**H e a d n o t e s**

**to the Judgment of the First Senate of 28 April 1999**

– 1 BvL 32/95 –

– 1 BvR 2105/95 –

**1. The entitlements and expectancies under supplementary and special pensions systems acquired in the German Democratic Republic and recognised in the Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity (*Vertrag vom 31. August 1990 zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands*, Unification Treaty) in accordance with its provisions as legal positions in the all-German legal system are protected by Article 14.1 sentence 1 of the Basic Law.**

**2. It is constitutionally unobjectionable that the supplementary and special pensions systems that existed in the German Democratic Republic are discontinued and the entitlements and expectancies acquired thereunder are transferred to the statutory pensions insurance scheme. The provision in the Unification Treaty relating to the guaranteed amount paid must, however, be interpreted in conformity with the Basic Law to the effect that the amount paid guaranteed there is to be adapted to the development of wages and income from 1 January 1992 for existing pensioners.**

**3. The provision in § 10.1 sentence 2 of the Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic (*Gesetz zur Überführung der Ansprüche und Anwartschaften aus Zusatz- und Sonderversorgungssystemen des Beitrittsgebiets, Anspruchs- und Anwartschaftsüberführungsgesetz,* Transfer of Titles and Expectancies Act) on the provisional restriction of the amount paid violates Article 14.1 of the Basic Law and is void.**

FEDERAL CONSTITUTIONAL COURT

**– BvL 32/95 —– 1 BvR 2105/95 –**

Pronounced
on 28 April 1999
Kehrwecker
*Amtsinspektor*
as Registrar of the
Court Registry

**IN THE NAME OF THE PEOPLE**

**In the proceedings**

**I.**
**for**
**constitutional review**

of § 10.1 sentence 2 of the Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic (*Gesetz zur Überführung der Ansprüche und Anwartschaften aus Zusatz- und Sonderversorgungssystemen des Beitrittsgebiets, Anspruchs- und Anwartschaftsüberführungsgesetz – AAÜG,* Transfer of Titles and Expectancies Act) of 25 July 1991 (Federal Law Gazette, *Bundesgesetzblatt* – BGBl I pp. 1606, 1677) as amended by the Act Amending the Transfer of Pensions (*Gesetz zur Ergänzung der Rentenüberleitung, Rentenüberleitungs-Ergänzungsgesetz – Rü-ErgG*, Pensions Transfer Amendment Act) of 24 June 1993, (BGB I p. 1038)

– order of suspension and referral from the Federal Social Court of 14 June 1995 (4 RA 28/94) –

–1 BvL 32/95 –,

**II.**
**on the constitutional complaint**

of Professor Dr. M(…)

– authorised representatives:

1. directly

against :

a) the partial judgment by the Federal Social Court (*Bundesverwaltungsgericht*) of 14 June 1995 – 4 RA 28/94 –,

b) the judgment of the Berlin Social Court ( *Sozialgericht*) of 13 February 1995 – S 8 An 4790/94 –,

c) the judgment of the Berlin Social Court of 17 January 1994 – An 278/91–,

d) the notices of pension issued by the Federal Insurance Institute for Salaried Employees (*Bundesversicherungsanstalt für Angestellte*) and its legal predecessors, including the notice on the recalculation of the pension of 7 December 1994 – BKZ 5934 –, which form the basis for the present proceedings,

2. indirectly

against § 23.1 of the Act to Adjust the Existing Pensions to the Net Pension Level of the Federal Republic of Germany and for Further Pensions-Law Provisions (*Gesetz zur Angleichung der Bestandsrenten an das Nettorentenniveau der Bundesrepublik Deutschland und zu weiteren rentenrechtlichen Regelungen – Rentenangleichungs-gesetz*) of 28 June 1990 (Law Gazette of the German Democratic Republic I – GBl I, p. 495) which continues to be applicable pursuant to the Unification Treaty (*Einigungsvertrag*), § 6 of the First Ordinance to Adjust Pensions in the Area stated in Art. 3 of the Unification Treaty (*Erste Verordnung zur Anpassung der Renten in dem in Art. 3 des Einigungsvertrages genannten Gebiet, 1. Rentenanspassungsverordnung* – 1. RAV, First Pension Adjustment Ordinance) of 14. December 1990 (BGBl 1 p. 2867) and § 8 of the Second Ordinance to Adjust Pensions and concerning the relevant calculations to be applied in the area stated in Art. 3 of the Unification Treaty (Second Pension Adjustment Ordinance, *2. Rentenanspassungsver-ordnung* – 2. RAV) of 19 June 1991 (BGBl I p. 1300)

