



The law “On the State Budget for 2019”, insofar it does not envisage the annual increase in the state financing, as determined in Section 78 (7) of the Law on Higher Education Institutions, complies with Article 1 and Article 66 of the *Satversme* of the Republic of Latvia

On 29 October 2020, the Constitutional Court delivered the judgement in case No. 2019-29-01 “On compliance of the programmes 03.00.00 “Higher Education”, 02.03.00 “Higher Medical Education”, 20.00.00 “Cultural Education” and sub-programme 22.02.00 “Higher Education” of the Law “On the State Budget for 2019”, insofar these do not envisage annual increase of the State-allocated financing for studies in State-founded institutions of higher education in the amount no less than 0.25 per cent of the gross domestic product, as provided for in Section 78 (7) of the Law on Higher Education Institutions, with Article 1 and Article 66 of the *Satversme* of the Republic of Latvia”.

The Contested Regulation

Programmes 03.00.00 “Higher Education”, 02.03.00 “Higher Medical Education”, 20.00.00 “Cultural Education” and Sub-programme 22.02.00 “Higher Education” of the Law “On the State Budget for 2019” determined the amount of the State-budget financing for State-founded institutions of higher education, which was below the provision made in Section 78 (7) of the Law on Higher Education Institutions, i.e., that every year an increase in the financing for studies in State-founded institutions of higher education had to be envisaged in the state budget until it would reach 2 per cent of the gross domestic product.

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 66 of the *Satversme*:

Annually, before the commencement of each financial year, the *Saeima* shall determine the State Revenues and Expenditures Budget, the draft of which shall be submitted to the *Saeima* by the Cabinet.

If the *Saeima* makes a decision that involves expenditures not included in the Budget, then this decision must also allocate funds to cover such expenditures.

After the end of the budgetary year, the Cabinet shall submit an accounting of budgetary expenditures for the approval of the *Saeima*.

The Facts

The application was submitted by thirty-one members of the 13th Convocation of the *Saeima* (hereafter – the Applicant).

The Applicant held that the contested regulation, by failing to comply with the provisions of Article 78 (7) of the Law on Higher Education Institutions, was in conflict with principle of the rule of law, the principle of legal certainty and the principle of good legislation as well as the sustainability principle, derived from Article 66 of the *Satversme*.

The *Saeima* noted that the increase in the State-financing, defined in Section 78 (7) of the Law on Higher Education Institutions, had been envisaged neither in the law “On the State Budget for 2019” nor in the previous laws on the State budget, since it had been precluded by the possibilities of the State budget.

The Court’ s Findings

On the Constitutional Court’ s competence in reviewing the law on the State budget

Although the law on the State budget is a pronouncedly “political decision” , in a democratic state governed by the rule of law, the rights in drafting and adopting the State budget law, implementation and supervising of it are vast. Thus, the right to budget, defined in Article 66 of the *Satversme*, is exercised by the *Saeima* in the form of a law, therefore, the Constitutional Court has the full competence to verify whether, in the drafting and approval of the law “On the State Budget for 2019”, the *Satversme* has been complied with. In the present case, the Constitutional Court has not been requested to and it will not examine whether the policy formed by the contested regulation is correct.

The Constitutional Court has full competence to verify, whether, in drafting and adopting the law “On the State Budget for 2019”, the *Satversme* has been complied with because, pursuant to Article 85 of the *Satversme*, the Constitutional Court’s task is to review cases regarding the compliance of laws with the *Satversme*.

The Constitutional Court has not been requested to examine and it will not examine whether the policy formed by the contested regulation is correct. [16.]

On including Section 78 (7) of the Law on Higher Education Institution into the constitutionality review

The Constitutional Court expanded the limits of the claim and examined also the compliance of Section 78 (7) of the Law on Higher Education Institutions with Article 66 of the *Satversme* in interconnection with Article 1 of the *Satversme*, otherwise it would be impossible to examine the Applicant’ s arguments regarding violations in the procedure of adopting the contested regulation.

In adopting the contested regulation, the *Saeima* had to examine, *inter alia*, its compatibility with the Section 78 (7) of the Law on Higher Education Institutions. [20.]

Section 78 (7) of the Law on Higher Education Institution intrudes in the procedure of drafting the annual state budget law and its validity also directly influenced the contested regulation. [17.]

On the provisions of Article 1 and Article 66 of the *Satversme* with regard to drafting the State budget

Article 66 of the *Satversme* reveals the principle of separation of powers, pursuant to which the special competencies of the executive and the legislative power in the area of drafting and examining the State budget are separated. The executive power, acting through the Cabinet, has to prepare the draft budget of the financial year for the State' s revenues and expenditure, and the *Saeima* has to approve of it. Hence, only the Cabinet has the right to initiate the draft State budget law, and it is the Cabinet who is responsible for creating the proposal for the State budget plan. [21.1.]

