



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

**On Behalf of the Republic of Latvia**

**29 October 2010**

**Case No. 2010-17-01**

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to an application of Ms. Aina Lakstiņa-Lakstīgala, Ms. Jautrīte Maija Kronīte, Ms. Anna Salmane, Mr. Emīls Streipa, Mr. Vitalijs Pčelovs, Ms. Vizma Draveniece, as well as members of the 9<sup>th</sup> Saeima [Parliament] Mr. Vladimirs Buzajevs, Mr. Jānis Urbanovičs, Mr. Jakovs Pliners, Mr. Valērijs Agešins, Mr. Juris Sokolovskis, Mr. Aleksejs Holostovs, Mr. Miroslavs Mitrofanovs, Mr. Andrejs Klementjevs, Mr. Valērijs Buhvalovs, Mr. Ivans Ribakovs, Mr. Igors Pimenovs, Mr. Sergejs Mirskis, Mr. Jānis Tutins, Mr. Boriss Čilevičs, Mr. Ivans Klementjevs, Mr. Aleksejs Vidavskis, Mr. Oļegs Deņisovs, Mr. Martijans Bekasovs, Mr. Artūrs Rubiks, Mr. Nikolajs Kabanovs and Mr. Sergejs Fjodorovs,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16<sup>1st</sup> indent, Article 17 (1), 2<sup>nd</sup> and 11<sup>th</sup> indent, and Article 19.<sup>2</sup> and 28.<sup>1</sup> of the Constitutional Court Law,

on October 2010, in writing examined the case

**“On Compliance of Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia and Compliance of Section 14 of the Same Law and Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases “(Wording of the Law from 25 November 2004 to 16 June 2009) and Section 6 Paragraph 1 of the Law “Amendments to the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia”**

### **The Facts**

1. On 2 November 1995, the Saeima adopted the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” (hereinafter – the Insurance Law) that came into force on 1 January 1997. One of the aims of the Law, as declared in Section 2 thereof, was “to ensure insurance compensation, restoration of health and ability to work and integration into society of the insured person if the person has suffered harm from an accident at work or contracted an occupational disease”. After the Insurance Law came into force, the Saeima adopted it eight times, among them by adopted the 16 June 2009 Law “Amendments to the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” (hereinafter – Amendments of 16 June 2009).

**1.1.** Section 14 (2) and (3) (wording of 24 November 2004) “Insurance Compensation” provided the following:

“(2) The insured person shall be entitled to receive the following monetary payments:

- 1) sickness benefit;
- 2) compensation for the loss of ability to work;
- 3) a lump sum benefit which can be substituted for the compensation for the loss of ability to work, if the State Medical Commission [ (VDEĀK) has

established a permanent loss of ability to work within the range of 10 to 24 percent; and

4) compensation for additional expenses.

(3) The following services shall be provided for the insured person

1) medical treatment, care, and medical rehabilitation;

2) retraining; and

3) occupational rehabilitation.”

The Amendments of 16 June 2009 excluded Section 14 (2) 3<sup>rd</sup> Indent of the Law and supplemented it with Section 14 (7) in the following wording:

“Disbursement of compensations for the loss of ability to work and compensations for the loss of a provider shall be ceased as soon as the beneficiary would receive unemployment benefit. In case of overpayment of the compensation for the loss of ability to work or the compensation for the loss of a provider, the overpaid sum shall be withheld at the amount of 10 percent of further payments pursuant to a decision of an official of a department of the State Social Insurance Agency.”

**1.2.** Section 20 (4) “Compensation for the Loss of Ability to Work” of the Insurance Law initially provided the following:

“Depending on the loss of ability to work determined by the State Medical Commission, insurance compensation for the loss of ability to work shall be determined for the insured person; the amount of such compensation shall be specified as a percentage of the average monthly wage subject to insurance contributions in the following amounts:

1) 80 per cent – if the loss of ability to work is 100 per cent;

2) up to 80 per cent – if the loss of ability to work is 80 - 90 percent;

3) up to 65 per cent – if the loss of ability to work is 50 –79 per cent;

4) up to 50 per cent – if the loss of ability to work is 25 – 49 per cent; and

5) up to 30 per cent – if the loss of ability to work is 10 – 24 per cent.

Section 6 (1) of the Amendments of 16 June 2009 excluded Section 20 (5) of the Insurance Law.

**1.3.** From 27 October 1998, Section 20 (9) of the Insurance Law had the following wording:

“Compensation for the loss of ability to work shall be paid to the insured person for the whole period, which has been specified by the State Medical Commission for the relevant loss of ability to work. As soon as the insured person is granted an old age pension, the compensation for the loss of ability to work shall be reduced by 20 per cent.”

The Amendments of 16 June 2009 introduced the following wording of Section 20 (9) of the Insurance Law:

“Compensation for the loss of ability to work to a person who has been granted long service pension disbursed from the State special pension budget or old age person shall be disbursed according to the following procedure:

1) if the amount of granted pension does not reach the amount of compensation for the loss of ability to work, then an insured person shall be disbursed the difference between the amount of the compensation for the loss of ability to work and the amount of long service pension or old age pension;

2) if the amount of granted long service pension or old age pension equals to the amount of the compensation for the loss of the ability to work or exceeds it, disbursement of the compensation for the loss of ability to work shall be ceased.”

**2.** In total, four applications were lodged before the Constitutional Court regarding compliance of certain norms of the Insurance Law and the Amendments of 16 June 2009 with legal norms of a higher legal force; based on the above mentioned applications, cases No. 2010-17-01, No. 2010-27-01, No. 2010-45-01 and No. 2010-63-01 were merged into one case.

Compliance of the following norms (hereinafter – the Contested Norms) with legal norms of a higher legal force are contested in the present case:

1) Section 14 (7) of the Insurance Law;

- 2) Section 20 (9) of the Insurance Law (wording effective from 25 November 2004 to 16 June 2009);
- 3) Section 20 (9) of the Insurance Law (wording of 16 June 2009);
- 4) Section 6 (1) of the Amendments of 16 June 2009 envisaging excluding of Section 20 (4) 5<sup>th</sup> indent of the Insurance Law.

**2.1. The applicants Ms. Aina Lakstiņa-Lakstīgala, Ms. Jautrīte Maija Kronīte, Ms. Anna Salmane and Mr. Emīls Streipa** dispute that the compensation for the loss of ability to work (hereinafter – disability compensation) established by the Insurance Law is no more disbursed to person who receive State pension at the amount exceeding that of the particular compensation. They hold that Section 20 (9) 2<sup>nd</sup> Indent does not comply with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The above mentioned applicants are persons having reached retirement age and receiving state pensions, as well as suffering from the loss of ability to work caused by an occupational disease established for a certain period. One of the applicants has been granted the 2<sup>nd</sup> disablement group. Disability compensation that was disbursed to each applicant based on their loss of ability to work did not reach the amount of pension disbursed to them. After coming into force of the Contested Norms, disability of the applicants was re-estimated; however, based on Section 20 (9) 2<sup>nd</sup> indent of the Insurance Law, disbursement of the disability compensation to them was ceased.

The applicants indicate that pursuant to the Law “On Social Insurance”, an employee has made respective social payments on their behalf. Allocation of the compensation has been in force of a long time, and it is based on certain principles. Persons had the right to count on the fact that, in case if they have an occupational disease or have an accident at work, they would be disbursed the disability compensation.

The applicants do not deny that the legitimate aim of Section 20 (9) 2<sup>nd</sup> indent is related with saving State budget resources. However, such saving is done in an inadmissible manner, namely, on behalf of weakly protected part of the society, i.e. persons suffering from occupational diseases. Moreover, the legislator has failed to assess whether the benefit gained in the result of prospective saving would be greater than the loss caused to pensioners suffering from occupational diseases. Neither a reasonable

transitional period, nor posterior disbursement of withdrawn amounts has been established. Consequently, Section 20 (9) 2<sup>nd</sup> indent of the Insurance Law contradicts the principle of legitimate expectations and that of proportionality; neither complies it with Article 1 of the Satversme.

The applicants hold that Section 20 (9) 2<sup>nd</sup> indent of the Insurance Law neither complies with the first and the second sentence of Article 91 of the Satversme because it admits, without reason, different attitude towards pensioners who have been established the loss of ability to work resulting from an occupational disease if compared with other persons who have been established the same loss of ability to work.

According to the applicants, disability compensation calculated based on social instalments made by an employer shall be recognized, in the light of Article 105 of the Satversme, as an earned capital, i.e. property. If the state fails to disburse the particular compensation, the fundamental rights established in the above mentioned article of the Satversme are infringed.

It has been indicated in the application that disability compensation pertains to the set of measures that the State has the duty to ensure to a person pursuant to Article 109 of the Satversme. The aim of the disability compensation is to compensate severity of detriment caused to a person, facilitate availability of treatment, and compensate the loss of ability to work; whilst old age pension ensures incomes to a person, on behalf of whom respective social payments were made. Since old age pension and disability insurance have different aim and objectives, substitution of the one by another is inadmissible.

**2.2. The applicant Mr. Vitalijs Pčelovs** disputes that disability compensation for person who receive long service pension is disbursed only at the amount exceeding the amount of the pension. He holds that Section 20 (9) 1<sup>st</sup> indent does not comply with Article 1, Article 91, Article 105, and Article 105 of the Satversme of the Republic of Latvia and asks to recognize the above mentioned norm as null and void as from the date of coming into force.

