THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 15 March 2010
in Case No. 2009-44-01

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

having regard to applications submitted by: Raimonds Priede-Baņģieris, Māris Kociņš, Māris Urbanovičs, Dainis Rozenfelds, Pāvels Levčenkovs, Vairis Lejiņš, Arvis Kņazs, Madars Deaks, Ivars Šulcs, Sandris Mukāns, Linda Plūme-Vozņakovska, Rolands Vāceris, Aivars Bērziņš, Armands Novickis, Guntars Polis, Anatolijs Streļins, Egils Ziemelis, Rolands Loganovskis, Kaspars Lāmanis-Jēgersons, Edgars Grotāns, Jānis Graudulis, Ingars Zariņš, Daņiils Azarijevs, Diāna Kairiša, Andris Amatnieks, Viktors Rautmanis, Kaspars Krūmiņš, Raivis Teniss, Mārtiņš Solovjovs, Nauris Griščenko, Aivars Vaičikauskis, Ļevs Lapkis, Valērijs Šabanovs, Ģirts Vinters, Guntars Agate Paeglis, Mārtiņš Sviķis, Agris Neilands, Sergejs Andračņikovs, Māris Apfelbergs, Ģirts Kaņeps, Ingus Sloka, Olga Būmane, Harijs Misiņš, Aleksejs Demjaņenko, Inita Auzāne, Arnis Maculēvičs, Andris Bleive, Māris Urbāns, kā arī divdesmit 9. Saeimas deputāti: Aigars Štokenbergs, Andrejs Klementjevs, Jānis Urbanovičs, Boriss Cilevičs, Ivans Ribakovs, Aleksejs Vidavskis, Valērijs Agešins, Mihails Zemļinskis, Sergejs Mirskis, Jānis Tutins, Vitālijs Orlovs, Oļegs Deņisovs, Ivans Klementjevs, Sergejs Fjodorovs, Nikolajs Kabanovs, Aleksandrs Golubovs, Aleksejs Holostovs, Igors Pimenovs, Artūrs Rubiks and Artis Pabriks (hereinafter all together referred to as Applicants), according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 3rd and 11th indent, Article 19.[2] and Article 28.[1] of the Constitutional Court Law,

on 16 February 2010 in writing examined the case

“On Compliance of the First Part of Section 5 of the Law "On State Pension and Benefit Disbursement from 2009 to 2012" with Article 1, Article 91 and Article 110 of the Satversme (Constitution) of the Republic of Latvia”.

The Facts

1. On 8 November 2007, the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima) adopted amendments to the Law “On Maternity and Sickness Insurance” that came into force on 1 January 2008 (hereinafter – the Benefit Law). The Benefit Law provided for a new type of allowance – parental benefit. Parental benefit is allocated and disbursed to a socially insured person for childcare up to the age of one year (to one of the parents, a guardian or another person for the care and raising of a child in accordance with a decision of the Orphan’s Court) if these persons are insured on the date of granting the allowance (is deemed to be an employee or a self-employed person in accordance with the Law “On State Social Insurance”) and: 1) is on childcare leave or cannot gain incomes as a self-employed person due to the childcare; 2) is employed during the child care period but is not on childcare leave or gains incomes as a self-employed person during the childcare period.

Parental benefit is granted at the amount of 70 percent of the average wage subject to social insurance payments of the recipient but no less than 70 percent of parental benefit of the double amount of State social security benefit effective as on the date of claiming the benefit.

2. On 16 June 2009, the Saeima adopted the Law “On State Pension and Benefit Disbursement from 2009 to 2012” (hereinafter – the Disbursement Law). The purpose of this law is stated in Article 1: „to provide persons with social security within the limits of the available financing according to the laws on State budget for the current year in the period from 1 July 2009 to 2012."

According to the Disbursement Law, cuts of particular payments from the special budget of social insurance were established for the above mentioned period. Thus, Section 5 (1) of the Disbursement Law provide that a person gaining incomes as an employee or a self-employed person during the childcare period, parental benefit established in the Law "On Maternity and Sickness Insurance" granted for childcare of a child born before 2 May 2010 shall be disbursed at the amount of 50 percent of the benefit amount granted" (hereinafter – the Contested Norm).

3. The Constitutional Court initiated several cases wherein compliance of Section 5 (1) of the Disbursement Law with norms of the Satversme of the Republic of Latvia (hereinafter – the Satversme) was contested. On 8 September 2009, when preparing the case for examination thereof and based on Article 22 (6) of the Constitutional Court Law, as well as Section 125 and 126 of the Rules of Procedure of the Constitutional Court, the Court took a decision to merge cases No. 2009-44-01, No. 2009-51-01, No. 2009-56-01, No. 2009-67-01, No. 2009-78-01, No. 2009-79-01 and No. 2009-80-01 into one case. The merged case No. 2009-44-01 was given the name "On Compliance of the First Part of Section 5 of the Law "On State Pension and Benefit Disbursement from 2009 to 2012" with Article 1, Article 91 and Article 110 of the Satversme of the Republic of Latvia". However, on 30 November 2009, the Court decided to merge cases No. 2009-44-01, No. 2009-95-01, No. 2009-96-01, No. 2009 97 01, No. 2009-98-01, No. 2009-101-01, No. 2009-103-01, No. 2009-105-01 and No. 2009-108-01. The merged case No. 2009-44-01 preserved the previous title.

4. The Applicants indicate that the positive duty of the State to organize and maintain the system for social and economical protection of a family follows from Article 110 of the Satversme. The legislature has concretized the right of families to a special protection by establishing different protection mechanisms (benefits, bonuses, etc.); therefore these rights have become the rights of a person. It is possible to request implementation of such rights from the State and to protect them before a court. Parental benefit is an integral part of the family protection system. The above mentioned benefit was related, at the time of introduction thereof, with the policy for improving demographic situation in the State; therefore it was necessary to introduce changes in the system taking into account interests of a child and family. However, these interests have not been observed when adopting the Contested Norm. When establishing the restriction for receiving the benefit of the statutory parental benefit in full, the Contested Norm denies the rights guaranteed in Article 110 of the Satversme and the rights concretized in normative acts on social and economic protection of family in the case of child birth for a person who is employed and who has already been granted such benefit and the disbursement has been initiated.

The Applicants hold that the Contested Norm does not comply with the principle of legal security that follows from Article 1 of the Satversme. The principle of legal security provides that a person has the right to count on statutory rights and the fact that the State would observe these rights in accordance with the fundamental principles of a law-governed State. Under the effective normative regulation, each Applicant was granted parental benefit that was reduced by 50 percent based on the Contested Norm. The Recipients have reasonably counted on the fact that measures meant for improvement of democratic situation could only be restricted if birth indices would have increased.

According to the Applicants, the parental benefit granted to persons before the date of coming into force of the Contested Norm could not be reduced because these persons could lawfully confide in receiving such benefit, and this legal security should be protected. Reduction of the benefit could only be applied to those persons who did not yet have the right to receive parental benefit at the date when the Contested Norm came into force. This point of view of the Applicants is testified by the fact that before adoption of the Disbursement Law the Prime Minister Valdis Dombrovskis announced in public that amendments in the benefit system would not apply to those whom benefits have already been granted and the principle of legal security would be observed.

Consequently, in the result of the amendments to the legal regulation regarding already allocated parental benefits, the granted rights of persons have been restricted without reason, and the legislature has not implemented a lenient transition to the new legal regulation; therefore the Contested Norm does not comply with Article 1 of the Satversme.

