



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## DECISION ON TERMINATING LEGAL PROCEEDINGS in Case No. 2016-03-01

*Riga*

*21 October 2016*

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court hearing Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova, Daiga Rezevska and Ineta Ziemele,

having regard to constitutional complaints submitted by:

1) Jānis Kotāns, Jānis Cunsķis, Zigizmunds Misjuns, Evgeny Grigoriev, Oleg Kravchuk, Ivans Lavreckis, Yuly Rabchenyuk, Arkādijs Žukovskis, Staņislavs Gluhovs and Ivan Pupykin (application No. 199/2015), and

2) Ivans Fariņecs, Victor Saprykin, Ilya Rybakov, Ādams Tkačuks, Alexander Volchenko, Nikolay Dmitriev, Ivan Sturov, Yury Medvedev, Nikolay Trukhan, Boriss Undalovs, Igor Puszcz, Aleksandrs Groševs, Genrihs Jermoļins, Vladimirs Gutcaits, Nikolay Shevchenko, Vitaly Rudakov, Anatolijs Ņilovs, Andrejs Peizums, Viktors Klingenberg and Ivan Gagarin (application No. 30/2016)

(hereinafter jointly – the Applicants),

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1), as well as Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 27 September 2016 examined in written procedure the case

**“On Compliance of Para 42<sup>1</sup> of Transitional Provisions of the Law “On State Pensions” with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia”.**

**The Constitutional Court established:**

1. On 2 November 1995 the *Saeima* of the Republic of Latvia adopted the law “On State Pensions” (hereinafter – the Pension Law), which entered into force on 1 January 1996.

The law of 14 June 2012 “Amendments to the Law “On State Pensions””, which entered into force on 18 July 2012, added to Transitional Provisions of the Pension Law, *inter alia*, Para 42<sup>1</sup> in the following wording:

“If a person has been granted a pension of another state for periods of length of insurance, which have been taken into account in granting or recalculation of Latvian pension, the Latvian pension shall be recalculated or disbursement thereof shall be discontinued, excluding such periods, if it has not been laid down otherwise in Regulation No 883/2004 or the international agreements ratified by the *Saeima*.”

**2. The Applicants** request the Constitutional Court to recognise Para 42<sup>1</sup> of Transitional Provisions of the Pension Law (hereinafter – the contested norm), insofar it is applicable in cases of recalculating pensions, when the Latvian old age pension and the pension of another state had been lawfully granted before the contested norm entered into force, as being incompatible with Article 1, 91, 105 and 109 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*) and void as of 18 July 2012, i.e., the date, when the contested norm entered into force.

It follows from the applications and materials attached thereto that the Applicants are former military of the USSR. Before the contested norm entered into force they were receiving both Latvia’s old age pension and the service pension granted by the Russian Federation as former military of the USSR. On the basis of the contested norm the State Social Insurance Agency recalculated

pensions to be disbursed to the Applicants, decreasing the amount of old age pension or totally discontinuing disbursement thereof.

**2.1.** The right to social security in at least minimum amount is said to fall within the scope of Article 109 of the *Satversme* and this right aims to serve, to the extent possible, to ensure existence worthy of human dignity. Moreover, the right to have a pension disbursed is said to fall within the scope of the concept “property” included in the first sentence of Article 105 of the *Satversme*. The Applicants hold that Article 105 and Article 109 of the *Satversme* guarantee to them the right to continue receiving the old age pension of the Republic of Latvia granted to them in the initial amount and that they had had the grounds to expect that the amount of a pension granted would be retained and that the disbursement thereof would not be discontinued. However, the contested norm is said to place significant restrictions upon this right or even totally deprive of it, and, thus, the contested norm is said to infringe upon fundamental rights enshrined in Article 105 and Article 109 of the *Satversme*.

The Applicants do not contest the fact that the restriction upon fundamental rights had been established by law adopted in due procedure. Moreover, the Applicants admit that the restriction upon fundamental rights established in the contested norm has a legitimate aim – ensuring the well-being of society, by protecting sustainability of the social insurance budget and eliminating the possibility that a person receives several pensions for the same social insurance period.

It is alleged that the legitimate aim of the restriction upon fundamental rights cannot be reached by measures envisaged in the contested norm. Para 2<sup>2</sup> of Transitional Provisions of the Pension Law already since 1 July 2008 provides for the possibility to review the amount of a pension granted to a person, if this person has submitted false information about a pension granted to him or her by another state. The economic effect of the contested norm is said not to be significant, since the number of pensioners affected by it is small. Thus, the contested norm is said to be inappropriate for reaching the legitimate aim.

It is alleged that the legitimate aim of the restriction upon fundamental rights could be reached by other measures, less restrictive upon a person's rights. First, by excluding a period from the total insurance period in those cases, where the remaining total period is shorter than ten years, disbursement of a pension should be continued proportionally to the remaining total period of insurance, rather than discontinued completely. Secondly, persons could be allowed to choose, from which pension the period, which had been taken into account in calculating both pensions, should be excluded. Thirdly, the legislator could establish criteria of age or of the term of granting the pension, pursuant to which the contested norm would not be applicable. Fourthly, in those cases, where the disbursement of Latvia's old age pension has been discontinued, other social benefits envisaged for pensioners should be retained. Thus, it is alleged that the restriction upon fundamental rights established by the contested norm is not necessary for reaching the legitimate aim.

