



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, March 13, 2001.

## JUDGMENT in the name of the Republic of Latvia

**in case No. 2000-08-0109**

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, justices Ilze Skultāne, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins and Anita Ušacka, with the secretary of the Court session Egija Rozenberga,

in the presence of the sworn advocate Vairis Reinholds and the deputy Egils Baldzēns - the authorised representative of the petitioner i.e. twenty Saeima deputies, namely: Egils Baldzēns, Osvalds Zvejsalnieks, Valdis Lauskis, Jānis Čeveris, Rišards Labanovskis, Arnis Kalniņš, Aija Barča, Leons Bojārs, Jānis Ādamsons, Jānis Leja, Viola Lāzo, Oskars Grīgs, Gundars Bojārs, Pēteris Salkazanovs, Jānis Jurkāns, Miroslavs Mitrofanovs, Martijans Bekasovs, Juris Sokolovskis, Jakovs Pliners and Imants Burvis

and Gunārs Kusiņš - the Head of the Legal Bureau of the Saeima- the authorised representative of the Saeima- the institution, which has issued the disputable act,

under Article 85 of the Satversme (Constitution) of the Republic of Latvia, as well as the first and sixth Items of Article 16 and the third Item of the first part of Article 17 of the Constitutional Court Law

in a public hearing in Riga, on February 27 reviewed the case

**” On Compliance of Item 1 of the Transitional Provisions of the Law ”  
On Social Insurance” with Articles 1 and 109 of the Satversme  
(Constitution) of the Republic of Latvia and Articles 9 and 11(the first  
Part) of the December 16, 1966 International Pact on Economic, Social  
and Cultural Rights”.**

## The Constitutional Court **established:**

On October 1, 1997 the Saeima adopted the Law "On the State Social Insurance" (henceforth- the Social Insurance Law). The fourth Part of Article 5 of the Law envisages that a person is socially insured and compulsory premiums shall be paid for him/her, starting from the date when this person has acquired the status of an employee or a self-employed person, or the status mentioned in Parts 1, 2 or three of this Article. The first Item of the Transitional Provisions of this Law determines that Part 4 of Article 5 of this Law shall take effect as of January 1, 2002. From January 1, 1998 to January 1, 2002 a person, for whom compulsory premiums have been paid, shall be considered a socially insured person. This provision does not concern persons who have been insured against accidents at work. On November 25, 1999 the Saeima amended the Social Insurance Law, substituting the figure 2002 with 2004 in the first Item of the Transitional Provisions of the Law.

On May 4, 1990 the Republic of Latvia with the Declaration of the Supreme Council "On the Accession of the Republic of Latvia to International Instruments Relating to Human Rights" also acceded to the December 16, 1966 UNO International Pact on Economical, Social and Cultural Rights (henceforth – the Pact). In the Republic of Latvia the Pact is effective since July 14, 1992. Its Article 9 determines that the Member State acknowledges the right of every person to social insurance.

**The applicant** – twenty deputies of the Saeima- question compliance of Item 1 of the Transitional Provisions of the Social Insurance Law (henceforth- the disputable norm) with:

- 1) Articles 1 and 109 of the Satversme of the Republic of Latvia ( henceforth- the Satversme);
- 2) Article 9 and the first Part of Article 11 of the Pact.

The applicant points out that the disputable norm denies the right of persons to social security, including social insurance. Article 109 guarantees every inhabitant of Latvia without any exceptions- independently from payment or not payment of different compulsory premiums- the right to social guarantees for old age, work disability, unemployment and other cases, determined by law. In legal relations, which exist between the employer and the state, contents of which are determined by the laws " On Taxes and Duties" and "On the State Revenue Service", the state has to ensure collecting of taxes. In compliance with the first Item of Article 1 of the Law "On Taxes and Duties", the payment of compulsory insurance premiums shall also be considered a tax. Items 1,2,3 and 4 of Article 18 of the above Law determines that the obligation of tax administration is to secure the observance of the laws on taxes both by taxpayers and tax administration, as well as to check the correctness of taxes payment and debts, and to implement sanctions on violators of taxes' laws. In its turn, Item 11 obligates to collect unpaid taxes on a no contestation basis. If the employer does not do his/her duty to pay the compulsory state social

insurance premiums and if the state is not able to do its duty to ensure collecting of the payment, the employee should not experience any unfavourable consequences.

