



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, 21 April 2010 Case No. 2009-86-01

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 Alla Ignatjeva,

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 23 March 2010 in writing examined the case

“On Compliance of Para 8 of the Transitional Provisions of the Law on Long Service Pensions for Public Prosecutors with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia”

### The Facts

1. On 13 May 1999, the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) adopted the Law on Long Service Pensions for Public Prosecutors that came into effect on 1 January 2000. By amendments of 16 June 2009 that came into force on 1 July 2009, the Transitional provisions of the Law on Long

Service Pensions for Public Prosecutors was supplemented by Para 8 in the following wording:

“In the period from 1 July 2009 to 31 December 2012, for beneficiaries of the long service pensions who, as on 1 July 2009, is a socially insured person (an employee or a self-employed person), the long service pensions 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.”

**2. The applicant – Mrs. Alla Ignatjeva** (hereinafter – the Applicant) – holds that Para 8 of the Transitional Provisions of the Law on Long Service Pensions for Public Prosecutors (hereinafter – the Contested Norm) does not comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme)

Inconsistency with Article 1 of the Satversme has occurred because the Contested Norm contradicts the principle of legal security and that of proportionality.

The Applicant holds that her legal security to receive the long service pension has been formed during more than 25 years of work in the position of a public prosecutor. In this period, the regulatory framework has been stable and constant. Moreover, granting and receipt of a full long service pension has never been related with instituting other legal labour relations. This has made the Applicant trust that she would receive the long service pension in accordance with the stipulated formula and allowed her to calculate in advance the amount of the long service pension to be received. This has also made her think that institution or continuation of other legal labour relations would never serve as an obstacle to receive the long service pension. The Applicant also emphasizes that disbursement of the long service pension at full amount is a part of the liabilities of the State within the frameworks of her service labour relations.

Counting on such legal security, the Applicant has undertaken civil liabilities at the amount permitted by incomes from the long service pension at full amount and the labour wage earned. Introduction of the restrictions in such a short period of time,

notably, from 16 June 2009 to 1 July 2009, has not allowed her to reorganize her life in an appropriate way. Moreover, the Contested Norm does not provide that losses incurred by persons in the result of application of the Norm would be reimbursed.

The Applicant maintains that saving of budget resources in the result of application of the Contested Norm can be achieved by other measures, namely, by reducing expenses in other budget categories, especially expenses for State administration. The benefit gained by the society in the result of application of the Contested Norm is not greater than the detriment caused to the rights of the Applicant.

When substantiating the non-compliance of the Contested Norm with Article 91 of the Satversme, the Applicant compares employed beneficiaries of the long service pension with three groups of persons:

1) self-employed persons of other professions able to work and employees that do not receive any pension. These persons receive remuneration at full amount, and they do not incur losses due to involvement in the labour market. Moreover, beneficiaries of the long service pensions lose 70 percent of the pension due to this reason. Consequently, their right to work and at the same time to receive the long service pension at full extent is restricted;

2) unemployed beneficiaries of long service pensions able to work who gain incomes from capital (dividends, deposit interest etc.). These persons receive 90 percent of the estimated amount of the pension, whilst employed ones receive only 30 percent;

3) unemployed beneficiaries of long service pensions able to work who do not have any other incomes. These persons receive 90 percent of the estimated amount of the pension, whilst employed ones receive only 30 percent;

The Contested Norm neither complies with Article 109 of the Satversme because it requires paying the long service pension at the amount of 30 percent in any circumstances. Therefore, if the Applicant would fail to gain income due to temporary disablement, vocation, lack of clients or other reasons, she would gain only 30 percent of the total amount of the granted pension. In this case, her incomes would not even reach the amount of the subsistence wage established in the State.

The Applicant also indicates that the Contested Norm restricts her right to get involved in the social life and therefore it comes into conflict with Article 25 of the Charter of Fundamental Rights of the European Union that provides: “The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.” Although application of the Contested Norm is temporary, it might have lasting consequences. If the Applicant would cease working as a sworn advocate, it is rather unlikely that she would be able to retrieve clients and her status in advocacy lost during the three and a half years.

**3.** The institution that adopted the Contested Norm, **the Saeima** does not share the opinion of the Applicant and holds that the Contested Norm does comply with the Satversme.

The Saeima holds that the principle of a socially responsible state obligates the state to eliminate social differences as far as possible, and the content of this principle includes ensuring of dignified living standard for persons, protection in the case of a social risk, as well as ensuring of social justice. Therefore, when assessing compliance of the Contested Norm with the Satversme, it is necessary to take into account the fact that adoption of the Contested Norm was required by objective factors related with the economic situation in the State and the State budget possibilities.

In the third quarter of 2008, Latvia started experiencing economic recession. The fall of the GDP compared with the respective indices of the same period of the previous year constituted 5.2 percent. During 2009, the national economy of the State deteriorated at a considerable rate; this is manifested by the fall of the GDP in comparable prices by 18 percent in the first quarter of the year and 19.6 percent in the second quarter of the year if compared with the same periods of the previous year.