– 1 BvR 2105/95 –

the Federal Constitutional Court – First Senate –

with the participation of Justices

Grimm,

Kühling,

Jäger,

Haas,

Hörnig,

Steiner,

Jentsch

held on the basis of the oral hearing of 21 July 1998:

**Judgment:**

**1. § 10.1 sentence 2 of the Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic (*Gesetz zur Überführung der Ansprüche und Anwartschaften aus Zusatz- und Sonderversorgungssystemen des Beitrittsgebiets, Anspruchs- und Anwartschaftsüberführungsgesetz – AAÜG,* Transfer of Titles and Expectancies Act) of 25 July 1991 (Federal Law Gazette (*Bundesgesetzblatt – BGBl*) I pp. 1606, 1677) as amended by the Act Amending the Transfer of Pensions (*Gesetz zur Ergänzung der Rentenüberleitung, Rentenüberleitungs-Ergänzungsgesetz – Rü-ErgG*, Pensions Transfer Amendment Act) of 24 June 1993, (Federal Law Gazette I p. 1038) is incompatible with Article 14 of the Basic Law and is void.**

**2. The constitutional complaint is rejected as unfounded.**

**R e a s o n s:**

**A.**

The proceedings, which are heard together to be decided jointly, relate to the transfer of entitlements and expectancies under supplementary pensions systems of the German Democratic Republic to the statutory pensions insurance scheme of reunified Germany. The subject of the referral is the question as to whether it is constitutionally admissible in the case of members of particular supplementary pensions systems to provisionally limit the total amount payable under pensions of the pension insurance scheme of the German Democratic Republic and the payment under a supplementary pensions system for pension drawing dates from 1 August 1991 on to 2,700 German marks. The constitutional complaint challenges the treatment of entitlements under supplementary pensions systems before they were transferred to the statutory pensions scheme. 1

**I.**

1. In the German Democratic Republic, from the beginning there was uniform mandatory social security insurance with insurance coverage of the risks of old age, invalidity and death. The basic protection provided by this was supplemented by a Voluntary Supplementary Pensions Insurance Scheme (*Freiwillige Zusatzrentenversicherung*). In addition to the Mandatory Social Security Insurance Scheme (*Sozialpflichtversicherung*) and the Voluntary Supplementary Pensions Insurance Scheme, there were numerous supplementary and special pensions systems (on this, see for example Ruß, *Die Sozialversicherung in der DDR*, 1979; Polster, *Deutsche Rentenversicherung – DRV* 1990, pp. 154 ff.; Lohmann, *Deutsche Demokratische Republik*, in: Zacher, *Alterssicherung im Rechtsvergleich*, 1991, pp. 193 ff.). Apart from the state-organised old-age insurance scheme, the German Democratic Republic, to a minor extent, also had an occupational old-age insurance scheme and a private old-age pension scheme. 2

a) The Mandatory Social Security Insurance Scheme covered nearly all gainfully employed persons (working people) and was divided between two insurers. Employed persons who had the possibility of becoming members of the Free German Trade Union Federation (*Freier Deutscher Gewerkschaftsbund*) were compulsorily insured in the Mandatory Social Security Insurance Scheme of the wage-earners and salary-earners. Self-employed persons and members of cooperatives were insured in the State Insurance Scheme (*Staatliche Versicherung*) of the German Democratic Republic. The Mandatory Social Security Insurance Scheme generally granted an old-age pension when retirement age was reached; the amount of this old-age pension was essentially based on the length of employment and the income earned. However, the pensions were low and could not keep pace with the development of income, because the upper limit of assessment for the compulsory contributions remained unchanged at 600 East German marks per month (7,200 East German marks per annum) for a long period of time and there was no regular adjustment of pensions. The benefits of the Mandatory Social Security Insurance Scheme were based on a pay-as-you-go system financed by contributions. For the insured, the contribution was normally 10 per cent of the earned income. Enterprises and institutions paid 12.5 per cent as their contribution. Additional financing needed was covered by public funds from the state budget of the German Democratic Republic. 3

