THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, November 4, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005 – 09 – 01

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

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 11 of the first Paragraph) and 192

on the basis of the constitutional claim by Kristīne Dupate, Aija Freimane and Aivita Putniņa

on October 7, 2005 in a public hearing in Riga reviewed the matter

" On the Compliance of the Provision Incorporated in Section 7 (Item 1 of the First Paragraph) of the Law on State Social Allowances – "if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave" with Articles 91, 106 and 110 of the Republic of Latvia Satversme (Constitution).

The establishing part

1. On November 11, 2004 the Saeima passed the Law "Amendments to the State Social Allowances Law", amending the first Paragraph of Section 7 of the State Social Allowances Law, determining 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 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".

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). In conformity with Item 3 of the above Regulations persons caring for a child till one year of age shall receive allowance in the amount of 50 lats, if this person is not employed (considered to be an employee or a self-employed person in accordance with the Law on State Social Insurance) and in 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 (is considered to be an employee or a self-employed person in accordance with the Law "On the State Social Insurance") and is on parental leave. In its turn the amount of the childcare benefit for persons, caring for a child from one year up to two years of age is 30 lats.

The normative regulation of the above childcare benefit is in effect from January 1, 2005.

2. Up to the time of the above Amendments taking effect, the First Paragraph of Section 7 of the Law on State Social Allowances determined that " an allowance for childcare shall be granted to a person caring a child up to two years of age if this person is not employed (is not considered to be an employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave or, in accordance with the procedures specified by the Cabinet, works part-time work and the mother does not receive the maternity benefit".

In its turn the amount of the childcare at that time was regulated by 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", which specified the amount of the benefit – 30 lats - for persons, caring for children up to a year and a half age and 7,5 lats for persons, caring for a child up to two years of age.

3. The submitters of the constitutional claim – Kristīne Dupate, Aija Freimane and Aivita Putniņa (hereinafter – the submitters) in accordance with the Law on State Social Allowances experienced the right of receiving the childcare allowance; however, they had to choose – whether to receive it being on a parental leave or to continue their

professional activities, combining it with childcare. To continue their professional activity, which would essentially influence the situation of them and their families in future, the submitters chose part-time work. They managed to successfully combine work with childcare. However, in the above situation the State allowance is denied for families, in which the child has been born.

The submitters contest the conformity of the provision, incorporated into Section 7 (Item 1 of the First Paragraph) ”if the person is not employed (is not considered to be an employee or a self-employed person in accordance with the Law ”On State Social Insurance”) or is employed and is on parental leave” (henceforth – the impugned norm) with Articles 91, 106 and 110 of the Republic of Latvia Satversme (henceforth – the Satversme).

The submitters indicate that the impugned norm or the procedure under which the childcare benefit is granted, forces the parents to make a choice among three solutions, all of which have negative effect.

”First of all the person makes the choice on spending the whole time for childcare, which gives the right to receive the allowance. However, just because of the discontinuation of work the person loses competitiveness in the labour market and thus – the possibility of securing child’s future, when the expenses will become larger.

Secondly, the person does not want to experience the consequences of the first (above) case or because of other reasons is not able to discontinue working. However, to spend more time with the newly- born child and ensure breast-feeding of the child, the person chooses a part-time job. This variant would also be an optimal solution; however the legislator has decided to punish the parents for the above activity by denying the right to childcare benefits. As the result the level of family income is decreasing, because the income from part-time job does not reach the former income level. Negative consequences – decrease of income – are being felt by all the family members, both – the parents and the newly-born as well as his/her brothers and sisters.

Thirdly, if the parent cannot discontinue working but the family is not able to live on the expenses from part-time job, the third variant shall be chosen, namely, the parent is forced to work full-time and place one’s child in another person’s care. Thus, in case, if the parent has no possibility of discontinuing work or if the parent is not able ensure support on the income from part-time job, then the reverse effect is reached – the parent is forced to work full-time thus decreasing the time to be dedicated to children to the minimum”.

Therefore the submitters hold that the impugned norm restricts their fundamental rights and does not reach the legitimate aim.

The submitters express the viewpoint that the impugned norm restricts the rights, established in Article 106 of the Satversme, as they force the person to discontinue legal labour relations if she wants to receive childcare allowance.

