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JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

No. of the case	3-4-1-33-05
Date of decision	20 March 2006
Composition of court	Chairman Märt Rask, members Tõnu Anton, Lea Kivi, Ants Kull and Eerik Kergandberg
Court case	Petition of Tallinn Administrative Court to review the constitutionality of the second sentence of § 3(7) and of § 7(1)3) of Parental Benefit Act
Hearing	Written proceeding
Decision	To declare the second sentence of § 3(7) of the Parental Benefit Act, to the extent that it provides that the parental benefit granted to a person shall be decreased by the amount of unreceived wages paid to the person, by the fault of employer, during the month when the parental benefit was payable, unconstitutional and invalid.

FACTS AND COURSE OF PROCEEDING

1. On 8 March 2004 Kaia Millend filed an application with the Tallinn department of Tallinn Pension Board of the Social Insurance Board (hereinafter “Tallinn Pension Board”) for the grant of parental benefit. By its decision No 2630 VH of 11 June 2004 the Tallinn Pension Board granted K. Millend the parental benefit for the period from 4 June 2004 until 31 December 2004 in the amount of 9796.- kroons per month.
2. In November 2004 the employer of K. Millend, Silja Line Eesti AS, transferred to her bank account the unreceived wages for 2001 – 2003 together with an interest on account of late payment, and paid the social tax of 3732.- kroons on the sum. The amount of the social tax indicates that in November Silja Line Eesti AS paid K. Millend 11,309 kroons. K. Millend did not inform Tallinn Pension Board of the received income.
3. On the basis of § 7(1)3) of the Parental Benefit Act (hereinafter “PBA”), by its decision No 2630 VH/1, the Tallinn Pension Board reclaimed from K. Millend the overpaid amount of the parental benefit, i.e. 7613.- kroons, as according to the data of the state pension insurance register K. Millend had, in November 2004, received income subject to social tax, which exceeded five times the parental benefit rate and pursuant to § 3(7) of PBA in such cases the benefit shall not be paid.
4. K. Millend filed a challenge against the decision of the Tallinn Pension Board. By its decision No 31 of 4

May 2005 the central pension committee of the Tallinn Pension Board dismissed the challenge.

5. On 7 June 2005 K. Millend filed an appeal with Tallinn Administrative Court, requesting that the decision of the central pension committee of the Tallinn Pension Board, concerning her challenge, be revoked. Later on K. Miller specified her appeal, requesting that decision No 2630 VH/1 of the Tallinn Pension Board of 31 March 2005 be revoked. K. Millend motivated her appeal with the argument that application of § 3(7) of PBA to the income she had earned before the period of receipt of parental benefit, which was paid to her later for reasons independent of her, was not compatible with the purpose and the spirit of the Parental Benefit Act. Furthermore, the decision of the Tallinn Pension Board resulted in the unequal treatment of the complainant in comparison with other parents staying home with a child, who receive a parental benefit for the period they stay home.

6. On 17 November 2005, by its judgment in administrative matter No 3-744/2005, Tallinn Administrative Court satisfied K. Millend's appeal, revoked decision No 2630 VH/1 of the Tallinn Pension Board of 31 March 2005, did not apply the second sentence of § 3(7) and § 7(1)3) of PBA and declared these unconstitutional.

7. Tallinn Administrative Court forwarded its judgment of 17 November 2005 to the Supreme Court, initiating a constitutional review proceeding in regard to the second sentence of § 3(7) and § 7(1)3) of PBA.

OPINIONS OF THE ADMINISTRATIVE COURT AND OF THE PARTICIPANTS IN THE PROCEEDING

8. Tallinn Administrative Court is of the opinion that the second sentence of § 3(7) and § 7(1)3) of PBA are not in conformity with the Constitution.

It was very clear that the will of the drafters of the Act as well as that of the legislator was to compensate a parent for the loss of wages arising from staying home with a child. The reclamation of a parental benefit from a person who, during the period of receipt of parental benefit received the wages earned before the parental leave, which – for some reason – were paid late, is not compatible with this aim.

This results in unequal treatment of the complainant in comparison with other non-working parents staying home with a child, who receive a parental benefit for the period. While on a parental leave, the economic situation of a non-working parent may also improve due to an inheritance or a gift or a recovery of a loan, yet these are not taken into account upon calculating a parental benefit. The court is of the opinion that bearing in mind the purpose of the Parental Benefit Act the wages earned earlier but transferred late together with interest on account of late payment belong to the same category.

