



The norms in the Cabinet Regulation that define the right of a deceased patients' heir to claim compensation from the Treatment Risk Fund comply with the *Satversme*

On 18 October 2018, the Constitutional Court passed the judgement in the case No. 2017-33-03 "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:

"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. It is reviewing an administrative 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 contested norms define the rights of the patient's heir to receive compensation from the Treatment Risk Fund if the patient has deceased.

The Administrative District Court holds that the Cabinet has adopted the contested norms by exceeding the limits of authorisation granted to it in Section 16 (3) of the Law on the Rights of Patients. It is maintained that, therefore, the contested norms are incompatible with Article 64 of the *Satversme*.

The Court's Findings

On procedural issues

Since Para 15 of the Cabinet Regulation No. 1268 has been expressed in new wording during the examination of the case, the Constitutional Court, first and foremost, verified, whether the aforementioned norm had become substantially void and whether the legal proceedings in the part regarding its constitutionality should be terminated. [11.]

The Constitutional Court found that Para 15 of the Regulation No. 1268, contested in the case, in the wording of the Regulation No. 1268 that was in force during examination of the case had been transformed into Para 15.2. but had not been substantially changed. [12.]

Moreover, the Constitutional Court noted that Para 3¹ and Para 15.2. of the Regulation No. 1268 regulated closely interconnected issues and jointly determined the procedure, in which the heirs of a deceased patient could receive compensation from the Treatment Risk Fund. Therefore the Constitutional Court decided to continue legal proceedings in the case, examining the compliance of Para 3¹ and Para 15.2. of the Regulation No. 1268 (hereinafter jointly – the contested norms) as a united legal regulation with Article 64 of the *Satversme*. [12.]

On the limits of the authorisation granted to the Cabinet of Ministers

The Constitutional Court noted that the Cabinet's right to issue external regulatory enactments extended only insofar this right had been transferred by law. The content of the Cabinet's regulations predominantly consist of procedural norms, which are required to embody the rights established in law. In some cases, these may comprise also substantial norms; however, these should be adopted on the basis of an unequivocal

authorisation by the legislator. The word “procedure” used in the authorisation granted by the legislator clearly points to the procedural nature of the Cabinet’s Regulation. [13., 14.]

The Constitutional Court found that it followed from the word “procedure” included in the text of Section 16 (3) of the Law on the Rights of Patients that the legislator had authorised the Cabinet to regulate the procedure, in which compensation was claimed from and paid by the Treatment Risk Fund. [14.]

Hence, the Constitutional Court found that it had to be established, to which persons compensation had to be paid from the Treatment Risk Fund and what damage had to be compensated for from it in accordance with the provisions of the Law on the Rights of Patients. [14.]

On the rights to receive compensation from the Treatment Risk Fund defined in the Law on the Rights of Patients

The Constitutional Court found that in accordance with Section 16 (1) of the Law on the Rights of Patients compensation had to be paid from the Treatment Risk Fund for the non-pecuniary harm caused to a patient or the physical and moral suffering inflicted on a patient, as well as for certain pecuniary loss caused to the patient, i.e., the treatment costs. Pursuant to this norm, the compensation must be paid also if the patient has deceased. [15.1.]

However, the Constitutional Court underscored that in if the patient has deceased he himself could not exercise the right to receive compensation. Therefore Section 16 (1) of the Law on the Rights of Patients should be interpreted to mean that in the case of a patient’s death the compensation for the harm inflicted on him should be paid to another person. [15.1.]

Pursuant to the provisions of the Civil Law, a deceased person’s movable and immovable property, as well as rights and commitments to be transferred to others, which the deceased person or the person who has been declared dead had owned at the time of actual death or at the time of his legally acceptable death as a whole constitute the estate of the deceased person. Therefore the Constitutional Court found that the objective aim of

Section 16 (1) of the Law on the Rights of Patients was to establish that a deceased patient's right to compensation for the harm inflicted on him was a part of the deceased patient's estate. Consequently, this right can be exercised only by those heirs of the deceased patient who have accepted the estate left by him. [15.2.]

The Constitutional Court noted that it has been recognised in the Latvian doctrine and judicature of civil law that the right to compensation for the harm inflicted upon a person's health, as to its nature, was a purely personal right and therefore could not be inherited. However, the legislator has the right, abiding by the general legal principles and other norms of the *Satversme*, to establish exemptions and to define by special norms specific issues in a way that differs from the general legal order in the particular area. The Constitutional Court noted that Section 16 (1) of the Law on the Rights of Patients envisaged an exception like this. [15.3.]

Thus, the Constitutional Court found that by Section 16 (3) of the Law on the Rights of Patients the Cabinet had been authorised, *inter alia*, to establish the procedure in which the heirs of a deceased patient had the right to claim and to receive from the Treatment Risk Fund compensation for the harm inflicted on the patient. Therefore the Constitutional Court recognised the contested norms as being compatible with Article 64 of the *Satversme*. [15.3., 16.]

The Constitutional Court held:

to recognise Para 3¹ and Para 15 of the Cabinet Regulation of 5 November 2013 No. 1268 "Regulation on the Functioning of the Treatment Risk Fund" as being compatible with Article 64 of the *Satversme*.

The judgement of the Constitutional Court is final and not subject to appeal, it will enter into force on the day of its publication.

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/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/12/2017-33-03_Spriedums.pdf#search=

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 judgement 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