



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, November 2, 2006

in case No. 2006-07-01

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

on the basis of the claim by twenty deputies of the 8th. Saeima - Andrejs Klementjevs, Valērijs Agešins, Vitālijs Orlovs, Aleksejs Vidavskis, Ivans Ribakovs, Jānis Jurkāns, Aleksandrs Golubovs, Igors Solovjovs, Oļegs Deņisovs, Sergejs Fjodorovs, Martijans Bekasovs, Jakovs Pliners, Andrejs Aleksejevs, Andris Tolmačovs, Juris Sokolovskis, Nikolajs Kabanovs, Vladimirs Buzajevs, Aleksandrs Bartaševičs, Boriss Cilevičs and Jānis Urbanovičs

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 1), 17 (Item 3 of the third Paragraph) and 28¹

in written proceedings at October 3, 2006 Court session reviewed the matter

”On the Compliance of that Paragraph of Section 1 of the Law ”Amendments to the Law on State Social Allowances” by which a New Item has been Incorporated into the State Social Allowances Law as well as the Compliance of

its Section 2 with Section 110 of the Republic of Latvia Satversme (Constitution)”.

The establishing part

1. Section 110 of the Republic of Latvia Satversme (hereinafter – the Satversme) took effect on November 6, 1998 in the following wording: ” The State shall protect and support marriage, the family, the rights of parents and the rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.”

On December 15, 2005 the Saeima passed the Law ” Amendments to the Republic of Latvian Satversme”, expressing Section 110 of the Satversme in the following wording: ”The State shall protect and support marriage – the union between a man and a woman, the family, the rights of parents and the rights of the child. The state shall provide special support to disabled children, children left without parental care or who have suffered from violence”.

2. The State Social Allowances Law took effect on January 1, 2003. Types of State Social Allowances are listed in Section 3. The above Section (Item 2 of the first Paragraph) envisages that one of the allowances to be disbursed at regular intervals is an allowance for childcare. Section 7 of the State Social Allowances Law establishes provisions for granting childcare allowances. In their turn the Cabinet of Ministers Regulations regulate the amount of the above allowance. After the State Social Allowances Law taking effect both – the provisions for granting childcare allowance and its amount have several times been changed.

2.1. Initially the first Paragraph of Section 7 of the State Social Allowances Law determined that ”an allowance for childcare shall be granted to a person caring for 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 if the mother of the child does not receive maternity allowance”.

The Cabinet of Ministers July 1, 2003 Regulations No. 349 ”Regulations on the Amount of the Childcare Benefit, its Review Procedure as well as the Procedure for Granting and Paying it” determined the amount of the childcare benefit to persons, who are caring for the child up to the age of a year and a half - 30 lats a month and to persons, who are caring for a child up to two years of age –7,5 lats a month.

2.2. On November 11, 2004 the Saeima adopted the Law ”Amendments to the State Social Allowances Law”, by which it amended the first Paragraph of Section 7 of the Law, establishing that ”An allowance for childcare shall be granted to a person caring for a child:

1) under one year 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;

2) from one year 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 of 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”.

From January 1, 2005 the amount of the childcare allowance was determined by 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” (hereinafter – Regulations No. 1003). In accordance with Item 3 of the above Regulations persons, who care for a child till one year of age, shall receive allowance in the amount of 50 lats, if this person is not employed and the amount of 70 percent from the average insurance contribution salary of the person (but not less than 56 lats a month and not more than 329 lats a month) if the person is employed and is on parental leave. In its turn the amount of the childcare allowance, caring for a child from one year up to two years of age was 30 lats.

3. On March 8, 2005 several persons submitted a constitutional claim to the Constitutional Court contesting the provision included in Section 7 (Item 1 of the first Paragraph) of the State Social Allowances Law "if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law "On State Social Insurance") or is employed and is on parental leave"" with Sections 91, 106 and 110 of the Satversme. On the basis of the above claims matter No. 2005-09-01 was initiated " On the Compliance of the Provision Incorporated into Section 7 (Item 1 of the first Paragraph) of the Law on State Social Allowances – " if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave " with Sections 91, 106 and 110 of the Republic of Latvia Satversme"".

On November 4, 2005 the Constitutional Court announced the Judgement in the above case (hereinafter – the Constitutional Court November 4, 2005 Judgment), declaring the provision, included in Section 7 (Item 1 of the first Paragraph) of the Law on State Social Allowances – "if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave" as unconfomable with Section 110 of the Republic of Latvia Satversme and null and void as of March 1, 2006. As concerned the submitters of the constitutional claim the above provision was declared as unconfomable with Section 110 of the Republic of Latvia Satversme and null and void as of March 8, 2005.

4. On March 1, 2006 Section 7 (Item 1 of the first Paragraph) of the State Social Allowances Law - in accordance with the Constitutional Court November 4, 2005 Judgment - was in effect in the following wording: "An allowance for childcare shall be granted to a person caring for a child until one year of age."

5. On March 2, 2006 the Saeima forwarded the draft Law "Amendments to the State Social Allowances Law", submitted by the Cabinet of Ministers to the

Commissions, for review. On the very same day the draft Law was reviewed in its first reading, declared as urgent and adopted also in its second reading, determining that the Law shall take effect on the next day after its publication.

On March 7, 2006 the Saeima Chairperson Ingrīda Ūdre, acting as the President, promulgated the Law.