The economic recession resulted in a considerable cut of State budget expenses. For instance, incomes of the State consolidate 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. However, expenses of the State consolidated budget during the first six months of 2009 increased by 167.3 million lats or 7.2 percent if compared to the same

period of 2008. Consequently, during the first six months of 2009, the financial deficit of the State consolidated budget reached 449.9 million lats.

Therefore it was necessary to take measures to prevent further economic decline, stabilize and revive the financial system, balance wishes of the society with the possibilities to implement them, restructure the national economy of Latvia by facilitating competitiveness in business, state administration and provision of public services, as well as achieve further cut of State expenses. Taking into account the aforesaid, 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. The above budget consolidation measures are based on the agreement signed by the political parties constituting the government, the Free Trade Union Confederation of Latvia, the Employer’s Confederation of Latvia, the Latvian Association of Local and Regional Governments, the Latvian Chamber of Commerce and Industry and Latvian Pensioners’ Federation.

Taking into account the fact that the situation of the State budget requested immediate actions, the Law “On Disbursement of State Pensions and Benefits in the Period from 2009 to 2012” was elaborated and amendments to the laws regulating long service pensions, including the Contested Norm, were introduced. The respective Laws were adopted by the Saeima on 16 June 2009.

When assessing compliance of the Contested Norm with the Satversme, it is necessary to take into account the fact that long service pensions for public prosecutors are disbursed from both, the State basic budget and the State social insurance special budget in accordance with the provisions of Section 4 (6) of the Law on Long Service Pensions for Public Prosecutors. For instance, on 1 September 2009, 63 beneficiaries of long service pensions for public prosecutors out of 82 received both, the old age pension from the State social insurance special budget and a part of the long service pension for public prosecutors from the basic budget. Consequently, the need to adopt the Contested Norm was based on the necessity to limit the use of the social insurance special budget funds by thus ensuring sustainability of the social insurance system. Moreover, to avoid granting privileges to any of the groups of persons in comparison

with others, the legislator had to establish the same restrictions for disbursement of pension for both, beneficiaries of the long service pension and those of the old age pension.

As to compliance of the contested norm with Article 109 of the Satversme, the Saeima indicates that social rights are a specific field of law that are described as general responsibilities of the State in constitutional laws of the states and international documents on human rights. The regulatory mechanism is left to the legislator of each state to decide upon, whilst implementation of social rights depends on the economic situation of the State and resources available.

In order to balance State budget incomes and expenses under the circumstances of economic crisis, the Contested Norm establishes reasonable differences between employed and unemployed beneficiaries of the long service pension. The Saeima is of the view that because of the economic situation in the State it is not possible to ensure, within the limits of available financial resources, exercise of social rights at the same level as during the period of economic growth. Consequently, such a solution during the economic crisis is regarded as socially fair.

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

When adopting the Contested Norm, the State has not refused guaranteeing the right to security due to the age. It has established, for a terminable period of time, such level of social security that complies with the budget possibilities of the State. Moreover, the comprehensive social security system of Latvia guarantees each person the right to social security at least at the minimum level.

Adoption of the Contested Norm shall be regarded as an indispensable measure. The aim of the Norm cannot be reached by other measures that would restrict the rights of a person at a lesser extent. The Contested Norm is appropriate for reaching of the legitimate objective because, taking into account the general situation in the State and restrictions established to other groups of persons, it can be concluded that the

benefit gained by the society is greater than the detriment caused to the rights of a person.

The Saeima holds that reduction of expenses from the special budget could be hypothetically replaced by increase of budget incomes by increasing social insurance payments for employers and employees. According to the Saeima, however, such alternative could cause a range of negative consequences, namely, to reduce incomes of the employed, subject to persons with small income to the poverty risk, facilitate illegal employment and undeclared work, and this would have a negative impact on the possibility to increase wages of employees and the possibilities of employers to invest into production and creation of new working places.

The selected means are appropriate for reaching of the above mentioned objectives because the adopted Contested Norm ensures saving of budget resources and balances the interests of all beneficiaries of social security. Consequently, the Contested Norm shall be regarded as appropriate.

When assessing compliance of the Contested Norm with Article 91 of the Satversme, the Saeima maintains that beneficiaries of long service pensions and able-bodied persons that do not receive the long service pension do not enjoy equal and comparable conditions. By establishing the pension system, the legislator has presumed that after a person reaches a certain age, he or she loses the ability to work and thus the possibility to earn a sufficient remuneration. Therefore, to support these persons, the pension system was founded.

When comparing employed beneficiaries of the long service pension with those who gain income from capital, the Saeima questions whether it would be possible to single out those persons who, in addition to the pension, receive incomes from capital as a form of remuneration. Even if a beneficiary of the pension has any bank deposits, it is very likely that the capital gains do not even reach the amount that could be equated to a labour wage.

The Saeima agrees with the opinion of the Applicant that both, beneficiaries of long service pension who are self-employed persons or employees and those who have abandoned their work because of the Contested Norm enjoy equal and comparable conditions because the requirements included in the Norm apply to both of the groups

of persons. The Saeima, however, holds that the legislator has granted both of these groups equal possibilities by offering them the choice either to receive the long service pension only or to continue working and receive a part of it.

**4.** The summoned person, **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) holds that the Contested Norm does not comply with Article 1 and Article 109 of the Satversme.