The applicant stresses that, on the basis of Article 1 of the Satversme, the principle of legitimate trust shall be realised in a democratic state. Every person has the right to trust that all the state institutions will observe the demands of law. No person needs to experience unfavourable consequences if the state institutions cannot do their duty. The person experiences the right to believe that the respective state institutions shall ensure collecting the payment of social premiums. The State Revenue Service, as the manager of the above tax, has sufficiently extensive authority to check the correctness of payment, to collect taxes on a no contestation basis, file a petition, implement administrative sanctions.

In the same way the applicant holds that just because of the disputable legal norm up to January 1, 2004 those Latvian inhabitants, for whom the compulsory state insurance premiums have not been paid, are not able to receive pensions and any other benefit in case of work disability. Thus they are left without means of subsistence, which could provide them with sufficient food, clothing and lodging. Therefore this norm does not comply with the first Part of Article 11 of the Pact.

At the Court session the representatives of the applicants upheld the above claim and requested the Constitutional Court to declare the disputable legal norm as invalid from the moment of it taking effect.

Besides at the court session the applicant explained that the disputable legal norm has caused serious social problems: in 1999 social insurance premiums were not paid for more than 13 000 employees who had been registered as taxpayers, but for 67 000 employees the premiums were paid irregularly. Thus for a whole year or at least for a part of it more than 80 000 persons were not socially insured in Latvia.

**The Saeima** in its written reply explains that social insurance is just one of the social security measures, which Latvia has included in the system of social security. Article 2 of the Law "On Social Security", when determining the fundamental principles of the activity of the social security system, mentions both- the social insurance and the social aid. These measures supplement one another, for in case if the rules of social insurance cannot be applied to a person, he/she can receive social aid. The legislator has adopted appropriate laws on both measures and these laws are directed to realisation of social rights determined in Article 109 of the Satversme and Article 9 of the Pact.

In its written reply the Saeima stresses the statement enclosed in Article 2 of the Pact, namely, that the Member State, taking into consideration maximum

reasonable resources, undertakes the obligation to use measures to ensure implementation of the rights, acknowledged in the Pact, with all the appropriate methods, including legislature. The social security system in Latvia was formed gradually, in accordance with its financial feasibility. Thus everything determined in the disputable norm should be considered as the intention of the state, taking into account the financial resources – to realise the rights established in Article 109 of the Satversme and Article 9 of the Pact.

The Saeima holds that there is no need to link Article 9 of the Pact with the first Part of Article 11 of the Pact, because the right to social security is the issue of Article 9 of the Pact, and the right of any person to food, clothing and lodging has not been restricted by the disputable norm.

A viewpoint is expressed in the written reply that the applicant tries to groundlessly interpret the principle of legitimate trust too extensively, as it is necessary to distinguish the controversy of the compliance of a disputable legal norm with the legal norm of higher legal force and the efficiency of application of other laws- the Law "On Taxes and Duties" and the Law "On the State Revenue Service".

At the Court session the Saeima representative additionally pointed out that implementation of the Social Security Law cannot be based on idyllic conceptions about the society and the unreal situation that all the employers will pay social insurance premiums. The State, when adopting a law shall be aware of the consequences of the law and foresee also the mentioned case. Thus the disputable legal norm shall not be regarded as limitation of the constitutional rights. If the employer has really acted illegally and has not paid the premiums, then the employee may submit a claim to the court and ask to compensate the loss, as the Satversme guarantees that everybody has the right of protecting his/her rights at the court.

The Constitutional Court, evaluating the compliance of the disputable norm with the legal norms of higher legal force,

**concluded:**

Social rights, including those to social insurance, are very important, but at the same time they are special, diverse human rights, as realisation of those rights depends on the economic situation and resources of every state. Therefore in international instruments social rights are formulated as universal obligations of the states, letting the state itself choose the way of implementing those rights.

Thus Article 22 of the UNO Universal Declaration of Human rights determines: " Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State,

of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Article 2 of the Pact also stresses that a Member State itself and with the international help and co-operation- undertakes to accomplish measures to ensure complete realisation of the rights envisaged in the Pact in as short a time as possible, taking into consideration the resources and with all the appropriate methods, including the legal acts.