It is alleged that the benefit to society does not outweigh the damage inflicted upon the Applicants' rights and lawful interests. The contested norm is said to restrict such social guarantees, the right to which the Applicants had acquired 6-16 years before the contested norm was adopted. Due to their age, the Applicants no longer can return to the labour market and acquire the insurance period necessary for granting the minimum old age pension. Thus, the contested norm is said to restrict significantly Applicants' fundamental rights enshrined in Article 105 and Article 109 of the *Satversme*. The public benefit, in turn, gained by application of the contested norm is said to be comparatively small, because the resources that are saved cannot improve the situation of all other pensioners. Thus, the restriction upon fundamental rights established in the contested norm is said to be inappropriate for reaching the legitimate aim.

**2.2.** The Applicants express the opinion that the contested norm is incompatible with the principle of legitimate expectations. The principle of legitimate expectations is said to protect the rights once granted to a person. In the context of the first pillar of pensions, a person does not acquire the right to a pension in concrete amount; however, after a pension has been granted to a person, this person develops protectable expectations that disbursement of the

pension will continue and the particular amount of pension will be retained. Moreover, the longer the period that has passed after the administrative act was issued, the greater is the need to protect a person's certainty regarding the acquired right.

However, the contested norm envisages decreasing the previously determined amount of a pension or discontinuing disbursement thereof. Although no legal norm directly envisages a person's right to receive a pension from two states, neither is there a legal norm prohibiting it. Moreover, in some case regulatory enactments allow for a person's right to receive pensions from two states, even for the same social insurance period. The Applicants have developed protectable legitimate expectations regarding receipt of a pension in accordance with Latvia's regulatory enactments. Thus, the contested norm, insofar it is applicable to recalculation of the amount of pension or discontinuing disbursement of a pension in those case, where Latvia's old age pension and a pension of another state had been legally grantee before the contested norm entered into force, is said to be incompatible with the principle of legitimate expectations.

**2.3.** Allegedly, the contested norm is also incompatible with the equality principle that follows from the first sentence of Article 91 of the *Satversme*.

The principle of equality is said to allow and even require in certain cases differential treatment of persons, who are in different circumstances. The persons, who simultaneously receive both Latvia's old age pension and a service pension of another state, compared to other pensioners, are said to be in a more privileged situation, irrespectively of whether the insurance period used for calculating both pensions overlaps or does not overlap. The purpose of a service pension is to ensure means of existence to persons, whose work is linked to loss of former professional skill, which may occur prior to reaching the age defined for granting an old age pension. Thus, the differential treatment is said to be justifiable, because persons are in incomparable circumstances, and, allegedly, the legislator may not deny the Applicants the possibility to receive both pensions concurrently.

Likewise, the Applicants note that following recalculation of Latvia's pension or discontinuing disbursement thereof they are placed in unequal situation compared to other pensioners, who in addition to a pension receive income from equity (dividends, bonds, securities and funds), interests (bank deposits, loans), renting or leasing property or revenue from labour relations. This differential treatment is said to have no objective and reasonable grounds.

**3.** The institution, which issued the contested act, – **the Saeima of the Republic of Latvia** – does not uphold the opinion expressed by the Applicants and holds that the contested norm is compatible with Article 1, 91, 105 and 109 of the *Satversme*.

**3.1.** On 24 November 1994 the *Saeima* had approved the treaty concluded with the Russian Federation “Agreement between the Government of the Republic of Latvia and the Government of the Russian Federation on the Social Security of Military Pensioners of the Russian Federation and their Family Members Residing in the Territory of Latvia” (hereinafter – the Agreement). The Agreement is still in force and applies to military pensioners (former military) of the Russian Federation, members of their families and persons, who in Russia have been equalled to military in the field of granting pensions. Pursuant to Article 7 of the Agreement, pensions to the military pensioners of the Russian Federation are disbursed from resources of the Russian Federation. Article 9 of the Agreement, in turn, envisages that to former militaries, who have acquired the right to a pension pursuant to legal acts of the Republic of Latvia, and according to their own wish, the respective competent bodies of the Republic of Latvia may grant and disburse pensions from resources of the Republic of Latvia. Thus, Latvia has the right to grant to a recipient of Russia's military service pension a pension of the state of Latvia, if the respective person has acquired this right in accordance with Latvia's regulatory enactments.

Article 9 of the Agreement provides for the obligation of the Russian Federation to discontinue disbursement of the previously granted pension for the period, when the state pension is paid by Latvia. The aim of this norm is to prevent the possibility that a person receives two pensions for particular periods of work or periods equalled thereto. Thus, the Agreement clearly envisages a person's right to receive the pension of one state – either the state pension of Latvia or Russia's service pension to former military.

The State Audit Office, performing an inspection on application of the Agreement together with the Accounts Chamber of the Russian Federation, established that the provisions of Article 9 of the Agreement were not complied with (the Russian side, after persons had been granted Latvia's old age pension, did not discontinue disbursement of the military pension to them). Thus, in numerous cases pensions of both countries had been paid for the same period (periods of studies or of compulsory military service or career service overlapped). To eliminate the deficiencies that had been identified, on 14 June 2012 the *Saeima* adopted amendments to the Pension Law, which included also the contested norm. It defines actions to be taken in those cases, where those periods, for which a pension has been granted by another state, have been included into the length of insurance period, i.e., the pension must be granted or the amount of it must be recalculated, excluding such periods.

