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PAYMENT OF MANDATORY SOCIAL INSURANCE CONTRIBUTIONS IN A SOCIALLY RESPONSIBLE STATE AS A SAFEGUARD FOR THE INVIOABILITY OF HUMAN DIGNITY IN EMERGENCY CONDITIONS IN A STATE GOVERNED BY THE RULE OF LAW

Keywords: social insurance contributions, human dignity, subsistence minimum, socially responsible state

Summary

The article provides an analysis of the impact of economic crises on improving regulation on the state mandatory social insurance in Latvia following the restoration of its independence *de facto* (1990–1991), as well as of the legal principles and case law related to social insurance. In examining case law, particular attention is paid to such concepts as human dignity, a state governed by the rule of law, and a socially responsible state. The subsistence minimum, which has not been calculated by the State, is recognised as being an unsolved problem, which, effectively, prohibits from discussing the effectiveness of the system of state mandatory social insurance in the area of social security when an insured event occurs.

Introduction

Socially responsible democratic states, governed by the rule of law,¹ have united in the European Union (hereafter – the Union). Human dignity is an

¹ Latvia was established (proclaimed) as a democratic state governed by rule of law on 18 November 1918. See Osipova S. Establishing the University of Latvia. In: Legal Science: Functions, Significance and Future in Legal Systems II. The 7th International Scientific Conference of the Faculty of Law of the University of Latvia 16–18 October 2019. Riga: University of Latvia, 2020, pp. 87–89. Available: <https://www.apgads.lu.lv/izdevumi/brivpieejas-izdevumi/rakstu-krajumi/lu-juridiskas-fakultates-zinatniska-konference-2/> [viewed 15.10.2021.].

inviolable value.² The social insurance system, organised jointly by the Union and its Member States, in many ways is subordinated to the implementation of these values.

The social insurance systems of Member States are coordinated on the Union's level. Harmonisation of these systems is not envisaged. The aim is to ensure that legal acts of one Member State are applicable to a person, at the same time preventing a situation where legal acts of none of the Member States are applicable to a person who is subject to social regulations.³ "Competencies in the field of social security are shared between the Member States and the EU. Member States are exclusively competent to shape the substance of their social security systems"⁴.

Art. 109 of the *Satversme* [Constitution] of the Republic of Latvia (hereafter – the *Satversme*) provides that "[e]veryone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law."⁵ Thus, any person is entitled to social security at least on the minimum level, compatible with human dignity.⁶ Social security is implemented on the basis of social insurance, as well as social assistance, benefits, and other services (hereafter – social assistance).⁷ State social insurance, in difference to social assistance, envisages a person's participation in the social security system, by making insurance contributions.⁸

In Latvia, social insurance is voluntary and mandatory. Voluntarism, in principle, excludes problems of legal nature.⁹ This, however, is not the case with

² Kirste S. Einführung in die Rechtsphilosophie [Introduction to the philosophy of law]. Darmstadt: WBG, 2010, pp. 126–132.

³ Regulation (EC) No. 883/2004 of the European Parliament and the Council of 29 April 2004 on the coordination of social security systems Arts 11–16 [in the wording of 31.07.2019.]; Regulation (EC) No. 987/2009 of the European Parliament and the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems Arts 14–21 [in the wording of 01.01.2018.]; CJEU judgement of 19 September 2013 in Case C-140/12 Brey para. 40; CJEU judgement of 14 June 2016 in Case C-308/14 Commission v. United Kingdom para. 64; CJEU judgement of 8 May 2019 in Case C-631/17 Inspecteur van de Belastingdienst para. 33 etc.

⁴ Strban G. The right to social security: from state to EU responsibility? In: Legal Science: Functions, Significance and Future in Legal Systems II (PDF). The 7th International Scientific Conference of the Faculty of Law of the University of Latvia 16–18 October 2019. Riga: University of Latvia, 2020, p. 190. Available: <https://www.apgads.lu.lv/izdevumi/brivpieejas-izdevumi/rakstu-krajumi/lu-juridiskas-fakultates-zinatniska-konference-2/> [viewed 15.10.2021.].

