THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, February 12, 2008

in case No. 2007-15-01

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

having regard to the application of Jolanta Kalniņa-Levina,

according to Article 85 of the Satversme [*Constitution*] of the Republic of Latvia (hereinafter – the Satversme), and Article 16 (1) and Article 17 (11) and Article 28.[1] of the Constitutional Court Law,

on January 15, 2008, in the Court Session examined the following case in written proceedings,

„On Compliance of Part 2 of Section 7.1 of the Law on State Social Allowances with Articles 91 and 110 of the Satversme (Constitution) of the Republic of Latvia"

The Constitutional Court has established:

1. On October 31, 2002 the Saeima (Parliament) of the Republic of Latvia (henceforth – the Saeima) passed the Law on State Social Allowances (hereinafter – the Law on Allowances), which took effect on January 1, 2003. In accordance with its

purpose, the Law determines the types of State social allowances and the range of those persons, who have the right to the State social allowances.

According to the first part of Section 3 of the Law on Allowances, one of the allowances to be disbursed at regular intervals shall be the care of disabled child benefit, and it shall be disbursed as from January 1, 2006.

The first part of Section $7.^{1}$ of the Law on Allowances provided in its initial wording: an allowance for childcare shall be granted to a person caring a child up to two years of age 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 or, in accordance with the procedures specified by the Cabinet, works part-time work and the mother does not receive the maternity benefit".

The second part of this Section provided: "Care of disabled child benefit shall not be disbursed if one of the parents at the same period of time has been granted maternity of child care benefit due to the birth of this child."

A care of disabled child benefit shall be granted to a person who cares for a child for whom the State Medical Commission for Expert-Examinations of Health and Working Ability has specified invalidity and issued an opinion regarding the necessity for special care. The payment of care of disabled child benefits shall be terminated when the time period ends for, which the invalidity and the necessity for special care have been specified, or when the child reaches 18 years of age.

According to Section 16 of the Law on Allowances, the care of disabled child benefit shall be granted to one of the parents or to a guardian if the child's parents have been deprived of the right to childcare or child guardianship; the child's parents are dead or absent without information as to their whereabouts; or the child's parents have not reached the age of social legal capacity specified in the Law on Social Security.

The Cabinet of Ministers of the Republic of Latvia (hereinafter – the Cabinet of Ministers) passed, on December 13, 2005, Regulation No. 940 "Regulations on the Amount of Disabled Child Care Benefit, Procedures for its Review and Procedures for Granting and Payment of the Benefit" (hereinafter – the Regulation No. 940).

Paragraph 2 thereof provides that the amount of care of disabled child benefit shall be LVL 50 a month.

On February 21, 2007, the Constitutional Court passed a judgment in the case No. 2006-08-01. By means of this Judgment, the provision included in the first part of Section 7.[1] of the Law on Allowances – "if the referred to person is not employed (is not deemed to be an employee or self-employed person in accordance with the Law On State Social Insurance)" – were recognized as non-compliant with Article 110 of the Satversme of the Republic of Latvia and invalid from January 1, 2006.

On September 20, 2007, the Saeima passed the Law "On Amendments to the Law on State Social Allowances". By means of these amendments, the second part of Section 7.[1] of the Law on Allowances was excluded. Para 11 of the Transitional Provisions of the Law provided that the above mentioned amendment would come into force on January 1, 2008.

2. The submitter of the constitutional complaint (hereinafter – the Applicant) asks to recognize the second part of Section 7.[1] of the Law on Allowances (hereinafter – the Contested Provision) as non-compliant with Article 91 and 110 of the Satversme of the Republic of Latvia and invalid as of the date of passing thereof.

2.1. The Applicant has two children. The State Medical Commission for Expert-Examinations of Health and Working Ability (hereinafter – the EEHWA) specified invalidity for one of the children and issued an opinion regarding the necessity for special care.

After a maternity leave, the Applicant has taken a leave for child care and received a child care benefit up to the day when the child reached one year of age – about LVL 80 per month. When the child reached one year of age, she received the child care benefit at the amount of LVL 30 per month.

