



The norm that sets the amount of the State social security benefit for unemployed disabled persons and seniors is incompatible with the *Satversme*

On 9 July 2020, the Constitutional Court delivered the judgement in case No. 2019-27-03 “On Compliance of Para 2 of the Cabinet Regulation of 22 December No. 1605 “Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits” with Article 1, the Second Sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

It follows from Para 2 of the Cabinet Regulation of 22 December 2009 No. 1605 “Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits”, in the wording that is in force since 1 January 2020 (hereafter – the contested norm) that the amount of the State social security benefit (hereafter also – the benefit) is:

- 1) for persons disabled since childhood – 122.69 *euro* per month;
- 2) for other persons with disabilities– 80 *euro* per month;
- 3) for persons, who have reached the age, which, pursuant to the law “On State Pensions”, has been set for a person to become eligible for an old age pension (hereafter – seniors) – 64.03 *euro* per month.

The present case was initiated with respect to the compliance of Para 2 of the Regulation No. 1605, in the wording that was in force until 31 December 2019, with Article 1, the second sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia. The aforementioned legal norm provided that the amount of benefit for persons disabled since childhood was 106.72 *euro* per month but for other recipients of the benefit –

64.03 *euro* per month. The Cabinet increased the amount of the benefit from 1 January 2020.¹

The Constitutional Court found that amendments to the contested norm were not the grounds for terminating legal proceedings in the case and that the constitutionality of Para 2 of Regulation No. 1605, in the wording that was in force from 1 January 2020, had to be reviewed. [17.1., 17.2.] The Constitutional Court also decided that it would review the contested norm insofar it applied to unemployed recipients of the benefit – disabled persons and seniors. [18.]

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 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 State social security benefit is granted, *inter alia*, to disabled persons and seniors, who are not entitled to the state pension.

The case was initiated on the basis of the Ombudsman’s application. The Ombudsman holds that the amount of the State social security benefit, set by the Cabinet, is insufficient and forbids the recipients of the benefit from satisfying their basic needs. Hence, the contested norm is said to be incompatible with the principles of human dignity and a

¹ The Cabinet Regulation of 10 December 2019 No. 603 “Amendments to the Cabinet Regulation of 22 December No. 1605 “Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits””.

socially responsible state. Moreover, the contested norm allows discrimination of the recipients of the benefit on the grounds of disability, age and social status.

In setting the amount of the benefit, the Cabinet has taken into account only the possibilities of the State's budget but not the national economic situation and actual changes in prices. The amount of the benefit is not reviewed regularly, and also the amount of the benefit, which is in force from 1 January 2020, is said to be incompatible with the *Satversme*.

The Court's Findings

On the scope of Article 91 of the *Satversme*

The Constitutional Court concluded that the State social security benefit was a measure of social security system, introduced by the legislator. Hence, the State's actions with respect to this benefit must comply with the general principles of law, *inter alia*, the principle of equality and prohibition of discrimination, included in Article 91 of the *Satversme*. [19.2.]

Disability is one of the criteria falling within the content of Article 91 of the *Satversme*, on the grounds of which discrimination is prohibited. Moreover, disabled persons are a group of persons needing special protection, and the State must introduce special measures to ensure to these persons equal opportunities and legal freedoms. [19.3.3.]

The Constitutional Court concluded that also age had to be recognised as one of the criteria falling within the content of Article 91 of the *Satversme* and that the State had to take special care of seniors, *inter alia*, by promoting their social inclusion and decreasing their social exclusion. [19.3.4.]

On how the constitutionality of the contested norm will be reviewed

The Constitutional Court noted: in reviewing the contested norm, it should be taken into account that this norm defined the amount of the State social security benefit for two groups of persons, to whom the criteria, falling within the content of Article 91 of the *Satversme*, were applicable: firstly, to the group of persons requiring special protection –

disabled persons, and, secondly, seniors, to whom the State should provide appropriate care. Whereas the basic matter in the case, i.e., the matter of the amount of the State social security benefit, falls with the area of social rights. Therefore, the Constitutional Court, taking into account, *inter alia*, the international norms of human rights, binding upon Latvia, examined the compliance of the contested norm with the principles of equality and prohibition of discrimination, included in Article 91 of the *Satversme*, in interconnection with Article 1 and Article 109 of the *Satversme*. [19.4.]

