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**The norms of the binding regulation of the Jūrmala City Council that envisage a rental payment for using a grave are incompatible with the *Satversme***

On 5 March 2019, the Constitutional Court passed the judgement in case No. 2018-08-03 “On Compliance of Para 18 and Para 20 of the Binding Regulation of the Jūrmala City Council of 4 September 2014 No. 27 “Regulation on the Operations and Maintenance of the Municipal Cemeteries of Jūrmala City” with Article 1 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Para 18 of the Binding Regulation of the Jūrmala City Council of 4 September 2014 No.27 “Regulation on the Operations and Maintenance of the Municipal Cemeteries of Jūrmala City” (hereinafter – the Binding Regulation No. 27): “The leaseholder acquires the right to rent a grave by concluding a rental agreement with the company that maintains the cemeteries.”

Para 20 of the Binding Regulation No. 27: “The leaseholder of the grave pays to the company that maintains the cemeteries an annual rental payment, which is approved by the decision of the Jūrmala City Council.”

**The Norm of Higher Legal Force**

Article 1 of the *Satversme*: “Latvia is an independent democratic republic.”

**The Facts**

The case was initiated with respect to the Ombudsman’s application. In the framework of verification procedure, the Ombudsman had found that the Jūrmala City Council had established a rental payment for using a grave, thus violating the principle of a state governed by the rule of law enshrined in Article 1 of the *Satversme*. Cemeteries are said to have the status of public property, therefore their civil turnover is restricted. Currently the

Jūrmala City Council, allegedly, has no right to establish a fee for the use of a grave. Moreover, the Jūrmala City Council does not have the right to determine a fee for using a grave. The Ombudsman had recommended to the Jūrmala City Council to revoke the contested norms; however, the Council had refused to eliminate the identified deficiencies within the term set by the Ombudsman.

## **The Court's Findings**

### On examining the contested norms as a united regulation

The Constitutional Court found, first and foremost, that the contested norms were interconnected as part of legal regulation that regulated the matters related to acquiring a grave. I.e., it follows from these norms that a person acquires the right to use a grave after concluding a rental agreement and that an annual payment had to be made for renting the grave. Therefore the Constitutional Court examined the contested norms as a united legal regulation. [10.]

### On the scope of Article 1 of the *Satversme*

The Constitutional Court recognised that the general legal principles, *inter alia*, the principle of a state governed by the rule of law, derived from the basic norm of a democratic state governed by the rule of law, fell into the scope of Article 1 of the *Satversme*. Substantive understanding of the principle of a state governed by the rule of law envisages recognition of the generally binding nature of fundamental rights and the protection of these rights. Human dignity and the value of each individual is the core of fundamental rights. [11.]

The Constitutional Court underscored: human dignity as a constitutional value characterised a human being as the supreme value of a democratic state governed by the rule of law. It must be protected both in relationships between the State and a person, and

in interpersonal relationships. Protection of human dignity after death is based on cultural and religious traditions, which are included in the Latvian folk wisdom referred to in the fifth paragraph of the Preamble to the *Satversme*. In Latvia, traditionally deceased persons were buried in cemeteries. Universal human values, *inter alia*, human dignity determines that a deceased person must be buried, and, first and foremost, this duty falls upon the deceased person's next-of-kin. The Constitutional Court found that a democratic state governed by the rule of law has the obligation to regulate the matters linked to the burial of a deceased person, to protect a person's dignity also after his or her death. [11.]

On the autonomous function of a local government – establishing and maintaining cemeteries – and financing of the performance thereof

The Constitutional Court found that, pursuant to Para 2 of Section 15 (1) of the law “On Local Governments”, one of the autonomous functions of a local government was establishment and maintenance of cemeteries. Pursuant to Section 7 (2) of the said law, the performance of this function also must be financed from the local government's budget resources. Local governments' budget revenue, from which the performance of the statutory autonomous functions must be ensured, is formed by deductions from state taxes and duties, local government's duties, state budget subsidy and earmarked subsidy, subsidies from the local governments' finances equalisation fund, settlement of accounts with local governments' budgets, deductions from the profit of capital companies, revenue from leasing (renting) local governments' property, selling of property, as well as other revenue provided for by law. [12.1., 12.2.]