⁵ Latvijas Republikas Satversme [The Constitution of the Republic of Latvia]. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁶ Judgment of the Constitutional Court of the Republic of Latvia (hereinafter – Judgment of the Constitutional Court) of 25 June 2020 in Case No. 2019-24-03 para. 17.3. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

⁷ Par sociālo drošību [On Social Security]. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁸ Judgment of the Constitutional Court of 19 October 2017 No. 2016-14-01, para. 19.2. Available: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

⁹ Par valsts sociālo apdrošināšanu [On State Social Insurance] Art. 5 (3–3⁴); Ministru kabineta 2010. gada 12. oktobra noteikumi Nr. 976 "Par brīvprātīgu pievienošanas valsts sociālajai apdrošināšanai" [Cabinet Regulation of 12 October 2010 No. 976 "On Joining the State Social Insurance Voluntarily]. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

respect to the state mandatory social insurance (hereafter – social insurance). The mandatory contributions of the state social insurance (hereafter – mandatory contributions) can be equalled to a tax. Many employers, employees and self-employed persons do not understand or do not want to understand the meaning of social insurance. This leads to the avoidance of making mandatory contributions or to making these in the smallest possible amount. It is a problem. Material deprivation becomes obvious during the periods of economic crisis, requiring amendments to the legal regulation.

The aim of the article is to analyse the impact of economic crises on improving the legal regulation on social insurance in Latvia following the restoration of its independence *de facto* (1990–1991) with respect to an employee employed by a domestic employer (hereafter – an employer), a self-employed person, and payers of the patent fee. Employees employed by a foreign employer remain outside the scope of this article.

1. Impact of an economic crisis caused by financial instability on social insurance

On 1 October 1997, the law “On State Social Insurance” was adopted. The law provided that “[a] person is socially insured and he or she shall mandatory contributions make (shall be made for him or her) from the day when this person has acquired the status of an employee or a self-employed person [...]”¹⁰ The purpose of social insurance was evident, to ensure to a person replacement of revenue from work if a socially insured risk had set in. To reach the aim, the State defined the types of social insurance.¹¹ It is envisaged to provide all types of social insurance only to employees below the retirement age. For example, an employee who has reached the retirement age is not to be insured for the event of unemployment or disability¹², because the source of income – pension – remains. A certain reservation regarding the basic provisions was included in the transitional provisions. These provided that “[f]rom 1 January 1998 to 1 January 2002, persons, for whom mandatory contributions have been actually made, is a socially insured person”.¹³ The legislator’s concern regarding the capabilities of the State Revenue Service (hereafter – the tax authority) to ensure control over entities making the mandatory contributions and effective collection of these in case of non-payment was obvious.

¹⁰ On State Social Insurance Art. 5 (4) [in the wording of 01.10.1997.].

¹¹ The valid law On State Social Insurance (Art. 4) defines the following types of insurance: the state pension insurance; the social insurance in case of unemployment; the social insurance against accidents at work and occupational diseases; the disability insurance; the maternity, paternity and sickness insurance; the parents' insurance; the health insurance.

¹² On State Social Insurance Art. 6 (1, 2).

¹³ This does not apply to persons who must be covered by insurance against accident at work.

In 1998, the financial and economic crisis began in the Russian Federation. It affected numerous Latvian entrepreneurs involved in export.¹⁴ The number of those claiming social benefits increased rapidly. Unfortunately, in many cases, benefits derived from social insurance were not granted. It transpired that employers had not made mandatory contributions for the employees.¹⁵ This meant that, pursuant to the letter of law, an employee was not socially insured. The social crisis was exacerbated by the legislator's decision to prolong for two years the transitional provisions.¹⁶ The Constitutional Court had to review compliance of "the principle of actual contributions" with fundamental rights.

