



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, December 11, 2006

in case No. 2006-10-03

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Andrejs Lepse, Romāns Apsītis, Aija Branta, Juris Jelāgins and Gunārs Kūtris

on the basis of the constitutional claim by Elīna Andersone, Santa Auziņa, Vita Karnīte, Baiba Liepiņa, Inese Magaļinska, Anda Pavlova, Elīna Rubule, Gunda Skolniece, Alla Spale, Jana Streļeca, Ramona Treilona and Agita Vecozoliņa

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 3), 17 (Item 11 of the first Paragraph), 19² and 28¹

in written proceedings at November 14, 2006 Court session reviewed the matter

”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”.

The establishing part

1.Section 7, Paragraph 1 of the State Social Allowances Law regulates the provisions for granting childcare allowance as well as the persons, who are entitled to receive the above allowance.

In its turn Section 15 of the State Social Allowances Law envisages that the State Social Allowances Law and the Cabinet of Ministers shall determine the amount of the State Social Allowances, inter alia also the amount of the allowance for childcare and the procedure for its revision.

2. When realizing the delegation, included in the State Social Allowances Law, on December 7, 2004 the Cabinet of Ministers adopted 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” (hereinafter – Regulations No. 1003).

Item 3.1 of Regulations 1003 establishes that a person, who cares for a child till one year of age, if this person is employed (is considered to be an employee or a self-employed person in accordance with the Law ”On State Social Insurance”) and is on parental leave shall receive the childcare allowance in the amount of 70 percent from the average insurance contribution salary of the person, but not less than 56 lats per month and not more than 392 lats per month.

3. Following the Constitutional Court November 4, 2005 Judgment in case No.2005-09-01”On the Compliance of the Provision ”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) Incorporated in Section 7, Item 1 of the First Paragraph of the

Law on State Social Allowances or is Employed and is on Parental Leave” – with Sections 91, 106 and 110 of the Republic of Latvia Satversme as well as by March 2, 2006 Amendments to Section 7, Paragraph 1 of the State Social Allowances Law, are specified provisions for a person to have the right to childcare allowance.

4. Taking into consideration the Amendments to Section 7, Paragraph 1 of the State Social Allowances Law, on August 8, 2006 the Cabinet of Ministers adopted Regulations No. 644 ”Regulations on the Procedure under which the Amount and Revision of the Allowance for Childcare and Additional Payment for Twins or Several Children Born in one Confinement shall be Granted and Paid” (hereinafter – Regulations No. 644). These Regulations replaced Regulations No. 1003.

Item 2.2 of Regulations No. 644 envisages that for a person, who cares for a child till one year of age, if this person is employed (is considered to be an employee or a self-employed person in accordance with the Law ”On State Social Insurance”) on the day from which the allowance is being granted and is on parental leave, the childcare allowance shall be in the amount of 70 percent from the average monthly insurance contribution salary of the person, but not less than 56 lats per month and not more than 392 lats per month.

5. Submitters of the claim – Elina Andersone, Santa Auziņa, Vita Karnīte, Baiba Liepiņa, Inese Magaļinska, Anda Pavlova, Elīna Rubule, Gunda Skolniece, Alla Spale, Jana Streļeca, Ramona Treilona and Agita Vecozoliņa – request to declare the maximum amount of childcare allowance (”and not more than 392 lats per month”), which is determined in Item 3.1 of Regulations No. 1003 and Item 2.2 of Regulations No. 644 (hereinafter – the impugned norm) as unconfirmable with Section 91 of the Republic of Latvia Satversme (hereinafter – the Satversme).

The submitters of the claim hold that the system of calculation of the childcare allowance during the childcare leave essentially diminishes the amount of income for persons, whose average monthly insurance contribution salary exceeds 560 lats. If the person’s average monthly insurance contribution salary is 560 lats, then this person

shall receive the maximum amount of the childcare allowance – 392 lats. But if the average monthly insurance salary of a person exceeds 560 lats, it does not influence the amount of childcare allowance to be granted, namely – even in such cases persons receive the allowance of the same amount.

It is stressed in the claims, that the parents of a child shall receive the childcare allowance in such an amount, which is actually equivalent to the monthly salary of one parent, as only in such a case the financial situation of the family during the time of parental leave will not become worse.

Even though the right of the State to determine restrictions to the amount of childcare allowance is not denied in the claims, the submitters of the claim express the viewpoint that such restrictions shall be equal to the persons concerned. They hold that the maximum amount determined by the impugned norm violates Section 91 of the Satversme; namely – it is unfair and discriminating. Persons, whose average monthly insurance contribution salary exceeds 560 lats, do not receive such an amount of childcare allowance, which is proportionate to the paid tax sums, if compared with persons, whose average monthly insurance contribution salary does not exceed 560 lats.

The submitters of the claim point out that the impugned norm does not comply with the principle of legal equality, as it envisages a differentiated attitude to two mutually comparable groups of persons – to persons, whose average monthly insurance contribution salary exceeds 560 lats and persons, whose contribution salary does not exceed 560 lats. The maximum amount of childcare allowance disallows to persons, whose average monthly insurance contribution salary exceeds 560 lats to receive childcare allowance in the amount of 70 percent from the average monthly insurance contribution salary.

To their mind the differentiated attitude, determined in the impugned norm, has no objective and reasonable basis, as one cannot regard the economy of State budget funds as such. They hold that in this case the principle of proportionality has been

violated, namely, it is possible to determine the amount of childcare allowance by using measures, restricting the rights to a person in a lesser degree.

6. The institution, which has passed the impugned act – **the Cabinet of Ministers** – in its written reply points out that the impugned norm complies with Section 91 of the Satversme.

