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# Experience of Reforms to the State Social Insurance in the Republic of Latvia after Restoring the Independence of the State *de facto*\*

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The article is dedicated to an overview of the reforms to the state social insurance law and criticism of some aspects in the reforms carried out in the Republic of Latvia after the restoration of independence *de facto* in 1990–1991, analysing the rights and obligations of the State, the employer and the employee in the area of social insurance. On the basis of research outcomes, the author concludes that the Soviet understanding of the social insurance law was soon dispensed with. However, it is debatable whether the reforms of social insurance have been successful enough. Although the social insurance contributions are paid in the amount of at least “the minimum amount of the object of mandatory contributions”, it is not clear whether, if an insured case sets in, the disbursed benefit ensures a life that is worthy of human dignity because the subsistence minimum has not been calculated in Latvia. Moreover, not all socially insured persons have all forms of social insurance. Hence, reforms in the area of social insurance cannot be regarded as being completed.

**Keywords:** social insurance, solidarity, tax, human dignity, subsistence minimum.

## Contents

<i>Introduction</i> . . . . .	179
1. <i>Social insurance reforms of the transitional period</i> . . . . .	179
1.1. <i>Legacy of the Soviet social insurance law</i> . . . . .	179
1.2. <i>Dispensing with the Soviet social insurance law</i> . . . . .	181
2. <i>Social insurance reforms after the end of the transitional period</i> . . . . .	183
2.1. <i>Basic principles and forms of social insurance</i> . . . . .	183
2.2. <i>Problems and solutions in social insurance</i> . . . . .	186
<i>Summary</i> . . . . .	189
<i>References</i> . . . . .	190
<i>Bibliography</i> . . . . .	190
<i>Normative acts</i> . . . . .	191
<i>Case law</i> . . . . .	191
<i>Other sources</i> . . . . .	192

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## Introduction

Social security is one of the foundations for national security. The State social insurance law (hereafter – social insurance), in turn, is part of the social security system. Social insurance as part of national security is no less important than the national defence, the right to education or clean environment. Unfortunately, until now, significant studies of social insurance law have not been published in the literature of legal science. Of course, the relevance of this article is not determined solely by the lack of studies on social insurance. The discussions, often heard in Latvia, about negligible State pensions, unemployment benefits, inaccessible health care services, etc., also point to the need for starting a scientific debate about the issues related to social insurance. However, these discussions predominantly focus on the consequences rather than one of the most important causes of the insufficiency of the social service (benefit) – problems in social insurance law.

All the issues linked to social insurance cannot be examined within the limits of a single article. Analysis of the rights of farm workers, employees of micro companies, as well as socially insured employees of a foreign employer remains outside its scope. The current article will provide only a comparative description of a self-employed person's status.<sup>1</sup>

The aim of the article is to analyse the experience related to social insurance reforms in the Republic of Latvia after the restoration of the State's independence *de facto* in 1990–1991 from the perspective of the social insurance rights and obligations of the State, the employer and the employee. The fact that the absolute majority of employed persons in Latvia has the status of an employee<sup>2</sup> speaks in favour of the author's choice.

## 1. Social insurance reforms of the transitional period

### 1.1. Legacy of the Soviet social insurance law

The Constitution (Basic Law) of the USSR of 7 October 1977 provided that “citizens shall have the right to material security in old age, in case of sickness, total or partial loss of the capacity for work, as well in case of survivorship”.<sup>3</sup> All workers, public

<sup>1</sup> The concept of a self-employed person was introduced into the social insurance law by the law of 2 November 1995 “On Social Tax”. Similarly to the social insurance law that is currently in effect, the definition of a self-employed person was provided. A definition was substituted by enumeration of persons who should be considered as being self-employed. The law regarded persons registered as engaged in commercial activities, in the meaning of personal income tax, e.g., individually practicing physicians, sworn attorneys, etc. as self-employed persons. See the law “Par sociālo nodokli” [“On social tax”] (02.11.1995), Art. 1. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>2</sup> The concept of an employee in the meaning of the social insurance law is broader than the concept of an employee in the meaning of “Labour Law”. In social insurance law, the status of an employee is applied also to a deputy of the *Saeima* (the parliament) and local governments, a Member of the Cabinet, a civil servant, etc. Compare “Par valsts sociālo apdrošināšanu” [“On State Social Insurance”] (01.10.1997), Art. 1 and Darba likums [Labour Law] (20.06.2001), Art. 3. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024]. See also Likuma “Par valsts sociālo apdrošināšanu” komentāri [Comments to the Law “On State Social Insurance”], Art. 1. Available: <https://www.dbhub.lv/rokasgramatas> [last viewed 15.05.2024].

