CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Press Release
Case No. 2019-36-01
13.07.2020.

The norm that envisaged that employees with group I and II disabilities were not subject to disability insurance is incompatible with the *Satversme*

On 10 July 2020, the Constitutional Court delivered the judgement in case No. 2019-36-01 "On Compliance of Section 6 (2) of the Law "On State Social Insurance"(in the Wording that was in Force from 1 January 1998 until 31 December 2002) with Article 91 and Article 109 of the *Satversme* of the Republic of Latvia".

The Contested Norm

Section 6 (2) of the law "On State Social Insurance" (here and hereafter – in the wording that was in force from 1 January 1998 until 31 December 2002)
"Employees who have attained the age that gives the right to receive the State old-age pension and persons with group I and II disabilities shall be subject to pension insurance, maternity and sickness insurance, as well as occupational accident insurance."

Norms of Higher Legal Force

Article 91 of the Satversme of the Republic of Latvia (hereafter – 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 was initiated on the basis of an application submitted by the Supreme Court. The Supreme Court is hearing an administrative case, which has been initiated with respect to an application requesting issuing a favourable administrative act, by which the applicant had requested that a disability pension were granted to him. The contested norm is said to be applicable in this case since it determines, whether the applicant in the administrative case will be granted the right to a disability pension.

In accordance with Article 109 of the *Satversme*, the State's actions, in introducing the disability pension, should comply with general legal principles; *inter alia*, the principle of legal equality. The Applicant holds that the legislator, in adopting Section 6 (2) of the law "On State Social Insurance", did not comply with the aforementioned principle. I.e., the legislator had adopted, without grounds, such legal regulation, in accordance with which persons with group I or II disabilities could not be subject to insurance for a disability pension. Hence, the contested norm is said to be incompatible with Article 91 and Article 109 of the *Satversme*.

The Court's Findings

<u>On how the constitutionality of the contested norm will be reviewed:</u>

The Constitutional Court reviewed the compliance of the contested norm with Article 91 and Article 109 of the *Satversme*, insofar it did not envisage subjecting persons to group I or II disabilities to disability insurance (hereafter – the contested regulation) [7.]

The equality principle, included in the first sentence of Article 91 of the *Satversme,* basically, is applicable together with other fundamental rights. A person's right to social protection is defined in Article 109 of the *Satversme.* The State has established such a

system of social security, which comprises social insurance services, social assistance, and other measures. Hence, the matters of social insurance fall within the scope of Article 109 of the *Satversme*. Therefore, the Constitutional Court examined the compliance of the contested regulation with Article 91 of the *Satversme* in interconnection with Article 109 of the *Satversme*. [8.]

On the content of Article 91 of the *Satversme*:

The Constitutional Court found that the Applicant had referred to the potentially inadmissible treatment of persons with group I or II disabilities. Disability is one of the criteria, included in Article 91 of the *Satversme*, which are the prohibited grounds for discrimination. Hence, the Constitutional Court examined, whether the prohibition of discrimination had been violated with respect to persons with group I or II disabilities. [9.]

On comparable groups of persons:

The Constitutional Court found that those employees, whose group I or II disability had been determined after they had worked for at least three years, and employees, whose group I or II disability had been determined before they had worked for at least three years, *inter alia*, also those employees, whose group I or II disability had been determined before they started working, were in similar and comparable circumstances [11.]

On whether the treatment, envisaged by the contested norm, is differential:

The contested regulation does not allow subjecting persons with group I or II disabilities to disability insurance, and these persons could not accrue the insurance period required for receiving the disability pension. Whereas those employees, whose group I or II disability had been determined after they had worked for at least three years and during the term of

validity of the contested regulation had made social insurance contributions, after the onset of disability, acquired the right to the disability pension. Thus, the contested regulation envisaged differential treatment on the grounds of disability of persons, who were in similar and comparable circumstances. [12.]