The Law "Amendments to the State Social Allowances Law" envisages several amendments to the State Social Allowances Law, inter alia:

"1. Express the first Paragraph of Section 7 in the following wording:

"(1) An allowance for childcare shall be granted to a person caring for a child:

1) until one year of age, if this person has not been employed on the day of granting the benefit (is not considered to be an employee or self-employed person in accordance with the "Law on State Social Insurance");

2) until one year of age if this person has been employed on the day of granting the benefit (is considered to be an employee or self-employed person in accordance with the "Law on State Social Insurance") and is on parental leave;

3) until one year of age if the person has been employed on the day of granting the benefit (is considered an employee or a self-employed person in accordance with the Law "On State Social Insurance) and is employed during the time of caring for the child but is not on parental leave;

4) from one year up to two years of age."

2. To supplement Section 15 with Paragraph 6 in the following wording:

"(6) the childcare allowance specified in Section 7 (Item 3 of the first Paragraph) granted to the above person is 50 percent from the allowance, specified for the above person in Section 7 (Item 2 of the first Paragraph), but shall not be less than the minimum benefit, specified for an employed person."

6. On August 8, 2006 the Cabinet of Ministers passed Regulations No.644 "Regulations on the Amount and Procedure of Granting and Payment as well as Revision of Childcare Allowance and Additional Payment to the Childcare Benefit

for Twins or Several Children Born in one Confinement” (hereinafter – Regulations No. 644), Item 2 of which determines that ”the amount of the allowance shall be as follows:

2.1. to a person, who cares for the child until one year 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”) on the day of granting the benefit – 50 lats per month;

2.2. to a person, who cares for the child until 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 of granting the benefit and is on parental leave – in the amount of 70 percent from the average insurance contribution salary, but not less than 56 lats a month and not more than 392 lats per month;

2.3. to a person, who cares for the child until one year of age, if this person is employed (is considered to be an employee or self-employed person in accordance with the ”Law on State Social Insurance”) on the day, when the allowance is granted, is employed during child care, but is not on parental leave – 50 percent from the allowance specified for a person in Sub-item 2.2., but not less than 56 lats a month”.

7. On March 28, 2006 twenty **deputies of the 8th. Saeima** (hereinafter – the submitter of the claim) submitted a claim to the Constitutional Court, contesting conformity of the parts of Section 1 of the ”Amendments to the State Social Allowances Law” by which in the Law has been introduced a new Item 3 to Section 7, Paragraph one and Section 2, which envisages supplementing of Section 15 of the State Social Allowances Law with a new sixth Paragraph (hereinafter – the impugned norms) with Sections 91, 106 and 110 of the Satversme. It is requested in the claim to declare the impugned norms null and void as of the day of their adopting.

Panel 4 of the Constitutional Court initiated a matter only on the compliance of the impugned norms with Section 110 of the Satversme.

The submitter of the claim holds that the restriction, following from the impugned norms which establish that a person, who cares for the child until one year of age and

works full-time or part-time job (is considered to be an employee or self-employed person in accordance with the "Law on State Social Insurance") receives the childcare allowance in the same amount as the person would receive if not working, does not comply with the Satversme. To their mind such a restriction shall be regarded as disproportional restriction of the rights, determined in Section 110 of the Satversme.

The submitter of the claim stresses that the primary interests of the child first of all are normal food, medical care and clothing, therefore the family needs additional income and not an uninterrupted presence of the mother. The will of the legislator to ensure worthy childcare in the first year of its life and the measures, chosen for it, do not comply with the economical situation of Latvia, therefore it disproportionately restricts the family rights and does not reach its legitimate aim. Childcare allowance does not compensate even the minimum salary and does not ensure the subsistence minimum. Besides, payment of the allowance in its full amount - taking into consideration the income level of the allowance receivers - would not noticeably enlarge the expenses of the total State budget.

It is noted in the claim that the above restriction of receiving the childcare allowance is evidently inelastic and disproportionately restricts the rights of the women in the maternity period.

From the claim simultaneously follows the viewpoint that the Saeima has groundlessly permitted equal attitude to persons, who work a normal working day and the young mothers, who are able to unite childcare and breast-feeding of the child in its first year of life with part-time work, without harming the interests of the child. The submitter of the claim stresses that the legislator has not taken into consideration the particular possibilities for women in the maternity period to work part-time work, as well as making use of the breaks for breast-feeding or work at home, making use of the possibilities of up-to-date technology, which are specified in the Labour Law.

8. The Saeima – not agreeing with the statements, expressed in the claim - in its written reply protects the viewpoint that the contested norms comply with Section 110 of the Satversme and requests to declare the claim as ungrounded.

The Saeima stresses that increasing of the amount of childcare benefit and the new procedure for calculation of it are directed to favouring birth rate in the State and introducing socially fairest and economically most efficient system of childcare allowance. Simultaneously to their mind the impugned norms are directed to the protection of interests of children in the best possible way.

In its written reply, referring to the Constitutional Court November 4, 2005 Judgment, it is pointed out that the impugned norm has an aim, which the Constitutional Court in the above Judgment has declared as legitimate, namely, protection of the rights of children, ensuring complete care to the child until the age of one year, which is rendered by the parents.

Besides in the written reply is cited the fragment from the Constitutional Court Judgment in which the Constitutional Court – assessing whether it is able to reach the legitimate aim with measures, less restricting the rights of the person – mentions the possibility that the person might work part-time work and receive allowance of minimum amount or the allowance, which is smaller than the person would receive if she did not work.