In view of the fact that both principles, included in Article 91 of the *Satversme*, are closely interconnected and that the principle of prohibition of discrimination, included in the second sentence of the article, supplements the equality principle, included in the first sentence of the article, the Constitutional Court examined the compliance of the contested norm with the entire Article 91 of the *Satversme*. [20.]

On the purpose of the benefit and comparable groups of persons

The Constitutional Court found that for the recipients of the benefit – disabled persons who are employed and, thus, gain, income, – the benefit is an additional support, which the person may use as he or she deems necessary. In this case, the benefit should be recognised as a special measure, by which the State promotes increase in the disabled persons' quality of life and social inclusion. [21.2.]

Whereas for unemployed recipients of the benefit, it, primarily, serves to satisfy basic needs. In a situation, where for the recipient of the State social security benefit it is the basic source of means of subsistence, it will, first of all, be used for satisfying basic needs. Hence, the unemployed and employed recipients of the benefit are in different circumstances. [21.3.]

Thus, the legislator has attributed the right to receive the State social security benefit to several groups of persons, who are in different circumstances: firstly, to employed recipients of the benefit – disabled persons, and, secondly, unemployed recipients of the benefit – disabled persons and seniors. Moreover, both unemployed disabled persons and seniors are to be considered as being such groups, which as to their actual situation and with respect to legal protection are in different circumstances and are not comparable. In the framework of Article 91 of the *Satversme*, these groups must be examined separately

because different criteria, falling within the content of this norm, are applicable to them. [21.3.]

On whether the treatment envisaged by the contested norm is equal or differential

The Constitutional Court found that neither the contested norm nor any other legal norm set a different amount of the benefit depending on whether it was for the recipient of the benefit the main or additional source of income. Likewise, the Cabinet, in defining the amount of the State social security benefit, has not taken into account, whether the recipient of this benefit is employed and gains other income. Hence, equal treatment of groups of persons, who are in different circumstances, has been allowed by the contested norm. [22.]

On whether the equal treatment envisaged in the contested norm, is justifiable

In examining, whether the equal treatment of groups of persons, which are in different circumstances, is justifiable, i.e., whether there are objective and reasonable grounds for it, in the present case, it should be taken into account that the contested norm applies to, firstly, unemployed disabled persons, thus, a groups of persons in need of special protection, for the ensuring of whose equal opportunities and legal freedoms the State must introduce special measures, and, secondly, seniors, which the State should take appropriate care of. Moreover, these groups of persons should be recognised as being under a special risk of poverty and social exclusion. [24.]

The right to social security is of special importance in the case, where a person cannot provide for himself or herself adequate standard of living because due to unemployment, age or disability is not working and is not earning subsistence. Persons, who because of various social or economic factors, discrimination or belonging to a particular social group have limited possibilities to gain income that is necessary for satisfying their basic needs, are under particular risk of poverty and social exclusion. [24.1.]

In various national policy planning documents, improving the situation of persons, subject to the risk of poverty, *inter alia*, disabled persons and seniors, is included as one of the national priorities. International institutions, in turn, have pointed to the problems in the area of decreasing poverty and social exclusion, existing tin Latvia. [24.1., 24.2.]

The Constitutional Court noted: to clarify, whether the similar treatment, established by the contested norm, was justifiable, the situation of each group receiving the benefit, i.e., unemployed disabled persons and seniors, had to be examined separately because these groups were in different circumstances. [24.2.]

On whether the treatment of the recipients of the benefit – unemployed disabled persons – is justifiable

The Constitutional Court found that the measures, introduced by the State, should be comprehensive and aimed at ensuring equal opportunities and legal freedoms to disabled persons. Thus, the social inclusion of these persons is promoted and poverty and social exclusion are diminished, facilitating reaching the aims of inclusive equality. [25.]

A number of various measures provided by the State and local government social security system are envisaged for the recipients of the benefit – unemployed disabled persons, and each of these measures is important. However, each of these measures has an aim of its own. [25.1., 25.2.]

Comprehensive assessment of the suitability of the support services by the State and local governments to the needs of unemployed disabled persons has not been performed in Latvia, likewise, of the extent, to which these persons are able to satisfy their basic needs. [25.2.]

The Constitutional Court found that the Cabinet had not envisaged criteria, which would allow to identify objectively the amount of the benefit, which, in interconnection with other measures of the social security system, would ensure that the recipient of the benefit would satisfy his or her basic needs and would allow leading a life that complied with human dignity, but only had defined the amount of the benefit, depending on the possibilities of the State's budget, without assessing the national economic situation and without taking into account the average index of actual consumer prices. [25.3.]

