



Satversmes tiesa

Press release

• Case No 2023-03-01 •

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Another case initiated on the provisions establishing a lawful land use right for the owner of a structure and determining fees for the exercise of such right

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On 22 February 2023, the 4th Panel of the Constitutional Court initiated a case “On Compliance of Section 38, Paragraph two of the Law On the Time Period of Coming into Force and the Procedures for the Application of the Introduction, Parts on Inheritance Rights and Property Rights of the Renewed Civil Law of 1937 of the Republic of Latvia with the First Sentence of Article 91 of the Constitution of the Republic of Latvia and the Compliance of Section 38, Paragraphs One and Two of that Law with Article 1 and the First and Third Sentences of Article 105 of the Constitution of the Republic of Latvia, as well as the Compliance of Section 42, Paragraph Three of the Law On the Time Period of Coming into Force and the Procedures for the Application of the Introduction, Parts on Inheritance Rights and Property Rights of the Renewed Civil Law of 1937 of the Republic of Latvia with Article 1 and the First Sentence of Article 92 of the Constitution of the Republic of Latvia”.

#### THE CONTESTED PROVISIONS

Section 38, Paragraph one of the Law On the Time Period of Coming into Force and the Procedures for the Application of the Introduction, Parts on Inheritance Rights and Property Rights of the Renewed Civil Law of 1937 of the Republic of Latvia (hereinafter – the Contested Law) provides: “If a structure is an independent property object in accordance with Section 14, Paragraph one, Clause 1, 2, 3, or 4 of this Law, until the structure is merged into one property with the land, the owner of the structure shall hold the land use rights on the basis of the law, insofar as it is necessary for exercising the ownership rights over the structure. Such a restriction of the lawful rights of use constitutes a real servitude in favour of the structure which is an independent object of ownership rights and the provisions of the Civil Law regarding real servitude shall apply to the rights of use insofar as it has not been laid down otherwise in this Law.”

Section 38, Paragraph two of the Contested Law provides: “The owner of a structure has an obligation by law to pay a fee for use to the land owner for the land use rights. The amount of the fee for lawful use shall be four per cent of the annual cadastral value of the land in use, but not less than EUR 50 per year. The owner of the structure and the land owner may agree in writing on a different amount of the fee for use. Such agreement shall not be binding upon the acquirer of the immovable property in the event of a change of the owner of the structure or the land.”

According to Section 42, Paragraph three of the Contested Law, agreements or court decisions determining the content of legal relations between the land owner and the owner of the structure shall not apply as of 1 January 2023.

#### PROVISION WITH A HIGHER LEGAL FORCE

Article 1 of the Constitution of the Republic of Latvia (hereinafter — the Constitution): “Latvia is an independent democratic republic.”

First sentence of Article 91 of the Constitution: “All human beings in Latvia shall be equal before the law and the courts.”

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

First and third sentence of Article 105 of the Constitution: “Everyone has the right to own property.”, “Property rights may be restricted only in accordance with the law.”

#### FACTS OF THE CASE

It arises from the application and the documents attached thereto that the Applicant owns immovable property – a plot of land. The plot is occupied by several apartment buildings with privatised apartments owned by other persons.

According to the Applicant, the establishment of the land use rights as real servitude and the fee for the land use in the provisions of the Contested Law significantly reduces their income from property. In addition, these provisions use terms not used in other laws and regulations and introduce a new legal institution – lawful use rights, without specifying the content of such a right. Moreover, these provisions establish the same land use fee for land owners in the case of divided property without an objective and reasonable basis, without taking into account the different circumstances of the land owners resulting from the purpose for which the existing structure on the land plot is used. Moreover, the aforementioned provisions do not comply with the case law of the Constitutional Court on compulsory divided property. Section 42, Paragraph three of the Contested Law modifies court decisions and agreements which have entered into force, contrary to the principle of *res judicata* and the principle of legitimate expectations.

#### JUDICIAL PROCEDURE

- The term for preparing the case is **22 July 2023**.

The Court shall decide on the procedure and date for hearing the case after its preparation.

- The decision on initiation of the case (in Latvian) is available here: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2023/02/2023-03-01\\_lemums\\_par\\_ierosinasanu.pdf#search=](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2023/02/2023-03-01_lemums_par_ierosinasanu.pdf#search=)

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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](http://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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