



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, 2 February 2010 in Case No. 2009-46-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

having regard to the application of twenty members of the Saeima (Parliament) of the Republic of Latvia - Boriss Cilevičs, Jāis Tutins, Ivans Klementjevs, Aleksandrs Golubovs, Artūrs Rubiks, Sergejs Fjodorovs, Sergejs Mirskis, Nikolajs Kabanovs, Sergejs Dolgopolovs, Valērijs Agešins, Andrejs Klementjevs, Ivans Ribakovs, Vitālijs Orlovs, Aleksejs Vidavskis, Oļegs Deņisovs, Jānis Urbanovičs, Nils Ušakovs, Juris Skolovsisa, Mirosļavs Mitrofanovs and Valērijs Buhvalovs (hereinafter – Applicants), this application being submitted for initiation of a case,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 3rd indent, and Article 28.¹ of the Constitutional Court Law,

on 12 January 2010 in writing examined the case

“On Compliance of the First Sentence of Para 1 of the Transitional Provisions of the Law on the Social Protection of the Participants of the Chernobyl Nuclear Clean-up and Persons Suffered as a Result of the Chernobyl Nuclear Power Station Accident with Article 91 of the Satversme (Constitution) of the Republic of Latvia”.

The Facts

1. On 9 September 1999, the Saeima of the Republic of Latvia (hereinafter – Saeima) adopted the Law on the Social Protection of the Participants of the Chernobyl Nuclear Clean-up and Persons Suffered as a Result of the Chernobyl Nuclear Power Station Accident (hereinafter – Law). It came into force on 1 January 2000. The first sentence of Para 1 of the Transitional Provisions of the Law (hereinafter – the Contested Norm) in its current wording provides the following: “The disablement pension and the survivor’s pension granted to the above mentioned persons before the date of coming into force of this Law and the amount of which has been calculated at the amount of the detriment, shall not be recalculated, except for the cases when the level of disablement (in percents) or disability group of a person who has been granted pension at the amount of the detriment compensation has changed.”

2. **The Applicants** hold that the Contested Norm does not comply with Article 91 of the Satversme of the Republic of Latvia (hereinafter – Satversme).

According to the Applicant, when recalculating pensions in accordance with the formula established in the second sentence of Para 2 of the Transitional Provisions of the Law, the average gross wage for employees working in the public sector for the previous quarter calculated by the Central Statistical Bureau is taken into account. When comparing the situation in 1999 and 2007, it can be concluded that this index has increased almost threefold. In the result of this, in certain cases when a pension is recalculated due to disablement or change of disability group, disablement pension increases if compared with the previous period, namely, the period before 1 January 2000. However, persons whose health has deteriorated and who were established a disability group previously, whilst their level of disablement or disability group has remained unchanged, the pension calculated in accordance with the detriment has remained at the same level. If a person was established a disability group or whose level of disablement or disability group has changed after coming into force of the Law, the amount of disablement pension is higher if compared with that of a person with a higher but unchanging level of disablement or disability group provided that

disablement pension was granted to this person before coming into force of the Contested Norm.

According to the Applicant, such a situation shall be regarded as an infringement of the principle of legal security because, according to the Contested Norm, the amount of disablement pensions of a person shall depend on the time when a person was granted disability group rather than on the health condition or other objective circumstances. It cannot be understood from the Contested Norm what criteria in particular were taken as the grounds when establishing the different procedures for calculation pensions for persons who were established a disability group before the date of coming into force of the Law and for those who were established a disability group after it.

3. The institution that adopted the contested act – **the Saeima** does not agree with the opinion of the Applicant and holds that the Contested Norm complies with Article 91 of the Satversme.

The data provided by the State Social Insurance Agency [*“Valsts sociālās apdrošināšanas aģentūra”*] (hereinafter – SSIA) show that person who were granted disability in the result of the Chernobyl Nuclear Power Station (hereinafter – Chernobyl NPS) nuclear clean-up and who were granted disablement pension before coming into force of the Law, the average amount of disablement pension was higher than that of persons suffered as a result of the Chernobyl NPS accident clean-up. Consequently, the opinion of the Applicant that disablement pensions granted nowadays are higher than those granted before coming into force of the law and pensions are not being recalculated, is not grounded.

