THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

RIGA, November 11, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005 – 08 – 01

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

on the basis of the constitutional claim by Vija Emsiņa, Mārtiņš Draudiņš and Mārtiņš Skuja

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 11 of the First Paragraph) and 28^1
of the Constitutional Court Law

in written proceedings at October 18, 2005 Court session reviewed the matter

"On the Compliance of Transitional Provisions, Item 15 of the Law "On State Pensions" with Article 91 of the Republic of Latvia Satversme (Constitution)"".

The establishing part

1. The procedure for reviewing of the state pensions is regulated by Section 26 and Item 15 of the Transitional Provisions of the Law "On State Pensions" (henceforth – the Pension Law), adopted by the Saeima on November 2, 1995 as well as by the Cabinet of Ministers July 16, 2002 Regulations No. 304 " The Procedure for Reviewing the State Pensions, Disability Pensions and Pensions for the Loss of a Supporter" (henceforth – Regulations No. 304).

1.1. Section 26 of the Pension Law determines: ”the amount of state pensions shall be reviewed annually under the procedure established by the Cabinet of Ministers by taking into account changes concerning the index of consumer prices and 50 percent of the real increase of the insurance contribution salary”.

1.2. From the time of the Pension Law taking effect, Item 15 of its Transitional Provisions adjusts the procedure of indexing the state pensions, established in Section 26 of the Law.

Initially in Item 15 of the Transitional Provisions it was determined that up to the year of 2000 state pensions shall be reviewed every six month by taking into account the index of consumer prices only. The changes in the amount of the increase of insurance contribution salary, as has been established in Section 26, were not taken into account On January, 1998 a new wording of Item 15 took effect and in it was included an additional criterion: in accordance with this norm until the year 2000 taking into consideration the consumer price index also the state pensions, the amount of which did not exceed three minimum salaries, had to be reviewed. From January 1, 1999 pensions were indexed by taking into account the consumer price index and the age of the pensioner, but already in April of 1999 Item 15 was amended again, in essence returning to the previous regulation. In their turn by the Amendments, adopted on August 5, 1999, the period of validity of Item 15 was prolonged for two years and the frequency of indexation decreased from two times a year to just once per year. The next Amendments were adopted on December 20, 2001, prolonging the term of validity of Item 15 till December 31, 2010, and stating that the frequency of indexation shall depend on inflation but its amount shall be differentiated depending on the amount of the pension.

On February 19, 2004 already the sixth Amendment was made to Item 15 of the Transitional Provisions of the Pension Law (henceforth – the impugned norm), which took effect on March 10, 2004. The wording of this Item, which is contested in the constitutional claims, is as follows:

” until December 31, 2005 the state pensions, which do not exceed the amount of five State social security benefits, shall be reviewed every year, but if the inflation exceeds 3 percent a year – after six months, taking into account the actual consumer price index and the index of the real growth of the insurance contribution salary under the following procedure:

State pensions, which do not exceed the amount of three State social security benefits shall be reviewed by taking into consideration the actual consumer price index and not less than 50 percent of the real growth of the insurance contribution salary;

state pensions, which exceed the amount of three state social security benefits but do not exceed the amount of five social security benefits shall be reviewed every year, taking into account the actual consumer price index.

From January 1, 2006 till December 31, 2010 the State pensions, which do not exceed the amount of five State social security benefits, shall be revised yearly, taking into account the actual consumer price index and not less than 25 percent of the index of the real growth of insurance contribution salary.

When revising State pensions, the amount of the pension granted is being revised.

1.3. On the basis of Section 26 of the Pension Law the Cabinet of Ministers has issued Regulations No. 304. Even though the Regulations have been passed in accordance with Section 26, they actually specify the regulation, established in the impugned norm. Item 7 of the Regulations establishes: ”Taking into consideration the amounts of the pensions, determined in Item 15 of the Transitional Provisions of the Law ”On State Pensions” and the terms of applying indexes, the pensions shall be revised under the following procedure: […]”.

