



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, 15 April 2010 in Case No. 2009-88-01

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

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

on 16 March 2010 in writing examined the case

**“On Compliance of Para 14, Para 16 and Para 17 of the Transitional Provisions of the Law “On Long Service Pensions of Military Persons” with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia”.**

### The Facts

1. On 19 March 1998, the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) adopted the Law “On Long Service Pensions of Military Persons” (Hereinafter – the Long Service Pension Law). The Long Service Pension Law establishes the right of active military service officers, non-commissioned officers, professional service troopers and rank service civil guard

(hereinafter – military persons) of military structures subordinated to and governed by the Latvian National Armed Forces and the Ministry of Defence to receive long service pension, as well as the procedure for allocation, calculation and disbursement thereof.

On 16 June 2009, the Saeima adopted the Law “Amendments to the Law on Long Service Pensions of Military Persons”. It came into effect on 1 July 2009. The Law supplemented the Long Service Pension Law by Paras 14, 16 and 17 of the Transitional Provisions (hereinafter – the Contested Norms).

Para 14 of the Transitional Provisions of the Long Service Pensions Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who have been granted the long service pension before 30 June 2009, shall be recalculated and reduced by 10 percent based on the estimated amount of the long-service pension. The Ministry of Defence shall recalculate long service pensions of military persons before 3 July 2009.”

Para 16 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who, as on 1 July 2009, is a socially insured person (an employee or a self-employed person), shall be recalculated and reduced by 70 percent based on the estimated amount of the long service pension. The amount of the long-service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost. If the beneficiary of the long service pension is not, as on 1 July 2009, a socially insured person (an employee or a self-employed person), he or she shall have the duty to inform the Ministry of Defence on it, as well as on the loss of the status of a socially insured person within three working days from the date of the loss of the status.”

Para 17 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pensions for beneficiaries, who become socially insured persons (an employee or a self-employed person) on the first date of the month preceding the month when the beneficiary of the long service pension has become a socially insured person, shall be recalculated and reduced by 70 percent based on the estimated amount of the long service pension. The amount of the long-service pension shall be restored as from the first date of the month preceding the month when the status of a socially insured person is lost. The duty of the beneficiary of the long service pension is to inform the Ministry of Defence on the loss or acquisition of the status of a socially insured person within three working days from the date of the loss or acquisition of the status.”

2. Since 31 December 2001, the applicant **Vēsma Vilka** (hereinafter – the Applicant) is retired from the service and the office of the director of the Law Department of the Border Guard of the Republic of Latvia. According to the Long Service Pension Law, since 1 January 2002 she was granted long service pension. The Applicant was employed before the contested paras of the Transitional Provisions of the Law were adopted; however, after coming into force of the contested paras of the Transitional Provisions, namely, after 1 July 2009, she terminated her labour relations. Consequently, according to Para 14 of the Transitional Provisions of the Long Service Pension Law, the pension of the Applicant was recalculated and reduced by 10 percent based on the estimated amount of the long-service pension.

The Applicant holds that the contested paras of the Transitional Provisions do not comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and asks the Court to recognize these norms as null and void as from the moment of adoption of them.

It has been indicated in the application that the principle of legal security and that of proportionality follow from Article 1 of the Satversme. The Legislator, when adopting the contested norms that establish reduction of long service pensions by 10 percent for non-employed recipients of long service pension and

by 70 percent for employed recipients of long service pensions has breached these principles.

The Applicant holds that the contested paras of the Transitional Provisions neither comply with Article 91 of the Satversme because employed recipients of long service pension are established a great reduction of the estimated long service pension if compared the reduction established for non-employed ones.

The Applicant also indicates that social guarantee earned by a person during his or her term of service. Norms of the Long Service Pension Law that regulate the procedure of granting of the pension have remained unchanged. The contested paras of the Transitional Provisions of the Law only restrict application of these norms during a certain period. Consequently, the contested paras of the Transitional Provisions do restrict the fundamental right to social security established in Article 109 of the Satversme.

The Contested Norms have been adopted with a view to solve financial problems of the State, to save budget resources, and to balance interests of all beneficiaries of social security. These norms are also aimed at creating such circumstances that make recipients of long service pension to abandon their jobs. When adopting amendments in the field of social rights, it is necessary to guarantee certain period for persons to be able to get prepared for the changes. In the case under review, such preparatory period constituted only two weeks. Disregarding the fact that application of the Contested Norms is temporary, consequences caused by them are, in fact, irreversible because it is rather unlikely that the Applicant who has terminated her labour relations will be able to restore them after the expiry of the term of the restriction established in the Law, namely, after 31 December 2012.

According to the Applicant, the Saeima, when establishing restrictions to the fundamental rights of persons, has failed to assess whether the society would gain any benefit when recipients of long service pension would be replaced by other persons. However, the aim of the norms, i.e. saving of budget resources, cannot be reached by means of the Contested Norms if the majority of recipients of long service pension prefer terminating their legal labour relations. The Saeima

has failed to assess this particular aspect of influence of the Contested Norms. It has neither assessed the fact that a part of recipients of long service pensions would continue working and receive “an envelope salary”, which means that they would not pay taxes and thus reduce incomes into the State budget.

3. The institution that adopted the Contested Norms, **the Saeima** does not share the opinion of the Applicant and holds that that the norms do comply with legal norms of a higher legal force.