The Constitutional Court recognised, "[i]f any social right is included in the basic law¹⁷ then the State no longer can derogate from it. This right no longer is only of a declarative nature."¹⁸ In reviewing the case, it was established that the employee was the only person involved in the state social insurance system who could make the mandatory contributions with the employer's mediation.¹⁹ Not delving deeper into the employee's right to receive information free of charge about the status of their insurance account, i.e., to control the payment of mandatory contributions, can be regarded as a certain drawback of the legal proceedings.²⁰ A socially responsible state cannot exist without socially responsible inhabitants. Of course, an employee's irresponsibility does not cancel the tax authority's obligations. Pursuant to the social situation at the time, the Constitutional Court's judgement, in principle, was valid, i.e.: "an employee as the subject of social insurance has fully performed their obligation at the moment of entering employment relationships and starting to fulfil the duties of one's job. Disbursements [based on social insurance] may not be linked to the fact, whether other persons [employer or the State] have or have not fulfilled their statutory obligations properly"²¹. Hence, a norm, which links social services derived from social insurance to the mandatory contributions that have been actually made, is incompatible with the *Satversme*.²²

¹⁴ Par Krievijas finansu un ekonomikas krīzes ietekmi uz Latvijas nodokļu ieņēmumiem līdz 1999. gada 15. janvārim [On the impact of Russia's financial and economic crisis on Latvia's tax revenue until 15 January 1999]. Latvijas Vēstnesis, 1999, No. 32/33. Available: www.vestnesis.lv [viewed 15.10.2021.].

¹⁵ Lazdiņš J., Ketners K. The Effect of Court Rulings on the Dynamics of the Latvian Tax Law. Journal of the University of Latvia. Law, 2013, No. 5, pp. 28–29.

¹⁶ Grozījumi likumā "Par valsts sociālo apdrošināšanu" [Amendments to the law "On State Social Insurance"] (25.11.1999.) Art. 18. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

¹⁷ See Art. 109 of the *Satversme* described above.

¹⁸ Judgment of the Constitutional Court of 13 March 2001 in Case No. 2000-08-0109 conclusion part. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

¹⁹ On State Social Insurance Art. 21 (1–4); Regulation (EC) No. 987/2009 Art. 21.

²⁰ For instance, in the State Social Insurance Agency. See Par nodokļiem un nodevām [On Taxes and Fees] Art. 16 (1) pt. 9. Available: <https://www.likumi.lv> [viewed 15.10.2021.]; On State Social Insurance Art. 23 (4).

²¹ Judgment of the Constitutional Court No. 2000-08-0109 conclusion part.

²² Lazdiņš J., Ketners K. 2013, pp. 28–30.

The “historical” judgement significantly increased employees’ social security. However, this security does not apply to illegally employed persons. Therefore, pursuant to courts’ case law, a person may be recognised as being socially insured, upon identifying legal employment relations.²³

Latvia experienced an unprecedentedly severe economic crisis in 2008–2010.²⁴ The total state budget revenue decreased rapidly. On 20 December 2010, with the aim of ensuring sustainable stability of the social budget, amendments were introduced to the law “On State Social Insurance”. These amendments provided, *inter alia*, that “[a] person shall be socially insured for pension insurance if mandatory contributions have been actually made”.²⁵ Returning to the principle of actual contributions in pension insurance in many ways could be substantiated by the Constitutional Court’s case law, which had recognised the State’s obligation to balance the revenue and expenditure parts of the special budget of state pensions as a legitimate aim.²⁶ Simultaneously, reinstatement of the principle of actual contributions in the case of pension insurance was contrary to the case law of the “historical” judgement.

The new legal norm defined employees’ co-responsibility for accruing the pension capital in accordance with the social insurance principle. However, also the solidarity principle as the basic “self-financing” principle of the social budget did not lose its relevance.²⁷ Mandatory contributions made by employees continue to ensure that other socially ensured persons receive social services.²⁸ Regretfully, there are plenty of people in Latvia who do not want to assume responsibility either for themselves or other persons. On the basis of a constitutional complaint submitted by their representatives, the Constitutional Court initiated the so-called “pensions case”.

