



The norm, which envisages the average income level, at not exceeding which a person or a family is to be recognised as being needy, is incompatible with Article 1 and Article 109 of the *Satversme*

On 16 July 2020, the Constitutional Court delivered the judgement in case No. 2019-25-03 “On Compliance of the Words “if its average monthly income during the last three months per each member of the family does not exceed EUR 128.06” of Para 2 of the Cabinet Regulation of 30 March 2010 No. 229 “Regulations Regarding Recognising of a Family or Person Living Separately as Needy” with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Para 2 of the Cabinet Regulation of 30 March 2010 No. 229 “Regulations Regarding Recognising of a Family or Person Living Separately as Needy”:

“2. The family (person) shall be recognised as needy **if its average monthly income during the last three months per each member of the family does not exceed EUR 128.06** and if:

2.1. it does not own savings of monetary funds or property, except that referred to in Paragraph 19 of this Regulation;

2.2. it has not entered into a maintenance contract;

2.3. it does not receive services of a long-term social care and social rehabilitation institution or is not imprisoned;

2.4. the person has been registered with the State Employment Agency as an unemployed person in accordance with Section 37, Paragraph one of the Social Services and Social Assistance Law.”

The Norms of Higher Legal Force

Article 1 of the *Satversme* of the Republic of Latvia (hereafter – 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.”

The Facts

The case has been initiated on the basis of the Ombudsman’s application. The Ombudsman holds that the average income level, set by the Cabinet, for recognising a family (a person), who is not exceeding it, as needy, is incompatible with the principle of human dignity, of a state governed by the rule of law and of a socially responsible state and does not fulfil the State’s obligation to provide social assistance to all persons in need of it, which follows from Article 109 of the *Satversme*.

The Ombudsman notes that the average level of income appropriate for the status of a needy person has been set too low for recognising a person as needy and, accordingly, grant them the right to the measures of social assistance accessible to needy persons. A much larger number of Latvia’s inhabitants needs this social assistance than allowed by the contested norm. Moreover, the Ombudsman draws attention to the fact that the income level for determining the status of a needy family or person has not been reviewed since 2009. Moreover, since 2011, it is defined without a valid methodology of calculation, taking into account only the financial possibilities of the State and local government at the particular time.

The Court’s Findings

On how to review the constitutionality of the contested norm

In the present case, the Constitutional Court reviewed the compliance of the contested norm with the general principles of law, included in Article 1 of the *Satversme*, in interconnection with the right to social security, defined in Article 109 of the *Satversme*.

[11.]

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 repeatedly underscored that human dignity characterised a human being as the supreme value of a democratic state governed by the rule of law and that all persons had fundamental rights, irrespectively of any conditions. Whereas the State's obligation to establish such legal framework that gives the possibility to each person to use and improve their abilities followed from the principle of a socially responsible state. [11.1.]

The Constitutional Court concluded that in those cases, where persons were unable to provide such means for themselves that would ensure life compatible with human dignity, the State's obligation was to provide social assistance to such a person and do it in a way to give the persons the possibility to lead a life compatible with human dignity. [11.2.]

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

The Constitutional Court recognised: by envisaging social support measures for a needy and low-income family or person and provision of an individual assistance in a situation of crisis, the State has facilitated the establishment of a social assistance system with the aim of providing social assistance to such families and persons, who lack means for satisfying their basic needs. Hence, it has introduced measures to promote the possibility for each person to exercise their social rights. [14.–14.3.]

On whether the State's measures for exercising social rights have been introduced properly

First and foremost, the Constitutional Court examined, whether the legislator itself had decided on the most important issues related to the granting of social assistance to needy persons. [15.–16.]

The Court pointed out that it was the legislator's direct duty – to ensure implementation of fundamental social rights throughout the state, i.e., to ensure that each person, who needed assistance in order to satisfy their basic needs, would be envisaged the right to the minimal social assistance. The Constitutional Court found that the legislator had not decided on the most important issues related to granting of the social assistance to a needy family or person. [16.]

The Constitutional Court noted that the objective of social assistance was assuming care for families and persons experiencing hardship, assisting them in ensuring their basic needs and facilitating their inclusion in society until they are able to provide for themselves. Hence, the social assistance at least on the minimum level should be such that would create to all persons, who are unable to provide sufficient means themselves, the possibility to create such a life that complies with human dignity, and this means also the possibility to integrate into the society of a contemporary democratic state governed by the rule of law. [18.]

