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Home > Supreme Court: Registered Partnership Act is a valid law

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In a court order dated 10.04.2018, the Supreme Court has explained that regardless of the lack of implementing acts, the Registered Partnership Act entered into force on 1 January 2016 and is now a part of the Estonian legal order. According to the Supreme Court, the failure to issue the implementing acts for the Registered Partnership Act does not per se give grounds for declaring the situation unconstitutional.

An application for initiating constitutional review proceedings was submitted to the Supreme Court by the Tallinn Circuit Court, who considered that by failing to issue the implementing acts for the Registered Partnership Act the legislator had violated the Constitution. Generally, the Supreme Court will assess whether the provisions of a legislative act are constitutional, and in the case of a breach will declare the act unconstitutional. However, in the case of a failure to issue a legislative act, the Supreme Court will identify the unconstitutional gap, and will oblige the legislator to draw up legislation in a situation where the latter has failed to fulfil its constitutional obligation.

According to the Constitutional Review Chamber, a general acknowledgment that the implementing acts for the Registered Partnership Act have not been adopted is not enough to identify an unconstitutional gap.

Since the Registered Partnership Act has entered into force and is valid, the addressees of the law are entitled to rely on it when they are defending their subjective rights. The Constitutional Review Chamber considers that, although the Riigikogu has failed to amend other laws in accordance with the Registered Partnership Act, this does not relieve the courts of the obligation to implement the Registered Partnership Act in individual cases. If necessary, conflicts arising from the different legal provisions shall be resolved based on the general principles of law. The courts will have to interpret the law in a way that ensures a constitutional result.

The Supreme Court has rejected the application for the abovementioned reasons, and taking into account the fact that the courts who had initiated the constitutional review proceedings did not explain what they found to be the legal provisions, the lack of which hampered the adjudication of the court case.

COURT ORDER 5-17-42 [1]

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Links

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