THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 22, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005-19-01

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

under Section 85 of the Republic of Latvia Satversme (Constitution), Sections 16 (Item 1), 17 (Item 9 of the first Part) and 281

on the basis of the claim by the Administrative District Court

in written proceedings at December 13, 2005 Court session reviewed the case

"On the Compliance of the Words "and Has Been Living in the Republic of Latvia not less than 60 Months, the Last 12 Months of which Continuously", which are Included in Section 4 (Item 2 of the Fifth Part) with Section 110 of the Republic of Latvia Satversme"".

The establishing part

1. On October 31, 2002 the Republic of Latvia Saeima (henceforth – the Saeima) passed the Law on State Social Allowances, which took effect on January 1, 2003. In accordance with its purpose, the Law determines the types of State social allowances and the range of those persons, who have the right to the State social allowances. In conformity with the first Part of Section 3 of the Law State social security benefit is one of the State social allowances to be disbursed at regular intervals.

Besides, in accordance with Section 13 (Item 3 of the first Part) a State social security benefit shall be granted to a person, who has lost one or both providers, has not entered into marriage and has not attained the

age of legal majority, or after the attaining of the legal age of majority is studying at an institution of general education or vocational education and is not older than 20 years of age, or is studying in the day division (full time studies) at an institution of higher education and who is under the age of 24.

The first Part of Section 4 of this Law determines that " Latvian citizens, non-citizens, aliens and stateless persons to whom a personal identity number has been granted and who permanently reside in the territory of Latvia have the right to State social allowances". In its turn the fifth Part (Item 2) of the Section (in the wording, which was in effect at the moment of submission of the claim) specifies that the right to the State social security benefit in the case of the loss of a provider shall have persons, mentioned in the first Part of this Section, who have lost a provider, if the former provider is a Latvia citizen, non-citizen, alien or stateless person to whom a personal identity number has been granted. The Item – as concerns the former provider – contains a requirement " and has been living in the Republic of Latvia not less than 60 months, the last 12 months of which continuously" (henceforth – the impugned norm).

On October 20, 2005 - during the period of preparation of the matter – the Saeima amended the Law on State Social Allowances, deleting the impugned norm and expressing Section 4 (Item 2 of the fifth Part) in a new wording. Thus all Latvian citizens, non-citizens, aliens and stateless persons to whom a personal identity number has been granted, who permanently reside in the territory of Latvia and have lost a provider shall have the right to State social security benefit.

The impugned norm was in effect from January 1, 2003 till November 2, 2005.

2. **The submitter of the claim –** the Administrative District Court at July 25, 2005 Court session reviewed the administrative case, which was initiated on the basis of the claim by Iveta Volmane - the legal representative of Edgars Volmanis –requesting abrogation of the State Social Insurance Agency November 10, 2004 Decision No. 292 and issuance of a favorable administrative act

2.1. In the materials of the administrative case it is pointed out that on January 30, 1998 the son Edgars Volmanis was born in the marriage of Iveta and Artūrs Volmanis.

In 1999 Artūrs Volmanis commenced entrepreneurial activity in Russia. To be able to freely reside and carry out entrepreneurial activities in Moscow, Artūrs Volmanis cancelled his residence

registration in Riga on April 19, 2001. On June 9, 2004 Artūrs Volmanis perished in Moscow. Thus his son Edgars Volmanis lost his provider.

On October 19, 2004 the Tukums Department of the State Social Insurance Agency received the application with the request to grant Edgars Volmanis the State social security benefit in the case of the loss of the provider. On October 21, 2004 the official of the State Social Insurance Agency Tukums Department took the Decision No. 22205, by which granting of the State social security benefit was declined. The decision was contested at the State Social Insurance Agency. By the State Social Insurance Agency November 10, 2004 Decision No. 292 the impugned administrative act was left valid, stressing that there was no legal grounds for granting State social security benefit in case of the loss of the provider, because Latvia had not been the permanent place of residence of Artūrs Volmanis 12 months before his death.

