



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT ON BEHALF OF THE REPUBLIC OF LATVIA in Case No. 2012-09-01 31 January 2013, Riga

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 the application by the Department of Administrative Cases of the Supreme Court Senate,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17(1) and Para 28¹ of the Constitutional Court Law, on 8 January 2013 examined at a court sitting in written procedure case

“On Compliance of Para 16(1) of Transitional Provisions of the Law “On State Pensions”, insofar as it Applies to Disability Pension Recalculation Formula in Case of Change of the Disability Group Provided that the Beneficiary of Disability Pension before the Change of the Disability Group was an Employee or Made Social Contributions, with Article 91 and Article 109 of the Satversme”.

The Facts

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

1.1. When adopting the law “On State Pensions” (hereinafter – the Pension Law), the Saeima included in it the Transitional Provisions, *inter alia*, Para 16(1) thereof.

The respective legal norm provides that pensions, including also disability pensions, granted before the coming into force of this law, are not to be recalculated, except for the cases, if the insurance period, accrued until the day of coming into force of this law, has been supplemented, if the family composition has changed, affecting those family members, who are entitled to survivor’s pension, or if the disability group has changed. In these cases the disability pension or the survivor’s pension was to be recalculated using the formula $P = 0.3 \times VA + 0.004 \times VA \times AS \times GL$, whereas P is pension; VA is the average salary subject to insurance contributions of the previous year – the following rule was in force with regard to this criterion: if this salary was smaller than the one used previously to calculate pension, the previous salary should be kept; AS – full years of insurance period; GL – the number of those family members, who are entitled to survivor’s pension – this criterion had to be taken into account in calculating the survivor’s pension.

1.2. On 27 December 1996 the Saeima adopted the law “Amendments to the Law “On State pensions””, which came into force on 7 January 1997.

This law, *inter alia*, amended also Para 16 of the Transitional Provisions of the Pension Law, adding to its first sentence, after the words “before the coming into force of this law” names and numbers “but as regards disability pension – before 1 January 1997”. Sub-para 1 of this paragraph was also simultaneously amended, substituting words “until the date when this law came into force” by words and numbers “until 1 January 1996” and in the legend of the criteria of the formula included in this law substituting the words “VA – the average salary subject to insurance contributions of the previous year; if this salary is lower than the one used to calculate the pension before, the previous salary shall be retained” by words “VA – the last average salary subject to insurance contributions, which was applied to define the amount of pension before recalculation of the pension”. Whereas in the explanation of the criterion “GL” of the formula included in this sub-paragraph the second sentence was deleted. Thus, the introductory part and sub-paragraph 1 of Para 16 in the Transitional Provisions of the Pension Law was expressed in the following wording:

“Pensions, which were granted before this Law came into force, but in relation to the disability pension – before 1 January 1997, shall not be recalculated, except for the following cases, when the recalculation shall be made in the following order:

1) if the length of period of insurance accrued up to 1 January 1996 has been supplemented, if there have been changes in the family composition, which affect the family members who have the right to a survivor’s pension, and if the disability group has changed, the old-age, disability or survivor’s pension shall be recalculated on the basis of the formula:

$$P = 0.3 \times VA + 0.004 \times AS \times GL$$

P – the pension

VA – the last average wage subject to insurance contributions that was applied in specifying the amount of the pension before the recalculation of the pension,

AS – the length of period of insurance in complete years, and

GL – the number of family members who have a right to receive a survivor’s pension.”

2. The Applicant – the Department of Administrative Cases of the Supreme Court Senate (hereinafter – the Senate) – reviewing the case No. A42651608, which was initiated on the basis of application by Uldis Strautkalns regarding revoking part of the decision of 8 July 2008 by the State Social Insurance Agency (hereinafter also – SSIA) No. 52-14/227/4299 and adopting a more favourable administrative act in connection with U.Strautkalns’ cassation complaint regarding the decision of 12 October 2011 by the Administrative Regional Court, decided to suspend judicial proceedings and submit an application to the Constitutional Court. The Application contains a request to assess compatibility of Para 16(1) of the Transitional Provisions of the Pension Law (hereinafter – the contested norm) with Article 91 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – Satversme).

It was established in the framework of the case under review before the Senate that the applicant U.Strautkalns was a disabled person. In 1986 his Group III disability was determined and on 1 September 1987 he was granted Group III disability pension, which he received until November 1996. Upon U. Strautkalns’ request the

disbursement of Group III disability pension to him was renewed in accordance with order of 26 September 2006 by SSIA.

On 6 May 2008 Group II disability was determined for U. Strautkalns. Therefore he turned to SSIA, requesting recalculation of the amount of disability pension to be disbursed to him due to the change of his disability group, taking into consideration the accrued insurance period and the compulsory social insurance contributions made by him (hereinafter also – social contributions) after 1 January 1996. SSIA, by the aforementioned order of 8 July 2008, recalculated U.Strautkalns' disability pension, taking into consideration his accrued insurance period. However, SSIA, in recalculating the pension, did not take into consideration social contributions made by him.

The Administrative District Court, reviewing the application submitted by U.Strautkalns requesting revoking the part of SSIA decision regarding the recalculation of his disability pension, without taking into consideration the social contributions made by him, concluded that the disability pension had been granted to U.Strautkalns in 1987, and the disbursement of it was renewed in 2006, therefore those terms regarding re-calculation of pensions included in the Pension Law that pertained to disability pensions granted prior to 1 January 1997 were applicable, i.e. – the contested norm. The same conclusion was made by the Administrative Regional Court, which reviewed U.Strautkalns' appeal.

The Senate holds that the contested norm, insofar it applies to the formula for recalculating disability pension in case the disability group is changed, if the recipient of the disability pension until the change of the disability group had been an employee and had made compulsory social insurance contributions, is incompatible with Article 91 and Article 109 of the Satversme.

2.1. The Senate, substantiating incompatibility of the contested norm with Article 109 of the Satversme, notes that in accordance with the formula that the contested form contains and which is applicable to recalculation of disability pensions granted prior to 1 January 1997, one of the elements in the formula is “VA”, which is the respective person's average salary subject to social insurance contributions. Since initially U.Strautkalns was granted the disability pension in 1987, as of 1 October 1995

it has been recalculated in accordance with the order of 13 September 1995 by the Ministry of Welfare No. 250 “On Increasing the Amount of Pension”, taking into consideration the average salary of employees in the economy in the 1st quarter of 1995. Thus, the element “VA” in the calculation formula has remained unchanged, even though he, as an employee, had made social contributions after 1 January 1997.

