



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT ON BEHALF OF THE REPUBLIC OF LATVIA in Case No. 2012-12-01 in Riga, 13 February 2013

The Constitutional Court of the Republic of Latvia comprised of: Chairperson of the court sitting Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to an application by twenty Members of the 11<sup>th</sup> Saeima, submitted by Andrejs Klementjevs, Jānis Urbanovičs, Vitālijs Orlovs, Igors Zujevs, Irina Cvetkova, Ivans Klementjevs, Marjana Ivanova-Jevsejeva, Jānis Ādamsons, Boriss Cilevičs, Vladimirs Nikonovs, Aleksandrs Jakimovs, Ņikita Ņikiforovs, Vladimirs Reskājs, Raimonds Rubiks, Sergejs Potapkins, Nikolajs Kabanovs, Viktors Jakovļevs, Valērijs Agešins, Igors Pimenovs and Artūrs Rubiks (hereinafter – the Applicant),

on the basis of Article 85 of the Satversme of the Republic of Latvia, Para 1 of Section 16, Para 3 of Section 17(1) and Section 28<sup>1</sup> of the Constitutional Court Law,

on 15 January 2013 at a court sitting examined in written procedure the case

“On Compliance of the Words “until 31 December 2011” of Para 41 of Transitional Provisions of the Law “On State Pensions” with Article 91 and 109 of the Satversme of the Republic of Latvia”.

## **The Facts**

1. The Saeima of the Republic of Latvia (hereinafter – the Saeima) on 20 October 2005 adopted the law “Amendments to the Law “On State Pensions”” .The law entered into force on 1 January 2006. By these amendments Transitional Provisions of the law “On State Pensions” were supplemented with Para 41, which envisaged:

“With regard to the recipients of old age pensions, residing in Latvia, whose total period of insurance is at least 30 years and who have been granted a pension, the amount of which per month does not exceed 105 lats (including a pension or a part of it, which is disbursed by other Latvian institutions, EU and EEA member states and states, with whom international agreements in the field of social security have been concluded), until 31 December 2009, for the period of insurance that has been accrued before 31 December 1996 and was taken into account when granting (recalculating) the pension, shall be granted a supplementary payment for each year of the period, in conformity with the resources of the social insurance special budget. The procedure for granting the monthly supplementary payment to old age pensions, as well as the amount of this supplement and procedure of disbursement shall be established by the Cabinet of Ministers.”

In the period from 2006 to 2011 Para 41 of Transitional Provisions of the law “On State Pensions” (hereinafter – Para 41 of Transitional Provisions) was amended a number of times, introducing changes both with respect to groups of persons entitled to pension supplement and the date until this supplement was granted.

On 1 June 2008 the law of 10 April 2008 “Amendments to the Law “On State Pensions”” came into force. After this law came into force Para 41 of Transitional provisions no longer envisaged a date, until which a supplement to the old age pension was to be granted (hereinafter – supplement). Whereas with the law of 20 December 2010 “Amendments to the Law “On State Pensions”” Para 41 of Transitional Provisions was amendment once again and henceforth envisaged that the supplement was to be granted until 31 December 2011.

Whereas pursuant to the law of 14 June 2012 “Amendments to the Law “On State Pensions” Para 41 provides:

“The recipients of an old age and disability pension, who reside in Latvia and Member States of the European Economic Area, for the period of insurance, which has been accrued until 31 December 1995 and taken into account in granting (recalculating) pension, shall be granted a supplement for each year of the length of period of insurance until 31 December 2011. Upon submitting the annual draft State budget to the *Saeima*, the Cabinet shall provide in the State basic budget from 1 January 2014 the transfer of expenditure for the maintenance of the State budget from the State basic budget to the State special budget in order to ensure the supplement granted until 31 December 2011 to disbursement of old age and disability pension from the State pension special budget and disability, maternity and illness special budget accordingly.

The Cabinet shall determine the procedures, by which a supplement shall be granted and disbursed, as well as determine the amount thereof, which shall not be less than 0.70 lats during the time period from 1 January 2009 until 31 December 2011.”

The application contests compliance of the words and numbers included in Para 41 of Transitional provisions “until 31 December 2011” (hereinafter – the contested norm) with Article 91 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

**2. The Applicant**, referring to the case law of the Constitutional Court and the Conception on Stability of the Social Insurance System in the Long Term, approved by the order of 17 November 2010 by the Cabinet No. 674 (hereinafter – Conception on the Social Insurance System), notes that Article 91 of the Satversme prohibits differential treatment of persons, who are in similar circumstances.

The Applicant holds that all those persons, who receive old age pension, are in similar circumstances. However, allegedly, the contested norm unfoundedly divides these persons into the following groups: persons, to whom old age pension was granted prior to 31 December 2011, and persons, to whom old age pension was granted after this date.

The first group of persons is entitled to the supplement, whereas the contested norm does not envisage such right to the second group of persons. The differential treatment allegedly has no reasonable grounds, since the length of service, accrued by all the aforementioned persons prior to 1996, does not differ significantly. The contested norm restricts only the circle of recipients of a particular social service, and the criterion for restriction is the date, when the retirement age sets in, which depends upon a person's year of birth.

It is noted in the application, referring to Article 109 of the Satversme, that this norm ensures to the inhabitants of the State the right to a stable and predictable, as well as effective, fair and sustainable system of social protection, thus, also to commensurate social security. The State retains a totality of fundamental obligations, and it has no right to retreat from these during a period of economic recession. Article 109 of the Satversme does not prohibit the legislator from changing the established system of social security, i.e., the legislator may choose other solutions to certain social problems. However, change of the social security system should not be used as a means for reaching short-term aims. The legislator should consider the impact of each decision upon the sustainability of pension system and should implement timely measures for assessing the economic and demographic risk.

