



Satversmes tiesa

Press release

Case No. 2022-13-05

20.04.2023

---

Suspension of the ban on gambling by the Ķekava Municipality local government complies with the regulatory framework

---

On 20 April 2023, the Constitutional Court has rendered a judgement in the case No. 2022-13-05 "Regarding Compliance of the Order No. 1-2/11040 of 21 December 2021 of the Minister for Environmental Protection and Regional Development "Regarding Suspension of the Effect of the Binding Regulation No. 22/2021 of the Ķekava Municipality Council dated 8 September 2021 "Regarding the Operation of Gambling at Ķekava Municipality" with Section 41, Paragraph Two, Clause 11, and Section 42, Paragraph Ten of the Law on Gambling and Lotteries, as well as with Section 49, Paragraph One of the Law On Local Governments".

#### THE CONTESTED ACT

Order No. 1-2/11040 of 21 December 2021 "Regarding Suspension of the Effect of Binding Regulation No. 22/2021 of the Ķekava Municipality Council dated 8 September 2021 "Regarding the Operation of Gambling at Ķekava Municipality" (hereinafter referred to as – the contested order), issued by the Minister for Environmental Protection and Regional Development (hereinafter referred to as – the Minister).

#### PROVISIONS WITH A HIGHER LEGAL FORCE

Section 41, Paragraph Two, Clause 11 of the Law on Gambling and Lotteries stipulates that the operation of gambling shall not be permitted at places or in territories of the municipality in question, which are defined in the binding regulations of the local government.

Section 42, Paragraph Ten of the Law on Gambling and Lotteries: "The local government has the right to issue binding regulations designating places and areas where operation of gambling is not allowed."

Section 49, Paragraph One of the Law On Local Governments: "The operation of an unlawful binding regulation or other laws and regulations or specific paragraphs of such issued by a council, except for the operation of decisions taken in accordance with the procedures of Section 47 of this Law, may be suspended by a substantiated order of the Minister for Environmental Protection and Regional Development. The order shall indicate the paragraphs of the specific binding regulations or other law or regulation that are to be revoked as unlawful, or shall indicate that the binding regulations or other law or regulation are to be revoked in their entirety. The order shall be published in the official gazette Latvijas Vēstnesis within three days from its issue and shall be sent to the chairperson of the relevant council who shall be responsible for its implementation."

#### THE FACTS OF THE CASE

The case was initiated based on the application of Ķekava Municipality Council. The contested act suspends effect of the Binding Regulation No. 22/2021 of the Ķekava Municipality Council dated 8 September 2021 "Regarding the Operation of Gambling at Ķekava Municipality" (hereinafter referred to as – the Regulation No. 22/2021), which stipulates the procedure for operation of gambling in the administrative territory of Ķekava Municipality.

According to Paragraph 2 of the Binding Regulation No. 22/2021, it is prohibited to operate gambling in the administrative territory of Ķekava Municipality. Whereas, according to Paragraph 3 of this Regulation, this prohibition does not apply to the cases where a gambling operation licence has been issued or other regulatory enactments authorise the operation of gambling prior to the entry of the Regulation No. 22/2021 into effect.

In the contested order, the Minister states that the Binding Regulation No. 22/2021 does not comply with the requirements of regulatory enactments, as the local government has not been granted the right to impose a ban on the operation of gambling throughout its administrative territory, and the procedure for drafting binding regulation regarding the establishment of territories where

the operation of gambling is prohibited has not been complied with. Whereas, K ekava Municipality Council disagrees with such an opinion of the Minister and requests to assess the compliance of the contested order with Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries, as well as Section 49, Paragraph One of the Law on Local Governments.