**3.2.** The right to at least minimum level of social security is said to fall within the scope of Article 109 of the *Satversme*, and the purpose of this right is, to the extent possible, to ensure existence worthy of human dignity. The State has the obligation to ensure that social security, at least in the minimum amount, is available to a person. The State is said to have broad discretion in performance of this obligation, and, respectively, the legislator has chosen to regulate the issue of social security of military pensioners of the Russian Federation by an international treaty.

Article 7 of the Agreement envisages that the Russian Federation is responsible for granting and disbursing pensions to its military pensioners. Thus, the Russian Federation is responsible for ensuring a person's right to social security at least on the minimum level. Although Article 9 of the Agreement envisages the right of military pensioners to request and to receive Latvia's pension, in such a case, however, the person must have met the requirements of Latvia's regulatory enactments, and, secondly, must take into consideration that disbursement of a military pension granted by Russia for the same insurance periods, for which Latvia's old age pension is paid, will be discontinued.

Allegedly, the right to demand a model of pension system or the formula for calculating a pension that would be preferable to a particular person or groups

of persons does not follow from Article 109 of the *Satversme*. Article 109 of the *Satversme* is said to create only the right to expect that the amount of pension will be determined in accordance with the scheme for calculating pensions regulated by legal acts. In the case under review Article 9 of the Agreement, which envisages a person's right to receive only a pension of one state for each insurance period, is said to be an integral part of this scheme. Since the Applicant's continue receiving the military pension of the Russian Federation, the contested norm is said not to restrict the fundamental rights established in Article 109 of the *Satversme*.

In view of the fact that in the field of social rights Article 105 of the *Satversme* ensures smaller scope of rights' protection compared to Article 109 of the *Satversme*, it can be concluded that neither does the contested norm restricts the Applicants' right to property.

**3.3.** It is alleged that the contested norm is not incompatible with the principle of legitimate expectations, which follows from Article 1 of the *Satversme*.

A person may refer to the principle of legitimate expectations only if the legal regulation previously established by the legislator had created grounds for legitimate expectations. By the contested norm the legislator did not decrease the scope of social rights that the Applicants had had as of the day when the Agreement entered into effect. The contested norm only specifies the procedure for implementing Article 9 of the Agreement and essentially does not change the scope of this right. Regulatory enactments had never envisaged persons' right to receive a pension from two states for the same social insurance period. Thus, the Applicants could not have developed legitimate expectations regarding a possibility to exercise such right.

Implementation of Article 9 of the Agreement had been postponed for a long period of time and, thus, persons actually had received concurrently pensions granted by two states. However, the *Saeima* holds that this fact may not cause legitimate, well-founded and reasonable expectations of a person that a situation like this would not be eliminated.

**3.4.** The legislator did not envisage differential treatment of military pensioners of the Russian Federation. I.e., it is alleged that Article 9 of the Agreement comprises the same principle that is included in Para 2<sup>2</sup> of Transitional Provisions of the Pension Law. The *Saeima* holds that the Applicants' considerations regarding whether and why the legislator should envisage differential treatment of military pensioners of the Russian Federation are, essentially, legal policy issues and do not follow from Article 91 of the *Satversme*. The contested norm is said not to restrict the Applicants' rights envisaged in Article 91 of the *Satversme* to differential treatment in a case, if persons are in different circumstances.

Likewise, the *Saeima* notes that the Applicants are not in similar and comparable circumstances with persons, who gain additional income from their property or private law transactions. The aim of social insurance system is not to ensure additional revenue to a person; therefore pensions cannot be equalled to other private law sources of profit. Thus, the contested norm does not envisage differential treatment of persons or groups of persons, who are in similar and comparable circumstances, and does not restrict the Applicants' right to equal treatment guaranteed in Article 91 of the *Satversme*.

**4.** The summoned person – **the Ministry of Welfare** – holds that the contested norms comply with Article 1, 91, 105 and 109 of the *Satversme*.

The Ministry of Welfare points out that the contested norm was included in the Pension Law to prevent situations, where Latvia's pension is granted for the same insurance (work) period, for which a pension has been granted by another state, and to determine how to act in such cases, where periods, for which a pension has been granted by another state, have been included in the insurance period.

Receiving two pensions for the same social insurance period is said to be contrary to both Latvian national legal acts and those of the European Union, as well as to principles of social insurance included in bilateral agreements. The aim of the Agreement is not to pay double for the same period of work or a period equalled to it, because in those cases, where an old age pension of the Republic

of Latvia has been granted and is disbursed, Article 9 of the Agreement provides for the obligation of the Russian Federation to discontinue disbursement of the military service pension of the Russian Federation. Thus, those persons, who apply for Latvia's old age pension, consciously choose in favour of it, being aware that the disbursement of the military pension of the Russian Federation will be discontinued for the period, when Latvia's old age pension is disbursed.

The Ministry of Welfare notes that an old age pension may be granted to any person – irrespectively of whether he or she is a citizen or non-citizen of Latvia or a national of another state – after the mandatory pre-requisites for granting a pension have been met. The procedure for granting an old age pension is the same for all. Moreover, it should be taken into account that the periods, which are excluded, are not even periods of work, but periods equalled to them (studies or compulsory military service), during which social insurance contributions have not been made.

The Applicants continue to be recipients of the military pension of the Russian Federation; therefore the contested norm does not affect the right to minimum social security. The recipients of military pensions of the Russian Federation also have the right to request state social security benefit and, in case of necessity, turn to local governments' social services for social assistance. The State is said to have discretion in choosing those methods and mechanism by which the right to social security is exercised.