The Senate holds that the procedure for calculating disability pensions, envisaged by the contested norm, would be substantiated if the persons with disability had not worked after 1 January 1997 and had not made social contributions. However, in a situation where a person continued working after 1 January 1997 and made social contributions, moreover, his disability group changed to a more severe one, such procedure for calculating is unsubstantiated. In this situation the amount of recalculated disability pensions is not linked with the social contributions made by persons, but remains pegged to a statistical indicator – the average salary of employees in the economy in 1995.

Moreover, recalculation of disability pension due to change of disability group cannot be considered to be simple recalculation of the amount of pension, as it is, for example, if the insurance period envisaged by the contested norm is supplemented. With the change of the disability group the insurance case itself changes – a person’s health has deteriorated and his or her loss of the capacity for work has increased. Therefore, the Senate holds, the recalculation of disability pension in connection with the change of disability group, essentially, should be regarded as a new insurance case.

2.2. To substantiate incompatibility with Article 91 of the Satversme, the Senate notes that in the case under review two comparable groups should be identified, i.e., persons with Group III disability, who were granted disability pension prior to 1 January 1997 and who continue to work and make social contributions and acquire Group II disability, on the one hand, and, on the other hand, socially insured employees, who after 1997 immediately obtain Group II disability. These groups of persons have one shared feature: the status of a socially insured employee after 1 January 1997 and determination of Group II disability after the same date.

However, differential treatment of these groups of persons is allowed: as regards the first group of persons, Group II disability pension is determined in accordance with the formula included in the contested norm, which does not envisage

taking into consideration the social contributions made by a person; however, as regards the second group of persons, Group II disability pension is calculated in accordance with the formula included in Para 1 of Section 16(1) of the Pension Law, which, *inter alia*, envisages that the social contributions made by the person are also taken into consideration. Depending upon the method of calculation chosen, the amount of pensions in the respective cases can differ rather greatly, and this particular case this difference manifests itself as a disability pension, which is three times smaller.

The Senate recognizes that the different feature of these comparable groups is the initial date of granting the disability pension, i.e., whether the pension was granted prior 1 January 1997 and – respectively – whether the granting of it was or was not based upon the social contributions made by the person. However, in this particular case both comparable groups are better characterised not by the date of granting the disability pension, but by the participation of the persons, belonging to both groups, in the social insurance system after 1 January 1997.

The Senate holds that the differential treatment of both groups of persons has no reasonable grounds and, thus, the restriction to persons' rights caused by it has no legitimate aim. Moreover, this restriction is disproportional, since the loss caused to a private person – disbursement of disability pension in a several times smaller amount – exceeds the public benefit.

3. The institution, which adopted the contested act, – **the Saeima** – holds that the contested norm complies with Article 91 and Article 109 of the Satversme.

The Saeima holds that the Senate has discerned a violation of Article 109 of the Satversme in the fact that the contested norm is incompatible with Article 91 of the Satversme. Therefore it must be established within the framework of this case, whether the legislator, in adopting the contested norm, has met the positive obligations of the State that follow from Article 109 of the Satversme and has abided by the principle of legal equality.

The Saeima notes that since 1 January 1996 the social insurance system is based upon individualised social contributions. In a generalised case, an employee is subject to all kinds of social insurance, *inter alia*, also insurance against the disability

risk. Its share in the total rate of social insurance contributions, which in 2012 was 35.09 per cent, was 3.16 per cent for disability insurance. Such rate of contributions for disability insurance is to be considered as being low. Thus, also the contributions to disability insurance made by persons are small. Therefore the principle of solidarity, not the principle of accrual is most directly operational in the system of disability insurance. The amount of disability pensions, in difference to the amount of old age pension, is not directly dependent upon the accrued pension capital. The social insurance contributions made from the salaries of employees are being paid to the persons with disability, without creating personalised accruals.

In this regard the Saeima does not uphold the Senate's opinion that upon the change of disability group from the third to second group, the re-calculation of pension cannot be considered as simple re-calculation of pensions, which is in the case of supplementing the insurance period. Social insurance services are aimed at compensating for a person's losses in connection with disease, old age or disability – partial or total loss of capacity for work. Since the loss of capacity for work in the case of Group I and Group II disability is very large, the situation should not arise that a person, after having been granted the disability status, continues to work and makes social insurance contributions from revenue, which exceeds the one before the disability status was granted. The Saeima substantiates this conclusion by the assumption that a person with very severe or severe disability usually cannot work full-time. If, however, a person is able to work, it means that he or she is able to ensure income himself or herself.

To substantiate compatibility of the contested norm with Article 91 of the Satversme, the Saeima notes that it does not uphold the statement by the Senate, i.e., that persons with Group III disability, to whom disability pension was granted prior to 1 January 1997 and who continue working after this date and make social contributions and for whom Group II disability is determined, are in similar and comparable circumstances with socially insured employees, who after 1 January 1997 immediately are granted Group II disability status.

Essential differences are said to exist between the groups of persons compared by the Senate. I.e., as regards the first group of persons the disability pension is recalculated due to change of the disability group in accordance with the formula

included in the contested norm; however, as regards the second group – it is granted for the first time in accordance with the first, second and third part of Section 16 of the Pension Law.

Whereas the recalculation of disability pensions for both groups is performed, taking into account only a person's accrued insurance period, as provided for by Section 24(5) and Para 16(4) of the Transitional Provisions of the Pension Law. In both cases the same formulae, which were used in determining the initial amount of pension, are used. Thus, in recalculating all disability pensions, irrespectively of the date when these were granted, the salary subject to insurance contributions, which was taken into consideration when the disability pension was granted initially, is used. Thus, in recalculating the disability pension, a person's salary subject to insurance contributions, is not changed.