The Applicant indicates that it has been established in the Judgment of February 21, 2007 by the Constitutional Court that employed parents of disabled children with serious physical and functional disorders are entitled to receive the care of disabled child benefit – LVL 50 per month. After this Judgment, she has waived the child care benefit and chose to receive the care of disabled child benefit by thus increasing the amount of incomes per month by LVL 20.

Although the Constitutional Court has established that the first part of Section $7.^{1}$ of the Law on Allowances on the date of coming into force thereof, i.e. from January 1, 2006, the Applicant was entitled to receive the care of disabled child benefit from July 28, 2006, when the opinion of the EEHWA was issued.

2.2. The Applicant holds that the Contested Provision does not comply with Article 91 of the Satversme, since the legislator has established, without reasonable grounds, a different attitude towards the parents of a disabled child with serious physical and functional disorders who receive the care of disabled child benefit and those parents of the same children who do not receive the benefit.

The Applicant holds that the different treatment has no legitimate objective.

Caring for a disabled child with serious physical and functional disorders requires large additional resources, however if the parent takes a maternity leave or a leave for child care, she or he may not claim to these additional resources.

2.3. The Applicant holds that the Contested Provision is non-compliant with Article 110 of the Satversme.

The Applicant indicates that the responsibility of the State is to create and maintain a system that were directed towards social and economic protection of families, to take such supporting measures that are efficient enough and as far as possible meet, first of all, needs of children. Moreover, according to the UN Convention on the rights of the Child, the duty of the State is to ensure decent life conditions for children, recognize the rights of children to a special care and to support provision thereof.

However, the Contested Provision, when establishing that the care of disabled child benefit shall not be disbursed if one of the parents has taken a maternity leave or a leave for child care, proves that caring for a disabled child with serious physical and functional disorders is not paid, however care of such children requires large additional expenses.

The Applicant emphasizes that the objective of the maternity leave is compensation of resources that can not be earned at work due to maternity in order to ensure preservation of an adequate living standard, as well as to protect the particular physiological condition of a women after a child birth.

However, the objective of the child care benefit is to provide support to families due to additional expenses that people undergo when caring of a child up to the two years of age. The Applicant indicates that disregarding the received maternity or child care benefit there still remain large additional expenses required for the care of a disabled child with serious physical and functional disorders. Hence the restriction to receive care of disabled child benefit simultaneously with the maternity or care of disabled child benefit due to the birth of this child has no legitimate objective.

3. The Saeima of the Republic of Latvia indicates in its reply that the second part of Section 7.[1] of the Law on Allowances was deleted from this Law. Although the Saeima has considered that a person caring for a disabled child with serious physical and functional disorders has already been provided with several support measures, the Contested Provision was deleted from the Law after assessment of its usefulness.

The Saeima has indicated: taking into account the amount of the child care benefit, it would be possible to provide more support for such a person and to achieve "a considerably different attitude". Deleting of the restriction to receive a maternity allowance or a child care benefit simultaneously with care of a disabled child benefit now ensures the necessary balance between the rights of a person and the duty of the State in the field of social rights.

The Constitutional Court holds:

4. The Contested provision has became invalid on January 1, 2008, when the second part of Section 3 of the Law of September 20, 2007 "Amendments to the Law on State Social Allowances" came into force, which provides for deleting of the Contested Provision. The Saeima holds that hence the case implies no dispute and asks to take it into consideration when continuing or terminating the proceedings in the case under review.

Item 2 of the first part of Article 29 of the Constitutional Court Law provides, that proceedings in the case may be closed before the judgment is announced by a decision of the Constitutional Court if the disputed legal norm (act) is no longer in

effect. The abovementioned has been established in order to ensure economy of the Constitutional Court process and that the Constitutional Court would not render judgment in cases where a dispute no more exists.

Hence the first part of Article 29 of the Constitutional Court Law provides for the rights of the Constitutional Court to close proceedings, but not the duty to do it (*see: Judgment of June 12, 2007 by the Constitutional Court in the case No. 2007-06-03, Para 11*). Hence, having established the conditions provided for in this norm, the Court shall assess whether there exists considerations that provide for the necessity to continue proceedings.