The Applicants hold that the Contested Norm neither complies with the principle of proportionality that follows from Article 1 of the Satversme. One of the criteria of proportionality that should be observed by the legislature is assessment of such alternative measures that would infringe at a lesser extent the fundamental rights. Such assessment has not been made. Moreover, if employed parents have chosen not to work taking into consideration the consequences of the Contested Norm, they would not pay taxes. Consequently, the legitimate objective of the Contested Norm, which is reduction of budget expenses and increase of budget incomes, would not be reached.

The Applicants indicate that the Contested Norm does not comply with the principle of equality guaranteed in Article 91 of the Satversme. All parents who have made social insurance payments both, who continue working and who take a childcare leave, are equal and they have equal right to receive parental benefit. The Contested Norm reduces, without reason, parental benefit for employed persons by 50 percent. The Applicants emphasize that such restriction has already been recognized as non-constitutional in the Judgment by the Constitutional Court in the case No. 2006-07-01.

5. The institution that adopted the Contested Norm, **the Saeima** indicates in its reply that adoption of the Contested Norm is related with economic recession.

The Saeima draws attention to the fact that that the amendments of 16 June 2009 excluded, from the Benefit Law, the norm that provided that parental benefit is granted to a person who gains incomes as employee or a self-employed person during the childcare period. Thus it was planned to ensure the main purpose of the State social insurance, namely, the State social insurance guarantees a certain substitution for incomes of a person in case if he or she loses labour income. Persons who are caring for a child aged up to one year and have work do not lose their labour income.

Moreover, if these persons receive both, a wage and parental benefit, enjoy a better situation if compared to persons who are on childcare leave and receive parental benefit only. Changes regarding allocation and disbursement of parental benefit have the purpose not only to adjust the State social insurance system in long term but also to ensure sustainable functioning of self-financing system because this benefit has been introduced in 2008 in the frameworks of the existent social insurance payment rate (33.09 percent). The purpose of these changes is also protection of the rights of the child, which is ensuring of a full-fledged parent care for a child aged up to one year.

The Saeima maintains that the purpose of the Contested Norm is not only to ensure interests of the State budget during economic recession when it is necessary to reduce budget expenses and balance incomes and expenses of the State special budget of social insurance but also to exercise the rights of persons to social security in accordance with Article 116 of the Satversme. Consequently, the Contested Norm is necessary for ensuring substantial interests of the society and the State. Moreover, the measures selected for reaching the above mentioned aims are adequate because adoption of the Contested Norm ensures saving of budget resources and balances interests of all recipients of the State social security. Consequently, the Contested Norm shall be regarded as proportional and appropriate for reaching the objective. The benefit gained by the society is greater than the detriment caused to right of a person taking into account the general situation in the State and restrictions established for other groups of persons.

According to the Saeima, in the particular situation it is possible to deviate from legal regulation beneficiary for a person if the person is given the possibility to understand motivation of such action as well as the fact whether the activities of the legislature under the particular circumstances is necessary by objective considerations and is not arbitrary. The principle of legal security does not mean that laws would not be amended. Likewise, the principle of legal security does not protect the amount of resources allocated by the State for disbursement of benefits and other social services. In the case of interaction of several constitutional values, the legislature enjoys freedom of action to provide for the most appropriate solution. Mechanical protection of legal security in cases when it contradicts other constitutional values cannot be absolute.

The Saeima holds that the Contested Norm complies with Article 91 of the Satversme. Employed and non-employed recipients of parental benefit enjoy comparable legal circumstances. The Contested Norm provides for a different attitude towards these two groups of persons, and this attitude has an objective and reasonable grounds.

The increase of the number of recipients and the amount of parental benefit has caused the following increase of budget expenses: 66.7 million lats were spent in 2008 and 82.9 millions lats are planned in the budget of 2009 (according to the Law "On State Budget for 2009"), which exceeds the index of the previous year by 24.4 percent.

By establishing disbursement of parental benefit at the amount of 50 percent from the amount of benefit granted, the savings of resources in 2009 constitutes 3.3 million lats. Since the incomes into the State special budget of social insurance in 2009 do not cover the expenses, any saving of resources is substantial for balancing the budget. The Saeima concludes that the different attitude towards persons to be applied the restriction of the established amount of the benefit in accordance with the Contested Norm is proportional with the benefit gained by the society (i.e. ensuring disbursement of social insurance services).

The Saeima emphasizes that Article 110 of the Satversme guarantees support for family; however it does not confer a person the subjective right to receive a particular State support of a certain type or amount. This Article firstly commits the State to form an adequate system (normative one, institution one etc.) and to perform such support measures to safeguard children, family and marriage and observe other norms and legal principles of the Satversme that would be efficient enough and comply, as far as possible with the needs of addressees.

The Contested Norm does not prohibit a person who is employed and caring for a child to receive parental benefit as such. On contrary – it ensures employed recipients of parental benefit the possibility to receive, during the transitional period (from 1 July 2009 to 2 May 2010) parental benefit at the amount of 50 percent. The possibility established for all persons who care for a child aged up to one year to receive parental benefit during the transitional period, ensures fulfilment of the positive duty of the State included in Article 110 of the Satversme at the minimum permitted extent. Establishment of a different amount of parental benefit for certain groups of person in the case under review cannot be regarded as failure to fulfil the above mentioned duty and this does not contradict Article 110 of the Satversme.

6. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that in the case of amendment of any such legal regulation that restricts the rights of a person and infringes the confidence of a person into stability and constancy of a norm, the State has a positive duty to establish a sufficient transitional period within which a person would weigh out possibilities and circumstances and plant one's future in accordance with the new legal regulation.

The Saeima adopted the Disbursement Law on 16 June 2009, but the date of coming into force of it was 1 July 2009. The term of two weeks is not a sufficient transitional period. It was also indicated in the annotation of the draft law that application of the Disbursement Law as from 1 July 2009 is not possible.

The Ombudsman holds that the legislature, when adopting the Contested Norm, has not taken into account conclusions of the Constitutional Court in the case No. 2009-07-01 and has not provided for such differentiated approach to parental benefits that would ensure observance of the principle of a socially responsible State. Therefore the Contested Norm does not comply with Article 91 of the Satversme.

The Ombudsman maintains that the legislature, taking into account international liabilities of Latvia in the field of social rights and what has been established by the Constitutional Court, has fulfilled the positive duty that follows from Article 110 of the Satversme at the minimum amount permitted. However, the Ombudsman draws attention to mutual relation of legal principles and emphasizes that Satversme is an aggregation of legal norms; therefore it holds that the Contested Norm breaches Article 110 of the Satversme in conjunction with Article 1 of the Satversme.

7. The Ministry of Welfare, in its reply to the Constitutional Court, indicates the following: when implementing the Concept on Increase of State Social Benefits for Families after Childbirth (hereinafter – the Concept), changes regarding one of the State social benefits were introduced since 1 January 2005 that was disbursed from the State basic budged, namely, changes in the childcare benefit system. The childcare benefit, like all other State social insurance benefits, was established as a constant sum disbursed to a non-employed person who cared for a child aged up to one year, as well as a person who cared for a child aged from one to two years. However, childcare benefit for an employed person, up to the moment when the child reaches the age of one year, was calculated based on the previous labour incomes of the particular persons, i.e. the amount of the above mentioned benefit was established based on the principles characteristic to State social insurance benefits.

