



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 31 March 2010

in the Case No 2009-76-01

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 an application of Uldis Mugurevičs

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1) and (11), Article 19.² and 28.¹ of the Constitutional Court Law,

on 9 March 2010 in writing examined the case

“On Compliance of Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” with Article 1 and 109 of the Satversme (Constitution) of the Republic of Latvia”

The Facts

1. On 16 June 2009, the Saeima adopted and on 30 June 2009 the State President proclaimed the Law „Amendments to the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”. The Law

came into effect on 1 July 2009. The above mentioned law supplemented the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” by Para 20 (hereinafter – the Contested Norm) in the following wording:

“From 1 July 2009 to 31 December 2012, the long-service pension for a socially insured person (an employee or a self-employed person) as from 1 July 2009 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 Uldis Mugurevičs (hereinafter- the Applicant) is a retired police lieutenant colonel. According to the Law on Long-Service pensions, in 2001 he was allocated a long-service pension. At the moment when the Contested Norm came into force and he submitted an application, Mr. Mugurevičs worked in the State Revenue Service (*Valsts ieņēmumu dienests*). Pursuant to the Contested Norm, after 1 July 2009 the Applicant’s pension was recalculated and disbursed at the amount of 30 percent out of the previous pension amount. The Applicant holds that the Contested Norm does not comply with Article 1 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and asks the Court to recognize the Contested Norm as null and void as from the date of adopting thereof.

It was indicated in the application that disbursement of pension at the amount of 30 percent in fact deprives the respective person of social security. The Applicant denies that exercise of social rights in the State would depend on economical situation and available resources; however, the Applicant draws attention to what has been established in the case-law of the Constitutional Court, namely, that if the Saeima has included social rights into the Satversme and concretized the content of these rights in laws, these rights have become individual’s rights. Legal norms on long-service pensions regulating the procedure of granting the respective pension have remained unchanged. The Contested Norm restricts only application of these norms during a

certain period of time. Consequently, the Contested Norm does not restrict the fundamental rights to social security as established in Article 109 of the Satversme.

The Applicant emphasizes that social security measures fulfil not only an economical function, which is to compensate loss of income, but also a social function, namely, to ensure persons a possibility to preserve the status of a full-fledged member of the society. The Contested Norm does not fulfil the latter function. Although the Norm has been adopted with the purpose to solve financial problems of the state, save budget resources, and balance the interests of all beneficiaries of State social security, this norm, however, is aimed at creating circumstances that makes a pensioner quit paid labour. Although the Contested Norm is a temporary measure, consequences thereof are, in fact, irreversible because it is rather unlikely that a pensioner having once quitted paid labour would be able to resume working after the expiry of the term of the Contested Norm, namely, after 31 December 2012.

It is emphasized in the application that the Contested Norm includes only one criterion – obligatory status of a person as a socially insured person. When determining restriction to the amount of pension to be disbursed, no duties and the extent thereof are not taken into consideration.

According to the Applicant, the Contested Norm does not comply with the principle of proportionality. When establishing restriction of the fundamental rights of a person in the Contested Norm, the Saeima has failed to assess whether the society would gain any benefit in the result of substitution of employed pensioners by other persons. However, the aim set, i.e. saving of budget resources, cannot even be reached by the Contested Norm because the majority of working pensions who receive long-service pensions prefer terminating their labour relations. The Saeima has neither assessed impact of the Contested Norm, nor the possibility that a part of pensioners receiving long-service pensions could continue working and be paid an envelope wage, which means that no taxes would be paid and budget incomes would only decrease. Moreover, the Contested Norm could cause a partial destruction of the pensions system because it could raise distrust of the society into the system.

It is stated in the application that the Contested Norm permits, without objective reason, a different attitude towards recipients of long-service pensions if compared to

other groups of the society, social security or other incomes of whom are being disbursed from the State budget resources. Reduction of pension of the recipients of long-service pensions, if compared to the above mentioned groups of the society, the reduction being 70 percent, is too great.

The Applicant emphasizes that, in the annotation of the respective draft law, attention is drawn to the possible risk that this might be inconsistent with the Satversme.

3. The institution that adopted the Contested Norm, **the Saeima** (Parliament) does not share the viewpoint of the Applicant and maintains that the Contested Norm does comply with legal norms of higher legal force.

It has been indicated in the reply of the Saeima that, when assessing compliance of a contested norm with the Satversme, it is necessary to take into account independent factors related with the economic situation of the State and possibilities of the Latvian State budget under circumstances decline of economic activities. The rapid fall of economic activities has caused substantial reduction of State budget incomes. The revenues of the State consolidated budget was 2052 million lats, which is by 363.4 million lats or 15 percent less than those of the corresponding time period in 2008. During the six months of 2009 the financial deficit of the State consolidated budget has reached 449.9 million lats.

Under the above mentioned circumstances, the Saeima has to take effective measures with a view to prevent economic recession in the state, preserve functioning financial system, and balance wishes of the society with the possibilities of implementing them. Moreover, in accordance with the Declaration of the Intended Activities of the Cabinet of Ministers issued on 11 March 2009, the government has undertaken to achieve reduction of the budget deficit. The need for such a reduction followed both from the commitments to the European Commission and IMF as well as from determination to stop the economic recession in the country

The Saeima indicates that substantial reduction of expenditure in the budgets of ministries and central state institutions was planned in the Law Amendments to the Law "On State Budget 2009" 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 on 11 June 2009 (hereinafter – the Agreement of 11 June).

In order to ensure reduction of budget expenses, different measures were planned, including reduction of expenditures in ministries and other central institutions, when implementing changes in the institutional and field policies. Optimization measures of structural units were also taken. Amendments introduced into laws regulating long-service pensions, the Contested Norm and the Law “On State Pension and State Allowance Disbursement in the Period from 2009 to 2012” has a common aim that was already mentioned above. The Contested Norm also ensures saving of resources in the basic budget and the special budget. Namely, long-service pensions are paid to the interior system employees with special service ranks from both, the basic budget programme 38.02.00 “Long-Service Pensions, Benefits and Compensations” and from the State special social insurance budget in accordance with provisions of Section 5 (7) of the Law on Long-Service Pensions.

On 1 September 2009, there were 6706 recipients of long-service pensions, and the majority of them were persons aged from 50 – 61. The Contested Norm applies only to 1495 persons, 1065 out of which are being disbursed their long-service pensions from the respective basic budget programme, whilst 430 persons – from the State special social insurance budget.

The Saeima emphasizes that the principle of functioning of the special social insurance budget is self-financing, which means that normative acts on social insurance establish a close link between social insurance payments and social insurance services. In the result of the crisis in Latvia, labour incomes of employed persons have reduced, whilst unemployment rate has increased. In the result of this, revenues into the special budget have reduced, these revenues being formed mainly by social insurance payments. According to the prognosis of incomes and expenses of the social insurance special budget as well as planned expenses of the following years, it is

possible to conclude that accumulation in the State special budget would be used within a couple of years unless the Saeima takes respective measures.

It is stated in the reply of the Saeima that the Contested Norm does comply with Article 109 of the Satversme because social rights are special and different rights. Exercise of these rights depends on the economic situation and available resources of each state. Economic growth and employment are preconditions for a higher level social protection system. During the period from 2002 to 2008, as economic development of the state became more rapid and incomes into the special budget increased, the amount of the old-age pensions and long-service pensions was substantially increased. For instance, long-service pension for an interior system employee with a special service rank in 2005 was about 122 lats, whilst in 2009 – 220 lats.

The Saeima is of the opinion that the Contested Norm provides for a temporal reduction of the amount of long-service pensions. This should be assessed in the light of amelioration or deterioration of the economic situation.

Restrictions included in the Contested Norm has a legitimate objective, namely, it is aimed not only at protection of the interests of special budget, but also the constitutional value enshrined in Article 116 of the Satversme, which is welfare of other persons, and to ensure the duty of the State to disburse State pensions and provide other social services in the future.

This objective cannot be reached by other measures that at the disposal of the Saeima or the Cabinet of Ministers and that would restriction the rights of a person at a lesser extent. Increase of incomes by increasing payment rates for employers and employees could serve as a hypothetical alternative to reduce expenses of the Special budget. Such alternative, however, would cause a number of negative consequences that would, in the long term, have a negative impact on State social insurance payments.

The Saeima holds that the selected measures for reaching of the above mentioned aims are appropriate because the Contested Norm ensures saving of budget resources and allows balancing of interests of all beneficiaries of social security. Consequently, the Contested Norm shall be regarded as proportional and appropriate

for reaching of the above mentioned objective because the benefit gained by the society is greater than detriment caused to the rights of a person.

It is also indicated in the reply that the restriction established in the Contested Norm is a temporary solution.

The Constitutional Court has established:

4. The Saeima emphasizes that the Contested norm has been adopted under the circumstances of economic recession in the State with the purpose to ensure reduction of expenses planned in the Law “Amendments to the Law “On State Budget for 2009””, namely, budget consolidation at the amount of 500 million lats. These measures for budget consolidation are based on the Agreement of 11 June 2009. The Contested Norm has been elaborated and adopted in the frameworks of a number of other measures and simultaneously with the Law “On State Pension and State Allowance Disbursement in the Period from 2009 to 2012” (hereinafter – the Disbursement Law).

In 21 December 2009 judgment in the case No. 2009-43-01 (hereinafter – Judgment in the case No. 2009-43-01), as well as in several other judgments, the Constitutional Court has already assessed several material issues regarding the draft law and general duties of the State under the circumstances when budget incomes decrease. Consequently, in the case under review, it is not necessary to reassess the issues regarding adoption of the Contested Norm.

4.1. Namely, the Constitutional Court has already concluded in several its judgments that in 2009, under the conditions of economic recession, the Latvian State was under the necessity to substantially cut budget expenses, these measures also including the general cut of wages in budget funded institutions (*see, e.g.: Judgment of 18 January 2010 in the case No. 2009-11-01*). Consequently, in the case under review, it is not necessary to reassess whether it was urgently necessary to reduce State basic budget and State social budget expenses when adopting the Contested Norm.

4.2. The Constitutional Court has also 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 rights” (*see: Judgment of 26 November 2009 in the case No. 2009-08-01, Para 22.3*). The amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 24*). 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, e.g.: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 16*). Consequently, in the case under review, it is not necessary to reassess whether the legislator, when adopting the Contested Norm, had the right to take measures aimed at reduction of expenses from the State basic budget or social budget.

4.3. The Constitutional Court has already indicated that during economic recession the action of the legislator should be as fast, coordinated and decisive as possible with a view to prevent possible negative consequences. To fulfil the respective duties, the legislator should be conferred a reasonable freedom of action. However, economic situation of the State or the necessity to reduce budget deficit provided that there are no other legitimate objective cannot serve as a general justification for the fact that the State refrains from the rights once conferred to persons (*see: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 21*). However, the fundamental rights of persons established by the Constitution are binding to the legislator irrespective of the economic situation in the State (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 24*). Consequently, adoption of the Contested Norms under the particular economic circumstances does not per se testify their constitutionality.

5. It has been concluded in the judgment in the case No. 2009-43-01 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. The court conclusions concerning the old-age pension disbursement amount are equally applicable to the service pension disbursement amount established in the contested norms (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 21 and 22*). Consequently, also to long-service pensions of the interior system employees who were granted these pensions in accordance with the norms effective before adoption of the Law on Long-Service Pensions.

5.1. It is indicated in the judgment in the case No. 2009-43-01 that service pension disbursement amount established in the impugned legal provisions is closely related to the social insurance special budget expenditures. The purposes of old-age and specific service pensions are similar – to compensate the loss of capacity for work. That is, service pensions are intended, when specific conditions occur, for providing the means of subsistence for persons whose work entails the loss of professional skills that may occur already before reaching the old-age pension age.

However, long-service pensions for the interior system employees, to whom the Contested Norm applies, are disbursed not only from the State social insurance special budget but also from the basic budget programme 38.02.00 “Long-Service Pensions, Benefits and Compensations”. The fact, however, that these pensions are partially disbursed from the State basic budget does not mean that the respective long-service pensions do not fall within the scope of Article 109 of the Satversme.

5.2. The Constitutional Court has assessed, in its judgments, constitutionality of certain issues regarding disbursement of long-service pensions (*see, e.g.: Judgment of 4 December 2003 by the Constitutional Court in the case No. 2003-14-01, and Judgment of 4 January 2007 in the case No. 2006-13-0103*) and concluded that 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 4 December 2003 by the Constitutional Court in the case No. 2003-14-01, Para 7*).

The Constitutional Court has already established that “long-service pensions serve as both – ensuring of the financial security and as a social guaranty for an employee, who has dedicated a certain period of his/her life for realization of important for the State functions – the protection of the State security, besides under

specific, physically and psycho-emotionally hard and not always to be prognosticated circumstances of service. The employees of the service also during the time free from duties may be involved in liquidation of the damages, caused by forces of nature, fire and other kinds of catastrophes or in carrying out the duties, significant for the State, if the number of persons, at the disposal of the State is insufficient. The skills for carrying out the duties of service under the above circumstances decrease with years” (see: *Judgment of 4 January 2007 by the Constitutional Court in the case No. 2006-13-0103. Para 7.1*).

When analysing the State-established long-service pensions, the Constitutional Court has concluded that arguments, which substantiate why a specific social guarantee – long-service pension – shall be determined for certain categories of State employees, may be divided into several groups:

- 1) specific features of the respective service or profession are connected with decreasing or loss of professional skills at the time of reaching a certain age or after working in this profession for a certain time (having a certain length of service);
- 2) the respective person carries out the duties in the service, significant for the State, the course of which noticeable differs from the labour conditions of those persons, who work on the basis of a civil agreement. At the time of the service a person is subject to vital restrictions determined by the State (Regulations of the service etc.), his/her duty is to participate in realization of the service under unforeseen, often also dangerous circumstances. The long-service pension on the one hand compensates the professional skills, which are lost untimely, but – on the other hand it serves as the compensation for the restrictions, determined for the time of the service, regardless of the fact whether these restrictions have or have not caused the untimely decrease of working skills;
- 3) the long-service pension indirectly as if creates “a postponed remuneration” for an irreproachable service for a long period of time and it advances qualitative performance of the respective services and institutions, especially in the aspect of anti-corruption.

All above mentioned objectives are applied to the interior system employees (*see: Judgment of 4 January 2007 by the Constitutional Court in the case No. 2006-13-0103. Para 7.1 and 7.2*).

The Constitutional Court has also concluded that a differentiated attitude to persons, who work in the above professions and realize the duties of the above service or profession, can be justified by legitimate aims, namely, by the protection of public interests and securing the performance of the particular service as well as by the protection of social interests of every person, working in the respective profession or realizing certain professional duties (*see: Judgment of 4 January 2007 by the Constitutional Court in the case No. 2006-13-0103. Para 7.1*).

Consequently, long-service pensions enshrine the aspect of social rights, as well as serves for other purposes. However, the fact that the long-service pensions also serve for other purposes does not exclude them from the scope of Article 109 of the Satversme. 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. The above mentioned differences shall be assessed taking into account circumstances of the case under review rather than be established in abstract terms.

5.3. Certain experts question long-service pensions as the least expensive and most effective mechanism of social protection. It is indicated that “according to the principles of the European Union and the laws, it is prohibited to distinguish between professions that should be disbursed compensation for working in unhealthy conditions (*see: Opinion of M. Poršņova in the case No. 2008-43-01, case materials, pp. 49 of the case under review*). This would be a material argument in relation to persons who have once had work in unhealthy working conditions and who therefore were given the possibility to retire before the general retirement age. However, this requirement cannot be applied, in any of the States, to services related with saving people in disasters and maintaining good order, including prevention of violence, such as military service. The State cannot guarantee that, for instance, a fire-fighter in the case of a grave fire or a policeman when arresting an armed criminal would enjoy completely secure conditions.

In the frameworks of the case under review it is not possible to deal with the question whether, under the circumstances of high dangerousness stress, service is held by all persons who have been conferred special service ranks in the interior system and who therefore would have the right, after a respective time period, to receive long-service pension. In the frameworks of the case under review, it is neither possible to deal with the issue regarding possibilities to increase the age, at which persons would have the right to receive a long-service pension. Such issues shall be dealt with when assessing provisions of the respective laws. The Contested Norm is not aimed at the aforesaid. It neither provides for any substantial changes in the existing system; it only restricts disbursement of pensions for a certain period.

The fact whether certain terms of long-service pensions for the interior system employees could be assessed critically, does not in itself deprive this category of pensions of legal constitutional protection.

5.4. When assessing issues related with long-service pensions of the interior system employees in the context of the common legal constitutional heritage of the European States, it is necessary to take into account the fact that regulatory provisions regarding civil service enshrined in constitutions of the States, as well as the structure of civil service as such differ considerably.

Constitutional courts of the European states have not established any breach of the principle of equality in the fact that a different retirement age is established for persons employed in the State service or such groups of persons who have held State service under special circumstances.

For instance, when assessing pensions' reform of 2000 that was first of all aimed at rapid increase of old-age pensions, the Constitutional Court of Austria did not establish any infringement of the principle of equality in the fact that the law that regulated pensions of federal officials established provisions that differed from the general regulation (*see: Judgment of 27 June 2003 by the Constitutional Court of Austria in the Case No. G300/02 ua, Para 2.3.2.2, <http://www.ris.bka.gv.at>*).

The German Federal Constitutional Court regarded a constitutional claim of a policeman regarding increase of retirement age as obviously ungrounded and

rejected the claim. Namely, up to 2004, the respective law of the Rhineland-Palatinate Land provided for a possibility for all police officials to retire at the age of 60. The new regulation established, however, that only those policeman who has been in civil service in unhealthy working conditions, like, shift work, mobile units, special operation units or police helicopters units for at least 25 years shall have the right to retire by reaching the age of 60. Retirement age for policemen who have held service in other police structures was gradually increased (*see: Judgment of 23 May 2008 by the German Federal Constitutional Court in the case No. BvR 1081/07, http://www.bverfg.de/entscheidungen/rk20080523_2bvr108107.html*).

Special state pensions in Lithuania are also guaranteed for officials of the interior service, special investigation service, state security service, defence forces and prosecutor's office, as well as soldiers and officers (*see, e.g. Judgment of 23 April 2002 by the Lithuanian Constitutional Court in the case No. 27/2000 <http://www.lrkt.lt/dokumentai/2002/r020423.htm>*).

Consequently, when assessing critical arguments regarding the Latvian pensions' system that have already been stated by certain international institutions several years ago, it is necessary to take into account the fact that the regulation establishing such provisions for persons having worked in the State service that differ from the general system of pensions disbursement, does not contradict the practice of democratic European States. The necessity to improve certain elements of the regulation on long-service pensions cannot serve as the grounds for exclusion of long-service pensions from the social security system.

Moreover, the proportion of long-service pensions (measures in percents), if compared to the Latvian gross domestic product for the time period from 1998 to 2009 has reduced from 0.3 percent to 0.1 percent (*see: Letter of 15 October 2009 of the Cabinet of Ministers No. 18/TA-3223 on additional information on case materials pp. 91, the case No. 2009-43-01*).

5.5. Article 109 of the Satversme establishes: "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, when interpreting the above mentioned Article, has recognized that, on the one hand, exercise of those rights depends on the

economic situation and resources of every state, but on the other hand, if some social rights are included in the fundamental law, the State cannot relinquish them. These rights do not have just a declarative nature (*see, e.g.: Judgment of 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, Concluding Part*).

The Applicant and the Saeima share a common opinion that the Contested Norm applies to the field of social rights, and, in the case under review, activities of the legislator that restrict the right to social security as guaranteed in the Satversme are contested. The Constitutional Court agrees with the opinion that the Contested Norm falls within the scope of Article 109 of the Satversme. 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.

6. The Constitutional Court has concluded that specific nature of social rights determines also the limits of the control of the judicial power. When realizing social rights the legislator enjoys an extensive freedom of action as far as it is reasonably connected with the economic situation of the State; however, this freedom of action is not unlimited (*see: Judgment of 2 November 2006 by the Constitutional Court in the case No. 2006-07-01, Para 13. – 14*). However, the Judicial Power has the duty of assessing whether the legislator has observed the limits of the above freedom of action (*see: Judgment of 11 December 2006 by the Constitutional Court in the case No. 2006-10-03, Para 16*). This means that the Court should assess, within its limits, whether 1) the legislator has taken all measures to ensure persons with the possibility to exercise their rights; 2) whether these measures have been taken at a sufficient level, namely, whether persons are given the possibility to exercise their social rights at least at the minimum level; 3) whether other legal principles have been observed (*see: Judgment of 19 December 2007 by the Constitutional Court in the case No. 2007-13-03, Para 8.4*).

6.1. In the case under review, the right to social security at least at the minimum level are not infringed. Consequently, it cannot be concluded that here exists

restriction of fundamental rights established in 109 of the Satversme in the same meaning as it exists in the case No. 2009-43-01. Article 109 of the Satversme does not guarantee the right to certain kinds of pensions, including the long-service pension that is calculated based on certain criteria or provided at a certain amount. However, if the State has established a certain kind of pension by law, then Article 109 of the Satversme requires that all further activities of the State would comply with the principles of a law-governed State. When assessing compliance of any legal norms with the principles that follow from the fundamental values established in Article 1 of the Satversme, it is necessary to take into account the fact that manifestation of these principles in different legal areas might differ. Consequently, in the case under review, 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.

6.2. 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 18 January 2010 by the Constitutional Court in the case No. 2009-11-02, Para3*). In cases when it is necessary to restrict social guarantees due to economic recession, the State has the duty to act in consistency with the principles of a law-governed State.

6.2.1. 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 cannot be interpreted in such a broad manner that would protect a person from any disappointment. An opposite approach would lead the State to the failure to react to the changing conditions of life. 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 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 23 and 25*).

Long-service pensions for interior system employees with special service ranks are granted with different purposes, one of them being compensation for being in State service under stressing circumstances. 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.

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. However, the Contested Norm provide for reduction of pension at a considerable rate, i.e. by two thirds. Only one criterion has been established for implementing reduction of pensions, namely, the condition for a person to be a socially insured person. A person had the right to confide in the fact that disbursement of a pension would not be related with such unforeseeable factor.

Consequently, the Contested Norm has materially infringed legal security of persons.

However, the Constitutional Court has reiterated that prevention of infringement of substantial interests of the society should be prior to the principle of legal security (*see, e.g.: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 19*).

6.2.2. In the judgment in the case No. 2009-43-01, the Constitutional Court has already recognized that the respective draft laws has been adopted by failing to thoroughly examine alternatives and weighing the benefits and detriments in case of the particular actions.

In the judgment in the case No. 2009-43-01, the Constitutional Court has concluded that when adopting the Contested Norms, the legislator has not considered

with sufficient care the alternatives to these provisions and has not envisaged a more lenient solution. Therefore, the Contested Norms do not comply with Article 109 of the Constitution (*see: Judgment of 21 December 2009 by the Constitutional Court 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 would have acted otherwise in relation to adoption of the Contested Norm under consideration in the present case.

As to the Contested Norm in the case under review, it is also necessary to emphasize that impact of restrictions established for disbursement procedure of long-service pension on person who are still in service. As it has already been indicated, long-service pensions fulfil a certain function to ensure high quality personnel in the State service, as well as it plays a major role in the aspect of anti-corruption. Ungrounded refusal by the State to fulfil its liabilities could lead to loss of faith in the State performing its duties after the expiry of the term established in the Contested Norm, which might lead to decrease of quality of interior system personnel. For instance, qualified and experienced persons able to be in the service and for training of which the State has already spent many resources could choose abandoning the State service.

Consequently, the statement that adoption of the norm would ensure benefit to the society is ungrounded.

6.2.3. The Constitutional Court has indicated in the judgment in the case No. 2009-43-01 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. That is to say, approximately two weeks passed from the moment of adoption of the Disbursement Law until its effective date. Such a short period of time was insufficient for persons to assess in an adequate manner whether it would be beneficial for them to terminate their employment legal relationships pursuant to Article 100, Paragraph One 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 (*see: Judgment of 21 December 2009 by*

the Constitutional Court in the case No. 2009-43-01, Para 32). This argumentation equally applies to the Contested Norm.

The Constitutional Court has also indicated that the reduction of pensions does not allow differentiated approach, namely, the fact whether a socially insured person has other incomes and, if so, their amount is taken into account when reducing pensions.

During harsh economic conditions in the State, a situation when the State would provide, within the limits of its possibilities, minimum existence possibilities for as much persons as possible, might arise. However, consequences of these circumstances should equally touch all inhabitants of the State. The Constitutional Court has already concluded that no equal attitude towards all persons regarding reduction of funds to be disbursed from the State budget was ensured (*see: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01, Para 19*). Under such circumstances, undifferentiated reduction of long-service pension by 70 percent cannot be regarded as compliant with the principle of proportionality.

Consequently, the Contested Norm does not comply with Article 109 of the Satversme in conjunction with Article 1 of the Satversme.

7. According to Article 31 Indent 11 of the Constitutional Court Law, The judgment of the Constitutional Court shall indicate with regard to the effective disputable legal norm – the time by which the disputed legal norm is no longer in effect, if the Constitutional Court has declared that the norm does not comply with the legal norm of higher force, 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 Applicants;
- whether there are any considerations due to which the impugned provisions would have to be invalidated with retrospective effect only in relation to the

Applicants (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 34*).

The Constitutional Court has concluded in this Case that the contested norms violate the fundamental principles of judicial state and the fundamental rights granted to persons by the Constitution. There are no other ways to preclude the infringement of the Application submitters' fundamental rights established by the Satversme than to invalidate the impugned provisions as of the moment of their adoption. In this case, the State is obliged to reimburse the deducted parts of pensions.

All persons to whom the impugned provisions apply are in a situation similar to that of the Applicants. The Constitutional Court took into account that several thousands of other persons wanted to submit constitutional claims concerning these same impugned provisions. Thus, the Constitutional Court decided that not only the rights of the Applicants but also the rights of all recipients of pension have been infringed. Therefore, the impugned provisions must be invalidated as of the moment of their adoption with respect to all recipients of pension whom they affect.

At the same time, one should take into account the fact that the impugned provisions significantly affect the finances of the State, i.e. the State budget. Instant enforcement of the judgment could cause rather unbeneficial consequences. Circumstances analysed in the judgment of the case No. 2009-43-01 also 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 contested norms, 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 contested norms 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 by the Constitutional Court in the case No. 2009-43-01, Para 35*).

Having assessed the economic situation of the State and possibilities of the State budget, the deducted part of the pension withheld based on the Contested Norm

shall be fully disbursed according to procedure established by the State and 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 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” does not comply with Article 1 and 109 of the Satversme of the Republic of Latvia and shall be null and void as from the date of adopting it.

2. Deductions from long-service pensions established in Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” shall be terminated no later than by 1 June 2010.

3. No later than by 1 June 2010, the Saeima shall be committed to establishing procedure for disbursing the deductions from the long-service pensions made in accordance with Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”.

The Judgment is final and not subject to appeal.

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

The Presiding Judge

G. Kūtris