



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT

### IN THE NAME OF THE REPUBLIC OF LATVIA

**Riga, December 11, 2006**

**in case No. 2006-04-01**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Aija Branta, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse,

on the basis of the constitutional claim by Ērika Gailīte, Dzidra Unbedahte, Gunārs Kampmanis, Jānis Meškovs, Solomeja Kundziņa, Rimma Elksniņa, Renāte Škute, Daina Galvāne, Regīna Joniņa, Kapitalīna Nagle, Astrīda Petaško, Vera Lucenko, Imants Mikāls, Krišs Alfrēds Druva, Pēteris Artūrs Briedis and Videvuds Lielpēteris (hereinafter – the submitters of the claim)

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 1), 17 (Item 11 of the first Paragraph), 19<sup>2</sup> and 28<sup>1</sup>

in written proceedings at October 10, 2006 Court session reviewed the matter

**“On the Compliance of Paragraph 16, Subparagraph 12 of the Law “On State Pensions” Transitional Provisions with Articles 1, 91 and 109 of the Republic of Latvia Satversme”**

## **The establishing part**

1. On November 2, 1995 the Republic of Latvia Saeima [the Parliament (hereinafter – the Saeima)] passed the Law "On State Pensions" (hereinafter – the Pension Law) and it took effect on January 1, 1996.

On September 17, 1998 the Saeima enacted the Law "Amendments to the Law "On State Pensions", which envisaged supplementing Paragraph 16 of the Transitional Provisions of the Pension Law with Subparagraph 12 in the following wording:

" If the insured person, to whom the state pension is granted prior to January 1, 1997 , continues to work and after January 1, 1996 has worked for at least three years then this person – on the basis of application of the insured person- shall be granted pension anew."

These Amendments did not take effect because the State President Guntis Ulmanis, holding that the Saeima had decided to supplement the Pension Law without adequate economic assessment, used his rights, established in Section 71 of the Republic of Latvia Satversme (hereinafter – the Satversme) and required reconsidering of the Law, enacted on September 17, 1998.

On October 21, 1998 the Saeima issued the Law "Amendments to the Law "On State Pensions"". By these Amendments, returned for reconsidering, Paragraph 16 of the Transitional Provisions was supplemented with Subparagraph 12 in the following wording

" If an insured person to whom the state pension is granted prior to January 1, 1997, has worked at least three years after January 1, 1996, based upon an application of the insured person, the pension shall be granted anew.

If this amount of the pension, which was granted anew, exceeds two minimum salaries, the old-age or term of service pension paid anew from January 1, 1996 until

the granting of the old-age or term service pension shall be repaid to the state special pension budget. In order to repay this pension from the old-age or term of service pension, which was granted anew, monthly deductions shall be made, which shall be calculated according to the following formula:

$$I_e = I_p : G : 12$$

$I_e$  – monthly deduction

$I_p$  – sums of pension paid during the time from January 1, 1996 until the granting of the old-age pension or term service pension anew

$G$  - period of time (in years) for which since the year of the granting of the pension is planned payment of the old-age pension. In the case of granting of the term of service pension the period of time of the age of 60 years shall be used.

The recipient of an old-age or term service pension granted anew has the right to demand that to him/her is determined a larger amount of monthly deductions as well as to repay the paid sum of the pension to the special state pension budget all at once.”

On August 5, 1999 the Saeima passed the Law ”Amendments to the Law ”On State Pensions””. By it Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions was expressed in a new wording:

” Insured person to whom the state pension was granted prior to January 1, 1997 and to whom, after working for at least of three years after January 1, 1996, prior to September 1, 1999 a new pension, the amount of which exceed two minimum salaries was granted, shall continue to repay the old age or the term of service pension to the special state pension budget that old age or term of service pension received from January 1, 1996 until the granting of pension anew. Monthly deductions of sum to be repaid is not exercised for that period of time in which the payment of pension was interrupted”.

Transitional Provisions Paragraph 1 of August 5, 1999 Law "Amendments to the Law "On State Pensions"" envisages that the above Subparagraph shall take effect as of September 1, 1999, therefore in Paragraph 16, Sub-paragraph 12 of the Pension Law Transitional Provisions was included reference to this date, namely, deductions refer to those pensions, which have been granted anew prior to September 1.

However, these Amendments were submitted to a national referendum. The referendum, which took place on November 13, 1999, did not revoke the Amendments. On November 23, 1999, the State President Vaira Vīķe- Freiberga promulgated the Law "Amendments to the Law "On State Pensions"", adopted on August 5, 1999. This Law took effect on December 7, 1999. Granting of pensions anew had continued up to this date.

On December 20, 2001, the Saeima passed the Law "Amendments to the Law "On State Pensions". By these Amendments the words "the amount of which exceeds two minimum salaries", which were included in Paragraph 16, Subparagraph 12 of the Transitional Provisions, were substituted by words "the amount of which as of the moment of granting exceeded 100 lats". Thus, since January 1, 2002 wording of Paragraph 16, Subparagraph 12 (hereinafter- the impugned norm) of the Pension Law Transitional Provisions is as follows:

" Insured person, to whom the state pension was granted prior to January 1, 1997 and to whom, after working for at least three years after January 1, 1996, prior to September 1, 1999 a new pension the amount of which as of the moment of granting exceeds 100 lats, was granted, shall continue to repay the old age or the term of service pension to the special state pension budget that old age or term of pension received from January 1, 1996 until the granting the pension anew. Monthly deduction of sum to be repaid is not exercised for that period of time in which the payment of pension was interrupted".