The Cabinet of Ministers points out that passing of the impugned norm has been envisaged by the Concept on Increase of the State Social Allowance to Families, on the basis of which Regulations No. 1003 have been adopted. When determining the amount of childcare allowance the Cabinet of Ministers has tried to make it proportionate to the previous income of the employed person as well as to take care of the persons, who have not been employed.

The fact that the amount of childcare allowance is linked with the average monthly insurance contribution salary of a person does not mean that general principles of social insurance shall be applied when determining the amount of the allowance. Childcare allowance is the state social allowance, which is paid from the State basic budget. The maximum amount of the allowance shall not be interpreted as "the ceiling of a service" or a restriction as the amount of the State social allowance depends on the financial possibilities of the State basic budget.

The Cabinet of Ministers stresses that non-determination of the maximum amount of childcare allowance for employed persons, who care for the child till the age of one year, shall considerably increase the expenses of the State basic budget and that may create problems in financing of the State social allowances.

Besides the Cabinet of Ministers points out that after the adoption of Regulations No. 644 persons are not prohibited to work (full time or part-time) and receive childcare allowance in the amount of 50 percent. To the mind of the Cabinet of Ministers this norm ensures persons with the possibility of procuring the necessary livelihood.

7. In its additional explanations the Cabinet of Ministers recognizes that persons, whose average monthly insurance contribution salary exceeds 560 lats are in legally comparable circumstances with persons, whose average monthly insurance contribution salary does not exceed 560 lats. In the same way the Cabinet of Ministers acknowledges that the impugned norm envisages a differentiated attitude to these two groups of persons.

However, the Cabinet of Ministers points out that the differentiated attitude has an objective and reasonable basis, namely, socially fair increase of the amount of childcare allowance for the whole target group, i.e., to all persons, who care for a child and who – in accordance with Section 7 of the State Social Allowances Law have the right of receiving the allowance. Taking into consideration the possibilities of the State basic budget, socially fair increase of the amount of such an allowance would be impossible if the maximum amount of childcare allowance to be paid had not been established. To the viewpoint of the Cabinet of Ministers the principle of proportionality has been observed in this case.

The amount of childcare allowance is connected with the average monthly insurance contribution salary just to increase birthrate in the State, especially in social groups, the income level of which is average and high. The amount of the allowance, inter alia, also the maximum amount of the allowance has been determined by taking into consideration long-term possibilities of the State budget.

8. The Ministry for Children and Family Affairs stresses that the compliance of the impugned norm with Section 91 of the Satversme cannot be assessed as detached from Sections 109 and 110 of the Satversme, as the norms, included in the Satversme shall be systemically interpreted.

The State has the duty of ensuring economic protection of the family by adequate means. The main means for realization of this aim are family or childcare allowances, which are ensured in the framework of the social security system and are accessible universally or after the assessment of individual means.

The maximum amount of childcare allowance has been determined by taking into consideration the possibilities of the basic budget, as this allowance is being paid from the State basic budget. The system of social and economic security and its maintenance depends on the economic situation of the State and accessible resources.

The Ministry for Children and Family Affairs points out that increase of the maximum amount of childcare allowance is not included in its competence. The Ministry of Welfare elaborates the State policy in the sector of social insurance and State social allowances. However, the Ministry stresses that improvement of the system of childcare allowances is one of the preconditions for making Latvia a more friendly and appropriate for a family state.

9. The Ministry of Welfare points out that non-determination of a constant maximum amount of the childcare allowance would noticeably increase expenses of the State basic budget, it would be difficult to prognosticate the amount of this increase and it would create problems in financing of the State social allowances.

The amount of the childcare allowance has been connected to average monthly insurance contribution salary of a person not only for increasing birthrate but also for favoring paying of taxes in the State.

The Ministry especially stresses that linking of the amount of childcare allowance to the income of a person does not make this allowance a social insurance service. When paying childcare allowances the principles of the system of social aid and not those of the social insurance system are taken into consideration.

10. The State Human Rights Bureau points out that the impugned norm complies with Section 91 of the Satversme.

The State Human Rights Bureau holds that all persons, who are employed and have a parental leave, and who are entitled to receiving childcare allowance are in equal and comparable circumstances. However the impugned norm envisages a different attitude.

However, to the viewpoint of the State Human Rights Bureau, this different attitude has an objective and reasonable basis. Regulation of childcare allowance has been introduced to determine a more effective system of childcare allowances, which would favor improvement of the demographic situation in the State. The maximum amount of the allowance, which has been determined in the impugned norm, has been directed to the protection of public welfare. By the adoption of the impugned norm it has been attempted to balance the improvement of the demographic situation with the financial resources, accessible to the State.

To their mind determination of the maximum amount of the allowance in the same way allows balancing the needs of different groups of residents. As the childcare allowance is being paid from the State basic budget, a reasonable balance between the minimum and maximum amount of the allowance to be paid shall be ensured. Non-ensurance of the above balance would create an impression that the system of the social aid is unfair, because for some persons a minimum support from the State basic budget would be ensured, in their turn – for others the granted allowance would allow living in greater welfare.

The circumstance that the childcare allowance to be paid is not proportional to insurance contributions paid by the person and cannot ensure for the person the previous level of income, to the mind of the Bureau is not at variance with the principles of the State social allowances system.

The Human Rights Bureau also stresses that the maximum amount of childcare allowance, determined by the Cabinet of Ministers, secures a satisfactory standard of living, as it more than three times exceeds the subsistence wage of a person.