A person submits a constitutional claim in order to protect his or her basic rights established in the Satversme. Therefore, when considering the issue regarding termination of proceedings in a case, the Constitutional Court first of all shall take into account the necessity to protect the basic rights or persons established in the Satversme.

The fact that the Contested Provision has become invalid may be insufficient in order to prevent negative consequences that a person has faced due to the Contested Provision. A judgment of the Constitutional Court is the only legal way how an applicant can achieve protection of his or her rights. For instance, the Constitutional Court has established in the case No. 2002-06-01 that the submitter requested the Constitutional Court not to terminate the case. She points out that the Constitutional Court Law may be the only legal way of the submitter to continue protecting his violated rights (*see: Judgment of February 4, 2003 by the Constitutional Court in the case No. 2002-06-01, Para 7*).

The case under review has been initiated on the basis of a constitutional complaint. In this case, the Applicant has asked to recognize the Contested Provision as invalid as from January 1, 2006, namely, from the moment of coming into force thereof. Having got acquainted with the case materials, the Applicant asked not to terminate proceedings in the case under review. Hence the Constitutional Court must assess whether the Contested Provision has without reason violated the rights of the Applicant guaranteed by the Satversme and, if it has, whether all negative consequences that have emerged in the result of application of the provision have been prevented by deleting the Contested Provision from the Law.

Therefore it is necessary to continue proceedings in the case under review.

5. 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."

When hearing a case, the Constitutional Court is bound to the limits of the claim, namely, it shall assess compliance of a contested provision with legal norms of a higher legal force taking into consideration argumentation and motives and considerations reflected in the application.

In the case under review, the Applicant has contested the restriction to receive the care of disabled child benefit simultaneously with the maternity benefit and the child care benefit.

Article 110 of the Satversme laconically defines what shall be protected by the State, but it does not concretize the way how the protection shall be implemented. One of the rights guaranteed by this provision of the Satversme is the rights of disabled children to a special support and protection by the State (*see: Judgment of February 21, 2007 by the Constitutional Court in the case No. 2006-08-01, Para 11*).

When interpreting the basic rights included in Article 110 of the Satversme, one has to simultaneously take into consideration the norms, included in international human rights instruments and practice of their application (*see: Judgment of October 11, 2004 by the Constitutional Court in the case No. 2004-02-0106, Para 10*).

The duty to ensure the widest protection and support possible to a family follows from the International Covenant on Civil and Political Rights, the first part of Article 23 of which provides that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". The rights of a family to a special protection includes, among the rest, the rights to a State-provided financial support (*see: Nowak M. U.N. Covenant on Civil and Political Rights: CCPR Commentary//Kehl, Strasbourg, Arlington: N.P.Engel – 1993, pp. 407*).

Article 10 of the International Covenant on Economic, Social and Cultural Rights provides that "The widest possible protection and assistance should be

accorded to the family, while it is responsible for the care and education of dependent children".

However, the rights of disabled children to a special care and assistance have been established in the 1989 UNO Convention on the Rights of the Child (hereinafter – the Convention on the Rights of the Child). According to Item 1 of Article 1 of the above Convention, "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community".

It has been established in Item 2 of the same Article that States Parties recognize the right of the disabled child to special care. The State, according to its resources, favours and ensures provision of the care to the child that has rights thereto, as well to persons who are responsible for care of the disabled child. However, according to Item 3 of Article 23 of the Convention on the Rights of the Child, the above mentioned care shall be provided free of charge, whenever possible, taking into account the financial resources. The objective of the support shall be to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Also the United Nation Committee on the Rights of the Child, when discussing the rights of the disabled children, has indicated that it is substantial to support families with a disabled child (*see: Summary of the general discussion „The rights of children with disabilities" of the United Nation Committee on the Rights of the Child (CRC/C/69) Para. 319, 331 and 333*).

