



The norm, which envisaged the right of a self-employed person to receive parents' benefit only, if during the period of caring for the child she did not gain income, complies with Article 110 of the *Satversme*

On 15 February 2018, the Constitutional Court passed the judgement in case “On Compliance of Para 3 of Section 10⁴(1) of the law “On Maternity and Sickness Insurance” (in the wording that was in force from 1 January 2012 until 31 December 2013) with Article 110 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Para 3 of Section 10⁴(1) of the law “On Maternity and Sickness Insurance” (in the wording that was in force from 1 January 2012 until 31 December 2013) provided that parents' benefit was granted and disbursed to a socially insured person, who took care of the child or several children born during one delivery in the age up to one year (to one of the parents of the child, one of the adoptive parents, in whose care and supervision the child had been transferred in accordance with a decision of the Orphan's Court, to a member of the foster family, who had concluded an agreement with the local government, guardian or another person, who in accordance with a decision of the Orphan's Court actually took care of the child), if this person was employed on the day of granting the benefit (is to be considered as an employee or a self-employed person in accordance with the law “On State Social Insurance”) and as a self-employed person did not earn income due to taking care of the child.

Norm of Higher Legal Force

Article 110 of the *Satversme*: “The State shall protect and support marriage – a union between a man and a woman, 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 Facts

The case was initiated with regard to a constitutional complaint submitted by a self-employed person, sworn advocate Sanita Bokta– Strautmane (hereinafter – the Applicant). The Applicant resumed her professional activities, although her newborn child had not yet reached the age of one. Therefore, the Applicant, pursuant to the contested norm, had no

right to receive the parents' benefit until her child reached the age of one. The Applicant holds that by this the State failed to perform the positive obligation to provide social protection to her family at least in a minimal scope for several months, until the child reached the age of one, for several months.

The Applicant also holds that the prohibition to simultaneously gain income from professional activities and to receive parents' benefit is contrary to the best interests of a child and that the contested norm had violated the principle of legal equality.

The Court's Findings

The Constitutional Court examined, whether the State, by setting in the contested norm such prerequisite to self-employment persons for receiving the parents' benefit that during the period of caring for the child the person did not gain income, had fulfilled the positive obligation that followed from Article 110 of the *Satversme* to ensure a system of social protection for families. [11]

On whether the State had established a system of social protection for families

The legislator had envisaged various types of social support to families in connection with the birth of a child, the aim of which had been to compensate for the lost income caused by taking care of the child, as well as expenses related to the birth of a child and caring for her, as well as to provide support to a family for satisfying its basic needs. The legislator has also established the right to parents' benefit during this period. The contested norm envisaged the right to parents' benefit to all self-employed persons (including the Applicant), who, as one of the child's parents, was not gaining income because she was caring for the child, until the child reached the age of one. Thus, the State had established a system of social protection for the family and envisaged support for the family until the child reached the age of one. [13]

On whether the rights of the Applicant's family to social protection have been duly ensured on at least the minimum level

It is impossible to create such preconditions for granting a benefit with respect to self-employed persons that would fully comply with the actual situation of every person. If a person during the period of caring for the child continues professional activities and gains of income, then the person does not incur social risk and the family does not lose financial security. Thus, the legislator had reasonable grounds to consider that a self-employed person, who during the period of caring for the child continued to gain income, was able to provide for the family herself. Since the parents' benefit, which was granted also to employed persons, facilitated decrease of reserves in the social budget, the legislator also had reasonable grounds, in order to ensure sustainability of social budget, to set such precondition for receiving parents' benefit to self-employed persons that they should not be gaining income during the period of caring for the child. [14.1]

In ensuring a family's right to social protection at least on the minimal level, the State has the obligation to establish such system of social protection for a family that would ensure support to the family, when the family is unable to provide for itself. [14.2]

Professional activities and gaining of income proves that a person is able to provide for her family herself. Moreover, until the child reached the age of one, the possibility to receive maternity benefit, paternity benefit, benefit at the birth of a child and, in a situation of crisis, also social assistance for satisfying the basic needs were envisaged for the Applicant's family. Hence, the Constitutional Court found that the right to minimal social protection had been ensured to the Applicant's family until the moment when the child reached the age of one. [14.3]

On whether the contested norms complied with the general principles of law

The legislator has correlated the need for parents' benefit of those parents, who receive income and, thus, are able to provide care to their child themselves, with the need for sustainability of the social budget, which, just like granting a particular benefit, is important for protecting the rights of children, *inter alia*, those of next generation. [15.1]

Parents' benefit to self-employed persons and child care benefit to persons, who were not employed on the date of granting the benefit, were envisaged by taking into consideration different circumstances, different needs, and, thus, for different purposes. Therefore the self-employed persons, who during the period of caring for the child continued

professional activity, and the persons, who were not employed on the date of granting the benefit, were not in similar and comparable circumstances. Also with respect to employment risk, linked to suspension of professional activities due to caring for a child, there are no grounds to recognise that self-employed persons would be in similar and comparable circumstances with employees in the meaning of the Labour Law. Thus, such groups of persons who would be in similar and comparable circumstances cannot be identified. The contested norm complies with the principle of legal equality. [15.3]

The Constitutional Court found that the State, by envisaging in the contested norm such preconditions for receiving parents' benefit to a self-employed person that she does not gain income during the period of caring for the child, had fulfilled the positive obligation to ensure a system of social protection for a family. [16]

Hence, the Constitutional Court decided to recognise the contested norm as being compatible with Article 110 of the *Satversme*.

The judgement by the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/03/2017-09-01_Spriedums.pdf.

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.