



Satversmes tiesa

Press release

Case No 2022-03-01

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Latvia's framework for the supervision of arbitral proceedings is incomplete and does not comply with the Constitution

On 23 February 2023, the Constitutional Court adopted a judgment in Case No 2022-03-01 “On Compliance of Sections 534, 534.¹, 535, 536 and 537 of the Civil Procedure Law with the First Sentence of Article 92 of the Constitution of the Republic of Latvia”.

THE CONTESTED PROVISIONS

The contested provisions are contained in Chapter 66 of the Civil Procedure Law on enforcement of awards of a permanent arbitration court established in Latvia (hereinafter also – Arbitration Court). Section 534 of the Civil Procedure Law establishes the procedure for submitting an application for the issue of a writ of execution for enforcement of a judgment of an Arbitration Court. Section 534.¹ of the Civil Procedure Law regulates the sending of such an application to the participants in the case. Section 535 of the Civil Procedure Law sets out the procedure for deciding on an application, while Section 536 sets out the basis for refusal to issue a writ of execution for enforcement of a judgment of an Arbitration Court. Finally, Section 537 of the Civil Procedure Law determines the consequences of refusal to issue a writ of execution for enforcement of the judgment.

PROVISION WITH A HIGHER LEGAL FORCE

The first sentence of Article 92 of the Constitution of the Republic of Latvia (hereinafter – the Constitution) is the following: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

FACTS OF THE CASE

The case was initiated on the basis of an application submitted by VZAIMNIJ KREDIT, a limited liability company registered in the Russian

Federation (hereinafter – the Applicant). An Arbitration Court registered in the Republic of Latvia has rendered an award imposing an obligation on the Applicant to repay the loan and the penalty. The Applicant learned about the judgment of the Arbitration Court from the Russian Federation Courts Information System, which published a notice that the St. Petersburg Arbitration Court would consider the issue of recognition and enforcement of the arbitral award in the Russian Federation. However, the Applicant submits that it has never entered into any transactions with the creditor in question, including an arbitration agreement, and that other procedural irregularities have been established in the arbitral proceedings in question.

The Applicant points out that the Law on Civil Procedure provides that in certain cases the court may refuse to issue a writ of execution for compulsory enforcement of an award of a permanent Arbitration Court, but not to revoke it. Even if enforcement is refused in Latvia, the creditor may apply for enforcement of the arbitral award in another country. In the absence of a mechanism for revoking an arbitral award in a situation where the Applicant has not, in accordance with an arbitration agreement, waived the consideration of the particular case by a court of general jurisdiction, the Applicant is denied the right to access to court enshrined in the first sentence of Article 92 of the Constitution.

CONCLUSIONS OF THE COURT

The Constitutional Court concluded that a person does have the right to refuse to submit a case to a State court and to have the dispute settled by Arbitration Court, however, such refusal had to be free, done in accordance with the law and unambiguous. Moreover, in line with the principle of a state governed by the rule of law, a person cannot voluntarily waive the guarantees enshrined in Article 92 of the Constitution, such as equality of parties, independence and impartiality of the court, and the opportunity to be heard. In light of the above, the State is obliged to ensure the supervision of the arbitral proceedings by providing persons with the possibility to protect their violated rights. This means that persons have the right to state supervision of the arbitral proceedings. [9]

On compliance of the contested provisions with the first sentence of Article 92 of the Constitution

First, the Constitutional Court examined whether the legislator had taken measures to supervise the arbitral proceedings. Where the arbitration agreement has been cancelled or declared null and void, or where enforcement of the Arbitration Court's judgment requires an application to a court of general jurisdiction for the issue of a writ of execution, these measures have been taken. [11, 12]

Second, the Constitutional Court examined whether the measures taken by the legislator to supervise the arbitral proceedings applied to all arbitral proceedings and to all objections made by participants thereto regarding the significant procedural violations that had occurred in those proceedings and thus complied with the principle of fairness. The Constitutional Court found that the measures taken by the legislator did not cover cases where the interested party did not apply to a court of general jurisdiction for enforcement of an Arbitration Court judgment for a long time, when such judgement was to be recognised and enforced abroad, or when it was not necessary to apply to a court of general jurisdiction for the issue of a writ of execution to enforce such judgment. Thus, the measures taken by the legislator are incomplete and the contested provisions are not compliant with the first sentence of Article 92 of the Constitution. [14]

On the date the contested provisions shall cease to have effect

To adopt a legal framework that ensures the supervision of arbitral proceedings also in cases where the interested party does not apply to a court of general jurisdiction for enforcement of an Arbitration Court judgment for a long time, when such judgement was to be recognised and enforced abroad, or when it was not necessary to apply to a court of general jurisdiction for the issue of a writ of execution to enforce such judgment, the legislator may need to conduct an in-depth and complex study. In view of the above, the legislator must be provided with a reasonable time to develop this legal framework. Taking into account the above, the Constitutional Court recognised that the contested provisions, in so far as they did not provide for supervision of arbitral proceedings in the above-mentioned cases, would lose their force as of 1 March 2024. [15]

- The Constitutional Court ruled the following:

to declare Sections 534, 534.¹, 535, 536 and 537 of the Civil Procedure Law, insofar as they do not provide for supervision of arbitration proceedings in cases where the interested party does not apply to a court of general

jurisdiction for enforcement of an Arbitration Court judgment for a long time, when such judgement was to be recognised and enforced abroad, or when it was not necessary to apply to a court of general jurisdiction for the issue of a writ of execution to enforce such judgment, to be incompatible with Article 92 of the Constitution of the Republic of Latvia as of 1 March 2024.

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

The text of the judgment is available (in Latvian) on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Spriedums.pdf

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

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A video on the Constitutional Court here.