The European Social Charter guarantees the rights of a family to protection by the State: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means." This norm obligates the State to introduce and maintain a family benefit system. The benefits should include a

considerable number of families and must be sufficient in order to ensure adequate extra incomes to the families. Benefits shall be regularly reviewed taking into consideration the inflation level (*see: Digest of the Case Law of the ECHR. Council of Europe, March 2005, pp. 73 – 74. //http://www.coe.int/T/F/Droits de 1%27 Home/Cse/Digest bil mars 05.pdf*).

The European Social Charter does not provide for an extensive list of instruments for the family policy, namely, it does not establish kinds of benefits and order of disbursement thereof. By taking into consideration the established minimum requirements, the States are entitled to choose their own tools for implementation of social and economic protection of the family (*see: Judgment of November 2, 2005 by the Constitutional Court in the case No. 2005-09-01, Para 8.2*).

However, what has been established in Article 110 of the Satversme, does not confer the rights to a person to receive a state support in the form of any kind and amount of a benefit, however, the State when caring for the children, family and marriage as well as when observing other norms and principles of the Satversme shall carry out such activities of support, which are effective enough and as much as possible meet the requirements of the addressees, first of all those of the children (*see: Judgment of November 2, 2006 by the Constitutional Court in the Case No. 2006-07-01, Para 13.1 and Judgment of December 11, 2006 in the case No. 2006-10-03, Para 13.1*). The duty to observe, first of all, the interests of the child when dealing with any issue related to a child follow from the Convention of the Rights of the Child.

The first part of Article 3 of the above Convention provides the priority of the interests of the child. This principle provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. This is one of the main principles of the Convention of the Rights of the Child, which provides for interpretation of all rights and freedoms of the child. The above principle is included also in the first part of Article 6 of the Protection of the Rights of the Child Law.

The Constitutional Court has provided an explanation 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 October 11, 2004 by the Constitutional Court in the Case No. 2004-02-0106, Para 11*).

The Constitutional Court has indicated that in accordance with international norms the system for the social and economic protection of a family (types and amount of allowances) and its maintenance lies within the State competence and depends on the State economical situation and accessible resources (*see: Judgment of February 25, 2002 by the Constitutional Court in the case No. 2001-11-0106, Para 1 of the Concluding Part, Judgment of November 4, 2005 in the case No. 2005-09-01, Para 14.1* and Judgment of December 22, 2005 in the case No. *2005-19-01, Para 9*).

The European Court of Human Rights has also recognized that the legislator, when implementing social and economical policy, has a special authority. One has also respect the decision of the legislator, which meets the interests of the society unless such a decision is not apparently ungrounded (*see: The James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, Para. 46*).

However, such a conclusion does not mean, that the right to a certain claim, namely – the right to require the State to grant the necessary social security – may not arise to a person. If some social rights are included in the Constitution then the State cannot refuse from them. These rights do not have only a declarative nature (*see: Judgment of March 13, 2001 by the Constitutional Court in the case No. 2000-08-0109, the Concluding Part and Judgment of December 11, 2006 in the case No. 2006-10-01, Para 14.3*).

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 November 4, 2005 in the case No. 2005-09-01, Para 9.3*).

When implementing the rights to social security established by the Satversme, the State is obligated to established normative regulation of these rights, as well as to establish an effective mechanism of implementation of the legal norms. The duty of the State is not only to declare the rights but also to "implement" them and monitor their application (*see: Judgment of January 14, 2004 by the Constitutional Court in the case No. 2003-19-0103, Para 9.3*).

Consequently the positive duty of the State to create and maintain a system directed towards social and economical protection of the families, among them –

the disabled children, follows from Article 110 of the Satversme and the international liabilities of Latvia.

6. According to the first part of Section 3 of the Law on Allowances, allowances that are directly related to a disabled child to be disbursed at regular intervals shall be the following: State family allowance, additional payment to the State family allowance for a disabled child, care of disabled child benefit and an allowance for the compensation of transport expenses for disabled persons who have difficulties in movement.

