



JUDGE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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SEPARATE OPINION

of Judge of the Constitutional Court

Jaurīte Briede

in Riga on 19 October 2023

in case No. 2022-34-01

“On Compliance of Section 33 (1) of Law on Social Services and Social Assistance and the Second and the Third Part of Section 2² of the Law “On Social Security” with Article 1 and Article 109 of the Constitution of the Republic of Latvia”.

1. On 5 October 2023, the Constitutional Court delivered its judgement in case No. 2022-34-01 “On Compliance of Section 33 (1) of Law on Social Services and Social Assistance and the Second and the Third Part of Section 2² of the Law “On Social Security” with Article 1 and Article 109 of the Constitution of the Republic of Latvia” (hereafter – the Judgement), by which it ruled:

1) to recognise Section 33 (1) of Law on Social Services and Social Assistance (in the wording that was in effect from 1 January 2021 until 30 June 2023) and the second and the third part of Section 2² of the Law “On Social Security” (in the wording that was in effect from 1 January 2021 until 30 June 2023) as being incompatible with Article 1 and Article 109 of the Constitution of the Republic of Latvia”;

2) to recognise the first and the second part of Section 33 (1) of Law on Social Services and Social Assistance (in the wording that is effect since 1 July 2023) and the second and the third part of Section 2² of the Law “On Social Security” (in the wording that is effect since 1 July 2023) as being incompatible with Article 1 and Article 109 of the Constitution of the Republic of Latvia and void as of 1 January 2025”.

2. I uphold the conclusion made in the Judgement that the legislator itself has regulated the most important matters related to the minimum income threshold and has envisaged an objective method for determining the minimum income threshold, aimed at protecting human dignity, levelling out social inequality and ensuring sustainable national development. Likewise, I subscribe to the conclusion that, by the new contested provisions, the legislator has ensured the minimum income threshold that is regularly reviewed but had not ensured by the initially contested provisions regular review of this threshold and, thus, the initially contested provisions are incompatible with Article 1 and Article 109 of the Constitution.

However, I do not uphold the conclusion made in the Judgement that the procedure for determining the minimum income threshold, set out in the new contested provisions, together with other measures of the social security system, does not create for every needy person the possibility to create a life that is worthy of human dignity.

3. As noted in the Judgement, the principle of a socially responsible State does not exclude every person's duty, to the extent it can be reasonably expected within the limits of their abilities, to provide for oneself and one's relatives and ensure a life worthy of human dignity. If a person is unable to do it then the State has the obligation to provide social assistance, on the basis of societal solidarity. The obligation to take care of oneself, one's relatives and the common good of society, acting responsibly towards others and the future generations is included also in the Preamble to the Constitution (*see Para 11 of the Judgement*).

It follows from the Judgement and the Constitutional Court's previous case law that the State is not obliged to ensure to every person a life that is worthy of human dignity but to ensure the possibility to create a life that is worthy of human dignity (*see Para 13 of the Judgement and, for example, Judgement of the Constitutional Court of 16 July 2020 in Case No. 2019-25-03, Para 15*).

It should be taken into consideration that the task of social assistance is to create, in conjunction with other measures of the social security system, the possibility for needy persons to escape the poverty trap. Social assistance support measures cannot permit that persons, who are not participating for a long time, continue to exploit the system on the basis of the common resources of the rest of society. I subscribe to the opinion of the *Saeima* and the State Audit Office, provided in the case, that the aim of the social assistance system is not to cover all

needs of a needy person in such an amount that they do not have to do anything in order to live a life that is worthy of human dignity. Its aim is to motivate and ensure that persons exits from the situation they are in and would be able to function independently in society.

At the court hearing, the representative of the Ministry of Welfare stated the average duration of receiving the guaranteed minimum income benefit was five months. This means that, in the majority of cases, needy persons are in a situation like this for a comparatively short period of time. This also shows that, under the influence of social assistance and other measures of the social security system, needy persons are able to escape the poverty trap.

Pursuant to information provided by the Ministry of Welfare, in 2021, the largest groups of the recipients of the guaranteed minimum income benefit were households with children – 36 percent; working-age persons residing alone – 25.8 percent; households with working-age persons and persons of retirement age or persons with disability– 18.6 percent. The Ministry of Welfare has indicated that persons of retirement age and persons with disability should not be among the recipients of the guaranteed minimum income benefit because they receive old-age or disability benefit in the amount of 20 percent or more of the median income. A possible exception could be only a case if these persons live together with other members of the household who are, for example, unemployed.

These statistical data show that the majority of the recipients of the guaranteed minimum income benefit are able-bodied persons and households with persons who are maintained by able-bodied persons. This means that, respecting the principle of participation, these persons should be able to escape the poverty trap themselves but social assistance and other support measures of the social security system are only additional aid.

I subscribe to the statements made by the *Saeima* and several summoned persons at the court hearing that substantial increase in the social assistance support would bring it close to the amount of minimum salary and, therefore, part of the recipients thereof would lose the motivation to participate or return to the labour market, as well as serve as incentive for other employed persons to quit their jobs and rely on the support provided by social assistance. The amount of support should be appropriate and aligned with the entire system of social security, also with the amount of the minimum pension, for which persons have made social contributions.

