Non-Official Translation

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE OF CONFORMITY OF THE RA LAW HO-67-N ON AMENDING THE LAW OF THE REPUBLIC OF ARMENIA ON FUNDED PENSIONS ADOPTED BY THE RA NATIONAL ASSEMBLY ON 21.06.2014 TOGETHER WITH THE LAWS HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N AND HO-77-N, AS WELL AS ARTICLES 6 AND 10 OF THE RA LAW ON INCOME TAX /HO-246-N/ SYSTEMICALLY INTERRELATED WITH THE LATTER ON THE BASIS OF THE APPLICATION OF THE DEPUTIES OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA

Yerevan July 7, 2015

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan (Rapporteur), A. Gyulumyan, F. Tokhyan, A. Tunyan, A. Khachatryan, V. Hovhanissyan (Rapporteur), H. Nazaryan, A. Petrosyan,

with the participation (in the framework of the written procedure) of A. Minasyan, M. Khachatryan, A. Zeynalyan, the representatives of the Applicant;

representative of the Respondent: H. Sargsyan, official representative of the RA National Assembly, Head of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1 and Article 101, Part 1, Point 3 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the Law of the Republic of Armenia on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of the RA Law /HO-67-N/ on Amending the Law of the Republic of Armenia on Funded Pensions adopted by the RA National Assembly on 21.06.2014 together with the Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N, as well as Articles 6 and 10 of the RA Law on Income Tax **(HO-246-N)** systemically interrelated with the latter on the basis of the Application of the Deputies of the National Assembly of the Republic of Armenia.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by 33 Deputies of the RA National Assembly on 03.10.2014.

By the motion of the Applicant the hearing was postponed and scheduled on July 7, 2015.

Having examined the written report of the Rapporteurs on the Case, the written explanations of the Applicant and the Respondent, the clarifications submitted by the RA Government on demand of the RA Constitutional Court, as well as having studied laws in dispute and other documents of the Case, the Constitutional Court of the Republic of Armenia **FOUND**:

1. The RA Law HO-67-N on Amending the RA Law on Funded Pensions, the RA Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N were adopted by the RA National Assembly on June 21, 2014, signed by the RA President on June 27, 2014 and entered into force on July 1, 2014.

The RA Law on Income Tax was adopted by the RA National Assembly on December 22, 2010 **(HO-246-N),** signed by the RA President on December 30, 2010 and entered into force on January 1, 2013.

By Article 1 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions, based on the decision DCC-1142 of the RA Constitutional Court dated April 2, 2014 and the legal positions expressed therein, the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions was entirely reworded.

By the RA Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N, the RA Law on Investment Funds, RA Civil Code, RA Law on Personified Record Keeping of Income Tax and Mandatory Funded Contribution, RA Law on Income Tax, RA Law on Bankruptcy, RA Law on the Budgetary System of the

Republic of Armenia, RA Law on Minimum Monthly Salary, the RA Law on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System, RA Law on Compulsory Enforcement of Judicial Acts and the RA Law on State Pensions, which are designed to ensure the implementation of the RA Law on Amending the RA Law HO-67-N on Funded Pensions, were accordingly amended and supplemented.

The challenged Article 6 of the RA Law on Income Tax, titled "Deductions from income", establishes the types of deductions from income, which in accordance with Part 3 of Article 4 of the same Law are taken into account in determining taxable income.

This Article was amended by the challenged Law HO-71-N, due to which, **amongst others, all kind of pensions paid in accordance with the RA legislation shall be considered deductions from income**, including pensions paid in accordance with the RA Law on Funded Pensions in the framework of the funded component of the accumulative pension (Point 2 of Part 1 of Article 6 of the RA Law on Income Tax), voluntary pension contributions made for himself/herself - in accordance with the procedure prescribed by the RA legislation - by the taxpayer and (or) a third party (including - the employer) in the framework of voluntary pension component in the amount not exceeding 5 percent of the taxable income of the taxpayer (Point 3 of Part 1 of Article 6 of the RA Law on Income Tax), funded contributions made by means of the RA state budget for (the benefit of) persons within the funded component of the RA pension system (Point 5 of Part 1 of Article 6 of the RA Law on Income Tax), revenues to be received before the expiration of the legal acquisition of the rights to receive funded pension at the expense of funded contributions made in accordance with the RA Law on Funded Pensions for (in favor of) the taxpayer within the funded component (Point 6 of Part 1 of Article 6 of the RA Law on Income Tax), property and monetary assets to be received from individuals as inheritance and (or) donation in accordance with the RA legislation (Point 13 of Part 1 of Article 6 of the RA Law on Income Tax).

The challenged Part 1 of Article 10 of the RA Law on Income Tax, titled "Income tax rates", prescribes the rate of the income tax, and Parts 2-9 of the same Article envisages the exceptions. Two of them, which are prescribed in Parts 2 and 3 of the same Article, refer to the RA Law HO-67-N on Amending the RA Law on Funded Pensions. In particular, Parts 2 and 3 of Article 10 of the RA Law on Income Tax envisage the following exceptions:

"2. In case of one-time receipt by the individual of the assets accumulated in the framework of voluntary funded pension scheme in the cases prescribed by the legislation of the Republic of Armenia, the income tax shall be calculated at the rates prescribed in Point 1 of Part 1 of this Article, without taking into account the deductions defined by this Law.

3. Income tax from the pensions received in the prescribed manner from the voluntary funded contributions made by the taxpayer for himself/herself - in accordance with the procedure prescribed by the RA legislation - by the taxpayer and (or) a third party (including - the employer) in the framework of voluntary pension component, shall be calculated 10 percent rate, without taking into account deductions defined by this Law".

2. The Applicant challenges the above mentioned laws from two perspectives: the procedural, related to the issue of compliance of the procedures of adoption of the abovementioned laws, and the contextual, related to the issue of constitutionality of various norms of the abovementioned laws.

From a procedural point of view, the Applicant - referring to Articles 1 and 5 of the Constitution of the Republic of Armenia, the RA Law on Legal Acts and the RA Law on the Rules of Procedure of the National Assembly, the Decree of the President of the Republic of Armenia No. NH-174-N of 18.07.2007 on Establishing the procedure for organizing the activities of the Government of the Republic of Armenia and other subordinate authorities of state administration - finds that procedural errors of adoption of the challenged legal acts are so significant that provide a reasonable basis for acknowledging them contradicting to the RA Constitution and void.

To substantiate the above-mentioned the Applicant - referring to Article 27.1 of the RA Law on Legal Acts and pointing out the provisions of the Article relating to the organization of public discussions and the 15 day term of their implementation - argues that without the disclosure of public opinion, gathering information on alternative options, feasible expenses, benefits and possible risks, ensuring public participation in the law-making process, ignoring the requirements of the legislation, the package of relevant legislative draft was included in the agenda of the extraordinary session providing that it should be adopted in three readings of the same extraordinary session and from the first to the second reading within 24 hours.

Simultaneously, the Applicant argues that the relevant draft legislations - based on the requirements of Points 39, 40, 42, 43, 46, 49 and 92 of the order, established by the Decree of the President of the Republic of Armenia No. NH-174-N of 18.07.2007 on Establishing the procedure for organizing the activities of the Government of the Republic of Armenia and other subordinate authorities of state administration - did not pass the proper procedures and were not submitted neither to the RA Human Rights Defender for his opinion nor to the deputies of the RA National Assembly. In addition, according to the Applicant, they were not adequately put into circulation and were not discussed in the relevant Committee of the RA National Assembly. Noting violations of the rules of legislative technique in the challenged legal acts, the Applicant also finds that the challenged legal acts do not comply with the constitutional principle of legal certainty.

According to the writs submitted on 14.05.2015 and 06.07.2015 the Applicant also finds that the clarifications of the RA Government are also inconclusive for exhaustive answers to the issues put forward in the Application.

Referring to the issue from **contextual perspective** the Applicant set out his arguments in Points 16-30 of the Application. In particular:

the Applicant considers an issue of constitutionality in the fact that the preamble to the RA Law HO-67-N on Amending the RA Law on Funded Pensions stipulated the possibility of receipt of additional pension income, which is a right according to the Applicant, while in other articles of the Law this right turns into an obligation to make a social contribution, choose a pension fund manager and bear financial risks and risks arising from the labor market which does not depend on the will of the person making the social contribution. According to the Applicant, such regulation "does not meet the constitutional norm of 'social state' (positive duties of the State) and the right stipulated by Part 2 of Article 42 of the Constitution".

The Applicant also considers an issue of constitutionality in the fact that the term "social contribution" - stipulated by Point 36 of Part 1 of Article 2 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions - does not correspond to the principle of legal certainty as it is not clear whether or not social contribution - stipulated by Article 45 of the RA Constitution – is a duty, tax or other mandatory payment.

Referring to the 2014 RA Law on State Budget, Article 1.2 of the RA Law on the Budgetary System of the Republic of Armenia, RA Law on Treasury System and stating that

social contributions are not included in the state budget of 2014, the Applicant finds that in case the term "social contribution" stipulated by the RA Law HO-67-N on Amending the RA Law on Funded Pensions is used as other mandatory payment stipulated by Article 45 of the RA Constitution, it does not correspond to the legal content of the concept "other mandatory payment" stipulated by the same Article of the Constitution, since mandatory payment does not express its public legal nature, in fact, it is not credited to the state budget (it is not the income of the state budget), it does not correspond to the concept "targeted budget revenues" stipulated by Part 14 of Article 1.2 of the RA Law on the Budgetary System; the RA Law HO-67-N on Amending the RA Law on Funded Pensions does not reveal the powers of the State implementation thereto social contributions should be aimed at.

In this regard, the Applicant considers that the term "social contribution" stipulated by Point 36 of Part 1 of Article 2 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions does not meet the requirements stipulated by Article 45 of the RA Constitution.

The Applicant considers an issue of constitutionality in the fact that the RA Law HO-67-N on Amending the RA Law on Funded Pensions uses the term "obligation of social contribution", and according to the Applicant it does not correspond to the legal positions expressed in the Decision DCC-975 of the RA Constitutional Court dated 14.06.2011, which concern the distinctive feature of the terms "obligation" and "duty".

The applicant finds that the RA Law HO-67-N on Amending the RA Law on Funded Pensions does not correspond to the legal positions expressed in the Decision DCC-1142 of the RA Constitutional Court which concern the right to property.

For substantiating his position and referring to Article 31 of the RA Constitution, Article 89 of the RA Constitution stipulating the powers of the RA Government on state property management, Articles 3, 9 and 11 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions, Article 132, Part 3 of Article 168 and Part 3 of Article 279 of the RA Civil Code, the Applicant considers that, firstly, the social contribution cannot be the property of the person, and secondly, if the social payment is the means of the state budget, it shall be the property of the Republic of Armenia, which shall be managed by the RA Government and shall not include the management of the property of individuals or local authorities. Accordingly, the Applicant states that the term "social contribution" stipulated by Point 36 of Part 1 of Article 2 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions does not meet the

requirements stipulated by Article 45 of the RA Constitution, and the Applicant finds that according to this basis, imposing duties on the employer to calculate, transfer or levy social contributions based on Article 7 of the same Law and providing liability for the employer for failure to do so based on Article 71 of the same Law violate the requirements of Articles 8, 31 and 43 of the RA Constitution.

According to the Applicant, the provisions concerning the scopes of persons making social contribution, the rate of social contribution (interest rate) and the sources of social contribution stipulated by the RA Law HO-67-N on Amending the RA Law on Funded Pensions violate "the constitutional norms and principles of the rule of law, prohibition of discrimination based on age or social factors, and prohibition of the retroactive effect of laws and other legal acts aggravating the legal status of a person, as well as the legal proportionality". To substantiate this position the Applicant refers to the Decision DCC-1142 of the RA Constitutional Court and finds that the legal positions expressed in the mentioned Decision of the Constitutional Court regarding the provisions concerning the scopes of persons making social contribution, the rate of social contribution (interest rate) and the sources of social contribution, stipulated by the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions, are not reflected in the RA Law HO-67-N on Amending the RA Law on Funded Pensions.

The Applicant also cited the legal positions of the Constitutional Court prescribed in Points 10 and 11 of the Decision DCC-1142 which relate to income tax, subsistence minimum basket and subsistence minimum budget. Summing up and considering the requirement of Article 14.1 of the Constitution, the Applicant finds that social contributions should not concern people older or younger than a certain age, and that "the principle of non-discrimination in the same age and labor sphere shall also apply to funded contributions made from the state budget".

By linking Articles 2 and 81 of the RA Law HO-67-N on Amending the RA Law on Funded Pensions, the Applicant considers the issue of constitutionality of the fact that, amongst others, explicitly disproportionate period was provided for the right to abandon making social contributions, it was possible to enjoy the given right only once, this right was granted to the persons who are in labor relations as of July 1, 2014 and in this regard being in labor relations one day after or before the mentioned day deprives the person of this given right, this right does not meet the requirements of legal certainty with regard to the persons who combine jobs, the link between the requirement to make social contributions and the realization of the right to

abandon making social contributions for the persons born in and after 1974 is not anyhow substantiated, the legislator did not establish the procedure for submitting applications on abandoning the duty to make social contributions to the tax authorities and the procedure for adoption of the applications by those authorities, there is a violation of the constitutional principle of prohibition of the retroactive effect of laws aggravating the legal status of a person, as well as violation of the constitutional principle of proportionality of the law in connection with the circumstance that on 1 July 2015 the provisions on the change of pension funds, inheritance of pension funds shares and receipt of assets in the pension account shall enter into force. In this regard, the Applicant finds that the requirements of Articles 3 and 14.1, Part 3 of Article 42 of the Constitution, as well as the principles of legal certainty, security, legitimate expectations and proportionality were violated.