When analysing compliance of the Contested Norm with Article 91 of the Satversme, the Saeima draws attention to normative regulatory framework on social protection for the persons suffered as a result of the Chernobyl NPS accident that was effective before adoption of the Law. The legislator, when adopting the Law, had to observe the principle of legal security, namely, to protect the rights of persons that were already conferred before the date of coming into force of the Law. The Contested Norm served as one of the mechanisms to protect legal security of persons during the process of introducing amendments to the normative regulatory framework. Moreover,

the Law was adopted in collaboration with the Latvian association “Černobiļa” [“*Chernobyl*”]. It asked to preserve the previous procedure for calculation of disablement pensions for persons who were established a disability group before 2000.

The Saeima does not share the opinion of the Applicant that the Contested Norm has no reasonable grounds. The procedure of elaboration of the norm shows that the aim of it was to protect legal security of those persons who were granted the disablement pension before coming into force of the Law. When adopting the Contested Norm, the principle of legal security was regarded to be a value of a higher constitutional importance if compared to the principle of equality. Such decision of the legislator was not political as to its character, and it can be reassessed in the frameworks of legislative procedure, should it be established that amendments to normative regulations are required. Moreover, the amount of disablement pension for those participants of the Chernobyl NPS nuclear clean-up who were already granted disablement pension would decrease considerably if the Contested Norm would not be adopted. When elaborating the Law, the legislator could not foresee the rapid increase of average monthly wage during the period of economic growth.

4. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – Ombudsman) indicates that all persons who were conferred disablement pension at the amount of the detriment before coming into force of the Law or who were granted detriment compensation and disablement pension after coming into force of the Law are brought together by one common circumstance, i.e. disablement and disability group set in after participation in the Chernobyl NPS nuclear cleanup or as a result of the accident.

Consequently, the above mentioned persons enjoy equal and comparable conditions. Since the Contested Norm provides for a restriction regarding the possibility to recalculate disablement pension, it establishes a different attitude towards persons who were granted disablement pension before 31 December 1999 and whose level of disablement (in percents) of disability group has remained unchanged since coming into force of the Law.

The Ombudsman agrees with the Saeima that the legitimate objective of the Contested Norm was to protect legal security of persons who were granted

disablement pension before coming into force of the Law. However, it should be taken into account that the situation has changed since adoption of the Contested Norm.

One of the indices that is taken into account when recalculating disability pensions in accordance with the Contested Norm is the average gross wage of employees of the public sectors during the previous quarter calculated by the Central Statistical Bureau [*Centrālā statistikas pārvalde*]. Since 2008, this index has constantly increased. There is a considerable difference between the wage in 2000 and 2009. When recalculating disablement pension in accordance with the Contested Norm, the above mentioned index is taken into account irrespective the fact whether the level of disablement (in percents) or disability group has increased or reduced. It can be concluded from the information provided by the SSIA that in the result of the above mentioned circumstances, provided that the level of disablement has reduced, the amount of disablement pension is greater than the pension in case if the level of disablement of a person has remained unchanged for several years.

According to the Ombudsman, the above described situation does not comply with the objective of the Contested Norm and the Law. The aim of the Law is to establish social guarantees for persons suffered as a result of the Chernobyl NPS accident. Both, the objective of the Law and the principle of justice requires compensating the detriment caused to the above mentioned persons depending on the gravity of the detriment, namely, the greater is the detriment, the more social guarantees a person gets. The Contested Norm has ceased to protect the right of the persons who were granted disablement pension at the amount of the detriment before coming into force of the Law and whose level of disablement or disability level has remained unchanged since coming into force of the Law. Consequently, the measures selected by the legislator are no more appropriate for reaching the legitimate objective, and the Contested Norm does not comply with the principle of proportionality and Article 91 of the Satversme.

5. The State Social Insurance Agency draws attention to normative acts, according to which disablement pensions, survivor's pensions were calculated and social guarantees were granted to persons suffered as a result of the Chernobyl NPS accident before the date of coming into force of the Law.

15 May 1991 decision of the Supreme Council of the Republic of Latvia provided that disablement pension at the amount of the detriment caused shall be conferred to persons who participated in Chernobyl NPS nuclear clean-up or have suffered as a result of radioactive pollution of the Chernobyl NPS accident.

However, detriment compensation established in the first part of Section 8 of the 1 January 2000 Law is allocated to those participants of the Chernobyl NPS nuclear clean-up who were established a disability group provided that its causal relationship with the clean-up works of the Chernobyl NPS accident or the level of disablement constitutes 10 – 25 percent, and it is related with having executed the above mentioned works.