<sup>3</sup> Padoņju Sociālistisko Republiku Savienības Konstitūcija (Pamatlikums) [Constitution of the Union of Soviet Socialist Republics (Basic Law)] (07.10.1977) (hereinafter – Constitution of the USSR). Rīga: Liesma, 1977, Art. 43; The same is also established: Latvijas Padoņju Sociālistiskās Republikas Konstitūcija (Pamatlikums) [Constitution of the Latvian Soviet Socialist Republic (Basic Law)] (18.04.1978) (further – Constitution of the Latvian SSR). Rīga: Liesma, 1978, Art. 41.

servants and collective farm (*kolkhoz*) workers were socially insured.<sup>4</sup> The social insurance of collective farm workers, however, had certain particularities.<sup>5</sup>

The social insurance rights (hereafter – social insurance) of workers and public servants were exercised at the expense of the State.<sup>6</sup> “Social insurance contributions [from the salary fund<sup>7</sup>] [were] made by enterprises, institutions and organisations without any deductions from the salaries of workers or public servants. If the enterprise, institution of organisation [had not] made the social insurance contribution, this [did] not deprive workers and public servants of the right to the material security guaranteed by the State.”<sup>8</sup> Commenting on the provision of “Labour Law Code of the Latvian Soviet Socialist Republic”, Soviet scientists wrote: “the right is guaranteed not by the contributions made but by the fact that they [workers and public servants] had been in a legal labour relationship”.<sup>9</sup> Thus, the State’s paternalism towards employees, loyal to the regime, was fully manifested in the area of social insurance.

The following benefits were guaranteed to the Soviet citizens 1) allowance for temporary work incapacity; for women, also pregnancy, childbirth and child care allowance until the child reached the age of one year; 2) childbirth allowance; 3) funeral allowance; 4) old-age, disability, survivor’s and special pensions.<sup>10</sup> The Soviet law did not provide for social insurance in the case of unemployment because the right to work was constitutionally guaranteed to all Soviet citizens.<sup>11</sup> Likewise, health insurance was not envisaged because medical assistance was provided free of charge.<sup>12</sup> Social insurance resources were used also to cover the costs of sanatoriums, resorts, prevention centres for workers and public servants, pioneer camps, etc.<sup>13</sup>

Contrary to the declared social security of working people in the Soviet state, social insurance law was one of the most underdeveloped branch of law. This can be explained by the nihilistic treatment by the Soviet power of those persons who were engaged in a legal labour relationship with the State. For example, at the end of the 1970s and beginning of 1980s, the Soviet pensions did not exceed 45 to 120 roubles per month.<sup>14</sup> To mitigate pensioners’ poverty, retired persons could continue

<sup>4</sup> Voronova, L. K., Khimicheva, N. I. (eds). *Sovetskoye finansovoye pravo [Soviet financial law]*. Moskva: Yuridicheskaya literatura, 1987, pp. 364–368.

<sup>5</sup> Until the first half of the 1960s, the level of social insurance for collective farm workers was lower compared to that of workers and public servants, in particular, as regards their right to old-age pension. The cause for this was the negligible support from the state budget for the social security of collective farm workers. Moreover, it was considered that a collective farm worker lived on a collective farm and received social support from other members of the farm. On 15 July 1964, “Law on Pensions and Benefits to Members of Collective Farms” was adopted. With this law entering into effect, collective farm workers were gradually made equal to workers and public servants in their social rights. See David, R., Grasmann, G. *Einführung in die großen Rechtssysteme der Gegenwart. 2. deutsche Auflage [Introduction to the major legal systems of the present day. 2<sup>nd</sup> German edition]*. München: C. H. Beck’sche Verlagsbuchhandlung, 1988, p. 355; Padojmu tiesības. V. Millera un E. Meļķiša redakcijā [Soviet law. *Millers, V. and Meļķis, E.* (eds)]. Rīga: Zvaigzne, 1978, p. 309.

<sup>6</sup> See Latvijas Padojmu Sociālistiskās Republikas Darba likuma kodekss [Code of Labour Law of the Soviet Socialist Republic of Latvia] (14.04.1972) [in the wording: 01.05.1988] (hereinafter – Code of Labour Law), Art. 241 (1). Rīga: Avots, 1989.

<sup>7</sup> Padojmu tiesības [Soviet law], pp. 267–269.

<sup>8</sup> Code of Labour Law, Art. 241(1).

<sup>9</sup> Rozenbergs, J., Zonne, O. In: Padojmu tiesības [Soviet law], pp. 2, 268.

<sup>10</sup> Code of Labour Law, Art. 242.

<sup>11</sup> Constitution of the USSR, Art. 40; Constitution of the Latvian SSR, Art. 38.

<sup>12</sup> *Ibid.*, Art. 40, 42; Constitution of the Latvian SSR, Art. 38, 40.

<sup>13</sup> Code of Labour Law, Art. 242.

<sup>14</sup> Padojmu tiesības [Soviet law], p. 275.

legal labour relationships, without having the amount of their pensions decreased.<sup>15</sup> A limit, however, had been set – the total monthly income of a pensioner could not exceed 300 roubles.<sup>16</sup>

The State's paternalism, implemented in the insurance law of the USSR, did not comply with the requirements of free society. Likewise, the provision that only State enterprises, institutions, organisations of State-controlled cooperative organisations could be an employer did not meet the needs of a State oriented towards market economy. Therefore, after the independence of the Republic of Latvia was restored *de facto*, new legal regulation on social insurance had to be drafted.

## 1.2. Dispensing with the Soviet social insurance law

In 1990–1991, the Republic of Latvia restored its independence *de facto*.<sup>17</sup> The historical declaration “On the Restoration of Independence of the Republic of Latvia”<sup>18</sup> was adopted on 4 May 1990. The economic situation in the country changed rapidly after this declaration was made. Economic reforms demanded elaboration of a new social insurance model. On 14 December 1990, the Supreme Council of the Republic of Latvia adopted the law “On Social Tax”<sup>19</sup> (hereafter – the First Social Tax Law). This law changed the understanding of social insurance in several aspects.