Iveta Volmane - the representative of the submitter Edgars Volmanis – appealed at the Administrative District Court , requesting to abrogate the State Social Insurance Agency November 10, 2004 Decision No. 292 and to impose to the State Social Insurance Agency the duty of paying the benefit to Edgars Volmanis in case of having lost the provider.

2.2. The Administrative District Court in its decision points out that ”even though the State has extensive freedom in implementation of social rights, especially in the system of social aid, still it does not allow the State to determine unfair or ungrounded restrictions”.

The Administrative District Court, when analyzing the substantiation of the determined restriction, established that there did not exist such circumstances that the restriction had to be determined and thus- it had no legitimate aim. The Court holds that the impugned norm restricts rights and interests of a child and envisages a differentiated attitude. It is concluded in the Decision that the Protection of the Rights of the Child Law establishes priority of the rights and freedoms of the child as well as prohibition of discrimination, determining that the State shall secure rights and freedoms of the child regardless of several factors, mentioned in the law, *inter alia* also the place of residence of the parents.

When reviewing the administrative case the Court has concluded that the impugned norm does not comply with the Satversme, because, the restriction determined by it is ungrounded, therefore on July 25,

2005 it took the decision to terminate proceedings in the administrative case and submit a claim to the Constitutional Court.

3. **The Saeima –** the institution, which has passed the impugned act – in its written reply points out that the restriction has been introduced simultaneously with the universal reform of the Latvian Social Security System and by consulting the experts of the World Bank as well as being guided by the practice of other European States. The Saeima, when referring to the case law of the European Court of Justice, stresses that the benefits, which are not based on premium payments are closely connected with the social medium of any Member State, therefore granting of the benefit may depend on the time of residence in the respective State.

   Simultaneously the Saeima also recognizes " […] even though the State social allowances is that sector of social rights, in which the legislator has the greatest freedom of action; use of such freedom of action by the state, which groundlessly and substantially restricts the rights of a person in case of the loss of the provider – the rights of the child, is inadmissible".

   Referring to the Constitutional Court October 11, 2004 Judgment in matter No. 2004 -02-0106, the Saeima points out that also the legislator shall observe the priority of rights and interests of a child when passing or amending normative acts. Besides, taking into consideration the matter No. 2005-19-01, initiated at the Constitutional Court on August 11, 2005, the Saeima Social and Employment Matters Committee already on October 6, 2005 has submitted to the Saeima Presidium the Draft Law "Amendments to the State Social Allowances Law" (registration No. 1392), by which "problems, identified in the above matter are being solved". The above draft Law is recognized as urgent.

   The Saeima in its written reply acknowledges that " it is more reasonable to determine the right to State social security benefit in case of the loss of a provider for a greater range of persons; thus the needed balance between the rights of a person and the State duties in the sector of social rights will be ensured.

   In its November 10, 2005 letter the Saeima points out that the passed Law has been published in the newspaper "Latvijas Vēstnesis" on November 2, 2005 and taken effect on November 3, 2005.

4. **The Ministry of Welfare,** when answering to the questions, asked by the Constitutional Court, informs that acquiring of the rights based on the principle of place of residence and the procedure for receiving social

security benefits was determined simultaneously with the introduction of a new type of State social allowance – the State social security benefit.

At the same time the Ministry refers to formulations, included in international instruments, regarding the general duties of the State in the sector of social rights, which leave extensive possibilities for the States in realization of these rights, depending on the economic situation and resources of the State. Thus, the requirements for the State about granting benefits to persons, who have not made any contribution to that State, greatly depend on the economic situation of this State.

The concluding part

5. Section 110 of the Satversme establishes: ”The State shall protect and support marriage, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence”. The norm laconically determines constitutional values, which have to be protected by the State; however, it does not envisage concrete measures, which the State shall realize. The State may freely choose the above measures, yet they have to comply with the Satversme.