The legislator, by adopting the contested norm, has restricted a person's fundamental right to social security in old age, since a person is not ensured the right to the disbursement of a pension in a sufficient amount. The solution envisaged in the contested norm is allegedly incompatible with the aim of social rights – to provide to persons social security within the framework of available funding. This aim could be reached also by other means, for example, by envisaging a person's right to receive a smaller amount of supplement.

The Applicant notes that the contested norm *per se* already included a reasonable and lenient term of transition, i.e., by decreasing annually the average period, for which the supplement was granted, and also by decreasing every year the amount of supplement. Thus, by amending the contested norm, the lenient transition to the new legal regulation is shortened and, hence, a violation of persons' fundamental rights occurs.

After acquainting with the materials of the case, it is additionally noted that in adopting the contested norm alternative solutions, less restrictive to a person's rights, had not been examined. For example, one of such alternative solutions could have been borrowing money from the State basic budget and special social insurance budget (hereinafter – the special budget) to stabilise the situation.

**3. The institution, which adopted the contested act, – the Saeima** – does not uphold the Applicant's arguments and request the Constitutional Court to recognise the contested norm as being compatible with the Satversme.

The Cabinet of Ministers, in elaborating the draft of the contested norm, had carefully considered the possible alternatives, as well as assessed the compliance of the contested norm with the Satversme. These considerations have been reflected not only in the Conception on the Social Insurance System, but also in the annotation appended to the draft law. When the submitted draft law was discussed at the Saeima, six proposals by the members of the parliament concerning Para 41 of Transitional Provisions were submitted, however, none of these was supported.

The supplement for each year of insurance period, envisaged by Para 41 of Transitional Provisions, allegedly is not a service of the social insurance system, but only a temporary measure aimed at ensuring as fair as possible disbursement of pensions to persons, who had accrued their insurance period prior to 1 January 1996. Article 109 of the Satversme does not impose an obligation upon the legislator to pay the supplement envisaged in Para 41 of Transitional Provisions. This had been the legislator's conscious political choice – to establish this supplement to improve the material provisions of those pensioners, who have a long period of insurance, but a small pension.

The supplement was always regulated as a temporary measure, i.e., since the adoption of Para 41 of Transitional Provisions it had always contained a date until which the disbursement of this supplement was planned. The legislator had reviewed this term a number of times, but an infinite disbursement of the supplement had never been envisaged. The fact that the respective regulation was included only in Transitional Provisions of the law also points to this.

In assessing, whether the legislator, in adopting the contested norm, has fulfilled all the State's obligations, which follow from Article 109 of the Satversme, it must be established, whether the legislator has implemented measures to ensure social rights to persons: whether these measures have been implemented duly, i.e., whether persons have been ensured the possibility to exercise their rights at least in minimum scope; whether the general principles of law have been abided by.

The case does not contain a dispute, whether the legislator has implemented certain measures to ensure to persons the possibility to exercise social rights. A system of social insurance and social assistance is operational within the State. Neither does the Applicant deny that pensions are disbursed. To all persons, to whom Para 41 of Transitional Provisions could be applied, also Para 34 of Transitional Provisions is applicable, which defines the minimum amount of old age pensions. Thus, the right to minimum level social security is ensured.

In assessing, whether the contested norm complies with Article 91 of the Satversme, first of all, it must be established, which persons are in similar and comparable circumstances.

The Applicant holds that those persons, to whom state pension was granted until 31 December 2011, and those, to whom it was granted after 31 December 2011, are in similar and comparable circumstances. However, the Saeima holds, that these groups of persons are not in similar and comparable circumstances, since the right envisaged in Para 41 of Transitional Provisions can be exercised only by those persons, who have become the subjects of the norm during the respective period, but those persons, whose right to state pension arises after the expiry of the term defined in the norm, are in a different legal situation.

The Saeima reiterates that the contested norm was adopted timely – on 20 December 2010, to protect persons' legal certainty and give them the possibility to plan their actions.

The contested norm had helped to unburden the special budget by removing from it uncharacteristic and inapplicable expenditure, thus promoting the sustainability of the pension system.

The contested norm does not deprive the recipients of pensions from at least minimum level of social security. Whereas the issue of broadening or narrowing social guarantees, including into these a different procedure for granting or recalculating old age pension, is a matter of legislator's law policy decision.

**4. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is not incompatible with Article 91 and Article 109 of the Satversme.

The supplement already initially had been established as a person's temporary right, which does not belong to the core of the right to social security established by Article 109 of the Satversme. In the field of social rights, the State has the positive obligation to ensure that only such social assistance is provided, which is guaranteed even if a person has not made social insurance contributions (hereinafter – contributions). Persons' right to minimum level social security is guaranteed by Para 34 of Transitional Provisions of the law "On State Pensions".

The supplement should be recognised as an additional social guarantee. The legislator has established it as the result of law policy decision, with the aim of improving the material conditions of those pensioners, who had a long period of insurance, but a small pension. Thus, in this case the right to at least the minimum level of social security is not affected.

As regards the compatibility of the contested norm with Article 91 of the Satversme, it is noted that the Ombudsman's Office has reviewed a case concerning the procedure for granting supplements. It was concluded in the case the contested norm complied with the principle of equality established by Article 91 of the Satversme. Even though persons, whose pension was calculated until 31 December 2011, and persons, whose pension was calculated after this date, are in similar and comparable circumstances, the contested norm has a legitimate aim and the differential treatment – objective and reasonable grounds.

**5. The summoned person – the Ministry of Welfare** – notes that the supplement was envisaged to improve the material conditions of those recipients of old

age pension, who retired prior to 31 December 1995 or in the initial years of the pension reform and who had long length of service, but a small pension. From the outset the supplement was established as a temporary measure until 31 December 2009. Since the average amount of newly granted old age pensions rapidly increased with each year, it was estimated that in 2010 it would exceed the limit of 105 lats set in the law for granting the supplement. Moreover, it was taken into consideration that the persons, who would reach the age of retirement in 2010, would have been participants of the new pension system for at least 14 years.

