



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

**On Behalf of the Republic of Latvia**

**Riga, 10 January 2011**

**Case No. 2010-18-01**

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to constitutional complaints of Ms. Marika Skulte and Ms. Renāte Dorondo,

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia, Article 16 1<sup>st</sup> indent, Article 17 (1), 11<sup>th</sup> indent, and Article 28.<sup>1</sup> of the Constitutional Court Law

on 20 December 2010, in writing, examined the case

**“On Compliance of Para 4 of Transitional Provisions of the Maintenance Guarantee Fund Law with Article 1, Article 109 and Article 110 of the Satversme of the Republic of Latvia”.**

## **The Facts**

1. On 17 June 2004, the Saeima [Parliament] of the Republic of Latvia adopted the Maintenance Guarantee Fund Law (hereinafter – the Guarantee Fund Law) that came into force on 1 July 2004.

On 1 December 2009, the Saeima adopted the Law “Amendments to the Maintenance Guarantee Fund Law” (hereinafter – Amendments to the Guarantee Fund Law). The above mentioned amendments supplemented Transitional Provisions of the Guarantee Fund Law by Para 4 and Para 5.

Para 4 of Transitional Provisions has the following wording: “In the time period between 1 January 2010 and 31 December 2012, child support shall be disbursed from the resources of the Fund in the initiated cases of disbursement of child support and in the cases which have been initiated after 1 January 2010, in accordance with Section 8, Paragraph two of this Law in the following amounts: 1) for each child from his or her birth until reaching the age of seven years – 30 lats, but not more than the amount specified in the court adjudication, as well as not exceeding the amount determined by the Cabinet in accordance with Section 179, Paragraph five of the Civil Law; and 2) for each child above the age of seven years until reaching the age of 18 years – 35 lats, but not more than the amount specified in the court adjudication, as well as not exceeding the amount determined by the Cabinet in accordance with Section 179, Paragraph five of the Civil Law.”

2. A case based on a constitutional complaint of Ms. Marika Skulta was initiated on 12 March 2010, whilst another case having regard to a constitutional complaint of Ms. Renāte Dorondo was initiated on 21 April 2010. Constitutional complaints of Ms. M. Skulte and Ms. R. Dorondo (hereinafter – the Applicants) contested compliance of Para 4 of Transitional Provisions of the Guarantee Fund Law (hereinafter – the Contested Norm) with Article 1 and Article 110 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). However, in the constitutional complaint of Ms. M. Skulte, compliance of the above mentioned norm with Article 109 of the Satversme was contested. In order to facilitate exhaustive and fast adjudication of both cases, on 19 May 2010 the two cases

were merged pursuant to Article 22 (6) of the Constitutional Court Law. The joined case no. 2010-18-01 was given the title “On Compliance of Para 4 of Transitional Provisions of the Maintenance Guarantee Fund Law with Article 1, Article 109 and Article 110 of the Satversme of the Republic of Latvia”.

**3.** The Applicants **Ms. Marika Skulte** and **Ms. Renāte Dorondo** are raising and providing juveniles, whilst their fathers fail to fulfil the stipulated duty to provide children.

**3.1.** It was established in the 17 august 2009 decision by the Maintenance Guarantee Fund Administration that the Maintenance Guarantee Fund (hereinafter – the Guarantee Fund) shall disburse, from 6 August 2009, to the Applicant Ms. M. Skulte support for child maintenance at the amount of 54 lats. Likewise, it was established in 10 March 2010 decision by the Guarantee Fund Administration that the Guarantee Fund shall disburse, from 1 March 2010, to the Applicant Ms. R. Dorondo support for child maintenance at the amount of 35 and 30 lats.

The Applicants hold that the Contested Norm infringes their rights and the right of their children because it restricts the right to social security. The norm fails to reach the aim of a socially responsible state; therefore it does not comply with Article 109 of the Satversme. When adopting the Contested Norm, the legislator has neither complies with the principle of legitimate expectations, that of proportionality and that of solidarity.

When founding the Guarantee Fund, it was planned that, in the case of necessity, the State would substitute other parent in a way that it would ensure minimum subsistence for a child due to him or her from the other parent and established in Article 179 of the Civil Law. Reaching of aims of the Guarantee Fund is an issue of the social policy that requires stability. By means of subsistence disbursed by the Guarantee Fund, the State ensures protection of the rights of parents and children.

The Applicants have counted on the fact that the Guarantee Fund would ensure means of subsistence to them and their children at the amount established in the Cabinet of Ministers regulations. The previous legal regulatory framework was constant enough, namely, it was in force for five years.

The Contested Norm establishes another amount of minimum subsistence to be guaranteed to children; however, the legislator has failed to establish a lenient transition to the new regulation, neither has it established any compensation. If there is no such transition, the rights of the Applicants are restricted without reason. Even if the particular amendments are the only solution for the situation, they must comply with constitutional principles established in the Satversme. It is neither clear what served as the basis for changing the established procedure and why the reduction has been established at the particular amount.

**3.2.** The Applicants hold that, by means of the Contested Norm, the legislator has caused collision of legal norms. Namely, Section 3 of the Guarantee Fund Law establishes that the Guarantee Fund shall ensure such minimum amount of child support, which has been determined by the Cabinet of Ministers in 1 July 2003 Regulation No. 348 “On Minimum Amount of Child Support” (hereinafter – the Regulation no. 348) on the basis of Section 179, Paragraph five of the Civil Law. Based on the Contested Norm, the Guarantee Fund disburses smaller sum if compared to the one established in Article 179 of the Civil Law and the above mentioned regulation of the Cabinet of Ministers.