At the Court session the submitters pointed out that the rights of the child may not be assessed taken separately and not together with the rights of the parents and the family. To their mind it follows from Article 110 of the Satversme that the State shall provide for the best possible conditions for the family – the parents and the children. However they hold that the impugned norm is at variance with the above principle, as it takes care for the interests of the newly-born only for a short-time period, but does not protect the interests of the family for a long-term period. Besides – they stress that it is possible to reach the legitimate aim by using more considerate measures – by allowing taking a part-time job.

The submitters hold that the impugned norm creates more unfavorable consequences just for one gender, as just women make use of childcare leave and only women can breast-feed the child, thus the fundamental rights, fixed in Article 91 of the Satversme, are also violated.

The submitters additionally draw the attention to the fact that by adopting the impugned norm the legislator has not considered the principle of legitimate trust, as only the persons, who had been granted the childcare benefit till December 31, 2004 (i.e. till the day of the impugned norm taking effect) may be engaged in a part- time job. However, the submitters hold that such a regulation might be attributed also to them as, when planning their pregnancy, they trusted that they will be able to receive childcare allowance and continue part-time work.

4. In its written reply and supplement to it **the Saeima** expresses the viewpoint that the constitutional claim is ungrounded and requests to reject it. The Saeima holds that the impugned norm has ”a composite legitimate aim. First of all to determine a more efficient system of childcare allowance; i.e. such a system, which both – promotes the improvement of the democratic situation in the state and at the same time secures care of full value for children, especially for infants. Secondly, to stimulate direct participation of parents in taking care of children and baby-sitting and ensure the possibility to at least one of the parents on permanently being together with the child.

The Saeima points out that that the impugned norm to some extent restricts the fundamental rights, determined in Articles 91 and 110 of the Satversme; however, such restrictions are admissible if they are proportionate to the legitimate aim. The legislator, when passing the prohibition to work a part-time job and simultaneously receive childcare benefit, has noticeably increased the childcare allowance, securing for the person such material conditions, which she in fact had before taking care of the child. Article 110 of the Satversme envisages real activities of the State in protecting and supporting the rights of children and their parents. Besides, the Saeima has chosen one of the most efficient measures for solving the childcare allowance problems.

The Saeima holds that the measure chosen by the State (restriction to do a part-time job and receive childcare allowance, when caring for the child till one year of age) for reaching the legitimate aim is proportionate. When improving the material situation of families with children of the youngest age and ensuring for these children perfect care, which only the parents may render, development of full value is secured. Thus, in this situation the benefit, gained by the society, is greater than the restrictions caused for the parents.

The Saeima points out that the impugned norm does not violate the fundamental rights, established in Article 106 of the Satversme, as the right of choosing, who of them will make use of the parental leave and receive the allowance, is left to the parents. Besides, the normative regulation of legal labour relations envisages retaining of the post for the employee, who is on parental leave.

At the Court session **the Saeima authorized representative- sworn advocate Anita Rektiņa** stressed that ”allowance is granted only to that person, who takes care of the child. Childcare is possible only if the person is always with the child. It is not possible to take care of the child, work and entrust the care to another person. If childcare is entrusted to another person, then it means that the requirement of the Law is not observed and thus the person loses also the right to receive the allowance”.

A.Rektiņa points out that there is no possibility of reaching the legitimate aim with more considerate measures, because, in order to improve the demographic situation in the State ”one had to choose – whether to restrict the wishes of the parents or choose measures, which deprive the child of the right to the best possible care and the legislator has given preference to the interests of the child”. Thus – to her mind - the legislator has chosen the measures, which are the best for the child.

Anita Rektiņa expresses the viewpoint that the benefit of the society is greater than the violation of the law caused to the persons, as ”health of children improves, traumatism of children decreases and the child gets a psychological comfort as well as closer ties with his/her parents. Close ties with the parents during the first year of life gives the long - term result in such a way that it lessens both -alcoholism and drug addiction of children as well as other problems of children in the age to come/

5. **The State Human Rights Bureau** (henceforth – SHRB) holds that childcare allowance is connected with the rights, guaranteed in Article 110 of the Satversme. One of the rights, guaranteed by this norm, is the right of the family to specific protection. SHRB points out that several International instruments, binding on Latvia, also guarantee the right of the family to specific protection.

   The right of the family to specific protection inter alia includes also the right to financial support from the state. The types and amount of such financial support is determined in state legal acts of every nation.

   SHRB holds that Latvia honours its international liabilities by introducing the system of family benefits: maternity benefit, paternity benefit, childbirth allowance, childcare allowance and state family allowance. However, by determining the prohibition to part-time work in the period when the person takes care of the child less than one year of age, the right of the person to receive childcare allowance is restricted, namely – the right of the family to specific protection, guaranteed in Article 110 of the Satversme is restricted.