The Constitutional Court underscored that the State had the obligation to create a comprehensive standard of social security for disabled persons. This standard should facilitate the social inclusion of each disabled person and also should diminish the poverty and social exclusion of these persons and their family members, irrespectively of the local government, where these persons reside. [25.4.]

The Constitutional Court could not ascertain that the State social security benefit, in interconnection with other State and local government support measures, would satisfy at least the basic needs of the recipients of the benefit – unemployed disabled persons – and would give to these persons the possibility to lead a life that was compatible with human dignity. Hence, it cannot be recognised that the State had fulfilled its obligation to introduce special measures with respect to disabled persons as a group of persons in need of special protection and facilitate reaching the aims of inclusive equality. [25.4.]

The Constitutional Court recognised that the differential treatment, allowed by the contested norm, of the recipients of the benefit – unemployed disabled persons – was not justifiable, i.e., it lacked objective and reasonable grounds. [25.4.]

It is concluded in the judgement: pursuant to the principle of a rational legislator, the *Saeima*, in authorising the Cabinet to set the amount of the State social security benefit, could not have wished the Cabinet to allow equal treatment of groups of persons, who are in different circumstances, i.e., employed and unemployed recipients of the benefit. Thus, the Cabinet, in issuing the contested norm, has not complied with the authorisation granted by the legislator. Hence, the treatment of unemployed disabled persons, which follows from the contested norm, has not been established by a legal norm adopted in the procedure envisaged in regulatory enactments. [25.5.]

Hence, the contested norm, insofar it defined the amount of the State social security benefit for unemployed disabled persons, was recognised as being incompatible with Article 91 of the *Satversme*, in interconnection with Article 1 and Article 109 of the *Satversme*. [25.5.]

On whether the treatment of the recipients of the benefit – seniors – is justifiable

The Constitutional Court concluded that the amount of the benefit for seniors had not been increased for almost 15 years, since 1 January 2006, notwithstanding the growth of the national economy and the actual increase of consumer prices during this period. [26.]

The Constitutional Court recognised that the social security system, established by the State, should be just and provide incentives for working-age persons to enter into legal labour relationships. However, in those case, where a person has been unable to accrue the period of employment required for receiving the old-age pension, set in the law, the

State has the obligation to ensure that a person, using the available measures of the social security system, could satisfy at least his or her basic needs, thus decreasing social inequality and promoting the social inclusion of these persons. [26.]

The Constitutional Court could not ascertain that the State social security benefit, in interconnection with other the State and local government support measures of social security, would ensure that the basic needs of the recipients of the benefit – seniors – were satisfied and would allow leading a life that was compatible with human dignity. Such attitude by the State does not facilitate the social inclusion of seniors and does not decrease their social exclusion; thus, it cannot be recognised as being appropriate care of seniors and is not justifiable, i.e., it lacks objective and reasonable grounds. Hence, the contested norm, insofar it defined the amount of the State social security benefit for seniors, was recognised as being incompatible with Article 91 of the *Satversme*, in interconnection with Article 1 and Article 109 of the *Satversme*. [26.]

On the term of validity of the contested norm

The Constitutional Court took into account that the contested norm applied to a socially important area, i.e., it defined the amount of the State social security benefit for unemployed disabled persons and seniors, who were not entitled to the State pension. If the Constitutional Court decided to recognise the contested norm as being void as of the date when the judgement was pronounced, then regulatory enactments would not define the amount of the benefit at all, which would prohibit from disbursing the benefit to these persons. That would cause significant jeopardy for these persons rather than ensure legal stability, clarity and peace in the social reality. [27.]

In the present case, it is necessary and admissible that a norm, which is incompatible with the *Satversme*, remains in force for a certain period to give the possibility to the Cabinet, in taking into account the findings made in this judgement, to adopt a new legal regulation, in view of the different circumstances of each group of the benefit's recipients. Since the respective changes can be aligned with the State's budget for the next fiscal year, the contested norms shall be recognised as being void as of 1 January 2021. [27.]

The Constitutional Court held:

to recognise Para 2 of the Cabinet Regulation of 22 December No. 1605 “Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits”, insofar it defines the amount of the State social security benefit for unemployed disabled persons and seniors, as being incompatible with Article 1, Article 91 and Article 109 of the *Satversme* of the Republic of Latvia and void as of 1 January 2021.

The judgement of the Constitutional Court is final and not subject to appeal. 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/2019/11/2019-27-03_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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