The concluding part

11. Section 91 of the Satversme determines: "All human beings shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind".

The legislator has included in Section 91 two mutually closely connected principles: the principle of equality – in the first sentence of the Section and the principle of prohibition of discrimination – in the second sentence (*sk. Satversmes tiesas 2005. gada 14. septembra sprieduma lietā Nr. 2005-02-0106 9. punktu// see the Constitutional Court September 14, 2005 Judgment in case No. 2005-02-0106, Item 9*).

In the constitutional claims of the submitters is included the request to assess the conformity of the impugned norm only with the first sentence of Section 92 of the Satversme, namely, to review whether the impugned norm complies with the principle of legal equality (*sk. Lietas materiālu 1. sējuma 4. – 6., 123. – 124., 158. – 159.lpp. un 2. sējuma 2. – 3., 66. – 67., 89. – 91., 125. – 126. lpp.// see Vol. I, pp. 4 – 6, 123 – 124, 158 – 159; Vol. II pp. 2 – 3, 66 – 67, 89 – 91, 125 – 126 of the materials in the matter*).

12. One may agree with the viewpoint of the Ministry for Children and Family Affairs, that the compliance of the impugned norm with Section 91 of the Satversme shall be assessed as read in conjunction with Sections 109 and 110 of the Satversme (*sk. Lietas materiālu 2. sējuma 34. lpp. // see Vol. II, p. 34 of the materials in the matter*).

It is often not possible to conclude how to solve a concrete legal issue just on the basis of the principle of legal equality. The rights, fixed in the first sentence of the Satversme Section 91, are "comparative", namely, they may require equal attitude but they cannot reveal what the above attitude shall be like. To choose one of the potential solutions, other considerations, which are beyond the framework of the notion of equality, shall be used (*sk. Satversmes tiesas 2006. gada 8. novembra sprieduma lietā Nr. 2006-04-01 15.1. punktu // see the Constitutional Court November 8, 2006*

Judgment in case No. 2006-04-01, Item 15.1). The norms of the Satversme Chapter VIII, which envisage obligations of the State in the sector of realization of human rights or endow private persons with the right of a claim of certain content against the State, determine the functional framework of the legal equality principle.

13. The first sentence of Section 110 *inter alia* envisages the duty of the State to protect and support the family, the rights of parents and the rights of the child.

13.1. 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 (*sk. Satversmes tiesas 2006. gada 2. novembra sprieduma lietā Nr. 2006-07-01 13.1. punktu // see the Constitutional Court November 2, 2006 Judgment in case No. 2006-07-01 Item 13.1).*

One of the ways in which the State may support the family and children is the creation and maintenance of social and economic protection of the family, envisaging also different services of the social security system (allowances, benefits etc.) (*sk Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 9.3. punktu // see the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01 Item 9.3).*

13.2. The State undertook the duty of protecting and especially supporting the family already in 1991 when the legislator passed the Constitutional Law "The Rights and Obligations of a Citizen and a Person" (*sk.: Konstitucionālais likums "Cilvēka un pilsoņa tiesības un pienākumi"; Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1992. gada 30. janvāris, Nr. 4 // see: The Constitutional Law "The Rights and Obligations of a Citizen and a Person"; the Bulletin Latvijas Republikas Augstākās Padomes Ziņotājs, January 30, 1992, No.4).* Section 36, Paragraph 1 of the Constitutional Law determined that "the state protects a family, marriage as well as the rights a mother and a child".

During the second reading of the Draft Constitutional Law the deputies of the Supreme Council discussed the issue how far (much) the State and the society shall take care for children and their material needs. The deputy Ivars Silārs stressed in the debate "I have objections against the construction that the State and the public shall take care ... Let the parents do it. Let the parents do it and take care! To my mind the State shall do everything so that the parents are able to care – there! That is the obligation of the State" (*Latvijas Republikas Augstākās Padomes 1991. gada 21. novembra rīta sēdes stenogramma // Verbatim Report of the Republic of Latvia Supreme Council November 21, 1991 morning session*).

The wording of Section 36 of the Constitutional Law, adopted in its final reading testifies that the greatest part of the Supreme Council deputies took the argumentation of the deputy Ivars Silārs into consideration. In Section 36, Paragraph 3 the legislator anticipated: "The care and upbringing of children is first of all the right and responsibility of the parents or the guardians". In its turn Paragraph 4 of this Section envisaged the obligation of the State in the above relations of children and their parents: "Society and State provide that the parents or the guardians are able to fulfill their responsibilities to their children."

It is necessary to take into considerations the circumstances under which the legislator was obliged to take the decision on distribution of the duties of the State and parents in care and upbringing of children. The Republic of Latvia had just regained its independence, besides it was beginning to fundamentally reorganize its socio-economic structure from the relations of socialistic planned economy to the capitalistic relations of free market. This reorganization essentially influenced the possibilities of the State residents to meet their economic, social and cultural requirements themselves. In its turn, it charged the State with the duty of creating a principally new and different from the requirements of the socialistic structure social security system.

13.3. The capability of the State to create an efficient and functioning social security system depends on the financial feasibilities and the economic situation on the whole. When the economic situation develops, the State has the possibility to support separate

residents to a greater extent and thus – also the duty of increasing financial and investment of other kinds in the system of realization of social, economic and cultural rights of persons.

