



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

**Riga, 26 November 2009**

**in Case No. 2009-08-01**

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

having regard to application of twenty members of the 9<sup>th</sup> Saeima (Parliament) of the Republic of Latvia - Andrejs Klementjevs, Valērijs Agešins, Boriss Cilevičs, Oļegs Deņisovs, Sergejs Dolgopolovs, Sergejs Fjodorovs, Aleksandrs Golubovs, Nikolajs Kabanovs, Ivans Klementjevs, Aleksandrs Mirskis, Sergejs Mirskis, Vitālijs Orlovs, Artis Pabriks, Ivans Ribakovs, Artūrs Rubiks, Aigars Štokenbergs, Jānis Tutins, Jānis Urbanovičs, Nils Ušakovs and Aleksejs Vidavskis,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1<sup>st</sup> indent, Article 17 (1), 3<sup>rd</sup> indent and Article 28.<sup>1</sup> of the Constitutional Court Law,

on 27 October 2009 in writing examined the case

**“On Compliance of the Words “State funded pensions shall not be revised in 2009” of Section 2 of the Law “On Amendments to the Law “On State Funded Pensions”” of 12 March 2009 with Article 1 and Article 109 of the Satversme (Constitution) of the Republic of Latvia”.**

## **Recitals**

1. The Law “On State Pension” was adopted on 2 November 1995 and came into effect on 1 January 1996. At the date of coming into force of the Law, Section 26 thereof provided that “the amount of State pension shall be reviewed annually according to the procedures specified by Cabinet, taking into account actual consumer price index and the change of the wage subject to insurance contributions index.

However, Para 15 of the Transitional Provisions of the Law “On State Pensions” provided the following:

“Up to 31 December 2014, State pensions shall be examined in the following order:

1) up to 31 December 2009, apart from what has been established in Item 1.1 of this Para, State pensions the amount of which is not threefold greater than the State social security benefit, shall be examined on 1 April, taking into account the actual consumer price index, and 1 October, taking into account the actual consumer price index and 50 per cent of the actual increase in the percentage of the wage subject to insurance contributions. State pensions, the value of which is greater than threefold the State social security benefit, but do not exceed by fivefold the State security benefit, shall be examined once a year on 1 October, taking into account the actual consumer price index;

1<sup>1</sup>) from 1 January 2008 to 31 December 2008, State pensions the amount of which does not exceed 150 lats shall be revised on 1 April 2008 taking into account the actual consumer price index, and on 1 October 2008, taking into account the actual consumer price index and 50 per cent of the actual increase in the percentage of the wage subject to insurance contributions. State pensions the amount of which exceeds 150 lats but does not exceed by fivefold the State social security benefit shall be examined once per year – on 1 October 2008 taking into account the actual consumer price index;

2) from 1 January 2010 to 31 December 2014, State pensions, which do not exceed by threefold the State social security benefit, shall be examined once a year on 1 October, taking into account the actual consumer price index and 50 per cent of the

actual increase in the percentage of the wage subject to insurance contributions. State pensions, the value of which is greater than threefold the State social security benefit, but does not exceed by fivefold the State security benefit, shall be examined once a year on 1 October, taking into account the actual consumer price index and 25 percent of the actual increase in the percentage of the wage subject to insurance contributions. State pensions, the amount of which exceeds by fivefold the State social security benefit shall be examined once per year, on 1 October, taking into account the actual consumer price index;

3) in examining the State pension, the granted pension amount shall be examined.”

Section 1 of 12 March 2009 Law “Amendments to the Law “On State Pensions”” provides for the following wording of Section 15 of the Transitional Provisions of the Law: “State pensions shall not be examined in 2009.”

**2. Twenty members of the 9<sup>th</sup> Saeima (Parliament) of the Republic of Latvia** (hereinafter – Applicants) asks the Constitutional Court to recognize the words “State pensions shall not be examined in 2009” of Section 2 of the Law “Amendments to the Law “On State Pensions”” (hereinafter – the Contested Norm) as non-compliant with Article 1 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

**2.1.** According to the Applicants, the Contested Norm does not comply with the principle of legal security.

The Applicants indicate that granting of State pensions is the issue of social policy bearing a temporary character; therefore legal regulation in this field should be sufficiently stable and unchanging. The procedure of re-examination of State pensions that was effective before 1 April 2009 existed from 1 January 2002, and it has underwent only minor amendments. Hence persons who have the right to receive a State pension could count on the legal regulation regarding re-examination of the amount of State pensions. Such legal security was lawful, reasonable and grounded. Legal regulatory framework was effective for a long timeframe; it was sufficiently stable and unchanging.

The Applicants indicate that the principle of legal security is not absolute. When introducing amendments, however, the legislator should provide for a lenient transition to a new legal regulation. Such transition can be established by means of transitional provisions or compensation of losses. The draft law “Amendments to the Law “On State Pensions”” was submitted to the Saeima on 11 March 2009 and it was admitted in both readings on 12 March 2009 on urgent basis. No transitional period was established for a person to be able to adapt to the new regulation.

Likewise, the Applicants indicate that the Contested Norm, in fact, has a retroactive force because it cancels examination of State pensions for the previous period – the timeframe from 1 October 2008 to 31 March 2009. At this period, cost of living was still increasing due to the inflation. Moreover, the majority of Saeima parties maintained that examination to be performed on April 2009 would not be cancelled after adoption of the amendments of 12 December 2008 to the Law “On State Budget for 2009”.

Consequently, the Applicants hold that the Contested Norm is in breach of the principle of legal security because persons are denied the right once conferred and the legislator has not provided for a lenient transition to the new regulation.

**2.2.** The Applicants also question compliance of the Contested Norm with the principle of proportionality.

As it is declared, one of the aim of the Contested Norm is the promise given by the government to international institutions, namely, “to freeze” examination of the amount of pensions in 2009 and, starting with 2010, to re-examine pensions only taking into account the actual consumer price index. Such objective cannot be recognizes as legitimate because the executive power has undertaken liabilities that fall merely into the scope of competence of the legislator.

According to what has been declared, the second aim of the Contested Norms is “balancing of incomes and expenses of the State special budget of social insurance”. However, it is possible to conclude that the actual objective of the Contested Norm is saving of the State budget. The Applicants indicate that such objective “in itself” cannot be legitimate; however, in the case under review, namely, State budget resources are being saved on account of pensioners, disabled persons and persons who

have lost a breadwinner, all of them being unprotected social group. Moreover, a norm that breaches the principle of legal security cannot be regarded as legitimate.

The Applicants also indicate that no appropriate calculations and considerations have been made to examine whether the legitimate objective can or cannot be reached by other means that would restrict the rights of a person at a lesser extent and whether restriction of the rights of persons is or is not greater than the benefit gained by the society. The annotation to the Draft Law does not provide any information regarding savings in the special budget of State pensions, impact of the Draft Law on balancing of the State special budget of social insurance, or the number of pensions to whom the amendments would apply.

By referring to the economy of 10 million lats, as suggested by the Saeima members, the Applicants indicate that cancelling of examination of pensions would provide a small gain to the special budget of State pensions. The Applicants also indicate that it is not grounded to refer to expected increase of unemployment rate and thus increase of expenses from the special budget of employment because reallocation of appropriations between State special budgets of social insurance is prohibited. Moreover, the Contested Norm infringes the rights and interests of one of the most unprotected social groups, namely, the norm applies to persons who receive State pensions at the amount not exceeding 135 lats and their living standard is below the subsistence level. Consequently, measures selected by the legislator cannot be regarded as proportional.

**2.3.** The Applicants hold that the Contested Norm is in breach of the principle of a socially responsible State. State pension is one of the kinds of social security implemented by the State with the purpose to ensure observance of the principle of a socially responsible State. State pensions have two different functions: fiscal one is to compensate loss of incomes for disabled persons; and social one – to ensure the possibility for disabled persons to preserve their status of full-fledged members of the society.

The Applicants indicate that according to the data of the Central Statistical Bureau of the Republic of Latvia the subsistence wage in February 2009 constituted 172.47 lats. It is indicated in the annotation to the Draft Law that the average pension

is 166.72 lats, whilst the Contested Norm cancels re-examination of pensions for persons who receive pensions not exceeding 135 lats, the examination having been planned to perform in February 2009. Consequently, the right of all social groups to an appropriate living standard is not ensured and pensions are not approximated to real costs.

Moreover, the Applicants emphasize that examination of State pensions, as established before 1 April 2009, cannot be regarded as amelioration of living standard for persons who receive State pension. Examination of State pensions can only be regarded as a slight approximation of State pensions to the subsistence level. Consequently, the Contested Norm does not comply with the principle of a socially responsible State.

**2.4.** According to the Applicant, the Contested Norm also breaches the right to social security enshrined in Article 109 of the Satversme. The above mentioned right is infringed by the fact that the State has amended legal regulation without a legitimate objective, the regulation concretizing the right to social security; moreover, the amendments are also in breach of the above analyzed principles of a law-governed State, i.e. the principle of legal security, the principle of proportionality and the principle of a socially responsible State.

**3.** The institution that adopted the contested act, **the Saeima** (Parliament) does not agree with the Applicants and indicates in its reply that the Contested Norm does comply with the Satversme.

**3.1.** The Saeima indicates that social rights, including the right to social security, are special and different rights, implementation of which depends on the economic situation and available resources of each state. Irrespective the economic situation, however, each state has the duty to ensure implementation of minimum social rights. In Latvia, a stable and effective social insurance system has been created that includes social insurance system, State social benefit system, as well as social services and social assistance system. Other social security system services are also available to a person also in case if the person receives State pension. Consequently,

Latvia has fulfilled its duty to ensure the right of each person to social security at least at the minimum level.

Several measures have been implemented during the last few years to ameliorate living standard of pensioners by paying a particular attention to persons with small pension and a considerable length of service. Namely, in 2006, the State introduced and then improved regulations regarding additional payments to a State old age pension for each year of insurance starting from 31 December 1995. The Saeima emphasizes in particular the importance of these additional payments and indicate that the additional payments to the State old age pension, them having come into force on 1 January 2009, substitute examination of pensions.

Latvia undergoes economic recession. Moreover, Latvia has borrowed international loans. Latvia's Economic Stabilization and Growth Revival Programme adopted in December 2009 by the Saeima serves as the grounds for granting international funding. Consequently, Latvia uses not only national resources but also international aid to ensure social rights.

The Saeima admits that inclusion of economic, social and cultural rights into the Satversme restricts freedom of action of the legislator, and the latter does not have the right to resign from the duty to ensure effective implementation of social rights. Social rights should be ensured at least at the minimum level and, when implementing social rights, it is necessary to observe general legal principles.

When adopting the Contested Norm, the State has not resigned from effective implementation of social rights. Quite on contrary – social area and especially ensuring of State pensions shall be regarded as the priority. If compared to other spheres, State pensions have been influenced the least, namely, only their examination has been cancelled, whilst the amount has not been reduced.