In conformity with Section 89 of the Satversme ” the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia”. As it has been repeatedly concluded in the Constitutional Court Judgments from the Article follows that the aim of the legislator has not been to oppose norms of human rights to the international human rights norms (*sk., piemēram, Satversmes tiesas 2003. gada 27. jūnija sprieduma lietā No. 2003-04-01 secinājumu daļas 1. punktu un 2005. gada 17. janvāra sprieduma lietā No. 2004-10-01 7. punkta 1. apakšpunktu; see e.g. the Constitutional Court June 27, 2003 Judgment in matter No. 2003-04-01, Item 1 of the concluding part and January 17, 2005 Judgment in matter No. 2004-10-01, Item 7, Sub-item1).*

When interpreting the fundamental rights determined in Section 110 of the Satversme, one shall simultaneously take into consideration the norms included in the international human rights instruments and the practice of their application.

6. Sections 4 (the first Part) and 13 **(**the first Part**)** of the Law on State Social Allowances determines the range of persons, who have the right to State social security benefit in the case of the loss of a provider. In addition to the criteria, mentioned in the above Sections, the impugned norm envisaged restriction for granting the State social security benefit

in the case of the loss of a provider. Namely, the person was able to receive the benefit, if the former provider had been living in the Republic of Latvia not less than 60 months, the last 12 months continuously.

Section 16 (the fifth Part) of the Law on State Social Allowances determines that the allowance in the case of the loss of a provider shall be granted to a child who has lost a provider.

Thus the restriction to receive the benefit shall be attributed to the child of the former provider.

7. By determining the restriction for the child, whose former provider has not been living in the Republic of Latvia at least 60 months, the last 12 continuously, to receive the benefit the impugned norm denies the right of a child to social and economic protection, which is guaranteed by Section 110 of the Satversme and anticipated in normative acts. Thus such a restriction shall be regarded as the restriction of fundamental rights, determined in the Satversme.

Fundamental rights may be subject to restrictions only in cases set out in the Satversme, if the protection of vital public interests requires it and if the principle of proportionality has been observed. Thus it is necessary to assess the restriction, namely to establish whether it is provided for by law, whether it has a legitimate aim and complies with the principle of proportionality.

8. As the impugned norm is provided for by law, passed and promulgated under the envisaged procedure, there is no doubt about the fact that the restriction of the fundamental rights has been determined by law.

9. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim.

The Constitutional Court has reiterated that in accordance with the international norms the system of social and economic protection (types and amount of the allowances) and its maintenance lies within the State competence and depends on the State economical situation and accessible resources. Besides, the State experiences an extensive freedom of action when taking decisions of the issues of social rights (*sk., piemēram, Satversmes tiesas 2005. gada 4. novembra sprieduma lietā No. 2005-09-01 secinājumu daļas 14.1. punktu un sprieduma lietā No. 2001-110106 secinājumu daļas 1. punktu; see, for example the Constitutional Court November 4, 2005 Judgment in matter No. 2005-*

09-01; Item 14.1 of the concluding part and the Judgment in matter No. 2001-11-0106, Item 1 of the concluding part).

As the Saeima has pointed out in its written reply, the requirement determined in the impugned norm was directed to limit granting of the State social allowances to persons, who are not connected with the State. Being guided just by this principle, the State has wanted to link social rights with the place of residence of a concrete person, namely, the former provider, in the State. The restriction was introduced simultaneously with the universal reform of the Latvia social security system.

Thus the impugned norm had a legitimate aim – to limit granting of State social allowances to persons, whose place of residence is not the territory of Latvia.

10. To assess whether the impugned norm reaches this aim, one shall establish whether the measures, chosen by the legislator are proportionate and suitable for reaching the legitimate aim.

The European Court of Human Rights has concluded that the legislator has extensive authority in implementation of social and economic policy. In the same way the decision adopted by the legislator, which complies with public interests, shall be respected unless the decision is not evidently ungrounded **(***see: The James and Others v. the United Kingdom, Judgment of 21 February 1986, Series A No. 98, para.46).*

As has already been pointed out the aim of the Saeima was to limit granting of social allowances to persons, who are not connected with the State. Therefore the legislator has attributed this principle also to the former provider. However, Section 16 (the fifth Part) in the case of the loss of a provider the State social security benefit shall be granted to a child, who has lost a provider. Besides, the payment of the benefit is not connected with the length of insurance and payments of insurance premiums of the former provider as it is in accordance with the Law ”On State Pensions” in the case of the loss of the provider.