The Saeima stresses that the impugned norms have been adopted to find an optimal solution for realization of the above Constitutional Court Judgment. If the Constitutional Court would have wanted to have no restrictions to employment or non - employment of the person caring for the child during the period of childcare, it would not have postponed the time of the norm becoming null and void till March 1, 2006.

In the written reply is expressed the viewpoint that the impugned norms envisage noticeably less restriction in comparison with the restriction, which was valid till March 1, 2006.

The Saeima holds that the submitter of the claim perceives the childcare allowance in a simplified way – only as an additional source of income, namely – the more the State pays, the better for the family. The Saeima points out that alongside with one vital aim of the allowance – to help the family cover expenses or a part of the expenses, which arise in connection with childcare and compensate those gainings, which have not been earned by work – there is another and not less important aim – to motivate the parents, whenever it is possible, not to work or to devote less time for working and ensure complete childcare themselves.

It is stressed in the written reply that the limitation of the allowance to be paid, which is incorporated into the impugned norms – 50 lats - allows to reach the legitimate aim in more than one ways and observe the rights of other persons, besides it allows the parents to keep up the needed professional qualification and at the same time to care for the child.

The Saeima maintains that the impugned norms envisage the restriction of the amount of childcare allowance, but it has been determined by law and it has a legitimate aim. To their mind the restriction is proportionate and not at variance with the duty of the State to support family and children.

The concluding part

9. After the Constitutional Court November 4, 2005 Judgment Section 110 of the Satversme – by the Saeima December 15, 2005 Law "An Amendment to the Republic of Latvia Satversme" was expressed in a new wording (*sk. šī sprieduma 1. punktu // see Item 1 of this Judgment*). As follows from the substantiation given by the Saeima Legal Affairs Committee about the necessity of the above amendment, its aim is to incorporate into Section 110 of the Satversme definition of marriage (*sk.*

anotāciju, kas pievienota Saeimas Juridiskā komisijas 2005. gada 13. oktobra vēstulei par alternatīva likumprojekta iesniegšanu; see annotation, which has been attached to the Saeima Legal Affairs Committee October 13, 2005 letter about the submission of an alternative draft law// www.saeima.lv). Thus, on its essence, this amendment does not introduce any changes in that part of the Satversme norm, which has been already interpreted in the above Constitutional Court Judgment.

The Constitutional Court has concluded that "from Section 110 of the Satversme and international liabilities of Latvia inter alia follows the positive duty of the State to create and maintain the system with a view to social and economic protection of a family" (*Satversmes tiesas spriedums lietā Nr. 2005-09-01, 8.2. punkts // The Constitutional Court Judgment in case No. 2005-09-01, Item 8.2*).

10. The legislator, when implementing the positive duty of creating and maintaining the system of family social and economic system, has specified the right of a family to specific protection by determining several protection mechanisms (benefits, allowances etc.) and these rights have become the rights of an individual. A person may require realization of these rights from the State, as well as defend the above rights in a court (*sk. Satversmes tiesas sprieduma lietā No. 2005-09-01 9.3. punktu // see Item 9.3 of the Constitutional Court Judgment in case No. 2005-09-01*). From the above Judgment, in which the Constitutional Court has inter alia analysed the whole system of social and economical protection in Latvia, follows that the childcare allowance is an integral part of the above system.

However, in difference from the impugned norm, analysed in the Constitutional Court November 4, 2005 Judgment, the impugned norms of the matter to be reviewed do not forbid the person, who works and cares for a child, to receive childcare allowance as such, namely, it does not forbid the person to receive an allowance of a certain minimum amount or an allowance in the amount of 50 percent from the allowance determined for a person, who is on parental leave.

In the framework of the concrete matter the submitter of the claim does not require the Constitutional Court to assess also the fact whether the concrete amount of the

childcare allowance - inter alia also the minimum amount, which at the moment of the submission of the claim was regulated by Regulations No. 1003 but at the time of reviewing and adjudication of the matter is regulated by Regulations No. 644, that is, legal acts, which have not been contested in the concrete case - complies with Section 110 of the Satversme. In the claim it is requested to assess only whether the norms, which divide the receivers of the allowance into groups on the criterion of employment and envisage for one group of the receivers the allowance in lesser amount, comply with the Satversme.

11. Two mutually connected but different norms are contested in the claim. Section 1 of the Law "Amendments to the State Social Allowances Law" expresses Section 7, Paragraph 1 of the State Social Allowances Law in a new wording but Section 2 supplements Section 15 of the Law with a new – the sixth Paragraph. Conformity with the Satversme of both the impugned norms shall be separately assessed.

12. Section 7 (Items 1-3 of the first Paragraph) of the State Social Allowances Law determines what persons shall receive childcare allowance until the time when the child is one year old but Item 4 refers to the care of the child from one until two years of age.

The first Paragraph (Items 1 –3) of Section 7 includes all the potential categories of persons, who care for the child until one year of age and groups these persons on the employment features. Namely, the childcare allowance is granted to a person caring for a child until one year of age, if this person:

- 1) has not been employed on the day of granting the allowance;
- 2) has been employed on the day of granting the allowance and is on parental leave;
- 3) has been employed on the day of granting the allowance and is employed at the time of childcare, but is not on parental leave.