In particular, due to the circumstance that on 1 July 2015 the provisions on the receipt of assets in the pension account shall enter into force, the Applicant argues that delaying the implementation of the person's right to ownership, no reasonable compensation for this period of time is provided.

The Applicant also argues that, instead of a rapid return of the funded contributions to the citizens levied in accordance with the previous law, it is provided that the refund of a portion in the period from January to July 2015, and not the entire amount and interest income calculated with respect to it, but the principal without the amount provided to the citizens from the state budget, as well as the income calculated with respect to the current amount in the pension fund from 1 January 2014 to at least 2015.

Referring to certain legal position expressed in the Decision DCC-1142 of the Constitutional Court and recalling Articles 83.3 and 83.5 of the RA Constitution, the Applicant considers an issue of constitutionality that the challenged acts do not solve the issue of public confidence towards the pension system, a complicated administration functions in the pension system and there is a great need for administrative expenses.

In particular, the Applicant considers that in the Republic of Armenia the requirements for the risk management system of pension funds are built on the desires arising from the phrases "needed" and "necessary", which violate the requirements of the RA Law on Legal Acts, and in particular Article 45 thereof, as well as Part 5 of Article 37 and Part 3 of Article 39 of the Law HO-67-N contain uncertain wordings that also do not entail legal consequences; the

RA Law HO-67-N on Amending the RA Law on Funded Pensions did not provide any relevant means for public-legal liability of the RA Central Bank for guaranteeing stable activity of the system or provided the latter with powers contradicting the requirements of Article 83.5 of the RA Constitution, and envisaged that the maximum amount of expenses related to the pension fund management shall be prescribed by the RA Central Bank, while it should be regulated by the law.

The Applicant quoted certain legal positions expressed in the Decision DCC-1142 of the Constitutional Court and stated that the challenged acts did not solve the issue of the reliability of the pension fund system from the perspective of indexation of current shares in the pension fund or adjustment due to annual inflation as well as the issue of guaranteeing pension fund system from the perspective of balancing rights and duties, providing relevant liability for shortcomings in duties and their consistent implementation.

In particular, the Applicant considers it impermissible that only the social contributions made by the citizens shall be adjusted by annual inflation and not the entire funded allocations, and secondly, by stating that none of the challenged acts defines the expression "aim deriving from funded pension system", the Applicant states that the latter, on one hand, cannot guarantee the similar implementation of the use of funded allocations and, on the other hand, an obvious contradiction may occur concerning the aim of funded system in the framework of pension system reforms in case when it is presented, on one hand, as a system of guaranteeing the future pensioners with decent pension, and, on the other hand, as an institute of "formation of long money" necessary for the country's economy.

In Point 31 of the Application, the Applicant summarizes his arguments pointed out in Points 16-30 of the Application and states that the challenged legal acts preserve a number of formulations, which, to his opinion, have already been acknowledged by the RA Constitutional Court as contradicting the RA Constitution and void. In particular, the Applicant finds that by renaming mandatory funded contribution to target social contribution does not alter its legal content, the logic of the definition of the amount of mandatory contribution is not reviewed, the unconstitutional restriction of the employer's right to property is not abolished, by merits, the mechanisms of liability for inefficient use of assets accumulated in the private funds is not reviewed; the constitutional principles of the rule of law, legal certainty, immunity of property and freedom of contract, proportionality and equability are ignored, clarity and proper review

over the mechanisms forming public trust as well as the principle of the activity of the chain employer-employee-state are also ignored.

3. The Respondent refers to the issue from the perspective of legislative regulations for aligning the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions with the Decision DCC-1142 of the RA Constitutional Court and from the perspective of the arguments of the Applicant from procedural and contextual aspects.

Referring to the issue from the perspective of legislative regulations for aligning the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions with the Decision DCC-1142 of the RA Constitutional Court and from the perspective of the arguments of the Applicant from procedural and contextual aspects, the Respondent, based on the analysis of the given Decision of the Constitutional Court, states that: **firstly**, in the result of new legislative regulations - pursuant to the requirements of the Decision DCC-1142 of the RA Constitutional Court - funded contribution was replaced by target social contribution; **secondly**, taking into account the circumstance that a sustainable period of time is needed for full-fledged implementation of the law, transition provisions were prescribed by the law authorizing a person to abandon the duty to make social contribution till July 1, 2017, **thirdly,** taking into consideration the circumstance that since July 1, 2014 a new system of salaries and increase of the amount of salaries of state employees was planned to install (which would prevent decrease of income), state employees of public service system were included in the first phase of public service system, **fourthly,** for the persons born after January 1, 1974 and achieved the status of hired employee after July1, 2014, who were appointed in the position of the notary or became an entrepreneur and were not employees, notaries or entrepreneurs as of July 1, 2014, the principle of voluntary involvement in the new pension system was prescribed, which functions for three years, **fifthly,** taking into consideration the norms acknowledged unconstitutional by the Decision DCC-1142 of the RA Constitutional Court, the procedure and terms of guarantee fund management (Article 47 of the RA Law on Funded Pensions), quantitative and currency restrictions of pension fund assets (Article 39 of the RA Law on Funded Pensions), requirements to the risk management system (Article 36 of the RA Law on the Funded

Pensions), procedure for adjustment of social contributions due to annual inflation (appendix to the RA Law on Funded Pensions) were prescribed exclusively in accordance with the Law.

Referring to the issue **from the procedural perspective** and stating that the challenged legal acts were adopted by the initiative of the RA Government during the extraordinary session, the Respondent makes reference to Articles 39 and 51 of the RA Law on the Rules of Procedure of the National Assembly, provisions on the parliamentary hearings of the above-mentioned Law, Part 4 of Article 27.1 of the RA Law on Legal acts and states that the mandatory legal requirement to the discussion of draft laws and submitting conclusions at the standing committees of the National Assembly refers the regular sessions, meanwhile the challenged legal acts were adopted in the framework of extraordinary session which excluded the legal possibility for standing committees to submit conclusions, and the Law left the power to put up a draft for public discussion to the discretion of the committees. Meanwhile, parliamentary hearings, as a rule, shall be carried out during the regular sessions. Simultaneously, stating that public discussions maximally increase public trust towards the drafts of legal acts, the Respondent considers that the circumstance of adopting the challenged legal acts during extraordinary sessions is conditioned with the urgency of adoption of the drafts of those legal acts due to the necessity of aligning the legal regulations of Funded Pensions with the Decision of the RA Constitutional Court within the period specified therein.

Referring to the issue **from the contextual perspective** and mentioning Articles 8, 37, 43, 45 and 47 of the RA Constitution, the legal positions set forth in the Decision DCC-753 of the RA Constitutional Court, Article 17 of the Universal Declaration of Human Rights (1948), Article 1 (titled: “Protection of Property”) of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 2 of the RA Law on Funded Pensions, Article 17 of the RA Law on the Budgetary System, the Respondent finds that in the result of amendments, legal regulations of the legislation on funded pensions were aligned with the legal positions of the RA Constitutional Court in regard to social contribution, in particular, **firstly**, social contributions are of public legal nature, namely the latter shall be defined and contributed within the framework of social relations of public-legal nature i.e. pension system, **secondly**, social contributions shall be levied into the state budget via transfer into a special account of the state budget.

Based on the above-mentioned, the Respondent also finds that social contribution fully fits in with the regulatory aspect of Article 45 of the RA Constitution, and the duty to make social contribution cannot be regarded as limitation of the right of a person to own, use and dispose of her/his salary (as the property of the person) at own discretion or regarded as restriction of property rights regardless of the will of the person.

The Respondent states that previously, according to the Law HO-244-N of 22.12.2010 on Funded Pensions the citizen was making mandatory funded contributions in return for which the acquired pension fund shares were the property of the citizen, and in the case of social contributions the amount is transferred into RA state budget. And if the citizen does not have property rights to the pension fund shares accrued to her/his account - which is protected by the Constitution and laws - any other guarantee of protection will be weaker.

According to the Respondent, in order to ensure maximum protection of pension rights of the RA citizens, the mechanism of transmitting property rights to pension funds shares to the RA citizens was implied in the Law also by making appropriate amendments to the RA Civil Code. In particular, social contributions made by citizens are aimed by the state at the acquisition of special securities, i.e. pension fund shares. In this case, **the security is the object** of legal relations, and the right to own, use and dispose of it, as well as the transfer of rights certified by it shall be limited to certain designated purpose. According to the Respondent, the above-mentioned is the evidence that the legal regulation concerning the security stipulated by Article 13 of the Law fully meet the requirements with respect to security stipulated by Chapter 8 of the RA Civil Code.

Stating that the state acquires securities not in its favor but in favor of the citizens – for each citizen - in the amount of social contributions made by the latter and supplements made by the state, and as a result the will of a third party (the citizen) is required for acceptance of pension fund shares, the Respondent notes that the legal regulation stipulated by Part 3 of Article 294 of the RA Civil Code was the basis for the will expression of the citizen, according to which: in cases provided for by law, silence shall be deemed as expression of will to enter into a transaction.

Referring to the argument of the Applicant regarding Article 14.1 of the RA Constitution that social contributions cannot concern people older or younger than a certain age, or those working in a certain area, the Respondent cites the case-law of the European Court of Human Rights concerning the discrimination, and notes that although the law shows a differentiated approach with regard to different categories of persons, such approach is due to objective circumstances. The Respondent also notes that many countries that switched to the funded pension system - the constitutions of which also enshrine the prohibition of discrimination based on age or other status – switched to the funded pension system not immediately, but gradually. In this case the legislator envisaged target social contributions only for persons, who were born on and after January 1, 1974 based on the actual possibility of pension provision by the state. As for the public servants envisaged by the Law of the Republic of Armenia on Public Service, who cannot abandon making social contributions due to the transitional provisions of the Law, the Respondent notes that such legal regulation was adopted in view of the fact that from July 1, 2014 salaries of public servants (paid from the state budget) significantly increased, as well as the actual possibility of making such payments in the near future by the above-mentioned persons was also taken into account. Simultaneously, the Respondent states that in the Decision DCC-1142 the RA Constitutional Court did not declare Article 5 (in the previous wording) of the RA Law on Funded Pensions contradicting Article 14.1 of the RA Constitution, which also envisaged such regulation.

Referring to the arguments of the Applicant regarding the receipt of additional pension income (stipulated in the preamble of the Law) and, in the judgment of the Applicant, the obligation to make social contributions (stipulated in the next articles of the Law), as well as noting that in the field of social security the state performs its positive obligation at the expense of the state budget, and that the taxes, duties and other mandatory payments paid by persons are first of all the sources of formation of the state budget, the Respondent states that the importance of the constitutional obligation to pay taxes, duties, other mandatory payments for the society and the state is conditioned by such circumstance.

Referring to the argument of the Applicant that the RA Law HO-71-N did not refer to the issues of reducing incomes in the amount of the subsistence minimum budget, not taxing minimum wage and social contributions, the Respondent notes that the package of drafts of the

legislation on funded pensions, adopted by the RA National Assembly in 25.06.2014, also included a draft of the RA Law "On Making Supplements to the RA Law on Minimum Monthly Wage", according to which: minimum monthly wage does not include taxes paid from wages, **target social contributions**, increments, additional payments, premiums and other incentive payments.

Referring to the argument of the Applicant that the social package is a source of social contributions, the Respondent notes that the considered legal regulation aims to ensure the maximum utilization of the amounts of the social package, which are often not used or used partly during the year.

Referring to the argument of the Applicant that the law did not ensure the participation of employers in the process of making social contributions, the Respondent notes that the employers in any case participate in that process, considering the circumstance that contributions made from nominal salaries are ultimately the assets directed at remuneration by the employer.

The Respondent also notes that the participation of the employer becomes more objectified in regard to the part of the minimum wage. In this regard, referring to Article 4 of the RA Law on Minimum Monthly Wage, the Respondent states that the employer shall make social contributions for those who receive minimum wage.

Referring to Part 10 of Article 9 of the RA Law on Funded Pensions, the Respondent also notes that persons enjoying social package shall have the right to direct the amount of social package to be paid for social contributions, which also are state - employer payments.

Referring to the arguments of the Applicant concerning the terms "obligation" and "duty", the Respondent states that firstly, by the decision DCC-975 the RA Constitutional Court disclosed the content of the terms "duty" and "obligation" in a certain case and secondly, the obligation of making social contribution is in essence relevant to the term "duty" as a component of public legal relations.

Referring to the arguments of the Applicant concerning time limitation period for realization of the right to abandon making social contributions and only once to enjoy this right, as well as stating that the exercise of rights is often accompanied by the establishment of specific

terms and these terms must be such as to reasonably ensure the ability to exercise the provided rights, the Respondent considers that in this case the legislator established a reasonable time sufficient for the exercise of the right to abandon making social contributions. Simultaneously, the Respondent notes that the issues on abandoning to make social contributions are in detail regulated by the Decision No 826-N of July 31, 2014 of the RA Government.

In regard to the argument of the Applicant, according to which social contributions made by the citizens shall be adjusted by annual inflation and not the entire funded sum, the Respondent states that the circumstance that social contributions shall be adjusted by annual inflation is due to the need for ensuring minimum guarantees for the latter, and this would enable the person to receive at least as much as she/he paid, while maintaining the purchasing power of the paid sum.

Referring to the argument of the Applicant that, according to the RA Law on Funded Pensions, providing the RA Central Bank with the legal authority to adopt normative legal acts on stipulating additional requirements with respect to pension fund managers contradicts the requirements of Article 83.5 of the RA Constitution, the Respondent notes that the Law entitles the RA Central Bank to adopt legal acts providing additional requirements but not duties with respect to pension fund managers, and this is dictated by the need to respond quickly to the situation and thereby protect the interests of the participants of pension fund.