The applicant has not yet reached retirement age. He has been diagnosed an occupational disease, established disability and granted the 3<sup>rd</sup> disablement group. In the result of this, the applicant had to quit his work. As from 3 August 2009, the applicant

was granted long service pension, the amount of which is lesser than the amount of disability compensation; therefore he is disbursed the disability compensation only at the amount exceeding the pension.

The applicant holds that persons receiving disablement compensation is a particular part of the society because they work under hazardous circumstances, the State being aware of this; they count of the fact that, in case if they have an occupational disease, they would receive disability compensation at full extent. Since the Contested Norm fails to establish the aforesaid, the principle of legitimate expectations is breached.

The applicant indicates that all persons who have been granted disability compensation enjoy equal and comparable conditions; however, the Contested Norm prohibits a part of these persons, namely, persons who have been granted pension after 30 June 2009, receiving the particular compensation at full extent without any objective reason. Moreover, the different attitude is related with the age of a person; consequently, it has been established based on inadmissible criterion.

The applicant indicates that pension or at least a part of pension accumulated after 1 January 1996 shall be regarded as property in the meaning of Section 105 of the Satversme. By prohibiting disbursing pension and disability compensation simultaneously, this right has been restricted without reason.

According to the Applicant, disability compensation is a supplementary social guarantee for persons who have fulfilled certain functions under hazardous working circumstances. By denying this guarantee to weakly protected part of the society, i.e. disabled persons, the fundamental rights established in Article 109 of the Satversme are restricted in an inadmissible manner.

**2.3. The applicant Ms. Vizma Dravniece** disputes that insurance compensation is no more disbursed to person who has been diagnosed the loss of ability to work at the amount of 15 – 24 percent. She holds that Section 6 (1) of the Amendments of 16 June 2009 that provides excluding Section 20 (4) 5<sup>th</sup> indent of the Insurance Law does not comply with Article 1, the first sentence of Article 91, and Article 109 of the Satversme. The applicant asks to recognize the above mentioned norm of the Amendments of 16 June 2009 as null and void as from the date of coming into force thereof.

The applicant has been established the loss of ability to work due to an occupational disease, which is less than 24 percent. Pursuant to the Contested Norm of the Amendments of 16 June 2009, disbursement of the disability compensation was ceased in respect to the applicant as from 1 July 2010.

The applicant holds that the right to receive disability compensation pertains to the content of Article 109 of the Satversme. This right of the applicant has been restricted insofar that it has, in fact, been denied. Although the restriction has been established by law, it does not have any legitimate aim. Namely, the aim that follows from annotation of a particular draft law, which is ensuring of the principle of legal equality, is, in fact, not reached by means of the Contested Norm. Moreover, a reasonable balance between interests of a person and the State or the society has not been observed. After July 2010, incomes of the applicant have reduced by more than 30 percent, whilst the savings of the State constitute only slightly more than five thousand lats.

Exclusion of Section 20 (4) 5<sup>th</sup> indent of the Insurance Law of the Insurance Law from the Law neither complies with the principle of legitimate expectations that follows from Article 1 of the Satversme. The regulatory framework of the excluded norm was in force for more than 13 years. An employer has made, on behalf of the applicant, mandatory social insurance payments against accidents at work and occupational diseases. The Contested Norm restriction the rights already conferred to the applicant; moreover, the restriction, in fact, denies the particular right. Consequently, no reasonable balance between protection of legitimate expectations of a person and ensuring of interests of the society has been ensured.

According to the applicant, exclusion of Section 20 (4) 5<sup>th</sup> indent does not comply with Article 91 of the Satversme regarding three aspects. First, an ungrounded different attitude is permitted in respect to persons having lost their ability to work because only a part of them have the right to receive disability compensation. Second, ungrounded different attitude is permitted in respect to person to receive disability compensation based on the Insurance Law and those who have been diagnosed disablement because disablement pension is granted to disabled persons of all groups, whilst the compensation under consideration is denied to person, the loss of ability of whom does not exceed 24 percent. Third, equal attitude is permitted in relation to person who enjoy different circumstances, namely, person who have been diagnosed the loss of ability to work at the

amount of 24 percent and those who have not been diagnosed the loss of ability to work. It is considerably more difficult for persons with partial ability to work to find job and earn living and pension.

**2.4. The applicants – twenty-one member of the Saeima** dispute the following:

1) all norms that are contested in the applications mentioned in Section 2.1.2.3 of the present Judgment;

2) Section 20 (9) of the Insurance Law in the wording that was in force before coming into effect of the Amendments of 16 June 2009;

3) the fact that disbursement of compensation for the loss of ability to work or the loss of a provider is discontinued as soon as the beneficiary receives unemployment benefit, namely, they contest Section 14 (7) of the Insurance Law.

The application contains a viewpoint that all Contested Norms contradict Section 1, Section 91 and Section 109 of the Satversme; therefore the applicants ask to recognize them as null and void as from the date of adopting thereof, as well as to establish a period, within which the legislator would have the duty to establish the procedure for compensation of losses incurred in the result of the Contested Norms.

It has also been indicated in the application that disability compensation pertains to the content of the fundamental rights established in Article 109 of the Satversme. The Contested Norms fully prohibiting disbursing of disability compensation or permitting partial disbursement thereof do restrict these fundamental rights. Before the Contested Norms were adopted, compliance thereof with requirements of proportionality has not been assessed. It follows from the annotation to the Amendments of 16 June 2009 that the Contested Norms have been adopted to reach the following three aims: 1) saving of State budget resources; 2) observance of the principle of equality in relation to beneficiaries of three kinds of insurance services; 3) exclusion of simultaneous receipt of several social insurance services. These aims cannot be regarded as legitimate aims permitting restriction of the fundamental rights.

Namely, persons who receive disability compensation enjoy special conditions. These persons have lost their ability to work due to their fault, they are constrained to looking for less remunerated job that increases unemployment risk and prohibits earning

pension of a proper amount. It was not necessary to prevent the different attitude already established in relation to these persons.

Social insurance services, like State pension insurance, social insurance in case of unemployment, and social insurance against accidents at work and occupational diseases, are ensured by means of different social budget, into which insurance payments are made. By referring to the case-law of the Constitutional Court, the following has been mentioned in the application: if an employee is insured for a type of an obligatory social insurance, then, when the case of insurance sets in, he/she has the right to appropriate security (*see: Judgment of 26 March 2004 by the Constitutional Court in the case No. 2003-22-01, Para 11*). Incomes of those employed person who have lost their ability to work due to an occupational disease or an accident at work are lower if compared to a situation if they could continue working normally. Consequently, the estimated pension is also lower. Moreover, recovery from disability and integration into the society requires additional expenses from a person, which is normally covered by insurance compensation. In this case, simultaneous receipt of several social insurance services does comply with Article 91 of the Satversme.

It has been emphasized in the application that social solidarity under social crisis requires that each citizen would undertake proportional responsibility for eliminating consequences of crisis. Data on average salary in the State makes concluding that wages have been reduced at the amount of 11 – 19 percent; however, the Contested Norms prohibit person to get income even at a greater extent.

The Contested Norms do not comply with the principle of legitimate expectations because they deny the right already conferred to beneficiaries of disability compensation, provided that some of them were receiving it for a considerable period of time.

It has also been indicated in the application that the Contested Norms do not comply with Article 91 of the Satversme because they establish ungrounded unequal attitude against disabled persons at retirement and pre-retirement age.

**3. The institution that adopted the contested act, the Saeima** has in total submitted three replies and one addendum to a reply. The Saeima holds that all Contested Norms do comply with legal norms of a higher legal force. According to the Saeima, the

Contested Norms can be divided into two groups. The first group comprises norms that establish reducing the amount of disability compensation to be disbursed in cases when a person also receives pension or unemployment benefit, whilst the other group includes norms that discontinue disbursement of the particular compensation in cases when the loss of ability to work is less than 25 percent.

As to the first of the above mentioned groups, the Saeima indicates the following: the Amendments of 16 June 2009 are based on the principle that it is not necessary to compensate lost labour incomes from the State social insurance special budget several times. Unemployment benefit, old age pension and disability compensation have been established for one and the same aim, namely, to compensate unearned incomes of a paid labour. It is also possible to presume that any of the above mentioned social insurance services should compensate this risk.

It has been emphasized in the reply that, by means of the Contested Norms, the State has not refused guaranteeing the right to social security in case of the loss of ability to work. The right to social security is ensured at a sufficient extent, provided that the greatest of all compensations due to a person or the difference between such compensations is disbursed. Article 109 of the Satversme cannot be interpreted in a mechanic manner, namely, that a person would have the right to separately receive compensation for each risk referred to in the Article. For instance, a 90 year old person might have all risks mentioned in Article 109 of the Satversme (old age, disability, unemployment); however, this article does not guarantee that each of the risks would be secured.

As to compliance of the Contested Norms with Article 105 of the Satversme, the principle of solidarity is referred to in the reply of the Saeima; namely, insurance compensations are disbursed based on social insurance payments, and no accumulations are ensured for a person. The amount of payments is not related with the amount of compensation to be disbursed. However, taking into account the change in the case-law of the European Court of Human Rights (hereinafter – the ECHR) in relation to social payments to be regarded as property in the meaning of Article 1 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHRFF), the Saeima indicates that disregarding the fact whether instalment system for accidents at work is or is not regarded as “the one constituting property”, Article 105

of the Satversme does not include constant claims regarding compensation of certain risks and the ways of doing so. Even if the Contested Norms would restrict the fundamental rights established in this Article, the State is granted a broad freedom of action in relation to property right in the field of social rights. Moreover, in relation to social rights, Article 105 of the Satversme ensures a person with lesser degree of protection if compared with Article 109 of the Satversme.