In the claim only supplementing of Section 7, Paragraph 1 with the third Item of the State Social Allowances Law is contested but not Items 1-3 of the Section, that is,

grouping of persons on the employment principle. Besides, the respective Regulations of the Cabinet of Ministers are not contested either. It means that the submitter of the claim does not contest that the amount of childcare allowance may depend on the fact of whether the person is or is not employed as well as is or is not on parental leave on the day of requesting the allowance.

Dividing persons into groups does not in itself deny the person the right of receiving childcare allowance. Quite to the contrary – Item 3 of this norm ensures the possibility of receiving the benefit for a certain group of persons. If the Constitutional Court would declare this norm as invalid, then persons, who were employed on the day of granting the allowance and are employed during the time of childcare, but are not on parental leave, would receive no childcare allowance.

Thus part of Section 1 of the Law "Amendments to the State Social Allowances Law" by which a new Item 3 has been introduced in Section 7 of the State Social Allowances Law, complies with Section 110 of the Satversme.

13. The Constitutional Court in its November 4, 2005 Judgment has concluded that "by determining the restriction to receive the childcare allowance, determined by the law, for the person, who works part-time work, the impugned norm denies the right to social and economic protection of the family in case of childbirth, which is guaranteed in Article 110 of the Satversme and specified in normative acts. Thus, such a restriction shall be considered as the restriction of fundamental rights, determined in the Satversme" (*Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 10. punkts // the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01, Item 10*). From the claim follows the viewpoint of the submitter that in the matter to be reviewed Section 2 of the contested Law "Amendments to the State Social Allowances Law" includes a similar restriction to the fundamental rights, determined in the Satversme.

Section 15, Item 1 of the State Social Allowances Law envisages that "the amount of the State social allowances and the procedures for the review thereof shall be

determined by this Law and by the Cabinet”. In accordance with this norm the amount of the childcare allowance is regulated by the Cabinet of Ministers Regulations No. 644, which have been passed in conformity with Sections 7 (Paragraph 3), 15 (Paragraph 1), 16 (Paragraph 1) and 17 (Paragraphs 1 and 2).

Section 2 of the Law ”Amendments to the State Social Allowances Law” envisages supplementing of Section 15 with Paragraph 6 in the following wording:

” (6) The childcare allowance specified in Section 7 (Item 3 of the first Paragraph), granted to the above person, is 50 percent from the allowance specified for the above persons in Section 7 (Item 2 of the first Paragraph) but shall not be less than the minimum benefit, specified for an employed person ” (hereinafter –Paragraph 6 of the contested Section 15).

This does not forbid the person, mentioned in Section 7 (Item 3 of the first Paragraph) to receive the allowance, however, it noticeably decreases the amount of it. Besides, the legislator has determined that even this allowance of different amount may not be less than a certain minimum amount. Thus in the matter being reviewed the contested sixth paragraph of Section 15 specifies the amount of the allowance to be granted to the person, mentioned in Section 7 (Item 3 of the first Paragraph), making it dependent on one criterion – employment.

To assess conformity of the contested sixth Paragraph of Section 15 with Section 110 of the Satversme, one shall first of all establish whether the legislator – when determining the concrete regulation - has violated the limits of the freedom of action.

13.1. Section 110 of the Satversme bids to support the family, however, it does not create for the person subjective rights to receive a concrete state support in the certain form and amount of a benefit. This Section first of all assigns the State with the duty of forming an adequate system (normative, institutional etc.) and, caring for children, family and marriage as well as observing the other Satversme norms and legal principles, carrying out such measures of support, which are efficient enough and –

as much as possible – comply with the interests of the addressees, first of all – the children.

13.2. Interpreting Section 110 of the Satversme as read in conjunction with Section 89 of the Satversme, it can be concluded that Section 110 of the Satversme assigns the State with the duty to guarantee for a family with children at least the minimum of internationally declared rights, surely, also that of social rights.

The Republic of Latvia has acceded to several international instruments in the sector of social rights. On March 23, 2006 the Saeima adopted the Law by which it declared as binding on Latvia the Convention of Maternity Protection, which has been elaborated on June 15, 2000 by the General Conference of International Labour Organization, by taking into consideration UNO 1948 Universal Declaration of Human Rights, UNO 1979 Convention on Elimination of Any Kind of Discrimination of Women, UNO 1989 Convention on the Rights of a Child, Peking 1995 Declaration and Platform of Activities, International Labour Organization 1975 Declaration on Equal Possibilities and Relationships to Working Women, International Labour Organization 1998 Declaration on Fundamental Principles and Rights in the Sector of Labour and Provisions for its Planned Realization, the aim of which is to ensure equal possibilities and relationships towards both – working women and working men and especially 1981 Convention on Employees with Families.

Maternity Protection Convention – in accordance with maternity leave (in the period before and after giving birth) - establishes specific requirements with regard to payment and amount of the allowance. As concerns breast-feeding mothers, to them refers only one Section, which envisages;

”1. The woman shall be ensured the right to one or several breaks or a decreased number of working hours for breast feeding the child.

2. National laws and practice determine the period in which breast-feedings breaks or a decrease of working hours are allowed, as well as the length, number and procedure in accordance with which the number of working hours is decreased are

established. Such breaks or a decrease of working hours are included in working time and are adequately paid”.

Thus it does not follow from the above Convention, that the requirement to ensure for the mother, who breast-feeds her child, the possibility to receive allowance has been internationally accepted.