**3.3.** The Contested Norm has three aims – to save State budget resources, to implement social security and to guarantee disbursement of previous of amount of support after the end of the transitional period.

The Applicants hold that the Contested Norm does not have any legitimate aim. Saving of State budget resources cannot be regarded as a legitimate aim if the cur of support applies to socially low-protected groups of the society, namely, incomplete families and families with three and more children. Moreover, it can be concluded from Article 116 of the Satversme that the fundamental rights established in Article 110 of the Satversme cannot be restricted.

The Applicants maintain that, even under economic recession, the State is committed to fulfilling its social functions. When elaborating and adopting the Contested Norm, no discussions with the society, organizations of social partners and representatives and experts of other institutions took place. Impact of the Contested Norm onto the social environment and persons who have the right to receive support from the

guarantee fund has not been assessed. The legislator has failed to take into consideration the fact that the Guarantee Fund performs the function of a creditor. It has the right to recover, according to undisputed procedure, debts from the parent who has failed to fulfil the stipulated duty to support a child; moreover, such recovery has no limitation in time. To reach the aims of the Contested Norm, it was possible to apply alternative solutions, for instance, improve mechanisms for recovering disbursed child support and introduce stricter norms regarding those parents who fail to fulfil their duty to support a child. The mechanism included in the Contested Norm cannot be regarded as proportional.

**4.** The institution that adopted the contested act, i.e. **the Saeima** does not share the viewpoint of the Applicants and hold that the Contested Norm does comply with Article 1, Article 109 and Article 110 of the Satversme.

**4.1.** Child support at the minimum amount established by the Cabinet of Ministers first of all is the duty of parents, and no circumstances can release parents from ensuring support to their child. The additional guarantee established by the State, namely, the Guarantee Fund plays only a secondary role. The Guarantee Fund temporarily substitutes parent who fails to fulfil his or her duty. This additional guarantee depends on economic possibilities of the State and it is used only in extraordinary cases. It neither releases parents from the duty established in Article 179 of the Civil Law, namely, the duty to support their child.

The State enjoys freedom of action when establishing the procedure for the use of measures of the Guarantee Fund when disbursing child support. Consequently, this ensures the use of the limited amount of financial resources at the disposal of the State in a way that the greatest number of persons possible would gain benefit from it.

In other Member States of the European Union, too, there is no common practice regarding provision of financial support. The Saeima indicates that the State could even choose not to establish such guarantee fund; instead, it could provide support only in the frameworks of the social security system.

**4.2.** The Saeima indicates that the Contested Norm does have a legitimate aim, namely, protection of the welfare of the society and protection of the rights of other persons. It ensures that the State support is first of all provided for all children in need.

Consequently, it is in the interest of the society to balance incomes and expenses of the Guarantee Fund.

The Contested Norm does comply with the principle of proportionality, namely, it is terminated in time. It also is the most lenient solution because it was necessary to coordinate incomes and expenditures with the total amount of financial resources. It was not possible to introduce the Contested Norm by applying more lenient transitional provisions because dilatory cut of budget expenditures would cause even greater detriment if compared to timely and proportional cut of the expenditures. However, alternative solutions, like assessment of material position of persons applying for disbursement of child support from the Guarantee Fund would be questionable as from the point of view of fairness and probability.

At the same time, the Saeima indicates that the Guarantee Fund disburses child support only in case if an opinion of a sworn bailiff that no recovery of child support from a particular defendant is possible is received. Consequently, the issue regarding recovery of child support from a debtor is, in fact, assessed.

**4.3.** After adoption of the Contested Norm, the right to receive child support from the Guarantee Fund have not changed; however, the amount of child support to be disbursed from the Guarantee Fund has changed in a proportional way due to limited resources. The Contested Norm does not prohibit persons having the right to receive child support from the Guarantee Fund to receive it at a reasonable amount that complies with financial possibilities of the State. Consequently, the legislator has fulfilled its positive duty that follows Article 110 of the Satversme.

Mechanical protection of legitimate expectations in cases when it could contradict other constitutional values cannot be absolute. In case of mutual interaction of these two values, the legislator is granted the freedom of action to establish the most appropriate solution. Moreover, the normative regulatory framework could not give a person the trust into receipt of a particular sum from the Guarantee Fund because, in the course of time, the wage and solvency of a debtor may change.

**5.** The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that the Contested Norm does not comply with Article 1, Article 109 and Article 110 of the Satversme.

**5.1.** Parents who have already been disbursed child support from the Guarantee Fund had the right to count on the fact that their family would receive foreseeable monthly income in case of occurrence of circumstances referred to in the Guarantee Fund Law. Consequently, the Contested Norm does not comply with the principle of legitimate expectations.

The annotation of the amendments to the Guarantee Fund indicates the aim of the draft law, and the measures selected by the legislator are appropriate for reaching the legitimate objective. The restriction included in the Contested Norm would not be established in case if the State could obtain additional funding for the Guarantee Fund at the amount of 4.6 million lats.

It cannot be clearly concluded from the reply of the Saeima that the legislator would have sufficiently assessed alternative measures that would restrict the right of a person to social security guaranteed in the Satversme.

The Contested Norm does not comply with the principle of proportionality because families with parents who execute court judgment on voluntary basis by ensuring a child with subsistence have the right to repeatedly address a court and request increase of the amount of child support proportionally to economic situation of parents; however, families that receive child support from the Guarantee Fund, are denied such possibility. Consequently, the benefit gained by the society in this case shall be assessed only in the frameworks of these families.