   At the Court session the **SHRB authorized representative Anita Kovaļevska** stresses that the state may restrict the above fundamental rights of persons so as to reach the chosen legitimate aim - the protection of the rights of the child - to ensure uninterrupted presence of at least one parent. However, such a restriction shall be proportionate to the advanced aim. To her mind having a part-time job allows the person not to lose her qualification and avoid problems, which arise returning in the labour market after the parental leave. The legislator, wishing to achieve for the child in his/her first year of life uninterrupted presence of at least one parent, has not chosen the measure, restricting the rights of a person to a lesser degree. She holds that it is possible to establish by the law that – when being engaged in a part-time job the amount of the childcare allowance is smaller than in the case if the person does not work. Thus – the impugned norm to her mind is unconformable with Article 110 of the Satversme.

6. **Ministry for Children and Family Affairs** holds that the impugned norm stimulates direct participation of parents in caring for children,

creating a strong emotional bond between the parents and the child. It creates also more favorable surroundings for the development of the child and as the result reaching of the aim – caring adequate for the interests of the child, including breast feeding during the first year of life – is ensured.

At the Court session **Inga Liepa - the Deputy of the State Secretary and the representative of the Ministry for Children and Family Affairs** stresses that the aim of the childcare allowance is mainly to compensate those losses, which occur to the parents at the period of childcare. This allowance ensures non-worsening of the financial situation for persons with medium and high income level and substituting the income, which the person would have received when working. Simultaneously I.Liepa recognizes that when examining the whole family allowance system, at the present moment the allowance is insufficient.

I.Liepa holds that there is no reason to speak about the violation of the principle of legitimate trust. This principle envisages " that the person has the right to trust that the state will not worsen the situation with the help of different legal regulation". In this case one cannot speak about worsening of the situation, as on its essence even the minimum allowance, which is received by persons, who do not work is greater than the allowance, which was formerly received by all persons.

7. **The Ministry of Welfare** holds that the impugned norm does not contradict Articles 91, 106 and 110 of the Satversme. By implementation of this norm terms for the solution of the unfavorable demographic situation in the State as well as conditions for uninterrupted presence of parents with their children, which is important for an infant, are created.

   The Ministry of Welfare expresses the viewpoint that the rights of all employed persons, who are on the parental leave, are realized without any discrimination. The State Social Allowances Law determines terms for payment of childcare allowance. Thus every person has a free choice – either to be on parental leave and receive the allowance or to work.

   At the Court session the **authorized person of the Ministry of Welfare Ināra Baranovska – the Head of the Allowances Section of the Social Insurance Department** expressed the viewpoint that by increasing the childcare allowance from 30 to 392 lats, simultaneously was increased also the childbirth allowance, which at the present moment covers expenses needed for purchasing all things necessary for the newly-born. Taking into consideration the fact that the State has advanced compensating of income as the main objective of the childcare

allowance, the state also experiences the right to state requirements for receiving the above allowance.

The concluding part

8. The first sentence of Article 110 of the Satversme determines that ”the State shall protect and support marriage, the family, the rights of parents and rights of the child”. It laconically formulates what the state protects, however does not specify ways of implementation of this protection. One of the rights, guaranteed by this norm, is the right of the family to specific State support and protection. ”Interpreting the fundamental rights, enshrined in the First Paragraph of Article 110 of the Satversme, one has to simultaneously take into consideration the norms, included in international human rights instruments and practice of their application” (*Satversmes tiesas 2004. gada 11. oktobra sprieduma lietā No. 2004-02-0106 10. punkts; The Constitutional Court October 11, 2004 Judgment in case No.2004-02-0106; Item 10).* Also several international human rights documents binding on Latvia guarantee the right of the family to specific state protection.