Proceeding from the spirit and the purpose of the Act K. Millend was not obliged to be aware that she had a duty to inform the Pension Board of the late receipt of wages, because she had not earned income during the month when she received parental benefit.

The first sentence of § 7(1) of PBA in conjunction with clause 3) of the same section is inappropriate and disproportionate as to the purpose of the Act and thus in conflict with § 11 of the Constitution to the extent that it does not enable the Pension Board to exercise discretion when reclaiming overpaid amounts. An imperative order to reclaim allegedly overpaid amounts of parental benefits in each case when a person has failed to fulfil his or her duty to inform, violates the requirement arising from § 14 of the Constitution that a procedure must be in conformity with the substantial content of the restricted right. Furthermore, first sentence of § 7(1) of PBA in conjunction with clause 3) of the same section infringes upon the complainant's right to purposeful and efficient administrative proceedings, which guarantees the right to be heard to persons participating in an administrative proceeding.

The second sentence of § 3(7) of PBA is in conflict with the principle of legal clarity arising from § 13 of the Constitution, in regard to "income received", because as a result of the use of terminology different from that of other provisions of the Parental Benefit Act, it is impossible to read an unambiguous meaning into the

provision. The contested decision of the Pension Board, issued on the basis of § 3(7) of PBA, also violates the rights of K. Millend, arising from § 27 of the Constitution.

The Pension Board must be in a position to assess whether a concrete income subject to social tax affects the amount of a benefit and the right thereto, and whether a person has failed to fulfil the duty to inform in bad faith, and whether there is a ground to reclaim the parental benefit from that person. In a state based on the rule of law the uniform and fair application of law must be guaranteed.

9. The Social Affairs Committee of the Riigikogu is of the opinion that the second sentence of § 3(7) and § 7(1)3 of PBA are not in conflict with the Constitution.

The purpose of the Parental Benefit Act is to retain an income to a parent and to guarantee that a family has a revenue. If a parent raising a small child receives income, subject to social tax, in excess of the rate established by the legislator, the Parental Benefit Act shall not be applied and a parental benefit shall not be paid. Allocation of resources to parents from the state budget when they have an income subject to social tax, is not justified.

The duty to inform, established in § 5 of the Parental Benefit Act, gives a recipient of a parental benefit no right to weigh whether to inform of the received income or not. This is an obligation, which is to guarantee that the recipient of a benefit co-operates with the body granting benefits. If a person violates the duty to inform, the overpaid amounts shall be reclaimed under § 7(1) of PBA.

The data of the register of taxable persons and the data of the state pension insurance register do not allow to differentiate between the income earned and received, and they do not reflect the period for which the income liable to taxation was paid. If the Pension Board had the right of discretion upon determining the amount of a parental benefit the decisions should be taken on the basis of different data. Certificates from employers, which serve as a basis for the payment of unemployment insurance benefits, could be a possibility, but the State Audit Office has found out that less than 30% of such certificates correspond to the data of the tax registers. Also, it will be difficult to check the data submitted by the employers. The arising of such a problem upon the implementation of the Parental Benefit Act should be avoided.

10. The Constitutional Committee of the Riigikogu is of the opinion that the contested provisions are constitutional.

The Constitutional Committee argues that § 3(7) of PBA should be specified in regard to the income to be taken into account upon granting parental benefit. As the Act regards the failures to fulfil the duty to inform as cases of overpayment and the overpaid amount was reclaimed from K. Millend on this very basis, § 3(7) of PBA is not a pertinent norm.

The duty to inform, established in § 5 of the Parental Benefit Act, is an absolute one and does not depend on the interpretation a person gives to § 3(7) of PBA. The duty to inform enables the Social Insurance Board to weigh whether the amount received by a recipient of parental benefit during the period when she or he receives the benefit has any importance upon the grant of the benefit.

The sanction, provided in the Parental Benefit Act, requiring that a failure to comply with the duty to inform should always be treated as an overpayment, is a proportional one.

11. The Minister of Justice is of the opinion that the second sentence of § 3(7) and § 7(1)3 of PBA are not in conflict with the Constitution.

The conflict with the Constitution, arising from the ambiguous wording of the second sentence of § 3(7) of the Parental Benefit Act, can be fully eliminated through the interpretation of the norm. The aim of the whole regulation of the Parental Benefit Act is to guarantee to a parent that the raising of a child will not result in the decrease of a family's income because one of the parents will not be able to work as much as before and receive income for that. The benefit should be granted on the basis of the monthly situation of

person.

At the same time, an interpretation making the payment of a parental benefit conditional on the previous unlawful conduct of other persons (late payment of wages) can not be regarded as conforming to the aim of the legislator. In this light the word “received”, used in § 3(7) of PBA, should be interpreted as meaning “earned” income.

The Minister of Justice points out that reclamation of overpaid amounts does not, pursuant to the Act, depend on the violation of the duty to inform, because proceeding from the wording of the second sentence of § 7(1) of PBA, § 7(1)3) of PBA has no independent meaning upon reclaiming the overpaid amounts. Overpaid amounts shall be reclaimed in any case. The legislator has only wanted to exclude a situation where the reclamation of an overpaid amount would not be possible due to unlawful conduct (failure to inform) of a person.

Giving the Pension Board the right of discretion upon reclaiming the overpaid amounts would result in unequal treatment, depending on the discretion of officials, of the recipients of the parental benefit. The imperative norm established in § 7(1) of PBA is proportional to the legitimate interest pursued by the legislator – to guarantee equal treatment of all persons.

When reclaiming the overpaid amounts the Pension Board must proceed from the Administrative Procedure Act (hereinafter “APA”), referred to in § 1(3) of PBA. Proceeding from the principle of investigation, established in § 6 of APA, the Pension Board is required to establish the facts relevant to the matter – whether the income subject to social tax received by a recipient of the parental benefit was earned by the recipient of the benefit during the calendar month of payment of the benefit -- if necessary, collect evidence on its own initiative for the purpose. Pursuant to § 40(1) of APA, the Pension Board is required to grant a recipient of the parental benefit a possibility to provide his or her opinion and objections in a suitable form.

12. The Tallinn Pension Board of the Social Insurance Board considers § 3(7) of PBA to be in conformity with the Constitution.

In conjunction with the purpose of the Parental Benefit Act, as established in § 1(1) of PBA, the word “receiving” is a synonym on the word “earning” for the purposes of the Parental Benefit Act. The legislator wished to retain the income of a family, not to compensate for the loss of wages. In this light the establishment of minimum and maximum benefit rates is also justified.

The Parental Benefit Act is register-based. Thus, the amount of the parental benefit is calculated on the basis of income subject to social tax, during the period the income is paid, i.e. as it is reflected in the register. The data of the register of taxable persons are cash based and reflect the income of a person as the income of the month when the tax was calculated. The payer of social tax is not required to specify the period during which the income subject to social tax was earned.

The complainant was granted the right to be heard. The fact that the complainant had been heard in the challenge procedure is indicated in the minutes of the sitting and in the reference in the decision of the committee to the effect that the committee examined K. Millend’s challenge and the materials of the file in her presence.

The duty to inform, established in § 5 of the Parental Benefit Act, should be ambiguous even to persons having no knowledge of law.

13. The Chancellor of Justice is of the opinion that the second sentence of § 3(7) of the Parental Benefit Act is in conflict with the first sentence of § 12(1) of the Constitution to the extent that it does not allow the parental benefit to be paid to a person whose income, subject to social tax, received during the month when the parental benefit was payable, exceeds five times the parental benefit rate. The Chancellor of Justice is of the opinion that § 7(1)3) of PBA is not pertinent.

The Parental Benefit Act proceeds only from the concept of income subject to social tax, which, pursuant to Social tax Act, is income related to work activity. Thus, there is no difference whether the legislator uses the word “to earn” or to “receive” to connote income subject to social tax. Neither has the Parental Benefit Act considered the time of the activity, which is the precondition of receiving an income, to be of importance. What is important is to guarantee sufficient resources to a person for the period of raising a child. That is why from the aspect of the composition and legal consequences thereof the second sentence of § 3(7) has to be considered a norm comprehensible and clear and compatible with the principle of legal clarity established in § 13(2) of the Constitution.

The general right to equality, provided for in § 12(1) of the Constitution, requires that two comparable persons or groups of persons or facts be treated equally. In the light of the existence of comparable facts (receipt of the incomes of 11,000 kroons and 11,309 kroons) the legislator has treated K. Millend unequally, because in the latter case the person’s income decreases by more than 6000.- kroons.

As it is not possible, on the basis of the materials concerning the Parental Benefits Act, accessible to the public, to ascertain the reason behind the described unequal treatment, the Chancellor of Justice argues that one of the possible reasons might be avoidance of unnecessary financial burden for the state. Thus, the state does not pay the parental benefit to persons who do not have an immediate need for that.

The cause of an infringement must be reasonable and thus proportional in the narrow sense. In order to assess the proportionality in the narrow sense it is necessary to weigh the aim of the unequal treatment and the gravity of the unequal situation created.

Pursuant to the first sentence of § 3(7) of the Parental Benefit Act a person is entitled to receive income during the receipt of the parental benefit to the limit established in the second sentence. It would be unjust in regard to the society if a person, to whom the parental benefit is paid so that he or she would not have to loose resources due to raising of a child, did not use the possibility for the intended purposes. Neither can unlimited support be offered at the cost of the society. The second sentence of § 3(7) of PBA constitutes a compromise between a collective interest and the interests of an individual.

The Chancellor of Justice is of the opinion that although the legislator has a legitimate interest to inhibit, beginning from a certain limit, the increase of the total income of a parent, in order to motivate the parent to pay attention to his or her child, this can not justify a sharp decrease of a family’s income beginning from a conventional limit. In the light of the general right to equality a rule pursuant to which the income of a family, in case of a surplus income of even one kroon, may decrease more than 6000.- kroons, as in the present case, which serves as the basis of the proceeding, is not permissible. Furthermore, the limit established by the legislator does not even allow the retention of the living standard to those whose parental benefit exceeds the established limit. The limit of standard of living, established by the legislator, is not reached in the case of those persons who receive the parental benefit in the amount from 11,001 kroons to 17,472 kroons. That is why § 3(7) of PBA can not be regarded as being proportional in the narrow sense.

§ 7(1)3) of the Parental Benefit Act is a procedural norm, which does not affect the judgment on the merits by a court. That is why it is not a norm pertinent in the present matter.

14. K. Millend is of the opinion that the second sentence of § 3(7) and § 7(1)3) are unconstitutional and she concurs with the reasoning of the judgment of Tallinn Administrative Court of 17 November 2005, in administrative matter No 3-744/2005.

CONTESTED PROVISIONS

15. § 3(7) and § 7(1)3) of the Parental Benefit Act, contested by Tallinn Administrative Court, provide for the following:

“§ 3. Calculation of amount of benefit

/.../

(7) If the recipient of benefit receives income subject to social tax (except the business income of a sole proprietor) which is greater than the benefit rate during the calendar month of payment of the benefit, the amount of the benefit shall be equal to the sum of the benefit and received income and the quotient of number 1.2 from which the received income is deducted. The benefit shall not be paid if income received during the calendar month of payment of the benefit exceeds five times the benefit rate.

§ 7. Reclamation of benefit

(1) Overpaid amounts of the benefit shall be reclaimed. The following is also deemed to be overpayment of the benefit:

/.../

3) if a recipient of benefit fails to notify the Pension Board of circumstances which affect the amount of the benefit or the right to receive the benefit.”

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

16. For the adjudication of the matter the Constitutional Review Chamber shall analyse first, whether the norms contested by Tallinn Administrative Court are pertinent (I), at the same time assessing the compatibility of the provisions with the principle or legal clarity arising from the principle of a state based on the rule of law (II). Thereafter the Chamber shall consider the infringements of the fundamental rights of Kaia Millend, raised by the administrative court, and the justification thereof (III). Finally, the Chamber shall resolve the petition of Tallinn Administrative Court to declare § 3(7) and § 7(1)3) of PBA unconstitutional and invalid (IV).

I.

17. Tallinn Administrative Court is of the opinion that § 3(7) and § 7(1)3) of PBA are unconstitutional and are of significant importance for the adjudication Kaia Millend’s case.

18. The Constitutional Review Chamber is of the opinion that when assessing the pertinence of norms it does not suffice to admit that an administrative body, when adopting a decision concerning a person, has referred to the norms. On the basis of former practice of the Supreme Court only those norms can be regarded pertinent which are of decisive importance for the adjudication of a matter (see judgment of the General Assembly of the Supreme Court of 22 December 2000, in matter No 3-4-1-10-00 – RT III 2001, 1, 1, § 10). The norms on the basis of which an administrative matter of a person should have been adjudicated pursuant to law, are of decisive importance. Proceeding from the principle of self-restraint the court can not analyse the constitutionality of the norms which were applied in regard to a complainant randomly or unfoundedly.

19. In its decision to reclaim the parental benefit from Kaia Millend Tallinn Pension Board referred to § 7(1)3) of PBA as a legal ground. Tallinn Administrative Court is of the opinion that the decision of the Pension Board was substantively based on what has been provided in § 3(7) of PBA.

The Constitutional Review Chamber concurs with Tallinn Administrative Court in that in the present matter § 3(7) of PBA is the pertinent norm, because Kaia Millend’s right to receive the parental benefit depended on the application of that norm and without the norm the Pension Board could not have reclaimed from her the overpaid sum of the parental benefit.

In the opinion of the Chamber § 7(1)3) of PBA is not decisive for the adjudication of the administrative matter of Kaia Millend. That is why the Chamber shall discard the norm and shall only analyse the constitutionality of § 3(7) of PBA.

II.

20. Tallinn Administrative Court argues that the second sentence of § 3(7) of PBA is lacking legal clarity

because as a result of the use of terminology different from that in the other provisions, the phrase “income received” used in the provision is not clearly understandable in the context of the first sentence of the same subsection, the purpose of the Act referred to in § 1(1) of PBA and the duty to inform established in § 5 of PBA.

21. § 10 of the Constitution gives rise to the principle of legal certainty. In the most general sense the principle is to create certainty as to the valid legal situation. Legal certainty means the clarity as to the content of the valid norms (principle of legal clarity) as well as certainty as to the standing of the enacted norms (principle of legitimate expectation). Pursuant to the principle of legal clarity a person must be able to predict with sufficient clarity the legal consequences of his or her acts. Besides, the principle of legal clarity constitutes a specification of the prohibition of arbitrariness of the state, established in § 13(2) of the Constitution.

22. The required level of specificity or legal clarity of a norm is not the same in the case of all norms. The norms which enable to restrict person’s rights and to impose obligations on persons must be more clear and precise.

The determinateness of a norm must not be assessed from the point of view of the parties to a dispute. The measure is a person of average abilities. If a norm restricts the rights of persons, it must be of high legal clarity and a norm not understandable to a person with average abilities can not be regarded as having legal clarity.

23. The Chamber concurs with the opinion of the Chancellor of Justice in that in the Parental Benefit Act the income received means the income subject to social tax. This conclusion arises both from the systematic interpretation of the Act as well as from the fact that the individually registered social tax data of the register of taxable persons has been taken as the basis for the calculation and payment of the parental benefit. The latter fact is indicated in subsections (1), (2), (3) and (4) of § 3 of the Parental Benefit Act.

Thus, the Chamber is of the opinion that a person with average abilities, who is the addressee of the norm, must have understood the meaning of the second sentence of § 3(7) of PBA and the second sentence of § 3(7) of PBA can not be regarded as being in conflict with the principle of legal clarity. As the second sentence of § 3(7) is a constitutional norm in the formal sense, the Chamber shall next analyse the substantial constitutionality thereof.

III.

24. Tallinn Administrative Court has raised the issue of violation of Kaia Millend’s fundamental right to equality as well as of the right to be heard. The Chamber shall consider these allegations of the administrative court in the sequence they have been presented.

25. The parental benefit is a benefit dispensed by the state to persons. The Constitutional Review Chamber is of the opinion that upon giving and restricting the right to receive the parental benefit the state as a whole, including the legislator, must observe the principle of equal treatment.

26. It proceeds from the earlier practice of the Supreme Court that the first sentence of § 12(1) of the Constitution also covers the principle of equality of legislation (see judgment of the Constitutional Review Chamber of the Supreme Court of 3 April 2002, in matter No 3-4-1-2-02 – RT III 2002, 11, 108, § 17). The equality of legislation requires, as a rule, that persons who are in similar situations must be treated equally by law. This principle expresses the idea of essential quality: those, who are equal have to be treated equally and those who are unequal must be treated unequally. But not any unequal treatment of equals amounts to the violation of the right to equality. The prohibition to treat equal persons unequally has been violated if two persons, groups of persons or situations are treated arbitrarily unequally. An unequal treatment can be regarded arbitrary if there is no reasonable cause therefor. The Chamber admits that although the control of

arbitrariness is extended to the activities of the legislator, the latter must be accorded a wide margin of appreciation. If there is a reasonable and appropriate cause, the unequal treatment in legislation is justified.

The Chamber shall now analyse whether § 3(7) of PBA is compatible with the principle of equality of legislation.

