



The norm that sets the defined guaranteed minimum income level is incompatible with Article 1 and Article 109 of the *Satversme*

On 25 June 2020, the Constitutional Court pronounced the judgement in case No. 2019-24-03 “On Compliance of Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 “Regulation on the Guaranteed Minimum Income Level” with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 “Regulation on the Guaranteed Minimum Income Level” (hereafter – Regulation No. 913):

“The guaranteed minimum income level for a person shall be 64 EUR per month.”

The present case was initiated with respect to compliance Para 2 of Regulation No. 913, in the wording that was in force until 31 January 2019, with Article 1 and Article 109 of the *Satversme*. This legal norm provided that the guarantee minimum income level (hereafter – GMI) for a person was 53 EUR per month. Starting with 1 January 2020, the Cabinet increased the level of GMI and set it as 64 EUR.¹ The Constitutional Court found that the amendments to the contested norm did not constitute the grounds for terminating legal proceedings in the case and that the constitutionality of Para 2 of Regulation No. 913, which was in force since 1 January 2020, had to be reviewed. [16.1., 16.2.]

The Norms of Higher Legal Force

Article 1 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “Latvia is an independent democratic republic.”

Article 109 of the *Satversme*: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

¹ The Cabinet Regulation of 1 October 2019 No. 454 “Amendments to the Cabinet Regulation of 18 December 2012 “Regulation on the Guaranteed Minimum Income Level””.

The Facts

The case was initiated on the basis of the Ombudsman's application. The Ombudsman holds that the level of GMI is incompatible with the principles of a socially responsible state and a state governed by the rule of law because it does not ensure to needy persons a life compatible with human dignity and does not fulfil the obligation to ensure to persons the possibility to exercise their social rights at least in minimal scope, which derives from Article 109 of the *Satversme*.

GMI level is said to be too low to ensure minimum preconditions for a life compatible with human dignity. This level had been determined through political agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments without using concrete methodology, based on economic considerations. Although the contested norm and the benefit closely linked to it for ensuring GMI level is not the only support measure available to a needy person, the support provided by the State and local governments is said to be insufficient to ensure a person's basic needs at least on the minimum level.

The Court's Findings

On how the constitutionality of the contested norm will be reviewed

In view of the arguments provided by the Ombudsman and other materials in the case, the Constitutional Court concluded that the basic issue in the case was, whether the GMI level, set in the contested norm, was compatible with human dignity and the principle of a socially responsible state. The Constitutional Court decided to examine, first and foremost, the compliance of the contested norm with Article 1 of the *Satversme* in interconnection with Article 109 of the *Satversme*. [17.]

On the incompatibility of the contested norm with Article 1 and Article 109 of the *Satversme*

On the scope of Article 1 and Article 109 of the Satversme

The Constitutional Court found that the legislator's obligation to create social security that would be aimed at the protection of human dignity as the supreme value of a democratic state governed by the rule of law, levelling out of social inequality and sustainable national development followed from the principle of a socially responsible state, based on human dignity. The concept of social security, which falls within the scope of Article 109 of the *Satversme*, must be understood as measures that are not linked to social insurance and paying of contributions but what is granted by the State to a person to provide the social assistance he or she needs. [17.1., 17.2.]

The Constitutional Court underscored: for everyone to be able to lead a life compatible with human dignity, the minimal social assistance should be such that anybody could provide for themselves food, clothes, housing and medical assistance – everything that is needed to guarantee elementary survival to any person, as well as to ensure to any person the possibility to exercise their right to basic education. Moreover, social assistance should guarantee to a person the possibilities to participate in the social, political and cultural life, thus, ensuring to any person the status of a full-fledged member of society. [17.3.]

To assess, in the present case, whether the State has fulfilled its obligation included in Article 1 and Article 109 of the *Satversme* to ensure that a person could lead a life compatible with human dignity, the Constitutional Court verified, firstly, whether the legislator had introduced measures to ensure to persons the possibility to exercise their social rights; secondly, whether these measures had been duly implemented, i.e., whether persons had been ensured the possibility to exercise their social rights at least on the minimal level; thirdly whether the general principles of law had been complied with. [17.4.]

On whether the legislator has introduced measures to ensure to persons the possibility to exercise their social rights

The judgement examines the measures, envisaged in regulatory enactments, aimed at creating the system of social security defined in the law “On Social Security”. The Constitutional Court concluded that the legislator had introduced measures to create a system of social security, thus ensuring to persons the possibility to exercise their right to

social security. One of the elements in the system of social security is social assistance, the purpose of which is to provide assistance to needy persons and which comprises the GMI level, set in the contested norm, and the benefit linked to it, which is disbursed to needy persons to ensure this level to them. [18., 18.1., 18.2. and 18.3.]