The Applicants could not have develop legitimate expectations, because pursuant to terms of the Agreement, after claiming an old age pension from Latvia, the disbursement of the military pension of the Russian Federation must be discontinued. Thus, the Applicants could not have expected to receive also in the future both Latvia's old age pension and the military pension of the Russian Federation in full amount. In the particular case the principle of legitimate expectations had not been violated, because legal norms did not envisage a person's right to receive simultaneously pensions from both states.

The Russian Federation has been informed about the conclusions made by the State Audit Office and the Accounts Chamber of the Russian Federation, as well as about actions taken by Latvia to eliminate the respective problem. The

Russian Federation had taken note of information provided to it and had not objected against actions planned by Latvia, at the same time indicating that it would provide as fast as possible statements for verifying information, requested by persons.

5. The summoned person – **the Ministry of Foreign Affairs** – holds that the contested norm complies with Article 1, 91, 105 and 109 of the *Satversme*.

The Ministry of Foreign Affairs points out that in examination of this case it is important to take into consideration the historical circumstances on 30 April 1994, when the Agreement was concluded. Negotiations on the Agreement had lasted from 1992 to 1994, i.e., they proceed at the time, when the government of the Republic of Latvia had to deal with the issue of withdrawal of the army of the Russian Federation. Therefore the content and purpose of the Agreement should be examined in interconnection with other agreements that were concluded with the Russian Federation at the same time. On 30 April 1994 four international agreements, included in one package, were signed, which established the procedure for withdrawing troops of the Russian Federation from the Republic of Latvia and dealt with issues related to it, including the Agreement.

The Agreement is said to be a totality of such conditions, which allowed those persons, who were residing on the territory of the Republic of Latvia as militaries of the Russian Federation, but after withdrawal of the troops of the Russian Federation for various reasons did not want to repatriate, to remain living permanently on the territory of the Republic of Latvia and to receive a military pension. By the Agreement, the Russian Federation, as successor in rights of the Soviet Union, in fact had assumed commitments regarding providing financially for its military pensioners. The Republic of Latvia, in turn, in view of provisions included in Article 9 of the Agreement and the fact that subjects of the Agreement might be both citizens and non-citizens of Latvia, as well as foreign nationals, had undertaken to abide by the principle of equality and apply to military pensioners the same requirements as to those persons, who receive a pension in accordance with regulatory enactments of the Republic of Latvia.

The Applicants' constitutional complaint is said to be based upon the statement that application of the contested norm to pensions that were granted before this norm entered into force infringes upon the right to social security, defined in the *Satversme*, in the scope that was granted initially. The Ministry of Foreign Affairs notes that pursuant to Article 9 of the Agreement, if a person (military pensioner) has expressed the wish to receive a pension in accordance with regulatory enactments of the Republic of Latvia and if this person meets the eligibility criteria for receiving a pension (the age defined in law has been reached, necessary insurance period has been accrued), the pension is disbursed from the resources of the Republic of Latvia, whereas disbursement of the pension granted previously by the Russian Federation is discontinued. Thus, Article 9 of the Agreement already initially had included the principle that the pension is disbursed by one state, chosen by the person. The Applicants knew about this principle already before they were granted Latvia's old age pension. The *Saeima*, by ratifying the Agreement, had undertaken to perform the commitments defined therein. Pursuant to the hierarchy of legal norms, an international agreement that has been ratified by a law adopted by the *Saeima* is of higher legal force compared to a law adopted by the *Saeima*. Therefore the Applicants could not have developed legitimate expectations regarding the right to receive pensions from both states for the same social insurance period – the Agreement does not provide for it.

**6. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm complies with Article 1, 91, 105 and 109 of the *Satversme*.

The right to social security in at least the minimum amount is said to fall within the scope of Article 109 of the *Satversme*. The Applicants' right to social security is ensured not only in accordance with national legal acts of the Republic of Latvia, but also pursuant to legal acts of the Russian Federation – the law of 12 February 1993 “On Ensuring Pensions to Persons, who Have Served in the Army or Institutions of the Interior, as well as to Families of these Persons” – and the Agreement concluded between the Republic of Latvia and the Russian

Federation. Upon concluding bilateral international agreements in the field of social security, states agree upon social protection of the residents of each contracting party and specify the rights and obligations of each party. By this two different systems of social security, i.e., those of two states, are adjusted for providing social security to residents of a particular state. In the Applicants' case the legislator has chosen to conclude the Agreement, by which the Russian Federation has assumed responsibility for granting and disbursing a pension to its military pensioners, moreover, for granting and disbursing a pension in the amount that would guarantee the right of the respective persons to social security in at least the minimum amount. Thus, the Agreement, by which social security of the former militaries of the Russian Federation is guaranteed, was a matter of political choice, which cannot be assessed from legal perspective. The contested norm *per se* is said not to restrict the right to social security guaranteed in Article 109 of the *Satversme*.

Since in the field of social security Article 105 of the *Satversme* is said to ensure protection of rights in lesser scope compared to Article 109 of the *Satversme*, separate assessment of compliance of the contested norm with Article 105 of the *Satversme* is said to be unnecessary.

Although actually a situation had evolved, where the Applicants were receiving simultaneously pensions of two states, legal norms did not envisage a person's right to receive pensions of two states for the same insurance period before the contested norms entered into force either. The Applicants could not have developed legitimate expectations that the law would grant such right in the future. If legal norms do not provide for particular rights of a person, then there are no grounds for referring to the principle of legitimate expectations. The fact that the State for a prolonged period of time did not meet the commitments envisaged in Article 9 of the Agreement cannot create legitimate expectations for a person that this situation is going to continue. Thus, the contested norm is said not to be incompatible with the principle of legitimate expectations, which follows from Article 1 of the *Satversme*.

