



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, March 19, 2002

## JUDGMENT in the name of the Republic of Latvia

in case No. 2001-12-01

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Ilze Skultāne, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse, Anita Ušacka

under Article 85 set by the Satversme (Constitution) as well as Article 16 (Item 1), Article 17 (the first part of Item 11) and Article 192 of the Constitutional Court Law,

on the constitutional claims by Mārtiņš Draudiņš, Valdis Eglītis and Viktors Purmalis

in a public hearing reviewed the case

**” On Compliance of Paragraph 26 of the State Pension Law Transitional Provisions with Articles 91 and 109 of the Satversme (Constitution)”**”.

### **Establishing part**

**1.** On November 2, 1995 the Saeima passed the Law ” On State Pensions” (henceforth- the Pension Law). Up to April 22, 1999 it has been amended six times, including amendments connected with enlargement of the payment from the state specific budget (henceforth - the pension budget), however no additional funding was envisaged.

On August 5, 1999 the Saeima adopted amendments to the Pension Law, justifying it with the necessity of decreasing the deficit of the pension budget

and supplemented the Transitional Provisions of the Law with Paragraph 26 in the following wording:

” From January 1, 2000 until January 1, 2005 mandatorily socially insured persons (employees or self- employed) with the first day of that month following the month in which the recipient of pension became a mandatory socially insured person, the payment of the state pension must be interrupted in accordance with the Regulation ”On Term of Service Pensions” and the Regulation ”On the Pensions of Rank and File and Commanders Personnel of the Interior Institutions (employers’ pensions)” and payment of granted term of service pension if it exceed the double amount of the state social ensuring allowance. The pension, which is granted after January 1, 2000, regardless of its amount, does not get paid to the persons to be socially ensured. Payment of pension must be renewed with a first day of the next month following that month in which the status of person to be socially insured is lost.”

The above law was not promulgated as it was put to a national referendum. However, because there was no quorum, the above law was not abrogated either.

On November 4, 1999, the Saeima adopted Amendments to the Pension Law and expressed Paragraph 26 of the Transitional Provisions in the following wording:

” from January 1, 2000 through January 1, 2005 for persons to be mandatorily socially insured (employees or self-employed) commencing the first day of that month which follows the month in which the recipient of the pension became a person to be mandatorily socially insured, the payment of that part of the pension which exceeds twice the amount of the state social insurance benefit shall be suspended. Payment of the pension must be renewed with the first day of that month which follows the month in which the status of person to be mandatorily socially insured was lost.”

The above wording of the Item took effect on December 8, 1999.

**2. Submitters of the constitutional claim** –Mārtiņš Draudiņš, Valdis Eglītis and Viktors Purmalis (henceforth – the submitters) challenge conformity of the Transitional Provisions Paragraph 26 of the Pension Law (henceforth – the challenged norm) with Articles 91 and 109 of the Republic of Latvia Satversme (henceforth – the Satversme).

The submitters point out that the challenged norm denies the pensioners the possibility of receiving their old age pension in full extent, thus limiting their right to social guarantees by law. The above norm violates both - the international legal norms and guarantees to social insurance fixed in the

Satversme. The challenged norm confuses different things – the old age pensions, earned by work, which are created from the own payments and the state social grants. Thus the submitters have been placed on the same level as those persons, who have not worked, but have the right of receiving state social grants. By denying the possibility to receive the old age pension, earned by the submitters, in full extent, Article 109 of the Satversme has been violated.

The submitters hold that they are discriminated if compared with the pensioners who do not work and experience the right of receiving their pensions, which have been calculated for the length of service and their social insurance premiums, in full amount and when compared with the inhabitants of Latvia, who are working.

The essence of the insurance system is: a person, who has made social insurance premium payments, has the right of receiving social insurance after reaching a certain age. The legal employment relations are regulated by other laws. If the person, who has reached the pensioner's age, is still working, it has the right of receiving an adequate salary for work. These relations cannot serve as the reason for the state to take away part of the pension from the employed pensioners. The state does not invest finances in the pension fund therefore it does not have the right of taking the pension away.