According to the information provided by the SSIA, persons who were established a disability group before 1 January 2000 provided that their disability is caused by having executed works related with clean-up after the Chernobyl NPS accident, have the right to receive disablement pension in accordance with the norms of the Law “On State Pensions”. However, according to the first part of Section 10 of the Law, participants of the Chernobyl NPS nuclear clean-up and their dependent persons can also be granted detriment compensation in addition to the State pension (disablement pension, old-age pension, long-service pension, as well as survivor’s pension). In case if a person does not have the right to a State pension, whilst he or she has the right to receive a State social security benefit, the detriment compensation shall also be granted in addition to the State social security benefit.

The SSIA also observes that, at present, 2737 persons receive disablement pension due to their disability as a result of the Chernobyl NPS nuclear clean-up. 1884 persons out of them were granted disablement pension before 2000, whilst 853 persons it was granted after 2000. The average amount of a pension for persons who were established a disability group before 2000 was 205.19 lats, whilst that of persons who were established a disability group after 2000 constituted 94.41 lats.

The Constitutional Court has established:

6. Article 91 of the Satversme provides: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

The application contains a request to assess compliance of the Contested Norm with the entire Article 91 of the Satversme. However, it follows from the application that compliance of the Contested Norms only with the first sentence of Article 91 of the Satversme should be assessed provided that the first sentence thereof guarantees equality of persons before the law and courts. The objective of the principle of prohibition of discrimination incorporated in the second sentence of Article 91 of the Satversme is to prevent the possibility that in a democratic and law-governed state, based on some inadmissible criterion like race, nationality or gender, the basic rights would be restricted (*see: Judgment of 29 December 2008 by the Constitutional Court in the case No. 2008-37-03, Para 6*). It has not been indicated in the application, however, that the different attitude provided in the Contested Norms would be based on some inadmissible criterion. Therefore, in the framework of this case, the Contested Norms shall be analyzed in the context of the principle of equality, rather than that of prohibition of discrimination.

7. The task of the principle of equality enshrined in the first sentence of Article 91 of the Satversme is to ensure that the demand of the law-governed state of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law (*see: Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.1*). However, such unity of legal procedure does not mean levelling, because “Equality allows a differentiated approach, if it can be justified in a democratic society” (*see: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 6 of the concluding part*).

When interpreting Article 91 of the Satversme the Constitutional Court has recognized that the principle of equality forbids the State institutions passing such norms, which without a reasonable ground permit a differentiated attitude to persons, who are in equal and under certain criteria comparable circumstances. The principle of equality permits and even requires a differentiated attitude towards persons, who are in different circumstances as well as permits a differentiated attitude towards persons, who are in equal circumstances, if there is an objective and reasonable basis for it (*see, e.g.: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Concluding Part and Judgment of 29 December 2008 in the case No. 2008-37-03, Para 7*). A different attitude has no objective and well-grounded reason if it does not have a legitimate objective or if the chosen means and advanced objectives are not proportionate (*see: Judgment of 23 December 2002 by the Constitutional Court in the case No. 2002-15-01, Para 3 of the Concluding Part*).

Consequently, in order to assess whether the Contested Norms comply with the principle of equality included in the first sentence of Article 91 of the Satversme, it is necessary to establish:

1. whether and what persons (groups of person) enjoy equal and, according to certain criteria, comparable conditions;
2. whether the Contested Norm provides for an equal or different attitude towards these persons;
3. whether such attitude has an objective and well-grounded reason, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed.

8. Legal regulation establishing the status of participants of the Chernobyl NPS nuclear clean-up, their dependant persons and persons suffered as a result of the Chernobyl NPS nuclear clean-up and social guarantees related thereto has been substantially amended since coming into force of the Law on 1 January 2000.

8.1. On 15 May 1991, the Supreme Council of the Republic of Latvia adopted the decision “On Measures to be Taken to Improve Social Situation of Inhabitants of the Republic of Latvia suffered in the result of the Chernobyl NPS accident”. Section 3

of the above mentioned judgment provided that persons who participated in the Chernobyl NPS nuclear clean-up, as well as have resided in the zone of radioactive pollution shall be granted disablement pension if disability of the above mentioned person is caused by the Chernobyl NPS accident. It was provided in the decision that the amount of pensions shall be established according to provisions regulating compensation for the detriment caused. The same procedure was also established for calculation of survivor's pension for families of deceased disabled persons. Consequently, before coming into force of the Law, social guarantees were established for three groups of persons:

- 1) persons who participated in the Chernobyl NPS nuclear clean up that resulted in disability;
- 2) persons who resided in the zone of radioactive pollution that resulted in disability;
- 3) families of deceased persons whose disability was caused by the Chernobyl NPS accident.