It is essential to establish the common procedure for allocating and disbursing of the State social benefit and the State social insurance benefit, as well as to finance them in accordance with the principles of the respective benefit system with a view to ensure sustainable and efficient functioning of the system in the future.

One of the types of social benefits is childcare benefit, the purpose of which is to provide a considerable support for a person caring for a child aged up to the age of one year. The purpose of paternity benefit as the State social insurance benefit is to compensate labour incomes no more received by a person due to childcare. Pursuant to the effective normative regulation, parental benefit also compensates expenses incurred by a person due to the childcare.

State social insurance benefits, including parental benefit, are disbursed from the special budget of social insurance. The main purpose of these benefits is compensation labour incomes for a person, who has lost them due to setting in of a social risk (for instance, pregnancy, illness, unemployment, childcare etc.). The common social insurance principle provides that the social insurance service to be received should comply with the social insurance payments made.

The Ministry of Welfare holds that, when adopting the Contested Norm, the legislature has selected socially fairest solution, namely, reduction of the parental benefit by 50 percent applies only for those person who continue working when caring for a child. Employed persons who receive a wage and parental benefit enjoy a better situation if compared to persons who are on a childcare leave and receive parental benefit only.

The Constitutional Court has established:

8. The first sentence of Section110 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."

It has been established in the case-law of the Constitutional Court that the positive duty of the State to form and maintain social and economical protection system for families follows from the first sentence of Article 110 of the Satversme (*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 positive duty of creating and maintaining the system of family social and economical situation, 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*).

One of the kinds of special family protection is provision of additional support due to childbirth. The State provides a special support for families with children aged up to two years. The necessity of such benefit is related with the fact that newborns need special care. Usually these are parents of the child who undertake such care; therefore they are no more able to earn living at the same level as before childbirth.

9. A new benefit was established in 1995 with a view to provide support for families. The new benefit was childcare benefit.

9.1. It was enshrined in 1995 Law "On Social Assistance" which was amended by the State Social Benefit Law as from 1 January 2003.

In the laws, State social benefits were defined as State support in the form of money payments which are received by persons belonging to certain groups of inhabitants in situations when additional expenditures are necessary or when these persons cannot obtain income and when a compensation from the State social security system is not provided".

Initially childcare benefit was guaranteed for all parents equally to be received as a social benefit based on the possibilities of the State budget funding. Benefits were differentiated depending on the age of the child (aged up to one year and a half – 40 lats, and aged one and a half years to two years – 7.5 lats). Moreover, during this period, the system for compensating loss of incomes due to childcare did not exist.

9.2. Taking into account the low demographic indices in Latvia, the legislature considered to increase the state support to be allocated t families. It is indicated in the Concept: "Efficiency of state social benefits (impact on stabilization of material basis of families, increase of family life quality and consequently impact on demographic processes in the State) has reduced during the last years. This is the efficiency of childcare benefit that has rapidly decreased. The amount of childcare benefit for a child aged up to the age of one and a half years constituted 37.5 percent from the minimum wage of the State (80 lats), whilst the benefit for a child aged 1.5 to 2 years constituted only 9.37 percent from the minimum wage of the State" (*Concept on Increase of State Social Benefits for Families after Childbirth //http://www.politika.lv/polit_real/files/lv/LM_240804_Konc_par_soc_pabalstu_paliel_gim.doc.).*

To improve the above described situation, it was suggested to increase childbirth benefit and childcare benefit.

In the result of implementation of the Concept, changes to the childcare benefit system were introduced as from 1 January 2005, namely, the amount of childcare benefit for an employed person caring for a child (in on a childcare leave and is not employed) aged up to the age of one year depends on the incomes of the person and is equal to his or her wage after tax that the person was received before the child birth

(70 percent of the average wage of a person subject to insurance payments). Minimum amount was also established for the above mentioned benefit, which was no less than 56 lats per month, and the maximum amount thereof was 392 lats per month. However, a non-employed person caring for a child aged up to the age of one year, as well as the person caring for a child aged from one to two years, received a constant sum at the amount of 50 lats, which was equal to the amount of other State social benefits.

The childcare benefit reform implemented in accordance with the Concept had several purposes. First, it aimed at introducing socially fair and economically efficient childcare benefit system, i.e. a system that would facilitate demographic situation in the State and ensure full-fledged care for children, especially newborns. Second, it is aimed at facilitating direct involvement of parents in childcare, raising and baby-sitting, as well as insuring the possibility for at least one of the parents to remain with the child (*see: Judgment of 4 November 2005 by the Constitutional Court in the case No. 2005-09-01, Para 13*).

Increase of the amount of the benefit for an employed person on a child leave provided, on the one hand, an additional support in relation to child birth and, on the other hand, fully or partially substituted the lost incomes of the person because the maximum amount of the benefit was established.

9.3. Based on constitutional claim submitted by several persons, on 7 April 2005 the Constitutional Court initiated the case No. 2005-09-01 "On the Compliance of the Provision Incorporated in Section 7 (Item 1 of the First Paragraph) of the Law on State Social Allowances – "if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave" with Articles 91, 106 and 110 of the Republic of Latvia Satversme" (hereinafter –case No. 2005-09-01).

On 4 November 2005, the Constitutional Court adopted a decision in the above mentioned case by recognizing the contested provision of Section 7 (Item 1 of the First Paragraph) as non-compliant with Article 110 of the Satversme and declared it as null and void as from 1 March 2006.

It was concluded in the judgment that the legitimate objective could be reached by measures that would restrict the rights of persons at a lesser extent. For instance, the person could be allowed to work part-time and receive the minimum amount of the allowance, or such an allowance, which would be smaller than in the case, if the person would not work. That it would encourage the parents to choose not working during the first year of life of the child; however, the possibility to work part-time would be maintained for those parents, for whom it would be necessary.

9.4. From 8 March 2006, childcare benefit was also granted to a person who was on a childcare leave and still continued working. During the period from 8 March 2006 to 28 February 2007, an employed person caring for a child aged up to one year and continued working during the childcare period received the benefit at the amount of 50 percent (70 percent of the person's average wage subject to insurance payments) but no less than 56 lats and no more than 392 lats per month. However, as from 1 March 2007, childcare benefit for all persons caring for a child aged up to one year (disregarding the fact whether these persons are on childcare leave or continue working) were granted at the equal amount - 70 percent of the person's average wage subject to insurance payments but no less than 56 lats and no more than 392 lats per month.

9.5. On 28 March 2006, based on application of twenty members of the 8th Saeima lodged before the Constitutional Court, the case No. 2006-07-01 "On the Compliance of that Paragraph of Section 1 of the Law "Amendments to the Law on State Social Allowances" by which a New Item has been Incorporated into the State Social Allowances Law as well as the Compliance of its Section 2 with Article 110 of the Republic of Latvia Satversme (Constitution)" (hereinafter – the case No. 2006-07-01) was initiated.

Unlike the legal norms analysed in the case No. 2005-09-01, the norms contested in the case No. 2006-07-01 did not prohibit a person who is employed and is caring for a child to receive childcare benefit as such, namely, they did prohibit to receive the benefit at the minimum amount or the benefit at the amount of 50 percent of the benefit established for a person who is on a childcare leave.