In certain cases, the local government council has the right to determine a fee for services in binding regulations that have been issued in accordance with Section 43 of the law “In Local Governments”, as well as envisage introduction of local government's duties. However, the legal norms that a local government adopts to ensure performance of its autonomous functions must be lawful. [12.2.]

On local government not having the right to rent graves

The Constitutional Court noted that concluding a rental agreement was an activity typical of private law and its purpose was gaining profit. However, traditionally, cemeteries and separate graves have served to ensure dignified burial of a deceased person. In the present case, the local government, by transferring an individual grave in the individual use of a person and envisaging payment for it, does not act as any owner but is performing a task of public administration envisaged in law; i.e., to ensure the performance of its autonomous function – establishing and maintaining cemeteries. By renting out cemeteries, the local government acts contrary to Section 77 (2) of the law “On Local governments” since cemeteries are local government property transferred into public use, serving public needs and therefore cannot be rented out to gain income. Consequently, the Constitutional Court found that the local government did not have the right to rent out graves to ensure the performance of its autonomous function – to establish and maintain cemeteries. [13.]

On the fact that granting a grave is not a service, for which a local government council would have the right to establish payment in accordance with Para 14 of Section 21 (1) of the law “On Local Governments”

The Constitutional Court held that a local government’s action – granting a grave to a person – as to its nature was not a service, since there was the obligation to bury, which did not give a choice to the next-of-kin, i.e., when a deceased person was buried in a grave, this had to be done in a cemetery. The fact that a local government demands payment for granting a grave as payment for a service is contrary to the rule that a deceased person’s body must be treated with respect. Hence, the Constitutional Court found that granting of a grave was not service, for which the local government council had the right to determine payment. [14.2.]

On the fact that, substantially, “the rental payment” established by the Jūrmala City Council, is a local government’s duty for using a grave, which the local government does not have the right to establish

The Constitutional Court found: in analysing the legal nature of the payment established by the contested norm, the Department of Administrative Cases of the Supreme Court had recognised that the payment established by the Jūrmala City Council, as to its nature, had to be deemed as being a local government’s duty. [14.3.]

The law “On Taxes and Duties” does not provide for a local government’s right to establish a duty for using a grave. Therefore the Constitutional Court found that the Jūrmala City Council, in adopting the contested norms, had exceeded its competence, established in regulatory enactments, had not respected subordination to legal acts and law, therefore the contested norms were incompatible with Article 1 of the *Satversme*. [14.3.]

On the date, as of which the contested norms become void

The Constitutional Court noted – if in the present case the contested norms were recognised as being void as of the moment of adoption thereof it would lead to a situation, where the Jūrmala City Council would have to repay the payment received for using graves. A ruling like this would have a significant impact on the local government’s budget and, thus, would jeopardise the rights and lawful interests of its residents. Therefore the Constitutional Court found that, in this case, the contested norms could not be revoked retroactively and the contested norms had to be considered as being void as of the date when the judgement by the Constitutional Court was published. [15.]

**The Constitutional Court held:**

**to recognise Para 18 and Para 20 of the Binding Regulation of the Jūrmala City Council of 4 September 2014 No. 27 “Regulation on the Operations and Maintenance of the Municipal Cemeteries of Jūrmala City” as being incompatible with Article 1 of the *Satversme* of the Republic of Latvia.**

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the date of its publication. 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=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/02/2018-08-03\\_Spriedums.pdf#search=2018-08-03](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/02/2018-08-03_Spriedums.pdf#search=2018-08-03)

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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 ruling 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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