The Saeima does not deny that recipients of disability compensation who have been granted State pension and those beneficiaries who have not been granted one enjoy legally comparable conditions. However, according to the Saeima, the Contested Norms does not provide a different attitude towards these persons. State pensions, disability compensation and unemployment benefit have one common aim, i.e. to guarantee incomes to a person during the period whenever he or she is not able to take an active part in legal labour relations and to earn living. This aim is being reached when disbursing any of the above mentioned aids – pension, unemployment benefit or disability compensation.

As to the norms discontinuing disbursement of disability compensation in case if the loss of ability to work is less than 25 percent, the Saeima indicates that, before the particular norms were adopted, there was a great number of person who received compensation for lost labour incomes; however, they still continued working in the same profession or position. The Contested Norms envisage that a person shall have the right to receive disability compensation only in case if the loss of ability to work equals with average disablement level. Article 109 of the Satversme does not prohibit establishing such “threshold of the loss of ability to work” (*see: Case materials, Vol. 2, pp. 47*). According to the Saeima, such regulatory framework is directly aimed at ensuring equal attitude towards all disabled persons; therefore the norms do comply with Article 91 of the Satversme.

It has also been stated in the reply that disability compensation is allocated to a person, recalculated, or the term of its disbursement is extended based on a decision of the State Social Insurance Agency (hereinafter – the SSIA), wherein the term of disbursing the compensation is indicated. If the loss of ability to work is established for a certain period, disability compensation is also disbursed during the same period. Only if the above mentioned administrative act is issued, a person is conferred the right to be

disbursed compensation, which considerably influences the protection level of legitimate expectations. Based on the regulatory framework of paras 12 – 14 of Transitional Provisions of the Insurance Law, the Contested Norms do comply with requirements of the principle of legitimate expectations.

**4. The summoned person – Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) concludes in its opinion that Section 20 (9) of the Insurance Law does not comply with legal norms of a higher legal force.

The Ombudsman holds that the right to receive compensation for an accident at work or occupational diseases as one of the kinds of social insurance pertains to the content of Article 109 of the Satversme. The right emerging from making payments into the social insurance system shall be regarded as property right in the meaning of Protocol No. 1 of the ECFHRRF (*see: Judgment of the EHCR in the case No. Ásmundsson v. Iceland, Application Nr. 60669/00, 12 October, 2004, Para. 39*). Consequently, the right to receive disability compensation does pertain to the content of the right to property established in Article 105 of the Satversme.

However, neither Article 109 of the Satversme, nor Article 105 of the Satversme guarantees a person disbursement of pension or benefit of a certain amount. Moreover, Article 105 of the Satversme ensures less protection of person's pension and benefits if compared to Article 109 of the Satversme. Compliance of the Contested Norms with Article 91 of the Satversme shall also be assessed in conjunction with Article 109 of the Satversme, from which it follows among the rest that the active duty of the state is to form such system of social security that would comprise all traditional social risks and guarantee adequate social security. The right to social security shall not be interpreted in the way that the State would have the duty to guarantee disbursement of benefit for each risk separately. The needs related with occurring of particular risk are of great importance, provided that State guaranteed social security is established for meeting of these needs. If these needs coincide in case of several risks, full or partial overlap of benefits is permitted.

According to the Ombudsman, old age and disability risks overlap only partially; namely, this is the necessity to compensate lost labour incomes that they share. However,

additional needs related to disability and caused by an accident at work or an occupational disease do not disappear after reaching retirement age. Attitude towards such disabled persons should be special so that it would eliminate social differences.

The Ombudsman holds that the aim of the Contested Norms, i.e. coordination of State social insurance services with needs and possibilities dictated by economical crisis, is aimed at ensuring welfare of the society; therefore it shall be regarded as a legitimate one. Although savings of resources in the social budget for accidents at work has not been great due to adoption of the contested regulatory framework, it should be taken into account that the Contested Norms have been adopted in the frameworks of complex measures for reducing expenses from the State budget. Consequently, the norms are appropriate for reaching the legitimate objective.

It should also be taken into account that both, average amount of pension and average amount of insurance compensation is small and it cannot satisfy all basic needs of a person. The Contested Norms directly affect the poorly-protected part of the society. By restricting simultaneous receipt of the above mentioned social services, respective persons are subject to risk of progressing poverty and disablement.

Moreover, the regulatory framework established in Para 13 of Transitional Provisions of the Amendments of 16 June 2009, though aimed at protection of legitimate expectations of persons, still permits a situation incompatible with the principle of justice when a person with progressive loss of disability and temporary disablement is ceased to be disbursed disability compensation, whilst a person with a lower though stable level of disability continues receiving the compensation.

**5. The summoned person – the Ministry of Welfare** holds that the Contested Norms do comply with legal norms of a higher legal force. The Contested Norms restrict the fundamental rights of persons established in Article 109 of the Satversme; however, the restriction has a legitimate aim, i.e. to optimize provision of social insurance services and ensure functioning of the social insurance system in the long term. This does comply with the principle of proportionality. In case if insurance risks coincide, there is no reason to compensate the loss of ability to work from resources of social insurance, provided that a person has already been indemnified.

The Ministry of Welfare does not share the opinion of the applicants regarding non-compliance of Section 20 (9) of the Insurance Law with Article 105 of the Satversme. The amount of disability compensation does not depend on accumulated capital. The system for ensuring accidents at work functions pursuant to the principle of solidarity. Social insurance payments made from wage of employees are transferred to present recipients of social assistance without forming any accumulations. For instance, as to one of the applicants, in the period from 1 January 1997 to the date of diagnosing an occupational disease, 5.31 lats were paid into the special budget for accidents at work, whilst, in the period from 1 January 1997 to February 2010 – 71,98 lats. However, this person has received 1438.76 lats from the special budget for accidents at work, as well as compensation for additional expenses at the amount of 750 lats, and compensation for the loss of ability to work at the amount of 6776.55 lats. Consequently, indemnification made to this person from the special budget for accidents at work exceeds, 125 times, the payments paid for the person to insure accidents at work.

**The Constitutional Court has concluded:**

6. In the present case, the Court shall investigate compliance of several norms with norms of a higher legal force. Namely, the court shall assess the following:

1) whether the following complies with Article 1, Article 91, Article 105 and Article 109 of the Satversme:

a) disability compensation is not disbursed in case if the loss of ability to work constitutes 10-24 percent,

b) disability compensation is not disbursed in case if a person has already been granted pension (long service pension paid from the State special pension budget, or old age pension), the amount of which exceeds the amount of disability compensation,

c) disability compensation is disbursed only at the amount exceeding the amount of pension (long service pension paid from the State special pension budget, or old age pension);

2) whether the following complies with Article 1, Article 91 and Article 109 of the Satversme:

a) disability compensation was disbursed (before the Amendments of 16 June 2009) at the amount of 80 percent to person who received old age pension;

b) disability compensation is not disbursed during the period when a person receives unemployment benefit;

c) compensation for the loss of provider is not disbursed during the period when a person receives unemployment benefit.

Since compliance of the above mentioned regulatory frameworks with several norms of the Constitution has been contested, the Constitutional Court shall first of all establish the sequence of assessments of compliance of the norms with Article 1, Article 91, Article 105 and Article 109 of the Satversme.

**6.1.** The concept of the democratic republic, included in Article 1 of the Satversme, obligates the State in its activities to observe a range of principles of a law-governed State, including the principles of proportionality and legitimate expectations [See, e.g., *Judgment of 10 June 1998 by the Constitutional Court in the case No. 04-03(98), the Concluding Part, and judgment of 24 March 2000 in the case no. 04-07(99), Para 3 of the Concluding Part*]. The principle of legitimate trust also determines that – as regards the issued normative acts - the state institutions shall be consistent in their activities and observe trust in law, which may arise to persons in accordance with a certain legal norm (see, e.g., *Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.2 of the Concluding Part, and judgment of 8 November 2006 in the case No. 2006-04-01, Para 21*). The principle of proportionality provides that if the public power restricts rights and legal interests of a person, one has to observe a reasonable balance between the interests of a person and the State of the society (see: *Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

It has been established in the case-law of the Constitutional Court that, when assessing the conformity of the impugned norm with the first sentence of the Satversme Section 91, one shall take into consideration the fact that manifestation of these principles in different domains of law may differ (see, e.g.: *Judgment of 8 November 2006 by the*

*Constitutional Court in the case No. 2006-04-01, Para 15.2 and 15.3, and judgment of 21 December 2009 in the case No. 2009-43-01, Para 21*). In cases when compliance of several norms of social rights with principles that follow from article 1 of the Satversme, as well as Article 109 of the Satversme has been contested, compliance thereof with Article 1 of the Satversme is usually assessed in conjunction with the latter.

Although the Satversme does not *expressis verbis* indicate the rights of persons or duties of the State regarding issues on social protection in case of an accident at work or an occupational disease, in the case under review there is no dispute regarding the fact that all Contested Norms would pertain to the field of social rights. Consequently, the Court shall assess compliance of these norms with Article 1 of the Satversme in conjunction with Article 109 of the Satversme.

**6.2.** In all applications, attention is drawn to non-compliance of the Contested Norms with Article 91 of the Satversme that 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 legislator has incorporated two mutually closely connected principles in Article 91 of the Satversme: the equality principle – in the first sentence and the principle of prohibition of discrimination – in the second sentence (*see: Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.3*).