1.4. In accordance with the Cabinet of Ministers July 29, 2003 Regulations No. 403 ”On the Amount of the State Social Allowance and Funeral Benefit, the Procedure of its Review as well as the Procedure for Granting and Payment of the Benefit” and the Cabinet of Ministers July 26, 2005 Regulations No. 561, the title of which is the same, the amount of the State social security allowance is 35 lats a month. Thus, according to the impugned norm, the amount of pensions to be indexed at this moment is 105 and 175 lats a month.

2. On April 6, 2005 a case was initiated on the basis of the constitutional claim by V.Emsiņa. In turn on June 7, 2005 a case was initiated on the basis of the constitutional claim by M.Draudiņš and M.Skuja. The above constitutional claims are similar on their essence. To encourage versatile and quick process of review of these cases, in accordance with Article 22, Paragraph 6 of the Constitutional Court Law, they were combined into one case.

The submitters of the constitutional claim receive old age pensions, which exceed the amount of five State social security benefits or 175 lats a month. In accordance with the impugned norm their pensions are not periodically revised.

The submitters of the constitutional claim hold that the impugned norm is at variance with Article 91 of the Republic of Latvia Satversme (henceforth – the Satversme). It is pointed out in both – the constitutional claim by V.Emsiņa and in that by M.Draudiņš and M.Skuja that the basis of the differentiated attitude, determined by the impugned norm and depending on the amount of the pension, has no objective and reasonable basis. They state that all the receivers of the pension are equally subjected to inflation, thus to their mind they are in equal circumstances. Besides, the gaining of the State pension special budget exceeds the expenses; therefore indexation of all state pensions is possible. The submitters of the constitutional claim conclude that the differentiated attitude is not proportional.

M.Draudiņs'and M.Skuja also point out that because of frequent amendments of Item 15 of the Pension Law Transitional Provisions the principle of trust in law is being violated, because "the pensioner may not be sure about the consequence of the legislator as well as about constancy and invariability of the passed legal norms.

After getting acquainted with the materials in case, the submitters of the constitutional claim in their written conclusions uphold their viewpoint, expressed in the constitutional claim.

3. **The Saeima –** the institution, which has passed the impugned norm – in its written reply points out that the above norm is not at variance with Article 91 of the Satversme.

   The Saeima states that the legitimate aim of the norm is first of all to promote more rapid increase of the low pensions. The Saeima mentions arithmetic coherence because of which comparatively much more money is needed to increase all pensions and index also the so-called higher pensions. Secondly, restrictions with regard to pension indexation have been incorporated into the Pension Law Transitional Provisions because it was necessary to balance the income and expense parts of the State special budget.

   The Saeima points out that the first level of the pension system functions in accordance with the principle of solidarity, which is to be applied not only between the generations but also within the framework of one generation. It is stated in the written reply that the participants of the above system mutually – one to the other – guarantee social security;

and differentiated indexation is one of the manifestations of the principle of solidarity.

In the written reply it is explained that ”the impugned norm has been included in the law on the basis of the request of the pensioners themselves. […] In the letters by the Latvian Pensioners' Federation and its regional unions the request was expressed to respect the proposals of the Latvian Pensioners' Board for normalization of the social-economic situation, inter alia , also the proposal to realize a differentiated – depending on the amount of the pension – indexation". Letters with such proposals were attached to the Saeima written reply.

4. During the period of preparation the case for review the Constitutional Court requested information from the Ministry of Welfare and State Social Insurance Agency.

4.1. **The Ministry of Welfare** points out that after assessing the economic situation in the State the Cabinet of Ministers revises the amount of the State social security benefit from which depends the amount of the pensions to be indexed. The Ministry has prepared a proposal of increasing the State social allowance from January 1, 2006. The Ministry, just as the Saeima, holds that the solidarity principle functions also between the receivers of social services. Both – calculation of pensions, by taking into consideration the average foreseeable length of life as well as the guarantees for minimum pension are important for the sector of pensions.

4.2. **The State Social Insurance Agency** (henceforth – the Agency) in its written reply to the Constitutional Court furnished information on the data used for calculation of the pensions of the submitters, as well as the statistics, characterizing indexation.

