



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Rīga, January 14, 2004

JUDGMENT

in the name of the Republic of Latvia

in case No. 2003-19-0103

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse and Ilze Skultāne on the basis of the constitutional claim by Irīna Pīgozne and Baiba Strupiņa under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 11 of the first part), 19² and 28¹ holding the proceedings in writing on December 16 at the Court session reviewed the case

”On the Compliance of the Transitional Provisions (Item 2, Sub-item 4) and Article 31 (the fourth part) of the Law ”On Maternity and Sickness Insurance” as well as the Cabinet of Ministers July 28, 1998 Regulations No. 270 ”The Procedure of Calculating the Average Insurance Payment Salary and the Procedure of Granting, Calculation and Payment of the State Social Insurance Benefits” with Articles 1, 91 and 109 of the Republic of Latvia Satversme (Constitution)””.

The establishing part

1. On November 6, 1995 the Saeima adopted the Law ”On Maternity and Sickness Insurance”” (up to July 22, 1998 the title of the Law was ”On Maternity and Sickness Benefits”).

On November 23, 2000 Amendments to the above Law were passed and Article 31 was supplemented with the fourth and the fifth parts. The fourth part of Article 31 of the Law ”On Maternity and Sickness Insurance” (in the wording which was in effect up to January 1, 2003) determined that ” The average insurance payment salary for a calendar

day used for calculation of benefits may not exceed 50 percent of 1/365th of the maximum amount of the object of mandatory annual payments of state social insurance, which was in force on the day when the insured case set in" (henceforth – the challenged legal norm).

On October 24, 2002 the Saeima amended the Law "On Maternity and Sickness Insurance" and deleted from the challenged legal norm the figure and the words "50 percent of".

On December 12, 2002 the Saeima repeatedly amended the Law "On Maternity and Sickness Insurance", incorporating the challenged legal norm in Item 2, Sub-item 4 of the Transitional Provisions of the Law.

At the time of preparation of the case for review – on October 30, 2003 the Saeima amended the Law "On Maternity and Sickness Insurance" and deleted the challenged legal norm from it. The Amendments took effect on November 13, 2003.

Thus the challenged legal norm was in effect from January 1, 2001 till November 13, 2003.

2. Item 8 of the Cabinet of Ministers July 28, 1998 Regulations No. 270 "The Procedure of Calculating the Average Insurance Payment Salary and the Procedure of Granting, Calculation and Payment of the State Social Insurance Benefits" determines: "The Average Insurance Payment Salary for granting the State social insurance benefits in cases established in Item 7 of the Regulations shall be calculated according to the following formula:

$Vd = (A1 + A2 \dots A6) : D$, where

Vd – the average insurance payment for a calendar day, which does not exceed the amount that has been determined in the fourth part of Article 31 of the Law "On Maternity and Sickness Insurance";

A1, A2... - the sum of the insurance payment which has been received for the period of time of six calendar months (as is established in the first part of Article 31 of the Law "On Maternity and Sickness Insurance");

D – the number of calendar days, determined in part 1 of Article 31 of the Law "On Maternity and Sickness Insurance", not counting the days of a temporary incapacity to work for which the sickness benefit has been paid, the calendar days of pregnancy and delivery leave or leave for nursing a child as well as the period when the employee has not been registered as a payer of state social insurance payments (henceforth –

the payer of social insurance payment)” (henceforth – the challenged legal norm).

- 3. The submitters of the constitutional claim** Irīna Pīgozne and Baiba Strupiša (henceforth – the submitters) left work at the end of 2003 for pregnancy and delivery leave, but before that both submitters had a temporary incapacity to work. In accordance with the Law ”On Maternity and Sickness Insurance” the submitters experienced the right to receive sickness and maternity benefits.

The submitters received the decisions on the calculated maternity and sickness benefits from the corresponding branches of the State Social Insurance Agency (henceforth – SSIA). The benefits calculated by the SSIA were considerably lower than the State social insurance payment salaries (henceforth – payment salaries) from which the social insurance payments were settled.

In the term envisaged by law the submitters requested to revise the above decisions but received the decisions of the corresponding branches of SSIA, stating that the former decisions adopted by the SSIA shall be left unchanged. SSIA pointed out that the above benefits have been calculated in accordance with the Law ”On Maternity and Sickness Insurance” and the Cabinet of Ministers July 28, 1998 Regulations No. 270 ”The Procedure of Calculating the Average Insurance Payment Salary and the Procedure of Granting, Calculation and Payment of the State Social Insurance Benefits”.