The applicant Ms. V. Dravniece holds that the particular Contested Norm fails to comply only with the first sentence of Article 91 of the Satversme, whilst other applications contain the opinion that the respective Contested Norms fail to comply with the entire Article 91 of the Satversme.

**6.2.1.** The Constitutional Court has reiterated in its case-law that the principle of legal equality enshrined in Article 91 of the Satversme obliges equal attitude only to persons who are in equal and comparable circumstances. Different attitude is permitted only if it has reasonable grounds. The Constitutional Court has also emphasized that this principle concedes and even demands different attitude to persons, who are in different circumstances. However, only if it has been established that there is an objective and reasonable aim, the principle of equality permits different attitude to persons, who are in different circumstances (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 13 of the Constitutional Court*).

It has been established in the case-law of the Constitutional Court that the principle of equality established in the first sentence of Article 91 of the Satversme shall generally be applied in conjunction with other fundamental rights. Particularly because, based on this principle, it is hard to establish how to adjudicate the case. The rights, enshrined in Section 91 of the Satversme are “comparable”, namely, they may demand equal attitude but - just by themselves – they cannot reveal what the above attitude shall be, namely, favourable or unfavourable. For example, it was concluded that determination of deductions violates the principle of equality; one shall know only the fact that the above deductions had to be determined either to all pensioners or to no one. To choose one of the solutions, other reasons, which are out of the framework of the notion of equality, shall be used (*see, e.g.: Judgment of 11 November 2005 by the Constitutional Court in the case No. 2005-08-01, Para 5 and Para 6.1, and judgment of 8 November 2006 in the case No. 2006-04-01, Para 15*). Consequently, compliance of the Contested Norms with Article 91 of the Satversme shall be assessed in conjunction with Article 109 of the Satversme.

**6.2.2.** The second sentence of Article 91 of the Satversme is aimed at exercise of human rights by avoiding all discrimination. The essence of the prohibition principle is like this: to avert the possibility that in a democratic and law-governed state the fundamental rights of a person are violated on the basis of some inadmissible criterion (*see: Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9*). According to the applicants, the Contested Norms fail to comply with the second sentence of Article 91 of the Satversme because they discriminate persons based on an inadmissible criterion, i.e. their age.

The Constitutional Court has already indicated that the human rights establish a general prohibition of discrimination based on the age of a person (*see: Judgment of 20 May 2003 by the Constitutional Court in the case No. 2002-21-01, Para 1 of the Concluding Part*). Unlike the case No. 2002-21-01, wherein the particular contested norm prohibited a person to candidate to a particular position having reached certain age, however, none of the Contested Norms of the present case prohibit a person receiving disability compensation after having reached certain age. Restrictions established in the Contested Norms are related with presence and amount of other social security payments rather than the age of a person.

**Consequently, the Contested Norms do not contradict the second sentence of Article 91 of the Satversme.**

**6.3.** The applicants Ms. A. Lakstiņa-Lakstīgala, Ms. K. J. Kronīte, Ms. A. Salmane, Ms. E. Streipa and Mr. V. Pčelovs dispute compliance of Section 20 (9) of the Insurance Law with Article 105 of the Satversme. According to the applicants, disability compensation calculated based on payments made by an employer shall be regarded as capital earned by a person, i.e. his or her property that the State should disburse after occurring of a particular circumstances. However, neither the Saeima, nor the Ministry of Welfare share this point of view by indicating that the amount of disability compensation does not depend on the amount of accumulated capital.

Pursuant to the case-law of the ECHR, wherein, when determining application of Article 1 of Protocol no. 1 of the ECPHRFF, social benefits based on investments are not separated from those that are not based on individual investments (*see: Judgment of ECHR in the case Stec and Others v. the United Kingdom, judgment of 12 April 2006, applications No. 65731/01 and 65900/01, paras. 47–53*), the Constitutional Court has concluded that “the right to pensions irrespectively the date of granting a pension or source of funding pertain to the content of the notion “property” included in the first sentence of Section 105 of the Satversme” (Judgment of 8 June 2007 by the Constitutional Court in the case No. 2007-01-01, Para 20).

The present case does not deal with pension; it is about disbursement of another payment established in the social rights, i.e. disability compensation. However, taking into account the aforementioned case-law of the ECHR and that of the Constitutional Court, the right to disbursement of disability compensation also pertains to the fundamental rights established in Article 105 of the Satversme.

It has been established in the case-law of the Constitutional Court that a broad freedom of action should be granted to the State in respect of property rights in the area of social rights, for the rights provided by Article 105 of the Constitution do not guarantee a specific pension amount, and they may be subject to restriction. With regard to the social rights, Article 105 of the Constitution guarantees to persons legal protection of a lesser extent than Article 109 of the Constitution (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 20*).

The aim of Article 109 of the Satversme is to constitutionally strengthen the fundamental rights related with solidarity of members of the society in the social field. Having established that a norm of the social field falls within the scope of Article 105 and Article 109 of the Satversme, the Court shall have the duty to assess its compliance with Article 109 of the Satversme. Should the Court establish that a particular norm fails to comply with Article 109 of the Satversme, it is not necessary to separately assess compliance thereof with Article 105 of the Satversme.

7. 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.” It has been established in the case-law of the Constitutional Court that Article 109 of the Satversme guarantees the inhabitants the right to a stable and predictable, as well as effective, fair and sustainable system of social protection that ensures a proportional social security (*see, e.g.: Judgment of 15 April 2010 by the Constitutional Court in the case No. 2009-88-01, Para 8*).

The system of social protection is aimed at eliminating consequences of such circumstances, which are the so-called social risks. Article 109 of the Satversme enumerates social risks: old age, the loss of ability to work, and unemployment. However, this is not an exhaustive list of risks. Article 109 of the Satversme committees the legislator to include other social risks into the social protection system. A part of risks that must be included into this system follow from fundamental rights of persons and duties of the State enshrined in other articles of the Satversme, for instance, health protection, provision of care to disabled persons, the rights of the child, family support. Other social risks must be included into the social security system based on the essence of the social rights, as well as international liabilities of Latvia. The Ombudsman indicates that the duty of the State to establish such social security system that would comprise “all traditional social risks” follow from Article 109 of the Satversme (*see: case materials, Vol. 1, pp. 138*).

**7.1.** It has been established in the case-law of the Constitutional Court that, international liabilities of Latvia in the field of human rights influence interpretation of fundamental rights and the principle of the law-governed state. International norms of

human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see: Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01, Para 11*).

**7.2.** Article 9 of the International Covenant on Economic, Social and Cultural Rights of the United Nations Organization (hereinafter – the UNO) provides that “the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance”.

In the General Comment of the UN Committee on Economic, Social and Cultural Rights, it is indicated in relation to the right to elements of social security established in Article 9 of the Covenant that exercise of the above mentioned rights requires that the social security system, whether it is established based on one or several schemes, would include the following nine branches of social security: health care, sickness, unemployment, old age, employment injury, family and child support, maternity, disability and loss of providers [*UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, available at: <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>*].

The Convention No. 102 of the International Labour Organization on minimum standards of social security (Latvia has not acceded to this document) summarizes requirements in the following fields: medical care, aid in case of disablement and aid in case of the loss of provided (*see: <http://www.ilo.org/ilolex/english/convdisp1.htm>*). A reference to the above mentioned Convention is also made in Article 12 of Chapter II of the European Social Charter (Latvia has not recognized this article as binding to it).

The first part of Article 35 of the Charter of Fundamental Rights of the European Union *expressis verbis* lists the following six social risks: “maternity, illness, industrial accident, dependency or old age, as well as loss of employment”.

**Consequently, when interpreting the Satversme in conjunction with international liabilities of Latvia, the duty of the legislator to establish social**

**security for social risks related with accidents at work and occupational disease follow from Article 109 of the Satversme.**

8. The applicant Mr. V. Pčelovs holds that he should be indemnified by the State for him having got an occupational disease because the State has allowed that he works in hazardous circumstances.

It cannot be denied that the Satversme commits the State to certain obligations in order to exercise rights of person to safe working conditions. The Constitutional Court has already indicated that, pursuant to Article 93 of the Satversme, “the State has the duty to protect life of a person not only from actions of the State, but also those of other persons. [...] the above mentioned duty of the State includes not only adoption of respective norms aimed at protecting of life, but also establishment of effective system for monitoring observance of these norms” (*see: Judgment of 7 January 2010 in the case No. 2009-12-03, Para 14.2*). It follows from Article 111 of the Satversme that the State also has the duty to adopt norms aimed at protection of health of a person at work, for instance, norms establishing safety and hygiene requirements, liability for non-observance thereof, as well as norms for monitoring observance of the above mentioned norms. However, “the right to health cannot be understood as the right to be in good health” (*Judgment of 29 December 2008 by the Constitutional Court in the case No. 2008-37-03, Para 11.2*).

Moreover, the Ministry of Welfare informs that, according to the data of the State Labour Inspection [*Valsts darba inspekcija*], only in 7 percent of cases inadequate labour conditions caused accidents at work in the first half of 2009, whilst in 67 percent of cases this was caused by actions of people (non-observance of labour safety requirements, insufficient attention, misuse of safety equipment, etc.) in the same period (*see: Case materials, Vol. 1, pp. 47*).