However, it is necessary to take into consideration that the State cannot undertake the whole care about social, economic and cultural needs of a person. ” In every person there is hidden the need for independence or at least a limited autarchy. Almost everyone takes more delight in something obtained by himself/herself than in something granted. To a certain limit everyone wants to be asked to protect himself and his kinsmen, take care of himself and his relatives as well as look for the possibility of proving himself to be able to cope with risky situations and to stand out before the others. In a word, total care is as contrary to the nature of a human being, as is being led by somebody” (*Cipeliuss R. Vispārēja mācība par valsti. Rīga: Izdevniecība AGB, 1998, 278. lpp.*// *Cipeliuss R. General Course of Instruction on State. Rīga: AGB Publishing House, 1998, p. 278*). Thus, a contemporary state shall be able to care for social fairness, dignified living conditions and universal welfare at the same time leaving a potentially extensive place for the development of a creative personality (*sk. turpat, 276 –277 lpp. // see the same place, pp. 276 –2770*).

13.4. In comparison with Section 36 of the Law ” The Rights and Obligations of a Citizen and a Person” in Section 110 of the Satversme the State has undertaken noticeably more extensive duties of the protection of a family and a child, inter alia also the duty of financially supporting the parents during the first years of life of a child. However, Section 110 of the Satversme does not require that the State only and solely by the payment of allowances shall fully secure material welfare of every child (*sk. Satversmes tiesas 2006. gada 2. novembra sprieduma lietā Nr. 2006-07-01 13.5. punktu // see the Constitutional Court November 2, 2006 Judgment in case No. 2006-07-01, Item 13.5*).

Such a full State care would be at variance with the first sentence of Section 110 of the Satversme as not only the State but also parents shall take care and provide for the needs of the children (*sk. Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr.*

2004-18-0106 secinājumu daļas 10. punktu // see the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 10). Full takeover of financial care of the parents would derange the structure of traditional family relations, denying the possibility of the parents to take care for their children and feel satisfaction about it. However, the State shall be able to render a reasonable support to the family, especially in cases, when the parents cannot ensure all the necessary means for the child (*sk. Satversmes tiesas 2006. gada 2. novembra sprieduma lietā Nr. 2006-07-01 13.5. punktu // see the Constitutional Court November, 2006 Judgment in case No. 2006-07-01, Item 13.5).*

14. Section 109 of the Satversme determines that "everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law".

14.1. Section 109 of the Satversme does not wholly envisage all cases when the right of persons to social security sets in or in what an amount and in what a way the State has the duty of realizing these rights. It is to a great extent connected with the circumstance that the rights of a person, guaranteed in Section 109 of the Satversme, belong to the human rights of the second generation, namely, to social, economic and cultural rights of a person.

In Chapter VIII of the Satversme an extensive catalogue of the fundamental rights of a person is entrenched. Not only the civil and political rights and freedoms, but also economical, social and cultural rights, solidarity rights are included in it. Such a division of fundamental rights of a person is considered to be conditional, as nowadays "human rights are not classified but shall be guaranteed and protected on their whole" (*Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūta atzinums par Tautas saskaņas partijas deputātu frakcijas likumprojektu "Grozījumi Latvijas Republikas Satversmē", 1996. gada 30. aprīlis, 5.lpp. ; Satversmes tiesas lietas Nr. 2006-03-0106 materiālu 3. sējuma 23. lpp. // Conclusion by the Human Rights Institute of the Latvian University Faculty of Law on the Draft Law "Amendments to the Republic of Latvia Satversme" proposed by the deputies of the People's Harmony*

Faction on April 30, 1996, p. 5; Vol. III, p. 23 of the materials in the Constitutional Court matter No. 2006-03-0106). 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.

14.2. The Constitutional Court has recognized that social rights are very significant, however – specific and distinctive human rights. Realization of the social rights of the second generation depends on the economical situation and available resources of every particular state (*sk. Satversmes tiesas 2001. gada 13. marta sprieduma lietā Nr. 2000 –08-0109 secinājumu daļu // see the concluding part of the Constitutional Court March 13, 2000 Judgment in case No. 2000-08-0109).*

In the same way the State decisions in the sector of realization of economical, social and cultural rights usually the political dimension are of importance – the legislator passes decisions in this sector being guided not so much by legal but political reasons, which are determined by the economic situation of the state and the necessity of the society or a part of it for the state aid or support of a certain kind; or the notions of the legislator on the principles of rendering state social services.

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 (*sk. Satversmes tiesas 2006. gada 8. novembra sprieduma lietā 2006-04-01 16. punktu // see the Constitutional Court November 8, 2006 Judgment in case No. 2006-04-01, Item 16).*

14.3. Social rights is a specific sector of human rights norms, which in international human rights instruments and Constitutions of other states are mainly formulated as

general obligations of the State (*sk. Satversmes tiesas 2001. gada 26. jūnija sprieduma lietā Nr. 2001-02-0106 secinājumu daļas 4. punktu // see the Constitutional Court June 26, 2001 Judgment in case No. 2001-02-0106, Item 4 of the concluding part*). 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 (*sk. Satversmes tiesas 2001. gada 13. marta sprieduma lietā Nr. 2000-08-0109 secinājumu daļu // see the Constitutional Court March 13, 2001 Judgment in case No. 2000 –08-0109 concluding part*).

15. Section 3, Item 2 of the First Paragraph determines that an allowance for childcare is one of the allowances to be disbursed at regular intervals. The amount and requirements for granting are regulated by the State Social Allowances Law as well as by the Cabinet of Ministers Regulations (Regulations No. 644, earlier – before the latter taking effect – by Regulations No. 1003), which were passed on the basis of this Law.

15.1. The amount of childcare allowance, the aim and procedure of its payment was determined in order to implement the Concept on the Increase of the State Social Allowance to Families after the Birth of a Child (*Koncepcijas tekstu skat. // see the text of the Concept: <http://ppd.mk.gov.lv/ui/DocumentContent.asp?ID=3434>*).