It has been indicated in the reply of the Saeima that, when assessing compliance of the Contested Norms with the Satversme, it is necessary to take into account factors related with economic situation of the State and possibilities of the State budget of Latvia under circumstances when the conditions has considerably reduced. The fall of the GDP in comparable prices was 18 percent in the first quarter of the year, and 19.6 percent in the second quarter of the year. The economic recession resulted in a considerable cut of State budget expenses. For instance, incomes of the State consolidated budget during the first six months of 2009 were by 363.4 million lats or 15 percent lesser than the incomes during the same period of 2008. During the first six months of 2009, the financial deficit of the State consolidated budget reached 449.9 million lats.

Therefore the Saeima had to take effective measures to cease economic recession in the State, to preserve functioning financial system, and balance wishes of the society with the possibilities to implement them. Moreover, under Declaration of 11 March 2009 regarding planned activities of the Cabinet of Ministers, the government has undertaken to achieve reduction of budget deficit. This followed from both, liabilities in front of the European Commission and the International Monetary Fund, and the determination to cease economic recession of the State.

The Saeima indicates that the Law “Amendments to the Law on the State Budget 2009” that came into effect on 1 July 2009 provided for a considerable cut of expenses from the budget of ministries and other central authorities in order to achieve budget consolidation for the amount of 500 million lats. To reduce budget

expenses, a broad range of remedial measures was planned to be implemented, these measures also including reduction of expenses of ministries and other central institutions by implementing institutional changes, field policy amendments, and optimisation of structures. Amendments to the laws regulating long service pensions, including the Contested Norms, and the Law “On Disbursement of State Pensions in the Period from 2009 to 2012” are aimed at the above mentioned objective. The Contested Norms ensure saving of the basic budget resources and those of the special budget. Namely, long service pensions for military persons are paid from both, the basic budget and the State social insurance special budget. The Saeima emphasizes that the fundamental principle of functioning of the social insurance special budget is self-funding, namely, normative acts on social insurance establish a linkage between social insurance payments and social insurance services. In the result of economic crisis incomes of employed persons have reduced and unemployment rate has increased considerably. This has resulted in substantial reduction of incomes into the special budget, which is generally formed by social insurance payments. Taking into consideration performance of the social insurance special budget and prognosis of its incomes, as well as planned expenses for the following years, the accumulated funds of the State special budget would be consumed within a couple of years if the Saeima would not take necessary measures.

It has been maintained in the reply that the Contested Norms do not contradict Article 109 of the Satversme because social rights are of special and different character. Exercise of these rights depends on economic situation of each state and resources available thereto. Economical development and employment serve as preconditions for social protection system of the highest level. From 2002 to 2008, when the State was experiencing economical growth and also incomes into the special budget, the amount of old age pensions and long service pensions has considerably increased.

The Saeima holds that the cut of long service pensions should be assessed in the context of economic recession. It has been indicated in the reply that the

restriction included in the Contested Norms was established as a temporary solution.

The restriction included in the Contested Norms has a legitimate objective, namely, to protect not only the interests of the special budget but also the constitutional value mentioned in Article 116 of the Satversme, i.e. welfare of other persons, taking into account the duty of the State to ensure State pensions and other social services in the future.

This aim cannot be reached by other measures at the disposal of the Saeima and the Cabinet of Ministers that would restrict the rights of a person at a lesser extent. A hypothetical alternative for reduction of expenses of the special budget could be increase of incomes by augmenting payments for employers and employees. Such alternative would, in fact, cause a range of negative consequences that would have a negative impact on the State social insurance payments in the long term.

The Saeima holds that measures selected for reaching of the above mentioned objectives are appropriate because the Contested Norms ensure saving of budget resources and balances interests of all beneficiaries of social security. Consequently, the Contested Norms shall be regarded as proportional and appropriate for reaching of the objective because the benefit gained by the society is greater than the detriment caused to the rights of a person.

**4. The Summoned Person – Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – indicates that the right to social security pertain to social rights that are of great importance. However, these are special and different human rights because exercise of them depends directly on economic situation of each state and resources available thereto. It should also be taken into account that this right has also been included in the Satversme; therefore the State cannot repudiate fulfilling them. The above conclusion follows from the principle of a socially responsible state.

The aim of long service pensions is to ensure subsistence for persons whose work is related with an earlier loss of professional skills that might occur before

the stipulated retirement age. The legislator has established in the Contested Norms that the restriction of disbursement of long service pensions is only temporary measure, which thus restricts the fundamental rights of persons established in Article 109 of the Satversme.

By referring to case-law of the Lithuanian Constitutional Court, the Ombudsman admits that an extraordinary situation might occur in a state when the State lacks resources for disbursement of long service pensions. In such event, regulatory framework on disbursement of long service pensions can be amended, these amendments *inter alia* including reduction of the amount of long service pensions insofar as it is necessary for ensuring of vital interests of the State and the society, as well as for protection of other constitutional values. Consequently, saving of budget resources and the principle of social solidarity implemented in the framework of such saving can be regarded as the legitimate aim of the Contested Norms.

When assessing proportionality of the Contested Norms, the Ombudsman shares the opinion of the Saeima, namely, that economical factors should be taken into account in this particular situation. Consequently, under the conditions of economic crisis, a temporary cut of long service pensions is an appropriate measure for reaching of the legitimate objective.

When establishing restrictions of disbursement of long service pensions regarding non-employed recipients of long service pensions, the legislator has failed to provide a minimum amount of the rights that should be guaranteed to a person at all events for him or her to be able to meet the basic needs. This is of particular importance in cases when a person is retired from service because of his or her health condition or the person is not able to gain extra incomes due to external reasons. Moreover, such regulatory framework restricts the rights of recipients of pension in public, social and cultural life.