8.1. Article 23, Paragraph 1 of the International Covenant on Civil and Political Rights determines that ”the family is the natural and fundamental group unit of society and is entitled to protection by the society and the State”. The first Paragraph of Article 10 of the International Covenant on Economic, Social and Cultural Rights also establishes that the States Parties to the present Covenant shall ensure the widest possible protection and assistance to the family, particularly for its establishment and while it is responsible for the care and education of dependent children. The right of the family to specific protection includes also the right to State financial assistance (*see: Nowak M. U.N. Covenant on Civil and Political Rights: CCPR Commentary//Kehl, Strasbourg, Arlington: N.P.Engel – 1993, p. 407).*

8.2. European Social Charter guarantees the right of the family to social, legal and economic protection: ”with a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means”. This norm assigns to the State the duty of implementing and maintaining the family allowances system. Allowances shall embrace a noteworthy number of families and shall be sufficient for ensuring adequate addition to the family financial income. Allowances shall be regularly revised so that they cover the expenses connected with inflation (*see: Digest of the Case Law of the ECSR. Council of Europe, March 2005, pp. 73-74.//http://www.coe.int/T/F/Droits_de_1%27Homme/Cse/Digest_bil_mars_05. pdf).*

Article 16 of the European Social Charter does not give an exhaustive list of family policy instruments, namely, it does not determine what benefits may there be and under what conditions they shall be paid. Taking into consideration the minimum requirements, the states themselves experience the right to choose their means for implementation of the social and economic protection of the family.

Thus from Article 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.

9. Such a system has been created in Latvia, determining in the normative acts several types of allowances, which ensure material allowance to a family.

9.1. State social insurance benefits i.e. maternity benefits and paternity benefits are in the first group. These benefits are financed from the mandatory social insurance system (the State social budget).

The objective of the maternity benefit is to compensate lost income from working. It shall be granted and paid for the entire time of the pregnancy leave and delivery leave in the amount of 100 from the average insurance contribution salary of the recipient.

The objective of the paternity benefit is to stimulate participation of the father in child care, in such a way compensating the loss of the income received from working. It shall be granted and paid to the father for ten calendar days, granted to the father in the connection of the birth of the child. The benefit shall be paid in the amount of 80 percent from the average insurance contribution salary of the recipient.

9.2. In the second group are included the State social allowances: childbirth allowance, the State family allowance and an allowance for child care. The above allowances shall be financed from the State basic budget.

The objective of a childbirth allowance is to render assistance to the family, ensuring granting an extraordinary allowance for purchasing all the goods needed for the infant.

The objective of the State family allowance is to render regular assistance to the families, which have additional expenses connected with the care for the child.
The objective of the childcare allowance is to render assistance to a) a person who takes care of the child up to one year of age, if this person is not employed or is employed and is on parental leave; 2) a person, who takes care of the child from one year of age to two years of age, if this person is not employed or is

employed and is on parental leave or, in accordance with the procedures specified by the Cabinet, works part-time work (not more than 20 hours a week).

9.3. As the legislator, when implementing the positive duty of creating and maintaining the system of family social and economical situation, has specified the right of a family to a specific protection by determining several protection mechanisms (benefits, grants etc.), these rights have become the rights of an individual. A person may require realization of these rights from the State, as well as may defend the above rights in a court.

10. Taking into consideration the fact that for several years the demographic situation in Latvia has been assessed as unfavorable, the possibility of increasing the amount of the State benefit for a person has been discussed when elaborating the Conception on the Increase of the State Social Allowance for Families after Childbirth. In the Conception it was pointed out "The effectiveness of state social allowances (influence on the process of stabilization of family material basis, improvement of the family life quality and thus the influence on the demographic processes in the State) has decreased during the last years. Especially rapidly has decreased the effectiveness of the childcare allowance. The amount of the childcare allowance for a child up to one and a half years of age (up to the day of the impugned norm taking effect) was 37,5% of the minimum monthly wage determined in the state (80 lats) but for care for a child from 1,5 years of age till 2 years of age only 9,37% of the monthly minimum age determined in the State" (*Koncepcija par valsts sociālo pabalstu palielināšanu ģimenēm pēc bērna piedzimšanas; Conception on the Increase of the State Social Allowance for Families after Childbirth//*http://www.politika.lv/polit_real/files/lv/LM_240804_Konc_par_soc_pabalstu_paliel_gim.doc).

In order to improve the above situation a proposal to increase the childbirth and childcare allowance was elaborated.

On December 7, 2004 Regulations No. 1003 were passed, which took effect on January 1, 2005 and essentially changed both – the amount of the childcare allowance and the procedure of calculating it. However, simultaneously were amended also the terms for receiving the childcare allowance, which were expressed in the impugned norm. Thus, when increasing the amount of the childcare allowance, the term – prohibition to work for those persons, who take care of the child up to the age of one year, was advanced. In its turn, when increasing the amount of the allowance for persons, who take care of the child up to the age of two years, the above term was not advanced and the previous terms – namely, that it is possible to receive childcare allowance also when working part-time work – were left unchanged.

