Para 31 of the Transitional Provisions of the Medical Treatment Law is incompatible with the equality principle enshrined in the *Satversme*

On May 15 2018, the Constitutional Court pronounced the judgement in Case No. 2017-15-01 "On Compliance of Section 53^1 (7) of the Medical Treatment Law with the First Sentence of Article 91 and Article 107 of the *Satversme* of the Republic of Latvia".

The Contested Norm:

Section 53^1 (7) of the Medical Treatment Law: "If an extension to the normal working hours of a medical practitioner has been applied, work remuneration for the working hours, which exceed the normal working hours specified in the Labour Law, shall be determined in proportion to the increase in working hours not less than in the amount of the specified hourly or daily wage rate but, if a lump-sum payment has been agreed upon, in accordance with the piece-work rate for the amount of work performed."

Additional information:

On 8 June 2017, the *Saeima* adopted the law "Amendments to the Medical Treatment Law". By these amendments the contested norm referred to above was deleted from the Medical Treatment Law as of 1 July 2017.

On 8 June 2017, the *Saeima* adopted the law "Amendments to the Medical Treatment Law" that introduced Para 30 and Para 31 to the Transitional Provisions of the Medical Treatment Law.

Para 30 of the Transitional Provisions of the Medical Treatment Law provides that, in 2018, for the medical practitioners and the members of emergency medical assistance team, who are not medical practitioners, with their consent, extended normal working hours can be set, which do not exceed 50 hours per week, i.e., 10 hours above the normal working hours set in the Labour Law, whereas in the period from 1 January to 31 December 2019, it will be possible to set extended normal working hours that do not exceed 45 hours per week.

Whereas Para 31 of the Transitional Provisions of Medical Treatment Law provides: if extended normal working hours are set, remuneration for the working hours that exceed the normal working hours set in the Labour Law is defined proportionally to the increase in the working hours: from 1 January to 31 December 2018 – in the amount of at least 1. 20 of the salary set for one hour, whereas in the period from 1 January to 31 December 2019 – in the amount of at least 1.35 of the salary set for one hour.

Norms of Higher Legal Force

The first sentence of Article 91 of the *Satversme*: "All human beings in Latvia shall be equal before the law and the courts."

Article 107 of the *Satversme*: "Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation."

The Facts

The case has been initiated on the basis of an application submitted by the Ombudsman of the Republic of Latvia. The applicant had established within the framework of an inspection case that Section 53^1 (7) of Medical Treatment Law imposed disproportional restrictions on the rights of medical practitioners to receive appropriate remuneration for working in the conditions of extended normal working hours and, in connection with this, had turned to the Constitutional Court.

The S*aeima* had requested termination of legal proceedings because the contested norm, which the Ombudsman initially had challenged at the Constitutional Court, had been deleted from the Medical Treatment Law.

The applicant did not uphold the opinion that the legal proceedings in the case should be terminated. At the court hearing, he expressed the opinion that the problem of remuneration for extended normal working hours, essentially, had not been resolved and continued to exist because of the Transitional Provisions of the Medical Treatment Law. I.e., for work in conditions of extended normal working hours in the transitional period, which has been set up to very 31 December 2019, the same payment as for overtime work

in the meaning of the Labour Law had not been ensured. Therefore the Constitutional Court should examine Para 31 of the Transitional Provisions of the Medical Treatment Law, which sets remuneration for work in conditions of extended normal working hours during the transitional period.

The Court's Findings

On the existence of a restriction on fundamental rights

The Constitutional Court found that the contested norm, in an amended form, was still in force. I.e., Para 31 of the Transitional Provisions of the Medical Treatment Law, essentially, continues to maintain the procedure established by Section 53^1 (7) of the Medical Treatment Law with respect to the remuneration rate for the extended normal working hours. The legislator still has set the remuneration for the extended normal working hours at a rate that is lower than the rate for overtime work in the meaning of the Labour Law. **Thus, the legal proceedings in the case must be continued, examining the constitutionality of Para 31 of the Transitional Provisions of the Medical Treatment Law (hereinafter – the contested norm).** [13.]

On the constitutionality of the restriction on fundamental rights

The Constitutional Court recognised that in the case under review all those employees, whose working hours exceeded the normal working hours in the meaning of the Labour Law, were in a comparable situation. The contested norm creates differential treatment of medical practitioners and the members of emergency medical assistance team, who are not medical practitioners, working extended normal working hours. The remuneration rate for persons, who work extended normal working hours, remains lower than the remuneration rate for overtime work defined in the Labour Law. [18., 19.]

To establish, whether the differential treatment introduced by the legislator has objective and reasonable grounds, it must be verified, whether the differential treatment has a legitimate aim. The legislator, in presenting considerations regarding preservation of the established differential treatment during the transitional period, noted that the possibilities

of the state budget had been assessed and the need to abide by the provisions of the Fiscal Discipline Law had been taken into consideration. As the result of this assessment, giving up the extended normal working hours gradually, within the period of three years, had been recognised as the most appropriate solution. [21., 21.1.]

The Constitutional Court recognises that establishing of a transitional period may be based on considerations linked to the need to ensure the stability of the state budget; however, the Court noted that such arguments *per se* were not sufficient to substantiate the legitimate aim of the differential treatment in the transitional period. Also in adopting a regulation of the transitional period, the legislator has the obligation to indicate and substantiate the legitimate aim of the restrictions established thereby. In the case under review, the legislator has not substantiated it with respect to the remuneration rate for extended normal working hours in the transitional period. Hence, the differential treatment of medical practitioners and members of emergency medical assistance teams, who are not medical practitioners, in establishing the remuneration rates for extended normal working hours in the transitional period, has no legitimate aim. Hence, the Constitutional Court found that the contested norm was incompatible with the equality principle included in the first sentence of Article 91 of the *Satversme*. [21.2.]

Since the contested norm has been recognised as being incompatible with the first sentence of Article 91 of the *Satversme*, assessment of its compatibility with Article 107 of the *Satversme* is not necessary. [22.]

<u>On the date when the judgement of the Constitutional Court enters into force</u>

The applicant has not requested recognising the contested norm invalid retroactively but has expressed the opinion that it would be possible to give up the procedure for paying for extended normal working hours within one budgetary year, balancing the interests of society and the interests of those working in the healthcare system. [23.]

The Constitutional Court noted that in the case under review it was admissible that the norm, which was compatible with the *Satversme*, would remain in force for a certain period in order to introduce the necessary measures into the healthcare system to ensure

equal treatment of medical practitioners and the members of emergency medical assistance team, who were not medical practitioners, and also to ensure that accessibility of high quality healthcare services wasnot interrupted. [23.]

The Constitutional Court held:

to recognise Para 31 of the Transitional Provisions of Medical Treatment Law as being incompatible with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia and void as of 1 January 2019.

The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force at the moment of pronouncement thereof.

The judgement will be published in the official journal "Latvijas Vēstnesis" within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the Judgement [in Latvian] is available on the homepage of the Constitutional Court:
http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/05/2017-15-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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