



Satversmes tiesa

Press release

Case No 2022-05-01

17.02.2023

The regulation of the Civil Procedure Law, which does not provide for the right of a legal person governed by private law to request exemption from the obligation to pay the State fee for filing a statement of claim, is incompatible with the Constitution

On 17 February 2023, the Constitutional Court adopted a judgment in Case No 2022-05-01 “On Compliance of Section 43, Paragraph four of the Civil Procedure Law with the First Sentence of Article 92 of the Constitution of the Republic of Latvia”.

THE CONTESTED PROVISION

- Section 43, Paragraph four of the Civil Procedure Law (hereinafter also – the contested provision):

“A court or a judge, upon consideration of the material situation of a natural person, shall exempt him or her partly or fully from the payment of court expenses in the State income, as well as postpone the adjudged payment of court expenses in the State income, or divide the payment thereof into instalments.”

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 a constitutional complaint made by a foreign economic operator. The Applicant submitted a statement of claim with a court of general jurisdiction in Latvia, at the same time requesting a partial exemption from the payment of the State fee. The court of first instance applied the contested provision and rejected the said request, ordering the Applicant to pay the State fee in full. The Applicant, being unable to pay the State fee in the prescribed amount, reduced the amount of the claim and paid the State fee in a lower amount, corresponding to the reduced claim.

The applicant holds that its right to access to court, enshrined in Article 92 of the Constitution, has been restricted, since the contested provision does not provide that a legal person governed by private law in financial difficulties may be exempted from the obligation to pay the State fee for filing a claim.

CONCLUSIONS OF THE COURT

On the scope of the first sentence of Article 92 of the Constitution

The very nature of the right to a fair court requires that this right may be exercised not only by a natural person but also by a legal person governed by private law. In addition, a legal person governed by private law may also find itself in financial difficulties which would affect its ability to make mandatory payments in related to legal proceedings. Consequently, the first sentence of Article 92 of the Constitution contains the legislator's obligation to ensure access to court for any person, including a legal person governed by private law, whose financial resources are insufficient to pay the State fee for filing a claim. [11-11.3]

On why the Cabinet of Ministers failed to fulfil the obligation imposed thereon by the first sentence of Article 92 of the Constitution

The Latvian legal system grants the status of a legal person to various legal entities - both those established for profit and those that exist for other, non-profit purposes. However, even a legal person established for profit that has not been declared insolvent may find itself in financial difficulties which affect its ability to pay the State fee for application. Without assessing the ability of a particular private-law legal person to make the requested payment, it cannot be said that it has sufficient financial means to pay the State fee for filing the statement of claim. On the question of the exercise of the right to a fair court, there is no objective basis for the presumption that every legal person governed by private law has sufficient financial resources to pay the duty for filing a statement of claim. Such

a presumption could lead to a situation unacceptable in a democratic state governed by the rule of law, where a person does not have access to court due to a lack of financial means to pay the duty. [14-14.2]

The Constitutional Court concluded that the legal regulation established in the Civil Procedure Law did not provide for the right to request a full or partial exemption from the State fee for a legal person governed by private law that had not been declared insolvent but was unable to pay the duty in order to apply to court to protect its rights. The legal framework does not provide for other alternatives to ensure access to court for such a private-law legal person. This does not ensure that such a legal person governed by private law can protect its rights in court. Consequently, the contested provision, in so far as it does not provide for the right of a legal person governed by private law to request that the court decide on its exemption from the obligation to pay the State fee for filing a statement of claim, is incompatible with the first sentence of Article 92 of the Constitution. [14.3]

ON THE DATE THE CIVIL PROCEDURE LAW REGULATION SHALL CEASE TO HAVE EFFECT

With regard to the Applicant, Section 43, Paragraph four of the Civil Procedure Law, insofar as it does not provide for the right of a legal person governed by private law to request the court to decide on its exemption from the obligation to pay the State fee for filing a statement of claim, shall cease to have effect from the moment of the infringement of the Applicant's fundamental rights.

When deciding on the moment when the contested provision loses its force in relation to other persons, the Constitutional Court took into consideration that the Latvian laws and regulations currently do not establish the legal mechanism and criteria which a court of general jurisdiction should assess when deciding on full or partial exemption of a legal person governed by private law from the obligation to pay the State fee for filing a statement of claim. Therefore, for reasons of legal certainty, the legislator needs a reasonable period of time to carry out an in-depth and complex study to develop a legal framework that ensures access to court for every legal person governed by private law. **Consequently, with regard to other persons, Section 43, Paragraph four of the Civil Procedure Law, insofar as it does not provide for the right of a legal person governed by private law to request the court to decide on its exemption from the obligation to pay the State fee for filing a statement of claim, shall cease to have effect as of 1 October 2023.** [15]

The judgment of the Constitutional Court is definitive and not open to appeal, it shall take effect on the day of its publication.

Text of judgement is available on the website of the Constitutional Court:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/02/2022-05-01_Spriedums.pdf