Moreover, the Saeima notes, that pursuant to Para 4 and Para 5 of Cabinet Regulation of 22 December 2009 No. 1581 "On the Procedure for Reviewing the Amount of State Pensions, Compensation for Lost Capacity for Work and Survivor's Benefit" (hereinafter – Regulation No. 1581), for all persons the average salary subject to insurance contributions, which was used in initial calculations and granting of the disability pension, is updated in accordance with inflation changes in the country.

4. The summoned person – the **Saeima Social and Employment Matters Committee** (hereinafter – the Committee) – notes that it has not had discussions on the possibility to amend the contested norms and that the organisations representing disabled persons have not submitted such proposals either.

The Committee emphasizes in particular that all disability pensions – both the ones granted prior to 1 January 1997 and the ones granted after it – are recalculated in accordance with the same terms, i.e., by taking into consideration the insurance period accrued by the person, not the social contributions made for disability insurance. Social contributions are taken into account in determining the amount of old-age pension, but in the case of disability pensions the principle of solidarity operates. Moreover, disability pension from the social insurance budget is paid also to persons, who have been granted it prior to 1 January 1997 and, thus, could not make individualised social contributions.

5. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with Article 109 of the Satversme. Whereas the compatibility of the contested norm with Article 91 of the Satversme should not be reviewed.

5.1. The Ombudsman notes that persons with Group III disability, who have been granted disability pension prior to 1 January 1997, but who continue working, make social contributions and acquire Group II disability, and the comparable group noted by the Senate – socially insured employees, who become disabled persons with Group II disability after 1 January 1997, are groups of persons to whom essentially different legal regulation applies.

Firstly, regulatory enactments do not envisage recalculation of the average salary subject to insurance contributions also in those cases, where a person continues to work and makes social contributions. Secondly, the Senate is comparing the recalculation of the disability pension, when the disability group changes from the third to the second, with initial granting of a disability pension, as regard which the regulatory enactments currently set out different legal regulation and procedure of calculation. Pursuant to the regulation presently in force, a change of the disability group is not considered to be a new insurance case. Therefore persons with Group III disability, who have been granted disability pension prior to 1 January 1997 and who continue working after this date, make social contributions and acquire Group II disability, and socially insured employees, who immediately acquire Group II disability after 1 January 1997, are not in similar and in accordance to concrete criteria comparable circumstances. Therefore compatibility of the contested norm with Article 91 of the Satversme should not be reviewed.

5.2. The Ombudsman, assessing compatibility of the contested norm with Article 109 of the Satversme, notes: the principle that social insurance disbursements are proportional to the social contributions made follows from the social insurance model that exists in Latvia. I.e., the amount of social contributions based pensions, *inter alia*, of disability pensions, depends upon a person's income subject to social contributions. However, as regards persons, to whom disability pension has been granted prior to 1 January 1997 and who continue working and making social

contributions after this date, the amount of disability pension does not depend upon the amount of social contributions made. Therefore, for these persons, in case the disability pension is recalculated, the contested norm does not ensure a connection between the social contributions made after 1 January 1997 and the amount of disability pension. Thus, the right to social security, guaranteed in Article 109 of the Satversme, is restricted.

The Ombudsman holds that this restriction is incompatible with the Satversme. The legislator, in adopting the contested norm, had the aim to ensure the stability and sustainability of the social contributions based social insurance system and, thus, also to protect the welfare of society. However, the contested norm does not reach this aim.

Moreover, the Ombudsman does not uphold the statement included in the written reply by the Saeima that the principle of solidarity, not the principle of accrual operates in the system of disability insurance system, contrary to the system of state old-age pensions. Solidarity between those making social contributions and the recipients of social insurance services is allegedly one of the basic principles of Latvia's social insurance system. In accordance with this principle, the social contributions made by employees are disbursed to the currently disabled persons. Due to this reason the amount of disability pensions in the system of disability insurance is said not to be dependent upon social contributions. It follows from Section 16 of the Pension Law that a person, who has made social contributions for disability insurance for at least 36 months, is entitled to, firstly, receive disability pension, and, secondly, feel sure that the relationship between the contributions made and the amount of disability pension will be reasonable. The contested norm, insofar it applies to the formula for recalculating the disability pension in case the disability group changes, does not ensure existence of a reasonable connection like that.

In view of the above mentioned, the Ombudsman holds that the contested norm is incompatible with the principle of proportionality, as the restriction established by it is not necessary, i.e., the aim of the contested norm can be reached by other measures, less restrictive to an individual's rights.

6. The summoned person – **the Ministry of Welfare** – recognizes that the two groups of persons, identified by the Senate, have two elements in common – i.e., the

status of a socially insured employee after 1 January 1997 and Group II disability determined after this date, – and a different element – the time when the disability pension was granted, which is the decisive element, whether the amount of pension is or is not based upon the social contributions made by the person, have been chosen foundedly.

However, it must be taken into consideration that the common feature of these two groups is the procedure for recalculating pensions, set out in Section 24 and Para 16(4) in the Transitional Provisions of the Pension Law, pursuant to which pension, irrespectively of the time it has been initially granted, is recalculated, taking into consideration the supplemented insurance period of the person, but not the social contributions made by this person. Moreover, these groups of persons are also united by the procedure for updating pensions, regulated in Para 4 and Para 5 of Regulation No. 1581, which envisage that when disability pensions are recalculated due to change of the disability group, irrespectively of the time when these were initially granted, they are updated in conformity with inflation changes in the country.

Since the groups compared by the Senate are in different situations as to the time when the pension was initially granted, the contested norms envisage differential treatment of persons who are in different legal situations. Therefore, it cannot be assumed that the contested norm creates restriction to the rights of private persons. Therefore, the legitimate aim of the contested norm and measures for reaching it cannot be assessed.

The case under review before the Senate, where a person continues working after he has been granted disability pension, moreover, receiving higher salary for work and thus, being able to provide for himself, is not typical. The Senate has not taken into consideration that in a case, where a person, after he or she has been granted disability pension, continues working and makes social contributions from a lower salary than the one used to calculate disability pension (for example, if a person due to disability works part-time), in re-calculating pension and taking this lower salary as the basis, the amount of disability pension would have to be decreased. Therefore, legal acts that regulate pensions comprise the principle that all disability pensions are recalculated, taking into consideration the additional insurance period accrued by the person, but no the additional social contributions made.