**5.2.** The amount of child support should be balanced with possibilities of a parent and needs of a child; however, it cannot be less than the amount established in the Cabinet of Ministers provisions. Establishment of the Guarantee Fund does not release parents from their duty to maintain their child. Only in case if no recovery of child support is possible, it is disbursed from the Guarantee Fund.

However, the Ombudsman does not share the statement of the Saeima that the State enjoys a freedom of action to decide on the amount of child support to be disbursed from the Guarantee Fund. Situation when the amount of the child support is less than the

minimum amount established by the State is impermissible because this would infringe the right of the child to social security established in Article 109 of the Satversme.

The legislator has the duty to observe the fact that normative acts should protect interests of children as far as it is possible. The Contested Norm does not comply with interests of children. This only increases poverty risk and social burden in families with one parent. Under the circumstances of economic recession, too, the duty of the State is to avoid, as far as possible, adopting decisions that might affect the least protected groups of the society, children included.

**6.** The summoned person – **the Ministry of Justice of the Republic of Latvia** indicates that the contested norm does comply with Article 1, Article 109 and Article 110 of the Satversme.

**6.1.** Ensuring child support at least at the minimum amount established by the Cabinet of Ministers is, primarily, the duty of parents, and no circumstances can release them from ensuring subsistence to their children. Such duty of parents is absolute and it sustains even if the child lives only with one of the two parents. Consequently, disbursement of child support from the Guarantee Fund does not release both parents from the duty to maintain children established in Article 179 of the Civil Law proportionally to their property status.

The Ministry of Justice indicates that, in the particular case, the standard criteria of human rights have been observed. Under circumstances of economic recession, it is reasonable to restrict social insurance guarantees. Disbursement of child support from the Guarantee Fund is not based on such criterion as social insurance payments of a person. The social security system differs from state to state, and it is adapted to the needs of each state.

**6.2.** The Ministry of Justice holds that the Contested Norm does comply with the principle of proportionality and it has a legitimate aim. In the present case, deviation from the regulatory framework that is beneficial to a person is permissible. In case of mutual interaction between several constitutional values, the legislator enjoys freedom of action to establish the most appropriate solution. Protection of legitimate expectations in case when it comes into conflict with other constitutional values is not absolute. This

principle does not exclude the right of the State to amend effective legal regulatory framework because it has to react to changing life circumstances. The amount of child support disbursed from the Guarantee Fund can be different in each particular state depending on the minimum labour wage.

The Contested Norm has been adopted to ensure that each child who is due to support from the Guarantee Fund receives it in the frameworks of the allocated budget. The Ministry of Justice indicates that the State is short of resources to introduce mechanism to compensate resources; neither are possible other mechanisms that would restrict the rights of person at a lesser extent.

The right of persons to receive child support from the Guarantee Fund has not been changed. By adopting the Contested Norm, the legislator has fulfilled its positive duty that follows from Article 110 of the Satversme.

**6.3.** Alternative measures have also been considered, namely, reliant of the amount of child support to be disbursed with property status of persons. However, the procedure regarding assessment of property status of a person is questionable from the point of view of justice. In the result of discussions, the most lenient solution was adopted and the norm under review was adopted.

It was neither possible to introduce more lenient transitional regulatory framework because delaying reduction of budget expenses would cause even greater detriment if compared to timely and proportional cut of budget expenses. The Ministry of Justice indicates that, as from 22 October 2009, informative statements regarding planned amendments in the normative acts as from 1 January 2010 were published. Consequently, the society was informed on prospective changes about three months beforehand.

**7.** The summoned person – **Dr. iur. Kristīne Dupate, a lecturer of the University of Latvia** [*Latvijas Universitāte*] indicates that the Contested Norm shall be regarded as non-compliant with Article 110 of the Satversme, which commits the State to a positive duty to take care of families with children as a special group of the society.

**7.1.** Ms. K. Dupate indicates that families of one parent are such a group of the society, in respect to which the State has more positive duties if compared to full

families. Families of one parent are more subject to poverty risk and that of social castaway.

The European Union commits its Member States to performing exhaustive measures, also to ensuring adequate income to groups of social risk. Poverty risk is caused by the fact that a parent cannot have a full fledged job, whilst expenses for bringing up a child exceed labour incomes. Measures for families with one parent only are established in the Guarantee Fund Law. Therefore it is important to ensure that these measures would ensure adequate supplementary income. The present amount of incomes ensured by the Guarantee Fund is inadequately low.

**7.2.** Ms. K. Dupate holds that the aims of reduction of child support to be disbursed from the Guarantee Fund cannot be regarded as legitimate ones.

In the light of the principle of equality, families of one parent should be compared to all groups of the society. Namely, reduction of the minimum amount of child support can be permitted only in case if, when receiving child support disbursed from the Guarantee Fund, families of one parent would thus enjoy a better situation if compared to other groups. Consequently, protection of the rights of other persons by thus ensuring that the State support is provided to all children who need support from the Guarantee Fund cannot be regarded as a legitimate aim justifying reduction of child support.

## **The Findings**

**8.** The Applicants ask the Constitutional Court to assess compliance of the Contested Norm with the principle of legitimate expectations and that of proportionality that follows from Article 1 of the Satversme. Likewise, the Applicants ask to assess compliance of the Contested Norm with the right to social security established in Article 109 of the Satversme and the rights of the child and parents enshrined in Article 110 of the Satversme.

It can be concluded from the applications and the reply of the Saeima that the Contested Norm applies to the field of social rights and, in the present case, action of the

legislator, which, according to the Applicants, restricts the right of them and their children to social security as established in the Satversme is contested.

