



The norms that define the duration of disbursing the parental and the childcare benefit to the parents of a prematurely born child comply with the first sentence of Article 91 and Article 110 of the *Satversme*

On 19 November 19, the Constitutional Court delivered the judgement in case “On Compliance of Para 2 of Section 10⁴ (4) of the law “On Maternity and Sickness Insurance” and Section 7 (1¹) of “Law on State Social Allowances” with the first sentence of Article 91 and Article 110 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Para 2 of Section 10⁴ (4) of the law “On Maternity and Sickness Insurance” provides that a parent is entitled to choose the parental benefit for the same child up to the child’s age of one or one a half years. Whereas Section 7 (1¹) of “Law on State Social Allowances” provides that the childcare benefit is granted to a person caring for the child up to the age of two years.

The Norms of Higher Legal Force

The first sentence of Article 91 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*): “All human beings in Latvia shall be equal before the law and the courts”

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 on the basis of a constitutional complaint submitted by person D (hereafter – the Applicant). A child was prematurely born to the Applicant; therefore, she had been granted the maternity benefit only following the birth of the child. Whereas the parental benefit and the childcare benefit are granted as of the day when the disbursement of the maternity benefit ends. The parental benefit and the childcare benefit are granted from

the day when the disbursement of the maternity benefit ends, and these benefits are paid until the child reaches a certain age. Thus, a situation occurred, in which the Applicant received the paternal and the childcare benefits for a shorter period compared to parents whose child was born on the predicted due date.

The Applicant requested the State Social Insurance Agency to review the period (calendar days), during which she received the parental and childcare benefit granted to her. However, her request was dismissed on the basis of the contested norms. The judgment of the Administrative Regional Court left the State Social Insurance Agency's decision unamended. The Applicant holds that the State has violated the equality principle and the principle that the child's best interests take the priority because the parents of a prematurely born child receive the parental and the childcare benefit for a shorter period of time; moreover, a prematurely born child requires special care and, therefore, these benefits should be disbursed until the date when the child reaches the adjusted and not the chronological age of two years.

The Court's Findings

On how the constitutionality of the contested norm should be reviewed

In the present case, the Constitutional Court examined the compliance of the contested norms with Article 110 of the *Satversme*, in the framework of the examination, reviewing also their compatibility with the first sentence of Article 91 of the *Satversme*. [9.]

On the scope of Article 110

The State has the obligation to provide reasonable and targeted social support to a family during the first years of a child's life. It is immediately after the birth of a child that the family needs the support most of all because the child is totally dependent on parental care and the parents, due to taking care of the child, may be unable to gain sufficient income to satisfy the family's needs.

Thus, the State's obligation to establish and maintain a social security system, which supports the family during the first years in a child's life, follows from Article 110 of the *Satversme*. [10.]

The state social security system that supports the family in the first years of a child's life

The Constitutional Court concluded that the State had taken measures to establish a social security system that supported the family in the first years of a child's life. This support includes social insurance, state social benefits as well as social assistance benefits and social services. [12.]

The State has created such system of social security that grants to all socially insured women, irrespectively of the date when their child is born, a maternity benefit for the whole period of pregnancy and a maternity leave. After that, one of the parents is granted the parental benefit until the child reaches the age of one year and a half and a childcare benefit until the child reaches two years of age. The possibility to receive these benefits until the child reached the age of two years was ensured also the Applicant. Thus, the State has ensured to the family during the first years of the child's life the possibility to exercise its social rights at least in the minimum scope. [13.]

Compliance of the contested norms with the principle that the child's best interests take the priority

By envisaging the right to the parental and the childcare benefit as well as defining the conditions for disbursing these benefits, ensuring, during the period of decisive importance for the child's development, constant parent's presence and care to the child, is fostered [14.1.1.]

The parental and the childcare benefits are not intended for resolving situations that are related to the child's health condition. For those cases, where the family needs additional state social support due to the child's health conditions, the State has provided for the parents' right to the sickness benefit for caring for a sick child until the 21st day of incapacity for work.

