THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

in Riga, on 21 December 2009,

in Case No. 2009-43-01

The Constitutional Court of the Republic of Latvia in the following composition: the Chairperson of the Court session Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

based on the Application of […] (hereinafter jointly referred to in the text as the Applicantss), according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16, Clause 1, Article 17, Paragraph One, Clauses 3, 11, and Articles 19^2 and 28^1 of the Constitutional Court Law,

on 23 November 2009, in a court session examined in writing the case

"On the compliance of Article 2, Paragraph One of the Law "On State Pension and State Allowance Disbursement in the Period from 2009 to 2012" with Articles 1 and 109 of the Constitution of the Republic of Latvia and on the compliance of Article 3, Paragraph One of the above Law with Articles 1, 91, 105 and 109 of the Constitution of the Republic of Latvia."

Recital

1. On 16 June 2009 the Saeima (Parliament) of the Republic of Latvia adopted the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 (hereinafter – the Disbursement Law). The purpose of this law is stated in

Article 1: „to provide persons with social security within the limits of the available financing according to the laws on State budget for the current year in the period from 1 July 2009 to 2012."

According to the Disbursement Law, cuts of particular payments from the special budget of social insurance were established for the above mentioned period. Thus, Article 2, Paragraph One of the Disbursement Law stipulates that „in the period from 1 July 2009 to 31 December 2012 the state old-age pensions and service pensions granted according to the by-laws 'On Service Pensions' and 'On the Rank and File and the Unit Commanding Personnel of the Institutions of the Ministry of the Interior Employee Pensions (Employer Pensions)' are paid in the amount of 90 percent from the pension amount granted in accordance with the legislative acts".

Whereas Article 3, Paragraph One of the Disbursement Law prescribes that "in the period from 1 July 2009 to 31 December 2012 the recipients of state old-age pensions and service pensions granted according to the by-laws 'On Long Service Pensions' and 'On the Rank and File and the Unit Commanding Personnel of the Institutions of the Ministry of the Interior Employee Pensions (Employer Pensions)' are paid in the amount of 30 percent from the pension amount granted in accordance with the legislative acts starting with the first date of the month following the month when the recipient of pension has become a person subject to mandatory social insurance (employee or self-employed) in accordance with the Law on State Social Insurance" (hereinafter Article 2, Paragraph One and Article 3, Paragraph One of the Disbursement Law jointly – the impugned provisions).

Several cases were declared admissible in the Constitutional Court that impugn the compliance of Article 2, Paragraph One and Article 3, Paragraph One to various provisions of the Constitution of the Republic of Latvia (hereinafter – the Constitution). Preparing the case for examination and on the basis of Article 22, Paragraph Six of the Constitutional Court Law as well as Paragraphs 125 and 126 of the Rules of Procedure of the Constitutional Court, a decision to merge cases No. 2009-43-01, No. 2009-47-01, No. 2009-48-01, No. 2009-49-01, No. 2009-50-01, No. 2009-52-01, No. 2009-53-01, No. 2009-54-01, No. 2009-55-01, No. 2009-57-01, No. 2009-58-01, No. 2009-59-01, No. 2009-60-01, No. 2009-61-01, No. 2009-62-01 and No. 2009-63-01 in one case has been adopted on 28 August 2009. The merged

case No. 2009-43-01 has been given the name "On the compliance of Article 2, Paragraph One of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 with Articles 1 and 109 of the Constitution of the Republic of Latvia and on the compliance of Article 3, Paragraph One of the above Law with Articles 1, 91, 105 and 109 of the Constitution of the Republic of Latvia".

Whereas on 27 October 2009 a decision to merge cases No. 2009-43-01, No. 2009-81-01, No. 2009-82-01, No. 2009-83-01, No. 2009-84-01, No. 2009-87-01, No. 2009-91-01, No. 2009-92-01 and No. 2009-99-01 was adopted. The merged case No. 2009-43-01 retained its previous name.

2. The Applicants pointed out that several basic legal principles follow from Article 1 of the Constitution – the principle of protection of legitimate expectations, the principle of proportionality, the principle of the rule of law, the principle of social state, the principle of good governance and the principle of social solidarity. The legislator, adopting the impugned provisions that prescribe 10 percent cut of old-age pension granted for life for pensioners unemployed and 70 percent cut for pensioners employed, has violated these principles.

The Applicants claimed that the issue concerning old-age pensions pertain to the area of social policy, has long term nature and requires stability. Therefore legal order in this area should be sufficiently stable and unchanging, so that individual persons could plan their future with confidence based on legal provisions. Assessing whether the impugned provisions comply with the principle of protection of legitimate expectations, it is necessary to take into account whether relying on the previous legal order was lawful, substantiated and reasonable, and whether legal order in its substance is sufficiently stable and unchanging to confide in it. In addition, the Applicants noted that it is important to bear in mind whether the legislator, adopting the impugned provisions, has deviated from the rights originally guaranteed to private persons.

2.1. The Applicants went on that the procedure prescribed by the Law on State Pensions adopted on 2 November 1995 was created as an insurance system – person's pension depends on the contributions made during the period of employment. Calculation and granting procedure for all kinds of state pensions has been in effect for a long period of time and is based on certain principles.

Recipients of old-age pension are a special group of society because the granted pension is predominantly the only source of income for them. Therefore, there is no doubt that persons who qualify for old-age pension have relied upon legal order for calculation and granting of old-age pension, and this reliance has been lawful, reasonable and justified. The legal order was in force for a long period of time and it was sufficiently stable and unchanging.

Although the economic situation in the country has deteriorated, the principle of protection of legitimate expectations still has a major role in the existence of a state governed by the rule of law. The state has an obligation to provide judicial stability, whereas persons have the right to rely upon the state fulfilling its obligation in good faith. The situation when a decision crucial for the state is adopted urgently in two days time is also unacceptable.

At the same time, the Applicants noted that the principle of protection of legitimate expectations does not hold an absolute nature. However, a deviation from the above principle should comply with the constitutional principles, and when the legislator makes such amendments to the Law, a "lenient" transition to the new legal order should be ensured. A lenient transition could have been providing both a certain transition period to the new legal order as well as compensation of losses.

It is especially emphasized in the Applications that the legislator has not envisaged the obligation to compensate or repay the deducted reduction of state pensions to the recipients of old-age pension. On the contrary – the Saeima has rejected the proposal that envisaged the procedure for repaying the deducted share of pensions.

2.2. The Applicants proceeded that, when determining the compliance of the impugned provisions with the principle of proportionality, one should bear in mind that benefit for the society from adopting a certain legal provision or legal order should be greater than detriment to legal interests of a person. Furthermore, the legislator should assess the influence of the legal provision to be adopted on each group of persons who are affected by the provision.

The Applicantss admitted that the economy of the state budget funds could by itself be the legitimate end of the impugned provisions; however, the economy of the

state budget funds at the expense of such an unprotected group of society, namely, the recipients of old age pensions, is unacceptable.

Likewise, the legitimate end of the impugned provisions cannot be the one mentioned in the Disbursement Law – "to grant social security to persons within the limits of the available financing". On the contrary, the state has to provide financing for the satisfaction of social needs in the amount guaranteed by the legislative acts.

When determining whether the impugned provisions are proportionate and whether the same ends could be reached by other means that interfere less with the rights of persons, it should be considered that social rights are different human rights since they depend on the economic situation in the country and the available resources. If there is not enough financing in the state social budget to safeguard the above principles, the state should look for other alternatives.

The additional explanations to the Application of the members of the Parliament list the following other alternatives: firstly, to increase income by improving collection of the existing taxes; secondly, to reduce other budget expenditures; thirdly, to introduce new taxes or to increase the existing ones. Non-compliance of the impugned provisions to the Constitution follows also from the draft law annotation that states a risk that these provisions might contradict Articles 1 and 109 of the Constitution.

2.3. As to Article 3, Paragraph One of the Disbursement Law, lack of consultations with experts during preparation of the draft law is also considered as its substantial drawback. Thus, the fiscal effect of the provision has not been duly assessed; moreover, it can even be disputed. A situation when the fiscal effect of the provision turns out exactly the opposite and the resources of the state social insurance budget would decrease is also possible.

Likewise, there is no substantiation as to why the legislator has included this particular amount of pension disbursement decrease in the impugned provisions, i.e. 70 percent. The Applications also dispute the allegation that the impugned provisions have been adopted because the international creditors – the European Commission and the International Monetary Fund (hereinafter – IMF) – had had required so.

Article 3, Paragraph One of the Disbursement Law does not comply with Article 91 of the Constitution because it envisages unequal situation between

employed and non- employed pensioners. An alternative solution for this provision was a proposal to determine an equal deduction for all pensioners, e.g. in the amount of 15 percent. Yet, such a solution was not even considered. Likewise, employed pensioners are put in an unequal situation compared to the employees who are not pensioners. In this context the criteria of unequal treatment is age, and age discrimination is one of the prohibited discrimination types both in Latvia and in the European Union.

Explanation by the Cabinet of Ministers that the adoption of Article 3, Paragraph One of the Disbursement Law is lenient because it is not applicable to certain self-employed persons, has no substantiation. Such a view is rather general and groundless because nobody has furnished exact number of persons to whom such a deduction of pension disbursement would not be applied. Likewise, one should take into account that persons whose income does not exceed one minimum monthly wage are not persons subject to mandatory social insurance in the interpretation of the Law on State Social Insurance; therefore they are not subject to recalculation of the state old-age pension in correspondence with social insurance contributions they have made.

When assessing the impugned provisions from the aspect of Article 105 of the Constitution, it should be taken into account that the Latvian pension system is based on the principle of insurance. That is – each person or his/her employer makes contributions that make up person's pension capital. Therefore at least that part of pension that has been calculated since 1 January 1996 should be regarded as having been earned by the person, and the state has undertaken to disburse it when the person reaches a certain age.

According to the Applicants, Article 3, Paragraph One of the Disbursement Law disproportionately restrict the property rights of a person since the calculated pension remains the same, whereas only 30 percent from the calculated pension is disbursed. Thus the essence of property rights is violated and further trust to the whole pension system is diminished. If the state had, for example, stipulated that such deduction from pensions should be treated as loan that will be repaid later, then the limitation would be proportionate.

2.4. The Applicants stated that, when determining the compliance of the impugned provisions with Article 109 of the Constitution, the following should be considered: if the state has included a fundamental right in the Constitution, it has an obligation to implement it.

When adopting any changes in the sphere of social rights, the state has to provide for a certain period of time, so that the affected persons can duly prepare themselves for these changes. In this case, the preparation time was just two weeks. It was noted even in the draft law annotation submitted by the Cabinet of Ministers that the adoption of the Disbursement Law from 1 July 2009 is not possible since there will be pension and allowance overpayments for the period from 1 July 2009 until the introduction of the new procedure.

Latvia has ratified a number of international agreements in the area of social rights. The conclusion that follows from these documents is that the legal provisions that provide a broader nature of human rights and better possibilities for human rights protection should be preferred. The obligation to protect and provide for the human rights to a certain extent does not deny the state the possibility to amend the provisions for implementation of the respective human rights, however, the respective amendments cannot restrict the nature of human rights.

Taking into account the above, the Applicants asked the Constitutional court to declare Paragraph One of Article 2 of the Disbursement Law as unconformable with Articles 1 and 109 of the Constitution and Paragraph One of Article 3 as unconformable with Articles 1, 91, 105 and 109 of the Constitution as well as to declare both impugned provisions invalid as of the moment of their adoption.

3. The institution that passed the Contested Act – the Saeima – did not agree with the arguments of the Applicants and pleaded the Constitutional Court to adjudge the Applications groundless and to reject them. The Saeima argued as follows.

3.1. When determining the conformity of the impugned provisions with the Constitution, factors related to the economic situation in the country and resources of the State budget of Latvia cannot be ignored. Since 2008, economic development has considerably deteriorated. The drop in Gross Domestic Product in the second quarter of 2009 was 19.6 percent in comparison with the same period of the previous year.

Therefore, more efficient steps to prevent the decline of the state economy were required.

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 sharp decline in economic activity caused the considerable decline in the state budget revenues as well. Therefore a 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 Disbursement Law has been prepared in view of the situation in the State budget. 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).

The Saeima pointed out that the principle of operation of the social insurance special budget is self-financing, namely, the legislative acts regulating social insurance envisage a close link between social insurance contributions and social insurance services.

Pensions and allowances are a part of social insurance services and are offered to their recipients from social insurance contributions made by those currently employed. It is emphasized in the replies that the special budget expenditures had been constantly increasing due to the rapid increase in wages during the previous years. As a result, the amount of pensions and allowances had increased alongside with the number of individual service users. Although the positive balance of the social budget on 1 January 2009 was LVL 951.1 million, it decreased to LVL 153.5 million by 1 August 2009. Therefore, if the impugned provisions were not adopted, considering the fulfillment of the social insurance special budget and revenues forecast as well as

planned expenditure for the coming years, the accumulations in the state special budget would be used up already in a couple of years.

3.2. The principle of protection of legitimate expectations following from Article 1 of the Constitution does not restrict the legislator's rights to deviate from the previous practice, even if it has been stable. Such a deviation is not only acceptable but also necessary in the cases when a more suitable and obviously more appropriate solution has to be chosen.

Although the principle of protection of legitimate expectations has constitutional value, protection of other persons' rights and social welfare has an equal constitutional value, and it can be provided by efficient redistribution of common wealth and balancing revenue and expenditure of the state. The principle of protection of legitimate expectations does not mean that the laws cannot be changed. Otherwise the regulating power of the state would gradually decrease until the operation of the state would "freeze".

3.3. Paragraph One of Article 3 of the Disbursement Law complies with Article 91 of the Constitution, since the purpose of social security benefits is to guarantee means for living to persons when they cannot be actively involved in employment legal relationships due to various reasons and thus to provide means for living by themselves. Old age is one of the cases when a person receives social security benefits – old-age pension. The differentiated amount of reduction in old-age pension for employed pensioners compared to non- employed pensioners and pensioners with other income is substantiated because employed pensioners have revenues from employment alongside with the state old-age pension and can provide means for living for themselves.

Different treatment of persons subject to the enactment contained in Paragraph One of Article 3 of the Disbursement Law is proportionate to the benefit for the society. The impugned provision helps to guarantee disbursements of social insurance services, and the established restrictions of rights are balanced taking into account the age of a person as a social risk that affects the ability of the person to provide means of living for himself or herself.

Whereas employed pensioners and able-bodied persons in active employment are not in an equal and comparable situation in accordance with Paragraph One of

Article 3 of the Disbursement Law; therefore, there are no grounds for analyzing whether Paragraph One of Article 3 of the Disbursement Law prescribes different treatment and whether such a different treatment has objective and reasonable grounds.

3.4. When determining the compliance of Paragraph One of Article 3 of the Disbursement Law with Article 105 of the Constitution, the Saeima pointed out that "making social insurance contributions cannot be regarded as creation of property, and the opinion that pension system creates ‘property’ in accordance with the Law on State Pensions has no grounds, because it is based on the principle that a person makes certain contributions". Although in the case No. 2007-01-01 the Constitutional Court ruled that the rights for pension disbursement are conformable with the nature of the concept of "property" in the first sentence of Article 105 of the Constitution, it would be appropriate to re-evaluate this issue precisely in the context of Paragraph One of Article 3 of the Disbursement Law.

3.5. Also, the impugned provisions do not violate Article 109 of the Constitution since social rights are special and different rights. The implementation of these rights depends on the economic situation in each country and the available resources.

Economic growth and employment are preconditions for a social protection system of a higher level. During the period from 2002 to 2008, when economic growth rate in the country was accelerating and revenues of the state special budget were increasing respectively, a number of changes in the area of pensions were made to support the recipients of pensions, paying special attention to the recipients of small pensions.

Before adopting the impugned provisions, the income of employees has decreased considerably, while unemployment has increased. As a result, special budget revenues that are basically made of social insurance contributions have considerably decreased. Therefore, it was necessary to balance expenditures and revenues within the limits of this budget.