b) Since the Mandatory Social Security Insurance Scheme did not satisfy the requirements of an appropriate old-age insurance system, from 1968 the persons insured under the Mandatory Social Security Insurance Scheme were given the opportunity to insure income above the upper earnings limit for the assessment of contributions in a voluntary supplementary insurance scheme and thus to determine individually the amount of their old-age pension. All persons insured under the Mandatory Social Security Insurance Scheme whose income exceeded the limit for mandatory insurance were entitled to join the Voluntary Supplementary Pensions Insurance. The insurers of the Voluntary Supplementary Pensions Insurance Scheme 4

were the administration of the social security insurance scheme of the Free German Federation of Trade Unions and the State Insurance Scheme of the German Democratic Republic for the persons mandatorily insured by each of them. The insured's contribution was normally 10 per cent of the income above 600 East German marks per month. If a person's income was over 1,200 East German marks per month (14,400 East German marks per annum), the insured could choose whether he or she wanted to pay contributions for all the income exceeding 600 East German marks or only for an income up to this limit. Institutions and enterprises paid the same contribution as the individuals insured.

The amount of the monthly supplementary pension was 2.5 per cent of the average income exceeding 600 East German marks that was covered by contributions per year of belonging to the Voluntary Supplementary Pensions Insurance Scheme. The Voluntary Supplementary Pensions Insurance Scheme at first considerably improved the relationship between pension and earned income. Since the incomes rose but the calculation factors remained constant, in the following period the gap between pension and last earned income widened again. For the pensionable year 1985, the pension in the German Democratic Republic (Mandatory Social Security Insurance Scheme and Voluntary Supplementary Pensions Insurance Scheme) on payment of maximum contributions was an average of 548 East German marks for the whole period, 578 East German marks per month for the pensionable year 1988 and 602 East German marks per month for the pensionable year 1990 (see Kiel/Müller/Roth, *Deutsche Rentenversicherung* 1990, pp. 471 ff.). 5

c) The old-age insurance system of the German Democratic Republic, in addition to the pensions insurance scheme, included a large number of supplementary pensions systems (over 60), which each covered only particular groups of persons and whose benefits were appreciably greater than those of the pensions insurance scheme. The supplementary pension supplemented the pension under the pensions insurance scheme. It was intended to preserve for the person entitled a proportion of his or her last earned income that would ensure the same standard of living. The supplementary pensions systems were thus similar to occupational pension plans and to the supplementary pension of the civil service in the old Federal Republic of Germany. 6

Independently of this, there were special pensions systems for the members of the National People's Army (*Nationale Volksarmee*), the German People's Police (*Deutsche Volkspolizei*), the fire brigade and the prison service, the customs administration and the Ministry for State Security/Office of National Security (MfS/AfNS). These were characterised by the fact that they guaranteed independent cover for their members outside the pensions insurance scheme in a way similar to civil service pensions in the Federal Republic of Germany. 7

The supplementary pensions systems differed from one another in many respects, above all with regard to the benefits and the structure of the contributions. For certain occupational groups, membership in these systems was obligatory, for others it was 8

voluntary. It was also possible for it to be created in the individual case by the decision of a minister or of the Council of Ministers (*Ministerrat*). The requirements for access to and benefits of the supplementary pensions were often announced neither in the law gazette nor in any other way. Insofar as there was liability to pay contributions, contributions were normally to be made to the Voluntary Supplementary Pensions Insurance Scheme, because the financing of the supplementary pensions was carried out by way of this scheme. However, the amount of the contribution was often only 5 or 3 per cent, in place of the rate of 10 per cent that was customary in the Voluntary Supplementary Pensions Insurance Scheme.

The amount of the benefits paid by the supplementary pension was linked to the last earned income and was between 50 and 80 per cent of the last net income. Here, some systems had an upper limit of 800 East German marks; a minister or the Council of Ministers could grant release from this limit. In the normal case, the benefits together with the pension from the pensions insurance scheme were to amount to 90 per cent of the last net income. 9

