



The norm that restricts the right to reimbursement of the State duty in civil procedure by the term of three years is incompatible with the first sentence of Article 91 of the *Satversme*

On 2 November 2020, the Constitutional Court delivered the judgement in case No. 2020-14-01 “On Compliance of Section 37 (3) of the Civil Procedure Law with the first sentence of Article 91 and Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Section 37 (2) of the Civil Procedure Law

“The State duty shall be reimbursed provided that an application requesting its reimbursement has been submitted to the court within three years from the date when the sum was paid into the State budget.”

The Norms of Higher Legal Force

The first sentence of Article 91 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*): “All human beings in Latvia shall be equal before the law and the courts.”

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.”

The Facts

The case was initiated on the basis of an application submitted by Jurijs Kapišņikovs, Ināra Kapišņikova, and Eduards Kapišņikovs (hereafter – the Applicants).

Upon establishing that the case, which was initiated on the basis of the Applicants’ claim, was not subject to review by a court, the Supreme Court terminated legal proceedings in the case.

The Applicants submitted an application to the court, requesting reimbursement of the State duty paid for the legal proceedings in the civil procedure. The court dismissed the request, indicating that the term set in the contested norm for submitting the request regarding reimbursement of the State duty had not been complied with.

The Applicants turned to the Constitutional Court and noted that the contested norm placed them in a more disadvantageous situation compared to persons, with respect to whom a court had terminated legal proceedings before the term of three years had expired. The Applicants cannot influence the length of legal proceedings in the case. Therefore, this differential treatment lacks a legitimate aim and is not proportional. By denying to the Applicants the possibility to be reimbursed the State duty that had been paid, the Applicants right to property is said to be infringed upon. Hence, it is alleged that the contested norm is incompatible with the principle of legal equality, included the first sentence of Article 91, and the right to property, included Article 105 of the *Satversme*.

The Court's Findings

On whether the legal proceedings should be terminated

The *Saeima* had requested termination of legal proceedings in the case, noting that the infringement on the Applicants' fundamental rights had been caused by incorrect application of the contested norm rather by the contested norm itself. The Constitutional Court found that the legislator, by the contested norm, had defined a final term, in which the right to the reimbursement of the State duty could be exercised. Therefore, the violation of the Applicants' fundamental rights followed from the contested norm [6.–6.4.]

On how the constitutionality of the contested norm should be examined

The Constitutional Court concluded that the basic matter in the case was the possible incompatibility of the contested norm with the principle of legal equality. Thus, the Court, first and foremost, examined the compliance of the contested norm with the first sentence of Article 91 of the *Satversme*. [7.]

On the incompatibility of the contested norm with the first sentence of Article 91 of the Satversme

On the scope of the first sentence in Article 91 of the Satversme

The Constitutional Court recalled that the principle of legal equality prohibited state institutions from issuing norms that, without reasonable grounds, allowed differential treatment of persons who were in similar and according to definite criteria comparable circumstances. This principle also allows and even demands differential treatment of persons who are in different circumstances. Only if the existence of objective and reasonable grounds is established, the principle of legal equality permits differential treatment of persons who are in similar circumstances, or equal treatment of persons in different circumstances. [8.]

On comparing, in the present case, groups of persons who are in different circumstances

The Constitutional Court found that the Applicants as the plaintiffs in a civil case shared with the plaintiffs in civil cases, where the legal proceedings had been terminated before the expiry of the term defined in the contested norm on the grounds that the examination of the case was not subject to a review by court, both the status of a participant in the case and the legal grounds for terminating legal proceedings. Hence, these groups of persons are comparable. Whereas the condition that places these groups of persons in substantially different situations is the length of legal proceedings. The plaintiffs, in whose cases the length of legal proceedings has not exceeded three years, have the possibility to submit a request regarding reimbursement of the State duty. Whereas those plaintiffs, in whose cases the length of legal proceedings, for reasons beyond their control, has exceeded three years, the term defined in the contested norm expires before they might have the chance to exercise the right to submit an application regarding reimbursement of the State duty. Hence, the plaintiffs in civil cases, in which the legal proceedings have been terminated because the adjudication of the case is not subject to a review by court before the term of three years has expired, and the plaintiffs in civil cases, in which legal proceedings have been terminated on the same grounds after the term of three years has expired, are in different circumstances. [9.]