The Ministry of Welfare upholds the opinion noted in the written reply by the Saeima that the principle of solidarity is not immediately at work in the system of disability insurance. Since 1 January 1996 the pension capital is registered in the personal account of a socially insured person, which is taken into consideration in granting old-age pension. Thus, the amount of pension is directly dependent upon the pension capital accrued by the person. However, as regards disability pension, accruals are not made for calculating the part of pension, which could be added to the disability pension granted previously, as is the case in recalculating old-age pension. The legislator has chosen to reallocate the collected social contributions for disability insurance among recipients of disability pension, defining appropriate amounts to concrete groups of recipients of these pensions both upon granting and recalculating pension, and also ensuring the minimum amount of pension.

7. The summoned person – **the State Social Insurance Agency**– holds that it is not correct to compare persons, who already have been granted disability pensions and whose disability group has changed, with persons, to whom disability pension is granted due to the fact that for them Group II disability has been determined for the first time, since as regards those persons, whose disability group changes, the disability pension is recalculated, but as regards persons, who acquire disability pension, disability pension is granted. The conditions for granting a pension cannot be compared to the conditions for recalculating a pension, since the disability pensions, which were granted prior 1 January 1997, in difference to disability pensions granted after this date, were not social contributions based.

It follows from the terms for recalculating disability pensions included in the Pension Law that all Group I and Group II disability pensions, irrespectively of the date when these were granted and the formula for recalculating them, are recalculated by taking into consideration the additional accrued insurance period, but not the salary subject to social contributions for disability insurance after the pension was granted. Hence, similar conditions for recalculating pension are envisaged for all recipients of disability pensions, who continue working after the pension has been granted to them. The same principle is applied to recalculation of disability pension in case the disability group has changed. Therefore SSIA holds that by changing the terms of

recalculating pensions for one group of persons, the principle of equality would be infringed as regards other recipients of disability pensions, for whom in defining the amount of pensions the accrued insurance period is taken into consideration, but not the social contributions.

In the case under review, the Senate has examined an example, where a recipient of disability pension continued working and received high salary, and during the period of work his disability group changed for a more severe one. If in this particular case the social contributions made the person were taken into account in recalculating the pension, in 2008 U.Strautkaln's Group II disability pension would have been recalculated in the amount of 301.50 lats, not in the amount of 103.01 lats. SSIA underlines that this amount of pension would have been calculated, if the disability pension were granted to a person for the first time in accordance with Para 1 of Section 16(1) of the Pension Law. However, in the case under review, the pension was not granted to the person for the first time, but was recalculated due to the change of the disability group.

8. The summoned person – **Anita Kovaļevska**, lecturer and doctoral student of the University of Latvia – holds that the contested norm is incompatible with the first sentence of Article 91 of the Satversme and Article 109.

A. Kovaļevska, assessing the compatibility of the contested norm with Article 91 of the Satversme, concludes that the groups compared by the Senate have both common and different elements. Since socially insured persons have the right to receive disbursements from the state social insurance budget, under conditions when two socially insured persons have made social contributions for identical period of time and from identical salaries and they have been granted Group II disability status in the same period of time, these persons should be treated equally.

However, the contested norm envisages differential treatment of groups of persons, since as regards one group the average salary of employees in economy is taken into consideration in calculating the disability pension, which was applied when setting the amount of pension prior to its recalculation; however, as regards the other group, the average salary subject to insurance contributions in any 36 successive months during the last five years before the disability pension is granted is taken into

consideration. Thus, in one case the average salary of employees in the economy, as it was more than 10 years ago, is taken into consideration, but in the other case – the average salary subject to insurance considerations of the concrete person.

This differential treatment allegedly has a legitimate aim; however, the contested norm ensures reaching the legitimate aim only in those cases, if the person's income after the disability pension was granted decreased. Whereas in those case where the income has increased, the only thing, which is ensured is that the amount of the recalculated pensions is not smaller than the one granted previously.

Therefore one cannot uphold the statement by the Saeima that the persons after granting disability should lose their job, or that, if they continue working and make social contributions, their revenue, due to decreased capacity for work, will always be smaller. First of all, pursuant to regulatory enactments, employers have been imposed the obligation to make reasonable adjustments to the work place, so that a persons with disability could continue working. Secondly, a person with disability can increase his or her qualifications, accrue experience over time, as the result of which the revenue can increase. Thirdly, if the period of time between the granting of disability for the first time and the change of disability group is ten years or even longer, the average salary in the country can increase so significantly that a person with disability, even working part-time, could receive remuneration exceeding the one he or she received before disability was granted. In cases like these the contested norm. instead of ensuring additional protection, makes the circumstances of the concrete persons worse.

A. Kovaļevska sees a less restrictive and fairer solution in the law “On Compulsory Social Insurance against Accidents at Work and Occupational Diseases”. I.e., Section 20(5) of this law provides that in case an insured person receives compensation for the loss of the capacity for work and this person suffers a repeated accident at work or an occupation disease is diagnosed, this remuneration is recalculated in accordance with the newly identified loss of capacity for work. In such a case the average monthly salary subject to insurance contributions is identical to the one, which was set for the person when the previous compensation for the loss of the capacity for work was granted, except for the cases, when the average monthly salary subject so insurance contributions, which is calculated after the repeated accident at

work or diagnosing an occupational disease, exceeds the one that was calculated previously.

The fact that the persons belonging to the first comparable group already were recipients of disability pensions prior Group II disability was determined, but the persons belonging to the second comparable group did not receive it, cannot justify differential treatment. Firstly, as regards the persons belonging to the second group, before Group II disability was determined, loss of capacity for work was not identified, therefore they did not need the disability pension due to lack of income or additional expenditure. Secondly, it is impossible to ensure that in all cases persons, who have made social contributions in equal amount, would also during their life-time receive equal amount of disbursements, since persons have different lifespans, the number of benefits granted to them, as well as periods during which these benefits are disbursed differ. Moreover, in the whole system of state social insurance the principle of solidarity operates, but not the principle of actual accruals, pursuant to which persons could receive disbursements only within the amount of contributions made. This principle does not prohibit simultaneous application of the principle of justice or equivalence, pursuant to which the disbursements that a person receives from the social insurance budget should be proportional to the contributions made by him or her, irrespectively of the amount of disbursements a person has received in previous periods and whether his or her contributions cover the disbursements.