**3.2.** According to the Saeima, there is no doubt that the restriction of social rights has been established by law, namely, it is established in Section 2 of 12 March 2009 Law “Amendments to the Law “On State Pensions””.

The Saeima indicates that the legitimate objective of the restriction is, first of all, to ensure the interests of the State budget. Functioning of the State social system is based on the principle of self-financing. From 2002, the State social insurance special

budget has accumulated resources, the amount of which exceeded 951 million lats as on 1 January 2009. At present, as incomes of the State special budget of social insurance reduce and expenses increase, the special budget undergoes deficit. As on 1 May 2009, the accumulated sum constituted only about 877 million lats. The Saeima holds that if incomes of the social insurance budget were not examined, the accumulated amount in the State special budget would be spent within a few years.

The Saeima indicates that the second objective of the restriction is implementation of the right of other persons to social security, as well as ensuring of the right to social security in the future.

The Saeima holds that the selected measures are appropriate for reaching the legitimate objective because budget resources are being saved by cancelling examination of pensions in 2009.

When assessing necessity of the established restriction, namely, considering whether the legitimate objective could be reached by other less restrictive measures, the Saeima indicates that other measures could only be cancelling of other norms favourable to pensioners, like additional payments to the pension, or elaboration of less favourable provisions for receiving pensions. Such measures, however, would restrict the rights of a person at a greater extent.

The Contested Norm shall be regarded as the most lenient measure also because the amount of pensions would reduce after examination due to the deflation. Cancelling examination of pensions permits avoiding such situation.

The Saeima holds that the Contested Norm complies with the principle of proportionality. When assessing proportionality of the restriction, it is necessary to take into consideration the common situation in the State and the fact that economic recession touches all groups of persons. Moreover, other groups of persons, for instance, employees of the public sector, have to count with even greater restrictions.

**3.3.** As to the compliance of the Contested Norm with the principle of a socially responsible State, the Saeima indicates that the Latvian State has created a comprehensive social insurance system and has no doubt fulfilled its duty to ensure each person the right to social security at least at the minimum level. Moreover, the

pensions system and living standard of pensions during the last few years have been improved considerably.

The opinion of the Applicant that the average amount of State pensions does not reach the subsistence level of the State is not grounded. According to the Saeima, the subsistence level in the State complies with the State guaranteed minimum income level. It has been established in 9 December 2003 of the Cabinet of Ministers Regulation No. 693 “Regulations Regarding the Guaranteed Minimum Income Level and the Amount of the Benefit for Ensuring the Guaranteed Minimum Income Level”. From 1 January 2009, the guaranteed minimum income level per month constitutes 37 lats. Consequently, the average amount of pensions and the minimum income level exceeds this sum. The minimum amount of pensions constitutes 45 lats to 76.50 lats depending on the insurance period (for old age pensions) and disability group (for disability pensions).

**3.4.** The Saeima also refers itself to the criteria established in Section 42 of the General Comment No 19 of the Committee on Economic, Social and Cultural Rights “The Right to Social Security (Art. 19)” that must be observed when reducing the amount of social security already established.

The Saeima indicates that the Contested Norm is an exceptional measure that is established in the circumstances of the economic crisis. Before adoption of the Draft Law, all possible alternatives were thoroughly considered. The National Tripartite Cooperation Council [*Nacionālā trīspusējās sadarbības padome*], the Employers’ Confederation of Latvia [*Latvijas Darba devēju konfederācija*], the Free Trade Union Confederation of Latvia [*Latvijas Brīvo arodbiedrību savienība*], and the Latvian Pensioners’ Federation [*Latvijas Pensionāru federācija*] have also provided their opinions on the Draft Law. When adopting the Contested Norm, the Saeima has not infringed the right of persons to social security at least at the minimum level, it has not acted unfairly regarding certain social groups, and it has balanced rights of different social groups.

**3.5.** When assessing compliance of the Contested Norm with the principle of legal security, the Saeima indicates that Para 15 of the Transitional Provision of the Law “On State Pensions” has been amended several times since the adoption of the

Law. Consequently, the procedure for examination of pensions has been changed several times; therefore it cannot be characterized as constant. Consequently, a person was not given grounds to confide that the procedure of examination of pensions would be constant. Quite on contrary – during economical recession a person was able to reasonably foresee that examination of pensions could be cancelled.

The principle of legal security is not absolute and the content thereof during economic crisis is not the same as during economic growth of a state. By referring to the case-law of the Lithuanian Constitutional Court, the Saeima emphasizes that in an extraordinary situation, including economic crisis, it is possible to provide for additional restriction to right of a person to social security. Such restriction, however, cannot be arbitrary. First of all, it should serve for ensuring important social and public interests and protection of other constitutional values. Second, it is necessary to observe the principle of proportionality, namely, it is necessary to preserve balance between the rights of a person to which a less favourable regulation is applied, and the social and public interests. Third, the restriction should be established only temporarily.

The Contested Norm is indispensable for ensuring substantial social and public interests. Moreover, the Norm complies with the principle of proportionality and it has been adopted only for a certain period of time, i.e. for 2009. Consequently, the Saeima holds that the Contested Norm complies with the preconditions, according to which restrictions of fundamental rights of a person can be established in an extraordinary situation. Consequently, the Contested Norm complies with the principle of legal security.

**3.6.** When answering the questions set by the Constitutional Court, the Saeima concretizes that the issue regarding planned activities in the area of State social insurance and also further indexation of State pensions has been discussed at the meeting of the Social Security Subcommittee of the National Tripartite Cooperation Council on 13 February 2009. At the meeting the Employers' Confederation of Latvia and the Free Trade Union Confederation of Latvia have objected the planned "freeze" of State pensions, namely, the cancelling of indexation of pensions in 2009. However, the Latvian Pensioner's Federation has suggested indexing State pensions that reach

600 lats. Moreover, opinions of the Employers' Confederation of Latvia, that of the Free Trade Union Confederation of Latvia or that of the Employers' Confederation of Latvia is not binding either on the members of the Saeima, them submitting the Draft Law, or the Saeima, it deciding on adoption of the Law.

The Draft Law "Amendments to the Law "On State Pensions"" (No. 1139/Lp9) was adopted on urgent basis on 12 March 2009 in accordance with requirements of the Saeima Rules of Procedure. Urgency was determined by the necessity to adopt a timely decision on the "freeze" of indexing of State pensions in 2009 since otherwise, based on the information provided by the State Social Insurance Agency, re-examination of pensions would be initiated already on 16 March with a view to execute indexation of 1 April 2009.

To substantiate urgency of adoption of the Draft Law, the Saeima also refers to the opinion of Silva Bendrāte expressed at the Saeima meeting of 12 March 2009 regarding the fact that the legislator is bound to adopt the amendments to fulfil liabilities undertaken by the executive power.

When answering the question regarding other considered alternatives to the Contested Norm, the Saeima indicates that the responsible commission, which is the Committee of Social and Labour Affairs, has received several suggestions to the Draft Law "Amendments to the Law "On State Pension"" (No. 1139/Lp9) after the first reading. None of the suggestions, however, were recognized as an alternative solution that would be efficient enough and would indicate an appropriate financing source. Moreover, the Saeima draws attention to the fact that the question regarding assessment of alternative solutions should be considered in a broader manner. Namely, assessment of alternative solutions could be made by the Cabinet of Ministers when drafting 18 December 2008 Declaration of intent that was lodged before the director of the International Monetary Fund because it is indicated in Section 24 (2) of the Declaration that pensions shall be frozen in 2009.

**4. The Summoned Person, the Cabinet of Ministers of the Republic of Latvia** (hereinafter – the Cabinet of Ministers) does not agree with the Applicants and holds that the Contested Norm does comply with Article 1 and Article 109 of the Satversme.

**4.1.** The Cabinet of Ministers indicates that, under Section 24 of the Declaration of Intent of Latvia and the International Monetary Fund of 18 December 2009, pensions shall be frozen in 2009. Consequently, for Latvia to be able to receive international loan, cancelling of indexation of State pensions in 2009 was provided as one of the measures to reduce expenses.

The Law “On State Budget for 2009” provided the total expenses for both times of indexing pensions in 2009 at the amount of 29 980 356 lats. Taking into account the fact that economical growth has ceased and even reduced, it was necessary to introduce amendments to the budget by providing for a considerable reduction of expenses. By means of the amendments to the Law “On State Budget for 2009” that came into force on 23 December 2008, expenses of the State special budget of social insurance spent on social benefits have been reduced by 59.0 million lats, 30.0 million lats of which were saved on the account of the cancelled pension indexation. The above mentioned amendments were elaborated based on prognosis with a view to ensure that budget deficit in 2009 would not exceed 5 percent of the gross domestic product.

Based on the aforesaid, the Cabinet of Ministers holds: if the Contested Norm were not adopted and expenses of the special budget of social insurance were not reviewed in accordance with the execution of the special budget of social insurance, as well as prognosis for budget incomes and planned expenses for the following years, the accumulated resources of the State special budget would be spent within a couple of years.

**4.2.** According to the Cabinet of Ministers, the Contested Norm complies with the right to social security guaranteed in Article 109 of the Satversme. Based on this opinion, the Cabinet of Ministers, first, refers to the social security system of the State that includes not only social insurance but also social benefits and services and the system of social assistance.

When adopting the Contested Norm, the State has not resigned from its duty to guarantee right to social security in old age, neither has it abandoned its determination to improve the social insurance system to ensure its compliance with the possibilities of the budget and not to deteriorate living conditions of persons. It has established

such level of social security for a certain period of time that complies with the possibilities of the State budget and would not deteriorate living conditions of persons. Consequently, the Cabinet of Ministers holds that the Contested Norm cannot be considered separately from Section 1 of the Law “Amendments to the law “On State Pensions”” that provides for annual examination of State pensions starting with 1 October 2010.

The Contested Norm has a legitimate objective, i.e. to ensure interests of the State budget during economic recession when it is necessary to reduce budget expenses and balance incomes and expenses of the special budget of State pensions, as well as to guarantee the right of other persons to social security under Section 116 of the Satversme.

The Cabinet of Ministers indicates that the right of a person to social security at the minimum level has not been infringed because, taking into account the economic situation of the State and the available financial resources, it is no more possible to ensure absolute implementation of social rights at the level equal to that during the economic growth period in order to ensure that pensioners would receive pensions in accordance with their social insurance contributions, provided that pensions are proportionally increased in accordance with inflation indices.

Adoption of the Contested Norm shall be regarded as necessary action, and the objective of it cannot be reached by other means that would restrict the rights of persons at a lesser extent. Since incomes into the special budget of social insurance constitute social insurance payments, it is possible to ensure savings of the budget only by reducing the amount of social security. The Contested Norm shall be regarded as compliant with its objective because the benefit gained by the society is greater than the detriment to the rights of a person considering the present situation in the State and restrictions established for other groups of the society.

The Cabinet of Ministers holds that the Contested Norm has a legitimate objective and measures for reaching the objective are proportional. Moreover, the comprehensive social security system of Latvia guarantees each person the right to social security at least at the minimum level.