The adoption of the impugned provisions is considered as a necessary measure, and it was not possible to reach its goal by other means that would restrict the rights of an individual to a lesser extent. Since special budget revenues are made of social

insurance contributions, the required economy could be achieved only by reducing the amount of the established social security disbursements.

3.6. The impugned provisions that prescribe a small and fixed-term reduction of state pension amount should be viewed in the context that, during the improvement of economic situation and increase of available resources, the amount of state pensions has been substantially increased over the years.

The Saeima especially drew the attention of the Constitutional Court to the fact that the restriction prescribed by the impugned provisions is a temporary measure and Article 9 of the Disbursement Law contains a constant and publicly controllable monitoring mechanism for this law.

Taking into account the above, the Saeima pleaded the Constitutional Court to declare Paragraph One of Article 2 of the Disbursement Law as conformable with Articles 1 and 109 of the Constitution as well as to declare Paragraph One of Article 3 of the Disbursement Law as conformable with Articles 1, 91 105 and 109 of the Constitution.

4. The arguments of the summoned party – **the Cabinet of Ministers** – that substantiate the conformity of the impugned provisions with the Constitution, were similar to the arguments of the Saeima.

When answering the questions of the Constitutional Court, the Cabinet of Ministers pointed out that the reference to a possible contradiction with the Constitution in the annotation of the Disbursement Law should be understood as drawing attention to a possible risk that should be particularly assessed during each stage of discussion of the draft law. The above reference in the annotation is informative, and as such is not founded on facts, for it contains neither any specific facts nor arguments that would give evidence concerning breach of the respective articles of the Constitution.

During the negotiations, the international creditors repeatedly took notice of the possibility that the sustainability of the social budget would be endangered even in the case of freezing the indexation of pensions. Nevertheless, the social area has been spared as much as possible and such reductions of old age pensions as prescribed by the impugned provisions were not included in any of the initial loan agreements. They were included only in the latest stages: with the European Community – in the

Supplementary Memorandum of Understanding of 13 July 2009; with IMF – in the Economic Stabilization and Growth Revival Programme for Latvia adopted by the Saeima on 16 June 2009. The Cabinet of Ministers took notice that IMF, based on the staff report of its mission reviewed by the Executive Board of the IMF, may refuse to grant the next installment of the loan if the commitments specified in the letters of intent were not fulfilled.

During the negotiations for the Agreement of 11 June, other alternative pension reduction solutions were also discussed; however as a result of these discussions, the agreement was reached only with respect to one particular solution. Based on the above agreement and considering that it was supported not only by the political parties that constitute the government but also by a wide segment of society, the respective draft of the Disbursement Law was prepared. Since this draft law precisely reflects the agreement reached, it would not have been rational to discuss other solutions or to hold additional expert consultations during its preparation. The budget deficit had to be reduced immediately; otherwise the receipt of the international loan was endangered.

The Cabinet of Ministers pointed out that reduction of pension does not apply to a group of persons that receive old-age pension and are self-employed at the same time. Taking into account the purpose of old-age pension as part of social security system – to protect persons so that they are not left without any income at old age, when they are unable to work and thus gain income from employment – the Cabinet of Ministers considers the reduction of pensions for employed pensioners as conformable with the principle of justice. This is the only solution that follows from the facts that there is the deepest crisis in the country and the Gross Domestic Product decline is the biggest in Europe. The Cabinet of Ministers also stated that reductions in other positions of budget started already in summer 2008, and all the resources available therein have already been exhausted by July 2009.

The Cabinet of Ministers informed that the State administration system undergoes constant development and structural reforms have been started already before the economic indicators started to show downfall. For example, the total reduction of the budget expenditures for the remuneration at the State direct administration institutions compared to 2008 is LVL 296.7 million.

5. The Summoned party – **the Ministry of Finance** – maintained that, in conformity with Article 34, Paragraph Two of the Law on Budget and Financial Management, the executors of the State budget, in case of the special budget – the State Social Insurance Agency (hereinafter – SSIA) – have the rights to enter into an agreement with the State Treasury concerning investment of the surplus balance of the special budget as a deposit as well as to invest this balance in the Latvian State securities. In accordance with the agreements signed with the SSIA and the State Treasury and within the term specified in these agreements, interest income from term deposits of the surplus balance of the special budget and income from utilization of the positive accounts balance of the special budget are transferred to the accounts of social insurance special budget and diverted to cover the costs in accordance with the Law on the State Budget for the current year. State social insurance special budget funds are placed in the State Treasury according to the rates of financial market.

The Ministry of Finance drew attention of the Constitutional Court to the fact that the State budget fulfillment indices, including the amounts of revenues, expenditures and financed deficit of the State special budget as well as the source of financing this deficit, are established in the annual State Budget Law and are not related to the actual balance of funds of the joint budget accounts of the State Treasury in the Bank of Latvia.

The draft Disbursement Law has been prepared by the Ministry of Welfare; therefore, the Ministry of Finance cannot provide detailed information concerning alternative solutions, calculations of social budget economy included in the draft law annotation as well as information about consultations with experts.

The Ministry informed that, for the eight months of 2009, the debt of taxpayers to the State social insurance budget was LVL 108 million, i.e. by LVL 32.9 million or 43.6 percent higher than in the same period of 2008.

It was also maintained that, due to the level of credit rating of the State, the possibilities to borrow money in financial markets were limited. Therefore international loans are the main source for financing the budget deficit. The received loans made it possible both to increase the volume of emission of State internal borrowing securities, thus providing the financing necessary for the fulfillment of the

commitments of the State, as well as not to utilize the funds of the international loan allocated in the second half of 2009.

6. The Summoned party – **the State Treasury** – maintained that, implementing the objectives stipulated by the Law on Budget and Financial Management and executing the functions established by the State Treasury Regulation, the State Treasury inter alia opens accounts for the State budget fulfillment, operates the State budget accounts in the Bank of Latvia and other credit institutions, provides resources necessary for financing the State budget deficit and repayment of debt liabilities as well as makes investments of budget funds within the framework of the State budget financial funds management. Since 1 January 2007, the special budget accrual funds alongside with other available resources are used for the common cash flow in the joint budget accounts of the State Treasury in the Bank of Latvia, thus providing availability of funds for the State budget fulfillment in accordance with the approved annual State Budget Law and for other financial liabilities in due time.

The State Treasury drew attention of the Constitutional Court to the fact that the State budget fulfillment indices, including the amount of revenues, expenditures and financed deficit of the State special budget as well as the source of financing this deficit are established in the annual State Budget Law and are not related to the actual balance of funds of the joint budget accounts of the State Treasury in the Bank of Latvia.

In accordance with the Law on State Budget for 2009, the accruals from the previous years are the source for financing the State special budget deficit. Taking into account the fact that the funds available in the State budget accounts at the end of the year can be used in the next fiscal year, the statement that the balance of social budget funds has already been spent is incorrect. According to the data of the State Treasury, the State special budget accrual at the end of 2009 was LVL 854.4 million, out of those LVL 522.5 million were placed in term deposits and LVL 322.9 million – kept at the account balances of the State Treasury. Within the framework of joint financial management practice, the State Treasury ensures the availability of respective resources for the State special budget expenditure according to the annual State Budget Law.

7. The Summoned party – **the Ministry of Welfare** – stated that the principle of social insurance system is self-financing, i.e. the current disbursements to the recipients of pensions and allowances are covered by the social insurance contributions made by the currently employed persons. Due to deteriorating economic situation, increased unemployment and decrease of wages, the revenues of the State social insurance budget decrease as well. As a result, the budget revenues do not cover the expenditure and operation of social insurance system and, consequently, the pension system is endangered as well.

The evaluation of the current situation in the special budget of social insurance and forecast for the coming years clearly shows that, in case if the expenditure of social insurance special budget is not urgently revised, the financial funds for social insurance service disbursements will be limited, whereas the state social insurance budget accrual – spent, thus creating a real deficit in the budget.

The Disbursement Law had to be prepared within a very short period of time; therefore, it was not possible to assess the alternatives. That was also the reason why it was not possible to assess fully and exhaustively the compliance of the State pension and allowance disbursement restrictions prescribed by the draft law with the legal principles stated in the Constitution or following from the provisions thereof. This situation has been described in the draft law annotation.

The Ministry of Welfare drew the attention of the Constitutional Court to the fact that the reduction would not apply to the persons who are the recipients of old-age pension and self-employed at the same time, whereas the pension recipients whose employment income is equal to the minimum wage or close to it and whose pension amount is equal to average pension in the State or even higher have the choice whether to continue employment or to terminate it.

8. The Summoned party – **the State Employment Agency** – maintained that, when determining the impact of the Disbursement Law on the number of vacant job positions, a conclusion can be drawn that the number of vacant job positions has not substantially changed due to the law coming into effect and possible termination of employment contracts by pensioners. However, some cases have been established at the agency’s branches when employers reported vacant job positions at the end of June

and beginning of July of this year due to termination of employment contracts by employed pensioners.

At the same time it was maintained that the number of vacant job positions is currently also affected by general economic factors, due to which the companies need to reduce the number of their employees. Thus, resignation of pensioners can be one of the possible ways for companies to reduce their number of employees and to close job positions.

9. The Summoned party – **The Bank of Latvia** – maintained that, in June 2009, the state consolidated budget deficit accrued since the beginning of the year reached LVL 458 million or 3.5 percent from the forecasted Gross Domestic Product. The forecast for the above mentioned deficit was LVL 1.3 billion by the end of the year. If the budget deficit were not reduced by LVL 500 million, this situation would endanger both the receipt of international loan as well as performance of state functions, and revival of economic activities in the country as soon as possible.

Adoption of the impugned provisions was a part of fiscal consolidation, and the planned impact of the impugned provisions on reduction of costs in 2009 was LVL 88 million. The Bank of Latvia held a view that the legislator, in this way, has managed to reach the set main goal.

There were several alternatives as to how to reduce the budget deficit. The possibility of economically more feasible or otherwise more suitable alternatives for reaching the set goal has to be determined within the framework of budget preparation. The competence of the Bank of Latvia is to consult the Saeima and the Cabinet of Ministers, whereas drafting and approving the budget is within the competence of the Cabinet of Ministers and the Saeima.

The Bank of Latvia possesses no information as to whether the international creditors have required the reduction of pension disbursements prescribed by the impugned provisions.

10. The Summoned party – **the State Audit Service** – maintained that it has not made any audits to assess the activities of the government in order to prevent the economic crisis.

At the same time the State Audit Service informed the Constitutional Court that the total 32 regulatory audits had been carried out during 2008, and that the Office of

the Prosecutor General has been notified concerning 11 violations of legal provisions detected as a result of these audits. The above violations are related to squandering of financial funds and property of the State and local governments, offences in the areas of bookkeeping and finance, violation of regulatory enactments regarding procurement, interest conflict situations and other various violations. The established violations of legal provisions were classified as squandering of financial funds and property of the State and local governments, as negligence in performing duties of the State civil servants, as exceeding of authority of the State civil servants and as inexpedient use of funds of the State and local governments.

The State Audit Service also maintained that, during the audit "On 2008 Annual Report on the Fulfillment of State Budget and Budgets of Local Governments of the Republic of Latvia", it was established that some State institutions had not followed the restrictions on bonus payments and material incentives. Therefore, the budget funds have not been used efficiently or have been used in violation of legislative acts.

11. The Summoned party – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – maintained that social security rights belong to social rights that are very important; however at the same time these are special and different rights since their enactment depends on the economic situation in the country and the available resources. Therefore, in international documents, social rights are formulated as general duties of the State, giving Member States a broad freedom in the enactment of these rights. At the same time, it should be considered that these rights are included in the Constitution and hence the State cannot resign from the enactment of these rights. The above conclusion follows also from the principle of socially responsible state. The legislator has established temporary restrictions in disbursements of pensions, thus limiting the fundamental rights of persons guaranteed by Article 109 of the Constitution.

Referring to the cases of the Constitutional Courts of Latvia and Lithuania, the Ombudsman acknowledged that the impugned provisions have to be assessed also in the context of Article 105 of the Constitution. When determining the legitimate end of the impugned provisions, the balancing of revenues and expenditures of the pension special budget can be deemed as such a legitimate end. The necessity to avoid creation

of deficit in the State pension special budget as well as the need to secure the continuance of pension disbursements in the future should be particularly emphasized.

When assessing the commensurability of the impugned provisions, the Ombudsman agreed with the statement mentioned in the reply of the Saeima that economic factors cannot be ignored in this case, i.e. it is possible to amend the legal enactments on pensions in extraordinary situations, also to reduce the amount of pension as much as it is needed for securing vitally important public and State interests and protecting other constitutional values.

Such a group as elderly people especially depend upon economic and social situation in the country. There are many persons in this group who do not have adequate means for living and who are socially less protected. The legislator has not stipulated the minimum of rights that should be guaranteed in any case so that a person can meet the basic needs. The above is a failure to perform the basic duties of the State and has no justification whatsoever. Such a duty also follows from the principle of socially responsible state. The aim of this principle is to square substantial social differences and provide an appropriate standard of living to each group of population. Social justice includes concern for squaring of social differences, protection of the weakest members of the society and equality of opportunities.

The Ombudsman emphasized that, in accordance with the impugned provisions, employed pensioners have been indirectly discriminated compared to the employees who have not reached the retirement age, since the possibility of choosing occupation freely is restricted for pensioners. The impugned provision pressed the employed pensioners to choose – either to receive full pension, or to continue employment.

In addition, information on the alternatives to the impugned provisions is inconsistent. There is no proof that creators of the draft law and the Saeima have not sufficiently evaluated whether the set goal can be reached by other alternative means that are less restrictive in respect of the fundamental rights of persons. The Cabinet of Ministers and the Saeima should also have taken into account the Judgment of the Constitutional Court in the case No. 2001-12-01 of 19 March 2002. Obvious ignoring of the conclusions of this Judgment is regarded as unacceptable in a democratic state.

The Ombudsman also maintained that the legislator has not planned lenient transition to the new legal order, i.e. time from the date of adopting the impugned

provisions until their coming into force was rather short. Thus, persons had been denied the possibility to prepare themselves duly for the changes and to plan their future lives corresponding to the reduced amount of pension, especially considering the fact that pension is not only the substantial but also the only source of income for the majority of pensioners.

12. The Summoned party – **the Free Trade Union Confederation of Latvia** (hereinafter – LBAS) – maintained that there were no consultations held with them during the preparation of the amendments to the year 2009 budget. Similarly, there were no meetings held with LBAS during the preparation of the impugned provisions. Before signing the Agreement of 11 June, LBAS was offered two alternatives – either to sign the document, or not to sign it, in which case to reckon with the situation that the Republic of Latvia would not receive the international loan.

Although LBAS is not competent to offer its opinion on the compliance of the impugned provisions with the Constitution, it considers these provisions to be unconformable with Articles 1 and 109 of the Constitution.

It should be especially emphasized that pensions received by the majority of the State pension recipients are below the minimum subsistence level established by the State. There will be 200 000 deprived persons in the country in 2010. Reducing the disbursable pension amount in this way means to achieve the needed budget economy on account of socially least protected persons.

13. The Summoned party – **the Employers' Confederation of Latvia** (hereinafter – LDDK) – maintained that the Agreement of 11 June should be considered as an agreement of social partners and other organizations, not just as an agreement of social partners. Before signing the Agreement, there were no other meetings. The only meeting was held on 11 June 2009, before signing the above agreement. LDDK is not competent to assess the compliance of the impugned provisions with the Constitution.

14. The Summoned party – **the Latvian Association of Local and Regional Governments** (hereinafter – LPS) – maintained that, when the Agreement of 11 June was prepared, the following alternatives were discussed – decrease of personal allowance to LVL 0 or decrease of pensions by 15 percent. LPS did not support the

decrease of pensions, maintaining that the required financing should be obtained from the funds of State administration. There have been no other consultations.