The Ombudsman indicates that the main aim of the long service pension is to ensure means of subsistence for person whose work is related with an earlier loss of professional skills that might occur before the stipulated retirement age. By conferring public prosecutors the right to receive the long service pension, the constitutional right to social security enshrined in Article 109 of the Satversme is ensured. The legislator has not amended provisions regulating the granting of the old age pension to public prosecutors; it has established temporary restrictions for disbursement of the long service pensions by thus restricting the right to social security.

Although the long service pension is regarded as an extra social guarantee, the aim of it can be compared to that of the old age pension, i.e. to guarantee subsistence means for a person when he or she is no more capable to have legal labour relations. Although ensuring means of subsistence is not the only aim of the long service pension, this conditions permits comparing the restrictions to the disbursement of the long service pension to those of the disbursement of the old age pension.

The Ombudsman indicates that, by conferring the right to receive long service pension, the State establishes different attitude too persons who work in certain professions. Such different attitude is substantiated by legitimate objectives – protection of the interests of the society by means of ensuring functioning of the respective services and protection of social interests of persons holding certain offices. However, it is not prohibited to restrict extra social guarantees to reach other legitimate objectives.

Latvia acts in accordance with the principle of a socially responsible state that includes the principle of social solidarity, which means that people should help each

other. Consequently, observation of the principle of social solidarity shall be regarded as a justifiable and legitimate aim of the Contested Norm.

The Ombudsman shares the viewpoint of the Saeima that a hypothetical alternative to the Contested Norm, which is increase of social insurance payments, would cause a range of negative consequences. The Ombudsman holds that reduction of the long service pension or employed pensioners for a definite period of time is appropriate for reaching the legitimate objectives, though it is not the only one.

The Ombudsman indicates, however, that the Contested Norm provides the cut of long service pension at the amount of 70 percent for all beneficiaries of it irrespective of the amount of incomes. The estimated pension is disbursed at the reduced amount also in the case if the pension, in fact, gains no income from his or her employment or if the wage is lesser than the unpaid part of the pension. Moreover, such regulation restricts the possibilities of beneficiaries of the long service pension to get involved in the social and cultural life.

The Ombudsman draws attention to the fact that the legislator, when adopting the Contested Norm, has not assessed other alternative measures to reach the objectives. The Ombudsman disagrees with the opinion of the Saeima that the aim of the Contested Norm cannot be reached by other measures that would restrict the rights of a person at a lesser extent. Such measure could be, for instance, reduction of the long service pension only during the period when a person gains certain amount of incomes as a self-employed person or an employee.

Therefore the Ombudsman holds that the Contested Norm does not comply with the principle of proportionality and consequently Article 109 of the Satversme.

The Ombudsman holds that the Contested Norm neither complies with the principle of legal security.

The long service pension, like the old age pension, is an issue of State social policy that has a long-term character and that requires stability. This necessity is substantiated not only by an earlier loss of professional skills characteristic for certain positions and consequently, the necessity to compensate it, but also by protection of national interests, namely, the necessity to ensure qualitative functioning of particular services. Since the time when the Law on Long Service Pensions for Public

Prosecutors has been adopted, no restriction that would prohibit receiving the long service pension at full extent in the case of employment has ever been established.

By adopting the Contested Norm, the legislator has deteriorated the legal status of beneficiaries of the long service pensions. However, no transitional period to the new regulation has been established. As the Contested Norm has come into force in such a short time, beneficiaries of the long service pension were denied the possibility to get prepared for the changes and re-plan their life in accordance with the reduced amount of the long service pension. Moreover, employed beneficiaries of the long service pension were made to make a choice within an unreasonably short time either to continue working or to cease legal labour relations.

5. The summoned person, **the General Prosecutor's Office** holds that the Contested Norm does not comply with Article 1, Article 91 and Article 109 of the Satversme.

The regulatory framework of the Law on Long Service Pensions for Public Prosecutors has been stable and constant enough for persons to be able to confide in it; moreover the regulation has a long-term character. When adopting the Contested Norm, the legislator has not established a transitional period. This denied the possibility of employed pensioners to re-plan their life in an adequate way, their legal labour relations with an employer included. It should also be taken into account that, up to now, a person could confide in the fact that his or her employment would never serve as an obstacle for the receipt of the long service pension at full amount.

The long service pension is one of the kinds of social security. The right to receive it can only be restricted with a view to reach a legitimate objective. The legislator, however, has not made appropriate calculations and assessed whether the objective could be reached by other less restrictive measures and whether the benefit gained by the society is greater than the detriment caused to the rights of persons. This is proved by the fact that no consultations have taken place when elaborating the Contested Norm.

At the moment when the opinion was provided, only three persons out of all retired public prosecutors receiving the long service pensions have the status of a

socially insured person. Consequently, the Contested Norm ensures saving of 5666 lats in 2009 and 10289 lats in 2010. However, it is possible that the Applicant, being a self-employed person, gains no income, whilst the long service pension is still disbursed at the amount of 30 percent that constitutes 148.29 lats. Such amount of pension does not reach the subsistence wage established in the State and therefore materially infringes the rights of the Applicant. Moreover, the Contested Norm does not ensure substantial economy of budget resources.