#### CONCLUSIONS OF THE COURT

On the Minister's right to suspend the effect of binding regulation or other regulatory enactments issued by the local government council or their individual paragraphs before receiving an opinion or other document on their legality from the relevant state administration authority or official

The Constitutional Court concluded that the second sentence of Section 5, Paragraph Five of the Law On Local Governments did not restrict the Minister's right to exercise control over the legality of the activities of local governments on his/her own initiative. If the Minister concludes that binding regulation or other regulatory enactment issued by the municipal council, or a part thereof, is unlawful, the opinion or other document of the relevant public administration body or official shall not be a mandatory prerequisite for the Minister to decide on the suspension of its operation. [16]

On the right of the Minister to suspend the effect of the Binding Regulation No. 22/2021

*On whether a local government is entitled to establish a restriction concerning the places and territories where operation of gambling is not allowed in binding regulations issued on the basis of Section 43, Paragraph One, Clause 13 of the Law On Local Governments, Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries*

The Constitutional Court stated that Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries did not specify the grounds for issuing binding regulation in which a local government is entitled to impose a restriction on the operation of gambling, and it did not follow from those legal provisions that such binding regulations could be only those issued on the basis of the Spatial Development Planning Law. Furthermore, the legislator has not indicated in Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries that the basis for issuing binding regulation should be differentiated depending on whether the local government prohibits gambling in places or territories. [18]

Since the right of a local government to restrict the spread of gambling premises in its territory by setting appropriate restrictions on the use of its territory in the spatial plan was recognised even before 15 April 2021 the entry of the Law On Amendments to the Law on Gambling and Lotteries into effect supplementing the Law on Gambling and Lotteries, inter alia, by Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten, the Constitutional Court concluded that, by the aforementioned amendments, the legislator intended to extend the competence of local government in limiting the spread of gambling premises in its administrative territory. [18]

Consequently, the Constitutional Court concluded that a local government had the right to establish a prohibition on the operation of gambling also in binding regulation issued on the basis of Section 43, Paragraph One, Clause 13 of the Law On Local Governments, Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries. [18]

*On the authority conferred by the legislator on the local government by Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries*

The Constitutional Court concluded that Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries provided the local government with the authority to establish specific places and territories where operation of gambling was not allowed. The Constitutional Court stated that a local government had the right to establish an unlimited number of such places and territories, moreover, such a restriction could be established in any place or territory of the municipality, except for those places

where, in accordance with the Law on Gambling and Lotteries, a permit of the local government for opening gambling premises is not required. [20]

The Constitutional Court stated that, when establishing in binding regulation the places and territories where operation of gambling was not allowed, the local government was not obliged to reassess and indicate that the operation of gambling was prohibited in those places where the conduct of commercial activities was not established as a permitted use in its spatial plan. However, with regard to the territories where the functional zoning established in the spatial plan specifies the conduct of commercial activities, including the operation of gambling, as a permitted use, if the local government establishes the places and territories where the operation of gambling is not permitted, an individual assessment of each of these places and territories must be carried out. It must duly justify why, in each case, the operation of gambling should be prohibited, taking into account the various circumstances, including the interests of the residents of the relevant municipality's administrative area. [20]

*On whether the Çekava Municipality Council, by issuing the Binding Regulation No. 22/2021, has acted in accordance with the authority set out in Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries*

The Constitutional Court concluded that the Çekava Municipality Council had not acted in accordance with the authority set out in Section 41, Paragraph Two, Clause 11 and Section 42, Paragraph Ten of the Law on Gambling and Lotteries, as it had not individually assessed specific places and territories within its administrative territory when adopting the Binding Regulation No. 22/2021, and had not properly substantiated why the operation of gambling in each of them should be prohibited. [21]

Thus, the Constitutional Court concluded that the Binding Regulation No. 22/2021 was unlawful and the Minister, by suspending it, had complied with Section 49, Paragraph One of the Law On Local Governments. [21]

- The Constitutional Court ruled as follows:

To recognise the Order No. 1-2/11040 of 21 December 2021 of the Minister for Environmental Protection and Regional Development "Regarding Suspension of

the Effect of the Binding Regulation No. 22/2021 of the Ķekava Municipality Council dated 8 September 2021 “Regarding the Operation of Gambling at Ķekava Municipality” as being compatible with Section 41, Paragraph Two, Clause 11, and Section 42, Paragraph Ten of the Law on Gambling and Lotteries, as well as with Section 49, Paragraph One of the Law On Local Governments”.

The Judgement is final and not subject to appeal, it enters into effect 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/2022/03/2022-13-05\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/03/2022-13-05_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 website of the Constitutional Court [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](#).

**Zanda Meinarte**

The Constitutional Court's  
Public Relations Specialist

Zanda.Meinarte@satv.tiesa.gov.lv

07000750 00000000