However, during the period of validity of these international instruments, viewpoints on the legal nature and binding force have advanced. For example, 1986 Limburg Principles on the Implementation of the Pact (see Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Commission on Human rights, U.N. ESCOR, 43<sup>rd</sup> Session, U.N. Doc. E/CN 4/1987/17) determined a new approach to the legal aspect of the rights and the obligation of states to ensure these rights. In compliance with the above principles, all the Member States of the Pact, regardless of the level of development of the state, shall immediately undertake measures, employing all the necessary standards, to ensure implementation of these rights at least on the minimum level. As to measures on the national level – they shall be understood not only as legislative, but also administrative, juridical, economical, social and educational measures. It is pointed out that the laws, which limit employment of any social right, shall not be unjust or discriminative. UNO Commission on Economic, Social and Cultural Rights, which supervises implementation of the Pact, in its comment (see The Nature of States Parties Obligations /Art.2, par.1/: 14/12/90, CESR General comment 3., UN Doc. E/1991/23.; The domestic application of the Covenant: 03/12/98, CESR General comment 9.) has stressed that the measures, undertaken to reach the objective, shall be implemented in a reasonably short time after the Pact has taken effect in a Member State and that every Member State has the obligation of securing implementation of the most essential liabilities at least on the basic level.

Not doubting the close connection of implementation of the social rights with the feasibility of every state, the following human rights’ conclusion shall still be taken into consideration – if some social rights are included in the fundamental law, the State cannot relinquish them. These rights do not have just a declarative nature.

The Satversme secures several social rights. Article 109 of the Satversme envisages the right of everyone to social guarantees for old age, work disability, unemployment and other cases determined by law. Thus in Latvia the right to social security has a constitutional value.

When speaking of social security, several measures of it, also the social insurance are meant in the Republic of Latvia (see the Law "On the Social Security, particularly Articles 2 and 5).

Contents of the right to social insurance and the procedure of implementing it in Latvia is determined by several laws, first of all the Social Security Law, as well as by the specific laws on particular types of social insurance.

When developing the social insurance system after the renewal of the State independence, from several forms of social insurance, which have been historically developed and are acknowledged in the world, the Saeima chose the state social insurance. If such a system exists, the basic principles of insurance, the scope of the insured persons, the risks of it and the procedure of formation of assets are determined by laws and the insurance is of compulsory nature.

In compliance with Article 3 of the Social Insurance Law, social insurance in Latvia "is an aggregate of activities organised 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 (or death), disability, maternity, unemployment, age, accident at work or professional (occupational) disease as well as additional expense."

Persons to be obligatory insured and covered by the State social insurance system are determined by the first and second Parts of Article 5 of the Law "On the State Social Insurance". Thus the legislator has envisaged the right of those persons to social security in the form of social insurance, which is guaranteed in Article 109 of the Satversme.

From among the persons who are obligatory covered by social insurance one should single out the employees, employed by an employer- domestic (inland) taxpayer. The Law determines that this group of persons shall have a different procedure of registration with the Taxpayers' Register (Article 13), terms for paying the premiums (Article 21) and determination of the amount of compulsory premiums (Article 20) besides it envisages different payers of the premiums (Articles 18, 19).

The employees, employed by an employer-domestic taxpayer (henceforth- the employees) are the only persons involved in the State social insurance system, who are not authorised to do their duty to the system (to install their respective compulsory premiums in the special budget) directly, but only with the intermediary - the employer.

Therefore the Constitutional Court holds that, when evaluating the disputable legal norm, its being effective shall be connected just with this group of persons, i.e., the employees.

In compliance with the first Part of Article 5 of the Law "On the State Social Insurance", all the employees shall obligatory be covered by social insurance.

The second Item of the first Part of Article 1 determines, which persons shall be considered employees in the sense of social insurance. Thus the relations of social insurance originate on the basis of law, together with relations of employment.