When the regulation on supplement came into force, it was initially established both for those persons, who had been granted old age pension until 1 January 2006, and to those persons, who had been granted pension after the aforementioned date. Initially 75 per cent of pensioners received this supplement, but in 2010 and 2011 – already approximately 99 per cent of pensioners. The average amount of supplement has also increased since 2006 – from 7 lats in 2006 to 23 lats in 2012.

The Ministry of Welfare emphasizes that those persons, who were granted the supplement until 31 December 2011, continue receiving it in the previous amount. Thus, the regulation included in the contested norm does not affect the rights that persons have already obtained.

**6. The summoned person – the Latvian Pensioners' Federation (hereinafter – LPF)** – notes that during the elaboration of the contested norm it had participated in a number of discussions – both at the Ministry of Welfare and the Saeima. LPF submitted proposals on some additions to the social insurance system. One of the proposals envisaged that the supplement should no longer be granted after 1 January 2014. The Saeima Social and Employment Matters Committee did not support this proposal.

The contested norm is said to be incompatible with Article 91 of the Satversme, since those persons, who retired after 1 January 2012, have a lower standard of living compared to persons who retired until this date.

The contested norm is also said to be incompatible with Article 109 of the Satversme, since the legislator's decisions did not facilitate ensuring of at least the

minimum level social security. The State has the obligation, in all economic situations, to ensure living conditions appropriate for human dignity. However, in Latvia the living conditions of the majority of old people continue to be unsatisfactory.

The argument provided by the Saeima, that the expenditure linked with the supplement created additional burden for the special budget and threatened its stability, was unfounded. The Saeima could stipulate that the supplement was to be disbursed from the State's basic budget. Thus, the threat to the stability of the special budget could be prevented.

7. The summoned person – *Dr. oec. Edgars Volškis* – noted that in the mid-1990s, when reforms were introduced to the pension system, the guidelines regarding the first level of pension systems were elaborated and adopted, envisaging the establishment of individual non-funded pension accounts for all participants of the pension system. I.e., the accruals in the personal pension accounts, in accordance with the principle of fairness of pension system, depending upon the contributions made by the participant to the system. Thus, the amount of pension for a participant of the pension system, who reaches the retirement aged established by law, is determined depending upon the amount of pension capital accrued in the private non-funded pensions accounts during the years of employment.

As part of the aforementioned reform to the pension system, socio-economic estimates had been made both with regard to the expected increase of salaries in Latvia's economy, the changes in the age structure of Latvia's population, the birth rate and the migration of Latvia's inhabitants. On the basis of these estimates and the outcomes of following economic modelling, the contribution rate was established in law, which was gradually decreased from 38 per cent to 33.09 per cent.

From 2000 to even mid-2009 the income of the inhabitants of the Republic of Latvia increased rapidly, and, respectively, also the special budget revenue. Because of this the decision to grant the supplement was adopted. The aim of this supplement was to improve the material conditions of those pensioners, whose pensions were small.

The summoned person emphasizes that the supplement was not included in the initial estimates of the pension system. Likewise, the rate of contributions, which

ensures the special budget revenue, did not envisage the supplement. Thus, from the perspective of public finance, the funding needed for supplement had to be searched for outside the special budget.

The supplement should be considered as a temporary and additional instrument of social support. It was envisaged for persons, who had limited socio-economic possibilities to accrue an adequate pension capital during the transition period from 1996 to 1999, as well as limited possibilities for joining voluntarily the second level of pension system.

### **The Findings**

**8.** The Application contains a request to assess the compliance of the contested norm with Article 91 and Article 109 of the Satversme.

**8.1.** As regards Article 91 of the Satversme, the Constitutional Court has repeatedly recognised that in assessing, whether a norm of the law “On State Pensions” was not incompatible with the principle of equality, aspects of the field of social rights should be taken into consideration. Especially because the right enshrined in Article 91 of the Satversme is “relative”, i.e., it may demand equal treatment, however, *per se* cannot reveal the nature of this treatment – favourable or unfavourable. To choose one of these solutions, other considerations, which are outside the limits of the equality concept, must be taken into account (*see, for example, Judgement of 11 November 2005 by the Constitutional Court in Case No. 2005-08-01, Para 5 and Para 6.1, and Judgement of 29 November 2010 in Case No. 2010-17-01, Para 6.2.1*).

The Constitutional Court has also noted: in order to find an answer to a particular issue of law, an individual norm of the Satversme should be interpreted in interconnection with other norms of the Satversme, since the Satversme as a united document influences the scope and the content of each individual norm (*see, for example, Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 1.1 of the Findings, and Judgement of 16 December 2005 in Case No. 2005-12-0103, Para 13*).

The Applicant holds that the supplement falls within the scope of fundamental rights established by Article 109 of the Satversme. Whereas the Saeima, in its written reply, expresses the opinion that the supplement does not fall within the scope of fundamental rights established by Article 109 of the Satversme and that the contested norm does not affect the aforementioned fundamental rights.

Thus, in assessing the compatibility of the contested norm with Article 91 of the Satversme, the fact, whether and to what extent the right to supplement falls within the scope of fundamental rights established by Article 109 of the Satversme and whether the contested norm affects the aforementioned fundamental rights, would be essential.

**8.2.** 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 right to at least minimum level of social security falls within the scope of Article 109 of the Satversme, and the aim of this right is to serve, to the extent possible, to ensure existence proper for human dignity (*see Judgement of 13 March 2001 by the Constitutional Court in Case No. 2000-08-0109, the Findings*). Pensioners are a social group requiring special protection. This applies even more to pensioners with low income, which can be considered as such that does not reach the minimums social security (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 31.2*).