According to the Ombudsman, long service pension shall be regarded as an extra social guarantee, and its aim is the same as that of old age pension, i.e. to ensure subsistence for a person when he or she is no more able to have active legal labour relations. Consequently, although ensuring of subsistence is not the

only aim of long service pension, this fact, however, permits comparing of restriction of long service pensions with those of old age pensions.

Transcripts of the Saeima meetings, the draft of and the annotation to the Long Service pensions Law confirms that developers of the draft law and the Saeima have sufficiently assessed whether the particular aim could be reached by other alternative measures that would restrict the fundamental rights of persons at a lesser extent.

The legislator has failed to provide a lenient transition to the new regulation. Namely, the time from adoption of the Contested Norm to coming into force of them was too short. Consequently, persons were denied the possibility to get prepared for the changes in an appropriate manner and to plan their future life in accordance with the reduced amount of long service pension.

The Ombudsman holds that the Contested Norms do not comply with the principle of proportionality and that of legal security, and therefore they do not comply with Article 1 and Article 109 of the Satversme.

**5. The Ministry of Defence** informs that on 31 December 2009 there were 1240 recipients of long service pension. Average long service pension for military persons constitutes 260 lats per month. Six percent out of these persons are still employed, which means that about 60 persons continue receiving long service pension and working. On the one hand, in average 182 lats are withdrawn from such person per month. Up to 31 December 2009, in total 74 880 lats were deducted from long service pensions of employed pensioners. From adoption of the Contested Norm to December 2009, the total deduction from long service pensions of military persons could reach 252 980 lats.

#### **The Constitutional Court has established:**

**6.** The case was initiated regarding compliance of Para 14, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law with Article 1, Article 91 and Article 109 of the Satversme. Para 14 of the Transitional Provisions of the Long Service Pension Law establishes reduction of long service pensions for military persons by 10 percent based on the estimated amount of the

pension. However, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law provides for reduction of long service pension by 70 percent based on the estimated amount of it for employed recipients of the pension.

Article 19.<sup>2</sup> of the Constitutional Court Law provides: “A constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers that their fundamental rights as defined in the Constitution infringe upon legal norms that do not comply with the norms of a higher legal force.” Consequently, a person has the right to address the Constitutional Court only in the event if there is a direct link between infringement of the right of this person and the contested legal norm. It also follows from the above mentioned norm that infringement of the fundamental rights of a person should be direct and concrete.

When adjudicating a case having regard to a constitutional complaint of a person, the task of the Constitutional Court is to assess compliance of legal norms that have, in fact, infringed or could infringe the fundamental rights of a person with legal norms of a higher legal force.

The Applicant was granted long service pension of a military person, and she was also employed and thus was a socially-insured person (*see: case materials, pp.12*). When submitting the application, the Applicant had already terminated her legal labour relations. It follows from the application that long term pension of the Applicant was reduced by 70 percent, namely, under Para 17 of the Transitional Provisions of the Long Service Pension Law the amount of long service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost. According to the information provided by the Ministry of Defence, some persons who terminated their legal labour relations from 1 July 2009 were disbursed long service pensions erroneously deducted 70 percent of the estimated amount because, after coming into force of the Contested Norms, not all data on persons who have ceased their legal labour relations before coming into force of the Contested Norms were received. It follows from the case materials that this mistake was corrected and sums erroneously deducted were disbursed.

Consequently, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law do not directly infringe the rights of the Applicant.

Article 29 Paragraph 3 of the Constitutional Court Law provides that judicial proceedings of a matter may be terminated until pronouncement of the judgment at the decision of the Constitutional Court if the Constitutional Court establishes that a decision regarding initiation of a matter does not comply with the requirements of Section 20, Paragraph five of this Law. However, Article 20 Paragraph 5 Indent 3 of the Constitutional Court Law provides that, in examining applications, the Division shall be entitled to refuse to initiate a matter if the application does not comply with the requirements specified in Section 19<sup>2</sup> of the Constitutional Court Law.

If a Constitutional Court panel, when deciding on initiation of the case, has any doubts regarding existence of any particular infringement, the above mentioned issue is being solved during preparation and examination of the case.

In the frameworks of the case under review, the Constitutional Court shall have the right to assess reduction of long service pensions for military persons insofar as it applies to the Applicant, namely, to assess Para 14 of the Transitional Provisions of the Long Service Pension law (hereinafter – the Contested Norm).

**Consequently, proceedings regarding compliance of Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law with Article 1, Article 91 and Article 109 of the Satversme shall be terminated.**

7. The Contested Norm pertains to the field of social rights. The Saeima indicates in its reply that, in the Long Service Pension Law, the legislator has provided for restrictions of long service pensions for military persons by thus restricting the fundamental rights to social security guaranteed in Article 109 of the Satversme.

The concept of the democratic republic, included in Article 1 of the Satversme, obligates all state institutions in their activities, especially when passing legal acts, to observe legality, separation of power and mutual control, taking into consideration subordination of public power to the law, i.e.

supervision of the law as well as other principles of a legal state, including the principles of reasonability and trust in law (*see: Judgment of the Constitutional Court of 10 June 1998 in the case No. 04-03(98), third paragraph of the Concluding Part, and Judgment of 24 March 2000 in the case No. 04-07(99), Para 3 of the Concluding Part*).