In drafting the State budget, the Cabinet' s actions are restricted by the tasks of the State, defined in laws, and concrete legal obligations that follow from legal norms and the acts of applying the law, for the financing of which the Cabinet must envisage appropriate financial resources. [21.1.]

Article 66 of the *Satversme* requires the State budget to reflect the expected State' s revenues and planned expenditure in full. [21.2.]

The first sentence of Article 66 of the *Satversme* requires the Cabinet to prepare each year a united and transparent State budget law and the *Saeima* – to decide on it every year. [22.]

In drafting the State budget, the Cabinet must be economical. [21.3.]

The Cabinet, in the process of drafting the budget, is bound by the obligation to allocate financing in concrete amount in a way that it prohibits the Cabinet from taking into account the

social economic forecasts regarding economic growth as well as to balance the planned expenditure between all sectors. The more requirements, which demand budget financing in particular amount, are included in laws the less competence the Cabinet has to decide freely on the priorities in financing the State's tasks, the fewer the possibilities remain for the executive power to fulfil directly the tasks of the State. [21.3.]

On compliance of Section 78 (7) of the Law on Higher Education Institutions

The requirement included in Section 78 (7) of the Law on Higher Education Institutions that provides that the Cabinet must determine each year the financing in a certain amount and its increase to cover the expenditure of State-financed institutions of higher education in connection with the gross domestic product of the State significantly limits the Cabinet's competence and the possibility to draft an economically balanced State budget. By constantly "earmarking" in the long-term substantive part of expenditure in various laws that exceed the boundaries of one fiscal year, the *Saeima* takes over the competence of drafting the budget, significantly restricting the respective competence of the Cabinet. Actually, it transfers the drafting of the budget from the executive power to the legislative power, which is contrary to the first sentence of Article 66 of the *Satversme*. [22.]

Defining parts of the State budget in various laws disregards the meaning of the State budget law and its purpose. If the *Saeima*, by using other laws, actually "allocates" the budget expenditure in the long-term, then the need for the united State budget law disappears. A State budget, which is fragmented like this, becomes untransparent, and its management - hampered. [22.]

The Cabinet has the obligation to prepare independently a feasible draft State budget. By using the gross domestic product as an indicator for increasing the State budget financing, Section 78 (7) of the Law on Higher Education Institutions is only seemingly linked to the growth of the national economy. The gross domestic product is only one of the indicators of

economic growth. The link with it limits the Cabinet in following the principle of economy that is derived from the principle of anti-cyclical fiscal policy. [22.]

Since Section 78 (7) of the Law on Higher Education Institutions is incompatible with Article 1 and the first sentence of Article 66 of the *Satversme* the contested regulation complies with Article 1 and the first sentence of Article 66 of the *Satversme*. [22.]

On the *Saeima*'s special responsibility in front of the people in relation with the State budget

In accordance with Article 66 and Article 73 of the *Satversme*, the right to budget is vested only in the *Saeima*. The people do not have the right to budget, therefore the *Saeima* has particular political responsibility in front of the people with regard to budgetary decisions. It is based on the relationship of trust because the *Saeima* has at its disposal only those financial resources that the people have entrusted to it. [23.]

The requirement that all public institutions must act fairly follows from the principle of a state governed by the rule of law. Therefore, the adoption of such legal norms, which from the very onset have been empty promises to voters and would not be covered by the resources, entrusted by the people, is incompatible with the principle of a state governed by the rule of law. Such actions jeopardise the foundations of the democratic order of the State, protected by the *Satversme*. [23.]

The Constitutional Court held:

To recognise Section 78 (7) of the Law on Higher Education Institutions as being incompatible with Article 1 and the first sentence of Article 66 of the *Satversme* of the Republic of Latvia;

to recognise the subsidies to the State-founded institutions of higher education of the programmes 03.00.00 “Higher Education”, 02.03.00 “Higher Medical Education”, 20.00.00 “Cultural Education” and sub-programme 22.02.00 “Higher Education” of the

4th Annex to the Law “On the State Budget for 2019” as being compatible with Article 1 and the first sentence of Article 66 of the *Satversme* of the Republic of Latvia.

The Constitutional Court’s judgement is final and not subject to appeal; it enters into effect on the day of its publication.

The judgement will be published in the official journal “Latvijas Vēstnesis” within the term defined in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the homepage of the Constitutional Court:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/11/2019-29-01_Spriedums-1.pdf

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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