



Satversmes tiesa

Press release

Case No. 2022-08-01

29.09.2022

The norm which provides for not determining the remuneration of the insolvency administrator if he/she is removed from the insolvency proceedings of a legal person is compliant with the Satversme

On 29 September 2022, the Constitutional Court adopted a judgement in Case No. 2022-08-01 “On Compliance of Section 169, Paragraph Six of the Insolvency Law with Article 107 of the Satversme of the Republic of Latvia”.

THE CONTESTED NORMS

In accordance with Section 169, Paragraph Six of the Insolvency Law, remuneration is not specified for the administrator if he or she is removed from insolvency proceedings of a legal person for the reasons referred to in Section 22, Paragraph Two, Clause 1, 2, 3, 4, or 7 of this Law.

NORMS WITH A HIGHER LEGAL FORCE

Article 107 of the Satversme of the Republic of Latvia (hereinafter referred to as — the Satversme): “Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.”

THE FACTS OF THE CASE

The case was initiated based on an application of Evita Kaužēna (hereinafter referred to as – the Applicant). She had been acting as administrator in the insolvency proceedings of a legal person for more than two years. By the court decision, the Applicant was removed from these duties for the reasons referred to in Section 20, Paragraph One, Clause 7, and Section 22, Paragraph Two, Clauses 1 and 2 of the Insolvency Law. The Applicant points out that, in accordance with the contested norm, she has been completely deprived of the right to receive

remuneration for the work performed in the insolvency proceedings in question.

According to the Applicant, the contested norm is non-compliant with Article 107 of the Satversme because her right to wage has been disproportionately restricted.

CONCLUSIONS OF THE COURT

On the boundaries of the present case

The Constitutional Court concluded that, taking into account the individual situation of the Applicant, it would assess the contested norm insofar as it relates to Section 22, Paragraph Two, Clauses 1 and 2, as well as Section 20, Paragraph One, Clause 7 of the Insolvency Law [10].

On the scope of Article 107 of the Satversme

The Constitutional Court recognised that Article 107 of the Satversme also applied to the right of an administrator to receive remuneration, and the contested norm restricted the right of the Applicant to receive remuneration appropriate to the work performed, established in the first sentence of Article 107 of the Satversme [11].

On whether the restriction included in the contested norm has been established by a duly adopted law

The Constitutional Court recognised that, in the present case, there was no dispute over the procedure for adoption and proclamation of the contested provision, and the Constitutional Court has no doubts that the contested norm has been adopted and proclaimed in accordance with the Constitution and the Saeima Rules of Procedure, as well available according to the requirements of the regulatory enactments [13].

The Constitutional Court concluded that, in the process of adoption of the contested norm, no infringements of the legislative procedure could be established [13].

On whether the restriction has been imposed for important interests – a legitimate aim

The Constitutional Court concluded that the restriction on fundamental rights included in the contested norm had legitimate aims – protection of the rights of other individuals and the welfare of society [14].

On whether the measures selected by the legislator are suitable to achieve the legitimate aim

The Constitutional Court recognised the following: the contested norm promotes prevention of serious misconducts by the administrator. In this way, interests of the debtor and the creditors in particular insolvency proceedings are safeguarded, as is the public interest in a lawful and efficient insolvency process. Consequently, the mean chosen by the legislator is appropriate for the achievement of the legitimate aims – protection of the rights of other individuals and the welfare of society [16].

On whether the restriction of fundamental rights included in the contested norm has a legitimate aim

The Constitutional Court concluded that the legislator had provided for judicial control, i.e., the court assessed lawfulness of the administrator's conduct and the nature of the infringements committed, and the court's obligation to separately assess the amount of remuneration to be determined for the administrator could not be regarded as an alternative mean to achieve the legitimate aims [17.1].

The Constitutional Court recognised that the establishment of liability of public nature, i.e., disciplinary liability, administrative liability or criminal liability, would not ensure the achievement of the legitimate aims of the restriction on fundamental rights established by the contested norm – protection of the interests of other individuals and society [17.2].

The Constitutional Court concluded that application of the regulation on compensation for damages established in the Civil Law could not be regarded as an alternative to the prohibition to receive compensation established in the contested norm [17.3].

On whether the adverse consequences incurred by the individual as a result of restriction of this right outweigh the benefit to society as a whole

The Constitutional Court concluded that, first of all, the Insolvency Control Service assesses the nature and severity of each violation. Removal of an administrator from particular insolvency proceedings and the prohibition to receive remuneration was such a tool for the supervision of the activity of administrators, which the Insolvency Control Service applies only if unlawful act has been established to such extent which has significantly affected the insolvency proceedings in question. Second, legality of the administrator's conduct, the nature and severity of his/her misconducts are assessed and subject to judicial review in two instances [18.1].

The Constitutional Court recognised that, taking into account the scope of powers granted to the administrator and the importance of the functions performed by him in each particular insolvency procedure, as well as the importance of the insolvency procedure nationwide in general, the compliance of the administrator's activity with the requirements of regulatory enactments or the unlawful nature of that activity significantly affected the rights and interests of both the persons involved in the particular insolvency proceedings – creditors, debtor – and the interests of the society. It is in the public interest to have a regulatory framework that is aimed at the fair performance of functions that are important for the society. It is the administrator who has the task of ensuring that the insolvency proceedings are conducted efficiently and lawfully [18.2].

The Constitutional Court also recognised that the contested norm was of essential importance for ensuring the insolvency proceedings. The contested norm first of all deters any administrator from committing violations. If, despite the consequences set out in this provision, the administrator nevertheless commits severe violations, he/she shall be prevented from gaining any legitimate property benefit from the insolvency proceedings, which have been conducted contrary to the interests of the society, the debtor and the creditors. This ensures that the insolvency proceedings are in line with the above interests [18.2].

The Constitutional Court recognised that substantial violations committed by a person to whom the legislator had granted the broadest powers in order to restore the solvency of a commercial company in financial difficulties to the maximum extent possible and to cover the claims of creditors were incompatible with the element of remuneration. If even one insolvency proceeding were allowed to be conducted unlawfully without a proper response, the financial interests of the debtor and creditors would be irreparably harmed and public confidence in insolvency proceedings would be undermined. Putting the administrator's property interests above other interests would create a sense of injustice in society [18.2].

The Constitutional Court concluded that the adverse consequences which the Applicant would suffer from the restriction of the fundamental right included in the contested norm did not outweigh the benefit which the whole society would gain from this restriction [18].

On the Applicant's request to impose on the Saeima obligation to reimburse the expenses incurred thereto in connection with the receipt of legal assistance provided by a sworn advocate

The Constitutional Court recognised that the issue of reimbursement of legal aid costs was regulated by the Constitutional Court Law and there

were no grounds to apply the third sentence of Section 26, Paragraph One of the Constitutional Court Law, which established the Court's competence to decide on a procedural matter not regulated by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court.

- The Constitutional Court resolved as follows:

To declare Section 169, Paragraph Six of the Insolvency Law, insofar as it relates to the provisions of Section 22, Paragraph Two, Clauses 1 and 2, as well as Section 20, Paragraph One, Clause 7, of the Insolvency Law to be compliant with Article 107 of the Satversme of the Republic of Latvia.

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

Text of the Judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/02/2022-08-01_Spriedums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. More detailed information on the latest developments, cases opened and examined by the Constitutional Court is available on the website of the Constitutional Court www.satv.tiesa.gov.lv. We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and the Court's *YouTube* **channel**.

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A video on the Constitutional Court.