The General Prosecutor's office shares the viewpoint of the Applicant that the Contested Norm causes unequal attitude towards those beneficiaries of the long service pension who are employees or self-employed persons if compared to beneficiaries of the long service pension who gain regular income from other sources and those who have chosen to terminate their legal labour relations.

### **The Constitutional Court has concluded:**

6. The Saeima indicates that the Contested Norm has been adopted taking into account the economic recession of the State with a view to ensure the planned cut of expenses and consolidation of the State budget at the amount of 500 million lats as established in 16 June 2009 Law "Amendments to the Law "On the State Budget 2009". The Contested Norm was elaborated and adopted within the frameworks of several measures and simultaneously with the Law "On Disbursement of State Pensions and Benefits in the Period from 2009 to 2012".

In the Judgment of 21 December 2009 in the case No. 2009-43-01, when deciding on restriction to disbursement of pensions, has already assessed substantial issues regarding this body of draft laws and general measures of the State under the circumstances of considerably reduced budget incomes. Consequently, in the frameworks of the case under review, it is not necessary to reassess certain cases that are related with adoption of the Contested Norm.

It is also taken into consideration that in the Judgment of 31 March 2010 in the case No. 2009-76-01, the Constitutional Court has already assessed the cut of pensions by 70 percent for the Interior System Employees with special service ranks. Insofar as

both beneficiaries of long service pensions enjoy equal and comparable conditions, the conclusions made in the above mentioned judgment shall also be applicable to the restrictions to the long service pension of public prosecutors (*see: Judgment of 4 January 2007 by the Constitutional Court in the case No. 13-0103, Para 7.2*).

7. The Contested Norm is related with the field of social rights. According to the Applicant, the legislator, by adopting the Contested Norm, has breached the principles of legal security and proportionality that follow from Article 1 of the Satversme, as well as it has restricted the right to social security enshrined in Article 109 of the Satversme.

The concept of the democratic republic included in Article 1 of the Satversme include several fundamental principles of a law-governed State, including the principle of legal security and that of proportionality (*see: Judgment of 10 June 1998 of the Constitutional Court 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 concluded that State institutions have the duty to act consistently in relation to adopted normative acts and should take into account legal security that could be granted to a person in accordance with a particular normative act (*see: Judgment of 10 June 1998 of the Constitutional Court in the case No. 04-03(98), Para 3 of the Concluding Part*). The principle of proportionality means, however, that if the public power restricts the rights and legal interests of a person, it is necessary to observe a fair balance between the interests of a person and those of the State or the society (*see, e.g.: Judgment of 19 March 2002 of the Constitutional Court 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*).

When assessing compliance of a legal norm with legal principles that follow from the fundamental constitutional values that follow from Article 1 of the Satversme, it is necessary to take into account the fact that manifestation of these principles in different fields of law might differ. The nature of the impugned 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 might have a broader or a narrower freedom of action when regulating particular issues, and the task of the Constitutional Court is to assess whether the extent of freedom of action of the Saeima complies with what has been established in the Satversme (*see: Judgment of 8 November 2006 of the Constitutional Court 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 should be assessed in conjunction with Article 109 of the Satversme.**

8. In order to assess whether the Contested Norm complies with Article 109 of the Satversme, it is first of all necessary to establish whether the Norm pertains to the context of the right to social security.

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 right to social security obligate the State to create an effective, fair and sustainable social security system. Since the right to social security pertain to the field of social rights, the State enjoys a freedom of action when selecting measures and mechanisms to be applied to implement these rights (*see, e.g.: Judgment of 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, the first paragraph of the concluding part*).

The long term of 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 4 December 2003 of the Constitutional Court in the case No. 2003-14-01, Para 7*).

Article 109 of the Satversme neither requires nor prohibits forming of a long-service pensions system in the State. The State can decide on different ways of compensating special service-related conditions. However, if the State has established a statutory pensions system, this system has become a part of the State social security

system (*see: Judgment of 31 March 2010 of the Constitutional Court in the case No. 2009-76-01, Para 5.5*).

The long service pension has several aims, namely, to compensate ultimately loss of professional skills, to compensate additional restrictions and workload undertaken during the service, as well as to facilitate qualitative functioning of particular services and institutions, especially having regard to the aspect of corruption. Consequently, aims of the long service pension are related with the aspects of social security and other circumstances. The long service pension for prosecutors, like long service pensions for the interior system employees with special service ranks, has been established to reach the three above mentioned aims (*see: Judgment of 4 January 2007 of the Constitutional Court in the case No. 2006-13-0103, Para 7.2*).

The Constitutional Court has already established that the fact that these pensions are partially disbursed from the State basic budget and that the long service pension embrace not only the aspect 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 31 March 2010 of the Constitutional Court in the case No. 2009-76-01, Para 5.1 and 5.2*).

The Constitutional Court recognizes that, based on the aspect of ensuring and protection of the fundamental rights enshrined in Article 109 of the Satversme, the State old age pensions and long service pension cannot be equated. Differences between these two kinds of pensions should not be established in an abstract way but they must be assessed taking into account circumstances of the particular case. The differences can generally be seen in the different aims of the State old age pension and those of the long service pension, as well as the different procedure for granting and calculation, the source of funding, amount of pensions etc. Likewise, long service pensions, if compared to the right to receive the State old age pension, are not related to the right to receive the minimum amount of social security. In the light of these considerations, it is possible to conclude that the amount of long service pensions established in special laws is considerably lower than that of the old age pensions; therefore the State should be conferred a more extensive freedom of action in this field.