**2. Submitters of the claim** hold that the impugned norm violates Sections 1, 91 and 109 of the Satversme. To their mind one shall take into consideration the fact that old age pension is the source of subsistence of old and disabled persons. The State, when assessing its economical facilities, experiences the right to determine the age limit for granting the pension. This age serves as the basis for the person to require old age pension. The pension is granted for life, beginning with the day, when the right to receive pension sets in.

In its turn the impugned norm is "economically ungrounded and legally questionable", as it incorporates discrimination elements in the social insurance system. They are of the viewpoint that granted for life pension regardless of the material situation, sex, nationality, belonging to a social group or any other circumstances of the person, might not be taken back. To their mind the impugned norm has created a discriminating situation, because "the pensioners, who retired on the basis of the old Pension Law at the end of 1995, received approximately half of the pension than those, who – with an equal length of service and other equal circumstances - retired some months later i.e. at the beginning of 1996".

The submitters of the claim, when assessing the impugned norm as read in conjunction with Sections 91 and 109 of the Satversme, conclude that the impugned norm envisages a different attitude, because it makes the amount of the pension dependent only on the time of retiring of the pensioners. In the same way the principle of trust in law has also been violated, as for one group of pensioners the age limit is prolonged, but for the others the above prolonging has been denied. It is stated in the claim: "The pensioners could not anticipate that Pension Laws would be changed in the State, that the new Law would be more favourable to pensioners and that the pension, calculated in accordance with the Law would be almost of the double amount". Thus, adopted by the legislator norm, which makes the pensioners to repay the lawfully granted pensions, to their mind is amoral and as such – inadmissible. The submitters of the claim conclude that the validity of the impugned norms, enacted by the legislator, cannot be legally substantiated, as it does not comply with the principles of equality,

proportionality, legal certainty, trust in law and legal succession. They hold it violates Sections 1, 91 and 109 of the Satversme and shall be revoked.

On September 19, 2006 the representative of the submitters Mārtiņš Draudiņš and the submitter of the claim Videvuds Lielpēteris submitted to the Constitutional Court "Objections to the Explanations of the State Social Insurance Agency, the Republic of Latvia Ministry of Welfare and the Republic of Latvia Saeima". When assessing the explanations by the State Social Insurance Agency and the Ministry of Welfare, it is pointed out that they "do not express any legal or morally ethical explanation" for demanding back the granted pension. Namely, the granted pension has been used for satisfaction of everyday needs of the pensioners, and from the principle of justice follows that it may not be demanded back. In its turn, when assessing the Saeima written reply, the facts pointed out in the constitutional claim, are repeated.

**3. The Institution, which has passed the impugned act – the Saeima – does not agree with the arguments, mentioned in the constitutional claim and requests the Constitutional Court to declare the claim as ungrounded and reject it.**

The Saeima indicates, that Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions during the years has had different wordings. Its initial wording has clearly determined that in case, if the amount of the pension granted anew exceeds two minimum salaries, the person in accordance with the certain formula shall gradually repay that old age or term of service pension, which the person has received from January 1, 1996 to the day, when the pension was granted anew. Pension has been granted anew as based upon application of the insured person and the person had clearly known that from the pension, which has been granted anew and exceeds the amount 100 lats, deductions will be made.

The impugned norm has been included in the Pension Law with a specific aim – to give the possibility of granting pension anew and thus ensure a greater amount of the pension. It is possible just because of methods determined in the Pension Law for calculation of old age pension, namely, when calculating the amount of the old age

pension, the "accrued by the person pension capital" is divided by the disbursement of the age pension planned. Thus it is as follows: the later the pension is granted, the greater its amount is.

The Saeima points out that the State President returned the initial wording of the impugned norm for reconsidering. Vital is the fact that during the second revision of it the Saeima did not abjure the regulation of the Law, which allowed a considerable part of pensioners to receive much greater pensions. Therefore just because of the above there has been the possibility to reach a compromise, namely, to determine the mechanism with the help of which the amount of the granted pension would be a little bit decreased.

The Saeima stresses that one shall take into consideration the fact that for some submitters of the claim the above regulation - despite the established deduction - all the same gave the possibility of approximately twice increasing their pension.

In the same way to their mind the impugned norm does not violate the principle of equality. On the basis of the initial wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, the submitters of the claim had received the right to a considerably greater pension than the one granted before. The Saeima holds that the interpretation of the equality principle, expressed by the submitters of the claim cannot be regarded as well grounded, because the case, mentioned in the claim, refers to different Pension Laws, which anticipated different social deposit systems and pension insurance systems.

The impugned norms to their mind do not violate the principle of trust in law either. One might discuss violation of the above principle, if the impugned norms – at variance with the initial regulation of the law – would cause decrease the amount of the pension. However, in this case the legal position of the submitters of the claim has not become worse, but – on the contrary – the amount of their pensions has noticeably increased and in several cases has reached or even exceeded the amount of 150 lats.

When assessing the potential violation of Section 109 of the Satversme, the Saeima points out that the basic idea of the Pension Law is as follows: pension is not granted anew, it may be only recalculated or indexed. In its turn the impugned norm is an exception of the principle fixed in Section 30, the first Paragraph of the Pension Law. Taking into consideration the above, one may come to the conclusion that the person, whose pension has been granted anew, shall repay the pension received earlier.