On January 1, 2005 there were 593 494 pension receivers in the State. The number of those pensioners, whose pension does not exceed the amount of three State social security benefits is 93,85% from the total number of pensioners. 36 500 persons, or 6,15% of pensioners have received pensions, which exceed the amount of three State social security benefits (105 lats). Among them are 27 900 persons or 4,7% of pensioners, who receive more than the amount of three State social security benefits, but less than the amount of five State social security benefits (175 lats). 1,45% of pensioners or 8600 persons receive pensions, which exceed the amount of five State social security benefits (175 lats). It is prognosticated that till 2010 the number of those pensioners, who receive more than 175 lats every month will grow to approximately 14 000 or 2,49% of the total number of the pensioners.

The Agency points out that due to the impugned norm the economy of the State pension special budget this year has been planned in the amount of 5,9 million, which corresponds to 1,1% of the expenses. It is foreseeable that in 2009 the above numbers will be 10,3 million lats and 1,8 percent. The prognosis for 2010 State pension special budget has not been elaborated yet, however, decrease of expenses in the amount of 11,9 million lats is foreseen.

The concluding part

5. Article 91 of the Satversme determines that ”all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind”. Two mutually closely connected principles are included in Article 91 of the Satversme: the principle of equality – in the first sentence and the principle of prohibition of discrimination – in the second sentence (*sk. satversmes tiesas 2005.gada 14. septembra spriedumu lietā No. 2005-02-0106 9. punktu; see: the Constitutional Court September 14, 2005 Judgment in case No. 2005-02-0106; Item 9).*

It follows from the constitutional claims and the Saeima written reply that in the above case the criterion of differentiated attitude is the amount of the pension. Thus, depending on the amount of the pension, the impugned norm establishes a differentiated procedure for revising of the state pensions. Therefore within the framework of the case the impugned norm shall be analyzed in the context of the principle of equality and not the principle of prohibition of discrimination.

When interpreting Article 91 of the Satversme the Constitutional Court has recognized that the principle of equality forbids to the State institutions passing such norms, which without a reasonable ground permit a differentiated attitude to persons, who are in equal and under certain criteria comparable circumstances. The principle of equality permits and even requires a differentiated attitude towards persons, who are in different circumstances as well as permits a differentiated attitude towards persons, who are in equal circumstances, if there is an objective and reasonable basis for it (*sk. piemēram, Satversmes tiesas 2001. gada 3. aprīļa sprieduma lietā No. 2000 – 07 – 0409 secinājumu daļas 1. punktu; see, for example, the Constitutional Court April 3, 2001 Judgment in case No. 2000 – 07 – 0409; Item 1 of the concluding part).*

When verifying whether the legislator has observed the principle of equality, one has to take into consideration the fact that the legislator experiences freedom of action and the right to take the decision whether

two situations shall be regarded as equal. In accordance with the principle of equality the prohibition of arbitrariness determines the outer limit of freedom of action of the legislator (*see, for example, Alexy R. A Theory of Constitutional Rights. Oxford: Oxford University Press, 2002, pp. 265 – 270).* Freedom of action of the legislator within the framework of realization of the principle of freedom (the first sentence of Article 91 of the Satversme) is much more extensive than within the framework of realization of the principle of prohibition of discrimination (the second sentence of Article 91 of the Satversme). When ascertaining whether a legal norm is not at variance with the principle of equality, one has to take into consideration the legal sector, into which the impugned norm is incorporated.

6. **A**s concerns this case the impugned norm is attributed to social rights. The Constitutional Court has repeatedly assessed the nature and specifics of the above rights by analyzing the contents of Article 109 of the Satversme.

