



Satversmes tiesa

Press Release

Case No 2020-30-01

8 March 2021

The provision setting out the transition period for claiming compensation for non-pecuniary damages is incompatible with Article 1 and the third sentence of Article 92 of the Constitution

On 5 March 2021, the Constitutional Court passed a judgment in case No 2020-30-01 “On the compliance of para 2 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 Constitution of the Republic of Latvia”.

CONTESTED PROVISIONS

- Para 2 of the Transitional Provisions (hereinafter – the contested provision) of the law “On compensation for damages caused in criminal proceedings and record-keeping of administrative violations” (hereinafter – the Compensation Law):

“A private individual who, under this Law, has the right to receive compensation for damages which were caused by unlawful or unsubstantiated actions by an authority, the prosecutor’s office or a court before the date of this Law coming into force and for the compensation of which no legal proceedings have been initiated in a court of general jurisdiction, must submit the application for compensation of damages within six months from the moment when the legal grounds for compensation for damages arose.”

PROVISIONS OF SUPERIOR LEGAL FORCE

- Article 1 of the Constitution (Satversme) of the Republic of Latvia (hereinafter – the Constitution):
“Latvia is an independent democratic republic”.
- The third sentence of Article 92 of the Constitution:
“Everyone, where his or her rights are violated without basis, has a right to commensurate compensation”.

FACTS OF THE CASE

The case was initiated in the Constitutional Court on the basis of a constitutional complaint filed by the Individual *F*. The Applicant, in accordance with the Compensation Law, turned to the Ministry of Justice, requesting compensation for non-pecuniary damages. The Ministry of Justice, however, refused to consider the respective application. The Applicant appealed the decision of the Ministry of Justice in court, but the legal proceedings in the respective administrative case concluded with a ruling unfavourable to the applicant, which was, *inter alia*, based on the contested provision and stated that the limitation period, as stipulated in the contested provision, for claiming compensation for non-pecuniary damages, had not been met.

The Applicant noted that the legal regulation which had been in force before the Compensation Law came into effect provided for the individual's right to claim appropriate compensation for non-pecuniary damages in civil procedure within ten years from the moment when the legal grounds for such compensation arose. The contested provision shortened this period significantly. The Applicant held that the contested provision, insofar as it applied to compensation for non-pecuniary damages, restricted the individual's right to commensurate compensation, as provided for in the third sentence of Article 92 of the Constitution, and violated the principle of legitimate expectations, which is enshrined in Article 1 of the Constitution.

THE COURT'S FINDINGS

Clarifying the claim

The Constitutional Court has determined that it will evaluate the compliance of the contested provision with Article 1 and the third sentence of Article 92 of the Constitution insofar as the contested provision applies to compensation for non-pecuniary damages. Along with that, the Constitutional Court has determined that it will carry out the said evaluation in respect of each and every person for whom the legal grounds for compensation for non-pecuniary damages arose not earlier than six months before the Compensation Law entered into force. [10.2, 10.3]

On Article 1 of the Constitution in conjunction with the third sentence of Article 92 of the Constitution

The Constitutional Court has concluded that the principal issue in the case under consideration is whether an individual whose right to claim appropriate compensation for non-pecuniary damages arose while the law "On compensation for damages caused by unlawful or unsubstantiated actions by

an investigatory authority, the prosecutor's office, or a court" (hereinafter – the Law on Compensation for Damages) was in force and not earlier than six months before the Compensation Law came into effect is guaranteed a transition to the new legal regulation in line with the principle of legitimate expectations. Thus, in the case under consideration, the principle of legitimate expectations is closely connected to the individual's right to appropriate compensation for non-pecuniary damages in the event of an unsubstantiated infringement of rights. Therefore, the Constitutional Court has evaluated the compliance of the contested provision with Article 1 of the Constitution taken in conjunction with the third sentence of Article 92 of the Constitution. [11.3]

On the appropriate way of evaluating the constitutionality of the contested provision

To evaluate the compliance of the contested provision with the principle of legal expectations as enshrined in Article 1 of the Constitution and with the right to appropriate compensation for non-pecuniary damages as provided for by the third sentence of Article 92 of the Constitution, the Constitutional Court has to find out, firstly, whether the individual had developed legitimate expectations in respect of retaining or exercising the right to claim commensurate compensation for non-pecuniary damages, and, secondly, whether the legislator ensured a reasonable balance between the interests of society and the individuals' legitimate expectations that they will be able to claim appropriate compensation for non-pecuniary damages. [12]

On the fact that the Applicant had developed legitimate expectations

The Constitutional Court has concluded that the Applicant had developed legitimate, well-founded and reasonable expectations, based on the provisions of the Law on Compensation for Damages, that they would have the right to claim appropriate compensation for non-pecuniary damages in accordance with the regulation of prescriptive periods contained in the Civil Law. The legal provisions of the Law on Compensation for Damages had been sufficiently certain and stable for the Applicant to be able to rely on them. [13]

On whether the legislator ensured a reasonable balance

To evaluate whether the legislator ensured a reasonable balance between the interests of society and the individuals' legitimate expectations regarding the possibility to exercise their right to claim appropriate compensation for non-pecuniary damages within a certain period, the Constitutional Court has had to examine, firstly, what was the aim pursued by the legislator in adopting the contested provision, secondly, whether the legislator, having evaluated the effect of the contested provision on the legal relationships already in place, provided

for a lenient transition to the new regulation, ensuring protection of the individual's right to appropriate compensation for non-pecuniary damages. [14]

On the aim pursued by the legislator in adopting the contested provision

The Constitutional Court notes that the legislator, in exercising its discretion to determine transitional provisions, essentially sought, by means of the contested provision, to maintain and provide for the legal protection of the right to claim appropriate compensation for non-pecuniary damages in respect of those individuals for whom such a right had arisen while the Law on Compensation for Damages had been in force but not earlier than six months before the Compensation Law came into effect. Therefore, the Constitutional Court has acknowledged that the legislator, aiming to ensure legal stability, specified in the contested provision the transition period in which the individual may exercise their right to claim appropriate compensation for non-pecuniary damages. [15]

On whether the legislator provided for a lenient transition to the new regulation

The Constitutional Court has stated that, in order to provide for a lenient transition to a new legal regulation, the legislator has to thoroughly and fully consider the situation of all the individuals falling within the scope of the particular legal provision, evaluate the extent of the rights already enjoyed by the individuals and provide those individuals with effective legal protection or substantiate why such protection is not to be provided. [16]

The contested provision allows situations where, depending on the moment when the legal grounds for compensation for non-pecuniary damages arose, after the coming into effect of the Compensation Law individuals may be allowed time from one day to nearly six months to replan their actions in accordance with the new legal regulation. It should also be taken into account that there can be situations in which the individual has no subjective influence whatsoever on when the legal grounds for compensation for non-pecuniary damages arise. [16]

It does not follow from the legislative materials and the content of the contested provision that the legislator weighed up, in respect of non-pecuniary damages, how long the reasonable transition period needs to be for the individual to be able to replan their actions from a 10-year period to a much shorter time. [16]

The situation where, in respect of an individual for whom the right arose to claim appropriate compensation for non-pecuniary damages under the previous regulation, the transition period is stipulated arbitrarily, that is, the period for exercising this right is made dependent on circumstances the individual cannot actually influence, is contrary to the essence of transitional regulation and the principle of justice. Depending on the moment when the legal grounds for compensation for damages arose, the duration of this period may range from

one day, which cannot be considered as a reasonable period allowing the individual to replan their actions in accordance with the new legal order, to nearly six months. [16]

Thus, the individuals falling within the scope of the contested provision are not guaranteed equal possibilities for protecting their rights. [16]

The Constitutional Court has concluded that the legislator, in determining the period of transition to the new legal regulation, did not thoroughly and fully ascertain the impact of the contested provision on the existing legal relationships. [16]

The situation where the individual's legal status is made worse without a particular substantiation or evaluation and without allowing the individual a lenient transition to the new legal regulation, thus prohibiting the individual from exercising the right to claim appropriate compensation for non-pecuniary damages within a reasonable transition period, is incompatible with the legitimate expectations principle enshrined in Article 1 of the Constitution and with the third sentence of Article 92 of the Constitution. Such a situation cannot be justified by the public interest in ensuring legal stability. [16]

The Constitutional Court has found that the contested provision, insofar as it applies to the right to claim appropriate compensation of non-pecuniary damages in situations where the legal grounds for such compensation arose not earlier than six months before the Compensation Law entered into force, is not compatible with the legitimate expectations principle enshrined in Article 1 of the Constitution and with the third sentence of Article 92 of the Constitution. [16]

On the moment when the contested provision becomes void

The Constitutional Court has determined that, in respect of every individual who turned to a decision-making authority but, pursuant to the contested provision, was denied compensation for non-pecuniary damages because the limitation period for claiming compensation for non-pecuniary damages had elapsed, if the legal grounds for such compensation had arisen not earlier than six months before the Compensation Law entered into force, the contested provision is void from the moment it came into effect. [17]

Along with that, the Constitutional Court has determined that, in order to ensure protection of legitimate expectations in line with Article 1 of the Constitution and of the individuals' right to claim appropriate compensation for non-pecuniary damages, as enshrined in the third sentence of Article 92 of the Constitution, the contested provision must be applied in accordance with the system of the Compensation Law, providing that the aforementioned individuals had the right to claim compensation for non-pecuniary damages within six months after the Compensation Law entered into force. [17]

The Constitutional Court has ruled:

1. To recognise para 2 of the Transitional Provisions of the law “On compensation for damages caused in criminal proceedings and record-keeping of administrative violations”, insofar as it determines the right to claim compensation for non-pecuniary damages, as being incompatible with Article 1 and the third sentence of Article 92 of the Republic of Latvia and void from the moment it entered into force in respect of the individuals for whom the legal grounds for compensation for non-pecuniary damages arose not earlier than six months before the said law came into effect, who have turned to a decision-making authority and have been denied compensation for non-pecuniary damages because the limitation period has elapsed.

2. In respect of the individuals for whom the legal grounds for compensation for non-pecuniary damages arose not earlier than six months before the law “On compensation for damages caused in criminal proceedings and record-keeping of administrative violations” entered into force, who turned to a decision-making authority and were denied compensation for non-pecuniary damages because the limitation period had elapsed, para 2 of the Transitional Provisions of the law “On compensation for damages caused in criminal proceedings and record-keeping of administrative violations”, insofar as it determines the right to claim compensation for non-pecuniary damages, is to be applied providing that those individuals had the right to claim compensation for non-pecuniary damages within six months after the said law came into force.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment enters into force on the day it is published.

The text of the judgment is available on the website of the Constitutional Court:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/03/2020-30-01_spriedums.pdf

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the [website](#) of the Constitutional Court. You are also invited to follow the information on the Court’s *Twitter* account [@Satv_tiesa](#) and *YouTube* [channel](#).

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