The Constitutional Court has indicated that “State institutions should act consistently in relation to the issued normative acts, they should observe the trust in law conferred to persons based on a particular normative act” [Judgment of the Constitutional Court of 10 June 1998 in the case No. 04-03(98), *paragraph 3 of the Concluding Part*]. However, the proportionality principle determines that – if the public power limits person’s rights and lawful interests – a reasonable balance between the interests of the person and the state or public interests has to be taken into account (*see, e.g.: Judgment of the Constitutional Court of 19 March 2002 in the case No. 2001-12-01, Para 3.1 of the Concluding Part and Judgment of 25 March 2003 in the case No. 2002-12-01, Para 5 of the Concluding Part*).

Secondly, 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 might differ in different fields of law. The nature of the Contested Norm, inter alia, also its connection with other norms of the Satversme and their place in the system of fundamental rights, inevitably influence the scope of the control, realized by the Constitutional Court. Namely, the legislator may have comparatively narrow or broad freedom of action when regulating a particular issue; therefore the task of the Constitutional Court is to assess whether the extent at which the Saeima has acted complies with the extent of freedom of action established in the Satversme (*see: judgment of the Constitutional Court of 8 November 2006 in the case No. 2006-04-01, Para 15.2 and 15.3*).

**Consequently, compliance of the Contested Norm with the principle of legal security and that of proportionality shall be assessed in conjunction with Article 109 of the Satversme.**

8. Article 109 of the Satversme provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

The Constitutional Court has already indicated in this judgment that social rights are very important, however they are of special and different nature because exercise of these rights depend on economic situation of each state and resources available thereto. 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. Article 109 of the Satversme, however, does not regulate provisions of pensions system. Consequently, this norm establishes and admits certain differences in receipt of social security (*see: Judgment of the Constitutional Court in the case No. 2001-11-0106, Para 1 of the Concluding Part*).

When implementing the right established in Article 109 of the Satversme, the legislator enjoys a broad freedom of action when regulating the issue regarding the kind of social security to be received by a person and the criteria for the receipt of it for a certain group of persons. However, this freedom of action is not unlimited. The limits are established by other norms and principles of the Satversme.

The list of cases of social risk included in Article 109 of the Satversme is not exhaustive. When assessing different factors of social risk and economic possibilities of the State, the legislator has the right to act within the limits of the freedom of action conferred thereto and form a social security system by also establishing other kinds of social security. Notably, the legislator has the right to stipulate different kinds of social security (like, benefits, pensions, bonuses, etc.) and concretize the rights of persons to social security.

Long service pensions are aimed at providing State aid to persons whose work is related with loss of professional skills under certain conditions before the retirement age is reached. Long service pension is an additional social guarantee to persons, who have performed certain functions in the interests of the State in specific conditions (*see: Judgment of the Constitutional Court of 4 December*

2003 in the case No. 2003-14-01, Para 7). The State has the right to choose measures to provide persons with such special conditions related with their service.

The Constitutional Court has already concluded that the fact that these pensions are partially disbursed from the State basic budget and the fact that these pensions apply not only to the field of social rights but also serves for other purposes, does not mean that the respective long-service pensions do not fall within the scope of Article 109 of the Satversme (*See: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 5.1 and 5.2*).

**The Contested Norm does not fall within the content of the right to social security guaranteed in Article 109 of the Satversme.**

9. The Constitutional Court has already concluded that Article 109 of the Satversme does not guarantee a person any particular kind of pension, including long service pension that is calculated based on certain criteria or at a certain amount. However, if the State has established a particular pension by law, then Article 109 of the Satversme requires that all further activities by the State regarding this pension would comply with the principles of a law-governed state, including the principle of legal security and that of proportionality (*see: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 5.5*).

The amount of state guaranteed social rights depends on the resources at the disposal of the State. In certain cases, economic crisis can develop to the point when the freedom of action must be granted to the legislator to enable the implementation of remedial measures – even if the latter would infringe the fundamental rights established by the Constitution. In the situation of extremely limited financial resources of the State, the latter has freedom of action to change the conditions for pension disbursement – with the aim of sustaining a just social insurance system (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01, Para 24 and Para 29.2*).

Under the conditions of economic crisis social solidarity means that every citizen assumes a proportional responsibility for eliminating the harsh consequences of the crisis (*see: Judgment of the Constitutional Court of 18 January 2010 in the case No. 2009-11-01, Para 10.3*). The Constitutional Court has concluded that measures for combating crisis and restrictions of rights of persons related thereto should comply with certain criteria. Namely, they should be carried out on the basis of thorough assessment and principles of a law-governed state should be observed (*see: Judgment of the Constitutional Court of 26 November 2009 in the case No. 2009-08-01, Para 17.2, 23 and 25 and Judgment of 18 January 2010 in the case No. 2009-11-01, Para 10.3*).

The Constitutional Court also recognized that, irrespective the aspect of ensuring and protection of the fundamental rights established in Article 109 of the Satversme, there exist differences between old-age and long-service pensions (*see: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 5.2*). The above mentioned differences shall be assessed taking into account circumstances of the case under review rather than be established in abstract terms.

**10.** Section 41 of the Military Service Law determines the maximum age at the military service for every concrete post. For a lieutenant in active service it is 35 years, for other military persons – from 45 till 60 years.

