Constitutional judgment 3-4-1-7-13

JUDGMENT

in the name of the Republic of Estonia

No. of the case	3-4-1-7-13
Date of judgment	14 May 2013
Composition of court	Chairman Märt Rask members Tõnu Anton, Lea Kivi, Jaak Luik and Jüri Põld
Court Case	The request of Tallinn Administrative Court to declare unconstitutional and repeal the first sentence of subsection 7 of § 3 of the Parental Benefits Act to the extent that, in a situation where a person receiving the maximum parental benefit earns income subject to social tax exceeding the benefit rate, it produces a result where the total income of the person (adjusted parental benefit plus additional income) decreases in comparison with a situation where the person would not have earned additional income
Basis for procedure	Judgment of Tallinn Administrative Court of 22 February 2013 in administrative case no. 3-11-1042
Hearing	Written
DECISION	**To declare the first sentence of subsection 7 of § 3 of the Parental Benefits Act unconstitutional and repeal it to the extent that the parental benefit payable to a person is reduced in such a manner that their entire income is smaller than the parental benefit initially granted to them.**

FACTS AND COURSE OF PROCEDURE

1.

By decision no. 257973 of the Northern Pension Board of the Social Insurance Board (SIB) dated 23 August 2010, Olavi-Jüri Luik was granted the parental benefit of 35 316 Estonian kroons (2257 euros and 10 cents) from 4 September 2010 to 12 November 2011. This was the maximum parental benefit at the time.

2. In October and November 2010, O.-J. Luik received 4800 Estonian kroons of income subject to social tax.

3. On 7 April 2011, the SIB made decision no. 9.TL15.2-2/436, according to which the excessive parental benefit in the amount of 601 euros and 94 cents must be recovered from O.-J. Luik and withheld from the parental benefit for the following calendar months. The SIB dismissed the intra-agency appeal against the decision. O.-J. Luike lodged a claim with the administrative court.

JUDGMENT OF TALLINN ADMINISTRATIVE COURT

4. Tallinn Administrative Court (the court of first instance) identified in a judgment of 22 February 2013 that the SIB had correctly applied the law in force, but the first sentence of subsection 7 of § 3 of the Parental Benefits Act (PBA) which led to the recovery claim is in conflict with the Constitution.

5. The court of first instance found that the application of the law in force produces a clearly unfair and illogical result. After earning additional income, the person's total revenue fell to 34 155 Estonian kroons, while without earning additional income, the revenue earned solely from the parental benefit had been higher, i.e. 35 316 Estonian kroons. This violates the requirement provided for in subsection 1 of § 12 of the Constitution to treat everyone equally. Persons who received the maximum parental benefit and earned additional income between 4350 Estonian kroons and 1 cent and 5838 Estonian kroons were treated differently than persons who earned additional income of up to 4350 Estonian kroons or anywhere between 5838 Estonian kroons and 1 cent and 21 750 Estonian kroons.

6. The fundamental right of equality can be restricted for a constitutional reason, but in the current case there is no legitimate or even comprehensible reasons for the unequal treatment. The resulting unequal treatment was not foreseen or desired upon passing the act. Therefore the argument of the economic use of public funds cannot be considered as a justification.

7. The court of first instance declared unconstitutional and repealed the first sentence of subsection 7 of § 3 of the PBA to the extent that , in a situation where a person receiving the maximum parental benefit earns income subject to social tax exceeding the benefit rate, it produces a result where the total income of the person (adjusted parental benefit plus additional income) decreases in comparison with a situation where the person would not have earned additional income. Since the method is unconstitutional and the court has no competence to design the method instead of the Legislature, there are no criteria on the basis of which to assess, upon resolution of the case, whether the recovery claim can be reasoned to a certain extent. Therefore the court annulled the recovery claim entirely.

8. The judgment of the court of first instance reached the Supreme Court on 27 February 2013.

OPINIONS OF PARTIES

9–28. [Omitted from this text.]

PROVISION DECLARED UNCONSTITUTIONAL

29. The first sentence of subsection 7 of § 3 of the PBA reads as follows:
"If the recipient of benefit receives income subject to social tax (including from another Contracting Party to the EEA Agreement or from the Swiss Confederation), except income from self-employment (hereinafter *income*), which exceeds the benefit rate, during the calendar month of payment of the benefit the amount of the benefit will be equal to the sum of the benefit and the amount of income exceeding the rate of the benefit and a quotient of 1.2 from which the amount of income exceeding the rate of the benefit is deducted."

OPINION OF CHAMBER

30. In order to review the constitutionality of a provision of law in judicial constitutional review

proceedings, the provision must be relevant.

31. In October and November 2010 the claimant received income subject to social tax (additional income) in the amount of 4800 Estonian kroons. The parental benefit in the amount of 35 316 Estonian kroons had been granted to him for the same period.