**4.3.** As to compliance of the Contested Norm with the principle of legal security, the Cabinet of Ministers indicates that the principle protects rights already conferred to a person. Namely, a person has the right to rely that the rights that have been conferred by a legal act would remain for a certain period of time and can be exercised. In the case under review, the Contested Norm does not infringe any conferred rights of a person because, before coming into force of the Contested Norm, the legislator has established, in Section 26 and Para 15 of the Transitional Provisions of the Law “On State Pensions”, the procedure for examination of State pensions.

Although indexation of pensions is performed with the view to compensate impact of inflation to the amount of it, the term “pension examination” does not always mean increasing of the amount of pension. Under deflation circumstances, the actual consumer price index is less than “1”, therefore the amount of old age pensions could have been reduced in accordance with the previous regulation. Since the previous regulation did not provide for an automatic increase of old age pension at each time of examination thereof, this has not conferred persons the right to an increased old age pension.

Moreover, old age pensions is granted to a person and examined based on a decision of an official of the State Social Insurance Agency adopted in accordance with Section 28 (1) of the Law “On State Pensions”. Only upon issuing of this administrative act, a person is conferred identifiable and fixed right to an increased old age pension.

The Cabinet of Ministers indicate that a person has the right to rely on validity and stability of a legal norm on social rights only in case if the legal norm does not by itself depend on the economic situation (changes of consumer price, number of employed persons and the amount of social insurance payments into the State budget).

Consequently, the Contested Norm does not breach the principle of legal security because before the date of coming into force thereof Section 26 and Para 15 of the Transitional Provisions of the Law “On State Pensions” did not confer persons any fixed rights to an increased old age pension.

**4.4.** When assessing compliance of the Contested Norm with the principle of proportionality, the Cabinet of Ministers indicate that the Contested Norm has been

adopted taking into account the rapid economical recession in the State and macro economy prognosis for the following year provided by the Ministry of Finance. The prognoses show that in the near future no rapid economic recovery or increase of incomes into the social insurance budget is expected. The objective of the Contested Norm is not only ensuring of the interests of the State budget during economic recession when it is necessary to reduce budget expenses and balance incomes and expenses of the special budget of State pensions but also ensure the right of other persons to social security in accordance with Article 116 of the Satversme.

The Cabinet of Ministers holds that, when assessing whether the legislator has adopted the Contested Norm on reasonable basis, it is necessary to analyse not only allocation of resources of the special budget of State pensions but also the aggregate activities performed by the State with a view to guarantee the right to security to each member of the society during the period when financial resources are limited.

Selected measures to reach the above mentioned objectives are appropriate because, when adopting the Contested Norm, economy of budget resources is achieved and interests of all beneficiaries of social security have been balanced for the State to be able to guarantee social rights to all social risk groups at least at the minimum level by using the available financial resources. The Contested Norm is necessary for ensuring substantial interests of the society and the State, namely, to balance expenses and incomes of the State budget during economic crisis, as well as to protect the constitutional values established in Article 116 of the Satversme, i.e. rights of other persons. The Contested Norm can be regarded as proportional and compliant with its objective because the benefit gained by the society is greater than the detriment to the rights of a person considering the present situation in the State and restrictions established for other groups of the society.

**4.5.** The Cabinet of Ministers holds that the Contested Norm complies with the principle of a socially responsible State. The Contested Norm does not provide for substantial changes in the general social security system of Latvia, which at present guarantees each person the right to social security at least at the minimum level. It complies with the principle of social justice because it balances interests of different groups of the society and guarantees the right of each person to social security taking

into account the duty of the State to ensure payment of State pensions and provision of other social services in the future.

Moreover, the Contested Norm cancels old age pension examination in 2009, but it provides that starting with 2010 State pensions shall be examined on annual basis on 1 October taking into account the actual consumer price index. In addition to this, the legislator has provided for a new regulation that is more favourable to a person in the case if the above mentioned index is less than 1 by establishing that in this case State pensions shall not be examined. Consequently, the legislator has prevented reduction of the amount of State pensions in case of deflation in the result of examination thereof.

**5. The summoned person – the Ministry of Welfare of the Republic of Latvia** (hereinafter – the Ministry of Welfare) indicates that the sum of resources of the special budget of social insurance as on 1 January 2009 was 951 million lats. On 1 July of this year, the total sum reduced and constituted only 845.6 million lats, whilst, according to 27 June 2009 amendments to the Law “On the State Budget for 2009”, the planned amount of total remaining resources in the budget was 747.5 million lats.

The accumulated sum of the special budget of social insurance was transferred to the public treasury in the form of term deposits (on 2 July 2009 – 654.5 million lats) and night deposits. The following is provided in term deposit agreement: if it is necessary to provide pre-term payment of the term-deposit, then the State special budget of social insurance would not only receive the basic sum but also the accumulated interest for the actual part of the deposit.

Total expenses planned for pension indexation in 2009 constitutes 13.3 million lats, 11 million lats of which would be necessary for the indexation of 1 April, whilst 2.3 million lats – for the indexation of 1 October. Such saving is enough to ensure additional payments to the old age pension and that to the disability pension.

Since indexation of pensions in 2009 is cancelled, State pension is not increased as to its amount. However, from 1 January 2009, the additional payment for the insurance period is increased, the period starting from 1996 (70 santimes instead of 40 santimes), and in fact the amount of pension is increased.

The Ministry of Welfare indicates that Latvia has such social security system that guarantees each person the right to social security at least at the minimum level. Although the Contested Norm reduces the overall level of social security for persons, it still has a legitimate objective, appropriate for reaching the objective and is regarded as proportional.

The Contested Norm does not infringe already conferred rights of persons because the Law “On State Pensions” only provides for the procedure of examination of State old age pensions. Pension examination does not by itself mean increase of the amount of it. Consequently, the amended norms have not conferred persons the right to an increased pension. Moreover, only upon issuing of an administrative act on recalculation of pension a person is conferred identifiable and fixed right to an increased old age pension.

According to the Ministry of Welfare, the Contested Norm complies with the principle of proportionality. It has been adopted with a view to ensure the interests of the State budget during economic recession, as well as to implement the right of other persons to social security. The measures selected are appropriate for reaching the objective because they permit economy of budget resources. It is not possible to reach the objective of the Contested Norm by means of other measures that would restrict the rights of persons at a lesser extent because incomes of the special budget of social insurance are constituted by social insurance payments, whilst resources can only be saved in the result of reduction of the social security established for persons. Moreover, the benefit gained by the society is greater than the detriment to the rights of a person considering the present situation in the State and restrictions established for other groups of the society.

The Contested Norm complies with the principle of a socially responsible State because it provides for considerable changes in the comprehensive social security system of Latvia.

In the clarifications, the Ministry of Welfare indicates that cancelling of indexation of pensions shall be regarded as the most appropriate measure for reaching the objective.

Taking into account several conditions, cancelling of indexation of pensions in 2009 can be regarded as measure that restricts the rights of a person at the least possible extent. Disregarding economic recession, as from 1 January 2009, the additional payment to the old age pension has been increased from 40 santimes to 70 santimes for each year of insurance period (before 31 December 1995) and the additional payment can be received by all recipients of old-age pensions and disability pensions irrespective the amount of their pension. In the near future, the recipients of State pensions will be protected from the negative impact of deflation, the impact being caused by indexation of State pensions, namely, if the consumer price index is less than 1 (deflation), State pensions would not be examined (reduced).

The Ministry of Welfare provides the following information of regulatory framework regarding examination of pensions in other States:

- In Estonia, State pensions are being indexed each year taking into account changes in the consumer price index and social contributions. After having assessed financial possibilities of the State, it was decided to apply, as from 1 March 2009, a lower index to indexation of State pension by elaborating respective amendments to the legal acts. Consequently, the increase of 5 percent rather than that of 12 percent was applied to pensions in 2009;
- In Ireland, indexation of pension is not regulated by legal acts and it is performed in accordance with the financial possibilities of the current year. In 2009, pensions were indexed by 3 percent, whilst no decision have yet been adopted as to 2010;
- In France, State pensions are being indexed each year. In 2008, the index was 1.011 percent, whilst in 2009 – 1 percent;
- In Poland, pensions are indexed once per three years provided that the index is less than 10. They take into account inflation during the period from the previous indexation;
  - In Rumania, pensions are being indexed each year taking into account inflation rate and changes in the average wage rate, as well as financial possibilities of the State special budget of social insurance. In 2009, State pensions were indexed by 5 percent. At present they discuss the

necessity to change indexation procedure in 2010 and also apply the annual consumer price changes;

- In Portugal, State pensions are being indexed taking into account consumer changes in price and gross domestic product, which are expected to be of negative value in 2009. In order to prevent reduction of pension by applying a negative value when indexing pensions, they are discussing possible freezing of indexation of state pensions in 2010.

**6. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) holds that the Contested Norm complies with Article 1 and Article 109 of the Satversme.

According to the Ombudsman, the normative regulation regarding indexing of pensions has not been sufficiently stable and unchanging to be able to confide in it. The Ombudsman also draws attention to the fact that, at the time when the Contested Norm was adopted, funding for different fields in the State was reduced with a view to stabilise economic situation. In such circumstances persons did not have reason to rely on examination of pension according to the former procedure. The Ombudsman agrees with the opinion of the Saeima that under the circumstances of rapid economic recession, the fact that a person relies on constant examination of pensions shall not be regarded as reasonable. Consequently, the Ombudsman holds that cancelling of examination of pensions in 2009 complies with the principle of legal security.

The Ombudsman admits that by ceasing examination of pensions the right to social security guaranteed in Article 109 of the Satversme are infringed. Such restriction can be recognized as lawful if it has been established with a view to reach a legitimate objective and it is proportional with the objective. According to the Ombudsman, there is no dispute whether the restriction has been established by law. The Ombudsman also recognizes the aim to ensure interests of the State budget as well as the right of other persons to social security as legitimate. Likewise, the Ombudsman indicates: although cancelling of indexation would not solve all problems of budget balancing, such measure would still reduce expenses of special budget of pensions; therefore such measure is appropriate for reaching the legitimate objective.

The Ombudsman holds that, when establishing whether the restriction established in the Contested Norm complies with the principle of proportionality and that of a socially responsible State, it is necessary to assess whether there exist other measures for reaching the legitimate objective and whether the benefit gained by the society is greater than the restriction of the rights of a person.

The main aim of pension examination is compensation of the impact of inflation on the amount of a pension. Since the consumer price tends to cease increasing, the necessity to examine pensions can also be revised. The Ombudsman holds that it would not be possible to reach the legitimate objective by other alternative measures, for instance, examination of only those pensions who do not exceed a certain amount. Taking into account the short-term nature of the Contested Norm and reduction of inflation, indexation of pension shall be regarded as the most lenient measure for reaching the objective.

The Ombudsman also draws attention to the fact that the cur of remuneration for employed persons and increase of unemployment cause reduction of incomes and increase of expenses into the special budget of social insurance and ensure. Therefore it is requested for the State to take measures to balance incomes and expenses of the special budget of social insurance by thus insuring sustainability of the system.