LPS conceded that it is not competent to assess the compliance of the impugned provisions with the Constitution; nevertheless, it acknowledged that these provisions are unconformable with Article 1 of the Constitution. Local and regional governments do not have sufficient funds available to provide the mandatory social services and social support to population stipulated by laws and the Cabinet regulations.

15. The Summoned party – the **Latvian Pensioners' Federation** (hereinafter – LPF) – pointed out that the LPF Chairperson received the text of the Agreement of 11 June only at 22.20 on 11 June 2009, and it was no longer possible to consider any amendments required therein. The Agreement and the amendments thereto have been adopted without any coordination with the LPF. The LPF Chairperson, after examining Section C of the Agreement of 11 June, has acknowledged that the body of measures included therein is unlawful. The President of the State was the only official who gave a hearing to her objections, and he recommended signing the Agreement.

While drafting the changes to be implemented in the area of social security, several alternative solutions have been considered.

The LPF Chairperson has been invited to the meeting of the Cabinet of Ministers taking place on 8 June 2009 in order to hear the proposals of the representative of the Ministry of Finance, and she considered these proposals as unacceptable. Therefore, the LPF Chairperson asked for an opportunity of discussing the issue pertaining to social security reduction with the Minister for Welfare and the LPF Board members.

On 9 June 2009, at the meeting with the Minister for Welfare, an agreement has been reached concerning a reduction of pensions for 20 percent for those employed pensioners whose pensions exceed 100 lats and non-disbursement of pension premiums to those pensioners who have retired after 1 January 1996. The agreements referred to at the meeting of the Cabinet of Ministers of 9 June 2009 have not been accepted.

The LPF pointed out that the impugned provisions do not comply with Articles 1, 105 and 109 of the Constitution, and its arguments were similar to those of the Applicantss.

16. The Summoned party – **the Chairperson of the Social and Employment Matters Committee of the Saeima Aija Barča** – informed the Constitutional Court that the Committee under her supervision has repeatedly drawn the Saeima's attention to the fact that the impugned provisions do not comply with the Constitution. For this reason, several meetings of the Committee have been convoked in which alternative solutions to the adoption of the impugned provisions were developed – for example, a proposal to establish the maximum pension amount of 350 lats and to restrict the pension disbursements to employed pensioners for 50 percent.

A. Barča drew the Constitutional Court's attention to the fact that the Social and Employment Matters Committee of the Saeima has prepared amendments to the Disbursement Law, proposing that the pension restrictions established in Articles 2 and 3 of this law would not be applied to persons with disabilities of Groups 1, 2 and 3; more than that, the pension deductions would be reimbursed to these persons. Likewise, eight draft laws have been developed which provided that service pension disbursement restrictions would not be applied to service pension recipients with disabilities of Groups 1, 2 and 3.

17. The Summoned party – doctoral student of the University of Latvia **Anita Kovaļevska** – acknowledged that, by means of the impugned provisions, the legislator has changed the operation of the social insurance system as an exception for a certain period of time, restricting the rights of persons to receive their pensions granted in accordance with the procedure established by the law by decreasing the amount of social security. If the rights of persons provided by the Constitution are restricted, among other things, the international commitments of Latvia have to be taken into account. Summarizing the criteria indicated by the Constitutional Court and the UN Committee on Economic, Social and Cultural Rights, A. Kovaļevska concluded that such factors as the procedure for the adoption of legal provisions, the legitimate aim and the observance of the principle of proportionality have to be considered.

A. Kovaļevska further admitted that the Disbursement Law had been adopted in compliance with the prescribed procedure. However, she maintained that there was no sufficient evidence as to whether the Saeima had considered alternative options or had consultations with the affected groups.

Analyzing the appropriateness of the impugned provisions for the attainment of the legitimate aim, as A. Kovaļevska maintained, one can conclude that the measures referred to in Article 2 of the Disbursement Law are indeed appropriate for the attainment of the end in question, whereas the appropriateness of the measures referred to in Article 3 is not clear, for the annotation does not specify the planned reduction amounts of the special budget expenditures.

At the same time, A. Kovaļevska maintained that the restrictions established in Article 2 of the Disbursement Law cannot be deemed as the least restrictive means for the attainment of the legitimate aim. Rights to social security are not granted at least at a minimum level if pensions are not disbursed to persons at least in the minimum amount. General principles concerning the minimum amount of pensions have been established in the practice of both the Constitutional Court and the UN Committee on Economic, Social and Cultural Rights.

Furthermore, the guidelines for calculation of the minimum amount of old-age pensions can be found in the International Labor Organization Conventions No. 102 and No. 128, not ratified by Latvia. The European Code of Social Security, signed by Latvia, provides a similar approach. In accordance with these documents, old-age pension should make at least 40 percent from the average wages of the respective person. Moreover, Article 13 of the European Social Charter is binding to Latvia. This article guarantees the rights to social assistance in order to ensure that the income of persons is not below the poverty line. It is inadmissible to apply the impugned provisions to persons whose pension amounts are below the poverty line.

This conclusion can also be substantiated by reference to Article 91 of the Constitution. The legislator had a duty to differentiate the recipients of pensions by the correspondence of the amounts of their pensions to the minimum income level. Concerning Article 3 of the Disbursement Law, one can agree in principle that it is permissible to reduce the amounts of pensions disbursed to employed pensioners. International treaties also support such a conclusion. Yet, as A. Kovaļevska pointed out, this impugned provision does not conform to the principles of proportionality and legal equality. The legislator has not taken into account such factors as the amounts of pensions granted to pensioners, the income received from employment legal relationships and the total income of pensioners. Consequently, a situation may arise

when persons are unable to provide for themselves and they become the recipients of social assistance, but such an outcome contradicts to the principle of socially responsible state. Establishing different amounts of pensions disbursable to different groups of persons depending on their income levels would be less restrictive means.

Although the measures specified in Article 3 of the Disbursement Law are permissible, the legislator had a duty to provide lenient transitional provisions, so that persons could adapt to the new legal order. In this case, the law has come into effect earlier than one month after its adoption, which is in contradiction to the principle of protection of legitimate expectations or the principle of legal stability.

18. The Summoned party – *Mg. mpa.* **Maija Poršņova** – pointed out that the investment of social insurance funds in the State Treasury has both positive and negative aspects. On the one hand, the circumstance that the funds in question are subject to a lesser economical risk since they are invested in reliable financial instruments, at the same time retaining their relative value, can be deemed as the positive aspect. Such an action is particularly advisable in the situation of economic instability, for it lessens the likelihood of losing these funds. On the other hand, the situation that the Cabinet of Ministers can dispose of these funds, thus destabilizing the social insurance system on the whole, can be deemed as the negative aspect.

Assessing whether the legislator has treated the employed pensioners differently than the old-age pension recipients, Maija Poršņova pointed out that the Cabinet of Ministers and the Saeima, when they proposed the impugned provisions for adoption, knew the Judgment of the Constitutional Court in the case No. 2001-12-01 passed on 19 March 2002. It is evident that the decisions of these institutions were taken on account of the situation that has developed as a result of the economic crisis. Article 1 of the European Social Charter establishes that everyone shall have the opportunity to earn his or her living in an occupation freely entered upon. However, the European Code of Social Security permits the reduction of pension disbursement amounts in certain cases.

With respect to working pensioners, the principle of protection of legitimate expectations has been violated first of all because the working pensioners' rights to resign from work in accordance with the procedure established by the law have been denied by the sudden coming into force of the impugned provisions.

The summoned party conceded that, from the viewpoint of social protection policy, service pension system is not the most economical and effective social protection mechanism. In accordance with the legal principles and legislative acts of the European Union, it is inadmissible to define occupations related to hazardous working conditions that would require compensation. Employees must be provided with such working conditions, environment and workday regimen that are not hazardous. At the same time one should take into account that it would be unjustified to restrict the rights to service pensions for those persons who have already earned these rights.

Determining whether it is justified to pay childcare benefit from the social insurance special budget, M. Poršņova indicated that, without increasing the State social insurance contribution rate, parental benefits were transferred to the State social insurance system, "squashed" in among other services, so to say. Consequently, the proportion of social insurance contributions in the pension fund decreased, and funds were channeled for the disbursement of parental benefits.

M. Poršņova held that the social insurance special budget surplus is, by definition, a reserve fund whose existence is permitted but not formalized by the legislative acts, i.e. they do not establish the amount of the surplus required for creating the reserve fund, how and on what conditions these funds can be disposed of and who supervises their disposal.

Latvia has chosen a model in which the social insurance special budget is a constituent part of the State consolidated budget, and the Minister for Finance undertakes the responsibility for the management of its funds. However, one should consider the risk that, in the politically split Latvian government, certain political interests may take precedence over other interests.

The fact that the government has not used a fairly large surplus of the social insurance special budget in order to continue the disbursement of pensions and allowances, at the same time ascertaining the situation and looking for better solutions, should be assessed negatively. Also, the excuses that recession was sudden are groundless.

Assessing whether the constitutional compliance of the restrictions imposed on the disbursement of pensions was contingent on the social assistance services available

to persons, M. Poršņova reminded that Latvia has ratified Article 13 of the European Social Charter. Consequently, Latvia has undertaken to ensure that any person who is without adequate resources and who is unable to secure such resources either by his or her own efforts or from other sources be granted adequate assistance.

In Latvia, a large number of elderly people – mostly those who do not have families, particularly women, who have longer life – are subject to the risk of poverty. During the economic growth, the proportion of these residents has increased from 21 percent in 2005 to 30 percent in 2006 and 33 percent in 2007. Approximately 75 percent of the elderly, lone pensioners are subject to the risk of poverty.

Although the Constitution guarantees the residents the rights to a stable and predictable social protection system, including a commensurate financial provision, inconsistencies in the implementation of social policy and discrepancies between the promises and decisions of every government of the last years make the residents doubt the stability of the social protection system as well as the capability of the State to ensure their social protection in the cases provided by the law.

Any publicly accessible documents contain no grounds for the allegation that the impugned provisions have been adopted as a result of pressure exerted by the international creditors. M. Poršņova also thought that there was no justification for dividing the old-age pension recipients into groups depending on whether they have been granted their old-age pension before or after 1 January 1996 – the date of the Law on State Pensions coming into force. The existing system is a kind of reconciliation between the older and younger generations, as a result of which pension disbursement can be guaranteed also to those persons who could not participate in the creation of the new system due to their age.

19. The Summoned party – expert in finance **Ģirts Rungainis** – indicated that pensions and allowances paid from the social insurance budget cannot be deemed as person's property. They can only be deemed as a certain pledge on the part of the State to make disbursements from the solidarity fund, taking into account, for example, person's input or length of service. Such disbursements depend on whether the State can afford making these payments in a given situation. No doubt, by decreasing the amount of pension or allowance, the State disappoints the recipients of these disbursements. Nevertheless, in the current situation income restrictions have an effect

on most of the society, and, if these restrictions are not applicable to some social group, this group is in a privileged position. Considering that the paying capacity of the State has decreased, in the first place, support from the majority of society should be obtained for such an action as the improvement of the financial situation of one social group compared to the financial situation of other groups.

On the one hand, if the Constitutional Court left the impugned provisions in force, a range of economic consequences could follow. First, achieving the reduction of expenditures in the social area, the State would fulfill the requirements of the international creditors and therefore would continue receiving international loans. Second, people would bear in mind that they cannot trust the promises of the State in the future. Third, the purchasing capacity of pensioners would decrease along with their living conditions; for a part of disadvantaged persons – noticeably. Fourth, a part of the employed pensioners would terminate their employment legal relationships, and it would not be easy to fill the vacancies after them simply because of the low wages for the respective jobs.

On the other hand, if the Constitutional Court invalidated the impugned provisions, another range of economic consequences could follow. First, the State would be compelled to find the budget expenditure decrease alternatives in other areas. Otherwise the State would not be eligible for the next international loan installments and would be compelled to move to balanced budget. Second, the State's potential fulfillment of its promises pertaining to the increase of pensions would be given much more careful consideration in the future. Third, people's reliance upon the State would grow stronger; consequently, the State would have an impetus for developing a more well-considered and balanced long-term policy in the future. Fourth, not to increase pensions in the situation of deflation would be the same as to increase them, because the purchasing capacity of pensioners would increase as a result. Fifth, domestic consumption of the State would be stimulated if pensions were not reduced.

Ģ. Rungainis proposed an all-embracing reform of the State administration system as an alternative to the adoption of the impugned provisions. Furthermore, the option to broaden the taxation system and to increase specific taxes was and still is open. However, one should take into account that, if the tax burden is increased in the

situation of economic recession, there is a high risk of making the economic situation in the country even worse.

Ģ. Rungainis indicated that the overall economic effect of the employment of pensioners is relatively insignificant. From the economic viewpoint, the pensioners' rights to employment should rather be deemed as a privilege; therefore, the restriction of these rights is permissible.

Ģ. Rungainis also emphasized that the reduction of pension disbursements should be evaluated in the context of budget expenditure cuts in other areas. If the reduction of pension disbursements is proportionally equal to or lesser than the reductions in other areas, this measure should be viewed as an opportunity for the State.

The Constitutional Court holds that:

I

20. Cases concerning both the compliance of Article 2, Paragraph One of *the Disbursement Law** with Articles 1 and 109 of the Constitution and the compliance of Article 3, Paragraph One of the Disbursement Law with Articles 1, 91, 105 and 109 of the Constitution were declared admissible in the Constitutional Court.

It follows from the Applications and the reply of the Saeima (the Latvian Parliament) that the impugned legal provisions pertain to the area of social rights, and the Case disputes the legislator's action which restricts the rights to social security granted by the Constitution. It also follows from the Case materials that the legislator has established restrictions for the disbursement of pensions in the Disbursement Law, thus restricting the fundamental rights to social security granted to persons by Article 109 of the Constitution (*see Case materials, vol. 9, p. 182 and vol. 10, p. 113*).

When determining the compliance of legal provisions with the legal principles derived from the national fundamental values defined in Article 1 of the Constitution, one should take into account that these principles can take different expressions in different legal areas. The nature of the impugned provisions, their relation to other provisions of

the Constitution and place in the context of the legal system also inevitably affect the control exercised by the Constitutional Court. That is to say, the legislator's freedom of action in regulating a specific matter may be broader or narrower, and the Constitutional Court has to determine whether the scope of the freedom of action exercised by the Saeima conforms to the provisions of the Constitution (*cf. Sub-paragraphs 15.2 and 15.3 of the Constitutional Court Judgment in the Case No. 2006-04-01 passed on 8 November 2006*). Thus, the compliance of the provisions impugned in this Case with the principle of protection of legitimate expectations and the principle of proportionality should be determined in the context of Article 109 of the Constitution.

Concerning Article 91 of the Constitution, the Constitutional Court repeatedly stated that, when ascertaining whether any legal provision of the Law on State Pensions contradicts to the principle of equality, one has to take into account the legal area that the impugned provision falls into. The principle of equality usually applies along with other fundamental rights – especially because often one cannot adjudicate a case on the basis of this principle alone. The rights established in Article 91 of the Constitution are "relative", namely, although they stipulate equal treatment, by themselves they do not reveal the nature of this treatment, i.e. whether it should be favourable or unfavourable. In order to arrive at one of these outcomes, one should take into account other considerations outside the limits of the principle of equality (*cf., e.g., Paragraph 5 and Sub-paragraph 6.1 of the Constitutional Court Judgment in the Case No. 2005-08-01 passed on 11 November 2005 and Paragraph 15 of the Constitutional Court Judgment in the Case No. 2006-04-01 passed on 8 November 2006*).

Furthermore, the Constitutional Court stated that the rights to receive pension disbursements are deemed as property rights in the understanding of Article 105 of the Constitution. However, when determining the compliance of a legal provision to the article in question, one has to take into account whether the case is related to the area of social rights. If the case is related to this area, it should at the same time be taken into account that the rights and legal interests of the submitter of the Application cannot be protected to the same extent as they would be protected in the case of restriction of property rights in their "classic" understanding (*cf. Paragraphs 20 and*

21 of the Constitutional Court Judgment in the Case No. 2007-01-01 passed on 8 June 2007).