9. The concept of the democratic republic included in Article 1 of the Satversme obligates the State in its activities to observe a range of fundamental principles of a law-governed State, including the principle of legitimate expectations. In their activities, public institutions must act on consistent basis in relation to adopted normative acts and observe the principle of legitimate expectations conferring a person the right to count on a particular legal norm [*see, e.g.: Judgment of 10 June 1998 by the Constitutional Court in the case No. 04-03(98), the Findings, and Judgment of 24 March 2000 in the case No. 04-07(99), Para 3 of the Findings*]. The principle of proportionality provides, however, that if the public power restricts rights and legal interests of a person, one has to observe a reasonable balance between the interests of a person and the State of the society (*see: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

When assessing the conformity of the contested norm with the constitutional values established in Article 1 of the Satversme, it is necessary to take into account the fact that manifestation of these principles in other domains of life may differ. The nature of the impugned norm, *inter alia*, also its connection with other norms of the Satversme and their place in the system of fundamental rights, inevitably influence the scope of the control, realized by the Constitutional Court. Namely, freedom of action of the legislator when deciding on a particular issue is either broad or narrow, and the task of the Constitutional Court is to assess whether the extent of the freedom of action of the Saeima enjoyed by the Saeima comply with what has been established in the Satversme (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 15.2 and 15.3*).

In cases when compliance of any norm of social rights with the principles following from Article 1 and Article 109 of the Satversme is contested, that with Article 1 of the Satversme is assessed in conjunction with Article 109 of the Satversme.

**Consequently, compliance of the Contested Norm with the principle of legitimate expectations and that of proportionality shall be assessed on conjunction with Article 109 of the Satversme.**

10. In order to assess whether the Contested Norm complies with Article 109 of the Satversme, first of all it is necessary to investigate whether it complies to the content of the right to social security.

Article 109 of the Satversme provides: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

The above mentioned article of the Satversme does not *expressis verbis* establish the right to social security in case when one of the parents fails to fulfil the duty to maintain a child as established in the Satversme, or fulfils it by failing to ensure the minimum amount of support established in the Regulation No. 348.

The Constitutional Court has already indicated: “If the legislator, making use of its authority in creation and realization of the social policy as well as in determination of the amount of social rights, has incorporated social rights into the Satversme and has specified the contents of these rights in laws, then they have turned into the rights of an individual. A person may request realization of these rights from the state as well as protect his/her rights at the court” (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 2 of the Findings*).

The legislator enjoys a broad freedom of action when implementing the fundamental rights established in Article 109 of the Satversme. Article 109 of the Satversme neither obligates, nor prohibits establishing the Guarantee Fund that would disburse child support from resources allocated from the State basic budget. The State has provided establishment of the Guarantee Fund by law and determined its functions. Consequently, it has become a part of the State social security system.

Pursuant to Section 3 (1) of the Guarantee Fund Law, the Maintenance Guarantee Fund is the amount of resources provided for in the State budget for ensuring a child with child support, if the execution of a court adjudication regarding the recovery of child support in accordance with the procedures prescribed in the Civil Procedure Law is

recognized as impossible, or a debtor fulfils a court adjudication regarding the recovery of child support, but does not ensure such minimum amount of child support, which has been determined by the Cabinet on the basis of Section 179, Paragraph five of the Civil Law. By means of the Guarantee Fund Law, the State has established an institution that ensures support to children in cases established in this Law.

**Consequently, social benefit to children does pertain to the scope of Article 109 of the Satversme.**

**11.** The positive duty of parents of a child is to ensure maintenance of the child in accordance with Article 179 of the Civil Procedure. This ensures that needs of the child are met for him or her to be able to get wholesomely involved in the social environment, not to suffer from famine and would be provided at least the goods of prime necessity. Article 179 of the Civil Law contains a reference to the minimum amount of child support that should be ensured by each parent irrespectively his or her property status. The Minimum amount of child support is established by the Cabinet of Ministers based on the subsistence wage of the State and child's age.

Pursuant to Section 1 and 2 of the Regulation No. 348, the minimum amount of child support to be ensured to the child on monthly basis by each parent irrespective of his or her property status shall be as follows: 1) 25 percent of the minimum monthly wage established by the Cabinet of Ministers for a child from his or her birth to the age of seven years; 2) 30 percent of the minimum monthly wage established by the Cabinet of Ministers for a child from seven to eighty years. Pursuant Section 2 to 23 September 2008 by the Cabinet of Ministers No. 791 "Regulations Regarding Minimum Monthly Salary and Minimum Hourly Tariff Rate" (hereinafter – the Regulation No. 791), in 2010 the minimum monthly salary in the frameworks of ordinary working hours shall be 180 lats.

Consequently, each parent has the duty to ensure the minimum amount of child support: 1) 45 lats for a child from his or her birth to the age of seven years; 2) 54 lats for a child from seven to eighty years.

**Consequently, this is primarily the duty of parents to ensure the minimum amount of support to their children on monthly basis.**

12. Section 8 (2) of the Guarantee Fund law establishes that the Fund Administration shall, on the basis of a written submission of a submitter and the documents attached thereto, disburse child support to the submitter from the resources of the Fund for each child in an amount determined by the Cabinet Regulation No. 348, but not more than the amount specified in the court adjudication. Execution of this activity shall be assessed in conjunction with the duty of the State to establish an effective, fair and sustainable social security system.

Since the right to social security is the social rights of a person, the state enjoys a freedom of action to select methods and mechanisms for implementing those rights (*see, e.g.: Judgment 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, first paragraph of the Findings*). When assessing economic possibilities of the State and other circumstances, the legislator shall have the right to use freedom of action and form a social security system by establishing general principles of its functioning, procedure for making contributions, administration, management and disbursement of funds (*see, e.g.: Judgment of 1 December 2010 by the Constitutional Court in the case No. 2010-21-01, Para 15*).