6.1. First of all the right to social security, guaranteed by Article 109 of the Satversme is specified in the Law "On Social Security", understanding by social security different social security measures; also the social insurance. By the Law are established the principles of formation and functioning of the social security system as well as persons' main social rights and obligations. The above Law in the sector of legal social rights shall be regarded as the Law establishing the framework of legal regulation (*sk. likuma "Par sociālo drošību"1. panta pirmo daļu, kā arī satversmes tiesas 2002. gada 25. februāra sprieduma lietā No. 2001-11-0106 secinājumu daļas 1. punktu; see: Article 1, the first Paragraph of the Law "On Social Security" as well as the Constitutional Court February 25, 2002 Judgment in case No. 2001-11-0106; Item 1 of the concluding part).*

In their turn the constitutional rights to social security in old age are established in the Law "On Social Security" and the Law "On the State Social Insurance", but are specified in the Pension Law (*sk. Satversmes tiesas 2002.gada 19. marta spriedumu lietā No. 2001-12-01 secinājumu daļas 1. punktu; see: the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01; Item 1 of the concluding part).* Thus the impugned norm shall also be regarded as the specification of the rights, established in Article 109 of the Satversme.

The principle of equality is often applied together with other fundamental rights, the more so because quite often it is impossible to conclude how the case shall be decided if based only on the above principle (*sk.: Langebuhere K. Tiesnešu tiesību attīstība un*

iztulkošana. Rīga: Tiesu namu aģentūra, 2005, 158.lpp.; see: Langenbuher K. The Development and Interpretation of the Rights of the Judges. Riga: The Agency of the Court House, 2005, p. 158).

6.2. Secondly, social rights is a specific sector of human rights, which within the constitutional laws of the states and in international human rights instruments are defined as general obligations of the state. The mechanism for regulating them is left for the legislator to take the decision on (*sk. Satversmes tiesas 2001. gada 26. jūnija sprieduma lietā No. 2001-02-0106 secinājumu daļas 4. punktu; see the Constitutional Court June 26, 2001 Judgment in case No. 2001-02-0106; item 4 of the concluding part).* The Constitutional Court has already earlier pointed out that social rights are very important, at the same time being specific and different human rights; as the realization of these rights depends on the economic situation and accessible resources of each state. Besides, Article 109 of the Satversme does not regulate specific provisions of the pension scheme. Thus the norm envisages and allows certain differences in receiving the social insurance services (*sk. Satversmes tiesas sprieduma lietā No. 2001-11-0106 secinājumu daļas 1. punktu; see the Constitutional Court Judgment in case No. 2001-11-0106; Item 1 of the concluding part).*

6.3. Thirdly, one of the basic principles of social insurance is solidarity between the payers of social insurance premiums and the recipients of social insurance services (*sk. likuma "Par sociālo drošību"2. panta 2. punktu un likuma "Par valsts sociālo apdrošināšanu" 3. panta otrās daļas 1. punktu; see: Section 2, Item 2 of the Law "On Social Security" and Section 3, Paragraph 2, Item 1 of the Law "On State Social Insurance").* It is reasonably pointed out in the written replies by the Saeima and the Ministry of Welfare that the principle of social solidarity shall be applied not only as regards the members of different generations, but also among the receivers of social services of one generation. This conclusion follows from the establishment of minimum social guarantees. If minimum social insurance payment has been determined (for example with regard to old age pensions), then in the circumstances of fixed budget logic of receipts and expenditures allows determining also restrictions regarding the maximum. In 2005 reports on the national strategy in the sector of pensions, the EU Member States have acknowledged a similar understanding of the solidarity principle, namely – it shall be applied not only as regards the members of different generations, but also within the framework of one generation [*see: National strategy reports (2005): adequate and sustainable pension systems; http:// europa.eu.int/comm./employment_social/social_protection/pensions _en.htm; dealt with on 14.08.2005).*

7. The submitters of the constitutional claim hold that they – as regards indexation of pensions – are in similar circumstances with the pensioners, whose pensions are being indexed in compliance with the impugned norm. To their mind the diverse attitude, i.e. by determining a differentiated procedure for the revision of pensions on the basis of the amount of the pension , cannot be justified, because inflation concerns them as much as the other pensioners, who receive pensions of smaller amount.

The Constitutional Court has reiterated that for the differentiated attitude to be justified it has to be substantiated by reaching of the legitimate aim and it has to be proportionate *(sk. piemēram, Satversmes tiesas sprieduma lietā No. 2002-15-01 secinājumu daļas 3. punktu; see e.g. Constitutional Court Judgment in case No. 2002-15-01; Item 3 of the concluding part).*

8. One shall recognize that the statement, mentioned in the Saeima written reply, namely, that the impugned norm is needed for increasing of the financial situation of the receivers of small pensions as quickly as possible. This aim was named at the Saeima debate on the wording of the impugned norm. Namely, when reviewing the draft Law ”Amendments to the Law ”On State Pensions”” in its second reading, the Saeima deputy Jevgenija Stalidzāne in the name of the Social and Employment Matters Committee pointed out that ”Item 15 of the Transitional Provisions for a certain period of time envisages several norms, which are directed to indexation of small pensions. The proposal, elaborated by the Committee envisages the protection of needy pensioners […]” [*2004. gada 19. februāra Saeimas sēdes stenogramma; Verbatim report of the Saeima February 19, 2004 session// Latvijas Vēstnesis, February 26, 2004, No. 31(2979)].* Besides, in the summary to the just planned draft Law Amendments to the Pension Law it was pointed out that the above Amendments ”shall hasten the improvement of the status of indigent pensioners. The draft Law all in all is directed to decreasing of the risk of social rejection of pensioners and ensurance of adequate amount of pensions” (*Likumprojekta ”grozījumi likumā “Par valsts pensijām” anotācija; Summary to the draft Law ”Amendments to the Law”On State Pensions””; http://www.mk.gov.lv/index.php/files/0/20728.doc; dealt with on 05.0702005).*

Well-grounded is also the argument, included in the Saeima written reply, that it was necessary to incorporate restrictions with regard to indexation of pensions in the Transitional Provisions, so as to balance the receipt and expenditure parts of the special budget of State pensions. The above aim follows from the basic principle of the State social insurance budget – self-financing. 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.

Thus, the differentiated attitude is connected with reaching of the legitimate aim – rise of the financial level of the receivers of "small pensions", simultaneously balancing the receipts and expenditures of the State special pension budget.

9. When analyzing the conformity of the impugned norm with the principle of proportionality, one has mainly to assess the consequences, created by the means chosen by the legislator, namely – whether the application of the legal norm does not create damages to the rights and lawful interests of the individual, which are greater than the public benefits.

The duty of the Constitutional Court is to verify, whether the legislator has reasonably determined a differentiated procedure for the revision of State pensions and thus – also a differentiated distribution of the State pension special budget funds. Namely, it has to be assessed whether the legislator has not violated the limits of freedom of action, following from the basic law.

Besides, the Constitutional Court shall abstain from assessing political issues, because these issues are within the competence of the democratically legitimized legislator (*sal. Satversmes tiesas 2003. gada 29. oktobra spriedumu lietā No. 2003-05-01 29. punktu un Satversmes tiesas spriedumu lietā No. 2005-02-0106 18. punktu; compare the Constitutional Court October 29, 2003 Judgment in case No. 2003-05-01; Item 29 and the Constitutional Court Judgment in case No. 2005-02-0106; Item 18).* Social rights are the sector in which it is hard to draw the line between juridical and political reasons (*see: Alexy, pp. 274-275).*

9.1. V.Emsiņa in her constitutional claim writes that "any pension shall be protected against the inflation, otherwise very soon equalization of pensions will take place and accrue of the pension capital of the employee, which in fact is the basis of the pension system, will lose sense" (*sk. lietas 3.lpp; see p.3 of the case).* M.Draudiņš and M.Skuja also point out that the Pension Law "introduces the principle that the pensioner receives old age pension on the basis of social premium payments, paid at the time of him/her being employed. Thus there functions the principle – the amount of the pension depends on the down payments […] the pension indexation, which is in effect at the present

moment, aids and abets leveling of pensions; therefore it is at variance with the essence and sense of personified pension system (*sk. lietas 65. lpp.; see p.65 of the case).*