The Constitutional Court has noted that usually the political dimension of decisions on exercise of social rights is important; i.e., decisions in this field are adopted rather on the basis of political considerations, not so much – the legal ones. These considerations depend upon the legislator’s opinion regarding which part of society needs the State assistance or support (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 16*). Deciding on political issues primarily falls within the competence of a 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*).

The legislator enjoys discretion in selecting methods and mechanisms for implementing the right to social security (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 15 and 21*). However, it is not absolute. If the legislator has specified in laws the content of social rights included in the Satversme, then these have become an individual's rights. A person may request from the State implementation of these rights, as well as defend these rights in court (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 2 of the Findings*).

The legislator has envisaged persons' rights to the social security guaranteed in Article 109 of the Satversme in the form of social insurance. The legislator's discretion is narrower with regard to those services, the receipt of which depends upon a person's prior contributions to the special budget (*see Judgement of 21 June 2012 by the Constitutional Court in Case No. 2011-20-01, Para 10*). Whereas with regard to such services, the receipt of which does not depend upon the contributions made by a person, the State has broader discretion. If the legislator has established to persons such additional social guarantees, the granting of which is not based upon the contributions made a person, the decreasing of rights granted in this way may depend upon the financial possibilities of the special budget (*see Judgement of 18 November 2011 by the Constitutional Court in Case No. 2010-29-01, Para 21*).

Thus, in order to assess, whether the contested norm complies with Article 109 of the Satversme, the Constitutional Court must, first and foremost, establish the legislator's intended content and aim of the supplement envisaged in the law "On State Pensions".

**9.** Since the legislator has applied the legal regulation of Para 41 of Transitional Provisions both to old age pension and disability pension, the subsequent conclusions made by the Constitutional Court shall apply to both types of pensions referred to in the norm.

**9.1.** Initially, as part of the pension system reform, it was intended to introduce also the fourth level, to decrease the impact of the transitional period upon those pensioners, whose period of employed fully or predominantly developed in the period prior to 1996. It was planned to ensure the fourth level of the pensions system from the

basic state budget. However, in 2006 the legislator decided to adopt a different approach, i.e., that the period of social insurance accrued until 31 December 1995 was to be evaluated by establishing a supplement and disbursing it from the special budget.

The supplement was included in the law “On State Pensions” with the amendments of 20 October 2005, which came into force on 1 January 2006.

The annotation to the draft law substantiates the establishment of supplement with the fact that the amount of pension is not always sufficient and therefore special attention should be paid to measures for improving pensioners’ standard of living, moreover, it is emphasized that the supplement is a fixed-term measure, depending upon “the possibilities of the special budget of social insurance (*annotation to the draft law “Amendments to the Law “On State Pensions””, draft law Reg. No. 1377, submitted on 30 September 2005*). The initial wording of Para 41 of Transitional Provisions envisaged granting of the supplement only until 31 December 2009.

The supplement was granted for each year of accrued insurance period prior to 31 December 1995 to all recipients of old age pensions residing in Latvia, whose total period of insurance was at least 30 years and the granted (recalculated) pensions of whom did not exceed 105 lats. Initially the supplement for each year of insurance period was set in the amount of 19 santims.

The decision to establish the supplement was, predominantly, based upon the fact that in 2002 – 2006 the economic situation in the State improved rapidly and that alongside revenue from work also the revenue of the special budget increased rapidly (*see E. Voļskis’ opinion, Case Materials, pp. 99*).

The accession to the European Union and influx of investments, which expanded the inhabitants’ participation in the registered labour market, also facilitated the economic growth of the State. Moreover, the number of employment age inhabitants also increased. Consequently, the legislator, within the limits of its discretion and as the result of political decisions, at the expense of the special budget established additional support measures for persons, who had been able to participate in the social insurance system, established by the law “On State Pensions” of 2 November 1995, for a relatively short period of time (*see Conception on the Social Insurance System, pp. 7 and 15, annotation to the draft law “Amendments to the Law “On State Pensions””, draft law*

*Reg. No. 81/Lp10, submitted on 7 December 2010, and the Letter of 7 September 2012 by the Ministry of Welfare to the Constitutional Court No.34-1-02/1869, Case Materials, p. 91).*

**9.2.** The law of 2 November 2006 “Amendments to the Law “On State Pensions”” expanded the circle of persons entitled to the supplement, as well as increased the amount of pension to be considered a criterion for granting the supplement. However, these amendments did not change the provision, which was initially included in the law, i.e., that the supplement should be granted until 31 December 2009.

The amendments with regard to the date, until which the supplement was to be granted, was introduced by the law of 10 April 2008 “Amendments to the Law “On State Pensions””. Namely, after coming into force of this law on 1 June 2008 Para 41 of Transitional Provisions no longer set out the term, until which the supplement was to be granted. Neither the annotation to the draft law, nor the debates at the Saeima allow concluding what the legislator’s grounds for revoking this term had been.

The statement included in the written reply of the Saeima that until 1 January 2011 Para 41 of Transitional Provisions “envisaged granting of supplement for each year of insurance period until 31 December 2012” is erroneous (*see Case Materials, p.23*). I.e., already since 1 June 2008 Para 41 of the Transitional Provisions no longer envisaged a date, until which the supplement was to be granted.

With the amendments to the Law of 19 June 2008, which entered into force on 1 January 2009, Para 41 of Transitional Provisions envisaged that in 2009 the supplement in the amount of 70 santims was to be granted for each year of insurance period accrued prior to 1996. Whereas with the amendments adopted on 1 December 2009 the period, during which the minimum supplement for each year of insurance period could not be lower than 70 santims, was extended until 31 December 2012.

Thus, contrary to the statement made by the Saeima, Para 41 of Transitional Provisions until 1 January 2011 did not envisage the final date for granting the supplement, but the minimum amount, which was binding upon the Cabinet of Ministers in establishing the procedure for granting the supplement.