Since resources of the Guarantee Fund are not collected from social payments but allocated from the State basic budget to meet the aims established in the Guarantee Fund Law, the legislator enjoys a broad freedom of action when establishing the way of ensuring the rights of persons established in Article 109 of the Satversme.

**Consequently, the legislator enjoys freedom of action not only when determining the procedure but also the amount of disbursement of child support from the Guarantee Fund.**

13. The Applicants hold that the Contested Norm infringe their right to social security because it restricts their right to receive child support at the minimum amount established by the Cabinet of Ministers.

13.1. The principle of legitimate expectations does not exclude the right of the State to amend existent regulatory framework. An opposite approach would lead to inability of

the State to react to changing living circumstances. The principle of legitimate expectations requires that the State, when amending normative regulatory framework, would observe a reasonable balance between trust of a person and those interests, in favour of which regulatory framework is being amended (*see: Judgment of 1 December 2010 by the Constitutional Court in the case No. 2010-21-01, Para 19*).

in order to assess whether the legal act that provided for deviation from the rights conferred to a person comply with the principle of legal security, the following should be investigated : 1) whether a person has been conferred legal security to safeguarding or implementation of any particular rights; and 2) whether a reasonable balance between protection of legal security of a person and ensuring of interests of the society has been observed (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 23*).

In order to establish whether the Applicants have been granted legitimate trust into preservation or implementation of the particular rights, it is necessary to investigate whether the person's trust in the legal norm is legitimate, well-grounded and reasonable, in its turn, the legal regulation on its essence should be reasonably definite and constant, so that one could trust in it (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01. Para 3.2, Judgment of 25 October 2004 in the case No. 2004-03-01, Para 7, and Judgment of 8 November 2006 in the case No. 2006-04-01, Para 21*).

**13.2.** When elaborating the Guarantee Fund Law in 2004, it was established in the annotation thereto that the respective normative regulatory framework and foundation of the Guarantee Fund is indispensable for finding solution for the problem of recovery of subsistence. The annotation also determined the aim of the Guarantee Fund, as well as the fact that child support shall be disbursed from this fund in accordance with the procedure established by the Cabinet of Ministers (*see: Saeima register of draft laws [http://helios-web.saeima.lv/bi8/lasa?dd=LP0748\\_0](http://helios-web.saeima.lv/bi8/lasa?dd=LP0748_0), consulted on 13 December 2010*). Such regulatory framework was in force from 1 July 2004 to 31 December 2009, which is more than five years.

Consequently, the normative regulatory framework regarding disbursement of support from the Guarantee Fund to maintain a child included in the law shall be

regarded as constant enough. The Applicants had the grounds to count on the fact that their children, too, would have the right to receive support from the Guarantee Fund should conditions for disbursement of child support established in the Guarantee Fund Law occur.

**13.3.** In the present case, it should be assessed whether the Contested Norm ensures the Applicants the right, implementation of which they can trust into.

The Contested Norm establishes that, in the time period between 1 January 2010 and 31 December 2012, child support shall be disbursed from the resources of the Fund in the initiated cases of disbursement of child support and in the cases which have been initiated after 1 January 2010, at a diminished amount, namely, for each child from his or her birth until reaching the age of seven years – 30 lats, and for each child above the age of seven years until reaching the age of 18 years – 35 lats.

Consequently, when introducing amendments to the Guarantee Fund Law, the legislator has not ignored implementation of the rights of persons. The State does not restrict legitimate expectations of persons to the fact that their children would receive support from the Guarantee Fund.

**13.4.** The Applicants have counted on the fact that the Guarantee Fund would allocate, to their children, child support at the amount established in the Cabinet of Ministers regulations.

In order to establish whether the Contested Norm infringes the right of the Applicants, it is necessary to investigate whether Article 109 of the Satversme includes a requirement to disburse support to families, wherein one of the parents have failed to fulfil his or her duty to maintain a child or fails to maintain a child at the extent established in the Regulation No. 348.

The duty of the State to establish and maintain the social security protection in general follows from Article 109 of the Satversme (*see: Judgment of 29 October 2010 by the Constitutional Court in the case No. 2010-17-01, Para 10.2*). However, Article 109 of the Satversme does not include a requirement to ensure disbursement of child support at a certain amount.

As to other social rights enshrined in the Satversme, the Constitutional Court has also reiterated that The Satversme neither requires disbursement of certain sums, nor establishes its conditions of such disbursement (*see: Judgment of 15 March 2010 in the case no. 2009-44-01, Para 12*).

As it has already been indicated in Article 3.1 of the present Judgment, the Applicant Ms. M. Skulte receives child support from the Guarantee Fund since 6 August 2009. Consequently, the former normative regulatory framework was applied to the particular Applicant for only five months; therefore she could not be given lawful, grounded and reasonable trust into permanence of the allocated sum. However, the Applicant Ms. R. Dorondo received child support from the Guarantee Fund since 1 March 2010; consequently, the initial wording of the Guarantee Fund Law that established another amount of child support to be disbursed has not been applied to her.

**The Applicants could count on the fact that their children would have the right to receive support from the Guarantee Fund; they, however, could not count on disbursement of the support at a particular amount.**

**14.** The Applicants hold that, when adopting the contested norm, the legislator has failed to observe the principle of legitimate expectations and that of proportionality, as well as they question the legitimate aim of the Contested Norm. Therefore, the Constitutional Court will investigate compliance of the Contested Norm with the principle of proportionality by also assessing whether a reasonable balance has been ensured between the necessity to protect legitimate expectations of persons and that to ensure interests of the society.