**7. The summoned party – the Latvian Pensioners' Federation** (hereinafter – the Pensioners' Federation) maintains that the Contested Norm contradicts Article 1 and Article 109 of the Satversme.

The Pensioner's Federation maintains that, when adopting the Contested Norm, the principle of legal security has been breached because pensioners had confided that by means of pension indexation of 1 April 2009 losses incurred in the result of inflation in the period from 1 September 2008 to 1 March 2009 would be compensated. However, several days before examination of pensions the examination was cancelled in two readings held in one day, this decision providing for no lenient transition period.

The Pensioners' Federation informs that it has submitted to the Saeima a proposition to apply examination of pensions for the period from 1 September 2008 to

1 March 2009 only to those pensions that do not exceed 135 lats and to postpone examination of pensions planned on 1 October 2009 to 2010.

As to compliance of the Contested Norm with the principle of proportionality, the Pensioners' Federation indicate that these amendments infringe socially unprotected and poor groups of the society. Average pension that had to be examined on 1 April constituted 110 – 115 lats for recipients of old age pension, which is 64 – 67 percent of the subsistence level, 95 – 100 lats for recipients of disability pension, which constitutes 55 – 58 percent of the subsistence level, and 80 – 85 lats for recipients of pension for the loss of a breadwinner, which is 47 – 49 percent of the subsistence level. The Pensioners' Federation holds that incomes gained by the State – 13.3 million lats, are not commensurate with the detriment to these groups of persons.

The Pensioner's Federation also questions whether the situation in the State special budget of social insurance is that critical as described by the legislator. For instance, the Pensioners' Federations refers to "Report on Execution of the State Special Budget of Social Insurance on January 2009" issued by the State Social Insurance Agency (SSIA), wherein it is indicated that incomes of the SSIA into the special budget in January 2009 increased the planned incomes by 17.8 million lats (20.1 percent), which resulted in increase of accumulated funds from 951.1 million lats at the beginning of the year to 965.6 million lats in the end of January. The Pensioners' Federation also indicate that 45.3 million lats that are necessary for covering deficit of the special budget and examination of pensions in 2009 could be taken merely from incomes from the accumulated interests of the special budget of social insurance, which constitutes about 60 – 70 million lats.

Likewise, the Pensioners' Federation holds that the reference of the Saeima to the increase of unemployment rate as the reason for increase of expenses from the special budget of social insurance is ungrounded because redistribution of resources between special budget is prohibited by Section 28 (5) of the Law "On State Budget for 2009".

The Pensioners' Federation also maintains that the principle of the rule of law and the principle of separation of powers has also been breached. To name one of the objectives of the Contested Norm, the Saeima mentions the duty to fulfil a promise

given by the executive power to international financial institutions. The Pensioners' Federation maintains that the executive power as undertaken such international liabilities that fall under exclusive competence of the legislator only.

The Pensioners' Federation emphasizes in particular that the Contested Norm breaches the principle of a socially responsible state. The Pensioners' Federation maintains that the social security system does not guarantee the right to social security. For example, about 64 percent of pensioners receive pensions that are below the subsistence wage established in the State. According to the Pensioners' Federation, the reference of the Saeima to the fact that the State pensions exceed the guaranteed minimum income level is regarded as cynical and ungrounded. The latter, in fact, is another kind of social aid payment and it cannot be compared with State pensions received by persons based on their social insurance contributions. Taking into account the aforesaid, the Pensioners' Federation holds that upon adopting of the Contested Norm the principle of a socially responsible State has been breached.

According to what was indicated by the Pensioners' Federation, the statement that the Pensioner's Federation would have been provided its opinion regarding the Draft Law, as indicated by the Saeima in its reply, is not true.

Representatives of the Pensioners' Federation have met with representatives of the Ministry of Welfare to discuss the possibilities to increase additional payment to the State pensions and other issues, whilst they have never discussed cancelling of examination of pensions. Already in the meeting of 9 March 2009 of the Pensioners' Federation and the Ministry of Welfare, the Deputy State Secretary Inguss Allisks indicated that the Ministry of Welfare is consequent in its decision to support examination of pensions on 1 April, the pensions not exceeding 135 lats. Representatives of the government and those of the Saeima Committee of Social and Labour Affairs maintained before adoption of the Contested Norm that indexation on 1 April will surely take place. As to indexation of pensions on 1 October, the Pensioners' Federation suggested postponing of the indexation to 2010 or 2011. However, no particular draft law has ever been discussed.

**8. The summoned person – the Latvian Free Trade Union Confederation** (hereinafter – the Free Trade Union Confederation) indicates that it has not supported possible cancelling of indexation of pensions. As an alternative solution, they discussed the proposition of the Pensioners' Federation regarding examination, during the period from 1 September 2008 to 1 March 2009, of only those pensions that do not reach 135 lats and to postpone to 2010 the indexation planned on 1 October 2009. The above mentioned proposition has been discussed and approved at the meeting of 13 February 2009 of the Social Security Subcommittee of the National Tripartite Cooperation Council.

The Free Trade Union Confederation emphasizes that indexation of pensions is indispensable because it can considerably help preserving purchasing power of pensions, which would thus eliminate poverty risk among socially unprotected inhabitants.

**9. The summoned party – the Employers' Confederation of Latvia** indicate that it has not provided its opinion on the Draft Law "Amendments to the Law "On State Pensions" (No. 1139/Lp9). At the meeting of 13 February 2009 of the Social Security Subcommittee of the National Tripartite Cooperation Council, they examined "information of the Ministry of Welfare on the current events in the field of State social insurance". A representative of the Ministry has presented a short overview on the course of execution of the State special budget of social insurance in 2009 and January 2009 and provided operative information on the execution of the budget in February. Likewise, they have outlined problems in the social insurance budget that could emerge in 2009 both, in long term and in short term (2012 – 2015). Persons present were introduced with the suggestions elaborated by the Ministry of Welfare regarding changes in the field of social insurance benefits, the aim of these changes being not to allow deficit in special budget of social insurance, namely, to reduce contribution rates into the funded pensions scheme, to shorten the period of paying sick-list, to reduce parents' benefit for employed persons. Persons present were not informed on the Contested Norm.

**10.** The summoned persons – **the Faculty of Economics and Management of the University of Latvia** (hereinafter – the Faculty of Economics and Management) indicates the following: if pensions are not re-examined in 2009, they will remain at the previous level; however, in case of indexation (examination) of pensions, budget expenses would increase only by 1 percent. Since the planned deficit of pension budget is considerably higher, increase of expenses in the result of the indexation is of minor importance. This is increase of incomes that plays the major role in balancing expenses of and incomes into the pensions budget. This, in fact, can be achieved by different measures. Namely, by attracting funding from the State budget and financing of investors; by ceasing investing 2 percent of the obligatory State social insurance contributions into the State funded pensions scheme and transferring this amount to the pensions budget; by transferring the resources of the 2<sup>nd</sup> pillar of pensions to State securities and by making further transfers, as well as by ensuring the recipients of pensions the possibility to receive pensions in the form of promissory notes.

**11.** The summoned person – **the Stockholm School of Economics in Riga** (hereinafter – the School of Economics) maintains that the decision to cancel indexation of pensions has been adopted not only in Latvia but also in other European States experiencing economical crisis. During the crisis, the government made a choice between the political measures at its disposal.

The School of Economics also indicate that such government policy increases uncertainty about responsibility of the government to safeguard present and future generations of pensioners. However, such uncertainty might result in increased private accumulations because pensioners would be less sure about social benefits and the amount of pensions in the future.

**12.** The summoned person – **Morten Hansen, Director of the Department of Economics of the Stockholm School of Economics in Riga** admits that economics of Latvia has undergone serious recession. The index of decrease of economic activities in the second quarter of 2009 was 18.6 if compared to the same period of 2008. Such sudden fall in economic activities is reflected in the decline of production amounts and

trade between enterprises, which has resulted in decrease of collected enterprise income tax and value added tax. This has also resulted in an increased unemployment rate. The lower are incomes of the inhabitants, the fewer amounts of tax are collected by the State.

As incomes of the State decrease, expenses of the State rise. Namely, due to the increased unemployment rate, the State incurs extra expenses to disburse unemployment benefits, which deteriorates the situation in the State budget by increasing its deficit. Due to the economic recession, this deterioration is particularly felt in Latvia. The situation is made even worse by the fact that at the initial stage of economic growth period Latvia already had a small budget deficit.

Since it is hard for Latvia to provide funding for the budget deficit (i.e. to receive a loan for this purpose), it addressed the International Monetary Fund and the European Union in December 2008.

M. Hansen indicates that it is necessary to analyse the level of economics of Latvia that the State has attained if compared to previous periods. The results of such analysis show that indices of economic activity in the second quarter of 2009 have fallen to the level of 2005 at the same period. It is not possible to retain pensions at the level of 2009 if economics of the State has fallen to the level of 2005.

**13.** The summoned person – **Andris Strazds, a professor of the Stockholm School of Economics in Riga** indicate that at the present moment Latvia experiences a dramatic economic recession. As economics collapses, budget incomes also diminish. In order to avoid dramatic increase of the public debt and transfer of the burden of the present economic crisis to the future, which would hamper development of the State in the years to come, it is necessary for Latvia to reduce deficit of the State consolidated budget.

A. Strazds indicates that by means of the Contested Norm it is only partially possible to reach the legitimate objective, i.e. to balance incomes and expenses of the State consolidated budget, because total savings would constitute only 13.3 million lats in case if pensions are not examined, whilst it is necessary to reduce deficit of the State consolidated budget by several hundred million lats.

### **The Constitutional Court holds that:**

14. The Applicants ask the Constitutional Court to assess compliance of the Contested Norm with the principle of legal security and the principle of proportionality that follow from Article 1 of the Satversme. Likewise, the Applicant asks to assess compliance of the Contested Norm with the principle of a socially responsible State that follows from the aggregation of social rights guaranteed in the Satversme, as well as the right to social security enshrined in Article 109 of the Satversme.

Article 1 of the Satversme provides that Latvia is an independent democratic republic. From the term of a democratic republic included in this Article follows the duty of the State to observe, in its activities, a range of principles of a law-governed State, including the principle of proportionality and that of legal security [*see: Judgment of 10 June 1998 of the Constitutional Court in the case NO. 04-03(98), Concluding Part and Judgment of 24 March 2000 in the case No. 04-07(99), Para 3 of the Concluding Part*].

Each law-governed State shall recognize the principle of legal security. This principle provides that State institutions should act consistently in relation to normative acts issued by them and observe the principle of legal security that persons have the right to confide in based on a particular normative act [*see: Judgment of the Constitutional Court in the case No. 04-03(98), Concluding Part*].