As the result the challenged norm has incurred losses to the submitters. The submitter Valdis Eglītis points out that he has had to leave work, not to lose pension. Other persons, who are able to work, have unlimited right to work, at the same time the challenged norm creates circumstances, which limit the above right for the employed pensioners.

The submitter Mārtiņš Draudiņš, making a reference to July 19, 2001 letter No. 3-2-2/782 by the State Human Rights Bureau, points out that the right of an employed person to salary and the right of every person to social security are mutually independent guarantees and a differentiated attitude to insurance of social rights for the employed and other pensioners is not objectively grounded and unavoidable in a democratic society and shall be regarded as discriminating.

**3. The Saeima** in its written reply does not agree with the viewpoint of the submitters, that the challenged norm violates their right to social old age security and equal realization of the rights guaranteed by Articles 91 and 109 of the Satversme.

The objective of the social security system is to guarantee person's subsistence in cases if the person itself – because of different reasons- is not able to join in legal labor relations and provide for himself/herself. The social security system

has been created for such cases. Old age is one of the reasons for receiving the social insurance – old age pension.

The Saeima points out that the first part of Article 11 of the Pension Law determines that females and males having reached the age of 62 years and whose length of insurance is no less than 10 years shall be entitled to age pension. The above Article does not divide the employed and unemployed pensioners; therefore the right of receiving pension under this norm is not connected with actual retirement.

However the attitude to the issue of pensions changed after adoption of November 4, 1999 Amendments. In accordance with the challenged norm socially insured persons beginning with the first day of that month which follows the month in which the recipient of the pension became a person to be mandatorily socially insured, the payment of that part of the pension which exceeds twice the amount of the state social insurance benefit shall be suspended. To the mind of the Saeima the challenged norm does not essentially change the pension insurance system, as the employed pensioners are not deprived of the right to old age pension, only the amount of the pension is decreased by equaling it to twice the amount of the state social insurance benefit.

The Saeima stresses that the right to social security forms part of the group of economic, social and cultural rights and to implement the above rights, noticeable activity of the state is needed. Thus, realization of the right is connected with investment of finances. Every state has a different level of welfare and, naturally, economic possibilities of implementing social rights of persons also are different. The compliance of the Latvian social security system with the human rights has to be evaluated by taking into consideration its economical situation. Establishment of the challenged norm, limiting the amount of the pensions, was one of the arrangements, proposed by the government to decrease the expense part of the specific social insurance budget and stabilize the pension system.

The Saeima holds that the objective of Article 109 of the Satversme is to guarantee subsistence for a person. Taking into consideration Latvian economic possibilities both the Law and the challenged norm guarantee it. Article 109 of the Satversme does not assign the state with the duty of socially insuring the person just because it has reached a certain age, regardless of the fact whether the person continues or discontinues working.

Taking into consideration all the above, the Saeima is of the opinion that the statement of the submitters of the claim that the challenged norm violates Articles 91 and 109 of the Satversme is groundless.

4. After initiation of the case at the Constitutional Court – on December 20, 2001 the Saeima adopted Amendments to the Pension Law again. Transitional Provisions Paragraph 26 was expressed in a new wording:

”To persons subject to mandatory social insurance (employees or self-employed persons) with the first day of that month following the month during which the recipient of the pension, except for the recipient of the disability pension, has become a person subject to mandatory social insurance shall be interrupted the payment of that portion of pension which exceeds:

- from January 1, 2002 until December 31, 2002 – the triple amount of state social security allowance;
- from January 1, 2003 until December 31, 2003 – the quadruple amount of state social security allowance;
- from January 1, 2004 until December 31, 2004 – the quintuple amount of state social security allowance.
- The payment of pension in its full extent shall be renewed with the first day of that month following the month when the status of person subject to social insurance is loosed.
- From January 1, 2002 to those recipients of disability pension who are subjects to mandatory social insurance the payment of pension granted shall be renewed in its full extent.”

