



Satversmes tiesa

Press Release

Case No 2020-34-03

9 April 2021

A provision regulating state fee, applied to the estate-leaver's same-sex partner who lived with the estate-leaver as a family, is incompatible with the Constitution

On 8 April 2021, the Constitutional Court passed a judgment in Case No 2020-34-03 “On the compliance of paragraph 12 of the Cabinet of Ministers Regulation No 1250 of 27 October 2009 ‘Regulation regarding state fee for registering ownership rights and pledge rights in the Land Register’ with Articles 91, 105, and 110 of the Constitution of the Republic of Latvia”.

CONTESTED PROVISION

- Paragraph 13 of the Cabinet Regulation No 1250 of 27 October 2009:

“13. State fee for registering immovable property ownership rights of heirs, based on a certificate of inheritance issued by a notary, shall be determined as follows if the value of the inherited immovable property does not exceed 10 minimum salaries:

13.1. in cases concerning confirmation of the right of inheritance:

13.1.1. for the spouse and the first-, second-, and third-class heirs who have been residing with the deceased – 0.25% of the value of the inherited immovable property;

13.1.2. for other first- and second-class heirs – 0.5% of the value of the inherited immovable property;

13.1.3. for other third-class heirs – 1.5% of the value of the inherited immovable property;

13.1.4. for the fourth-class heirs – 5% of the value of the inherited immovable property;

13.2. in cases concerning the coming into effect of the last will instruction instrument or inheritance contract:

13.2.1. for the spouse and the first-, second-, and third-class heirs – 0.125% of the value of the inherited immovable property;

13.2.2. for the fourth-class heirs – 4% of the value of the inherited immovable property;

13.2.3. for other testamentary or contractual heirs – 7.5% of the value of the inherited immovable property;

13.2.4. for testamentary or contractual heirs, if they are organizations that provide public good – 1.5% of the value of the inherited immovable property.”

PROVISIONS OF SUPERIOR LEGAL FORCE

- Article 91 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):
“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 105 of the Constitution:
“Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”
- Article 110 of the Constitution:
“The State shall protect and support marriage — a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.

FACTS OF THE CASE

The case was initiated on the basis of an application filed by the Ombudsman. The Ombudsman considers that the contested provision does not comply with Articles 91, 105, and 110 of the Constitution as it does not ensure protection and support to families consisting of same-sex partners, namely, it sets the same amount of state fee for the estate-leaver’s surviving same-sex partner, who lived with the deceased as a family, and for an individual who was not in a family relationship with the deceased.

Essentially, the Ombudsman considers the contested provision to be incompatible with the first sentence of Article 110 of the Constitution, which *inter alia* establishes the State’s obligation to protect and support a family. The Ombudsman notes that, so far, the State has not fulfilled its obligation, following from the first sentence of Article 110 of the Constitution, to protect and support each and every family, since, unlike opposite-sex couple families, same-sex couple families have not been guaranteed a possibility to legally register their family relationships. Thus, same-sex couple families are not legally protected and, among other things, not provided with the support specified in the contested provision, namely, the reduced rate of state fee.

The Ombudsman requests that the contested provision should be recognised as being also incompatible with the second sentence of Article 91 of the Constitution, which enshrines the principle of prohibition of discrimination, and with the first three sentences of Article 105 of the Constitution, which comprise an individual's right to own property. The Ombudsman notes that, according to the contested provision, the state fee to be paid by the surviving same-sex partner of the estate-leaver in case of testamentary or contractual inheritance is 60 times higher than that set for the surviving spouse of the estate-leaver. Thus, the contested provision places a same-sex couple family in a less favourable situation compared to an opposite-sex couple family on grounds of an impermissible criterion – sexual orientation. As the cause of this discrimination, the Ombudsman specifies the absence of the possibility for a same-sex couple family to legally register their family relationship, which is due to the lack of appropriate legal **framework**.