To their mind one shall take into consideration the circumstance that by including in the Pension Law the regulation, which permits granting pension anew, was not elaborated a new formula for calculation of it. When calculating by the "usual" formula for calculating pension, which is determined in Section 12, Paragraph 1, the amount of pensions granted anew has turned out to be too great a burden for the social budget. Thus the Saeima had just two possibilities: either to calculate the amount of the pension by another formula or determine monthly deductions from the pension to be paid. The Saeima from the two above possibilities has chosen the last one, besides – with a "sparing" intention – envisaging that only that pension, which was paid after the Pension Law took effect, will be deduced, namely, for the last three years.

Taking the above into consideration the Saeima holds that the impugned norm complies with Sections 1, 91 and 109 of the Satversme and requests the declare the claim as ungrounded and reject it.

**4. The Ministry of Welfare**, when answering to the questions of the Constitutional Court, points out that October 21, 1998 Amendments to the Pension Law by which in Paragraph 16 of the Transitional Provisions was supplemented by Subparagraph 12 were economically ungrounded and in 1999 led to a critical situation in the special budget of the State Social Insurance. Therefore August 5, 1999 Amendments were elaborated, which excluded the possibility of granting pensions anew. By the above Amendments the formula, on the basis of which monthly deduction was calculated, was deleted.

The Ministry of Welfare also points out that it would have been socially fair to introduce the regulation, which – in case of granting pension anew – would make the person responsible for repaying all the sums received earlier, and not only the pensions, received after January 1, 1996.

**5. The State Social Insurance Agency (hereinafter – the Agency)** informed, that – on the basis of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, 20 826 pensions were granted anew. The medium amount before granting the pension anew has been 61,22 lats but after granting of pension anew – 118,81 lats. In the same way the Agency points out that pensions, from which deductions, determined in the impugned norm are withheld, are indexed in accordance with Paragraphs 15 and 41 of the Pension Law Transitional Provisions.

**6. The Administrative Cases Department of the Supreme Court Senate (hereinafter – the Senate)** within the framework of their authority, when answering to the question of the Constitutional Court of Senate practice, furnishes the following information. The universal principle envisages that an institution or – in case of contesting an administrative act – a higher institution shall in any case apply a valid legal norm, taking into consideration that it has an immediate force, if only the legislator has not determined an exception to it. The issue is more complicated if the court shall assess an administrative act, which has not yet received its final force, if the legal norm has been amended since issuing of the act. In this case it is assessed whether the administrative act is of short-term or lasting impact. If the administrative act is of no lasting impact and it has already been implemented, the legal norm, which has been valid at the moment of issuing the act, shall be applied. If the administrative act is of lasting impact and it is still valid at the moment of review of the claim, its lawfulness shall be verified on basis of the legal norms, which are valid at the moment of reviewing the case.

**7. The State Human Rights Bureau** agrees with the viewpoint, expressed in the Saeima written reply that it is socially fair to demand repaying of the pension, received after January 1, 1996. To their mind such a regulation does not violate the fundamental

rights, guaranteed to the person in the Satversme. In the same way the State Human Rights Bureau points out that the impugned norm might anticipate also such regulation, which demands repaying all the previously received pension, not only the sums, which were paid to the person after January 1, 1996. Taking into consideration the fact that the regulation of the Pension Law envisaged periodic, but not immediate recovering of the pension paid, the impugned norm is proportionate and does not violate the Satversme.

### **The concluding part**

8. To assess the compliance of the impugned norm with Sections 1, 91 and 109 of the Satversme, it is first of all necessary to view the historical circumstances of issuance of the impugned norm as read in conjunction with the principles of the Pension Law.

The Pension Law was adopted during the reform of the pension system in 1995. The aim of the reform was to create a financially stable and economically based pension system by taking into consideration the experience of the last five years. Namely, November 29, 1990 Law "On State Pensions" did not comply with the conditions of market economy, was economically ungrounded and thus the undertaken liabilities could not be fulfilled with the financial resources, which were at the disposal of the State.

In difference from November 29, 1990 Law "On State Pensions", the Pension Law has been substantiated by the principle, which anticipates that the system of the State mandatory insurance system is based on the insurance premiums. Thus, the amount of the pension also depends on the length of insurance, that is - periods of employment provided for in law and the periods equalled to them. In its turn November 29, 1990 Law "On State Pensions" was based on the principle of redistribution, which – in its essence – did not stimulate personal interest of the workers in securing their old age pensions.

In the same way one of the principles of the Pension Law envisages that old age pension is granted for life and its recalculation and indexation but not granting anew is

envisaged. The fact that the amount of the pension depends from the amount of down payments [accrued (planned) capital] and the age of the person at the moment when he/she retires, ensures long-term stability of the pension system (*sk.: par Latvijas pensiju sistēmas starptautisko novērtējumu; see: On the International assessment of the Latvian pension system// Latvijas Vēstnesis, No./ 57 (2444), April 10, 2001*). In its turn in certain circumstances and if the person had submitted a respective application the impugned norm allowed granting of pension anew. Such a regulation led to considerable increasing of age of the person, which was at the basis of calculation of old age pensions at the time when the person retired so to say for the second time. In other words, the divisor – or the planned period of disbursement of pension - included in the calculation formula became much smaller, but the amount of the pension – greater.

**Thus the impugned norm shall be regarded as an exception from the principles of the Pension Law, which do not envisage granting pension anew.**

9. The idea, included in the impugned norm was expressed at the beginning of 1998, namely, on February 16 – not full ten months before the elections of the 7<sup>th</sup>. Saeima. Then the Chancellery of the Saeima received the draft Law on Amendments to the Pension Law, elaborated by five deputies of the Saeima Faction "Latvijas ceļš", which inter alia anticipated supplementing Paragraph 16, of the Pension Law Transitional provisions with SubParagraph 12 in the following wording:

"if the insured person continues working after being granted pension and has worked for at least three years after January 1, 1996 then based upon application of the person pension shall be granted anew" (*lietas materiālu 2. sējuma 178. lpp.// Vol.II p.178 of the materials in the matter*).