The Constitutional Court found that the average level of a person's income, included in the contested norm, which determined the circle of persons entitled to the social assistance for needy families and persons, had been defined without a clear method. [19.]

In view of the above, the Court underscored that setting, without any arguments and justification, the amount of average income, which influenced a person's right to receive the minimum of social assistance, was contrary to the fundamental right to human dignity, the principle of socially responsible state and the principle of sustainable national development. The State has the obligation to create the system of social assistance, to

choose the criteria for granting the minimum of social assistance in a way that would identify the real needs of persons and would determine targeted support measures. The State must choose a valid and reasoned method for determining and granting such minimum of social assistance that would create the possibility for each needy person to lead a life compatible with human dignity. This obligation has not been fulfilled by determining, in the contested norm, the average income level that complies with the status of a needy person and family. [20.]

The Constitutional Court also noted that the State had the obligation to review and update the minimum of social assistance regularly. The requirements for ensuring a life that complies with human dignity change with the development of the State and society. Therefore, the income level, defined for recognising a person as being needy, should be updated, scientifically and statistically substantiated. The State should review the regulation that envisages a person's right to the minimum of social assistance in a way to make this regulation compatible with the actual circumstances and a person's socioeconomic situation at the moment when the person needs social assistance. [21.]

The Court found: although the national welfare level had increased, since 2009 the State had not reviewed the threshold of average income for the status of a needy family and person, and the current situation was that very many persons needed the social assistance for satisfying their basic needs, provided by the state, but it was not accessible. [22.]

The average income level, at not exceeding which a person or family is recognised as being needy, has not been reviewed mainly because of political choice. Therefore, the Court underscored that political choice could not serve as a criterion in defining the minimum of social assistance. [22.]

The Constitutional Court also verified, whether the State, by other support measures of social assistance, had not ensured that each person was provided social assistance, which

created the possibility for everyone to create such life that is compatible with human dignity. [23.]

The Court concluded that social assistance for low-income persons was determined and support measures were provided, depending on the local governments' social policy and financial possibilities and might not differ significantly from the support measures for a needy family and person. The assistance in situations of crisis is not aimed at solving lasting problems. As regards the assistance provided by local governments, the Constitutional Court noted that the exercise of fundamental rights could not depend on the financial possibilities of local governments or the place, where a person resided. A person's fundamental right to such social assistance that gives the possibility to create a life that is compatible with human dignity must be ensured to all inhabitants of the state, irrespectively of their place of residence. Hence, in interconnection with these support measures of social assistance, the possibility for each person to create a life compatible with human dignity is not ensured. [23.1.–23.3.]

In view of the above, the Constitutional Court found that the measures, which the State had introduced to ensure to persons the possibility to exercise their social rights, had not been introduced properly. They do not ensure to every person the possibility to exercise their rights to social assistance at least in the minimum scope. Hence, the contested norm is incompatible with Article 1 and Article 109 of the *Satversme*. [24.]

On the term of validity of the contested norm

The contested norm pertains to a socially important area. If the Constitutional Court were to decide that the contested norm was valid as of the moment when the judgement was pronounced it would significantly jeopardise the exercise of social rights. Due assessment and substantiation of the legal regulation is required for the adoption of a new regulation. Therefore, a reasonable period of time must be set for drafting a regulation that would be compatible with the *Satversme* and it is admissible that a norm, which is incompatible with

the *Satversme*, remains in force until the legislator, abiding by the findings made in this judgement, would be objectively able to adopt new legal regulation. [25.]

The setting of the average income level, at which a family or a person is to be recognised as being needy, that is compatible with the *Satversme* is needed for the protection of human dignity, and the respective changes should be created in a systemic interconnection with amendments to the law with respect to GMI level, therefore the contested norm should be recognised as being void as of 1 January 2021. [25.]

The Constitutional Court held:

to recognise the words “if its average monthly income during the last three months per each member of the family does not exceed EUR 128.06” of Para 2 of the Cabinet Regulation of 30 March 2010 No. 229 “Regulations Regarding Recognising of a Family or Person Living Separately as Needy” 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 will 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 in Latvian is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/11/2019-25-03_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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