13.3. Section 26 of the UNO Convention on the Rights of a Child establishes:

”1. Member States recognize the right of every child to make use of benefits of social security, including social insurance and carry out the needed measures to completely realize the above right in accordance with the national legislature.

2. These benefits – if necessary – are granted in accordance with the existing resources and the possibilities of the child and those persons, who are responsible for subsistence of the child as well as by observing any reasons, which are connected with the benefit, received by the child or which are being received in its name.”

The first, the second and the third Paragraphs of the above Convention determine:

1)The Member States recognize the rights of a child to such standard of living, which is needed for physical, intellectual, mental, moral and social development.

2.) Parents or other persons, who care for the child, commensurate to their finances and social standing, shall be mainly responsible for ensurance of standard of living, which is needed for the development of the child.

3.) The Member States in accordance with national circumstances and within the range of national possibilities implement the needed measures to render assistance to parents and other persons, who care for the child to realize the above rights and – if necessary – render material aid and elaborate programs of support, especially with regard to provision of food, clothing and dwelling.”

Simultaneously Section 4 of this Convention envisages that ” the Member States perform all the necessary legislative, administrative and other measures to realize the rights, incorporated in this Convention. As regards economic, social and cultural rights the Member States perform the above measures within the range of maximum resources at their disposal and – if necessary – with the help of international cooperation”.

Thus the above international norms stress the responsibility for ensurance of child’s interests of both – the parents (or other persons, who care for the child) and the state within the range of its maximum resources in rendering aid to parents and other persons, who care for the child. However, these norms leave the issue on the provisions and amount of the above aid within the competence of the national legislator. From the norms follow neither the requirement to grant an allowance to the person, who cares for the child, nor any other requirements concerning the amount of such an allowance.

13.4. Latvia, when acceding to the Social Charter of Europe (hereinafter- the Charter), in accordance with its Section 1, Items 16 and 17 has declared as the aim of its policy reaching such conditions under which the following rights and principles shall be efficiently realized:

a) The family as a fundamental group unit of society in order to ensure valuable development of it has the right to respective social, legal and economic protection.

b) Mothers and children, regardless of the family status and family relations, have the right to respective social and economic protection.

However one shall take into consideration that the principles, declared in Section 1 of the Charter on their nature are political but not juridical.

Simultaneously in accordance with Section 20 of the Charter Latvia has undertaken to regard as binding also Sections 16 and 17, which envisage concrete State obligations. Section 16 determines; "To ensure circumstances, which are necessary for the complete development of a family as the fundamental group unit of the society, the States Parties undertake promoting economic, legal and social protection of family life by such means as family grants, fiscal easement, provision of available housing, grants to the newly-wed and other appropriate funds."

In its turn Section 17 envisages; " To secure efficient use of the rights of a mother and a child to social and economical protection the State Parties shall realize all the necessary and adequate measures, including formation and maintenance of respective institutions and services."

Thus from the above norms of the Charter follows the duty of the State to favour economic, legal and social protection of the family life, including such means as family allowances. However, the Charter envisages neither the concrete structure of the grants, nor their amount.

13.5. The Constitutional Court has concluded that "Section 110 of the Satversme by establishing that the State shall protect the rights of the parents and the rights of the child, also inter alia determines both – the natural right of the parents to take care about their children and bring them up in conformity with their religious and philosophical convictions and the duties, which are connected with care and upbringing of children"(*Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 10.punkts //The Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 10 of the concluding part*).

The Constitutions of other states also - side by side with the duty of parents to take care about their children - determine the obligation of the state to support the family. For example Section 27, Paragraphs 1 and 3 of the Estonia Constitution envisage:

”The family being fundamental for the preservation and growth of the nation, and as the basis for society, shall be protected by the state. [...] Parents shall have the right and the responsibility for the raising and care of their children” (*see Constitutions of Europe. Texts collected by the Council of Europe Venice Commission, Volume I, Martinus Nijhof Publishers Leiden Boston 2004, P 593*).

Section 47, Paragraph 1 of the Bulgaria Constitution determines that the rights and the duties of parents are to care for their children until they attain the age of majority. The state shall support the parents (*see Constitutions of Europe. Texts collected by the Council of Europe Venice Commission, Volume I, Martinus Nijhof Publishers Leiden Boston 2004, P 373*).

Section 51, Paragraphs 2 and 3 of the Ukraine Constitution establish that parents are obliged to support their children until they reach the age of majority. Adult children are obliged to care for their parents who are incapable of work. The family, childhood, motherhood and fatherhood are under the protection of the State (*see Constitutions of Europe. Texts collected by the Council of Europe Venice Commission, Volume 2, Martinus Nijhof Publishers Leiden Boston 2004, P 1957*).

Section 110 of the Satversme does not require that the State – only and solely by the payment of allowances – shall secure material welfare of every child during its first year of life. That is first of all the duty of the parents. However, in accordance with the interests of the child the State has the duty to render reasonable support to the family, especially in cases when the parents are not able to ensure all the necessary means for the child.

When weighing the amount of such support one shall take into consideration that social rights ” is a specific sector of human rights, which in constitutional laws of states and international human rights instruments has been formulated as general obligations of the state. Choosing of the regulating mechanism has been left for the legislator of every state. Realization of social rights depends from the economic situation of the state and the accessible resources” (*Satversmes tiesas 2001. gada 26.*

junija sprieduma lietā Nr. 2001-02-0106 secinājumu daļas 4. punkts // the Constitutional Court June 26, 2001 Judgment in case No. 2001-02-0106, Item 4 of the concluding part).