During the Saeima February 19, 1998 session the draft Law was forwarded to the Committee of Social and Employment Affairs. It can be seen from the minutes of the above Committee sitting that the submitted motion on Amendments to the Pension Law was discussed several times. Having received information on the financing,

needed for implementation of the draft Law, the Saeima Committee of Social and Employment Affairs unanimously decided not to conceptually support the project (*sk. lietas materiālu 2. sējuma 184. lpp. // see Vol. II p. 184 of the materials in the matter*). However, on the basis of Section 86, Paragraph 6 of the Saeima Rules of Procedure, the authors required review of the project – not backed by the Committee of Social and Employment Affairs – at the Saeima session.

**10.** The initial wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, adopted in its first and second reading, complied with the motion, submitted by the five deputies and did not envisage the duty of repaying that pension, which had been received before granting of the pension anew (*sk. lietas materiālu 2. sējuma 197. lpp. un 3. sējuma 4.lpp. // see Vol. II, p. 197 and Vol. III, P. 4 of the materials in the matter*).

The Ministry of Welfare submitted for the third reading such wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, which included both – the duty to repay the pension, received after January 1, 1996 and a new formula for calculation of the deductions.

The responsible Committee partly supported the proposal of the Ministry of Welfare, additionally pointing out that the pension received after January 1, 1996 should be repaid only in case, if the amount of the pension granted anew exceeded two minimum salaries (*sk. lietas materiālu 3. sējuma 4.lpp. //see Vol.III, p. 4 of the materials in the matter*).

At the Saeima September 17, 1998 session a long debate took place when taking the decision on the adoption of the wording of Paragraph 16, Sub-paragraph 12 of the Pension Law Transitional Provisions. As the result, other motions were dismissed and the wording, which did not envisage the duty of repaying the previously received pension, was upheld.

11. As has been already mentioned, the State President did not promulgate the Amendments and required second review of the adopted on September 17, 1998 Law "Amendments to the Law "On State Pensions". The President substantiated it by the fact that before envisaging introduction of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, the Saeima had not carried out economic assessment and had not reconciled the norm with the budget feasibilities (*sk. Latvijas Valsts prezidenta 1998. gada 19. septembra vēstuli Saeimas priekšsēdētājam. Lietas materiālu 3. sējuma 8. lpp. // see September 19, 1998 letter of the State President of Latvia to the Saeima Chairperson. Vol.III, p. 8 of the materials in the matter*).

On October 21, 1998 when repeatedly taking the decision on Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, the Saeima adopted it in the wording, which the responsible Committee had prepared for the third reading (*sk. lietas materiālu 1. sējuma 166. – 168. lpp. un 3. sējuma 4. lpp. // see Vol. I, pp. 166-168 and Vol. III, p.4 of the materials in the matter*).

On August 5, 1999 the Saeima, wanting to secure economy of finances in the State Social Insurance Special Budget and to eliminate the critical situation the budget was in, adopted a new Law "Amendments to the Law "On State Pensions". By Section 14 of the Law, Paragraph 16, Sub-paragraph 12 of the Pension Law Transitional Provisions was expressed in a new wording, envisaging that pension shall be granted anew only up to September 1, 1999. This norm also determined that the person, who had been granted pension anew and if the amount of the pension exceeded two minimum salaries, should continue repaying to the State Pension Special Budget the pension, which had been received after January 1, 1996. In accordance with Paragraph 1 of the new wording of Paragraph 16, Subparagraph 12 of Transitional Provisions had to take effect as of September 1, 1999.

However, August 5, 1999 Law "Amendments to the Law "On State Pensions" did not take effect, as 35 Saeima deputies sent to the State President the request to suspend publication of this Law (*sk. lietas materiālu 2. sējuma 35., 36.lpp. // see Vol.II, pp.35-36 of the materials in the matter*). In accordance with Section 72 of the Satversme the

signatures of more than 1/10<sup>th</sup>. of the electorate were collected and the Law was put to national referendum.. However, only 35,25 percent from the number of voters, which participated in the 7<sup>th</sup>. Saeima elections, took part in November 13, 1999 Referendum. In accordance with Section 74 of the Satversme the above Amendments were not abrogated (*sk. lietas materiālu 2. sējuma 70.lpp. // see Vol. II, p.70 of the materials in the matter*). The State President promulgated the Amendments on November 23, 1999.

As August 5, 1999 Law "Amendments to the Law "On State Pensions", took effect only on December 7, 1999 then also after September 1, 1999- on the basis of Paragraph 16, SubParagraph 12 of the Pension Law Transitional Provisions granting of pensions anew was continued.

As concerns this matter there is no dispute on the legality of repeated granting of pension from September 1 to December 7 of 1999; however it is vital to point out that the impugned norm *expressis verbis* determines that deductions shall be made only from the pensions of those persons, to whom they have been granted till September 1, 1999. Thus first of all the issue on the compliance of the impugned norm with the first sentence of Section 91 of the Satversme shall be established.