**5. At the Court session** M. Draudiņš pointed out that Latvia belongs to that group of states, in which when granting the pension, the investment, which the person has paid into the pension fund is taken into consideration. Particularly careful registering of personal pension funds is carried out and people know what amount of the pension they will be able to receive from the above fund. Thus the pension capital, from which the person’s pension is calculated, is the property of the person. This has been envisaged by the Pension Law as well – the pension capital is developed from monthly insurance payments into the pension budget. These values are constant, are not to be amended and are determined as has been envisaged in Article 12 of the Pension Law. As the actually invested funds do not coincide with those the pensioners receive, but the state does not invest any money into the pension capital funds, then it is not clear what happens to  $\frac{3}{4}$  from the pension, which should be paid to the pensioners in compliance with the formula envisaged by law. M. Draudiņš holds – if the legislator wanted to spare money, there were other ways to do it, without violating the Satversme norms, for example they could change the pensioning age. Another solution would be to return the sums, which the state had borrowed from the pensioners to decrease the state budget.

Besides M. Draudiņš pointed out that every person, who worked was entitled to receive remuneration for his/her work. In the above case, when

receiving the salary and a limited amount of the pension, the submitter loses more than if he received only the pension.

V.Purmalis explained that the challenged norm was not fair to the employed pensioners. It might cause far-reaching consequences – persons, who have not reached the pensioning age, because of the unfair norm may lose trust in the Pension Law and try evading social payments. Besides, the challenged norm forces the pensioners to choose either receiving the full amount of the pension or making use of the possibility to work. Thus the pensioners are denied the possibility of active participation in public life.

**6. The Saeima representative** Gunārs Kusiņš at the Court session said that he did not agree with the statement of the submitters that the challenged norm was at variance with Articles 91 and 109 of the Satversme. He stressed that not only the essence and procedure of elaboration of the above norms had to be considered. To his mind one should take into consideration international instruments on the basis of which Article 109 of the Satversme had been adopted.

Thus it follows from Article 2 of the International Covenant on Economical, Social and Cultural Rights that social and economical rights are closely connected with the available resources of the state. Particular issues incorporated into laws are different in different states, because economical possibilities to realize the social rights of persons are different.

When speaking of Article 109 of the Satversme, the Saeima representative pointed out that one had to evaluate the fact, whether the above Article envisaged something that might set in because of circumstances not depending on the person. In the interpretation of International instruments a person might lose salary because of the above circumstances not depending on the person. In this case it is necessary to insure the risk. The Latvian social security system also is based on the above approach and it is formulated in Latvian laws.

The Saeima representative acknowledged that the Amendments to the Pension Law, adopted at the pre-election time, which caused spending of the spared pension budget funds, had created the deficit of the pension budget. Adoption of the challenged norms was the proposal of the government to decrease the pension budget deficit and that had saved the social security system from break-down. If it had not been done, the state might have been obliged to change the existing system and return to the previous pension system with everybody receiving the same amount of pension. The Saeima representative explained that the challenged norm was adopted after a heated debate and evaluation but there was no information whether its compliance with the principle of proportionality had also been evaluated. In its turn compliance of the challenged norm with the principle

of legitimate trust has to be evaluated together with the essence of the above right, namely, what is the essence of the right to social security (old age pension). In this case the persons might trust in the established system of social security, however one has to take into consideration also "the shocks" it was subjected to. Besides the principle of legitimate trust cannot be completely absolute.

The Saeima representative did not agree with the statement of M.Draudiņš that the accrued pension capital was his property. There were no "personal pension funds" up to 1996. For the length of service up to 1996 pensions are calculated according to the provision of Item 13 of the Pension Law Transitional Provisions. "Personal pension funds" were introduced in 1996, when the Pension Law took effect. Property rights may be attributed only to the pension capital accrued after the law became effective but not to the whole pension capital.

## **Concluding part**

**1.** Article 109 of the Satversme guarantees for everyone the right to social security in old age, for work disability, for unemployment and in other cases. Contents of the constitutional right to social security in old age is determined in the Laws "On Social Security" and "On the State Social Insurance" and is specified in the Pension Law.

Contents of Article 109 of the Satversme has been analyzed in the Constitutional Court Judgments (*e.g. March 13, 2001 Judgment in case No. 2000-08-0109 and June 26 Judgment in case No. 2001-02-0106*).