**9.3.** With the continuous growth of the national economy and expanding participation of inhabitants in the registered labour market, accrual formed in the special budget, and at the beginning of 2009 it reached almost 950 million lats. The positive budget balance was the basis for the adopted decision on financing additional expenditure within the framework of the existing rate of contribution with respect to disbursements from the special budget, like the supplement to old age pensions (since 2006), supplement to disability pension (since 2009), parents' benefit (since 2008) and four additional days of incapacity for work (since 2009). Since 1 January 2010 the disbursement of the supplement to Latvian pensioners living in other states of the European Union started (*see Conception on the Social Insurance System, pp. 7 and 15*).

The Constitutional Court has repeatedly recognised that these decisions disrupted the balance of the special budget and caused serious threats to its sustainability (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 31.1.2, and Judgement of 15 March 2010 in Case No. 2009-44-01, Para 9.7*). They placed significant additional burden upon the special budget, since the resources needed for their implementation had not been included in the rate of contributions and were covered at the expense of other persons making the contributions (*see annotation to the draft law "Amendments to the Law "On State Budget""*, draft law Reg. No. 81/Lp10, submitted on 7 December 2010).

With the drastic deterioration of economic situation in the State, growing unemployment and inhabitants' decreasing revenue from work, also the revenue of the special budget decreased, and in 2009 it no longer covered the expenditure. The financial reserves, accrued during the previous years, were used, and this situation continued also in 2010 – 2012 (*see Conception on the Social Insurance System, p.8*).

On 20 December 2010 the Saeima adopted the law "Amendments to the Law "On State Pensions"", establishing the final date for granting the supplement, i.e., that the supplement was to be granted until 31 December 2011. It is noted in the annotation to the draft law that this regulation was adopted with the aim of decreasing the special budget expenditure, of striking a balance between its revenue and expenditure (*see*

*annotation to the draft law “Amendments to the Law “On State Pensions”, draft law Reg. No. 81/Lp10, submitted on 7 December 2010).*

The Constitutional Court concludes that supplement was included in the law “On State Pensions” with the aim of providing support to those persons, who had small pensions and who had not had the possibility to participate in the contributions based pension system for a sufficient period of time. However, by amending the law “On State Pensions”, the legislator gradually changed this initial aim, and thus the supplement was disbursed to persons, irrespectively of the amount of pension and the length of insurance period accrued prior to 1996.

To establish, whether the supplement falls within the scope of fundamental rights set out in Article 109 of the Satversme, the Constitutional Court must establish the groups of persons, whose rights are affected by the contested norm.

**10.** It is of relevance in the context of the case under review, that an abstract control of norms is to be conducted, having regard to an application by members of the Saeima. In a case like this the Applicant is not required to substantiate the infringement upon the fundamental rights of a concrete person. However, the legal substantiation of the application regarding the incompatibility of the norm with the fundamental rights included in the Satversme must contain substantiation that the legal norm restricts the rights of a group of persons, as well as reveal the causality between the contested norm and the negative consequences caused to persons (*see Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 9 and 17.3*).

The contested norm does not decrease the rights already obtained by persons. I.e., those persons, to whom the supplement was granted prior to 31 December 2011, continue to receive both the pension and the supplement in the established amount. This was directly confirmed both by the Ministry of Welfare in its letter to the Constitutional Court and the annotation to the law “Amendments to the Law “On State Pensions””, adopted in 20 December 2010, stating that those persons, to whom the supplement was granted prior to 31 December 2011, continue receiving the supplement in the previous amount (*see letter by the Ministry of Welfare of 7*

*September to the Constitutional Court No.34-1-02/1869, Case Materials p. 93, and annotation to the draft law “Amendments to the Law “On State Pensions”, draft law Reg. No. 81/Lp10, submitted on 7 December 2010).*

Thus, the contested norm does not apply to the group of persons, to whom the supplement was granted until 31 December 2011. The rights acquired by persons belonging to this group already fall within the scope of fundamental rights established by Article 109 of the Satversme, and potential actions by the legislator vis-à-vis the rights of these persons must comply with the principle of socially responsible state.

Simultaneously it can be concluded that the contested norm affects the fundamental rights of those persons, who retired after 31 December 2011. I.e., the contested norm amended the regulation that was previously in force and envisaged that the supplement would no longer be granted to persons reaching the retirement age after this date.

Thus, the Constitutional Court shall assess, whether the contested norm complies with Article 109 of the Satversme with regard to those persons, who retired after 31 December 2011.

**11.** Considering the nature of the supplement as a temporary social support measure and the substantiation for its inclusion in the law, it must be concluded that the contested norm has not limited the permanently acquired rights of any person. Thus, there are no grounds to recognise it as a restriction to the fundamental rights established in Article 109 of the Satversme.

The criteria for assessing the compatibility of a legal norm with the fundamental right to social security may differ, depending upon whether the particular norm restricts the right granted to a person or defines the implementation of a State’s positive obligation (*see Judgement of 6 April 2005 by the Constitutional Court in Case No. 2004-21-01, Para 10, Judgement of 11 December*

2006 in Case No. 2006-10-03, Para 16.1, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 26).

The Constitutional Court has already noted that in assessing, whether the State has fulfilled the positive obligation, which follows from a person's fundamental social rights, it must be verified, whether: 1) the legislator has implemented measures to ensure to persons the possibility to exercise social rights; 2) whether these measures are appropriate, i.e., whether persons have been ensured the possibility to exercise their social rights at least to minimal extent; 3) whether the general principles of law, which follow from the Satversme, have been complied with (*see Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 16.1*).