**12.** The Constitutional Court, when interpreting Section 91 of the Satversme has concluded that the principle of equality forbids State institutions to pass norms, which without a reasonable ground permit different attitude to persons, who are in really equal and comparable circumstances. The principle of equality allows and even demands different attitude to persons, who are in different circumstances, as well as allows different attitude to persons, who are in equal circumstances, if there is an objective and reasonable ground (*sk., piemēram, Satversmes tiesas 2001. gada 3. aprīļa sprieduma lietā Nr. 2000-07-0409 secinājumu daļas 1. punktu un Satversmes tiesas 2001. gada 5. decembra sprieduma lietā Nr. 2001-07-0103 secinājumu daļas 3. punktu // see, for example, the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409, Item 1 of the concluding part and the Constitutional Court December 5, 2001 Judgment in case No. 2001-07-0103, Item 3 of the concluding part*).

To determine whether the impugned norm complies with the first sentence of Section 91 of the Satversme, one shall establish whether:

- persons are in equal and comparable circumstances;
- the impugned norm anticipated a differentiated attitude;
- the differentiated attitude has an objective and reasonable basis, namely, whether it has a legitimate aim and whether the principle of proportionality has been observed.

Granting of pensions anew continued as long as till December 7, 1999, however, the impugned norm obliges only those persons, to whom it was granted anew till September 1, 1999 to repay the pensions. This regulation has created a situation that as a matter of fact there is no obligation for persons, to whom pensions were granted anew after September 1, 1999, to repay the above pensions. All persons, to whom – on the basis of the impugned norm – pensions were granted anew from January 1, 1999 to December 1, 1999, are in equal circumstances. However, the impugned norm allows making deductions only from the pensions of those persons, to whom it was granted till September 1, 1999, thus the regulation makes a differentiated attitude.

The Agency, when applying the impugned norm in practice, made deductions with regard to both – the persons, to whom the pension was granted till September 1, 1999 and those, to whom pensions were granted anew from September 1, 1999 till December 1, 1999. In the first case deductions are made on the basis of the impugned norm, but in the second – in accordance with the wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, which were in effect till December 7, 1999.

**13.** The basic duty of the Constitutional Court is not to decide how legal norms shall be correctly interpreted or applied in every particular case (*sk. Satversmes tiesas 2005. gada 4. janvāra sprieduma lietā Nr. 2004-16-01 17. punktu // see the Constitutional Court January 4, 2005 Judgment in case No. 2004-16-01, Item 17*). However, in this case the Constitutional Court points out that the above practice of the Agency in

applying the Pension Law and the impugned norm with regard to deductions is contradictory. If one presumes that deductions may be made on the basis of the norm, which was in effect at the moment, when the decision on granting pensions anew was adopted, then the essence of the impugned norm would lose effect. In its turn, if that legal norm, which is in effect at the present moment, were applied, then deductions could be made just with regard to persons, to whom pension was granted anew till September 1, 1999. Important to this case is also the circumstance that no-one of the submitters of the claim, with regard to whom the decision on granting pensions after September, 1999, has not appealed at the court of general jurisdiction, in order to assess from the above viewpoint lawfulness of this administrative act – the Agency decision on granting pension anew. The court of general jurisdiction would have been able in such a court process to express its decision on the validity of the provision of the administrative act –making of deductions. In its turn it follows from the materials in the matter that the submitters of the claim appealed at the court of general jurisdiction only more than five years later than such decisions on granting pensions anew and making of deductions had already taken effect. In their constitutional claims and after getting acquainted with the materials in the matter the submitters of the claim have not contested the impugned norm in the above aspect.

On the one hand the Constitutional Court, possibly, has the reason to declare the impugned norm as unconfirmable with the first sentence of Section 91 of the Satversme. On the other hand, one shall take into consideration that the intention of the legislator cannot be observed as the basis of the impugned norm and the legal consequences of it. Namely, the activities of the Saeima may be criticized only as far as it – as the result of unconsidered legal "technique" – had not corrected the date, determined in the impugned norm. Important is also the fact that in 1999 and 2000 the submitters of the claim have not addressed the court of general jurisdiction to protect their rights with general remedies of legal protection.

**14.** From the viewpoint of clarity of legal regulation the Saeima had the obligation to amend this norm in the shortest possible time after the impugned norm taking effect – namely- after December 7, 1999, precisely determining the range of persons, from

whose new pensions deductions shall be made. Namely, the Saeima had the obligation to decide whether the duty of repaying the previous pensions, determined in the impugned norms shall refer to all persons, to whom the pension was granted anew (also to those, to whom pensions were granted from September 1, 1999 till December 7, 1999) or whether it does not refer to any person (beginning from January 1, 1999).

Inactivity of the Saeima shall be recognized as ungrounded, as the regulation, which evidently placed in unequal situation persons, who were in equal legal circumstances, was not amended. However, the Constitutional Court repeatedly stresses that in this case when taking effect of the norm and the legal consequences, caused by it, did not depend on the will of the Saeima, it would be ungrounded to assess the impugned norm just on the basis of the equality principle and separately from the other Satversme norms.

**15.** Taking the above into consideration the Constitutional Court recognizes that it is not always possible to assess conformity of a concrete restriction of a fundamental right with the Satversme only in the aspect of the first sentence of Section 91 of the Satversme.