THE COURT'S FINDINGS

On the scope of review in the case

The Constitutional Court found that the contested provision sets the amount of state fee to be paid by heirs for registering their ownership rights in the Land Register if the value of the inherited immovable property exceeds 10 minimum monthly salaries. According to the contested provision, the amount of the state fee differs depending on the legal grounds for inheriting and on whether the heir is the surviving spouse of the deceased, belongs to a certain class of heirs, is an organisation providing public good, or a person not included in any of the mentioned groups. [8]

Considering the arguments presented in the Ombudsman's application, the Constitutional Court concluded: the Ombudsman does not object to the amounts of state fee being set in the contested provision depending on the legal grounds for inheriting, nor to the amounts of state fee as such, but rather considers the contested provision to be incompatible with the constitutional provisions specified in the application because it does not ensure protection and support to families consisting of same-sex partners. [8]

Therefore, the Constitutional Court evaluated the compliance of the contested provision with the Constitution insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the deceased as a family. [8]

On the stage-by-stage procedure of evaluating the compliance of the contested provision with the Constitution

The Constitutional Court clarified the content of the contested provision, considering the legal regulation contained in the Civil Law. The Constitutional Court concluded that the contested provision provides for economic support for the surviving spouse, relatives and the adopted children of the deceased, and this support takes the form of a reduced amount of state fee compared to the amount to be paid by other persons, who were not in a family relationship with the deceased or related to the deceased. Therefore, the legal regulation contained in the contested provision, which concerns the surviving spouse, relatives and adopted children of the deceased, should be recognised as a measure of economic support for a family. According to the contested provision, this economic support measure does not apply to same-sex couple families. [9]

The Constitutional Court concluded that the basic question in the case is about the obligation to protect and support a family, as enshrined in the first sentence of Article 110 of the Constitution, and about the fulfilment of that obligation in respect of a same-sex couple family. Therefore, the Constitutional Court decided to first test the compliance of the contested provision with the first sentence of Article 110 of the Constitution. [9]

On the content of the first sentence of Article 110 of the Constitution

With a reference to the findings contained in the Constitutional Court judgment of 12 November 2020 in Case No 2019-33-01 “On the compliance of Section 155(1) of the Labour Law with the first sentence of Article 110 of the Constitution of the Republic of Latvia” (hereinafter – case No 2019-33-01), the Constitutional Court noted that the first sentence of Article 110 of the Constitution enshrines the obligation of the State to protect each and every family, including same-sex couple families. [10.1]

Two obligations of the legislator follow from the first sentence of Article 110 of the Constitution: 1) to ensure legal protection of a family; 2) to ensure social and economic protection and support of a family. The legislator has no discretion to choose whether at all legal protection, as well as economic and social protection and support, is to be ensured to same-sex couple families. However, the Constitutional Court acknowledged that the legislator has a certain discretion in determining the form and content of the legal framework for family relationships and choosing the methods, mechanisms, and measures by which the social and economic protection and support of a family is ensured. [10.1]

The Constitutional Court noted that the first sentence of Article 110 of the Constitution is closely connected with the principle of human dignity. Human dignity must be respected not just formally but in essence, therefore, to comply with the principle of human dignity, the legal regulation of protection and support of each and every family has to be meaningful. A legal framework providing for

just a formal recognition of a same-sex couple family but not ensuring protection and support would essentially mean that such a family is recognised as an unimportant type of family and thus infringe on human dignity. Therefore, the legislator should look to it that the legal framework ensures not only formal legal recognition, but also legal protection and social and economic protection and support to same-sex couple families. [10.2]

The Constitutional Court emphasised that respect for one person's dignity and fundamental rights does not take away or diminish another person's dignity. Thus, providing a same-sex couple family with the protection and support in compliance with the first sentence of Article 110 of the Constitution does not interfere with the existence of other types of families and does not diminish the protection and support envisaged for them. Furthermore, the legislator's discretion in fulfilling the obligations enshrined in the first sentence of Article 110 of the Constitution is limited not only by the principle of human dignity, but also, *inter alia*, by the principle of legal equality and the principle of prohibition of discrimination. According to these general principles of law, the legal regulation of the family relationships of same-sex partners and the legal regulation of social and economic protection and support adopted by the legislator must not, without a sound reason, place such families in a less favourable position compared to opposite-sex couple families. [10.2]

