

Case No 2009-44-01*

Name of the Court:

Constitutional Court

Parties:

Raimonds Priede-Baņģieris et al. v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Legally relevant factual situation:

On 8 November 2007, the Parliament adopted amendments to the Law "On Maternity and Sickness Insurance" that came into force on 1 January 2008 (the Benefit Law). The Benefit Law provided for a new type of allowance – parental benefit. Parental benefit is allocated and disbursed to a socially insured person for childcare up to the age of one year if these persons are insured on the date of granting the allowance and: 1) is on childcare leave or cannot gain income as a self-employed person due to the childcare; 2) is employed during the child care period but is not on childcare leave or gains incomes as a self-employed person during the childcare period. Parental benefit is granted at the amount of 70 percent of the average wage subject to social insurance payments of the recipient but no less than 70 percent of parental benefit of the double amount of State social security benefit effective as on the date of claiming the benefit. On 16 June 2009, the Parliament adopted the Law "On State Pension and Benefit Disbursement from 2009 to 2012" (the Disbursement Law). According to the Disbursement Law, cuts of particular payments from the special budget of social insurance were established for the above mentioned period. Thus, Section 5 (1) of the Disbursement Law provided that a person gaining income as an employee or a self-employed person during the childcare period, parental benefit established in the Law "On Maternity and Sickness Insurance" granted for childcare of a child born before 2 May 2010 shall be disbursed at the amount of 50 percent of the benefit amount granted" (the Contested Norm).

Legal questions:

Compliance of the First Part of Section 5 of the Law "On State Pension and Benefit Disbursement from 2009 to 2012" with Article 1, Article 91 and Article 110 of the Constitution.

Arguments of the parties:

Applicants: Parental benefit is an integral part of the family protection system. The benefit was related at the time of introduction with the policy for improving the demographic situation in the State; therefore it was necessary to introduce changes in the system by taking into account interests of a child and family. However, these interests have not been observed when adopting the Contested Norm. When establishing the restriction for receiving the benefit of the statutory parental benefit in full, the Contested Norm denies the rights

guaranteed in Article 110 of the Constitution and the rights concretized in normative acts on social and economic protection of family in the case of child birth for a person who is employed and who has already been granted such benefit and the disbursement has been initiated. The Applicants hold that the Contested Norm does not comply with the principle of legal certainty that follows from Article 1 of the Constitution. According to the Applicants, the parental benefit granted to persons before the date of coming into force of the Contested Norm could not be reduced because these persons could lawfully confide in receiving such benefit, and this legal certainty should be protected. Reduction of the benefit could only be applied to those persons who did not yet have the right to receive parental benefit at the date when the Contested Norm came into force. The Applicants hold that the Contested Norm neither complies with the principle of proportionality that follows from Article 1 of the Constitution. The Contested Norm does not comply with the principle of equality guaranteed in Article 91 of the Constitution (para. 4).

Respondent: The Parliament maintained that the purpose of the Contested Norm is not only to ensure interests of the State budget during economic recession when it is necessary to reduce budget expenses and balance incomes and expenses of the State special budget of social insurance, but also to exercise the rights of persons to social security in accordance with Article 116 of the Constitution. Consequently, the Contested Norm was necessary for ensuring substantial interests of the society and the State. Moreover, the measures selected for reaching the above mentioned aims are adequate because adoption of the Contested Norm ensures saving of budget resources and balances interests of all recipients of the State social security.

Answer by the Court to the legal questions and legal reasoning of the Court

According to Section 5 (1) of the Disbursement Law adopted by the Parliament on 16 June 2009, during the period from 1 July 2009, namely, the date when this law comes into force, to 2 May 2010 a person who is deemed to be a socially insured person (an employee or a self-employed person) during the child care period in accordance with the Law “On State Social Insurance”, parental benefit established in the Benefit law has to be disbursed at the amount of 50 percent of the benefit granted at the first date of the month that follows the month when a person has become a socially insured person (an employee or a self-employed person) in accordance with the Law “On State Social Insurance”. Consequently, the Contested Norm provided for a transitional period of 306 days to adjust disbursement of parental benefit in accordance with the effective social insurance system of the State (para. 10).

Unemployed parents and employed ones do not enjoy equal and comparable circumstances because parental benefit is meant for different aims: in the first case – substituting of lost income and provision of support for a family with a child aged up to one year, and in the second case – provision of support only for families with children aged up to one year. Consequently, establishment of different amount of benefit to employed parents and unemployed ones is permissible. Establishment of equal amount of benefit for these groups would contradict the principle of equality established in Article 91 of the Constitution unless such establishment has reasonable and objective grounds. Since the Contested Norm provides for a different attitude to persons who do not enjoy equal and comparable conditions, it does not breach Article 91 of the Constitution (para. 14).