A. Kovaļevska, analysing compatibility of the contested norm with Article 109 of the Satversme, underlines that in case if a person has made social contributions, a reasonable relationship should exist between a person's income, contributions calculated from it and the disbursements received. If it is not ensured to a person, subject to social insurance, that the disbursements are proportional to the contributions made, then a person's right to social security is restricted. A. Kovaļevska does not doubt that such restriction has been set out in law and that it has a legitimate aim, however, she holds that this restriction is disproportional, applying the criteria used in assessing the compatibility of the contested norm with Article 91 of the Satversme.

The Substantive Part

9. The Application contains a request to assess compatibility of the contested norm with Article 91 and Article 109 of the Satversme. In those cases, when the Constitutional Court had to review the compatibility of contested norms with both aforementioned norms of the Satversme, depending upon the concrete facts of cases under review, it assessed the compatibility of contested norm with the both aforementioned norms of the Satversme in interconnection (*see, for example, Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 12, and Judgement of 29 October 2010 in Case. 2010-17-01*), as well as subsequently – first of all assessing compatibility with one of these norms, and only then, if necessary, – with the second norm (*see, for example, Judgement of 21 June 2012 by the Constitutional Court in Case No. 2011-20-01*).

The Constitutional Court has concluded in its case law both that the State's obligation to create such social security system that would offer appropriate security in the case the disability risk sets in and that this system is functional follows from Article 109 of the Satversme (*see Judgement of 29 October 2010 by the Constitutional Court in Case No. 2010-17-01, and Judgement of 21 June 2012 in Case No. 2011-20-01*). However, the Satversme envisages neither a concrete sum of social security disbursements, nor conditions for calculating this sum or procedure for granting particular sums (*see, Judgement of 29 October 2010 by the Constitutional Court in Case No. 2010-17-01, Para 10.1.2 and Para 10.3, and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 19.1*). Moreover, it follows from the case law of the Constitutional Court that disability pensions should be recognised as a social service falling within the scope of Article 109 of the Satversme (*see, for example, Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01, Para 7, and Judgement of 21 June 2012 in Case No. 2011-20-01, Para 14*).

At the same time the Constitutional Court has emphasized that the legislator's actions, in adopting decisions in the field of social rights, must comply with the norms and principles of the Satversme (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 15.4*). Thus, for example, even

though the State's obligation to provide to a particular group of persons social services in accordance with the principle of equality does not follow from Article 109 of the Satversme, this obligation could follow from the fact that the particular social service is envisaged for another group of persons in similar and according to concrete criteria comparable circumstances, unless there are grounds to treat comparable groups of persons differently (*see, for example, Judgement of 2 February 2010 by the Constitutional Court in Case No. 2009-46-01*).

In such cases the Constitutional Court first of all assesses the compliance of the contested norm with Article 91 of the Satversme, and only after that – compliance with Article 109 of the Satversme (*see, for example, Judgement of 4 January 2007 by the Constitutional Court in Case No. 2006-13-01*).

10. The Constitutional Court has concluded that Article 91 of the Satversme comprises two closely interlinked principles: the principle of legal equality, enshrined in the first sentence of this Article, and the principle of prohibition of discrimination, enshrined in the second sentence of this Article (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9*).

It follows from the Application that the compatibility of the contested norm with Article 91 of the Satversme is contested only in the context of the first sentence of this Article, as the Senate points to the probable violation of the principle of equality.

Thus, the Constitutional Court will assess the compatibility of the contested norm with the first sentence of Article 91 of the Satversme.

11. The first sentence of Article 91 envisages: “All human beings in Latvia shall be equal before the law and the courts.” The Constitutional Court has noted that the principle of legal equality, enshrined in this norm of the Satversme, prohibits state institutions to adopt such norms, which without reasonable grounds allow differential treatment of persons, who are in similar and according to particular criteria comparable circumstances. The principle of equality permits and even demands differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for it. The principle of equality must guarantee

existence of a uniform legal order. However, the uniformity of such legal order does not mean levelling out, since equality allows differential treatment, if it is justifiable in a democratic society (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Substantive Part, and Judgement of 21 June 2012 in Case No. 2011-20-01, Para 15*).

Thus, to assess, whether the contested norm complies with the first sentence of Article 91 of the Satversme, the Constitutional Court must establish:

- 1) whether and which persons (groups of persons) are in similar and according to particular criteria comparable circumstances;
- 2) whether the contested norm envisages equal or differential treatment of these persons;
- 3) whether such 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, for example, Judgement of 18 February 2011 by the Constitutional Court in Case No. 2010-29-01, Para 12*).

12. Thus, the Constitutional Court must first of all establish, which persons are in similar and according to particular criteria comparable circumstances.

The Constitutional Court has already noted that two situations are never completely identical. A situation, which has one or several common characteristics with the situation under review, must be selected for comparison (*see, Judgement of 4 January 2007 by the Constitutional Court in Case No. 2006-13-0103, Para 7*). I.e., to identify whether and which groups of persons are in similar and comparable circumstances, the main characteristic uniting these groups must be identified (*see Judgement of 4 December 2003 by the Constitutional Court in Case No. 2003-14-01, Para 12*).

The Senate holds that in the case under review two groups of persons should be compared. I.e., on the one hand, persons like, for example, U. Strautkalns – socially insured employees, who in the period prior to 1 January 1997 had been granted Group III disability person and who have been worked after this date, make social contributions (*inter alia*, contributions to disability insurance) and acquire Group II

disability, and, on the other hand, socially ensured employees, who work after 1 January 1997, make social contributions (*inter alia*, contributions to disability insurance) and acquire Group II disability immediately.

Thus, the Constitutional Court will establish, which are the essential features characterising the group of persons, to which U.Strautkalns belongs, and whether these features are equally typical of these both groups of persons to be compared.

12.1. The Senate notes that the most essential elements shared by both groups of persons are the status of an employee after 1 January 1997 and the social contributions made (*inter alia*, contributions to disability insurance) for these persons.