From then on, not only State enterprises, institutions, organisations and State-controlled cooperatives, but also private legal and natural persons could offer their work for remuneration. Therefore, such new concepts as an employer and an employee were introduced. An employee was defined as “a person who is in a labour relationship with an employer”.<sup>20</sup>

In difference to the Soviet law, an employee also had to pay the social tax. Although the part of the social tax to be paid by the employee constituted only 1 % of the remuneration for work that had been calculated for an employee, this changed the legal relationships, defining an employee's duty to participate in financing the social security system. Substantially, the employer had to pay the social tax. The amount of social tax to be paid by the employer was 37 % of remuneration for work, calculated for an employee.<sup>21</sup> Responsibility for paying the social tax contributions into the State budget was determined for the employer, whereas controlling the payment of the social tax became the basic duty of the State.<sup>22</sup> This

<sup>15</sup> David, R., Grasmann, G. Einführung [Introduction], pp. 355–356.

<sup>16</sup> Pensioners involved in the production of agricultural products were an exception. See Latvijas tiesību vēsture (1914–2000). Prof. Dr. iur. Andreja Dītriha Lēbera redakcijā [History of Latvian Law (1914–2000). Edited by Prof. Dr. iur. Andrejs Dītrihs Lēbers]. Rīga: Fonds Latvijas Vēsture, 2000, pp. 394–395.

<sup>17</sup> On the restoration of the independent state, see more: Cercel, C., Pleps, J. Eternity clause as Agalma. Articulating constitutional Identity in Romania and Latvia. In: Law, culture and identity in central and eastern Europe. A comparative engagement, Cercel, C., Mercescu, A., Sadowski, M. M. (eds). Abingdon, Oxol, New York: Routledge, Taylor & Francis Group, 2024, pp. 174–187.

<sup>18</sup> Par Latvijas Republikas neatkarības atjaunošanu [On the Restoration of Independence of the Republic of Latvia] (04.05.1990). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>19</sup> Likums “Par sociālo nodokli” [law “On social tax”] (14.12.1990). Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs. 1991. gada 31. janvāri [Bulletin of the Supreme Council and Government of the Republic of Latvia. 31 January 1991], No. 3/4.

<sup>20</sup> The First Social Tax Law, Art. 2.

<sup>21</sup> Ibid., Art. 2–3, 6. Not all employers were obliged to pay the social tax according to the standard rate. For example, employers, who had among their employees at least 50% disabled persons, had the right to pay the employer's part of the social tax in the amount of 8 % of the remuneration calculated for the employee (See Art. 3).

<sup>22</sup> Par nodokļiem un nodevām [On Taxes and Fees] (28.12.1990), Art. 10. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

marked the diminishing of the State's responsibility in the area of social insurance compared to the Soviet period.

On 7 September 1995, the law "On Social Security"<sup>23</sup> was adopted. The principle of social insurance was determined as one of the basic principles for the functioning of the social security system.<sup>24</sup> On 2 November 1995, a new law "On Social Tax" (hereafter – the Second Social Tax Law)<sup>25</sup> was passed to implement this principle. *Prima facie* contradiction between the two concepts – "insurance" and "tax" was eliminated by explanations, provided in Transitional Provisions of the Second Social Tax Law, that "the social tax shall be considered as being a social insurance contribution".<sup>26</sup>

The social tax was defined as mandatory payment into the State special social insurance budget, which created an insured person's right to the social service defined in law.<sup>27</sup> At the sitting of the *Saeima*, State Minister for Social Affairs Vladimirs Makarovs explained that the purpose of the Second Social Insurance Tax Law was to implement the provisions of the law on social security. This law would become "the economic foundation for those social guarantees that are envisaged by the law "On Pensions", the law "On Insurance against Unemployment" [and] the law "On Insurance against Accidents"<sup>28</sup>. In the author's opinion, the Second Social Tax Law completed the rapid process of abandoning the paternalistic policy of the Soviet law in social insurance law. Two facts testify to this:

- 1) social insurance contributions became personified (hereafter also – "the principle of personified contributions"). As explained by V. Makarovs: "the personified contributions will be the basis for further guarantees that these persons will receive in the case of insurance risk".<sup>29</sup> This meant that the amount of social service disbursements in the case of a pension, a sickness benefit, an unemployment benefit and in other cases<sup>30</sup> would depend, *inter alia*, on the amount of social contributions made;
- 2) the so-called "principle of actual contributions" was introduced. This meant that only a person who had made social insurance contributions, or for whom these contributions had been made by a third party, was socially insured.<sup>31</sup>

All employed persons, within the limits of their abilities, must take care of themselves and their relatives. However, this does not release the State from responsibility in the area of social security. The social insurance, organised by the State, cannot be based only upon "the principle of actual contributions" or, as the well-known Latvian proverb states – each man forger of his own fortune. In such a case, the State would, in principle, distance itself from responsibility in the area of

<sup>23</sup> Par sociālo drošību [On Social Security] (07.09.1995). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>24</sup> On Social Security, Art. 2

<sup>25</sup> Par sociālo nodokli [On social tax] (02.11.1995) (hereafter – the Second Social Tax Law). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>26</sup> The Second Social Tax Law. Transitional provisions, Art. 2 (1).