**15.1.** First of all it shall be taken into consideration that the equality principle, determined in the first sentence of Satversme Section 91 very often shall be applied together with other fundamental rights. Especially because one cannot often deduce how to adjudicate a case just on the basis of this principle (*sk.:Langenbuhere K. Tiesnešu tiesību attīstība un iztulkošana // see: Langenbuhere K. Development and Interpretation of the Rights of Judges; Rīga, Tiesu namu aģentūra, 2005, p. 158*). The rights, enshrined in Section 91 of the Satversme are “comparable”, namely, they may demand equal attitude but - just by themselves – they cannot reveal what the above attitude shall be, namely, favourable or unfavourable. For example, it was concluded that determination of deductions violates the principle of equality; one shall know only the fact that the above deductions had to be determined either to all pensioners or to no one. To choose one of the solutions, other reasons, which are out of the framework of the notion of equality, shall be used.

**15.2.** Secondly, when assessing the conformity of the impugned norm with the first sentence of the Satversme Section 91, one shall take into consideration the Chapter, in which it is included (*sk. Satversmes tiesas 2005. gada 11. novembra sprieduma lietā Nr. 2005-08-01 5. punktu; see the Constitutional Court November 11, 2005 Judgment in case No. 2005-08-01, Item 5*). The nature of the impugned norm, inter alia, also its connection with other norms of the Satversme and their place in the system of fundamental rights, inevitably influence the scope of the control, realized by the Constitutional Court.

**15.3.** Thirdly, the Satversme is a cohesive whole and the legal norms, incorporated into it are mutually closely connected. Every norm of the Satversme has its certain place in the constitutional system. The Constitutional Court has already earlier stressed: to establish the contents of separate norms more completely and impartially, they shall be interpreted as read together with other norms of the Satversme (*sk. Satversmes tiesas 2005. gada 16. decembra lietā Nr. 2005-12-0103 13. punktu// see the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103 Item 13*). The principle of oneness of the Satversme forbids interpreting a separate constitutional norm as detached from the other norms of the Satversme, because the Satversme as an undivided document influences the contents and comprehensiveness of every separate norm. Therefore, the less freedom of action the Satversme endows legislator with, the stricter the Constitutional Court shall control use of the above freedom of action, and vice versa: the more extensive the freedom of action of the legislator, the less the Constitutional Court shall interfere in use of the above freedom of action. For example, if it has been established that Section 91 of the Satversme requires equalization of attitude to comparable groups of persons, the Constitutional Court may take the decision on what this attitude shall be like in case, when the freedom of action of the legislator is narrow, or allow the Saeima to make this choice, if the freedom of action is extensive. In the same way, strictness and concreteness of provisions advanced for the action of the Constitutional Court and – when necessary – also for the legislator shall depend on the circumstances of the matter to be reviewed.

16. The impugned norm lies within the sector of social rights. The Constitutional Court has repeatedly assessed the nature and features of it by analysing the content of Section 109 of the Satversme. On the one hand realization of the above rights is to some extent dependent on the resources at the disposal of the state and the society. On the other hand, if some rights to social protection are included in the fundamental law, then the state may not refuse to implement them. Then these rights do not any more have a declarative nature and for their protection constitutional value has been attached to the above rights (*sk. Satversmes tiesas 2001. gada 13. marta sprieduma lietā Nr. 2000-08-0109 secinājumu daļu // see the concluding part of the Constitutional Court March 13, 2000 Judgment in case No. 2000-08-0109*). Thus the specific nature of the above rights makes realization of them different, for example, from realization of political or civic rights; namely – the state shall have considerably more freedom of action for determination of regulation of the above rights.

The Lithuania Constitutional Court has also concluded that regulation of social rights shall be based on the material and financial possibilities of the state and the legislator, taking into consideration these factors and regulating the above legal relationships, shall be endowed with extensive freedom of action (*sk. Lietuvas Konstitucionālās tiesas 2005. gada 7. februāra sprieduma lietā nr. 9/02 secinājumu daļas 2. punkta 2. apakšpunktu // see the Constitutional Court of Lithuania February 7, 2005 Judgment in case No. 9/02, Item 2, Sub-item 2*).

The Senate, when recognizing that it does not have any right to interfere in realization of the policy of social rights, has also reached a similar decision. Such interference is possible only in cases, when – adopting the concrete decision - violation of principles of equality, trust in law, prohibition of arbitrariness or other principles of general rights have been permitted in the activities of state administration ( *sk. Augstākās tiesas Senāta Administratīvo lietu departamenta 2004. gada 20. aprīļa sprieduma lietā Nr. SKA-33 11. punktu. Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedumi un lēmumi, 2004; see the Supreme Court Administrative Cases Department of the Senate April 20, 2004 Judgment in case No. SKA-33, Item*

*11; Judgments and Decisions of the Republic of Latvia Supreme Court Administrative Cases Department of the Senate // Riga, TNA, 2005, p.289).*

From the above can be concluded 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.

Thus in the sector of realization of social rights one cannot advance the same strict requirements as those with regard to non- interference in realization of civil and political rights of a person. However, the circumstance that economic, social and cultural rights are guaranteed in the Satversme, determines certain boundaries of freedom of action of the legislator also in this sector.

First of all the legislator may not refuse to ensure effective realization of social rights – they have been incorporated in the Satversme and the legislator shall observe and respect them.

Secondly, the social rights, even though they depend on the financial possibilities of the state, have to be secured at least in its minimum amount.

Thirdly, in realization of social rights general legal principles shall be observed, which create the basis for legal relationship between the person and the state. The state allowance shall not be as large as the interested persons might possibly want it to be; however, the legislator, when determining to amount of the allowance, is not acquitted from the observance of the principles of the above rights.