27. The amount of 7613.- kroons is being reclaimed from Kaia Millend from the parental benefit of November 2004, because in that month her employer paid her the unreceived wages for 2001 – 2003, in the sum which exceeded five times the parental benefit rate. The late payment of wages is considered to be income subject to social tax, by which the amount of the parental benefit payable is deducted. If the employer had paid K. Millend the wages in a timely manner, the Pension Board would have taken the income into account when calculating the amount of the parental benefit payable to K. Millend during the period prescribed by law and K. Millend would have received the parental benefit in a bigger amount.

Due to the fact that K. Millend's employer paid her the wages with a delay of more than a year and during the period when she was a recipient of the parental benefit, the Pension Board is now reclaiming from K. Millend, on the basis of § 3(7) of PBA, the amount of 7613.- kroons of the parental benefit of November 2004.

28. The Chamber holds that K. Millend, to whom the income subject to social tax, serving as the basis for calculating the amount of the parental benefit, was paid later than prescribed and the income was taken into account only for the deduction of the parental benefit payable to her and not upon granting the parental benefit, has been treated unequally in comparison to other parents to whom their employers paid their income, subject to social tax, in a timely manner, that is at the time when this was taken into account when granting the parental benefit.

Next, the Chamber shall examine whether there is a reasonable and appropriate reason for the unequal treatment of K. Millend.

29. The explanatory letter to the draft of the Parental Benefits Act does not reveal a cause for the different treatment of the described groups. It appears from the verbatim records of the first reading of the draft of the Parental Benefits Act at the plenary assembly of the Riigikogu on 8 October 2003, that the aim of the drafters had been to make the parental benefit as easily administrable as possible for those who grant the benefits. Thus, the aim of the legislator upon differential treatment of the described groups may have been the desire to guarantee that the procedure for the grant, payment and reclamation of the parental benefits be as economic and as easily controllable as possible. This view is supported by the explanation of the Social Affairs Committee of the Riigikogu, pursuant to which the parental benefit is calculated on the basis of the data of the register of taxable persons and the pension insurance register, and these do not reflect the period for which the taxable income had been paid. In the letter sent to the Supreme Court the Social Affairs Committee of the Riigikogu admits that the Pension Board could obtain this information from the certificates from employers, but the Committee considers it difficult to check the data submitted by the employers.

30. The Supreme Court has previously held that unequal treatment can not be justified solely by administrative difficulties (see judgment of the Constitutional Review Chamber of the Supreme Court of 21 January 2004, in matter No 3-4-1-7-03 – RT III 2004, 5, 45, § 39). The Chamber is of the opinion that in the case under discussion the simplicity of administration of parental benefits can not be regarded to be a reasonable cause justifying the different treatment of K. Millend in comparison to those parents to whom their employers paid the income subject to social tax in a timely manner. Bearing in mind that the unequal treatment of K. Millend as compared to those parents who received their wages in a timely manner, may result in an unfair outcome, the complexity of administration, asserted by the state by way of justification, does not outbalance the infringement of the fundamental right to equality.

31. The Constitutional Review Chamber can not see any other reasons which could justify the unequal

treatment of K. Millend in comparison to those parents to whom their employers paid the income subject to social tax in a timely manner.

32. Thus, the second sentence of § 3(7) of PBA violates the principle of equality of legislation, arising from the first sentence of § 12(1) of the Constitution, to the extent that it provides that the parental benefit granted to a person shall be decreased by the amount of unreceived wages paid to the person, by the fault of employer, during the month when the parental benefit was payable.

33. Tallinn Administrative Court pointed out to the Supreme Court that the Parental Benefits Act did not guarantee the right to be heard to K. Millend.

The Constitutional Review Chamber is of the opinion that the right to be heard, arising from § 14 of the Constitution, is guaranteed to a recipient of the parental benefit, including K. Millend, in the course of the challenge procedure, established in § 9 of the Parental Benefits Act.

It appears from the materials of the case that Kaia Millend participated in the sitting of the central pension committee of Tallinn Pension Board and that she had a possibility to explain her opinion to the central pension committee examining her challenge.

IV.

34. On the basis of the aforesaid the Constitutional Review declares the second sentence of § 3(7) of the Parental Benefit Act, to the extent that it provides that the parental benefit granted to a person shall be decreased by the amount of unreceived wages paid to the person, by the fault of employer, during the month when the parental benefit was payable, unconstitutional and invalid.

Märt Rask, Tõnu Anton, Lea Kivi, Ants Kull, Eerik Kergandberg

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