<sup>27</sup> *Ibid.*, Art. 2.

<sup>28</sup> 5. Saeimas sēžu stenogrammas. Latvijas Republikas 5. Saeimas sēde 1995. gada 2. novembrī [5. Transcripts of the sittings of the *Saeima*. Session of the 5<sup>th</sup> *Saeima* of the Republic of Latvia, 2 November 1995]. Available: [https://www.saeima.lv/steno/st\\_955/st0211.html](https://www.saeima.lv/steno/st_955/st0211.html) [last viewed 15.05.2024].

<sup>29</sup> *Ibid.*

<sup>30</sup> Article 2 of the Second Social Tax Law determined seven types of services for a socially insured person: "1) old-age pension; 2) disability benefit; 3) survivor's pension; 4) sickness benefit; 5) maternity benefit; 6) allowance in the case of unemployment; 7) funeral allowance."

<sup>31</sup> The Second Social Tax Law, Art. 1(1).

social security. A State like that could not be considered as being a socially responsible State. At the moment when the Second Social Tac Law was adopted, the concept of a socially responsible State had not yet taken root in the Latvian legal system. Only on 2 November 2006, in the judgement by the Constitutional Court of the Republic of Latvia (hereafter – the Constitutional Court) in Case No. 2006-07-01, Latvia for the first time was examined as a socially responsible State: “Latvia is a socially responsible State. i.e., a State, which attempts, to the extent possible, to implement social justice in its legislation, governance and administration of justice. The aim of a socially responsible State is [...] to ensure an appropriate living standard.”<sup>32</sup> Then, eight years later, on 19 June 2014, it was determined in the Preamble to the Constitution (*Satversme*) of the Republic of Latvia (hereafter – the Constitution) that Latvia was a socially responsible State.<sup>33</sup> After the end of the transitional period, the Constitutional Court has interpreted the rights and obligations of a socially responsible State in the area of social insurance in its judgements. Interpretation of this analysis will be provided in the second part of this article.

The paternalistic policy of the Soviet law in social insurance law was not compatible with the interests of free society and the State, founded on market economy, the principle of “actual contributions”, in turn, in the implementation of social insurance rights could not meet in full the requirements of a socially responsible State. This meant that the reform of the social insurance law had to be continued also after the transitional period had ended.

## 2. Social insurance reforms after the end of the transitional period

### 2.1. Basic principles and forms of social insurance

On 1 October 1997, the law “On State Social Insurance”<sup>34</sup> was adopted and is still in effect. Pursuant to the law, “[t]he social insurance is a set of measures organised by the State to insure the risk of a person or dependants thereof to loss of income for work in connection with sickness, disability, maternity, paternity, unemployment, old-age, an accident at work or the contraction of an occupational disease, nursing of a child of the socially insured person, as well as additional expenditures in connection with the death of the socially insured person or dependants thereof.”<sup>35</sup> The object of mandatory social insurance contributions (hereafter – mandatory contributions) is all income, calculated for an employee in salaried employment, up to the maximum amount of mandatory contributions, determined by the State.<sup>36</sup> Mandatory

<sup>32</sup> Judgement of the Constitutional Court of the Republic of Latvia (further – JCCRL) of 2 November 2006 in Case No. 2006-07-01, Art. 18. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>33</sup> Grozījums Latvijas Republikas Satversmē [Amendment to the Constitution of the Republic of Latvia] (10.06.2014). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>34</sup> Par valsts sociālo apdrošināšanu [On State Social Insurance] (01.10.1997). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024]. It has been recognised also in the Constitutional Court's judicature (case law) that the purpose of social insurance is to ensure to an insured person replacement of income in the case of losing income from work. See JCCRL of 25 February 2002 in Case No. 2001-11-0106, para. 1; JCCRL of 15 February 2018 in Case No. 2017-09-01, para. 14.1., JCCRL of 7 October 2020 No. 2019-36-01, para. 15.1. etc. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>35</sup> On State Social Insurance, Art. 3. See also Likuma “Par valsts sociālo apdrošināšanu” komentāri [Comments to the Law “On State Social Insurance”], Art. 14.

<sup>36</sup> The maximum amount of the compulsory contributions is 78 100 EUR. See the law “On State Social Insurance”, Art. 14(1, 5).

contributions from the employee's whole income, calculated in salaried work, must be paid both by the employer and the employee, exactly as it was provided for by the First Social Tax Law. The currently valid law has only decreased the employer's part of mandatory contributions and increased the employee's part.<sup>37</sup>

With the law entering into effect, the fundamental principles, on which social insurance is based, were defined:

- 1) the principle of solidarity or "solidarity between those making social insurance contributions and the recipients of social insurance services"<sup>38</sup>;
- 2) the principle of using social insurance contributions or "the use of social insurance funds only for social insurance services in accordance with Law".<sup>39</sup>

The law "On Taxes and Fees" provides that mandatory contributions are a tax.<sup>40</sup> Pursuant to the same law, it is explained that "[p]ayment of taxes does not provide for a direct compensation to the taxpayer"<sup>41</sup>. Contrary to this, the scope of social insurance services directly depends on the amount of mandatory contributions made<sup>42</sup>, as pointed out by the Constitutional Court: "[t]he scope of social insurance services to be received depends on the scope of a person's co-participation in making social contributions".<sup>43</sup> Of course, just like a tax, the mandatory contribution is a solidarity payment. However, the mandatory contribution is also an insurance payment. Therefore, in the author's opinion, an amendment should be introduced into the text of the law "On State Social Insurance", providing that the principle of insurance is also one of the fundamental principles of social insurance. The introduction of the principle of insurance would promote the awareness of the need to differentiate between the concept of mandatory contributions and a tax.

Pursuant to the Constitutional Court's judicature (case law), social insurance fulfils its task in a meaningful way if it comprises "all traditional social risks"<sup>44</sup> or "would comprise all most significant social risks".<sup>45</sup> The law "On State Social Insurance" in its basic wording defined five forms of social insurance:

- 1) the State pension insurance;
- 2) the social insurance in case of unemployment;
- 3) the social insurance against accidents at work and occupational diseases;

<sup>37</sup> "If an employee has been insured for all types of social insurance, the mandatory contribution rate shall be 34.09 per cent from which an employer shall pay 23.59 per cent and an employee shall pay 10.50 per cent. See the law "On State Social Insurance", Art. 18(1). See also *Ketners, K. Nodokļi un nodokļu plānošanas principi* [Tax and tax planning principles], Rīga: SIA "Tehnoinform", SIA "Info Tiltis", 2018, pp. 32–33; *Jurušs, M. Nodokļi* [Taxes]. Rīga: RTU Izdevniecība, 2019, pp. 112–113.

<sup>38</sup> Social "[s]olidarity is the very basis of the principle of a socially responsible State" see *Kovaļevska, A. Sociāli atbildīga valsts* [A socially responsible country]. *Jurista Vārds*, 2022, No. 7 (1221). Available: <https://m.juristavards.lv/doc/280633-sociali-atbildiga-valsts/> [last viewed 23.01.2024].

<sup>39</sup> On State Social Insurance, Art. 3.

<sup>40</sup> Likums "Par nodokļiem un nodevām" [Law "On Taxes and Fees"] (02.02.1995), Art. 8. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>41</sup> On Taxes and Fees (02.02.1995), Art. 1 (1).

<sup>42</sup> *Ketners, K. Publisko finanšu tiesību pamati*. In: *Publiskās tiesības. Ievads. Autoru kolektīvs Inetas Ziemeles un Sanitas Osipovas zinātniskā redakcijā* [Fundamentals of public finance law. Public law. Introduction. Scientific editors Ineta Ziemele and Sanita Osipova]. Rīga: Tiesu namu aģentūra, 2024, p. 426.

<sup>43</sup> JCCRL of 10 December 2020 in Case No. 2020-07-03, para. 16.1. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>44</sup> JCCRL of 29 October 2010 in Case No. 2010-17-01 para. 7. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>45</sup> JCCRL in Case No. 2017-09-01 para. 14.1.

- 4) the disability insurance;
- 5) the maternity (from 2019, also paternity<sup>46</sup>) and sickness insurance.<sup>47</sup>

The history of the law has proven that all the most significant cases of social insurance risk were not covered by the forms of social insurance enumerated above. Therefore, the legislator until now already has added two more cases to the risks to be socially insured:

- 6) the parents' insurance (2007)<sup>48</sup>;
- 7) the health insurance (2017)<sup>49</sup>.

Amendments to the law of 3 April 2019 eliminated gender inequality in social insurance law. From then on, not only the risk of maternity occurring but also that of paternity must be socially insured.<sup>50</sup> In concluding the overview of the forms of social insurance, one more finding by the Constitutional Court needs to be pointed out: "if an employee has been insured for a certain type of insurance then, upon setting of an insurance case, he is entitled to the respective security".<sup>51</sup> Thus, the exercise of the social insurance right is based, *inter alia*, on the principle of legitimate expectations.

Does the current social insurance system cover all social risks that a person might face in the case of losing one's income? The author holds that the development of the social insurance system will continue in accordance with the political system and the level of social welfare in the state.

Analysing the social insurance system, it needs to be explained that not all socially insured persons must have all forms of social insurance.<sup>52</sup> This is based on the assumption in the national legal policy that a person is ensured against those social risks that they might incur in the future.<sup>53</sup> For example, a person who is entitled to the State old-age pension (also in early retirement) or any of the special pensions should not be insured against employment because, if the job is lost, the source of income – pension – is retained. However, such an approach might prove to be wrong in many other cases of social insurance. To compare, a self-employed person is not insured against unemployment either. However, as the recent crisis, caused by COVID-19, proved, many self-employed persons lost all income due to the restrictions imposed and could rely only on the State's support in the form of allowance for idle time.<sup>54</sup> The fact that the majority of people do not understand insurance law

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<sup>46</sup> Grozījumi likumā "Par valsts sociālo apdrošināšanu" [Amendments to the Law "On State Social Insurance"] (03.04.2019), Art. 3. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>47</sup> On State Social Insurance, Art. 4.

<sup>48</sup> Grozījumi likumā "Par valsts sociālo apdrošināšanu" [Amendments to the Law "On State Social Insurance"] (08.11.2007), Art. 2. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>49</sup> Grozījumi likumā "Par valsts sociālo apdrošināšanu" [Amendments to the Law "On State Social Insurance"] (27.07.2017), Art. 3. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>50</sup> Amendments to the Law "On State Social Insurance" (03.04.2019), Art. 3.

<sup>51</sup> JCCRL 26 March 2004 in Case No. 2003-19-0103, para. 11. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>52</sup> An employee who has reached the age of 15 is insured for all types of socially insurable risks. However, there are several exceptions. See the law "On State Social Insurance", Art. 5–6.

<sup>53</sup> JCCRL in Case No. 2019-36-01, para. 5.

<sup>54</sup> Ministru kabineta noteikumi Nr. 179 "Noteikumi par dikstāves pabalstu pašnodarbinātām personām, kuras skārusi Covid-19 izplatību" [Cabinet of Ministers Regulations No. 179 "Regulations Regarding the Allowance for Idle Time for the Self-Employed Persons Affected by the Spread of COVID-19"]



exacerbates this problem even more. For example, it follows from the judgement by the Supreme Court (Senate) of the Republic of Latvia (hereafter – the Senate) of 28 April 2023 in case No. SKA-234/2023 that a board member of a company had not understood that, pursuant to his status as a socially insured person, he had not been insured against the risk of sickness and, therefore, was not entitled to sickness benefit.<sup>55</sup> The examples described above lead to the conclusion that the national policy in the area of social insurance should be reviewed, reducing to minimum the number of those persons who, in accordance with their status of a person to be socially insured, are not insured in all forms of social insurance.

## 2.2. Problems and solutions in social insurance

On 15 October 1998, Chapter VIII “Fundamental Human Rights”<sup>56</sup> was added to the Constitution. In the very same year, Latvia was affected by a severe economic crisis. The economic crisis “shed light” on the incompatibility of the “actual contributions”, repeatedly referred to, with the Constitution. In this regard, the judgement by the Constitutional Court of 13 March 2001 in case No. 2000-08-0109<sup>57</sup> became historic.

Article 109 of the Constitution provides: “[e]veryone has the right to social security in old age, for work disability, for unemployment and in other cases provided by law.” The Constitutional Court concluded from this: “[i]f anyone’s social rights are included in the basic law, the State cannot derogate from them. These rights are no longer of only declarative nature”<sup>58</sup>.

In the course of reviewing the case, it was found that an employee who was employed by a domestic employer was the only person belonging to the social insurance system who could make the mandatory contributions only with the mediation of the employer and the State’s obligation was to control whether the employer fulfilled this statutory obligation. The employee’s co-responsibility in exercising the social insurance rights was not examined. Since this aspect was not taken into consideration in the examination of the case, the Constitutional Court’s judgement included the following statement: “[...] an employee as the subject of social insurance relationship has fulfilled his obligation in full at the moment of entering the legal labour relationship and commencing to discharge one’s duties of work. [...] to guarantee the rights of persons subject to mandatory social insurance, disbursements cannot be linked to the fact of whether other persons [employer or the State] have not properly fulfilled the duties defined in law”.<sup>59</sup> Thus, “the principle actual contributions” lost its relevance. Ensuring the social service (benefit), regardless of whether mandatory contributions for the insured person had or had not been made, became the State’s obligation. The author is of the opinion that, in accordance

(31.03.2020). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024]. See also *Dārziņa, L.* Krīzes dikstāves pabalsts pašnodarbinātajiem – kam un kā [Crisis downtime allowance for the self-employed – to whom and how]. Available: <https://lvportals.lv/skaidrojumi/314861-krizes-dikstaves-pabalsts-pasnodarbinatajiem-kam-un-ka-2020> [last viewed 15.05.2024].

<sup>55</sup> Judgment of the Supreme Court of the Republic of Latvia (*Senāts*) of 28 April 2023 in Case No. A420231320, SKA-234/2023, ECLI:LV:AT:2023:0428.A420231320.10.S, para. 10. Available: <https://www.at.gov.lv/en/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 15.05.2024].

<sup>56</sup> *Grozījumi Latvijas Republikas Satversmē* [Amendments to the Constitution of the Republic of Latvia] (15.10.1998). Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>57</sup> JCCRL of 3 March 2001 in Case No. 2000-08-0109, conclusion part. Available: <https://www.satv.tiesa.gov.lv/cases/> [last viewed 15.05.2024].

<sup>58</sup> *Ibid.*

<sup>59</sup> JCCRL No. 2000-08-0109, conclusion part.

with the social situation in 2001, the Constitutional Court's judgement was just. However, in the long term, such legal regulation promoted neither social solidarity nor a person's responsibility for one's financial security in the future.

A certain balance between the responsibility of the State and a socially insured person was reached in 2009–2010, during the major economic crisis. On 20 December 2010, amendments were introduced to the law "On State Social Insurance". Amendments to the law provided, *inter alia*, that "[a] person shall be socially insured for pension insurance if mandatory contributions have been actually made".<sup>60</sup> This meant that the amendments to the law inevitably were contrary to the Constitutional Court's judicature (case law) and marked a return to "the principle of actual contributions", although only in the case of insurance for pensions.

This time, the Constitutional Court concluded in its judgement (case law) of 19 December 2011 that "[t]he pensions system, in particular – its first tier<sup>61</sup>, was based on the principles of solidarity, justice and individual contribution"<sup>62</sup>, and, namely:

- 1) the solidarity principle determines that the disbursement of pensions is ensured at the expense of the current mandatory contributions;
- 2) the principle of justice is implemented by making the amount of the pension dependent on the amount of mandatory contributions and the length of service;
- 3) the principle of individual contribution envisages the accumulation of the mandatory contributions by the payer in an individual account of contributions for pensions.<sup>63</sup>

On the basis of the principles described above, the Constitutional Court noted: "[...] the amount of a pension depends directly on the income, from which the social insurance contributions have been calculated, [and] the pensions system, *inter alia*, comprises a person's responsibility for one's future and the amount of one's pension.<sup>64</sup> [...] Thus, the responsibility for a sustainable system of pensions is divided between the State, the employer and the employee.<sup>65</sup>" This meant that, in the case of insurance for pensions, "the principle of actual contributions" was not contrary to the Constitution.<sup>66</sup> The State's responsibility in cases of other socially insured risks was retained. The author holds that, in the current social insurance law, a proportionate balance has been reached in the responsibilities of the State, the employer and the employee.<sup>67</sup>

<sup>60</sup> Grozījumi likumā "Par valsts sociālo apdrošināšanu" [Amendments to the law "On State Social Insurance"] (20.12.2010), Art. 2. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>61</sup> The funded pension scheme or pensions of the second tier and investment of financial resources in private pension funds or pensions of the third tier require a person's own participation in the accumulation of capital and, in this case, this is not a matter of social solidarity.

<sup>62</sup> JCCRL of 19 December 2011 in Case No. 2011-03-01 para. 16.1. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>63</sup> JCCRL No. 2011-03-01 para. 16.1–16.2.

<sup>64</sup> *Ibid.*, para. 16.2.

<sup>65</sup> *Ibid.*, para. 25.

<sup>66</sup> *Ibid.*, para. 31.

<sup>67</sup> In other social insurance cases, it is not envisaged to calculate the disbursements of social insurance from the accumulated social insurance contributions, as it is in the case of pension insurance. For example, the unemployment benefit is calculated from "the salary of the insured person's insurance contributions for the period of 12 calendar months, concluding this period two months before the month, in which the person acquired the status of an unemployed person." See "Par apdrošināšanu bezdarba gadījumam" ["On Unemployment Insurance"] (25.11.1999), Art. 5–6.

Ensuring inhabitants subsistence minimum that is worthy of human dignity is the duty of a socially responsible State.<sup>68</sup> In Latvia, human dignity is a person's fundamental right<sup>69</sup> and, pursuant to the Constitutional Court's interpretation: "[h]uman dignity as a constitutional value characterises a human being as the supreme value of a democratic State governed by the rule of law."<sup>70</sup> In social insurance law this means that the State has the duty to determine such object of social insurance contributions that would ensure that, in the case of an insurance risk setting in, the benefit disbursed would be at least in the amount of subsistence minimum.<sup>71</sup>

In this regard, the crisis caused by COVID-19 brought a positive impetus. On 27 November 2020, amendments were made to the law "On State Social Insurance". They introduced the concept of "the minimum object of mandatory contributions".<sup>72</sup> "The minimum object of mandatory contributions within a quarter is three minimum monthly wages determined by the Cabinet".<sup>73</sup> Unfortunately, it is not known whether the social insurance contributions in the amount of minimum object of contributions ensure a social security benefit that is worthy of human dignity if a case of socially insured risk sets in because the subsistence minimum has not been calculated in Latvia.

The case law regarding the State's obligation to ensure to inhabitants a standard of living that is worthy of human dignity has been developing rapidly over the recent years. In this matter, the Constitutional Court has the leading role. The Constitutional Court has noted that the State's obligation is "to ensure social justice and serve to ensure everyone the possibility to lead such a life that is worthy of human dignity"<sup>74</sup>, "the legislator's obligation to create such social security that is directed at protecting human dignity as the supreme value of a democratic State governed by the rule of law, levelling out of social injustice and sustainable national development follows from the principle of a socially responsible State"<sup>75</sup>, etc.<sup>76</sup> However, it is also noted

<sup>68</sup> See, for example, 1) German legal doctrine: *Friedhelm, H.* Staatsrecht II. Grundrechte. 10. Auflage [Constitutional Law II. Fundamental rights. 10<sup>th</sup> edition]. München: C. H. Beck, 2023, pp. 137–138, 149 or Latvian scientific doctrine: 2) *Kovaļevska, A.* Sociāli atbildīgas valsts princips kā Latvijas Republikas valsts iekārtu raksturojošs princips [The principle of a socially responsible state as a characterizing principle of the state system of the Republic of Latvia]. In: *Ilgtspējīga attīstība un sociālās inovācijas. Zinātniskā redaktores Dr. sc. soc. Baiba Bela [Sustainable development and social innovation. Scientific editor Dr. sc. soc. Baiba Bela.]*. Rīga: LU Akadēmiskais apgāds, 2018, pp. 42–43.

<sup>69</sup> See Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), Introduction and Art. 95. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024].

<sup>70</sup> JCCRL of 5 March 2019 in Case No. 2018-08-03 para. 11. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>71</sup> See also *Rodiņa, A., Kārklīņa, A.* 25 Years of Fundamental Rights in the Constitution of the Republic of Latvia: Development, Significance and Content. *Journal of the University of Latvia. Law, No. 16, 2023*, pp. 32–35.

<sup>72</sup> *Grozījumi likumā "Par valsts sociālo apdrošināšanu"* [Amendments to the law "On State Social Insurance"] (27.11.2020), Art. 10. Available: <https://likumi.lv> or <https://likumi.lv/about.php> [last viewed 15.05.2024]. See also *Dārziņa, L.* Sociālā apdrošināšana darba ņēmējiem, pašnodarbinātajiem un obligātās iemaksas [Social insurance for employees, the self-employed and compulsory contributions]. Available: <https://lvportals.lv/skaidrojumi/337197-sociala-apdrosinasana-darba-nemejiem-pasnodarbinatajiem-un-obligatas-iemaksas-2022> [last viewed 15.05.2024].

<sup>73</sup> Law "On State Social Insurance", Art. 20<sup>4</sup>.

<sup>74</sup> JCCRL 9 July 2020 in Case No. 2019-27-03, para. 20.2. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>75</sup> JCCRL 25 June 2020 in Case No. 2019-24-03, para. 17.1. Available: <https://www.satv.tiesa.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>76</sup> On Latvia as a country governed by the rule of law, see more: *Osipova, S.* "The Borders" of the Legislator's Freedom in the Legislation. In: *New Perspectives on Legislation. A Comparative Approach.* *Chmielnicki, P., Sulikowski, A.* (eds). Berlin: Peter Lang GmbH, 2020, pp. 189–196.

in the Constitutional Court's judicature (case law) that: "the principle of a socially responsible State does not exclude the obligation of every person, insofar it can be reasonably expected within the limits of their abilities, to care for oneself and one's relatives and to ensure life worthy of human dignity."<sup>77</sup> Thus, the Constitutional Court's judicature (case law) allows to conclude that, in a socially responsible State that respects human dignity, responsibility for social security is a duty shared between the State and citizens.

Predominantly, the Constitutional Court's judicature (case law) is embodied in the relationships between the State and citizens in the area of social law through the mediation of administrative courts. In this respect, the author would like to point to the Senate's judgement of 16 March 2021 in case No. SKA-259/2021 regarding the amount of the old-age pension, calculated by the State, which obviously did not ensure a person life worthy of human dignity (EUR 96.07 per month). The calculated pension was based mainly on the person's length of service and not on the social insurance contributions. However, also in this case, the Senate validly noted that lower instance courts, in the future, would have to assess whether the pension, in conjunction with other social measures, satisfied the basic needs in compliance with human dignity, in case of necessity requiring from the Ministry of Welfare the methodology for calculating the minimum old-age pension.<sup>78</sup> This means that the minimum amount of pensions that follows from social insurance should likewise ensure a standard of living that is worthy of human dignity to an insured person.

## Summary

Dispensing with the Soviet understanding of social insurance law began immediately after the restoration of the independence of the Republic of Latvia *de facto* and was completed with the entering into effect of the Second Social Insurance Law when social insurance contributions became personified and the so-called principle of "actual contributions" was introduced.

In several of its judgements, the Constitutional Court has reviewed the compliance of "actual contributions" with the Constitution. The Constitutional Court has recognised the compatibility of "actual contributions" with the Constitution only in the case of pension insurance, pointing out that the employee also has to assume responsibility for the sustainability of the pension system in the case of pension insurance. The State's responsibility for ensuring the social service was retained in other cases of socially insured risks.

The solidarity principle has been recognised as one of the fundamental principles in legislation on social insurance. However, the solidarity principle reveals the substance of social insurance only partially. Therefore, the principle of insurance should be added to the law. That would help to differentiate between the concepts of mandatory contributions and taxes.

In recent years, the fact that not all socially insured persons are insured in all social insurance forms has started to emerge as a problem in social insurance law. One can assume that this problem will be highlighted in the coming years through case law. However, it is clear already now that such statuses of socially insured persons

<sup>77</sup> JCCRL 5 October 2023 in Case No. 2022-34-01, para. 11. Available: <https://www.satv.tiesas.gov.lv/en/cases/> [last viewed 15.05.2024].

<sup>78</sup> Judgment of Supreme Court (*Senāts*) of Latvia of 16 March 2021 in Case No. A420271718, SKA-259/2021, ECLI:LV:AT:2021:0316.A420271718.17.S, para. 14–15. Available: <https://manas.tiesas.lv/eTiesasMvc/nolemumi> [last viewed 15.05.2024].

that do not envisage insurance in all forms of social insurance should be brought down to minimum.

Latvia is a socially responsible State. It is the obligation of a socially responsible State to ensure to inhabitants' standard of living that is worthy of human dignity. In Latvia, the concept of "object of minimum mandatory contributions" has been introduced into the social insurance law. However, it is not known whether the mandatory contributions in the amount of the object of minimum mandatory contributions in the case where a socially insured risk sets in guarantees social services (benefit) that would ensure a life that is worthy of human dignity because the subsistence minimum, according to which the minimum amount of mandatory contributions should be determined, has not been calculated in Latvia.

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