The reform of the childcare allowances had several aims.

First of all to introduce a fair and economically efficient system of childcare allowances i.e., such a system, which simultaneously furthers the improvement of the State demographic situation and secures adequate care for children, especially for infants.

Secondly, to stimulate direct involvement of parents in childcare, special attention and baby-sitting and ensure the possibility for at least one of the parents to constantly be

together with the child (*sk. Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 13. punktu // see the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01 Item 13*).

15.2. A person, who is caring for a child until one year of age, has the right to childcare allowance, if this person is employed (is considered to be an employee or self-employed person in accordance with the Law "On the State Social Insurance" on the day on which the allowance is granted. If this person is on parental leave then childcare allowance shall be in the amount of 70 percent from the average insurance contribution salary of the person, but not less than 56 lats per month and not more than 392 lats per month.

Insurance contribution salary is an income acquired from a paid job, from which in accordance with the Law "On State Social Insurance" the State social insurance compulsory contributions have been made (*sk. likuma "Par obligāto sociālo apdrošināšanu pret nelaiemes gadījumiem darbā un arodslimībām" 1. panta 8. punktu // see Section 1, Item 8 of the Law "On Compulsory Social Insurance in Cases of Accidents at Work and Occupational Diseases"*). Thus, by linking the amount of the childcare allowance to previous income of the person the State has wanted to find the optimum solution – to ensure for a person, caring for the child until one year of age such an allowance, which as much as possible would correspond to income of the person before the birth of a child, if this person has been employed as well as to render support to those persons, who have not received income from paid job before the birth of the child (*sk. Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 13. punktu // see the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01, Item 13*).

The Director of the Family and Youth Department of the Ministry for Children and Family Affairs has supported the aim of determination of such an amount of the childcare allowance: "We wished to noticeably increase this allowance so that one of the parents would have the possibility of spending the first year of the child together with him/her out of work and simultaneously not worsening the financial situation of

the family. The aim of the allowance is to almost replace the income from a paid job” (sk.: *Kesnere R. Kad pabalsts aizvieto darbā gūtos ienākumus; see: Kesnere R. When the allowance replaces the income acquired from a paid job// Latvijas Vēstnesis, March 10, 2005, No.41*).

15.3. The Cabinet of Ministers has chosen a combined method for determining the amount of childcare allowance. First of all, the Cabinet of Ministers Regulations regulates the minimum and maximum amount of the allowance. Secondly, the amount of the allowance, which exceeds the minimum amount of childcare allowance, but does not reach the maximum amount, is determined proportionally to the income acquired by person from paid job, namely, in such cases the person receives the allowance in the amount of 70 percent from the average insurance contribution payment.

As the Ministry of Welfare points out in its letter, such a complicated system of calculation of the allowance has been deliberately chosen. It allows the State to reach those political goals aimed at ensuring human rights, which it planned to achieve during the reform (sk. *lietas materiālu 2. sējuma 167. –168. lpp. //see Vol. II, pp. 167-168 of the materials in the matter*).

16. Belonging of the social rights to the human rights of the second generation and their specific nature determine also the limits of the control of the judicial power. When realizing social rights the legislator enjoys an extensive freedom of action as far as it is reasonably connected with the economic situation of the State; however, this freedom of action is not unlimited (sk. *Satversmes tiesas tiesas 2006. gada 2. novembra sprieduma lietā Nr. 2006-07-01 13. –14. punktu // see the Constitutional Court November 2, 2006 Judgment in case No. 2006 –07-01, Item 13 –14*).

16.1. The Judicial Power has the duty of assessing whether the legislator has observed the limits of the above freedom of action.

First of all it is possible to verify whether the legislator has performed any activities for realization of social rights. The legislator may not refuse from ensuring efficient realization of social rights. These rights are included in the Satversme and the legislator has to observe and respect them (*sk. Satversmes tiesas 2006. gada 8. novembra sprieduma lietā Nr. 2006-04-01 16. punktu // see the Constitutional Court November 8, 2006 Judgment in case No. 2006-04-01, Item 16*).

Secondly, it is possible to verify whether the legislator has adequately realized the social rights. Social rights, even though they depend on the financial possibilities of the State, shall be ensured at least in the minimum amount (*sk. Satversmes tiesas 2006. gada 2. novembra sprieduma lietā No. 2006-07-01 18. punktu un 2006. gada 8. novembra sprieduma lietā Nr. 2006-04-01 16. punktu //see the Constitutional Court November 2, 2006 Judgment in case No. 2006-07-01, Item 18 and November 8, 2006 Judgment in case No. 2006-04-01, Item 16*).

Thirdly, it is admissible to control whether – when realizing social rights – the legislator has not violated general legal principles. When realizing social rights the legislator shall observe general legal principles, which create the basis of the State legal relations (*sk. Satversmes tiesas 2006. gada 8. novembra sprieduma lietā Nr. 2006-04-01 16. punktu // see the Constitutional Court November 8, 2006 Judgment in case No. 2006-04-01, Item 16*).

16.2. When reviewing a matter the Constitutional Court shall observe the limits of the claim, namely, it has to verify the conformity of the impugned norm with the norms of higher legal force, by taking into consideration argumentation of the submitters of the claim as well as the causes and consideration, reflected in the claim.

In this case the submitters of the claim have challenged the maximum amount of the childcare allowance, pointing out that it does not comply with the principle of legal equality.

17. The principle of legal equality prohibits the State institutions to issue norms, which – without a reasonable ground – allow a differentiated attitude towards persons, who are in equal and comparable circumstances.

