



Satversmes tiesa

Press Release

Case No. 2022-04-01

01.02.2022.

One more case initiated with respect to norms that provide for the lawful right of owner of a building to use land and defines the fee for exercising this right

On 31 January 2022, the 1st Panel of the Constitutional Court initiated the case ““On compliance of the first and the second part of Section 38 of the law “On the Date of Coming into Force and Application of the Introduction, the Chapter on Inheritance Law and the Chapter of Property Law of the Restored Civil Law of the Republic of Latvia of 1937” with Article 1 and Article 91, as well as the first and the third sentence of Article 105 of the *Satversme* of the Republic of Latvia and compliance of Section 42 (3) of the law “On the Date of Coming into Force and Application of the Introduction, the Chapter on Inheritance Law and the Chapter of Property Law of the Restored Civil Law of the Republic of Latvia of 1937” with Article 1 and the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.”

THE CONTESTED NORMS

Section 38 (1) of the law “On the Date of Coming into Force and Application of the Introduction, the Chapter on Inheritance Law and the Chapter of Property Law of the Restored Civil Law of the Republic of Latvia of 1937” (hereafter – the contested law) provides: “If a building is an independent object of property in accordance with Para 1, 2, 3 or 4 of Section 14 (1) of this Law, until the building is joined in one property with the land, the owner of the building has the right, on the basis of law, to use the land, insofar it is necessary to exercise the right to property of this building. The restriction on this lawful right to use is real servitude in favour of the building, which is an independent

object of property, and the provisions of the Civil Law on real servitude are applicable to the right to use, insofar this Law does not provide otherwise.”

Section 38 (2) of the contested law provides: “The owner of the building has the obligation, on the basis of law, to pay a fee for use to the landowner for the right to use the land. The legal fee for use is four per cent of the cadastre value of the land that is in use annually but not less than 50 euro annually. The owner of the building and the landowner may agree in writing on another amount of the fee for use. Such agreement shall not be binding upon the acquirer of the immovable property when the owner of the building or the land changes.”

Pursuant to Section 42 (3) of the contested law, agreements or court rulings that define the content of the legal relations between the owners of the land and the building are void as of 1 January 2023

THE NORMS OF HIGHER LEGAL FORCE

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

Article 91 of the *Satversme*: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

The first sentence of Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The first and the third sentence of Article 105 of the *Satversme*: “Everyone has the right to own property.. Property rights may be restricted only in accordance with law.”

THE FACTS

The case has been initiated on the basis of an application by Žanete Aščuka (hereafter – the Applicant). She owns immovable property - a plot of land, on which several residential buildings with apartments that have been privatised and are owned by other persons are located.

The Applicant holds that the first and the second part of Section 38 of the contested law infringe upon her right to property, included in the first and third sentence of Article 105 of the *Satversme*. Namely, it is alleged that the contested norms restrict her right to handle her property and gain desirable profit from it. It is also noted in the application that this restriction on fundamental rights is not proportional and violates the principle of legitimate expectations, included in Article 1 of the *Satversme*.

It is contended that the first and the second part of Section 38 of the contested law are incompatible also with Article 91 of the *Satversme*. These norms, without objective and reasonable grounds, envisage different consequences, depending upon the status of the landowner and the object of immovable property. I.e., the restrictions defined in the first and the second part of Section 38 of the contested law, irrespectively of differences between objects of immovable property, are applicable to all landowners in the case of divided property, hence, having significantly different effects upon landowners.

Likewise, Section 42 (3) of the contested law is said to be incompatible with the principle of legitimate expectations and the right to a fair trial, included in the first sentence of Article 92 of the *Satversme* since it actually allows re-examining by a law court rulings that have entered into force.

LEGAL PROCEEDINGS

The Constitutional Court has requested the *Saeima*, the institution, which issued the contested act, to submit to the Constitutional Court **by 31 March 2002** a written reply, presenting the facts of the case and legal substantiation.

- The term for preparing the case is **30 June 2022**.

The Court will decide on the type of proceedings for hearing the case and the date after the case has been prepared.

- The decision on initiating the case is available here:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/02/2022-04-01_lemums_par_ierosinasanu.pdf

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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