The Pension Law was elaborated and adopted in 1995 in the process of the pension system reform. The objective of this reform was to create a financially stable and economically reasonable pension system. The Pension Law was elaborated by taking into consideration the experience of the last five years, which gave proof that the November 29, 1990 Law "On State Pensions" was unbecomable with the conditions of the market economy and that the undertaken liabilities did not meet the requirements of the available financial resources.

The Latvian pension system was created during the reform and its first level – the state mandatory pension scheme- regulated by the Pension Law, was positively evaluated also on the international scale (*see: When the Latvian Pension System is Considered to Serve as an Example for Europe// Latvijas Vēstnesis, No.27, 19.02.2002*).

This pension system has been created as the pension insurance system – person's pension depends on the social insurance premiums paid at the employment period.

However, in the period when also the persons, employed before January 1, 1996 require granting of pensions (henceforth – the transitional period), the insurance system cannot be attributed to them: the 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.

The Pension Law determines such provisions for granting the state age pensions:

- 1) the person has been covered by compulsory state pension insurance (Article 3 of the Pension Law);
- 2) the person whose length of insurance is no less than 10 years (Article 11 of the Pension Law);
- 3) the person has reached the certain age.

While reviewing the case the issue of the age for receiving pension has to be analyzed.

In compliance with Article 11 of the Pension Law it is 62 years, during the transitional period it is lower but with the tendency to increase (Article 11 of the Pension Law and Paragraph 8 of the Transitional Provisions).

The first part of Article 3 of the Law "On the State Social Insurance" gives the concept of social insurance:

"Social insurance is an aggregate of activities organized by the state, in order to insure the risk of a person or his/her dependants to lose income due to the socially insured person's sickness, disability, maternity, unemployment, age, accident at work or professional (occupational) disease as well as additional expenses regarding the death of a socially insured person or the death of person supported by him/her."

However this part of the Article shall be read together with Article 11 of the Pension Law, which determines the pensioning age.

Just because the first level of the pension system was created as the social insurance system, then reaching the certain age means setting in of the risk or the insurance occurrence, which entitles the person to receiving of the aid, established by law. Pension insurance differs from other types of social insurance with its specific social risk, as only in this case of insurance the occurrence of the unfavorable event – one's labor disablement – time presumption is established. It is within the competence of the legislator to choose the age for assuming that the person has lost its ability to work and may claim the payment of the age pension. However, when the choice has been done and the pensioning age (in the insurance case) has been fixed in the law, additional affirmation of the person's labor disablement is not

needed. The above does not exclude the right of the legislator to determine another pensioning age by the law.

If the three above provisions have set in, the person experiences the right of requesting for age pension. It is granted to a person from the day when the right for pension has set in ; it shall be granted for life (Articles 28 and 30 of the Pension Law). No other provisions, limitations, e.g., termination of legal labor relations or real loss of income, for requesting and granting age pension have been established in the Pension Law. This is also pointed out in the Saeima written reply, stressing that the right of receiving pension is not connected with the actual retirement.

The Latvian legislator, when elaborating and passing the Pension Law has not adopted the experience of those states, in which the right of receiving the granted pension for the employed pensioners is limited. It exists in many states, for example in Lithuania and Germany (*see Article 23 of the July 18, 1994 Republic of Lithuania Law "On the State Social Insurance Pensions"*). However, when evaluating the pension systems of the developed state with regard to limitation of pension payment to the employed pensioners, one has to take into consideration the fact, that first of all both – the pension systems and the above limitations of different states are different. Secondly, in many states the employed pensioner may receive not only the social insurance pensions but also pensions, accrued in the private pension funds (or from the employer), the amount of which is unlimited. Thus the total income of the pensioners of those states ensures adequate living conditions for them. (*see Social Security Programs Through the World – 1999: SSA Publication No.13-11805/ Social Security Administration, Washington, 1999*).

In their turn the private pension funds of Latvia are a reality only for a few years and for the greatest part of the employed pensioners the only income is the state age pension and the salary.

Decreasing of the amount of pensions under the social insurance system is permitted also by international legal acts, like Article 26 of the 1952 International Labor Organization Convention No. 102 "Convention on the Minimum Norms of Social Insurance" and Article 26 Of the Euro Council Social Security Code. Latvia has not ratified these international legal acts.

