



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, October 25, 2004

## JUDGMENT in the name of the Republic of Latvia

in case No. 2004-03-01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as justices Aija Branta, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 9 of the first part), 19<sup>1</sup> and 28<sup>1</sup> on the basis of the claims by the Riga Northern District Court, Administrative District Court and Administrative Regional Court on October 1, 2004 at the Court session in written proceedings reviewed the case

**”On the Compliance of Article 30 (Parts five and six) of the Law ”On State Pensions” with Articles 1 and 91 of the Republic of Latvia Satversme (Constitution)””.**

### **The establishing part**

1. On November 2, 1995 the Saeima adopted the Law ”On State Pensions” (hereinafter – the Pension Law), which took effect as of January 1, 1996. Till February 19, 2004 several amendments to the Law have been introduced, among them also the amendments, which are connected with the procedure of suspension and restitution of the state pension.

November 6, 1996 Amendments, which took effect as of December 10, 1996 supplemented Paragraph 16 of the Transitional Provisions with Subparagraph 11 in the following wording: ”Previously granted age pension ceased to be disbursed in the cases anticipated by law, shall be restituted as of the day when the rights to the suspended pension are acquired anew, if no more than five years have passed since the month

of suspending the pension disbursement. After expiration of the mentioned term the state pension shall be granted anew”.

November 20, 1997 Amendments, which took effect as of January 1, 1998 expressed Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law in another wording: ”The state pension (regardless of the time of its granting) disbursement of which is suspended in the cases stipulated in the Law or on the basis of the insured person’s application on the waiver from receiving the pension, shall be restituted from the date when the right to the suspended pension is acquired anew or the insured person’s application on withdrawing the waiver from receiving the pension is received if no more than three years have passed since the month of suspending the pension disbursement. After expiration of the three-year term the state pension shall be granted anew. In order to acquire the right to granting the pension anew, one may waive from receiving the pension already from the date of its granting, but no earlier than January 1, 1996, if the pension disbursed till the month of suspending the pension is repaid into the special budget for state pensions.

The application on the waiver from receiving the pension may be withdrawn at any time. Pension amounts for the period while the person had waived from receiving the pension shall not be disbursed. The restituted pension shall be revised for the period while its disbursement was suspended, in accordance with Paragraph 15 of these Transitional Provisions”.

November 21, 1998 Amendments, which took effect as of January 1, 1999 determined that Paragraph 16, Subsection 11 of the Transitional Provisions referred to state pensions granted on January 1, 1997 or later.

August 5, 1999 Amendments, which took effect as of December 7, 1999 deleted Subsection 11 of the Transitional Provisions Paragraph 16 of the Pension Law. Simultaneously Article 30 of the Law was supplemented with the fifth Part to read as follows: ”Payment of pension, which was interrupted in cases determined by law, must be renewed from the day, when for anew the right to it is acquired. When renewing a payment of pension, the pension must be reviewed in accordance with Article 26 of this Law. If from the day of interruption of pension payment more than three years have passed, the pension must be granted anew”. Besides, the Transitional Provisions were supplemented with Paragraph 24 to read as follows: ”Starting September 1, 1999 to insured persons – recipients of old age or term of service pensions – the old age or term of service pension is not granted anew”.

December 20, 2001 Amendments, which took effect as of January 1, 2002 in the fifth Part of Article 30 of the Law substituted the words "payment of pension, which was interrupted in cases determined by law" with the words "Pension to which the right was lost in cases determined by law". After incorporating the Amendments, the fifth Part is in effect in the following wording: "Pension to which the right was lost in cases determined by law must be renewed from the day, when for anew the right to it is acquired. When renewing a payment of pension, the pension must be reviewed in accordance with Article 26 of this Law. If from the day of interruption of pension payment more than three years have passed, the pension must be granted anew".

Simultaneously the above Amendments supplemented Article 30 with the sixth part to read as follows: "State pension, the payment of which was interrupted based upon application by the recipient of the pension, shall be renewed (irrespective of the time of the interruption) with that day when an application on the renewing of pension payment was received. The renewed pension shall be reviewed in compliance with Article 26 of the Law for that period of time when its payment was interrupted".

- 2. The submitters of the claim** – the Riga Northern District Court, the Administrative District Court and the Administrative Regional Court requests the Constitutional Court to assess the conformity of Article 30 (the fifth and sixth Parts) of the Pension Law with Articles 1 and 91 of the Republic of Latvia Satversme (henceforth – the Satversme).