In its Judgement, the Constitutional Court already drew attention to the fact that the guaranteed minimum income benefit, in conjunction with other measures of the social security system, should provide for the basic needs of needy persons in such minimum amount that would help these persons escape the poverty trap by their own means. Simultaneously, they should not create such conditions that would diminish the wish of needy persons to participate and improve their living conditions (*see Para 18 of the Judgement*). Moreover, the amount of the guaranteed minimum income benefit should be commensurate with the entire system of social security.

Hence, I am of the opinion that social assistance should be provide in the amount that ensures that the most necessary basic needs of persons in need are satisfied in minimum amount to avoid creating such conditions where the social assistance system is used by persons who are able to provide for themselves a life that is worthy of human dignity.

4. The Constitutional Court concluded in the Judgement that the guaranteed minimum income benefit, together with other support measures, did not ensure sufficient support regarding food and clothing. At the same time, it recognises that support, at least in the minimum amount, is provided for expenses related to housing and health care, as well as for obtaining basic education and the possibility to participate in social and cultural life, as well as political processes.

I cannot consent that the Constitutional Court should assess a particular amount of basic needs and certain source of support, from which these basic needs should be satisfied. As noted by the Applicant, the basic needs enumerated by the Constitutional Court are general. However, the amount of support that is required to satisfy these needs to a great extent depends on the situation and living conditions of each particular person. For example, although the Ministry of Welfare has calculated the relative expenditure of households on the budget food basket, it, nevertheless, differs from the actual consumption of food products by inhabitants, comparing it to the data of food consumption. The actual consumption reveals choices made by people, influenced by their income, habits, traditions and other aspects (*see Study of the Ministry of Welfare "Development of a new methodology for determining the basket of minimum subsistence consumption goods and services and its approbation (pilot projects)"*. Available: lm.gov.lv). Observations from life also show that in populated places where local governments have less resources to allocate for social assistance, people often have the

opportunity to cultivate their own land and grow some of their own food, and they take advantage of it. Hence, to assess the sufficiency of support for food, a particular amount of a food consumption basket cannot be taken into account and the value of support cannot be counted mathematically. This applies to all basic needs.

The Constitutional Court recognised that if the guaranteed minimum income benefit did not cover the costs of food then it could not be used for purchasing clothing. However, I hold that the guaranteed minimum income benefit can be used for purchasing both food and clothing. The entire benefit should not be used only for food. One person or household might need it to provide food, another – to provide clothing. In my opinion, it is acceptable that persons can purchase for low prices second-hand clothing or use the assistance provided by various organisations, for example, the Latvian Red Cross, and it is not contrary to human dignity (*see: Latvian Red Cross. Humanitarian Aid. Available: redcross.lv*). Since the Court recognised that other basic needs were satisfied at least in the minimum amount I am not going to examine these separately.

Summarising the above, I believe that the Constitutional Court had to examine whether support measures as such were available. If they are available then it should be recognised that the guaranteed minimum income benefit, in conjunction with other support measures, provides the possibility for every needy person to create a life that is worthy of human dignity.

5. In my opinion, it is important to take into account that since the Constitutional Court's judgement of 25 June 2020 in Case N. 2019-24-03 and the judgement of 16 July 2020 in case No. 2019-25-03 the procedure for determining the minimum income threshold has changed substantially. Previously, it was determined on the basis of political choice and the financial possibilities of local governments, currently, however, the legislator has chosen an objectively substantiated method for determining the minimum income threshold. Moreover, the amount that is used in the method – 20 percent of the median income, is such at which social support is provided to needy persons in several Member States of the European Union. The Constitutional Court recognised the method, chosen by the legislator, as being substantiated and aimed at protecting human dignity.

If the particular amount of the basic needs and of specific sources of support for satisfying these basic needs is assessed and the conclusion is reached that the guaranteed minimum income benefit, together with other measures of the social

security system, does not ensure the possibility to create a life that is worthy of human dignity, then it enters into contradiction with the conclusion that the method, chosen by the legislator, is substantiated. As the result, it might be not clear even for the legislator whether it has to increase the amount of the minimum income threshold or envisage additional support measures.

6. Neither can I subscribe to the Constitutional Court's conclusion that other social support benefits cannot be used to satisfy the basic needs of persons in need, e.g., the State family allowance. Although this allowance is disbursed not only to low-income households but to every family with a child, its aim is, in any case, to ensure general support to family for bringing up a child. Accordingly, the costs of food for the child, clothing, education and other expenses can be covered by it. If this allowance allows to cover certain costs and allows a low-income household to escape the poverty trap, then it also can be deemed to be a support measure.

This applies also to the individual support measures, introduced by the legislator, in periods of economic upheavals and crisis. I.e., if such support allows a low-income household to decrease expenses at the time when, in general, the costs of living have increased then this is an effective support measure also for such persons. It is irrelevant that these support measures were fixed-term because this was their aim – to help overcome the increase in the costs of living. If the costs of living were not growing then persons in need would be better able to satisfy their basic needs through other support measures.

7. I uphold the conclusions made by the State Audit Office and the Constitutional Court that such social support system that would ensure transparent system of support still has not been established. However, this *per se* is not the grounds for recognising that the possibility to lead a life worthy of human dignity has not been ensured to needy persons and that the new contested provisions would be incompatible with Article 1 and Article 109 of the Constitution.

Judge of the Constitutional Court

Jautrīte Briede

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