



The norms that establish linking judges' monthly salary to the maximum amount of monthly salary of a highly qualified lawyer of state direct administration institution or the 12th group of monthly salaries are recognised as being incompatible with Article 83 and Article 107 of the *Satversme*

On 26 October 2017, the Constitutional Court pronounced the judgement in case No. 2016-31-01 “On Compliance of Section 4(9) and Section 6¹ (1) of “Law on Remuneration of Officials and Employees of State and Local Government Authorities” with Article 83 and Article 107 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Section 4(9) of “Law on Remuneration of Officials and Employees of State and Local Government Authorities” (hereinafter – the Remuneration Law): “The monthly salary of a judge shall be determined by linking it to the monthly salary of a highly qualified lawyer of state direct administration institutions, applying a respective coefficient¹. The

¹ Section 6¹(2) of the Remuneration Law provides that the judges' monthly salary is determined by applying the following coefficient to the monthly salary of a judge of district (municipal) court:

- 1) the Deputy Chief Judge of a district (municipal) court and Chairperson of a district (municipal) court house — 1.1;
- 2) the Chief Judge of a district (municipal) court — 1.2;
- 3) a judge of a Land Registry Office — 1;
- 4) the Deputy Head of a Land Registry Office— 1.05;
- 5) the Head of a Land Registry Office— 1.1;
- 6) a judge of a regional court— 1.2;
- 7) the Deputy Chief Judge of a regional court and chairperson of a panel, as well as chairperson of a regional court house — 1.28;
- 8) the Chief Judge of a regional court — 1.35;
- 9) (deleted by the law of 12.12.2013);
- 10) a Judge of the Supreme Court — 1.42;
- 11) the chairperson of a Department of the Supreme Court— 1.55;
- 12) the Chief Judge of the Supreme Court — 1.7;
- 13) a Justice of the Constitutional Court — 2.1;
- 14) the Vice-president of the Constitutional Court — 2.3;
- 15) the President of the Constitutional Court — 2.62.

salary of a prosecutor shall be determined by linking it to the monthly salary of judge of a district (municipal) court, applying a respective coefficient.”

Section 6¹ (1) of Law on Remuneration: “The monthly salary of a judge of a district (municipal) court shall be determined by equalling it to the maximum amount of a head of legal structural unit at a state direct administration institution (12th group of monthly salaries) pursuant to Annex 3 to this Law².”

Norms of Higher Legal Force

Article 83 of the *Satversme*: “Judges shall be independent and subject only to the law.”

Article 107 of the *Satversme*: “Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.”

Facts of the Case

The case has been initiated on the basis of an application by the Council for the Judiciary. The Council for the Judiciary holds that the contested norms violate the principle of judges’ independence, by placing incommensurate restrictions on the guarantees for judges’ independence, and therefore are incompatible with Article 83 and Article 107 of the *Satversme*.

By comparing, in terms of remuneration, the office of a judge and the office of a head of legal structural unit in an institution of direct public administration, the legislator, allegedly, has not taken into consideration the different functions, status, and responsibilities of these offices, as well as restrictions established with respect to these. Likewise, the legislator has not taken into consideration that the head of a legal

² Pursuant to Annex 3 to the Remuneration Law, the amount of monthly salary of a judge of a district (municipal) court is 1647 EUR (gross).

structural unit at an institution of direct public administration, depending upon performance, is entitled to bonuses, awards and monetary prizes; such, however, cannot be granted to judges. The existing system of judges' remuneration is said to be an obstacle in attracting the best candidates for a judge's office and does not provide incentives for a head of a legal structural unit at an institution of direct public administration to become a judge, because a judge's actual remuneration is lower.

The Council for the Judiciary holds that because of the legislator's failure to act the judges' remuneration system has not been adjusted to the changes in economic situation and legal regulation. The legislator has safeguarded remuneration of other public officials, but had failed to create a system for retaining the actual value of judges' remuneration. The comparison of judges' remuneration with the remuneration of officials of public administration does not allow recognising the judge's remuneration as being sufficient. The Council for the Judiciary underscored that, in setting remuneration for judges and in public administration, different principles had to be complied with, therefore the remuneration set in public administration could be used for comparison; however, gearing of judges' remuneration with that of officials of public administration is said to be inadmissible.

The Court's Findings and Ruling

On defining limits of the claim

The Constitutional Court decided that, in the framework of this case, it would examine compliance of the contested norms with Article 83 and Article 107 of the *Satversme* only insofar the contested norms established the procedure for calculating the monthly salary of judges. Compliance of the norms with the *Satversme*, insofar they establish the procedure for calculating the monthly salary of prosecutors, the Constitutional Court will examine in the case No. 2017-13-01, which has been initiated on the basis of an application submitted by the Prosecutor General of the Republic of Latvia. [17.]

On examining the contested norms

The Constitutional Court found that the case comprised only dispute regarding one element of the regular part in the judge's remuneration for work – their monthly salary.

