



The norm that links a person's right to retirement before the full retirement age with the criteria for establishing disability envisaged in the regulatory enactments of the USSR applied during the period when she cared for her disabled child is incompatible with the *Satversme*

On 15 June 2017 the Constitutional Court passed judgement in case No. 2016-11-01 "On Compliance of Section 11(4) of the Law "On State Pensions" with the First Sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia".

The Contested Norm

Section 11(4) of the law "On State Pensions": "A parent or guardian of a child who during the time period until a child has reached 18 years of age has taken care of five or more children for not less than eight years or of a child who has been recognised as a disabled child in accordance with the procedures laid down in laws and regulations for at least eight years has the right to an old-age pension five years before reaching the age laid down in Paragraph one of this Section, if the length of period of his or her insurance is not less than 25 years. A person who has been withdrawn the right of child care or custody right or who has been suspended from fulfilling the duties of a guardian due to negligent fulfilling of such duties does not have such a right."

Norms of Higher Legal Force

The first sentence of Article 91 of the *Satversme*: "All human beings in Latvia shall be equal before the law and the courts."

Article 109 of the *Satversme*: "Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law."

Facts of the Case

The case was initiated with respect to an application submitted by the Department of Administrative Cases of the Supreme Court (hereinafter – the Supreme Court). The Supreme Court is examining a case, in the framework of which a person applied for old-age pension five years before reaching the retirement age defined in law, because

she had taken care of a disabled child for more than eight years. The person's child had had his forearm amputated in 1986; however, pursuant to norms that were in force at the time the child was not granted the status of a disabled person. It was done only in 1990, following restoration of Latvia's independence and change of legal regulation. At the time less than eight years remained before the child came of age.

The Supreme Court holds that the contested norm makes granting of old-age pension on preferential terms to persons, whose child's status of health actually complies with the criteria for granting the status of a disabled person, dependent upon the child's date of birth. Therefore the contested norm is said to be incompatible with the equality principle enshrined in the *Satversme* and to violate a person's right to social security.

The Court's Findings and Ruling

On the content of the contested norm and differential treatment caused by it

The contested norm, insofar it sets the requirement to establish that the child's disability status had been recognised in accordance with the former criteria for granting the disability status that were in force at the time when the child was taken care of, denies the person, who has turned to the administrative court, the right to receive old-age pension before reaching the full retirement age. Contrary to the *Saeima's* opinion, the case under review was not based upon the issue of application of the contested norm; therefore constitutionality of the contested norm must be reviewed in the case. [12.3; 13]

If the State has envisaged in law the possibility to retire before reaching the full retirement age, then Article 109 of the *Satversme* requires that the actions of the State in this matter comply with general principles of law, *inter alia*, the principle of legal equality. Hence, in the case under review compliance of the contested norm with Article 109 of the *Satversme* was reviewed in interconnection with the principle of legal equality that falls within the scope of the first sentence of Article 91 of the *Satversme*. [14]

All persons, who have taken care of children, who for at least eight years until reaching the age of 18 had had the same diseases or the same pathological conditions, are in the same and according to definite criteria comparable circumstances. [16]

As the Constitutional Court noted, the contested norm places in a different situation persons, who have been denied the right to retire before reaching the full retirement age, because at the time of caring for the child the criteria for granting disability status to a child that were in force at the time, in difference to criteria adopted later, did not include the disease or the pathological condition that the child was diagnosed with as the grounds for granting the disability status, and therefor it was impossible to grant the disability status to the child for a period of at least eight years before reaching the age of 18. Therefore the contested norm causes differential treatment of a person, depending upon her child's date of birth and the criteria for granting disability status envisaged in regulatory enactments that were in force at the time when the child was taken care of. [17]

On the legitimate aim of the differential treatment

The contested norm comprises a requirement that the child should have been recognised as a disabled child for at least eight years in the procedure established by regulatory enactments that had been in force at the time he was taken care of, specifying the range of persons, who are entitled to old-age pension before reaching the full retirement age, and thus is aimed at planning the amount of expenditure from the special budget. The differential treatment has been established with the aim of ensuring effective and predictable system of granting social security, i.e., for the protection of public welfare. [18]

On the principle of proportionality

The Constitutional Court recognised that the contested norm envisaged a mechanism that ensured predictability of expenditure from the special budget and long-term stability of the pension system. The measures used by the legislator are appropriate for reaching the legitimate aim. [20]

The contested norm comprises a reference to legal regulation of the USSR. The legal regulation of another state, i.e., the USSR, on granting disability status to children as to criteria it included obviously fell behind developments in the protection of the rights of disabled children and their family members, enshrined in international human rights documents, it also differed significantly from regulation adopted by a democratic state governed by the rule of law, i.e., by Latvia, which envisages much broader range of criteria for granting the disability status to be directly applied to children. [21.2; 21.3] Until the moment when Latvia's regulatory enactments came into force, the children of particular parents already could have had diseases or pathological conditions indicated in these regulatory enactments; however, pursuant to regulatory enactments applied in the USSR, the disability status was not recognised. Such criteria defined by a totalitarian state may not be the grounds for denying a person the rights that are ensured to another person, who is in similar and comparable circumstances. [21.3]

In the particular situation the legislator has not examined, pursuant to equality principle, the best way for exercising the fundamental rights of parents of disabled children, if the child at the moment when legal regulation was replaced in 1990 was older than ten years and had had already prior to that a concrete disease or a pathological condition that met the criteria for granting disability status only after the criteria for granting the disability status adopted in the Republic of Latvia entered into force. Application of regulatory enactments adopted after restoration of Latvia's independence, insofar they comply with the principles for protecting the rights of disabled children and their family members, also with respect to caring for the child in the previous period, could be considered as one of the possible alternative measures that would infringe to a lesser extent upon persons' fundamental rights enshrined in the *Satversme*. Also, this would not destabilise the system of social security, because the number of parents, to whom the contested norm applies and in whose period of caring for the child the criteria for granting disability status included in regulatory enactments of the USSR apply, is comparatively small. [21.3]

The Constitutional Court ruled:

The contested norm, insofar it denies to a person the right to retire before reaching the full retirement age and demands establishing that the child's disability had been

recognised in accordance with criteria for granting disability status envisaged in regulatory enactments of the USSR, is to be recognised as being incompatible with the first sentence of Article 91 and Article 109 of the *Satversme*.

With respect to persons, who have started protecting their rights in procedure established in the Administrative Procedure Law and to whom the contested norm is applicable, it is recognised as being invalid as of the moment of its adoption.

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

Text of the judgement [in Latvian] is available on the home page of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-11-01_Spriedums-1.pdf

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

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