The Constitutional Court explained that the first sentence of Article 110 of the Constitution primarily contains the legislator's obligation to ensure legal protection of a family, that is, to establish a regulatory framework for family relationships. Subordinate to this is the second obligation of the legislator contained in the said provision of the Constitution – to ensure economic and social protection and support of a family by choosing and providing for appropriate protection and support measures. [10.3]

What is to be understood by a legal framework for family relationships is a comprehensible regulation of mutual personal and property relations between family members which provides grounds for the protection of a family, including the right to legally register a family relationship. If no right to legally register a family relationship has been provided for in respect of individuals who have developed such a relationship between them, the State "cannot see" such a family. It is therefore not at all possible to ensure either full legal protection or social and economic protection and support to such families. [10.3]

Establishing a legal framework for family relationships, the legislator may choose various solutions, as long as the respective regulation ensures, firstly, that individuals have the possibility to legally register their family relationships and be recognised as a family by the State and, secondly, that a family and its members are protected in their personal and property relations. This means that the legal

framework for family relations must determine the mutual rights and responsibilities of family members in the personal and property relations which follow from their family life. The legislator's discretion is wider in establishing the regulatory framework for the economic and social protection and support of a family. The legislator may freely choose what kind of measures should be provided for in respect of a family in certain situations, however, the respective regulation must rest on objective and substantiated criteria, with consideration given to the specific nature of family relationships, including the differences between situations and between the participants in those relationships. [10.3]

The Constitutional Court concluded that the personal and property-related issues emerging with the cessation of family life, which can be caused, among other things, by the death of a family member, are issues following from and, consequently, inextricably linked with family life as understood by the first sentence of Article 110 of the Constitution. Thus, the legislator's obligation, as contained in the first sentence of Article 110 of the Constitution, to protect and support a family includes the protection and support of a family in the event of death of a family member. [10.3]

On the Cabinet's competence to issue external legal instruments regulating protection and support of a family

Considering that the legal provision the constitutionality of which is contested in the case had been adopted by the Cabinet of Ministers, the Constitutional Court also clarified the Cabinet's competence to issue external legal instruments to ensure fulfilment of the State's obligation contained in the first sentence of Article 110 of the Constitution. [11]

The Constitutional Court observed that, according to Article 64 of the Constitution, the Cabinet's right to issue external legal instruments only extends as far as it was delegated to the Cabinet by law. The limits of the Cabinet's discretion in exercising the right to issue external regulations vested in it by law are determined not only by the authorisation to regulate a particular matter, specified in a particular provision of law, but also by other laws and the legal system as a whole. In case the legislator has not regulated in law a matter whose regulation requires a political choice and which, according to Article 64 of the Constitution, falls within the legislator's competence, the Cabinet of Ministers has no right to regulate it on its own initiative and at its own discretion instead of the legislator. [11]

The Constitutional Court concluded: the way in which the legislator, within the limits of its discretion, regulates the mutual personal and property relations between family members to fulfil its obligation to ensure legal protection of a family, or, in other words, the form and the content of the legal framework for

family relationships, is a matter of importance to the whole of society, the settlement of which requires the legislator's choice and which therefore falls within the exclusive competence of the legislator. Thus, what follows from Article 64 and the first sentence of Article 110 of the Constitution is the legislator's obligation to establish by law a legal framework for family relationships of same-sex partners. [11]

The Constitutional Court noted that the legislator may provide in law for an authorisation to the Cabinet of Ministers, under which the latter would have the right, *inter alia*, to determine the measures for economic or social protection or support of a family. To make it possible to ensure economic and social protection and support to those families in respect of which no legal framework for family relationships has been established in law, the Cabinet of Ministers itself would need to establish the conditions and criteria for the legal registration of such family relationships. In that case, however, the Cabinet would intrude into the question of the form and content of the legal framework of family relationships, which is in the legislator's competence, and violate Article 64 of the Constitution. Therefore, in accordance with Article 64 of the Constitution, the Cabinet of Ministers, in issuing external legal instruments, may only determine the measures of economic and social protection and support for those families in respect of which the legislator has established a legal framework for family relationships. [11]

On the methodology of evaluating the constitutionality of the contested provision

The Constitutional Court noted: the close link between the legislator's obligations, as contained in the first sentence of Article 110 of the Constitution, to establish a legal framework for family relationships and ensure economic and social protection and support of a family means that any legal regulation of the social and economic protection and support of a family forms a single system with the legal regulation of family relationships. Therefore, the regulatory framework for the social or economic protection or support of a family adopted by the Cabinet, including the regulation contained in the contested provision, is to be considered as a part of a single legal regulatory system. [12]

Therefore, to test whether the contested provision, insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the estate-leaver as a family, complies with the first sentence of Article 110 of the Constitution, in the case in question the Constitutional Court first of all found out whether the legislator had established a legal framework for family relationships of same-sex partners and whether legal instruments included a legal regulation of protection and support for same-sex couple families. [12]

On the current legal framework for family relationships

The Constitutional Court reminded that it had already concluded in case No 2019-33-01 that the legislator had not established a legal framework for family relationships of same-sex partners. Having recognised, in case No 2019-33-01, the contested provision, insofar as it did not provide for protection and support of a same-sex couple family, as being incompatible with the first sentence of Article 110 of the Constitution, the Constitutional Court allowed reasonable time for the legislator to be able to adopt, within the limits of its discretion, the most appropriate regulation of same-sex partners' family relationships and provide in respect of a same-sex couple family for appropriate measures of social and economic protection and support. [13]

The Constitutional Court found that, as at the time of hearing of the present case, the legislator had not yet adopted a legal framework for family relationships of same-sex partners, that is, had not decided on the form and content of such framework, including specific conditions and procedures for legal registration of same-sex couple family relationships. [13]

The Constitutional Court noted that, according to the legal framework currently in force, the State does not "see", in the legal sense, the actual same-sex couple families, because they have not been given the possibility to legally register their family relationships. Thus, same-sex partners are not, in the legal sense, considered as a family and can only organise legal relations between themselves as individuals between whom there are no family ties. Since there is so far no legal regulation of family relationships of same-sex partners which would allow to legally register a same-sex couple family relationship, it is currently not possible also to identify such a family to ensure its social and economic protection and support. Thus, the system of protection and support of a family currently in place in the state, which *inter alia* includes the contested provision, does not protect same-sex couple families either legally or economically and socially. [13]

Therefore, the Constitutional Court concluded that the contested provision, insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the estate-leaver as a family, is incompatible with the first sentence of Article 110 of the Constitution. [13]

Considering the above, the Constitutional Court held that it is not necessary to additionally evaluate the compliance of the contested provision with the rest of the constitutional provisions specified in the Ombudsman's application. [14]

On the moment as of which the contested provision, insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the estate-leaver as a family, should be recognised as void

The Constitutional Court noted that the legal framework for family relationships and the legal regulation of measures for economic and social protection and support of a family must constitute a single and coherent legal regulatory system. That is why the Cabinet of Ministers must look to it that, after the coming into effect of the legal framework of same-sex couple family relationships, the provisions of the Cabinet of Ministers regulation regarding the economic and social protection and support of a family are consistent with the new legal framework of family relationships, as well as with the general principles of law and other provisions of the Constitution, with international and EU law. [15]

In view of the above, the Constitutional Court held that the contested provision, insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the estate-leaver as a family, is to be recognised as void as from the same moment as the contested legal provision in case No 2019-33-01. [15]

The Constitutional Court ruled:

to recognise paragraph 13 of the Cabinet of Ministers Regulation No 1250 of 27 October 2009 "Regulation regarding state fee for registering ownership rights and pledge rights in the Land Register", insofar as it applies to the estate-leaver's surviving same-sex partner who lived with the estate-leaver as a family, as being incompatible with the first sentence of Article 110 of the Constitution of the Republic of Latvia and void as from 1 June 2022.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment enters into force on the day it is published.

The text of the judgment is available on the website of the Constitutional Court: <https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-34->

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the [website of the Constitutional Court](#). You are also invited to follow the information on the Court's *Twitter* account [@Satv_tiesa](#) and *YouTube* [channel](#).

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