However, these considerations indicate to the extent of freedom of action of the State when restricting social guarantees; however they do not change the conclusion that long service pension pertain to the social security system formed by the State.

**Consequently, the Contested Norm falls within the scope of the rights to social security guaranteed in Article 109 of the Satversme.**

9. The Constitutional Court, when interpreting Article 109 of the Satversme, concluded that, on the one hand, implementation of particular fundamental rights depends on the resources at the disposal of the State and the society, but, on the other hand, if the particular social rights have been included in the basic law, the State does not have the right to refuse implementing them. These are no more the rights of declarative nature, and protection of these rights is a constitutional value of Latvia (*see: Judgment of 13 March 2001 of the Constitutional Court in the case No. 2000-08-0109, Paragraph 5 of the concluding part*).

The special character of social rights also determines the limits of control executed by the judicial power in this field. When implementing the social rights, the legislator enjoys an extensive freedom of action insofar as it is reasonably related with the economic situation of the State. However, this freedom of action is restriction. The task of the judicial power is to assess whether the legislator has observed the limits of freedom of action conferred to it (*see: Judgment of 3 November 2006 of the Constitutional Court in the case No. 2006-07-01, Para 13 and 14 and Judgment of 19 December 2007 in the case No. 2007-13-03, Para 8.4*).

Criteria that should be applied when assessing compliance of a legal norm with the right to social security may differ depending on the fact whether the particular norm restricts the rights conferred to the person or obligates the State to implement its positive duty.

When assessing whether the State has fulfilled its duties that follow from the social rights, the Constitutional Court verifies whether: 1) the legislator has performed any activities for realization of social rights; 2) the legislator has adequately realized the social rights, namely, whether persons were ensured the possibility to exercise the rights at least in the minimum amount; 3) the legislator has observed general legal

principles (*see: Judgment of 11 December 2006 of the Constitutional Court in the case No. 2006-10-03, Para 16.1*).

However, in cases when a contested norm restricts the rights established in Article 109 of the Satversme, the Constitutional Court investigates whether the restriction 1) has been established by law or is based on a law; 2) has a legitimate objective; 3) complies with the principle of proportionality (*see, e.g.: Judgment of 6 April 2005 of the Constitutional Court in the Case No. 2004-21-01, Para 10 and Judgment of 21 December 2009 in the case No. 2009-43-01, Para 26*).

Cases when a contested norm applies to the core of social security should be assessed in a different way. The Constitutional Court pointed out that even if the State reduces the pension disbursement amounts for a period of time in the situation of rapid economic recession; there is still a definite body of fundamental rights that the State is not entitled to derogate from. One of the duties of the State is the duty to guarantee social security of at least the minimum level, and the aim of these rights is to ensure life worthy of a human being (*see: Judgment of 21 December 2009 of the Constitutional Court in the case No. 2009-43-01, Para 31 and 31.2*).

Taking into account the aforesaid, it is necessary to establish the way how compliance of the Contested Norm with the Satversme should be assessed.

**10.** The Constitutional Court has already indicated that state old age pensions and long service pensions might be reduced during the economic recession provided that there exist certain circumstances and certain criteria are observed.

The Constitutional Court agreed that the cut of the pensions was directly related to the urgent need to balance the State budget, including the social insurance special budget, in order to diminish the influence of the economic recession on the balance of revenues and expenditures as well as to ensure the sustainability of the pension system. The Constitutional Court has indicated: “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 21 December 2009 of the Constitutional Court in the case No. 2009-43-01, Para 29.2*).

The Constitutional Court has concluded that measures for combating crisis should be taken after having made a proper assessment and by observing the principles of a law-governed State (see: *Judgment of 26 November 2009 of the Constitutional Court in the case No. 2009-08, Para 17.2, 23 and 25 and Judgment of 18 January 2010 in the case No. 2009-11-01, Para 10.3*).

Article 109 of the Satversme does not guarantee persons the right to receive any particular kind of pension, including the long service pension that is calculated based on certain criteria or established 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 of the State regarding this particular person would comply with the principles of a law-governed State, including the principle of legal security and that of proportionality (see: *Judgment of 31 March 2010 of the Constitutional Court in the case No. 2009-76-01, Para 5.5*). Moreover, if the legislator has decided to guarantee a certain amount of social security by law, a person is conferred subjective rights to it (see: *Judgment of 19 March 2002 of the Constitutional Court in the case No. 2001-12-01, Para 2 of the Concluding Part and Judgment of 26 November 2009 in the case No. 2009-08-01, Para 15*).

Article 109 of the Satversme does not prohibit the legislator to change the existing social security system, namely, the legislator has the right to apply other mechanisms to solve certain social problems. The Contested Norm, however, is not aimed at such change of the social security system. It provides that during a certain period of time, namely, from 1 July 2009 to 31 December 2012, persons shall be disbursed long service pensions at the amount of 30 percent. The Contested Norm is incorporated into the Transitional Provisions and its functioning has a time limit. It affirms that the means, envisaged in the norm in order to solve the financial problems is an exception of the created system (see: *Judgment of 19 March 2002 of the Constitutional Court in the case No. 2001-12-01, Para 2 of the Concluding Part*).

**Consequently, the Contested Norm restrict the rights of the Applicant that follow from the social security system established in the frameworks of Article 109 of the Satversme.**

When establishing whether this is a lawful restriction, it is necessary to assess whether it has been established by law, whether it has a legitimate objective and whether it is proportional with its aim.

**11.** The restriction of the rights has been established by law, namely, it is included in 16 June 2009 Law “Amendments to the Law on Long Service Pensions for Public Prosecutors” that came into force on 1 July 2009. None of the materials of the case raise any doubt regarding proper procedure of adoption of the norm.

**Consequently, the restriction of the fundamental rights established in the Contested norm has been established by law.**

It should also be noted that the Constitutional Court has already assessed the legislative process, according to which restrictions of the social rights have been established during the economic recession in 2009. Haste in the context of preparation and adoption of the impugned provisions, as well as the fact that society was not duly and timely informed prior to the adoption of these provisions, were viewed negatively (*see: Judgment of 26 November 2009 of the Constitutional Court 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 aforesaid also applies to the Contested Norm.

**12.** The Saeima indicates in its reply that the Contested Norm has been adopted in the frameworks of measures to combat economic recession, and the Norm has a legitimate objective, namely, to protect not only budget interests but also the constitutional value enshrined in Article 116 of the Satversme, i.e. the rights of other persons and welfare of the society taking into account the duty of the State to ensure guarantee State pensions and other social services in the future. The Contested Norm is only one of the many measures taken in order to save economy of the State, balance the State budget and ensure substantial interests of the society and the State.

The Constitutional Court has already concluded in several judgments that in 2009 the economic recession of the state made the State cut budget expenses, which resulted in general cut of wages of employees of budget-funded institutions (*see, e.g.: Judgment of 18 January 2010 of the Constitutional Court in the case No. 2009-11-01*). Consequently, in the frameworks of the case under review, it is not necessary to reassess whether it was urgently necessary for the State to reduce expenses from the State basic budget and the State social budget at the time when the Contested Norm was adopted.

The Constitutional Court has emphasized that “the State has not only the right but also the duty to coordinate its liabilities in the field of social rights with its economic possibilities. Otherwise execution of other duties of the State could be hampered, including implementation of other social right” (*see: Judgment of 26 November 2009 of the Constitutional Court in the case No. 2009-08-01, Para 22.3*). The amount of social security can depend on the amount of financial resources at the disposal of the State. The State has the right to restrict disbursement of benefits if it is counterbalanced by interests of the society and the right of other persons to receive financial support from the State (*see: Judgment of 21 December 2009 of the Constitutional Court in the case No. 2009-43-01, Para 24 and Judgment of 15 March 2010 in the case No. 2009-44-01, Para 16*). In the frameworks of the case under review, it is not necessary to reassess whether, at the time when the Contested Norm was adopted, the legislator had the right to take measures to reduce costs from the State basic budget and the social budget.

**Consequently, it can be established that the Contested Norm has a legitimate objective, which is protection of the rights of other persons and welfare of the society.**

**13.** To determine whether a legal provision adopted by the legislator satisfies the principle of proportionality, one should clarify: 1) whether the means used by the legislator are appropriate for achieving the legitimate aim; 2) whether such an action is indispensable, i.e., the end cannot be achieved by other means restricting the rights of

individual persons at a lesser extent; 3) whether the benefit for society will be more significant than the detriment to the rights of individual persons.

If, while assessing a legal provision, it can be established that it does not comply with at least one of these criteria, it follows that the legal provision in question does not comply with the principle of proportionality and therefore is unlawful (*see: Judgment of 16 May 2007 in the case No. 2006-42-01, Para 11 and Judgment of 21 December 2009 in the case No. 2009-43-01, Para 28*).

**13.1.** When assessing whether the measures selected are appropriate for reaching the legitimate objective, it is necessary to take into account the fact that the Contested Norm is only one of the measures that serves for the cut of State budget expenses. The Constitutional Court has already indicated in Section 6 of this judgment that the Contested Norm has been elaborated and adopted in the frameworks of a body of measures along with the Law “On Disbursement of State Pensions and Benefits in the Period from 2009 to 2012” in order to ensure the planned cut of expenses and consolidation of the budget by 500 million lats as established in the Law “Amendments to the State Budget 2009”. Consequently, the Contested Norm shall be regarded as one of the measures aimed at reaching of the legitimate objective.

In the Judgment of 21 December 2009 in the case No. 2009-43-01, the Constitutional Court has already indicated that the Constitutional Court had no grounds to call into question the fact that the impugned provisions had helped reduce the expenditures of the State social insurance special budget, correspondingly facilitating the balancing of revenues and expenditures (*see: Judgment in the case No. 2009-43-01, Para 29.2*). The aforesaid is also applicable to the saving in the State social budget and the basic budget ensured by the restriction of disbursement of the long service pensions.

**Consequently, the Contested Norm is appropriate for reaching the legitimate objective.**

**13.2.** When assessing whether the restriction of the fundamental rights was indispensable, namely, whether the legitimate aim could be reached by other measures that would restrict the rights of a person at a lesser extent, it is necessary to take into account the fact that the legislator enjoys a broad freedom of action in the field of

social rights. However, the Constitutional Court must investigate whether the legislator has assessed what could be the most appropriate measure for reaching the legitimate objective and whether the legislator has or has not breached, by such a choice, the limits of the freedom of action conferred thereto (*see: Judgment of 26 November 2009 of the Constitutional Court in the case No. 2009-08-01, Para 21*).

In the Judgement of 21 December 2009 in the case No. 2009-43-01, the Constitutional Court has already indicated that the particular body of draft law has been adopted without proper assessment of alternatives and assessing benefits and losses of each alternative. In the above mentioned judgment, the Constitutional Court has concluded the following: “Adopting the impugned provisions, the legislator 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 in the case No. 2009-43-01, Para 30.2.2*).

It has not been indicated in the reply and it does not follow from the case materials, that the Saeima has acted otherwise when adopting the Contested Norm of the case under review.

For instance, the Saeima has failed to establish a differentiated approach towards the cut of the long service pensions. Namely, when reducing the amount of the pension to be disbursed, it is not taken into account whether the socially insured pensioner earns any income and at what extent.

The Applicant reasonably indicates that 70 percent of the estimated long service pension are being withdrawn also in cases if incomes of the socially insured person are lower than the part of the withdrawn pension and whether the person gains any income at all.

The Constitutional Court has already recognized that the amount of pension is limited only by also taking into consideration the labour income of the pensioner (*see: Judgment of 19 March 2002 of the Constitutional Court in the case No. 2001-12-01., Para 3.1.3 of the Concluding part*). The restriction included in the Contested Norm is evidently unfair in relation to the group of pensioners whose labour incomes do not exceed the withdrawn part of the pension. Moreover, the Contested Norm provide for

a considerable cut of the pension, namely, more than two thirds of the estimated amount.

Like in the Judgment of 19 March 2002 of the Constitutional Court in the case No. 2001-12-01, in this case, too, the Contested Norm makes employed pensioners to make a choice, either to receive the pension at the full amount or to continue working. This, in turn, contradicts to the right of elderly persons to get involved in the social life (*see: Judgment in the case No. 2001-12-01, Para 3.1.3*).

Regardless of the fact that the activity of the challenged norm has been limited in time, if fact, consequences it has created may turn out to be permanent. For example, if the employed pensioner hands in a notice to his employer to receive his pension after the contested norm takes effect, then it is doubtful whether after some years when the norm loses validity he/she will have the possibility of returning in the labour market (*see: Judgment of 19 March 2002 of the Constitutional Court in the case No. 2001-12-01, Para 3.1.3*).

**Consequently, the Constitutional Court concludes that the legitimate objective can be reached by other less restrictive measures.**

**Taking into account the aforesaid, it can be concluded that the Contested Norm does not comply with the principle of proportionality.**

**14.** The principle of legal security does not exclude the possibility of the State to amend the effective legal regulatory framework. 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. 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. 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 in the case No. 2009-08-01, Para 23*).

**14.1.** The Law on Long Service Pensions for Public Prosecutors came into force on 1 January 2000. Before the Contested Norm was adopted, no substantial amendments have been introduced into the Law, and disbursement of the long service pensions has never been related with the status of a socially insured person. Previously it has only been related with occupying positions that confer the right to receive the long service pension.

Prosecutors, like employees of the interior system with special service ranks who hold a particular position and have worked for a particular period of time, have once made their choice, namely, they have decided to work in this position in accordance with particular conditions, one of these conditions being the right to the 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 31 March 2010 of the Constitutional Court in the case No. 2009-76-01, Para 6.2.1*). Consequently, person who have fulfilled the criteria set forth in the law have been conferred legal security to receive the long service pension in accordance with the provisions of the law.

However, persons like the Applicant who have already been granted the long service pension, namely, an administrative act that stipulates a certain amount of the pension has already been issued for them, could confide in the receipt of the established amount of the long service pension.

**Consequently, the Applicant and person who enjoy equal conditions, could confide in the receipt of the long service pension at full extent, while the Contested Norm has infringed this trust.**

14.2. When assessing whether a reasonable balance between the necessity to protect legal security of person and the necessity to protect the interests of the society, it should be taken into account whether a lenient transition to a new regulation has been established, it being a reasonable transition term or compensation. When establishing a fair balance, it is important to take into account whether a person has trusted in the existent or anticipated wrights as well as the importance of those interests of the society that have been ensured by breaching legal security of persons (*see: Judgment of 26 November 2009 of the Constitutional Court in the case No. 2009-08-01, Para 24 and 25*).

The Contested Norm restricts the rights that have once been conferred to a person. Moreover, for a person to be conferred these rights, he or she had to comply, for a long period of time, with the requirements and criteria established by law.

In the Judgment of 21 December 2009 in the case No. 2009-43-01, the Constitutional Court has already indicated that the reduction of pensions particularly affected the employed pensioners: deduction from their pensions was set for the amount of 70 %, while they could not terminate employment relations in accordance with the requirements of the relevant regulatory enactments of the Republic of Latvia (*see: Judgment in the case No. 2009-43-01, Para 32*). Approximately two weeks passed from the adoption of the Contested Norm of the case under review to the coming into force of it, like it was the case in the above mentioned judgment. The short term of coming into force of the Contested Norm did not allow beneficiaries of the long service pension to assess, in a proper manner, what is more advantageous for them – either to continue or to cease working. Moreover, the term was not sufficient to terminate legal labour relations of a person in accordance with Article 100 (1) of the Labour Law, which provides for the right to give a notice in writing of termination of an employment contract one month in advance. Consequently, when adopting the Contested Norm, the legislator failed to provide for a transitional term that could be regarded as a lenient transition to the new legal regulation and would thus balance the

detriment caused to legal security of person. Moreover, the Contested Norm came into force within a very short time that did not give the possibility to the persons concerned to react in an appropriate manner.

When adopting the Contested Norm, the legislator has avoided looking for other measures to ensure a reasonable balance between the necessity to protect legal security of person and ensure interests of the society, like, compensation, subsequent reimbursement of deductions, conferring of other rights and other mechanisms.

**Consequently, it can be concluded that, when adopting the Contested Norm, no fair balance between protection of legal security of persons and that of the interests of the society has been ensured. Consequently, the Contested Norm does not comply with the principle of legal security.**

15. It has already been indicated in Section 7 of this judgment that compliance of the Contested Norm with the principle of legal security and that of proportionality should be assessed in conjunction with Article 109 of the Satversme.

**Since the Contested Norm that establishes a restriction to the rights guaranteed in Article 109 of the Satversme does not comply with the principle of proportionality and that of legal security, it shall also be regarded as inconsistent with Article 1 and Article 109 of the Satversme.**

16. The Constitutional Court has already established inconsistency of the Contested Norm with Article 1 and Article 109 of the Satversme; therefore it is not necessary to assess compliance thereof with Article 91 of the Satversme.

17. According to Article 31 (11) of the Constitutional Court Law, a Constitutional Court judgment shall indicate, in relation to the disputed legal norm (act) in force – the moment with which it shall cease to be in force, if the Constitutional Court has judged that this norm (act) does not comply with the norm of a higher legal force. In the case under review, the Applicant asked to recognize the norm as null and void as of the date of adopting thereof, namely, 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.
- whether there are any circumstances that influence the date of execution of the judgment (*see: Judgment of 21 December 2009 of the Constitutional Court in the case No. 2009-43-01, Para 34*).

In the case under review, the Constitutional Court has concluded that the Contested Norm breaches the fundamental principles of a law-governed State established in the Satversme and consequently it infringes the rights guaranteed to persons. There is no other way of preventing the infringement of the fundamental rights of the Applicant established in the Satversme than to recognize the Contested Norm as null and void from the date of adopting thereof. In this case, the State shall have the duty to disburse the deducted part of the pension.

All other persons to whom the Contested Norm applies are in the same situation as the Applicant. The Constitutional Court finds that the detriment caused not only to the Applicant but also to other beneficiaries of the long service pension to whom the Contested Norm applies. Therefore the Contested Norm shall be regarded, as from the moment of adoption thereof, as null and void regarding to all beneficiaries of the respective long service pension as from the moment of adoption thereof to whom the Norm applies.

It should also be taken into account that the Contested Norm pertains to the field of state finances, namely, the State budget. An immediate execution of the judgment would cause negative consequences to the entire society. Circumstances analysed in the judgment of 21 December 2009 of the Constitutional Court in the case No. 2009-45-01 apply to the Contested Norm of the case under review.

If the Constitutional Court did not decide the issues related to the enforcement of this Judgment, namely, did not set the moment of invalidation of the impugned

provisions, a situation would arise that could endanger the stability of the State budget; besides, it would not be clear when exactly the reimbursement of the part of pensions withheld on the basis of the impugned provisions would have to be commenced, for how long and following what procedure. The law does not prohibit the Constitutional Court to decide that it is unfeasible to commence immediately the enforcement of the Judgment – the disbursement of pensions in full (*see: Judgment of 21 December 2009 of the Constitutional Court in the case No. 2009-43-01, Para 35*).

Taking into account possibilities of the State budget, the part of the estimated pension deducted in accordance with the Contested Norm shall be reimbursed at full amount no later than before 1 July 2015.

### **The Constitutional Court**

Based on Article 30 – 32 of the Constitutional Court Law,

#### **h o l d s :**

**1. Para 8 of the Transitional Provisions of the Law on Long Service Pension of Public Prosecutors does not comply with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia as from the date of adoption thereof.**

**2. Deductions from the long service pensions made in accordance with Para 8 of the Transitional Provisions of the Law on Long Service Pension of Public Prosecutors shall be ceased and reimbursed no later than before 1 June 2010.**

**3. No later than before 1 June 2010, the Saeima shall have the duty to establish a procedure, according to which the deductions made in accordance with Para 8 of the Transitional Provisions of the Law on Long Service Pension of Public Prosecutors will be reimbursed.**

The Judgment shall be final and not subject to appeal.

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

Presiding Judge

G. Kūtris