Consequently, the Contested Norms apply to a case when a person has lost his or her ability to work or lost a provided due to unsatisfactory working conditions, and a case when a person has suffered an accident at work or an occupational disease by his or her own fault. When including all these cases into a single system of social insurance, it is ensured that injured persons are not left without support also in case if his or her

employer is insolvent or ceases existing. In the frameworks of this system, the State is not regarded as the guilty party; it fulfils its functions in the field of social rights. Schemes of social security are manifestation of solidarity between the entire society and the poorly-protected part of it (*see: Judgment of the ECHR in the case Wieczorek v. Poland, judgment of 8 December 2009, application no. 18176/05, Para. 64*).

9. Insurance of industrial accidents is the oldest branch of social security. In the course of time, it has changed by including another risks, like insurance of occupational disease and insurance of possible accidents when arriving home from work, as well as by broadening the group of persons benefiting from insurance of industrial accidents, and improving social services. In certain states, insurance of industrial accidents is not regarded as a separate branch of social security; it has been included into the common scheme. If respective risks are being appropriately indemnified, the Social Security Code issued in Strasbourg in 1964 that establishes guidelines for the member States of the European Union in this field does not require singling out insurance of industrial accidents as a separate branch (*see: Heredero A. G. Social security. Protection at the international level and developments in Europe, Council of Europe, 2009, pp. 139-140*).

In the General Comment of the UN Committee on Economical, Social and Cultural Rights, it is indicated in relation to employment injury established in Article 9 of the Covenant that States parties should also ensure the protection of workers who are injured in the course of employment or other productive work. The social security system should cover the costs and loss of earnings from the injury or morbid condition and the loss of support for spouses or dependents suffered as the result of the death of a breadwinner. Adequate benefits should be provided in the form of access to health care and cash benefits to ensure income security. Entitlement to benefits should not be made subject to the length of employment, to the duration of insurance or to the payment of contributions (*see: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19*).

The Insurance Law establishes that an insured person who has suffered harm from an accident at work or contracted an occupational disease and in respect of whom an insurable event has occurred shall have the right to receive insurance compensation

specified in this Law. It includes cash disbursements (illness benefit, compensation for the loss of ability to work and compensation of additional expenses) and provision of services to the insured person (treatment, care and medical rehabilitation, retraining and professional rehabilitation), as well as cash disbursements to the third party (compensation for the loss of a provider for incapable members of family of the insured person who were dependant of the first, and funeral benefit for the insured person).

Consequently, disability compensation is not the only constituent part of insurance compensation; neither is it the only cash disbursement due to a person in respect of whom an insurable event has occurred. Section 19 of the Insurance Law envisages disbursement of sickness benefit, whilst Section 21 (2) establishes compensating to the insured persons all additional expenses incurred to a person in case of an accident at work or an occupational disease, compensating prosthetics expenses, expenses for employing an assistant and traffic expenses to visit medical institutions, as well as expenses for purchase of technical equipment and repair thereof, and to compensation expenses of a person for treatment, care, medical rehabilitation and professional retraining in case if these expenses are not covered by means of the minimum of health care services or State programme for social assistance.

The Constitutional Court has concluded the following: “if an employee is insured for a type of an obligatory social insurance, then, when the case of insurance sets in, he/she has the right to appropriate security” (*Judgment of 26 March 2004 by the Constitutional Court in the case No. 2003-22-01, Para 11*). When adjudicating the aforementioned case wherein the contested norm prohibited disabled persons in places of imprisonment to receive disability compensation, the Constitutional Court also assess whether these persons have access to effective medical assistance and appropriate social care. After having established that needs of a person related to his or her disability are not met, it was possible to conclude that a particular contested norm prohibited a person to exercise the right to social security established in Article 109 of the Satversme.

Consequently, disability compensation is only an element pertaining to a body of measures included in the right to social security established in Article 109 of the Satversme. **Reduction of disability compensation or ceasing of disbursement thereof to a person suffered an accident at work or an occupational disease does not mean**

**that a person should be denied the fundamental right to social security in case of occurring of an insurable event.**

**10.** The Contested Norms affect specific situation for allocating disability compensation; therefore the Court has to investigate whether the following requirements follow from Article 109 of the Satversme:

1) to disburse disability compensation to person who have lost their capacity to work at the amount of 10 – 24 percent;

2) to disburse disability compensation and other social insurance payments as well (old age pension, long service pension, and unemployment benefit).

**10.1.** The applicant Ms. V. Dravniece and members of the Saeima have indicated that the also the right of a person to receive disability compensation in case if he or she has lost the ability to work at the amount of 10 – 24 percent. The Saeima, holds, however, that Article 109 of the Satversme does not requires establishing such “threshold”.

**10.1.1.** It has been indicated in the annotation to the Amendments of 16 June 2009: “At present, rather low threshold of the loss of ability to work, i.e. 10 percent, has been established for conferring the right to compensation for the loss of ability to work resulting from accidents at work or occupational diseases. This means that persons with rather insignificant loss of ability to work (i.e. their ability to work has reduced only by 10 – 24 percent) have the possibility to receive insurance compensation at the amount of 25 – 30 percent of their former labour incomes (in February 2009, 56.9 percent of recipients of disability compensation had 10 – 24 percent loss of ability to work, whilst an average amount of compensation was 106.91 lats). However, the 3<sup>rd</sup> disablement group and also disablement pension is granted to persons with average physical or mental capacities restrictions provided that the loss of ability to work constitutes 24 – 49 percent” (*see: Annotation to the draft law No. 872/Lp9, <http://titania.saeima.lv>*).

The General Comment of the UN Committee on Economical, Social and Cultural Rights in relation to Article 9 of the Covenant contains a reference to the Convention No. 102 of the International Labour Organization on minimum standards of social security. Article 32 of this Covenant enumerates, in details, positions do be indemnified.

It includes disclaimers regarding indemnification of the loss of ability to work exceeding the limits set forth by law.

Such limits have been established in the majority of the European Member States, and they differ considerably. In Austria and Germany the threshold is 20 percent, in Lithuania – 30 percent, in Spain – 33 percent, in Estonia - 40 percent, in Greece and Bulgaria – even 50 percent, whilst in Ireland – 1 percent, in Italy – 11 percent, in Denmark – 15 percent (*see: European Commission, Mutual Information System on Social Protection, Comparative Tables on Social Protection* [http://ec.europa.eu/employment\\_social/missoc/db/public/compareTables.do](http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do)).

Consequently, when establishing the criterion “the loss of ability to work up to 25 percent”, the Saeima has not acted contrary to international liabilities of Latvia in the social field, neither has it deviated from the common case-law of the Member States in this particular issue.

**The requirement to ensure social security in the form of disbursement of insurance compensation in case if a person has lost his or her ability to work at the amount that does not prevent him or her from earning appropriate living does not follow from Article 109 of the Satversme.**

**10.1.2.** As to other social rights enshrined in the Satversme, the Constitutional Court has reiterated that the Satversme neither establishes certain sums to be disbursed, nor provisions for such disbursements. For instance, Article 109 of the Satversme establishes the right of a person to pension; however, it does not guarantee receipt of pension of a certain amount. Establishment of different amounts of benefits to be granted to certain groups of persons shall not be regarded as avoidance to fulfil the above mentioned duty and therefore it complies with Article 110 of the Satversme. Moreover, in accordance with Section 110 of the Satversme the legislator enjoys an extensive freedom of action when regulating the issue on the amount of the childcare allowance and on what criteria this or another group of persons shall receive the above allowance (*see: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 12*).

As to social security regarding accidents at work and occupational diseases included in the scope of Article 109 of the Satversme, the Satversme does not establish any certain amount of medical assistance, retraining measures or any certain amount of

compensation for unearned labour incomes due to the loss of ability to work of a certain amount.

**10.1.3.** However, although Article 109 of the Satversme does not prohibit the legislator to establish threshold for the loss of ability to work conferring the right to disability compensation, such provision cannot be established arbitrarily. Respective applications contain a viewpoint that, when issuing norms in the field of social rights, public institutions have the duty to consider alternative solutions, as well as to hear opinions of people as far as it is possible. As to the Contested Norms, the above mentioned requirements have not been fulfilled because they were adopted in haste, submitted in a set of draft laws together with several other draft laws, non-compliance of which with the Satversme has already been established by the Constitutional Court.

Although the Contested Norms were adopted within a set of such draft laws, the main aim of which was ensure saving of budget expenses, insofar as they concern establishment of “the loss of ability to work up to 25 percent”, preparation of the respective draft law shall be assessed in conjunction with elaboration and adoption of the Disablement Law by the Saeima. The Cabinet of Ministers submitted the above mentioned law to the Saeima already in 2007, and the following is indicated in the annotation thereto: “a person having lost his or her ability to work by 50 percent has to receive medical, social and, in the case of necessity, professional rehabilitation in order to obtain economic independence by involving into the labour market. [...] A part of the above mentioned persons having lost their ability to work by 50 percent are now classified as disabled persons of the 3<sup>rd</sup> group of disablement; whilst another part of them have been ill for a long time, up to 52 weeks” (*see: Annotation to the draft law No. 872/Lp9, <http://titania.saeima.lv>*). Pursuant to the wording of the Disablement Law adopted at the first reading, after 2011 the 3<sup>rd</sup> disablement group would no more be granted.

The draft Disablement Law was reviewed by the Saeima in the second reading on 11 June 2009; consequently, only one week before adoption of the Amendments of 16 June 2009. When reviewing this draft law in the second reading, the suggestion of parliamentary secretary of the Ministry of Welfare to provide the following wording of Section 6 (3) of the law: “Level of functional disablement and the resulting loss of ability to work measured in percents for persons aged from 18 years up to reaching of retirement

age shall be assessed: [...] 3) the 3<sup>rd</sup> disablement group if the loss of ability to work is 25 - 59 per cent (average disablement)” was accepted (*see: Comparative chart of the draft law No. 577/Lp9 for the second reading, <http://www.saeima.lv>*).

