

Towards a stronger role of the judiciary in social policy-making in Latvia?

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Description

There are currently five cases pending before the Latvian Constitutional Court on the unacceptably low social protection standards, and their non-compliance with the principle of State social responsibility and the articles of the European Social Charter, which Latvia has ratified. The cases were initiated by the Latvian Ombudsman and the Supreme Court in 2019 and 2020. Whatever the Constitutional Court verdicts on those cases, the Ombudsman and the Supreme Court are using legal arguments to question the adequacy of social benefits. This may help bring about long-overdue changes in the country's social protection system.

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In 2020, the Latvian Constitutional Court (which is the competent authority to rule on the constitutionality of laws) faces a serious challenge: to evaluate the adequacy of the social protection system in Latvia. The judiciary was unusually active with regard to social issues at the end of 2019.

The inadequate standards of social protection in Latvia have long been widely known of. Neither domestic criticism nor repeated EU Country-Specific Recommendations have been able to change the “no progress/ some progress” assessment for years. The Government had commissioned an assessment of the social protection system by international OECD and World Bank experts, but did not follow the key recommendations stemming from this assessment.

For example, in 2013, the World Bank criticised the Guaranteed Minimum Income (GMI) scheme for its low coverage and low generosity, and recommended a substantial increase in the GMI benefits, central government co-financing of the GMI, and the inclusion of an equivalence scale and annual indexation in the formula (WB, 2013). None of these measures has been adopted. In 2016, similar recommendations on reforming and strengthening the GMI were received from the OECD (OECD, 2016).

In 2017-2018, the OECD carried out an assessment of the Latvian pension system, and then primarily recommended a significant increase in the levels of the state social assistance allowance and the minimum pension (OECD, 2018).

Since January 2020, some benefits have been increased: the minimum old-age pension has been set at €88–€136 per

month depending on the length of service (vs. €70.43–€108.85 before January 2020), the minimum disability pension is €80–€128 per month depending on the severity of the disability (vs. €64.03–€102.45), and the GMI is €64 per month (vs. €53). By contrast, the income threshold above which in many municipalities a person is not eligible for the benefit allocated to “needy” persons has not been revised since 2009 (€128.06/month per family member). The state social assistance allowance has also not been revised for a long time (since 2006): it is as low as €64.03/month.

By way of comparison, the median equivalised income in 2018 (the latest available data) was €680 per month, which means that the at-risk-of-poverty threshold, as defined at EU level (i.e. 60% of the median income), was €410 per month for a single-person household. The aforementioned increases in the levels of benefits will therefore not pull thousands of people out of poverty (even if we consider a threshold set at only 40% of the median income – i.e. €270).



Outlook and commentary

The inadequate social safety net has become a major concern of the Latvian Ombudsman, Juris Jansons. According to the law, in order to bring a claim to the Constitutional Court, the Ombudsman must first address the issuer of the relevant legal act with a request to remedy the identified deficiencies. If the legislator fails to do so, then he may file a lawsuit at the Constitutional Court.

In 2019, the Ombudsman sent the legislator five pre-trial warning letters concerning the poverty reduction policies, claiming that these were not in line with

the Constitution. These letters referred to the GMI (April); the needy person's income threshold and the state social assistance allowance (both in May); the minimum old-age pension benefit (July); and the minimum disability pension benefit (October).

The Government responded by referring to the "Plan for the improvement of the minimum income support system for 2020-2021", adopted in August 2019. The plan included setting the income threshold for being considered "needy" at 40% of the median equivalised income from 2021, and setting the minimum income level (which is to replace GMI from 2021) at half of that - 20% of the median. The plan also included an increase of the state social security allowance from €64 to €99 from 2020, and a rise of the minimum pension to €109-€139. However, less than one month after adoption of the plan, the Government announced that due to a lack of funds in the 2020 budget, there would be no increase in the state social security allowance, and the minimum pension increase would be lower than promised.

The Ombudsman was not satisfied with the responses received from the Government to his first pre-trial warnings, so filed three suits at the Constitutional Court in October 2019: on the level of GMI, the needy person's income threshold, and the state social assistance allowance. In March 2020, he filed one more suit on the minimum disability pension benefit.

In addition to the above suits, the Ombudsman considered making an appeal to the Constitutional Court to question the constitutionality of the 2020 budget, as, he argues, by adopting it, the members of the parliament acted contrary to the law on healthcare financing by failing to provide sufficient financing to increase the salaries of health professionals. In February 2020, he sent an official letter to the Parliament explaining his position and demanding that the necessary

amendments to the budget law be made by 1 July 2020.

In December 2019, while the exchange of information concerning the minimum old-age pension between Jansons and the government continued, the Supreme Court (the highest court in the three tiered Latvian court system) filed a Constitutional Court case claiming non-compliance of the minimum pension with the Constitution and Latvia's international obligations.

The application of the Supreme Court is not related to the Ombudsman's action. It is based on a 2018 case submitted by a private person who required the State Social Insurance Agency to recalculate their old-age pension, arguing that it did not provide them with the necessary social security and questioning the constitutionality of the article of the Law on State Pensions related to the calculation of pensions. The case went through the various judicial bodies: District Court, Regional Court and finally Supreme Court.

The preamble to the Latvian Constitution states that Latvia is a "socially responsible state"; both the Ombudsman and the Supreme Court are therefore calling on the Constitutional Court to oblige the Government and Parliament to apply this in practice. The lawsuits refer to Article 109, which states that "everyone has the right to social security". The Ombudsman in his actions also invokes Article 1 ("Latvia is an independent democratic republic"), arguing that social responsibility of the state is an immanent part of democracy, and Article 91 ("Human rights shall be realised without discrimination of any kind"). Meanwhile, the Supreme Court has referred to Article 12.1 of the European Social Charter (Revised): the obligation on the state to maintain a system of social security.

In his arguments, the Ombudsman also refers to the World Bank publication "Poverty and Shared Prosperity 2018. Piecing Together

the Poverty Puzzle", which sets poverty lines at \$1.90 daily for low-income countries, \$3.20 and \$5.50 for lower- and upper-middle-income countries, and \$21.70 for upper-income countries. The existing minimum benefits in Latvia do not even ensure poverty prevention at the level of lower-middle-income countries. The Ombudsman also estimates that the purchase of healthy food alone requires a minimum of €175 per month per person in January 2020. Meanwhile, the Supreme Court in its pleading compares the minimum old-age pension to the relative poverty benchmark, concluding that the situation is critical, since one fifth of all pensioners receive pensions below the 40%-median poverty line.

Whatever the Constitutional Court verdicts will be on those cases, the Ombudsman and the Supreme Court are using legal arguments to question the adequacy of social benefits. Will the judicial power have the influence and authority to help bring about long-overdue changes in the country's social protection system?

Further reading

Official web-page of the Ombudsman of Latvia.

OECD (2016). OECD Reviews of Labour Market and Social Policies: Latvia 2016.

OECD (2018). OECD Reviews of Pension Systems: Latvia.

The Supreme Court of Latvia, press release 19/12/2019. Atzīstot par kritisku situāciju, ka piektā daļa vecuma pensijas saņēmēju saņem pensiju zem nabadzības sliekšņa, Senāts vērsās Satversmes tiesā [*Recognising the critical situation whereby one-fifth of recipients of old-age pensions receive a pension below the poverty line, the Senate turns to the Constitutional Court*].

World Bank (2013). Scientific research: Latvia: "Who is Unemployed, Inactive or Needy? Assessing Post-Crisis Policy Options".

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