On whether the differential treatment, envisaged in the contested norm, is justifiable:

On the admissibility of differential treatment

It is admissible that states introduce measures that improve the situation of disabled persons and facilitate their integration into society. In accordance with Article 5 of the Convention on the Rights of Persons with Disabilities, such actions can be implemented as reasonable accommodation or specific measures. [14.2.]

The Constitutional Court agrees that the aims, indicated by the *Saeima*, *inter alia*, facilitating the employment of persons with group I or II disabilities, could be in the interests of these persons. However, the specific measures must comply with certain criteria, i.e., the aim and the outcome of these specific measures should be aimed at reaching, substantially, effective and inclusive equality. To recognise that the differential treatment is part of this measure, it must be examined, whether the differential treatment is in the interests of persons with group I or II disabilities and whether this group of persons gains benefit that complies with the aim of this specific measure. [14.3.,14.4.]

On compliance of the differential treatment with the aim of the specific treatment

The disability insurance is not linked to the onset of disability but to the loss of income from work. Employment can continue as long as the status of a person’s physical and mental health, in interconnection with the suitability of social and environmental factors

for the respective work, allows it. Persons, whose group I or II disabilities already have been determined, may both continue to work and also end up in a situation, where because of their health conditions they no longer can participate in the labour market. The system of disability pensions is linked to a decrease in or total loss of a person's income from work. Thus, the risk of disability may set in also for persons with group I or II disabilities. Thus, also these persons should be ensured access to disability insurance. [15.1., 15.2.]

The aim of the specific measure – facilitating the inclusion of persons with group I or II disabilities into the labour market – could not have been linked to the prohibition for making such social insurance contributions that could ensure to persons social insurance service, applicable to them in the future. [15.2.]

Neither does the differential treatment, established by the legislator, promote the rights of already employed persons with group I or II disabilities. These persons no longer needed the State's involvement in fostering their employment. Additionally, they were denied the possibility to use the contributions made prior to the contested regulation for substituting the previous income in case if the risk of disability set in. [15.2.]

The Constitutional Court found that the contested regulation caused disability-related adverse consequences, not allowing disabled persons to exercise the rights they were entitled to and not facilitating inclusive equality. Such differential treatment cannot be justified. Hence, the differential treatment is discriminatory and the contested regulation is incompatible with Article 91 of the *Satversme* in interconnection with Article 109 of the *Satversme*. [15.2.]

<u>On the date, as of which the contested regulation becomes void:</u>

The Constitutional Court agreed that the actual situation, which had developed in the case, was contrary to the basic principles of social insurance. [16.]

However, it should be taken into account that this situation has occurred due to the legislator's actions; i.e., by establishing differential treatment on the prohibited grounds and, accordingly, prohibiting disabled persons from making social insurance contributions in order to receive the disability pension in the future. At the same time, the disability pension for persons with group I or II disabilities is at least 1.6 times higher than the State social security benefit in the case of disability. [16.]

If an infringement on a person's rights has occurred directly due to inadmissible actions by the State, the State cannot refuse to eliminate this infringement on the basis of arguments that it would be too expensive, insofar the costs are not disproportionally high. Such excuses are even more inadmissible in cases, where groups that already are socially vulnerable are placed in a more unfavourable situation, on the basis of a discriminating criterion. [16.]

Hence, pursuant to the equality principle, the period of work of persons with group I or II disability during the time when the contested regulation was in force should be taken into account in determining the insurance period of these persons. Hence, the contested regulation is to be recognised as void as of the date it entered into force with respect to all persons with group I or II disabilities. [16.]

The Court held:

to recognise Section 6 (2) of the Law "On State Social Insurance"(in the Wording that was in Force from 1 January 1998 until 31 December 2002), insofar it does not envisage subjecting persons with group I and II disabilities to disability insurance, as

being incompatible with Article 91 and Article 109 of the *Satversme* of the Republic of Latvia and void as of the date it entered into force.

The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force upon being pronounced. 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/2019/12/2019-36-01_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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