Contrary to the “historical” judgement, it was recognised that a person had been ensured an effective possibility to receive information about the status

²³ Judgment of Supreme Court of Latvia of 31 January 2017 in Case No. A420371713 SKA-368/2017, para. 9. Available: <https://manas.tiesas.lv/eTiesasMvc/nolemumi> [viewed 15.10.2021.]. On identifying legal employment relations see, for example, Judgment of Supreme Court of Latvia of 18 October 2019 in Case No. A420249614 SKA-42/2019; of 4 November 2020 in Case No. A420125216 SKA-64/2020. Available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/nolemumi> [viewed 15.10.2021.] etc.

²⁴ Latvijas tautsaimniecība. Makroekonomiskais apskats [Latvian Economy. Macro-economic Overview]. 2010, No. 2 (43). Available: <https://www.em.gov.lv/lv/media/1882/download> [viewed 15.10.2021.].

²⁵ Grozījumi likumā “Par valsts sociālo apdrošināšanu” [Amendments to the law “On State Social Insurance”] (20.12.2010.) Art. 2. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

²⁶ Judgment of the Constitutional Court of 11 November 2005 in Case No. Nr.2005-08-01 para. 8; Judgment of the Constitutional Court of 26 November 2009 in Case No. 2009-08-01 para. 18.1. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

²⁷ Likumprojekta “Grozījumi likumā “Par valsts sociālo apdrošināšanu”” sākotnējās ietekmes novērtējuma ziņojums (anotācija) [The initial impact assessment report (annotation) regarding the draft law “Amendments to the Law “On State Social Insurance”]. Available: <http://titania.saeima.lv/LIVS10/SaeimaLIVS10.nsf/0/48F1DFEF440B97E1C22577F200267567?OpenDocument> [viewed 15.10.2021.].

²⁸ Jurušs M. Nodokļi [Taxes]. Rīga: RTU Izdevniecība, 2019, pp. 112–114.

of their insurance account. On the basis of this information, an employee may demand appropriate action from the employer or the State.²⁹ The judgement referred also to the interaction between the principles of social insurance and solidarity. Pursuant to the insurance principle, “[s]ocial insurance contributions are a person’s long-term investment, which guarantees to them social security in the future, [moreover] the amount of a person’s pension will be fair – proportional to the social insurance contributions made”³⁰. Social solidarity, in turn, requires taking responsibility for other people by making mandatory contributions. This means that not only an employer and the State but also an employee should take social responsibility. Thus, implementation of the principle of actual contributions in pension insurance is neither contrary to the *Satversme* nor the principle of a socially responsible state.³¹ Moreover, in accordance with the principle of a state governed by the rule of law, as was known already before “the pensions case”, “if an employee is ensured for a certain type of mandatory social insurance, he or she has the right to the respective security”³². In the case of a pension – if the social insurance contributions have actually been made. In other cases of social insurance – if legal employment relations can be identified. Although an economic crisis, as any other crisis causes problems, in Latvia they have facilitated the alignment of the social insurance system in the interests of a socially responsible employee.

2. Impact of COVID-19 caused economic crisis on social insurance

COVID-19 crisis revealed the urgency of a problem, well-known until then, but unresolved, in the area of social security. Several categories of persons were formally insured but actually their insurance was on a very low level. The reform of social insurance was greatly supported by the Constitutional Court’s case law. In 2020, several cases pertaining to issues of social security were reviewed. In two of them, it was noted *expressis verbis*:

“The State’s obligation to take care of just social order, decreasing social differences in society, facilitating social inclusion and providing to each group of inhabitants the possibility to lead a life that is compatible with human dignity follows from the principle of a socially responsible state, based on human dignity.³³ [...]

²⁹ Judgment of the Constitutional Court of 19 December 2011 in Case No. 2011-03-01 para. 24–27, 31. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

³⁰ *Ibid.*, para. 16.2, 24.

