



Satversmes tiesa

Press release

Case No. 2021-25-03

28.03.2022

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## Provisions establishing the maximum amount of legal aid expenses to be reimbursed to a natural person are unconstitutional

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On 25 March 2022, the Constitutional Court adopted a judgement in the Case No. 2021-25-03 "Regarding Compliance of Paragraphs 3, 4 and 5 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (in the version applicable from 8 May 2015 to 9 April 2020) with the first sentence of Article 92 of the Constitution of the Republic of Latvia".

### THE CONTESTED PROVISIONS

Paragraph 3 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (hereinafter referred to as – the Regulations No. 859), in the version applicable from 8 May 2015 to 9 April 2020 stipulated that the state reimburses legal aid costs per person in the following amount:

3.1 for legal consultation – 19.21 *euro* per hour;

3.2 for drawing up an application, an ancillary complaint or an administrative contract (settlement) – 32.01 *euro*;

3.3 for drawing up an appeal and counter-appeal – 38.42 *euro*;

3.4 for drawing up a cassation appeal – 45.53 *euro*;

3.5 for drawing up a document necessary for the decision of a case (submissions, requests or explanations (except for a document on request of information and documents referred to in Sub-paragraphs 3.2, 3.3 and 3.4 of these Regulations)) – 25.61 *euro*;

3.6 for drawing up supplements to the documents referred to in Sub-paragraphs 3.2, 3.3 and 3.4 of these Regulations – 25.61 *euro*;

3.7 for representation at a court hearing – 28.46 *euro* per hour;

3.8 for examination of one volume of the case file in court within the framework of one court instance – 19.21 *euro*.

Paragraph 4 of the Regulations No. 859 in the version applicable from 8 May 2015 to 9 April 2020: "The State shall bear the expenses for legal consultation provided in the amount referred to in Sub-paragraph 3.1 of these Regulations for not more than five hours within the framework of one case."

Paragraph 5 of the Regulations No. 859 in the version applicable from 8 May 2015 to 9 April 2020: "The State shall bear the expenses for the drawing up of not more than five documents referred to in Sub-paragraphs 3.2, 3.3, 3.4, 3.5 and 3.6 of these Regulations within the framework of one case."

#### PROVISION WITH A HIGHER LEGAL FORCE

The first sentence of Article 92 of the Constitution of the Republic of Latvia (hereinafter referred to as – the Constitution): "Everyone has the right to defend his or her rights and lawful interests in a fair court."

#### THE FACTS OF THE CASE

The case has been initiated on the basis of a constitutional complaint of the Limited Liability Company "TAVEX" (hereinafter referred to as – the Applicant). An administrative offence proceedings were initiated against the Applicant, and a fine was imposed. The Applicant received legal aid provided by a sworn advocate. After the unlawful conduct of the institution was established in the administrative violation case, the Applicant applied to the institution and the court for reimbursement of the expenses related to legal aid. The Applicant asserts that the legal aid expenses were reimbursed in the amount established in the contested provisions, however, this amount is disproportionately low.

The Applicant believes that the contested provisions are incompatible with the first sentence of Article 92 of the Constitution, since they do not provide for reimbursement of expenses which were necessary for effective conducting of the case.

#### CONCLUSIONS OF THE COURT

##### On the scope of the first sentence of Article 92 of the Constitution

The Constitutional Court concluded that the obligation to regulate fairly the reimbursement of legal aid expenses, which includes the obligation to determine the amount of reimbursable expenses related to legal aid in such a way that the right of a person to receive qualified legal aid was ensured, arises from the first sentence of Article 92 of the Constitution. [10.3]

On the obligation contained in the first sentence of Article 92 of the Constitution

The Constitutional Court noted that the first sentence of Article 92 of the Constitution included the legislator's obligation to adopt such legal provisions which ensured reimbursement of the necessary expenses related to legal aid within a reasonable amount. [11]

On why the Cabinet of Ministers has failed to fulfil the obligation imposed thereon in the first sentence of Article 92 of the Constitution

The Cabinet of Ministers has set the maximum amount of reimbursement of legal aid expenses in the Regulations No. 859. The law gives to the law enforcer a wide discretion for the assessment of the reimbursable expenses. That means that the particular circumstances of the case are to be assessed in relation to the necessary legal aid expenses, and they are to be reimbursed in reasonable amount. It follows both from the text of the contested provisions and from the practice of application of those provisions that the enforcer determines the reimbursable expenses related to legal aid, taking into account the fact that the legislator has expressly provided for the reimbursement of those expenses only in the amount not exceeding the one provided for in the contested provisions. [14.2.1]

The Constitutional Court concluded that the Cabinet of Ministers had freedom of action to determine the amount of reimbursement of expenses related to legal aid, however, the legal framework had to be such as to allow the enforcer of the legal provisions to assess each individual case related to reimbursement of legal aid expenses and, taking into account the objective justification of the necessary expenses incurred in the case, to determine their reimbursement in a reasonable amount. However, it does not follow from the circumstances of the case under adjudication and the materials of elaboration of the contested provisions that the Cabinet of Ministers has assessed the right of a person to receive reimbursement of the necessary expenses related to legal aid in a reasonable amount, which, taking into account the individual circumstances of the case, would ensure the right of a person to receive reimbursement of the necessary expenses related to legal aid also in a larger amount. [14.2.2]