The Constitutional Court acknowledges that wide freedom of action should be granted to the State in respect of property rights in the area of social rights, for the rights provided by Article 105 of the Constitution do not guarantee a specific pension amount, and they may be subject to restriction. With regard to pension, Article 105 of the Constitution guarantees to persons legal protection of a lesser extent than Article 109 of the Constitution (*see Case materials, vol. 10, p. 125*).

When ascertaining the nature of the fundamental rights established by the Constitution, one should also take into account the international commitments that Latvia has undertaken in the area of human rights. The international regulations of human rights and the practice of their application at the level of constitutional rights serve as interpretative means for determining the nature and scope of the principles of judicial state and fundamental rights as far as they do not lead to the restriction of the fundamental rights provided by the Constitution (*cf. Paragraph 11 of the Constitutional Court Judgment in the Case No. 2007-03-01 passed on 18 October 2007*). The obligation of the State to observe its international commitments in the area of human rights follows from Article 89 of the Constitution, stating that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. This article clearly shows the constitutional legislator's intention to harmonise the constitutional provisions concerning human rights with the international regulations of human rights (*cf. Paragraph 11 of the Constitutional Court Judgment in the Case No. 2007-24-01 passed on 9 May 2008*).

Thus, Article 9 of the International Covenant on Economic, Social and Cultural Rights (hereinafter – the Covenant) prescribes that the States that are Parties to the Covenant recognise the right of everyone to social security, including social insurance. Admittedly, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) does not contain provisions analogous to the content of Article 109 of the Constitution. Nevertheless, the European Court of Human Rights (hereinafter – ECtHR) adjudicates the matters pertaining to social security and social assistance in the light of property rights as they are

interpreted in Protocol 1, Article 1 of the Convention (*cf., e.g., ECtHR Judgment in the Case Stec and Others v. the United Kingdom [GC], nos. 65731/01 and 65900/01, 12 April 2006, para. 51*).

In view of the aforesaid, the Constitutional Court concluded that the rights to pension fall under the fundamental rights to social security granted by Article 109 of the Constitution. In this case, there were reasons for acknowledging that the said article of the Constitution guarantees higher protection for the persons' rights to pension. At the same time, it should be pointed out that the decrease of pension disbursement amount prescribed in the impugned legal provisions should also be considered in the context of principles derived from Article 1 of the Constitution and Protocol 1, Article 1 of the Convention, taking into account both the protection of property rights provided therein and the Latvian system of pension financing.

Therefore, the compliance of the impugned legal provisions with Article 109 of the Constitution should be determined first.

21. None of the Cases was declared admissible following a constitutional claim concerning the compliance of Article 2, Paragraph One of the Disbursement Law – insofar as it pertains to the long service pensions specified in the provision – with the legal provisions of higher legal force. Furthermore, the Application submitted by twenty members of the Saeima, on the basis of which the case No. 2009-68-01 was declared admissible, does not contain substantiation for deeming that the deduction from the aforementioned long service pensions does not comply with the requirements of legal provisions (acts) of higher legal force.

The Saeima pointed out that the arguments included in its replies in the cases No. 2009-52-01, No. 2009-63-01 and No. 2009-65-01 can be applied by analogy to the case Nr. 2009-68-01. Cases No. 2009-63-01 and No. 2009-65-01 were declared admissible with respect to Article 3, Paragraph One of the Disbursement Law – insofar as this paragraph pertains to service pensions, which are analogous to pensions specified in Article 2 of the Disbursement Law.

The Constitutional Court stated that it follows from the principle of economy of legal costs that it would not be cost-effective to adjudicate repeatedly the matters that can be adjudicated within a specific case. The decisive factor is whether the matter to be adjudicated is closely related to the provisions impugned in the Case as well as

whether it is possible to adjudicate this matter on the basis of the provided substantiation (*cf. Paragraph 17 of the Constitutional Court Judgment in the Case No. 2007-23-01 passed on 3 April 2008*). It follows from the replies of the Saeima that the service pension disbursement amount in the impugned provisions is established on the grounds of the same considerations as those concerning old-age pensions. All the pension disbursement amounts established by the impugned legal provisions are essentially based on a similar understanding of the legislator's rights to implement specific changes in the regulation of social rights.

Therefore, it is also possible within this Case to determine the compliance of the service pension disbursement amount established in Article 2, Paragraph One of the Disbursement Law with Article 109 of the Constitution.

21. None of the cases were initiated based on a constitutional claim regarding compliance of the first part of Section 2 of the Disbursement Law insofar as it applies to service pensions mentioned in the norm with legal norms of higher legal force. However, the application lodged by twenty members of the Saeima does not provide for justification for the fact why that deductions from long-service pensions should be regarded as non-compliant with requirements of legal norms (acts) of higher force.

The Saeima has indicated that, in the case No. 2009-68-01, it is possible to apply the arguments provided in the replies of the Saeima regarding cases No. 2009-52-01, No. 2009-63-01 and No. 2009-65-01 on an analogous basis. Cases No. 2009-63-01 and No. 2009-65-01 have been initiated on constitutionality of the first part of Section 3 of the Disbursement Law insofar as it applies to service pensions that in fact are analogous to pensions mentioned in Section 2 of the Disbursement Law.

The Constitutional Court has already recognized: It follows from the principle of procedural economy that it would not be useful to repeatedly decide on the issues that could be adjudicated in the case under review. The decisive circumstance is the fact whether those norms are so closely related to the contested norms contested in the case under review and whether assessment of them is possible in the frameworks of the provided justification (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 17*). It follows from the replies submitted by the Saeima 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.

Consequently, in the frameworks of the case under consideration it is equally possible to assess compliance of the procedures for disbursement of service pensions established in the first part of Section 2 of the Disbursement Law with Article 109 of the Satversme.

22. The Constitutional Court in its judgments has adjudicated the constitutional compliance of specific matters concerning pension disbursements (*see, e.g., the Constitutional Court Judgments in the Cases No. 2003-14-01 passed on 4 December 2003 and No. 2006-13-0103 passed on 4 January 2007*). In the above judgments the Court has not analysed service pensions in the light of Article 109 of the Constitution.
The 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 set in – 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. Service pension is an additional social guarantee for persons who have carried out specific functions in the interests of the State in special conditions (*cf. Paragraph 7 of the Constitutional Court Judgment in the Case No. 2003-14-01 passed on 4 December 2003*).
One can conclude from the replies of the Saeima that service pensions disbursed in compliance with the Law on State Pensions are calculated using the same method as for old-age pensions, which have disbursement restrictions. Thus, an identical decrease is established for these service pensions, so that the relevant category of persons would not have a privileged status (*see Case materials, vol. 8, p. 87 and p. 97*). The substantiation provided by the Saeima for the service pension disbursement amount

specified in the impugned provisions is identical to the substantiation provided with regard to the old-age pension amount established in the impugned legal provisions.

Therefore, in this judgment there is no need to adjudicate separately the matter of service pensions as such, and the court conclusions concerning the old-age pension disbursement amount are equally applicable to the service pension disbursement amount established in the impugned provisions.

II

23. On 29 November 1990, the Supreme Council of the Republic of Latvia adopted the Law on State Pensions. The rights to state pension were granted to all the residents of the Republic of Latvia whose domicile at the moment of the law coming into force – 1 January 1991 – was the Republic of Latvia. This law established the right to social security in retirement age, prescribing two types of state pension: labour pension (old-age, disability, survivor's and service pensions) and social pension. The law granted the right to labour pension to persons under the social insurance of the Republic of Latvia, whereas social pension was granted to persons without the right to labour pension.

The pension scheme established by this law was based on the formerly effective pensioning principles, that is, on redistribution principles, which did not facilitate the interest of employed persons in securing their old age. This scheme made the whole society responsible and did not provide a direct relation between the amount of contributions and the amount of pension granted. The level of pensions granted was also low (*see Paragraph 1 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002 and page 7 of the Pension Reform Conception in Case materials, vol. 10, p. 162*).

On 21 October 1993, the Law on Provisional Procedures for Calculating State Pensions was adopted. This law also assigned the main responsibility for old-age security to the State instead of each individual resident. In accordance with the provisions of this law, the disbursed pension amount did not depend on the amount of contributions, but on the length of service only. The lack of relation between the

amount of social contributions and the amount of pension did not facilitate the making of social contribution payments.

Creating a new social insurance system, the Saeima chose the State social insurance model from several alternatives. For such a system, the law prescribed the basic principles of insurance, the range of insured persons, the insurance risks and the procedure for accruing the funds, and this insurance was mandatory. This system was included in the Law on State Pensions adopted on 2 November 1995. With the adoption of this law, the principles of State mandatory pension insurance system based on insurance contributions were implemented in Latvia.

The Law on State Pensions stipulates that old-age pension is granted for life. Although the granted pension can be recalculated and indexed, it cannot be granted anew. In particular, the condition that the amount of pension depends on the amount of contributions (the accrued capital) and the number of years when a person is entitled to receive pension ensures the long-term stability of the pension system. The first level of pension is designed as a redistribution scheme working on the basis of the principle of solidarity between generations, which means that the money contributed by younger, currently employed persons is distributed for disbursements to pensioners. This system finances all pensions, including the pensions of those persons who had been employed before Latvia regained independence and who were unable to make social insurance contributions or otherwise accrue their pension capital.

The Constitutional Court has adjudicated that only the funds available in the State pension special budget can be used for the old-age pension disbursements. Thus, it is in the interests of one part of society – the recipients of pension – to balance the pension budget expenditures with revenues and to preclude the excess expenditure of the funds of this budget (*cf. Clause 3.1.3 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002*).

It means that all contributions to the social insurance budget can be used only for the purposes established by the law – for pensions, allowances as well as system administration costs. Therefore, the economic situation in the State, especially employment and migration, is closely related to the amount of funds in the social insurance special budget.

It follows from the Applications and the replies of the Saeima that the reduction of pension disbursements affects the first level of pension system only (mandatory State non-funded pension scheme). The purpose of the first level of State pension system is to guarantee the minimum income level to the residents of retirement age. Since the first level is mandatory and based on the principle of social insurance, there is a connection between the mandatory social insurance contribution payments made by the residents and the level of service attained as the end result (*see p. 12 of the Pension Reform Conception in Case materials, vol. 10, p. 167*).

In the context of the first level of pension, the right to request an identifiable share is not granted to an individual person; however, the person can hope to receive material support that will depend on the situation at the time when pension is to be received. The pensions of this system are based on the so-called collective insurance principle, and they cannot be granted on the basis of individual contribution. In this case, persons do not acquire the right to a specific sum, for it is subject to fluctuations and legal regulation (*cf. Paragraph 2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-02-0106 passed on 26 June 2001*). In addition, once pension is granted to a person, the person obtains legally protected confidence that the specific amount of pension disbursement will be retained in the future.

Latvia has adapted and modified the classic principle of solidarity between generations: the money earned by the employed generation is paid to the current pensioners. At the same time, the insurance principle is maintained, which means that everyone makes one's own accruals for pension.

The principle of taking into account the expected lifetime in pension calculation has received a positive evaluation. Pension policy should not be used for solving all social matters, for every attempt to do so creates problems that endanger the pension system's long-term stability, which cannot be permitted (*see, for example: Par Latvijas pensiju sistemas starptautisko novertejumu [On international assessment of Latvian pension system]. Latvijas Vestnesis, 10 April 2001, No. 57; Kad Latvijas pensiju sistemu uzskata par paraugu Eiropai [When Latvian pension system is taken as a model for Europe]. Latvijas Vestnesis, 19 February 2002, No. 27*).

At the same time, conclusions have been made that the Latvian pension system is sensitive even to the slightest changes of such parameters as, for example, contribution

rate, indexation mechanism and the minimum retirement age (*see Sub-paragraph 4.14 of Aide Memoire – the World Bank Fund technical assistance mission report of 11-22 June 2007 concerning state expenditure control and state financial management matters, Case materials, vol. 9, p. 104*).

Hence one can say that the social insurance system implemented in Latvia as a result of the pension reform of 1995 can ensure long-term availability of pension and other social services in proportion to the amount of person's participation in this system, or on the basis of collective insurance principle, whereas inconsiderate or hasty decisions may considerably endanger the sustainability and well-balanced continuation of the system.

III

24. Article 109 of the Constitution states: "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, interpreting the above article, acknowledged that, on the one hand, the enactment of these fundamental rights depends on the resources at the disposal of the State and society; however, on the other hand, if any rights to social protection are included in the fundamental law, the State is not entitled to refuse the enactment of these rights. In this case these rights are not just declaratory, their protection has constitutional value in Latvia (*see, e.g., the Concluding Part of the Constitutional Court Judgment in the Case No. 2000-08-0109 passed on 13 March 2001*).

The Applications dispute the regulation of the Disbursement Law that restricts the disbursement amount for the pensions specified by the Law on State Pensions as well as for certain service pensions. The said regulation of the Disbursement Law has not been adopted as a result of a comprehensive social insurance system reform, and it is prescribed for a specific period of time – from 1 July 2009 to 31 December 2012. Besides, Article 9 of the Disbursement Law obligates the Cabinet of Ministers to reconsider the validity of disbursement restrictions stipulated by this law twice a year and, correspondingly, submit the Saeima either a report concerning the continuation of

the restrictions, or, in case of need, a draft law concerning their full or partial revocation.

The Constitutional Court in its judgments repeatedly adjudicated the constitutional compliance of legal provisions pertaining to social rights, affirming that the State itself is responsible for the system of social and economic protection (types and amounts of allowances) and its maintenance. This system is dependent on the economic situation in the State and the available resources. Moreover, the State should be vested with wide-ranging freedom of action when deciding the matters of social rights (*see Paragraph 1 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-11-0106 passed on 25 February 2002 and Paragraph 9 of the Judgment in the Case No. 2005-19-01 passed on 22 December 2005*).

Usually the political dimension of decisions concerning the enactment of social rights taken by the State – and, especially, by its legislator – is of importance, that is, decisions in this area are made not so much following legal considerations than political ones, which, in turn, are dependent on both the legislator's idea of the State social service principles and a special need of the society or its part for relief or support from the State (*see Paragraph 16 of the Constitutional Court Judgment in the Case No. 2006-04-01 passed on 8 November 2006)*. In the area of social rights it is not always possible to draw an exact dividing line between legal and political considerations, and the Constitutional Court should refrain from judging the political matters, for it is primarily the area of authority of a democratically legitimated legislator (*cf., e.g., Paragraph 29 of the Constitutional Court Judgment in the Case No. 2003-05-01 passed on 29 October 2003 and Paragraph 18 of the Constitutional Court Judgment in the Case No. 2005-02-0106 passed on 14 September 2005*).

The State has a threefold duty in the area of each fundamental right: to respect, to protect and to guarantee the rights of persons. Acting in conformity with human rights, the State should enact a range of measures – both passive, for example, non-interference with the rights of persons, and active, for example, satisfaction of persons' individual needs (*cf. Paragraph 7 of the Constitutional Court Judgment in the Case No. 2007-23-01 passed on 3 April 2008*).

In the area of social rights it is crucial whether the State with its affirmative action can guarantee the satisfaction of person's individual needs resultant from a particular

fundamental right. At the same time, one should take into account that the provisions of the Constitution basically do not grant persons the rights to a specific amount of social security, and the State should refrain from excessive interference with the financial relations of its citizens.

Therefore, the amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State. However, the fundamental rights of persons established by the Constitution are binding to the legislator irrespective of the economic situation in the State.

25. The Applicants maintain that the impugned legal provisions restrict the fundamental constitutional rights. The replies of the Saeima also *expressio verbis* state that the impugned provisions restrict the fundamental rights of persons. The Constitutional Court has ruled that if the pensions granted in compliance with the procedure established by the law are not disbursed in full amount, the rights to social security in the case of old age granted by Article 109 of the Constitution and specified in the Law on State Pensions are restricted (*cf., e.g., Paragraph 2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002 and Paragraph 10 of the Constitutional Court Judgment in the Case No. 2004-21-01 passed on 6 April 2005*).