As for the concern of the Applicant relating the security of pension fund shares, the Respondent points out that Article 13 of the RA Law on Funded Pensions stipulates the status of mandatory pension fund shares and determines the procedure for acquiring the citizens' right to property over mandatory pension fund shares. The Respondent also notes that Article 968.9 of the RA Civil Code provides civil liability for the fund manager. In its turn, protection of the right of ownership is also exercised by criminal legal norms.

In summary, the Respondent states that current regulations of the scope of pension legislation are aimed at performance of positive duties of the state in the sphere of social security, within the framework of which pensions will be guaranteed (relevant to the contributions made), a decent standard of living of pensioners will be ensured and possible social problems will be overcome. At the same time the Respondent considers that the

provisions of the RA Law (HO-67-N) on Amending the RA Law on Funded Pensions (adopted by the RA National Assembly on 21.06.2014) together with the Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N, as well as Articles 6 and 10 of the RA Law on Income Tax systemically interrelated with the latter are in conformity with the requirements of the RA Constitution.

4. At the request of the Constitutional Court, the RA Government on 24.12.2014 submitted clarifications on the issues raised in the Application, referring to the issue from two perspectives: from the perspective of solutions put forward in order to align the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions with the Decision DCC-1142 of the RA Constitutional Court and from the perspective of the arguments put forward by the Applicant in contextual and procedural aspects. At the same time, on 31.03.2015, by the letter No 01/13.11/5050-15 the RA Government submitted additional clarifications and attached documents regarding the matter at issue to the RA Constitutional Court expressing dissent in connection with the matters put forward in the Application.

Referring to the issue from the perspective of the solutions taken in order to align the RA Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions with the Decision DCC-1142 of the RA Constitutional Court, the RA Government **firstly** quotes the positions of the final part of the Decision DCC-1142 of the RA Constitutional Court, **secondly**, based on the analysis of the given Decision of the Constitutional Court, the RA Government states that instead of funded contribution, target social contribution was stipulated and according to the RA Law on Funded Pensions and Article 17 of the RA Law on the Budgetary System, the latter is a target contribution levied into the RA state budget, and as tax income it is a source of income of the state budget, **thirdly**, based on the above-mentioned, the RA Government concludes that the legal positions on the protection of the right of ownership expressed in the Decision DCC-1142 were taken into account in the RA Law on Funded Pensions and that social contribution fully fits in with the regulation aspect of Article 45 of the RA Constitution, and **fourthly**, the RA Government states that due to stipulating social contribution transferred to the state budget the issue of constitutionality of Part 2 of Article 76 of the RA Law on Funded Pensions was also resolved.

The RA Government states that according to the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions, the acquired pension fund shares in return for mandatory funded contributions made by the citizen were the property of the citizen, and in the case of current legal regulations the amount of social contributions is transferred into the state budget. Social contributions made by citizens are aimed by the state at the acquisition of special securities, i.e. pension fund shares. In this case **the security is the object** of legal relations, and the idea of security (stipulated by Article 13 of the RA Law on Amending the RA Law on Funded Pensions) fully meets the requirements with respect to security stipulated by Chapter 8 of the RA Civil Code.

Based on the circumstances that the state acquires securities not in its favor but in favor of the citizens, and as a result the will of a third party (the citizen) is required for acceptance of the pension fund shares, the RA Government states that in order to avoid unnecessary administration in connection with the writing of applications for acceptance of pension fund shares, the RA government seized the opportunity stipulated by Part 3 of Article 294 of the RA Civil Code, according to which: silence shall be deemed as expression of will to enter into a transaction.

The RA Government also states that, in order to align the provisions of the RA Law on Funded Pensions declared contradicting the RA Constitution and void – on the basis of not envisaging certain guarantees of protection of rights equal to the requirements of the principles of rule of law and legal certainty, and not specifying the margin of discretion of the executive power in these legal relationships – with the requirements of the Decision DCC-1142 of the RA Constitutional Court, the law established the following:

- Procedures and terms for disposing of guarantee fund (Article 47 of the RA Law on Funded Pensions);
- Quantitative and currency restrictions for investment of pension fund assets (Article 39 of the RA Law on Funded Pensions);
- Requirements to the risk management system of pension funds managers (Article 36 of the RA Law on Funded Pensions);
- Procedure for adjustment of social contributions due to annual inflation (Appendix to the RA Law on Funded Pensions).

Referring to the issue from viewpoint put forward by the Applicant and other arguments of the RA Government not related to the aforementioned solutions from procedural and contextual aspects, the RA Government, within the framework of the abovementioned clarifications No 01/13.7/21785-14 of 24.12.2014 and No 01/13.11/5050-15 of 31.03.2015, stated its positions in relation to the arguments presented by the Applicant. In particular, with respect to the arguments set out in the Application, which relate to compliance of the procedures of adoption of the challenged acts, including the organization of public discussions, the RA Government refers to Article 27.1 of the RA Law on Legal Acts and states that the forms of conducting public discussions shall be mandatory (publication of the draft legal act on the website) and optional (meetings with interested persons, public hearings, discussions and public opinion polls), and all those procedures were followed while adopting the challenged legal acts. In particular, amongst others, starting from April 2, 2014 the matter was the subject of discussion and study of various segments of society and all interested persons, which resulted in adoption of drafts of the challenged legal acts. The list of 17 mass media is also mentioned, which published the complete description of legislative amendments. Referring also to the relevant articles of the RA Law on the Rules of Procedure of the National Assembly and the RA Law on Legal Acts, as well as presenting the whole process of implementation of legislative initiative, the RA Government finds that "... the process of adoption of the challenged legal acts and their coming-to-be "law" was carried out in accordance with the RA legislation".

In regard to the arguments put forward in Point 21 of the Application that in all welfare states people are not exempt from the obligation to make tax payments, social or other contributions, (which does not anyhow contradict the social nature of the country), that social security is not only the right of a person but it is also the target function due to the positive obligation of the state, and that in accordance with Article 37 of the RA Constitution the scope and forms of social security shall be defined by law, the RA Government states that in this case the choice of the scope and forms of social security is left to the legislator's discretion, and that on the basis of the requirements of the fundamental principles of homogeneity and proportionality in this field the margin of appreciation are, on the one hand, due to the socio-economic capabilities of the state and on the other hand, due to the constitutional requirements of the social state.

In regard to the arguments concerning the uncertainty of some of the notions presented in the Application, the RA Government clarifies that the laws may contain certain provisions which are perceived ambiguously. For these cases, Article 87 of the RA Law on Legal Acts is provided.

In regard to the arguments with respect to the terms "obligation" and "duty" put forward by the Applicant, the RA Government states that the terms mentioned in the Decision DCC-975 of the Constitutional Court of Armenia of 14.06.2011 were assessed solely in the plane of civil legal relations, and the RA Government states that the legal positions expressed in the above-mentioned Decision of the RA Constitutional Court are not applicable in this case.

Regarding the position put forward in the Application, according to which the exemption from the obligation to make social contributions for certain age or professional groups leads to violation of the provisions of Article 14.1 of the Constitution due to age and labor spheres, the RA Government finds that in this case, the differentiated approach between employees in public and private sector has objective and reasonable grounds due to the transition from distributive pension system to funded pension system in two phases: first, for public sector employees and then for private sector employees, and from July 1, 2017 the system will work for everyone. In addition, the RA Government finds that in this case there is no circumstance of being in the same situation, since, in contrast to private sector employees, from July 1, 2014 there has been a rise in wages of public sector employees, and in the result the obligation to make social contributions will not result in significant changes in the standard of living of the latter, and 2017 was determined as deadline for the private sector to adapt to the obligation to make social contributions. The RA Government also mentions that by the Decision DCC-1142 the provisions of the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions stipulating the framework of persons making mandatory funded contributions were not declared contradicting the RA Constitution and void, and Part 1 of Article 5, Parts 1 and 11 of Article 7 of the given Law were declared contradicting the Constitution and void in regard to the part that do not ensure the right of everyone to freely own, use and dispose of her/his wage, and entail restriction of the people's right to property regardless of their free will.

In regard to the position presented in the same Point of the Application concerning the danger of replacing social security funds with tax, the RA Government, **sharing these concerns**,

states that on the part of the RA Government it was offered to distinguish the amount paid for the formation of funded pensions from taxes due to their accented intended purpose.

In regard to the position presented in the same Point of the Application on the constitutionality of Articles 6 and 10 of the RA Law on Income Tax which concerns the fact that the Law HO-71-N on Amending the Law of the Republic of Armenia on Income Tax did not refer to the issue of reduction of income in the amount of subsistence minimum budget, not taxing minimum wage and social contribution as prescribed by Article 6 of the RA Law on Income Tax, the RA Government recalls the amendment to Article 4 of the RA Law on Minimum Monthly Wage, as well as Article 6 of the RA Law on Income Tax, and states that the challenged legal acts touched upon the given issue. In particular, the RA Government states that according to Article 6 of the RA Law on Income Tax social contributions are not taxed. Afterwards, the RA Government notes that social contributions are taxed (they are not reduced), though mandatory funded pension is not taxed, and vice versa, voluntary pension contributions are not taxed (they are reduced), though voluntary funded pension is taxed, based on the logic that at certain stage, any income should be taxed only once.

In regard to the arguments of the Applicant concerning the period allowed for the right to abandon making social contributions and granting this right to persons who are in labor relations as of July 1, 2014, the RA Government notes that about six months is more than enough to determine whether or not to refuse making social contributions for the next 3 years, and this also applies to persons who only appeared in the labor market, given that since July 1, 2017 all working citizens born after 1974 will be included in the funded pension system.

In regard to the argument of the Applicant concerning the procedure for presenting statements on abandoning the duty to make social contributions to the tax authorities and the procedure for making these statements, the RA Government states that this issue is regulated by the transitional provisions of the Law HO-67-N, and the Decision 826-N of the RA Government of 31.07.2014.

As for the question of the Applicant, which relates to the issue of not meeting the requirements of legal certainty of the right to abandon making social contributions with regard to the persons who combine jobs, the RA Government, based on the interrelated analysis of Articles

5, 6 and 7 of the RA Law on Funded Pensions, states that persons combining public and private jobs are obliged to make social contributions from all income.

In regard to the arguments of the Applicant concerning the circumstances of the entry into force on July 1, 2015 of the provisions of the receipt of funds in the pension account, as well as the procedure of the refund of pension contributions to the citizens, which were levied according to the previous law, the RA Government states that the establishment of a reasonable time for filing applications for redemption of shares received by funded contributions made earlier, and the receipt of the accumulated amount is provided in order to prevent cases of sale at a low price of the assets targeted to meet the constantly received applications, and in the case of deposits - in order to avoid cases of loss of accrued interest, since the amount collected in pension funds are invested in assets, including securities and term deposits. Moreover, the participants are also paid the amount of income received through funded contributions made by the participants until maturity date.

Referring to the procedure of the refund of pension contributions to the citizens, which were levied according to the previous law, the RA Government states that by the Decision DCC-1142 the provisions concerning mandatory funded contribution were declared contradicting the RA Constitution and void, and as a result, due to the new legal regulation it is necessary to restore the previous provision, that was before the violation, namely the refund of pension contributions to the citizens and refund back the supplements to the state.

In regard to the arguments put forward by the Applicant which concern the formulations in Part 5 of Article 37 and Part 3 of Article 39 of the Law HO-67-H, as well as endowing the RA Central Bank with the power to determine the maximum amount of the expenses associated with pension fund management and a number of other powers, the RA Government states that in Part 3 of Article 39 of the Law HO-67-N it comes to foreign banks which meet the relevant ratings provided by well-known rating agencies, and the Law stipulates the minimum investment grade rating, and investment in banks with lower rating below is prohibited.

Referring to the arguments of the Applicant that concern the endowing the RA Central Bank with the power to determine the maximum amount of the expenses associated with pension fund management, the RA Government states that, firstly, one of the above-mentioned expenses,

which deals with fund manager award, is prescribed by Part 2 of Article 42 of the Law HO-67-N, and endowing the RA Central Bank with the power to determine the maximum amount of other expenses is due to the need to display a flexible and professional approach to determining such expenses, and secondly, determining large expenses mentioned by the Law will lead to unnecessary high expenses, and determining smaller expenses will undermine the financial stability of the system.

In addition, as for endowing the RA Central Bank with other powers, the RA Government considers that the duties of pension fund managers are stipulated by law, and the Central Bank may adopt legal acts prescribing additional requirements arising from the law for pension fund managers. In addition, it is extremely essential for the authority regulating and supervising the financial sector to have the power to take departmental acts within the framework of the law and resulting from the law.

Referring to the arguments put forward in Points 29 and 30 of the Application, which refer to the fact that only the social contributions made by the citizens are adjusted due to annual inflation and not the entire funded sum, and that none of the challenged acts defines the expression “aim deriving from the funded pension system”, the RA Government states that it does not come to indexation of social contributions or social allocations, and the logic of the legal regulation is that any citizen received at least as much as she/he paid while maintaining the purchasing power of the paid sum.

Referring to the mechanisms of protection and liability, the RA Government makes reference to Article 13 of the Law HO-67-N on the right to property and its protection, RA Constitution, RA Criminal Code and RA Civil Code, and states that reliable and experienced organizations such as “Amundi-ACBA Asset Management” CJSC and “C-QUADRAT Ampega” LLC are involved in pension fund management, and the Law prescribes the framework and restrictions for investments.

Referring to the argument of the Applicant that none of the challenged acts defines the expression “aim deriving from the funded pension system”, the RA Government states that institute of “formation of long money” is not the aim of funded pension system and the law, but

it is only the result of inevitable process, which would result in additional benefit for the economy of Armenia.