**17.** It follows from the constitutional claim and ”objections to explanations of VSAA, Republic of Latvia Ministry of Welfare and the Republic of Latvia Saeima” that the submitters of the claim basically appeal against the duty, determined in the impugned

norm, to repay old age or term of service pensions, received in the period between January 1, 1996 till granting of the pension anew. Thus the Constitutional Court shall assess whether the duty of repaying pensions, received after January 1, 1996 complies with Section 109 of the Satversme and does not exceed the bounds of the freedom of action of the legislator, which follow from the fundamental law. Besides, one shall take into consideration that in the sector of social rights it is difficult to determine the boundary between legal and political reasons and the Constitutional Court has to suspend its judgment on political issues, as they are primarily included in the competence of a democratically legitimised legislator ( *sk., piemēram, Satversmes tiesas 2003. gada 29. oktobra sprieduma lietā Nr. 2003-05-01 29. punktu un Satversmes tiesas 2005. gada 14. septembra sprieduma lietā Nr. 2005-02-0106 18. punktu; see, for example the Constitutional Court October 29, 2003 Judgment in case No. 2003-05-01, Item 29 and the Constitutional Court September 14, 2005 Judgment in case No. 2005-02-0106, Item 18*).

**18.** By getting acquainted with the Saeima Verbatim Reports it can be seen that on September 17, 1998 - when reviewing the draft Law "Amendments to the Law "On State Pensions" – a long debate developed on whether after granting the pension anew, the pension, received before that should be repaid and what the procedure of repayment should be.

Thus the representative of the Saeima Committee of Social and Employment Affairs Ludmila Kuprijanova during the debate pointed out that such monthly deduction might be from six to twelve lats per month and determination of it "for big pensions would be nothing tragic" (*lietas materiālu 1. sējuma 143. lpp.; Vol. I, p. 143 of the materials in the matter*). In his turn the deputy Kārlis Leiškalns was sharp when expressing his viewpoint that " the demand to repay is unfair, as, when continuing to work, people increase gross domestic product" (*lietas materiālu 1. sējuma 144. lpp.; Vol.I, p. 144 of the materials in the matter*). Deputies Jānis Mauliņš, Andris Rubins and Modris Lujāns also expressed similar viewpoints. In his turn the Minister of Welfare Vladimirs Makarovs pointed out that " (he) cannot undertake responsibility for the Law, which does not have long-standing future", and stated that in case, if the Saeima backed the

position, protected by K.Leiškalns, he would submit his demission papers to the Prime Minister (*sk. lietas materiālu 1. sējuma 145. –146. lpp.; see Vol I, pp. 145-146 of the materials in the matter*). V. Makarovs also pointed out that the growth of the social insurance budget allows not to recalculate the pensions of one part of the pensioners, but to grant them anew, however, with the provision that the income of the insurance budget should also increase (*sk. lietas materiālu 1. sējuma 160. lpp.; see Vol.I, p. 160 of the materials in the matter*).

Protecting the wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, prepared by the Ministry of Welfare, the deputy Roberts Jurdžs pointed out that this proposal was a compromise and its duty was to save the pension budget. He also acknowledged ”naturally it is unfair to take away money from a person. It creates feeling of unfairness, but if a system is destroyed in the whole state, then to destroy the state is a greater unfairness...” (*lietas materiālu 1. sējuma 147. lpp.; Vol. I, p. 147 of the materials in the matter*).

The deputy Anna Seile also expressed a similar viewpoint on the proposal and calculations of the Ministry of Welfare, pointing out that the deduction would be about 10 lats ”then the social budget will increase and to my mind justice will prevail” (*lietas materiālu 1. sējuma 152. lpp.; Vol. I, p. 152 of the materials in the matter*).

Even though the greatest part of the deputies, who participated in the debate expressed their opinion about the necessity to repay the previously received pension, none of the above proposals was backed by vote and thus the wording, adopted in the second reading, was preserved. Only when discussing for the second time the potential wording of Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, its was unanimously decided to adopt the norm in the variant prepared by the responsible Commission and during the third reading it was supported by the greatest number of deputies, speaking during the debate.

**Thus the Constitutional Court has no reason to recognize that the above duty of repaying has been determined arbitrarily, without appropriate deliberation or assessment.**

**19.** When analysing the conformity of the impugned norm with the principle of proportionality in the sector of social rights, one shall assess both – the consequences caused by the measures, used by the legislator, namely – whether applying of the legal norm does not create greater loss to the rights and legitimate interests of the individual than public benefit, and the fact whether the legislator has not violated the boundaries of freedom of action, which follows from the fundamental law.

**19.1.** First of all one shall take into consideration that the legislator did not have the obligation of offering to persons the possibility of requesting granting the pension anew. Such obligation of the Saeima follows neither from Section 109 of the Satversme nor from the principles of the Pension Law. For example, the Ministry of Welfare connects adoption of the above regulation with the approaching elections of the 7<sup>th</sup>. Saeima (*sk. lietas materiālu 2. sējuma 136.lpp.; Vol. II, p. 136 of the materials in the matter*).

The Saeima, when considering the objections of the State President, if it still wanted to give persons the opportunity to require granting of the pension anew, had no other alternative than finding the possibility of decreasing the amount of the granted anew pension and thus maintain the stability of the pension social budget. Therefore the compromise was reached, which was expressed by determining deductions from the pensions, which have been granted anew.

**19.2.** Secondly, it is evident that the Saeima, when adopting the impugned norm, has chosen one of the possibly most considerate solutions. Namely, it determined that not all the previously received pension shall be repaid, but only that part of the pension, which was received after January 1, 1996 and only in case, if the amount of the pension granted anew exceeded 100 lats. The State Human Rights Bureau in its conclusion has also pointed out that the Saeima had the right of introducing such

regulation, which would envisage repayment of the whole amount of the previously received pension, not only that part, which was received after January 1, 1996 (*sk. lietas materiālu 2. sējuma 172.lpp.; see Vol.II, p. 172 of the materials in the matter*).