When obtaining the status of the employee and beginning to do one's duty, the employee is actually incorporated into the system of social insurance. These persons with their work create material preconditions for social insurance – employers have the obligation to calculate the salary of the employee and ensure the employee receives the salary, in which the state social insurance compulsory premiums are also provided for. Besides, the premiums, which are to be paid by the employee are deducted by the employer and on a certain date paid into the social budget. The employee cannot exert influence on this procedure; he/she can neither stop the employer from deducting the premiums, nor make the payment himself/herself. The Law does not envisage the duty or possibility of the insured person to control the employer – the executor of the social insurance payment.

The State social insurance is a sector of public rights and legal relations between the insurer and the insured person as well as with the employer is relations of public rights. The law obligates the employer to incur the payment of the compulsory premiums for every employee. If the employer does not perform this task, then the organiser of insurance, i.e.- the State shall ensure the implementation of it with the help of compulsory measures. Therefore, when developing the system of the State social insurance, the State is obligated to develop an efficient mechanism of implementation of the above legal norms, thus guaranteeing the right to social security, established by the Satversme.

Realisation of legal norms is achieved also by legally organised and fixed implementation methods, in case if there exists a structure as well as measures of implementation (including also a control system and appliance of legally regulated sanctions) of mutually connected and mutually ensuring norms. Because, to ensure that the legal norms become "guaranteed rights", their implementation shall be guaranteed in a standardised and institutionalised way. (See Cipeliuss R. General Theory on the State, Riga, Publishing House AGB, 1998, pages 36-37; and Cipeliuss R. The Essence of Rights, Riga, the Latvian University, 2001, pages 11-17).

The above mechanism is necessary also to protect the employees, who are considered to be the socially weakest persons, i.e.- persons who need a special social protection.

In the Republic of Latvia a system of adjustment and control of social insurance has been developed in a standardised and institutionalised way.

The Social Insurance Law and other laws, like laws "On Taxes and Duties", "On the State Revenue Service", "On Insolvency of Enterprises and Entrepreneurial Associations" determine liability of legal and physical entities to the State in the sector of social insurance, as well as sanctions for violation of laws. Several State institutions, which form a special system, have been authorised to supervise implementation of the Law.

Payment of the compulsory State social insurance premiums is one of the types of the State taxes, i.e., a compulsory payment into the State budget, determined by law (Articles 1 and 8 of the Law "On Taxes and Duties"). In the territory of the Republic of Latvia the State Revenue Service collects the above tax. Administration obligations, directions of activities, duties and rights of the above institution are determined by the Laws "On Taxes and Duties", and "On the State Revenue Service". The laws envisage the right to extensive authority of the State Revenue Service and duties in collecting debts both on a no contestation basis and by submitting claims to the court (as well as submitting a claim on termination of debtor's activities or on insolvency).

Thus, if the employer violates the law and does not make the compulsory payment, certain State institutions are authorised to realise their claim against those employers under compulsion.

The persons to be insured, who can influence neither the activity of the employer nor of that institution, which implements and/or supervises social insurance, need not suffer just because other persons do not perform tasks determined by law or perform them insufficiently. Otherwise the mechanism, created to implement constitutional rights, will not correspond to its objective. Persons mentioned in the first Part of Article 5 of the Social Insurance Law, who shall be covered by the State compulsory social insurance, but for whom compulsory premiums- as determined in Article 19 of this Law- are paid from the basic state budget, are in the same situation.

In turn, if the institutional system, developed like mentioned earlier, does not perform its duties in collecting taxes adequately, then one may hold that the State institutions do not make use of all the resources in implementing the social rights.

In spite of the present economic problems and hardships the Lithuanian Constitutional Court already in 1997 has also declared that, to implement the right to social insurance determined by the Constitution, the obligation of the state institutions and officials is to ensure collecting the funds, envisaged by the laws (See The Constitutional Court of the Republic of Lithuania March 12, 1997 Judgement in case No. 5/96).

In social insurance, as in one of the types of insurance, the right on paying premiums from the funds of social insurance is closely connected with the obligation to make payment into the special budget. This principle is incorporated also in Item 2 of the second Part of Article 3 and Article 12 of the Law. In its turn, Article 21 stresses the principle that the employee may pay the compulsory premiums only by the employer's mediation.

Therefore the Constitutional Court holds that the employee as the subject of social insurance relations has performed his/her duty on the moment when he/she enters upon one's duties. And the law commissions another person - the employer- with realisation of the further duties of insurance- i.e. paying the premiums into the special budget.