9.2. However one has to take into consideration that ”in the period, when also the persons, employed before January 1, 1996 require granting of pensions […], the insurance system cannot be attributed to them: pensions shall be granted and calculated not only under the norms of the Pension Law but also under Transitional Provisions. Therefore one may find deviation from the above provision that person’s pension depends only on the social insurance premiums paid at the employment period” (*Satversmes tiesas sprieduma lietā No. 2001-12-01 secinājumu daļas 1. punkts; the Constitutional Court Judgment in case 2001-12-01, Item 1 of the concluding part).* One of the deviations refers just to the submitters of the constitutional claim – that is an assumption that approximately the same salary as has been received in the period from 1996 to 2000 has been received during all the years of employment. The Constitutional Court has explained it in the following way: ”During the transition period pensions were calculated not only in accordance with Article 12 of the Pension Law but also by observing Paragraph 13 of the Transitional Provisions. Thus, when calculating pensions, not only the pension capital registered from January 1, 1996 and which complies with the payment of insurance premiums, but also the initial capital were taken into consideration. The initial capital was determined for the employment period up to December 31, 1995 by taking into consideration the person’s average insurance premium wages for another – later period, from 1996 to 2000 (depending on the year of retirement). Thus it is evident that the calculated pension is not adequate for the person’s individual investment during the whole period of employment” (*Satversmes tiesas sprieduma lietā No. 2001-12-01 secinājumu daļas 1. punkts; the Constitutional Court Judgment in case No. 2001-12-01; Item 1 of the concluding part).*

Incompatibility of the pensions with the down payments can be clearly seen in the case of the submitters of the constitutional claim. In accordance with the information, furnished by the Agency on November 1, 2005, the accrued pension capital of V.Emsiņa to which were applied indexes of the insurance premium payments and which had been taken into consideration, when calculating the pension, is 13 525,25 lats, but the monthly pension is 340, 49 lats. Thus the envisaged accrued capital covers a little bit more than three year long payments. The accrued pension capital of M.Draudiņš is 10 389, 38 but the monthly pension- 261,04 lats. Even in this case the accrued capital covers a lit bit more than three year long payments. In its turn the accrued pension capital of M.Skuja is 19 970, 24 lats, but the pension – 684,14 lats. In this case the capital would cover the payments for only a little bit more than two years. However, due to the Transitional Provisions of the Pension Law they receive payments, which cannot be covered by the envisaged accrued capital, because the terms and calculation formulas result from the Saeima political decision.

The impugned norm, which determines the procedure of the revision of pensions, can also be regarded as partly political.

9.3. The decision of the legislator on the procedure of calculating state pensions when carrying out the pension reform was of the political nature. The Transitional Provisions refer to pensioners, whose employment life had begun before the Pension Law taking effect. The longer the length of service – and as concerns the submitters of the constitutional claim it is tens of years – the more the regulation of the Transitional Provisions influences the pension calculation. Neither the Constitutional Court, nor the legislator may assess the contribution of every pensioner during his/her lifetime before the pension Law taking effect. From the above follows that also the later decisions about the differences on the increase of the pensions, calculated under the Transitional Provisions, are mostly political decisions.

Thus, the Constitutional Court holds that differentiated indexation, even though it is not the only way to increase the lowest amount of pensions, is still a possibility and in this case – permissible means.

9.4. The fact that the above procedure is characteristic not only to Latvia also indirectly testifies about the permissibility of a differentiated revision procedure as concerns pension. A differentiated pension revision is implemented also in Austria, Belgium, Denmark, Italy, Cyprus, Lithuania, Slovakia, and Slovenia (*Social protection in the Member States of the European Union, of the European Economic Area and in Switzerland: Situation on 1 May, 2004; http://europa.eu.int/comm/employment_social/missoc/missoc2004_en.pdf, dealt with on 15.08.2005; see also National strategy reports http://europa.eu.int/comm/employment_social/social_protection/pensions_en.htm).*

9.5. However, the legislator, when adjusting the application of Section 26 of the Pension Law, shall take into consideration the principles of a law-governed state. When resolving the procedure for revision of the State pensions, it shall be taken into consideration that by not revising pensions, the amount of which exceeds the amount of five State social security benefits for a long period of time, the differentiated attitude, determined in the impugned norm, may lose its justification.