At the Saeima meeting, acting on behalf of the committee responsible for the draft law, a member of the parliament Ms. Aija Brača provided the information that, before the second reading of the particular draft law, seventy suggestions were reviewed, discussed and analysed (*see: Transcript of the Saeima meeting of 11 June 2009, <http://www.saeima.lv>*). At the third reading, however, she noted that “we have made a difficult way to the third reading due to cooperation with non-governmental organizations representing the rights of disabled persons in Latvia, as well as with different organizations of disabled persons, [...] and also by hearing opinions of certain disabled persons” (*see: Transcript of the Saeima meeting of 5 May 2010, <http://www.saeima.lv>*).

Both, the Disablement Law adopted on 5 May 2010 that came into force on 1 January 2011, and the effective Law “On Medical and Social Protection of Disabled Persons” apply to all disabled persons, including those who became ones in the result of an accident at work or an occupational disease. However, the conditions included in Section 14 of the Law “On State Pensions” determining those disabled person to whom disablement pension would be disbursed. It is also established that the above mentioned pension shall not be disbursed to person whose disablement has been a result of an accident at work (these persons are disbursed insurance compensation).

Consequently, already when discussing the basic framework of the Disablement Law, the Saeima discussed conceptual issues regarding development of the social security system, as well as preconditions for establishing degree of the loss of ability to work permitting establishing a person as a disabled person.

The Constitutional Court has indicated that, when elaborating the draft law, the Saeima fulfils the duty of hearing and assessment in the frameworks of legislation. To fulfil the requirement of hearing opinions, it is sufficient for presenting an oral opinion of a person at a meeting of responsible committee or making it available in writing to members of responsible committee (*see: Judgment of 30 October 2009 by the Constitutional Court in the case No. 2009-04-06, Para 11.2*).

If the Saeima committee has discussed a particular problem in the frameworks of one draft law, there is no need to integrate the discussed solution into another draft laws to re-assess it.

Consequently, it cannot be stated that the Saeima would have selected the criterion of the loss of ability to work by 25 percent included in the Contested Norms without appropriate consideration. This limit complies with such degree of the loss of ability to work that was already discussed and integrated into the Disablement Law at the time when the Contested Norms were adopted. Consequently, adoption of the above mentioned regulatory framework by the Saeima does comply with the requirements that follow from the Satversme regarding adoption of legal norms in the field of social rights.

**10.2.** The applicants Ms. A. Lakstiņa-Lakstīgala, Ms. K. J. Kronīte, Ms. A. Salmane and Ms. E. Streipa, Mr. V. Pčelovs and the members of the Saeima hold that Article 109 of the Satversme requires that the socially person suffered an accident at work or an occupational disease is disbursed disability compensation disregarding whether the person receives or not any other social security benefits. The Saeima, the Ministry of Welfare and the Ombudsman hold, however, that the social rights shall not be interpreted in a way that the State would have the duty to guarantee separate benefit in each occurrence of social risk.

The duty of the State to establish and maintain the social security protection in general, also in relation to those social risks, for which social protection is also envisaged in other articles of the Satversme, follows from Article 109 of the Satversme. Article 109 of the Satversme also enshrines the duty to ensure social protection in case of occurrence of risks referred to in this article. This does not mean, however, that the Satversme confers a person several isolated rights to social security requiring compensating one and the same elements of social security separately.

Insofar as it ensures a person security aimed at meeting the needs for medical assistance, the Insurance Law “duplicates”, at a considerable extent, security established by the right to protection of health. This does not mean, however, that a person should be given the possibility to receive compensation twofold for one and the same medical products.

Insofar as it ensures a person security aimed at meeting the needs of retraining, the Insurance Law “duplicates”, at a considerable extent, security ensured by support in case of unemployment. This does not mean, however, that a person should be ensured with one and the same retraining two times.

Insofar as it ensures a person security aimed at substituting unearned labour incomes, the Insurance Law “duplicates”, at a considerable extent, the right to pension or unemployment benefit.

Before the Contested Norms were adopted, a principle that one and the same unearned labour incomes shall not be compensated twice has already existed in the social security system. The right of a person to social aid in case of disability, temporary disability included, does not mean that a person, whose unearned labour incomes are already compensated by maternity benefit or child care benefit, would have the right to request additionally be disbursed illness benefit to compensate the same unearned labour incomes. Likewise, a person would never simultaneously be disbursed disablement pension and old age pension.

In other Member States, too, the possibility to simultaneously receive compensation for the loss of ability to work and pension is restricted (*see: European Commission, Mutual Information System on Social Protection, Comparative Tables on Social Protection* [http://ec.europa.eu/employment\\_social/missoc/db/public/compareTables.do](http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do)).

**Article 109 of the Satversme does not confer a person the right to request to additionally compensate unearned labour incomes due to a particular social risk in case if they are already being compensated due to another.**

**10.3.** In the case under review, opinion of the applicants and that of the Saeima and the Ombudsman differ regarding the fact whether state pension and long service pension do compensate all lost labour incomes, compensation of which is established in the Insurance Law.

By assuming that lost labour incomes comply with the amount of the loss of ability to work, it is possible too agree with the opinion of the Ombudsman, namely, that these compensation partially overlap. Namely, if a person has lost its ability to work (and, along with the loss of ability to work, also a certain part of incomes) after having

accumulated certain length of service, but he or she still continues working for a certain period (though by earning less income), person's pension capital would be constituted by insurance payments for the entire period, provided that payments after an accident would decrease if compared to a situation when a person would not have suffered an accident at work or occupational disease. Consequently, pension earned by a person is lower if compared to a situation when a person would not have suffered an accident at work or occupational disease and would have continued working by earning the same amount of incomes. According to the applicants, disability compensation should be aimed at compensating the above mentioned "unearned part of pension".

On the one hand, in fact, loss of ability to work at a certain extent does not as such mean that a person would incur loss of incomes of the same amount. It has already been indicated that 50 percent of beneficiaries of disability compensation have lost their ability to work at small extent, namely, up to 25 percent. After being allocated compensation, these persons continued gaining income often by remaining in the same position. It is possible to agree with the opinion of the Ministry of Welfare, namely, that it is not fair to compensate twice incomes of one group of the society, provided that the right of other persons to social security are being exercised at the minimum level.

On the other hand, in fact, loss of ability to work at a certain extent does not as such mean that a person would continue gaining incomes of the same amount. If the loss of ability to work of a person reaches the degree of disablement, it is more likely that the person would have to quit work or working in a profession, which would result in greater loss of incomes from wage labour if compared to the extent of the loss of ability to work. When considering such a situation in the context of pension reform and the fact that before 1995 a person was not gaining pension capital, the actual loss caused by an occupational disease or an accident at work could considerably affect social security of a person in the old age.

The argumentation of the Saeima regarding the fact that a person has the right to receive social security at the amount established for the highest payment does not solve the problem entirely because, for instance, the applicant Mr. V. Pčelovs receives compensation for partial loss of ability to work rather than full disablement compensation; however, he had to quit working in his profession. It should also be taken into account that this applicant was working in the field of railroad industry. Possible loss

of ability to work of employees of a particular profession was presumed based on the specific character of the field, and employees are ensured social guarantees, i.e. long service pension.

It cannot be denied, however, that the contested regulatory framework prohibits a part of pensioners to receive social compensation for “unearned pension”. Therefore it is necessary to investigate whether Article 109 of the Satversme requires that a person would be provided with such social security.

As it has already been established, Article 109 of the Satversme does not guarantee receipt of disability compensation at a certain amount. Likewise, no requirement to meet certain needs of a certain amount related with occurrence of a particular social risk follows from it.

The above mentioned international legal norms, as well as the social insurance system of Latvia provide for compensating lost labour incomes in case if a person is guaranteed compensation in case of temporary loss of ability to work or if a person has suffered an accident at work or an occupational disease, based on the level of incomes of a person before occurrence of a particular social risk, provided that a person can no more gain the above mentioned income. However, they do not provide for compensating such level of incomes that a person could reach when continuing his or her professional carrier, provided that the social risk would not have occurred.

**Consequently, no requirement to cover “unearned pension” follows from Article 109 of the Satversme.**

**10.4.** Opinion of members of the Saeima mentioned in the application and viewpoints presented in the Saeima reply regarding the fact whether unemployment benefit compensates all lost labour incomes, compensation of which is established in the Insurance Law, also differ.

As it has already been mentioned in Para 10.3 of the present Judgment, disability compensation compensates unearned labour incomes based on a presumption that these incomes have been lost approximately at the same amount as the loss of ability to work. Consequently, after suffering an accident at work or an occupational disease, a person continues working based on a presumption that he or she would earn only a part of incomes that he or she would have earned in case if he or she would not have suffered a

particular accident at work or occupational disease. Since the amount of unemployment benefit is related with the amount of lost labour incomes, it compensates the part of incomes gained by means of preserved ability to work and lost due to unemployment rather than the ones lost in the result of an accident at work or an occupational disease.

It should be taken into account that the State is committed to provide support to a person in case of unemployment and to make sure that a person is not left without means of subsistence. However, no duty of the State to ensure, in case of unemployment, the same of similar level of income for a person as he or she had during period of employment follows from Article 109 of the Satversme. Article 109 of the Satversme is aimed at securing that a person has certain means subsistence. No duty of the State to ensure that a person having reach certain level of incomes would preserve it also after loosing work and getting involved in new labour relations.