The procedure of calculation of the age pension is also determined in the Pension Law. The amount of the pension depends not only on the time period for which age pension payment is planned but also on the pension capital of every person i.e. on the amount of the social insurance premium, which is registered in his/her personal account (Article 12 of the Pension Law and Paragraph 13 of the Transitional Provisions). Thus , the amount of the granted pension is different, established individually and by taking into

consideration the length of service of the person (length of insurance and the periods of employment equaled to it) and income (insurance premium wages from which social insurance payments are made).

Ungrounded is the viewpoint of M.Draudiņš that the pension capital, from which his pension has been calculated, is his property. In 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. (*see June 26, 2001 Constitutional Court Judgment in case No. 2001-02-0106*).

**Thus, the legislator, when realizing the pension reform and evaluating the economic feasibilities and material resources of the state, has determined provisions for use of the right to social security in old age. Up to 1998 the pension system, created in the above way, ensured even the surplus of the pension budget.**

2. At the beginning of 1999 the Amendments to the Pension Law took effect, and after implementation of them, a serious budget deficit appeared in the pension budget (*see the 2000 Social Report of the Ministry of Welfare; Riga, 2000 and the 2001 Social Report of the Ministry of Welfare; Riga, 2001*).

With an intention of decreasing the pension budget expenses, the Saeima amended the Pension Law first of all on August 5, 1999 and then on November 4, envisaging several measures. Thus the Transitional Provisions of the above Law were supplemented also with the challenged norm, which determined limitation of the amount of pension for the employed pensioners for the next five years.

The Constitutional Court agrees with the statement, expressed by the Saeima in its written reply and at the Court session, namely, that realization of the social rights depends first of all on the economic situation and the available resources of the state.

However, if the legislator, making use of its authority in creation and realization of the social policy as well as in determination of the amount of

social rights, has incorporated social rights into the *Satversme* and has specified the contents of these rights in laws, then they have turned into the rights of an individual. A person may request realization of these rights from the state as well as protect his/her rights at the court.

The norms of the Pension Law, regulating preconditions for granting and calculating of the age pension, have remained unchanged. They are conformable with the essence of the created pension (insurance) system and are not questioned by the legislator either. In its turn the challenged norm is incorporated into the Transitional Provisions and its functioning has a time limit. It affirms that the means, envisaged in the norm in order to solve the financial problems is an exception of the created system.

**Thus by limiting the right of the person to receive the granted pension under the procedure, envisaged by law, the challenged norm limits the right to social security in old age, guaranteed by Article 109 of the *Satversme* and specified in the Pension Law.**

**3.** If the decisions of the legislator violate the rights and lawful interests of an individual, then one has to evaluate whether they are in compliance with the principles of a law-based state.

Several principles of a law-based state, also the principles of proportionality and legitimate trust, follow from the notion of a democratic state, included in Article 1 of the *Satversme* ( *see March 11, 1998 Constitutional Court Judgment in case No. 04-05/97/, October 1, 1999 Judgment in case No. 03-05/99/ and March 24, 2000 Judgment in case No.04-07/99/*).

**3.1.** The proportionality principle determines that –if the public power limits person’s rights and lawful interests – a reasonable balance between the interests of the person and the state or public interests has to be taken into account. To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain:

first of all, if the means, used by the legislator are suitable for achieving the legitimate objective;

secondly, if such an activity is required, i.e., if it is not possible to attain the objective by other means, which would less limit the rights and legal interests of an individual ;

thirdly, if the activity of the legislator is proportionate or adequate, i.e., if the benefit, obtained by the society, is greater than the loss incurred to the rights and lawful interests of an individual.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate.

**3.1.1.** In 1999 the deficit of the pension budget reached 57,6 million lats (*see the February 18, 2002 letter No.01-11/S-360 of the Republic of Latvia Ministry of Welfare, attached to the case*), which seriously endangered the pension payments, therefore some activities to decrease the deficit and stabilize the pension system had to be undertaken. As the Saeima has pointed out in its written reply, one of the options, proposed by the government was to decrease the amount of pensions for the employed pensioners (who have the status of the socially insured person).