³¹ *Ibid.*, para. 24, 31.

³² Judgment of the Constitutional Court of 26 March 2004 in Case No. 2003-22-01 para. 11. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

³³ Judgment of the Constitutional Court of 9 July 2020 in Case No. 2019-27-03 para. 20.1. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

Thus, human dignity as a basic value, included in the *Satversme*, has an impact on the legislator's discretion in establishing the social security system.³⁴

The following were among persons with low-level social insurance:

- 1) payer of the patent fee;
- 2) employee of a micro-enterprise³⁵;
- 3) part of royalties' recipients³⁶;
- 4) part of self-employed persons;
- 5) part of part-time employees.

The patent fee was paid for the right to engage in economic activity in a certain area of crafts, i.e., footwear and clothing repair, floristics, etc.³⁷ The revenue from economic activity could not exceed a certain threshold, defined in the law³⁸, i.e.: it was a low-income form of economic activity.³⁹ The example described below allows judging about the ineffectiveness of social insurance. Thus, in 2020, the monthly patent fee for a shoemaker outside the city of Riga was set in the amount of 50 EUR.⁴⁰ 67% of this amount constituted social insurance contributions. A payer of the patent fee below the retirement age was insured only for the events of disability and pension.⁴¹ To compare, social contributions for an employee below the retirement age were made from all income, calculated in paid employment⁴², applying the rate of 35.09% (2021 – 34.09%)⁴³The minimum salary in 2020 was 430 EUR (2021 – 500 EUR).⁴⁴ Such an employee was insured for all types of social insurance, *inter alia*, unemployment. The social security level of an employee, even

³⁴ Judgment of the Constitutional Court of 10 December 2020 in Case No. 2020-07-03 para. 15.1. Available in Latvian: <https://www.satv.tiesa.gov.lv/cases/> [viewed 15.10.2021.].

³⁵ I.e., an employee of an employer who is paying the micro-enterprise tax.

³⁶ I.e., recipients of copyright and neighbouring rights remuneration.

³⁷ Grozījumi likumā “Par iedzīvotāju ienākuma nodokli” [Amendments to the law “On Personal Income Tax”] (01.12.2009.) Art. 12. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

³⁸ For instance, in 2019–2020, they were 15 000 EUR.

³⁹ Dārziņa L. Patentmaksājums un sociālā apdrošināšana [Patent Fee and Social Insurance]. Available: <https://lvportals.lv/skaidrojumi/285012-patentmaksajums-un-sociala-apdrosinasana-2017> [viewed 15.10.2021.].

⁴⁰ Ministru kabineta 2018. gada 16. janvāra noteikumi Nr. 28 “Kārtība, kādā piemērojama patentmaksas fiziskās personas saimnieciskajai darbībai noteiktā profesijā, un patentmaksas apmērs” 1. pielikums [Cabinet Regulation of 16 January 2018 No. 28 “Procedure for applying patent fee for the economic activities of a natural person in a certain profession, and the amount of patent fee”. Annex 1]. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁴¹ On State Social Insurance Art. 6 (3²) [in the wording of 2019–2020].

⁴² Likuma “Par valsts sociālo apdrošināšanu” komentāri. 14. pants [Commentaries on the Law “On State Social Insurance”. Article 14]. Available: <https://www.dbhub.lv/rokasgramatas> [viewed 15.10.2021.].

⁴³ On State Social Insurance Art. 18 (1).

⁴⁴ Ministru kabineta 2015. gada 24. novembra noteikumi Nr. 656 “Par minimālās mēneša darba algas apmēru normālā darba laikā ietvaros un minimālās stundas tarifa likmes aprēķināšanu” [Cabinet Regulation of 24 November 2015 No. 656 “On calculating the amount of minimum monthly salary within the framework of regular working hours and calculating the minimum hourly tariff rate”] Art. 2. Available: <https://likumi.lv> [viewed 15.10.2021.].

in the case of minimum standard of insurance, was higher than that of a person paying the patent fee.