Thus the disputable legal norm does not ensure the interrelation of the in payment and out payment, but on the contrary- separates them. Thus the employee to be insured, who has performed his/her duty with regard to the social insurance system has been denied social insurance services.

The Social Insurance Law has provided for solidarity between the payers of social insurance premiums and the recipients of social insurance services as one of the basic principles of social insurance in the Republic of Latvia (Article 3, Item 1 of the second Part). The recipients of social insurance services are the insured persons. However, as the above persons alone cannot procure negotiable instruments and as the state social insurance includes also an element of social maintenance, the Law envisages that other persons- the employers as well as the State- for definite groups of persons- shall pay a certain part of the premiums (see Article 19). If it is permitted not to perform the above task, the principle of solidarity is violated.

When adopting the disputable norm, the legislator has in advance permitted the possibility that some persons, among them the employers, could avoid performing the task, determined by the law. Besides the Law "On Taxes and Duties" (Article 24) envisages that the tax administration has the right to prolong the payment terms. As the social insurance down payment is also a tax, the above legal norm allows the possibility that the employer may legally avoid paying the social premiums. But, if we take into consideration the conditions of the legal norm, the protected person- the person to be obligatorily socially insured- feels the negative consequences of the norm.

Thus, the term that the social insurance serves to implement social justice, social security and rights indispensable for the dignity of the person and that every person shall have the right to social security, envisaged in the Satversme is not observed.

Thus, if the disputable legal norms is in effect, persons who shall be obligatory insured and who obtain constitutional rights to social security because of their status or employment relations, depend on the decision of their

employer or the State institution to perform or avoid performing the tasks, determined by law. Thus the imperative legal norms, which envisage that all the subjects of social insurance relations shall perform their duties, lose their sense. Therefore, to guarantee the rights of persons to be covered by social insurance, payment shall not be connected with the fact if other persons have or have not performed their duties, envisaged by law.

Ungrounded is the viewpoint, expressed in the written reply of the Saeima and upheld by its representative at the Court session, that the right to social security, fixed in Article 109 of the Satversme, has not been violated as the person, who – in accordance with the disputable legal norm - cannot receive social insurance premiums has not been denied the right to receive social aid.

In Latvia both- the social aid and social insurance, which are interconnected and supplement one another form the system of social security. However, each of them has its objective, tasks, functions and principles. Article 3 of the Law "On Social Aid" determines that a person, who is not able to provide for himself or overcome specific difficulties and who does not receive sufficient aid from anyone, has the right of receiving social aid.

Not doubting that in certain cases also employed persons may claim social aid, the Constitutional Court holds that persons, who are to be covered by social insurance, but who- in case of social risk- are not able to receive social insurance premiums because the employer, an institution or the State have not ensured paying the premiums into the special budget, should not be regarded as persons, who are not able to provide for themselves or overcome difficulties in the sense of the Law "On Social Aid".

Besides, social aid is usually rendered individually, after evaluating the possibilities of the person and checking the material situation and other resources. Therefore requesting and receiving of social aid is connected also with the psychological aspect and personal attitude. The right to social aid may not substitute the right to social security in the form of social insurance.

When fixing in the Satversme the right of an individual to social security as the fundamental right of a person, the State is obligated to implement it. However, the disputable norm denies a person the right to social security. This norm is not just and contradicts Article 109 of the Satversme.

A legal norm may not be valid if it is not in compliance even with one legal norm of higher legal force. Therefore, establishing that the disputable legal norm is at variance with Article 109 of the Satversme, the Constitutional Court holds that there is no necessity to evaluate its compliance with other legal norms of the Satversme and the Pact, mentioned in the application.

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

**the Constitutional Court**

**DECIDED:**

to declare Item 1 of the Transitional Provisions of the Law " On the State Social Insurance" as **unconformable** with Article 109 of the Satversme and from the day of publishing the Judgement as **null and void** with regard to those persons who shall be obligatory covered by social insurance and who pay the social insurance premiums by other person's mediation or for whom other persons pay the premiums.

The Judgment is final and may not be appealed.

The Judgment was announced in Riga, on March 13, 2001.

The Chairman of the Court session

Aivars Endziņš