The Ombudsman holds that the groups of persons, indicated by the Applicants, are not in similar and comparable circumstances. The Applicants'

right to social security has been regulated by the Agreement. This had been the political will of both states – to provide special regulation on social security of military pensioners of the Russian Federation residing on the territory of the Republic of Latvia. The Applicants are not in similar and comparable circumstances with persons, who gain additional revenue from their property or private law transactions, because a pension cannot be equalled to other private law sources of profit. The contested norm does not envisage differential treatment of persons, who are in similar and comparable circumstances, and, thus, does not restrict the right guaranteed in the first sentence of Article 91 of the *Satversme*.

7. The summoned person – **Zane Vorslava**, lecturer at Riga Stradins University, – holds that the contested norm is compatible with Article 1, 91, 105 and 109 of the *Satversme*.

The purpose of the Agreement is to prevent overlapping of the rights to social security and not allow a situation, where a person simultaneously receives pensions from both states. This applies also to those cases, when the recipients of the service (military) pension of the Russian Federation residing in the Republic of Latvia were receiving two pensions for the same social insurance period or a period equalled thereto because the Russian side did not meet its commitments. Such duplication had been possible in those cases, where the recipients of service (military) pension of the Russian Federation, upon applying for the old age pension of the Latvian state, had not submitted full information about themselves. As the result, the recipients of the service (military) pension of the Russian Federation had been granted Latvia's pension for full insurance period, although the Russian Federation continued disbursing to them the service (military) pension in full amount. The contested norm had been adopted to resolve this situation.

A pension granted by another state is also to be considered as being minimum social security. Since the Applicants were receiving the service (military) pension of the Russian Federation, which was disbursed in accordance with the Agreement, they were provided social security in at least the minimum

amount. Thus, it can be concluded that the contested norm does not restrict the right to social security included in Article 109 of the *Satversme*.

Article 9 of the Agreement envisages that upon applying for a pension of the State of Latvia, the disbursement of the service (military) pension of the Russian Federation is discontinued. This means that already initially no regulatory enactment comprised regulation establishing the right to receive pensions of two states for the same insurance period. Thus, the Applicants could not have developed legitimate expectations to receive two pensions for the same insurance period.

### **The Constitutional Court Found:**

8. The contested norm sets out, how to act in cases, where periods, for which a pension has been granted by another state, have been included in a person's insurance period, i.e., the pension must be granted or recalculated by excluding such periods (*see Para 2 of annotation to the draft law No. 237/Lp11 "Amendments to the Law "On State Pensions"" submitted to the Saeima on 27 March 2012*).

The Applicants request the Constitutional Court to recognised the contested norm as being incompatible with Article 1, 91, 105 and 109 of the *Satversme*, insofar the contested norm is applicable in a case, where the old age pension of Latvia and a pension of another state had been lawfully granted before the contested norm entered into force.

The contested norm also contains a provision that it is not applicable, if Regulation No. 883/2004 or international treaties approved by the *Saeima* include another legal regulation. However, a dispute regarding more favourable legal regulation compared to the contested norm being included in Regulation No. 883/2004 or in international treaties approved by the *Saeima* does not follow from the case materials.

The Constitutional Court has noted that, in examining a case, limits of the claim are binding upon it; i.e., it has to review compliance of the contested norm with legal norms of higher legal force, taking into consideration the reasoning

provided by the Applicant, as well as grounds and considerations presented in the application (*see, for example, Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 5*).

**Hence, the Constitutional Court will examine compliance of the contested norm with the *Satversme*, insofar it applies to recalculation of a pension granted by Latvia or discontinuing disbursement thereof.**

9. The State has different obligations in areas of each fundamental right: to respect and to protect, and to ensure a person's rights. For the State to act in compliance with human rights, it must implement a number of measures – both passive, for example, not interfering into a person's rights, and active, for example, by ensuring that a person's individual needs are met (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 7, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 24*). Similarly, the criteria, according to which compliance of a legal norm with the fundamental right to social security is to be assessed, may differ, depending on whether the particular norm restricts rights granted to a person or provides for fulfilment of the State's positive obligations (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 15.1*).

The Applicants express the opinion that Article 109 of the *Satversme* protects their right to continue receiving Latvia's old age pension granted to them. A pension granted to a person should be considered as being property in the meaning of Article 105 of the *Satversme* and the principle of legitimate expectations, allegedly, prohibits depriving of this pension later. On the basis of the contested norm, the amount of Applicants' old age pension has been decreased or disbursement thereof has been discontinued totally, thus, the contested norm is said to restrict their fundamental rights enshrined in the *Satversme*. I.e., the contested norm is said to infringe upon fundamental rights enshrined in Article 1, 91, 105 and 109 of the *Satversme* (*see application in Case Materials, Vol. 1, pp. 15–17*).

The *Saeima*, however, notes that the contested norm should be examined in interconnection with international commitments that follow from the Agreement.