Employees of micro-enterprises were similarly disadvantaged. Formally, an employee of a micro-enterprise was treated as an employee. The amount of actual mandatory contributions differed from the one set for persons employed in the general regime.⁴⁵ It followed from a number of restrictions related to the tax regime of a micro-enterprise: the tax was paid from turnover, a certain restriction was set for the turnover, mandatory contributions constituted part of the tax, etc.⁴⁶ If the turnover was small or non-existent, the amounts of social insurance contributions were insignificant or a person was not socially insured at all.

Social insurance of the recipients of royalties had been a known problem in the area of social security already since *de facto* restoration of independence of the Latvian State. Strange as it might seem, “tax planning” was particularly widespread in mass media. Thus, for example, an employment contract was concluded with a journalist in the amount of one or two minimum monthly salaries, defined by the State, and the rest of the remuneration was paid as royalties. In such a case, there was no obligation to pay social insurance contributions for royalties, and the author was not obliged to register as a self-employed person. However, shortly before the economic crisis caused by COVID-19, it was provided that those disbursing royalties⁴⁷ had to pay, from their own resources, pension insurance for the author in the amount of 50% of the disbursed royalties.⁴⁸ It is difficult to judge about the long-term effectiveness of these amendments because they will become invalid this year.

As the result of economic crisis, as of 1 January of the current year (2021), it is no longer possible to pay the patent fee for economic activities⁴⁹; as of 1 July, all employees of a micro-enterprise are socially insured like all employees⁵⁰; after expiry of the transitional period, from 1 January 2022, a recipient of royalties as a socially insured (natural) person will have to get registered as a person engaged in economic activity (as a self-employed person).⁵¹

⁴⁵ Dārziņa L. *Mīkrouzņēmumu nodoklis un sociālā apdrošināšana* [Micro-Enterprise Tax and Social Insurance]. Available: <https://lvportals.lv/skaidrojumi/284772-mikrouzņemumu-nodoklis-un-sociala-apdrošinasana-2017> [viewed 15.10.2021.].

⁴⁶ *Mīkrouzņēmuma nodokļu likums* [Micro-Enterprise Tax Law] [in the wording of 2019–2020]. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁴⁷ Except for collective management organisation.

⁴⁸ *Grozījumi likumā “Par valsts sociālo apdrošināšanu”* [Amendments to the law “On State Social Insurance”] (27.07.2017.) Art. 23¹. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁴⁹ *Grozījumi likumā “Par iedzīvotāju ienākuma nodokli”* [Amendments to the law “On Personal Income Tax”] (27.11.2020.) Art. 10. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁵⁰ *Grozījumi Mīkrouzņēmumu nodokļa likumā* [Amendments to the Micro-Enterprise Tax Law] (26.11.2020.) Art. 2, 11 pt. 35. Available: <https://www.likumi.lv> [viewed 15.10.2021.].

⁵¹ Amendments to the law “On Personal Income Tax” (27.11.2020.) Art. 27 pt. 163. It will be possible to receive royalties also on the basis of a work-performance contract. In this case, social insurance contributions are made just as for an employee.

Self-employed persons differ quite significantly. They can be well-remunerated lawyers, physicians or architects, whose financial means are not a cause of concern. However, the economic activities of not all self-employed persons are outside the risk of losing income. Since a self-employed person is not socially insured against unemployment, due to restrictions established in the period of COVID-19, hairdressers, masseurs, photographers and many others suddenly lost their source of income. They could rely only on the state social assistance. Likewise, many part-time employees were in the social risk group because, in such a case, the object of social insurance contributions could be below the minimum monthly salary.

