



A case initiated with regard to the norms in the Cabinet Regulation that define the right of a deceased patients' heir to demand compensation from the Treatment Risk Fund for the damage inflicted upon a patient's life and health and for the treatment costs

On 20 December 2017, the 2nd Panel of the Constitutional Court initiated the case “On Compliance of Para 3¹ and Para 15 of the Cabinet Regulation of 5 November 2013 Nr. 1268 “Regulation on the Functioning of the Treatment Risk Fund” with Article 64 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Para 3¹ of the Cabinet Regulation of 5 November 2013 Nr. 1268 “Regulation on the Functioning of the Treatment Risk Fund” (hereinafter – Regulation No. 1268): “In the case of a patient's death, the patient's heir has the right to submit a claim, appending a certificate of the spouse's share of property or a certificate of succession.”

Para 15 of Cabinet Regulation No.1268 15:

“In the case of a patient's death, the compensation shall be disbursed to the heir proportionally to the part of the inheritance, if a claim for compensation and a certificate of the spouse's share of property or a certificate of succession have been submitted.”

The Norm of Higher Legal Force

Article 64 of the *Satversme*: “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution.”

The Facts

The case was initiated with respect to an application submitted by the Administrative District Court (hereinafter – the Applicant). The Applicant is examining a case, in the framework of which the applicant, on the basis of the contested norms, requests issuing an administrative act, by which the Treatment Risk Fund is imposed an obligation to

disburse to her compensation for the damage inflicted upon her mother's life and health, including moral damages and treatment costs.

The Applicant notes that pursuant to Section 16 (1) of the Law on the Rights of Patients, only the patient has the right to receive compensation from the Treatment Risk Fund, whereas the Cabinet, by the contested norms, which had been adopted in accordance with Section 16 (3) of the Law on the Rights of Patients, has granted this right also to the heir of the deceased patient.

The Applicant holds that an authorisation to expand the circle of those subjects, who are entitled to receive compensation from the Treatment Risk Fund, does not follow from Section 16 (3) of the Law on the Rights of Patients. Hence, the Cabinet has exceeded the limits of authorisation granted in Section 16 (3) of the Law on the Rights of Patients un by this has failed to abide by the principle of separation of power. It is maintained that, therefore, the contested norms are incompatible with Article 64 of the *Satversme*.

Legal Proceedings

The Constitutional Court has requested the Cabinet of Ministers to provide a reply on the facts of the case and legal substantiation by 20 February 2018.

The term for preparing the case is 20 May 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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 the 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.

Ketija Strazda

Assistant to the President of the Constitutional Court

Ketija.Strazda@satv.tiesa.gov.lv

+ 371 67830737, + 371 26200580