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**Discontinuing the disbursement of the remuneration for performing the duties of a guardian if the guardian moves for permanent residence abroad is incompatible with the *Satversme***

On 16 May 2019, the Constitutional Court passed the judgement in case No. 2018-21-01 “On Compliance of Section 4 (1) and Para 2 of Section 20 (1) of “Law on State Social Allowances”, insofar these Apply to Remuneration for Performing the Duties of a Guardian”, with Article 91 and Article 109 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Section 4 (1) of “Law on State Social Allowances” (hereinafter – the Law on Allowances) provides that Latvian citizens, non-citizens, aliens and stateless persons to whom a personal identity number has been granted and who permanently reside in the territory of Latvia have the right to State social allowances.

Para 2 of Section 20 (2) of the Law on Allowances, in the wording that was in force until 6 March 2019, provided that the disbursement of the State social allowance disbursed at regular intervals was discontinued if the recipient of the allowance or a child for whom the allowance was disbursed departed from the Republic of Latvia for permanent residence in a foreign state.

**Legal Norms of Higher Legal Force**

Article 91 of the *Satversme*: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

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.”

**The Facts**

The case has been initiated with respect to an application by the Supreme Court. The Court is reviewing a case, initiated on the basis on application by a private person requesting revoking of a decision by the State Social Insurance Agency (hereinafter – the

Agency). On the basis of, *inter alia*, the contested norms, the Agency discontinued disbursing to a guardian, permanently residing in a foreign state, the remuneration for performing the duties of a guardian and demanded repayment of the overpaid remuneration.

The Supreme Court holds that the contested norms place disproportional restrictions on persons' fundamental social rights, established in Article 109 of the *Satversme*, since the legislator had adopted the regulation that envisages differential treatment without valid grounds. Hence, the principle of legal equality, enshrined in Article 91 of the *Satversme*, also had been violated.

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

#### On continuing the legal proceedings

The *Saeima* requested termination of legal proceedings since, following the initiation of the case, the contested norms had become void. The Constitutional Court found that Section 4 (1) of the Law on Allowances, contested in the present case, had not been amended. However, the legislator had amended the fourth part of this Section and Para 2 of Section 20 (1), hence, changing the contested norms, as to their content, with respect to remuneration for performing the duties of a guardian. Hence, Para 2 of Section 20 (1) of the Law on Allowances, in the wording that was in force until 6 March 2019, contested in this case, had become void, whereas the content of Section 4 (1) of this Law had changed substantially. [8. and 9.]

The Constitutional Court recognised that it was necessary to continue legal proceedings in the present case to resolve the disputes in the administrative cases that had already been initiated, in which the contested norms had been previously applied, *inter alia* also the administrative case regarding the protection of fundamental rights that, allegedly had been infringed on and which was the basis for the case reviewed by the Applicant. Amendments to the contested norms, substantially, cannot be held as being sufficient grounds for terminating legal proceedings, as requested by the *Saeima*, because, thus, a possible infringement on a person's fundamental rights might remain uneliminated. Therefore the legal proceedings in the present case were continued. [10.]

#### On the limits of reviewing the contested norms

It followed from the application that the Supreme Court did not object against the application of the whole Section 4 (1) of the Law on Allowances to remuneration for performing the duties of a guardian but only to the requirement included in this legal norm regarding the permanent residence in the territory of Latvia. Hence, the Constitutional Court examined compliance of the words “and who permanently reside in the territory of Latvia” of Section 4 (1) of the Law on Allowances (in the wording that was in force until 6 March 2019) and Para 2 of Section 20 (1) of the Law on Allowances (in the wording that was in force until 6 March 2019), insofar these apply to performance of the duties of a guardian, (hereinafter – the contested regulation) with Article 109 of the *Satversme* in interconnection with the equality principle falling within the scope of the first sentence of Article 91 of the *Satversme*. [11. and 12.]

On incompatibility of the contested regulation with the *Satversme*

*On the State's positive obligations that follow from a person's fundamental social rights*

The Constitutional Court recognised that a guardian was provided financial support both for the maintenance of a child and for performing the duties of a guardian. The legislator has taken the necessary measures to ensure to the persons, who are performing the duties of a guardian, the possibility to exercise the social rights, i.e., to receive special social security. In the case under review, the legislator had established a particular amount of remuneration for performing the duties of a guardian and a procedure of reviewing it. By the contested regulation, the amount of social security, until now guaranteed by the Law on Allowances to a guardian, who was residing permanently together with his ward in the territory of Latvia, was not decreased. Hence, in the present case, the right to social security, at least on the minimum level, was not affected [13.1. un 13.2.]

