



The norm that grants the right to an insurer, in case if an agreed statement is not submitted, to bring a subrogation claim against the driver of a vehicle, who has caused loss to a third person in a road traffic accident, is incompatible with
Article 105 of the *Satversme*

On 6 June 2018, the Constitutional Court passed the judgement in case No. 2017-21-01 “Compliance of Sub-para “d” of Para 1 of Section 41(1) of Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law with Article 105 of the *Satversme* of the Republic of Latvia.”

The Contested Norm

Sub-para “d” of Para 1 of Section 41 (1) of Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law (hereinafter – the CCLI Law) provides that an insurer is entitled to submit a subrogation action against the driver of a motor vehicle that has caused the loss to a third person in a road traffic accident, if he or she has failed to submit a completed agreed statement¹ in accordance with the procedures laid down in this Law² or has failed to submit information regarding the circumstances of the road traffic accident to the insurer upon request thereof.

Additional information:

On 14 December 2017, the law “Amendments to Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law” was adopted, which entered into force on 16 December 2017. This law established that Sub-para “d” of Para 1 of Section 41 (1) provided that the insurer had the right to submit a subrogation action against the driver of a motor vehicle that had caused the loss to a third person in a road traffic accident, if he had not submitted the completed agreed statement upon the insurer’s request to verify the circumstances of the road traffic accident.

The Norm of Higher Legal Force

¹ Para 10 of Section 1 of the CCLI Law provides that an agreed statement is a form that the drivers of motor vehicles who are involved in a road traffic accident must complete at the scene of the accident, confirming by signature the circumstances of the accident, the facts and the scheme of the accident.

² It follows from Para 2 of Section 36(2) of the CCLI Law that the driver of a motor vehicle, who has caused a road traffic accident, has to submit within 10 days after the day of the occurrence of the road traffic accident to his or her CCLI insurer the second copy of the filled out agreed statement.

Article 105 of the *Satversme*: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

Facts of the Case

The case has been initiated with regard to an application submitted by Svetlana Blohina. The applicant had caused a road traffic accident, as the result of which she caused losses to a third person. The losses caused by the road traffic accident had been compensated to the third person by the insurer. Although the persons, who were involved in the road traffic accident, had filled out the agreed statement, the applicant did not submit it to the insurer in the procedure established in the CCLI Law. Therefore the insurer, on the basis of the contested norm, had brought a subrogation action against the applicant. The court had satisfied the claim and had recovered from the applicant compensation for losses.

The Applicant holds that the contested norm restricts her right to property enshrined in Article 105 of the *Satversme* because the obligation to compensate to the insurer all losses, which it had incurred in connection with the disbursement of insurance compensation, decreases the amount of property (monetary resources) owned by the applicant. The obligation of the second participant of a road traffic accident to cover all losses is said to be incommensurate in a case, where the insurer already has at its disposal one copy of the agreed statement, on the basis of which it is possible to establish the circumstances of the incident and decide on disbursement of insurance compensation.

The Court's Findings

On terminating legal proceedings in the case

The Constitutional Court recognised that, although the contested norm had become void, it was necessary to continue legal proceedings in the case to ensure the protection of the applicant's fundamental rights by examining the case on its merits. On the basis of Para 2 of Section 29 (1) of the Constitutional Court Law, the fact that the contested norm has become invalid cannot be recognised as being sufficient grounds for terminating the legal proceedings, since it does not resolve the existing dispute and does not prevent the

possible infringement on the fundamental rights of a person. The Constitutional Court decided that the legal proceedings in the case under review had to be continued. [10., 11.]

On the restriction of fundamental rights established in Article 105 of the *Satversme*

The Constitutional Court found that the text of the contested norm provided that in the case, where an insurer had brought a subrogation action, the driver of a vehicle involved in the traffic accident who had not submitted a completed agreed statement had the obligation to compensate for losses caused by the traffic accident, and, thus, restricted this person's right to property. This finding was confirmed also by the uniform practice of applying the contested norm. The Constitutional Court recognised that the contested norm restricted the applicant's fundamental rights established in the first three sentences of Article 105 of the *Satversme*. [13.]

On compliance of the restriction of fundamental rights with the *Satversme*

The Constitutional Court recognised that the restriction on fundamental rights that the contested norm comprised had been established by law. At the same time recognising that the contested norm ensured the protection of the insurer's rights and interests in the case, where the driver of a vehicle, who had caused losses to a third person in a road traffic accident, was not performing his obligations established in CCLI Law. The restriction on fundamental rights included in the contested norm has a legitimate aim – protecting the rights of other persons. [15., 16.]

On the proportionality of the restriction on fundamental rights

Essentially, the contested norm ensures that the persons, who are involved in an insurance case, meet their commitments defined in the law and provide information to the insurer about the circumstances of the road traffic accident, by submitting both copies of the completed agreed statement. Whereas persons perform their obligation established in Section 36 (2) of CCLI Law to submit to the insurer their copies of the agreed statement so that the insurer would not bring a subrogation claim against them and they would not have to cover the insurer's losses. Thus, the interests of the insurer are also protected because in the case where the second copy of the agreed statement has not submitted the insurer may collect losses from that driver of a vehicle who has caused losses to a third

person. The Constitutional Court recognised that the chosen measures were appropriate for reaching the legitimate aim. [18.]

At the same time, in assessing whether the restriction on fundamental rights included in the contested norm was necessary, the Constitutional Court noted that the persons' legal relationships that were affected by the contested norm should be taken into consideration, *inter alia*, the right and interests of each subject of the legal relationship. [19.]

In the legal relationship between the insurer and the insured, also the insurer's right to property should be protected, whereas the insured party becomes involved in this relationship to protect his right to property. The legislator, in establishing the legal regulation, in the case where the rights of two or more private persons collide, must balance these in a way as to restrict the fundamental rights of each person as little as possible. [19.]

The Constitutional Court found that the legislator had not duly examined the existence of such alternative measures that would restrict the rights of the insured party to a lesser extent but also would not impose an incommensurate burden on the insurer. At the same time, the Constitutional Court found that there was a more lenient measure for reaching the legitimate aim. The additional obligation imposed on the insurer, i.e., the obligation to request a copy of the completed agreed statement is less restrictive on the fundamental rights of the insured party and, at the same time, does not impose an incommensurate burden on the insurer, in view of the unequal situation of the insurer and of the insured party. It is to be considered as being a more lenient measure that allows reaching the legitimate aim in the same quality. [19.]

On the period of validity of the contested norms

The Constitutional Court recognised that with respect to the applicant the contested norm was to be recognised as being invalid as of the moment when the infringement on the fundamental rights occurred. [20.1.]

The Constitutional Court also underscored that the contested norm was no longer in force since 16 December 2017; however, it had been applied in court during the period of its

validity or it should be applied in legal proceedings that already have been initiated, thus, also other persons' fundamental rights established in Article 105 of the *Satversme* are infringed upon. To protect the fundamental rights of these persons, it must be established that with respect to persons, to whom it has been applied in court or should be applied in court in legal proceedings that already have been initiated, it becomes invalid as of the moment when the infringement upon the fundamental rights of these persons occurred. [20.2.]

The Constitutional Court held :

to recognise Sub-para "d" of Para 1 of Section 41(1) of Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law (in the wording that was in force from 1 November 2007 to 15 December 2017) as being incompatible with Article 105 of the *Satversme* of the Republic of Latvia and, with respect to persons, to whom it has been applied in court or should be applied in court in legal proceedings that already have been initiated, becomes invalid as of the moment when the infringement upon the fundamental rights of these persons occurred..

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 home page of the Constitutional Court.](#)

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 on the home page of the Constitutional Court www.satv.tiesa.gov.lv.

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