- 4. In their constitutional claim** the submitters challenge the conformity of the fourth part of Article 31 (the wording , which was in effect up to January 1, 2003) of the Law ”On Maternity and Sickness Insurance” and Item 8 of the Cabinet of Ministers July 28, 1998 Regulations No. 270 ”The Procedure of Calculating the Average Insurance Payment Salary and the Procedure of Granting, Calculation and Payment of the State Social Insurance Benefits” with Articles 1, 91 and 109 of the Republic of Latvia Satversme (henceforth – the Satversme).

The submitters hold that the challenged legal norm does not comply with the principle of legal equality, which is enshrined in Article 91 of the Satversme. The submitters stress that they have made social insurance payments from the maximum yearly amount of the whole state social insurance obligatory payment object (henceforth – the payment object), but have received as social insurance benefit (sickness benefit and maternity benefit) only one half of the paid sum. The submitters hold that the challenged legal norm envisages differentiated attitude to two groups of persons: the persons, whose yearly income

does not exceed half of the maximum yearly payment object and those persons, whose income exceeds it.

In their constitutional claim the submitters express the viewpoint that the challenged legal norm infringes their right to social insurance envisaged by law. The State of Latvia has chosen the model of social security for insurance of social welfare of its inhabitants. In compliance with Article 5 (Item 2 of the second part) of the Law "On Social Security" the person, who has been insured by social insurance institutions, shall be entitled to material support in case of illness, pregnancy... The submitters hold that as they have made the social insurance payments, they are "automatically" entitled to material support (social security), besides, to their mind, the state social security service shall correspond to the social insurance payment. Their insurance payment salary from which the social insurance payment was calculated has been much higher than the state social service (maternity and sickness benefit) they received. In such a way their right to social security has been infringed.

The submitters point out that the challenged legal norm contradicts the principles of justice and legitimate trust, which follow from Article 1 of the Satversme. They hold that the challenged legal norm permits unfair (unequal) attitude to equal persons, i.e., the payers of the social tax and stress that "the principle of distributional justice" is understood as equal attitude to "the equals" and unequal attitude to the "different ones", besides, the degree of the unequal attitude shall be proportional to the degree of the diversity". In its turn violation of the principle of the legitimate trust lies in the fact that the Law "On Maternity and Sickness Insurance" has been repeatedly changed. The Law, which regulates the amount of the maternity benefits, has been amended three times in two years. At first there were no infringements at all, then they were introduced, later repealed and at long last declared as being in effect. The submitters hold that this fact does not ensure legitimate trust as concerns the above Law and the legal relations it regulates.

- 5. The Saeima** in its written reply expresses the viewpoint that the constitutional claim is ungrounded and requests the Court to reject it. The Saeima states that one of the objectives of the challenged legal norm is to decrease the deficit of the State Social Insurance Special Budget and the infringement refers only to a small group of persons – approximately 2,9 percent of all persons, who have the right of receiving benefits. The Saeima points out that it has been necessary to introduce Transitional Provisions to eliminate the appearance of the State social insurance special budget deficit and ensure the implementation of public social interests, even though it means infringement of the rights of a small group of persons.

At the time of preparing the case for review the Saeima, when submitting additional explanations, pointed out that the aim of the challenged legal norm – decreasing of the State social insurance special budget deficit – at the present moment is not urgent, besides, the conformity of the challenged legal norm with the principles of proportionality and legitimate trust is questionable, therefore the Saeima under the procedure of urgency has passed the Amendments to the Law "On Maternity and Sickness Insurance", deleting the challenged norm from it. The Amendments took effect as of November 13, 2003. The Saeima in its additional explanation stresses that by the adoption of the Amendments the controversy with the general principles of the State social insurance, which envisage that the State social insurance services received, shall comply with the in-payments, will be eliminated.

6. **The Cabinet of Ministers** does not agree with the viewpoint, expressed by the submitters and requests the Constitutional Court to declare the challenged legal norm as conformable with Articles 1, 91 and 109 of the Satversme.

The Cabinet of Ministers explains that the challenged legal norm follows from the fourth part of Article 31 of the Law "On Maternity and Sickness Benefits". The challenged legal norm was adopted in the period when a serious deficit had developed in the special budget of the State social insurance: at the end of 1999 the accumulated deficit reached 38,6 million lats, at the end of 2000 – 67,8 million lats, at the end of 2001 – 77 million lats, at the end of 2002 – 75,4 million lats.