In the above mentioned case, the Court concluded that Article 110 of the Satversme commits the State to support family; whilst it does not confer a person the subjective right to receive the particular State support in the form of a certain benefit and amount thereof. However, in the above mentioned case, the Constitutional Court recognized breach of the principle of equality because families with children aged up to one year enjoy equal and comparable circumstances; namely, they have extra needs in the financial and material aspect, as well as the need to have more free time to devote it to the child. All children of this age have the right to receive the necessary State support that would ensure them the best care possible and, preferably, presence of their parents.

However, in the judgment in the case No. 2006-10-03 "On the Compliance of Item 3.1 of the Cabinet of Ministers December 7, 2004 Regulations No. 1003 "On the Procedure under which the Allowance for Childcare and Additional Payment for Twins or Several Children Born in one Confinement shall be Granted and Paid" and the Words "and not more than 392 Lats per Month", of Item 2.2 which are Included in the Norms of the Cabinet of Ministers August 8, 2006 Regulations No. 644 "On the Amount of the Allowance for Childcare and Additional Payment for Twins or Several Children Born in one Confinement as well as the Procedure for its Revision, Granting and Payment" with Section 91 of the Republic of Latvia Satversme" (hereinafter – case No. 2006-10-03), the Constitutional Court indicated that the State has the right to establish minimum and maximum amount of childcare benefit as a type of social benefit.

9.6. To assess the situation and to implement conclusions made in judgments of the Constitutional Court, the Concept "On Establishment of Benefits" was elaborated. It was indicated in the concept that formation of a mixed system of childcare benefit in the frameworks of the State social benefit system would not comply with the essence and principles of State social benefits; moreover, this would cause misunderstandings to users of the law and recipients of child care benefit. "To eliminate the misunderstandings and to form explicit and understandable child care benefit system for all recipients of social benefits, it is necessary to change the existent childcare benefit system by preserving those childcare benefits in the system of State social benefits that are being paid as a constant sum, whilst all those benefits, the amount of which is established based on incomes of a socially insured person, i.e. by substituting childcare benefit for those people who care for a child aged up to one year by a new State social insurance benefit, should be transferred to the State social insurance system" (Concept on Establishment of Parental Benefit // *http://www.mk.gov.lv/doc/2005/LMkonc_020507_1.doc*).

On 20 September 2007, the Ministry of Welfare was obligated, by Resolution No. 111-1/152 of the Prime Minister, to prepare and submit amendments to the respective legal acts on optimization of childcare benefit system by establishing a new State social insurance benefit – parental benefit that would substitute State social childcare benefit for employed persons caring for a child aged up to one year. It was also established in the Resolution that parental benefit shall be financed from the State social insurance special budget of disability, maternity and sickness by preserving a constant social insurance payment rate, whilst the rate would be mutually reallocated among the particular types of social insurance.

According to the calculations performed by the Ministry of Welfare at the beginning of 2007, when benefits to socially insured persons were paid from the special budget of social insurance, the social insurance payment rate should be increased by 1.3 percent.

Since amendments to the Benefit Law were elaborated to establish parental benefit, these amendments establishing a new benefit of the social insurance system, it was also necessary to introduce amendments to the Law "On State Social Insurance" with a view to establish a new type of social insurance (parental insurance), which according to the Resolution of the Prime Minister was included in the effective social insurance payment rate (33.09 percent).

On 8 October 2007, the Cabinet of Ministers submitted to the Saeima a draft law "Amendments to the Law "On State Social Insurance"" that provided for introducing a new type of social insurance – parental insurance. It was planned to disburse the above mentioned benefit to employed parents, too, which would constitute the same amount of the benefit as that received by unemployed parents caring for a child. It was planned to disburse the benefit from the State social insurance budget.

It was also explained in the annotation to the draft law that State social insurance is one of the fields of social security that guarantees a person a certain substitution of incomes in case if labour incomes are lost due to the retirement age, disability, loss of breadwinner, unemployment, disease, parental leave and postnatal period, as well as in the case of an accident at work or an occupational disease. In the annotation, several problems were also highlighted. First, it was planned to disburse parental benefit to employed persons without restrictions and at full extent, these persons also receiving labour incomes; however this does not comply with the essence of social insurance. Second, introduction of parental benefit would be ensured in the frameworks of the present social insurance payment rate; therefore this would negatively influence social insurance special budget in the long term. Consequently, according to the prognosis of the social insurance budget model, the reserve accumulated in the social insurance special budget would be used 10 years earlier, i.e. already in 2032 after introduction of parental benefit and disbursing it from the state social insurance budget in the frameworks of the effective social insurance payment rate (*see: Annotation to the draft law No. 446/Lp9http://www.saeima.lv/saeima9/lasa?dd=LP0446_0*).

However, on 8 November 2007, the Saeima, based on a political decision, adopted amendments to the Benefit Law. The law came into force on 1 January 2008. The Benefit Law provides for introduction of parental benefit. It is allocated and disbursed to socially insured person caring for a child aged up to one year if the person is ensured on the date of granting the benefit (it is deemed to be an employee or a self employed person in accordance with the Law "On State social Insurance") and:

1) in on a childcare leave or does not receive incomes as a self employed person due to childcare;
2) is employed during the childcare period but is not on a childcare leave or gains incomes as a self-employed person during the childcare period.

Parental benefit is granted at the amount of 70 percent of the average wage subject to social insurance payments of the recipient but no less than 70 percent of parental benefit of the double amount of State social security benefit effective as on the date of claiming the benefit.

9.7. Before 1 January 2008, childcare benefit was established as a type of social benefit and was disbursed from the State basic budget. However, the new parental benefit was established as a type of social insurance. Moreover, the benefit was disbursed from the social insurance budget with equal conditions for both, employed and unemployed persons.

The effective social insurance system of the State is based on certain principles and conditions. Based on such system, the basic principles of insurance, the range of insured persons, insurance risks and resource accumulation procedure is established by law; therefore such insurance is mandatory as to its nature. It is established in Section 3 of the Law "On State Social Insurance" that social insurance in Latvia is "a set of measures organized by the State in order to insure the risk of a person or dependants thereof to loss of employment income in connection with sickness, invalidity, maternity, unemployment, old age, an accident at work or the contraction of an occupational disease of the socially insured person, as well as additional expenditures in connection with the death of the socially insured person or dependants thereof". Compensation of expenses due to childcare, as it is in the case of parental benefit, was not established at the initial stage.

However, the new normative regulation caused a situation that families could choose to attribute parental benefit to the parent who received higher remuneration before childbirth. For instance, in a family where one of the parents was unemployed before the childbirth, whilst the other parent was employed, the benefit was chosen to be attributed to the one who was employed and received a wage (parental benefit) rather than the one who was employed and was on a childcare leave (social benefit – childcare benefit would constitute LVL 50). However, in cases when both parents were employed before the childbirth, the family asked to allocate parental benefit to the one who received a higher wage, though this was the other parent who remained at home with the child and who would receive the benefit at the amount of 70 percent of his or her average wage.

Such use of parental benefit was in conflict with the conclusions made in the judgment No. 2006-07-01 by the Constitutional Court regarding the effective social insurance system of the State because in the result of this a group of persons was formed who were not socially insured during the childcare period. For instance, if parental benefit was allocated to an employed parent who had a higher wage, social insurance payments were made from the wage of this particular person. However, the other parent who was on childcare leave and did not receive parental benefit, was not socially insured since he or she received neither benefit, nor wage. Therefore persons could not receive any other social insurance services because they have not made social insurance payments for almost a year.

