



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, November 27, 1998

On case No. 01-05(98)

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session A.Endziņš, the justices I.Čepāne, R.Apsītis, A.Lepse, I. Skultāne and A.Ušacka, with the secretary of the Court session L.Vīnkalna

in the presence of the Director of the Legal Department of the Ministry of Welfare M.Ķimele --the representative of the party of the applicant i.e. the Cabinet of Ministers

and the Head of the Legal Bureau G.Kusiņš – the representative of the institution – the Saeima - that had issued the normative act which is disputed

under Article 85 set by the Satversme (Constitution) of the Republic of Latvia, as well as Article 16, paragraph 1 and the first part of Article 17 of the Constitutional Court Law

in a public hearing on November 13, 1998 reviewed the case

” On Conformity of the Norm Established by the Second Part of Article 4 of the Law ”On Maternity and Sickness Benefits”- that on June 19, 1998 Was Expressed in a New Wording in Article 8 of the Saeima Law ”Amendments to the Law ”On Maternity and Sickness Benefits””- with Article 66 of the Satversme (Constitution) of the Republic of Latvia.”

The Constitutional Court *established*:

On June 19, 1998 the Saeima adopted the law " Amendments to the Law "On Maternity and Sickness Benefits"", expressing several Articles – among them Article 4 of the Law "On Maternity and Sickness Benefits"- in a new wording. Besides the title of the law was also expressed in a new wording, namely "On Maternity and Sickness Insurance". The Amendments took effect on July 22, 1998.

On August 7, 1998, the Cabinet of Ministers submitted the application to initiate a case (hereinafter – the application) at the Constitutional Court, questioning conformity of the norm (hereinafter- the disputable norm) established by the second part of Article 4 of the law "On Maternity and Sickness Benefits", that has been expressed in a new wording in Article 8 of the Saeima June 19, 1998 Law "Amendments to the law "On Maternity and Sickness Benefits"", with Article 66 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

In the application **the submitter** points out that the Saeima, when altering the law "On Maternity and Sickness Benefits" on June 19, 1998 and expressing the second part of Article 4 in a new wording, has enlarged the scope of persons entitled to receive maternity benefit, not envisaging funding for it. Thus, to the mind of the applicant, the Saeima has not observed the norm of Article 66 of the Satversme. Article 66 of the Satversme stipulates that if the Saeima passes a resolution involving expenditure not foreseen in the Budget, it should specify in this resolution the sources of revenue with which to meet such expenditure.

Besides it is stressed that by introducing the above norm and not envisaging extra funds, the 1998 Special Budget for Disability, Maternity and Sickness shall be in deficit and will not cover expenses for services of social insurance.

At the Court session, the representative of the applicant backed the petition.

In addition to the legal motivation she pointed out, that the social insurance system was regulated by several laws and was based on unified principles of social insurance, establishing that expenses and services from the social insurance funds shall cover only those persons who are socially insured.

There has been only one exception when benefits were granted to persons who were not socially insured – and that was the case of granting funeral benefits in cases of death of a socially insured person. Therefore – to their mind – the disputable legal norm is at variance with the principles

of social insurance. Besides, the notion "a person who is provided for by a socially insured person" has not been interpreted, thus establishing uncertainty in its application.

The representative of the applicant stressed, that benefits to cover the expenses of the disputable legal norm shall not be paid from the fund for unforeseen purposes, as the Social Budget is a self-dependent budget and only expenses for objectives of social insurance are planned in it.

To ensure that the disputable norm shall not be at variance with the second part of Article 66 of the Satversme, the Saeima- when altering the law "On Maternity and Sickness Benefits"- should have specified the sources of revenue with which to finance the maternity benefits for persons referred to in the disputable norm of the Transitional Provisions.

The Saeima in its written reply points out that the application is ungrounded as the Special Budget for Disability, Maternity and Sickness has surplus revenues, therefore the expenses for maternity benefits, envisaged by the law can be covered.

In the written reply it is admitted that the Saeima, when passing a resolution involving expenditure not foreseen in the budget, shall specify the sources of revenue with which to meet such expenditures. At the same time the procedure of the Saeima does not allow to alter another law when amending a law, i.e. – the Saeima shall adopt a decision on amendment of every law separately.

The written reply informs that the draft of "Amendments to the Law "On the State Budget for 1998"", has been submitted to the Saeima Committees on September 3. The draft envisages introducing amendments to the Annual State Budget. From the submitted draft can be seen that the funds, required to cover the expenses of the disputable norm are to be found in the already confirmed 1998 State Budget- in the coded programme 06.00.00. –Resources of the Ministry of Finance for Unforeseen Purposes.

Besides, in the above reply is expressed the viewpoint that the Saeima, when passing the law "On the State Budget for 1998", has already foreseen a special position –Resources for Unforeseen Purposes. The Cabinet of Ministers shall decide on utilisation of the fund.

The representative of the Saeima backed the viewpoint that the application was ungrounded and should be rejected.

The Saeima representative gave a detailed analysis of the concept of the state budget and additionally pointed out, that the projection of the Ministry of Welfare on the necessary funds to cover maternity benefits was

superficial and biased. The Ministry of Welfare had been of the opinion that to implement the disputable norm 823 715 lats would be needed in 1998. In fact, up to October 1, 1998 maternity benefits to the persons who are not socially insured, but are provided for by a socially insured person were granted only in six cases – amounting to only 252 lats. Therefore, to his mind, the question whether adoption of the disputable legal norm could be connected with the Resources for Unforeseen Purposes of the State budget, shall be discussed, not by taking into consideration projections, but direct costs.

The representative of the Saeima pointed out that Article 11 of the law "On the State Social Insurance" stipulates, that the funds of the Special Budget for Disability, Maternity and Sickness shall be comprised not only by compulsory premiums for insurance of disability, maternity and sickness but also by other revenues, the latter meaning grants from the State Budget as well.

Besides, he stressed that Resource for Unforeseen Purposes that could be used to pay the benefits- were under the management of the Ministry of Finance. However, the Ministry of Welfare had not asked the Ministry of Finance to grant the resources to cover the expenses of the benefit.

At the Court session a witness – the deputy of the Saeima and the Parliamentary Secretary of the Ministry of Welfare R.Jurdžs explained that the disputable legal norm had been adopted in a hurry. On July 4, at the sitting of the Social and Employment Matters Committee he had asked the Ministry of Finance to comment on the norm. However, his request had been rejected by reference to the Rules of Procedure of the Saeima. R.Jurdžs expressed a viewpoint that resources for application of the disputable legal norm should have been envisaged not from the Special Budget but from the Basic Budget. However, the Saeima, when passing the disputable norm had not specified the sources of revenue with which to meet such expenditure and thus had violated the second part of Article 66 of the Satversme.

Another witness – the deputy of the Saeima and the Parliamentary Secretary of the Ministry of Finance M.Vītols explained at the Court session that representatives of the Ministry of Finance had neither been invited to the July 4, 1998 sitting of the Social and Employment Matters Committee nor informed about the fact that during the second reading the disputable legal norm had been included in the draft law. Speaking about the second part of Article 66 of the Satversme, the witness pointed out that, when reviewing draft laws in the second and third reading the Saeima frequently had violated the above norm. Taking advantage of incompleteness of the Rules of Procedure, the Saeima had quite often backed populist motions. Comparing the projection elaborated by the

Ministry of Welfare with the number of requested benefits, the witness admitted that the persons who – on the basis of the disputable legal norm – were entitled to receive the benefit were not sufficiently informed of it.

Witnesses – Director of the Social Insurance Department of the Ministry of Welfare I.Alliks, Head of the Department of Economic Analyses and Projections of the Ministry of Welfare I.Vanovska and the Head of the Department of Financial Management of the State Social Insurance Agency G.Šica characterised methods of calculating the resources needed to meet the expenditure while implementing the disputable legal norm. They affirmed that the Saeima, when passing the Amendments to the Law "On Maternity and Sickness Benefits" had enlarged the scope of persons entitled to receive the benefit without specifying the sources of revenue with which to meet such expenditure.

Evaluating the conformity of the disputable legal norm to Article 66 of the Satversme of the Republic of Latvia, **the Constitutional Court concluded:**

1. The Satversme stipulates that before the commencement of each financial year, the Saeima approves the State Revenue and Expenditure Budget. The Budget is the financial plan of the state, which on the basis of the existing laws envisages revenues and expenditure for a certain period of time – the financial year.

The objective of the Budget shall be to establish and substantiate what resources are required for fulfilling those state obligations the funding of which is established by legislative acts. All the state institutions and offices are inter-related with the Budget. Within the period of a financial year only the resources anticipated by the budget shall be spent and only for objects foreseen in the budget.

The second part of Article 66 establishes that the Saeima is also inter-related with the Budget, adopted by it. When passing a law or a resolution, involving expenditure from the Treasury, the Saeima has to take into consideration the Basic Budget. And "if the Saeima passes a resolution involving expenditure not foreseen in the Budget, it should specify in this resolution the sources of revenue with which to meet such expenditure".

2. In accordance with the Law "On the Administration of Budgets and Finances", the special budget is a constituent part of the state budget that "shall comprise appropriations of revenues for certain purposes as well as donations (money or payment in-kind, estimated in currency) or subsidies. Resources shall be spent only on the basis of the revenues". The special Budget for Disability, Maternity and Sickness is one of the 1998 confirmed Special Budgets of Social Insurance. This Budget has

been comprised on the basis of the Law "On Maternity and Sickness Benefits" and the Law "On the State Social Insurance". In accordance with the above laws, revenues, accrued in the Special Budget (resources of the Social Insurance) shall be utilised only for social insurance services – social insurance payments (benefits) to socially insured persons.

In accordance with the existing laws, the resources of the 1998 Disability, Maternity and Sickness Special Budget were anticipated only for payment of social insurance benefits to socially insured persons, with an exception of funeral benefits in cases of death of an insured person.

On June 19, 1998 when adopting the disputable legal norm and anticipating that the above Budget shall also cover the payment of maternity benefits to persons who are not socially insured, but who are provided for by a socially insured person, the Saeima has enlarged the objective of utilisation of the resources of the Special Disability, Maternity and Sickness Budget.

Thus, the Saeima by passing the disputable legal norm has adopted a resolution that can be referred to Unforeseen Purposes.

3. The second Item of Article 87 of the Rules of Procedure of the Saeima determines, that no draft shall be reviewed in the first reading if it incurs expenditure not foreseen in the budget and the comments of the Minister of Finance have not been attached to the draft law. However, the law does not forbid either the Saeima deputies or the Minister of Welfare to ask for the comment before the review of the draft in the third reading.

In compliance with Article 8 of the Law "The Structure of Ministries" and Item 8 of the Regulations of the Ministry of Welfare, the Parliamentary Secretary may represent the political opinion of the Minister. Besides he ensures the link of the Ministry with the Saeima as well. Thus, if the Parliamentary Secretaries were of the opinion that the disputable norm was at variance with the Satversme, their duty was to inform the respective Ministers and Ministry officials about inclusion of the disputable norm into the draft law.

In accordance with Articles 109 and 110 of the Rules of Procedure of the Saeima, the deputies, when debating the draft law in the third reading had every right to review the debatable norm and put it to a vote.

However, at the Saeima June 19, 1998 sitting when the draft law was debated in the third reading, the disputable norm was not reviewed. Neither any of the present 83 deputies nor the Parliamentary Secretary of the

Ministry of Welfare and the Minister of Finance asked to reject the motion. The data on vote testify that 79 deputies and the Parliamentary Secretary of the Ministry of Welfare voted for adoption of the draft law "Amendments to the Law "On Maternity and Sickness Benefits"". Besides, first of all, before passing the disputable norm the Saeima has not tried to find out what sum of money shall be necessary to cover the expenses of maternity benefits, envisaged by the disputable norm. Secondly, when adopting the disputable norm, the deputies had not been informed about the fulfilment of the Special Budget for Disability, Maternity and Sickness. Thirdly, as Article 23 of the draft law "Amendments to the Law "On Maternity and Sickness Benefits"" envisaged that the maternity benefits shall be paid from the Special Budget for Disability, Maternity and Sickness, the Saeima had no reason to be of the opinion that the above benefits shall be paid from the resources of the State Budget for Unforeseen Purposes that are under the authority of the Ministry of Finance.

As the Decision of the Saeima is connected with resources unforeseen for the 1998 budget purposes, it was the obligation of the legislator to specify the sources of revenue with which to meet the expenditure. Saeima could do it either by passing adequate amendments to the Law on the State Budget or by determining that the adopted Resolution – the disputable norm shall take effect together with a respective Amendment to the existing Law on the Budget.

Thus, during the process of passing the disputable norm, the deputies of the Saeima as well as the officials of the Ministries of Welfare and Finance have not made use of and carried out the duties determined by normative acts, permitting violation of the requirements of the second part of Article 66 of the Satversme.

4. When making a decision on the time from which the disputable legal norm shall be declared null and void, it should be taken into consideration that in accordance with Article 89 of the Satversme, the State acknowledges and protects the basic right of a person to social insurance (protection). Besides, in compliance with the principle of trust in law, the socially not insured persons trusted in legality and stability of the disputable legal norm (see Verdict of the Constitutional Court No.04-05 (97) of March 11, 1998).

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

The Constitutional Court

DECIDED:

To declare the second part of Article 4 of the Law "On Maternity and Sickness Benefits" that has been expressed in a new wording in Article 8 of the Saeima June 19, 1998 Law "Amendments to the Law "On Maternity and Sickness Benefits"" **as not being in compliance with** Article 66 of the Satversme and **null and void** from the moment of the law "On the State Budget for 1999" taking effect, if the State Budget for 1999 does not envisage resources for covering the payment of maternity benefits to the persons indicated in the second part of Article 4 of the Law "On Maternity and Sickness Insurance".

The Judgment takes effect from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on November 27, 1998.

The Chairman of the Court session	A.Endziņš
Justice of the Constitutional Court	I.Čepāne
Justice of the Constitutional Court	R.Apsītis
Justice of the Constitutional Court	A.Lepse
Justice of the Constitutional Court	I.Skultāne
Justice of the Constitutional Court	A.Ušacka