The Federal Insurance Institute for Salaried Employees (*Bundesversicherungsanstalt für Angestellte*) stated that the number of all pensions established under the pensions law of the German Democratic Republic and transferred on 1 January 1992 to pensions under the Sixth Book of the Code of Social Law (*Sozialgesetzbuch Sechstes Buch – SGB VI*) was 4,053,878. At least 240,400 of these were based on entitlements under supplementary pensions systems. The number of persons with expectancies in the supplementary pension system was estimated by the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Sozialordnung*) at over two million. 10

d) A special supplementary pensions system was created from the year 1951 for members of academic, arts, pedagogical and medical institutions of the German Democratic Republic. The legal basis for this supplementary old-age pension, which also included university teachers, was the Ordinance on the Old-Age Pensions of the Intelligentsia at Academic, Arts, Pedagogical and Medical Institutions of the German Democratic Republic (*Verordnung über die Altersversorgung der Intelligenz an wissenschaftlichen, künstlerischen, pädagogischen und medizinischen Einrichtungen der Deutschen Demokratischen Republik*) of 12 July 1951 (Law Gazette of the German Democratic Republic, *Gesetzblatt der Deutschen Demokratischen Republik – GBl* p. 675), which was amended several times in the following period. It did not provide a payment of contributions by the persons supplementarily insured. Later, some contributions were made to the Voluntary Supplementary Pensions Insurance Scheme. 11

The amount of the old-age pension under the supplementary pension scheme granted by the State Insurance Scheme of the German Democratic Republic was normally 60 per cent of the average monthly gross earnings of the last years before the pension was payable, at a maximum of 800 East German marks a month (§ 8 let- 12

ter a of the Ordinance). In exceptional cases, in the case of particular success at work (see § 9.1 of the Ordinance), up to 80 per cent of the average gross earnings were paid.

2. a) After the collapse of the Communist system in the German Democratic Republic, the legal situation changed. The Treaty between the Federal Republic of Germany and the German Democratic Republic establishing a Monetary, Economic and Social Union (*Vertrag über die Schaffung einer Währungs-, Wirtschafts- und Sozialunion zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik*) of 18 May 1990 (Federal Law Gazette II p. 537; hereinafter: the Treaty) *inter alia* provided that the social security law of the German Democratic Republic should be aligned with federal German law. A pension insurance scheme financed by contributions was to be created, with wage-oriented, index-linked benefits (see Article 20.1 sentence 1 of the Treaty; for the details of this, see Ruland, *Deutsch-deutsche Rechts-Zeitschrift – DtZ* 1990, pp. 159 ff.; Michaelis/Reimann, *Die Angestellten-Versicherung – DAngVers* 1990, pp. 293 ff.). For the pension payments already being made when the Treaty was entered into, a conversion to German marks in the ratio 1:1 (see Article 10.5 of the Treaty) and an adaptation to the federal German pension rate were provided (for details, see Article 20.3 of the Treaty). In addition, the existing pensions were in future to be adjusted to the development of net wages and salaries in the German Democratic Republic (see Article 20.4 of the Treaty). 13

The existing supplementary and special pensions systems were to be discontinued on 1 July 1990 and the entitlements and expectancies be transferred to the pensions insurance scheme. Benefits under special arrangements were to be reviewed with the aim of abolishing unfair benefits and reducing excessive benefits (Article 20.2 sentences 2 and 3 of the Treaty). 14

Article 20 of the Treaty, as far as of interest here, read as follows: 15

Pension Insurance 16

(1) The German Democratic Republic shall introduce all necessary measures to adapt its pension law to the pension insurance law of the Federal Republic of Germany, which is based on the principle of wage- and contribution-related benefits. In this process, over a transitional period of five years, account shall be taken of the principle of the protection of public confidence with regard to persons approaching pensionable age. 17

(2) The pension insurance fund shall use its resources exclusively to meet its obligations with regard to rehabilitation, invalidity, old age, and death. The existing supplementary and special pensions schemes shall in principle be discontinued on 1 July 1990. Accrued entitlements and expectancies shall be transferred to the pension insurance fund, and benefits on the basis of special arrangements 18

shall be reviewed with a view to abolishing unjustified benefits and reducing excessive benefits. The additional expenditure incurred by the pension insurance fund by reason of such transfers shall be reimbursed from the state budget.