32. According to the first sentence of subsection 7 of § 3 of the PBA, if the recipient of benefit receives income subject to social tax (including from another Contracting Party to the EEA Agreement or from the Swiss Confederation), except income from self-employment, which exceeds the benefit rate, during the calendar month of payment of the benefit, the amount of the benefit will be equal to the sum of the benefit and the amount of income exceeding the rate of the benefit and a quotient of 1.2 from which the amount of income exceeding the rate of the benefit is deducted. Under subsection 5 of § 3 of the 2010 State Budget Act, the benefit rate in 2010 was 4350 Estonian kroons.

33. Thus, in October and November 2010 the claimant's income subject to social tax exceeded the parental benefit rate effective at the time. At the same time, the income earned was smaller than the parental benefit rate multiplied by five. Therefore, the claimant's parental benefit amount for these months was calculated on the basis of the first sentence of subsection 7 of § 3 of the PBA. Thus, the provision is relevant.

34. Both the court of first instance and the parties have noted that § 12 of the Constitution has been affected. Subsection 1 of § 12 of the Constitution provides for the fundamental right of equality, according to which everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds.

35. The claimant was granted the parental benefit in the amount of 35 316 Estonian kroons. In addition, he received income amounting to 4800 Estonian kroons. After applying the formula set out in the first sentence of subsection 7 of § 3 of the PBA, the person was entitled to the parental benefit in the amount of 29 355 Estonian kroons.
[35 316 + (4800 – 4350)] : 1.2 – (4800 – 4350) = 29 355

36. Thus, his total income amounted to 34 155 Estonian kroons (29 355 + 4800 = 34 155). This is a smaller sum than the parental benefit initially granted. This means that his total revenue following receipt of the additional income was smaller than in a situation where he would not have received additional income and merely received the parental benefit.

37. The court of first instance declared the first sentence of subsection 7 of § 3 of the PBA unconstitutional to the extent that concerns only those who receive the parental benefit at the maximum rate. In fact, the receipt of additional income also resulted in a decrease in total income in 2010 for those recipients of the parental benefit who received it, for instance, in the amount of 26 316 Estonian kroons (9000 Estonian kroons less than the maximum parental benefit) and additional income in the amount of 4351 Estonian kroons (1 Estonian kroon more than the parental benefit rate). This year, the decrease in total income will, in addition to persons who receive the maximum parental benefit, also affect persons who receive the parental benefit in the amount of 1784 euros (approx. 450 euros less than the maximum parental benefit) and additional income in the amount of 291 euros (1 euro less than the maximum parental benefit rate). The court of first instance did not specify why it considered the recipients of the maximum parental benefit as the group that was treated worse, but not, for instance, those who received the maximum parental benefit or the parental benefit sized 2257 euros and 10 cents (35 316 Estonian kroons) in 2010.

38. According to the Chamber, there is no reason to determine comparable groups in such a narrow manner. Such a determination would make the judicial constitutional review proceedings ineffective in a situation where the right to receive a specific sum of money or payment obligation has been contested – this way, separate judicial proceedings should be initiated even if a sum differs by merely one cent. One of the purposes of distinguishing between specific and abstract constitutional review is the preclusion of *actio popularis*, not merely the protection of the constitutional rights of one person.

39. Therefore, in order to decide on the constitutionality of the first sentence of subsection 7 of § 3 of the PBA, it must be assessed whether the recipients of the parental benefit whose total revenue following the receipt of additional income decreases in comparison with the parental benefit granted to them are being treated unequally without reason compared to recipients of the parental benefit whose total income following the receipt of additional income remains the same or increases in comparison with the parental benefit granted to them.

40. The provision is formally constitutional. The restriction has been established by an act and there is no information about any violation of the rules of procedure upon passing the act. The provision is also unambiguous.

41. The different treatment of comparable groups of persons is not unconstitutional if this has a legitimate purpose and is proportional towards the legitimate purpose. The fundamental right of equality can be restricted for a reason that is in line with the Constitution (see the judgment of the Supreme Court *en banc* of 7 June 2011 in case no. 3-4-1-12-10, point 31).

42. The court of first instance and some of the parties to the proceedings also found that the different treatment does not have a legitimate purpose, because the Legislature did not foresee such a result of the application of the formula. The Chamber disagrees with this view. Even if the Legislature did not plan or could not foresee such an adverse effect, this does not automatically mean that the effect is unconstitutional. It is inevitable that the Legislature is unable to foresee all of the adverse effects of provisions of law, including all of the possible adverse effects on fundamental rights. If a legitimate purpose can be found for such an accidental adverse effect and the effect is proportionate to attainment of the purpose, the effect is also constitutional.

43. If after the recalculation of the parental benefit a person is entitled to a smaller parental benefit, this means that the state must pay less money. This saves public funds. The fact that the saving of public funds is a purpose in line with the Constitution has been maintained by the Supreme Court in numerous decisions (see, for instance, the judgment of the Constitutional Review Chamber of the Supreme Court of 27 December 2011 in case no. 3 4 1 23 11, point 59). Thus, in the opinion of the Chamber, in this case the legitimate purpose of the different treatment is the saving of public funds.