**12.** In assessing, whether the legislator has implemented measures to ensure the possibility to persons to exercise social rights, the resources allocated for the disbursement of the granted supplements must be taken into consideration. I.e., the legislator, contrary to what has been indicated by the Applicant, did not want to derogate from its commitments vis-à-vis a particular group of inhabitants. Sizeable resources of the special budget were channelled for supplements even during the period of economic recession, for example, in 2009 141.9 million lats were spent for this purpose, in 2010 – 140.5 million lats, in 2011 – 138.6 million lats, but in 2012 – 136 million lats (*see the letter of 7 September 2012 by the Ministry of Welfare to the Constitutional Court No.34-1-02/1869, Case Materials, pp. 93 and 94*).

The contributions based pension system exists already since 1 January 1996 – since the coming into force of the law of 2 November 1995 “On State Pensions”. Until 20 October 2005, when Para 41 of Transitional Provisions was added to the law, this system had been operational for almost ten years, and starting with 1 January 2006 the supplement was granted for the successive six years. Thus, those persons who retired after 1 January 2010, had been the participants of the contributions based system of pensions for almost sixteen years. Participation in the pension system for sixteen years ensures that the amount of the pension to be granted is relatively less influenced both by the compensatory character of the supplement and the insurance period accrued prior to 1996.

Thus, the legislator within the financial possibilities of the special budget and within the framework of its discretion has implemented measures to ensure to persons the possibility to exercise their social rights.

13. Social rights, to which the contested norm pertains, is a special field of human rights, which also in the international human rights documents has been defined as general obligations of the State (*see Judgement of 17 February 2011 by the Constitutional Court in Case No. 2010-20-0106, Para 10*). The Constitutional Court has repeatedly noted that the legislator has not had the aim to contrast the norms included in the Satversme with the norms of international law (*see Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings*). The possibility and even necessity to apply international norms in interpreting the fundamental rights included in the Satversme, *inter alia*, follow from Article 89 of the Satversme, which provides that the State shall recognise and protect fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia. This Article shows that the legislator's aim had been harmonising the human rights provisions included in the Satversme with the provisions of international law (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings*).

Likewise, the European Court of Human Rights has recognised in a number of cases that the European Convention for the Protection of Human Rights and Fundamental Freedoms grants to the State broad discretion in issues pertaining to the implementation of general strategic economic or social measures. Thanks to the knowledge of the society of their state and its needs that the state institutions have at the disposal, the legislator is best suited for defining public interest on the basis of social or economic considerations, and the European Court of Human Rights usually respects the policy in the field of social rights chosen by the legislator (*see, for example, Judgement of 16 March 2010 by the Grand Chamber of the European Court of Human Rights in Case "Carson and Others v. the United Kingdom", application No. 42184/05, Para 61*).

Social assistance, which is guaranteed even if the person has not made contributions, belongs to the core of the State's positive obligations in the field of social rights. Persons' right to the minimum level social security is guaranteed by Para 35 of Transitional Provisions of the law "On State Pensions", which defines the minimum amount of pension, which depends upon the insurance period accrued by the person and the amount of state social security benefit. If in the concrete case a person is guaranteed the minimum right, then the social security on at least minimal level is not affected (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 15.3*).

Considering the nature of the supplement as an additional social support measure, the Constitutional Court recognises that the norm that has been contested in the case under review does not affect the basic service of the social insurance system, for example, issues of granting, calculating or disbursing a pension. Likewise, while preparing the case it was not confirmed that because of the coming into force of the contested norm the right to social security on at least minimum level had no longer been guaranteed to a group of persons. The Ombudsman also recognised that persons' right to minimum level of social security was guaranteed by Para 34 of Transitional Provisions of the law "On State Pensions", which envisaged the minimum amount of pensions, depending upon the insurance period accrued by the person and the amount of state social security benefit (*see Case Materials, p. 87*).

Thus, the contested norm does not affect exercise of social rights at least in minimal scope.

**14.** The application contains a reference to two principles of law, which the contested norm allegedly violates, i.e.: the principle of legal equality and the principle of legal certainty.

**14.1.** The Constitutional Court, in interpreting Article 91 of the Satversme, has recognised that it contains two closely interconnected, and yet – different principles: the principle of equality – in the first sentence; and the principle of prohibition of discrimination – in the second sentence (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.3*).

Even though the application contains a request to assess the compliance of the contested norm with the whole Article 91 of the Satversme, it, nevertheless, follows from the application that essentially the compatibility of this norm with the first sentence of Article 91 is contested, i.e., that “all human beings in Latvia shall be equal before the law and the courts”. The substantiation that the contested norm divides pension recipients into several groups according to an inadmissible criterion does not follow from the application.

The principle of equality should guarantee the existence of a uniform legal order. I.e., its objective is to ensure implementation of such requirement of a judicial state as comprehensive impact of law upon all persons and application of law without any privileges whatsoever (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.1*). However, this legal order does not mean levelling out, since “equality allows differential approach, if it is justifiable in a democratic society” (*Judgement of 26 June 2001 by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

In the field of social rights the differential treatment is based upon the idea that the State, having the purpose to ensure social justice, assumes responsibility for those citizens, whose basic needs it must satisfy, considering resources it has at its disposal. Absolute application of the principle of equality in the field of social rights might cause serious financial consequences. Solely the fact that a person does not enjoy particular social right *per se* does not cause a violation of fundamental rights. Differential treatment causes a violation of persons’ rights only if it has no valid reason [*see Bossuyt M. Should the Strasbourg Court Exercise More Self-Restraint? // Human Rights Law Journal, Vol. 28, No. 9–12 (2007), pp. 325, 329*].

In the case under review, it must be taken into consideration that the contested norm pertains to such support measures of financial nature that depend upon the limits of the legislator’s discretion. The broader the legislator’s discretion in regulating a particular issue belonging to the field of social rights, the smaller the legal protection that the principle of legal equality, included in the first sentence of Article 91 of the Satversme, establishes for persons.