On the fact that the contested norm envisages equal treatment of these persons

With respect to the term, in which the application regarding reimbursement of the State's duty must be submitted, the contested norm envisages equal treatment of all plaintiffs in a civil case, in which legal proceedings have been terminated on the grounds that the adjudication of the case is not subject to a review by court. The contested norm provides that any of these persons may request reimbursement of the State duty only within three years as of the date when the duty has been paid into the State budget. The Constitutional Court found that, hence, the contested norm envisaged equal treatment of groups of persons who were in different circumstances. [10.]

On the fact that the equal treatment in the present case lacks a legitimate aim

Pursuant to the contested norm, a person's possibility to exercise the right to the reimbursement of the State duty may depend solely on the length of legal proceedings in the respective civil case. This means that the contested norm ignores the fact, whether the person had had the possibility at all to exercise the right to the reimbursement of the State duty. This leads to a situation where one group of persons had had the possibility to exercise this right within the period that did not exceed three years as of the moment when the State duty was paid; however, there is another group, the persons belonging to which are in substantially different circumstances because they had not had the possibility to exercise this right due to circumstances beyond the persons' own control. [12.]

The Constitutional Court concluded that the legislator had envisaged in the contested norm expiry of the term for submitting an application regarding reimbursement of the State's fee. However, a situation, in which, for a certain group of persons, this term expires before the possibility to exercise the respective right occurs, is contrary to the meaning of the expiry of the term and the principle of justice. Hence, a norm that makes the exercise of a right for a certain group of persons dependent on circumstances, which, actually, are beyond the control of these persons, should be considered as being arbitrary since it is not linked to circumstances that would make these persons significantly different compared to the other subjects of this norm. A norm like this is contrary also to the principles of justice and legal certainty. Thus, the Constitutional Court did not identify objective and reasonable grounds for the equal treatment, established by the contested norm, of persons in different circumstances. Thereby the Constitutional Court recognised the contested norm as being incompatible with the first sentence of Article 91 of the *Satversme*. [12.]

The Constitutional Court underscored that the legislator enjoyed discretion in choosing the most appropriate solution for calculating the term for reimbursement of the State duty and the expiry of this term, insofar this solution complied with the principle of legal equality. Thus, this means that the legislator should envisage for all persons, taking into account their different circumstances, substantially, not formally, equal rights to reimbursement of the State duty. [12.]

On compliance with Article 105 of the *Satversme*

Upon identifying incompatibility of the contested norm with even one article of the *Satversme* it must be recognised as being unlawful and void. Since the contested norm was recognised as being incompatible with the first sentence of Article 91 of the *Satversme*, the Constitutional Court noted that it was not necessary to examine, additionally, its compliance also with Article 105 of the *Satversme*. [13.]

On the date as of which the contested norm becomes void

With respect to the Applicants, the contested norm was recognised as being void as of the moment when the infringement on their fundamental rights occurred. The date when the first instance court, on the basis of the contested norm, decided to refuse reimbursement of the State duty to the Applicants, is to be considered as being the moment when the infringement occurred. [14.]

With respect to other persons, the contested norm becomes void as of the date when this judgement is published. The Constitutional Court noted that until the date when the regulation, by which the legislator envisaged the term for reimbursing the State's duty that complied with the equality principle, entered into effect, the parties applying the law had to take into account the findings expressed in this judgement. Abiding by the principle of legal certainty and the legal order existing thus far, the parties applying the law must see to it that the expiry of the term for all persons is substantially equal. This means that the right to submit an application regarding the reimbursement of the States duty may be restricted by the term of three years; however, this term must be counted as of the date when the legal grounds for reimbursing the State duty arose, not as of the date when the duty was paid into the State budget. [14.]

The Constitutional Court noted, additionally, that the legislator was entitled to restrict the right to demand reimbursement of the State duty paid in civil proceedings; however, in doing so, the legislator had to abide by the principle of proportionality and legal equality, and the date, as of which persons could exercise their rights, should be taken as the point of reference in calculating the term. [14.]

The Constitutional Court held:

1. To recognise Section 37 (2) of the Civil Procedure Law as being incompatible with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia.

2. With respect to Jurijs Kapišņikovs, Ināra Kapišņikova and Eduards Kapišņikovs, to recognise Section 37 (2) of the Civil Procedure Law as being incompatible with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia as of the date when the infringement of their fundamental rights occurred.

The Constitutional Court's judgement is final and not subject to appeal; it enters into effect on the day of its publication. The judgement will be published in the official journal "Latvijas Vēstnesis" within the term defined in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the Constitutional Court's homepage:

<https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/03/2020-14-01-spriedums.pdf>

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 judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

Zanda Meinarte

Public relations specialist
of the Constitutional Court

Zanda.Meinarte@satv.tiesa.gov.lv

+ 317 67830759, + 371 26393803