The objective of the State family benefit is to provide a regular support for families who incur additional expenses due to the upbringing of a child. The State family benefit is allocated according to Sections 6 and 16 of the Law on Allowances. The amount of the benefit is established according to the Cabinet Regulations of July 26, 2005 No. 562 "Regulations on the Amount, Order of Revision of the State Family Benefit and Additional Payment to the State Family Benefit for a Disabled Child and on the Order of Allocation and Disbursing of the Benefit and the Additional Payment" (hereinafter – the Regulation No. 562).

The additional payment to the State family benefit is allocated in accordance with the third part of Section 6 of the Law on Allowances. It provides: "If the State family allowance has been granted for a disabled child who has not reached 18 years of age, a supplement shall be disbursed with the allowance in the amount specified by the Cabinet. The right to this supplement for a person raising a disabled child shall remain regardless of the payment of the State family allowance until the disabled child has reached 18 years of age." According to the Regulation No. 562, the amount of the additional payment constitutes LVL 50 per month.

The allowance for compensation of transport expenses for disabled persons who have difficulties in movement is allocated according to Section 12 of the Law on Allowances. The objective of this Section is to provide support for purchase of a specially amended car. According to the Cabinet Regulations of July 26, 2005 No. 563 "Regulations regarding the Amount of Allowance for the Compensation of Transport Expenses for Disabled Persons who have Difficulties in Movement, the Procedures for the Review thereof and the Procedures for the Granting and Disbursement of

Allowance", the amount of the benefit constitutes LVL 56 per each full period of six months.

The care of disabled child benefit is allocated in accordance with the Section 7.[1] and 16 of the Law on Allowances, and it is disbursed as from January 1, 2006. According to the Regulation No. 940, the amount of the benefit constitutes LVL 50 per month.

The objective of the benefit is to provide support to a person caring for a child whom the EEHWA specified invalidity for one of the children and issued an opinion regarding the necessity for special care

Hence the legislator, when fulfilling the duty that follows from the Satversme to provide a special care to disabled children, has concretized the above Section by including a right-protective mechanism in the laws.

7. In order to assess whether the Contested Provision, up to its deleting from the Law on Allowances, complied with Article 110 of the Satversme, it is necessary to establish:

First of all, whether the Contested Provision restricted the rights of a disabled child to a special State care, as provided in Article 110 of the Satversme.

Second, if the Contested Provision restricted the rights established in Article 110 of the Satversme, whether such restriction was permissible.

7.1. The care of disabled child benefit is one of the allowances established for social and economic protection of disabled children.

Before the amendments made to the Law on Allowances, the Contested Provision established that "the care of disabled child benefit shall not be allocated if a maternity benefit of a child care benefit has been allocated to one of the parents of the child at the same time period".

Hence the Contested Provision established that a person caring for a disabled child, who needs special care due to serious physical and functional disorders, shall not receive the above benefit, if he or she corresponds to certain features. Namely, if the parent has been granted the maternity benefit or the child care benefit.

The State when forming the social guarantees system, enjoys a freedom of action, and it is entitled to establish different restrictions (*see: Para 5 of this*

Judgment). However, the restriction included in the Contested Provision denied rights to a certain part of people to special State support for disabled children with serious physical and functional disorders, and these rights are not ensures even at the minimum amount.

The Constitutional Court has established that children who need a special care, namely, continuous care and supervision, have been mainly disabled already from their childhood and their disablement is usually serious, i.e. falling within the first disability group. Taking care of such disabled children in the family environment, it is required to provide them at least continuous presence of one parent or qualified patients' carer. Furthermore, if a disabled child has serious physical and functional disorders, the presence of qualified patients' care nurse may be also necessary in the case if one of the parents at the same time takes care of the child (*see: Judgment of February 21, 2007 by the Constitutional Court in the case No. 2006-08-01, Para 16.3*).

Care after the child also comprises purchasing of the necessary medical products and providing of rehabilitation, which requires considerable financial resources (*see: Judgment of February 21, 2007 by the Constitutional Court in the case No. 2006-08-01, Para 16.3*). The needs of the respective families are far greater due to the indispensable expenses for medicine and rehabilitation for the disabled child.

Therefore it shall be recognized that the rights to receive the care of disabled child benefit is not a profit for the parents, but the rights of the children with special needs.