However, the principle of equality, fixed in Section 91 of the Satversme, does not mean leveling. It requires equal attitude only to those persons, who are in really equal and comparable circumstances.

Thus, the principle of equality permits and even demands a differentiated attitude to persons, who are in diverse circumstances as well as permits a differentiated attitude to persons, who are in equal circumstances if there is a reasonable and objective basis for it (*sk. Satversmes tiesas 2001. gada 3. aprīļa sprieduma lietā No. 2000 – 07 – 0409 secinājumu daļas 1. punktu // see the Constitutional Court April 3, 2001 Judgment in case No. 2000 –07-0409, Item 1 of the concluding part*). A differentiated attitude has no objective and reasonable basis, if it does not have a legitimate aim, or if the relations between the chosen measures and set aims are not proportionate (commensurate) (*sk. Satversmes tiesas 2002. 23. decembra sprieduma lietā Nr. 2002-15-01 secinājumu daļas 3. punktu // see the Constitutional Court December 23, 2002 Judgment in case No. 2002-15-01, Item 3 of the concluding part*).

To state whether the impugned norm complies with the first sentence of Section 91 of the Satversme one shall establish whether:

- persons are in equal and comparable circumstances;
- the impugned norm envisages a differentiated attitude;
- the differentiated attitude has an objective and reasonable basis, namely, whether it has a legitimate aim and whether the principle of proportionality has been observed.

18. Section 7, Item 2 of the First Paragraph of the State Social Allowances Law envisages the right to childcare allowance to all persons, caring for a child till one year of age, if these person have been employed on the day of granting the allowance (were considered to be employees or self-employed persons in accordance with the Law ”On

State Social Insurance” and are on parental leave. In this case all the above persons have the right to social security and State support to the family.

Thus all persons, who have the right of receiving childcare allowance in accordance with Section 7, Paragraph 1, Item 2 of the State Social Allowances Law are in equal and comparable circumstances.

19. By the impugned norm, when taking into consideration determination of the amount of childcare allowance for a person in every individual case, all persons are divided into two groups. Namely, the maximum amount of the allowance determined by the impugned norm, does not permit a certain group of persons to receive the allowance in the proportion, in which it is calculated for another group of persons.

Persons, whose average monthly insurance contribution salary does not exceed 560 lats, receive childcare allowance proportionally to their former income from paid job, namely, in the amount of 70 percent from the average monthly insurance contribution salary. In their turn person, whose average monthly insurance contribution salary exceeds 560 lats, receive childcare allowance in the form of fixed sum – 392 lats.

The maximum amount of the allowance, determined by the impugned norm disallows one group of persons to receive the allowance, the amount of which would be proportional to the previous income from paid job. Several submitters of the claim have calculated and mentioned in their claims the proportion between the received allowance – 392 lats, namely – the maximum amount of the allowance and the income received previously from paid job.

For example, for person A the childcare allowance is just 23 percent from her average insurance contribution salary (*sk. lietas materiālu 1. sējuma 2. lpp. //see Vol. I, p. 2 of the materials in the matter*). For person B the allowance is 61,9 percent from her average insurance contribution salary (*sk. lietas materiālu 2. sējuma 67. lpp. // see Vol. II, p. 67 of the materials in the matter*). In its turn for person C the allowance is 49,3

percent from her previous income from paid job (*sk. lietas materiālu 2. sējuma 126. lpp. // see Vol. II, p. 126 of the materials in the matter*).

Thus, one may agree with the submitters of the claim that the impugned norm envisages a differentiated attitude to persons, who are in equal and comparable circumstances.

20. Before assessing whether the differentiated attitude is justifiable, it is necessary to ascertain the place of childcare allowance in the social security system.

20.1. The notion "social security", which is guaranteed in Section 109 of the Satversme is specified in the Law "On Social Security". In the social security system the term "social security" includes not only the payments, which the person receives in accordance with schemes of social insurance but also activities of social aid.

Thus, in Latvia the social security system is set by both – social aid and social insurance, which are mutually connected and supplement one another (*sk. Satversmes tiesas 2001. gada 13. marta sprieduma lietā Nr. 2000-08-0109 secinājumu daļu // see the Constitutional Court March 13, 2001 Judgment in case No. 2000-08-0109, the concluding part*).

20.2. In accordance with Section 3, Paragraph 1 of the Law "On State Social Insurance" social insurance is an aggregate of activities organized by the State in order to insure the risk of a person or his/her dependants to lose income due to socially insured person's sickness, disability, maternity, unemployment, age, accident at work, professional disease as well as the death of the insured person or his/her dependants.

The basic principles of social insurance inter alia provide for utilization of the social insurance funds only for the social insurance services (*sk. likuma "Par valsts sociālo apdrošināšanu" 3. panta otrās daļas 2. punktu // see Section 3, Paragraph 2, Item 2 of the Law "on State Social Insurance"*). It is so because the person himself/herself or his/her employer makes social insurance payments for this person, which are accrued

and from which social insurance benefits are paid to the person, if the case of social insurance sets in.

In the framework of the social insurance system the received social insurance service shall correspond to the social insurance payments made. One shall not render to a person, in comparison with other persons to whom social insurance services are rendered, services which are not proportional to the social insurance payments made (*sk. Satversmes tiesas 2004. gada 14. janvāra sprieduma lietā Nr. 2003-19-0103 9.2. punktu //see the Constitutional Court January 14, 2004 Judgment in case No. 2003-19-0103, Item 9.2).*

20.3. In its turn social aid is personal and financial aid to a person, who is unable to provide oneself or to overcome particular hardships by one's own forces, and who does not receive any sufficient aid from anyone. Social aid shall correspond to his/her requirements, enable self-aid and promote his/her involvement into social life. (*sk. likuma "Par sociālo drošību" 11. pantu // se Section 11 of the Law "On Social Security"*). Social aid services are rendered from the basic State budget.