Moreover, the newly established type of insurance, i.e. parental insurance did not provide for an additional social insurance payment rate, therefore it deteriorated the situation in the State social insurance budget. One of the reasons of such a big deficit in the social insurance budget was inconsiderate definition of parenting benefit as a type of social insurance. In 2008, approximately 66.7 million lats were spent for the disbursement of this benefit (when introducing this benefit, it was planned to use about 26 million lats), and already 43 million lats were used for this purpose in the first half of 2009 before the Contested Norm was adopted (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 31.1.2*).

10. On 16 June 2009, the Saeima adopted the Law "Amendments to the Law "On Maternity and Sickness Insurance" that came into force on 1 July 2009. Section 2 thereof provides that for children born after 3 May 2010 parental benefit shall be allocated only to those socially insured person who are on childcare leave and therefore are not employed and do not gain any income as self-employed person. Therefore it was decided not to grant parental benefit to persons who are not on a childcare leave during the childcare benefit but at the same time are employed or gain incomes as self-employed persons. It is indicated in the annotation to the draft law that "As to parental benefit, the Draft Law provides the following:

1) to exclude the norm providing for granting parental benefit to a person who is employed during the childcare period and is not on a child care leave or gains income as a self-employed persons during the childcare period;

2) to establish that parental benefit disbursement shall be ceased for the period when a person receives unemployment benefit.

According to the principle of legal security, the norm established in Section 1 would come into force 306 days after coming into force of this Law" (*annotation to the draft law No. 1241/Lp9 // [http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/06A1350730F90AEEC 22575C5002A27B2?OpenDocument](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/06A1350730F90AEEC22575C5002A27B2?OpenDocument)*) .

It was also emphasized in the annotation that "by excluding, from the Law "On Maternity and Sickness Insurance", the norm that provide that paternity benefit shall be allocated to a person who gains incomes during the childcare period as an employee or a self-employed person, functioning of the fundamental principle of state social insurance is ensured, namely, the State social insurance guarantees a person substitution of certain incomes when he or she loses labour incomes. If persons caring for a child aged up to one year continue working, they do not lose their labour incomes. Moreover, persons who receive a wage and parental benefit enjoy better circumstances if compared to those persons who are on a childcare leave and receive parental benefit only".

When adopting the amendments, it was also established that for a child born before 1 July 2009 or within 306 days after this term, parental benefit shall be granted to a person caring is employed or gains incomes as a self-employed person during the childcare benefit. Therefore Transitional Provisions of the Benefit Law were supplemented by Section 17 that provided that during the period from 1 July 2009 to 2 May 2010 a person who gains incomes as an employee or a self-employed person during the childcare period, shall be disbursed the statutory parental benefit in accordance with the Disbursement Law.

According to Section 5 (1) of the Disbursement Law adopted by the Saeima on 16 June 2009, during the period from 1 July 2009, namely, the date when this law comes into force, to 2 May 2010 a person who is deemed to be a socially insured person (an employee or a self-employed person) during the child care period in accordance with the Law "On State Social Insurance", parental benefit established in the Benefit law shall be disbursed at the amount of 50 percent of the benefit granted at the first date of the month that follows the month when a person has become a socially insured person (an employee or a self-employed person) in accordance with the Law "On State Social Insurance".

Consequently, the Contested Norm provided for a transitional period of 306 days to adjust disbursement of parental benefit in accordance with the effective social insurance system of the State.

11. The ability of the State to form an effective and working social protection system for families depends on financial resources and the general economic situation of the State. During the economic growth the State has a possibility to provide higher benefits for certain inhabitants and also to increase financial and other kinds of investments into the system of implementation of social rights of a person.

Article 110 of the Satversme commits the State to undertake broad measures for protection of families and children, including the duty to provide financial support for parents during the first years of age of a child. However, Article 110 of the Satversme does not require that the State should apply only services of social security system to ensure material welfare of a child. The care provided by the State only would contradict the first sentence of Article 110 of the Satversme because this is not only the duty of the State but also that of parents to care for their children and meet their needs (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 10*). If the State would undertake all financial care for children, the traditional relation structure within the family would be destroyed as parents would be denied the possibility to take care for their children and get emotional satisfaction for this.

However, in accordance with the interests of the child the State has the duty to render reasonable support to the family, especially in cases when the parents are not able to ensure all the necessary means for the child (*see: Judgment of 2 November 2006 by the Constitutional Court in the case No. 2006-07-01, Para 13*).

12. If the State would have resigned from providing support for families, then it would deny the right to social and economical protection of families with children aged up to the age of two as guaranteed in Article 110 of the Satversme and other normative acts. Consequently such a restriction shall be considered as the restriction of fundamental rights established by the Satversme.

According to the effective normative regulation, families with children aged up to one year receive the following State support:

1) parent who was unemployed before the childbirth and who cares for the child shall receive the State social benefit at the amount of 50 lats (State Social Benefit Law, Section 7 (1) Indent 1);

1) parent who was employed before the childbirth and who is on a childcare leave (stays with the child) shall receive the State social insurance benefit – parental benefit which shall be equal to his or her previous income level;

3) parent who was employed before the childbirth and continues working shall receive the State social insurance benefit – parental benefit at the amount of 50 percent of his or her previous income level.

The legislator has fulfilled its positive duty that follows from Article 110 of the Satversme by ensuring all persons who have children aged up to the age of one with the possibility to receive State support – either parental benefit or childcare benefit.

Establishment of different amounts of benefits to be granted to certain groups of persons shall not be regarded as avoidance to fulfil the above mentioned duty and therefore it complies with Article 110 of the Satversme. Moreover, in accordance with Section 110 of the Satversme the legislator enjoys an extensive freedom of action when regulating the issue on the amount of the childcare allowance and on what criteria this or another group of persons shall receive the above allowance. However, this freedom is not unlimited. The other norms of the Satversme and the principles following from it, first of all the principle of universal equality, determine the boundaries of it (*see: Judgment of 2 November 2006 by the Constitutional Court in the case no. 2006-07-01, Para 14*).

Consequently, in the frameworks of the case under review, it would be investigated, based on the limits of the claim, whether the Contested Norm complies with Article 91 of the Satversme and whether the principle of legal security and that of proportionality have been observed.

13. The Applicants hold that employed parents should be disbursed the same amount of benefit as for unemployed ones because both these groups have children aged up to one year and both groups have mad social insurance payments.

Section 91 of the Satversme provides that “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.” The Constitutional Court has reiterated in its judgments that the principle of legal equality obliges equal attitude only to persons who are in equal and comparable circumstances. A different attitude to such persons shall be permitted only if this has reasonable and objective grounds. The Constitutional Court has also emphasized that the principle of legal equality concedes and even demands different attitude to persons, who are in different circumstances. However, only if it has been established that there is an objective and reasonable aim, the principle of equality permits different attitude to persons, who are in different circumstances (*see, e.g.: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 13*).

14. In order to assess compliance of the Contested Norm with the first sentence of Article 91 of the Satversme, it is necessary to investigate whether persons enjoy equal and comparable circumstances, whether the Contested Norm provides for a different attitude, and whether the different attitude has an objective and reasonable grounds, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed.

Unlike the case No. 2006-07-01 wherein the Constitutional concluded that all families with children aged up to one year enjoy equal and comparable circumstances since they all need State support (social benefit), without concretizing the amount thereof, the comparison criterion has been observed in the case under review, namely, all persons having a child aged up to one year are provided with State support depending on the status of the person (socially insured or non-insured person).