The Constitutional Court has already concluded that the term of service for soldiers is particularly restricted, and it is not possible to continue service up to the stipulated age of granting old age pension. Long service pension ensures retired soldiers the possibility to integrate themselves in the civil life, namely, to give the possibility to master a civil profession and ensure means of subsistence taking into account the fact that provisions, requirements and circumstances of the service may significantly influence the further possibilities of the soldiers to compete in the labour market. Besides, the term of service pension is one of the factors, which compensates limitations, which are in effect during the time of

military service (*see: Judgment of the Constitutional Court of 4 January 2007 in the case No. 2006-13-01, Para 7.1*).

The Long Service Pension Law (wording of 3 April 2008) provided that a military person whose calculated length of service is no less than 20 years or less than 20 years in case if a military person has started serving before 31 December 2004 and has served no less than 10 years of if a military person has started serving after 1 January 2005 and has served 10 years running and retired in accordance with one of the cases stipulated in the law shall have the right to receive long service pension.

The Constitutional Court has already indicated that the aim of the term of service pension is first of all to ensure support for the person during the period of retraining; in its turn for a person, who retires near to the time of reaching the age envisaged for old-age pension, adequate subsistence shall be ensured, as there is minimum possibility that the person will retrain at this age (*see: Judgment of the Constitutional Court of 4 January 2007 in the case No. 2006-13-01, Para 8.2*).

**10.1.** The Applicant has reached the stipulated age for granting of old age pension. Under Section 10 Paragraph 1 of the Long Service Law, certain part of long service pension is deducted or the amount of the pension is changed when a recipient of long service pension is granted old age pension in accordance on the Law “On State Pensions”.

Long service pension of the Applicant is compensating one as to its nature, i.e. it compensates restrictions established during the term of service disregarding the fact whether these restrictions have or have not cause ultimately loss of work skills. In this case, the deducted part of the pension as the difference between the granted old age pension and long service pension not only ensures subsistence but also serves as remuneration for being in State service.

**10.2.** When exercising social rights, it is necessary to observe the fundamental legal principles that form the basis of relations between a person and the State. When establishing the amount of long service pension and the procedure of granting of it, the legislator is committed to observing of the above mentioned legal principles.

Under circumstances of economic recession and crisis, it is necessary to ensure disbursement of State granted long service pensions but, when reducing them, it is necessary to observe the principle of proportionality, which means that the State cannot cease fulfilling liabilities undertaken by it and cause considerably less beneficial situation for a person by thus infringing the trust of a person in receipt of the stipulated long service pension.

The Contested Norm is not aimed at changing of the social security system. It provides that, during a certain period, i.e. from 1 July 2009 to 31 December 2012, granted long service pensions shall be disbursed at the amount of 90 percent. The measure established in the Contested Norm, the aim of which is to solve financial problems, shall be regarded as an exception of the long service pension system for military persons established in the State.

**Consequently, by failing to disburse long service pension granted according to a certain procedure, the fundamental rights of the Applicant established in the Satversme are infringed.**

11. Article 116 of the Satversme does not directly establish cases when the fundamental rights established in Article 109 of the Satversme can be restricted; however it does not mean that the fundamental rights are absolute. The presumption that no restrictions may be imposed on certain fundamental rights would be at variance with the fundamental rights guaranteed to other persons and other norms of the Satversme (*see: Judgment of the Constitutional Court of 2002-04-03, Para 2 of the Concluding Part*).

Consequently, the rights guaranteed in Article 109 of the Satversme can be restricted provided that the restriction is established by law, has a legitimate objective and complies with the principle of proportionality.

12. The restriction of fundamental rights guaranteed in Article 109 of the Satversme is established by the law, namely, it is included in the Long Service Pension Law adopted by the Saeima on 16 June 2009 and announced by the President of the State on 30 June 2009. In the case under review, there is no dispute whether the Contested Norm has been adopted based on a properly

adopted and announced law. However, the Constitutional Court draws attention to the fact that legislative process in 2009, when certain restrictions of social rights under circumstances of economic crisis, was inadequate because preparation and adoption of draft laws was premature, and the society was not duly and timely informed prior to the adoption of these laws (*see: Judgment of the Constitutional Court of 26 November 2009 in the case No. 2009-08-01, Para 17.2 and Judgment of 21 December 2009 in the case No. 2009-43-01, Para 26*).

**The restriction of the fundamental rights established in the Contested Norm has been established by law.**

13. The Saeima indicates in its reply that the Contested Norm was adopted in frameworks of measures to combat economic recession, and it is aimed at reaching of the aims mentioned in Article 116 of the Satversme, i.e. protection of the rights of other persons and welfare of the society. The Contested Norm is only one of the numerous measures performed with the view to balance the State budget, protect other constitutional values, and ensure substantial interests of the society and the State.

The Constitutional Court has already concluded that in 2009 Latvia was ceased by economic recession, therefore it was necessary to materially reduce State budget expenses, this also including cut of wages paid from the State budget (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01 and Judgment of 18 January 2010 in the case No. 2009-44-01*). In the frameworks of this case, it is not necessary to establish once more that, when adopting the Contested Norm, it was necessary to reduce State budget expenses.

The Constitutional court has recognized that if regulatory framework is aimed at reducing of State budget expenses, the regulation has a legitimate objective, i.e. ensuring of welfare of the society (*see: Judgment of the Constitutional Court of 15 March 2010 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*). The Constitutional Court has no reason to doubt whether the Contested Norm and several other measures have ensured reduction of expenses of the State budget by

facilitating balancing of incomes of expenses of the budget and thus ensuring welfare of the society.