44. The adverse effect is constitutional if it is proportional to a legitimate purpose. When it comes to proportionality, the appropriateness, necessity and reasonableness (proportionality in the narrower sense) of the adverse effect must be reviewed. According to the Chamber, the given effect is suitable and necessary for attaining the legitimate purpose.

45. Upon weighing up reasonableness, the intensity of the effect on the one hand and the importance of the purpose on the other must be taken into account. The effect must be considered rather intense. As a rule, the main income of people is pay for work. A person is materially and morally affected by a situation where their total income decreases as a result of working, i.e. an activity usually conducted so as to increase their income.

46. The importance of the purpose, i.e. saving money, can be assessed based on how big the achieved saving is. In order to retain the total income equal to the amount of the initially granted parental benefit for a person to whom the parental benefit had been granted at the maximum rate in 2010 and who received additional revenue that exceeded the rate of the parental benefit by one Estonian kroon, the parental benefit paid to the person should have been 1610 Estonian kroons (approx. 103 euros) higher than the sum paid to the person after applying the formula set out in the first sentence of subsection 7 of § 3 of the PBA. In order to retain the total income equal to the amount of the initially granted parental benefit for a person to whom the parental benefit had been granted in the amount falling short of the maximum rate by 9000 Estonian kroons in 2010 and who received additional revenue that exceeded the rate of the parental benefit by one Estonian kroon, the parental benefit paid to the person should have been 35 Estonian kroons (approx. 2 euros) higher

than the sum paid to the person after applying the formula set out in the first sentence of subsection 7 of § 3 of the PBA. In the first example, the amount saved amounts to 4.6% of the granted parental benefit, while in the second example it amounts to 0.1%. Given the rates in 2013, the amount saved in the case of the maximum parental benefit and additional income exceeding the parental benefit rate by one euro amounts to approx. 81 euros, i.e. 3.6%; and to approximately 15 euros (i.e. 0.8%) in the case of the parental benefit falling short of the maximum rate by 400 euros and additional income exceeding the parental benefit rate by one euro. Thus, the amount of money saved was not high in total or in terms of the percentage in 2010, and it is not high now.

47. In point 68 of the judgment of 27 December 2011 in case no. 3-4-1-23-11, the Constitutional Review Chamber of the Supreme Court held that the parental benefit is a matter of equal treatment in a field of social policy where the state itself has assumed a responsibility, because payment of the parental benefit is not an obligation of the state under the Constitution. On the one hand, this guides the court towards modesty. On the other hand, it means that the political purposes of the Legislature must be taken into account.

48. The political purpose of the parental benefit is set out in subsection 1 of § 1 of the PBA. Among other things, it includes the purpose of supporting a combination of work and family life. Social tax is levied, above all, on employment income. A situation where a person's attempt to combine work and family life results in a decrease in their total income is in conflict with the purpose.

49. The broader impact of different treatment must also be taken into account. If legislation grants a person higher income in a situation where the person does not work than in a situation where the person works, it favours the non-working of persons. Favouring such a situation is not sustainable and the Legislature has obviously not established such a social policy purpose. Support focussed on raising children is related to the purpose of preserving the Estonian nation, as set out in the Preamble of the Constitution. At the same time, it is possible to promote the raising of children only at the expense of taxpayers, i.e. working people. The attainment of the purpose is impeded by a situation where the person's total income decreases due to working.

50. In some cases, the formula established in the first sentence of subsection 7 of § 3 of the PBA produced a very large difference in a person's total income due to only a minor difference in income. The parental benefit is designed, above all, to enable a parent to focus on raising a child. Constitutionally, it is not required that the state pay a working parent (in general, employment income is subject to social tax) just as high a parental benefit (support that promotes focusing on a child) as to a parent who does not work and is presumably fully focused on raising a child. Thus, the support may be reduced. Given that this is a social policy field where the state has assumed a responsibility on its own, it is not constitutionally required that, on the whole, higher income be ensured for a person who earns additional income and presumably focuses less on raising a child. The only reason for combining work and family life is not an increase in income, but also, for instance, a chance for a parent to do something else for a change. However, a decrease in total income clearly diminishes the desire to work.

51. Thus, persons who, at the same time, receive the parental benefit and income subject to social tax which exceeds the parental benefit rate and a multiple of up to five thereof, and
a) whose parental benefit is reduced in such a manner that their total income (the adjusted parental benefit + additional income) is smaller than the initially granted parental benefit are without reason treated worse than those
b) whose total income is the same or higher than the initially granted parental benefit.
52. Following the above, the first sentence of subsection 7 of § 3 of the Parental Benefits is unconstitutional and must be repealed to the extent that the parental benefit payable to a person is reduced in such a manner that their total income is smaller than the parental benefit initially granted to them.

Märt Rask, Tõnu Anton, Lea Kivi, Jaak Luik, Jüri Põld