

**Case number:**

Up-239/15

**ECLI:**

ECLI:SI:USRS:2017:Up.239.15

**Challenged act:****Operative provisions:****Abstract:****The Liability of the State for Damages**

In Case No. **Up-239/15** (Decision dated 7 June 2017, Official Gazette RS, No. 45/17), the Constitutional Court decided on the constitutional complaint of a complainant whose lawsuit for damages against the Republic of Slovenia had been rejected because it failed to demonstrate a causal link between the established unlawful act of the state – the excessive length of judicial proceedings – and the damage it suffered. The Supreme Court explained, *inter alia*, that jurisprudence has generally accepted the theory of adequate causation, according to which lengthy adjudication by a court cannot be deemed to constitute a legally acceptable cause of damage in the form of the higher interest rates that the complainant was required to pay to its creditor. In its constitutional complaint, the complainant alleged that by the challenged judgment the Supreme Court violated a number of provisions of the Constitution, *inter alia*, that the Supreme Court nullified or essentially denied its right to compensation for damage determined by Article 26 of the Constitution, a constitutional right that is also guaranteed to legal entities.

The first paragraph of Article 26 of the Constitution determines that everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority. First and foremost, from this human right there proceeds the general prohibition of exercising authority in an unlawful manner, whereby it is irrelevant which of the branches of power caused the damage. The meaning of the right to compensation for damage is to provide compensatory protection from unlawful conduct by state authorities. In accordance with the first paragraph of Article 26 of the Constitution, the basis of such responsibility is (1) the unlawful conduct of a state authority, local community authority, or other bearer of public authority (2) during the exercise of power or in relation to the exercise of power, a consequence of which is (3) the occurrence of damage. It is established constitutional case law that the liability of the state for damages caused by the unlawful conduct of state authorities, civil servants, and functionaries is a specific form of liability and that the classic rules of vicarious civil liability for damages do not suffice for its assessment; when assessing the individual prerequisites of the responsibility of the state, the specificities that originate in the authoritative nature of the functioning of its authorities must be taken into consideration, and particular care must be taken when applying the rules of the general law of obligations in order to ensure that these rules are adapted to the characteristics of liability for *ex iure imperii* actions under public law. These specificities are particularly characteristic with regard to the prerequisite of unlawfulness, with regard to which Article 26 of the Constitution prohibits that it be interpreted in an inappropriately narrow and rigid manner, e.g. an interpretation whereby the state would not be held liable for unlawful conduct

that cannot be attributed to a particular person or to a particular authority, but only to the state or its apparatus as such, as well as in cases where there is no individualised relationship between the bearer of power and the affected individual.

In the case at issue, the Supreme Court did not interfere with the position of the first instance court that the defendant acted in an unlawful manner. In this regard, it could not be said that it disregarded the mentioned specificities of the liability of the state for damages. In addition, the Constitutional Court did not accept the extremely general and only briefly presented allegation of the complainant that from the Constitution it follows that the Supreme Court should have granted its lawsuit already due to the existence of the prerequisite of unlawfulness. Article 26 of the Constitution does not of itself guarantee compensation for damage to a subject unless there exists a causal link between the unlawful action of the state and the damage suffered. By adopting the position that in order to establish the liability of the state for damages such causal link has to be demonstrated, the Supreme Court did not violate the complainant's right stemming from Article 26 of the Constitution.

The Constitutional Court further adopted a position on the allegation that the doctrine of adequate causation had been manifestly erroneously applied in the Supreme Court judgment. The Supreme Court opined that under the theory of adequate causation the lengthy adjudication of courts cannot constitute a legally acceptable cause of the damage suffered by the complainant, as this theory attributes damage to another's goods to the action that in the regular course of things and according to general practical experience would have resulted in such damage. The theory of adequate causation or the theory of adequacy is essentially a theory of attribution: its goal is to determine whether a specific effect, which is undisputedly the consequence of the perpetrator's conduct, can also be attributed to the perpetrator from a value judgment perspective.

The Constitutional Court is not competent to decide whether the decision of the Supreme Court regarding the causal link was lawful, i.e. whether the challenged judgment is erroneous from the perspective of substantive law. It has to limit itself to establishing whether the challenged judgment is in fact "manifestly" (i.e. at first glance, evidently, without any reasonable justification) erroneous. In the case at issue, the Constitutional Court held that the exclusion of the prerequisite of the causal link under the theory of adequate causation was not manifestly erroneous. Therefore, the challenged decision did not violate the complainant's right determined by Article 22 of the Constitution.

**Thesaurus:**

**Legal basis:**

**Cases joined:**

**Full text:**

**Type of procedure:**

ustavna pritožba

**Type of act:**

posamični akt

**Applicant:**

INFOHIP, Kranj, d.o.o., Kranj

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**Date of Decision:**

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