The principle of proportionality is regarded as one of the most important fundamental principles of a democratic and law-governed State. It provides in a general manner that activities of the State power that restrict rights and legal interests of a person and the objective that serves for the State power as means for implementing the activities should be reasonably balanced (*see: Decision 27 February 2007 by the Constitutional Court on termination of the case No. 2006-41-01, Para 11*). According to the Applicants, the restriction established by the Contested Norm to the right of a person to social insurance is not proportional with the legitimate objective. Therefore the Constitutional Court holds that arguments of the Applicants regarding non-compliance of the Contested Norm with the principle of proportionality shall be

examined by assessing compliance of the norm with the right to social security enshrined in Article 109 of the Satversme.

The Latvian constitutional legislator has determined several social rights in the Satversme. Thus the legislator has determined that Latvia is a socially responsible State, namely, such a State, which is trying to potentially extensively realize social justice in legislature, administration and court adjudgment. The aim of a socially responsible state is to level the most vital social public difference and to ensure for every group of residents adequate living standard (*see: Judgment of 2 November 2006 by the Constitutional Court in the case No. 2006-07-01, Para 18*).

The content of a socially responsible state is broader if compared to the content of any particular social right; however, the right to social security is one of the most characteristic elements of this principle (*see, e.g.: Kovaļevska A. Sociāli atbildīgas valsts princips. Jurista Vārds, 26 August 2008, No.32, pp. 6–13*). Therefore the Constitutional Court holds that arguments of the Applicants regarding non-compliance of the Contested Norm with the principle of a socially responsible State shall also be assessed in conjunction with the right to social security enshrined in Article 109 of the Satversme.

**15.** Article 109 of the Satversme provides the following: „ Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

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

The right to social security provides for the duty of the State to create an effective, fair and sustainable social security system. Since the right to social security pertain to social right, the State enjoys freedom of action when selecting methods and mechanism to apply when implementing these rights (*see, e.g.: Judgment of 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, Concluding Part*).

The content of the right to social security is concretized in laws regulating the Latvian social security system, and in particular in the Law “On Social Security”. One

of the most essential elements of social security system is social insurance, which is regulated in details in the Law “On State Social Insurance” and the Law “On State Pensions” (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 1 of the Concluding Part and Judgment of 11 November 2005 in the case No. 2005-08-01, Para 6.1*).

The Constitutional Court admits that the amount of social security guaranteed to a person is impacted by the economic situation of the state and available resources. The Constitutional Court, however, has already established the following: “If the legislator, making use of its authority in creation and realization of the social policy as well as in determination of the amount of social rights, has incorporated social rights into the Satversme and has specified the contents of these rights in laws, then they have turned into the rights of an individual. A person may request realization of these rights from the state as well as protect his/her rights at the court” (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 2 of the Concluding Part*). Consequently, if the legislator has decided to guarantee a certain amount of social security by law, a person is conferred subjective rights to it.

Section 26 and Para 15 of the Transitional Provisions of the Law “On State Pensions” provided for the procedure of examination of pensions (which is also called as indexation of pensions) since adoption of the norm on 2 November 1995. The procedure has been amended several times, however the institute of examination of pensions has always existed. Also the present wording of the law provides for examination of pensions. Namely, Section 26 of the Law “On State Pensions” provides that State pensions shall be examined on annual basis on 1 October taking into account the actual consumer price index. The Contested Norm suspends examination of pensions for a certain period of time by providing that State pensions shall not be examined in 2009. Consequently, the next examination of pensions is planned to take place on 1 October 2010. Consequently, the Contested Norm serves as an exception in the State social security system (*for comparison, see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 2 of the Concluding Part*).

It should also be indicated that the duty to regularly examine State pensions follows from international law. For instance, the UN Committee on Economic, Social

and Cultural Rights that was founded with the purpose to monitor implementation of the UN International Covenant on Economic, Social and Cultural Rights has indicated that States parties must monitor on regular basis whether the amount of social security is sufficient to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights (*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 22*).

The duty to examine pensions is also included in certain international documents – Article 65 of the European Code of Social Security and Article 4 of the Additional Protocol of the European Social Charter. Latvia has already signed the above mentioned documents, though not yet ratified.

Likewise, to compare social protection systems effective in 27 Members States of the European Union as on 1 January 2009, it can be concluded that principles applicable when examining pensions in different states may differ. However, old age pensions and disability pensions are regularly examined in all the Member States (*see: European Commission, Mutual Information System on Social Protection, Comparative Tables on Social Protection [http://ec.europa.eu/employment\\_social/missoc/db/public/compareTables.do](http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do), consulted on 22.10.2009.*).

**The Contested norm cancels, for a certain period of time, the right of persons to examination of pensions by the State; consequently, it restricts the right to social security guaranteed in Article 109 of the Satversme.**

**16.** In the context of provisions of the right to social security, the Constitutional Court has reiterated that restriction of the fundamental rights can only be established by law or based on a law, it must have a reasonable and legitimate objective, as well as it must comply with the principle of proportionality (*see: Judgment of 6 April 2005 by the Constitutional Court in the case No. 2004-21-01, Para 10 and Judgment of 9 October 2007 in the case No. 2007-04-03, Para 26*).

17. In the case under review there is no dispute whether the restriction has been provided by law. However, it is questioned whether the Law “Amendments to the Law “On State Pensions” that contains the Norm has been adopted according to proper procedure.

17.1. The Draft Law “Amendments to the Law “On State Pension” (No. 1139/Lp9) was submitted to the Saeima on 11 March 2009. It has been adopted on urgent basis. The Draft Law was reviewed in both readings on 12 May 2009, whilst the term for submitting suggestions for the second reading constituted 15 minutes.

It has been established in the case-law of the Constitutional Court that the fact whether a law has been adopted according to proper proceedings shall be examined in the light of Article 21 of the Satversme. The Article incorporates the principle that the Saeima itself makes decisions on several issues (*see: Judgment of 13 July 1998 by the Constitutional Court in the case No 03-04(98), Para 3 of the Concluding Part, Judgment of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 5 of the Concluding Part and Judgment of 16 December 2008 in the case No. 2008-09-0106, Apra 6.1*) “The objective of the Saeima Rules of Procedure (hereinafter – the Rules of Procedure) is to determine such a procedure of activities that, while realising the will of the majority, the Rules guarantee the rights of the minority and ensure the efficiency of the Saeima performance [*Judgment of 13 July 1998 by the Constitutional Court in the case No. 03-04(98), Para 3 of the Concluding Part*].

The first sentence of the first part of Section 90 of the Rules of Procedure and the second part of the same Article provide: “If a draft law has been adopted at the first reading, the Saeima shall rule (Article 54) on the deadline by which proposals may be submitted. The time limit for submitting proposals shall not be shorter than five days except in cases when the draft law is recognized as urgent.” The Rules of Procedure do not provide for the minimum term for submitting suggestions for the second reading in case of a draft law is recognized as urgent.

Although no minimum term for submitting suggestions in the particular situation has not been *expressis verbis* established in the Rules of Procedure, it should be taken into account, however, that in such a case the Rules of Procedure provide for

the right of each member of the Saeima to submit suggestions to the draft law for the second reading. Consequently, the term established by the Saeima for submission of suggestions to an urgent draft law should be of the length that would provide a member of the Saeima willing to submit one the possibility to prepare it in accordance with requirements of the Rules of Procedure.

In the particular case, it should be taken into account that the above mentioned Draft Law had only two sections. As it can be concluded from the summary of suggestions submitted for the second reading, the term was sufficient for the members of the Saeima and the Saeima Legal Bureau to be able to prepare and submit their suggestions.

Consequently, in the case particular case, the timeframe for submitting suggestions, i.e. 15 minutes shall not be regarded as breach of the Rules of Procedure.

**17.2.** It is indicated in the reply of the Saeima that the Employers' Confederation of Latvia, the Free Trade Union Confederation and the Pensioner's Federation have provided their opinions on the Draft Law.

However, it is not testified in the case materials that consultations on the Contested Norm have ever been organized. At 13 February 2009 meeting of the Social Security Subcommittee of the National Tripartite Cooperation Council, activities in the field of State social insurance have been discussed; likewise they considered issues regarding examination of State pensions. At the meeting, the organization mentioned by the Saeima in its reply have expressed their support for further examination of pensions in accordance with the effective legal acts (*see: case materials, Vol. 1, pp. 121*).

Neither the Rules of Procedure, nor any other law provides that the Saeima should hear, according to special proceedings, any particular organization or persons when adopting norms regarding examination of pensions or that a negative opinion of such organizations or persons would prohibit the legislator to adopt particular norms.

However, it should be indicated that in a democratic State involvement of concerned groups of society in the decision-making process is an essential mechanism for facilitating participation of a civil society. It would be of particular importance to hear the opinion of the respective groups of the society in the cases when the

normative act to be adopted restricts their fundamental rights guaranteed by the Satversme.

The Constitutional Court has concluded the following: “The principle of the rule of law requires reaching as fair a balance between the controversial interests of the society as possible. One of the ways of implementation of this principle is to ensure observation of participation of persons in the adoption of different decisions and creation of the political will. [...] The sense of participation does not lie in the fact that the viewpoint of any group of persons is binding on the legislator, but in adopting of objective decisions and reaching balance of different interests. One of the aims of participation is to ensure that the addressees of the decision support the chosen solution and thus are motivated to implement it” (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 7 of the Concluding Part*).

It should also be pointed out that in a democratic state the process of adopting a normative act restricting the fundamental rights established in the Satversme should be of the nature to make the society trust into its lawfulness. In the context of preparing and adopting of the Contested Norm, any urgency and the fact that the society has not been informed in advance on the respective amendments to the Law are not positive phenomena. The Constitutional Court holds that the above mentioned circumstances infringed trust of the society into a prior thorough consideration of the fact that adoption of the Contested Norm requires restriction of the fundamental rights guaranteed in the Satversme.

**The above mentioned considerations, however, do not change the fact that the restriction of the right to social security has been established by law.**

**18.** The Saeima indicates that the Contested Norm has two mutually related objectives – to balance incomes and expenses of the State special budget of social security and to exercise the right of persons to social security by guaranteeing exercise of these rights in the future.

**18.1.** The Constitutional Court has already recognized the objective to balance incomes and expenses of the special budget of State pensions as legitimate provided

that the fundamental principle of the special budget, which is the principle of self-financing, is observed. Namely, the legal regulation in the sector of social insurance determines a close link between the down payments and expenses. The funds of the special State pension budget mainly consist of mandatory and voluntary payments to pension insurance. Besides, it is essential to avoid shortage of the State pension special budget. Moreover, it is necessary to ensure the possibility of pension payment in future, when the demographic situation may possibly be different (*see: Judgment of 11 November 2005 by the Constitutional Court in the case No. 2005-08-01, Para 8*).

In 2009, the State special budget of social insurance shows reduction of incomes and increase of necessary expenses. The situation in the State special budget of social insurance is closely related with the general economic situation in the State, which at the beginning of 2009 was mainly characterized by the decline in economic activities, reduction of wages and increase of the unemployment rate. The above mentioned circumstances determined decrease of the amount of social insurance contribution and also caused additional expenses in the special budget of employment. Taking into account the aforesaid, the amendments of 16 June 2009 into the Law “On State Budget for 2009” provided for a deficit at the amount of 206.1 million lats in the State special budget on social insurance. Consequently, the accumulated funds of the special budget of social insurance, which constituted 951 million lats on 1 January 2009, was planned to be only 744.5 million lats at the end of the year. The aforesaid evidences a considerable tension in the State special budget of social insurance and the necessity to balance incomes and expenses of the budget.