The Saeima backed the motion and adopted the challenged norm on November 4, 1999. At the Court session the Saeima representative affirmed that application of the norm in 2000 ensured savings in the pension budget of 10,6 million lats, but in 2001 – 10,3 million lats. Thus the budget deficit decreased to 29,2 million lats in 2000 and to 9,2 in 2001 (*see the verbatim report of the February 19, 2002 Constitutional Court Judgment, page 31*).

However, neither the Cabinet of Ministers, nor the Saeima have analyzed what the consequences of the application of the challenged norm would have been, if all the pensioners whose pensions are over 60 lats a months, terminated the labor relations and the pensions granted to them were to be paid in full amount.

The State Control has established that, when adopting the challenged norm, no controlling mechanism has been envisaged, therefore the state does not supervise the process and it is difficult to state whether the amount to be paid to the pensioners has been limited to all the employed pensioners (*see August 23, 2001 the Republic of Latvia State Control Report No. 5.1-1/1676 to the Republic of Latvia Cabinet of Ministers on rightness of payment of state pensions to the employed pensioners of the State Stock Company "The State Social Insurance Agency"*). Thus equal and efficient application of the challenged norm has not been ensured.

When evaluating the suitability of the legislator's activities to achieve the objective, one shall take into consideration also the conditions, which caused the pension budget deficit in 1999. When discussing about the Amendments to the Pension Law at the Saeima session, the deputy Andrejs Požarnovs pointed out that "all the norms and ill-considered votes of the four last years are being corrected" (*verbatim report of the Saeima October 14, 1999 session*).

At the Court session the Saeima representative acknowledged that the amendments to the Pension Law, adopted at the pre-election period, have caused the pension budget deficit. Also the experts of the social insurance sector have repeatedly admitted in public that because of populist, short-sighted decisions of the politicians, adopted at the pre-election period not only the surplus of the pension budget was spent but also an enormous

pension budget deficit was created (*see: There is no other way// Lauku Avīze, 14.08.1999; On the second pension system level// Latvijas Vēstnesis No.46, 21.03.2002*). Therefore it is doubtful whether the legal norm has been appropriate to reach the objective.

**3.1.2.** November 4, 1999 Amendments to the Pension Law envisaged several measures for decreasing the pension budget – not only to suspend that part of the pension which exceeded twice the amount of the state social insurance benefit (for the employed pensioners) but also gradual increasing of age required for granting an old age pension and terminate the payment of pensions to those persons, who leave the country for a permanent stay in foreign countries. The last limitation was deleted by the December 20, 2001 Law "Amendments to the Law " On the State Pensions"".

However there are other possibilities of decreasing the pension budget deficit, for example, to ensure collecting the mandatory debt payments, to limit administrative expenses and to more accurately evaluate the deduction of social insurance payment granted to the employers (tax payers). In 2000 the total debt of the social tax and social insurance payment was 130, 5 million lats (*see the 2001 Social Report of the Ministry of Welfare, Riga, 2001*). Besides the possibility of decreasing percentage rates of loans (credits) and payments for administration of taxes, which the State Social Insurance Agency has to pay to other state institutions (the Public Treasury, the State Revenue Service) is to be evaluated. Besides, the Saeima deputies, when debating on the amendments to the Pension Law, have expressed similar motions on gaining additional funds for the pension budget (*see the verbatim reports of the Saeima August 5 and October 14, 1999 sessions*). Therefore the Constitutional Court has not received affirmation of the fact that the Saeima has adequately evaluated whether there were no other possibilities of reaching the envisaged objective by other, alternative means, which would to a lesser degree limit the right of a person to social security, also the right of receiving the full amount of the granted age pension, guaranteed by the Satversme.

**3.1.3.** When evaluating the conformity of the challenged norm with the principle of proportionality one has first of all to weigh the consequences created by the measures, which have been used by the legislator i.e. whether the application of the legal norm does not cause more damage to the rights and lawful interests of an individual than the society gains.