The Cabinet of Ministers stresses that the objective of determining derogation of the average insurance payment salary per a calendar day has not been connected with turning against malicious using of legal norms and receiving big benefits. It was connected with the State financial feasibilities in securing of the social rights.

The concluding part

7. Article 109 of the Satversme establishes that "everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law". Social security in the Republic of Latvia means aggregate of activities in the sector of social security, including social insurance (*see Articles 2 and 5 of the Law "On Social Security"*).

Several laws, first of all the Law "On the State Social Insurance" (henceforth – Social Insurance Law), as well as the specific laws on separate types of social insurance determine the right to social insurance and the procedure of its realization.

When creating the social insurance system after regaining the State independence, out of several types and models of social insurance acknowledged in the world, the Saeima has chosen the State social insurance. Under the above system the laws determine the basic principles of the insurance, the range of the persons to be insured, the risks of insurance and the procedure of creating special budgets, besides, the above insurance is mandatory.

In compliance with Article 3 of the Social Insurance Law, social insurance in Latvia is "an aggregate of activities organized by the state, in order to insure the risk of a person or his/her dependants to lose income due to the socially insured person's sickness, disability, maternity, unemployment, age, accident at work or professional (occupational) disease as well as in case extraordinary expenditure which is connected with the death of the socially insured person or his/her dependant is needed". The basic principles of social insurance provide for:

- 1) solidarity between the payers of social insurance premiums and the recipients of social insurance services;
- 2) utilization of the social insurance funds only for the social insurance services in accordance with the law.

The first and the second part of Article 5 of the Social Insurance Law establish the range of persons to be obligatory covered by social insurance and included in the social insurance system, created by the State. Thus the legislator has envisaged the right of the above persons to social security, which is guaranteed in Article 109 of the Satversme.

For receiving the services of the State social insurance, inter alia, also maternity and sickness benefits, the person – in compliance with the law- has to pay compulsory insurance premiums (*see Article 12 of the Social Insurance Law*).

When implementing the social insurance model, the State has anticipated the maximum amount of the payment object. It is determined by the Cabinet of Ministers. In 2000 it was 15 000 lats; in 2001 – 16 000; in 2002 – 17,300 and in 2003 – 18 400 lats. From the income of the insured persons, which exceeds the maximum payment object, determined by the State, insurance premiums shall not be paid.

Maternity and Sickness insurance is one of the types of social insurance (*see Item 5 of Article 4 of the Social Insurance Law*).

Article 6 of the Social Insurance Law determines the range of persons, covered by the social insurance. In its turn the procedure of granting, calculation and payment of maternity and sickness benefits as well as the persons, who are entitled to receive the above benefits as well as the cases, when the above right sets in are determined by the Law "On Maternity and Sickness Insurance".

The maternity benefit is one of the services of the social insurance and socially insured persons i.e. the employees and self-employed persons, who have paid social insurance or for whom the payments have been made, have the right to the above benefit. The benefit is granted and paid for all the period of maternity leave and delivery leave, if the woman loses her working income. Thus every woman, who in accordance with the law has paid or for whom the social insurance premiums have been made is ensured also in case of maternity.

The sickness benefit is also one of the services of the social insurance, which is granted by the state by paying cash to a person, who has been insured in the cases, envisaged by the law and is absent from the work (*see Article 11 of the Law "On Maternity and Sickness Insurance"*) and thus loses the remuneration or if a self-employed person loses remuneration for his/her work. The sickness benefit shall be granted and paid from the 15th. day of working incapability, up to that time the sickness remuneration is being paid and the employer is under the obligation to do so.

8. The Saeima and the Cabinet of Ministers point out that the challenged legal norm has been passed at the time, when there was (and had been for a considerable time) a serious State social insurance budget deficit. The objective of this norm was the decrease of the above budget deficit.

The Constitutional Court has already pointed out that "social rights, including those to social insurance, are very important, but at the same time they are special, diverse human rights, as the realization of those rights depends on the economic situation and resources of every state. Therefore in international instruments social rights are formulated as universal obligations of the states, letting the state itself to choose the way of realization of those rights"(The Constitutional Court March 13,2001 Judgment in case No. 2000-08-0109).