**Consequently, the contested restriction has a legitimate objective, and the Contested Norm ensures reaching of the above mentioned objective.**

14. It has been indicated in the reply that the Contested Norm has been elaborated and adopted within frameworks of a body of measures to ensure the planned cut of expenses established in the Law “Amendments to the Law “On the State Budget 2009”, i.e. budget consolidation by 500 million lats, along with the Law “On Disbursement of State Pensions and State Benefits in the Period from 2009 to 2012” (hereinafter – the Disbursement Law) and other laws that establish cut of long service pensions.

The Constitutional Court has concluded that the procedure for payment of service pensions has been established in the contested norms due to the same consideration that apply also to old age pensions. The amounts of pensions to be disbursed provided in the Contested norms is, in fact, based on a similar understanding of the legislature of its rights to introduce certain amendments in the regulatory framework for social rights (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01, Para 21 and 22*).

In the judgment of 21 December 2009 in the case No. 2009-43-01 (hereinafter – Judgment in the case No. 2009-43-01), the Constitutional Court concluded that conclusions made by it regarding old age pensions shall also apply to long service pensions established in Section 2 and Section 3 of the Disbursement Law. Such conclusion is based, among the rest, on the fact that the amount of long service pensions established in the Disbursement Law is closely related with expenses of the social insurance special budget, and they were calculated using the same method as for old-age pension. In the Judgment in the case No. 2009-43-01, legal consequences in the particular case does not mean that all long service pensions, in the light of the protection of the rights established in Article 109 of the Satversme can be equated with old age pensions.

The Constitutional Court recognizes that, as to the aspect of ensuring and protection of the fundamental rights established in Article 109 of the Satversme, there are differences between old age pensions and long service pension, the latter being established in special laws. These differences are mainly based on the procedure of granting and recalculating of long service pensions, their source of funding, as well as the amount of long service pension to be granted. Consequently, the amount of ensuring and protection of long service pensions established in special laws is considerably lesser than that of old age pension, and therefore the State enjoys a broader freedom of action in this respect.

In the Judgment in the case No. 2009-43-01 and in the judgment of 31 March 2010, the Constitutional Court has assessed several material issues related with laws that pertain to regulatory framework adopted in the framework of measures to eliminate consequences of economic crisis. The Constitutional Court concluded that the legislator, when adopting norms contested in the above mentioned cases, “has not considered with sufficient care the alternatives to these provisions and has not envisaged a more lenient solution. Therefore, the impugned provisions do not comply with Article 109 of the Constitution (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01, Para 30.2.2 and judgment of 31 March 2010 in the case No. 2009-76-01, Para 6.2.2*).

The Saeima has not indicated in its reply and it does not follow from case materials that the Saeima would have acted otherwise in relation to adoption of the Contested Norm.

Consequently, in the frameworks of the case under review, it is not necessary to reassess the procedure of adoption of the Contested Norms.

**15.** The Applicant holds that the legislator, when adopting the Contested Norm, has breached the principle of legal security and that of proportionality.

The principle of legal security requires, amongst the rest, to safeguard the confidence conferred to a person regarding protection or implementation of his or her particular rights. However, the principle of legal security does not exclude the

possibility of the State to amend the effective legal regulatory framework. An opposite approach would lead the State to the failure to react to the changing conditions of life. Besides, by amending legal regulatory framework, the State should also take into account the rights that a person reasonably confides in to be safeguarded and implemented. The principle of legal security requires the State, having decided to amend normative regulations, to observe a reasonable balance between legal security of a person and the interests, safeguarding of which is ensured by means of amending the regulation (*see: Judgment of the Constitutional Court of 26 November 2009 in the case No. 2009-08-01, Para 23 and 25*).

However, it cannot be admitted that amendment of any legal regulatory framework, including, for instance, such regulatory framework that restricts the rights of a person once conferred would always mean breach of the principle of legal security. In order to assess whether the principle of legal security has been observed, it should be taken into account that manifestation of this principle in different fields of law may differ. Namely, the extent of protection of the principle of legal security depends on the freedom of action of the legislator when regulating the particular issue. The Constitutional Court must assess whether the extent of freedom of action enjoyed by the Saeima complies with the extent of it established in the Satversme. Consequently, in the case under review, when assessing compliance of the Contested Norm with the principle of legal security, it is necessary to take into account freedom of action of the State when regulating social rights, these also including the issue of long service pensions.

Consequently, 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 the Constitutional Court of 26 November 2009 in the case No. 2009-08-01, Para 23*).

In order to assess whether the Applicant was granted legal trust into preservation or exercise of the particular rights, it should be assessed whether the person's trust in the legal norm is legitimate, well-grounded and reasonable, and whether the legal regulation on its essence should be reasonably definite and constant, so that one could trust in it (*see: Judgment of the Constitutional Court of 19 March 2002 in the case No. 2001-12-01, Para 3.2 of the Concluding Part, Judgment of 25 October 2004 in the case No. 2004-03-01, Para 7, and Judgment of 8 November 2006 in the case No. 2006-04-01, Para 21*).

**15.1.** Section 59 Paragraph 1 of the Military Service Law provides that a retired soldier – a citizen of Latvia who is in an active service and who has been conferred a military service rank – is granted long service pensions in accordance with the Long Service Pension Law. Section 2 Paragraph 1 of the Long Service Pensions Law provides that a military person whose term of service has been calculated shall have the right to long service pension. Long service pensions are granted without time limit after a military person is retired from active military or combatant service. Disbursement of long service pensions shall be ceased or changed if recipient of long service pension is granted old age pension under Law “On State Pensions”; however, the disbursement shall be fully ceased if the recipient returns to service that confer the right to long service pension, or if the recipient receives unemployment benefit. Namely, it is not permitted for a person to simultaneously receive two services of social security system, i.e. long service pension from the basic State budget and unemployment benefit from the social insurance special budget.