Since 1 January 2020, the State has envisaged additional support to working parents in cases where the child has a serious illness. I.e., part 2¹ has been added to Section 13 of the law "On Maternity and Sickness Insurance", which establishes the parents' right to sickness benefit for incapacity to work, which in one instance cannot exceed three months, but in total – 26 weeks, counting from the first day of the incapacity for work if the incapacity for work is uninterrupted, or it cannot be longer than three years within the period of five years if the incapacity for work is intermittent. The Constitutional Court found that the State has continued to improve the social support system to provide support, most appropriate for the child's needs, to those parents, the parents of a prematurely born child among them, whose child's health care required special care and constant presence of a parent.

Moreover, the State has ensured to prematurely born children the participation in the dynamic observation programme for prematurely born children, in the framework of which the child undergoes regular check-ups.

Thus, the measures taken by the State to establish such social security system that supports the family during the first years in the child's life, comply with the principle that the child's best interests take the priority. [14.1.3.]

Compliance of the contested norms with the equality principle

The legal issues to be examined in the case regarding caring for a child until a certain age are closely related to pregnancy and the birth of a child. Therefore, in establishing, whether and which persons (groups of persons) are in similar and according to definite criteria comparable circumstances, it was necessary to examine in their interconnection the conditions for granting not only the parental and the childcare benefits but also the maternity benefit. [14.2.1.]

The Constitutional Court concluded that the legislator, by envisaging differential regulations, which allow a woman, whose child has been born before the moment when the pregnancy leave and the maternity benefit calculated for it had been granted, to receive the maternity benefit in full amount after the birth of the child, had ensured to this woman social support that was equal to the social support received by a woman whose child has been born after the pregnancy leave and the maternity benefit calculated for it had been granted. [14.2.2.]

On whether and which persons (groups of persons) are in similar and in accordance with definite criteria comparable circumstances

In view of the fact that, in the present case, the duration of the disbursement of the parental benefit and of the childcare benefit, paid even up to the time when the child became two years old was contested, and that in this period all parents develop additional needs – both in terms of finances and in terms of the need of finding time necessary for a personal contact with the child, the Constitutional Court recognised that socially insured parents, whose child had been born on the predicted due date, and socially insured parents, whose child had been born prematurely, were in similar and in accordance with definite criteria comparable circumstances [14.2.3.]

On whether the contested norms envisage similar or differential treatment of the comparable persons (groups of persons).

One of the elements in the social security system chosen by the legislator is targeted support to families during the first years of the child's life. The legislator has envisaged the right of all women, irrespectively of the time when the child is born, to receive pregnancy and maternity leave as well as a maternity benefit in full amount. Likewise, the legislator has provided that all parents, irrespectively of the time when the child is born, have the right to the state support in the form of the parental benefit until the child reaches the age of one and a half years and a childcare benefit until the child reaches the age of two years. Hence, the treatment of socially insured parents, whose child has been born on the predicted due date, and the socially insured parents, whose child has been born prematurely, is equal.

Although the parental benefit and the childcare benefit were disbursed to the Applicant for a period that was shorter compared to the parents, whose child was born on the predicted due date, nevertheless, also she, for the whole period when she was not receiving salary, received concrete social insurance service and state social benefit. After the Applicant's child reached the age of a year and a half, in turn, the State continued providing support to her until the child reached the age of two years, as to other parents with children below the age of two.

Thus, the legislator, by establishing through the contested norms equal treatment of socially insured parents, whose child was born on the due date predicted by the physician, and socially insured parents, whose child was born prematurely, has not violated the principle of equality.

[14.2.4.]

The Constitutional Court held:

to recognise Para 2 of Section 10⁴ (4) of the law "On Maternity and Sickness Insurance" and Section 7 (1¹) of "Law on State Social Allowances" as being compatible with the first sentence of Article 91 and Article 110 of the *Satversme* of the Republic of Latvia".

The Constitutional Court's judgement is final and not subject to appeal; it enters into effect on the day of its publication. The judgement will be published in the official journal "Latvijas Vēstnesis" within the term defined in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the Constitutional Court's homepage:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/02/2020-13-01_spriedums.pdf

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the judgement 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.

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