Article 109 of the Satversme does not prohibit the State to establish such regulatory framework, according to which an unemployed person would lose the right to receive unemployment benefit in case if he or she is engaged in less paid work, gets a part-time work, etc. Consequently, the particular norm of the Satversme does not prohibit the State to refuse paying unemployment benefit to a person who gains “labour income” in the form of compensation of the above incomes.

**Consequently, no requirement to simultaneously disburse disability compensation and unemployment benefit follows from Article 109 of the Satversme.**

**10.5.** Likewise, opinion of members of the Saeima mentioned in the application and viewpoints presented in the Saeima reply regarding the fact whether Article 109 of the Satversme requires to simultaneously disburse compensation regarding the loss of a provider and an unemployment benefit differ.

The loss of a provider as such is a social risk occurred to a person who gains no income. Compensation in case of the loss of a provider is aimed at ensuring subsistence to a person who has no such subsistence. Unemployment benefit is also aimed at meeting of the same needs. Consequently, the State does not have the duty to ensure subsistence to a person twice.

**Consequently, no requirement to simultaneously disburse compensation for the loss of a provider and unemployment benefit follows from Article 109 of the Satversme.**

11. The Constitutional Court has established in its case-law that the special character of social rights determines the limits of control of the judicial power over this field. When implementing social rights, the legislator enjoys a broad freedom of action insofar as it is reasonably related with the economical situation of the State. However, this freedom of action is not unlimited (*see: Judgment of 2 November 2006 by the Constitutional Court in the case No. 2006-07-01, Para 13 – 14*). However, “the judicial power has the duty to assess whether the legislator has observed the limits of this freedom of action” (*see: Judgment of 11 December 2006 by the Constitutional Court in the case No. 2006-10-03, Para 16*). This means that, within the frameworks of its competence, the Court has to investigate the following: 1) whether the legislator has taken measures to ensure the possibility for person to exercise their social rights; 2) whether these measures have been executed properly, namely, whether persons were ensured the possibility to exercise their social rights at least at the minimum extent, and 3) whether all general legal principles have been observed (*see: Judgment of 19 December 2007 by the Constitutional Court in the case No. 2007-13-03, Para 8.4*).

The Constitutional Court has indicated in Para 9 of the present Judgment that the Insurance Law establishes a set of measures to ensure social security in case of occurrence of a particular social risk. Reduction of disability compensation or ceasing of disbursement thereof to a person who has suffered an accident at work or an occupational disease does not mean that a person is deprived of the right to social security as such in case of occurrence of a social risk. Disability compensation is aimed at meeting all those needs that a person has as a result of a particular social risk.

In case if disbursement of disablement compensation is cased to person, whose loss of ability to work constitutes less than 25 percent, it is presumed that a person is able to gain appropriate amount of means of subsistence. The Contested Norms do not prohibit a person to receive other services established in the Insurance Law in order to compensate consequences of an accident at work or an occupational disease as far as

possible and to exercise the right of a person to earn means of subsistence by working in a wholesome manner.

In case of disbursement of disability compensation or compensation for the loss of a provider is ceased or reduced to person who receive pension or unemployment benefit, a person is not denied such State benefit that is aimed at compensation of lost labour incomes.

Consequently, the State has ensured persons the possibility to exercise their social rights at least at the minimum level. Consequently, in the frameworks of the present case, the Court has to investigate whether each of the contested regulatory frameworks comply with the principle of equality, that of legitimate trust, as well as that of proportionality.

**12.** It has been established in the case-law of the Constitutional Court that the legislator has the right to amend effective regulatory framework in the field of social right only by observing the principle of legitimate expectations. In order to assess whether the legal act that provided for deviation from the rights conferred to a person comply with the principle of legal security, the following should be investigated: 1) whether a person has been conferred legal security to safeguarding or implementation of any particular rights; and 2) whether a reasonable balance between protection of legal security of a person and ensuring of interests of the society has been observed (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 23*).

Since, in the present case, several and different regulations are contested, the Constitutional Court shall first investigate, what are legitimate expectations of person regarding each of the Contested norm and how the legislator has dealt with a particular issue in the Amendments of 16 June 2009 to protect legitimate expectations of persons.

**12.1.** It has been indicated in several applications that, pursuant to the Law “On Social Insurance”, employers have made respective payments on behalf of the applicants. Allocation of disability compensation is in force for a considerable period of time, and it is based on certain principles. Persons did have the right to count on the fact that in case if they suffer an accident at work or an occupational disease, the State would pay them disability compensation at the amount previously established.

It should be taken into account, however, that the field of insurance of accidents at work is based on obligatory payments and the principle of solidarity. Making of stipulated payments ensure a person the status of a socially insured person in this field; however, this does not confer him or her the right to count on compensation of a certain amount of certain provisions regarding disbursement of compensation. The above mentioned status gives a person the right to count on the fact that the State would grant him or her social security in accordance with legal norms effective at the period when a person needs particular security.

However, the decision regarding granting of particular disability compensation to a particular person gives the person the right to count on the fact that a particular sum would be disbursed within the term established in a particular period.

**12.2.** Consequently, persons who have been allocated compensation for the loss of ability to work at the amount of 10-24 percent were given protected legitimate expectations regarding the fact that they would have the right to receive the granted disability compensation.

The Contested Norms do not whatsoever infringe these legitimate expectations. The Amendments of 16 June 2009 supplement Transitional Provisions of the Insurance Law by Para 12 providing that a person who has lost the ability to work at the amount of 10 – 24 percent shall be disbursed compensation for the loss of ability to work or compensation for detriment during the period established in the decision regarding granting, recalculation or extending of the term of a particular service. The applicant Ms. V. Dravniece was disbursed disability compensation for more than one year after adoption of the Law, and it was ceased as from 1 July 2010 (*see: 6 July 2010 notice No. 25368 of the SSIA Jelgava Regional Department, case materials, Vol. 2, pp. 74*).

**12.3.** Persons who simultaneously received disability compensation and State pension or long service pension disbursed from the State social insurance budget were granted legitimate expectations into the fact that they would have the right to receive both social services. However, The Contested Norms do not infringe these legitimate expectations. The Amendments of 16 June 2009 supplement Transitional Provisions of the Insurance Law by Para 13 providing that beneficiary of compensation for the loss of ability to work who has been granted long service pension or old age pension before

30 June 2009 shall be disbursed, up to the above mentioned date, the granted compensation for the loss of ability to work during the period established in the decision regarding granting, recalculation or extending of the term of a particular service.

Consequently, legitimate expectations of persons, in respect to whom an administrative act regarding granting of disability compensation is issued, regarding the administrative act has been infringed.

**12.4.** However, the legal norm that has not yet been applied, though it determines prospective rights, might cause protected legitimate expectations. Namely, the rights are established in the normative act; however, not all preconditions for exercise thereof have yet occurred. Legitimate expectations are granted especially if a legal norm applies to legal relations already initiated. Persons could have been granted legitimate expectations regarding the fact that the regulatory framework that was valid for a considerable time would remain unchanged, and their disability would still be confirmed at re-examination in order to be able to continue receiving disability compensation. Moreover, in case if a person has already been granted certain rights, namely, if a legal norm has already been applied thereto, legitimate expectations of a person regarding preservation of such a norm is particularly high; therefore stricter criteria are established for the possibility of the State to infringe legitimate expectations of persons. However, the fact that responsible institution had not yet issued respective administrative act does affect the protection level of legitimate expectations of persons (*see: Judgment of 26 November 2010 by the Constitutional Court in the case No. 2009-08-01, Para 24*).

The Constitutional Court of the Republic of Lithuania has also concluded that person who receive disability pension granted for an indefinite period have also been given legitimate expectations into the fact that the pension would be disbursed for an indefinite period of time; disabled person, however, whose pensions are allocated for a definite period of time cannot trust into the fact that disbursement of a particular pension would not be ceased (*see: Judgment of 2 September 2009 by the Constitutional Court in the case No. 26/06 <http://www.codices.coe.int>*).

**12.5.** Persons who have been granted disability compensation or compensation for the loss of a provider have been given legitimate expectations regarding the fact that they

would receive a particular compensation disregarding the fact whether he is or not granted the status of an unemployed person.

The Amendments of 16 June 2009 supplement Transitional Provisions of the Insurance Law by Para 14 providing that Section 14 (7) of the Insurance Law shall come into force on 1 January 2010. Consequently, in the particular case, a certain transitional period was established for person who were unemployed and counted on the fact that they would also receive disability compensation along with unemployment benefit during the period of unemployment to be able to adapt to new regulatory framework. However, this regulation does not fully eliminate restriction of legitimate expectations of persons.

**13.** Consequently, regulatory frameworks referred to in Para 11 of the present Judgment restrict legitimate trust of persons given by the previous effective regulatory framework at a certain extent, therefore the Court must assess compliance of this restriction with the principle of proportionality.

**13.1.** Changes in the contested regulatory frameworks introduced by means of the Amendments of 2009 have been introduced to reach two mutually related aims. First, they are aimed at optimizing of respective social security fields by implementing the principle of justice and legal quality when disbursing disability compensation. It is in the interests of the society to establish such regulatory framework in this field that would provide that disbursement from funds meant for social assistance are received only by those persons who indeed need it. The ECHR has also recognized that the society might be interested in reviewing issue regarding the fact whether persons who work in a particular profession and who have once been granted pension due to the loss of ability to work have lost their general ability to work at the extent requiring to disbursing pension to them (*see: Judgment by the ECHR in the case Ásmundsson v. Iceland, judgment of 12 October 2004, Application 60669/00, Para. 39*).

