



**The Constitutional Court terminates legal proceedings in the case regarding norms that determine the procedure for compensating for non-pecuniary damages caused by unsubstantiated actions by investigatory institutions, the prosecutor's office and a court**

On 7 May 2020, the Constitutional Court adopted a decision in case No. 2019-21-01 “On Compliance of Section 14 (4) and Para 4 of the Transitional Provisions of the Law “On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations” with Article 1 and the Third Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Section 14 (4) of the law “On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations” (hereinafter – the Compensation Law): “The compensation for non-pecuniary damages shall be set in the amount of 7000 euro. If severe non-pecuniary damages have been caused, the compensation may be set in the amount of 10 000 euro, but if damage to life has been caused or particularly severe damage to health, the maximum amount of compensation may be up to 30 000 euro. The amount of compensation for non-pecuniary damages caused by ungrounded or unlawful restriction of liberty shall be determined in accordance with Article 15 of this Law.”

Para 4 of the Transitional Provisions of the Compensation Law: “The cases regarding a person's claim for compensation for damages caused by unlawful or

ungrounded actions by an investigatory institution, the prosecutor's office or a court, in which prior this law enters into force, the statement of claim has been accepted and legal proceedings have been initiated at a court of general jurisdiction, shall be heard by a court of general jurisdiction in the legal proceedings regarding a claim, abiding by the provisions of this Law. The compensation for damages shall be disbursed by the Ministry of Justice from the resources of the state basic budget allocated for this purpose."

### **The Legal Norm of Higher Legal Force**

Article 1 of the Satversme of the Republic of Latvia (hereinafter – the *Satversme*):  
“Latvia is an independent democratic republic.”

The third sentence of Article 92 of the Satversme: “Everyone, where his or her rights are violated without basis, has a right to commensurate compensation.”

### **The Facts**

The case was initiated on the basis of an application submitted by Oskars Viļums. In 2007, criminal proceedings against the applicant had been initiated, and a security measure – detention – had been applied to him. Later this security measure had been revoked and other security measures had been applied. Whereas on 12 July 2010, the prosecutor's office had decided to terminate the said criminal proceedings, upon establishing that the applicant's actions did not comprise elements of a criminal offence. In general, during the fifty days, which the applicant had spent in an institution for deprivation of liberty, several violations of his fundamental rights had been committed.

The applicant had turned to the City of Riga Vidzeme District Court, claiming compensation from the Republic of Latvia for moral damages in the amount of 50 000 euro. He substantiated the claim, *inter alia*, by the Civil Law and the law “On Compensation for Damages Caused by Unlawful or Unsubstantiated Actions by an Investigatory Institution, the Prosecutor’s Office or a Court”. The applicant’s claim had been partially satisfied by the judgement of the City of Riga Vidzeme District Court, i.e., he had been awarded 5000 euro. Therefore he submitted an appeals complaint regarding this part of the judgement.

By the judgement of the Riga Regional Court, pursuant to Para 4 of the Transitional Provisions of the Compensation Law, Section 14 (4) of the Compensation Law had been applied to the applicant. The amount of compensation for non-pecuniary damages, set in this norm, had been applied to him, thus, prohibiting him from receiving appropriate compensation. In view of the above, the applicant holds that his fundamental rights defined in the third sentence of Article 92 of the *Satversme* had been infringed upon and that also the principle of legitimate expectations, derived from the basic norm of a democratic state governed by the rule of law, which falls within the scope of Article 1 of the *Satversme*, had been violated.

### **The Court’s Findings and Decision**

The Constitutional Court found that the basic matter of the case was, how, in the applicant’s situation, the right to commensurate compensation for ungrounded violation of rights manifested itself. Therefore the Constitutional Court examined, first and foremost, whether Section 14 (4) of the Compensation Law complied with the third sentence of Article 92 of the *Satversme*. [9.]

On the content of the third sentence of Article 92 of the *Satversme*

The Constitutional Court found that the third sentence of Article 92 of the *Satversme* comprised general guarantees of the right to a fair trial – if a person’s rights or interests, protected by law, have been violated the person has the right to receive commensurate compensation. A person has the right to the access to legal remedies that ensure effective protection of a person’s rights and allow the person to receive commensurate compensation in the case of ungrounded violation of rights. The third sentence of Article 92 of the *Satversme* is to be applied directly and immediately. However, the principle of legal certainty imposes an obligation upon the legislator to regulate in law, to the extent possible, the pre-conditions for the implementation of this norm of the *Satversme* in practice. By adopting the Compensation Law, the legislator has created regulation, which specifies a person’s right to commensurate compensation for the damages caused to a person in criminal proceedings or the record-keeping procedure for an administrative violation due to unsubstantiated actions by an institution, the prosecutor’s office or a court. [10.1.]