The Russian Federation is responsible for granting and disbursing pensions to military pensioners of the Russian Federation. Upon applying for Latvia's pension, a person, first of all, must have met requirements of Latvian regulatory enactments, and, secondly, must take into consideration that in this case disbursement of the military pension granted by Russia for the same insurance periods, for which Latvia's old age pension is paid, will be discontinued. Thus, a person does not have the right to receive a pension from two states for the same insurance period or a period equalled to it. None of the *Satversme* provisions guarantees the right to receive several pensions for the same insurance period. Thus, the *Saeima* expresses the opinion that the contested norm does not cause a violation of Applicants' fundamental rights established in the *Satversme* and that legal proceedings in the case should be terminated (*see written reply by the Saeima in Case Materials, Vol. 1, pp. 148 – 154*).

In the practice of the Constitutional Court issues of procedural nature are usually examined before reviewing constitutionality of legal norms on their merits (*see, for example, Judgement of 27 June 2013 by the Constitutional Court in Case No. 2012-22-0103, Para 10, and Judgement of 29 April 2016 in Case No. 2015-19-01, Para 10*). If arguments have been provided that could be the basis for terminating legal proceedings in the case, the Constitutional Court must examine these first of all (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11, or Judgement of 27 June 2016 in Case No. 2015-22-01, Para 12*).

**Thus, the Constitutional Court must examine, first and foremost, whether the contested norm infringes upon fundamental rights enshrined in the *Satversme* and whether there are legal grounds for terminating legal proceedings.**

**10.** In the case law of the Constitutional Court legal issues linked to social security are examined primarily in the context of Article 109 of the *Satversme*, also examining it in interconnection with other norms of the *Satversme*, as required (*see, for example, Judgement of 21 April 2016 by the Constitutional Court in Case No. 2015-21-01, Para 10.2.*).

The right to disbursement of a pension may be assessed also as property in the meaning of Article 105 of the *Satversme*. However, in examining compliance of a legal norm with the Article referred to above, it must be taken into consideration, whether the case pertains also to the area of social rights. If the case pertains to this area, then it is to be recognised that the applicant's rights and lawful interests cannot be protected to the same extent as they would be in case, if property right in the "classical" understanding of it were restricted (*see Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 20 and 21*). With respect to the right to property in the area of social rights the State must be granted broad discretion, because the right established in Article 105 of the *Satversme* does not guarantee a particular amount of pension, and this right may be restricted (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 20*).

In examining compliance of a legal norm with the general principles of law that have been derived from the basic norm of a democratic state governed by the rule of law that falls within the scope of Article 1 of the *Satversme*, it must be taken into account that these principles of law may manifest themselves differently in different areas of law. Likewise, the nature of contested norms, their link to other norms or the *Satversme* and place within the legal system inevitably influence constitutional review performed by the Constitutional Court. I.e., the legislator's discretion in regulating a particular issue may be broader or narrower, and the Constitutional Court must examine, whether the scope of discretion exercised by the *Saeima* complies with the one established by the *Satversme* (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 15.2. and 15.3.*). Thus, compliance of a legal norm adopted in the area of social rights with the principle of legitimate expectations may be examined in interconnection with Article 109 of the *Satversme* (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 20*).

In establishing, whether any of the norms in the Pension Law is not contrary to the principle equality, the area of law to which this norm belongs must be taken into consideration. Basically, the equality principle must be

applied together with other fundamental rights, in particular because, quite often, it is impossible to decide how a case should be adjudicated solely on the basis of this principle. The right enshrined in Article 91 of the *Satversme* is “comparative”, i.e., it may require equal treatment, but as such cannot reveal what this treatment should be like (*see, for example, Judgement of 11 November 2005 by the Constitutional Court in Case No. 2005-08-01, Para 5 and 6.1, and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 15*).

The *Satversme* is a unified and coherent system, and the legal norms included in it are closely interconnected. Each norm of the *Satversme* has a definite place within the constitutional system. The Constitutional Court has noted previously: to establish more comprehensively and objectively the content of individual norms, they must be interpreted in interconnection with other norms of the *Satversme* (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 13*). The principle of unity of the *Satversme* prohibits interpreting some constitutional norms of the *Satversme* in isolation from other norms thereof, because the *Satversme* as a united document influences the scope and content of each separate norm (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 15.3.*).

**Thus, the norms of the *Satversme* referred to in the claim must be examined in their interconnection.**

**11.** Article 109 of the *Satversme* provides: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law”.

The Constitutional Court has recognised that the right to social security in at least minimum level falls within the scope of Article 109 of the *Satversme* and that the aim of this right is, to the extent possible, to ensure existence worthy of human dignity (*see Judgement of 13 February 2013 by the Constitutional Court in Case No. 2012-12-01, Para 8.2.*). Article 109 of the *Satversme* guarantees to inhabitants the right to a stable and predictable, as well as effective, fair and sustainable system of social protection, which ensures commensurate social

services. In Latvia the right to social protection is of constitutional value (*see, for example, Judgement of 13 March 2001 by the Constitutional Court in Case No. 2000-08-0109, the Findings, and Judgement of 19 December 2011 in Case No. 2011-03-01, Para 15.2.*).

Exercising the fundamental rights included in Article 109 of the *Satversme*, on the one hand, depends upon resources that are at the disposal of the State and society, but, on the other hand, if any right to social protection has been included in the basic law, the State no longer may refuse to exercise it (*see, for example, Judgement of 13 March 2011 by the Constitutional Court in Case No. 2000-08-0109, the Findings, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 24*).