The dispute is about the amount of benefit to be disbursed to socially insured persons, this amount depending on the fact whether the persons continues working or is on a childcare leave. Therefore it is necessary to investigate whether persons who receive parental benefit and are on a childcare leave (hereafter – unemployed parents) and persons who receive parental benefit and continue working (hereinafter – employed parents) enjoy equal and comparable circumstances.

The Ministry of Welfare indicates that "the aim of parental benefit as social insurance benefit is to compensate incomes to be gained by a person but lost due to childcare. According to the effective normative regulation, parental benefit also helps compensating extra expenses incurred by a person due to childcare" (*see: case materials, Vol. 1, pp. 170*).

These are unemployed parents (the first group) during the first year of age of a child who take care of the child. In such a situation, a person incurs extra expenses due to childbirth, and he or she does not have the possibility to gain incomes from paid employment due to the childcare leave; therefore the level of welfare of the family decreases. Consequently, support is necessary for both, a newborn and the parents (family) who do not have the possibility to gain incomes.

Employed parents (the second group) manage to work during the first year of age of the child or entrust childcare to a third party. In such a case parents do not lose their incomes and are capable of ensuring family welfare at the previous level. Consequently, they need support only to cover expenses due to the childbirth.

It can be concluded from the aforesaid that unemployed parents and employed ones do not enjoy equal and comparable circumstances because parental benefit is meant for different aims: in the first case – to substituting of lost incomes and provision of support for a family with a child aged up to one year, and in the second case – provision of support only for families with children aged up to one year. Consequently, establishment of different amount of benefit to employed parents and unemployed ones is permissible.

Establishment of equal amount of benefit for these groups would contradict the principle of equality established in Article 91 of the Satversme unless such establishment has reasonable and objective grounds.

Since the Contested Norm provides for a different attitude to persons who do not enjoy equal and comparable conditions, it does not breach Article 91 of the Satversme.

15. The Applicants hold that, when reducing parental benefit, it was necessary to observe the principle of legal security by providing for a reasonable transitional period. Moreover, they emphasize that this principle was observed regarding State civil services, namely, Para 1 of Transitional Provisions of the Law "On Remuneration Officials and Employees of State and Local Government Institutions in 2009" provided for a transitional period regarding application of the restriction of Section 5 (3) Indent 1 of the above mentioned law in 2009 when disbursing childbirth benefit. These restrictions provide that childbirth benefit shall be calculated at the amount of two monthly wages (monthly wage, salary) for each child but no more than 1000 lats per child. Section 1 of the Transitional Provisions also provided that the above mentioned norm that the above mentioned norm shall not apply to cases when a child was born within the period of 306 days after coming into force of this law, which ensures that the restrictions do not apply to persons who got pregnant before coming into force of the law.

Article 1 of the Satversme provides that Latvia is an independent democratic republic. The duty of the State to observe a range of principles of a law-governed State, including the principle of proportionality and that of legal security follow from the notion of a democratic republic included in the above mentioned article (*see: Judgment of 10 June 1998 by the Constitutional Court in the case No. 04-03(98), the Concluding Part and Judgment of 24 March 2000 in the case No. 04-07(99), Para 3 of the Concluding Part*).

The Constitutional Court has indicated that the principle of legal security also determines that – as regards the issued normative acts - the state institutions shall be consistent in their activities and observe trust in law, which may arise to persons in accordance with a certain legal norm. In his/her turn the individual – in conformity with this principle – may rely on constancy and immutability of the legal norm, passed in accordance with the law. He may positively plan his future in accordance with the right, which the norm has endowed him with (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.2 of the Concluding Part and*

Judgmetn of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 21).

The principle of legal security also requires protecting the trust conferred to a person regarding preservation and exercise of his or her rights. It includes the duty of the State to fulfil liabilities undertaken by it before the people. Otherwise people would cease trusting in the State and the rights.

However, the principle of legal security does not exclude the right of the State to amend the effective regulation. Otherwise this would lead to inability of the State to react to changing life. When amending legal regulation, however, the State has the duty to take into account the rights, in preservation and implementation of which people trusted. The principle of legal security requires that the State, when amending normative regulation, would observe a reasonable balance between trust of persons and the interests that should be ensured by amending regulatory framework.

In the field of social law, a particular importance is assigned to the fact whether the State, by means of its positive actions, is able to ensure meeting of individual needs that follow from a particular basic right. It should also be taken into account that the norms of Satversme basically do not guarantee persons any right to a particular amount of social security and the State should refrain from undue interference with financial relations of the citizens.

Taking into account the principle of compliance of a legal norm with legal principle that follows from the State constitutional fundamental values established in Article 1 of the Satversme, it should be taken into account that manifestation of these principles in different fields of law might differ. The character of the Contested Norm, relation with other norms of the Satversme, and its place in the legal system impacts the control implemented by the Constitutional Court. Namely, freedom of action of legislator, when regulating a particular question, can be either broader or narrower, and the Constitutional court has the duty to assess whether the extent of freedom of action realized by the Saeima complies with the established limits (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 15.2 and Para 15.3*). Consequently, in the case under review, compliance of the Contested

Norm with the principle of legal security and that of proportionality shall be assessed in the light of Article 110 of the Satversme.

16. The principle of legal security in conjunction of Article 110 of the Satversme in the context of parental benefit shall be assessed taking into account the duty to ensure state support for a family.

Chapter VIII of the Satversme includes not only civil and political rights and freedoms, but also economical, social and cultural rights. However, when trying to secure and protect all the fundamental rights of a person, guaranteed in the Satversme as a unified system, one shall not ignore the structural differences of the civil and political rights from the economical, social and cultural rights. In cases of human rights of the first generation the State shall mainly not interfere and respect the inner freedom of an individual as the personality and society member, but the rights of the second generation require the State to satisfy economic, social and cultural needs of a person and render adequate services in these sectors (*see: Judgment of 11 December 2006 by the Constitutional Court in the case No. 2006-10-03, Para 14.1*).

The right of a family to receive a special state protection ensured in Article 110 of the Satversme shall be regarded as social rights. The Constitutional Court has concluded that the duty to ensure access to medical product shall depend on the resources at the disposal of the State (*see: Judgment of 29 September 2008 by the Constitutional Court in the case No. 2008-37-03, Para 12.1.2*). In the field of social rights, the State also enjoys a broad freedom of action when deciding upon the way of fulfilling its liabilities in the frameworks of restricted resources. However, this freedom of action is not unrestricted.

Moreover, decisions of the state when implementing economical, social and cultural rights, usually have a substantial political dimension – the legislator usually adopted a decision based on political rather than legal considerations, which is determined by economical situation in the State and the need of the society or a part thereof for state assistance or support, as well as concept by the legislator of the principles of provisions of social services by the State.

Thus in the sector of realization of social rights one cannot advance the same strict requirements as those with regard to non- interference in realization of civil and political rights of a person (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 16*).

The Constitutional court has already indicated that the amount of social security can depend on the amount of financial resources at the disposal of the State. The State has the right to restrict disbursement of benefits if it is counterbalanced by interests of the society and the right of other persons to receive financial support from the State. The State also has the duty to observe the core of the basic rights of persons (i.e. the minimum level of State support) that the state cannot fail to fulfil based on the lack of financial resources.