The SSIA indicated that before coming into force of the Law, disablement pensions for both, participants of the Chernobyl NPS nuclear clean-up and persons suffered in the result of the Chernobyl NPS accident were calculated in accordance with the Law "On State pensions". However, in the case if the amount of this pension calculated in accordance with these norms was smaller than the amount of detriment compensation, the pension was granted at the amount of the compensation in accordance with the average wage in the State and the level of disablement (*see: case materials, pp. 102*). Calculation of disablement pension at the amount of detriment compensation was more advantageous for persons with relatively high level of disablement. The procedure for recalculation of detriment compensation has not been considerably amended before 1 January 2000, and according to the normative acts effective at that time this compensation was calculated according to the formula DC (detriment compensation) or later PA (pension amount) = $90\%AW$ (average wage) x LD (level of disablement in percents).

8.2. Persons whose disability was caused by the Chernobyl NPS accident and for whom disability group was established before coming into force of the Law, social guarantees are being ensured in accordance with the norms of the Law. The Law

provides for different social guarantees, namely, detriment compensation, disablement pension, survivor's pension, state social security benefit, as well as medical assistance.

Section 8 of the Law distinguishes three groups of persons who are granted detriment compensation:

- 1) Participants of the Chernobyl NPS nuclear clean-up who were granted a disablement group, and disability being caused in the result of executing works of Chernobyl NPS nuclear clean-up;
- 2) Participants of the Chernobyl NPS nuclear clean-up whose level of disablement constitute 10 – 25 percent, and it disability being caused in the result of executing works of Chernobyl NPS nuclear clean-up.
- 3) Disabled persons who are family members of the above mentioned persons, the first being dependent on the latter that has already deceased.

Moreover, according to the first part of Section 10 of the Law, the first and the third group of persons have the right to receive detriment compensation at the same time and State pension granted under the Law “On State Pensions”, or detriment compensation and the State social security benefit granted under the Law “On Social Assistance”. At present, issues included in the Law “On Social Assistance” are regulated by the Social Service and Social Assistance Law.

Consequently, it can be concluded that, after coming into force of the Law, circumstances enjoyed by persons suffered as a result of the Chernobyl NPS have changed. The circle of persons who were granted social guarantees has also changed. Namely, before coming into force of the Law, all social guarantees were also received by persons who suffered from radioactive pollution but who did not participate in nuclear clean-up; however now the Law ensures these persons with only one kind of social assistance, which is medical assistance. Kinds of social assistance and the procedure for calculation thereof also have substantially changed. Before coming into force of the Law, normative acts provided for two kinds of social guarantees, namely, disablement pension and survivor's pension. Nowadays the Law provides for five kinds of social guarantees. Normative acts have also undergone considerable amendments, these acts establishing procedure for calculation of disablement pension and allocation of different kinds of social assistance.

Consequently, persons who suffered as a result of the Chernobyl NPS accident and were granted social guarantees before coming into force of the Law, and persons who were granted social guarantees after the coming into force of the law shall be regarded as comparable groups in the frameworks of the present case.

8.3. According to the Contested Norm, disablement pension conferred before the date of coming into force of the Law and was calculated at the amount of detriment compensation, shall be recalculated in the cases when the level of disablement (in percents) or disability group of a person who has been granted pension at the amount of the detriment has changed. According to the second sentence of Para 1 of the Law, the above mentioned pension are calculated based on the formula p (pension amount) = $90\%AV$ (average gross wage for employees working in the public sector for the previous quarter calculated by the Central Statistical Bureau) \times LD (level of disablement (in percents)).

Consequently, persons who, before coming into force of the Law, were granted disablement pension at the amount of detriment compensation can be divided into two groups. The first group includes persons, the amount of disablement pension of whom has remained unchanged since the date of adoption thereof due to the fact that the pension was not recalculated. The second group includes persons whose disablement pension was recalculated in accordance with the above mentioned formula. Consequently, the Constitutional Court has to investigate whether these persons enjoy equal and comparable conditions.