The legislator's decisions on exercising social rights depend upon the prevailing perception in the state regarding the principles of providing social services and the need of society or part thereof for the State's assistance or support (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 16*). In the field of social rights, the border-line between legal and political considerations cannot always be precisely identified, and the Constitutional Court must refrain from assessing political issues, because primarily these fall within the competence of the democratically legitimised legislator (*see, for example, Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 29, and Judgement of 14 September 2005 in Case No. 2005-02-0106, Para 18*).

**12.** The term "other state" has been used in the contested norm, and, thus, it is applicable to pensions granted by any state. However, the case materials reveal that drafting and adoption of the contested norm had been closely linked to pensions granted by the Republic of Latvia and the Russian Federation for the same insurance period or a period equalled to it.

The Constitutional Court also takes into account that all Applicants are recipients of the military pension granted by the Russian Federation, for whom, on the basis of the contested norms, the old age pension granted by Latvia has been recalculated or the disbursement thereof had been completely discontinued.

The Applicants and the *Saeima*, as well as all summoned person have expressed their considerations regarding compliance of the contested norm with the *Satversme* in close interconnection with States' commitments determined by an international treaty, i.e., the Agreement.

The Ombudsman notes that in the case under review the Applicants' right to social security is ensured not only in accordance with the national legal acts of the Republic of Latvia – the law “On State Pensions” –, but also in accordance with legal acts of the Russian Federation – the law of 12 February 1993 “On Ensuring Pensions to Persons, who Have Served in the Army or Institutions of the Interior, as well as to Families of these Persons”, as well as with the Agreement concluded by the Republic of Latvia and the Russian Federation (*see the Ombudsman's opinion, Case Materials, Vol. 3, p. 34*).

The first part of Article 68 of the *Satversme* provides: “All international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the *Saeima*”.

The first part of Article 68 of the *Satversme* imposes an obligation upon Latvia's institutions of state power, *inter alia*, the *Saeima*, in international relations to abide by not only requirements of the *Satversme* and other national legal norms, but also those of international legal norms. An action by the *Saeima* aimed at not performing international commitments or changing the scope thereof, contrary to requirements of international legal norms, would be incompatible with the first part of Article 68 of the *Satversme* (*see Judgement of 29 November 2007 by the Constitutional Court in Case No. 2007-10-0102, Para 75.1. and 75.3.*). Thus, in the case under review the content of fundamental rights protected by the *Satversme* must be established in interconnection with international commitments defined by the Agreement.

By concluding the Agreement, the Republic of Latvia and the Russian Federation have dealt with issues pertaining to social security of former military of the USSR residing on the territory of the Republic of Latvia.

The Constitutional Court has recognised that it is possible to regulate the issue of calculating and granting pensions as favourably as possible to a person, who is not entitled to the state social insurance pension in accordance with the

Pension Law, by an international treaty ratified by the *Saeima*. By concluding bilateral international treaties in the field of social security, states come to a mutual agreement regarding social protection of each party's residents, specifying the rights and obligations of each party, thus, different social security systems of two states are adjusted for social protection of residents of the particular state. Each state's social security model is commensurate with interests of its citizens, therefore an international treaty is one of the measures for protecting social security of all residents of the state (*see Judgement of 26 June 2001 by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

The first sentence of Article 7(1) of the Agreement provides: "Pensions of military pensioners shall be non-taxable and shall be disbursed by the banking institutions of the Republic of Latvia in national currency from resources of the Russian Federation in accordance with terms and conditions established in the Russian Federation."

Thus, the Russian Federation has assumed responsibility for social security of former militaries of the USSR in accordance with regulatory enactments that are in force in the Russian Federation. To ensure that all persons within the territory of Latvia could exercise their right to social security, the Republic of Latvia, in turn, has concluded the Agreement with the Russian Federation.

The Applicants themselves also note that the contested norm does not infringe upon their right to minimum social security, because they continue receiving the military pension granted by the Russian Federation (*see application in Case Materials, Vol. 1, p. 15*).

**Hence, the contested norm does not infringe upon the right to minimum social security established in the *Satversme*.**

**13.** The issue regarding meeting the international commitments established in the Agreement initially was highlighted in the audit report of the State Audit Office of 17 October 2011 No. 5.1-2-3-1/2011 "Parallel regulatory audit of actions by the authorities of the Republic of Latvia and the Russian Federation to ensure meeting of commitments that follow from the Agreement between the

Government of the Republic of Latvia and the Government of the Russian Federation on social protections of the military pensioners of the Russian Federation residing on the territory of the Republic of Latvia and members of their families” (hereinafter – the audit report by the State Audit Office).

The audit report by the State Audit Office includes a conclusion that terms of Article 9 of the Agreement are not met; i.e., after persons have been granted Latvia’s old age pension the Russian Federation continues disbursing the military pension to them. Therefore in many instances pensions of both states are disbursed for the same period (periods of studies and compulsory military service or career service overlap) (*see Audit Report of the State Audit Office, Para 96 – 98*).

It follows from the written reply of the *Saeima* that the audit report of the State Audit Office had been the grounds for adopting the contested norm (*see written reply by the Saeima, Case Materials, Vol. 1. p. 147*).

In this respect, in the case under examination, it is essential to take into account Article 9 of the Agreement, which provides: “Former military, who have acquired the right to pension provision pursuant to legal acts of the Republic of Latvia, in accordance to their wish, the respective competent bodies of the Republic of Latvia may grant and disburse pensions from resources of the Republic of Latvia. Moreover, disbursement of pensions previously granted by the Russian Federation shall be discontinued, while a pension is disbursed by bodies of the Republic of Latvia.”