In summary, the RA Government concludes that the provisions of the Law HO-67-N and the laws and other legal acts systemically interrelated with the latter are fully in conformity with the RA Constitution.

5. Within the framework of this Case, the RA Constitutional Court first of all considers it necessary to argue that:

firstly, it follows from the study of the issues raised by the Applicant that challenging the Law HO-67-N of the Republic of Armenia on Amending the Law of the Republic of Armenia on Funded Pensions, the Applicant raises the issue of the constitutionality of certain provisions of Article 1 of the Law in the aspect of content;

secondly, due to the fact of entry into force of the Law HO-67-N of the Republic of Armenia on Amending the Law of the Republic of Armenia on Funded Pensions, these provisions were incorporated in the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions, therefore, within the framework of consideration of this Case the following should be disclosed:

- Compliance of the constitutionally stipulated procedure for adoption and enforcement of the Law HO-67-N of the Republic of Armenia on Amending the Law of the Republic of Armenia on Funded Pensions based on the requirements of Point 2 of Part 7 of Article 68 of the Law of the Republic of Armenia on the Constitutional Court;
- The constitutional legal content of the challenged provisions of the Law HO-244-N of the Republic of Armenia on Funded Pensions;

thirdly, considering the arguments of the Applicant and the Respondent, as well as the explanation of the RA Government and the circumstance that part of the challenged legal acts i.e. the Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N were adopted to ensure the implementation of the RA Law HO-67-N on

Amending the RA Law on Funded Pensions (in the incorporated version - the Law HO-244-N of the Republic of Armenia on Funded Pensions), and for the same purpose by the RA Law HO-71-N the challenged Article 6 of the RA Law on Income tax was amended, given that the constitutionality of the RA Laws HO-68-N, HO-69-N, HO-70-N, HO-71-N, HO-72-N, HO-73-N, HO-74-N, HO-75-N, HO-76-N and HO-77-N, as well as the constitutionality of the challenged Articles 6 and 10 of the RA Law on Income Tax is actually conditioned by the constitutionality of the relevant legal provisions of the RA Law HO-244-N, hence, within the framework of this Case, the constitutionality of the above-mentioned laws, as well as the constitutionality of Articles 6 and 10 of the RA Law on Income Tax must be assessed in the context of the RA Law HO-244-N, revealing both the constitutional legal content of the challenged legal acts and the compliance of procedures for their adoption.

6. In the Decision DCC-630 of 18.04.2006 the RA Constitutional Court defined that "… no legal norm may be regarded as "law" unless it complies with the principle of legal certainty (res judicata), i.e. it is not formulated accurately enough to allow citizens to reconcile own behavior with the latter".

In the Decision DCC-753 of 13.05.2008 the Constitutional Court also defined that "the circumstance of presence or absence of contradictions in various regulations is also an essential factor in assessing the predictability of law."

Within the framework of consideration of this Case, the Applicant's references regarding the legal certainty of certain concepts prescribed in the challenged provisions should be adverted to.

So, the Preamble of the RA Law on Funded Pensions stated that "The purpose of this Law shall be the **creation of possibility** for persons who have made social contributions during their employment in the Republic of Armenia to receive additional pension income at retirement age in addition to state pension, ensuring a direct link between the amount of social contributions and the pension to be received, as well as **providing the opportunity** for persons making social contributions to affect the amount of funded pensions by selecting, in accordance with this Law, the person to manage accumulated funds and the management policy of such funds". According

to the Applicant, such regulation is not consonant with the content of the constitutional provisions on the social state and the positive obligations of the state following from the latter, as well as such regulation is not in conformity with the principle of legitimate and the free exercise of human rights and responsibilities stipulated by Part 2 of Article 42 of the Constitution, according to which: everyone shall be free to act in a way that is not prohibited by law and does not infringe the rights and freedoms of others. The Applicant finds that in the context of further legal regulations, such possibility turns into coercion as applied to the worker, and in some cases to the employer.

In this aspect it is important to note that every law is aimed at regulating certain social relations, based on the purpose that will be achieved as a result of the implementation of the law. That is, stipulating the purpose of the certain law exactly by the law defines the desired result and the means of achieving it, to which the legislator aspires while regulating certain social relations. Consequently, "creation of possibility" and "providing the opportunity" must be considered within the framework of this approach, given the fact that the implementation of legal regulations stipulated by certain legal act **is the necessary means by which these circumstances as objectives may become a reality**.

The term "creation of possibility" used in the Preamble of the challenged Law may not be interpreted as the right of the participant of funded pension system to make social contributions also based on the following:

- In the Preamble of the Law HO-244-H, it also comes to creating a favorable social situation for providing the participant the opportunity to accumulate means and affect the amount of funded pensions as a result of proper performance of **duty to make social contribution**;

- Systematic analysis of the Law shows that making social contribution is the duty of the individuals prescribed by the Law. In particular, in Articles 5 and 71 of the Law the term "duty to make social contribution" is used.

In addition, the realization of any right must be considered from the viewpoint of the democratic principle of the unity of rights and duties, according to which the rights of persons and relevant duties guaranteed by the Constitution and laws assume that the state simultaneously undertakes a number of duties to ensure their implementation also in the sphere of ensuring legal, social and other conditions. The rights and duties of persons and states are interconnected and unified due to the content and features of certain public relations. Such unity is not only a

precondition but also an essential guarantee of effective legal regulation. In this case, the right to social security stipulated by Article 37 of the Constitution, in addition to the positive duty of the state for ensuring that right, necessarily assumes also a relevant duty for the addressee of the right, namely the duty to make target social contribution and, as a result, a sum is generated to be provided to the individual of the right to social security as an additional pension amount.

At the same time, the duty to make target social contribution is explicitly compatible in the context of the provision of Article 37 of the Constitution, according to which: the scope and forms of social security shall be stipulated by law. In this case, choice of the scope and forms of social security is left to the legislator's discretion, and based on the requirements of the fundamental principles of proportionality and adequacy in this domain, the margin of discretion is conditioned, on the one hand, by socio-economic capabilities of the state and on the other hand, by the constitutional requirements of the welfare state.

The notions "social contribution", "funded contribution" and "funded allocation" are of key importance for the new legal regulations. According to Point 36 of Article 2 of the challenged Law, social contribution is characterized as "... target contribution levied into the state budget of the Republic of Armenia in the manner and in the amounts stipulated by this Law". The RA Constitutional Court referred to this concept in Point 9 of the Decision DCC-1142, in particular, noting that "... contribution made for social security is initially of target nature, and stipulating it by the law makes the social perspective more predictable." The Constitutional Court also stated that: "The state's obligation is to make the given relations consistent and guaranteed via legislative regulation."

The same Decision also outlines the requirement for precise implementation of the constitutional and legal content of Article 45 of the Constitution of the Republic of Armenia, according to which, in order to solve national tasks, as well as create material guarantees for the social security of people, the mentioned Article of the Constitution states: "Everyone shall be obliged to pay taxes, duties, and make other mandatory payments in the amount and as prescribed by law." The Constitutional Court stressed the consistency of its legal positions on this issue and stated: "Within the framework of revealing the legal content of Article 45 of the Constitution of the Republic of Armenia, the Constitutional Court of the Republic of Armenia expressed legal position in the Decision DCC-753 of May 13, 2008, and the Applicant also touched upon the latter. In particular, the Constitutional Court stated that '… in the given Article

the mentioned taxes and duties are also mandatory contributions, and, therefore, other mandatory contributions mentioned in the given Article differ from taxes and duties, and must have common features with the latter."

Point 9 of the Decision DCC-1142 also refers to the legal position expressed in the Decision DCC-753, which states that: "Based on the results of analysis of tax legislation, the Constitutional Court stated that 'mandatory contributions mentioned in Article 45 of the Constitution:

a/ have public legal nature, namely, shall be stipulated and contributed within the framework of social relations, which are of public nature,

b/ are intended to be paid into state or community budget."

Based on the above-mentioned, the Constitutional Court concluded that: "It follows from the given common logic that if mandatory funded contributions acted as social contributions, were in reasonable correlation with other fees pursuing the aim of non-social security, **were transferred to the special account of state budget and were passed to management with precise guarantees stipulated by the law and by the responsibility of the state:**

a/ within the scopes of budget control, the system would also get under direct control of the National Assembly of the Republic of Armenia, and such circumstance would increase reliability of ensuring reasonable management and reimbursement of resources;

b/ the obligation of the Government of the Republic of Armenia in respect of public legal responsibility would be substantive;

c/ public confidence towards reliability of the system would essentially increase;

d/ such system would provide with the opportunity to stipulate by the law additional mechanisms of encouragement also in regard to the participants in voluntary funded component.

It should also be noted that according to the Law HO-244-N of December 22, 2010 of the Republic of Armenia on Funded Pensions, the acquired pension fund shares in return for mandatory funded contributions made by the citizen were the property of the citizen, and in the case of legal regulations at issue the amount of social contributions is transferred into the state budget, which is also stipulated by Article 17 of the RA Law on the Budgetary System, according to which target social contributions, as tax income, are a source of income of the state budget. Social contributions made by citizens are aimed by the state at the acquisition of special securities, i.e. pension fund shares. In this case **the security is the object** of legal relations, and

the idea of security (stipulated by Article 13 of the RA Law on Amending the RA Law on Funded Pensions) fully meets the requirements with respect to security stipulated by Chapter 8 of the RA Civil Code.

Based on the above-mentioned, the Constitutional Court states that social contribution, as a contribution credited to the state budget, fully fits in with the regulatory aspect of Article 45 of the RA Constitution. Point 36 of Part 1 of Article 2 of the RA Law HO-244-N and the RA Law HO-73-N are also the evidence of the above-mentioned. Moreover, the Applicant also mentions the latter. Another question is the nature of legislative procedures for the sound management of resources, the extent to which possible disparities in the legal regulations of different laws have been overcome so that the legal positions of the Constitutional Court on this issue are consistently implemented.

In this regard, the RA Constitutional Court finds that **the task of the legislator is to ensure a systematic approach and make relevant amendments (regarding social contribution) to the laws on budget and treasury systems.**

7. Taking into account the circumstance that according to Article 13 of the RA Law HO-244-N, the state acquires pension fund shares in favor of the citizens as their property, as well as establishes the peculiarities of realization of the right to those shares, therefore it becomes necessary to refer to the constitutional legal content of legal regulations stipulated by Parts 5 and 13 of Article 13 of the said Law. Thus, according to Part 5 of Article 13 of the RA Law HO-244-N, "mandatory pension fund shares may be owned, used and disposed of solely in accordance with the procedure and purposes stipulated by this Law. The rights certified by mandatory pension fund shares shall not be subject to transfer, except for the cases provided for by this Law." According to Part 13 of Article 13 of the RA Law HO-244-N, "Pension fund share cannot be pledged, invested in the authorized capital of a legal entity, donated or disposed of by the participant in any other way, except for the cases provided for by this Law, as well as pension fund share cannot be used in any way other than provided for by this Law".

It follows from the above-mentioned provisions of Parts 5 and 13 of Article 13 of the RA Law HO-244-N these are norms that restrict the citizens' right to property over mandatory

pension fund shares. In this case, it is important to assess whether these norms are equivalent to the constitutional-legal content of Article 31 of the RA Constitution.

According to the provision stipulated by the second sentence of Part 1 of Article 31 of the RA Constitution, the exercise of the right to property shall not cause damage to the environment, infringe the rights and legitimate interests of other persons, the public and the State.

The comparative analysis of the provision stipulated by the second sentence of Part 1 of Article 31 of the RA Constitution and the provisions of Parts 5 and 13 of Article 13 of the RA Law HO-244-N indicates that **the content of the latter is fully compatible with the content of the provision stipulated by the second sentence of Part 1 of Article 31 of the RA Constitution**. That is, the restrictions on the right to property over pension fund shares stipulated by Parts 5 and 13 of Article 13 of the RA Law HO-244-N are due to the legitimate interest of the State. In this case, directing target social contributions to serve their purpose is the legitimate interest of the State, namely, the fulfillment of the positive duty of the State in the field of social security consonant with the idea of a social state, providing higher level of standard of living in the form of an additional pension for the persons who have reached retirement age. That is, such restriction of the right pursues a legitimate social objective, aimed at realizing the tasks enshrined in the foundations of the constitutional order.

This also applies to Part 1 of Article 1 of the RA Law HO-75-N on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System, challenged by the Applicant, according to which: funded contributions made in favor of (for) the participant can be used exclusively for the purposes following from the pension system.

The applicant notes that "... the term **'participant'** used in the Law also does not meet the principle of legal certainty. Thus, according to the wording: **the participant is the person who made social contribution** in accordance with the procedure provided for by this Law, for (in favor of) whom funded allocation has been made from the state budget of the Republic of Armenia or for (in favor of) whom voluntary pension contributions have been made. That is, in all cases, making social contribution is the main characteristic of the concept "participant" and the legal function of this entity, whereas making social contribution is not a necessary condition for the person participating in voluntary funded system."

In this regard, the Constitutional Court considers it necessary to state that, according to Point 28 of Part 1 of Article 2 of the Law, the participant is not only the person who made social contribution in accordance with the procedure provided for by the Law, for (in favor of) whom funded allocation has been made from the state budget of the Republic of Armenia, **but also/or the person for (in favor of) whom voluntary pension contributions are made**. According to Point 36 of Part 1 of Article 2 of the Law, social contribution is a target contribution levied into the state budget of the Republic of Armenia in the manner and in the amounts stipulated by the Law, and voluntary pension contribution is characterized as a contribution **made** by the **participant** and (or) other person **for (in favor of) the participant** with the purpose to obtain voluntary pension (Point 13 of Part 1 of Article 2). Simultaneously, based on Articles 1, 61, 63, 64 and 65 and many other articles of the Law at issue, it can also be stated that the term "participant" also refers specifically to the persons making voluntary pension contribution. In both cases the common is the person - the legal entity, who in one case not only made social contribution in accordance with the procedure provided for by the Law, but also for (in favor of) whom funded allocation has been made from the state budget of the Republic of Armenia, and in other case **it is the person for (in favor of) whom voluntary pension contributions are made**.