**19.3.** Thirdly, Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions (in the wording, which was in effect till December 7, 1999) anticipated that pension shall be granted anew only in case, if the person himself/herself submits an application to the Agency and requests to grant the pension anew. Thus the administrative act about granting the pension anew was issued only on the initiative of the person himself/herself and the person knew that respective deductions would be made from the granted anew pension. Thus the Constitutional Court agrees to the statement, included in the written reply, that pension was granted anew only in case, if the person wanted it.

**19.4.** Finally, one shall take into consideration that in the result of repeated granting of the pension, its amount increased, besides, the pensioners clearly knew the amount of the granted anew pension and the amount of the deductions. They were able to make a rational choice and increase their income on the basis or the provisions, determined by the state.

**Thus the Constitutional Court has no reason to conclude that the duty of repayment is determined by the legislator by violating freedom of action, endowed to it in the sector of social rights as well as that the result achieved is disproportionate with the benefit of a person.**

**Thereby the impugned norm complies with Section 109 of the Satversme.**

**20.** The submitters of the claim point out that the principle of trust in law is being violated, as those persons, who retired after January 1, 1997, find themselves in the situation, which is worse, than that of the persons, who retired before the above date. Namely, the right to require granting of pension anew was only to those persons, who retired before January 1, 1997.

The principles, following from Section 1 of the Satversme, require that all the norms of the rights, also those, which are included in the Satversme, shall be applied in such a way, that the result of their application complies with the demands of a law-governed state. Section 1 of the Satversme does not deny the right of the legislator to make amendments to the existing legal regulation. However, in a democratic and law-governed state the principle of legitimate trust requires to envisage considerate transition to the new regulation, when introducing such amendments (*sk. Satversmes tiesas 2005. gada 16. decembra sprieduma lietā nr. 2005-12-0103 24. punktu; see the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103, Item 24*).

**21.** 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. 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 (*sk. Satversmes tiesas 2002. gada 19. marta sprieduma lietā Nr. 2001-12-01 secinājumu daļas 3.2. punktu; see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.2 of the concluding part*). One shall take into consideration that this principle may protect only such rights, which have once been determined to the person (*sk. Satversmes tiesas 2004. gada 25. oktobra sprieduma lietā Nr. 2004-03-01 8. punktu; see the Constitutional Court October 25, 2005 Judgment in case No. 2004-03-01, Item 8*).

**Thus, 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.**

22. When assessing whether the principle of legitimate trust has been violated in this case, one shall first of all estimate, whether Paragraph 16. Subparagraph 12 of the Pension Law Transitional Provisions has ever worsened the legal status of the submitters of the claim.

One shall take into consideration that pension to all the submitters of the claim, with an exception of just one person, has for the first time been granted before the adoption of the Pension Law. For example, one of the submitters of the claim was granted pension in 1978, two others – in 1982. Paragraph 16, Subparagraph 12 of the Pension Law Transitional Provisions, which allows granting pension anew, was adopted only on October 21, 1998. On the basis of the regulation, included in this norm, pension was granted anew to all the submitters of the claim and its amount was increased at an average for 60 lats. For example, to one of the submitters of the claim the amount of the pension granted anew was 123,76 lats, but the previous old-age pension – 61,91 lats (monthly deduction – 15, 85 lats); to another submitter of the claim the amount of the pension granted anew was 179,13 lats, but the previous old-age pension – 81,32 lats (monthly deduction – 22,03 lats); still to another one – the amount of the pension granted anew was 148,68 lats, but the previous one – 80,82 lats (monthly deduction – 13,34 lats) (*sk. lietas materiālu 1. sējuma 18., 19., 26., 29. un 30.lpp.; see Vol.I, pp. 18, 19, 26, 29 and 30 of the materials in the matter*).

Thus it can be seen that the Amendments to the Pension Law, passed on October 21, 1998 granted to the submitters of the claim such rights, which they did not have before, besides, the legal status, in which they were before the adoption of the above Amendments, was not worsened. Thus the Constitutional Court agrees with the statement of the Saeima in its written reply that the impugned norm, in all the wordings, which have been in effect, envisaged the provision – if the pension is granted anew, the pension, received from January 1, 1996 till the day of granting pension anew shall be repaid.

23. The legal status of the submitters of the claim was not worsened by the Amendments to the Pension Law, which took effect on December 7, 1999, and did not envisage granting of pension anew. The fact, that other persons after December 7, 1999 did not experience the right of requiring granting pensions anew, cannot be considered as violation of the principle of legitimate trust as regards the submitters of the claim. Also the fact that it was possible to grant pensions anew only to persons, to whom pensions for the first time were granted till January 1, 1997, does not violate the principle of legitimate trust as regards the submitters of the claim.

**Thus the Constitutional Court recognizes that the impugned norm has not worsened the legal status of the submitters of the claim and complies with the principle of legitimate trust, which follows from Section 1 of the Satversme.**

#### **The operative part**

On the basis of Sections 30-32 of the Constitutional Court Law the Constitutional Court

**hereby rules:**

to declare Paragraph 16, Subparagraph 12 of the Transitional Provisions of the Law "On State Pensions" as conformable with Sections 1, 91 and 109 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the day of its publishing.

The Chairman of the Court session

Aivars Endziņš