This norm provides for Latvia’s right to grant and disburse pensions to former military of the USSR in accordance with regulatory enactments of Latvia. However, it must be underscored that this is Latvia’s right, not an obligation. Thus, pursuant to Article 9, Latvia enjoys discretion – to leave disbursement of pensions to former military of the USSR to the Russian Federation, or, upon request by the respective person, to grant him or her pension in accordance with regulatory legal acts of the Republic of Latvia. Within the limits of its discretion, Latvia had granted old age pension to all Applicants, informing the Russian Federation about it.

The Applicants had retired at different times, from 1997 to 2007. Legal regulation of the Pension Law, on the basis of which the Applicants had been granted old age pensions, has also changed accordingly over time. It can be generally stated that pursuant to historic wording of Section 11 of the Pension Law, the criteria for granting an old age pension were as follows: reaching of a certain age (60 – 62 years) and ten years' working period. The working period, for which Latvia's old age pensions are granted, pursuant to Sub-para 1 and 4 of Para 1 of Transitional Provisions in the Pension Law included also compulsory military service and studies at institutions of higher education. The same periods are taken into account also in granting the military pension of the Russian Federation. Pursuant to Article 9 of the Agreement, the Russian Federation had to discontinue disbursement of pensions for those periods, for which a pension was granted by the Republic of Latvia; however, the Russian Federation had failed to do so.

The Ministry of Welfare notes, with good reason, that the purpose of the Agreement is not to pay double for particular periods of work and periods equalled to them, because in those cases, where the old age pension of the Republic of Latvia has been granted and is being disbursed, Article 9 of the Agreement imposes upon the Russian Federation the obligation to discontinue disbursement of the military service pension granted by the Russian Federation. Thus, by applying for Latvia's old age pension, a person makes a conscious choice in favour of it, being aware that in accordance with the terms of the Agreement, disbursement of the military pension granted by the Russian Federation will be discontinued for the period, while Latvia's old age pension is disbursed. To avoid duplication in periods of pension – it is a general principle of law in the field of international treaties on social security, it provided that only one state granted a pension for same insurance (work period or a period equalled to it) period (*see opinion by the Ministry of Welfare in Case Materials, Vol. 2, pp. 18 – 19*). Therefore Article 9 of the Agreement must be examined in close interconnection with the purpose of applying this norm – to prevent a situation, where both states are simultaneously disbursing a pension for the same insurance period.

It follows from the above that the Applicants have never had subjective right to receive simultaneously pensions granted by several states for the same insurance period or a period equalled thereto. Such right does not follow from the terms of the Agreement, and neither does Article 109 of the *Satversme* protect it. Thus, also exclusion of overlapping insurance periods from a person's period of insurance and following recalculation of a pension does not cause a restriction upon a person's fundamental rights.

The Constitutional Court has recognised that with respect to pensions Article 105 of the *Satversme* provides to a person rights protection in a lesser scope compared to Article 109 of the *Satversme* (see *Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 20*). If no restriction upon fundamental rights enshrined in Article 109 of the *Satversme* can be established, then there are no grounds to consider that the contested norm restricts also the right to property enshrined in Article 105 of the *Satversme*.

The principle of legitimate expectations that is derived from the basic norm of a democratic state governed by the rule of law that falls within the scope of Article 1 of the *Satversme* protects only such rights, with respect to exercise of which a person could develop lawful, founded and reasonable expectations, which is the core of the general principle of law referred to above. Since legal norms have never envisaged a person's subjective right to receive a pension from several states for the same social insurance period or a period equalled to it, the Applicants could not have developed protectable legitimate expectations that this situation would not be eliminated sooner or later. The fact that the Applicants, contrary to terms of the Agreement, for a number of years were receiving pensions from two states for the same social insurance period does not create protectable legitimate expectations. Thus, adoption of the contested norm is not incompatible with the principle of legitimate expectations.

In assessing the possible violation of the equality principle enshrined in the first sentence of Article 91 of the *Satversme*, the Constitutional Court must first of all verify, whether groups of persons are in similar and comparable circumstances. The principle of equality does not require ensuring to a group of persons the right to receive two pensions for the same insurance period. Quite to

the contrary, granting of such a right to a group of persons would place it in a more favourable situation compared to other pensioners and, thus, would cause a violation of the equality principle. Consequently, the contested norm does not envisage differential treatment of persons, who are in similar and comparable circumstances.

**Thus, the contested norm does not cause a violation of fundamental rights enshrined in Article 1, 91, 105 and 109 of the *Satversme*.**

14. Para 6 of Section 29(1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated before promulgation of a judgement by a decision of the Constitutional Court, if continuation of legal proceedings is impossible.

The Constitutional Court has already established in this decision that the contested norm does not infringe upon fundamental rights enshrined in Article 1, 91, 105 and 109 of the *Satversme*. Therefore it also is impossible to assess, whether the contested norm complies with provisions of the *Satversme*.

**Hence, it is impossible to continue legal proceedings in the case.**

In view of the above and on the basis of Para 6 of Section 29 of the Constitutional Court Law,

**The Constitutional Court held:**

**to terminate legal proceedings in case No. 2016-03-01 ““On Compliance of Para 42<sup>1</sup> of Transitional Provisions of the Law “On State Pensions” with Article 1, Article 91, Article 105 and Article 109 of the *Satversme* of the Republic of Latvia”.**

The decision is not subject to appeal.

Chairman of the court hearing

A. Laviņš