Likewise, the regulatory framework preventing ungrounded allocation of several social security services for meeting one and the same needs does comply with the legitimate aim, i.e. ensuring of welfare of the society and rights of other persons.

**13.2.** Amendments in the above mentioned regulatory frameworks were adopted in the frameworks of set of budget draft laws aimed at ensuring sustainability of social

budget. The Constitutional Court has concluded in several judgments that in 2009 Latvia underwent economic recession and therefore it had to perform considerable cut of budget expenses (*see, e.g.: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01*). Regulatory framework elaborated with the purpose to reduce budget expenses does have a legitimate aim, namely, ensuring of welfare of the society (*see, e.g.: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 16, and judgment of 31 March 2010 in the case No. 2009-76-01, Para 4.2*).

**13.3.** The applicant substantiate unconstitutionality of the Contested Norms by stating that persons suffer greater losses as to their incomes if compared with achieved savings in the budget measured proportionally. However, it is not possible to agree with this simplified assessment. The Ombudsman reasonably indicates that the benefit gained by the society from the particular regulatory framework must not be regarded as a particular sum saved in respective position of the social budget; instead, it should be regarded as a part of set of measures for ensuring savings in the common budget. In this light, it can be admitted that the Contested Norms reach the above mentioned legitimate aims.

When assessing whether a reasonable balance has been reached between the necessity to protect legitimate expectations of persons and the necessity to ensure interests of the society, it should be taken into account whether a lenient transition to a new regulatory framework has been provided (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 2 of the Concluding Part*). Such lenient transition could also be a reasonable transitional period, which, in the present case, has been envisaged as far as possible.

Taking into account all above mentioned circumstances, the benefit gained by the society in the result of measures aimed at consolidation of social budget expenses and optimisation of use thereof is greater than restriction established in relation to certain persons.

**Consequently, Section 6 (1) of the Amendments of 16 June 2009 (providing excluding Section 20 (4) 5<sup>th</sup> indent from the Insurance Law), Section 14 (7) and Section 20 (9) of the Insurance Law do comply with Article 109 of the Satversme in conjunction with Article 1 of the Satversme.**

**14.** The applications contain several opinions regarding the fact why certain Contested Norms do not comply with the second sentence of Article 91 of the Satversme. In order to assess compliance of the Contested Norm with the first sentence of Article 91 of the Satversme, it is necessary to investigate whether persons enjoy equal and comparable circumstances, whether the Contested Norm provides for a different attitude, and whether the different attitude has an objective and reasonable grounds, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed (*see, e.g.: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 14*).

**14.1.** According to the applicant Ms. V. Dravniece, the Contested Norm envisaging excluding Section 9 (4) 5<sup>th</sup> indent from the Insurance Law (disbursement of disability compensation for person with the loss of ability to work at the amount of 10 – 24 percent) does not comply with the principle of equality in respect to three aspects.

First, contents of the notions “the loss of ability to work” and “disablement” are similar. Pursuant to the Law on Occupational Diseases, disability compensation is received by every person who has been established the loss of ability to work; whilst disablement pension is received by those who have been diagnosed any of the three disablement groups.

The Constitutional Court does not agree to what follows from this statement, namely, the fact that persons with the loss of ability to work at the amount of 10 – 24 percent enjoy equal and comparable conditions if compared to disabled persons, i.e. persons who have been established the loss of ability to work at the extent exceeding 24 percent. Pursuant Appendix No. 3 “loss of health up to 25 percent shall not be regarded as disablement” of 19 November 2009 Cabinet of Ministers Regulations No. 650 “Procedure Determining Invalidity by the State Commission of Doctors and Health and Working Ability” adopted in accordance with Section 10 (2) of the Law “On Medical and Social Protection of Disabled Persons”

Second, the applicant Ms. V. Dravniece maintains that attitude towards persons who have lost their ability to work amounting up to 24 percent should be different if compared with persons with perfect capacity. It is considerably more difficult for persons with partial ability to work to find work and earn living subsistence and pension.

The Constitutional Court agrees that this particular difference between the above mentioned persons commits the legislator to establish extra aid to employing such persons and, in case of necessity, to ensure retraining; however, the loss of ability to work at the particular amount does not mean that the legislator would have the duty to provide such aid in the form of money only. Section 18 of the Insurance Law establishes the duty of a person to take advantage of professional rehabilitation and retraining funded by the SSIA. However, Section 21 (2) of the same Law that the SSIA shall cover expenses of a person for medical and professional rehabilitation in case of they are not compensated from the minimum of health care services and State programme of social assistance.

Third, Ms. V. Dravniece holds that each person suffered an accident at work or an occupational disease enjoy legally comparable conditions; however, only a part of them, namely, person who have lost their ability to work by less than 25 percent, are not allocated disability compensation.

The Constitutional Court agrees that all persons suffered an accident at work or an occupational disease enjoy legally comparable circumstances insofar as they need social security to meet the needs resulting from an accident at work or an occupational disease. However, such needs may differ depending on the kind of accident or an occupational disease. In this case, equal attitude means that different needs resulting from an accident at work or an occupational disease are met at to a certain extent (for instance, need for medical treatment, medical products, prosthetics, retraining etc.), rather than one and the same services are ensured or paid to each person. The need to compensate lost incomes occurs of a person has lost his or her ability at the extent when he or she is no more able to gain incomes. The possibility to establish threshold for presuming that a person is able to earn means of subsistence of a certain amount disregarding his or her loss of ability to work fall within the freedom of action of the legislator; based on this threshold it is then possible to establish whether a person needs compensation of lost incomes. Consequently, each person suffered an accident at work or an occupational disease is treated equally, namely, it is established that their needs would be meet at a certain extent.

**Consequently, Section 6 910 of the Amendments of 16 June 2009 (providing for excluding Section 20 (4) 5<sup>th</sup> indent from the Insurance Law) does comply with Article 91 of the Satversme.**

**14.2.** It follows from the applications of Mr. A. Lakstiņš-Lakstīgala, Ms. K. J. Kronītee, Ms. A. Salmane and Ms. E. Streipa, Mr. V. Pčelovs, as well as that of the members of the Saeima that all socially insured person who, in the result of an accident at work or an occupational disease, have lost their ability to work at least at the extent of 25 percent enjoy legally comparable circumstances; however, persons who receive State pension, respective long service pension or unemployment benefit are treated differently because disability compensation is disbursed partially or it is not disbursed at all.

The Constitutional Court agrees that the above mentioned persons enjoy legally comparable conditions. However, the different attitude has been established by law and it is related to an objective criterion, i.e. presence of another element of social security, the aim of which is compensation of unearned labour incomes. This attitude has a legitimate objective, namely, to ensure sustainability of the social protection system and compliance thereof with legal principles.

The above mentioned regulatory frameworks do reach this aim because they ensure that persons are not compensated their loss of ability to work several times. Namely, pension is calculated and disbursed based on assumption that a person has completely lost its ability to work. Unemployment benefit also is disbursed based on assumption that a person does not gain any income from wage labour. Consequently, a person is not denied the possibility to receive compensation for losing incomes from wage labour due to occurrence of one or several social risks.

In the field of social rights, it is not possible to avoid that in each particular case the actual situation of a person might differ from the assumed situation. For instance, it is assumed that a person loses his or her ability to work at a stipulated age; however, this presumption does not comply with state of every person at a particular age. The legislator has the right to take such presumptions into consideration if they are reasonably grounded and have been assessed according to a proper procedure. Likewise, limits of the freedom of action of the legislator permits it establishing, based on the above mentioned

presumptions, the procedure for calculating the amount of social security in case of occurrence of several social risks.

Moreover, the legislator has selected the most lenient solution, namely, a person is preserved the possibility to receive social security at a greater extent if compared to the one calculated for each social insurance service.

The benefit gained by the society from the different attitude is greater than restriction of interests of a person. Consequently, the above mentioned different attitude does comply with requirements of proportionality.

**Consequently, Section 14 (7) and Section 20 (9) of the Insurance Law does comply with Article 109 of the Satversme in conjunction with Article 91 of the Satversme.**

15. In the application submitted by the members of the Saeima, they have included a claim regarding compliance of Section 20 (9) (former wording) of the Insurance Law with Article 1, article 91 and Article 109 of the Satversme. Since it has already been concluded in the present judgment that Article 109 of the Satversme does not require that persons should simultaneously disbursed State pension and disability compensation, there is no need to separately make sure whether restriction to disbursement of disability compensation at the amount of 20 percent complies with these requirements. It has not been indicated in the application that the above mentioned norm would have been adopted breaching the principle of legitimate expectations. However, in Para 6.2.2 of the present Judgment, the Constitutional Court has already assessed substantiation *expressis verbis* included in the application regarding non-compliance of the particular norm with the second sentence of Article 91 of the Satversme.

**Consequently, Section 20 (9) of the Insurance Law (wording that was effective before 1 July 2009) does comply with Article 1, Article 91 and Article 109 of the Satversme.**

## The Constitutional Court

based on Article 30 – 32 of the Constitutional Court Law

**h o l d s :**

**1. Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” (wording effective up to 1 July 2009) does comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia.**

**2. Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” does comply with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia.**

**3. Section 14 (7) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” does comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia.**

**4. Section 6 (1) of the 16 June 2009 Law “Amendments to the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” does comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia.**

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris