THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

J U D G E M E N T

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 17 February 2011

Case No. 2010-20-0106

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Viktors Skudra, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, and Vineta Muižniece,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 11th indent, and Article 19.[2] and 28.[1] of the Constitutional Court Law

having regard to a constitutional complaint of Ms. Asija Sivicka, Ms. Marzija Vagapova, Mr. Genādijs Ņesterovs and Mr. Vladimirs Podoļako

in writing examined the case

"On Compliance of Para 1 of the Transitional Provisions of the Law "On State Pensions" (the Part Regulating Making Equivalent of the Accrued Work and the Equivalent Period thereof for Non-citizens of Latvia to Length of Period of Insurance) with Article 14 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms in Conjunction with Article 1 of Protocol No. 1 thereof and Article 91 of the Satversme of the Republic of Latvia".

The Facts

1. On 2 November 1995, the Saeima adopted the Law "On State Pensions" (hereinafter – the Pension Law) that came into force on 1 January 1996. Para 1 of Transitional Provisions of the Pension Law provided the following:

"The accrued work and the equivalent periods thereof of citizens of the Republic of Latvia in the territory of Latvia and outside of Latvia shall be equivalent to length of period of insurance necessary for granting State pension irrespective of social insurance payments made. This provision shall be appleid to aliens and stateless persons whose place of residence as on 1 January 1991 was the Republic of Latvia only in respect to accrued work and the equivalent periods thereof in the territory of Latvia. [..]"

On 6 November 1996, the Saeima introduced amendments into the above mentioned norm by establishing the following wording thereof:

"The accrued work and the equivalent periods thereof of citizens of the Republic of Latvia, repatriates, their family members and descendants in the territory of Latvia and outside of Latvia shall be equivalent to length of period of insurance necessary for granting State pension irrespective of social insurance payments made. The length of period of insurance of aliens and stateless persons whose place of residence as on 1 January 1991 was Latvia is equivalent to the work and the equivalent periods thereof accrued in the territory of Latvia, as well as to the work and the equivalent periods thereof accrued outside the territotry of Latvia referred to in Sub-paragraph 4, 5 and 10 of this Para. [..]"

By the Law of 20 October 2005, the Saeima established the following wording of the said norm:

“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 length of period of insurance. The length of period of insurance of aliens and stateless persons is equivalent to the work and the equivalent periods thereof accrued in the territory of Latvia, as well the work and the equivalent periods thereof accrued in the territory of the former USSR, that are referred to in Sub-paragraphs 4 and 5 of this Paragraph, and the periods accrued outside of Latvia referred to in Sub-paragraph 10 of this Paragraph. [..]”

By means of the Law of 19 June 2008, the Saeima again amended the said norm by replacing the words of the second sentence thereof “foreign citizens and stateless persons” by the words “foreign citizens, stateless persons and non-citizens of Latvia”. Consequently, since 1 July 2008, when the last amendments came into effect, Para 1 of Transitional Provisions of the Pension Law provides the following:

“The accrued work and the equivalent periods thereof for Latvian citizens in the territory of Latvia and the terreritory 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 length of period of insurance. The length of period of insurance of aliens, stateless persons and non-citizens of Latvia is equivalent to the work and the equivalent periods thereof accrued in the territory of Latvia, as well the work and the equivalent periods thereof accrued in the territory of the former USSR, that are referred to in Sub-paragraphs 4 and 5 of this Paragraph, and the periods accrued outside of Latvia referred to in Sub-paragraph 10 of this Paragraph. Up to 31 December 1990 [..] the length of period of insurance shall be equated to the following work equivalent periods [..]:

4) periods of study at institutions of higher education, as well as at other educational institutions after the acquisition of secondary education, but not longer than five years in relation to specialisation, in which the acquisition of an education was specified as not more than five years, and not longer than six years in relation to a specialisation, in which the acquisition of an education was specified as more than five years;

5) the period of time of full time doctoral studies, but not longer than three years, the period of post-graduate education and the period when qualifications were raised; [..]

10) politically repressed persons' in places of imprisonment, included during the deportation period is the work done during deportation and other work done under the supervision of the USSR Interior Ministry Administration for Industry and Building Provision No. 907, as well as the time spent while escaping from such places is to be multiplied by the amount of three, but that spent in the Far North or the equivalent districts thereof – multiplied by the amount of five. The Cabinet shall determine the districts that are classified as being the Far North and the equivalent districts thereof. The calculated length of period shall remain in effect, for those persons, for whom such length of period has been specified as six times the amount [..]."

2. The applicants Mr. Jurijs Savickis, Ms. Asija Sivicka, Ms. Marzija Vagapova, Mr. Genādijs Ņesterovs and Mr. Vladimirs Podoļako (hereinafter also referred to as the Applicants) contest compliance of Para 1 of Transitional Provisions of the Pension Law in the part regulating making equivalent of the accrued work and the equivalent period thereof for non-citizens of Latvia to length of period of insurance (hereinafter – the Contested Norm) with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in Conjunction with Article 1 of Protocol No. 1 thereof.

The Applicants are non-citizens of Latvia. When calculating old age pension pursuant to the Contested Norm, the work and the equivalent period thereof accrued in the territory of the former USSR before 31 December 1990 were not added to the length of service of Mr. J. Savickis, Ms. A. Savicka, Ms. M. Vagapova and Mr. G. Ņesterovs. However, when calculating premature old age pension for Mr. V. Podoļako pursuant to the Contested Norm, the length of obligatory military service has not been added to the length of service of the above mentioned person.

The Applicants indicate that the Contested Norm discriminates the rights of non-citizens of Latvia because the working period and the length of obligatory military service accrued outside the territory of Latvia before 31 December 1990 has not been included into the length of insurance, which has had a considerable effect on the amount of their pension.

The Applicants hold that they enjoy comparable situation with that of citizens of Latvia who receive old age pension. A different attitude towards non-citizens, if compared with citizens, can be regarded as discrimination by citizenship, which constitutes infringement of Article 91 of the Satversme and that of Article 14 of the convention in conjunction with Article 1 of the Protocol No. 1. The European Court of Human Rights (hereinafter – the ECHR) has concluded the aforesaid in the judgment in the case "Andrejeva v. Latvia".

The Applicants indicate that the aim of the Contested Norm has not been clearly established because the Pension Law does not contain any norm regarding different attitude towards non-citizens.

Likewise, the restriction included in the Contested Norm is not proportional since there are no substantial reasons to treat persons differently based on their citizenship. It is not possible to regard the requirement by way of naturalisation in order to avoid discrimination as proportional. Likewise, discrimination is not excluded by international agreements in the field of social

security because agreements concluded by Latvia either do not apply to the Applicants, like. Mr. G. Ņesterovs, or they apply only partially.

After having got acquainted with the court file, Mr. Vladimirs Buzajevs, a representative of the Applicants Mr. J. Savickis, Ms. A. Savicka, Ms. M. Vagapova and Mr. G. Ņesterovs, submitted his opinion, wherein he provided commentaries on the Saeima reply in the present case, as well as opinions the Ombudsman and a representative of the Cabinet of Ministers submitted to international institutions on human rights.

It has been indicated in the above mentioned opinion that the Contested Norm fails to comply with Article 91 of the Satversme, as well as Article 14 of the Convention in conjunction with Article 1 of the Protocol No. 1. International agreements in the field of social security cannot guarantee prevention of different attitude. Consequently, the only possibility to ensure restoration of such status of the Applicant that they would have in case if Article 14 of the Convention were not breached is to recognize the Contested Norm as anticonstitutional and non-compliant with the Convention as from the date when the Convention came into effect in the Republic of Latvia.

3. The institution that adopted the contested act, the Saeima has indicated in its reply to the Constitutional Court that the Contested norm envisages making equivalent of the all work and the equivalent period thereof accrued before 31 December 1990 in the former territory if the USSR for citizens of Latvia to length of period of insurance. However, the length of period of insurance for non-citizens includes only certain work and the equivalent period thereof accrued in the former territory of the USSR.

Latvia is not a successor of the former USSR. Consequently, it shall not undertake liabilities of the former USSR. This is the Russian Federation that is regarded the successor of the USSR. In order to ensure that work periods accrued in the former territory of the USSR were made equivalent to the length of period of insurance to all persons irrespective their citizenship, this requires

certain regulatory framework in the form of an international agreement. Latvia has concluded such agreements with several states.

The Saeima does not agree with the claim of the Applicants to declare the Contested Norm as null and void with retroactive force because no duty of the State to take into account certain work periods or to guarantee social protection follows from Article 14 of the Convention in conjunction with Article 1 of the Protocol No. 1, provided that the attitude towards persons complies with the principle of legal equality. According to the Saeima, the right to property protects disbursement of pension; however, this does not commit the State to certain actions in the field of social rights, for instance, it does not define the content of the right to social security that would determine whether respective work periods should be taken into account or not.

4. The summoned person, the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) holds that the Contested Norm, insofar as it applies to non-citizens of Latvia and provided its present wording, cannot be regarded as compliant with Article 91 of the Satversme.

Since Latvia is not a successor of the rights and liabilities of the former USSR, international legal acts do not commit Latvia to undertaking responsibility for work periods accrued by a person outside the territory of Latvia. However, it follows from the ECHR judgment in the case "Andrejeva v. Latvia" that making equivalent of the work period accrued outside the territory of Latvia for citizens of Latvia to length of period of insurance, as well as lack of respective regulatory framework in normative acts or international agreements in relation to non-citizens causes ungrounded different attitude. The Ombudsman indicates that, by ratifying the Convention, Latvia has undertaken to ensure to each person under its jurisdiction the rights and freedoms guaranteed in the Convention. Consequently, Latvia cannot make an allegation to the fact that it is nor or was not bound by any agreement in the social field with any country.

5. The summoned person, Ms. Inga Reine, a representative of the Cabinet of Ministers before international institutions of human rights based her opinion mainly on analysis of the judgment of the Grand Chamber of the ECHR in the case "Andrejeva v. Latvia". Ms. I. Reine indicates that the above mentioned judgment should be assessed in conjunction with case-law of the ECHR in other similar cases, as well as international public law and practice of other countries should be taken into account.

The peculiarity of the regulatory framework of the Contested Norm is that it applies to cases when work period is accrued in one state, whilst pension is requested in another. Complaints of the Applicants apply to the regulatory framework of the Contested Norm concerning the work period accrued outside the territory of independent Latvia and the Latvian SSR. Consequently, in the present case, it is necessary to assess the status of Latvia in the light of international public law. Any issues related with inheritance of liabilities of the former USSR shall be solved by means of international negotiations, and primarily with the Russian Federation as the successor of the USSR. In case if such issues, in relation to which the Russian Federation has not admitted inheritance of liabilities of the former USSR, have been identified, this shall be solved by means of other negotiations.

The following has been indicated in the opinion: pursuant to international legal norms regarding succession, the new state usually inherits the rights and responsibilities of the former in case if it is able to identify rights and duties directly applicable to its territory, although it is not regarded as a successor of the "mother" state or liabilities thereof. Respectively, in the Contested Norm, Latvia has taken into account work periods accrued in the territory of the Latvian SSR. This corresponds to the principle recognized in the international public law that in case of separation, formation or restoration of states, pensions shall be regarded as administrative (public) debts that should be undertaken by the successor state (successor of rights).

Ms. I. Reine holds that the position of Latvia corresponds to the principle recognized in the international public law, namely, that the issue of foreign employment shall be dealt with by means of international agreements.

The Findings

6. On 4 May 1990, the Supreme Soviet of the Latvian SSR adopted the declaration "On the Renewal of the Independence of the Republic of Latvia" (hereinafter – the Declaration). According to Article 8 thereof, the State shall undertake the following: "To guarantee citizens of the Republic of Latvia and those of other states permanently residing in Latvia social, economic and cultural rights, as well as those political rights and freedoms which comply with the universally recognized international human rights instruments. To apply these rights in full extent also to those citizens of the USSR who will express the desire to continue residing in the territory of Latvia without accepting its citizenship."

6.1. After reinstating independence of Latvia, it was necessary to elaborate the social security system that would guarantee social security to all inhabitants of the State.

On 29 November 1990, the Supreme Council of the Republic of Latvia adopted the Law on State Pensions. The rights to state pension were granted to all the residents of the Republic of Latvia whose domicile at the moment of the law coming into force – 1 January 1991 – was the Republic of Latvia

6.2. After having assessed economic and geographic situation of the State, as well as available resources and other circumstances, on 2 November 1995, the Saeima adopted the Law "On State Pensions" that came into force on 1 January 1996. With the adoption of this law, the principles of State mandatory pension insurance system based on insurance The purpose of the

first level of State pension system is to guarantee the minimum income level to the residents of retirement age. Since the first level is mandatory and based on the principle of social insurance, there is a connection between the mandatory social insurance contribution payments made by the residents and the level of service attained as the end result (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 23*).

6.3. Meanwhile, the State had to solve the issue of calculating pension for persons who had not made any social insurance payments into the budget of Latvia due to having had reached the retirement age before the restoration of independence of Latvia. A similar problem had to be solved in relation to those pensioners whose length of period of insurance was accrued during the period of occupation by the USSR. Para 1 of Transitional Provisions of the Pension Law in the wording of 2 November 1995 determined what work and the equivalent period thereof shall be made equivalent with the length of period of insurance when calculating pensions for citizens of the Republic of Latvia, aliens and stateless persons. Work periods accrued only in the territory of Latvia were made equivalent to the length of period of insurance for aliens and stateless persons.

On 6 November 1996, the legislator established a new wording of this norm by providing that the length of period of insurance of aliens and stateless persons whose place of residence as on 1 January 1991 was Latvia is equivalent to the work and the equivalent periods thereof accrued in the territory of Latvia, as well as to certain work and the equivalent periods thereof accrued outside the territotry of Latvia before 1 January 1991.

6.4. On 26 June 2001, the Constitutional Court adopted a judgment in the Case No. 2001-02-0106, wherein it assessed compliance of Para 1 of Transitional Provisions of the Law "On State Pensions (on length of insurance of foreign citizens and stateless persons whose permanent place of residence till January 1, 1991 has been the Republic of Latvia) with Articles 89, 91 and 109 of the Satversme (Constitution) of the Republic of Latvia as well as with

Article 14 of the November 4, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the First Protocol of the Convention. The Constitutional Court found that a particular contested norm that is similar to the Contested Norm in the present case regarding the procedure for calculating pensions for aliens and stateless persons does comply with legal norms of a higher legal force. Since non-citizens were not *expressis verbis* mentioned in Para 1 of Transitional Provisions of the Law "On State Pensions" at that time, the Constitutional Court indicated that this it is in the sphere of authority of the legislator to regulate the issue on including of the employment periods abroad, accumulated by non-citizens as particular legal subjects, and periods regarded as equal to them up to January 1, 1991 in the length of insurance (*see: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 5 of the Concluding Part*).

6.5. Since 1 July 2008, after the Law "Amendments to the Law "On State Pensions" came into force on 19 June 2008, non-citizens of Latvia were also included into Para 1 of Transitional Provisions of the Law "On State Pensions" along with aliens and stateless persons.

Consequently, all work periods accrued in the territory Latvia before 31 December 1990 by all persons whose domicile at the moment of the law coming into force – 1 January 1991 – was the Republic of Latvia are made equivalent to length of period of insurance. Work and equivalent periods thereof accrued outside the territory of Latvia are made equivalent to length of period of insurance for citizens of the Republic of Latvia, whilst periods equivalent to work period referred to in Sub-paragraphs 4, 5 and 10 of Para 1 of Transitional Provisions of the Law "On State Pensions" are made equivalent to length of period of insurance for non-citizens, these periods being as follows:

1) periods of study at institutions of higher education, as well as at other educational institutions after the acquisition of secondary education;

5) the period of time of full time doctoral studies, but not longer than three years, the period of post-graduate education and the period when qualifications were raised; [..]

10) politically repressed persons' in places of imprisonment, included during the deportation period is the work done during deportation, as well as the time spent while escaping from such places is to be multiplied by the amount of three, but that spent in the Far North or the equivalent districts thereof – multiplied by the amount of five.

7. Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind."

Article 14 of the Convention provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [..] national or social origin, association with a national minority, property, [..] or other status

Article 1 of Protocol No. 1 of the Convention provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Applicants hold that the Contested Norm envisages different attitude towards citizens and non-citizens. Namely, work and equivalent periods thereto accrued outside the territory of Latvia before 31 December

1990, including the period of military service, are not made equivalent to length of period of insurance for non –citizens.

The Saeima also concludes in its reply that the Contested Norm envisages a different attitude.

Consequently, the Constitutional Court concludes that the legislator has established different principles when making equivalent of work and equivalent periods thereto to length of period of insurance in respect to citizens and non-citizens of the Republic of Latvia when calculating their pensions; therefore these two groups of persons are treated differently.

8. On 18 February 2009, the Grand Chamber of the ECHR adopted a judgment in the case "Andrejeva v. Latvia". Ms. N. Andrejeva, like other permanent residents of Latvia, was granted the minimum State pension. Additional pension payments and pension indexation established by law applied to her. She also received other social benefits (medical treatment and dwelling benefit). The work period up to 31 December 1990 of Ms. N. Andrejeva when she worked in Russian SFSR and Ukrainian SSR enterprises was not made equal to her length of period of insurance.

The ECHR indicated that State has the duty to secure "to everyone within [its] jurisdiction" equal attitude. Latvia, when calculating pension of Ms. N. Andrejeva, has showed different attitude if compared to the procedure of calculation of pensions for citizens of the State. The ECHR held that it is not proportional not to taken into count work periods accrued outside the territory of Latvia before 1 January 1991 when calculating old age pension for non-citizens. Consequently, Latvia has breached Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 of the Convention (*see: Judgment of 18 February 2009 by the Grand Chamber of the ECHR in the case "Andrejeva v. Latvia, application No. 55707/00, Para 89 and Para 90*).

9. The Constitutional Court has to assess whether the different attitude, when calculating old age pensions for citizens and non-citizens, is justifiable or not and whether it has an objective and reasonable grounds.

First, the Constitutional Court indicates that, in the case "Anderejeva v. Latvia", the ECHR assessed only particular facts rather than compliance of the contested norm with legal norms of a higher legal force. Facts of the case "Andrejeva v. Latvia" and those of the present case differ considerably. Namely, since 1945, Ms. N. Andrejeva lived in Latvia and she was subject to the central government of the USSR or she was an employee of an enterprise of the Union; however, the regional department wherein she worked was located in the territory of Latvia.

However, the total length of period of insurance of the Applicant Mr. J. Savickis constitutes 37.2 years, 21.3 (57 percent) of which he was working outside the territory of Latvia. The total length of period of insurance of Ms. M. Vagapova is 31.4 years, 21.4 (68 percent) of which she was working outside the territory of Latvia. As to Ms. A. Savicka, 21,8 (52 percent) of the 41.7 years of length of period of insurance she has accrued outside Latvia, whilst for Mr. G. Ņesterovs – 12 years (28 percent out of 42.1 years were spent working outside Latvia. The Constitutional Court has no information at its disposal stating either the above mentioned Applicants would have formally worked as employees of enterprises subject to republics of the USSR or they have actually dwelt and worked in the territory of Latvia, which was the case of Ms. N. Andrejeva. Consequently, in the above mentioned periods, no legal link between them and Latvia could have formed.

10. Social human rights are regarded as a specific sector of human rights, which in constitutional laws and international instruments (for instance, the European Social Charter) are defined as general obligations of the state.

The Constitutional Court has several times assessed constitutionality of such legal norms that pertain to the field of social rights, and the Court has

concluded that the system of social and economic protection (types and amount of the allowances) and its maintenance lies within the State competence and depends on the State economical situation and accessible resources. Besides, the State experiences an extensive freedom of action when taking decisions of the issues of social rights (*see: Judgment of 25 February 2002 by the Constitutional Court in the case No. 2001-11-0106, Para 1 and Para 3 of the Concluding Part, and judgment of 22 December 2005 in the case No. 2005-19-01, Para 9*).

The ECHR has also recognized in several its cases that a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice (*see, e.g.: Judgment of 12 October 2000 by the ECHR in the case „Jankovič v. Croatia", application No.. 43440/98; Judgment of 13 September 2001 in the case „Hadžič v. Croatia", application No.. 48788/99; Judgment of 28 January 2003 in the case „Saarinen v. Finland", application No.. 69136/01; Judgment of 4 November 2008 in the case „Carson and Others v. the United Kingdom", application No.. 42184/05, Para 73 Judgment of the Grand Chamber of 18 February 2009 in the case „Andrejeva v. Latvia", application No.. 55707/00,Para 83, Judgment of 12 January 2010 in the case „Zubczewski v. Sweden", application No.. 16149/08).*

Consequently, the State enjoys a broad freedom of action when establishing its social security system, including pension system.

11. The ECHR has referred to succession of states or significance of inheritance of liabilities when adjudicating a case (*see, e.g.: Judgment of the ECHR of 9 September 1998 in the case „Jasinskij and Others v. Lithuania", application No.38985/97; Judgment of 10 April 2001 in the case „Kuna v.*

Germany", application No.. 52449/99; Judgment of 1 July 2008 in the case „Kireev v. Moldova and Russia", application No. 11375/05; Judgment of the Grand Chamber of 3 October 2008 in the case„Kovačič and Others v. Slovenia", applications No.. 44574/98, 45133/98 and 48316/99, Para 256; Judgment of 29 October 2009 in the case „Si Amer c. France", application No. 29137/06). Although the ECHR has established, in the above mentioned cases, applicability of Article 14 of the Convention and Article 1 of Protocol No. 1, it has rejected complaints taking into account particularly the aspect of freedom of action of the State or lack of succession.

The Constitutional Court also holds: in order to establish whether, when making equivalent work periods to length of period of insurance, the different attitude towards citizens and non-citizens can or cannot be regarded as objective and proportional provided the context of historical, economical and social events, in the present case it is important to assess social rights, the assessment being made observing international rights and the doctrine of state continuity.

11.1. The Constitutional Court has already assessed in details legal aspects of foundation of the Republic of Latvia, unlawful occupation and reinstitution of independence thereof.

On 18 November 1918, the Latvian People's Council proclaimed the Republic of Latvia as an independent state. Latvia and other Baltic States lost their independence de facto in 1940 when the USSR occupied Latvia by breaching international law.

Independence of Latvia was restored in 1990 based on the doctrine of state continuity. If the state, independence of which has been unlawfully discontinued, restores its statehood, it has the right to recognize itself, based on the doctrine of State continuity, as the state previously having been unlawfully liquidated (*see: Ziemele I. State Continuity and Nationality: The Baltic States and Russia. Past, Present and Future as Defined by International Law. – Leiden: Martinus Nijhoff Publishers, 2005, p. 129).*

Continuity of Latvia as an entity subject to international law was emphasized in the Declaration. It has been indicated in Preamble thereto, that inclusion of the Republic of Latvia into the Soviet Union is null and void as from the point of view of international law, and the Republic of Latvia still exists *de jure* as an entity subject to international law. Strengthening of the doctrine of continuity of the state of Latvia in the Latvian legal sytem shall be regarded as the main function of the Preamble of the Declaration (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā // 4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. – Rīga: Fonds Latvijas Vēsture, 2000, pp. 57)*.

11.2. For the determination of the identity of the State, one has to take into account the claim to recognize that an illegal annexation of a State or a part thereof to the territory of another State has no legal consequences. Law regulates not only the mutual relations of States as existing subjects of international law, but also the creation and termination of States. It is particularly important in the cases when a State or its part is annexed to the territory of another State in breach of the rules of international and domestic law. Under the principle *ex injuria ius non oritur*, States and parts thereof can be annexed to the territory of other states on voluntary basis and by observing the procedures established in international and national law (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 32.1*).

11.3. The doctrine of state continuity directly influences action of the State not only in international law where it continues to fulfill the international obligations undertaken before the *de facto* termination of independence and it does not take over the international obligations of that state the part which it had unlawfully been, but also in the internal affairs. The acts of the illegally established public authorities of the other State in the field of public law are not binding on the State that has re-established its independence. The State that has restored its independence on the basis of the doctrine of continuity is entitled to

decide itself on all necessary issues regarding existence of the State under its constitutional regime and legal rules (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 32.3*).

Consequently, the Republic of Latvia is not successor of the rights and liabilities of the former USSR and pursuant to the doctrine of state continuity, a renewed state does not have the duty to undertake any liabilities that follow from liabilities of the occupant state.

12. In the field of social rights, different attitude is based on the idea that the State undertakes care and responsibility for its citizens whose basic needs it would satisfy. As to social rights that should be introduced according to general procedure by observing maximal resources of a particular state, no general standards have been established. However, certain social rights can be ensured only partially. Application of absolute prohibition of discrimination in relation to social rights might cause substantial financial consequences. The fact that a person is denied the possibility to enjoy certain social rights does not constitute infringement of fundamental rights. Infringement is caused if there is no reasonable grounds for such breach of the rights [*see: Bossuyt M. Should the Strasbourg Court Exercise More Self-Restraint? // Human Rights Law Journal, Vol. 28, No. 9–12 (2007), pp. 325, 329]*.

Also the ECHR has indicated that the State enjoys freedom if action when granting priority to persons whom it regards as necessary taking into account a particular context (*see: Judgment of the ECHR of 12 October 2000 in the case "Jankovič v. Croatia", application No. 43440/98*). The Convention does not prohibit the Member States to introduce general political measures by means of legislation, in the result of which certain group of person is treated differently if compared to others, provided that generally such interference with the stipulated rights of certain categories or groups of persons is justifiable pursuant to the Convention (*see: Judgment of the ECHR of 16 March 2006 in the case "Ždanoka v. Latvia", application No. 58278/00, Para 112*).

Likewise, the ECHR established that different attitude based on citizenship cab be regarded as consistent with norms of the Convention provided that such attitude is based on substantial circumstances (*see: Judgment of the ECHR of 16 September 1996 in the case "Gaygusuz v. Austria", application No.. 17371/90, Para 42, Judgment of 30 September 2003 in the case „Koua Poirrez v. France", application No. 40892/98, Para 46; Judgment of the Grand Chamber of 18 February 2009 in the case „Andrejeva v. Latvia", application No. 55707/00, Para 87).*

The following principle has been clearly established in the case-law of the ECHR: even assuming that Article 1 of Protocol No. 1 guarantees benefits to persons who have contributed to a social insurance system, it cannot be interpreted as entitling that person to a pension of a particular amount. An important consideration in the assessment under this provision is whether the applicant's right to derive benefits from the social insurance scheme in question has been infringed in a manner resulting in the impairment of the essence of his pension rights (*see: Judgment of the ECHR of 12 October 2004 in the case „Kjartan Asmundsson v. Iceland", application No.. 60669/00, Para 39; as well as Judgmetn of 12 October 2000 in the case „Jankovič v. Croatia", application No. 43440/98).* Likewise, the ECHR has established that the Convention does not guarantee the right to receive pension for work done in another state (*see: Judgment of the ECHR of 18 April 2002 in the case „L.B. v. Austria", application No. 39802/98).*

12.1. The Preamble of the Declaration of Independence imposes the obligation on the authorities of the Republic of Latvia to observe the doctrine of continuity of the Republic of Latvia and not to derogate from it. In all juridically important circumstances the State organs of the Republic of Latvia have to base their action in the doctrine of continuity formulated in the Preamble (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 64.2*). Consequently, the determination to guarantee social rights to all inhabitants of Latvia included in Article 8 of the

Convention should not be regarded as recognition of social rights as absolute fundamental rights of a person that equally apply to all persons. This determination shall be interpreted in conjunction with the doctrine of State continuity enshrined in Preamble of the Declaration and taking into account the situation occurred as the result of soviet occupation. Consequently, what has been established in the Declaration commits the State to ensure social right to each inhabitant at least at the minimum extent.

12.2. After the restoration of independence, Latvia has formed such social security system that applies to all persons residing in Latvia as on 1 January 1991.

Considerable difficulties were encountered along with the collapse of the USSR and reinstitution of the State of Latvia. During the occupation, State and social budgets were controlled by the USSR Public Bank. After the collapse of the USSR, the resources were not shared; they remained property of the Russian Federation. Therefore Latvia decided to ensure minimum pension to all inhabitants of Latvia. Pursuant to the Contested Norm, work periods accrued in the territory of Latvia were taken into consideration when calculating pensions for citizens and non-citizens. The legislator selected the particular regulatory framework because, in fact, it was the same administrative territory with the same body of inhabitants that Latvia "inherited" when reinstituting its independence. Moreover, it is possible to suggest that, during work period up to 31 December 1991 in the territory of Latvia, the inhabitants gave their contribution into improving of national economy and development of Latvia.

12.3. When forming a new pension system, it was decided to include, into the length of period of insurance, work periods accrued by persons outside the territory of Latvia by thus ensuring additional payment to the pension. Citizens were established a broader range of work periods accrued outside the territory of Latvia if compared to non-citizens, aliens and stateless persons. When assessing what the equivalent periods of work periods the legislator has

selected to be made equivalent to length of period of insurance of non-citizens, it can be concluded that those are periods when non-citizens were obtaining education or raised qualification so that they could later give their contribution into development of Latvian national economy, as well as periods when politically repressed persons were in custody, settling or deportation since they were regarded opponents of the occupational regime. Consequently, the State enjoyed its freedom of action when establishing pension system and it took into account the special ling of its citizens with the State, aw ell as contribution of their ancestries into development of the national economy. Making equivalent of certain work periods of non-citizens accrued outside the territory of Latvia to length of period of insurance can be regarded as manifestation of will of the reinstituted State of Latvia (*see also: Judgment of 8 January 2008 by the ECHR in the case "Epstein et Autres c. Belgique", application No.. 9717/05)*.

13. In June of 1940 the USSR occupied Latvia, Estonia and Lithuania. As the result – these states lost their freedom, experienced mass deportations and killing of its inhabitants as well as inflow of Russian-speaking immigrants. 2,3 percent of inhabitants were deported from Latvia on March 25, 1949, that is about thrice as many persons than in June 14, 1941 deportation. After the Second World War mass immigration of the USSR citizens in Latvia took place (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 1 of the Concluding Part).*

After reinstitution of independence, the legislator had to decide on establishing the body of Latvian citizens. Taking into consideration continuity of Latvia as an international legal subject, there was reason for renewing the aggregate body of Latvia in the same way as it was determined in 1919 "Law on Citizenship". Thus, Latvia did not grant citizenship to persons, who had it before occupation of Latvia, but renewed the right of these persons *de facto* (*see: Ziemele I. Starptautiskās tiesības un cilvēktiesības Latvijā: abstrakcija vai realitāte. – Rīga: Tiesu namu aģentūra, 2005, pp. 103.)*. Consequently,

continuity of Latvia as an entity subject to international law gave legal groups for grating the status of citizens to certain group of person, and it was necessary to grant a special legal status to those persons who travelled to Latvia during the occupation period without obtaining any other citizenship. Granting of the status of a non-citizen to a certain group of persons was the result of a complicated political compromise. Besides, when adopting the Non-Citizen Law Latvia had to observe also the international human rights standards, which prohibit increasing the number of stateless persons in cases of state continuity (*see: Judgment of 7 March 2005 by the Constitutional Court in the case No. 2004-15-0106, Para 13 and 14*).

Latvian non-citizens cannot be compared with any other status of a physical entity, which has been determined in international legal acts, as the rate of rights, established for non-citizens, does not comply with any other status. The status of a non-citizen is not and cannot be regarded as a variety of Latvian citizenship (*see: Judgment of 7 March 2005 by the Constitutional Court in the case No. 2004-15-0106, Para 15 and 17*).

The present case does not apply to long-term immigrants that came to the state pursuant to provisions of regulated immigration procedure, as it takes place nowadays. The majority of Latvian non-citizens travelled to the territory of Latvia in the result of immigration policy implemented by the USSR. During work periods accrued by these persons outside territory of Latvia, they made not contribution into improvement of Latvian national economy and development of the State. These persons regarded the Latvian SSR as one of the corners of the USSR where they had to live and work for a certain period of time by thus implementing the policy of *Sovietisation* and *Russification* of the USSR communistic party (*see: Partly Dissenting Opinion of Judge Ziemele in the case "Andrejeva v. Latvia", Para 27*).

The Constitutional Court recognizes legal lies of non-citizens with Latvia, which has served as the basis for granting mutual rights and duties. However, the context of State continuity is the determining factor and serves as

a crucial aspect to regard differences in the procedure for calculating pensions of citizens and non-citizens as grounded. A state that has been occupied as the result of aggression by another state does not have the duty to guarantee social security for persons who have traveled to its territory from the occupant state as the result of immigration policy. Especially if *erga omnes* duty not to recognize and justify breaches of international law is taken into account (*see: Judgment of 5 February 20170 by the International Court of Justice in the case "Belgium v. Spain (Barcelona traction case)", I.C.J. Reports 1970, No. 3, Para 33]*.

Although the Applicants do not regard such possibility as proportional, non-citizens of Latvia have the possibility to obtain citizenship of the Republic of Latvia. The legislator has expressed a viewpoint that the status was established as a temporary status, so that the person might obtain the citizenship of Latvia or choose another state with which to strengthen legal ties (*see: Judgment of 7 March 2005 by the Constitutional Court in the case No. 2004-15-0106, Para 17*). After acquisition of Latvian citizenship, work periods accrued outside the territory of Latvia would also be made equivalent to length of period of insurance of a person. Many non-citizens have taken advantage of such possibility by thus obtaining the rights and duties stipulated in respect of citizens of the State. However, many non-citizens have failed to take advantage of this possibility due to different reasons.

Consequently, different attitude, when calculating pensions for citizens and non-citizens of Latvia, have objective and reasonable grounds.

14. In several judgments, the ECHR has drawn attention to the role of bilateral international agreements regarding cooperation in the field of social security when solving the problem of cross-border pensions (*see, e.g.: Judgment of the Grand Chamber of the ECHR of 16 March 2010 in the case „Carson and Others v. the United Kingdom", application No.. 42184/05, Para 88*).

Also in the case "Anderejeva v. Latvia", the ECHR indicated that it "is fully aware of the importance of such agreements in the effective solution of problems such as those arising in the instant case" (*see: Judgment of the Grand Chamber of the ECHR of 18 February 2009 in the case "Andrejeva v. Latvia", application No. 55707/00, Para 90*).

The Constitutional Court has recognized in the judgment No. 2001-02-0106 that international agreements concluded observing the principles of fairness, proportionality, complementarity and other legal principles are of great importance. The State of Latvia shall not undertake the obligations of other state in granting old age pension for the stint abroad. The State of Latvia may not assign the taxpayers, participating in the new pension scheme, to solve issues, which should be solved by interstate agreements. Thus, it lies in the competence of concluding international agreements with particular states and not the competence of a State la (*see: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 4 of the Concluding Part*). Moreover, the Saeima and the representative of the Cabinet of Ministers before international human rights institutions indicate that the issue regarding making equivalent of work periods accrued outside the territory of Latvia to length of period of insurance shall be solved in the form of international agreements. By concluding such agreement, the issue regarding different attitude towards non citizens whose work periods accrued outside the territory of Latvia is not taken into account when calculating old age pension is solved.

Latvia has concluded agreements that envisage mutual recognition of length of period of insurance with several states, namely, with the United States of America (effective as of 5 November 1992), Lithuania (effective as of 31 January 1995), Estonia (effective as of 29 January 1997, another agreement – as of 1 September 2008), Ukraine (effective as of 11 June 1999), Finland (effective as of 1 June 2000), Norway (effective as of 18 November 2004), the Netherlands (effective as of 1

June 2005), Canada (effective as of 1 November 2006), Byelorussia (effective as of 28 September 2010), Russia (effective as of 19 January 19). Consequently, the states have mutually agreed on social protection of inhabitants by concretizing rights and duties of each state.

Agreements concluded with states formed after the collapse of the USSR show that the states equally understand their rights and duties in the field of social rights in respect to the period of occupation effected by the USSR. All above mentioned agreements differ; they reflect results reached by means of reaching an agreement between the states and regulate situations formed as the result of different historical, economical and political circumstances (*see: Judgment of the ECHR of 4 November 2010 in the case „Tarkoev and Others v. Estonia", applications No.. 14480/08 and 47916/08, Para 53*). When concluding such agreements, the states have taken into account historical context, in which Latvia has formed its pensions system after the restoration of independence.

Consequently, Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 should be interpreted pursuant to Article 31 of the Vienna Convention on the Law of Treaties that establishes that a principle that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, as well as by observing any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, and any relevant rules of international law applicable in the relations between the parties. In the practice of international relations, a principle that an international agreement cannot be assessed isolated has been established. This is not only related with social facts but also the fact that its norms should be assessed in relation to other legal norms that might compete therewith (*see: Dailler D., Pellet A., Droit international public. – Paris: Libraire generale de droit et de jurisprudence, 2002, p. 266*).

Consequently, when calculating length of period of insurance for the Applicant. Ms. A. Savicka, the agreement concluded between Latvia and Byelorussia regarding cooperation in the social field should be taken into account; however, the work period accrued in Germany shall be included into the length of period of insurance based on normative acts of the European Union (see: European Parliament regulations No. 883/2004, Nr. 987/2009 and Nr. 1231/2010).

Moreover, since 19 January 2011, the agreement on collaboration in the field of social security concluded between the Republic of Latvia and the Russian Federations is in force; it provides that pension shall be granted and disbursed in the country where the domicile of a person is located at the moment of request of pension. Consequently, for the Applicants Mr. J. Savickis, Ms. A. Savicka and Ms. M. Vagaponova, work period accrued in the Russian Federation is made equivalent to their length of period of insurance, whilst for Mr. V. Podoļako – period spent in obligatory military service. It has been established in the Agreement that pensions granted before coming into force of the Agreement can be revised based on an application submitted by particular persons.

Consequently, the issue regarding making equivalent of work periods accrued outside the territory of Latvia to length of period of insurance has been solved by concluding bilateral international agreements regarding collaboration in the field of social security or they are regulated pursuant to legal acts of the European Union.

15. In the conception of the Pension Law the notion "the state pension" or "social insurance pension", to which the disputable legal norm refers, is just one of the types of old age social insurance. The right to social security in old age are established by several laws. The Law “On Social Security” establishes the framework for forming and functioning, as well as principles of the social security system. The Pension Law establishes the circle of persons who have

the right to receive State pensions. However, the Law "On Social Services and Social Assistance" establishes the order, according to which each person having permanent domicile in Latvia may receive social assistance in the case of need (*see also: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 3 of the Concluding Part*).

The Applicants of the present case, like it is the case in the matter "Tarkoev and Others v. Estonia", want to broaden their rights in respect to the amount of pension granted (*see: Judgment of the ECHR of 4 November 2010 in the case "Tarkoev and Others v. Estonia", applications No. 14480/08 and 47916/08).* Namely, the Applicants want that period up to 1 January 1991, when they were working outside the territory of Latvia, would be made equal to the length of period of insurance. It has already been concluded, however, that there is no reason to do so.

The Constitutional Court indicates that the Applicants have not been denied the right to pension or any other social security in old age. Like citizens of the Republic of Latvia, they receive the stipulated pension and additional payments thereto. They also have the possibility to receive stipulated social services and social assistance in the case of necessity.

Consequently, the different attitude can be regarded as proportional, and the Contested Norm does comply with Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 thereof, as well as with Article 91 of the Satversme.

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law,

h o l d s:

Para 1 of the Transitional Provisions of the Law "On State Pensions" (the part regulating making equivalent of the accrued work and the rquivalent period thereof for non-citizens of Latvia to length of period of insurance) with Article 91 of the Satversme of the Republic of Latvia and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in Conjunction with Article 1 of Protocol No. 1 thereof.

The Judgment is final and not subject to appeal.

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

Presiding Judge V. Skudra

Translated by Egija Labanovska, translator of the Constitutional Court