Even during economic recession it is necessary to ensure the payment of established State benefit. In case it is reduced, it is necessary to observe proportionality, i.e. the State does not

have the right to refrain from what it has promised by thus causing an unfavourable situation for a person and thus infringing the trust of persons to State support in a non-proportional manner. However, when performing the proportionality assessment, the Court has the duty to take into account interests of the society, including the interest of other groups of the society into sustainability of the social insurance system (para. 16).

The Contested Norm was adopted during economic recession in Latvia when incomes to the State budget reduced, unemployment rate increased and expenses of the social insurance budget increased. In the second quarter of 2009, Latvia underwent the most rapid reduction of economic activities in the entire European Union. For instance, the revenues of the State consolidated budget during the first six months of 2009 were for 15 percent lower than those of the corresponding time period in 2008. At the same time, the expenditures of the State consolidated budget during the first six months of 2009 were for 7.2 percent higher than those of the corresponding time period in 2008. The Gross Domestic Product drop in comparison to the first six months of 2008 was 18.7 percent. The drop persisted also in the third quarter of 2009, reaching 18.4 percent. During this time, the financial deficit of the State consolidated budget reached 449.9 million lats or approximately 3.5 percent from the Gross Domestic Product, and the prognosis was that the deficit may reach 1.3 milliard lats or approximately 9.5 percent from the Gross Domestic Product by the end of 2009. As a consequence, both the performance of the functions of the State and the possibility of the economic activity renewal in the foreseeable future would be put in danger.

The Constitutional Court has already concluded that during economic recession or other extraordinary situation the principle of legal certainty requires balancing of legal trust of persons with interests of the society. In such a case, a decisive role is played by the fact whether the principle of proportionality has been observed (para. 20).

During economic recession, when assessing compliance of the Contested Norm with the Constitution and general legal principles, the main criterion is the fact whether the solution selected by the legislator is a socially responsible one. A socially responsible solution is such a solution, in the result of which legal interests of certain persons are balanced with those of the society. Therefore, it is necessary to assess measures selected by the legislator to ensure a lenient transitional period in conjunction with the necessity to ensure balance between economic possibilities of the State and welfare of the entire society. A socially responsible state under the particular circumstances could be based not only to provision of a lenient period for the transition to the new legal regulation but also on the fact that along with the amendments to normative acts, a person is given the possibility to implement the rights once conferred by the State, all this being based on financial possibilities of the State. By means of the Contested Norm, adjustment of the social insurance system (and also the social insurance budget) has been initiated. Endangered sustainability of the social insurance budget, which is of great importance for the State to be able to ensure disbursement of pensions and social insurance benefit in the long term. In the result of the Contested norm, it was possible to accumulate savings in the State social insurance budget (1.7 million lats each month), which in total constituted about 10 million lats in the time frame from 1 July 2009 to 1 January 2010. Moreover, in the result of the Contested Norm, the planned amount of savings in this time period was 3.3 million lats. Moreover, the Contested Norm also ensures a transitional period (306 days) to adjust the social insurance system. Consequently, measures selected by the State are aimed at reaching of the legitimate objective (para. 22).

The fact that the State has decided to cease disbursing the State social insurance benefit to employed parents and to pay a reduced amount of benefit during the transitional period, shall be regarded as a measure for reduction of consequences of infringements caused to the rights of persons. Consequently, during the transitional period, the State has to ensure families an adequate amount of support for it to fulfil its functions (para. 23).

If amendment of the legal regulatory framework serves the benefit of the society, then restriction of the legal trust of persons is permitted. The Contested Norm has been adopted with the purpose to balance revenues and expenses of the State special budget of social insurance. The economic recession denied the possibility for the State to guarantee such amount of social security that was established during the period of economic growth of the State. If no measures were taken to solve the situation, this would have influenced the possibility of the State to ensure the right of persons to social security and to guarantee sustainability of the social security system. This would not comply with the principle of a socially responsible State. The restriction of the right of employed parents to receive parental benefit at full extent during the transitional period has been established with a view to ensure substantial interests of the society. In the result of this, a fair balance between restriction of legal security of a person and the right of the society to a sustainable State social insurance system and balanced State budget was ensured. *After having compared the importance of the particular interests of persons and those of the entire society, it can be concluded that in the case under review the necessity for the Contested Norm is counterbalanced by the fact that the rights, into which persons had the right to confide, are ensured at a restricted extent. The Contested Norm does not infringe the principle of legal certainty and complies with Article 1 of the Constitution* (para. 24).

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

Since the Constitutional Court held that the Contested Norm is compatible with the Constitution, no legal amendments were necessary. This was, however, one of the judgments called out for being in favour of harsh austerity measures without taking due account of social protection interests.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*