(3) Upon conversion to German marks, current pensions from the pension insurance fund shall be fixed at a net pension level that, for a pensioner who has completed 45 insurance/working years and whose earnings were at all times in line with average earnings, shall be 70 per cent of average net earnings in the German Democratic Republic. For a greater or smaller number of insurance/ working years, the percentage shall be correspondingly higher or lower. The basis for calculating the upward adjustment rate for individual pensions shall be the pension of an average wage-earner in the German Democratic Republic, graduated according to year of entry, who has paid full contributions to the voluntary supplementary insurance scheme of the German Democratic Republic, over and above mandatory social insurance contributions. If there is no upward adjustment on this basis, a pension shall be paid in German marks which corresponds to the amount of the former pension in East German marks (…) 19

(4) Pensions in the pensions insurance scheme shall be adjusted in line with the development of net wages and salaries in the German Democratic Republic. 20

(5) to (7) (…) 21

b) The German Democratic Republic largely implemented these terms of the Treaty in the Act to Adjust the Existing Pensions to the Net Pension Level of the Federal Republic of Germany and for Further Pensions-Law Provisions (*Gesetz zur Angleichung der Bestandsrenten an das Nettorentenniveau der Bundesrepublik Deutschland und zu weiteren rentenrechtlichen Regelungen, Rentenangleichungsgesetz – RAnglG*; hereinafter: Pensions Adjustment Act) of 28 June 1990 (Law Gazette of the German Democratic Republic I p. 495)). With regard to the creation of a new pensions insurance law, the Pensions Adjustment Act contained a number of transitional provisions for the transfer of entitlements and expectancies under supplementary and special pensions systems. It contains the following provision for the supplementary pensions systems: 22

Transfer of supplementary pensions already determined 23

§ 23 24

(1) The pensions and supplementary pensions paid until 30 June 1990 shall continue to be paid at the same rate from 1 July 1990 until they are transferred to the pensions insurance scheme. There will 25

be no increase of the pensions of the social security system pursuant to the provisions of Part One. If existing pensions of the social security system are increased because the social security scheme has no documents showing that a supplementary pension is being drawn, the payment of the increased sum shall be made conditionally.

(2) Supplementary pensions under pensions systems for full-time party workers, and full-time members of social organisations and of the Society for Sport and Technology (*Gesellschaft für Sport und Technik*), for members of the state apparatus, directors-general of the centrally managed combines and heads of centrally managed economic bodies on an equal footing with them, and also pensions under the special pensions systems of the former Ministry for National Defence (*Ministerium für Nationale Verteidigung*) or the Ministry for Disarmament and Defence (*Ministerium für Abrüstung und Verteidigung*) and the Ministry of the Interior (*Ministerium des Innern*) that exceed the amount of 1,500 East German marks will from 1 July 1990 be paid at a maximum rate of 1,500 German marks. 26

Together with the highest possible pension under the Mandatory Social Security Insurance Scheme (without regard to the pensions adjustment), on the basis of § 23.2 of the Pensions Adjustment Act, an upper limit of 2,010 German marks per month was possible for persons entitled under the supplementary pensions systems named there. 27

In the second half of 1990, the pensions rights were to be transferred to the pensions insurance scheme by way of reassessment as pensions of the social security scheme (§ 24.1 of the Pensions Adjustment Act). […] But this did not happen, because the German Democratic Republic acceded to the Federal Republic of Germany. 28

3. a) The Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity (*Vertrag vom 31. August 1990 zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands*, Unification Treaty, Federal Law Gazette II p. 889) contained further fundamental provisions and the first detailed provisions in the field of the statutory pensions insurance scheme. Here, the Unification Treaty posited a gradual alignment of pensions and created the essential cornerstones and the period of time needed for this. The harmonisation of substantive pensions law was to take place on 1 January 1992 on the basis of the Sixth Book of the Code of Social Law, which had been pronounced as early as 1989 and which was intended to enter into force throughout Germany on this date. Thus, in pensions law, even after the German Democratic Republic acceded to the Federal Republic of Germany, the division into two areas with differing legal systems was at 29

first retained.

b) The Unification Treaty upheld the provisions of the German Democratic Republic on the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme, and also some significant provisions of the Pensions Adjustment Act on the pension systems, including § 23.1 (see Annex II chapter VIII subject area F part III no. 8). However, the scheme on which the Pensions Adjustment Act was based, that the entitlements and expectancies under supplementary and special pensions systems should be transferred to the pensions insurance scheme, was altered. The Pensions Adjustment Act provided an interim step, based on the provisions in the Treaty, on the way to the establishment of legal unity – that is, the creation of a pensions insurance law for the German Democratic Republic satisfying the structural framework conditions of the Sixth Book of the Code of Social Law; this interim step was omitted. The Unification Treaty extended until 31 December 1991 the period laid down in the Pensions Adjustment Act for transferring the entitlements and expectancies with regard to benefits (see Annex II chapter VIII subject area H part III no. 9 letter b sentence 1 of the Unification Treaty). As a result the transfer of the rights to pension payments was left to the legislature of unified Germany. 30