Persons who have been granted pension at the amount of the detriment before the date of coming into force of the Law, have several characteristics in common. All of them have suffered as a result of the Chernobyl NPS accident, their disability having been caused by consequences of the accident. Disablement pension at the amount of detriment compensation for these persons was calculated in accordance with one and the same formula. Moreover, the formula that is used for recalculation of disablement pensions at the amount of detriment compensation granted to these persons in case if level of disablement or disability group has changed, is identical to the formula used for calculation of disablement pension at the amount of detriment compensation before coming into force of the Law. When establishing such procedure, the legislator has recognized that all persons who, before the date of coming into force

of the Law, were granted disablement pension at the amount of detriment compensation enjoy equal and comparable circumstances.

Consequently, persons who, before the date of coming into force of the Law, were granted disablement pension at the amount of detriment compensation enjoy equal and comparable conditions disregarding the fact whether the above mentioned pensions of these persons has been recalculated in accordance with Para 1 of the Transitional Provisions of the Law.

9. Before the date of coming into force of the Law, the amount of disablement pension at the amount of detriment compensation granted to a person depended on the level of disablement and the average wage of employees in public and local government enterprises, institutions and organizations for the previous quarter calculated by the State Statistical Bureau. The higher was the level of disablement, the greater was disablement pension calculated.

The Contested norm provides that pensions are recalculated based on the formula included in the second part of Item 1 of the Transitional Provisions of the Law, which is done only for those persons who suffered as a result of the Chernobyl NPS accident and whose level of disablement (in percents) or disability group changed after coming into force of the Law. When recalculating disablement pension at the amount of detriment compensation based on the above mentioned formula, the average gross wage of employees of public sector during the previous quarter is taken into account. In the first quarter of 1999, the average gross wage for employees in the public sector was 144.94 lats (*see: case materials, pp. 98*). According to the statistical data, since 2001 the average gross wage of employees of the public sector has substantially increased. For instance, in the first quarter of 2001 the wage constituted 165 lats, in the first quarter of 2004 - 216 lats, whilst in the fourth quarter of 2008 the average gross wage of employees of public sector was 607 lats. Although average monthly gross wage of employees of public sector has reduced within first three quarters of 2009, it still exceeds the initial amount by several times (*see: <http://data.csb.gov.lv/DATABASE/Iedzsoc/%C4%AAstermi%C5%86a%20statistikas%20dati/Darba%20samaksa/Darba%20samaksa.asp>, consulted on 21 December 2009*).

The amount of pensions for persons whose disablement pension at the amount of detriment compensation has been calculated before coming into force of the Law and whose level of disablement or disability group has not changed since then, still depends on the average gross wage at the date of granting of the pension. However, after recalculation of pensions for persons whose level of disablement or disability group has changed after the date of coming into force of the Law, the average gross wage at the moment of recalculation is taken into account. As it has already been mentioned, average gross monthly wage of employees of public sector has substantially changed after the date of coming into force.

Consequently, in the result of this persons who, before the date of coming into force of the Law, were granted disablement pension at the amount of detriment compensation and whose level of disablement and disability group remained unchanged, the amount of pension depends on the fact whether the level of disablement and disability group remained unchanged or has changed since coming into force of the Law. For instance, the amount of disablement pension at the amount of detriment compensation for a person whose level of disablement since 1 September 1999 at the level of 70 percent remained unchanged and he or she has the 2nd disability group constitutes 98,52 lats. However, for a person who was granted disablement pension at the amount of detriment compensation and whose level of disablement, reduces or increases up to 70 percent, but the disability group is reduced or increased up to the 2nd disability group, the above mentioned pension is recalculated in accordance with the second sentence of Para 1 of the Transitional Provisions of the Law. According to the above mentioned formula, this person would receive 152.46 lats after the pension is recalculated (*see: case materials, pp. 97*). Consequently, pension of this person would exceed, by more than 50 percent, the pension of the person whose level of disablement or disability level has remained unchanged and therefore pension of the latter person would not be recalculated. These were the Applicants and the Ombudsman who drew attention to possible occurrence of such situation. Neither the Saeima denies in its reply that such a situation is probable because, when elaborating the Law, it was not possible to prognosticate increase of the average gross wage of employees of the public sector.

Consequently, the Contested Norm establishes unequal attitude to persons who enjoy equal and comparable conditions.

10. The Constitutional Court has already concluded that any restriction of the independence of judges should be founded upon conditions and arguments about its necessity, i.e. the restriction is set because of important interests – with a legitimate aim. In the Constitutional Court proceedings the duty to demonstrate and substantiate the legitimate aim of any restriction first of all rests upon the institution that passed the contested act, in this specific case – upon the Saeima (*see, e.g.: Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01, Para 22.1 and Judgment of 18 January 2010 in the case No. 2009-11-01, Para 15*).