Whereas the Saeima holds that these common elements are not the grounds to recalculate the disability pensions of such persons in connection with the social contributions made after the initial granting of the disability pension, since the principle of solidarity, not the principle of accruals operates in the system of disability pensions, in difference to the system of state old-age pensions.

The finding that making of social insurance contributions is an important criterion in establishing the scope of the State's discretion in the field of social services has been enshrined in the case law of the Constitutional Court. The united system of state social security system comprises two different systems – the system of social insurance and the system of social assistance, and the limits of the State's discretion vis-à-vis these two systems are different (*see Judgement of 21 June 2012 by the Constitutional Court in Case No. 2011-20-01, Para 16.1*). A persons right to claim against the State originates in the system of social insurance, in the framework of which a person makes social contributions (*see Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 22.2*).

Thus, making of social contributions is an essential unifying feature in those cases, when the common and different features of groups of persons receiving social services are assessed.

However, the Ministry of Welfare draws attention to the fact that since 1 January 1997 persons with Group I and Group II disability were not ensured against the risk of disability. Such persons have made social contributions to disability insurance only since 1 January 2003, when respective amendments to the law "On State Social Insurance" came into force. Prior to that date only persons with Group III

disability had to make social contributions to disability insurance. The Ministry of Welfare and also the Saeima note that in accordance with Sub-para 2.4. of the Cabinet Regulation of 27 December 2011 No.1026 “Regulation on the Allocation of the State Social Insurance Contribution Rate according to Types of State Social Insurance in 20102” the disability insurance rate was, accordingly, 3.16 per cent, but in the previous years it had fluctuated from 3.18 per cent to 2.55 per cent (*see Case Materials, pp. 99, 123 and 124*).

However, the fact pointed out by the Ministry of Welfare is of no relevance in the case under review, since it does not change the facts established within the framework of the administrative procedure, that social contributions to disability insurance had been made regarding U.Strautkalns for at least three years prior to 2008, when his Group II disability was determined (*see Case Materials, pp. 4, 48 and 49, as well as p. 70*), which in accordance with Section 14(1) of the Pension Law is sufficient grounds for a person to claim disability pension. Moreover, the amount of social contribution rates referred to, which is determined by the State, *per se* has no impact upon that fact that all persons, who have made social contributions for a period of time defined in regulatory enactments and a part of whose contributions has been channelled to disability insurance, are in similar and comparable circumstances.

In this context the Saeima’s opinion on differences in applying the solidarity principle in cases of old-age pensions and disability pensions cannot be upheld. The Constitutional Court has already noted that solidarity between the payers of social contributions and the recipients of social insurance services as one of the fundamental principles of state social insurance is characteristic of all types of compulsory social insurance (*see Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01, Para 11*). The principle of solidarity operates also within the framework of old-age pension system (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 23*). The different recording procedure for state old-age pensions and disability pensions, pointed out by the Ministry of Welfare, has been established for all socially insured persons, who make contributions, also in case, if these persons at the same time receive Group III disability pension. The Constitutional Court has already noted that disability pension is a kind of social service, which is linked with the social contributions made by the person (*see*

Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 13). Therefore, the Saeima's opinion that social contributions to disability insurance made by persons are comparatively low and therefore cannot be linked with the amount of disability pension received in the respective case, cannot be upheld.

Thus, the arguments noted by the Saeima and the Ministry of Welfare do not change the fact that both comparable groups have one common feature – social contributions have been made for all these persons.

Moreover, the Constitutional Court has concluded: the social insurance service to be received within the framework of social insurance system must be proportional to the social contributions made. Compared to other persons, who receive social insurance services, a person cannot be provided service, which is not proportionally commensurate to the social insurance contributions made by this person (*see Judgement of 14 January 2004 by the Constitutional Court in Case No. 2003-19-0103, Para 9.2*). The fundamental principle of social insurance system providing that the insurance remuneration, which a person receives from the social insurance budget, should be linked with the social contributions made by this person, operates also in other countries belonging to the circle of continental European law, for example, in Germany, where the system of social insurance is based upon similar principles as in Latvia (*see, for example, Becker J. Transferegerechtigkeit und Verfassung. Tübingen: Mohr Siebeck, 2001, pp. 100–111*).

Thus, a person *a fortiori* cannot be provided social service, in deciding the amount of which social contributions made by him or her are not taken into account altogether, if the taking amount of them would ensure to a person more beneficial conditions and if in providing the respective social insurance service to other persons its amount is linked with the social contributions made by these persons.

Thus, a person's status of an employee within the framework of the state social insurance system and the payment of social contributions for a period of time defined in regulatory enactments are essential elements shared by both comparable groups.

12.2. The Saeima emphasizes that essential differences exist between the two groups of persons compared by the Senate. I.e., as regards persons belonging to the first group, including U.Strautkalns, the disability pension is recalculated due to the

change of disability group, since these persons had been already granted disability pension due to acquiring disability in the past. Whereas as regards persons belonging to the second group, disability pension is granted for the first time in connection with the insurance case of disability risk setting in for the first time (*see Case Materials, p. 100*).

The Senate admits that such a difference between the two groups of persons can be identified. However, the Senate holds that in the particular case the comparable groups are better characterised not by the time of granting disability pension, but by the participation of persons belonging to both groups in the state social insurance system after 1 January 1997. Moreover, recalculation of disability pension due to change of disability group cannot be considered as a simple recalculation of the amount of pension, as it is, for example, in the case of supplementing to insurance period envisaged by the contested norm.

The Constitutional Court concludes that the difference noted by the Saeima exists. However, it should be taken into consideration that the case under review before the Senate deals with the issue of an insurance case – acquiring Group II disability – after 1 January 1997, i.e., after introduction of the social insurance system. Therefore in the case under review the fact, whether the amount of disability pensions of persons belonging to the two groups is determined by recalculating the disability pension granted previously or by calculating it anew, is of no relevance. In this case the most essential is the fact that the persons belonging to both groups for a similar period of time have made social contributions within the frameworks of social insurance system existing in the state.

Therefore the fact that for one group of persons in case of changed disability group the amount of disability pension was established by recalculating the pension that had been granted previously, but for the other group of persons this amount was determined by granting this pension for the first time does not prohibit comparing these groups of persons.