The Administrative Case Department of the Supreme Court Senate, when analyzing the essence of social aid, has concluded: "One of the basic principles of social rights is that social aid is ensured only then, if the seeker of aid cannot help himself/herself and cannot receive aid from his/her relatives. Social aid shall ensure minimum living conditions for a person [...] As the Constitutional Court has declared in its Judgment (in case No. 2000-08-0109), social rights – and social aid is one of them – are very significant, however, simultaneously, they are specific rights, because realization of these rights depends on the economical situation and available resources of every particular state. Thus social aid is not rendered to everybody, who wants it, but only depending on a certain level of living conditions. The corresponding level of living conditions is determined by a normative act" (*Augstākās tiesas Senāta Administratīvo lietu departamenta 2004. gada 20. aprīļa sprieduma lietā Nr. SKA-33 11. punkts; Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedumi un lēmumi. 2004. Rīga: Tiesu Namu Aģentūra, 2005, 288.-289. lpp. // The*

Administrative Case Department of the Supreme Court Senate April, 20, 2004 Judgment in case No.SKA-33, Item 11 ; Judgments and Decisions by the Administrative Case Department of the Republic of Latvia Supreme Court Senate. 2004. Riga: The Agency of Court Houses, 2005, pp. 288-289).

20.4. Childcare allowance is the State social allowance. In accordance with Section 5 of the State Social Allowances Law, this allowance shall be financed from the State basic budget.

State social allowances shall be 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 (*sk. Valsts sociālo pabalstu likuma 2. pantu // see Section 2 of the Law on State Social Allowances*). Thus, the State social allowances, inter alia, also childcare allowances, are elements of State social aid.

In difference from other State social allowances, the amount of childcare allowance depends on the previous income from paid job of the person, namely, the allowance – within the framework determined by the Cabinet of Ministers – is connected with the average monthly insurance contribution salary of the person. However, the circumstance that the average monthly insurance contribution salary of the person influences the amount of the allowance does not change the essence of this allowance. It would become the State social insurance service only in case if it were paid from the special social insurance budget.

21. To determine whether such a differentiated attitude has an objective and reasonable basis, it shall be established whether it has a legitimate aim.

Several submitters of the claim have indicated the interests of the State basic budget as the aim of the differentiated attitude (*sk. lietas materiālu 1. sējuma 124.lpp. un 2. sējuma 3. lpp. //see Vol.I, p. 124 and Vol.II, p. 3 of the materials in the matter*). As has

been pointed out in the constitutional complaint "if economy of budget funds could be the aim of determining a limited amount of the allowance (childcare allowance is financed from the basic State budget), then such an aim might not be considered as legitimate and proportionate for determination of differentiated attitude" (*lietas materiālu 1. sējuma 124. lpp. // Vol. I, p. 124 of the materials in the matter*).

In the sector of realization of social rights the interests of the State basic budget shall not always be regarded as illegitimate aim. The Constitutional Court, when reviewing another case and assessing the decision of the legislator to determine the maximum amount of maternity allowance as the social insurance service, has concluded: "The legitimate aim of the impugned norm [...] is securing the State social budget (in this case – the special disability, maternity and sickness budget)" (*Satversmes tiesas 2004. gada 14. janvāra sprieduma lietā Nr. 2003-19-0103 9.3. punkts //the Constitutional Court January 14, 2004 Judgment in case No. 2003-19-0103, Item 9.3*). If securing of the budget as a legitimate aim is permissible within the framework of the social insurance system, then it shall be the more so in the system of social aid, as the services of social aid are financed from the basic State budget.

The legitimate aim of the impugned norm is not the interests of the basic State budget *per se* but it is the protection of the rights of other people. Not only persons, claiming the childcare allowance have the right to receive services of social aid. In addition to this allowance Section 3 of the Law on State Social Allowances envisages paying eight more regular allowances and two allowances to be disbursed once.

The Ministry of Welfare in its letter to the Constitutional Court reasonably points out that the amount of the childcare allowance, just like the allowance of other State social allowances depends on the financial feasibilities of the State basic budget. These feasibilities shall be assessed by taking into consideration expenses for other allowances, included in the State Basic Budget Program "State Social Allowances" (*sk. lietas materiālu 2. sējuma 167. lpp. // see Vol.II, p. 167 of the materials in the matter*). If the amount of finances, needed for the payment of some allowance, would

be noticeably increased, then the possibility might arise that the rights of other persons to social aid within the framework of the system of social aid would be violated.

The Ministry of Welfare especially stresses that the minimum and maximum amount of the childcare allowance were determined by assessing financing needed for increase of the allowance in accordance with the long-term feasibilities of the State budget (*sk. lietas materiālu 2. sējuma 166. lpp. // see Vol. II, p. 166 of the materials in the matter*).

Thus, the differentiated attitude has a legitimate aim, namely, it allows also the realization of the right of other persons to social security.

22. When analyzing the conformity of the impugned norm with the principle of proportionality one shall assess whether application of the impugned norm does not create greater losses to the rights and legitimate interests of a person, than the benefits gained by the society.

22.1. Realization of social rights depends on the State economical and financial feasibilities. When assessing the above feasibilities and taking into consideration the needs of the society or separate public groups, the legislator experiences the right of determining both – the social security services and the minimum and maximum volume of every social security service, as well as provisions for receiving it.