On whether needy persons have not been ensured the possibility to exercise their social rights at least in minimal scope

To assess, whether needy persons have been ensured the possibility to exercise their social rights at least in minimal scope, the Constitutional Court verified: 1) whether the legislator itself had regulated the most important issues linked to GMI level; 2) whether GMI level had been set by using a method that followed from the purpose to protect human dignity, level out social inequality and ensure sustainable national development; 3) whether GMI level, set in the contested norm, in interconnection with other measures of the social security system ensured to every needy person the possibility to lead a life that complied with human dignity [19.4.]

The Constitutional Court noted that setting of GMI level was a matter related to the State's obligation to create such system of social security that would ensure protection of human dignity, levelling out of socioeconomic differences and sustainable national development. Moreover, GMI level is the lowest level of minimum income or resources defined in legal acts that allows a person, who has been recognised as being needy, to apply for social assistance of a certain kind. Hence, it should be recognised as being the lowest point of reference, which is used in Latvia in envisaging measures of social assistance for decreasing poverty and social inequality. Thus, the defining of the purpose for ensuring GMI level as well as the development of basic principles for the method used to set GMI level are issues of such importance that should be decided on by the legislator itself. The Constitutional Court found that the legislator has not decided on these most essential matters related to setting GMI level. [20.]

The Constitutional Court also underscored that the Cabinet's obligation, in exercising the authorisation granted by the legislation, to set GMI level by using a valid and substantiated method followed from the principle of a socially responsible state, based on human dignity, since only then it would be possible to ascertain that the level that had been set

serves to protect human dignity, to level out social inequality and for sustainable national development. Whether the benefit for ensuring GMI level should be disbursed from the state or local-government budget resources is a matter of national social policy; however, the legislator's choice may not prohibit from determining GMI level that would be compatible with the *Satversme*. [21.2.]

The Constitutional Court did not find in the preparatory materials for drafting the contested norm the substantiation why GMI level had been set in the amount of 64 EUR. The Constitutional Court concluded that, prior to the adoption of the contested norm, the Cabinet did not have at its disposal a valid and substantiated method for defining GMI level. Therefore the Cabinet could not ascertain, whether GMI level in interconnection with other measures of the social security system, was such that ensures to needy person the possibility to lead a life that complied with human dignity. The Constitutional Court noted that local governments were responsible for fulfilment of this obligation, they had to fulfil the obligation, established by the Cabinet, to disburse to needy persons a benefit for ensuring GMI level, by taking into account the lawful interests of the state and persons residing in the respective administrative territory. [21.3.]

Other measures of the social security system available to needy persons in addition to the benefit for ensuring GMI level are also examined in the judgement. The Constitutional Court recognised that, within the framework of the social security system, various measures of social assistance were available to a needy person. However, the state social benefits cannot be assessed as benefits to be used to satisfy a person's basic needs since they have other objectives. Moreover, they are granted to persons belonging to certain groups of inhabitants in concrete situations. Whereas the possibilities for needy persons to receive social assistance within the framework of social assistance are different. The Constitutional Court found that GMI level, set in the contested norm, in interconnection with other measures of the social security system, did not ensure that every needy person could lead a life that would be compatible with human dignity. [22., 22.1., 22.2., 22.3., 22.3.1., 22.3.2., 22.3.3., 22.4. and 22.5.]

On the compliance of the contested norm with the second sentence of Article 91 of the *Satversme*

Since the contested norm is incompatible with Article 1 and Article 109 of the *Satversme* the Constitutional Court recognised that assessment of its compatibility with the second sentence of Article 91 of the *Satversme* was unnecessary. [24.]

On the term of validity of the contested norm

The Constitutional Court took into consideration the fact that the contested norm pertained to a socially important matter – the minimal social assistance that is required to ensure that every needy person could lead a life compatible with human dignity and the setting of this minimum. If the Constitutional Court were to decide that the contested norm should be recognised as being void as of the moment of pronouncing the judgement then GMI level would not be set at all in the regulatory enactments and, accordingly, it would be impossible to disburse this benefit to needy persons to ensure this level. Whereas by declaring the contested norm void retroactively the principle of legal certainty would be jeopardised. [25.]

The Constitutional Court noted: the legislator's obligation to regulate the most essential issues followed from the principle of a socially responsible state, based on human dignity, and the Cabinet had to comply with this regulation in setting GMI level. Hence, in the present case, it is necessary and admissible that the norm, which is incompatible with the *Satversme*, remains in force for a certain period to give the possibility to the *Saeima* and the Cabinet, abiding by the findings made in the judgement, to adopt new legal regulation. In view of the fact that setting of GMI level that would comply with the *Satversme* is required for the protection of human dignity and also that the respective changes can be aligned with the national budget for the next fiscal year, the Constitutional Court recognised the contested norm as being void as of 1 January 2021. [25.]

The Constitutional Court held:

to recognise Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 “Regulation on the Guaranteed Minimum Income Level” as being incompatible with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia and void as of 1 January 2021.

The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force upon being pronounced. The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

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

http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/10/2019-24-03_Spriedums.pdf#search=

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.

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