Particularly in the context of the principle of self-financing of the special budget of social insurance, balancing of incomes and expenses of the budget can be linked with the possibility to exercise the right of other persons to social security. Reduction of the amount of insurance contributions, establishment of budgeted deficit and reduction of accumulated funds suggests reducing expenses of the special budget of social insurance. Consequently, preservation of social security at a constant level for all groups of persons is rather problematic. Likewise, balancing of the special budget of social insurance shall be regarded as the grounds for guaranteeing sustainability of the budget and confidence into the fact that the right of the following generations to social

security would be realized. Consequently, the aim to guarantee the right of other persons to social security as guaranteed by the Satversme shall be regarded as legitimate.

**18.2.** The Applicants maintain that the objective to fulfil liabilities undertaken by the Cabinet of Ministers in front of international creditors cannot be regarded as legitimate because adoption of such a decision falls into the competence of the legislator rather than that of the government.

Although the Saeima has not indicated the objective of the Contested Norm, its statements during the discussions show that this was one of the factors that influenced adoption of the Norm. For instance, at the Saeima meeting, when discussing adoption of the Draft Law “Amendments to the Law “On State Pensions” (No. 1139/Lp9) at the first reading, S. Bendrāte, a member of the Saeima and a representative of the responsible committee, which is the Committee of Social and Labour Affairs, indicated that such a norm had to be adopted by the previous government already. “[..] This is not our duty to conjure an illusion in the society and here, in the Saeima that we are able to execute the agreement concluded by the previous government with the creditors for the sum that has never been planned in the budget, and this sum constituted 11 million lats. This issue should not be left to the following Cabinet of Ministers and left unsettled.” (*Transcript of the meeting of the Saeima of 12 March 2009*).

The Saeima agrees to the Applicants that the aim to fulfil international liabilities undertaken by the Cabinet of Ministers, prided that there are no other legitimate objectives, could not be recognized as the grounds for restricting the fundamental rights established in the Satversme.

**19.** In order to find out whether the restriction of the right to social security established by the Contested Norm is proportional, it is first of all necessary to assess, first, whether the measures selected by the legislator are appropriate for reaching the legitimate objective, second, whether there exist any other “more lenient” measures for reaching the objective, and third, whether the benefit gained by the society is greater than the detriment to a person.

20. According to the information provided by the Ministry of Welfare when adopting the Contested Norm, it was not necessary to make payments from the State special budget of social insurance at the amount of 13.3 million lats (*see: case materials, Vol. 1, pp. 77 – 78*). Taking into account the amount of the State special budget of social insurance of this year (1263 million lats), the budget deficit (206 million lats) and the accumulated funds into the special budget of social insurance at the end of the year (744.5 million lats) as established in the amendments of 16 June 2009 into the Law “On State Pensions for 2009”, such economy cannot be recognized as considerable. Namely, the Contested Norm would not reach the objective set unless it is the only measure available for balancing incomes and expenses of the State special budget of social insurance.

However, the Contested Norm should be assessed in the context of the general situation in the economics of the State and other measures performed with the purpose to balance incomes and expenses of the State special budget of social insurance. As it is indicated in the annotation to the Draft Law “Amendments to the Law “On State Pensions”” (No. 1139/Lp9), it was elaborated in relation with the Latvia’s Economic Stabilization and Growth Revival programme accepted by the Saeima on 12 December 2008 when adopting amendments to the State budget (*see: case materials, Vol. 1, pp. 58*). Since the Contested Norm is only one of the elements out of a range of measures, the Constitutional Court regards it as one of the instruments, the aim of which is reduction of expenses (respectively, balancing of incomes and expenses) of the State special budget of social insurance.

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

21. When analysing whether there exist other more lenient measures for reaching the legitimate objective, in the case under review the Constitutional Court must take into account limits of assessment determined by the character of social rights. The Constitutional Court has already indicated in its case-law that usually the political dimension of the decisions of the state and especially its legislator in realization of

social rights is important, namely, decisions in this sector are usually adopted more on the basis of political and not legal reasons; and they in their turn depend on the conception of the legislator about the principles of rendering state social services, economical situation of the state and the public – or its part – special necessity for aid or support of the state (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 16*).

When selecting the most appropriate measure for reaching the legitimate objective, the legislator enjoys a broad freedom of action in the field of social rights. However, the Constitutional Court must investigate whether the legislator has assessed what could be the most appropriate measure for reaching the legitimate objective and whether the legislator has or has not breached, by such a choice, the limits of the freedom of action conferred thereto.

At the Saeima discussions, reduction of the amount of State pensions was suggested as one of alternative solutions to cancelling of examination of pensions. A member of the Saeima Solvita Āboltiņa, when discussing adoption of the Draft Law at the first reading, indicated the following: “[..] We are still in a “free fall” and we would still have to make even more difficult decisions. At present we take this hard decision with the view not to take away 12 lats later instead of the present 6 lats. That is why it was written in the declaration of this government that we will not reduce pensions. [..] Now we are doing our best not to take money away.” (*Transcript of the Meeting of the Saeima of 12 March 2009*).

The Ministry of Welfare indicates that other measures that would permit reaching the legitimate objective could turn out to be even less favourable to persons or even cause a range of negative socio-economical consequences. Since the special budget of social insurance is formed by social insurance contributions, then savings in it can be accumulated either at the expense of increase of social insurance contribution rate or reduction of the amount of social security to persons. Increase of social contributions rate would constitute a great risk of a range of negative consequences, namely, it would reduce incomes of employees, whilst persons with low incomes would be even more subject to poverty risk; this would also advance illegal employment and undeclared labour, would negatively impact the possibility to

increase wages of employees and restrict the possibilities of employers to invest to development of the company (*see: case materials, Vol. 2, pp. 20 – 21*).

The persons summoned by the Constitutional Court have also indicated to alternative solutions to the Contested Norm. M. Hansen maintains that it would be possible cancel examination of pensions only in the case if this would ensure even greater budget deficit or budget expenses would be even more reduced, or budget incomes would be increased at the expense of increased tax rate. He rejects the above mentioned alternatives since they are less favourable if compared with the Contested Norm (*see: case materials, Vol. 2, pp. 60 – 61*). However, the School of Economics indicates that the legislator would have succeeded to reach the same effect as the one guaranteed by the Contested Norm if pensions were taxed. The School of Economics holds that the legislator, when adopting the Contested Norm, has made a political choice between the available economical instrument (*see: case materials, Vol. 2, pp. 62*).

In this case, it is neither possible to provide for a more lenient restriction because examination of pensions on 1 April 2009 would apply only to those persons who receive pension not exceeding 135 lats. Moreover, such examination would be performed taking into account only the consumer price index but interest of the actual increase of the wage subject to social contributions. Consequently, as to a more lenient solution, this could be only implementation of pension examination, namely, rejection of the Contested Norm.

Suggestions provided during 12 March 2009 adoption procedure of the Law “On Amendments to the Law “On State Pensions”” provided only for exclusion of the Contested Norm from the Draft Law.

Consequently, it can be concluded that possible alternative solutions provide either rejection of the Contested Norm or adoption of a less favourable regulation. Under the present circumstances, the Constitutional Court has no reason to recognize the existence of any other more lenient measure for reaching of the legitimate objective.

**Consequently, when selecting the most appropriate measure for reaching the legitimate objective, the legislator has not exceeded the limits of the freedom of action conferred thereto.**

22. Finally, the Constitutional Court has to assess whether the benefit gained by the society is greater than the detriment to a person.

22.1. The Contested Norm provided for cancelling of examination of pensions on 1 April 2009 and 1 October 2009. According to the information provided by the Ministry of Welfare, examination of pensions would apply to 228 387 pensioners, which constitutes 40.6 percent of the total number of recipients of State pensions. Depending on the amount of the pension, the increase of pension would constitute: 2.16 lats for pensions of 45 lats, 4.79 lats for pensions of 100 lats and 6.47 lats for pensions of 135 lats (*see: case materials, Vol. 1, pp. 78*).

Examination of pensions on 1 October 2009 would apply to 334 036 pensioners, which is 59.4 percent of the total number of recipients of State pensions. In the result of examination of pensions, pensions that do not exceed 135 lats would not be increased, the increase of pensions of 136 lats would constitute 1.86bn lats, that of 180 lats – 2.47 lats and that of 300 lats – 4.11 lats (*see: case materials, Vol. 1, pp. 78*).

When assessing the amount of the detriment to a recipient of a State pension, the Saeima draws attention to different measures carried out with a view to ameliorate living standards of pensioners by particularly emphasizing persons receiving small pension and having a considerable length of service. For instance, in 2006 the amount of minimum pension for the loss of a breadwinner has been increased, the minimum old age pension for persons whose length of service increases 40 years has been increased, an extraordinary benefit to a pensioner outlived the spouse has been introduced. In 2007, it was made possible for certain categories of persons to request State pension five years prior to the retirement age, and in 2008 the possibilities of prior retirement were even more broadened (*see: case materials, Vol. 1, pp. 27 – 28*).

Since 2006, the regulatory framework regarding additional payments to the State pension for each year of insurance accumulated before 31 December 1995 has been introduced and gradually broadened. As from 1 January 2006, the additional

payment to the State pension, the payment constituting 19 santimes, provided that the insurance period is no less than 30 years and the amount of the pension does not exceed 105 lats. As from 1 January 2007, the additional payment has also been granted to those recipients of old age pension if the pension does not exceed 135 lats. Generally the requirement of 30 years of insurance period was preserved, however this requirement constituted only 25 years for persons who have worked in especially unhealthy and especially difficult conditions or unhealthy and difficult conditions. As from 1 June 2008, the additional payment to an old age pension constituted 40 santimes for each year of insurance provided that the pension does not exceed 225 lats, whilst the requirement regarding the insurance period was repealed. Besides, as from 1 January 2009, this additional payment was provided for all old age pensions and disability pensions disregarding the amount of the pension and the insurance term; moreover, the amount of the additional payment was increased up to 70 santimes for each year of the insurance period. In the result of this, the average additional payment constituted 24.16 lats to an old age pension and 11.55 lats to a disability pension (*see: case materials, Vol. 1, pp. 27 – 29*).

Likewise the regulatory framework regarding examination of pensions has been broadened. Since 2002 when a new procedure for examination of pensions was introduced, the examination of pensions, the amount of which does not exceed threefold the State social security benefit, was made twice a year but once per year. These pensions were examined both, according to the actual consumer price index and the interest of actual increase of the wage subject to social insurance contributions. Moreover, the amount of the interest regarding the latter has been increased from 25 percent to 50 percent. In 2008 it was established that pensions that do not exceed 150 lats rather than pensions that do not exceed threefold the State social security benefit (113 lats) shall be examined according to the above mentioned procedure. Pensions that exceed threefold the State social security benefit (but in 2008 – 150 lats) and do not exceed it fivefold have always been examined annually in accordance with the actual consumer price index. In 2008, pensions below 150 lats were increased by 11.95 lats in April and in average by 18.31 lats in October. Pensions that did not

exceed 150 lats were increased by 25.55 lats in the result of the examination (*see: case materials, Vol. 1, pp. 21*).