The legislator may determine not only the maximum amount of the volume of social security services, which are financed from the basic State budget. The Constitutional Court has recognized that it is also permissible to determine the maximum volume of social insurance services. "The principle of social solidarity shall be applied not only as regards the members of different generations, but also among the receivers of social services of one generation. This conclusion follows from the establishment of minimum social guarantees. If minimum social insurance payment has been determined (for example with regard to old age pensions), then in circumstances of fixed budget logic of receipts and expenditures allows determining also restrictions regarding the maximum" (*sk. Satversmes tiesas 2005. gada 11. novembra sprieduma*

lietā Nr. 2005-08-01 6.3. punktu // see the Constitutional Court November 11, 2005 Judgment in case No. 2005-08-01, Item 6.3).

In the sector of social aid the legislator or the Cabinet of Ministers, when realizing the delegation of the legislator, is even more entitled to determine the amount of the allowance.

22.2. The submitters of the claim repeatedly stress that they have the right of receiving childcare allowance without any restrictions, namely – in the amount of 70 percent from the average monthly insurance contribution salary (*sk., piemēram, lietas materiālu 1. sējuma 4., 123. – 124. lpp. // see, for example, Vol. I, pp. 4, 123, 124 of the materials in the matter*).

The Satversme envisages neither the right of a person to a certain amount of the allowance, nor the system, under which this allowance shall be calculated. The Satversme only anticipates that the State shall support the family. Both – the amount of the allowance and the procedure of its calculation depend on the decision of the legislator or – on the basis of its authorization – on the decision of the Cabinet of Ministers, which in most cases is substantiated not by legal but political considerations.

The right of the claim by a person versus the state arises in the system of social insurance, in the framework of which a person makes mandatory social insurance payments. When the case of social insurance sets in, a person experiences the right of receiving social insurance services in proportion to the payments he/she has made.

However, childcare allowance, even though its amount to a great extent depends on the social insurance payments, is not a social insurance service. Thus the submitters of the claim have no right to receive childcare allowance, which is proportional to the social insurance payments, made by them.

22.3. When assessing the right of the legislator or the Cabinet of Ministers to determine the maximum amount of the social aid service, it is necessary to take into consideration that the maximum amount of the allowance to a great extent depends on the feasibilities of the basic State budget, which most of all are politically appraised.

The Constitutional Court shall abstain from assessing political issues, especially in the sector of social rights, in which it is hard to draw the line between juridical and political arguments (*sk. Satversmes tiesas 2005. gada 11. novembra sprieduma lietā Nr. 2005-08-01 9. punktu // see the Constitutional Court November 11, 2005 Judgment in case No. 2005-08-01, Item 9*). In the sector of social rights finding of a legally substantiated and more favorable for a person solution, which would allow receiving a bigger social allowance from the State, is almost always possible. However, it is not possible to take into consideration the financial feasibilities of the State, the economic situation, legal and political priorities and special needs of separate social groups just under the procedure of legal argumentation. All the above considerations influence decisions of the legislator or the Cabinet of Ministers when envisaging certain services of the social security system, its volume and provisions for granting.

22.4. Respecting freedom of action of the legislator and the Cabinet of Minister in the sector of social rights, one has to verify whether the determined maximum amount is not disproportionate.

One may agree with the viewpoint, expressed by the State Human Rights Bureau, that the maximum amount of childcare allowance ensures a satisfactory living standard for a person, as the amount of the allowance more than three times exceeds the amount of subsistence wage (*sk. lietas materiālu 2. sējuma 46. lpp. // see Vol.II, p. 46 of the materials in the matter*). Besides, the maximum level of the allowance is seven times bigger than the minimum amount of the allowance. Thus, the maximum amount of childcare allowance is sufficiently big in comparison with both - the minimum amount of this allowance and other State social allowances.

In addition the impugned norm is clearly and unmistakably formulated. No person, when acquainting herself/himself with the content of the norm should have doubt about the maximum amount of the State aid in the form of childcare allowance. Thus, it was possible for persons to establish and precisely envisage their rights in a concrete situation.

The State has no duty to completely substitute the income of a person from paid job by childcare allowance. In the framework of the social aid system the State shall render aid at least in the minimum amount. When comparing the maximum and minimum amount of childcare allowance as well as other State social allowances, one has to recognize that the maximum amount of the childcare allowance ensures this aid.

The Cabinet of Ministers has envisaged not only the maximum amount of childcare allowance but also the procedure for its revision. Item 8 of Regulations No. 644 determines that on the initiative of the Minister of Welfare the Cabinet of Ministers revises the maximum amount of the childcare allowance in accordance with feasibilities of the State budget by assessing the economic situation in the State and by taking into consideration the average monthly gross wage increase, determined by the Central Statistics Board.

In the same way it shall be taken into consideration that the Cabinet of Ministers plans to normatively determine childcare allowance as a social insurance service.

By envisaging a differentiated attitude the Cabinet of Ministers has not violated the principle of proportionality. Thus, this differentiated attitude is justifiable and the impugned norm complies with Section 91 of the Satversme.

The operative part

On the basis of Sections 30 –32 of the Constitutional Court Law the Constitutional Court

hereby rules:

to declare 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 words "and not more than 392 lats per month", which are Included in Item 2.2 of the Cabinet of Ministers August 8, 2006 Regulations No. 644 "Regulations on the Amount of Childcare Allowance and Additional Payment for Twins or Several Children Born in One Confinement as well as on the Procedure for Revision of it and Granting and Payment of the Allowance and Additional Payment" as Conformable with Section 91 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session

A.Endziņš