The legislator, when carrying out the positive duty of supporting a family, following from Section 110 of the Satversme, and specifying the rights, determined in the Satversme, inter alia also regulating the state social allowances, including the childcare allowance, by the law experiences an extensive freedom of action, as far as it is reasonably connected with the economic situation of the State.

Maintaining the possibility for all persons, who care for the child until one year of age, to receive childcare allowance, the legislator has realized the positive duty, following from Section 110 of the Satversme in its admissible minimum amount. Determination of a different allowance for separate groups of persons in the concrete case shall not be regarded as avoiding implementation of the above duty and is not at variance with Section 110 of the Satversme.

Thus the contested sixth Paragraph of Section 15 complies with Section 110 of the Satversme.

14. In accordance with Section 110 of the Satversme the legislator enjoys an extensive freedom of action when regulating the issue on the amount of the childcare allowance and on what criteria this or another group of persons shall receive the above allowance. However, this freedom is not unlimited. The other norms of the Satversme and the principles following from it, first of all the principle of universal equality, determine the boundaries of it.

Section 91 of the Satversme determines that ” all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind”. The Constitutional Court in its Judgments has repeatedly pointed out that from Section 91 of the Satversme follows the principle of legal equality, which requires equal attitude to persons, who are in similar and comparable

circumstances. Different attitude to such persons is permissible only if there is an objective and reasonable basis for it (*sk., piemēram, Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 13. punktu // see, for example, the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 13 of the concluding part*). Simultaneously the Constitutional Court has stressed that the principle of legal equality concedes and even requires different attitude to persons, who are in different circumstances. Only if it has been established that it has an objective and reasonable basis the principle of equality permits different attitude to persons, who are in similar circumstances or equal attitude to persons, who are in different circumstances (*sk., piemēram, Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 13. punktu // see, for example, the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 13 of the concluding part*).

This matter has been initiated only on the conformity of the impugned norm with Section 110 of the Satversme, refusing to initiate a matter on the compliance of the impugned norm with Section 91 of the Satversme. However, the Constitutional Court has to take into consideration that "the Satversme is a single aggregate body, and the norms included in it shall be interpreted systemically" (*Satversmes tiesas 2002. gada 22. oktobra sprieduma lietā nr. 2002-04-03 secinājumu daļas 2. punkts // The Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 2 of the concluding part*).

The first Paragraph of Section 18 of the Constitutional Court Law envisages that the legal justification of the claim shall be indicated in the application to initiate a case at the Constitutional Court. If the conformity of the legal norm (act) with several norms of higher legal force is contested then legal substantiation with regard to the conformity of the impugned act with every indicated norm of higher legal force shall be included in the claim. In the concrete claim the legal justification as concerns unconformity of the impugned norm with Section 91 of the Satversme was not included. If there is no legal substantiation in the claim, then the Constitutional Court Panel experiences the right of refusing to initiate a case as concerns that part of the

claim, to which no substantiation has been given; and in this case the Panel acted just so.

However, even when the Constitutional Court Panel has refused to initiate a case on the claim, formulated in some parts of the application, the Constitutional Court, taking into consideration the principles of the Constitutional Court process, if it is needed for the systemic interpretation of the impugned norms, may verify the compliance of the impugned norms with the norm of higher legal force also in that part of the claim, on which the matter was not initiated.

15. Families with children up to one year of age are in equal and comparable circumstances – they have additional needs – both in the financially material aspect, and in the need to find the time needed for personal contact with the child. All children of that age have the right of receiving the necessary State support, which would ensure for them the best possible care and, preferably, also the presence of the parents.

The legislator has determined a different attitude to a part of these families, namely to families in which the person, who cares for the child, simultaneously works a full time or part time job.

To establish whether such differentiated attitude is permissible from the viewpoint of Section 91 of the Satversme, one shall assess whether the differentiated attitude, envisaged in Paragraph 6 of the impugned Section 15:

- 1) has been determined by Law adopted under a certain procedure;
- 2) has a legitimate aim;
- 3) has been determined by observing the principle of proportionality.

16. The impugned norm has been determined by Law promulgated and adopted under a certain procedure. In the claim is criticized adoption of this Law in a hurry, however, it was not pointed out that the legislator had violated the procedure,

determined in the Rules of the Procedure of the Saeima. Thus there is no doubt about the fact that Law has determined the differentiated attitude.

17. In the Summary to the draft Law "Amendments to the State Social Allowances Law" it has been pointed out that "the aim of the draft Law is introducing of a more adequate to family needs system of the childcare allowance. [...] childcare allowance is granted both to persons, who are not employed and to persons, who are employed and are on parental leave or are working, i.e. granting of the childcare allowance is not further connected with the person being on parental leave or the fact of working (*lietas materiālu 1. sēj., 198.lpp. // materials in the matter, Vol.I, p. 198*).

In the Summary the necessity of limiting the amount of the allowance as concerns persons, who are working, is also substantiated. The Cabinet of Ministers stresses that "the childcare allowance is meant for caring for the child – it is granted to the person, who takes care of the child. When determining the childcare allowance in the amount of 50 percent for the person, who takes care of the child until one year of age and is working, the interests of both – the child and the parents are equivalently ensured. Implementation of such a norm stimulates parents to choose not working during the first year of age of the child thus rendering adequate care to their children. When receiving adequate care and support from the parents the child grows and develops into a full-fledged member of the society, and that – in its turn – ensures qualitative public growth in future (*lietas materiālu 1. sēj., 198-199 lpp. // Vol.I, pp. 198-199 of the materials in the matter*).