The term “commensurate compensation”, used in the third sentence of Article 92 of the *Satversme*, includes legal satisfaction, which in the particular legal situation is commensurate to the infringement of a person’s rights. Unfounded infringement of rights may cause both pecuniary and non-pecuniary damages, which also influence what commensurate compensation is going to be in each particular case. It must be commensurate and fair, in establishing it, all circumstances of the case must be taken into account, *inter alia*, the nature of the rights that had been violated and of the interests, protected by law, the severity and manifestations of the particular infringement, as well as the victims’ actions. Since the non-pecuniary damages cannot be expressed directly in material values, the party, which is applying the legal norm, plays a particularly significant role in assessing the commensurate compensation for non-pecuniary damages. [10.2.]

On a court's role in determining commensurate compensation

The Constitutional Court recognised that the third sentence of Article 92 of the *Satversme* allowed the court, on the basis of objective criteria and rational legal considerations, to decide on all issues regarding determination of commensurate compensation. The court must indicate the substantiation for the determined compensation in its ruling. Moreover, the principle of equality demands that similar compensation is awarded in similar cases, hence, the court must take into account comparable cases. Commensurate compensation cannot be obviously incommensurate or significantly lower than the compensation granted by the European Court of Human Rights in similar cases. However, the limits on the amount of compensation set in legal norms *per se* do not prohibit a person from receiving commensurate compensation and do not mean that the mechanism for the person's right protection would be ineffective. [10.2]

In a democratic state governed by the rule of law, the court is one of the legal remedies. It ensures to a person the right to commensurate compensation and provision of individualised justice in the particular situation. By fulfilling the positive obligation that follows from the third sentence of Article 92 of the *Satversme*, the legislator must establish regulation that does not prohibit the court from performing its role – ensuring fair administration of justice. By applying the regulation, established by the legislator, specifying a person's right to commensurate compensation, included in the third sentence of Article 92 of the *Satversme*, the court takes into account also the general principles of law to reach the aim of this regulation – ensuring commensurate and fair compensation to a person. [10.2.]

The Constitutional Court noted that, in an individual case, a violation of a person's right to commensurate compensation occurred if the court did not have the right to award commensurate compensation. Therefore, in the particular case, the Constitutional Court had to establish, whether the limits on the amount of compensation, referred to in the contested norm, had restricted the court in determining the commensurate compensation. [11.]

On the infringement on rights in the applicant's situation

The Constitutional Court established: in examining the civil case, in which the applicant had been the plaintiff, the Riga Regional Court noted that, in accordance with the provisions of Section 15 of the Compensation Law, for the applicant in his situation compensation in the amount of 400 euro should be granted. However, the Regional Court recognised that, in the particular case, this compensation could not be considered as being commensurate and fair compensation for the damages. Therefore, in determining the final amount of compensation for non-pecuniary damages, other circumstances of the case had to be taken into account. As the result, the Regional Court established 5000 euro as reasonable and fair compensation for the non-pecuniary damages, inflicted upon the applicant, whereas the compensation in the amount of 50 000 euro, indicated by the applicant, was considered as being incommensurable high in the particular circumstances. [11.]

The Constitutional Court found that, in the particular case, upon having assessed the actual circumstances of the case, the court defined, in its opinion, commensurate compensation, and the limits on the amount of compensation, indicated in the contested norm, did not restrict the court in determining commensurate compensation. Hence, the Constitutional Court found that a violation of the applicants' rights to commensurate compensation, caused by the contested norm,

could not be established and, therefore, there were grounds for terminating legal proceedings regarding the compliance of Section 14 (4) of the Compensation Law with the third sentence of Article 92 of the *Satversme*. [11.]

On the principle of legitimate expectations

The Constitutional Court recognised: since the applicant's fundamental right to commensurate compensation, included in the third sentence of Article 92 of the *Satversme*, had not been affected by Section 14 (4) of the Compensation Law, there were no grounds for reviewing the compliance of Para 4 of the Transitional Provisions of the Compensation Law with the principle of legitimate expectations, included in Article 1 of the *Satversme*. [12.]

**The Constitutional Court decided:**

to terminate legal proceedings in case No. 2019-21-01 “On Compliance of Section 14 (4) and Para 4 of the Transitional Provisions of the Law “On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations” with Article 1 and the Third Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The decision is not subject to appeal.

The text of the decision is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/10/2019-21-01\\_Lemums-par-tiesved%C4%ABbas-izbeig%C5%A1anu.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/10/2019-21-01_Lemums-par-tiesved%C4%ABbas-izbeig%C5%A1anu.pdf#search=)

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The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The

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