Annex II chapter VIII subject area H part III no. 9 letter b reads as follows: 31

> The accrued entitlements and expectancies with regard to benefits for reduced earning capacity, old age and death are, to the extent that this has not yet been done, to be transferred to the pensions insurance scheme by 31 December 1991. Until the transfer, the provisions on benefits law of the pensions systems in question shall continue to apply to the extent that this Treaty, in particular the following provisions, does not provide otherwise. Entitlements and expectancies, insofar as they have already been transferred or the pensions system in question has already been discontinued, shall 32
>
> 1.be adapted according to their nature, basis and scope to the entitlements and expectancies under the general rules of social security in the area named in Article 3 of the Treaty, taking into account the relevant contributions paid; in this process, unjustified benefits are to be abolished and excessive benefits reduced, and these entitlements and expectancies may not be treated more favourably than comparable entitlements and expectancies under other public pensions system, and 33
>
> 2.in addition be reduced or refused if the person entitled has violated the principles of humanity or of a constitutional state or has in a serious degree abused his or her position for personal advantage or for the disadvantage of others. 34
>
> In the case of persons who are entitled under the scheme on 3 Oc- 35

tober 1990, the amount paid following the adaptation under sentence 3 no. 1 may not be less than the amount that was payable by the social security system and the pensions system for July 1990. In the case of persons who become entitled to benefits in the period from 4 October 1990 to 30 June 1995, the amount paid following the adaptation under sentence 3 no. 1 may not be less than the amount that would have been payable by the social security system and the pensions system for July 1990 if the pension had become payable on 1 July 1990.

For persons who at the date when the German Democratic Republic acceded to the Federal Republic of Germany already had rights to pension benefits, the Unification Treaty, in sentence 4, contained a guarantee of a particular amount payable after this (hereinafter: guaranteed amount payable). Under sentence 5, the same applied for persons who became entitled to benefits by 30 June 1995. In addition, sentence 3 nos. 1 and 2 contain provisions on the abolition and reduction or refusal of pension benefits for particular reasons; here, the Unification Treaty deviated from the ideas of the legislature of the German Democratic Republic in § 27 of the Pensions Adjustment Act on the possible reasons for a reduction. 36

4. […] 37-51

5. The […] pensions in the area of the former German Democratic Republic were […] structurally still largely governed as under the pensions insurance law of the German Democratic Republic before the collapse of the Communist system. This changed with the Act to Create Legal Uniformity in the Statutory Pensions and Accident Insurance (*Gesetz zur Herstellung der Rechtseinheit in der gesetzlichen Renten- und Unfallversicherung, Rentenüberleitungsgesetz – RÜG,* Pensions Transfer Act) of 25 July 1991 (Federal Law Gazette I p. 1606). The material parts of the Pensions Transfer Act entered into force on 1 January 1992, but some of them as early as on 1 August 1991, and thus only one month after the Second Pensions Adjustment Ordinance (*2. Rentenanpassungsverordnung*) entered into force it influenced the amount payable, which had only just been established there. In the following period, it was altered and amended several times. 52

a) The core of the Pensions Transfer Act was extending the pensions-law provisions of the Sixth Book of the Code of Social Law to the area of the former German Democratic Republic (Article 1 of the Pensions Transfer Act). With effect from 1 January 1992, the provisions of insurance, contributions and benefits law therefore in principle applied in the former German Democratic Republic too. A further emphasis of the Pensions Transfer Act was transferring the supplementary and special pensions systems. The Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic (*Gesetz zur Überführung der Ansprüche und Anwartschaften aus Zusatz- und Sonderversorgungssystemen des Beitrittsgebiets, Anspruchs- und Anwartschaftsüberführungs-* 53

*gesetz – AAÜG,* Transfer of Titles and Expectancies Act) of 25 July 1991 (Federal Law Gazette I pp. 1606, 1677), promulgated as Article 3 of the Pensions Transfer Act, which entered into force on 1 August 1991, in conjunction with the provisions of the Sixth Book of the Code of Social Law, contained provisions on the details of this (see on the effects of the Pensions Transfer Act Ruland, *Deutsche Rentenversicherung* 1991, pp. 518 ff.; Michaelis/Stephan, *Die Angestellten-Versicherung* 1991, pp. 149 ff.; Rische, *Die Angestellten-Versicherung* 1991, pp. 229 ff.; Rahn, *Deutsch-deutsche Rechts-Zeitschrift* 1992, pp. 1 ff.).