According to what was indicated by the Saeima, the aim of the legislator, when adopting the Contested Norm, was to protect legal security of participants of the Chernobyl NPS nuclear clean-up, these persons having been granted disablement pension. The legislator has decided to preserve the previous amount of disablement pension for those persons, whose pensions were granted before the date of coming into force of the Law. If the Contested Norm was not adopted, the amount of pension for participants of the Chernobyl NPS nuclear clean-up and persons suffered as a result of the Chernobyl NPS accident, whose disablement pension at the amount of detriment compensation before the date of coming into force of the Law, would diminish considerably. Namely, in July 1999, the average amount of disablement pension at the amount of detriment compensation was 80.77 lats. However, after coming into force of the Law, the average disablement pension was 57.70 lats in accordance with the Law “On State Pensions” (*see: case materials, Vol. 99*).

Consequently, the aim of the legislator, when adopting the Contested Norm, was to protect legal interests of persons who have been granted disablement pension at the amount of detriment compensation before the date of coming into force of the Law and to prevent reduction of pensions already granted.

11. To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain:

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

2) 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;

3) 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 (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part*).

12. The Constitutional Court shares the opinion of the Saeima, namely, at the moment of adoption of the Law the Contested Norm did reach its legitimate objective. If the Contested Norm has not been adopted, the amount of disablement pensions granted before coming into force of the Law would decrease considerably.

However, circumstances enjoyed by the groups of persons under consideration in the present case have changed considerably since adoption of the Contested Norm. After coming into force of the law, the average gross wage of employees in public sector has increased by several times since coming into effect of the Law. This is one of the variables of the formula mentioned in the second sentence of Para 1 of the Transitional Provisions of the Law, according to which disablement pensions at the amount of detriment compensation are being recalculated. Therefore the Constitutional Court must assess whether the Contested Norm is still appropriate for reaching the legitimate objective.

Because of the Contested Norm, now persons who were granted disablement pension at the amount of detriment compensation before the date of coming into force of the Law and the pension has not been recalculated, enjoy a worse legal situation if compared to persons whose disablement pension at the amount of the detriment compensation was recalculated in accordance with Para 1 of the Transitional

Provisions of the Law. Consequently, the Contested Norm assumes that the amount of disablement pension for a person with an unchanging level of disablement or disability group is lower than that of a person with less grave level of disablement or disability group, provided that the level of group of disability has changed after coming into force of the Law.

Therefore it can be concluded that the at present the Contested Norm protects, at an insufficient level, the rights of those persons who were granted disablement pension at the amount of detriment compensation before coming into force of the Law and whose level of disablement or disability group has remained unchanged. The objective of the Law is to establish social guarantees for participants of the Chernobyl NPS nuclear clean-up and persons suffered as a result of this accident by compensation the detriment caused depending on the gravity of it. By establishing recalculation of disablement pension based on the formula mentioned in the second sentence of Para 1 of the Transitional Provisions of the Law only for those persons whose level of disablement or disability group has changed after 1 January 2000, the Contested Norm previously ensured reaching of the legitimate objective, however it no more complies with the general objective of the law.

Consequently, the Contested Norm is not appropriate for reaching the legitimate objective. It neither complies with the principle of equality.

13. Article 32 Indent 3 of the Constitutional Court Law provides that any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

The formula included in the second sentence of Para 1 of the Transitional Provisions of the Law, according to the Contested Norm, is applicable only to those recipients of disablement pension whose level of disablement or disability group has changed after 1 January 2000. Since the average gross wage of employees of public sector is a changeable value, in the future this can also result in a way that parson with an equal level of disablement and disablement group receive disablement pensions of different amounts. Therefore the legislator needs extra time to elaborate normative

regulation that would ensure such attitude to all participants of the Chernobyl NPS nuclear clean-up and persons suffered as a result of the accident, disablement pensions at the amount of detriment compensation of both groups of persons having been granted before 1 January 2000 that would comply with principle of equality.

The Constitutional Court

Based on Articles 30 – 32 of the Constitutional Court Law

h o l d s :

The first sentence of Para 1 of the Transitional Provisions of the Law on the Social Protection of the Participants of the Chernobyl Nuclear Clean-up and Persons Suffered as a Result of the Chernobyl Nuclear Power Station Accident does not comply with Article 91 of the Satversme of the Republic of Latvia and shall be null and void as from 1 July 2010.

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing of it.

Presiding Judge

G. Kūtris