**14.1.** In order to recognize the Contested Norm as proportional, the Court has to investigate the following: 1) whether measures applied by the legislator are appropriate for reaching of the legitimate objective; 2) whether this action is indispensable, i.e. whether the same aim could be reached by other measures that would restrict the rights and legal interests of a person at a lesser extent; 3) whether the action of the legislator is commensurate, i.e. whether the benefit gained by the society is greater than the detriment caused to the rights and legal interests of a person.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Findings*).

**14.2.** The Contested Norm children maintained by one parent support from the Guarantee Fund at a reduced amount if compared with the previous regulatory framework. Consequently, the right of the Applicants to receive child support from the Guarantee Fund at the amount established by the Cabinet of Ministers is restricted. In the present case, there is no dispute regarding the fact that the reduction of the amount of child support to be disbursed has been clearly and explicitly established by law.

The Constitutional Court has already concluded that any restriction of the independence of judges should be founded upon conditions and arguments about its necessity, i.e., the restriction is set because of important interests – with a legitimate aim (*see, e.g.: Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01, Para 22.1, and Judgment of 18 January 2010 in the case No. 9-11-01, Para 15*).

The annotation of the amendments of the Guarantee Fund Law provides a detailed description of the situation in 2009, as well as indicates further activities of the Guarantee Fund. It has been indicated in the annotation that, in the frameworks of 2010 sub-programme “Child Support Fund”, it is not possible to ensure disbursement of child support at the amount established in the Regulation no. 348 because respective statistical information and macro-economical unemployment indices show that there exist substantial factors that affects the amount of child support to be disbursed in 2010. It is also indicated in the Application that, taking into account economic situation of the State and limited amount of budget resources allocated for the particular purpose, it is necessary to review the amount of resources to be disbursed from the Guarantee Fund by proportionally reducing support to be disbursed to each child in order to ensure disbursement of child support in 2010, 2011 and 2012 to all children who have the right to receive support from the Guarantee Fund in cases and according to the procedure established in the Guarantee Fund Law. Namely, to all children who are already disbursed support from the Guarantee Fund, as well as to all children, applications in

respect of whom would still be submitted in 2010, 2011 and 2012 (*see: Case materials, pp. 181*).

The Constitutional Court has reiterated in several judgments that Latvia had to considerably reduce budget expenses in 2009 under economic recession (*see, e.g.: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01*).

Consequently, the legitimate aim of the Contested Norm is ensuring and protection of welfare of the society and protection of rights of other persons. Although the Guarantee Fund plays a secondary role in ensuring children with subsistence, the State is committed to ensure the rights of children who have the right to receive support from the particular fund. By reducing amount of child support if compared with the previous regulatory framework, the legislator has ensured subsistence to all children who have the right to receive support from the Guarantee Fund.

**Consequently, the Contested Norm does has a legitimate aim, and it is appropriate for reaching thereof.**

**14.3.** The Applicants indicate that it was possible to apply other alternative measures to reach the aims of the Contested Norms, namely, it was possible to improve the mechanism for recovery of disbursed child support and introduce stricter legal norms in respect to those parents who fail to fulfil their duty of maintaining a child (*see: Case materials, pp. 7*). The Saeima indicates, however, that alternative solutions are doubtful if considered from the point of view of justice and probability (*see: Case materials, pp. 134*).

The Applicants also hold that it was necessary to arrange discussions with the society, social partner organizations, and representatives and experts of other institutions when elaborating and adopting the Contested Norm under economic recession. Likewise, it was necessary to assess impact of the Contested Norm on the social environment and persons who have the right to receive child support from the Guarantee Fund (*see: Case materials, pp. 7-8, and pp. 40*).

The Applicants have failed though to substantiate why the effective normative regulatory framework regarding recovery of disbursed child support is regarded as ineffective, and requirements for parents who fail to fulfil their duty to maintain a child are regarded as not strict enough. The Constitutional Court, however, does not have any

reason to doubt a statement of the Saeima that the issue regarding recovery of child support from a debtor has, in fact, been assessed. It is possible to agree with what was indicated by the Saeima, namely, that assessment of property status of parents would not ensure effective functioning of the Guarantee Fund, and it would contradict the aim of the fund.

Consequently, other solutions would not ensure disbursement of support from the Guarantee Fund to all children at the amount established before coming into force of the Contested Norm. However, the Contested Norm does ensure that all children who have the right to receive child support from the Guarantee Fund according to the procedure established in the Guarantee Fund Law would receive it.

The Constitutional Court has already concluded that, when elaborating draft laws, the Saeima performs the duty of hearing and assessment in the frameworks of the legislative process (*see: Judgment of 30 October 2009 by the Constitutional Court in the case No. 2009-04-06, Para 11.2*). It follows from the reply of the Saeima that the legislator has considered the possibility to improve the mechanism of recovery of child support from debtors, whose duties were fulfilled by the Guarantee Fund. Therefore it is not necessary to reassess such solution that has already been assessed in the frameworks of any other draft law.

The Constitutional Court does not have the reason to question the fact that, when elaborating amendments to the Guarantee Fund Law, the Saeima has assessed alternative solutions and selected the most lenient mechanism. Although no discussions with the society or social partners took place when elaborating and reviewing amendments to the Guarantee Fund Law, this does not prohibit the legislator to make its own considerations and analysis.