Essentially, both contested norms form a united system for calculating judges' monthly salary, which envisages that amount of every judge's monthly salary is linked to the salary of the head of legal structural unit of an institution of direct public administration or the maximum amount of the monthly salary for the 12th group of monthly salaries. Therefore the Constitutional Court examined the contested norms as a united regulation on the judges' remuneration for work. [18.1., 18.2.]

The Constitutional Court found that the criteria that should be used to assess, whether judges have been ensured appropriate remuneration for work in the meaning of Article 107 of the *Satversme* followed directly from Article 83 of the *Satversme*. Therefore, if it were found that the contested norms did not comply with Article 83 of the *Satversme*, it would also mean that they did not ensure to judges appropriate remuneration for work and also were incompatible with Article 107 of the *Satversme*. Hence, the Constitutional Court examined compliance of the contested norms with Article 83 of the *Satversme*. [19.]

On incompatibility of the contested norms with the principle of judges' independence included in Article 83 of the *Satversme*

The Constitutional Court noted that the legislator had an obligation, which followed from the principle of separation of powers, to respect the status of a judge; i.e., to treat the judicial power in a way that would ensure balance between the three branches of state power. The legislator's attitude towards the judicial power should be reflected, *inter alia*, in the legal regulation on judges' remuneration. [21.1.]

The Constitutional Court recognised that the legislator had the right to establish a system of judges' remuneration by choosing the amount of remuneration set for an official of the executive power as a point of reference. However, in such a case, a judge's remuneration may not depend on the principles for setting remuneration that are typical of another branch of state power. [21.1.]

The Constitutional Court underscored that the legislator, in deciding on the compliance of judges' remuneration, should ensure that remuneration for the work of every judge should comply with the principle of independence of judges, irrespectively of the level of a court or the period served in the judge's office. [20.]

Hence, the Constitutional Court examined, whether the contested norms ensured to a judge of a district (municipal) court, without taking into consideration possible supplement for the length of service, such remuneration for work that complied with the criteria that followed from the principle of judges' independence, included in Article 83 of the *Satversme*. [20.]

The Constitutional Court recognised that a system of remuneration for judges, where the remuneration of a judge depended on the principles for setting remuneration that were typical of another branch of state power, was incompatible with the principle of judges' independence. [21.1.]

On financial security of judges

The Constitutional Court recognised that judges' financial security should be understood as the State's obligation to envisage for judges such remuneration that would ensure to them appropriate standard of living throughout the judge's career, taking into account the economic situation of the state and the general standard of living. A judge's financial security included not only his subsistence, but, in view of the public importance of a judge's office, also a certain quality of life. A judge's financial security is not jeopardised only if the remuneration that a judge receives allows him to maintain an appropriate standard of living and provide for the welfare of his family. [21., 21.2.]

The Constitutional Court noted that a judge's remuneration, for it to ensure a judge's financial security, should be commensurate with the requirements and restrictions set for the judge's office, and that it should be competitive [22.1.]

The Constitutional Court found that, although high requirements with respect to qualification and social competence had been set for a judge's office, as well as certain restrictions had been imposed upon their rights, judges had been set such remuneration, the actual value of which was lower compared to that of an official, to whose monthly salary a judges' monthly salary was linked. [22.3.]

The practice of applying norms of the Remuneration Law in public administration only intensifies the threat to judges' financial security, thus decreasing the actual value of judges' remuneration, which has been established as inappropriately low by the contested norms. [22.3.]

On retaining the actual value of judges' remuneration

The Constitutional Court recognised that the legislator should establish such system of judges' remuneration that would comprise a mechanism for retaining the actual value of judges' remuneration. The actual value of judges' remuneration may be retained, if the legislator established such system of judges' remuneration that made the actual amount of judges' remuneration depend on the economic indicators or by setting a term for reviewing the amount of judges' remuneration, and concrete criteria, according to which the actual amount of judges' remuneration had to be examined. [21.3.]

The Constitutional Court found that the current system of judges' remuneration did not comprise a mechanism for retaining the actual value of judges' remuneration, since the norms of the Remuneration Law that pertain to reviewing remuneration and salaries applied only to the heads of state and municipal institutions. [22.4.]

Since the linking of judges' remuneration set in the contested norms does not ensure compliance of judges' remuneration with the requirements that follow from the principle of judges' independence, the Constitutional Court found that the contested norms were incompatible with Article 83 of the *Satversme*, as well as Article 107 of the *Satversme* and were to be recognised as being invalid. [22.4.]

On the force of the judgement by the Constitutional Court in time

The Constitutional Court recognises that the legislator needs time for elaborating a system of judges' remuneration that would comply with the requirements of Article 83 of the *Satversme* – to examine the actual value of remuneration to be ensured to every judge and to review the possibilities of the state budget. Therefore the contested norms are to be recognised as being invalid as of 1 January 2019. [23.]

The Constitutional Court held:

to recognised the first sentence of Section 4(9) and Section 6¹(1) of “Law on Remuneration of Officials and Employees of State and Local Government Authorities” as being incompatible with Article 83 and Article 107 of the *Satversme* of the Republic of Latvia and invalid as of 1 January 2019.

The judgement by the Constitutional Court is valid and not subject to appeal, it enters in force on the day it is pronounced.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/10/2016-31-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. 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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