The Saeima Commission for Social and Labour Issues, when discussing the amendments to the Law on Allowances, has recognized as inadmissible the fact that a person may reach a worse material situation if compared to others. Therefore the attitude of the State towards disabled children with special needs should be considerably different and the financial support for disabled children – considerably better. Consequently, the norm that restricts the respective rights shall be deleted from the Law on Allowances (*see: Protocol No. 82 of the Saeima Commission for Social and Labour Issues, September 12, 2007, case materials, pp. 32*).

Serious physical and functional health disorders make a disabled child particularly dependent on the help and care of other people. There is no doubt that this

care, first of all, is the duty of parents, however the duty of the State is to provide parents with the necessary conditions in order to make fulfilment of their duties possible.

One of such conditions no doubt is the care of disabled child benefit, reception of which in respect of a certain group of person was prohibited by the Contested Provision.

Consequently, the Contested Provision denied the rights to the social and economic protection of disabled children with serious physical and functional disorders, as established in Article 110 of the Satversme.

7.2. The rights established in Article 110 of the Satversme are not absolute. The Constitutional Court has already established that fundamental rights may be restricted only in cases established by the Satversme, namely, if the protection of significant public interests demands it and if the principle of proportionality is observed (*see: Judgment of November 4, 2005 by the Constitutional Court in the case No. 2005-09-01, Para 11*). Therefore, in order to establish whether the restriction established by the Contested Provision complies with the Satversme, it is necessary to assess:

1) whether the restriction has been established by law;

2) whether the restriction has a legitimate objective;

3) whether the restriction complies with the principle of proportionality.

7.2.1. The Contested Provision, which includes the restriction of the rights established in Article 110 of the Satversme, was included in the Law on Allowances by the Law "On Amendments to the Law on State Social Allowances" of October 27, 2005, which was passed and announced according to the order established by the Satversme and the Saeima Rules of Order.

Consequently, the restriction of the basic rights established in the Contested Provision has been established by law.

7.2.2. In the basis of any restriction of the basic rights there should be conditions and arguments why such a restriction is necessary, namely, the restriction must be established for protection of a legitimate objective, i.e. important interests of the society.

The Applicant holds that the Contested Provision has no legitimate objective. No direct opinion of the Saeima has been provided in its reply.

In order to establish whether the restriction has a legitimate objective, the Contested Provision must be assessed jointly with Section 7.[1] of the Law on Allowances.

The Law on Allowances was supplemented by Section 7.[1] after having concluded that the present amount of the State support in the form of social allowances is insufficient for families with disabled children who need special care.

One of the objectives of this benefit is to increase the purchasing capacity of families with disabled children by simultaneously positively influencing the economic processes within the State, to improve living standards for families caring for a disabled child, as well as to ensure full development of disabled children and their safe care at home (*see: Annotation of the draft law "On Amendments to the Law on State Social Allowances", http://www.saeima.lv/bi8/lasa?dd=LP1385-0*).

By means of this benefit, it was planned too provide additional financial support for families with disabled children who need continuous care and supervision, in order to favour direct involvement of parents (and other person) in the care of the disabled child and ensure a possibility to stay with the child for at least one of the parents.

Initially 7.[1] Section of the Law on Allowances provided that the child of disabled children benefit shall not be received by a person who is employed (is deemed to be an employee or a self employed person in accordance with the Law "On State Social Insurance"). The benefit could neither be received in the case if one of the parents of the child was granted the maternity of the child care benefit at the same time due to the birth or care of the child.

At present the situation has changed. First of all, the Constitutional Court has established that the child care benefit could also be received by an employed person. Consequently, reception of the child care benefit does not mean that a person may not be employed (*see: Judgment of November 4, 2005 by the Constitutional Court in the case No. 2005-09-01*).

