



Satversmes tiesa

Preses relīze

Lieta Nr. 2022-27-01

01.07.2022.

One more case initiated with respect to norms that envisage the legal right to use the land to the owner of the building and defines the amount of payment of exercising this right

On 11 July 2022, the 2nd Panel of the Constitutional Court initiated the case “On Compliance of the First Part and the First and Second Sentence of the Second Part of Section 38 of the Law “On the Date of Entering into Force and the Procedure of Application of Introduction and Parts of Inheritance Law and Property Law of the Restored Civil Law of the Republic of Latvia of 1937” with Article 1, Article 91, as well as the First and the Third Sentence of Article 105 of the *Satversme* of the Republic of Latvia”.

THE CONTESTED NORMS

The first part of Section 38 of the law “On the Date of Entering into Force and the Procedure of Application of Introduction and Parts of Inheritance Law and Property Law of the Restored Civil Law of the Republic of Latvia of 1937” (hereafter – the contested law) provides: “If the 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 combined into one property with the land, the owner of the building shall have, on the basis of the law, the right of use to the land, insofar as it is necessary to exercise the right to property over the building. Such limitation of the legal right of use shall be a real servitude of the building, which is an independent object of property rights, and the provisions of the Civil Law on real servitude shall be applicable to the right of use, insofar this law does not provide otherwise.”

The first and the second sentence of the second part of Section 38 of the contested law provides: On the basis of the law, the owner of the building shall be obliged to pay a user fee to the land owner for the right to use the land. The amount of the payment for the

legal use of land shall be four percent of the cadastral value of the land in use annually, but not less than EUR 50 euros annually.”

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 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 submitted by Uldis Mežsēta, Inta Lapiņa, Mārtiņš Berlands, Zigrīda Buša, Līga Žimante, Anita Trapāne, Ruta Kalniņa, Ilmārs Tilgaļš, Ilze Eriš, Kaspars Brūvers, Inese Tilgale un Nikola Buša (hereafter – the Applicants). They own immovable property – a plot of land, on which residential buildings and multi-storey apartment buildings, owned by other persons, are located.

The Applicants hold that the first part and the first and the second sentence of the second part of Section 38 of the contested law cause infringement on their right to property, included in the first and the third sentence of Article 105 of the *Satversme*. Namely, the first part and the first and the second sentence of the second part of Section 38 of the contested law restrict their right to handle their property and also gain the desirable profit from it.

It is also noted in the application that the principle of legitimate expectations, included in Article 1 of the *Satversme*, is being violated by the first and the second sentence of the second part of Section 38 of the contested law.

Likewise, it is alleged that the first and the second sentence of the second part of Section 38 of the contested law are incompatible with Article 91 of the *Satversme*. These norms, without objective and reasonable grounds, are said to envisage different consequences, depending upon the object of immovable property. Namely, the restrictions, established

in the first and the second sentence of the second part of Section 38 of the contested law, irrespectively of the differences between objects of immovable property, are applicable to all land owners in the cases of divided property, thus casing significantly different effects for land owners.

LEGAL PROCEEDINGS

- The term for preparing the case is **1 December 2022**.

The Court shall decide on the procedure and date for hearing the case after the case is prepared.

- The decision on initiation of the case is available here: https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/07/2022-27-01_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](#).

Zanda Meinarte

Public relations specialist
of the Constitutional Court
Zanda.Meinarte@satv.tiesa.gov.lv
67830759, 26393803

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