If the State has envisaged the possibility of special social security in law, Article 109 of the *Satversme* requires that the State's actions in this matter would comply with the general legal principles derived from the basic norm of a democratic state governed by the rule of law, *inter alia*, the principle of legal equality, which falls within the scope of the first sentence of Article 91 of the *Satversme*. [13.3.]

*On the differential treatment caused by the contested regulation*

The Constitutional Court recognised that the scope of a guardian's duties did not depend on the change of the guardian's and the ward's place of permanent residence since, *per se*, it did not affect the validity of the guardianship, jurisdiction of supervision and did not suspend the decision by the Orphans' Court on establishing guardianship. Each guardian dedicates time and care in caring for the child and protecting his rights, and the scope of a guardian's duties did not change until the guardian's status was retained. Hence, all persons, who perform the duties of a guardian, are in similar and according to definite criteria comparable circumstances. [14.]

The contested regulation prohibits from granting remuneration for performing the duties of a guardian to Latvian citizens, non-citizens, aliens and stateless persons, who have been granted a personal identification number and whose ward – a child under their guardianship – has been granted a personal identification number and who permanently reside in foreign states. Hence, the guardians have been placed in different situations, depending on the state, where the guardian has his permanent place of residence. Hence, the contested regulation establishes differential treatment of persons, who are in similar and according to definite criteria comparable circumstances, depending on their permanent place of residence. [15.1.]

The Constitutional Court found that the differential treatment caused by the contested regulation had been established by law. [15.2.]

*On the absence of a legitimate aim for the differential treatment*

The State, to the extent possible, must ensure that a child grows up in a family environment. The best interests of a child are protected if there is a person who assumes guardianship. The aim of the financial remuneration for performing the duties of a guardian is to provide financial incentives to a person suitable for performing the guardian's duties to be a child's guardian, thus facilitating that the priority principle of the child's best interests is complied with. This remuneration is aimed at involving people in caring for children without parental care. Moreover, the obligations and rights that follow from the institution of guardianship do not change even if the guardian has moved for permanent residence in another country. I.e., the decision by the Orphans' Court on establishing guardianship remains in force, and the Latvian institutions of public administration continue supervision over the guardianship. [16.]

The Constitutional Court recognised that the need to save the state budget resources might justify the State's refusal to grant resources for performing the less important among its functions or the introduction of general austerity measures in circumstances of economic recession. However, saving the state budget resources may not serve as the legitimate aim for the differential treatment of persons who are in similar and according to definite criteria comparable circumstances, in particular, if this affects the best interests of a child to grow up in a family environment. [16.]

Since the differential treatment envisaged in the contested regulation is not aimed at protecting the best interests of a child it cannot be compatible with the legitimate aim defined in Article 116 of the *Satversme* – protection of public welfare. In the present case, a legitimate aim cannot be discerned for establishing differential treatment of persons who perform a guardian's duties depending on the permanent place of residence of these persons and their wards. [16.]

In view of the above, the differential treatment caused by the contested regulation lacks a legitimate aim and, hence, the contested regulation is incompatible with Article 91 and Article 109 of the *Satversme*. [16.]

On the date, as of which the contested regulation becomes void

To protect the best interests of a child and also the fundamental rights of such persons, who have begun defending their fundamental rights in the procedure established in the Administrative Procedure Law, the contested regulation must be recognised as being void as of a certain date in the past. Although the contested regulation, substantially, is no longer in force, it could have been applied within the framework of administrative proceedings at the time when it was in force and had to be applied in the initiated administrative proceedings, hence, infringing also upon other persons' rights, established in the *Satversme* [17.]

**The Constitutional Court held:**

**to recognise the words “and who permanently reside in the territory of Latvia” of Section 4 (1) of “Law on State Social Allowances” (in the wording that was in force until 6 March 2019) and Para 2 of Section 20 (1) of “Law on State Social Allowances” (in the wording that was in force until 6 March 2019), insofar these**

**apply to performance of the duties of a guardian, as being incompatible with Article 91 and Article 109 of the *Satversme* of the Republic of Latvia and void with respect to persons, to whom these legal norms had been applied or would have to be applied in the framework of administrative proceedings and who have begun to defend their fundamental rights in the framework of administrative proceedings, as of the moment when the infringement on the fundamental rights of these persons occurred.**

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 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/2018/10/2018-21-01\\_Spriedums.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/10/2018-21-01_Spriedums.pdf#search=)

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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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