The applicant also notes that "... in Part 13 of Article 81 of the Law the principle of legal certainty is also violated." The Constitutional Court states that this provision is formulated accurately enough: the will of the legislator is expressed precisely and does not deprive the citizen of the possibility to reconcile own behavior with the challenged norm, therefore, this regulation meets the requirements of the principle of legal certainty. Moreover, for the compliance with said requirement of the Law, on 21.10.2014 the RA Minister of Finance issued the order No. 733-N on establishing the procedure for recalculating commitments for unpaid or partially paid funded contributions resulting from legal relations that arose after January 1, 2014, according to which the recalculation and the transfer of certain amounts was made.

The Applicant also considers that "... it is impossible to interpret in any way the reference to Article 43 of the Law prescribed in Part 5 of Article 37 of the Law". Part 5 of Article 37 of the Law stipulates the following: "within the meaning of Parts 1 and 4 of this Article, equity securities do not include the shares of investment funds (stocks), according to the rules (charter) of which the fund assets can be invested only in bank deposits **provided for by Article 43 of this Law**, debt securities or derivatives that are acquired for the purpose of their hedging".

The study of the regulations set forth in Article 43 of the Law indicates that the latter legally regulated not the legal relations on bank deposits, debt securities or derivatives that are acquired for the purpose of their hedging, in the framework of which fund assets can be invested, and those regulations are aimed at regulating the issues related to the contributions made (levied) for the services of the Registrar of participants. Namely, **it is objectively impossible to apply** Part 5 of Article 37 of the Law, since the legal provision underlying its implementation (Article 43) is aimed at regulating completely different relations.

In a number of decisions, such as the Decisions DCC-864, DCC-914 and DCC-933 the RA Constitutional Court expressed the legal position regarding the competence to consider the constitutionality of legal gaps, according to which the normative legal solution of gaps in legal regulation is the competence of the legislator. **The Constitutional Court considers that the situation created is a gap in the legal regulation, which must be overcome within the competence of the RA National Assembly.**

8. In regard to possible inaccuracy of Part 3 of Article 39 of the Law, the Applicant finds that

"... it is not known whether all deposits are concerned or only those invested in foreign banks". Article 39 of the Law legally regulated the issues on restrictions on the investment of mandatory pension funds assets. The third sentence of Part 3 of the said Article states: "Furthermore, mandatory pension fund assets may be invested as deposits only in a **foreign bank**, which at least has Standard & Poor's 'BBB', Moody's Investors Service 'Baa3' or Fitch Ratings 'BBB' ratings." By the said provision the legislator makes it possible to invest mandatory pension fund assets as deposits also in a foreign bank, however, the legislator stipulates a certain rating as a guarantee of reliability. That is, the term "only" used in the given sentence is an indicator that mandatory pension fund assets may be invested as deposits only in a foreign bank that has an appropriate rating. Otherwise, the legal regulation stipulated by the said legal provision concerns only deposits invested in foreign banks and the term "only" aims to accentuate the circumstance that foreign banks must have an appropriate rating, an internationally recognized criterion for assessing reliability, and only under these circumstances the latter can be attracted in the process of investing mandatory pension fund assets as deposits.

At the same time, based on the provision of Part 3 of Article 38 of the Law, it is

necessary to state that Part 3 of Article 39 of the Law does not rule out the possibility of investment of mandatory pension fund assets also in the territory of the Republic of Armenia. Thus, providing such precise legal criteria, the legislator sought to guarantee the target use and protection of pension fund assets, which directly follows from the content of constitutional legal duty imposed on the social state.

From the standpoint of the principle of legal certainty and/or proportionality, the provision of Part 7 of Article 46 of the Law is also challenged, according to which the amount of regular guarantee fees is calculated at the rate of 0.02 percent of the net asset value of the mandatory pension fund managed by the pension fund manager, on a daily basis. The Constitutional Court states that the said provision is formulated precisely and does not deprive the citizen of the possibility to reconcile own behavior with the challenged norm.

The following circumstance is also challenged by the Applicant, according to which: "based on Part 1 of Article 81 of the Law, 'the hired employee (other than a hired employee of an employer released from the duty of a fiscal agent) shall submit the application through the employer. The person specified in this Part shall discontinue making social contribution ... on the 1st day of the month following the month of submission of the relevant application.' In fact, according to the Law, August is the 1st day of the month following the month of submission of the application, and the issue on July remains open and not settled".

The RA Law HO-67-N on Amending the RA Law on Funded Pensions entered into force on 01.07.2014. Part 1 of Article 81 of the current Law of the Republic of Armenia on Funded Pensions establishes that the person's right to abandon the duty to make social contributions shall be effective for the period from the date of entry into force of this Law until July 1, 2017. At the same time, Point 1 of Part 1 of the same Article stipulates that "The person specified in this Part shall discontinue making social contribution ... on the 1st day of the month following the month of submission of the relevant application". Thus, on the one hand, the legislator provides the person with the opportunity to enjoy the right to abandon the duty to make social contribution and, on this basis, to be released from the duty to make social contribution from the moment the Law enters into force, namely from July 1, 2014, and on the other hand, the legislator establishes that the person shall discontinue making social contribution on the 1st day of the month following the month of submission of the relevant application, which may be 1 August at best.

As a result, the period of release from the duty to make social contribution is

reduced, excluding July. Consequently, when making appropriate changes, it was necessary to establish regulations that would enable individuals to fully exercise the right to abandon the duty to make social contribution and, on this basis, to be released from the duty to make social contribution from the moment the Law enters into force, namely from July 1, 2014. The Constitutional Court finds that **the current situation should be corrected by the legislator in order to ensure the opportunity to be released from the duty to make social contribution also for July for the persons who submitted the relevant application during July 2014.**

It is also noted in the Application that: "According to Part 3 of Article 43 of the Law, the account operator shall be entitled to establish and charge fees for applications of participants that may not exceed the total amount of expenses incurred for this purpose and reasonable profitability". It is noteworthy that the Law does not establish the cost structure or any criterion, as well as the concept "reasonable profitability" cannot be perceived and measured unambiguously. Firstly, not all concepts used in the Law should be given a definition worded in accordance with legal morphological rules. Secondly, the legal content of the terms "reasonable yield" and "reasonable profitability" respectively stipulated in Parts 1 and 3 of Article 43 of the Law should be considered in the context that in this case the reasonable nature of yield and profitability must be assessed in each case - in accordance with circumstances that characterize a certain situation - not only according to formal legal, but also financial and economic and other criteria, without violating the principles, means and forms of legal regulation that are provided for by the challenged Law. The Constitutional Court finds that the provision of the term "reasonable" in the Law does not itself cause problems in terms of the principle of legal certainty, but it should be noted that in order to verify the reasonable nature of profit and income, it is necessary to take into account the objective situation in which the latter became the subject of assessment and calculation. Nevertheless, in a certain situation, in case of a disagreement over the content of the disputed terms, it is also necessary to be guided in accordance with the legal positions of the European Court of Human Rights within the content of the term "reasonable" in the concept "reasonable time" as far as the latter are inherently compatible and applicable to specific factual circumstances.

In addition, according to Part 2 of Article 43 of the Law, "**The maximum fee** for the services of the Registrar of participants shall be established by a contract between the Government of the Republic of Armenia and the Registrar of participants". This legal regulation

is the legal guarantee restraining the disproportionate, unreasonable and discretionary perception of the term "reasonable yield" in a particular situation; therefore, it is also a legal guideline for the subjects of certain public relations regulated by the law in the aspect of planning and implementing their possible actions.

9. The following circumstance is also challenged by the Applicant, according to which: the RA Law HO-75-N on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System contains declarative provisions that do not entail legal consequences. Thus, Part 1 of Article 1 of the RA Law HO-75-N on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System stipulates: "Funded contributions made in favor of (for) the participant can be used exclusively for the purposes following from the pension system". In Point 30 of the Application, the Applicant notes: "... none of the challenged acts defines the expression 'aim deriving from funded pension system".

The Constitutional Court considers it necessary to state that challenging the RA Law HO-75-N on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System, the Applicant in essence raises the issue of constitutionality of the expression "aim deriving from funded pension system" prescribed in Part 1 of Article 1 of the Law, but not the issue of constitutionality of the entire Law. **Firstly**, the Applicant mentions the requirement of the RA Law on Legal Acts, according to which the articles that do not entail legal consequences, may not be included in the law. In fact, the issue of correlation of the challenged Law and the Law on Legal Acts is raised, which in its nature does not entail a constitutional dispute. **Secondly**, there is no legal uncertainty in this legal regulation, since the goals of the pension system can be revealed through the analysis of legal regulations of the sphere to which they relate, and also from the very logic of the pension system, which, in essence, pursues the constitutionally justified goal of ensuring, on the one hand, the well-being of the persons who have reached retirement age, the realization of the right to social security of persons who have reached retirement age on the basis of the principle of solidarity, and on the other hand, guaranteeing the right of everyone to social security based on the funded principle and in accordance with the work done by the latter and the degree of investment in the system.

Thirdly, Article 1 of the RA Law on State Pensions refers to the RA pension system, establishing also its constituent elements. By the Decision DCC-967 the RA Constitutional Court stated: "... the content of certain notions of the law cannot be self-sufficient. They need to be considered in the systemic integrity of common legal regulation". The expression "aim deriving from funded pension system" also cannot be self-sufficient, as it must be perceived as part of the whole, considering it only within the framework of common logic and as a single and harmonious whole.

The preamble of RA Law on Additional Guarantees of Protection of Rights and Legal Interests of Participants of the Funded Component of the Pension System stipulated that: "The purpose of this Law shall be - in order to ensure the provisions of the Law of the Republic of Armenia on Funded Pensions - to secure the inviolability of ownership of the shares of mandatory pension fund, acquired at the expense of funded contributions made for (in favor of) the persons making social contributions, as well as establishing additional guarantees for protection of rights and legal interests of participants of the funded component, and defining continuity of their protection in cases of declaring a state of emergency provided for by the law".

The Applicant notes that the phrase "state of emergency provided for by the law" is one of the core expressions of this definition, which is not defined or described anyhow, as well as there is no regulation of the occurrence of this situation and its legal consequence. At the same time, there is no indication of any norm of the Constitution, to which the provision in dispute allegedly contradicts. In addition, the non-stipulation in the preamble of the Law of one or another expression therein may not entail the issue of contradiction of this Law to the RA Constitution, since the preamble itself primarily has a mostly axiological function. At the same time, the RA Law on the Legal Regime of the State of Emergency is in force in the Republic of Armenia, in which the legal term "state of emergency" is disclosed, i.e. the legal and contextual interpretation of this issue should be necessarily carried out by the competent entity based on the principle of unity of the RA legal system.

The following circumstance is also challenged by the Applicant as a gap in legal regulation, according to which: "...the legislator did not establish the procedure for submitting applications on abandoning the duty to make social contributions to the tax authorities and the procedure for adoption of the applications by those authorities".

According to the first sentence of Part 1 of Article 81 of the Law, "The person shall have the right to abandon the duty to make social contributions for the period from the date of entry into force of this Law until July 1, 2017 upon submitting the relevant application to the tax authority before December 25, 2014". By this provision, the legislator authorized the person to abandon the duty to make social contribution for a certain period of time through establishing the terms and procedure for exercising this right, namely the availability of the relevant application and submission to the tax authority. In order to ensure the right of the person stipulated by the mentioned legal norm, on July 31, 2014 the RA Government adopted the Decision No 826-N on making Amendments and Supplements to the Decision No 1676-N of December 20, 2012 of the Government of the Republic of Armenia, which established the procedure for "Submitting applications on abandoning the duty to make social contributions and renewal of making social contributions to the tax authority". Taking into account the mentioned circumstances, the Constitutional Court states that Part 1 of Article 81 of the Law stipulated the terms and procedure for the implementation of that right, and the said Decision of the RA Government stipulated the procedure for submitting to the tax authority of the applications as a necessary and mandatory component of the realization of that right, i.e. the procedure for the implementation of the legal regulation provided for by the law.

10. The issue of aligning the powers conferred on the RA Government with the requirements of Article 83.5 of the RA Constitution within the framework of the legal regulation of the Law is also challenged. In Point 12 of the Decision DCC-1142, the RA Constitutional Court noted that: "... according to Point 6 of Part 1 of Article 2 and Article 44 of the Law in dispute, within the scopes of stipulating quantitative and currency restrictions, as well as in regard to the part of disposing of guarantee fund and stipulating the procedure and terms for management, the Government of the Republic of Armenia was vested with the mentioned power. In this case, the fact that the Government shall stipulate the terms for **disposing** of the mentioned fund is also worthy of attention. Disposing also assumes the right to determine the legal status or the faith of the property. The Law stipulates that the resources of the fund shall be the property of citizens, nevertheless, terms for disposing property shall not be stipulated by the Law, and the latter shall be stipulated by the Government. Such regulation does not follow from the

requirements of Point 1 of Article 83.5 and Point 3 of Article 89 of the Constitution of the Republic of Armenia.

As a result, the provision "... procedures and terms … for disposing of which shall be stipulated by the Government of the Republic of Armenia" prescribed in Point 6 of Part 1 of Article 2 of the RA Law on Funded Pensions, as well as Part 1 of Article 44 of this Law were declared by the Constitutional Court of the Republic of Armenia contradicting the requirements of Point 1 of Article 83.5 of the Constitution of the Republic of Armenia and void.

The Constitutional Court of the Republic of Armenia states that within the framework of current legal regulation, Article 39 of the Law of the Republic of Armenia on Funded Pensions regulates the legal regulations related to the restrictions for investment of mandatory pension fund assets, no longer granting the RA Government the power to regulate quantitative and currency restrictions for investment of mandatory pension fund assets. Parts 9-11 of Article 47 of the Law of the Republic of Armenia on Funded Pensions stipulate legal regulations related to disposing of guarantee fund and stipulating the procedure and terms for management, as a result of which the regulation of disposing of guarantee fund and stipulating the procedure and terms for management is not the competence of the RA Government and it shall be subject to regulation by law.

Taking into account the above-mentioned, the Constitutional Court states that the legal positions expressed in the Decision DCC-1142 were taken into account in this context, and due to the new legal regulations the aforementioned issues were settled by the law.

11. Pursuant to Decision DCC-1142 of the RA Constitutional Court, to recognize the requirements of the provision Article 41, Part 4 of the RA Law on Pensions "The requirements presented to the system of risk management are defined by the normative legal acts of the Central Bank" as contradicting to the requirements of Point 1, Article 83.5 of the Constitution of the Republic of Armenia and void. Referring to the constitutionality of this provision, the Constitutional Court reiterates:

- Article 41 of the Law of the Republic of Armenia on Funded Pension prescribes, "The requirements presented to the system of risk management are prescribed by the normative legal act of the Central Bank",

- the regulation of the law of the main framework of the requirements submitted to the main principles of the management of the risks of the pension foundations, as well as restrictions of the investment of the actives of the pension funds are highlighted.

In the terms of the current legal regulations, the decision N 324-N of the Board of the Central Bank of the Republic of the Armenia dated as of December 13, 2013 prescribes "Minimum requirements of the system of internal control and management of risks of the manager of the investment fund" /Charter 10/16/ has found its prescription in the Law of the Republic of Armenia "On Pension Funds", in particular in Article 36. In this regard, **the positions expressed in the decision of the Constitutional Court are definitely implemented.** Simultaneously, **the circumstance**, that the Constitutional Court, referring to the abovementioned decision of the Board of the Central Bank of the Republic of Armenia has stated that "…in contextual sense the document does not reflect the requirements of the Law of the Republic of Armenia on Legal Acts, in particular, Article 45, is based on the wishes deriving from the phrases "shall", "is necessary" and does not contain certain guarantees for ensuring the reliability of the system" **is ignored**. That is, the legal regulations prescribed by the abovementioned decision of the Board of the Central Bank of the Republic of Armenia by moving into the regulative level of the law have not been subject to contextual changes thus preserving phrases "shall", "is obliged", to which the legislative body shall touch upon in the scopes of its competence.

The Applicant also states that "…Part 3 of Article 37 of the Law, according to which the Central Bank cannot adopt normative legal acts, which prescribe additional requirement for the Funded Pension managers, does not correspond to requirements of the Article 83.5 of the Constitution. This inconformity also is present in Parts 5 and 6 of Article 62, Part 7 of Article 63, Point 6 of Part 3 of Article 67 and Part 1 of Article 68 when the Central Bank is authorized to adopt harsher requirement which differ from the requirements of the law." Analyzing the mentioned provisions, the Constitutional Court concludes that except for Part1 of Article 68 of the Law, the rest of the legal provisions do not cause any problems from the perspective of the requirements of Article 85.5 of the Constitution as the regulations prescribed by the mentioned norms do not directly concern the terms and order of implementation and protection of the natural and legal entities but mainly regulate such issues of activities of the Funded Pension

managers, insurance companies and banks which concern the implementation of the requirements of the Law.

The situation is different in the case of Part 1 of article 68 pursuant to which “The actives of voluntary Funded Pension may be invested in the framework of quantity and currency restrictions prescribed by the Central Bank in the financial tools prescribed in Article 67 of this Law”.

Point 1 of article 83.5 of the Constitution of the Republic of Armenia prescribes that the conditions of and procedure for the exercise and protection of the rights of natural and legal persons shall be prescribed exclusively by the laws of the Republic of Armenia. It is definite that this constitutional provision concerns all rights of the person. Meanwhile, in accordance with Part 1 of Article 68 of the Law this competence, in the scopes of definition of quantity and currency restrictions, has been assigned to the Central Bank of the Republic of Armenia. Moreover, the requirements of Decision DCC-1142 of the RA Constitutional Court taking into consideration the restrictions of investment of actives of the mandatory Funded Pension prescribed in Parts 1-7 of Article 39 of the Law of the Republic of Armenia on Pension Funds are prescribed by the Law Part 1 of Article 68 shall also be in concordance with the latter.

12. By Decision DCC-1142 of the RA Constitutional Court Part1 of Article 49 of the RA Law on Pension Funds contradicting the requirements of Article 1, Part 2 of Article 3 and Point 1 of Article 83.5 and void deriving from the circumstance of non-prescription of certain guarantees of protection of relevant rights to the requirements of the principles of rule of law and legal certainty and non-certification of discretion of the executive power in the given legal relations. In Point 14 of this decision, the Constitutional Court addressed to the issue of indexation of the shares of Funded Pension stock or the issue of annual inflation adjustments. In particular, the Constitutional Court notes: “At the same time, the existence of guarantees provided by the law is one of the most important guarantees for system reliability. The Law on Pension Funds of the Republic of Armenia has almost bypassed this issue by not prescribing the legal equivalent guarantees for ensuring the annual inflation adjustment of the paid amount of contributions”.

As a legal guarantee, Article 44 (2) the Law “On Funded Pensions" of the Republic of Armenia provides: "The order of clarification of the annual inflation prescribed by this Part is defined by the annex which is the constituent element of this Law”. That is, if according to the

former legal regulation, the order of clarification of the amount of the pension contributions due to the annual inflation was established by the Government of the Republic of Armenia, the current legal regulation prescribes it by the Law, in particular, by the Annex which is the constituent element of this Law. In the Annex, amongst the other issues, it is prescribed that the clarification of the social payments made for the entire period due to inflation is calculated by the formula which is included in the Annex.

The Applicant states that "…only the social payment of the Funded Pension (which is formed from the total amount of the social payment provided from the state budget) is indexed, and the amount transferred from the state budget to the account of the administrator, is not indexed. This approach is not only incomplete, but also significantly reduces public confidence in the funded system, ignoring the constitutional principle of equivalent protection of property rights and the legal positions of the Constitutional Court. "

Part 1 of Article 44 of the RA Law "On Funded Pensions" states: "The Republic of Armenia guarantees the repayment of the pension payments to the participant in favor of the person prescribed in Point 1 of Part 1 of Article 5 of this Law, in the revised annual inflation rate of social payments made in accordance with Article 6 of this Act".

According to Point 21 of Part 1 of Article 2 of the Law of the Republic of Armenia "On Funded Pensions" **funded payments** are cash payments paid for (in the benefit of) a person paying social contribution for the acquisition of shares of mandatory Funded Pension in accordance with the procedures of the Law, which is formed of these **social payments and funds provided from the state budget of the Republic of Armenia** in accordance with this Law, and in accordance with Point36 of the same part of the social payment is a target fee, paid to the state budget of the Republic of Armenia in the manner and amount prescribed by this Law. Article 6 of the Law of the Republic of Armenia "On Funded Pensions" establishes the object and calculates the social -payment rates, and the issues, with regard to the pension payments assigned from the state budget of the Republic of Armenia are regulated by Article 9 of the Law.

In addition, Part 1 of Article 13 of the RA Law "On Funded Pensions" provides: "**The share of mandatory Funded Pension** is the **rated securities**, produced for the social goals, which indicate the right of its owner (citizen) to funded pensions, in accordance with the order prescribed by this Law." And in order to acquire a share of the pension fund, i.e. rated securities, is done with the help of accumulative deduction. It turns out that according to Point 1 of Article

44 of the RA Law "On Funded Pensions" the Republic of Armenia guarantees to the participant repayment of not cumulative deductions but only funded payments. The same approach is also taken as grounds in case of defining the amount of the accumulative amount of pension payments prescribed in Article 45 of the Law.

The Constitutional Court states that such an approach does not possess justified grounds, taking into account the legal position expressed in the Decision DCC-1142 of the Constitutional Court according to which, "The question is that between the formation of the means required for the pension funds and the implementation of the social security law have the effect of the time factor. In case of not considering the latter it is impossible to accumulate the necessary resources and to ensure the realization of the right of persons to social security. In addition, **clarification on the amount of annual inflation of the entire funded contributions follow the goal to protect the right to receive back the entire amount and is subject to regulation by law.**" The existing legal regulation does not guarantee the concord of the purpose of the pension reform and the legitimate expectations of the pensioner, does not follow the requirements of the consistent implementation of the principle of the rule of law, makes insensible adoption of positive obligations by the state in the field of social security for establishing possible reliable pension system, sows distrust to the entire process.

13. In Point 17 of its Decision DCC-1142, the Constitutional Court expressed the legal position according to which: "... Chapter 9 of the RA Law" On Funded Pensions ", entitled" Payment for services ", regulates these legal relations. However, the establishment of the maximum amount of the costs associated with the management of the pension fund, is provided to the Central Bank of the Republic of Armenia / Part 1 of Article 45 /. In some countries, the maximum amount of the costs associated with the management of the Funded Pension is also prescribed by law. In the Republic of Armenia it may also be prescribed by law or become a subject of regulation in the frames of contract obligations of the pension fund". Despite this position of the RA Constitutional Court, definition of the maximum amount of expenses related to the management of the Funded Pension is once again assigned to the Central Bank of the Republic of Armenia (Part 1, Article 40 of the Law of the Republic of Armenia on Pension Funds). That is, the legal position expressed in Point 17 of DCC-1142 has not been implemented.

The Constitutional Court again emphasizes the circumstance the maximum expenditure

of related to the management of Funded Pension may be prescribed by the law or become a subject of regulation in the frames of contract obligations between the government of the Republic of Armenia and pension fund. What concerns the above mentioned function of the RA Central Bank, then in the frames of above mentioned regulation the legislator is obliged to follow the requirements of the Articles 83.3 and 83.5 of the RA Constitution.

14. The Applicant states that Law LA-71-Ն of the Republic of Armenia on Making Amendments in the Law of the Republic of Armenia "On Income Tax" does not refer to the issues on deductions from income in the amount of the minimum subsistence budget, non-taxation of minimum salaries and social contribution.

The Constitutional Court addressed the issues regarding the minimal wage in Point 11 of Decision DCC-1142.

Pursuant to Article 1 of Law LA-74-N of the Republic of Armenia on Making Amendments in the Law of the Republic of Armenia "On Minimum Wage" Article 4 of the Law LA-66-Ն of 17 December 2003, the word "taxes" is supplemented with the words "Target social payments". Thus, in accordance with Article 4 of the Law of the Republic of Armenia "Minimum Monthly Salaries" "Minimum monthly wage does not include the taxes paid from the wage, target social payments, augmentations, premiums, rewards and other encouragement payments". That is, after the decision of the Constitutional Court a relevant amendment was made in the abovementioned law, according to which it is prescribed that target social payments are not included in the amount of the minimum monthly wage. Consequently, it should be stated that the issue related to the taxation of the minimum monthly wage has been overcome in the frames of legal regulation.

15. The Constitutional Court states that the arguments regarding definition of disproportionate obligation alimentation of the positive obligation of the state and the citizen cannot be considered as grounded, taking into consideration the circumstance that social security despite being the right of a person is a target constitutional-legal function conditioned with and guaranteed by the positive obligation of the state. In decision DCC-1142, the Constitutional Court expressed the following position-according to the constitutional provision /Article 37/, the extent and types of social security shall be stipulated by law, which is one of the basic

peculiarities of guaranteeing, ensuring and protecting the given right. Constitutional legal regulations precisely indicate that both the issues on the extent (quantitative definiteness) and types of social security are left to the legislator's discretion. In this field, based on the requirements of fundamental principles of adequacy and proportionality, the margins of discretion shall be conditioned by socioeconomic facilities of the state on one hand and constitutional requirements of the social state on the other".

It should be mentioned that in frames of the funded pension system the amount of the obligations of the participants derives from a number of circumstances: social-economic potentials of state, constitutional requirements of the social state, reasonable balance between the current and prospective life support of the participant of pension system, etc.

Besides, the challenged law prescribes that the state, in the scopes of the Funded Pension system, performing the positive duty of guaranteeing the right to social security of a person, makes accumulative payments for/in favor of the participant of the Funded Pension till attaining the pension age; Part 2 of Article 9 of the RA Law LA-244-N envisages, "The Funded Pension payments for the persons prescribed by Point 1 of Part 1 of Article 5 of this Law until their retirement age are made in the following amount:

1)at the rate of 10% of monthly gross income for covering the calculated and transferred levied social payments from gross income and for covering 10% of the appropriate means allocated from the state budget of the Republic of Armenia (maximum 25, 000AMD) but not more than 10% of the monthly threshold of the social cost calculation object

2) at the rate of 10 % for covering the social payment calculated and transferred from the entrepreneurial income and for covering 10% of the appropriate means allocated from the state budget of the Republic of Armenia (maximum 300, 000AMD) but not more than 10% of the monthly threshold of the social cost calculation object.

3) in the amount of 10 000 AMD monthly in regard to types of activities subject to fixed payments prescribed by the Law of the Republic of Armenia "On Fixed Payments" or included in the list of Annex 7 to the Law of the Republic of Armenia "On Patent Fees" or taxable turnover prescribed by the Law of the Republic of Armenia "On Value Added Tax";

4) in the amount of social security contributions, calculated from social contribution revenues which are considered as an object of calculation, submitted on the basis of a personalized (simplified) calculation and not provided in Points 1, 2 and 3 of this Part. "

16. The Applicant states that the time period till 1 July 2017 for implementation of the right to relinquish from the social payments set on 25 December 2014 is clearly non-proportionate period of time; the actual use becomes impossible and it leads to violation of the principles of legal certainty and rule of law.

The Constitutional Court states that the constitutional-legal principles of legal certainty and rule of law not only do not exclude but presuppose that the legislator shall prescribe certain legal terms for implementation of certain rights in this case deadlines. Prescription of certain deadline for implementation of the right lies in the frames of competence of the legislator, and the raised issue does not have any relation to the constitutionality of the challenged issues.

Regarding the issue of selective, differentiated procedure enabling realization of the right to relinquish from the social payments, the Applicant considers two separate situations of differentiated approaches for the social contributions:

1. The differentiated approach to persons who entered into the labor market after the expiration of the period stipulated for denial of social security contributions, and to persons in an employment relationship for a specified period;

2. The differentiated approach to public servants, employees of state management agencies and community management institutions, their structural and separate subdivisions, the Central Bank, non-governmental and community-based non-profit organizations and other participants of the funded pension system.

The abovementioned issues must be considered in the light of Article 14.1 of the RA Constitution, the legal positions expressed in the decisions of the Constitutional Court and case-law of the European Court of Human Rights. For instance, regarding the constitutionality of differentiated, discriminatory attitudes towards a person, the Constitutional Court expressed the following legal positions:

a/ Article 14.1 of the RA Constitution stipulates the principle of equality before the law. Pursuant to requirements of this Article it is the positive constitutional duty of the state to ensure such terms which will allow the persons with equal possibility to implement and in case of violation defend their rights, otherwise not only the constitutional principles of equality and prohibition of discrimination, but also principles of rule of law and legal certainty will be violated (DCC-731, 29 January 2008),

b/ In the framework of prohibition of the principle of discrimination, the Constitutional Court considers any differentiated approach of objective grounds and legitimate objective as permissible. Prohibition of the principle of discrimination does not mean that in the scope of persons of the same category any differentiated approach will turn into discrimination. The differentiated approach, which lacks objective grounds and legitimate objective, is considered as violation of the principle of discrimination. (DCC-881, 4 May 2010).

The European Court of Human Rights expressed similar positions likewise (see, in particular, Stec and Others v. the United Kingdom [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI, as well as Carson and Others v. the United Kingdom [GC], no. 42184/05, ECHR 2010).

Comparing the first situation of differentiated approach presented by the Applicant, it should be mentioned that the legal regulation prescribed by the challenged provisions cannot conclude to discrimination on the basis of the social status. The differentiated approach of time-period prescribed for renouncement of social payments for persons who entered in labour market after this period and persons who are in labour relations during the abovementioned time period is conditioned by the time period restriction of implementation of the right to renouncement of social payments, which may be considered as an objective grounds, as well as prescribing such a differentiated approach follows legitimate objective.

Regarding the differentiated approach of the second situation pointed out by the Applicant, first, it shall be mentioned that regulation prescribed by the challenged provision, according to which, certain category of persons cannot enjoy the right to renounce from the social payments, which are mainly the employees of public segment, this right is provided selectively, although this is grounded on certain objective basis, and the legal regulation follows a legitimate objective. The employees of public and private sectors cannot be considered as persons of the same category due to the peculiarities of their labour spheres, sources of formation of wage and a number of other circumstances. On 1 July 2014 the RA Law on Remuneration of Persons Holding Public Office entered into force according to which the wages of the public officials were increased and the obligation of social payments will not cause any essential negative changes at the living standards of the latter and restriction of the right to renounce from the social payments for the persons of this category is not problematic from the perspective of constitutionality in case of guarantees prescribed by the abovementioned legislative

amendments. The situation is different if the State has not implemented its obligation due to the requirement of paragraph 2 of Article 48 of the RA Constitution.

17. Regarding the issue of prohibition of the retroactive force, the Applicant relates it with the legal regulations regarding returning the funded payments calculated for six months, stating that on 15 May 2014 the RA National Assembly adopted the law LA-13-N (which contains 5 articles); Article 3 prescribes that for (on the behalf of) the employed and receiving contractual income participants defined by Article 5 of the Law, the employer does not calculate and transfer pension payments, if the participant presents an application to the employer in person or by mail service. As a result, the Applicant states that the person used that possibility and had already applied to enjoy the right prescribed by law but due to the challenged acts he/she is deprived of this right which receives the retroactive force for the employees born in 1996 and after, for persons who are not employed by 1 July 2014, as well as for the public officials, employees of state administrative institutions and community administrative institutions, their structural or separate departments, Central Bank, governmental non-profit and community-based non-profit organizations.

The Law LA-13-N mentioned by the Applicant lost its power in 1 July 2014. Part 5 of Article 81 of the RA Law LA-224-N on Pension Funds titled "Transition Provisions" prescribes legal regulation for the employees born in 1996 and after, according to which, "5. The amount of the social payment paid by the person born in January 1996 and after as prescribed in Paragraph 2, Part 2 of this Article is reduced from the amount of income tax subject to payment till July1 2017".

Paragraph 2 of Part 2 of this Article refers to the persons who received the status of employee, appointed as a notary or become an individual entrepreneur born after 1 January 1974, who at the moment of 1 July 2014 were not employees, notaries or individual entrepreneurs.

Regarding retroactive implementation of the provisions of the law, the Constitutional Court states the principle of prohibition of the retroactive force concerns only the cases when the person has some rights and duties and her/his legal position gets worse, s/he gets derived of his/her rights or the implementation of his/her right is in the result of amending the law.

18. According to the Applicant, the provision prescribed by Part 7 of Article 81 of the RA Law LA-244-N according to which the provisions concerning the shares of inheritance of pension funds, as well as the provisions relating to receiving the existing, is also disproportional, enters into force 1 July 2015. According to the Applicant, by delaying the person's right to possess, use and dispose their property, the abovementioned provision does not prescribe any reasonable compensation for the mentioned period. According to the Applicant, the same applies to Part 13 of Article 81 of the same law, according to which the state authorized body of the financial sector of the Government of the Republic of Armenia prescribes the order of recalculation of the obligations of unredeemed fund payments as a result of legal relations raised after 1 January 2014. Liabilities for unredeemed funded contributions or partially paid funded contributions, which rise as a result of legal regulations after 1 January 2014, are recalculated till 31 December 2014.

The Constitutional Court states that definition of the period of entering into force of this or that provision shall not bring to illegitimate restrictions of the rights and freedoms of a person. Thus, first, these regulations must be considered from the perspective of restriction of the right to property in the light of the legal positions of the Constitutional Court.

By the Decision DCC-1073 the Constitutional Court expressed the legal position, according to which, the legislator restricts the implementation of the right to property on the basis of the requirement to preserve certain public values. These are the environment, the rights and legitimate interests of others, society and the state. This approach is intended to provide a reasonable balance between the rights and the public interest of the owner and others, recognizing the implementation of the guaranteed, but not absolute right to property.

The challenged norm prescribes that the restriction of the implementation of the right to property is legitimate by the following motivation; according to it, this legal regulation temporary restricts the implementation to the right to property of the participants deriving from the necessity protection of the rights and legitimate interests of other participants of the Funded Pension system, who may not wish to get back their paid fund pension payments. The collected Funded Pension payments are invested in the actives which are prescribed by law, for instance, in deposits or securities, and in case their immediate implementation other participants of the pension system will suffer substantial losses as would be required to sell assets at a price lower

than expected, for example, the case of the contributions to lose already calculated interest on deposits.

Regarding the issue of the absence of any reasonable compensation for the mentioned period, it should be noted that in case of any questions about succession in the period from 1 July 2014 until 1 July 2015, the heirs can receive their due amount as from 1 July 2015, and these amounts will also include the income derived from their investment over the aforementioned period of time, which can be considered as reasonable compensation for this period.

19. In the aspect of the provision of adequate safeguards for protection of constitutional rights, the RA Constitutional Court, in its Decision DCC - 1142 found it necessary to emphasize that for the specific legal regulations of the Law for the offenses it is necessary to prescribe a specific and differentiated approach for legal liability (criminal, civil, administrative). The applicant states that the RA Constitutional Court has emphasized that the challenged Law has referred to these issues mainly in the framework of ensuring the supervisory powers of the Central Bank of the Republic of Armenia (Articles 77-84). However, in conjunction with the application of the Law no relevant amendments were made in other legal acts which prescribe legal responsibility. In particular, the Criminal Code and the Code on the administrative offenses of the Republic of Armenia, in practice, have avoided these issues. The provision of Part 1 of Article 968.9 of the Civil Code of the Republic of Armenia, according to which "The losses caused to the participants of the Funded Pension shall be reimbursed in accordance with the law and other legal acts," is of abstract character. While a clear liability regulation in this area could be an important guarantee of confidence towards the system. Great importance is given to this issue in the international practice. This is stated in the Decision DCC-1142 where the Constitutional Court in this regard, also noted that: "... examples of Slovenia and Romania are noteworthy. And in the US financial offenses related to pension funds, by law are considered **as especially serious crimes**, and they prescribe the punishment of imprisonment for a term of 20 years and more." Taking into consideration the provision stipulated in Part 1 of Article 13 of the RA Law on Funded Pension, according to which the share of mandatory Funded Pension is rated securities, produced in the social order, and the second sentence of paragraph 2 of the same article, according to which the shares of a mandatory pension funds are the property of the participant from the moment with the date of their acquisition by the state, the Constitutional

Court states that the general structures on protection of property and securities prescribed by the civil and criminal legislation apply also to the shares of pension funds. At the same time, the Constitutional Court draws attention to the fact that the Constitutional Court's decision pointed out the appropriateness to develop “specific and differentiated responsibilities.

Therefore, the Constitutional Court finds that the abovementioned legal positions expressed in the decision DCC -1142 have partially found their reflection within the framework of the legislation, which does not lead to conflict of the disputed laws with the Constitution, as the exercise of the legal positions of the Constitutional Court requires systemic changes that should find their place in the relevant legal acts of civil, administrative and criminal legal areas.

The legal positions of the Constitutional Court are directed to the National Assembly and are called to ensure the effective operation of the pension system with the help of systemic approach. It has not been fully exercised and maintains its urgency.

20. The Applicant states that the challenged provisions in many cases do not meet the rules of legislative technique. The Applicant specifically mentions the fact of adoption of principally new law by one legal act on making amendments and addenda as well as the circumstance that a number of laws have been amended due to amendments but preserved the same numbers. The Applicant also considers that by the force of these arguments, there is a problem of legal uncertainty.

In connection with the abovementioned, it should be stated that the number of the article is preserved in regulation when this article was repealed. However, when it is amended, in this case, not the previous one is recognized as repealed another article is definite but the previous article is amended. According to Article 45 of the Law on Legal Acts, the requirements, relating to the raised problem, concern the sections, chapters, articles, parts of articles, paragraphs, sub paragraphs. The operation of which is ceased. Therefore, the Applicant's claims that when making amendments they should have to be the same number of former edition, and the new edition should be stipulated by other additional article, is not grounded within the framework of the existing rule of legal technique. The same can be said regarding the Applicant's argument according to which the challenged act should not have been changed, but a new law should have been adopted. In this regard it should be noted that the RA Law on Legal Acts does not prescribe any limit on the scale of amendments in the legal act, so the mere fact that the challenged law has

been subjected to a large scale changes cannot lead to the violation of legislative technique, especially to the anti-constitutionality of the act. In addition, in this case the rules of the legislative technique in terms of technique do not entail legal uncertainty, i.e. do not deprive a person of the ability to predict his/her behavior and do not result in causing constitutional controversies.

21. The Applicant also challenged the fact that the new legal regulations will not ensure payment of the fund component of employer-employee-state trinity, as a result of which, the Constitutional Court's decision DCC-1142 has been implemented.

This issue is rightly mentioned in the frames of DCC -1142. In particular, in this regard the RA Constitutional Court expressed the following legal position:

- "As a result, the employer, as the direct participant of the resolution of the issues of the social insurance of the employees, was forced out of these legal relations, and the state undertook additional responsibilities at the expense of taxpayers and the uncertainty is introduced in the issues prescribed in Article 37 of the Constitution of the Republic of Armenia, guaranteeing the right to social security and in the issues prescribed in Article 45 on implementing the constitutional-legal approaches for ensuring the conditions and guarantees for exercising this right,

"The Constitutional Court of the Republic of Armenia states that the percentage of international social security contributions made by employers and employees is such that they are formed mainly at the expense of employers' social security contributions from half of the two-thirds of total fund payments. Regardless of the peculiarities of the pension system the practice of a number of countries / Sweden, USA, UK, France, Singapore, Poland, Hungary, Slovenia, Croatia, Slovakia etc / has shown that the relatively greater success is recorded in the countries where the three main entities, the state, the employer and the employee are involved in the solution of the pension issue. "

Regarding this issue the Constitutional Court states that in the context of the challenged laws the legal position of the Constitutional Court have not received adequate solutions. At the same time, the RA Law on Making Amendments and Addenda to the RA Law on Funded Pensions does not automatically lead to the contradiction of the RA Constitution with grounding that it, first, does not assume that this issue shall receive legal stipulation by this law and not

otherwise but by the legal act dedicated to the regulation of this legal relation. Secondly, the decision DCC -1142 of the Constitutional Court on the law on Funded Pensions has not conditioned on the conformity of the Constitution with the legislative imperative stipulation of the issue raised by the Applicant.

By this decision the Constitutional Court stated the lack of such a system in the RA, as well as analyzing the international practice, stated that "... the relatively greater success is recorded in the countries where the three main entities, the state, the employer and the employee are involved in the solution of the pension issue. By this decision, the Constitutional Court expressed a position on the possible option of the funded pension system, and complete resolution of the issue is within the competence of the National Assembly.

Reaffirming this legal position, the Constitutional Court finds that one of the effective resolutions of the issue is to ensure such a harmonious trinity.

22. The Applicant considers that the decision DCC -1142, related to the age discrimination, is not implemented because the existing regulation continues to maintain a differentiated approach depending on specific age threshold.

The Constitutional Court states that in the final part of the Decision DCC -1142 certain provisions are declared as unconstitutional and void not on the grounds of age discrimination. In the reasoning part of the decision DCC -1142 also the Constitutional Court does not record the presence of age discrimination. Therefore, there can be no issue of non-performance of the decision DCC -1142 on these grounds.

As regards the Applicant's arguments on age discrimination in general, it should be noted that discrimination exists when a differentiated approach is shown to this or that person or persons within the same legal status, in particular, they are deprived of any rights, or the latter are limited, or they gain privileges. In such a circumstance, such a situation cannot be registered as under the same legal status the discrimination is not determined by age, but it concerns the rights and obligations of persons as provided by law on the basis of different legal status, i.e. the legal justification of objective conditions.

23. In accordance with LA-244-N, Paragraph 10 of Article 9 of the Law, the person is entitled to direct the amount of social package for the social payment. In this case, the person

who makes social payment is entitled, in accordance with the procedure prescribed by the Government of the Republic of Armenia, as compensation for the social payments, as of January 1, receive the lump sum of the balance but no more than the amount of social payments calculated and transferred from the income received from the salary and from entrepreneur activity during the previous year.

Based on the foregoing, the Constitutional Court states that transferring the amount of social security contributions to the package is a right prescribed by the law and does not mean to limit the efficient realization but promote human rights. As regards the Applicant's claim, according to which a limited number of people can benefit from this right, it should be noted that for such a legal regulation the legislature has prescribed the right to social package provided for a certain group of people under certain conditions provided for by law, and the legal norm which prescribes such a right with such a formulation has not been challenged in the RA Constitutional Court and has not been declared unconstitutional and invalid.

In this regard, the Applicant also finds that "... if the incomes other than operating incomes may be used for social payment, then why it is limited to the social package and does not include other incomes, such as interest received from dividends or borrowed funds, or income from rent, etc. ".

The abovementioned issue does not directly relate to the constitutionality of the challenged regulation of this case, but may be considered in accordance with the Constitution and the Law "On Constitutional Court" within other application.

24. Regarding the challenged procedural issues, the Constitutional Court first states that the requirement to carry out public debates on the draft of the normative legal acts is stipulated by the RA Law "On Legal Acts". Particularly, in accordance with paragraph 4 of Article 27.1 of the Law, "A draft developer body along with the presentation to the assessors of impact of the draft normative legal act organizes public debate on the draft, which aims to inform natual and legal entities about the draft of the normative legal act, as well as to collection of their opinions and on the basis of them, implementation of the necessary adaptation work of the draft of the normative legal act. Public debates of the draft state budget of the Republic of Armenia start within three days after submission of the draft on the state budget to the National Assembly of the Republic of Armenia.

Public debates are carried out in the website of the draft developer body by publication of the draft of the normative legal act alongside with other materials prescribed by the decision of the Government of the Republic of Armenia, and by the initiative of the draft developer body by meetings with persons or stakeholders, public hearings, debates, public opinion polls, as well as telecommunications.

The timeperiod for the public debate is at least 15 days.

The procedure for organizing and conducting the public debates shall be established by the Government of the Republic of Armenia".

This article stems that certain features for public debates are designed only for the implementation of public debates on the draft of the law on state budget of the Republic of Armenia.

The RA Law on Legal Acts, as well as the Decision of the Government of 25.03.2010 N296 on Establishing the Procedure for Organizing and Conducting Public Debates do not prescribe any special regulation on implementation of public debates on the drafts of the considered laws in the framework of extraordinary session of the National Assembly.

The analysis of Articles 71 72, 75 and 76 of the Constitution implies that the constitutional legislator regulates only the most important issues related to the order of the implementation of the legislative process. In particular, the abovementioned articles of the Constitution specify the number of votes required for adoption of laws, the minimum number /quorum/ of delegates required for voting, the requirement to discuss extraordinary the law returned by the RA President by the National Assembly, the subjects of right of the legislative initiative, the issues related to confirming the state budget presented by the RA Government.

Thus, the constitutor does not consider any procedural constitutional requirement on organization and conduct of public debates. Consequently, the raised issue, by its nature, does not relate to constitutional and legislative regulation of the sphere.

At the same time, the Constitutional Court also considers necessary to state that from the perspective of requirement to organize parliamentary, as well as, public debates on adoption of laws, any violation of extra-parliamentary procedures is inadmissible in the framework of the legislative procedure, is incompatible with the rules of legislative activity, but not all violations are of principle significance from the perspective of constitutionality.

They include only those rules violations that are directly based on the requirements of the Constitution and do not have any crucial importance for making a final decision on the adoption of the law and/or are so essential that without observing these rules, it is impossible to determine reliably the legislator's real will, therefore, also the will of the people presented by the legislature.

Such a legal position is also present in the international practice of constitutional justice /for instance, decision N 4 2013-П of the Constitutional Court of the Russian Federation of February 14, 2013/.

At the same time, deriving from the requirements of Article 68, Part 7, Point 2 of the RA Law on the Constitutional Court of the Republic of Armenia, it is necessary to examine the subject matter in the context of preservation of the order prescribed by the Constitution to adopt and implement the challenged legal act.

According to Article 70 of the Constitution, "An extraordinary session or sitting of the National Assembly shall be convened by the Chairperson of the National Assembly, at the initiative of the President of the Republic, at least one third of the total number of deputies, or the Government. The extraordinary session or sitting shall be held according to the agenda and within the terms defined by the initiator."

According to Article 39, Part 1 of Rules of Procedure of the National Assembly titled "The Procedure for Convening an Extraordinary Session,"An extraordinary session of the National Assembly is convened by the Chairperson of the National Assembly on the initiative of the President of the Republic, of at least one third of the total number of Deputies or on the initiative of the Government. The extraordinary session is held according to the agenda and in the timeframe defined by the initiator."

Part 6 of the same Article prescribes the procedure of the extraordinary session unless otherwise stipulated by the resolution of the National Assembly. In the case of the challenged issue by the initiative of the RA Government the RA National Assembly adopted the resolution on "Special Procedure of the Extraordinary Session held by the National Assembly on 18 June 2014 which, amongst the other, set to hold three sittings for the duration of an hour and a half on the first day of the extraordinary session of the National Assembly. The break for the duration of the first sitting is one hour and a half. Beginning from the second day, to hold four sittings for duration of one hour and a half each day. The duration of each break is half an hour.

According to Article 40, Part 2 of Rules of Procedure of the National Assembly titled "The Procedure for Discussing Issues at the Extraordinary Session", "If the agenda of the extraordinary session includes issues on discussing the same issue by several readings, then prior to their discussion, the National Assembly discusses the draft resolution of the National Assembly on the special procedure for the discussion of those issues, submitted by the initiator(s), which foresees at least 3 hours for submitting recommendations related to the draft law or package of drafts".

On 18.06.2014 the RA National Assembly adopted the resolution on "The Special Order of Discussion of a number of draft laws (on holding the second reading after the first reading within 24 hours), where amongst the others, the draft law on making amendments in the Law of the Republic of Armenia on "Funded Pensions" was included.

The Constitutional Court also notes that in terms of guaranteeing the efficiency of legislative activities, from the perspective of ensuring the effectiveness of the legislative activity, the procedures of adoption of laws and resolution of the National Assembly should be subject to strict regulatory laws both at the regular and extraordinary session (sitting).

In particular, the study of Articles 21, 27-29, 39-41, as well as Articles 51 and 52 of "Rules of Procedure of the National Assembly" shows that in case of the extraordinary sessions / sittings / the role of the National Assembly committees is not clarified. But reference to the constitutionality of the provisions of the RA Law on Rules of Procedure of the National Assembly is not within the scopes of the challenged subject.

Analyzing the existing legal regulations and the factual circumstances, the Constitutional Court states that the extraordinary session of the National Assembly is convened by initiative of the Government, and the RA Government, taking into account the fact that the RA Constitution and "Rules of Procedure of the National Assembly" allow the initiator to set the agenda and day of the extraordinary session and the holding period, made a respective initiative. The Applicant's analysis is based on issue that organizing first - second reading within 24 hours is problematic, however, as noted above, **at least 3 hours** is prescribed for the presentation of the suggestions regarding the draft law or the package of drafts adopted by the first reading. In other words, the organization of the second reading after the first reading within 24 hour regime is combined legitimately within framework of the defined legal regulations.

According to the Applicant, the alleged unconstitutionality of the law, inter alia, is due to the fact that the Ministry of Justice of the Republic of Armenia has not submitted a conclusion on the subject to consideration in handling this case. However, the examination of the documents shows that the appropriate conclusion is available.

In particular, the Minister of Justice of the Republic of Armenia, in response to the request of the Constitutional Court by the letter 01/14 / 2932-15 dated of 16.03.2015 informed that "On June 19, 2014 by the letter 02 / 4231-14 the Ministry of Justice of the Republic of Armenia submitted a written expert report to the Government of the Republic of Armenia on making amendments in Law on Funded Pensions of the Republic of Armenia.

The letter informed that in the mentioned letter equivalent conclusions are presented regarding all other challenged draft laws. The copies of expert opinions submitted in accordance with the regulatory impact assessment report on the anti-corruption field were attached to the response letter of the Minister of Justice.

25. The aforementioned positions refer to the issues of the constitutionality of the provisions challenged by the Applicant. At the same time, the Constitutional Court states that compared with the previous legal regulations by ensuring certain positive changes, in the new legal regulations incomplete regulations are registered which are the result of non-implementation of legal positions stated in the decision DCC -1142 of the Constitutional Court of the Republic of Armenia. **Legislative further regulations need to provide complex nature to the system solutions of the problems**, consistently taking into account the legal positions expressed in the decision DCC -1142 and this decision of the Constitutional Court.

Based on the review of the Case and being governed by the requirements of Article 100, Point 1 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 68 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. The challenged Points 28, 36 and 37, Part 1, Article 1, Part 7, Article 5,Part 1 of Article 5, Part 10, Article 9, Parts 1, 2,5 and 13 of Article 13, provision “by Article 43 of the Law of Parts 3

and 5 of Article 37, third sentence of Part 3 of Article 39 provision “the composition and maximum amount is defined by the Central Bank” of Paragraph 2 of Part 1 of Article 40, term “reasonable profitability” of Paragraph 2 of Part 1 of Article 43, term “reasonable profitability” of Part 3 of Article 43, Part 2 of Article 44, second sentence of Part 7 of Article 46, Part 5 of Article 62, second sentence of Part 6 of Article 62, second sentence of Part 7 of Article 63, Point 6 of Part 3 of Article 67, Part 1 of Article 81, Points 1 and 2 of Part 2 of Article 81, Part 5 of Article 81, Part 7 of Article 81, Part 13 of Article 81 of the Law on Funded Pensions of the Republic of Armenia are in conformity with the Constitution of the Republic of Armenia taking into consideration the legal positions expressed in this decision.

2. To Declaree Part 1 of Article 68 of the Law on Funded Pensions of the Republic of Armenia contradicting the requirements of Point 1 of Article 83.5 of the Constitution of the Republic of Armenia.

3. To Declare Part 1 of Article 44, as well as Parts 1 and 2 of the Law on Funded Pensions of the Republic of Armenia in regard to the part that guarantee the return of annual inflation-adjusted rate does not apply to the respective funds provided by the state budget of the Republic of Armenia prescribed by Article 9 of this Law as contradicting the requirements of Articles 1, 3 and Point 12 of Article 48 of the Constitution of the Republic of Armenia and invalid.

4. The Law of the Republic of Armenia on Making Amendments and Addenda in the Law of the Republic of Armenia on Investment Funds (LA-68-N Law), the Law of the Republic of Armenia on Making Amendments in the Civil Code of the Republic of Armenia (LA-69-N Law), Articles 6 and 10 of the Law of the Republic of Armenia on Income Tax, the Law of the Republic of Armenia on Making Amendments on Minimum Wages (LA-74-N Law), the Law of the Republic of Armenia on Making Amendments in the Law of the Republic of Armenia on Compulsory Enforcement of Judicial Acts (LA-76-N Law), the Law of the Republic of Armenia on Making Amendments and Addenda in the Law of the Republic of Armenia on Personal Income Tax and Mandatory Funded Pension (LA-70-N Law), the Law of the Republic of Armenia on Making Amendments in the Law on Income Tax of the Republic of Armenia (LA-71-N Law), the Law of the Republic of Armenia on Making Amendments in Law on Bankruptcy of the Republic of Armenia (LA-72-N Law), the Law on Making Amendments in the Law of the Republic of Armenia on the Budget System (LA-73-N Law), the Law of the Republic of

Armenia on Making Amendments in the Law on State Pensions of the Republic of Armenia (LA-77-N Law), Part 1 of Article 1 of the RA Law on Additional Guarantees of Protection of Rights and Legal Interests of Participants of Funded Pension System are in conformity with the Constitution of the Republic of Armenia taking into consideration the legal positions expressed in this decision.

5. Pursuant to Article 102, Part 2 of the Constitution of the Republic of Armenia this Decision is final and enters into force from the moment of its announcement.

Chairman **G. Harutyunyan**

July 7, 2015

DCC-1224