Side by side with the vital aim of the allowance – to help the family cover expenses or a part of them, which have arisen in connection with childcare and compensate income, which has not been received in work, the Saeima in its written reply names the second – not less important – aim to motivate the parents, if it only is possible not to work or devote less time to working and ensure adequate childcare themselves.

The Constitutional Court has repeatedly stressed that "in legal relationships, concerning the child, in all the activities the rights and interests of the child shall

prevail. It means that not only the courts and other institutions shall adopt their decisions on the basis of the interests of the child, but the legislator has also to observe it, so that the adopted or amended normative acts would protect the interests of the child in the best possible way (*Satversmes tiesas 2004.gada 11. oktobra sprieduma lietā Nr. 2004-02-0106 11. punkts // the Constitutional Court October 11, 2004 Judgment in case No. 2004-02-0106, Item 11*).

The Constitutional Court has also concluded that the State, guided by the above principle, has wished to protect the rights of the child, in order to ensure adequate care for the child in his/her first year of life, which shall be taken by one of the parents. Thus the impugned norm has a legitimate aim – protection of the rights of the child, ensuring adequate care, taken by the parents – for the child to the age of one year (*sk. Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 13.3. punktu // see the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01, Item 13.3*).

The differentiated attitude, which is expressed in determining the childcare allowance in a limited amount, has just the same legitimate aim – protection of the rights of a child, ensuring adequate childcare to children up to one year of age, taken by the parents.

18. To assess whether the impugned norm reaches this aim, one shall establish whether the measures, chosen by the legislator, are appropriate for reaching the legitimate aim.

The Latvian constitutional legislator has determined several social rights in the Satversme. Thus the legislator has determined that Latvia is a socially responsible State, namely, such a State, which is trying to potentially extensively realize social justice in legislature, administration and court adjudgment. The aim of a socially responsible state is to level the most vital social public difference and to ensure for every group of residents adequate living standard.

Measures, chosen by the legislator may be regarded as proportionate for reaching the legitimate aim only if they are in compliance with the principle of the socially responsible state.

18.1. The impugned norms reach their aim in a full and financially well-off family, where one of the parents during the period of the childcare takes the greatest part of charge of material and financial security, but the loss of income of the other parent, connected with childcare, is fully or partly compensated by the childcare allowance. In this case the impugned norm additionally stimulates one of the parents to care for the child himself/herself and not to work for some time or work part-time work, most of all just not to lose professional qualification. Usually it is the mother, if she breast-feeds her child. As regards such a family, well grounded is the viewpoint, expressed in the written reply, that the impugned norm stimulates the person caring for the child to work as less as possible, so as to personally devote more time to childcare. Similarly – by decreasing the allowance for 50 percent to persons, who are working – this issue has been solved in the richest states, for example, in Sweden.

If the other parent is not able to ensure the financial position of the family for meeting the requirements of the child and person, caring for the child, in the needed level, besides, the childcare allowance is not received in the amount, which would ensure realization of the needs of the family; then working of the person – caring for the child – is first of all the precondition of the protection of child's interests.

Child's interests include not only the necessity of uninterrupted presence of the parent and mother's milk, but also the necessity of receiving good quality mother's milk (which first of all depends on mother's food and health), food, clothing, shelter etc. Thus – not only the need for the presence of the parents but also needs of financial nature, like a certain financial guarantee for the mother, are included in the interests of the child.

In August of 2006 the state family allowance at an average 7,05 lats and the childcare allowance, the medium amount of which was 68,5 lats (*see*

www.vsaa.gov.lv), did not guarantee subsistence wage even for one person, which in accordance with the data of the Statistics Board was 117,64 lats (see www.csb.lv).

If the person, who takes care for the child, is compelled to work in order to satisfy the primary financial needs of the family, besides, receives only half of the allowance, then the result, which is reached by the impugned norm is contrary to the result, which the legislator has wanted to reach. Namely, the parents of the child has even less possibility to be together with the child.

As has been stressed in Item 17 of this Judgment, the primary obligation of the State is to protect the interests of the child, and in this case the above aim is not reached.

18.2. The sixth Paragraph of the impugned Section 15 connects the amount of the allowance only with the income of the person, who takes care of the child. It does not envisage the possibility to connect the decrease of the amount of childcare allowance with the total level of family income. As the result – two contradicting tendencies arise.

Families, the financial position of which is relatively better, may afford devoting more attention to the child and receive the childcare allowance in its full amount. As regards the above families, the amount of the allowance is an equalizing factor. For example, if both – the mother and father before the birth of the child have received income of approximately 500 lats a month (before paying the taxes) each (the sum from which the Cabinet of Ministers has calculated the maximum amount of the allowance) and the income of the father after the birth of the child remains the same, but the mother receives childcare allowance in its maximum amount, then the total income of the family exceeds 700 lats.

If before the birth of the child the income of the father of the family has been 500 lats a month but the mother has received the minimum amount of the salary and the income of the father remains the same, but the mother receives the childcare

allowance in its minimum amount (56 lats) then the total income of the family exceeds 400 lats.