The minimum object of mandatory contributions in social insurance contributions, introduced since 1 July of the current year (2021), should be considered as the most important part of social security reform. The minimum object of quarterly mandatory contributions is defined in the amount of three minimum monthly salaries, as defined by the government. This provision applies both to employees and to self-employed persons. If the contributions declared by employees are below the minimum mandatory contributions, the employer will have to cover the difference between the declared and the mandatory contributions from its own resources. This applies also to a case, where an employee is simultaneously a self-employed person. The legislator, however, has envisaged several exemptions. I.e., it will not be required to make mandatory contributions for a convicted person, who is employed in the facility for serving a sentence of deprivation of liberty, for a person who has reached the age that allows receiving the state old-age pension, etc.⁵²

Undoubtedly, the reform increased social security, but did it reach a sufficient level? The finding made by the Constitutional Court allows assessing how far-sighted the State's social policy of the previous years had been, i.e.: "the established minimum amount of old-age pension, in conjunction with other measures of the social security system, does not ensure that every recipient of the minimum pension can lead a life that is compatible with human dignity"⁵³.

The case law of the Supreme Court (the Senate) has started evolving by referring to the Constitutional Court's case law. In the future, lower-instance courts will have to assess whether a pension, in conjunction with other social security measures, ensures a life, compatible with human dignity.⁵⁴ Is it foreseeable how rational this assessment will be on case-by-case basis? For example, the finding that the fairness of a socially responsible state (*Sozialstaat*) is characterised by the guarantees of the subsistence minimum has become consolidated in the doctrine of German constitutional law

⁵² See On State Social Insurance, Art. 20⁴ (4).

⁵³ Judgment of the Constitutional Court in Case No. 2020-07-03 para. 23.2.3.

⁵⁴ Judgment of Supreme Court of Latvia of 16 March 2021 in Case No. A420271718 SKA-259/2021 para. 14–15. Available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/nolemumi> [viewed 15.10.2021.].

already long ago.⁵⁵ This means that any social service (benefit) or the sum total of them must amount at least to the subsistence minimum.⁵⁶ The subsistence minimum has not been calculated in Latvia.

Economic crises have stimulated the alignment of social insurance system in Latvia. Of course, unresolved problems remain. The most visible among these – the uncalculated subsistence minimum. Hopefully, the solution to this problem will not have to wait for the next economic crisis.

Conclusion

1. Economic crises have forced aligning the social insurance system. In this process, the Constitutional Court's case law has been of major importance. Until now, the legally employed, socially responsible employees below retirement age have benefitted the most from social insurance reforms. They are insured for all types of social insurance at least in the amount of the object of minimum mandatory contributions.
2. The minimum monthly salary has been defined in Latvia. It is also the minimum amount of the object of minimum contributions in social insurance. However, the subsistence minimum has not been calculated in Latvia. Hence, it is not known whether the social services that follow from social insurance can ensure to anyone life that is compatible with human dignity, if an insured event occurs.
3. The social insurance of a self-employed person still legally can provide a low level of security, moreover, a self-employed person is not insured against unemployment. As the COVID-19-related economic crisis shows, upon losing income, such persons can rely only on social assistance. Thus, with respect to a self-employed person, the social insurance, organised by the State, does not reach the basic aim set for it, i.e., to ensure income replacement in all significant cases of losing income.

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⁵⁵ Hufen Fr. *Staatsrecht II. Grundrechte. 3. Aktualisierte und überarbeitete Auflage* [Constitutional law II. Fundamental rights. 3. Updated and revised edition]. München: Verlag C. H. Beck, 2011, pp. 137–138; Schöbener B., Knauff M. *Allgemeine Staatslehre* [General theory of the state. 2nd Edition]. 2. Auflage. München: Verlag C. H. Beck, 2013, pp. 232–233.

⁵⁶ Lazdiņš J. *Taisnīguma principa ievērošana iedzīvotāju ienākuma aplikšanā ar iedzīvotāju ienākuma nodokli* [Complying with the principle of justice in applying the personal income tax to inhabitants' income]. *Latvijas Universitātes Raksti. Juridiskā zinātne* [Acta Universitatis Latviensis. Law], 2008, No. 740, pp. 100–104.

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