**Consequently, there are no such alternative measures that would restrict the rights of a person at a lesser extent and ensure reaching of the legitimate aim.**

**14.4.** The Applicant holds that the Contested Norm causes collision of legal norms because it contradicts Section 3 (1) of the Guarantee Fund Law and Regulation No. 348, as well as Regulation No. 791 (*see: Case materials, pp. 3*).

It follows from Section 3 (1) and Section 8 (2) of the Guarantee Fund Law that the Guarantee Fund shall undertake ensuring a child with support at the minimum amount

established in the Regulation No. 348. However, the Contested Norm included in Transitional Provisions of the Guarantee Fund Law establishes that in the time period between 1 January 2010 and 31 December 2012, child support shall be disbursed from the resources of the Fund in the initiated cases of disbursement of child support and in the cases which have been initiated after 1 January 2010 in reduced amounts. Consequently, the Constitutional Court has to assess whether the legislator could determine, in Transitional Provisions, a terminable and different procedure for application of a legal norm.

Transitional provisions are a part of normative act that regulates different issues of coming into force and application of a normative act in a particular time frame. Transitional provisions are legal instruments, by means of which the institution that adopts a normative act can concretize and change legal consequences of legal norms. It is possible to include such legal norms into transitional provisions that delay or otherwise restrict occurrence of legal consequences of any other legal norms in a certain time frame.

Consequently, the statement of the Applicants that the Contested Norm causes collision of legal norms in respect to Section 3 (1) of the Guarantee Fund Law, as well as Regulation No. 348 and Regulation No. 791, is ungrounded. In the time period from 1 January 2010 to 31 December 2012, the Contested Norm restricts occurrence of legal consequences established in Section 3 (1) and Section 8 (2) of the Guarantee Fund Law insofar as it applies to the amount of support to be disbursed. Legislative method applied when adopting the Contested Norm does comply with the essence of transitional provisions.

**14.5.** The Applicants indicate that the legislator has failed to ensure a lenient transition to the new regulation or to provide compensation of losses (*see: Case materials, pp. 5*). The Ombudsman and Ms. K. Dupate indicate that such amendments to the regulatory framework does not ensure any reasonable balance because it subjects a certain group of the society, namely, families of one parent maintaining a child, to risk of poverty and social castaway (*see: Case materials, pp. 218, 118 and 190*).

However, the Saeima indicates that the Contested Norm could not be introduced by applying a more lenient regulatory framework because delay in reduction of budget

expenses would cause even greater detriment if compared to timely and proportional reduction of expenses (*see: Case materials, pp. 134 and 136*).

When assessing whether a reasonable balance between the necessity to protect legitimate expectations of persons and the necessity to ensure interests of the society, it is necessary to take into account whether a lenient transition to a new regulatory framework has been established (*see: Judgment of 25 march 2003 by the Constitutional Court in the case No. 2002-12-01, Para 2 of the Findings*).

The Contested Norm came into force on 1 January 2010, which was the very day when the Guarantee Fund started disbursement of child support at a reduced amount. This means that the legislator has not established a separate transitional period before coming into effect of the amendments.

In certain cases, when balancing the amount of the restriction of legal security and the necessity and urgency of amendments to legal regulation, deviation from the rights guaranteed to a person is permissible without providing a transitional period (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 25*).

The Constitutional Court does not have the reason to doubt the statement of the Saeima, namely, that the benefit gained by the society in the result of application of the Contested Norm is greater if compared to the case if a transitional period was established in the Contested Norm or if initial amount of child support was preserved.

It follows from the Appendix No. 4 Law "On the State Budget 2010" that the sub-programme "Guarantee Fund" was allocated 9 556 975 lats from the State basic budget. For the Guarantee Fund to be able to disburse support to all children who have the right to receive them from the fund at the amount and according to the procedure established before coming into force of the amendments to the Guarantee Fund Law, the Fund would additionally need 4.6 million lats. Such additional funding has been indicated in the annotation of the amendments to the Guarantee Fund Law. Consequently, the funding allocated to the Guarantee Fund Law, in fact, does not permit disbursing child support to each children at the amount established in the Regulation No. 348.

The refusal to ensure support to children would contradict the aim of the fund established in Section 3 (1) of the Guarantee Fund Law. Adoption of the amendments to

the Guarantee Fund Law was a substantial decision at the political and legal level so that, beginning with 1 January 2010, all children who already received support from the Guarantee Fund Law before coming into force of the Contested Norm and those who would receive them as from the above mentioned date would indeed be ensured support.

In the present case, there is no dispute regarding the fact that number of children who have the right to receive support from the Guarantee Fund has increased. This is approved by data of the Guarantee Fund for the period from 1 January 2010 to 30 June 2010. It was prognosticated that number of children who would continue receiving child support in 2010 would constitute 20 585. In fact, however, the number of children was 20 841, which is by 256 children more (*see: Case materials, pp. 215*). Annotation of the amendments to the Guarantee Fund Law refers to factors that cause the above described situation. For instance, along with increase of unemployment rate, number of those parents recovery of child support from which is impossible. Number of cases related to recovery of child support directed by sworn bailiffs has also increased, Consequently, administration of the Guarantee Fund Law continues receiving more and more requests to start disbursing child support (*see: Case materials, pp. 183-184*).

Consequently, a reasonable balance between protection of legitimate expectations of the Applicants and ensuring of interests of the society has been observed. As it has already been established in Para 14.2 and Para 14.3 of the present Judgment, when adopting the Contested Norm, the legislator was basing on rational and substantiated considerations and has ensured the rights of all children who have the right to receive support from the Guarantee Fund.