On the one hand, well- grounded is the viewpoint of the Saeima representative that the challenged norm as well as the other activities, undertaken to decrease the pension budget expenses, established in November 4, 1999 Amendments to the Pension Law have been adopted in the interests of all pensioners. "If the above activities had not been undertaken, the state would have been obliged to return to the previous

pension system, when everybody received equal pensions and the state would not be able to fulfill the financial liabilities, envisaged by this law. Then there would have been just one way out – to change the existing pension system and decline it” (*Verbatim report of the February, 19, 2002 Constitutional Court session, page 29*).

The first level of the pension system (the state mandatory non-funded pension scheme) is created under the social insurance system. It, in its turn, functions on the principle of solidarity, which means - only the funds of the pension budget may be used for old age pensions. If there is no money in the pension budget, then there is no possibility of paying pensions. Thus in the interests of one part of the society – the receivers of the pension- is to balance the expenses of the pension budget with the income and not to allow excess expenditure.

On the other hand one shall evaluate also the losses, caused to the employed pensioners by the application of the challenged norm.

The Saeima, when determining the limitations for the employed pensioners, has not included in the challenged norm the criterion, which can be found in international legal acts and which is observed by the most European states. Namely – the amount of pension is limited only by also taking into consideration the labor income of the pensioner. In Latvia the legislator has chosen another criterion – the status of the mandatory socially insured person (that of the employee or a self- employed person) regardless of the existence of other income or the amount of it. Thus, on the basis of the challenged norm, the amount of the granted pension is decreased even in cases if the pensioner in fact does not receive any income from his employment, for example, if he is on vacation and does not receive remuneration for that time, or if he has submitted a refusal from the salary, or if the earned salary is smaller than the unpaid part of the pension. V.Eglītis found himself in the above situation. He has been granted pension in the amount of 230 lats. If he would continue to work and received 120 lats a month, his total income (salary and the limited amount of pension) would have been 180 lats.

Besides, from the material, submitted by the pensioner Inta Sirmace, which have been attached to the case, it can be seen that she, after the pension had been granted to her and she continued carrying out the duties of the pagasts’ (a small rural district) deputy, in a year had lost 400 lats. The monthly salary of the pagasts’ deputy had not exceeded 9 lats, therefore she had refused from it. However, without taking into consideration the above fact, her pension (110 lats) had been limited to 60 lats.

Thus it is evident that the challenged norm is evidently unfair to that part of pensioners, whose income from their employment does not exceed that part of pension, which is not paid.

Social security measures have both – the economical function – to avoid income losses and the social function – to ensure the possibilities of an individual to maintain his/her status of a full-fledged society member.

The challenged norm compels the employed pensioners to choose: either to receive a full amount of the pension or to continue working. And that – in its turn- comes in conflict with the right of a person, who has reached the pensioner's age, to participate in the public life. Already Item 8 of the May 4, 1990 Declaration "On the Renewal of the Independence of the Republic of Latvia" determined that "the state guarantees citizens of the Republic of Latvia and those of other states permanently residing in Latvia social, economic and cultural rights, as well as those political rights and freedoms, which comply with the universally recognized international human rights instruments". Article 4 of the European Social Charter (1988 supplementary protocol) determines that the contracting parties undertake the obligation of helping elderly people remain full-fledged society members as long as possible, that is –making use of measures , which ensure they can live and actively participate in public, cultural and social life. Even though Latvia has not yet ratified the supplementary protocol, the internationally acknowledged principles, incorporated into them, shall be observed in Latvia as the main guiding lines for the protection of people's social rights.

Similar norms are found also in other international instruments. Thus – the UN Principles for Older Persons envisage that older persons, also pensioners should remain integrated in society and actively participate in public life. Item 7 of the above Principles determines: "Older persons should actively participate in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations" (*see December 16, 1991 UNO General Assembly Directive No. A/RES/46/91*).

Also in the completing document, adopted at the Conference of the Leaders of 117 States, which was held in Copenhagen in 1995, reference was made to the United Nations Principles for Older People and once again the necessity of guaranteeing that older persons were able to increase their public input and that they should have a role in public life. The President of Latvia has also signed the above document (*Copenhagen Declaration and Programme of Activities, Riga, 1996*).