For instance, as to the duty of the State to ensure pensions, the Constitutional Court has indicated that "if the State reduces the pension disbursement amounts for a period of time in the situation of rapid economic recession, there is still a definite body of fundamental rights that the State is not entitled to derogate from. In this context, it is essential to determine whether the rights of pension recipients to social security have been infringed according to substance" (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 31*).

Even during economic recession it is necessary to ensure the established State benefit. In the event if it is reduced, it is necessary to observe proportionality, i.e. the State does not have the right to refrain from what it has promised by thus causing an unfavourable situation for a person and thus infringing the trust of persons to State support in a non-proportional manner. However, when performing this assessment, the Court has the duty to take into account interests of the society, including the interest of other groups of the society into sustainability of the social insurance system.

Consequently, 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*).

17. In order to establish whether a person has been granted legal trust to preservation or implementation of particular rights, it is necessary to take into consideration that this principle may protect only such rights, which have once been determined to the person. Thus, the main duty of the principle of legitimate trust is to protect the rights of a person in cases, when – as the result of amendments to legal regulation – the legal status of an individual is or may be worsened (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 21*). Functioning of the principle of legitimate trust depends on the fact whether the person's trust in the legal norm is legitimate, well-grounded and reasonable, in its turn, the legal regulation on its essence shall be reasonably definite and constant, so that one can 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*).

17.1. The rights of employed parents to receive parental benefit before the date of coming into force of the Contested Norm was regulated by Section $10.^4$ (1) Indent 2 of the Benefit Law. Moreover, each parent (also each of the Applicants), based on this norm, received an administrative act –the State Social Insurance Agency decision regarding allocation of a benefit, wherein a precise amount and term of reception thereof was indicated, until the child reaches the age of one year. This allowed families that were allocated the benefit to plan their financial resources by also planning certain purchases.

Consequently, Applicants were given grounds to confide in the fact that they would receive parental benefit at a certain amount and for a certain period of time. Moreover, their trust into this was based on only on the effective normative regulation but also to an individual legal act. Therefore it shall be regarded as legitimate and grounded.

17.2. Normative regulation on parental benefit was effective for a year and a half. However, parental benefit shall be regarded as a substitution for childcare benefit that existed for several years (*see: Para 9 of this judgment*). No doubt, in the course of time it was amended; however, all these amendments were advantageous for a person. This was related with the economic growth and demographic policy of the State. Consequently, normative regulation regarding parental benefit shall be regarded as fixed enough.

Consequently, the contested norm has given a person the grounds to confide in receiving of parental benefit of a certain amount and for a certain time period.

18. When assessing whether a reasonable balance has been observed between the necessity to protect legal security of persons and the necessity to ensure interests of the society, it is necessary to take into account the fact whether a lenient transition to the new regulation has been provided.

The Constitutional Court has already concluded that a lenient transition to a new regulation is characterized by establishment of a reasonable term or a due compensation (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 2 of the Concluding Part*). However, the aforesaid does not exclude that it is possible to establish such lenient transition by means of other mechanisms. Moreover, in separate cases such lenient transition is not the only criterion that determines whether a reasonable balance has been observed (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 25*).

19. Prevention of infringement of substantial interests of the society should be prior to the principle of legal security. Once having established substantial infringements of interests of the society, public institutions have not only the right but also the duty to take measures (*see: Judgment of 9 March 2004 by the Constitutional Court in the case No. 2003-16-05, Para 2 of the Concluding Part and Judgment of 6 July 2009 by the Constitutional Court in the case No. 2008-38-03, Para 13*). The

Constitutional Court has also drawn attention to the necessity to substantiate non-proportionality of infringement of legal security (*see: Judgment of 24 March 2009 by the Constitutional Court in the case No. 2008-39-05, Para 12*).

In order to ensure functioning of the basic principle of State social insurance, i.e. State social insurance guarantees a person certain income substitution after the loss of labour incomes – Section 10.[4] of the first part of Section 2 of the Benefit Law was excluded, this section providing that parental benefit shall be granted to a person who gains incomes as an employee or a self-employed person during the childcare period. Exclusion of the norm shall be regarded as restriction of the rights established in Section 110 of the Satversme. The State has the right to restrict fundamental rights of persons; however, restriction of basic rights should be provided by law, directed towards reaching of a certain legitimate objective and should comply with the principle of proportionality. In the case under review, the above mentioned norm is not contested; therefore, taking into consideration the extent of the claim, the Constitutional Court will not assess compliance thereof with Article 110 of the Satversme.

The norm regulating parental benefit for employed parents was excluded by establishing a transitional period from the date of adopting of the norm till the date of coming into force of it, which in total constituted 306 days. Such a transitional period, i.e. 306 days, has been observed in Para 1 of Transitional Provisions of the Law "On Remuneration Officials and Employees of State and Local Government Institutions in 2009". Consequently, the opinion of the Applicants that in once case a transitional period is established whilst in the other – is not, is ungrounded.

According to Section 146 of the Civil Law, the above mentioned period is the period between a person getting pregnant and the childbirth. Such period established for the transition to a new order (coordination of parental benefit with the principles of social insurance) allows persons to plan their private life. In this case, the legislator has observed the principle of legal security; however, it has also restricted, by means of the Contested Norm, the possibility to receive full amount parental benefit during the transitional period and has reduced it by 50 percent.

Consequently, it is necessary to investigate whether, when establishing a transitional period before introduction of the new regulatory framework, namely, employed parents would no more be disbursed parental benefit from the social insurance budget, the legislator had the right to restrict the amount of such a social insurance benefit.

20. The Contested Norm was adopted during economic recession in Latvia when incomes to the State budget reduced, unemployment rate increased and expenses of the social insurance budget increased. In the second quarter of 2009, Latvia underwent the most rapid reduction of economic activities in the entire European Union. For instance, the revenues of the State consolidated budget during the first six months of 2009 were for 15 percent lower than those of the corresponding time period in 2008. At the same time, the expenditures of the State consolidated budget during the first six months of 2009 were for 7.2 percent higher than those of the corresponding time period in 2008. The Gross Domestic Product drop in comparison to the first six months of 2008 was 18.7 percent. The drop persisted also in the third quarter of 2009, reaching 18.4 percent.

During this time, the financial deficit of the State consolidated budget reached 449.9 million lats or approximately 3.5 percent from the Gross Domestic Product, and the prognosis was that the deficit may reach 1.3 milliard lats or approximately 9.5 percent from the Gross Domestic Product by the end of 2009. As a consequence, both the performance of the functions of the State and the possibility of the economic activity renewal in the foreseeable future would be put in danger.

Concerning the need to balance the revenues and expenditures of the social security system, the Saeima indicated that, as a result of the economic crisis, wages had decreased and unemployment – increased. Consequently, the social insurance special budget revenues dropped. The number of socially insured persons has also decreased for 12.3 percent. It is also evident from the information furnished by the Ministry of Welfare that the actual expenditures of the social insurance special budget were for approximately 86 million lats higher than revenues during the first six months of 2009 (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 27.1*).

The cut of funding for all fields was established in the State budget. Due to restricted financial resources, the amount of parental benefit payments was reduced with a view to balance resources of the State budget in accordance with the needs and interests of the society.

The Constitutional Court has already concluded that during economic recession or other extraordinary situation the principle of legal security requires balancing of legal trust of persons with interests of the society. In such a case, a decisive role is played by the fact whether the principle of proportionality has been observed (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 25*).