By reducing the amount of child support to be disbursed, it is possible to disburse them to each child who has the right to receive social support from the state in the form of child support. Consequently, the benefit gained by the society from the Contested Norm is greater than the detriment done to rights and legal interests of a person.

**When adopting the Contested Norm, the legislator has observed the principle of proportionality and that of legitimate expectations, and it does comply with Article 1 and Article 109 of the Satversme.**

**15.** Article 110 of the Satversme provides: „ 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.”

The Applicants hold that the fundamental rights included in Article 110 of the Satversme cannot be restricted because they are not referred to in Article 116 of the Satversme.

Article 116 of the Satversme does not refer to the rights guaranteed in Article 110 of the Satversme; however, this does not mean that these fundamental rights are absolute. The Constitutional Court has already concluded in its case-la that the Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*see: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 13*). The assumption that the rights of each person established in Article 110 of the Satversme cannot be restricted contradicts the rights of other persons guaranteed in other articles of the Satversme, as well as the duty of the State to protect the fundamental rights of a person established in Article 89 of the Satversme.

**Consequently, the fundamental rights established in Article 110 of the Satversme can be restricted.**

**16.** The Applicants indicate that the Contested Norm fails to comply with Article 100 of the Satversme.

It follows from the case materials that the Applicants consider the Contested Norm as non-compliant with the first sentence of Article 110 of the Satversme because both Applicants have minor children, whose other parents fail to fulfil their duty to maintain the child. The Applicants have not indicated that the Contested Norm would have infringed the fundamental rights of their children established in the second sentence of Article 110 of the Satversme.

**The Constitutional Court has to assess whether the Contested Norm complies with the first sentence of Article 110 of the Satversme.**

17. Article 110 of the Satversme provides for protection of the child. It has been concluded in the case-law of the Constitutional Court that the first sentence of Article 110 of the Satversme envisages a positive duty of the State to form and maintain social and economic support system for family (*see: Judgment of 4 November 2005 by the Constitutional Court in the case No. 2005-09-01, Para 9.3, Judgment of 2 November 2006 in the case No. 2006-07-01, Para 13.1, and Judgment of 11 December 2006 in the case No. 2006-10-03, Para 13.1*).

As the legislator, when implementing the above mentioned positive duty, has specified the right of a family to a specific protection by determining several protection mechanisms (benefits, grants etc.), these rights have become the rights of an individual. A person may require realization of these rights from the State, as well as may defend the above rights in a court (*see: Judgment of 4 November 2005 by the Constitutional Court in the case No. 2005-09-01, Para 9.3*).

Child support is disbursed from the Guarantee Fund to that parent who maintains the child without the support of another parent. Consequently, the State provides support to meet needs of the child by ensuring him or her with social security.

The issue of child support shall be assessed in conjunction with implementation of the rights of the child. Consequently, in the frameworks of the present case, assessment of the fundamental rights included in the first sentence of Article 110 of the Satversme shall be applied only to the duty of the State to protect the rights of the child. However, these pare the parents who use the State allocated resources for meeting the needs of the child. The Contested Norm does not infringe the fundamental rights of parents of the children established in the first sentence of Article 110 of the Satversme.

18. The duty of the State to protect the rights of the child, as established in the Satversme, has been concretized in the Law on the Protection of the Rights of the Child. Section 6 (1) thereof provides that “all the activities with regard to children, regardless

whether they are carried out by the State or municipal institutions, public organizations or other physical or legal entities, which are engaged in child care as well as courts and other law enforcement institutions shall secure priority of the interests of the child”.

It follows from the above that in legal relationships, concerning the child, in all the activities the rights and interests of the child shall prevail. It means that not only the courts and other institutions shall adopt their decisions on the basis of the interests of the child, but the legislator has also to observe it, so that the adopted or amended normative acts would protect the interests of the child in the best possible way (*see: Judgment of 11 October 2004 by the Constitutional Court in the case No. 2004-02-0106, Para 11*).

When implementing the right to social security, guaranteed by the Satversme, the duty of the state is not only to determine the normative regulation of the above right but also to create the mechanism of effective realization of the legal norm. The duty of the state is not only to declare the rights, but also to put them into practice and supervise their application (*see: Judgment of 14 January 2004 by the Constitutional Court in the case No. 2003-19-0103, Para 9.1*).

As it has already been indicated in Para 13.2 of the present judgment, it was necessary to found the Guarantee Fund in order to find solution for the problem of recovery of disbursed child support. When adopting the Guarantee Fund Law in 2004, the State undertook support parents who maintain their child without financial support of the other parent. Consequently, the respective regulation regarding disbursement of child support ensures protection of the interests of the child.

**The legislator has elaborated such procedure of disbursement of child support that ensures implementation of the fundamental rights established in Article 110 of the Satversme in respect to those children who are maintained by one parent.**

**19.** The duty of the State to protect the rights of the child included in the first sentence of Article 110 of the Satversme is closely related with what has been considered in Para 13 and Para 14 of the present Judgment, as well as the duty of the State to provide, in the case of necessity, support to children who are maintained by one parent.

The Constitutional Court has already concluded that the Contested Norm does not infringe the principle of legitimate expectations and that of proportionality. The Contested Norm also complies with Article 109 of the Satversme. When adopting the Contested Norm, the legislator has fulfilled its positive duty established in the first sentence of Article 110 of the Satversme.

**Consequently, the Contested Norm does comply with the first sentence of Article 110 of the Satversme.**

### **The Constitutional Court**

Based on Article 30-32 of the Constitutional Court Law,

**h o l d s :**

**Para 4 of Transitional Provisions of the Maintenance Guarantee Fund Law does comply with Article 1, Article 109, and Article 110 of the Satversme.**

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris