# THE CONSTITUTIONAL COURT
# OF THE REPUBLIC OF LATVIA

**JUDGMENT**

**ON THE BEHALF OF THE REPUBLIC OF LATVIA**

**Riga, October 9, 2007**

**in case No. 2007-04-02**

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

with the secretary of the sitting of the Court Arnis Žugans,

with presence of the representative of the Latvian National Human Rights Office (Ombudsman) – the Head of the Department of Human Rights of the Ombudsman, Anita Kovaļevska,

the representative of the institution that passed the contested act, the Cabinet of Ministers, the Head of the Department of European and Legal Affairs of the Ministry of Welfare, Edgars Korčagins,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Section 16 (1) and (3), and Section 17 (1) (8) of the Constitutional Court Law,

on September 11, 2007, in Riga in an open Court session examined the case

**"On Compliance of the Words and Figures "(but not Sooner than from the Day a Person has Reached 15 Years of Age, Except the Case Specified in Paragraph 40 of These Regulations)" Included in Para 2 of the Regulation No. 165 of April 23, 2002 by the Cabinet of Ministers, Procedures for Producing**

**Evidence, Calculation and Registration of Periods of Insurance with Articles 64, 91 and 109 of the Satversme (Constitution) of the Republic of Latvia".**

**The Constitutional Court has established:**

**1.** On November 29, 1990, the Supreme Council of the Republic of Latvia adopted the Law "On State Pensions". This Law provided for the rights to social security, and provided for two kinds of State pensions – work pensions (old-age, invalidity, survivor's and service pension) and social insurance pension. The rights to the social insurance pension are held by persons subject to the social insurance of the Republic of Latvia. Persons, who did not hold the right to the work pension, were guaranteed a social pension by means of the Law. The pension scheme established by this Law was based on the principle of redistribution, which did not favour involvement of employees in securing their old age.

**2.** In 1995, a reform of the pension system was carried out, and on November 2, 1995, the Law "On State Pensions" (hereinafter – Pension Law) was passed. This law became effective on January 1, 1996. The reform provided that the the State mandatory pension insurance system is based on insurance contributions made. The lenghts of period of insurance is formed by the period, during which a mandatorily socially insured person has made him or herself social insurance contributions or the contributions were to be made for the socially insured person. Hence the Pension Law provides that the amount of a pension depends on insurance contribution and length of period of insurance.

**3.** The Transitional Provisions of the Pension Law deals with the questions regarding the length of period of insurance for those persons who were employed up to December 31, 1990 when the State mandatory pension insurance system was not yet introduced. Para 1 of the Transitional Provisions provided that work periods and work equivalent periods accrued up to January 1, 1991 for Latvian citizens, repatriates and their family members and descendants shall be equated to the length of period of

insurance, which is necessary for granting (recalculation) of a pension, disregarding the social insurance contributions made.

**4.** On October 20, 2005, there were amendments made to the Pension Law and Para 1 of the Transitional Provisions of the Law was formulated in the following wording: "The accrued work and the equivalent periods thereof for Latvian citizens in the territory of Latvia and the territory of the former USSR up to 31 December 1990, as well as the periods accrued outside of Latvia as prescribed by Sub-paragraph 10 of this Paragraph shall be equivalent to lengths of period of insurance". This workding became effectove as of January 1, 2007. However this does not change the principle that the work period accrued up to December 31, 1990 (herenafter – up to 1991) is equated to the lenght of period of insurance.

**5.** Para 2.[1] of the Transitional Provisions of the Pension Law provides: "The procedures for the calculation of the period, provision of proof and method of recording specified in Paragraphs 1 and 2 of these Transitional Provisions shall be determined by the Cabinet". Based on this authorization, on April 23, 2002, the Cabinet of Ministers passed the Regulation No. 165 "Procedures for Producing Evidence, Calculation and Registration of Periods of Insurance" (hereinafter – Regulation No. 165). Para 2 of the abovementioned Regulation provides: "Work and periods regarded as equal thereto by 1 January 1991, irrespective of the performance of the social insurance payments (but not sooner than from the day a person has reached 15 years of age, except the case specified in Paragraph 40 of these Regulations) shall be regarded as equal to periods of insurance which are based on the social insurance payments and constitute the length of period of insurance (except the case specified in Paragraph 35 of these Regulations), in order to determine the rights to the State pension which have occurred after coming into force of these Regulations."

**6. The Applicant – the Latvian National Human Rights Office** (according to Para 2 of the Transitional Provisions of the Ombudsman Law, the Ombudsman's Office is the legal successor of the Latvian National Human Rights Bureau) contests in its application compliance of the words and figures of Para 2 of the Regulation No.

165 “(but not sooner than from the day a person has reached 15 years of age, except the case specified in Paragraph 40 of these Regulations)” with Articles 64, 91 and 109 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – Satversme).

The Latvian National Human Rights office (hereinafter – Ombudsman) holds that the contested provision, which provides that only those periods of work that a person has accrued from the day when he or she has reached the age of 15, is equated to the length of period of insurance, is in conflict with Article 64 of the Satversme. Para 2.[1] of the Transitional Provisions of the Pension Law has authorized the Cabinet of Ministers to regulate procedures for calculation, producing evidence and proving the periods established in Para 1 and 2 of the Transitional Provisions of the Law “On State Pensions”. The Ombudsman indicates that it does not follow from this authorization that the Cabinet of Ministers is entitled to determine the periods that shall be included in the length of period of insurance. The Cabinet of Ministers, when establishing that only those work periods that a person has accrued from the day whet he or she has reached the age of 15 shall be equated to the length of period of insurance, in essence established periods of insurance.

A representative of the Ombudsman emphasized during the Court sitting that Paras 1 and 2 of the Transitional Provisions of the Pension Law do not set forth the age, from which work periods and equivalent periods thereof shall be equated to the length of period of insurance. It neither follows from other laws that at the date indicated in Para 1 of the Transitional Provisions of the Pension Law such period, at which an employed person has already reached the age of 15, can be regarded as a work period.

A. Kovaļevska expressed a viewpoint that the work “calculation” implies an activity of a technical nature. Calculation implies the way how a period shall be counted – in years, months or days, and in what technical way the period shall be calculated. The contested provision provides that periods accrued before the age of 15 shall not be included in the insurance period and hence several months and even a year is excluded from it. The representative of the Ombudsman emphasized that it is a substantial period of time, to which no technical regulation can be applied. The contested provision directly affects the basic rights of a person, i.e. the right to a social security. A. Kovaļevska emphasized that in the case if the legislator could have

established such restriction, it should be done explicitly, precisely and clearly enough. However, this is not the case. Regulations effective at present are applicable only to the present situation in the field of social insurance, and the legislator has not indicated that they would be applicable to the period before 1991.

The representative of the Ombudsman concluded that, when establishing the period, the Cabinet of Ministers has exceeded the limits of authorization delegated by the legislator thereto and thus the contested provision is in conflict with Article 64 of the Satversme.

The contested provision neither complies with Article 109 of the Satversme, since it narrows the scope of rights guaranteed by the Pension Law. The Ombudsman emphasized that the norms of the Pension law, unlike the contested provision, do not provide for any age limits regarding those work periods and equivalent periods thereof accrued up to 1991. The Pension Law concretizes the right to social security in old age. The contested provision restricts the scope of rights established by the Pension Law and thus also restricts the rights to social security established in Article 109 of the Satversme.

The Ombudsman in its application also draws attention to non-compliance of the contested provisions with Article 91 of the Satversme. The Ombudsman holds that all persons mentioned in Para 1 of the Transitional Provisions of the Pensions Law, who were employed in the territory of Latvia or the former USSR, enjoy equal and comparable conditions. However, based on the contested provision, these work periods are included into the length of period of insurance for a person who was older than 15 years during the period of employment, but they are not included for a person who was aged under 15 even if these persons would have been employed in the same work place. The Ombudsman emphasizes that such unequal attitude has no objective and reasonable grounds.

Moreover, during the Court sitting, the representative of the Ombudsman indicated that the normative regulation in the field of social insurance elaborated after 1991 can not be applied to t he situation that existed before that. The situation that existed before 1991 should be assessed separately, because it can not be automatically applied to the present conditions of the social insurance system. Persons who were

employed before 1991, enjoyed another situation, and they must be treated differently, by taking into account and accurately assessing normative regulation of that time.

**7. The institution that passed the contested act – the Cabinet of Ministers –** indicates it its reply that social insurance contributions were introduced in Latvia on January 1, 1991. In order to calculate pensions based on the social insurance principle, it is necessary to elaborate procedures, according to which the length of period of insurance before 1991 would be calculated. Therefore it was agreed that this work period (up to 1991) shall be taken into account when equating it to the work period based on the principle of insurance. Since social insurance is possible only from the age of 15, the Cabinet of Ministers has established that the work period up to 1991 shall be calculated from the age of 15 of a person. Namely – only such work period when a person has reached the age of 15 is included in the length of period of insurance. Thus the contested provision was appeared.

The Cabinet of Ministers emphasizes that the legislator has established the criterion of the age of 15 in Section 5 of the Law "On State Social Insurance": "All employees who have reached 15 years of age employed by an employer shall be subject to mandatory social insurance". Moreover, Section 3 of the Law "On State Pensions" provides that The right to a State social insurance pension who were subject to the State mandatory pension insurance scheme. If this age is determined in a special law, then it must not be established in the general law.

During the Court sitting, the representative of the Cabinet of Ministers explained that the respective age is not determined unintentionally and it is justified by several considerations. First of all, it is based on the duty of acquisition of basic education, which is provided by normative acts regulating education. These acts provide that acquisition of basic education is mandatory, it starts with the age of seven and it lasts for nine years, namely, up to the age of 15 in the majority of cases. Second, also those normative acts that regulate employment of persons serve as the basis for this determination, including the Labour Law, which provides that persons from the age of 15 shall be employed in a regular work.

Therefore the cabinet of Ministers has provided for the abovementioned law in the Regulation No. 165 as a generally accepted point of reference for insurance. Hence

the Cabinet of Ministers holds that it has not exceeded the limits of authorization delegated by the legislator, because the minimum age (15 years) that shall be included in the period of insurance is established by the Law "On State Social Insurance". Hence the contested provision complies with Article 64 of the Satversme.

The Cabinet of Ministers expresses a viewpoint in its reply that the contested provision also complies with Article 109 of the Satversme, because it does not guarantee an equal old age pension for all persons. This norm of the Satversme provides for and permits certain differences regarding reception of social security. The Cabinet of Ministers holds that the State has elaboration a pensions system and has provided a person with a State social insurance pensions, namely, the old-age pension. Hence the State has implemented the rights of a person to social security established by the Satversme and Article 109 of the Satversme has not been breached.

The Cabinet of Ministers indicates that the contested provision does not provide for a different attitude and persons enjoy equal and comparable conditions because they all have reached or will reach the age necessary for granting a pension after November 2, 1992. Moreover, work periods for all these persons were calculated from the age of 15. Consequently, the contested provision complies with Article 91 of the Satversme.

**8. The Saeima (Parliament)** was invited to provide explanation for the authorization. The Saeima indicated that the word "procedures" included in the norm is to be understood in the common meaning, as used in the Latvian language. This word does not prohibit including in regulations certain norms that establish restrictions, since "a norm of procedures", when regulating the respective issue, restricts something in any case. However, in each situation it is necessary to assess, whether the respective legal norm provides for a continuous restriction of the rights of a person, which in fact can be regulated only by the legislator, as established in Article 64 of the Satversme. Simultaneously it is necessary to take into account the fact that the Cabinet of Ministers, when elaborating regulations, guides itself by other legal norms. For instance, employment of a person (the first par of Section 37 of the Labour Law) and subjection to the duty of making mandatory social insurance contributions

(the first, second and third part of Section 5 of the Law "On State Social Insurance") is impossible if a person is younger than 15 years.

The Saeima holds that the requirements of the contested provision are logic and justified. Moreover, this provision is only of a concretizing nature. If the contested provision is understood in this way, then it serves as a supplementary aid for implementation of other norms of the Law and it pertains to the notions "procedures for the calculation" included in Para 2.[1] of the Transitional Provisions of the Pension Law.

During the Court sitting, **the representative of the Saeima – the head of the Saeima Legal Office – Gunārs Kusiņš** added that the Saeima, when authorizing the Cabinet of Ministers regulation of calculation, producing evidence and calculation of periods of insurance, wanted that the Cabinet of Ministers would establish it in accordance with the way how the notion "work" was understood in the soviet period. Mr. Kusiņš emphasized that the only legal basis for establishing of the abovementioned order could be normative acts of that time, respectively, of the soviet period regulating legal employment relationships.

Moreover, the Saeima expresses a viewpoint that it is necessary to establish whether a person could be employed before the age of 15 according to the normative acts and international treaties effective at that time. Even if it has been permitted, the contested provision and norms of other laws still cannot be interpreted grammatically and mechanically.

**9. The representative of the Ministry of Welfare -** Deputy Head of Pension Policy and Forecast Division, Social Insurance Department of the Ministry of Welfare – **Saulveiga Krastiņa** indicated during the Court Sitting that in the time period from November 26, 1940 to October 1, 1972, legal employment relationships in Latvia were regulated by the Labour Law Code of the Russian Soviet Federative Socialist Republic. It has been established in the Labour Law Code that it is prohibited to employ persons under the age of 16. However there have been exceptions and in some cases, based on special instructions, one could employ an under-age persons, but not younger that 14 years. Whilst, from October 1, 1972 to 2002 the legal employment relationships were regulated by the Labour Law code of the Latvian SSR adopted on

April 14, 1972. No substantial changes regarding the age of employment of children have been introduced in this normative acts. In this act, too, the age of 16 is mentioned, but in the case of exceptions – persons having reached the age of 15.

S. Krastiņa explained that in 1992, there were amendments made to the Latvian SSR Labour Law Code. These amendments established another age. Persons shall be employed from the age of 15, but in the case of exception – from the age of 13.

**10. The representative of the Ministry of Education and Science – the Head of the General Education Department - Artūrs Skrastiņš** indicated during the Court sitting that since 1919, in Latvia there is a mandatory septennial education, which is initiated at the age of seven and completed not later than at the age of 16.

From 1934 it is established that studies shall be initiated at the age of seven or eight, or even nine years depending on the health conditions and usually completed at the age of 15. The maximum age when a person could still acquire education was the age of 18. Mandatory education at that time was septennial, and it consisted of the following periods: one year – preschool education, six years – elementary education. It was supplemented by the so-called extra-education.

Whereas, from 1940 the septennial education was again established. Then it was followed by the eight-year education.

Mr. Skrastiņš emphasized that during this period pupils usually initiated studies at the age of seven or eight years, but in the case of exception – at the age of six or nine. Education was in general acquired by the age of 15, or at last – 18. Of course, there can be some separate cases and children who have competed their education at another age or who have not attended school.

**The Constitutional Court concluded:**

**11.** By means of the contested provision the Cabinet of Ministers has established that only such work periods are equated to the length of period of insurance that a person has accrued form the day when he or she has reached the age of 15. The abovementioned age limit shall not be applied to persons who were subject to political repressions ore have participated in national resistance movement.

The Applicant holds that the contested provision that was adopted on the basis of Para 2.[1] of the Transitional Provisions of the 1995 Law "On State Pensions" does not comply with Article 64 of the Satversme. The abovementioned Para of the Transitional Provisions authorizes the Cabinet of Ministers to regulate the procedures for calculation, producing of evidence and registration of periods established in Para 1 and 2 of the Transitional Provisions of the Pension Law. Since the Cabinet of Ministers, by means of the norm, has established the periods to be included in the length of period of insurance without authorization by the legislator, such action shall be assessed as breach of the principle of separation of State power.

**12. Observation of the procedure of issuing a legal norm** is the precondition of the validity of the legal norm (*see: Judgment of September 21, 2005 by the Constitutional Court in the Case No. 2005-03-0306, Para 10.4*). Therefore first of all it is necessary to assess argumentation of the Applicant regarding compliance of the contested provision with Article 64 of the Satversme.

Article 64 of the Satversme shall be assessed jointly with Article 1 of the Satversme. Article 1 of the Satversme determines that "Latvia is an independent democratic republic". Several principles of a law – based state, including the principle of separation of power, follow from the Article. The objective of separation of power is ensuring of rights and freedoms of a person in order not to permit substitution of a democratic legal state model by an authoritarian regime or autocracy of one person. Hence the essence of the separation of power is separation of political influence of the State and social life and ensuring of moderation of implementation of power. The principle of separation of power manifests itself in division of the state power into legislative, executive and judicial power, which are being realised by independent and autonomous institutions. The above principle guarantees balance and mutual control among them. It favours moderation of power. *[see: Judgment of October 1, 1999 by the Constitutional Court in the case No. 03-05(99), Para 1 of the Concluding Part*].

Division of competence of State organs as the basis for the principle of separation of power established by the Satversme is implemented in the norms of the institutional part of the Satversme (*see: Judgment of December 20, 2006 by the Constitutional Court in the case No. 2006-12-01, Para 6.2*).

**13.** According to Article 64 of the Satversme, the legislative rights belong to the Saeima, as well as to the Latvian people according to the order and amount established by the Satversme.

Legislator implies adoption of laws, i.e. the rights to regulate an issue by means of a law. The Satversme, when conferring rights to the Saeima and the body of Latvian citizens, has permitted an exception up to May 31, 2007. Namely, Article 81 of the Satversme conferred emergency powers to the executive powers – the Cabinet of Ministers – to pass regulations by act of law, including amending existing laws. However, the rights conferred to the Cabinet of Ministers was an exception form division of legislative rights established in Article 64 of the Satversme, and at present this norm is no more valid.

**14.** The Satversme has delegated the executive power to the competence of the Cabinet of Ministers, even though to ensure separation of power separate executive power activities have been delegated also to other constitutional institutions. Therefore it is possible to conclude that those activities of the executive power, which have not been delegated to other constitutional institutions, are within the competence of the Cabinet of Ministers and it is responsible for realization of them (*see: Judgment of October 16, 2006 by the Constitutional Court in the case No. 2006-05-01, Para 10.4*).

One of the most important activities of administration is adoption of external normative acts in the case if the legislator has authorized the executive institution. Normative acts of the Cabinet of Ministers passed in such manner are regarded as "regulations passed in an administrative order" *(Dišlers K. Ievads Latvijas valststiesību zinātnē. – Rīga: A. Gulbis, 1930, pp. 191).*

Since adoption of such normative acts is an administrative activity, the Cabinet of Ministers or other institution concretizes the political will included in laws or establishes the order of implementation of laws.

**15.** The requirement that the legislator itself shall regulate all issues of the State is hard to implement in complicated life conditions of modern society. The

legislator has no possibility to exhaustively regulate, by means of legislation, all issues that require regulation. Such activity of the legislator would often be dilatory, because the process of lawmaking is difficult and time-consuming. In order to ensure an effective implementation of State power, it is possible to deviate from the requirement that the legislator itself must regulate all issues. Such efficiency is reached when the legislator in the process of lawmaking regulates all most important issues, but elaboration of more detailed legal norms is delegated to the Cabinet of Ministers or other State organs. Such order not only makes the process of lawmaking more efficient, because the legislator does not have to devote itself to dealing with technical issues, but also allows reacting on the necessity of amending regulation faster and more adequately. The Cabinet of Ministers or other authorized State organs often is more competent in elaboration of "technical" norms if compared to the legislator, and the process of lawmaking in these institutions is not that complicated (*see: Sajó A. Limiting Government. An Introduction to Constitutionalism. – Budapest: Central European University Press, 1999, pp. 161*).

**16.** In Latvia, the Cabinet of Ministers can pass a normative act in the case if the legislator has formulated a special delegation in a law for adoption of such act and has established the limits of competence for the executive power.

Conditions of a special authorization (delegation) are regulated in common in Section 14 of the Law on the Structure of the Cabinet of Ministers. Item 2 of this Section of the Law provides that the Cabinet of Ministers may only issue normative acts – regulations "if the law specifically authorises the Cabinet of Ministers to do so. Besides, the authorisation shall formulate the main directions of the regulations' content."

Provision that the law shall directly include authorization to issue the Regulations as well as the main direction of the Cabinet of Ministers Regulations follows from the requirement that the legislator himself has to solve the most important public life issues. Taking into account the fact that it is not purposeful to regulate all the issues in the legislative way, the legislator has at least to consider the issues. And authorization to regulate in a more detailed way this or that issue by the Cabinet of Ministers Regulations, testifies about accomplishing of the above *(see:*

*Judgment of November 24, 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 10*).

The Constitutional Court has already indicated that "The Cabinet of Ministers within the procedure of administration may issue only normative acts subordinated to the law, consequently regulations shall be in compliance with the law. Regulations are issued to further implementation of laws. Specifying norms of the law in regulations does it. [..] Cabinet of Ministers, when issuing regulations, shall not incorporate norms, which cannot be regarded as remedies for implementing norms of law (*see: Judgment of April 3, 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 5 of the Concluding Part*).

Consequently, regulations of the Cabinet of Ministers passed on the base of a special delegation form the part of normative acts that has emerged not in the way of elaboration of laws but in that of execution thereof. The content of such regulations are mainly formed by procedural norms that function as an instrument of exercising of rights already established in a law. In separate cases, the content of regulations of the Cabinet of Ministers can be formed by material norms, however these must be passed based on a special authorization by the legislator.

**Regulations of the Cabinet of Ministers passed within the procedure of administration may not include those legal norms that would form new legal relations and restrict the basic rights without authorization by the legislator.**

**17.** In the case under consideration it is necessary to establish whether the Cabinet of Ministers, when passing the contested provision, has acted within the limits of authorization delegated by the Saeima.

Therefore it is first of all necessary to assess whether the legislator has authorized the Cabinet of Ministers to regulate the respective issue. If an authorizing norm is included in a law, then the objective, content and limits of the authorization shall be established.

The objective, content and limits of the authorizing norm must be identified explicitly enough in order to be able to understand what kind of regulation the government may issue.

**18.** Para 2.[1] of the Transitional Provisions of the Pension Law provides for the rights of the Cabinet of Ministers to pass regulations that would regulate procedures for calculation, producing of evidence and registration of work periods and equivalent (insurance) periods thereof.

**Hence, the Law contains a norm that authorizes the Cabinet of Ministers to pass regulations.**

**19.** What the legislator has aimed at when conferring rights to the Cabinet of Ministers to regulate the respective issue is understood as the objective of the authorization.

**The objective of the authorization is to regulate procedures, according to which the work periods and equivalent periods thereof established in Para 1 and 2 of the Transitional Provisions of the Pension Law shall be calculated, proved and registered.**

**20.** The content of the authorization reveals its essence and meaning. The content must be clear. The legislator has established in Para 2.[1] of the Transitional Provisions of the Pension Law that the procedures for calculation of the period, producing of evicence and method of recording specified in Paragraphs 1 and 2 of these Transitional Provisions shall be determined by the Cabinet.

The Saeima, too, has indicated that the notion "procedures" used in the authorization formulation must be understood in the common meaning.

The notion "procedures" means the way of implementation of a procedure; organization of activities *(Latviešu valodas vārdnīca: 30 000 pamatvārdu un to skaidrojumu / Bāliņa R., Ēdelmane I., Grase I. u.c. – Rīga : Avots, 2006, pp. ).*

The word "procedures" mentioned in the formulation of the authorization clearly indicates the procedural nature of regulations of the Cabinet of Ministers, namely, elaboration of a certain procedure. Hence no material norms that would create new legal relationships that are not provided for in the authorization and would restrict the basic rights can be included in the Regulation No. 165.

**Consequently, the Cabinet of Ministers was authorized to elaborate the way of implementation of the procedure (organization of activities), i.e. to**

**establish the procedures, according to which the periods mentioned in Paras 1 and 2 of the Transitional Provisions of the Pension Law shall be taken into consideration when calculating a State pension.**

**21.** The scope of the authorization means the limits how far the Cabinet of Ministers is authorized to act when elaborating and passing a legal norm.

The contested provision equals only such work periods to the length of period of insurance that a person has accrued from the day of reaching the age of 15.

Para 1 of the Transitional Provisions of the Pension Law provides that "The accrued work and the equivalent periods thereof for Latvian citizens in the territory of Latvia and the territory of the former USSR up to 31 December 1990, as well as the periods accrued outside of Latvia as prescribed by Sub-paragraph 10 of this Paragraph shall be equivalent to lengths of period of insurance." Hence, the legislator itself has established what is regarded as a length of period of insurance. Whilst the Cabinet of Ministers has established that only such work periods are equated to the length of period of insurance that a person has accrued from the day of reaching the age of 15.

In order to assess compliance of the contested provision with Article 64 of the Satversme, it is necessary to establish whether determination of the period of insurance form the age of 15 pertains to the scope of authorization. Namely, whether the contested provision is that of a procedural nature that only concretizes legal relationships established in the authorization delegated by the legislator (established procedures for calculation of the period), or that of a material nature that established new legal relationships and/or restricts the basic rights.

**21.1**. The structure of the Regulation No. 165 is formed by five chapters: General Provisions; Documents Attesting to Period of Insurance; Producing Evidence of Periods of Individual Insurance; Calculation of Periods of Insurance and Registration of Periods of Insurance.

**21.2.** The Applicant indicates that the contested provision is of a material nature, because it defines the beginning of the work period, i.e. it determines the baseline, and hence the periods of employment before the age of 15 are not included in the work period, namely, the basic rights are restricted.

However, the Cabinet of Ministers emphasizes that the contested provision only concretizes the age of social insurance established in another law, because, by equating the work period to the length of period of insurance, the equated periods can not begin before reaching the age of 15 (the Law "On State Social Insurance"). Therefore the Cabinet of Ministers, when establishing the age of 15, has guided itself by the minimum age for social insurance established in the Law "On State Social Insurance".

**Therefore it is necessary to establish whether establishing of the baseline of registration of the work period can be regarded as procedures for calculations of such periods.**

**22.** A period, as to its duration, is an unlimited time frame, which considerably differs form other time frames; the time frame for taking place, existence (*Latviešu valodas vārdnīca, pp. 82*). Hence, work periods and equivalent periods thereof are periods of time, during which a person has initiated and concluded legal employment relationships. However, the procedures for calculation of a period of insurance mean a body of methods and techniques that shall be applied in order to calculate the abovementioned period. It follows from it that the data regarding the baseline and end of the period are necessary. It is established by Chapter 4 of the Regulation No. 165 "Calculation of Periods of Insurance", which includes certain methods and techniques for calculation of periods of insurance. It follows from the structure of this Regulation that the insurance (work) period has already been established.

**23.** The contested provision is included in Chapter 1 of the Regulation No. 165 "General Provisions" and defines a period of insurance, namely, it provides that "Work and periods regarded as equal thereto by 1 January 1991, irrespective of the performance of the social insurance payments (but not sooner than from the day a person has reached 15 years of age, except the case specified in Paragraph 40 of these Regulations) shall be regarded as equal to periods of insurance which are based on the social insurance payments and constitute the length of period of insurance (except the case specified in Paragraph 35 of these Regulations), in order to determine the rights to the State pension which have occurred after coming into force of these Regulations."

**23.1.** The Cabinet of Ministers has mechanically transferred the minimum age of social insurance (the age of 15) elaborated in the social insurance system, which is established by the Law "On State Social Insurance", to those legal employment relationships that existed before 1991. Consequently, the Cabinet of Ministers has passed a material legal norm, which established the period of insurance itself, rather than procedures for its calculation. Therefore, when establishing the age of 15 as the baseline for a period of insurance, the period itself is determined its beginning).

**23.2.** The Saeima, when establishing that the work periods and equivalent periods thereof are regarded as a period of insurance, does not establish the limit from which the respective period shall be calculated. The legislator established in detail in Paras 1 and 2 of the Transitional Provisions of the Law "On State Pensions" all work periods and equivalent periods thereof, but in Para $2.^{1}$ authorizes the Cabinet of Ministers to elaborate procedures for calculation, producing evidence and registration of these periods.

Determination of work periods and equivalent periods thereof is the competence of the legislator. The Cabinet of Ministers could act only within the limits of the authorization, namely, it could elaborate procedures for calculating, producing evidence and registration of certain periods (work periods and equivalent periods thereof).

**24.** It can not be concluded from the materials of the case that the Saeima would have considered the issue regarding the fact, from what age the work period of a person and equivalent periods thereof shall be included in the length of period of insurance.

The minimum age of insurance (work) period established in the contested provision has not been established based in the authorization established in the Law. When passing the contested provision, the Cabinet of Ministers has not observed the limits of the authorization established in the Law, namely, it has dealt with the issue *ultra vires*.

**Consequently the contested provision has not been passed according to an adequate order and does not comply with Article 64 of the Satversme.**

**25.** After having established the non-compliance of the contested provision with Article 64 of the Satversme, the contested provision shall be recognized as unlawful and **invalid from the day of passing it**. Consequently it is not necessary to additional examine compliance of the contested provision with Articles 91 and 109 of the Satversme.

**26.** However, the Constitutional Court draws attention to the fact that the contested provision restricts the basic rights to social security as established in Article 109 of the Satversme, because it prohibits including the factual (real) work period, when a person had been employed before the age of 15, into the length of period of insurance. Restriction of the basic rights can only be established by law or based on a law, it must have a reasonable and legitimate objective, as well as it must comply with the principle of proportionality.

It is prohibited to restrict the basic rights of a person by referring to an unclear or ambiguous authorization by the legislator.

**If authorization of the legislator causes doubts, the Cabinet of Ministers shall implement this authorization by avoiding, as far as possible, any restriction of the basic rights of a person, unless necessity of such a restriction is directly indicated in the authorizing norm.**

## The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

**holds:**

The words and numbers of the Regulation No. 165 of April 23, 2002 by the Cabinet of Ministers "(but not sooner than from the day a person has reached 15 years of age, except the case specified in Paragraph 40 of these Regulations)" do not comply with Article 64 of the Satversme and are invalid from the day of passing the provision.

The Judgment is final and not subject to appeal.

The Judgment was announced in Riga, on October 9, 2007.

The Presiding Judge G. Kūtris