**14.2.** In assessing the compliance of the contested norm with the first sentence of Article 91 of the Satversme, it must be established, first, whether and which persons (groups of persons) are in similar and comparable circumstances; secondly, whether the contested norm envisages differential treatment; thirdly, whether differential treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see Judgement of 10 June 2011 by the Constitutional Court in Case No. 2010-69-01, Para 10*).

**14.2.1.** The Applicant holds that those persons, who retired prior to 31 December 2011 and who have been granted the supplement, and persons, who retired after this date and who are not entitled to the supplement, are in similar and comparable circumstances. Whereas the Saeima notes that these groups of persons are not in similar and comparable circumstances, as the supplement had been a fixed-term measure. Those persons, who retired after 31 December 2011, are within the framework of a new legal regulation, which cannot be compared to the previous period.

The Constitutional Court notes that the assessment offered by the participants of the case, on which persons are in similar and comparable circumstances, cannot be used in the case under review. If the argument offered by the Applicant were recognised as valid, a situation would arise, where a term established by the legislator would always create two groups of persons and differential treatment of these. Whereas the argument offered by the Saeima would mean that a term established in law could never be examined from the vantage point of the principle of equality, since changes in persons' rights and obligations after this date would always happen with the framework of a new legal regulation.

The Constitutional Court holds that in the context of the norm contested in the case under review it would be reasonable to assume that all those persons, to whom pension has been granted and who have accrued insurance period prior to 31 December 1995, are in similar and comparable circumstances. I.e. the legislator's purpose, in establishing the supplement, had been to provide special support to those persons, who had accrued long insurance period prior to 31 December 1995, but could not fully participate in the system of social insurance, which was newly established by the law of 2 November 1995 "On State pensions". Moreover, Para 41 of Transitional

Provisions has always envisaged the insurance period accrued prior to 31 December 1995 as the main precondition for granting the supplement.

**Thus, in the context of the norm contested in the case under review, all those persons, who have insurance period accrued prior to 31 December 1995 and are entitled to a state pension, are in similar and comparable circumstances.**

**14.2.2.** Both the persons, to whom pension has been granted before the date defined by the contested norm – 31 December 2011, and the persons, to whom pension has been granted after this date, have insurance period that has been accrued prior to 31 December 1995. Whereas the supplement is to be disbursed only to one group of these persons, i.e., to the persons, to whom pension was granted prior to 31 December 2011. The other group is not entitled to the supplement.

**Thus, the contested norm has caused differential treatment of groups of persons, who are in similar and comparable circumstances.**

**14.2.3.** The Saeima notes that the legitimate aim of the contested norm is ensuring long-term stability of the special budget. Whereas the Applicant notes that economising of financial resources at the expense of the least protected group of society is inadmissible and, thus, this aim cannot be recognised as being legitimate.

It follows from the annotation to the draft law, which introduced the contested norm into the law “On State Pensions” that was adopted with the aim of balancing the revenue and expenditure of the special budget and, thus, to ensure sustainability of the social insurance system (*see annotation to the draft law “Amendments to the Law “On State Pensions””, draft law Reg. No. 81/Lp10, submitted on 7 December 2010*). The Constitutional Court has already recognised that even if the fundamental rights included in Article 109 of the Satversme are restricted, the aim of ensuring sustainability of the special budget should be recognised as being legitimate. Thus, the legislator had not only the right, but also obligation to act and to take care of the sustainability of the social insurance system. Otherwise meeting of other obligations of the State, *inter alia*, exercise of other social rights would have been hindered. The legislator has the obligation to ensure sustainability of the pension system,

guaranteeing that also the coming generations would be able to exercise the right to social security (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 22*).

Moreover, the hasty and inconsiderate decision in the field of social policy to increase the supplement to 70 santims for each year of insurance period influenced the sustainability of the special budget (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 31.1.2*).

It follows both from the information provided by the Ministry of Welfare and the Conception on the Social Insurance System that the balance (accruals) of the special budget is rapidly decreasing. In the period from 1 January 2009 to 1 January 2013 the decrease reached approximately 750 million lats (*see Conception on the Social Insurance System, p. 8, and the letter of 7 September 2012 by the Ministry of Welfare to the Constitutional Court No.34-1-02/1869, Case Materials, p. 94*). Therefore the adoption of the contested norm was one of the means for reaching the legitimate aim. For example, the Ministry of Welfare notes that in the period from 1 January 2012 to 1 July 2012 the contested norm created savings in the amount of approximately 540 thousand lats (*see the letter of 7 September 2012 by the Ministry of Welfare to the Constitutional Court No.34-1-02/1869, Case Materials, p. 93*). Whereas the Saeima, referring to the Cabinet's estimates, notes that in 2012 it was planned to save with the help of the contested norm 2.6 million lats, but in 2013 – 7.2 million lats (*see written reply by the Saeima, Case Materials, p. 28*).

**Thus, the contested norm ensures the sustainability of the special budget, which complies with the legitimate aim of the contested norm – protecting other persons' rights.**

**14.2.4.** The Applicant notes that the contested norm lack reasonable grounds, since no alternatives were examined in the process of its adoption. For example, the Applicant indicates as one of the alternatives the possibility to continue granting the supplement, but at the same time envisaging equal decrease of it for all persons.

To establish, whether the legislator has exercised its discretion in compliance with the Satversme, the Constitutional Court in its rulings has assessed, whether it had considered alternatives to the contested norm (*see, for example, Judgement of 26*

November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 21, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 30.2). Even if the fundamental rights of any group are not restricted, but the legislator had intended to establish differential treatment of groups of persons, who are in similar and comparable circumstances, the legislator has the obligation to consider, in view of the concrete situation and circumstances, alternatives to the envisaged legal regulation. Meeting this obligation, *inter alia*, ensures taking of a better-considered decision.