21. The Constitutional Court agrees with the argument of the Saeima that during economic recession the action of the legislator should be as fast, coordinated and decisive as possible with a view to prevent possible negative consequences. To fulfil the respective duties, the legislator should be conferred a reasonable freedom of action. However, economic situation of the State or the necessity to reduce budget deficit provided that there are no other legitimate objective cannot serve as a general justification for the fact that the State refrains from the rights once conferred to persons.

Disbursement Law, which among the rest things includes the Contested Norm, has been adopted under difficult economic circumstances. In this context, the economical situation has impacted the social budget in a comparatively short time.

The special budget of social insurance is a part of the State budget. Consequently, a financial link exists between these two budgets. As revenues or expenses of the special budget of social insurance change, balance of the entire State budget is influenced. It is evident that the economical situation in the State has influenced also stability of the special budget of social insurance, and the Saeima and the Cabinet of Ministers had the duty to take measures to ensure welfare of the society in the long term.

Consequently, the Contested Norm has a legitimate objective – ensuring of sustainability of the social insurance budget by balancing its revenues and expenses, and thus – protection of welfare of the society.

22. Measures, chosen by the legislator may be regarded as proportionate for reaching the legitimate aim only if they are in compliance with the principle of the socially responsible state (*see: Judgment of 2 November 2006 by the Constitutional Court in the case No. 2006-07-01, Para 18*).

The duty of the State to form a sustainable and balanced policy for ensuring welfare of the society follows from the principle of a socially responsible State. The State has the duty to coordinate not only the rights of persons in the social field but also the necessity to ensure welfare of the entire society with its economical possibilities, as well as it must elaborate such legal regulatory framework that would be aimed at sustainable development of the State.

During economic recession, when assessing compliance of the Contested Norm with the Satversme and general legal principles, the main criterion is the fact whether the solution selected by the legislator is a socially responsible one. A socially responsible solution is such a solution, in the result of which legal interests of certain persons are balanced with those of the society. Therefore, it is necessary to assess measures selected by the legislator to ensure a lenient transitional period in conjunction with the necessity to ensure balance between economic possibilities of the State and welfare of the entire society. A socially responsible state under the particular circumstances could be based not only to provision of a lenient period for the transition to the new legal regulation but also on the fact that along with the amendments to normative acts, a person is given the possibility to implement the rights once conferred by the State, all this being based on financial possibilities of the State.

By means of the Contested Norm, adjustment of the social insurance system (and also the social insurance budget) has been initiated. IN the Judgment No. 2009-43-01, the Constitutional Court has already concluded that the newly established parent insurance was ill-considered and premature. This endangered sustainability of the social insurance budget, which is of great importance for the State to be able to ensure disbursement of pensions and social insurance benefit in the long term.

In the result of the Contested norm, it was possible to accumulate savings in the State social insurance budget (1.7 million lats each month), which in total constituted about 10 million lats in the time frame from 1 July 2009 to 1 January 2010. Moreover, in the result of the Contested Norm, the planned amount of savings in this time period was 3.3 million lats (*see: case materials, Vol. 1, pp. 170-172*).

Moreover, the Contested Norm also ensures a transitional period (306 days) to adjust the social insurance system. Consequently, measures selected by the State are aimed at reaching of the legitimate objective.

23. When assessing whether a reasonable balance has been observed, it is necessary to balance two opposite interests – protection of legal trust of persons and the necessity to amend the particular regulatory framework in the interests of the society (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 25*). However, the principle of rule of law requires reaching as fair a balance between the controversial interests of the society as possible (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 7 of the Concluding Part*).

During the transitional period, when reducing the amount of parental benefit by 50 percent for employed parents, it was taken into account that these persons who receive salary and parental benefit at the same tame enjoy better circumstances if compared with persons who are in a childcare leave and receive parental benefit only. In the first case, welfare level of the family increased after allocation of the parental benefit because one of the parents received also a salary in addition to parental benefit, whilst in the second case – the level of welfare remained at the previous level because one of the parents during the childcare leave received parental benefit only. Therefore a decisive role was played by ensuring welfare level for families before and after the childbirth at the most equal level possible (*see: case materials, Vol. 1, pp. 166 – 173*).

Moreover, families could choose to assess the amount of the benefit to be allocated and in case if the benefit was granted to father (for example, at the amount of

400 lats), whilst this was mother who took the childcare leave (whose average wage before the childcare leave constituted, for example, 300 lats net per month), it was requested to allocate the benefit to mother (constituting 300 lats) in the case of reduction of the benefit (constituting 200 lats). This is also testified by the information provided by the State Social Insurance Agency: provided that the total number of recipients of the benefit did not reduce, the number of employed recipients of parental benefit reduced from 7.7 thousand in June 2009 to 4.1 thousand in December 2009 (*see: case materials, Vol. 1, pp. 177*).

The reduced benefit during the transitional period continues fulfilling its function – to support families with children. Moreover, this benefit at the amount of 50 percent of the wage of a person will be disbursed up to the moment when the child reaches the age of one year. In any case, total incomes of the family would be higher than before the childbirth. For instance, before reduction of the benefit by 50 percent, applicant A received 821 lats per month, applicant B – 961 lats per month, applicant C – 1708 lats per month, applicant D – 421 lats per month and Applicant F – 1726 lats per month. The average amount of parental benefits allocated to all the applicants constitutes about 900 lats. According to the information provided by the State Social Insurance Agency, the average amount of parental benefit granted constitutes about 440 lats, whilst the maximum amount of the benefit for women is 2822 lats, whilst for men – 4069 lats (*see: case materials, Vol. 1, pp. 176 – 177*).

Moreover, parents can choose not to work and receive the benefit at full extent. Thus, in the result of application of the Contested Norm, incomes of parents remain at the same level as they were before the childbirth.

The fact that the State has decided to cease disbursing the State social insurance benefit to employed parents and to pay a reduced amount of benefit during the transitional period, shall be regarded as a measure for reduction of consequences of infringements caused to the rights of persons.

Consequently, during the transitional period, the State ensures families an adequate amount of support for it to fulfil its function.

24. If amendment of legal regulatory framework serves for the benefit of the society, then restriction of the legal trust of persons is permitted. The Contested Norm has been adopted with the purpose to balance revenues and expenses of the State special budget of social insurance. Economic recession denied the possibility for the State to guarantee such amount of social security that was established during the period of economic growth of the State. If no measures were taken to solve the situation, this would have influenced the possibility of the State to ensure the right of persons to social security and to guarantee sustainability of social security system. This would not comply with the principle of a socially responsible State.

Consequently, restriction of the right of employed parents to receive parental benefit at full extent during the transitional period has been established with a view to ensure substantial interests of the society. In the result of this, a fail balance between restriction of legal security of a person and the right of the society to a sustainable State social insurance system and balanced State budget was ensured.

Consequently, after having compared importance of the particular interests of persons and those of the entire society, it can be concluded that in the case under review the necessity for the Contested Norm is counterbalanced by the fact that the rights, into which persons had the right to confide, are ensured at a restricted extent. Consequently, the Contested Norm does not infringe the principle of legal security and complies with Article 1 of the Satversme.

The Constitutional Court

based on Article 30 – 32 of the Constitutional court Law,

h o l d s :

Section 5 (1) of the Law "On State Pension and Benefit Disbursement from 2009 to 2012" complies with Article 1, Article 91 and Article 110 of the Satversme of the Republic of Latvia.

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