The contested provisions relate to the reimbursement of the costs of certain services which are subject to change in the free market as the nationwide economic situation changes. The Cabinet of Ministers is obliged to periodically consider whether the amount of reimbursement of legal aid expenses it has set

is proportionate and still in line with social reality and a person's right to access to justice and the right to qualified legal assistance, as well as whether the existing legal framework in this area should be improved. [14.3]

The Constitutional Court concluded that, in accordance with the principle of the state subject to the rule of law, in order to ensure a person's right to access to justice and the right to receive qualified legal aid, the legal framework must be such that does not prevents a person from applying to court at all or does not create a situation where, after the court proceedings, a person finds himself in a financially less favourable situation than before, provided that the expenses incurred by the person were objectively justified and necessary. Consequently, the Cabinet of Ministers has not properly – in accordance with the general principles of law and other provisions of the Constitution – established the legal framework which provides for the reimbursement of the necessary expenses related to legal aid in a reasonable amount. Consequently, the contested provisions, insofar as they do not provide for reimbursement of the necessary expenses related to legal aid in a reasonable amount, do not comply with the first sentence of Article 92 of the Constitution. [14.3]

#### On extending the boundaries of the proceedings

The contested provisions were in force until 9 April 2020, when the Regulations of the Cabinet of Ministers No. 195 of 7 April 2020 "Amendments to the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person"" entered into force. The Constitutional Court concluded that, in the currently applicable legal framework, the Cabinet of Ministers had increased the amount of reimbursement of costs related to legal aid, however, Paragraphs 3, 4 and 5 of the Regulations No. 859 (in the version applicable from 10 April 2020) contained legal framework similar to the contested provisions. Paragraphs 3, 4 and 5 of the Regulations No. 859 (in the version applicable from 10 April 2020) also contain legal framework which the Constitutional Court has recognised as incompatible with the first sentence of Article 92 of the Constitution. Consequently, the Constitutional Court recognised that Paragraphs 3, 4 and 5 of Regulations No. 859 (in the version applicable from 10 April 2020), insofar as they do not provide for reimbursement of the necessary expenses related to legal aid in reasonable amount, also did not comply with the first sentence of Article 92 of the Constitution. [15]

#### Regarding the moment of expiry of the legal provisions

With regard to the Applicant, the contested provisions, insofar as they do not provide for the reimbursement of the necessary expenses related to legal aid in a reasonable amount, shall be declared null and void from the moment of the infringement of the fundamental rights thereof. However, with regard to those persons who have initiated and continue to defend their rights through general legal remedies, the contested provisions and Paragraphs 3, 4 and 5 of the Regulations No. 859 (in the version applicable from 10 April 2020), insofar as they do not provide for the reimbursement of the necessary expenses related to legal aid in a reasonable amount, shall cease to have effect from the moment when the infringement of the fundamental rights of the persons concerned occurred. [16.1, 16.2].

#### On the conduct of the enforcer of legal provisions during the transitional period

The Constitutional Court indicated that, by the moment the legal framework by which the Cabinet of Ministers fulfils its obligation established in the first sentence of Article 92 of the Constitution enters into force, the enforcer of legal provisions must ensure the right to a fair trial to the persons who had incurred expenses related to legal aid as a result of unlawful State action, by directly applying the first sentence of Article 92 of the Constitution, and findings of this Judgement, and by establishing the reimbursement of the necessary expenses related to legal assistance in a reasonable amount. [16.2]

#### **The Constitutional Court ruled the following:**

1 To declare Paragraphs 3, 4 and 5 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (in the version applicable from 8 May 2015 to 9 April 2020), insofar as they do not provide for reimbursement of the necessary expenses related to legal aid in a reasonable amount, as incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia.

2 With regard to the Limited Liability Company "TAVEX" and persons who have initiated and still continue to defend their fundamental rights by means of general legal remedies, to declare Paragraphs 3, 4 and 5 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (in the version applicable from 8 May 2015 to 9 April 2020) insofar as they do not provide for reimbursement of the necessary expenses related to legal aid in a reasonable amount, as incompatible with the first sentence of Article 92 of the Constitution

of the Republic of Latvia and invalid from the moment of the infringement of the fundamental rights of the person concerned.

3 To declare Paragraphs 3, 4 and 5 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (in the version applicable from 10 April 2020), insofar as they do not provide for reimbursement of the necessary expenses related to legal assistance in a reasonable amount, as incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia.

4 With regard to the persons who have initiated and still continue to defend their fundamental rights by means of general legal remedies, to declare Paragraphs 3, 4 and 5 of the Regulations of the Cabinet of Ministers No. 859 of 8 November 2011 "Regulations on the Maximum Amount of Legal Aid Expenses to be Reimbursed to a Natural Person" (in the version applicable from 10 April 2020), insofar as they do not provide for reimbursement of the necessary expenses related to legal aid in a reasonable amount, as incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia and invalid from the moment of the infringement of the fundamental rights of the person concerned.

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

Text of the Judgement is available on the website of the Constitutional Court:

[https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/06/2021-25-03\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/06/2021-25-03_Spriedums.pdf)

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The press release was prepared to inform society about the Constitutional Court's work. More detailed information about recent developments, cases initiated and heard by the Constitutional Court is available on the Constitutional Court's webpage [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv). Please follow also information published on the Court's *Twitter* account [@Satv\\_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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