The Constitutional Court does not uphold the Applicant's argument that no alternatives were assessed in the process of adopting the contested norm.

The Cabinet of Ministers elaborated the contested norm, taking as the basis the analysis of the situation included in the Conception on the Social Insurance System, as well as various possible solutions for ensuring the sustainability of the special budget included in it.

The Conception on the Social Insurance System shows that a number of solutions were offered to reach the aforementioned aim, and it examined, for example, the following alternative solutions: increasing the rate of contributions, decreasing the amount of various services of the state social insurance system, *inter alia*, pensions and benefits, borrowing from the State Treasury or applying the principle of actual contributions to all types of social insurance. However, all these possible models for action were assessed as more restrictive to the rights of persons and less favourable to persons' interests (*see, Conception on the Social Insurance System, pp. 21 – 39*).

The annotation to the draft law, which introduced the contested norm into the law "On State Pensions", also contains a similar assessment (*see annotation to the draft law "Amendments to the Law "On State Pensions", draft law Reg. No. 81/Lp10, submitted on 7 December 2010*).

Discussions about various possible wordings of Para 41 of Transitional provisions had taken place also at the Saeima Budget and Finance (Taxation) Committee. For example, the possibility to provide that the supplement would be granted to those persons, whose old age or disability pension did not exceed 135 lats per month, was discussed. A possibility to grant the supplement only to those persons, whose pensions did not exceed eleven fold state social security benefit, was also

examined (*see minutes of the sitting of the Saeima Budget and Finance (Taxation) Committee on 14 December 2010 No. 19, Case Materials, pp. 50 and 51*).

Even though the Saeima Budget and Finance (Taxation) Committee rejected these proposals and the Saeima voted in support for the proposal with regard to the supplement offered by the Cabinet of Ministers, there are no grounds to consider that in the process of elaborating and adopting the contested norms alternative solutions were not considered. Likewise, the fact the legislator did not adopt the alternative to the contested norm, which the Applicant or any of the summoned persons deem to be most useful, does not prove the incompatibility of the contested norm with the Satversme.

If in the field of social rights a number of alternatives exist, which can be objectively substantiated and are equally appropriate for reaching the legitimate aim, then the choice of the particular solution first of all falls with the legislator's competence. The Constitutional Court must verify, whether the alternatives were assessed. However, it is not the task of the Court to replace the selected solution with the alternative preferred by the Applicant, nor to reassess the correctness of decisions based upon social policy usefulness considerations, nor to perform reallocation of the financial resources of the State budget, including the special budget, in favour of reaching other aims.

Thus, at the time when the contested norm was elaborated, alternative solutions were considered.

**14.3.** The Applicant holds that the contested norm is also incompatible with the principle of legal certainty.

The principle of legal certainty is inseparably linked with the principle of a judicial state. The Constitutional Court has noted that in compliance with the principle of legal certainty state institutions in their activities must be consistent with regard to the regulatory enactments they have issued and must abide by legal certainty, which persons might develop in accordance with a particular legal norm. Whereas an individual, in accordance with this principle, can rely upon constancy and invariability of a legal norm. He or she can safely plan his or her future in connection with the rights granted by this norm (*see Judgement of 19 March 2002 by the Constitutional*

*Court in Case No. 2001-12-01, Para 3.2 of the Findings, and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 21).*

The principle of legal certainty, *inter alia*, requires protecting the certainty that a person has developed regarding preservation or exercise of his or her rights. This includes the State's obligation to meet the commitments it has undertaken vis-à-vis persons. Otherwise persons' trust into the State and law would be lost.

However, the principle of legal certainty does not exclude the possibility for the State to amend the existing legal regulation. A contrary approach would lead to the State's inability to respond to changing circumstances of life. However, also in amending the legal regulation the State must take into consideration the rights, with regard to maintenance or exercise of which a person could legally, validly and reasonably rely upon. The principle of legal certainty requires the State, in amending legal regulation, to abide by a reasonable balance between a person's certainty and those interests, for the ensuring of which the regulating is amended.

Thus, to assess, whether a legal act, which has determined derogation from the rights granted to a person, complies with the principle of legal certainty, it must be assessed:

- 1) whether a person had developed legal certainty with regard to maintaining or exercising certain rights; and
- 2) whether a reasonable balance has been observed between the protection of a person's legal certainty and ensuring the interests of society (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 23*).

In assessing the possible infringement upon a person's rights to additional measures of social support, the Constitutional Court has recognised that if the legal regulation does not apply to the rights already granted to persons, but only to expected rights, the level of legal protection is lower. However, if the legal regulation affects rights, which would be granted to persons after a longer period of time, persons cannot have developed valid and reasonable certainty regarding obtaining additional measures of social support at all (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 24*).

The findings expressed in the case law of the Constitutional Court are applicable also to the case under review. I.e., the contested norm was adopted already on 20 December 2010 and entered into force on 1 January 2011. Thus, the legal regulation envisaged a sufficiently long period – one year – in order for persons reaching the retirement age after 31 December 2011 to plan their actions accordingly. Thus, in the case under review there are no grounds to consider that the persons, to whom the supplement had not been granted yet, had developed legal certainty regarding the receipt of the supplement as an additional measure of social support.

**Thus, the contested norm complies both with Article 109 of the Satversme and the first sentence of Article 91 of the Satversme.**

### **The Ruling**

On the basis of Section 30– 32 of the Constitutional Court Law the Constitutional Court

**held :**

**to recognise the words and numbers in Para 41 of Transitional Provisions of the law “On State Pensions” “until 31 December 2011” as being compatible with Article 91 and Article 109 of the Satversme of the Republic of Latvia.**

The Judgement is final and subject to appeal.

The Judgement enters into force as of the day of its publication.

Chairperson of the court sitting

G. Kūtris