However, regardless of the level of the economical development, the state has the obligation of undertaking activities to reach the ensurance of the social rights at least on the minimum level by making use of all the means at its disposal. Article 9 of the UNO December 16, 1966 International Covenant on Economic, Social and Cultural Rights (henceforth – the Covenant) determines that "the States Parties to the

present Covenant recognize the right of everyone to social security, including social insurance. Article 10 of the Covenant establishes that "the widest possible protection and assistance should be accorded to the family (...) while it is responsible for the care and education of dependent children (...). Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits".

Article 8 (Item 1) of the European Social Charter (hereinafter – the Charter) determines: "to ensure effective realization of the right to security of the employed women, the Contracting Parties undertake to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks".

This provision assigns the states with two duties: first of all to determine by law that the working women are entitled to maternity and delivery leaves up to a total of at least 12 weeks; secondly, to provide for the women adequate social security benefits for the above period.

As concerns the second duty, the Committee of Independent Experts holds that the above benefit is sufficient, if it is 80% of the average income of the woman (*see Gomien D., Harris D., Zwaak L. Law and practice of the European Convention on Human rights and the European Social Charter, Council of Europe, 1996, p. 396*).

Article 10 of the Law "On Maternity and Sickness Insurance" determines that "the maternity benefit shall be granted in the amount of 100 percent from average earnings of the receiver of benefit".

In its turn the challenged legal norm determines infringement which shall be attributed to the average insurance payment salary when calculating maternity and sickness benefits. Thus it is established that the average insurance payment salary for a calendar day used for calculation of benefits may not exceed 50 percent of 1/365th of the maximum amount of the object of mandatory annual payments of state social insurance, which was in force on the day when the insured case set in. Thus for one category of persons the average income is decreased even for 50 percent when calculating the benefit, thus reducing the amount of the benefit.

9. Article 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 when interpreting this Article has concluded that the principle of

equality inter alia forbids the State institutions to pass norms that without a reasonable ground permit different attitude to persons, who find themselves in similar circumstances (*see the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409 Item 1 of the concluding part*).

To assess whether the challenged legal norm complies with Article 91 of the Satversme, one has to ascertain:

- 1) whether the persons are in similar and comparable circumstances;
- 2) whether the challenged legal norm anticipates a differentiated attitude;
- 3) whether the differentiated attitude has impartial and reasonable ground, namely, if it has a legitimate aim and if the principle of proportionality has been observed.

9.1. Persons, when making social insurance payments are insured for events of maternity and sickness as established by the law. As soon as the event of insurance sets in, the person experiences the right to maternity or sickness benefit. The person makes social insurance payments from his/her income, which do not exceed the maximum yearly income object (at present – up to 18 400 lats).

Thus all persons, who are entitled to the above benefit, are in similar and comparable circumstances.

9.2. The State, when choosing the model of social insurance has determined that the received State social security service shall comply with the social insurance payments made. In its turn the challenged legal norm establishes a noticeably smaller social insurance benefit in comparison with the payment salary, from which the social insurance payments have been made. Thus one group of the social insurance premium payers receives services, which are not proportional to the paid social insurance premiums, at the same time another group receives services, which are proportional to the payment, which was made (*see p.40 of the First Volume of the case*).

Thus the challenged legal norm envisages a differentiated attitude to persons, whose income exceeds 50 percent of the maximum amount of the object of annual payments and to persons, whose income does not exceed the above sum.

9.3. In the summary of the draft of the Amendments to the Law "On Maternity and Sickness Insurance" (the Law took effect as of November 23, 2000) and the Social Report on 2001 by the Republic of Latvia Ministry of Welfare (<http://www.lm.gov.lv/index.php?sadala=296&id=97>, 10.11.2003) it has been pointed out that the objective of the challenged legal norm is to preclude the

possibility of misuse of the legal norms and receiving ungroundedly great maternity and sickness benefits. When implementing the right to social security, guaranteed by the Satversme, the duty of the state is not only to determine the normative regulation of the above right but also to create the mechanism of effective realization of the legal norm. The duty of the state is not only to declare the rights, but also to put them into practice and supervise their application. In its turn, if this duty is not appropriately fulfilled, i.e., if there is not adequate control concerning misuse of the legal norms as regards receiving of ungroundedly great benefits, then the state does not make use of all the measures at its disposal for realization of social rights.

Thus the above objective cannot be regarded as legitimate.

The Summary of the 7th. Saeima Draft Law "Amendments to the Law "On Maternity and Sickness Insurance" (the Law was passed on October 24, 2002) includes the aim – to harmonize legal norms in compliance with the principle of the State social insurance so that the person, who is making payments in the social insurance special budget receives adequate services. When amending the Law "On Maternity and Sickness Insurance" the restriction of 50 percent was deleted from the challenged legal norm.

On December 12, 2002 the 8th. Saeima amended the Law "On Maternity and Sickness Insurance" and included the challenged norm in Item 2, Sub-item 4 of the Transitional Provisions of the Law. The objective, included in the Draft Law Summary was to prevent increase of the expenses of the State social insurance special budget in the sector of maternity, sickness and burial benefits. In its turn in Item 3 of Chapter 2 of the Summary "Appraisal of social consequences" it is pointed out that the challenged legal norm "is at variance with the general principles of the state social insurance [...]. Determination of such restrictions does not stimulate participation of persons in the system and may encourage appealing at the Constitutional Court".

The Saeima and the Cabinet of Ministers in their written replies state that the legitimate aim of the challenged legal norm is securing of the State social insurance special budget and submit generalized data on all the State social insurance budgets, in which the deficit has reached the amount of several tens of millions lats (*see Item 6 of the Judgment*). However these figures shall not be taken into consideration as they characterize the amount of the deficit in the state social insurance budgets all in all.

In its turn the maternity and sickness benefits are paid from the special budget of disability, maternity and sickness. In 2000 the fiscal deficit of this budget had reached the amount of 3 164 719 lats. The deficit in the above budget remained also in 2001, when it reached 5 859 514 lats. In 2002 a fiscal reserve of 222 081 lats developed in the special budget of disability, maternity and sickness (*see p.84 of the Second Volume of the case*).

Thus determination of the differentiated attitude established by the challenged legal norm at the period when there was no deficit in the special disability, maternity and sickness budget was not justified by a legitimate aim.

The legitimate aim of the challenged legal norm (as long as there was a deficit) is securing of the State social budget (in this case – the special disability, maternity and sickness budget). However, one has to assess whether the means, chosen for reaching the above aim are proportionate.

In 2002 12 606 persons received the maternity benefit. Out of these persons the infringement was applied to 367 persons or 2,9, percent of the total number of the receivers of the above benefit. In 2001 it was applied to 296 persons – 3,05 percent. As follows from the information submitted by the SSIA to calculate the amount of the benefit without the 50 percent restriction in 2001 106 000 lats would have been needed, in 2002 – 88 510 lats (*see pp. 232 -233 of the First Volume of the case*).

In its turn, when calculating the maternity benefit for a person, to whom the restriction of the challenged legal norm refers, its financial situation is substantially worsened if compared with the period before maternity and delivery leave. For example, the person is not able to observe its credit commitments, which she could easily pay before the maternity and delivery leave. Thus the restriction, incorporated in the challenged legal norm is not proportionate as the benefit received by the public is not greater than the loss incurred to the rights and legitimate interests of the individual.

10. The challenged legal norm determines the procedure of calculating the average insurance payment salary for granting the State social insurance benefits, inter alia also for granting maternity and sickness benefits. The above norm incorporates reference to Article 31 (the fourth part) of the Law "On Maternity and Sickness Insurance". The submitters question the norm only as far as it refers to the challenged legal norm. Therefore there is no necessity of separately assessing the compliance of the challenged legal norm with the Satversme.

11. Taking into consideration the fact that from November 13, 2003 the challenged legal norm had lost its validity, the Court does not have to reach the decision on the moment of the challenged legal norm becoming null and void. At the time when the challenged legal norm was still in effect the SSIA calculated sickness and maternity benefits in accordance with the challenged legal norm. Thus the challenged legal norm has violated the fixed in Article 91 of the Satversme constitutional rights of the submitters. To secure the protection of the rights of the submitters and give them the possibility of receiving the sickness and maternity benefits in the full amount, the challenged legal norm shall be declared as being null and void as of the date when the right to sickness and maternity benefits for the submitters arose.

12. When establishing unconformity of the challenged legal norm with even one of the Satversme Articles, it is declared as unlawful and null and void. Therefore there is no need to assess conformity of the above legal norm with Articles 1 and 109 of the Satversme.

The substantive part

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

hereby rules:

to declare the fourth part of Article 31 (in the wording, which was in effect up to January 1, 2003) and Item 2, Sub-item 4 of the Transitional Provisions of the Law "On Maternity and Sickness Insurance" as being unconfirmable with Article 91 of the Republic of Latvia and – as concerns the submitters of the constitutional claim Irīna Pigozne and Baiba Strupiša – null and void as of the moment when the right to the sickness and maternity benefits arose.

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