The above mentioned measures ensured increase of the average State pension, which was particularly noticeable during the last year. According to the statistical data available in the home page of the SSIA, on 1 January 2005 the average amount of all kinds of State pensions was 75.33 lats, on 1 January 2006 – 84.39 lats, on 1 January 2007 – 99.82 lats, on 1 January 2008 – 119.34 lats, whilst on 1 January 2009 – 166.72 lats (*see: <http://www.vsaa.lv/vsaa/content/?lng=lv&cat=651>, consulted on 20.11.2009*). Respectively, in 2008, which is the period when economical situation in the State started deteriorating, the average amount of State pensions increased by 39.7 percent.

In its reply, the Saeima emphasizes the significance of the additional payments for the insurance period and maintains that these payments, them being preserved at the amount as determined in 2009, in fact replace examination of pensions. The Constitutional Court does not share this opinion because the above mentioned regulation has another aim. The aim of additional payments is to increase pensions for those pensioners who have entirely or generally accumulated the insurance period before 1996, when the Law “On State Pensions” has not yet been adopted. The aim of examination of pensions, however, is preservation of purchasing power of pensions. It cannot be related with the insurance period or the date of granting of the pension. Not all persons having the right to examination of pensions have the right to the above mentioned additional payment at the respective amount. However, it should be admitted that the increase of the amount of the additional payment has considerably reduced the impact of the infringement caused by the Contested Norm on a great part of recipients of State pensions.

When assessing infringement of the rights of recipients of State pensions, it should be emphasized that the Contested Norm has not diminished the amount of the pension already granted to persons. It should also be noted that the Contested Norm has neither restricted such social guarantee lawfully granted to a person when making State social insurance contributions. The Contested Norm restricts the right of persons

to regular examination of the purchasing power of pensions in accordance with the consumer price growth.

The gravity of the infringement caused by the Contested Norm to recipients of State pensions is reduced by the fact that the restriction of the right to social restriction has been established only for a definite period of time, which is the year 2009. It is planned to resume examination of State pensions in summer 2010.

According to the data available at the home page of the Central Statistical Bureau, the consumer price index started reducing as from April 2009 and it still continues falling. Likewise, the amount of the subsistence wage calculated by the Central Statistical Bureau has reduced since April 2009 (*see: <http://www.csb.gov.lv/csp/content/?cat=602>, consulted on 20.11.2009*). Consequently, the consequences of the Contested Norm are less felt.

**22.2.** Along with the detriment to recipients of State pensions, it is also necessary to assess the benefit that the society gains in the result of the particular restriction of rights.

Savings ensured by the cancelling of examination of pensions on 1 April 2009 constitute 11 million lats, whilst that of 1 October 2009 – 2.3 million lats. Consequently, the total sum of economy ensured by adoption of the Contested Norm constitutes 13.3 million lats (*see: case materials, Vol., 1, pp. 77 – 78*). However, as it has already been concluded, this gain cannot be considered separately from the common economic situation of the State and other measures meant for stabilization of the economy.

As the Cabinet of Ministers has indicated to the Saeima, the reduction of incomes into the State special budget constituted 453.0 million lats or 26.3 percent in the result of amendments introduced to the Law “On State Budget for 2009” if compared to the initial plan for 2009. The cut of expenses from the State special budget was 62.8 million lats of 4.1 percent if compared to the initial plan for 2009, which reduced the remainder of resources of the State special budget by 216.2 million lats (*see: case materials, Vol. 1, pp. 133*).

According to reports of the State Treasury, total expenses of the State special budget of social insurance in the first half of 2009 constituted 752.7 million lats. The

expenses have increased by 208.0 million lats if compared with the first half of 2008 (544.7 million lats). However, incomes of the State special budget of social insurance in the first half of 2009 was 647.4 million lats and, compared to the first half of 2008 (704.3 million lats) they have reduced by 56.9 million lats (*see: case materials, Vol. 1, pp. 134*).

It is possible to agree with the opinion of the Cabinet of Ministers that it is necessary to review expenses because of the rapid fall in incomes. The principle of functioning of the special budget of social insurance is self-financing, which means that incomes of the State special budget of social insurance are basically formed by social insurance contributions made by present employees of the national economy. Consequently, budget incomes at the current year depend on the number of payers and the wage subject to social insurance contributions. However, expenses of the special budget of social insurance are being planned based on the prognosticated number of social insurance services and amounts of the services in the respective year.

The remainder of funds in the State special budget of social contributions during the period of demographic increase are accumulated in the account of the State special budget of social insurance. The Cabinet of Ministers indicates that the accumulated remainder of funds will be used for ensuring functions of social insurance system during the period of demographic fall.

According to the reviews of the State Treasury, the remainder of the State special budget of social insurance on 1 August of this year constituted 797.6 lats. If compared with 1 January of this year (951.1 million lats), it has decreased by 153.5 million lats (*see: case materials, Vol. 1, pp. 134*). However, under 16 June 2009 amendments to the Law “On State Budget for 2009”, the planned decrease of the remainder of the State special budget of social insurance in 2009 is 206.6 million lats, which would give the remainder of 744.5 million lats at the end of the year. Moreover, expenses of the special budget constantly increase due to different factors, for instance, fast increase of wages during the previous years, in the result of which pensions and benefits have also increased, increase of the number of beneficiaries of certain services, introduction of new services and the high unemployment rate.

Likewise, to assess the situation in the State special budget of social insurance, it is necessary to take into account the common economical situation of the State because it has a direct impact on incomes and expenses of the special budget. For instance, the number of the unemployed has considerably increased. According to the data of the Central Statistical Bureau, the number of the unemployed among economically active inhabitants has increased from 6.3 percent in the second quarter of 2008 to 16.7 percent in the second quarter of 2009 (*see: <http://www.csb.lv/csp/content/?cat=610>, consulted on 20.11.2009*). In the first half of 2009, economic activities decreased and Gross Domestic Product fell by more than 18 percent if compared to the same period of the previous year (*see: <http://www.csb.lv/csp/content/?cat=2148>, consulted on 20.11.2009*). The summoned person M. Hansen indicates that in the second quarter of 2009 economic activities have fallen to the level of the second quarter of 2005 (*see: case materials, Vol. 2, pp. 60*).

The World Bank and the International Monetary fund have drawn attention to the fact that the system of examination of pensions that provides for application of 50 percent of the actual increase of the wage subject to social insurance contributions in addition to the actual changes of the consumer price index, as it was established before the Contested Norm was adopted, was too generous and implied fiscal risks in short and medium term (*see: „Background Report Bank-Fund Technical Assistance Mission on Public Expenditure Review and Public Finance Management Issues June 11-22, 2007”, case materials, Vol. 2, pp. 42*).

According to the information provided by the Ministry of Welfare, several neighbouring states have also decided either to “freeze” pensions or to reduce them. For instance, Sweden has planned to apply a negative index when examining pensions, which would reduce the amount of pensions. Lithuania that does not have a special regulatory framework for indexation of State pensions but still performs it on regular basis, has planned to reduce pensions by 5 – 10 percent after having assessed possibilities of the current budget. Finland applies the subsistence wage minimum when examining State pensions. Since the index has fallen, the State has started elaborating a temporary regulation, the aim of which is “freezing” of indexation of

pensions in 2010. Also in the recession period in the 90-s Finland “froze” indexation of State pensions for one year (*see: case materials, Vol. 2, pp. 22*).

**22.3.** The Constitutional Court has reiterated that social rights, including those to social insurance, are very important, but at the same time they are special, diverse human rights, as realization of those rights depends on the economic situation and resources of every state (*see: Judgment of 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, Concluding Part*).

The State has not only the right but also the duty to coordinate its liabilities in the field of social rights with its economic possibilities. Otherwise execution of other duties of the State could be hampered, including implementation of other social rights. It should also be emphasized that the State has the duty to ensure sustainability of pensions system by guaranteeing that the right to social security would also be exercised in the following generations. The duty to develop a sustainable social security system is the basis of the right to social security that follows from the principle of a socially responsible State.

Consequently, the Constitutional Court concludes that, as the economic situation in the State deteriorates, the State could no more guarantee the same amount of social security as it was provided during the period of economic growth. Otherwise the ability of the State to implement the right to social security and to guarantee sustainability of social security system would be threatened. Under such circumstances, cancelling of examination of pensions shall be regarded as the most appropriate measure for solving the above mentioned problems.

**When comparing the necessity of the society in the Contested Norm and the right of a person to social security, it can be concluded that the benefit gained by the society by the Contested Norm is greater than the infringement of rights of a person.**

**Consequently, the Contested Norm shall be regarded as appropriate for reaching the legitimate objective and complies with the right to social security enshrined in Article 109 of the Satversme.**

23. The Applicant holds that the Contested Norm does not comply with the principle of legal security.

The principle of legitimate trust also determines that – as regards the issued normative acts - the state institutions shall be consistent in their activities and observe trust in law, which may arise to persons in accordance with a certain legal norm. In his/her turn the individual – in conformity with this principle – may rely on constancy and immutability of the legal norm, passed in accordance with the law. He may positively plan his future in accordance with the right, which the norm has endowed him with (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.2 of the Concluding Part and Judgment of 8 November 2006 in the case No. 2006-04-01, Para 21*).

The principle of legal security requires, amongst the rest, to safeguard the confidence conferred to a person regarding protection or implementation of his or her particular rights. This includes the duty of the State to fulfil the liabilities undertaken by it in form of persons. Otherwise, the trust of persons into the State and their rights would be lost.

However, the principle of legal security does not exclude the possibility of the State to amend the effective legal regulatory framework. An opposite approach would lead the State to the failure to react to the changing conditions of life. Besides, by amending legal regulatory framework, the State should also take into account the rights that a person reasonably confides in to be safeguarded and implemented. The principle of legal security requires the State, having decided to amend normative regulations, to observe a reasonable balance between legal security of a person and the interests, safeguarding of which is ensured by means of amending the regulation.

Consequently, in order to assess whether the legal act that provided for deviation from the rights conferred to a person comply with the principle of legal security, the following should be investigated:

- 1) whether a person has been conferred legal security to safeguarding or implementation of any particular rights; and
- 2) whether a reasonable balance between protection of legal security of a person and ensuring of interests of the society has been observed.

The Constitutional Court indicates that the opinion of the Saeima that under the circumstances of rapid economical fall or in any other extraordinary situation the principle of legal security has a different content is not grounded. Also in such cases the principle of legal security requires balancing of legal security of persons with the interests of the society. However, it cannot be denied that in extraordinary circumstances these are the interests of the society and the necessity of ensuring of them that prevail.