**The Riga Northern District Court** (henceforth – the Northern District Court) in its claim requests the Court to assess whether December 21, 2001 Amendments - the fifth and sixth Parts of Article 30 of the Pension Law - comply with Articles 1 and 91 of the Satversme.

In its claim the Court points out that December 20, 2001 Amendments to the Pension Law are unconformable with the principle of legitimate trust, because the person relied in the procedure, established by the law and believed that if he/she waived from the pension then after a three-year term the pension will be granted anew, taking into consideration the additionally accrued insurance term and in-payment. Besides, the Court holds that the legislator has not observed the principle of legal equality either, because as regards persons, to whom pension is calculated under the fifth Part of Article 30, the length of suspension of pension payment has been taken into consideration, but the procedure of calculation of pension, determined in the sixth Part of Article 30 ignores it, even though before adoption of the Amendments the legal regulation was equal. Thus the Court stresses that the sixth Part of Article 30 of the Law denies the persons the right of receiving pension in the amount

he/she would receive if all the accrued insurance of length of service were taken into consideration.

**The Administrative District court** in its claim requests to assess the conformity of the fifth Part of Article 30 of the Pension Law with Article 1 of the Satversme.

The Court in its claim points out that the fifth Part of Article 30 is unbecomable with the principle of legitimate trust as it denies to grant pension anew to persons, who in accordance with Article 32 (the third Part until it was deleted from the Law by August 5, 1999 Amendments) were not paid pension. Besides, the Court points out that as the result of Amendments to the Pension Law the legislator has violated the principle of legitimate trust, because by amending the fifth Part of Article 30 of the Pension Law, the person has been denied the previously determined rights to granting pension anew.

**The Administrative Regional Court** in its claim requests to assess the sixth Part of Article 30 of the Pension Law with Article 1 of the Satversme.

The Court in its claim points out that it is necessary to assess whether the legislator, when amending the Pension Law has considered the principle of legitimate trust with regard to persons, who – in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law (until it was deleted from the Law by August 5, 1999 Amendments) had submitted an application on the waiver from receiving the pension payment. The Administrative Regional Court requests to assess whether the person had reasonable grounds to trust in the fact that the procedure established by the Pension Law would be in effect and that – if the persons waived from the pension payment, after three years they would experience the right to granting of the pension anew.

In conformity with Article 22 (the sixth Part) of the Constitutional Court Law, the matters, initiated on the bases of the claims by the Northern District Court, Administrative District Court and Administrative Regional Court were combined into one matter.

- 3. The Republic of Latvia Saeima** – the institution, which has passed the opposed act- in its written reply disagrees with the viewpoint of the submitters of the claim and points out that August 5, 1999 Amendments to the Pension Law not only supplemented it with Part five of Article 30 but also with Paragraph 24 of the Transitional Provisions, which determined that ”starting September 1, 1999 to insured persons – recipients of old age or term of service pensions- the old age or term of

service pension is not granted anew”. Thus the fifth Part of Article 30, which anticipates that after a three year term the pension must be granted anew, could be applied only to disability pension and loss of supporter pension.

The Saeima points out that December 20, 2001 Amendments to the Pension Law only specified the wording of the fifth and sixth Parts of Article 30. Namely, the Amendments clearly separate two different cases – first of all the case when the right to the state pension is lost; secondly – the case when the payment of the pension was interrupted based on the application of the person.

The Saeima explains that in accordance with the first part of Article 30 of the Pension Law the pension shall be granted for life, therefore the right to it cannot be lost. Thus, the fifth Part of Article 30 may not be applied to old age pensions. And from it follows that only the sixth Part of Article 30 refers to old age pensions. Besides August 5, 1999 Amendments supplemented the Transitional Provisions of the Pension Law with Paragraph 24, which denies the person the right to granting of old age pension anew.

The Saeima reiterates that the fifth part of Article 30 of the Pension Law refers to disability pension and pension for the loss of a supporter. These state pensions are granted for a certain period of time and the person may lose the right to it; namely – disability pension is granted for the period of disability, but the pension for the loss of a supporter for the period while the family member of the dead supporter is considered to be incapable to work. Thus, the fifth Part of Article 30 refers only to those types of state pensions, to which in certain circumstances the person may lose the right.

Taking the above into consideration, December 20, 2001 Amendments to Article 30 of the Pension Law have only an editorial nature and their objective is to strengthen the conception of the norm, incorporated in the previous wording of the Article. Thus to their mind Amendments to the Pension Law are in conformity with Article 1 of the Satversme.

- 4. The Ministry of Welfare** (hereinafter – the Ministry) points out that November 6, 1996 Amendments to the Pension Law supplemented Paragraph 16 of the Transitional Provisions of the Pension Law with Subparagraph 11. The objective of the Amendments was to determine the procedure of restitution of the payment of the pension, if the right to pension was lost and then- after some time – recovered. The above Amendments refer to the receivers of disability pension and pension for the loss of a supporter. The Ministry explains that the legal regulation, incorporated into Paragraph 16, Subparagraph 11 of the Transitional

Provisions was later determined in the fifth Part of Article 30 of the Law.

Essential Amendments to the Pension Law were made on November 20, 1997. Paragraph 16, Subparagraph 11 of the Transitional Provisions of these Amendments anticipated the possibility of waiving from the pension (on the basis of an application) so as to receive the right to granting the pension anew after a three year long term.

The Ministry explains that the Amendments were introduced so that it was possible to persons, who had pensioned till 1996 and during the first year of the reform, pension could be granted anew in accordance with the norms, which required taking into consideration average insurance premium wages when calculating the initial pension capital. The persons, who had pensioned prematurely, also could submit applications on the waiver from receiving the pension, so as to acquire the right of being granted pension anew, when more than three years had passed.

In its turn, if the persons, to whom pension was not paid in accordance with the third Part of Article 32 of the Law and who had not submitted applications on the waiver from receiving the pension, after reaching the pensioning age were not granted pension anew but it was recalculated in conformity with the legal regulation determined in the Pension Law.

5. **The State Social Insurance Agency** (henceforth – the Agency) points out that Subparagraph 11 was included in Paragraph 16 of the Transitional Provisions of the Pension Law so that in cases, when for some time the right to the pension was lost, the procedure of restitution of the pension payment is determined.

When in accordance with August 5, 1999 Amendments, Subparagraph 11 was deleted from Paragraph 16 of the Transitional Provisions of the Pension Law, the Law was simultaneously supplemented with the fifth Part of Article 30, which was of the same importance as Subparagraph 11 of Paragraph 16. In its turn December 20, 2001 Amendments only specifies the wording of the fifth Part of Article 30, stressing that it refers only to the cases, when the right to the pension has been lost for some time.

The Agency explains that a person did not lose the right to the pension, if it was not paid in accordance with the third Part of Article 32 of the Pension Law. Thus, non-payment of the prematurely granted old age pension could not serve as the basis for granting the pension anew in accordance with the fifth Part of Article 30 of the Law.

In its turn November 29, 1997 Amendments, which envisage the right for a person to waive from the granted state pension and after a term of three years to request granting of the pension anew, were introduced to ensure the possibility for persons to recalculate the pension in accordance with the "new" Pension Law, in conformity with which average insurance premium wages were taken into consideration when calculating the initial pension capital. One could waive from the prematurely granted old age pension under the same procedure as from the old age pension, granted under the general procedure. Thus, pension was granted anew only if the application on the waiver from receiving pension was submitted and not less than three years had passed since that time.

### **The concluding part**

6. The applications of the courts include the claim to assess the compliance of the fifth and sixth Parts of Article 30 of the Pension Law with the principle of legitimate trust, which follows from Article 1 of the Satversme and compliance of the sixth Part of Article 30 with the principle of legal equality, which is determined in Article 91 of the Satversme. The fifth Part of Article 30 of the Pension Law determines the procedure under which payment of the pension, which was interrupted in cases stipulated by law, must be renewed but the sixth Part determines the procedure for the renewal of payment of the state pension, which was interrupted on the basis of the application of the person. Taking into consideration the fact that Paragraph 24 of the Transitional Provisions of the Pension Law specifies the procedure of renewal of the payment of old age pension, one shall assess also the conformity of this norm with the Satversme.
7. The submitters of the application point out that the fifth Part of Article 30 is unconformable with Article 1 of the Satversme as to their mind the legislator has violated the principle of legitimate trust as concerns the persons who had been granted premature old age pension but who did not receive it on the basis of the third Part of Article 32 (till it was deleted from the Law by August 30, 1999 Amendments). To the viewpoint of the submitters, December 20, 2001 Amendments, which in the fifth Part of Article 30 substituted the words "payment of pension, which was interrupted in cases determined by law" with the words "pension to which the right was lost in cases determined by law" denies the individuals the right to be granted the pension anew.

When supplementing the Pension Law with the sixth Part of Article 30, the legislator has not observed the principle of legitimate trust with regard to those persons, to whom the payment of pension was

interrupted on the basis of Paragraph 16, Subparagraph 11 of the Transitional Provisions (till they were deleted by August 5, 1999 Amendments), i.e., to persons, who waived from receiving the payment of pension on the basis of application. The submitters hold that the sixth Part of Article 30 denies the persons the right to granting pension anew, which were determined earlier.

Thus one has to assess whether the legislator, when amending the Pension Law, has observed the principle of legitimate trust with regard to two groups of persons, firstly, to persons who did not receive the payment of pension in accordance with the third Part of Article 32 of the Pension Law, secondly, to persons, to whom the payment of pension was interrupted in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law.

When assessing the conformity of Parts five and six of Article 30 of the Pension Law with the principle of legitimate trust one has to establish within the framework of the case to be reviewed:

- 1) if and when the person receives the right to granting of old age pension anew;
  - 2) whether the trust of the person to the rights determined by earlier legal regulation is legitimate, reasonable and whether the legal regulation in its essence is sufficiently well determined and unchangeable so that one may rely on it;
  - 3) whether the legislator, when altering the legal regulation with regard to the renewal of the state pensions, has deviated from the initially guaranteed rights to the individuals and has anticipated a considerate transition to a new legal regulation.
8. When assessing the compliance of the fifth Part of Article 30 of the Pension Law with Article 1 of the Satversme one has first of all to establish whether the legal regulation, which determines granting of the pension anew to persons to whom it was not paid in accordance with the third Part of Article 32 (i.e. to females who were granted premature receiving of pension and who continued their employment, shall not be paid the pension till reaching the general pensioning age), was included in the Pension Law.

It is necessary to establish whether the legislator has anticipated such a right, as the individual may refer to the principle of legitimate trust only in case if the legal regulation, earlier determined by the legislator, has created basis for legitimate expectation. The European Court of Justice has indicated to application of the principle of legitimate trust in several cases (*see case C-63/93 "Duff and Others v. Minister for Agriculture and Food, Ireland, and the Attorney General"*[1996], *ECR I-0569, Item 20*; *case C-22/94 "Irish Farmers Association and others v. Minister for*

*Agriculture and Food, Ireland and the Attorney General*” [1997], ECR I-01809, Item 19 and case C-177/90 *”Ralf-Herbert Kühn v Landwirtschaftskammer Weser-Ems”*[1992], ECR I-00035, Item 14).

In the claims it is pointed out that the legislator on December 20, 2001 when making Amendments to the fifth part of Article 30 of the Law has not observed the principle of legitimate trust. The submitters hold that before the Amendments the Pension Law anticipated granting of pension anew also to the persons, who were granted the right to receiving premature pension, but who did not receive it in accordance with the third Part of Article 32.

By December 20, 2001 Amendments the legislator in the fifth Part of Article 30 substituted the words ”payment of pension, which was interrupted in cases determined by law” with the words ”pension to which the right was lost in cases determined by law”. Thus the Court has to assess whether the objective of the legislator was to attribute the original wording of the fifth Part of Article 30 to the third Part of Article 32.

Before supplementing Article 30 of the Pension Law with the fifth Part, similar regulation was anticipated in Chapter 16, Subparagraph 11 of the Transitional Provisions, which was included into the Law with November 6, 1996 Amendments. Thus, it is necessary to assess whether the legal regulation determined in Subparagraph 11 of Paragraph 16 of the Transitional Provisions refers also to the third Part of Article 32.

Initially Subparagraph 11 of Paragraph 16 of the Transitional Provisions determined the procedure under which was restituted payment of such pension, which was interrupted in cases anticipated by law. Even though in this legal norm were not indicated the cases to which the words ”pension ceased to be disbursed in the cases anticipated by law” referred, however, one may conclude that the aim of the legislator was to attribute the above norm to situations, when the payment of the pension to a persons was interrupted and thus this person lost the right to the state pension; and not to situations, when the pension was not paid in cases determined by law and the person preserved the right to pension. The objective of this norm was to determine the procedure for renewing payment of the state pension, if the person lost the right to state pension and after some time regained it. Thus Subparagraph 11 of Paragraph 16 of the Transitional Provisions does not refer to cases when the pension was not paid to the persons, but the person retained the right to it.

The Ministry of Welfare also points out that incorporation of the norm into the Law helped to solve the situation when, for example, the person

had not duly renewed the disability group (thus losing the right to disability pension) and did it later. Before elaboration of November 6, 1996 Amendments to the Pension Law, in the above cases the disability pension was to be granted anew and – among other things – it required also additional administrative expenses. Elaboration of the Amendments solved the problem, namely, if during the period of five years the right to pension was renewed, it was not granted anew but restituted under the procedure determined by law. If the term of five years had passed, then the pension was granted anew.

Taking the above into consideration, it can be concluded that Subparagraph 11 of Article 16 of the Transitional Provisions of the Pension Law does not refer to persons, who were not paid pension in accordance with the third Part of Article 32. One should note that during the period of non-payment of pension the law under which the pension was granted was still in effect; thus the persons, to whom the pension was not paid in conformity with the third part of Article 32, did not lose their right to pension. It can be concluded also from the first Part of Article 30 of the Pension Law, in conformity with which old age pension is granted for life. Thus the persons were able to receive the prematurely granted pension, if their labour relations were terminated. Besides, if during the period of non-payment of pension were adopted normative acts, which had an effect on the amount of the granted pension, for example, decisions on indexation of pension and increase of the minimum amount of pension, then the amount of all pensions, even those, which at the particular moment were not paid, increased. Besides, Article 24 of the Pension Law determines increase of the state pension amount due to added funded pension capital for the period after granting of pension and thus the person experiences the right to receiving a larger pension.

The legislator has determined a free choice for the person – it may make use of the right to premature receiving of pension determined by law or continue legal labour relations and retire under the general procedure. The procedure of calculation of the old age pension, determined in the Pension Law, is directed towards rousing interest of a person to request pension as late as possible and in such a way obtain the right to a larger pension. The person, who makes use of the right to premature receiving of old age pension shall take into consideration that in such a case he/she will receive smaller pension in comparison with the pension he/she would receive when retiring under the general procedure.

It follows from the above that Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law, which initially determined the procedure of renewal of pension payment, if it was interrupted in cases determined by law, does not refer to the third Part of Article 32.

Thus for the women, who had been granted premature old age pension, but to whom pensions were not paid if they continued to work, the legislator had not anticipated the right to granting pension anew. Taking into consideration the fact that the legislator had not anticipated such rights for the above persons, there is no legal basis for referring to the principle of legitimate trust.

The further Amendments to the Pension Law did not envisage the right to granting pension anew for these persons either.

August 5, 1999 Amendments to the Pension Law deleted from the Transitional Provisions Subparagraph 11 of Paragraph 16, at the same time supplementing Article 30 with the fifth Part. In the fifth part of Article 30 of the Law the same procedure for the renewal of the payment of pension, which was determined in Subparagraph 11 of Paragraph 16 of the Transitional Provisions, was preserved; thus the above Amendments did not alter the procedure of renewal of the payment of pension, which had been interrupted in the cases, determined by law. From the above follows that August 5, 1999 Amendments did not establish the right of granting pension anew to persons, who were not paid pensions in accordance with the third Part of Article 32, i.e., to prematurely retired persons. Besides the above Amendments incorporated Paragraph 24 into the Transitional Provisions of the Pension Law; and it explicitly determined that old age pension could not be granted anew.

In its turn December 20, 2001 Amendments in the fifth Part of Article 30 of the Pension Law only specified the wording of the legal regulation, determined earlier, so as to express the sense of the above norm more explicitly. These Amendments clearly determine that the legal regulation, incorporated in the fifth Part of Article 30, refers only to those pensions to which in certain cases, determined by law, one may lose right, namely, it refers to the types of pension, which are not old age pensions.

It follows from the above that December 20, 2001 Amendments to the Pension Law did not restrict the right to granting pension anew to persons, to whom pension was not paid in accordance with the third Part of Article 32, as the sense of the fifth Part of Article 30 before the introduction of the Amendments does not differ from the sense of the wording of the present wording of the norm. The legal regulation was changed, but the contents or essence of the norm remained unchanged. Taking into consideration the fact that the former legal regulation have not determined the right to granting pensions anew to persons, the Amendments, made by the legislator in the fifth Part of Article 30, are not at variance with the principle of protection of legitimate expectations, as this principle may protect only such rights, which have been once determined to a person.

**Thus the fifth Part of Article 30 of the Pension Law complies with Article 1 of the Satversme and the principle of protection of legitimate expectations concerning persons, who were not paid pension in accordance with the third Part of Article 32, has not been violated.**

9. When assessing the compliance of the sixth Part of Article 30 of the Pension Law with Article 1 of the Satversme, one has to establish whether the legislator had determined the right to granting pension anew to persons, on the basis of the person's application on the waiver from receiving the pension in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions; as the persons may refer to the principle of the protection of legitimate expectations only in cases, if the legal regulation, previously determined by the legislator, has established basis for legitimate expectations.

9.1. When analyzing the initially determined legal regulation, it may be concluded that with November 20, 1997 Amendments the legislator in Paragraph 16, Subparagraph 11 of the Transitional Provisions determined that the payment of pension shall be interrupted not only in cases, determined by law but also on the basis of the person's application on the waiver from receiving the pension. Accordingly – the payment of the state pension may be renewed if the right to the suspended pension is acquired anew or the insured person's application on withdrawing the waiver from receiving the pension is received.

The above Amendments determined that when renewing the payment of pension, it shall be granted anew if more than three years have passed since the month of suspending the pension disbursement. If the term of three years has not passed, then the renewed pension for the period, when its payment was suspended, shall be reviewed under the procedure anticipated by law.

The legislator has not determined that the right to waver from the pension and thus the right to granting pension anew does not refer to some types of pension. Therefore, it may be concluded that the rights, determined in Paragraph 16, Subparagraph 11 of the Transitional Provisions, refer also to the receivers of old age pension; namely, the individual might expect that after his waiver from receiving the payment of pension, he/she will be granted pension anew under the procedure determined in Paragraph 16, Subparagraph 11.

Even though on its essence the legal regulation, incorporated in Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law, does not comply with the principle that old age

pension is granted for life, included in the first Part of Article 30 of the Pension Law, however it shall be acknowledged that the purpose of the legislator has been to create more benevolent circumstances for the individual and in such a way to secure granting pension anew in conformity with the 1995 or the so-called new Pension Law, which in difference from the 1992 Law or "the old" Pension Law determined to take into consideration the average insurance premium salary when calculating the amount of the pension. It follows from the above, that the objective of the Amendments was to secure the possibility of receiving larger pensions for the persons.

It is stressed also by the Ministry of Welfare, which points out that November 20, 1997 Amendments to Paragraph 16, Subparagraph 11 of the Transitional Provisions have been made so as to endow persons, who had retired before the 1995 Pension Law took effect, with the right to granting pension anew in conformity with the legal norms of the "new" Pension Law, in compliance with which the person's insurance premium salary shall be taken into consideration, when calculating the initial capital of the pension. Besides, in accordance with the 1992 Pension Law, for calculation of the initial capital of old age pension not the average person's insurance premium salary (personified registration of social insurance payment was introduced since January 1, 1996) but average salary in the state was taken into consideration.

Thus, after November 20, 1997 Amendments took effect, Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law allowed persons to waive from the old age pension so as to receive the right to granting pension anew after the period of three years, regardless of the fact whether the pension had been granted under the general procedure or prematurely. Namely, the right, determined in Paragraph 16, Subparagraph 11 of the Transitional Provisions, referred also to the persons, to whom the pension was not paid in conformity with the third Part of Article 32 of the Pension Law. These persons were also allowed to submit an application on the waiver from receiving the pension, so as to be entitled to the right of granting pension anew after the period of at least three years. Thus, everyone was allowed to waive from receiving the premature old age pension under the same procedure as from any other type of pension. If a person, who - in accordance with the third Part of Article 32 of the Law - was not paid the premature old age pension, did not submit an application on waiver from receiving the pension then the person did not acquire the right to granting pension anew.

- 9.2. The Constitutional Court has reiterated that functioning of the principle of legitimate trust (protection of the legitimate

expectations) 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 in its essence is reasonably definite and constant, so that one could trust in it (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.2 of the concluding part*).

However, the Constitutional Court has also determined that old age pensions belong to the sector of state social policy, which shall be long-termed and stable. Social policy is connected with the certain state support and protection for persons, who need it, therefore the trust in law (legitimate expectation) in this sector shall be protected (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.2 of the concluding part*). From it follows that legal regulation in the sector of social policy shall be stable enough and invariable, so that an individual could safely plan his/her future being guided by the legal norms.

The principle of rule of law, which is one of the fundamental principles of a law-governed state, among other things determines that laws shall be prospective and explicit. Thus the legal regulation, determined in legal norms, may not be groundlessly and frequently changed, because incommensurably frequent changes in legal regulation make observation of laws hard. The more so – legal regulation shall be stable so that an individual, guided by legal norms, could adopt not only short-term decisions, but also make long-term plans for future. The principle of legal certainty also charges the state with the responsibility of ensuring stability and legal exactitude as well observation of the principle of legitimate trust, so as to facilitate loyalty of an individual to the state and the law.

However, Article 1 of the Satversme does not forbid making such Amendments to the valid legal regulation, which conform with the constitutional principles, enshrined in the Satversme. The principle of legitimate trust requires that in a democratic state considerate transition to a new regulation shall be envisaged, when adopting the above Amendments. Reasonable terms shall be established or due compensation for the incurred losses shall be anticipated (*see the Constitutional Court March 25, 2003 Judgment in case No. 2002-12-01, Item 2 of the concluding part*). Thus the legislator, when determining a new legal regulation, has the duty of determining a transitional period, which guarantees the individual the possibility of realization of the once acquired rights.

In its July 12, 2001 Judgment the Constitutional Court of Lithuania has also stressed – the principle of legal security (legitimate trust) anticipates that legal regulation may be amended only in pursuance with an earlier established

procedure and without violating the principles and norms of the Constitution as well as observing the legal interest of the person and his/her legitimate expectations (*see Rulings and Decisions of the Constitutional Court of the Republic of Lithuania, No.17 – Vilnius: Constitutional Court of the Republic of Lithuania, 2002, pp. 33-34*).

It may be concluded that the principle of protection of legitimate expectations means the protection of the person's once acquired rights, i.e. persons have the right to reasonably expect that the rights acquired under the valid legal acts will be retained for the established period of time and will be implemented in reality. The Constitutional Court of Lithuania has reached a similar decision in its December 18, 2001 Judgment, when assessing the legal protection of the right once determined for individuals (*see Rulings and Decisions of the Constitutional Court of the Republic of Lithuania, No.17- Vilnius: Constitutional Court of the Republic of Lithuania, 2002, pp. 133-134*).

- 9.3.** The legislator, when introducing Amendments to the Pension Law has repeatedly altered the legal regulation concerning the procedure of renewal of the payment of old age pensions in cases, when the payment was suspended on the basis of person's application. Moreover, when deleting from the Transitional Provisions Subparagraph 11 of Paragraph 16 and supplementing the Transitional Provisions with Paragraph 24 and Article 30 with the sixth Part, the legislator has deviated from the initially guaranteed norms.

When assessing August 5, 1999 Amendments to the Pension Law one can conclude that they essentially restricted the rights determined for the individual before. First of all these Amendments denied the right of granting pension anew to the individual, who had waived from the payment of old age pension. Secondly, the Amendments unequivocally determined that the old age pension might not be granted anew.

When analyzing the conformity of these Amendments with Article 1 of the Satversme, it can be concluded, that deleting from the Transitional Provisions Subparagraph 11 of Article 16 complies with the fundamental principles, fixed in the Satversme, as the principle of legitimate trust among other things determines also the fact that the rights, once acquired by an individual, cannot exist for an unlimited time. Namely, this principle does not serve as the basis for expectation that the once determined legal situation will never change. Essential is the fact that the principle of legitimate trust secures for the individual the legal protection only for the transitional period, determined by the legislator. The principle of legitimate trust does not guarantee for the individual a continual *status quo*, i.e. it

does not bestow upon the individual the right to a constant exceptional situation in the new legal regulation.

However, when supplementing the Transitional Provision of the Pension Law with Paragraph 24, the legislator has not taken into consideration legitimate expectations, which were created for a certain range of persons by the previous legal regulation. The legislator did not determine the period for the transition to a new legal regulation for those persons, who – in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions - had waived from the payment of the old age pension, but had not yet realized the rights, envisaged in this norm. The European Court of Justice has concluded that the institution, which has passed the legal norm on which the above persons rely, is required to respect the principle of the protection of legitimate expectations and the person may refer to the rights, determined earlier (*see case 289/81 "Vassilis Mavridis v. European parliament"*[1983], *ECR I-01731, Item 4*). It can be concluded that, within the framework of the case to be reviewed, the Saeima, which passed the legal norm on which the individual relied, had also the duty of observing the principle of legitimate trust and the rights, determined for the persons before.

December 20, 2001 Amendments, which supplemented Article 30 of the Pension Law with the sixth part, *expressis verbis* determine that, when renewing the right for the person to pension, the payment of which has been suspended on the basis of the application of the person, pension shall be reviewed in accordance with the legal regulation, determined in the Pension Law, but not granted anew.

These Amendments only specify the legal regulation, determined already by August 5, 1999 Law, namely – the legislator unequivocally determines that in cases, when the payment of the pension has been suspended on the basis of the person's application then when renewing the pension, it shall be reviewed in the procedure determined by the law but not granted anew.

The sixth Part of Article 30 of the Pension Law, which was incorporated into the Law with December 20, 2001 Amendments, shall be in essence declared as conformable with the contents of the Pension Law. However, just as Paragraph 24 of the Transitional Provisions, which was incorporated into the Law by August 5, 1999 Amendments, this norm is also unconformable with the principle of legitimate trust, which is fixed in the Satversme, because it does not determine a considerate transition to the new legal regulation for persons, who had waived from the old age pension in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions.

The European Court of Justice has also pointed out – if the person has relied on a valid normative act and chosen a certain kind of undertaking, then this person may legitimately expect that even after introduction of amendments to this normative act, he/she will not be subject upon the expiry of his/her undertaking to negative consequences (see case 120/86 *"Mulder v. Minister van Landbouw en Visserij"*[1998], ECR I-02321 and case 170/86 *"Georg von Deetzen v. Hauptzollamt Hamburg-Jonas"*[1988], ECR I-02355).

From the above follows that the legislator, when supplementing the Transitional Provisions of the Pension Law with Paragraph 24 and Article 30 with the sixth Part, has not observed the principle of legitimate trust with regard to persons, who in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions had waived from receiving the payment of the state pension.

**Thus the sixth Part of Article 30 of the Pension Law and Paragraph 24 of the Transitional Provisions, as concerns the persons, who had waived from receiving the payment of the state pension on the basis of an application and in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions, do not comply with Article 1 of the Satversme.**

10. The Northern District Court points out that the legislator has not observed the principle of legal equality, as in the fifth part of Article 30 of the Pension Law the length of the period of suspense of the pension payment has been taken into consideration; in its turn the sixth Part ignores it, even though before the alteration of the legal regulation the procedure for the renewal of the pension payment was equivalent. Thus to the mind of the Court the sixth Part of Article 30 of the Law denies the person the right of receiving the old age pension in the due amount, if the whole length of insurance service were taken into consideration.

Thus the submitter of the claim holds that the sixth part of Article 30 of the Pension Law does not comply with Article 91 of the Satversme, because it determines quite a different procedure for the renewal of the pension payment than in the fifth Part of Article 30.

As the sixth Part of Article 30 of the Pension Law is declared as unconfomable with one of the Satversme Articles – Article 1 – with regard to those persons, to whom the payment of the pension was interrupted on the basis of the person's application in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Pension Law, there is no necessity to assess the conformity of it with the principle of legal equality, determined in Article 91 of the Satversme.

## **The substantive part**

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

**hereby rules:**

- 1. to declare the fifth Part of Article 30 of the Law "On State Pensions" as conformable with Article 1 of the Republic of Latvia Satversme.**
- 2. to declare the sixth Part of Article 30 of the Law "On State Pensions" and Paragraph 24 of the Transitional Provisions as unconformable with Article 1 of the Republic of Latvia Satversme and null and void as of the day of it taking effect with regard to those persons, to whom the payment of the pension was interrupted on the basis of person's application in accordance with Paragraph 16, Subparagraph 11 of the Transitional Provisions of the Law "On State Pensions".**

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