



Satversmes tiesa

Press Release

Case No 2020-35-01

1 April 2021

The provision stipulating that state social insurance against unemployment only applies until the child reaches the age of one and a half years is compatible with the Constitution

On 31 March 2021, the Constitutional Court passed a judgment in Case No 2020-35-01 “On the compliance of Section 6(5) of the law ‘On State Social Insurance’ with the first sentence of Article 91 and Article 109 of the Constitution of the Republic of Latvia”.

CONTESTED PROVISIONS

- Section 6(5) of the law “On State Social Insurance” (hereinafter – the contested provision):

“(5) In addition to the individuals referred to in Paragraph one of this Section, the following individuals shall be subject to unemployment insurance:

- 1) (deleted by the Law of 26 April 2007);
- 2) individuals who are taking care of a child who has not reached the age of one and a half years and receiving an allowance for child care;
- 3) individuals who are receiving a maternity, paternity, or sickness benefit;
- 4) individuals who are receiving an allowance for the care of an adopted child;
- 5) individuals who are located in the respective foreign state in the status of the spouse of a soldier performing service duties, except for the cases where the soldier is participating in an international operation, military training, manoeuvres or is on a mission;
- 6) individuals who are taking care of a child who has not reached the age of one year or one and a half years and receiving a parental benefit;
- 7) individuals whose spouse (who has been granted a diplomatic rank in accordance with the Diplomatic and Consular Service Law) performs diplomatic and consular service in foreign states and who are staying in the respective foreign state as the spouse of the person performing diplomatic and consular service;
- 8) individuals who are receiving an allowance for the fulfilment of the duties of a foster family;
- 9) individuals who are staying in the respective foreign state as the spouse of the Eurojust representative or the spouse of a liaison officer.”

PROVISIONS OF SUPERIOR LEGAL FORCE

- First sentence of Article 91 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):
“All human beings in Latvia shall be equal before the law and the courts.”
- Article 109 of the Constitution:
“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 in the Constitutional Court on the basis of an application filed by the Supreme Court. The Supreme Court is hearing an administrative case concerning the issuance of a favourable administrative act granting an unemployment benefit to the applicant. According to the legal regulation currently in force, an employee is entitled to use childcare leave up until the date when the child reaches the age of eight. However, during this leave, the employee is subject to state social insurance against unemployment only if the child has not yet reached the age of one and a half years. The contributions for insurance against unemployment had been made for the applicant for four months instead of the required minimum of nine months, because the applicant had been on childcare leave taking care of a child who had exceeded the age of one and a half years. For this reason, she was not entitled to an unemployment benefit.

The Supreme Court notes that the contested provision establishes a differential treatment of groups of individuals who are in situations that are comparable according to certain criteria. Namely, if an employee uses childcare leave to take care of a child who is one-and-a-half to eight years old, this employee is not socially insured against unemployment during this period. Conversely, if an employee uses childcare leave to take care of a child who has not reached the age of one and a half years, during this period the employee is socially insured against unemployment.

Therefore, in the opinion of the Supreme Court, the contested provision does not comply with the principle of legal equality as enshrined in the first sentence of Article 91 of the Constitution and with Article 109 of the Constitution.

THE COURT'S FINDINGS

On the appropriate way of evaluating the constitutionality of the contested provision

In this case, the Constitutional Court evaluated the compliance of the contested provision with Article 109 of the Constitution, also testing it for compliance with the first sentence of Article 91 of the Constitution as part of this evaluation. [7]

The contested provision complies with the first sentence of Article 91 and with Article 109 of the Constitution

On whether measures had been taken to enable individuals to exercise social rights

The Constitutional Court concluded that the legislator had taken measures to create a social security system for unemployment. The social security system created by the legislator allows individuals to exercise their social rights by taking part in the social insurance system and, in the event of certain circumstances, receiving unemployment benefits. [9]

On whether individuals have the possibility to use at least a minimum of their social rights

Employees are insured under all types of social insurance, as they receive income and state social insurance contributions are made for them. Furthermore, it is provided that also the individuals who are unable to gain income because they are taking care of a child, and for whom the contributions for unemployment insurance are made from the special budget, are subject to social insurance against unemployment. [10]

It can be concluded that the right to an unemployment benefit is created by the contributions for insurance against unemployment, which are made for the individual as an employee or as a person taking care of a child under the age of one and a half years and receiving an allowance for child care or a parental benefit. [10]

Thus, the individuals are guaranteed the possibility to exercise their right to social security in case of unemployment at least in the minimum amount. [10]

On whether the principle of legal equality had been observed

The contested provision sets forth the following two cumulative criteria for the mandatory contributions for state social insurance against unemployment being

made for an individual while s/he is taking care of a child: 1) the employee is receiving a parental benefit and a childcare allowance or just a childcare allowance; 2) the child has not exceeded the age of one and a half years. [13]

According to the Supreme Court, being on childcare leave is the most significant uniting feature of the comparable groups of individuals. The Constitutional Court, in its turn, concluded that there can be situations where one of the child's parents is not subject to state social insurance against unemployment despite using childcare leave before the child has reached the age of one and a half years. This situation may arise if both parents use childcare leave, in whole or in part, at the same time, while a childcare allowance and a parental benefit are only granted to one of the parents, or if one of the parents uses childcare leave while the other parent receives a childcare allowance and a parental benefit. [13.1]

The contested provision aims to provide social guarantees to an individual who is taking care of a child at an early stage of life, when the child is fully dependent on the continuous presence of at least one parent. [13.2]

An employee who is taking care of a child over the age of one and a half years is not insured against unemployment not because s/he is on childcare leave, but because s/he is taking care of a child who is over one and a half years old. [13.2]

Therefore, the individuals specified by the Applicant are not in situations that are comparable according to certain criteria, and the contested provision does not violate the principle of legal equality. [13.2]

The Constitutional Court ruled:

to recognise Section 6(5) of the law "On State Social Insurance" as being compatible with the first sentence of Article 91 and with Article 109 of the Constitution of the Republic of Latvia.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment enters into force on the day it is published.

The text of the judgment is available on the website of the Constitutional Court:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-35-01_Spriedums.pdf

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the [website](#) of the Constitutional Court. You are also invited to follow the information on the Court's *Twitter* account [@Satv_tiesa](#) and *YouTube* [channel](#).

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