**24.** In order to establish whether a person has been granted legal security to safeguarding or implementation of certain rights, it should be taken into account that this principle protects only such rights that have already been conferred to a person. The main duty of the principle of legitimate trust is to protect the rights of a person in cases, when – as the result of amendments to legal regulation – the legal status of an individual is or may be worsened (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 21*). Functioning of the principle of legitimate trust depends on the fact whether the person's trust in the legal norm is legitimate, well-grounded and reasonable, in its turn, the legal regulation on its essence shall be reasonably definite and constant, so that one can trust in it (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.2 of the Concluding Part, Judgment of 25 October 2004 in the case No. 2004-03-01, Para 1 and Judgment of 8 November 2006 in the case No. 2006-04-01, Para 21*). The fact whether under the particular circumstances security is lawful, grounded and reasonable, shall be assessed based on the opinions of particular persons.

The Constitutional Court has reiterated that old age pensions are issue of State social policy that has a long-term character and that requires stability. Social policy is related with a certain support and protect by the State to persons who are in need of it; therefore legal security of person in this respect shall be protected (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2002-12-01, Para 3.2 of the Concluding Part and Judgment of 11 November 2005 in the case No. 2005-08-01, Para 6.1*).

Likewise, the Constitutional Court has recognized that, the stability has never been characteristic of the indexation regulation, incorporated in the Law “On State Pensions”. The essence of the pension system does not serve as the basis for trust that the pension budget will exactly and duly react on inflation; both – because increase of the salary amount usually follows inflation, it does not take place simultaneously with it and the relative amount of the obligatory insurance contribution payment is within the competence of the legislator; it may be altered, for example, with the reason of changing the burden of taxes (*see: Judgment of 11 November 2005 by the Constitutional Court in the case No. 2005-08-01, Para 10.2*).

However, the trust in invariability of the particular regulation regarding examination of pensions and the fact that pensions would be examined should be regarded separately. Examination of pensions was established already before adoption of the Law “On State Pensions” on 1 November 1005. Since that time, examination of pensions has always been performed; moreover, it pertains to the content of the right to social security. Consequently, it can be concluded that if a person had the reason to confide in the fact that provisions regulating examination of pensions would change, it was still given a lawful, grounded and reasonable basis to trust that pensions would be examined.

The Contested Norm cancels examination of pensions planned to take place of 1 April 2009 and 1 October 2009. As to each of these dates of examination of pensions, there existed different grounds to confide in the planned examination of pensions. As to the examination of 1 April 2009, it should be taken into account that at the moment of adoption of the Contested Norm, i.e. on 12 March 2009, the period, for which pensions had to be examined, was already terminated. Namely, the examination of 1 April 2009 would mean increase of the amount of pensions in accordance with the changes in the consumer price index taken place from 1 September 2008 to 1 March 2009. Moreover, the Contested Norm came into force on 1 April 2009, which was the date when examination of pensions should have taken place. Case materials show that several days before adoption of the Contested Norm representatives of the Saeima and the Ministry of Welfare confirmed that examination of pensions would certainly take place (*see: case materials, Vol. 1, pp. 103*). Taking into account the aforesaid, persons

were given lawful, grounded and reasonable basis to trust that examination of pensions planned on 1 April 2009 would take place.

The trust if the examination of pensions on 1 October 2009 shall be assessed differently. Under the circumstances of economic recession and in the situation when the living standards of the entire society reduce, whilst economical indices show the necessity to reduce the amount of social security, at the moment of adoption of the Contested Norm, which is 12 March 2009, persons were not given grounded and reasonable basis to confide in the examination of pensions on 1 October 2009 to take place.

The opinion of the Cabinet of Ministers that legal security cannot be granted if a particular right *per se* depends on the economical situation of the state, i.e. changes of consumer prices, number of the unemployed and the amount of social insurance contributions into the State budget is not grounded. The Constitutional Court indicates that persons were granted legal security only to the fact that pensions would be examined at the dates established in normative acts in accordance with the criteria established therein, rather than to a certain increase of the amount of the pension. When adopting the Contested Norm, this security was infringed.

The Cabinet of Ministers also indicate that the trust into examination of pensions can be formed only after the responsible institution has issued an administrative act on examination of pensions. Such an opinion is neither grounded. Legal security can be granted by either an administrative act, a legal norm or, in certain situations, any other action of a public authority, the activity having a high level of certainty. If a person has already been granted certain rights, i.e. if a legal norm has already been applied thereto, then the trust of a person to preservation of such right is particularly high, whilst the freedom of action of the State to impact such trust is restricted by even stricter criteria.

However, a legal norm that has not yet been applied may constitute a protected legal security if it provides for planned rights. Namely, if rights are envisaged in the particular normative act but not all preconditions for the exercise of the rights are yet present. Such legal security is conferred particularly in case if a legal norm applies to legal relations already initiated. Such conditions in particular can be established in

relation to examination of pensions, namely, persons were already granted State pensions, and the legal regulatory framework provided for the right to examination of them in accordance with the procedure and at the date established in the normative acts. Consequently, the fact that the responsible institution has not yet issued the normative act on examination of pensions impacts the level of safeguarding of legal security, whilst it does not influence the fact that legal security would not have been conferred.

**Taking into account the aforesaid, it can be concluded that persons were given lawful, grounded and reasonable basis to trust into examination of pensions on 1 April 2009 in accordance with the procedure established in the normative acts.**

25. Taking into consideration the fact that a reasonable balance between the necessity to protect legal security of persons and to ensure interests of the society has been observed, it should be investigated whether a lenient transition to the new regulation has been established. The Constitutional Court has already concluded that a lenient transition to a new regulation is characterized by establishment of a reasonable term or a due compensation (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 2 of the Concluding Part*). However, the aforesaid does not exclude that it is possible to establish such lenient transition by means of other mechanisms. Moreover, in separate cases such lenient transition is not the only criterion that determines whether a reasonable balance has been observed.

For instance, the Federal Constitutional Court of Germany has reiterated in its case-law that the principle of legal security cannot be interpreted in such a broad manner that would protect a person from any disappointment. In certain cases, when balancing the amount of the restriction of legal security and the necessity and urgency of amendments to legal regulation, deviation from the rights guaranteed to a person is permissible without providing a transitional period (*see: Judgment of 8 February 1977 by the Federal Constitutional Court of Germany in the case No. 1BvR 79, 278, 282/70, published in BVerfGE 43, 242, pp. 286 – 289 and Judgment of 19 November 1980 in the case No. 1BvR 228, 311/73, published in BVerfGE 55, 185, pp. 203 – 204*).

The Constitutional Court has also indicated that prevention of infringement of substantial social interests is prior if compared to the principle of legal security. The institution of the State Administration, having established an essential violation of public interests experiences not only the right but also the duty to act (*see: Judgment of 9 March 2004 by the Constitutional Court in the case No. 2003-16-05, Para 2 of the Concluding Part and Judgment of 6 July 2009 in the case No. 2008-38-03, Para 13*). Likewise, the Constitutional Court drawn attention to the necessity to justify non-proportionality of the infringement of legal security (*see: Judgment of 24 March 2009 by the Constitutional Court in the case No. 2008-39-05, Para 12*).

Consequently, when assess whether the reasonable balance has been observed, it is necessary to compare importance of the contrasted interests – protection of legal security of persons and the necessity to amend the legal regulation in the interest of the society. Establishment of a lenient transition is regarded as a measure for reducing consequences caused by the infringement to the rights of persons.

As it has been already indicated – when assessing the extent at which legal security of persons should be safeguarded, it should be taken into consideration whether the legal norm that has conferred the particular rights has already been applied to the persons. The extent of safeguarding of legal security differs depending on the fact whether a person has trusted into already conferred rights or those to be conferred.

In the case under review, examination of pensions was cancelled before it, in fact, took place, namely, the amount of State pensions was not yet increased in the result of the examination. Consequently, norms that provided for the procedure of examination of pensions were not yet applied. Persons confided into planned rather than already granted rights. Such legal security shall be protected; however, the extent of the protection is less if compared to protection of already granted right, i.e. if examination of pensions would have already taken place.

In the case of adoption of the Contested Norm pensions would have been examined and therefore safeguarding of the conferred rights of persons would be grater if compared to that of planned rights. It can be understood that in the crisis when it was evidently necessary to reduce the amount of social security, the legislator wanted to prevent such a situation.

The Constitutional Court has already concluded in its case law that the principle of legal security shall be related with the necessity to create such circumstances that would permit a person to plan his or her future. The Constitutional Court has indicated the following: legal regulation shall be stable so that an individual, guided by legal norms, could adopt not only short-term decisions, but also make long-term plans for future (*see: Judgment of 25 October 2004 by the Constitutional Court in the case No. 2004-03-01, Para 9.2*). Likewise the duty to provide for a reasonable transitional period is necessary for a person to be able to plan his or her life, future and undertake liabilities etc, when confiding in a particular normative regulation. The transitional period is also necessary for a person to be able to adapt to the new procedure established in the new legal regulation.

As the Constitutional Court has already concluded, persons were given lawful, grounded and reasonable basis to confide that 1 April 2009 examination of pensions would take place according to the procedure established in the normative acts. However, they were not conferred the right to confide in increase of pensions by a certain amount. Although the period, regarding which pensions would be examined, has already expired and consumer prices increased during this term, the information on the particular consumer price indexes was not yet available. Consequently, legal security of persons is related with observance of the procedure established in the normative acts and performance of examination of pensions rather than with a particular financial gain. Moreover, the sum of increase of pensions in case if examination was executed cannot be regarded as the determining substantial future plans, planning of life and undertaking of liabilities etc. Consequently, the circumstance that no transitional period has been provided when adopting the Contested Norm cannot play a major role in the case under review when assessing whether a reasonable balance between safeguarding of legal security of persons and interests of the society has been observed.

The Contested Norm was adopted with the purpose to balance incomes and expenses of the State special budget of social insurance. The Constitutional Court established in Section 22.3 of the Judgment that the economic situation in the State deteriorates, the State could no more guarantee the same amount of social security as it

was provided during the period of economic growth. Otherwise the ability of the State to implement the right to social security and to guarantee sustainability of social security system would be threatened. This would contradict the principle of a socially responsible State. It follows from the aforesaid that deviation from the rights to examination of pensions has been committed with the purpose to ensure substantial interests of the society.

**Consequently, after having compared importance of the interests of a person that those of the society, it can be concluded that in the case under review the necessity in the Contested Norm is compensated by the fact that rights, in implementation of which persons confided, were not ensured. Consequently, the Contested Norm does not infringe the principle of legal security.**

### **The Constitutional Court**

based on Article 30 – 32 of the Constitutional court Law,

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

**The words “State pensions shall not be examined in 2009” of Section 2 of 12 March 2009 Law “Amendments to the Law “On State Pensions” comply with Article 1 and Article 109 of the Satversme of the Republic of Latvia.**

The Judgment is final and not subject to appeal.

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

Preising Judge

G. Kūtris