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**The Cabinet, by ceasing to disburse the early retirement support to the heirs of its recipient, has placed a proportionate restriction on the right to property**

On 18 December 2018, the Constitutional Court passed the judgement in Case No. 2016-04-03 “On Compliance of the Cabinet of Ministers Regulation of 14 April 2015 No.187 “Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No.1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006””” with Article 105 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

The contested norm deletes the words “If the recipient of the support passes away in the period, when the concluded agreement on receipt of early retirement pensions is effective, his monthly pension for the remaining period shall be disbursed to the person, whose inheritance rights have been recognised pursuant to the national legal acts” in sub-para ”a” in Section “Early Retirement” of Subchapter 12.3.2 of the programming document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006.”

**The Norm of Higher Legal Force**

Article 105 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

**The Facts**

The Regulation of the Council of the European Union No. 1257/99 establishes support measures for rural development. *Inter alia*, it envisages the possibility for elderly farmers to cease agricultural activities and retire early. It is indicated in the programming document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006” that this measure creates the possibility for elderly farm owners, who due to different

reasons are unable to continue and develop commercial activity, to transfer the farm (give, sell, gift) to another person, receiving early retirement support. Whereas the Cabinet Regulation of 30 November 2004 No.1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006”” envisaged that the pension granted to a farmer during the remaining period was paid to his heirs. In 2015, the Cabinet amended this Regulation, deleting the norm, which envisaged the possibility to inherit the pension.

The case was initiated on the basis of an application by the Administrative District Court. This Court is hearing a case regarding discontinuation of the disbursement of the early retirement support. Heiresses of a farmer, who had been granted such pension, have turned to the Administrative District Court. The agreement on early retirement envisaged that the pension would be paid to the farmer or his heirs until 2021; however, the disbursement thereof was discontinued in 2015 – after the contested norm was adopted.

The Constitutional Court, examining the case at a court hearing with the participation of the participants in the case on 28 February 2017, adopted the decision to refer a question to the Court of Justice of the European Union to receive a preliminary ruling and to suspend the legal proceedings until the ruling by the Court of Justice of the European Union entered into force. [15.]

On 7 August 2018, the Court of Justice of the European Union proclaimed the judgement in the case C-120/17 “Administratīvā rajona tiesa v. Ministru kabinets” (hereinafter – the Judgement of the Court of Justice of the European Union”). The Court of Justice of the European Union recognised that Articles 10 to 12 of Council Regulation No. 1257/1999 had to be interpreted as precluding the Member States, when implementing those articles, from adopting measures making it possible to transfer by inheritance support for early retirement as that at issue in the main proceedings. Whereas the principle of legitimate expectations must be interpreted as follows: a provision of national law, such as that at issue in the main proceedings — which provided for the transfer by inheritance of early retirement support and was approved by the European Commission as compatible with Regulation No 1257/1999, gave rise to a legitimate expectation on the part of the heirs of farmers who received that support, and a conclusion such as that mentioned in the minutes of the meeting of the European Commission Committee on Rural Development of 19 October 2011, to the effect that such support may not be passed on by inheritance, did not bring that legitimate expectation to an end. [16.]

At the assignments sitting of 29 October 2018, the Constitutional Court decided to hear the case *de novo* in full composition of the Court, in written procedure. The Constitutional Court found: to prevent the situation, where the interests of the legal proceedings in the particular case could be jeopardised to the extent that during examination of the case there would be less than five Justices of the Constitutional Court in the composition of the Court and the legal proceedings would become impossible, the Constitutional Court, following the coming into force of the ruling by the Court of Justice of the European Union, had to hear the case in a new composition of the Court because during the period when the legal proceedings were suspended the composition of the Constitutional Court had changed. [17.]

### **The Court's Findings**

#### On the content of the right to property

In accordance with the principle of the unity of the *Satversme*, the Constitutional Court must take into consideration also the general principles of law and the rights included in other norms of the *Satversme*, although the case under review has been initiated with respect to the incompatibility of the contested norm with Article 105 of the *Satversme*. In determining, whether the contested norm affects such rights that should be considered as the object of the right to property in the meaning of Article 105 of the *Satversme*, the principle of legal expectations that is derived from the basic norm of the democratic state governed by the rule of law included in the scope of Article 1 of the *Satversme* might be of importance in the case under review. Such rights of financial nature, with respect to which a person has developed legal expectations, also fall within the scope of Article 105 of the *Satversme*. [18.]