The State, when determining the above restriction, had wanted to link social rights with the place of residence of the concrete person - the former provider of the child in the State. The duty of the State to protect the rights of a child is specified in the protection of the Rights of the Child Law, Section 3 of which envisages the principle of equality of the rights of a child, determining that the State shall ensure the rights and freedoms of all children irrespective of the place of residence of the child, his parents, guardians or family members.

Thus, there are no grounds for connecting the restriction of granting the allowance to the child with the place of residence of the lost provider.

11. The UNO Convention on the Rights of a Child (henceforth – the Convention) establishes several fundamental principles for the protection of the rights of a child.

Both – Section 3 (the first Part) of the Convention and Section 6 (the first Part) of the Rights of the Child Law determine the priority of the interests of a child. This principle establishes that in all activities and decisions in regard to a child, attention shall first of all be paid to ensuring of the best interests of the child. This is one of the most significant principles of the Convention, which determines the interpretation of the rights and freedoms of a child.

The above refers to all three branches of State power – the legislative power, the executive power and the judicial power. This principle, incorporated into the Convention, shall be observed also when determining priorities and directions of policy. When elaborating the policy on the protection of the rights of a child special attention shall be paid to distribution of the budget, as well as to the fact how the above policy will influence the life of children.

The Constitutional Court has stressed: priority of the rights and interests of a child means that not only the courts and other institutions shall adopt their decisions on the basis of the rights and interests of a child, but the legislator shall adopt or amend normative acts so as to protect the interests of a child in the best possible way (*sk. Satversmes tiesas 2004. gada 11. oktobra sprieduma lietā No. 2004-02-0106 11. punktu; see the Constitutional Court October 11, 2004 Judgment in matter No. 2004-02-0106; Item 11).*

Any decision regarding the child shall be passed in such a way as to observe the interests of a child and protect its rights. They are applied not only when the decision shall be taken regarding the child itself, but also then when the decision may be attributed to the child or indirectly concerns the child. Even if the child is not the object of the decision, the above priority principle shall be observed if the decision may concern the child. Acknowledgement of any other priority without a serious reason and justification is inadmissible. No materials justifying non-observance of the interests of the child have been submitted to the Constitutional Court and the Court has not found sufficient reasons for it.

Both – Section 2 of the Convention and Section 3 of the Protection of the Rights of the Child Law determine prohibition of discrimination. The impugned norm envisages a differentiated attitude to persons, who are in equal conditions – to children, who have lost their provider.

As the Constitutional Court has reiterated, the attitude is discriminatory if it has no objective and reasonable justification, if it does not follow a legitimate aim and if there is not a reasonable relationship between the means employed and the aim sought to be realized by the restrictions (*sk. Satversmes tiesas 2005. gada 14. septembra sprieduma lietā No. 2005-02-0106 11. punktu; see the Constitutional Court September 14, 2005 Judgment in matter No. 2005-02-0106; Item 11).* Taking the above conclusions into consideration the Constitutional Court does not see an objective and reasonable basis for determining a differentiated attitude to the children, whose former provider has lived in Latvia and to the children, whose former provider has not lived in Latvia.

Thus the means chosen by the legislator are not appropriate for reaching the legitimate aim, besides they create substantial restrictions to the rights of separate persons.

12. On October 3, 2005 the impugned norm lost validity. However, during the period of it taking effect (January 1, 2003) till the moment of it losing validity the impugned norm has violated the constitutional rights, fixed in Section 110 of the Satversme, of E.Volmanis and possibly also other children. To ensure the protection of the rights of a child, the impugned norm shall be declared as having lost its validity as of the moment of it taking effect.

The operative part

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

hereby rules:

To declare the words ”and has been living in the Republic of Latvia not less than 60 months, the last 12 months of which continuously”, which are incorporated in Section 4 (Item 2 of the fifth Part) of the Law on State Social Allowances, as unconformable with Section 110 of the Republic of Latvia Satversme and null and void from January 1, 2003.

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