Therefore the Court draws the attention of the Saeima and the Cabinet of Ministers to the fact that – when continuing improvement of Item 15 of the Transitional Provisions of the Pension Law, it is necessary to determine a more considerate attitude also to the persons, the amount of whose State pensions exceeds the amount of five State social security benefits, because inflation influences everybody. A certain part of pensions of these persons might be indexed.

10. In their constitutional claim M.Draudiņš and M.Skuja refer to the Constitutional Court case law and maintain that the impugned norm violates the principle of the legitimate trust (trust in law).

The Constitutional Court has reiterated that old age pensions belong to the issues of state social policy, which shall be long-termed and which need stability. Social policy is connected with a certain state support and protection for persons, who need it; therefore the trust in law in this sector shall be protected (*sk. satversmes tiesas sprieduma lietā No. 2001-12-01 secinājumu daļas 3.2. punktu; see the Constitutional Court Judgment in case No. 2001-12-01; Item 3.2 of the concluding part).*

10.1. It should be taken into consideration that the principle of solidarity of generations functions in the first level pension system and the contribution (down payments) of the people, who are working now, is immediately paid to the pensioners *(sk. Satversmes tiesas sprieduma lietā No. 2001-12-01 secinājumu daļas 3.1.3. punktu; see the Constitutional Court judgment in case No. 2001-12-01; Item 3.1.3. of the concluding part).* If the solidarity principle is in force then it cannot be established what share (part) of the fund belongs to a concrete member (*Satversmes tiesas sprieduma lietā No. 2001-02-0106 secinājumu daļas 2. punkts; The Constitutional Court Judgment in case 2001-02-0106; Item 2 of the concluding part).* The pension system of the first level is apparently funded and the envisaged capital is created for it, but not the real capital accrued in the personal account, as it is in the funded pension systems of the first and the second level, in which the increase of the fund is gained by the down payment of the pensioners themselves. In the circumstances of steady economical growth the pensioners should receive pensions, corresponding to their down payments, which would be increased, taking into consideration the level of inflation. However, taking into consideration the conceptual viewpoint, one has to recognize that the link between the amount of pension, inflation and increase of salaries under the pension system is not automatic. It can be said about both – the pensions of the second and third, as well as the first level.

10.2. In the Constitutional Court Judgment in case No. 2001-12-01 on the restrictions to pension payment to employed pensioners it was recognized that ” the pensioners were convinced that one could certainly trust in the pension system, i.e. the Pension Law. Also in the norms, which envisage that, first of all, when the person reaches the age, determined by the law, then he/she shall be able to receive the pension, calculated to the formula; thus there was the possibility of calculating the amount of the potential pension […]” (*secinājumu*

daļas 3.2. punkts; Item 3.2 of the concluding part). However, the situation in this matter is different.

First of all, the stability has never been characteristic of the indexation regulation, incorporated in the Pension Law (*sk šā sprieduma 1.2. punktu; see Item 1.2 of this matter).* The Constitutional Court has already earlier pointed out that ”implementation of the principle of trust in law depends on the fact whether the person’s trust in the legal norm is legitimate, well-grounded and reasonable as well as on the fact whether the legal regulation on its essence is reasonably definite and constant, so that one could trust in it (*Satversmes tiesas 2004. gada 25. oktobra sprieduma lietā No. 2004-03-01 9.2. punkts; sk. arī Satversmes tiesas sprieduma lietā No. 2001-12-01 secinājumu daļas 3.2. punktu; Item 9.2 of the Constitutional Court October 25, 2004 Judgment in case No. 2004-12-01; see also the Constitutional Court Judgment in case No. 2001-12-01; Item 3.2 of the concluding part).* Secondly, already since the time of the Law taking effect, terminated norms of the Transitional Provisions, which adjust the general indexation procedure, determined in Section 26, have been valid. Thirdly, 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.

Thus, the nature of the pension system and the principles cannot serve as the basis for trust that the regulation of indexation will not be changed.

The operative part

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

hereby rules:

to declare Item 15 of the Pension Law Transitional Provisions as conformable with Article 91 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