversme*

The substance of the right to a fair trial requires granting the possibility for exercising this right not only to a natural person but also to a private law legal person. Moreover, also a private law legal person can encounter financial difficulties that impact its ability to make various payments related to legal proceedings. Hence, the first sentence of Article 92 of the *Satversme* includes the legislator's duty to ensure, in the process of appealing against a court's decision, access to court to all persons, including a private law legal person who does not have sufficient financial resources to pay the security deposit for submitting an ancillary complaint. [10.-10.3.]

On the reason why the legislator has not fulfilled its obligation included in the first sentence of Article 92 of the *Satversme*

Regulation of the Civil Procedure Law is based on the assumption that all private law legal persons, if insolvency proceedings have not been declared, have sufficient financial resources to pay the security deposit for an ancillary complaint. However, within the Latvian legal system, the status of a legal person has been granted to various subjects of law – both to such that have been established for the purpose of making a profit and such that exist for other purposes, unrelated to making a profit. Moreover, also such a legal person that has been established for the purpose of making a profit may encounter financial difficulties that could affect its ability to pay the security deposit.

Without assessing the ability of the particular private law legal person to make the required payment, it is impossible to assert that it has sufficient financial resources for paying the security deposit for submitting the ancillary complaint. With respect to the issue of exercising the right to a fair trial, there are no objective grounds for assuming that all private law legal persons should be able to ensure the financial resources necessary for paying the security deposit for submitting an ancillary complaint. An assumption like this might cause a situation, unacceptable in a democratic state

governed by the rule of law, where a person cannot exercise its right to a fair trial and achieve the adoption of a fair decision because it lacks the financial resources required for making this payment. [13., 13.1. un 13.1.1.]

The Constitutional Court found that the legal regulation, set out in the Civil Procedure Law, did not ensure any measures for ensuring access to the court to a private law legal person, which experienced financial difficulties and with respect to which insolvency proceedings had not been declared. Hence, it is not ensured that such a legal person of private law could achieve the adoption of a fair decision in a respective procedure. Hence, the contested norm, insofar it does not provide for the right of a private law legal person to request the court to decide on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, is incompatible with the first sentence of Article 92 of the *Satversme*. [13.2., 13.3.]

On broadening the limits of review in the case

The contested norm was included in the second sentence of Section 444¹(3) of the Civil Procedure Law, which was in force until 19 April 2021. Simultaneously with the law of 25 March 2021 “Amendments to the Civil Procedure Law”, which entered into force on 20 April 2021, Section 43¹ “Security Deposit” was added to Chapter 4 of the Civil Procedure Law “Legal Expenses”. The Constitutional Court concluded that the second sentence of Section 43¹ (2) of the Civil Procedure Law continued regulating, in the same way, the same legal relations, which from 1 March 2018 until 19 April 2021 were regulated by the second sentence of Section 444¹(3) of the Civil Procedure Law, contested by the applicant. [14.]

Therefore, the Constitutional Court recognised that the conclusions made in the judgement applied also to the second sentence of Section 43¹ (2) of the Civil Procedure Law, which, insofar it did not provide for the right of a private law legal person to request the court to decide on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, was incompatible with the first sentence of Article 92 of the *Satversme*. [14.]

On the date on which the norms of the Civil Procedure Law become void

With respect to the applicant, the second sentence of Section 444¹(3) of the Civil Procedure Law (in the wording which was in force from 1 March 2018 until 19 April 2021), insofar it did not provide for the right of a private law legal person to request the court to decide on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, becomes void as of the moment when the infringement on this person’s fundamental rights occurred. Whereas with respect to other persons, this legal norm and the second sentence of Section 43¹ (2) of the Civil Procedure Law, insofar it does not provide for the right of a private law legal person to request the court to decide

on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, become void on the date when this judgement is published. [15.]

On the actions by parties applying legal norms during the transitional period

The Constitutional Court noted that, until the date when the regulation, by which the legislator had fulfilled its obligation, included in the first sentence of Article 92 of the *Satversme*, had entered into force, the parties applying legal norms had to ensure the right to a fair trial to those private law legal persons who did not have sufficient financial resources to pay the security deposit for submitting an ancillary complaint by applying directly the first sentence of Article 92 of the *Satversme* and the findings included in this judgement. [15.]

The Constitutional Court held:

1. To recognise the second sentence of Section 444¹(3) (in the wording which was in force from 1 March 2018 until 19 April 2021) and the second sentence of Section 43¹ (2) of the Civil Procedure Law, insofar these norms do not provide for the right of a private law legal person to request the court to decide on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.
2. With respect to the limited liability company “WINNER”, which is undergoing liquidation, to recognise the second sentence of Section 444¹(3) (in the wording which was in force from 1 March 2018 until 19 April 2021) and the second sentence of Section 43¹ (2) of the Civil Procedure Law, insofar these norms do not provide for the right of a private law legal person to request the court to decide on releasing it from the obligation to pay the security deposit for submitting an ancillary complaint, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on its fundamental rights occurred.

A judgement by the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication.

The text of the judgement is available on the Constitutional Court's homepage: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/05/2021-22-01_Spriedums.pdf#search=2021-22-01

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. 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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