#### On the compliance of the contested norms with Article 105 of the *Satversme*

##### *On the existence of a restriction on fundamental rights*

The Constitutional Court found that, upon concluding an agreement on the granting of the early retirement support, the persons (both the transferor of the farm and his heirs) could expect the transfer of the granted support to the heirs of the transferor of the farm. Thus, in the particular circumstances, the rights of the transferor's heirs to receive the payment of the early retirement support after his passing away is to be considered as being an object of the right to property. By adopting the contested norm, the Cabinet has restricted the aforementioned right, prohibiting the heirs of the transferor of the farm to continue receiving the support payment. Hence, the

contested norm restricts such rights of the heirs of the transferor of property that fall within the scope of the fundamental right to property. [19.]

*On whether the restriction on fundamental rights has been established by law and whether it has a legitimate aim*

The Constitutional Court recognised that the restriction on fundamental rights included in the contested norm had been established by law. [20.]

The principle of a democratic state governed by the rule of law determines the State's right to ensure that the support of early retirement is disbursed in a legal way that complies with the norms of the European Union law. The restriction set out in the contested norm has been established with the purpose of precluding incompatibility of the Cabinet Regulation No. 1002 with the norms of Regulation No. 1257/99. Thus, the restriction on fundamental rights included in the contested norm has a legitimate aim – protecting the democratic order of the state. [21.2.]

Protecting the welfare of society at large, *inter alia*, of other farmers, by precluding the contradiction of the Cabinet Regulation No. 1002 with the norms of Regulation No. 1257/99, as well as inexpedient use of the financial resources of the European Union and the Republic of Latvia must also be recognised as being the legitimate aim of the restriction on fundamental rights included in the contested norm. [21.3.]

*On the proportionality of the restriction on fundamental rights*

The contested norm is compatible with the finding included in the Judgement of the Court of Justice of the European Union that Articles 10 to 12 of Regulation No. 1257/1999 preclude the Member States from implementing measures that would allow inheriting the early retirement support. Hence, the restriction on fundamental rights included in the contested norms allows reaching the aim of protecting the democratic order of the state because after the contested norms entered into force the early retirement support is disbursed in a way that complies with the norms of the European Union law. [23.1.]

The contested norm precludes inexpedient use of the financial resources of the European Union and the State and provides the possibility to save almost two million euro, i.e., an amount that exceeds the amount already disbursed to the heirs of the transferors of the farms. In the particular case, objective and rational considerations have been provided to substantiate the measures chosen by the Cabinet. Hence, the restriction on fundamental rights included in the contested norm fosters also the public welfare because the resources saved following the coming into force of the contested norm can be used for other support measures. [23.2.]

The Constitutional Court found that the State had no right to continue supporting the farmers' heirs on the basis of a legal norm that was incompatible with Article 10 to 12 of Regulation No. 1257/1999. The use of the resources of the European Union Funds and of the Republic of Latvia for supporting others working in the field of agriculture in the amount, which by 2021 will not be disbursed to the heirs of the transferors of the farms, is impossible in any other way but by adopting the contested norm. In the particular case, it was impossible to choose any other measures for reaching the legitimate aim, save for discontinuing the disbursement of the support to the heirs of the recipient thereof. [24.]

Economic operators have no grounds to expect that, in implementing the European Union law, the Member States will not amend the legal regulation, pursuant to which persons may inherit the early retirement support. Also, the public law contracts on granting the early retirement support contain a provision regarding the State's right to change the procedure for receiving the support. There are no legal grounds with respect to the transferor's heirs, in whose ownership the granted support that had come, to continue disbursement of the early retirement support that had been granted to another person instead of them, the disbursement of which is prohibited by the norms of the European Union law. The Cabinet, by discontinuing the disbursement of the early retirement support not in full, although due to its inefficiency this solution had been proposed by the State Audit, but only with respect to one group of such persons, who are not a party of the agreement on granting the early retirement support, and, moreover, without demanding that these persons repay the support they had already received, had found a proportionate balance between the interests of various persons. Hence, the benefit that the society gains from the restriction on the fundamental rights of the heirs of the transferors of the farms included in the contested norm outweighs the damage inflicted on a person's rights and lawful interests. Thus, the restriction on a person's fundamental rights included in the contested norm is proportionate. [25.]

**The Constitutional Court held:**

to recognise the Cabinet of Ministers Regulation of 14 April 2015 No.187 "Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No.1002 "Procedure for Implementing the Programming Document "Latvia's Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006"" as being compatible with Article 105 of the *Satversme* of the Republic of Latvia.

The judgement of the Constitutional Court is final and not subject to appeal, it enters in force on the day of its publication.

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/2016/02/2016-04-03\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2016-04-03_Spriedums.pdf)

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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](http://www.satv.tiesa.gov.lv).

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