12.3. The Saeima also notes that persons like U.Strautkalns, who after acquiring Group III disability status continue working and for whom later granted Group I or Group II disability is determined, in difference to those socially insured employees, for

whom Group II disability is determined immediately, each month have received in addition to their salary also Group III disability pension (*see written reply by the Saeima, Case Materials, p. 105*).

However, neither is this characteristic of relevance in dealing with the issue, whether the previously identified common elements exist. Also in other cases the fact, whether a person has previously received one social service, does not influence the fact that a person is socially insured and entitled to receiving other service. For example, the fact that a person has received social disbursement due to temporary incapacity for work does not prohibit him or her to receive disability pension later (*see Judgement of 29 October 2010 in Case No. 2010-17-01, Para 9*).

Thus, the fact that one group of persons prior to having been granted Group I or Group II disability has received, but the other has not received Group III disability pension, does not prohibit comparing these groups of persons.

12.4. Thus, it can be concluded that the groups of persons compared in the case under review have the following common elements:

- 1) they are persons, whose disability has been determined, moreover, in both cases it is Group II disability;
- 2) Group II disability has been determined for the persons after 1 January 1997;
- 3) persons have worked and had been subject to the compulsory state social insurance, i.e., made social contributions (including contributions to disability insurance) after 1 January 1997.

13. In accordance with the formula included in the contested norm, for the group of persons, which is represented by U.Strautkalns, the amount of disability pension, in connection with the change of disability group from the third to the second, was determined by taking into consideration the average monthly salary of employees in the economy, which was used to determine the amount of pension prior it was recalculated – thus, prior to 1 January 1997, applying appropriate coefficient. Whereas to the persons belonging to the other comparable group the disability pension was granted for the first time due to establishment of Group II disability, the amount of their pension is determined by taking into consideration the average salary subject to

insurance contributions in any 36 successive months during the last five years before granting the disability pension.

Thus, even though persons belonging to both comparable groups have participated in the state social insurance system after 1 January 1997, in one case the criterion used to determine Group II disability pension is the average monthly salary of employees in the economy, as it was more than ten years ago, and a coefficient, whereas in the second case – the social contributions made by the particular person during the last three years.

Thus, differential treatment is exercised with regard to comparable groups of persons.

14. Upon establishing that persons, who are in similar and comparable circumstances, are treated differently, the Constitutional Court must assess, whether the differential treatment is justified, i.e., whether it has a legitimate aim and whether it complies with the principle of proportionality (*see Para 11 of this Judgement*).

14.1. In the procedure before the Constitutional Court the institution, which has adopted the contested act, in this case – the Saeima, has the obligation to indicate and substantiate the legitimate aim of the restriction to fundamental rights or differential treatment (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 12.2*). The Saeima has not indicated such an aim in its written reply.

However, it is noted in the written reply by the Saeima that a situation, where a person after acquiring disability continues to work and makes social contributions from a salary that exceeds the previous one, should not occur, since due to disability a person's capacity for work should decrease (*see Case Materials p. 104*). Whereas it follows from the statements made by the Ministry of Welfare that the contested norm usually ensures to persons larger amount of disability pension than in case if in recalculations of Group II disability pension the social contributions made by the particular insured person during the last years, when a person with Group III disability worked, perhaps, part-time or had an easier job, were taken into consideration (*see Case Materials, pp. 121 and 122*).

Thus, it can be concluded that the contested norm has the aim to protect the right to social security of such persons, whose income, if they were working after establishment of disability, would be lower than the one prior to acquiring disability, i.e., the aim is to ensure to ensure that the income of the persons, if the pension is recalculated, would not decrease.

Thus, the legitimate aim of the contested norm is the protection of other persons' rights.

14.2. To assess, whether the legal norm adopted by the legislator complies with the principle of proportionality, it must be established:

- 1) whether the measures used by the legislator are appropriate for reaching the legitimate aim;
- 2) whether such action is necessary, i.e. whether the legitimate aim can be reached by other measures, less restrictive to individual rights and legal interests;
- 3) whether the legislator's action is proportional or appropriate, i.e., whether the benefit gained by society exceeds the harm inflicted upon an individual's rights and legal interests.

If the assessment of the legal norm leads to the conclusion that it is incompatible with even one of these criteria, then it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Substantial Part*).

14.3. It follows from the information provided by the Saeima, by the Ministry of Welfare and SSIA that in the majority of cases the contested norm reaches its legitimate aim. For persons, who due to acquiring disability have fully or partially lost the capacity for work, it is usually difficult to retain the same level of income as before acquiring disability. Even if these persons continue working, the social contributions made are usually smaller compared to the period before acquiring disability, and when recalculating disability pension for such persons, its amount would be decreased (*see Case Materials pp. 103, 104, 121 and 122*). Thus, the contested norm, pursuant to which in recalculating pension the accrued insurance period, but not the social contributions made by the person is taken into consideration, ensures that the income of such persons does not decrease.

The Constitutional Court has recognised that in the field of social rights the legislator has the right to follow the presumption regarding the connection between the scope of lost capacity for work and the loss of income. If social disbursement that substitutes income is not envisaged for persons, whose loss of capacity for work is smaller than certain amount, it is presumed that a person is able to earn sufficient living for himself or herself. This presumption is not incompatible with the Satversme. In accordance with this presumption the social disbursement that substitutes income is not aimed at satisfying all those needs, which persons usually experience in connection with the particular social risk (*see Judgement of 29 October 2010 by the Constitutional Court in Case No. 2010-17-01, Para 10.4 and 11*).

However, the Constitutional Court has also concluded that the actual loss of particular scope of capacity for work *per se* does not mean that the person will experience income loss in the same amount, or *vice versa* – the retention of capacity of work of a certain scope *per se* does not mean that a person also in the future will be able to gain the same amount of income as before. Moreover, an insight has been enshrined in the case law of the Constitutional Court that whether persons, who receive social services, are in similar and according to particular criteria comparable circumstances, must be predominantly decided not according to formal characteristic, but by assessing the aims for establishing the particular social disbursement linked with social risk (*see, for example, Judgement of 2 November 2006 by the Constitutional Court in Case No. 2006-07-01, Para 15, Judgement of 2 February 2010 in Case No. 2009-46-01, Para 8.2, and Judgement of 15 March 2010 in Case No. 2009-44-01, Para 14*).