In its turn Article 25 of the EU Charter of Fundamental Rights determines that the Union admits and observes the right of older persons to an adequate standard of living, to independence and participation in public and cultural

life (Vildbergs H.J., Feldhūne G. *Comparative Constitutional Rights. Riga: University of Latvia, 2001, p. 92*). The Charter was signed in Nice on December 7, 2000.

The challenged norm creates opposite consequences – it limits the possibilities of the employed pensioners to participate in public, social and cultural life. The viewpoint of the Minister of Welfare then in power Roberts Jurdžs affirms the above statement. To the question on what the economical effect of the prohibiting the employed pensioners to receive the salary and the pension would be, he pointed out that ”the situation in the labor market will change – there will be vacancies for new employees...” (*Pilsētniece L. Our Common Concern Is: the Pensioners’, the Nation’s and the State Life//Latvijas Vēstnesis, No.251/252, 10.08.1999*).

Regardless of the fact that the activity of the challenged norm has been limited in time, in fact, consequences it has created may turn out to be permanent. For example, if the employed pensioner hands in a notice to his employer to receive his pension after the challenged norm takes effect, then it is doubtful whether after some years when the norm loses validity he/she will have the possibility of returning in the labor market.

**Thereby the challenged norm is not in compliance with the principle of proportionality.**

**3.2.** One has also to evaluate conformity of the challenged norm with the principle of legitimate trust (trust in law). This principle establishes that state institutions in their activities have to be consistent with regard to the passed normative acts, they have to observe the legitimate trust, which might arise to persons in accordance with the specific legal norm (*see June 10, 1998 Constitutional Court Judgment No. 04-03/98/.*) In his/her turn, in compliance with the above principle, the individual may rely on the constancy and invariability of a legitimately passed legal norm. He/she may plan his/her future taking into consideration the rights the norm has endowed.

The functioning 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, in its turn, the legal regulation on its essence should be reasonably definite and constant, so that one could trust in it.

Old age pensions belong to the sector of state social policy, which is to 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 in this sector shall be protected.

The Pension Law in Latvia was adopted not just after the renewal of the independence but only at the end of 1995, when the imperfections of the previous law had been evaluated and the decision reached that it was not suitable for the feasibilities of the state. Mass media have repeatedly expressed information on the advantages of the Pension Law. For the first three years the level of the pension system, regulated by the Pension Law, functioned on the savings of the pension budget. Thus the inhabitants of Latvia, also 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 pension, calculated to the formula. Thus the person had the possibility of calculating the amount to the potential pension; secondly, that granting of pension will create no problems in continuing working and retaining the status of a socially insured person.

Thus the persons, who obtained the status of the pensioner up to August 5, 1999, i.e., to the moment, when the Saeima envisaged limitations to the employed pensioners in the Pension Law for the first time, made their plans for future in the connection with those rights, which the Pension Law had granted them. These pensioners could undertake civil liabilities in the amount, which their income – the granted pensions and the earned wages – would allow.

Implementation of the limitations in a comparatively short period - from January 1, 2000 – denied them the possibility of reorganizing their lives.

The Saeima, deviating form the initially guaranteed rights without evaluating the conformity of the challenged norm with the principle of trust in law, has created the feeling of insecurity in the society.

**Thus, the challenged norm is not in compliance with the principles of proportionality and trust in law and contradicts Article 1 of the Satversme.**

4. The above conclusions of the Constitutional Court shall be attributed also to Paragraph 26 of the Pension Law Transitional Provisions in its present wording. Even though the amount of the part of the pension to be paid has been increased from January 1, 2002, the criterion for determining limitations has remained unchanged – i.e. pensioner who is in the status of a mandatorily socially insured person- regardless of the existence of employment income and its amount.

5. If unconformity of Paragraph 26 of the Pension Law Transitional Provisions with even one Article of the Satversme is established, it shall be declared as illegitimate and null and void.

### **Substantive part**

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

#### **decided:**

to declare Paragraph 26 of the Pension Law Transitional Provisions as unconfomable with Article 1 of the Satversme and null and void from the day of publishing the Judgment.

The Judgment has been declared in Riga, on March 19, 2002.

Chairman of the Constitutional Court

A.Endziņš