In their turn the families, the financial position of which is already not satisfactory, receive childcare allowance in a decreased amount, as the parent, who takes care of the child is compelled also to work. For example, if before the birth of the child the father of the family received the minimum wages, but the mother – a small salary, then their income allowed the two-member family to satisfy their needs in the minimum extent. If – after the birth of the child – the income of the father remains the same, but the mother receives childcare allowance, which substitutes her previous income, then the income of the family is not satisfactory to ensure adequate care also for the child. If the mother chooses to work and care for the child, the State pays her only part of the allowance.

Similar situation arises also in incomplete families, where father's support taken together with childcare allowance cannot ensure satisfying of the minimum needs of the child and the mother.

Thus the families, who because of the financial position the person, who cares for the child, may afford not working, receive a greater State support; in their turn the most needy families are compelled to receive the childcare allowance in a limited amount. Such specification of the rights envisaged in Section 110 of the Satversme is at variance with the principle of socially responsible state, which obliges the State – within the framework of its possibilities – to see to equalization of social differences, that is, to see that a reasonable State support is rendered to all children, who need it.

The aim of childcare allowance is to satisfy the interests both of a child and the parents; still the interests of the child shall prevail. All the born children (as far as they do not need a special care or special aid) are in equal and comparable circumstances. From the principle of universal equality follows that the child shall receive the needed care minimum, regardless of the fact whether he/she grows up in a full, financially provided for family, in which one parent works, but the other – either

does not work or works and is on parental leave, or in the family in which one parent is not able of securing adequate subsistence. The legislator- when adopting the impugned norm has not assessed this aspect of limitation and has not left for the Cabinet of Ministers the possibility to determine a differentiated allowance in cases, when the total amount of family income does not secure the interests of the child.

18.3. The Constitutional Court reached its November 4, 2005 Judgment in the matter, which was initiated on the constitutional claim. As concerns this matter the Constitutional Court concluded ” a person could be allowed to work part-time and receive the minimum amount of the allowance, or such an allowance, which would be smaller than in the case, if the person would not work. Thus, it would encourage the parents to choose not working during the first year of life of the child; however, the possibility to work part-time would be maintained for those parents, for whom it would be necessary” (*Satversmes tiesas 2005. gada 4. novembra sprieduma lietā Nr. 2005-09-01 14.3. punkts // Item 14.3 of the Constitutional Court November 4, 2005 Judgment in case No. 2005-09-01*). Concrete submitters of the claim were compelled to work mainly to maintain their professional qualification and protect long term family interests.

Ungrounded is the viewpoint following from the written reply that the Constitutional Court by ”the minimum amount” has in all cases meant the minimum allowance regulated in the Cabinet of Ministers Regulations. The notion ” minimum amount” in every concrete case has to be connected with the minimum interests of the child, which shall be ensured for every child by the State and the parents.

18.4. The impugned norms are not fair to separate persons, because the amount of the income, which one of the parents receives by working part-time, is not connected with that part of the allowance, that he/she loses. If a person [for the reasons of qualification publishes papers or delivers several lectures as well as works in an elected institution, for example, like the deputy in the local authority Dome (Council) etc.] receives a small income from part-time work, she/he loses, possibly, half of the maximum allowance. Thus this person is compelled to work more and dedicate even

less attention to the child, and such an outcome is at variance with the result, which the legislator has wanted to achieve.

Thus, the sixth Paragraph of Section 15 is not suitable for reaching the legitimate aim with regard to a certain range of families; thereby it is not proportionate to this aim.

19. The impugned norms envisage equal attitude to persons, who work part time work and persons, who work full time. However, the above persons are not in equal and comparable circumstances as regards the possibility of ensuring childcare.

Well grounded is the viewpoint of the submitters of the matter that the legislator has not taken into consideration the different situation in which the young mothers, who have the possibility of combining childcare and breast-feeding of the child in its first year of life with employment, i.e. – by working part-time and not harming the interests of the child, find themselves. The legislator has not taken into consideration the specific possibilities of women to work part-time work in the period after birth as well as using the breaks for breast-feeding or working at home, making use of the possibilities of the up-to-date technology, which are determined in the Labour Law.

The legislator has determined equal relationship to both – persons, who take care of the child and work full time and those persons, who care for the child and work part-time; and thus has permitted equal attitude to persons, who are in essentially different circumstances. Such relationship has no reasonable and objective basis.

Thus, the contested sixth Paragraph of Section 15 is at variance with Section 91 of the Satversme.

20. When determining the moment from which the impugned norm shall lose validity, the Court takes into consideration the fact, that immediate rescission of the norm, while no other regulation has not taken effect, in separate cases may create

violation of the rights of a child. Therefore the legislator needs a certain time for improving the normative regulation of the childcare allowance.

The operative part

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

hereby rules:

1. To declare part of Section 1 of the Law "Amendments to the State Social Allowances Law" by which a new Item – Item 3 – has been included in the State Social Allowances Law as conformable with Section 110 of the Republic of Latvia Satversme.

2. To declare Section 2 of the Law "Amendments to the State Social Allowances Law" by which Section 15 of the State Social Allowances Law has been supplemented with a new – the sixth Paragraph, as unconformable with Section 91 of the Republic of Latvia Satversme and null and void as of March 1, 2007.

The Judgment is final and allowing of no appeal.

The Judgment shall take force on the day of its publishing.

The Chairman of the Court session

A.Endziņš