As it follows both from the materials of the case under review and the opinions of the summoned persons, the presumption that upon acquiring Group III disability a person's salary will definitely decrease, not always proves to be true. In the case under review the concrete person with Group III disability was able to start a professional career and follow it successfully for a long period of time, moreover, reaching such level of income that significantly exceeded his income before Group III disability was determined. Whereas after Group II disability was determined, this person could no longer continue his professional career.

However, by applying the contested norm in the situation of a concrete person, as little as possible decrease of income due to acquiring Group II disability is not ensured to the person, because pursuant to the contested norm when recalculating disability pension of persons, whose disability group changes from less severe to a more severe one, formally the same formula for calculations is used as the one when the insurance period is supplemented, without taking into consideration social contributions made by the person.

Thus, in cases that are similar to the one under review, the contested norm fails to reach its legitimate aim, and differential treatment of comparable groups of persons cannot be justified. Thus, the contested norm is incompatible with the first sentence of Article 91 of the Satversme.

15. Upon establishing incompatibility of the contested norm with even one article of the Satversme, it must be recognised as being unlawful and invalid, without assessing compatibility of this norm with other articles of the Satversme noted in the Application (*see, for example, Judgement of 4 January 2007 by the Constitutional Court in Case No. 2006-13-01, Para 11*). Since the norm that was contested in the case under review has been recognised as being incompatible with Article 91 of the Satversme, its compatibility with Article 109 of the Satversme must not be examined.

16. Pursuant to Section 32(1) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a norm of higher legal force, must be recognised as being invalid as of the day the Judgement by the Constitutional Court is pronounced, unless the Constitutional Court has ruled otherwise. In accordance with Para 11 of Section 31 of the Constitutional Court Law, a Constitutional Court, recognising a legal norm to be incompatible with a norm of higher legal force, must define the moment as of which the particular norm becomes invalid.

16.1. The Constitutional Court, exercising the rights granted to it by Section 32(3) of the Constitutional Court Law, must, to the extent possible, ensure that the situation, which might arise from the moment when the contested norms are declared invalid, until the moment the legislator has adopted new norms to substitute these,

should not cause violation of persons' fundamental rights guaranteed in the Satversme, as well as should not cause significant harm to the interests of the State or society (*see, for example, Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 2 May 2012 in Case No. 2011-17-03, Para 16*).

In order to ensure the compatibility of the contested norm with the Satversme, the Saeima must introduce amendments to the Pension Law. To fulfil this obligation, time is needed, therefore, looking at it from this vantage point, the most suitable solution would be to recognise the contested norm invalid as of a particular moment in the future.

16.2. However, in defining the moment as of which the contested norm becomes invalid, the Constitutional Court must assess, whether for the protection of fundamental rights of a person involved in the concrete administrative case, the contested norm should not be recognised as being invalid retroactively, and whether considerations exist, according to which the contested norm should be recognised as being invalid retroactively with regard to concrete persons (*see, for example, Judgement of 7 June 2012 by the Constitutional Court in Case No. 2011-19-01, Para 20*).

Recognising the contested norm invalid as of the date of its adoption with regard to the applicant in the administrative case U. Strautkalns is the only possibility to protect his fundamental rights. Moreover, on 6 June 2012 the Constitutional Court received a letter from the Administrative District Court, noting that the Court had suspended judicial proceedings in a similar case. At the same time, the possibility cannot be excluded that other person has turned to state institutions to defend his or her fundamental rights violated by the contested norm. The Constitutional Court, to the extent possible, must ensure that by defining the moment, as of which the contested norm becomes invalid with regard to a group of persons, the interests of these persons are not harmed (*see Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 10*). Therefore the contested norm must be declared invalid as of the date of its adoption with regard to all those persons who have started defending their interests before the respective state institutions or courts.

16.3. The Constitutional Court notes that after coming into force of this Judgement a situation may arise, where state institutions will have to decide on the way disability pensions should be calculated for U. Strautkalns and other persons in similar circumstances in cases, during the review of which the contested norm would have become invalid with respect to these persons, but the new regulation would not be adopted yet.

The Constitutional Court law authorises the Court to rule on ensuring the enforcement of the judgement, i.e., to define the legal consequences of its Judgements. Simultaneously, the Law not only authorises the Constitutional Court, but also imposes responsibility to ensure that its judgements would ensure legal stability and certainty in social reality (*see, for example, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1, and Judgement of 3 November 2011 in Case No. 2011-05-01, Para 24*).

The Constitutional Court has noted in its judgements on how to reach an outcome compatible with the Satversme when dealing with legal situations before new legal regulation has been drafted and adopted. One of the solutions is that the state institutions and courts must apply the legal norm, applying to it, by analogy, another regulation (*see, for example, Judgement of 6 June 2012 by the Constitutional Court in Case No. 2011-21-01, Para 13*).

In the case under review the Constitutional Court draws attention to the fact that before the new regulation is adopted it is possible, by analogy, to apply the formula for calculating disability pension envisaged in Section 16(1) of the Pension Law in cases, when the amount of disability pensions calculated by this method would exceed the amount calculated by applying the contested norm.

Pursuant to Section 30 – 32 of the Constitutional Court Law

the Constitutional Court

held:

- 1. To recognise Para 16(1) of transitional provisions of the law “On State Pensions”, insofar as it applies to disability pension recalculation**

formula in case of change of the disability group provided that the beneficiary of disability pension before the change of the disability group was an employee or made social contributions at least for three years incompatible with Article 91 of the Satversme and invalid as of 1 October 2013,

- 2. To recognise Para 16(1) of transitional provisions of the law “On State Pensions”, insofar as it applies to disability pension recalculation formula in case of change of the disability group provided that the beneficiary of disability pension before the change of the disability group was an employee or made social contributions at least for three years incompatible with the first sentence of Article 91 of the Satversme of the Republic of Latvia with regard to Uldis Strautkalns and other persons, who have started defending their infringed rights with general legal remedies, invalid as of the date of its adoption.**

The Judgement is final and not subject to appeal

The Judgement comes into force as of the day of its pronouncement.

The Chairperson of the Court Sitting

G. Kūtris