THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, April 6, 2005

JUDGMENT
in the name of the Republic of Latvia
in case No. 2004 – 21 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Gunārs Kūtris, Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins and Andrejs Lepse under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 11 of the First Paragraph), 19^2 and 28^1 of the Constitutional Court Law on the basis of the constitutional claims by Mārtiņš Draudiņš, Alberts Krols, Jevgēnija Borovska, Mārtiņš Skuja, Jānis Botmanis, Jānis Koponāns, Aivars Bērziņš, Astrīda Krakope, Raimonds Millers, Viktors Stepičevs, Mihails Bondarevs, Taisija Antmane, Alberts Beļajevs, Elga Akotiņa, Ivars Kārkliņš, Maija Ausekle, Eduards Šņukuts, Francis Buļs, Artūrs Elksnis, Almants Balodis and Elmārs Gultnieks in written proceedings at March 15, 2005 Court session reviewed the case

”On the Compliance of Paragraph 32 of the Transitional Provisions of the Law on State Pensions with Articles 1 and 109 of the Satversme (Constitution)”.

The establishing part

1. On November 2, 1995 the Republic of Latvia Saeima (hereinafter – the Saeima) passed the Law ”On State Pensions” (hereinafter – the Pension Law), which was repeatedly amended during the following years.

On September 25, 2001 a case ”On the Compliance of Paragraph 26 of the State Pension Law Transitional Provisions with Articles 91 and 109 of the Satversme (Constitution)”, based on the constitutional claims by Mārtiņš Draudiņš, Valdis Eglītis and Viktors Purmalis, was initited at the Constitutional Court (information on the initiating of the case was published in the newspaper ”Latvijas Vēstnesis” on September 28,

2001). Paragraph 26 of the Transitional Provisions of the Pension Law prohibited for the mandatory socially insured persons to receive old age pension in the whole amount.

On March 19, 2002 the Constitutional Court with a Judgment in case No. 2001-12 – 01 declared Paragraph 26 of the Pension Law Transitional Provisions as unconformable with Article 1 of the Satversme and null and void from the day of publishing of the Judgment i.e. from March 20, 2002.

On December 20, 2001 the Saeima adopted the Law ”Amendments to the Law ”On State Pensions””, which supplemented the Transitional Provisions with Paragraph 32 in the following wording:

” from a person whose pension during the period of January 1, 2000 until December 31, 2001 was exceeding the double amount of state social security allowance and from January 1, 2002 until December 31, 2004 that amount indicated in Paragraph 26 of the Transitional Provisions and who during the period from January 1, 2000 until December 31, 2004, while being person subjected to the mandatory social insurance (employee or a self-employed person) in contravene to provisions of Article 34 of this Law did not so inform the affiliation of the State Social Insurance Agency has the right to keep no more than 30 percent of the pension payable to him/her until the overpayment of pension is extinguished”.

In its turn the first part of Article 36 of the Pension Law had already provided for cases on when and under what procedure withholdings from pension may be made:

”(1) withholdings from state pensions may be made:

1.) on the basis of court decisions and decisions of other institutions (officials) to be executed under the procedure established for execution of court decisions;
2.) on the basis of decisions by institutions (officials) to be executed under procedure without disputes;
3.) on the basis of an order by the Head of Social Insurance Department to recover pension amounts overpaid to a pensioner due to his/her fault. In this case no more than 10 percent of the payable pension may be withheld”.

In Paragraph 32 of the Transitional Provisions of the Pension Law there is reference to Article 34 of the Law, which determines that ”a recipient of state pension shall be obliged to notify the Social Insurance Department about emerging of circumstances causing cessation of pension payment or changes in the amount of the pension to be paid”.

2. **The submitters of the constitutional claim –** Mārtiņš Draudiņš, Alberts Krols, Jevgēnija Borovska, Mārtiņš Skuja, Jānis Botmanis, Jānis Koponāns, Aivars Bērziņš, Astrīda Krakope, Raimonds Millers, Viktors Stepičevs, Mihails Bondarevs, Taisija Antmane, Alberts Beļajevs, Elga Akotiņa, Ivars Kārkliņš, Maija Ausekle, Eduards Šņukuts, Francis Buļs, Artūrs Elksnis, Almants Balodis and Elmārs Gultnieks (hereinafter – the submitters) contest the conformity of Paragraph 32 of the Pension Law Transitional Provisions with Articles 1 and 109 of the Republic of Latvia Satversme (hereinafter – the Satversme).

   Submitters, making reference to the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, point out that withholding of part of the pension, which has been granted ”for life” is illegal in point of fact as it is unconformable with the fundamental principles of a law-governed and democratic state. If the Constitutional Court declared that withholdings from pension, established in Paragraph 26 of the Pension Law Transitional Provisions, do not comply with Article 1 of the Satversme and the fundamental principles of a democratic state, then Paragraph 32 of the Transitional Provisions, which regulates the same activities and includes the same requirements, even reference to the invalid Paragraph 26, cannot be considered as legitimate.

   The submitters express the viewpoint that the impugned norm is unconformable with the principle of proportionality and stress that ”there does not exist any social need to continue withholdings ex post facto for the previous period, if – in accordance with official press information (newspaper ”Diena”, July 5, 2003) - there is 19,5 million lats excess in the social budget”. In this case the public benefit does not exceed the loss of individuals.

   The submitters hold that the impugned norms violate the principle of legal certainty, because in accordance with the First Paragraph of Article 30 of the Pension Law, the pensioner trusted that the pension, granted ”for life”, would not be withheld i.e. neither 10 nor 30 percent of it might be withheld.

   There is no reason to blame pensioners for ”not notifying” in the understanding of Article 34 of the Pension Law either. This Article took effect on January 1, 1996. The submitters point out that ” for four years the Article of the Law had nothing in common with pensioners’ informing about their labor relations. Only then, when the legislator passed Article 26 of the Pension Law Transitional Provisions, Article 34 – even without any alteration of its wording- incorporated new essence and meaning; and the pensioners had a new- earlier unknown ”obligation” to notify about their labor relations”. In the same way the submitters hold that the State Social Insurance Agency has not fulfilled

its main duty that of administration of the pension system and implementation of the norms of the Pension Law. Every month the State Revenue Service keeeps informing the State Social Insurance Agency about the increase in the personal pension fund of every particular pensioner. Therefore to their mind imposition of the duty to the pensioners to inform about their labor relations has been ungrounded, besides, the Law defines the obligation in an ambiguous way. The submitters point out that the legislator should have exactly indicated the mechanism for realization of the incompetently and inaccurately formulated law, - either by supplementing Article 34 of the Pension Law and precisely formulating the obligation of the pensioners to inform about their labor relations or by assigning realization of the norms of the Pension Law to the State Social Insurance Agency.

3. **The Saeima –** the institution, which has passed the impugned act – in its written reply points out that the impugned norm complies with Articles 1 and 109 of the Satversme and requests to declare the claim as ungrounded and reject it.

   The Saeima explains that ” the impugned norm is closely connected with Paragraph 26 of the Pension Law Transitional Provisions, as it ensures fulfillment of the Paragraph in cases when withholdings of pension are deducted after some time, if it is established that a person has not fulfilled its duty envisaged by the Law - has not informed about the changes, but has received full amount of the pension”. The aim of the impugned norm has been ”to ensure efficient enactment of Paragraph 26 of the Transitional Provisions of the Law”. That is, ”to ensure that from persons, who had not fulfilled the obligation envisaged in the Law to inform about changes in their labor relations and whom Paragraph 26 of the Transitional Provisions might concern, 30 percent of the pension payable to him/her shall be withheld until the overpayment pension is extinguished”.

   The Saeima points out that the impugned norm is applied in interconnection with the requirements of Paragraph 26 of the Pension Law Transitional Provisions. After adoption of Paragraph 26 all pensioners, subjected to mandatory social insurance, had the obligation to inform about the fact. However, many employed receivers of the State pension did not fulfill the duty of informing about changes in their status, established in Article 34; therefore part of the pension, which in compliance with Paragraph 26 of the Pension Law Transitional Provisions had not to be paid, was overpaid.

   The Saeima expresses a viewpoint that ” in case if the impugned norm did not exist or had not been applied, a situation could arise, that a person would not fulfill other duties, established by laws”. Thus to their

mind the impugned norm is requisite and proportionate, as it ensures observance of the principles of equality and legal force of law as well as trust of persons in legal norms.

4. **The Ministry of Welfare (**henceforth – the Ministry), when answering to questions asked by the Constitutional Court, points out that the impugned norm is directed to ensure implementation of the principle of legal equality and principle of justice, as it does not permit a differentiated attitude with regard to persons, who observed the requirement of the law and informed about their labor relations, thus – they received pension in a limited amount and those persons, who did not observe the requirement of the law and received their pensions in full amount. The objective of the impugned norm has been to collect that sum, which has been overpaid due to the guilt of the pensioners.

   The Ministry holds that establishment of limitation of pension payment to the employed pensioners by supplementing the Transitional Provisions of the Pension Law with Paragraph 26 ”by no means restricted the right of a person to pension”.

   Besides, in the written reply it is stated that at the present moment the special budget of the State Social Insurance still has to discharge the debt to the state budget as well as refund the payment of credit interest.

5. **The State Social Insurance Agency** (henceforth – the Agency) points out that the norms of Article 36 (Item 3 of the first Part) and those of Paragraph 32 of the Transitional Provisions enable the Agency to get back the pension sums, which have been overpaid during the time when the norms of Paragraph 26 of the Pension Law Transitional Provisions were valid, i.e. – from January 1, 2000 till March 19, 2002.

   The Agency, when specifying the information furnished by the Ministry on the debt liability of the State Social Insurance budget, states that the total loan of the State Social Insurance Special budget in the period from 1999 till 2002 is 81,96 million lats, out of which 40,34 million more lats have to be paid in the next three years. In addition to the above interest for the loan is 31,30 million lats out of which 5,2 million lats have to be repaid in the next four years.

   The Agency draws attention of the Constitutional Court to the fact that rescission of Paragraph 32 of the Pension Law Transitional Provisions ”may create unpredictable consequences on part of those pensioners, whose pension amount was limited just because they had observed the valid legal norms”.

The concluding part

6. Article 109 of the Satversme guarantees to everyone the right to social security in old age, for work disability, for unemployment and in other cases. The Constitutional Court has analyzed the contents of the above Article in several of its Judgments (*see e.g. the Constitutional Court March 13, 2001 Judgment in case No. 2000-08-0109; June 26, 2001 Judgment in case No. 2001-02-0106 and March 19, 2002 Judgment in case No. 2001-12-01).*

The Constitutional Court has pointed out that social rights are very significant; however, at the same time they are special and diverse human rights, as implementation of the above rights depends on the economic situation and available resources of every particular state – it is closely connected with the feasibilities of every state (*see the Constitutional Court March 13, 2001 Judgment in case No. 2000-08-0109; the concluding part).*

The obligation of the state is to secure social rights not only when implementing legislative measures, but also administrative, legal, economical, social and educational measures [*see: The Nature of States Parties Obligations (Art 2, par. 1):14/12/90, CESR General Comment 3, UN Doc. E/1991/23;* ***http://cesr.org/generalcomment3;*** *dealt with on 08.02.2005.]* When fixing in the Satversme the right of an individual to social security as the fundamental right of a person, the state has an obligation to create an efficient mechanism for realization of this legal norm, as well as to see to implementation of this right, that is, to ensure that the State institutions shall make use of all available resources.

Laws, passed in the sector of social insurance, not only establish the rights of an individual but also obligations with regard to the State, for example, insurance of the State pension etc. These normative acts also authorize the State institutions to administer, supervise and control observation of the law.

7. The impugned norm simultaneously includes both – the obligations of the state and the person. Therefore, only after establishing the validity of the determined obligations and the mechanism for implementation of them, one may assess the conformity of the legal regulation, incorporated in the norm with the Satversme.

The impugned norm just as Article 36 of the Pension Law envisages deductions from the State pension. Besides, it refers directly to Paragraph 26 of the Pension Law Transitional Provisions, as well as to Article 34 of the Law, which determines the obligations of the receiver

of the State pension. Therefore the impugned norm shall be reviewed as read in conjunction with the above norms.

8. If the pension has been overpaid due to the guilt of the pensioner himself/herself, then – on the basis of Article 36 (Item 3 of the First Part), the State may deduct not more than 10 percent of the pension to be paid per month. Regardless of this possibility on December 20, 2001 the legislator supplemented the Pension Law with the impugned norm, which established that in a concrete case –if the overpayment occurred in compliance with Paragraph 26 of the Transitional Provisions - deductions may reach 30 percent of the pension to be paid.

Besides, it took place at the time, when a case on the compliance of Paragraph 26 of the Pension Law Transitional Provisions with the Satversme was being prepared for review at the Constitutional Court. The above norm was incorporated in the Draft Law only in the second reading on the proposal of the Minister of Welfare.

Both – the norm of Article 36 of the Pension Law and the norm of Paragraph 32 of the Transitional Provisions permit the possibility of making deductions from the pension, if it has been overpaid in connection with the case, established in Paragraph 26 of the Transitional Provisions. Both the above norms are connected with Article 34 of the Pension Law, which determines the obligation of the recipient of pension. This Article envisages the obligation of the recipient of pension " to notify the Social Insurance Department about emerging of circumstances causing cessation of pension payment or changes in the amount of the pension to be paid". In difference from Article 36 (Item 3 of the First Part), which determines that withholdings may be withheld from pension amounts overpaid to a pensioner due to his/her fault, the impugned norm refers to non-observance of the obligation established in Article 34 – i.e. if a person at variance with Article 34 of the Law has not notified the affiliation of the Agency.

Both – the Saeima and the Ministry, as well as the Agency hold that non-observance of Article 34 of the Pension Law as regards Paragraph 26 has taken place due to the fault of the pensioner and thus – it may serve as the basis for withholdings from the pension.

9. To determine whether Article 34 of the Pension Law clearly assigned the pensioners with the obligation to notify about the circumstances, mentioned in Paragraph 26 and whether not doing it may be considered as the fault of the pensioner, one shall assess:

1. Whether the person has the duty of always observing a valid legal norm?

2. Whether the legal norm, included in Article 34 of the Pension Law with regard to circumstances, determined in Paragraph 26 can be clearly understood?
3. Whether the State, when determining such normative regulation has duly taken care of implementation of the right of the persons to social maintenance, which is fixed in the Satversme?

9.1. Article 7 of the Law ”On the Procedure by which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid” determines that all the valid laws are binding in the whole territory of Latvia. The principle of force of law determines that everybody is subjected to law. One may agree with viewpoint of the Administrative Case Department of the Republic of Latvia Supreme Court Senate that ” to be on the safe side as regards legal security, a person has to submit even to those laws, which the person considers as unjust. As long as a legal norm is valid, it has to be observed or one has to lodge a complaint against it under the procedure, determined by law” (*Judgment of the Republic of Latvia Supreme Court Senate Department of Administrative Cases in matter No. SKA-5 C 10081702, 2004.)*

Thus everybody has to observe the legal norms in effect.

9.2. Article 34 of the Pension Law, which is in effect since January 1, 1996, obliges the recipient of state pension to notify about the circumstances causing cessation of pension payment or changes in the amount of the pension to be paid. Such circumstances are envisaged in several Articles of the Law, for example, in cases of premature receiving of age pension or loss of supporter pension. In all cases the person already at the time of granting pension has to clearly understand what ”the circumstances causing cessation of pension payment or changes in the amount of pension to be paid” meant with regard to the particular pension. Only since August 5, 1999, when the legislator adopted Paragraph 26 of the Pension Law Transitional Provisions, the above Article 34 – as the submitters point out - besides the changes in wording, included quite new obligations and a new duty for the pensioners - to notify about their labor relations, was included in it. Moreover, this obligation was indirectly imposed. Namely, Paragraph 26 did not incorporate the duty to notify, but determined that mandatory socially insured persons (employees or self-employed persons) with the first day of that month following the month during which the recipient of the pension has become a person subject to mandatory social insurance shall be interrupted the payment of a portion of pension, determined by law.

Thus the obligation, incorporated in Article 34 of the Pension Law, cannot be clearly connected with the circumstances, established in Paragraph 26.

9.3. Article 109 of the Satversme establishes to everybody the right to social security in old age. The State, when fixing the right of an individual to social security in the Satversme as the fundamental right of a person, has to see to implementation of the right, by creating a regulation mechanism, in accordance with which efficient – and restricting in a lesser degree - measures are used.

9.3.1. In accordance with the principle of good administration, which follows from Article 89 of the Satversme and Article 10 of State Administration Structure Law, the State has the duty to simplify and improve procedures as well as to efficiently organize them.

When assessing the activities of the State in securing social rights and the fact how the State is implementing the principle of good administration, one shall take into consideration several circumstances. The Constitutional Court has already mentioned the activities, undertaken by the State, in decreasing the expenses of the pension budget (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.1.2. of the concluding part).* However, even up to the present moment the State keeps inefficiently implementing other opportunities at its disposal with regard to increasing the budget of social insurance, for example, the possibility to ensure more active cashing in of the mandatory debt payments [on March 1, 2005 the debt of social insurance payment was almost 70 million lats (*see March 10, 2005Information on the Structure of Tax Debts by the Central Tax Department of the State Revenue Service, **http://www.vid.gov.lv)]*** , a more thorough assessment of tax reductions, allotted to tax payers, cutting down of administration expenses. Of vital influence in securing social rights has been and still is the state arranged loan ”from the state itself”. As the State borrowed 81,96 million lats from the State budget for securing the budget of another state sector –the State Insurance Special Budget, the Agency up to 2008 continues paying credit interest in the amount of 31,30 million lats (5,18 million are still to be paid).

The Agency is a State institution, which has been created to implement the State policy in the sector of social insurance and state social benefits. The Agency administers the functions of the State Administration in the above sectors (*see Article 24 of the Law ”On State Social Insurance” and the Cabinet of Ministers December 16, 2003 Regulations No. 733”The Regulation of the State Social Insurance Agency”).*

The Agency experiences the right of requiring and receiving from persons and different institutions, inter alia also from the State institutions free of charge data, necessary for implementing functions of the Agency. In its turn Article 23 (the third Paragraph) of the Law ”On the State Social Insurance” determines that ”the State Revenue Service, under the procedure stipulated by the Cabinet of Ministers, shall provide to the State Social Insurance Agency the data on the social insurance premiums paid”.

Thus the Agency had the possibility to establish cases, when the pensioner became the mandatory socially insured person (started working) and that his/her pension exceeds the amount, determined in Paragraph 26. In many cases the Agency had established it and -on the basis of Article 36 (Item 3 of the First Paragraph) of the Pension Law (i.e. before the impugned norm took effect) kept 10 percent of the pensions to be paid. For example, on January 1, 2002 it was known to the Agency that 1630 pensioners had not notified about labor relations and thus their pensions had been overpaid (*see the materials in Case , Vol.2, pp.27-28 and 54-63).* If the Agency in all cases had made use of all of its possibilities, the overpayment of pension would not have been so great.

Thus Article 34 of the Pension Law is not the most effective measure for reaching the aims, incorporated in Paragraph 26.

9.3.2. Paragraph 26 of the Pension Law Transitional Provisions determined only one case, when the payment of the state pension shall be ceased. This legal norm unmistakably assigned the institution, which has the authority to administer pension payment, with the duty to cease paying a certain part of pension to those mandatory insured persons, whose pension exceeds the amount envisaged in Paragraph 26, but not to those persons, who have notified about their labor relations.

To carry out the above duty the Agency needs information on those receivers of pension, who are mandatory insured persons. The Agency obtains this information on all the receivers of pension, who had become mandatory insured persons by making use of the available resources, as the State Revenue Service – in accordance with Article 23 (the third Paragraph) of the Law ”On the State Social Insurance” furnishes information under the procedure stipulated by the Cabinet of Ministers.

On January 1, 1996 the Law ”On Social Security Tax” took effect. The first Paragraph of its Article 11 determines that the State Social Insurance Fund – a State Administration Institution, which is the administration of the social tax, enumerates payments of the social security tax on every socially insured person. The same Law determines that once a year every notification on the standing of the insurance account shall be sent to every socially insured person. Thus the Agency had the information on both - the amount of pension to be paid to a pensioner and about every pensioner, who had labor relations or commenced them, as well as on the situation of the insurance account of every pensioner.

Already in its March 19, 2002 Judgment in case No. 2001-12-02 the Constitutional Court pointed out that efficient application of Paragraph 26 has not been ensured. Referring to the conclusion of the State Control, the Court

established that concrete control mechanisms have not been envisaged, when adopting Paragraph 26 of the Pension Law Transitional Provisions. However, the State had the possibility of ensuring supervision of the fact whether the certain amount of the pension to be paid was decreased to all the employed pensioners. The legal acts included a certain mechanism how – and without assigning to a person an additional duty, which was not clearly formulated as a duty - the State institution could on the basis of information at its disposal and the existing system of notification to duly establish both – the fact that the person was employed and that his/her pension exceeded the amount, envisaged in Paragraph 26 as well as could inform every single pensioner on the sum to be withheld (cessation of payment) in the interests of saving the State Social Budget.

The measure included in the aim of the legal norm may be considered as acceptable only in case if there are no other – more efficient measures, which are less onerous for a person. The formed pension system shall act in the interests of persons, therefore such measures, which ease administration of the pension system, but restrict the rights of pensioners are inexcusable (*see the Constitutional Court December 23, 2002 Judgment in case No. 2002-15-01; Item 3.2. of the concluding part).*

Thus non-notifying of the receiver of the pension about his/her labor relations as determined in Section 34 of the Pension Law so that the State is able to implement restrictions, established in Paragraph 26 shall not be regarded as the fault of the pensioner.

10. The Ministry, counter to the Constitutional Court March 19, 2002 decision in case No. 2001-12-01, in its November 29, 2004 reply to the Constitutional Court still points out that determination of restrictions of the pension payment to the employed pensioners, when supplementing the Pension Law Transitional Provisions with Paragraph 26 ”by no means restricted the right of a person to pension” (*see the Ministry of Welfare November 29, 2004 letter No. S-01-15/2512; Vol. 2 of the case material, pp. 202-205).* Therefore the Constitutional Court has repeatedly emphasized that non-payment of pension in its full amount under the procedure provided for by law restricts the right to social security in old age, which is guaranteed in Article 109 of the Satversme and specified in the Pension Law.

Restriction of rights shall be determined by law or on the basis of a law, justified by a legitimate aim as well as be in conformity with the principle of proportionality.

10.1. Withholdings from pension to collect the sum, which has been overpaid to the pensioner due to his/her fault, have been provided for in Paragraph 32 of the Pension Law Transitional provisions.

Thus the restriction has been determined by law.

10.2. Erroneous is the statement of the Agency that the Constitutional Court has declared Paragraph 26 as unconformable with the Satversme only as of the moment of the Judgment taking effect. Declaring a legal norm as unconformable with the Satversme and losing of validity of such a norm are two different concepts.

In its March 19, 2002 Judgment in case No. 2001-12-01 the Constitutional Court established that the restriction determined in Paragraph 26 of the Pension Law Transitional Provisions had a legitimate aim – to solve the financial problems of the budget, however, this norm was not in compliance with principles of proportionality and trust in law. Therefore by the above Judgment the Constitutional Court ruled that Paragraph 26 of the Transitional Provisions of the Law ”On State Pensions” was unconformable with Article 1 of the Satversme.

However, in accordance with Article 32 (the third Part) of the Constitutional Court Law, the Constitutional Court has the right to take a decision on the time of the legal norm, which it has considered as incompatible with the legal norm of higher legal norm, becoming invalid. When determining the above moment the Constitutional Court assessed both –legal and actual (important in the sector of social rights) circumstances at the time of adoption of the norm and at that of adjudicating the case. Therefore the Constitutional Court decided that Paragraph 26 of the Pension Law Transitional Provisions shall lose validity with the moment of the Judgment taking effect.

The Saeima in its written reply has pointed out that the aim of the impugned norm is ”to ensure efficient implementation of Paragraph 26 of the Transitional Provisions of the Law”.

”Efficient implementation” of the legal norm, which is unconformable with the Satversme, cannot be regarded as the legitimate aim of the norm.

Unjustifiable is reference to the principle of legal equality as the substantiation for application of an anti-constitutional norm. Equal application of illicit norms cannot be the aim of a law-governed state.

Thus, the restriction does not have a legitimate aim.

Taking into consideration the fact that the restriction of the fundamental rights, which follows from Paragraph 32 of the Pension Law Transitional Provisions, lacks the legitimate aim, there is no necessity of

assessing the conformity of this restriction with the principle of proportionality.

Thereby the impugned norm is unconformable with Article 109 of the Satversme.

When establishing unconformity of an impugned norm with any of the Satversme Articles, it shall be declared as illicit and null and void. Thus, there is no necessity to asses the conformity of the impugned norm with Article 1 of the Satversme.

11. Ungrounded is the statement of the Agency that abrogation of the impugned norm may cause unforeseen consequences on part of the pensioners to whom at the time when Paragraph 26 of the Pension Law Transitional Provisions was in effect, pensions- in accordance with this norm- was not paid in the full amount. Up to March 20, 2002 Paragraph 26 was in effect and partly cessation of payment of the pension, determined by it, as well as withholdings from pension, was legitimate.

12. The Constitutional Court holds that withholdings from pensions on the basis of Paragraph 32 of the Pension Law Transitional provisions or Section 36 of the Law (if the reason of the withholdings is the norm, included in Paragraph 26 of the Transitional Provisions) shall be inadmissible and illegal as of the moment of declaring Paragraph 26 of the Pension Law Transitional Provisions invalid. Thus, the persons, from whom the above withholdings have been held, have the right to receive back the withheld sum of money.

On the basis of the Administrative Procedure Law the institution and the court shall act so as to as much as possible efficiently ensure those rights of the pensioners, which follow from this Judgment.

The substantive part

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

hereby rules:

to declare Paragraph 32 of the Transitional Provisions of the Law ”On State Pensions” as unconformable with Article 109 of the Republic of Latvia Satversme and null and void from the moment when Paragraph 26 of the

Transitional Provisions of the Pension Law lost effect, that is, from March 20, 2002.

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 A.Endziņš