Based on the Long Service Pension law, the Applicant was granted long service pension in accordance with a decision of the Social Affairs Department of the Ministry of Defence (*see: case materials, pp. 9*). Consequently, the Applicant was conferred legitimate trust in receipt of long service pension at certain amount. Consequently, her legal security was based not only on a valid normative act, but also on an individual legal act.

The Constitutional Court has concluded that a person who has been in service in the interior system for a particular term was not granted legal security regarding a certain amount of the pension, however, he or she had the right to rely that the amount of the long-service pension would be reasonably bound to contribution of the person into the service and the correspondent economic situation. Under the circumstances of general inflation and increase of wages, such persons would have the right to expect a respective recalculation of pensions. Likewise, under the circumstances when wages of the interior system employees are substantially cut, reduction of the amount of long-service pensions based on certain criteria would be permissible (*see: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 6.2.1*).

**15.2.** Regulatory framework on long service persons for military persons is in force since 19 March 1998. In the course of time, regulation of the Long Service Pension Law has changed; however, these amendments have always been favourable. Consequently, normative regulatory framework of long service pensions for military persons shall be regarded as stable enough. Moreover, the Constitutional Court has already concluded that a person who has been granted a special service rank and has served his or her time has once made the choice, namely, the choice to be in service under the particular provisions, including the provision of a long-service pension. At the moment of coming into effect of the Contested Norm, such a person is deprived of the possibility to choose whether to choose being in service or not provided the particular wage and social guarantees. Likewise, such a person is denied the right to choose retiring before reaching of the general retirement age (*see: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 6.2.1*).

**Consequently, the Applicant was conferred legitimate trust in receipt of long service pension at a certain amount.**

**16.** When assessing whether a reasonable balance has been observed between the necessity to protect legal security of person and ensure interests of the society, it is necessary to take into account the fact whether a lenient

transition to the new regulation has been established in the form of a reasonable transitional period or compensation (*see: Judgment of the Constitutional Court of 25 March 2003 in the case No. 2002-12-01, Para 2 of the Concluding Part*). However, the aforesaid does not exclude that it is possible to establish such lenient transition by means of other mechanisms. In certain cases, when balancing the amount of the restriction of legal security and the necessity and urgency of amendments to legal regulation, deviation from the rights guaranteed to a person is permissible without providing a transitional period. Moreover, in separate cases such lenient transition is not the only criterion that determines whether a reasonable balance has been observed (*see: Judgment of the Constitutional Court of 26 November 2009 in the case No. 2009-08-01, Para 25*).

The Constitutional Court has already indicated that under circumstances of economic recession or in other extraordinary situation, the principle of legal security requires balancing legitimate trust of persons with interests of the society. In this case, observance of the principle of proportionality plays a decisive role (*see: Judgment of the Constitutional Court in the case No. 2009-08-01, Para 25*).

Deduction of 10 percent is applied to long service pensions of all military persons disregarding the amount of pension and age of these persons. The Constitutional Court has already concluded that reduction of the long service pension does not apply to the right to social security at least at the minimum level (*see: Judgment of the Constitutional Court of 31 March 2010 in the case No. 2009-76-01, Para 6.2*).

The Contested Norm was adopted with a view to balance incomes and expenses of the State budget. Economic recession denied the State the possibility to guarantee such amount of long service pension established during the period of economic growth. If no measures were carried out to solve the situation, this would influence the possibility of the State to ensure the right of other persons to receive services of the social security system and thus it would fail to protect welfare of the society. This would contradict the principle of a socially responsible state.

When adopting the Contested Norm, the legislator had to assess situation of military persons that receive long service pensions. Namely, military persons who have been granted long service pension as state support during the period of re-qualification do not enjoy equal and comparable conditions if compared with military persons who have been retired from service after having reached the maximum age of service of a particular rank and who has been granted long service pension with a view to ensure subsistence because re-qualification possibilities of such persons are rather limited. The Applicant and other military persons who have reached the age of granting old age pension established in the Law “On State Pensions” enjoy different circumstances if compared to other military persons who have not yet reached the age of granting old age pension. Long service pension of persons who have reached the age of granting old age pension established in the Law “On State Pensions” fulfil other functions. The Constitutional Court has already indicated that recipients of old-age pensions are deemed as a special social group, because when these people discontinue paid employment, their income and, correspondingly, opportunities to take part in different processes of public life decrease. States should secure, within limits, a standard of worthwhile human life and opportunity to take active part in the state, public, social and cultural life to all elderly people (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01, Para 28 and 31*).

When adopting the Contested Norm and establishing reduction of long service pensions, the legislator had to assess all differences of functions and aims of long service pension for military persons.

Neither the reply of the Saeima, nor the case materials prove that the legislator, when adopting the Contested Norm, has assessed economical and social consequences in relation to each group of military persons that receive long service pensions.

The Constitutional Court cannot replace the legislator and suggest more appropriate decisions or establish the way of allocating State budget resources. The Satversme provides that State authorities should take each decision based on

the norms and principles of the Satversme. The task of the Constitutional Court in the case under review is to verify whether the legislator has reasonably established reduction of long service pensions in relation to the Applicant and persons who enjoy equal and comparable conditions.