Hence, the Disbursement Law restricts the fundamental rights of persons granted by Article 109 of the Constitution.

26. The rights granted by Article 109 of the Constitution may be restricted if such a restriction is established by the law, justified by a legitimate end and conforms to the principle of proportionality (*cf., e.g., Paragraph 26 of the Constitutional Court Judgment in the Case No. 2007-04-03 passed on 9 October 2007*).

The restriction of fundamental rights is established by the law, namely, it is included in the Disbursement Law adopted by the Saeima on 16 June 2009 and announced by the President of the State on 30 June 209. The Case does not contain any materials that would call into question the legitimacy of the adoption of the impugned provisions.

At the same time, it should be pointed out that 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, should be viewed negatively

(*cf. Sub-paragraph 17.2 of the Constitutional Court Judgment in the Case No. 2009-08-01 passed on 26 November 2009*).

Therefore, the restriction of fundamental rights in the impugned provisions has been duly established by the law.

27. In the case of any restriction of fundamental rights, there must be circumstances and arguments justifying such a restriction, that is, it must be imposed for the sake of significant interests, a legitimate end (*cf., e.g., Paragraph 23 of the Constitutional Court Judgment in the Case No. 2007-01-01 passed on 8 June 2007*).

Although the Constitution, inter alia Article 116 thereof, does not specify directly the cases when the fundamental rights established by Article 109 could be restricted, these fundamental rights cannot be deemed as absolute either. The Constitution is a single body and the provisions included therein should be interpreted systemically.

The assumption that no restrictions can be imposed on particular fundamental rights would contradict with both the fundamental rights of other persons granted by the Constitution and other provisions of the Constitution (*cf. Paragraph 2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2002-04-03 passed on 22 October 2002*).

When restricting the rights, the institution that has issued an impugned regulation – in this specific case, the Saeima in the first place – is obliged to present and justify a legitimate end for such a restriction.

27.1. The Saeima as well as the Cabinet of Ministers pointed out that the restriction included in the impugned provisions had a legitimate end, namely, to protect not only the interests of the State social insurance special budget but also the constitutional values specified in Article 116 of the Constitution – the rights of other persons, also taking into account the obligation of the State to ensure both the disbursement of state pensions and rendering of other services granted by the social security system in the future.

It follows from the information provided by the Saeima that the impugned provisions were adopted in the circumstances when the economic situation of the Republic of Latvia had been in a rapid decline. The State budget revenues had been decreasing, unemployment growing, bringing about the increase of the social insurance special budget expenditures. In the second quarter of 2009 Latvia underwent the most rapid

decline of economic activity in the European Union. So, for instance, the revenues of the State consolidated budget during the first six months of 2009 were for 15 % lower than those of the corresponding time period in 2008. At the same time, the expenditures of the State consolidated budget during the first six months of 2009 were for 7.2 % higher than those of the corresponding time period in 2008. The Gross Domestic Product drop in comparison to the first six months of 2008 was 18.7 %. The drop persisted also in the third quarter of 2009, reaching 18.4 % (*see http://www.csb.gov.lv/csp/content/?cat=244, accessed on 1 December 2009*).

The prognosticated amount of the government's external debt for the second half of 2009 was approximately 33.2 % from the Gross Domestic Product, and it has increased for approximately 70 % since 2008

(*see http://ec.europa.eu/economy_finance/pdf/2009/autumnforecasts/lv_en.pdf, accessed on 1 December 2009*).

During this time, the financial deficit of the State consolidated budget reached 449.9 million lats or approximately 3.5 % from the Gross Domestic Product, and the prognosis was that the deficit may reach 1.3 milliard lats or approximately 9.5 % from the Gross Domestic Product by the end of 2009. As a consequence, both the performance of the functions of the State and the possibility of the economic activity renewal in the foreseeable future would be put in danger (*see the opinion of the Bank of Latvia, Case materials, vol. 9, p. 118*).

Concerning the need to balance the revenues and expenditures of the social security system, the Saeima indicated that, as a result of the economic crisis, wages had decreased and unemployment – increased. Consequently, the social insurance special budget revenues dropped. The number of socially insured persons has also decreased for 12.3 %. It is also evident from the information furnished by the Ministry of Welfare that the actual expenditures of the social insurance special budget were for approximately 86 million lats higher than revenues during the first six months of 2009 (*see Case materials, vol. 9, p. 113*).

At the same time, the rapid increase of wages during the preceding years has brought about the increase of the expenditures of the social insurance special budget. The budget in question is a constituent part of the State budget. It is prognosticated that its expenditures will exceed the revenues in the years 2009 and 2010, thus creating the

budget deficit. In order to curb this tendency and to ensure further sustainability of the social insurance budget, the deficit had to be reduced.

The Applicants hold that the impugned provisions have two ends – the economy of the State budget funds and the enactment of the rights of other persons to social security. The Ombudsman and A. Kovalevska, in turn, pointed out that the balancing of expenditures and revenues of the special budget should be deemed as the legitimate end of the impugned provisions (*see Case materials, vol. 9, p. 182f and vol. 10, p. 116*).

It follows from the opinion furnished by the Bank of Latvia and G. Rungainis that the reduction of the state budget deficit and the budget balancing can be deemed as the legitimate end of the impugned provisions (*see Case materials, vol. 9, p. 118 and vol. 10, pp. 1-3*).

27.2. The Constitutional Court has adjudicated that a pension disbursement restriction can have a legitimate end – to solve financial problems in the social budget (*cf., e.g., Paragraph 2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002*). Equally, the Constitutional Court has concluded that balancing the revenues and expenditures of the pension special budget can be a legitimate end for pension disbursement restriction. One should especially consider the need to preclude deficit in the State pension special budget as well as the need to ensure that pension disbursements continue in the future (*cf. Paragraph 8 of the Constitutional Court Judgment in the Case No. 2005-08-01 passed on 11 November 2005*).

The main challenge of the pension system is to ensure its sustainability. The UN Committee on Economic, Social and Cultural Rights has also affirmed that social security scheme should be sustainable, especially with respect to pensions – to guarantee that both the current and future generations would be able to enact their rights to pension (*see UN Committee on Economic, Social and Cultural Rights, General Comment No. 19. The right to social security, E/C.12/GC/19 4 February 2008, para. 11*). Thus, the system of pensions is intended not only for the existing pension recipients; it is intended for securing pension to the future generations as well. In this context the system of pensions is related to ensuring the welfare of society.

The sustainability of pension system is based on three principles: adequacy, financial sustainability and capability to adapt itself to changes (*see European Commission, Objectives and working methods in the area of pensions: Applying the open method of coordination, Joint Report of the Social Protection Committee and the Economic Policy Committee, Luxembourg: Official Publications of the European Communities, 2001*). Consequently, the sustainability of pension system is closely related to the overall economic situation in the State.

The Constitutional Court agreed with the argument of the Saeima that, in the circumstances of major economic recession – to lessen, within limits, its adverse consequences – the legislator must act as swiftly, concertedly and decidedly as possible. Reasonable freedom of action must be granted to the legislator for taking such measures. However, the economic situation in the State, or the need to reduce the budget deficit, in the absence of other legitimate ends, cannot serve as an overarching justification for the State to restrict the rights previously granted to persons.

The Disbursement Law has been adopted at the time of difficult economic situation. In this context, the rapid economic recession in the State has affected the social budget within a relatively short period of time. The social insurance special budget is a constituent part of the State budget; therefore, there are financial interconnections between these budgets. Changes in the expenditures or revenues of the social insurance special budget have an effect on the balance of the entire State budget. It is evident that the economic situation in the State has also affected the stability of the social insurance special budget, and the Saeima and the Cabinet of Ministers, in this situation, were obliged to take action in order to ensure the welfare of society in a long-term perspective.

The Constitutional Court could not regard as justified the opinion of the Applicants – i.e. that the impugned provisions do not have a legitimate end, for the necessary economy is planned solely at the expense of persons with low income. The decrease of budget expenditures reached by means of the impugned provisions is approximately 17.4 % or one-sixth from the total decrease of the State consolidated budget. No doubt, such a decrease has also affected the other positions of the budget along with the branches of activity of the State and national economy. So, for example, the number of workplaces has been cut down and the amount of financing revised for the State

administration system, including the areas of healthcare and education. More than that, it follows from the Case materials that if the amount of pensions had not been reduced, even more significant reductions in the other budget positions would have been in order (*see Case materials, vol. 10, pp. 1-2 and 130*).

To be sure, the issue concerning the consequences of the impugned provisions should be determined in view of their proportionality, and this aspect by itself does not take away the legitimate end of the impugned provisions.

Therefore, the impugned provisions have a legitimate end – securing the sustainability of the social insurance budget by means of balancing its revenues and expenditures, thus ensuring the welfare of society.

28. The principle of proportionality prescribes that, in the cases when a public authority restricts the rights and lawful interests of persons, a reasonable degree of proportionality between the interests of persons and the interests of the State or society should be attained. 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 end;

2) whether such an action is indispensable, i.e., the end cannot be achieved by other means, less restricting the rights of individual persons;

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 (*cf. Paragraph 11 of the Constitutional Court Judgment in the Case No. 2006-42-01 passed on 16 May 2007*).

The Limburg Principles – developed for the implementation of the Covenant in 1986 – stipulate that measures must be taken without delay and using all the necessary means in order to guarantee the respective rights at least at a minimum level, irrespective of the development level of a country. The said national-level measures include not only legislative but also administrative, judicial, economic, social and

educational measures. The laws that restrict the enactment of any social rights cannot be unjust or discriminatory (*see Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Commission on Human Rights, U.N. ESCOR, 43d Sess., U.N. Doc. E/CN.4/1987/17*). Even if a country has a substantial deficiency of financial resources, it is obliged to protect the weakest members of the society (*see UN Committee on Economic, Social and Cultural Rights, General Comment No.3. The nature of States parties obligations, E/1991/23 14 December 1990, para. 12; UN Committee on Economic, Social and Cultural Rights, General Comment No. 6. The economic, social and cultural rights of older persons, E/1996/22 8 December 1995, para. 17*).

In accordance with the Law on State Pensions, the recipients of old-age pensions are deemed as a special social group, because when these people discontinue paid employment, their income and, correspondingly, opportunities to take part in different processes of public life decrease.

29. To determine whether the impugned provisions comply with the principle of proportionality, the Constitutional Court had to ascertain first of all whether the means chosen by the legislator were appropriate for the attainment of the legitimate end.

29.1. The Applicants maintained that the means chosen are not appropriate for the attainment of the legitimate end set forth by the Saeima, for these means affect only the most unprotected group of society – the recipients of old-age pension. Furthermore, those Applicants who dispute Article 3, Paragraph One of the Disbursement Law emphasised that this provision is not appropriate for the attainment of the legitimate end, and the prognosticated fiscal effect has not been achieved as a result of its adoption.

The Saeima and the Cabinet of Ministers believe that the chosen means are appropriate for the attainment of the legitimate end. During the difficult economic situation, as the opinion of the Cabinet of Ministers and the replies of the Saeima assert, the State was compelled to turn to international institutions in order to obtain loans for the stabilisation of the economic situation and the financial system of the Republic of Latvia. The condition for receiving the said loans was the reduction of the State budget expenditures for 500 million lats. Consequently, the budget for the year 2009 had to be modified, reducing the expenditures for this sum. Other alternatives for cutting the

expenditures, such as the devaluation of the national currency, were regarded as unacceptable. With the adoption of the impugned provisions, the planned social insurance special budget economy for the year 2009 was more than 88 million lats.

A. Kovalevska pointed out that the measures specified in Article 2 of the Disbursement Law are appropriate for the attainment of the legitimate end, for the reduction of the amount of pension disbursements helps substantially reduce the special budget expenditures, whereas the appropriateness of the measures specified in Article 3, Paragraph One of the Disbursement Law are debatable (*see Case materials, vol. 10, p. 116*).

29.2. The Constitutional Court admitted that the means chosen by the legislator could be appropriate for the attainment of the legitimate end if it were possible to attain this end by the regulation in question. Determining the appropriateness, the Constitutional Court cannot take the legislator's place and present more appropriate political decisions or advise how to allocate the State budged funds. The task of the Court is to determine whether the impugned provisions are reasonable and harmonised, whether the State possesses the resources needed for their implementation, whether the provisions are balanced, flexible and bring about short-term or long-term satisfaction of needs as well as whether these provisions are transparent and have been made public (*see Langa P., Taking Dignity Seriously. Judicial Reflections on the Optional Protocol to the ICESCR, Nordic Journal of Human Rights, Vol. 27, No. 1, 2009, p. 33).*

The Constitutional Court agreed that the impugned provisions were 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. 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 Concurring opinion of judge Thomassen,*

Case of Kjartan Ásmundsson v. Iceland, Application no. 60669/00, Judgment 30 March 2005).

The planned social insurance budget economy in this context is commensurate with the consequences of economic recession – the deficit in the State budget and the overall decline of economic activity in Latvia compared to the showings for 2008.

Even if the information furnished by the Ministry of Welfare confirmed that the total economy attained as a result of the implementation of Article 3, Paragraph One of the Disbursement Law was approximately 12.7 million lats for the period from July to September 2009, i.e., for 6.2 million lats less than the economy planned for this period of time (*see Case materials, vol. 13, pp. 45-47*), all in all, 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.

Therefore, the impugned provisions can help achieve the legitimate end.

30. The Constitutional Court also had to determine whether the legitimate end – the balancing of the social insurance special budget – could be attained by other means, less restricting the rights of individual persons.

It means determining whether there is an appropriate balance achieved between the need to attain the end and the means used toward the attainment of this end (*see Langa, p. 36*). The measures imposed by the State must be commensurable with both the financial crisis and the interests that these measures affect (*see Jackman M., Porter B., Canada, in Langford M. ed., Social Rights Jurisprudence. Emerging Trends in International and Comparative Law, Cambridge University Press, 2009, p. 219*).

30.1. The Saeima and the Cabinet of Ministers have repeatedly referred to the liabilities towards the international creditors as one of the substantiations for the adoption of the impugned provisions. That is, it follows from the information furnished by these institutions that the adoption of the impugned provisions is related to the fulfilment of the requirements of the international creditors.

In contrast to that, the summonied parties admitted that they do not possess any information concerning the international creditors requesting the reduction of pensions established by the impugned provisions (*see Case materials, vol. 9, pp. 119, 204 and 205*). They attested just the opposite, namely, that the international creditors did not

point at a specific area in which the reduction should be carried out; moreover, the representative of the European Commission even emphasised that the budget deficit cannot be reduced solely on account of decreasing the expenditures, for that would impose too heavy a burden on the residents, particularly on the families with low income (*see Case materials, vol. 9, p. 205*).

The Constitutional Court established that the original documents related to the receipt of international loans do not contain information that could be associated with the adoption of the impugned provisions. At the same time, in Sub-paragraph 7.2 of the Supplementary Memorandum of Understanding between the European Community and the Republic of Latvia of 13 July 2009, Latvia pledged to reduce the outlays of pensions by 10 % for non- employed pensioners and by 70 % for employed pensioners (*see the opinion of the Cabinet of Ministers, Case materials, vol. 9, p. 7, and Sub-paragraph 7.2 of the Supplementary Memorandum of Understanding between the European Community and the Republic of Latvia of 13 July 2009, Case materials, vol. 11, pp. 90 and 91*). With reference to the commitment between the IMF and the Republic of Latvia, the same pledge is included in the Economic Stabilisation and Growth Revival Programme for Latvia adopted by the Saeima on 16 June 2009 (*see the opinion of the Cabinet of Ministers in Case materials, vol. 9, p. 7, and Sub-paragraph 5.2 of the Economic Stabilisation and Growth Revival Programme for Latvia adopted by the Saeima on 16 June 2009, Case materials, vol. 9, pp. 33 and 34*).

However, the fact that the above documents contain the pledge of the Cabinet of Ministers to adopt the impugned provisions does not mean that the international creditors have stipulated these particular conditions. Although the international creditors, within their terms of reference, prescribe for the State the main objectives to be achieved, such as, e.g., the reduction of the State budget for the amount of 500 million lats, including the reduction of the social insurance special budget expenditures, the choices of the most suitable and appropriate means for the attainment of these objectives as well as the possible alternatives are left at the State's own discretion.

The Constitutional Court has not received any information attesting that the international creditors stipulated the adoption of the impugned provisions as a prerequisite for granting the loan. The measures set forth in Sub-paragraph 7.2 of the

Supplementary Memorandum of Understanding between the European Community and the Republic of Latvia of 13 July 2009 and Sub-paragraph 5.2 of the Economic Stabilisation and Growth Revival Programme for Latvia adopted by the Saeima on 16 June 2009, inter alia the measures pertaining to the reduction of pension disbursements, are to be characterised as an action of the State with the aim to reduce the budget expenditures and, consequently, to be eligible for the international loan.

The Cabinet of Ministers has indicated that during the negotiations the international creditors repeatedly took notice of the possibility that the sustainability of the social budget would be endangered even in the case of freezing the indexation of pensions. Yet, no evidence of this assertion – for instance, negotiation minutes – have been submitted to the Constitutional Court. It follows from the previous IMF reports that the sustainability of the social budget is endangered and the fiscal risk is caused, for example, by the excessively generous parental allowances (children benefits) and the inconsiderately regulated sickness benefits; moreover, the outflow of large amounts of the social security funds to those social groups that cannot be deemed as disadvantaged or low-income is observable (*see, e.g., Sub-paragraphs 4.22-4.27 of The World Bank report Aide Memoire, Case materials, vol. 9, pp. 105f*).

Besides, the principle of separation of powers delimits the authority of the Cabinet of Ministers. In accordance with this principle, the Constitution confers the lawmaking powers – namely, the powers to decide the most important matters for the state – to the Saeima in particular, and, in individual cases, to full-fledged citizens of the Republic of Latvia. The other branches of power are obliged to implement these laws in practice (*cf. Paragraph 1 of the Concluding Part of the Constitutional Court Judgment in the Case No. 03-05(99) passed on 1 October 1999*).

Determining the relations of the areas of authority of the Saeima and the Cabinet of Ministers, it was admitted that the requirement for the legislator to decide by itself all the matters of the State through legislation has become unrealistic in the complicated living conditions of the present-day society. In order to ensure that the State power be exercised more effectively, it is permissible to deviate from the requirement that the legislator decides all the matters wholly by itself. The optimum effectiveness is achieved when the legislator decides the most important matters through legislation, while delegating to the Cabinet of Ministers the drafting of more detailed regulations

and the development of provisions necessary for the implementation of the law in practice (*cf. Paragraph 7 of the Constitutional Court Judgment in the Case No. 2005-03-0306 passed on 21 November 2005*).

Although the Cabinet of Ministers is entitled to adopt regulatory enactments, the latter are not permitted to contain such provisions that cannot be deemed as aids for the implementation of the provisions of the law (*cf. Paragraph 5 of the Constitutional Court Judgment in the Case No. 2000-07-0409 passed on 3 April 2001*).

Thus, it is permissible to delegate the drafting required for the implementation of a law in practice to the Cabinet of Ministers, whereas the Saeima is obliged to decide all the most important matters of the State and public life by itself through legislation. Furthermore, the first part of Article 68 of the Constitution prescribes that all international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima.

In order to establish whether the Saeima's argumentation for the infringement of the rights of persons, one should consider whether the Cabinet of Ministers was entitled to decide without the authorisation from the Saeima the matters pertaining to the international loans, or else the respective commitments are to be taken as settling the matters that had to be decided through legislation and, accordingly, needed the Saeima's approval.

In determining whether the respective commitments are to be taken as settling the matters that had to be decided through legislation, one should take into account the previous practice of regulating such matters. So, on 29 December 1928, the President of the State announced the Law on External Loan adopted by the Saeima on 18 December 1928. Article 1 of this law stated: "The Cabinet of Ministers shall be authorised to enter into an commitment concerning an external loan for the amount of six million US dollars for a period of 35 years with 6% annual interest rate and to sell for this purpose the State Treasury bonds for the same amount for the highest possible rate." Furthermore, Article 3 of this law stated: "The Cabinet of Ministers shall issue specific provisions for the implementation of this law into practice" (*Collection of laws and Cabinet regulations, issue No. 27, 31 December 1928, p. 662*).

On 6 May 1931, the President of the State announced to the Saeima the Law on Internal Loan for Road Building with Premiums adopted on 28 April 1931.

Article 1 of this Law stated that "the internal loan of 1931 for road building with premiums shall be issued for the nominal value of 12 million lats for 30 years. The loan shall be issued on the basis of a special instruction of the Minister for Finance" (*Collection of laws and Cabinet regulations, issue No. 11, 18 May 1931, pp. 441-447*).

On 29 June 1931, the President of the State announced to the Saeima the Law on Short-term External Loan adopted on 22 June 1931. Article 1 of this Law stated: "The Cabinet of Ministers shall be authorised to commission the Minister for Finance to issue government bonds for the amount of up to 20 million lats" (*Collection of laws and Cabinet regulations, issue No. 22, 12 August 1931, p. 772*).

The above references illustrate that the matters pertaining to international and other loans that significantly affect the State budget were dealt with by the Saeima through legislation in the 20s and 30s of the last century. The initial practice after the restoration of the Constitution was that the matters related to international loans were decided by the Saeima (*see, e.g., the Law on the Investment Bank of Latvia General Loan Security Agreement between the Republic of Latvia and the European Investment Bank adopted on 29 March 1995 and the Law on the Agreement between the Republic of Latvia and Nordic Investment Bank adopted on 29 March 1995*).

Article 81 of the Constitution stated: "In cases of urgent necessity between sessions of the Saeima, the Cabinet of Ministers shall have the right to issue regulations which shall have the force of law." These regulations did not have the power to amend, inter alia, the budget and budget rights, and they could not be applied to loans and the issue of Treasury bonds. The fact that Article 81 has been deleted from the Constitution does not provide grounds for concluding that the matters specified therein would now fall within the area of authority of the Cabinet of Ministers. That is, even after the Constitution has been amended and Article 81 deleted, the Saeima still has exclusive authority to decide on the matters pertaining to the areas specified in this article, and the Cabinet of Ministers has no rights to decide on the matters regulated therein.

The Constitutional Court admitted that the matters the Cabinet of Ministers dealt with by entering into the respective commitments with the international creditors were deemed as sufficiently important matters for the State and public life to be decided through legislation by the Saeima. It also obviously follows from the replies of the Saeima that the receipt of the international loan is of the last importance for halting the

economic recession in Latvia. Similarly, Paragraph 20 of the Memorandum of Understanding between the European Community and the Republic of Latvia states: "For Latvia the Memorandum shall become effective after completion of internal procedures required under the Laws of Latvia" (*Case materials, vol. 11, p. 66*).

The Constitutional Court could not agree with the statements concerning receipt of the loan found in the letter of the Minister for Justice to the European Commission, namely, that all the approvals and authorisations required for the receipt of the loan have been obtained and that the Agreement does not violate any provision of national legislation, and that the enactment of the Agreement will not violate the requirements of any Latvian legislative act, and that its lawfulness, validity and enactment will not be impugned in the court or any other institution (*see Letter of the Minister for Justice of the Republic of Latvia to the European Commission, Annex 3 to the Loan Agreement between the European Community and the Republic of Latvia of January 2009, http://ec.europa.eu/latvija/documents/pievienotie_faili/29.01.09.la.doc, accessed on 1 December 2009*).

The Constitutional Court maintained that the conceptual decision with respect to the receipt of the international loan and terms and conditions thereof is to be deemed as an important and significant matter of State and public life, and that, in compliance with the procedure established by the Constitution, it had to be decided by the legislator itself. Although the Saeima has adopted the Economic Stabilisation and Growth Revival Programme for Latvia, has carried out decisions concerning changes to the State budget for 2009 and has adopted the State budget for 2010, these decisions cannot replace the rights established by the Constitution and also the duty to decide on all the substantial matters relating to the aforementioned loans, including the matters concerning the possible authorisation for the Cabinet of Ministers.

Therefore, the international commitments assumed by the Cabinet of Ministers cannot by themselves serve as an argument for the restriction of the fundamental rights established by Article 109 of the Constitution.

30.2. In order to ascertain whether there were less restricting means at the disposal of the legislator, the Constitutional Court had to determine whether the legislator had considered possible alternatives to the impugned provisions.

The ECtHR has indicated that public interests also in the context of decrease of pension or other comparable disbursements leave broad freedom of action to the legislator. The Court must respect this freedom of action – unless it is evident that the legislator's action has no reasonable justification (*see the ECtHR Judgment in the Case Moskal v. Poland, Application No. 10373/05, 15 September 2009, para. 61*).

30.2.1. The reply and the opinion of the Cabinet of Ministers indicate that, as a result of the Agreement of 11 June, the Disbursement Law was approved by the political parties that constitute the government, the Free Trade Union Confederation of Latvia (LBAS), the Employer's Confederation of Latvia (LDDK), Latvian Pensioners' Federation (LPF), the Latvian Association of Local and Regional Governments (LPS) and by the Latvian Chamber of Commerce and Industry. Thus, the Saeima and the Cabinet of Ministers imply that, by means of this Agreement, the best possible solution from several alternatives has been reached.

One can gain an insight from the replies submitted by the involved organisations to the Constitutional Court that alternative solutions to the impugned provisions have either been uttered at other meetings, or have been left without consideration. So, for example, LPS informed the Constitutional Court that, during preparation of the Agreement of 11 June, other alternatives were considered – reduction of untaxed minimum to 0 lats, reduction of pension for 15 %, reduction of pension premiums and disbursement of pensions to employed pensioners in the amount of 100 lats. LBAS and LDDK indicated that, during the preparation of changes to the budget of 2009, there were consultations held concerning possibilities to reduce the untaxed minimum of the individual income tax or to increase the social insurance contribution rate, and there were no other counsels held regarding the impugned provisions.

Latvian Pensioners' Federation (LPF), in turn, admitted that it did not participate in deliberations concerning the Agreement of 11 June because the decision had already been adopted. LPF also acknowledged that an agreement concerning the reduction of pensions for 20 % to those employed pensioners whose pensions are higher than 100 lats and non-payment of premiums to those pensioners who have retired after 1 January 1996 has been reached at the meeting with the Minister for Welfare on 9 June 2009. These agreements were not approved at the meeting of the Cabinet of Ministers.

The Constitutional Court pointed out that the Agreement of 11 June by itself neither confirms, nor excludes the legitimacy or constitutional compliance of the impugned provisions. Also, the participation of individual organisations or public partners of the government in the preparation of the aforementioned Agreement is not indicative of the constitutional compliance or – just the opposite – non-compliance. The Agreement of 11 June cannot be considered as a legitimate precondition for the adoption of the impugned provisions; rather, it may be viewed a quasi-political pledge signed for different reasons by the individual organisations and public partners of the government along with the political parties constituting the government. The fact of the Agreement is relevant to this Case only insofar as possible alternatives to the impugned provisions have been considered during its preparation. In addition, contrary to the opinion expressed in the replies of the Saeima, the letter of the Cabinet of Ministers and the annotation to the Disbursement Law Draft, the Constitutional Court deemed that the participation of organisations and public partners of the government in the preparation of the Agreement of 11 June was just formal.

30.2.2. The Ministry of Welfare explained in the information it furnished to the Constitutional Court that the Disbursement Law Draft had to be drawn up in a limited period of time, and it was not possible to consider the alternatives for lack of time (*see Case materials, vol. 9, p. 115*). The Cabinet of Ministers, in turn, explained that debates concerning the required reduction of the State budget for 500 million lats were extremely difficult and hard. Other alternatives for the reduction of pensions were considered in these debates. Yet, as a result, an agreement was reached only with regard to one specific solution, namely, the one set forth in the Agreement of 11 June. Besides, it would not be rational to discuss other solutions during the Disbursement Law Draft preparation process also for the reason that the issue of the budget deficit reduction had to be settled immediately (*see Case materials, vol., 9 p. 8*).

The information furnished by the Saeima, LBAS, LDDK, LPF, LPS and the Head of the Social and Employment Matters Committee A. Barca purport that separate alternatives to the adoption of the impugned provisions were discussed. For example, there was a proposition to set down the maximum amount of pension – 350 lats and to restrict the disbursement of pension to employed pensioners for 50 %. At the same time, it is acknowledged that the alternatives would not yield sufficient economy or

have not been sufficiently reviewed (*see Case materials, vol. 9, p. 162f and vol. 10, p. 64*).

Also, during the debates concerning the Disbursement Law taking place at the meeting of the Saeima, several propositions alternative to the adoption of the impugned provisions were uttered, for instance – reduction of the expenditures of ministries, increase of the mandatory social insurance contribution rate or fixing the minimum amount of pension that cannot be further reduced (*see transcripts of the meeting of the 9th Saeima taking place on 15 and 16 June http://www.saeima.lv/steno/Saeima9/090615/st090615.htm, http://www.saeima.lv/steno/Saeima9/090616a/st090616a.htm, accessed on 2 December 2009*). Yet, these propositions were just uttered, not reviewed.

The Constitutional Court concluded that neither the Cabinet of Ministers, nor the Saeima had carried out objective and well-weighed analysis neither regarding the consequences of the adoption of the impugned provisions, nor regarding other, less restrictive means for the attainment of the legitimate end. This conclusion also follows from the Disbursement Law Draft annotation, which states that "there is a risk that the provisions of Articles 2, 3, 5 and 6 of the Draft Law contradict the principle of protection of legitimate expectations ensuing from Article 1 of the Constitution as well as cause the risk of contradiction to the rights of persons to equality and non-discrimination established by Article 91 of the Constitution and the rights to social security established by Article 109, and may therefore constitute grounds for persons to apply to the Constitutional Court" (*Article II, Annotation, the Draft Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012, http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/0BEB9E49A7761574C22575D6003F8248?OpenDocument, accessed 1 December 2009*).

The Disbursement Law Draft annotation also indicates that no consultations with experts have taken place (*see Article VI, Annotation, the Draft Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012*). The Law Office of the Saeima, in turn, indicates in its opinion concerning the Disbursement Law Draft that there is no sufficient information for considering the draft law provisions as the most lenient and definitive means for the reduction of the State expenditures. Furthermore, the opinion goes on that applying the restriction provided in Paragraph

One of Article 3 of the draft law to so wide a range of persons is not justified and violates the principle of proportionality. In addition, the draft law contains an obvious contradiction: the law is supposed to become effective as of 1 July 2009, whereas the draft law annotation indicates that the enactment of the law from this date is unfeasible (*see Case materials, vol. 8, pp. 53f*).

The legislator's task is to find a compromise between competing legislative-political ends, especially between the legislative and constitutional principles. For example, when taking a decision concerning specific social reliefs, one must find a compromise between the fundamental principles of social statehood and enactment of economical State budget policy (*see Cipeliuss R. Par tiesisko apsverumu racionalu strukturesanu. Likums un Tiesibas, 2000, No. 4, p. 112*).

The Constitutional Court concluded that the proposed alternatives to the impugned provisions cannot be regarded as viable and accepted, for it was simply impossible to draft adequate alternative proposals in such a short period of time. Likewise, it was impossible to give careful and detailed consideration to such major issues as the potential economic effect and social consequences of these alternative solutions within a few days. Consequently, the Constitutional Court had no grounds for deeming the alternative solutions – which lack the necessary justification and analysis of economic and social consequences – as sufficiently well-considered alternatives to the impugned provisions.

Due to haste and insufficient involvement of experts, the legislator could not duly consider alternative solutions and work out a lenient transition. Among other things, the fact that the Disbursement Law had to be corrected urgently is also indicative of the legislator's inconsiderate action. That is, the disbursement restrictions included in the Disbursement Law pertained to old-age and service pensions. As a consequence, those persons, who had reached the retirement age while still receiving disability pension, received it in full amount, whereas those persons, who had been granted old-age pension instead of disability pension, received it in restricted amount. In other words, the Disbursement Law provided obviously different treatment for persons who were the recipients of disability pension on the one hand (the reduction of pension not applied), and persons who received old-age pension instead of disability pension on the other hand (the reduction of pension applied) (*see the Law Amendment to the Law*

on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 adopted on 17 September 2009 and annotation to this draft law http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/CDF73564B79BB4E3C225761F004BE61E?OpenDocument, accessed on 1 December 2009).

It is acknowledged in the science of law: delay, unpredictability and inconsistency in the exercise of state power prove that measures carried out and implemented by the state have led up to violation of the principle of proportionality (*see Harris D., O'Boyle M., and Warbrick C., Law of the European Convention on Human Rights, 2nd ed., Oxford University Press, 2009, p. 676*). The ECtHR has also stated that "indecisiveness – no matter whether it has come about as a result of legislation or administrative or institutional practice – is a factor to be considered in adjudicating an action of the state. Indeed, in the case of dealing with a matter of common interest, the public authorities have a duty to consider this matter in due and coordinated manner for a reasonably long period of time" (*Broniowski v. Poland, 2004-V; 43 EHRR 1, paras. 151 and 184 GC*).

Next, if the restriction established in Article 3, Paragraph One of the Disbursement Law is not dealt with in a differentiated way, a situation may arise when the deduction from person's pension is higher than his or her income from work or self-employment legal relations. The fact that such an action of the legislator does not comply with the Constitution has already been stated in the earlier Constitutional Court judgments (*see Clause 3.1.3 of the Concluding Part of the Constitutional Court Judgment in Case No. 2001-12-01 passed on 19 March 2002*).

Besides, a situation has arisen that Article 3, Paragraph One is not applicable to specific groups of persons who have other income in addition to pension. As the Cabinet of Ministers pointed out, in accordance with Article 6 of the Law on State Social Insurance, persons who have reached the age that gives the right to receive the State old-age pension, and who are owners of farms (fisheries), recipients or royalties, natural persons who perform the management of an immovable property or acquire income from a private subsidiary holding or a household plot, and who have registered as economic activity income tax payers, shall not be persons subject to mandatory social insurance. Similarly, the reduction of pension is not applied to self-employed

persons who are registered with the State Revenue Service and whose income does not reach the minimum monthly wage (*see Case materials, vol. 9, pp. 11f*).

Also, with respect to those persons who are subject to Article 2, Paragraph One of the Disbursement Law, the Constitutional Court could not confirm that the legislator has chosen the least restricting means for the attainment of the legitimate end. That is to say, the deduction from pension in the amount of 10 % is applied to all pensioners irrespective of the amount of their pension. As a result of the application of this provision, a pensioner may become a deprived person compelled to apply for social aid.

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.

31. 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. In this context, it is essential to determine whether the rights of pension recipients to social security have been infringed according to substance (*see ECtHR Judgment in Case Kjartan Ásmundsson v. Iceland, Application no. 60669/00, passed on 30 March 2005, para. 39*).

The Constitutional Court indicated that one of the indispensable elements of a pension system is its adequacy. It means that the pension system guarantees reliable and adequate income, which does not destabilise the State budget and does not put an excessive burden on future generations, at the same time ensuring justice and solidarity, as well as capacity to react on changing needs of individuals and society (*see Social Protection Committee, Adequate and Sustainable Pensions, Report by the Social Protection Committee on the future evolution of social protection, Göteborg European Council, June 2000*). States should secure, within limits, a standard of worthwhile human life and opportunity to take active part in the state, public, social and cultural life to all elderly people (*see European Commission, Communication on*

supporting national strategies for safe and sustainable pensions through an integrated approach, COM (2001) 362 final, July 2001).

31.1. The Applications repeatedly emphasise that the accruals of the social insurance special budget have been spent unreasonably, and this expenditure was one of the reasons for adopting the impugned provisions.

The Ministry of Finance and the State Treasury in their replies to the Constitutional Court purport that disposing of the social insurance special budget accruals took place in conformity with the Law on Budget and Financial Management.

One of the fundamental principles of social insurance – self-financing – has been worked into the legal acts regulating this area. The social insurance special budget is built up solely by the social insurance contributions, and the outlays from this budget are intended solely for social insurance services. It means that a certain balance between the revenues and outlays of this budget has to be maintained. Imposition of unreasonable additional expenditures can unsettle this balance, thus endangering the financial sustainability of this budget.

31.1.1. One can see from the Case materials that 951.1 million lats have been accrued in the social insurance special budget at the beginning of 2009, whereas by 1 September 2009 this accrual has decreased to 845.4 million lats. Thus, the accrual of the social insurance special budget has decreased for more than 100 million lats within a period of eight months.

The surplus in the social insurance budget from contributions made during the years of economic growth and favourable demographic situation is accrued to the social insurance accounts. Although mutual borrowing among budgets took place already in 1999, and a possibility to use the social insurance budget reserves for deriving profit was discussed already in 2005, only on 2 December 2009 the Cabinet of Ministers decided to support the investment of the social insurance special budget accrual funds into the State Treasury (*see Case materials, vol. 9, pp. 187f, and the Conception of the Cabinet of Ministers "On management of State social insurance financial resources until 2012" of 3 December 2008, Latvijas Vestnesis, 5 December 2008, No. 190*).

The surplus of the social insurance special budget is the reserve fund. In accordance with the effective regulatory enactments, it can be used solely for the disbursement of social insurance allowances and pensions in the cases when the revenues of the social

insurance special budget are not sufficient for covering its expenditures. That is, this accrual can also be used for creating a balance between the social security of different generations and the guaranteed adequacy of pensions. Article 7, Paragraph Three of the Law on Social Insurance provides that a reserve may be established for each special budget in which the excess income of the special budget over the amount of financing for the provided social insurance services is included.

Thus, one can conclude that a decision to dispose of the social insurance budget accruals belongs to social policy. Well-considered and focused disposal of this accrual would facilitate its increase, and the accrual could be used for alleviating the budget situation when the demographic situation in the State starts to go down.

On the one hand, the chosen procedure ensures that the social insurance budget accruals are subject to a lesser economic risk, because they are invested into sufficiently reliable financial instruments, and their value is relatively retained. Likewise, the practice in force guarantees that the social insurance special budget funds are adequately accounted for. On the other hand, there is no doubt that the practice in force, which governs the disposal of this accrual of several hundred million lats, delegates undue powers to the executive authority – the Minister for Finance – and the State Social Insurance Agency (hereinafter – SSIA) as the executor of the budget. For example, the procedure following which the director of SSIA and the representative of the State Treasury enter into simplified agreements for the investment of several hundred million lats from the social insurance budget accrual funds to the State Treasury cannot be deemed as transparent. Considering the lack of due control, there are sufficient grounds for doubting whether the social insurance special budget accrual funds have been, in this way, indeed, allocated most effectively. For this reason, the Applicants could have reasonable doubts regarding the purposes for which the said accruals have in fact been channelled.

Likewise, there is no sufficient control, including the control exercised by the Saeima, ensuring that this large accrual is used as an instrument of social policy and the funds are allocated in a way that is most profitable to the national economy and social insurance budget. To the contrary, as M. Porsnova pointed out, it is possible that the respective accrual is being used for solving the State budget deficit problems as well as

for the fulfilment of short-term objectives of the executive power. As a result, the whole social insurance system is destabilised (*see Case materials, vol. 9, p. 188*).

31.1.2. It can be inferred from the Case materials that one of the reasons of such a big deficit in the social insurance budget was inconsiderate definition of parenting benefit as a type of social insurance. In 2008, approximately 66.7 million lats were spent for the disbursement of this benefit, and there were plans to spend approximately 82.9 million lats for this purpose in 2009 (*see Case materials, vol. 9, p. 195*).

Until 1 January 2008, this benefit was defined as a type of social allowance – childcare benefit, and it was disbursed from the basic budget of the State. Under the then effective legislation, the amount of the benefit was limited, i.e. it could not exceed 392 lats per month. The Constitutional Court adjudicated such a regulation as conforming to the principle of legal equality ensuing from Article 91 of the Constitution (*see the Constitutional Court Judgment in Case No. 2006-10-03 passed on 11 December 2006*).

In order to change the procedure for the disbursement of childcare benefit that was effective until 1 January 2008, the Cabinet of Ministers submitted a draft law Amendments to the Law on State Social Insurance to the Saeima on 8 October 2007. The draft law was developed on the basis of the Prime Minister's Resolution No. 111-1/152 of 20 September 2007. The Resolution commissioned the Ministry of Welfare, in cooperation with the Ministry of Justice and the Ministry of Finance, to prepare amendments concerning the optimisation of the childcare benefit system to the relevant drafts of legal acts and submit for review until 24 September 2007 for the Cabinet of Ministers' meeting of 25 September (*see the Prime Minister's Resolution No. 111-1/152 of 20 September 2007, Case materials, vol. 10, p. 81*). The draft law was declared as urgent and was adopted without debates in both the first and the second readings (*see transcript of the Saeima's meeting of 24 October 2007 http://www.saeima.lv/steno/Saeima9/071024/st071024.htm and transcript of the Saeima's meeting of 8 November 2007 http://www.saeima.lv/steno/Saeima9/071108/st071108.htm, accessed on 2 December 2009*).

With the adoption of this law, a new type of State social insurance – parenting insurance – was introduced in the Law on State Social Insurance. The Draft Law

Annotation stated: since it is planned to disburse the parenting benefit in full amount and without any restrictions also to employed persons who at the same time receive income from work, the parenting insurance does not conform to the real meaning of social insurance. Furthermore, since the implementation of this benefit was supposed to be provided from the existing social insurance contributions, it would negatively affect the social insurance special budget in a long-term perspective. Implementing the parenting benefit and disbursing it from this budget in keeping with the current social insurance contribution rate, the reserve accrued in this budget would be spent 10 years earlier than planned (*see Annotation to the draft law Amendments to the Law on State Social Insurance, reg. No. 470/Lp9, http://www.saeima.lv/saeima9/lasa?dd=LP0470_0, accessed on 2 December 2009*).

The draft law annotation stated that the overall social insurance contribution rate would be maintained in the amount of 33.09 %, and the service (parenting benefit) corresponding to parental insurance would be financed from the disability, maternity and sickness special budget funds, changing proportionally the distribution of expenditures of these special budgets (*see Annotation to the draft law, reg. No. 470/Lp9*).

It is evident from the Cabinet of Ministers regulations pertaining to the distribution of social insurance contribution rates by State social insurance types that in 2009 the proportion of mandatory social insurance contributions intended for parental insurance has increased for approximately 70 % compared to 2008; i.e. the proportion has increased from 1.08 % in 2008 to 1.85 % in 2009.

The Constitutional Court maintained that, keeping the social insurance contribution rate in the amount of 33.09 %, the legislator had no basis for introducing a new type of social insurance. As a result of this, the balance of the social insurance budget was unsettled and its sustainability – put in danger. The newly introduced type of social insurance – parental benefit – is paid from the social insurance budget without respective additional contributions therein.

It is also evident from the draft materials of the Law on State Social Insurance that the initially established social insurance contribution rate was planned for financing only five types of State social insurance – State pension insurance, social insurance in case of unemployment, social insurance against accidents at work and occupational

illnesses, disability insurance and maternity and sickness insurance (*see, e.g. drafting documents of the Law on State Social Insurance, Case materials, vol. 9, pp. 166-180; Pension Law conception, p. 3, Case materials, vol. 10, p. 158; Ministry of Welfare Social Report for 1998, pp. 12-37*).

Consequently, the substantial cause of the negative financial balance in the social insurance budget is the establishment of the parental benefit as a new type of social insurance, without changing the social contribution rate. For instance, the total economy planned to be achieved for the year 2009 as a result of the enactment of the impugned provisions was approximately 88 million lats. This sum corresponds to the planned outlays of parental benefits from the social budget for approximately one year and one month.

It can also be concluded that the sustainability of the social insurance special budget was affected by other hasty and inconsiderate decisions in the field of social policy, for example, the increase of pension premium to 70 santims for each year of the length of insurance accumulated until 1996, the decrease of mandatory social insurance contributions channelled to pension funds as well as the inconsiderate pension indexation mechanism (*see Sub-paragraph 4.19 of the World Bank report Aide Memoire, Case materials, vol. 9, p. 105, and the opinion of M. Porsnova, Case materials, vol. 9, p. 204*).

As already stated in this Judgment, the Latvian social insurance system is fragile, and every inconsiderate decision may cause serious consequences for the stability of this system in a long-term perspective. Therefore, the State has a duty to put its social policy into effect by managing the social insurance special budget funds with extreme care. The decisions adopted in haste and without sufficient prior deliberation, along with the economic situation in the State, have caused the current difficult situation in the social insurance special budget.

31.2. Rights to social security of at least the minimum level are included in the scope of Article 109 of the Constitution, and the aim of these rights is to ensure life worthy of a human being (*see the Conclusive Part of the Constitutional Court Judgment in the Case No. 2000-08-0109 passed on 13 March 2001*). Pensioners are to be deemed as a social group that needs special protection, all the more those pensioners whose income is low and estimated as not reaching the minimum social security.

The UN Committee on Economic, Social and Cultural Rights has described the duty of the State to guarantee the availability of social security at least at a minimum level. In the cases when state, considering the resources at its disposal, is incapable to ensure this minimum level to all the risk groups, it should specify the groups that need special protection, and social security should be provided for these groups (*see General Comment No. 19, para. 59*).

Several organisations, int. al. international organisations, have assessed the risk of poverty for the residents of Latvia. For example, *Eurostat* data of poverty risk groups due to old age for the year 2007 show that approximately 33 % from persons who are older than 65 are in the poverty risk group (*see http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/data_overarching_en.xls, accessed on 25 November 2009).*

Furthermore, according to the study carried out in Latvia, poverty risk among lone elderly people has increased also during the time of economic growth – from 45 % in 2005 to 69 % in 2006 and to 75 % in 2007 (*see the provisional data of the Central Statistical Bureau for 2007 "Survey of European Union Statistics on Income and Living Conditions (EU-SILC)" http://www.csb.lv/csp/content/?cat=471&id=5762, accessed on 25 November 2009*).

Even during the time of economic growth, the funds allocated to social protection services were relatively scanty in Latvia (*see Europe in Figures, Eurostat yearbook 2009, p. 256*). Whereas Sweden, for example, allocated approximately 32 % from its GDP for this purpose and France – 31.5 %, this figure for Latvia is only 12.4 %. This situation is reflected in statistics concerning the inequality of income distribution, which continued to increase also in the period of economic growth and is the highest among the EU States (*see Inequality of income distribution http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdsc260, accessed on 1 December 2009*).

In order to ascertain the minimum level of social security in the specific case, the State has to make a choice from several methods used by different international organisations. Although these methods are not legally binding, their principles are of markedly recommendable nature, sufficiently authoritative to be able to advice the State to choose the optimum model of action for solving a specific problem. These

methods take into account the needs of households depending on their size and composition. There is a wide range of such methods of assessment available (*see Atkinson A. B., Rainwater L., Smeeding T. M., Income Distribution in OECD Countries, OECD Social Policy Studies, No. 18, 1995, Paris*).

Three of these methods are the most widespread: (1) OECD equivalence scale, (2) OECD-modified scale, (3) square root scale, which is used since 2008 *(see http://www.oecd.org/dataoecd/61/52/35411111.pdf, accessed on 3 December 2009). Eurostat* in its practice has adopted the OECD-modified scale method (*see http://ec.europa.eu/employment_social/spsi/docs/social_protection/SPC%20Study%20minimum%20income%20final.pdf, accessed on 3 December 2009*). On the basis of calculations made according to these methods, the optimum level of income is determined for persons, so that they would be able to satisfy their basic needs. The choice of a particular equivalence scale to be used depends on technical assumptions about economies of scale in consumption as well as on value judgments about the priority assigned to the needs of different individuals, such as the elderly. These judgments will affect the results. In selecting a particular equivalence scale, it is important to be aware of its potential effect on the level of inequality and poverty, on the size of the poor population and its composition (*see What are Equivalence Scales? OECD Project on Income Distribution and Poverty, via www.oecd.org/els/social/inequality, accessed on 25 November 2009*).

Since the results may differ depending on the method chosen, a substantiated choice of the method which is most suitable to the situation in Latvia is a matter of political choice of the legislator.

32. The Applicants hold that the impugned provisions do not comply with the principle of protection of legitimate expectations, for the legislator has not envisaged a lenient transition to the new legal order.

The principle of protection of legitimate expectations is indissolubly linked with the principle of judicial state. The Constitutional Court has pointed out that, in accordance with the principle of protection of legitimate expectations, government institutions are obliged to act consistently with respect to the normative acts issued and to respect the legitimate expectations that persons could have developed under a specific legal provision. Individual persons, in turn, in accordance with this principle, can count on

the constancy and unchangeability of a lawfully issued legal provision. Then persons can plan with confidence their future in the context of the rights granted by this legal provision (*see Sub-paragraph 3.2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002 and Paragraph 21 of the Constitutional Court Judgment in the Case No. 2006-04-01 passed on 8 November 2006*).

At the same time, the principle of protection of legitimate expectations does not preclude the State from making changes to the existing legal order. The principle cannot be interpreted so widely that it would safeguard persons from every possible dissatisfaction. Otherwise the State would not be able to react to changing conditions of life. Nevertheless, the principle of protection of legitimate expectations requires the State, when it changes an existing legal order, to observe a reasonable balance between persons' confidence in the currently effective legal order and those interests for the sake of which this legal order is being changed (*see Paragraphs 23 and 25 of the Constitutional Court Judgment in the Case No. 2009-08-01 passed on 26 November 2009*).

The Constitutional Court has already indicated that, when a resolution on revocation of pension revision was made in 2009, the determination of retaining the pension disbursement amount was referred to as the substantiation for this revocation in the debates of the Saeima (*see Paragraph 21 of the Constitutional Court Judgment in the Case No. 2009-08-01 passed on 26 November 2009*). Clause 12.2.4 of the government declaration endorsed on 11 March 2009 states that the government is not going to aggravate "the existing financial situation for pensioners and persons with disabilities; however, knowing that the previously signed international documents envisage 'freezing' of pensions in Latvia, which means temporary revocation of pension indexation", further procedure for pension indexation will be defined more exactly.

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.

Moreover, there were cases when deductions from the pensions of employed pensioners were made even if the employment legal relationships had in fact been terminated. As a result, legal uncertainty increased even more. Annotation to the Disbursement Law Draft also conceded that the enforcement of this law from 1 July 2009 was unfeasible (*see Article I, Annotation, the Draft Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012*).

The Constitutional Court has previously adjudicated that the amount of pensions of employed pensioners can be restricted, taking into account their income from employment (*see Clause 3.1.1 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002*). However, the impugned legal provisions to be adjudicated within this Case do not envisage an all-encompassing change of State policy with regard to the amount of pensions of employed pensioners; the provisions in question provide only a temporary restriction of pension disbursements. In any event, the employed pensioners could not foresee such a change of legal order – even if this change was supposed to be temporary; nor could they make a well-considered choice.

Adjudicating whether a reasonable balance has been maintained between the need to protect legitimate expectations of persons and the need to secure public interests, one should consider whether the planned transition to the new legal order is sufficiently lenient. The Constitutional Court has previously established that such a lenient transition may be expressed in the form of setting down a reasonable transitional period or granting a compensation (*see Paragraph 2 of the Concluding Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 25 March 2003*). Having regard of the duty to protect persons' reasonable confidence in the permanence of legal order ensuing from the principle of legitimate expectations, the State has not only rights; it also has a duty to counter the situations when public interests are seriously jeopardised. If legal order is changed for the common good of society, then such an action is permissible. On this account, a temporary reduction of

pension disbursement amount is justified if it is carried out in fair balance with persons' legitimate expectations concerning a specific pension disbursement amount. The ECtHR has also repeatedly drawn attention to the need of ensuring fair balance and commensurate compensation (*see Harris D., O'Boyle M., Warbrick C., Law of the European Convention on Human Rights, 2nd ed., Oxford University Press, 2009, p. 675*).

In the context of this Case, it means that the reduction of pensions could have been implemented only if a legal provision concerning later reimbursement of the deducted money had been simultaneously adopted. In other words, planning such a temporary reduction, the legislator is obliged to ensure its fair reimbursement at a later time. More than that, the State, in proportion to the overall interests of society, had to define the groups of pensioners who would be exempt from this reduction, or to whom a different reduction amount would be applied.

The impugned reduction of pensions does not allow a differentiated approach and does not provide either for a later compensation for the deductions, or for an adequate transitional period. Therefore, the impugned provisions do not comply with Article 1 of the Constitution.

IV

33. Consistent with the practice of the Constitutional Court, if an impugned legal provision is adjudicated as unconformable with one constitutional norm, the Court does not further adjudicate the conformity of the provision in question with other constitutional norms. The provisions impugned in this Case also affect several other fundamental rights established by the Constitution, first of all the fundamental rights established by Articles 91 and 105 of the Constitution. Thus, the legislator had, to equal extent, to take into account both the duty arising from the first sentence of Article 91 of the Constitution – to treat persons in different positions differently – and the duty to protect the rights to pension disbursement granted by Article 105 of the Constitution (*cf. Paragraph 6 of the Establishing Part of the Constitutional Court Judgment in the Case No. 2001-12-01 passed on 19 March 2002 and Paragraphs 20*

and 21 the Constitutional Court Judgment in the Case No. 2007-01-01 passed on 8 June 2007).

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

For that reason, the Constitutional Court had to decide on the moment from which the impugned provisions would loose their validity.

Article 32, Paragraph Three of the Constitutional Court Law prescribes that "any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the day of publication of the decision of the Constitutional Court, unless the Constitutional Court has ruled otherwise." Thus, announcing an impugned provision as unconformable to the legal norm of higher force does not necessarily mean that the provision in question must be declared as invalid as of the day of publication of the judgment.

In Article 32, Paragraph Three of the Constitutional Court Law, the legislator has conferred to the Constitutional Court wide freedom of action to decide from which moment an impugned legal provision – that has been declared as unconformable to a legal norm of higher legal force – becomes invalid. To invalidate the impugned provision not from the day of publication of the judgment but from some other moment, the Constitutional Court must substantiate such a decision. 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.

The Constitutional Court has concluded in this Case that the impugned provisions 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 Constitution 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. The effect of these provisions on the State budget is estimated for several tens of millions of lats. Instant enforcement of the judgment could cause rather unbeneficial consequences. Therefore, the Constitutional Court would analyse several circumstances that must be considered in deciding about the moment of invalidation of the impugned provisions.

Article 66 of the Constitution states: "Annually, before the commencement of each financial year, the Saeima shall determine the State Revenues and Expenditures Budget." Interpreting this Article, the Constitutional Court has indicated that "the funds required for the execution of the State duties are determined and substantiated for the budget in keeping with this procedure: in a timeframe for which these funds are planned, the expenditures are covered by the corresponding revenues (*Paragraph 1 of the Conclusion Part of the Constitutional Court Judgment in the Case No. 1998-01-05(98) passed on 27 November 2009*). The Law on the State Budget for 2010 was adopted on 1 December 2009. Abandonment of the regulation of the impugned provisions was not planned in this budget. If the Constitutional Court Judgment had to be enforced immediately, a situation would arise that would be even more unconformable to the Constitution than the situation in which the consequences of the impugned provisions still continue for some period of time. Instant disbursement of pensions in full amount and reimbursement of all the sums withheld could substantially endanger the stability of both the basic budget of the State and the social

insurance special budget, therefore – the welfare of the whole society, including that of the Applicants. In its previous practice, the Constitutional Court has acknowledged: even if some provisions have been adjudged as unconformable to the Constitution, an instant increase of financial assets disbursable to persons without an opportunity to carry out well-considered measures providing for these disbursements could substantially affect the funds to be disbursed to other persons, encumber the performance of functions of the State institutions and thus impede the discharge of State functions in general (*see Paragraph 12 of the Constitutional Court Judgment in the Case No. 2006-13-0103 passed on 4 January 2007*). In view of the purpose of the social budget – which is to ensure the sustainability of the pension system as well as to satisfy the public interests in general – a reasonable period of time should be given for the accomplishment of the necessary measures.

Therefore, the Constitutional Court has a duty to define the procedure for the enforcement of this Judgment.

35. Article 31, Clause 12 of the Constitutional Court Law provides that, if necessary, "other court decisions" can be included in a Constitutional Court Judgment. Therefore the Constitutional Court is also authorised to settle other substantial matters, so that new infringements of the fundamental rights established by the Constitution would not come about after the invalidation of the impugned provisions and that the withdrawal of the these provisions "from circulation" would not cause disturbance in the legal order (*see Paragraph 25 of the Constitutional Court Judgment in the Case No. 2005-12-0103 passed on 16 December 2005*).

35.1. According to substance, Article 31, Clause 12 of the Constitutional Court Law provides for similar rights to those granted to constitutional courts of other countries for ensuring the enforcement of their judgments, namely, authorising the Constitutional Court to decide important legal consequences of its judgments by itself. For example, the law not only grants authorisations to the Constitutional Court but also makes it responsible for its judgments – so that they ensure legal stability, clarity and peacefulness in the public sphere (*see Benda E., Klein E. Lehrbuch des Verfassungsprozeßrechts. C.F. Müller Juristischer Verlag Heidelberg, 1991, S.525*). The Constitutional Court has already concluded that, within limits, it has to make sure that the situation from the moment of invalidation of the impugned provisions would

not cause the infringement of the fundamental rights that the Constitution grants to the Applicants and other persons as well as would not cause substantial damage to the State or public interests (*see Paragraph 25 of the Constitutional Court Judgment in the Case No. 2005-12-0103 passed on 16 December 2005*).

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.

35.2. Article 9 of the Disbursement Law prescribes for the Cabinet of Ministers to reconsider the validity of disbursement restrictions stipulated by this law twice a year and, correspondingly, submit the Saeima either a report concerning the continuation of the restrictions, or, in case of need, a draft law concerning their full or partial revocation. The Ministry of Welfare has undertaken, by 1 February 2010, to prepare and submit to the Cabinet of Ministers for further submission to the Saeima the draft report referred to in Article 9 of the Disbursement Law, thus ensuring the fulfilment of the task delegated to the Cabinet of Ministers (*see the letter of the Ministry of Welfare, Case materials, vol. 10, p. 93*).

The Case materials show that the accrual of the social insurance special budget was approximately 951 million lats at the beginning of January 2009. This accrual has decreased to 767 million lats by the beginning of December 2009 (*see item "Money for pension disbursement will have to be taken from deposit", National News Agency LETA, 11 December 2009*). Accordingly, the accrual has decreased for 184 million lats within the eleven months of 2009, decreasing for approximately 17 million lats per month.

Furthermore, the information furnished by SSIA reveals that, in December 2009, the pension special budget had a deficit of approximately 50 million lats. To guarantee the disbursement of pensions at the beginning of 2010, solutions for acquisition of the necessary funds are being considered: first, channelling of the accrual in the

employment special budget to the pension special budget; second, early termination of the agreements concluded with the State Treasury concerning the investment of the social insurance special budget in term deposit (*see item "Money for pension disbursement will have to be taken from deposit", National News Agency LETA, 11 December 2009*).

On this account, one can conclude that, presently, in order to eliminate the deficit in the social insurance pension special budget, a certain period of time is required either for revision of the agreement concluded with the State Treasury concerning the investment of the social insurance special budget in term deposit, or for proper revision of the division of State social insurance contribution rates by State social insurance types, or for finding some other solution.

In view of the aforesaid and the circumstance that, in addition to current expenditures, more than ten million lats per month will still be needed for the restoration of full pension disbursement amounts, as well as the fact that pensions are calculated and disbursed for calendar months, the Constitutional Court maintained that the deductions from pensions made on the basis of the impugned legal provisions are terminable not later than from 1 March 2010.

35.3. Deciding about the timeframe for reimbursement of the part of pensions withheld from persons within the period from 1 July 2009 to 1 March 2010, one should take into account that the restriction for the disbursement of particular pensions prescribed by the Disbursement Law was planned for three and a half years – from 1 July 2009 to 31 December 2012.

Moreover, the legislator has allowed for a possibility that the said restrictions may be revoked already before 31 December 2012. It has already been pointed out by this Judgment that the Disbursement Law had been adopted rather hastily, without considering either the proportionality of the reduction of pensions, or other aspects relating to the consequences of the impugned provisions.

In accordance with the Constitution, the Saeima has not only rights but also duties to draft and adopt laws that settle important matters of State and public life. Similarly, the Constitution authorises the Saeima to decide on matters that affect the State budget. Establishment of the procedure for reimbursement of the pension deductions made in accordance with the impugned provisions can be deemed as both a sufficiently

important matter of public life and a matter that significantly affects the State budget. Therefore, the Saeima has a duty to draft and adopt a regulation that would settle this matter in a lawful way.

The Constitutional Court, in turn, has a duty, within its terms of reference, to ensure effective protection and restoration of the fundamental rights of the affected persons. Neither the protection of the infringed rights, nor their restoration would be effective if the Saeima did not fulfil its duty to establish a procedure for the reimbursement of the deductions from pensions. The Constitutional Court decided that, in this Case, the conclusions of this Judgment constitute the ground for the reimbursement in question, which must be commenced on 1 March 2010 in such an amount and within such a timeframe as the deductions have been made in accordance with the impugned provisions, namely, a part of pension non-disbursed in one month should correspondingly be reimbursed in one month.

The ECtHR, adjudicating the matters concerning the reimbursement of financial assets unjustifiably withheld as a result of violation of rights established by the Convention, has also concluded that persons are entitled to compensation within a reasonable timeframe, taking into account the respective situation and commensurate interests (*see the ECtHR Judgments in the Cases: Lithgow v. UK, Judgment of 8 July 1986, application no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, paras. 120-122; Guillemin v. France (Article 50), Judgment of 2 September 1998, 105/1995/611/699, para. 24; Jucys v. Lithuania, Judgment of 8 January 2008, application no. 5457/03, paras. 37 and 39; Broniowski v. Poland, 2004-V; 43 EHRR 1, paras. 151 and 184 GC*).

Deciding on the drafting and adoption of such a regulation, one should take into account that, although the recipients of old-age pension constitute a special group, this group is not uniform with respect to income, age and other aspects. It means that the reimbursement of the deducted part of pension should be carried out within a reasonable timeframe and, within limits, taking into account the different positions of particular persons. Considering the economic situation in Latvia and the State budget, the part of pensions withheld on the basis of the impugned provisions must be, in accordance with the procedure established by the Saeima, reimbursed in full not later than by 1 July 2015.

The Ruling Part

On the basis of Articles 30-31 of the Constitutional Court Law, the Constitutional Court

r u l e d

1. To declare Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 as unconformable with Articles 1 and 109 of the Constitution of the Republic of Latvia and invalid as of the moment of their adoption.

2. To stipulate that the deductions from pensions established in accordance with Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 shall be discontinued not later than from 1 March 2010.

3. To order the Saeima to establish a reimbursement procedure for deductions made in accordance with Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 not later than by 1 March 2010.

The Judgment is final and may not be appealed.

The Judgment comes into legal effect as of the day of its publication.

Chairperson of the Constitutional Court sitting G. Kutris