Second, the Constitutional Court has established that the area of regulation included in Section 7.[1] of the Law on Allowances is directed towards ensuring of a full care of a disabled child with serious physical and functional disorders in the family environment, and this has a legitimate objective – protection of the rights of the child. However the Constitutional Court has also established that parents of disabled children

with serious physical and functional disorders incur large additional expenses that are related with purchase of medical remedies, use of rehabilitation procedures for disabled children, as well as, in many cases, use of the services of high-qualified carers (*see: Judgment of February 21, 2007 by the Constitutional Court in the case No. 2006-08-01*).

It also follows from the annotation of the above mentioned draft law that the objective of the care of disabled child benefit is to provide support for the families due to additional expenses that arise because of the care of a disabled child with serious physical and functional disorders. Namely, to ensure that "persons who care for disabled children with moderate disorders of vital functions and persons caring for disabled children with serious disorders of vital functions, which establishes the necessity to care for the disabled child (i.e. continuous care and supervision of a disabled child) would not enjoy unequal socio-economic conditions" (*see: Annotation to the draft law "On Amendments to the Law on State Social Allowances, http://www.saeima.lv/bi8/lasa?dd=LP1385-0).*

The Constitutional Court has established that the restriction that prohibited a persons who is employed (is deemed to be an employee or a self employed person in accordance with the Law "On State Social Insurance") to receive the care of disabled child benefit is non-proportionate. Hence a person is entitled to receive the child care benefit even if he or she is employed.

It is impossible to conclude in the case under review, that the restriction established by the Contested Provision would protect any important interests of the society. Since the care of disabled child benefit can be received by a person who is employed, it does not seem logic to prohibit these rights for a person who receives the maternity benefit or the child care benefit.

If compared to these kinds of benefits, the care of disabled child benefit has a different objective. Namely, the objective of the maternity benefit is to replace incomes that can not be earned at work. The objective of the child care benefit is to provide support for families due to additional expenses that arise when caring for a child up to one year of age, and reception of this benefit is not related to the precondition of non-employment of a person.

Whereas, the objective of the care of disabled child benefit is to provide support for families due to additional expenses that arise due to the necessity of the special care for the disabled child. Consequently, each of these benefits has a different objective. Hence there is no reason to establish a restriction for the rights of a person to receive the care of disabled child benefit during the period when he or she receives the maternity benefit or the child care benefit.

Consequently, the restriction established in the Contested Provision has no legitimate objective and does not comply with Article 110 of the Satversme.

8. Since the restriction established in the Contested Provision has no legitimate objective, it is not necessary to assess compliance of this restriction with the principle of proportionality.

9. Having established non-compliance of the contested provision with at least one of the articles of the Satversme, it shall be recognized as illegal and invalid. Hence it is not necessary to assess compliance of the above Provision with Article 91 of the Satversme.

10. Although the Contested Provision is invalid from January 1, 2008, still during the time period when the above provision was effective, it was applied and hence violated the rights established in Article 110 of the Satversme.

It is possible that other persons, the rights of whom were violated by the Contested Provision and who have started protection of rights by general means of rights protection up to the moment when the Judgment in the case under review took effect.

When taking the decision on the moment from which the contested provision loses effect, the Constitutional Court shall as much as possible take care that the situation, which might arise from the above moment, does not harm the interests of other person (*see: Judgment of June 6, 2006 by the Constitutional Court in the case No. 2005-25-01, Para 23*). In order to prevent negative consequences caused in the result of application of the Contested Provision, it is necessary to determine that, in regards to the Applicant and other persons who have started protecting violated rights

by general means of rights protection up to the moment when this Judgment took effect, the Contested Provision looses its force at the moment when the rights of these persons established in Article 110 of the Satversme were violated.

According to Para 11 of the Regulation No. 940, the care of disabled child benefit shall be allocated from the day when the opinion of the EEHWA department (or EEHWA of general or special profile) has specified the necessity for special care for a child up to 18 years of age, who needs special continuous care due to serious physical and functional disorders.

The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

holds:

the second part of Section 7.[1] of the Law on Allowances does not comply with Article 110 of the Satversme of the Republic of Latvia and, as to Jolanta Kalniņa-Levina, as well as to other persons who have started protection of the violated rights by means of general means of rights protection, is invalid from January 1, 2006.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding Judge Uldis Ķinis