Social security measures fulfil not only economical function, which is to avoid income losses, but also social function – to ensure the possibilities of an individual to maintain his/her status of a full-fledged society member (*see: Judgment of the Constitutional Court of 19 March 2002 in the case No. 2001-12-01, Para 3.1.3*). Consequently, temporary cut of long service pensions for persons who have reached the age of granting old age pension established in the Law “On Long Service Pensions” is possible provided that a fair balance between legitimate trust of a person and a particular amount of long service pension is achieved.

The Contested Norm restricts the rights of the Applicant once conferred to her; moreover, she could count on these rights for an extended period of time. When adopting the Contested Norm, the legislator has failed to provide a lenient transition to the new legal regulation, namely, it has not established a certain transitional period or elaborated regulation providing compensation to persons.

Since no compensation for deductions from pension or any other measures that would be aimed at ensuring of a fair balance between legal interests of the Applicant and those of the society has been established, the Contested Norm shall not be regarded as proportional.

**Consequently, the Contested Norm does not comply with the principle of proportionality.**

**17.** The Constitutional Court has already concluded (*see: Para 14 of this Judgment*) that, when adopting the Contested Norm, the legislator has not assessed its alternatives and has failed to establish a more lenient transition; therefore the Contested Norm does not comply with Article 109 of the Satversme.

**Consequently, the Contested Norm does not comply with Article 1 and Article 109 of the Satversme insofar as it applies to military persons who have reached the age of granting old age pension established in the Law “On State Pensions”.**

18. Having established non-compliance of the Contested Norm with Article 1 and Article 109 of the Satversme, it is not necessary to assess compliance of it with Article 91 of the Satversme.

19. In the frameworks of the case under review, when examining the constitutional complaint of the Applicant, the Constitutional Court assessed compliance of the Contested Norm with norms of a higher legal force insofar as it restricts her fundamental rights. The Constitutional Court is not entitled to initiate a case or to broaden the claim of a constitutional claim on its own initiative. Therefore, in this Judgment, the Court has not assessed reduction of long service pensions of those military persons who receive the pension and are employed or who are not employed and have not yet received the age of granting old age pension established in the Law “On State Pensions”.

The Constitutional Court has already concluded (*see: Para 14 of this Judgment*) that reduction of long service pension has been established due to the same consideration that apply also to old age pensions. All stipulated reductions of pensions are based on a similar understanding of the legislature of its rights to introduce certain amendments in the regulatory framework for social rights. Issues related with the cut of long service pensions have already been assessed in several judgments of the Constitutional Court (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01 and Judgment of 31 March 2010 in the case No. 2009-76-01*). Consequently, the legislator, within the frameworks of its freedom of action, should revise the regulatory framework on long service pensions and duly prevent the possible infringement of the fundamental rights of recipients of long service pensions.

20. In accordance with Clause 11 of Article 31 of the Constitutional Court Law, if the Constitutional Court has decided that a legal provision is unconformable to a legal provision of a higher legal force, the Court is obliged to set the moment when the impugned provision becomes invalid. In this Case, the Applicant has requested to declare the impugned provisions as invalid from the day of their adoption, which is 16 June 2009

Determining the exact moment from which the impugned provisions lose validity, the Constitutional Court, on the basis of its previous practice, would consider the following issues:

- whether the invalidation of the impugned provisions with retrospective effect is required for the protection of fundamental rights of the Applicant;
- whether there are any considerations due to which the impugned provisions would have to be invalidated with retrospective effect only in relation to the Applicant (*see: Judgment of the Constitutional Court of 21 December 2009 in the case No. 2009-43-01, Para 34*).

In this Judgment, the Constitutional Court has concluded that the Contested Norm breaches the fundamental principles of a law-governed State established in the Satversme, and thus also the fundamental rights guaranteed to persons. The only possibility of preventing the infringement of the fundamental rights of the Applicant established in the Satversme is to recognize the Contested Norm as null and void as from the moment of adoption thereof. In this case, the State shall be committed to disbursing the deducted part of long service pension.

The same situation is also enjoyed by all persons who have received the age of granting old age pension and to whom the Contested Norm applies. The infringement is caused to all those recipients of long service pension who have reached the age of granting old age pension established in the Law “On State Pensions”; therefore the Contested Norm shall be recognized as null and void in relation to all persons as from the moment of adoption thereof.

It should also be taken into account that the Contested Norm is related with the State budget and immediate execution of the Judgment would cause negative consequences.

Therefore the part of long service pension for military persons who have received the age of granting old age pension established in the Law “On State Pensions” deducted in accordance with the Contested Norm shall be disbursed according to a procedure established by the Saeima no later than before 1 July 2015.

### **The Constitutional Court**

Based on Articles 30-32 of the Constitutional Court Law,

#### **holds:**

1. Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”, insofar as it applies to persons who have received the age of granting old age pension established in the Law “On State Pensions” does not comply with Article 1 and Article 109 of the Satversme of the Republic of Latvia and shall be regarded as null and void as from the moment of adoption thereof.

2. According deductions of long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” shall be terminated no later than by 1 June 2010.

3. The Saeima shall be committed to establishing, no later than by 1 June 2010, procedure for disbursing deductions from long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”.

4. Proceedings regarding compliance of Para 16 and Para 17 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” with Article 1, Article 91 and Article 109 of the Satversme shall be terminated.

The Judgment is final and not subject to appeal.

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

Presiding Judge

G. Kūtris