By determining the restriction to receive the childcare allowance, determined by the Law for a 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 the fundamental rights, determined by the Satversme.**

11. Fundamental rights may be restricted only incases established by the Satversme, namely, if the protection of significant public interests demands it and if the principle of proportionality is observed. Thus the Court has to assess whether the restriction, determined in the impugned norm meets the following requirements:
a) whether it is determined by law;
b) whether it complies with the legitimate aim, which the state wants to reach by determining the above restriction;
c) whether it complies with the principle of proportionality.

12. As the impugned norm has been determined by the law, passed and promulgated under the established procedure, there can be no doubt that the restriction of the fundamental rights is determined by law.

13. Increase of the childcare allowance and the new procedure for calculating it (inter alia the impugned norm) is directed to promote birthrate and determine ”implementation of socially the fairest and economically the most efficient childcare allowance system”, envisaging that the person, who takes care of the child up to one year of age and is on parental leave, shall be ensured to receive the former income level, if the person has been employed (*sk. lietas 2. sēj.,58.lpp.; see Vol.2 , p.58 of the case).*

13.1. The Saeima in its reply has pointed out that the legitimate aim of the impugned norm is: ”first of all to determine a more effective system of the childcare allowance, i.e., such a system, which promotes both - the improvement of the demographic situation in the State and simultaneously ensures perfect childcare, especially care of infants. Secondly, it is to stimulate direct participation of parents in childcare, baby-sitting and attention as well as to ensure the possibility for at least one of the parents to constantly be with the child”. Such complex legitimate aim has been determined for the new regulation of childcare allowance. In their turn from the material in case and the conclusions, expressed at the Court session one may draw the conclusion that the legitimate aim of the impugned norm (prohibition to work a part-time job) is involvement of parents in childcare, i.e., constant presence whencaring for the child up to one year of age.

13.2. The Constitutional Court in its Judgment in case No. 2004 – 02 – 0106 has concluded 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 spriedumu lietā No. 2004-02-0106 11. punkts; The Constitutional Court October 11, 2004 Judgment in case No. 2004-01-0106, Item 11).*

13.3. 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 (prohibition to work) 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.**

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

14.1. As has been mentioned in accordance with international norms the system for the social and economic protection of a family (types and amount of allowances) and its maintenance lies within the State competence and depends on the State economical situation and accessible resources.

14.2. By changing the childcare allowance system the State has desired to find the most optimal solution – to ensure for the person who takes care of the child up to the age of one year receiving such an allowance, which as much as possible complies with the income of the person before the birth of the child, if the person was employed as well as to grant assistance to those persons, who before the birth of the child did not receive income from work. In the newly-created system the amount of the childcare allowance is differentiated, depending on the contribution payment of the socially insured person. Thus this allowance on its essence is not any more universal, as it was earlier and as it is in case, when the person takes care of the child from the age of one year to two years of age. Therefore, when reviewing the above restriction, persons shall be grouped on the feature of employment.

14.2.1. When fixing the childcare allowance to the average insurance contribution salary, simultaneously was also expressed the prohibition to work (even part-time job). The above situation may be explained by the fact that the person receives compensation for the income she cannot any more receive when taking care of the child. Thus employment in this situation would be at variance with the aim of the new system of childcare allowance – to compensate person's income, ensuring adequate parental care of the child. From the above follows, that the means, chosen by the State, are directed towards reaching the legitimate aim.

However, in separate cases being employed in a part-time work may be significant for the receiver of the allowance as the possibility of not losing professional qualification and avoiding problems in the labor market after the end of the parental leave. Thus, for example, one of the submitters – A.Putniņa – is the associate of the Latvian University. Up to January 1, 2005 A Putniņa successfully combined care of the child and part-time job. On March of 2005 her child was born and – in accordance with the impugned norm – she is not allowed to combine childcare with a part-time job. However, there is the necessity that A.Putniņa continues her professional activity, as in March of 2006 the term of work for which she was elected an associate ends and it coincides with the end of parental leave. In order to take part in the competition for the above post A.Putniņa has to do scientific and academic work of a certain extent. Otherwise, not only her professional career but also the material situation of her family, in which there are four kids, is endangered.

Thus for both – the submitters and the families in which the parents have to maintain their professional qualification (for example, in the doctor's profession) the above restriction may bring noticeable harm in future. From the above follows that the State, trying to reach the legitimate aim – adequate care of an infant - to a certain extent violates the interests of other members of the family, including those of the children.

Thus, there are cases when the employment of a person during a certain period (even during the period of childcare) is a precondition for maintaining the professional qualification or advancement, which – in its turn is significant for the protection of long-term family interests (after the end of parental leave). Thus, there exists a group of persons, who are forced to refuse from the State allowance (childcare benefit) to maintain their professional skills and the place in the labor market, as well as to provide for their family in future. In these cases the means, chosen by the State, do not reach the legitimate aim.

14.2.2. In their turn for persons, who have not been employed before the birth of the child, the determined childcare allowance is 50 lats. That is more than before the time the impugned norm took effect (increased for 20 lats).

In this case the aim of the childcare allowance is to render assistance to the family because of additional expenses, which arise when taking care of the child. Thus this allowance is not connected with the income and employment of the person. As concerns unemployed persons, who take care of the child up to the age of one year (amount of the benefit – 50 lats) as well as the persons, who take care of the child from the age of one year and up to two years of age (amount of the allowance – 30 lats), the allowance is of universal nature. In the first case (the amount of the allowance is 50 lats) the prohibition to work is determined to be the term, in its turn, in the second case it is not determined. However, one can find substantiation for the above situation neither in the summary of the draft law, nor in other materials in the case.

Besides, the amount of the childcare allowance is noticeably lower than the amount of the minimum wage (80 lats) and subsistence wage (107,22 lats – as given in the data of the Central Statistics Board for September, 2005). Therefore many persons – it especially refers to indigent and incomplete families – are forced to work to ensure sufficient subsistence and refuse from the allowance.

Thus the means, chosen by the state, in this case do not reach the legitimate aim either.

Thus the means, chosen by the legislator, even though on the whole are appropriate for reaching the legitimate aim, however create essential restrictions for realization of the rights of separate persons.

14.3. Besides the Court has to assess whether the legitimate aim, determined by the legislator, may not be reach by means, restricting the rights of a person to a lesser degree.

The Court agrees to the viewpoint of both – the submitters and the representative of the SHRB A.Kovaļevska, namely, that it would be possible to reach the legitimate aim with means, restricting the rights of a person to a lesser degree. For example, the person could be allowed to work part-time and receive the minimum amount of the allowance, or such an allowance, which would be smaller than in the case, if the person would not work. That it would encourage the parents to choose not working during the first year of life of the child; however, the possibility to work part-time would be maintained for those parents, for whom it would be necessary.

Looking for the most optimal solution is not within the competence of the Constitutional Court, as that is the duty of the legislator. The Court may only stress that such more considerate means exist. Making use of them it would be possible to reach the legitimate aim – to protect the rights of the child by involving one of the parents. Simultaneously, more considerate means would allow ensurance of assistance to the family both – after the birth of the child and the protection of the family in future.

Thus, it is possible to reach the legitimate aim with means, restricting the rights of a person to a lesser degree. Thus the means, chosen by the state (the impugned norm) are not proportionate for reaching the legitimate aim and unconformable with Article 110 of the Satversme.

15. By establishing unconformity of the impugned norm with at least one Article of the Satversme it shall be considered as unlawful and invalid. Thus there is no necessity to assess the compliance of the above norm with Articles 91 and 106 of the Satversme.

16. When determining the moment of the impugned norm losing validity, the Court takes into consideration the fact that the terms for receiving childcare allowance are incorporated in the impugned norm. Immediate abolition of them, without the existence of other normative regulation, may in separate cases create violation of the rights of a person. Therefore the legislator needs a certain period of time for improving the normative regulation of the childcare allowance both in the interests of the child and the whole family.

In its turn, to ensure the protection of the rights of the submitters and grant them with the possibility of receiving the childcare allowance, even if they have worked part-time, the impugned norm shall be considered as having lost its validity as of the moment when for the protection of their fundamental rights the submitters appealed at the Constitutional Court.

The operative part

On the basis of Articles 30-32 of the Constitutional Court Law, the Constitutional Court

hereby rules:

to declare the term, 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 unconformable with** Article 110 of the Republic of Latvia Satversme and **null and void from March 1, 2006.**

As concerns the submitters of the constitutional claim – Kristīne Dupate, Aija Freimane and Aivita Putniņa – **to declare** the term, 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 employee or self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave” – **as unconformable with** Article 110 of the Republic of Latvia Satversme and **null and void as of March 8, 2005.**

The Judgment is final and allowing of no appeal.

The Judgment has been declared in Riga, on November 4, 2005.

The Chairman of the Court session A.Endziņš