b) The provisions in § 2.2, § 2.2.a and §§ 4.1 and 4.2 of the Act, which continue in effect without alterations today, apply to the transfer of part of the supplementary pensions systems of the German Democratic Republic or of the benefits granted under these systems and of all special pensions systems (see Annex 1 to § 1.2 and Annex 2 to § 1.3 of the Transfer of Titles and Expectancies Act). First of all, as agreed in the Unification Treaty, the Act discontinued such pensions systems as have not already, under the law of the German Democratic Republic, been discontinued (see § 2.1 of the Transfer of Titles and Expectancies Act). Then, the Act lays down the chronological sequence of the transfer to the statutory pensions insurance scheme and determines, *inter alia*, what periods under pensions law and what income are to be taken as the basis for calculating pensions under the Sixth Book of the Code of Social Law. 54

Under § 5.1 of the Transfer of Titles and Expectancies Act, the periods of membership in a supplementary or special pensions system are deemed to be compulsory contributions periods to the pensions insurance scheme (see § 55 of the Sixth Book of the Code of Social Law); they are evaluated – independently of payment of contributions – according to the wage or income from employment up to the upper earnings limit for the assessment of contributions (see § 6.1 of the Transfer of Titles and Expectancies Act in conjunction with Annex 3). This limit is at all events the upper limit. The target of the Unification Treaty (see Annex II chapter VIII subject area H part III no. 9 letter b sentence 3 no. 1) of gradually abolishing excessive benefits is implemented by § 6.2 and 3 of the Transfer of Titles and Expectancies Act (in conjunction with Annexes 4, 5 and 8) and § 7 of the Transfer of Titles and Expectancies Act (in conjunction with Annex 6) with regard to particular pensions systems and functional levels in such a way that wages, salaries or income from employment below the relevant upper earnings limit for the assessment of contributions are not taken into account in full. 55

§ 10 of the Transfer of Titles and Expectancies Act in its original wording restricted the sum of the amounts payable under similar pensions of the pensions insurance scheme and supplementary pensions and the amounts payable as benefits of the special pensions systems to fixed maximum amounts (known as provisional restriction of amounts payable). The restriction was provisional insofar as the maximum amount was paid for the persons affected until the index-linked pension entitlement following from the transfer reached the same amount and the maximum amount no longer applied. 56

The restriction of the amount payable, which the Pensions Adjustment Act imposed selectively for some supplementary and special pensions systems (see § 23.2) was thus, from 1 August 1991, extended to all pensions systems to be transferred to the statutory pensions insurance scheme. This affected all existing pensions to which the persons entitled had a right on 31 July 1991 under the supplementary and special pensions systems for pension drawing dates from 1 August 1991. For pensions of persons insured under supplementary pensions systems and special pensions systems under Annex 2 nos. 1 to 3 to § 1.3 of the Transfer of Titles and Expectancies Act, the maximum amount was uniformly 2,010 German marks per month (§ 10.1 no. 1 of the Transfer of Titles and Expectancies Act). § 10 of the Transfer of Titles and Expectancies Act was to replace the guaranteed amount payable laid down in the Unification Treaty by a maximum amount provision, which would have the effect of putting a ceiling on the pensions above this amount. In the statement of reasons for the bills of the Federal Government of 11 April 1991 (*Bundestag* document 197/91) and of the CDU/CSU and F.D.P. parliamentary parties of 23 April 1991 (*Bundestag* document 12/405, pp. 113-114, 148), the following is stated on § 10 of the Transfer of Titles and Expectancies Act: 57

> "An assessment has now been carried out of the supplementary and special pensions systems and shows that if the framework conditions of the Unification Treaty were complied with, this would necessarily lead to results that are not appropriate and that are unjustifiable not only from the point of view of social policy. 58-59
>
> However, it would be completely unjustifiable to preserve the protection of possession proviso contained in the Unification Treaty with the result that benefits would continue to be paid and new benefits would be granted up to several times the maximum pension under the pensions insurance scheme, above all *inter alia* to persons who in the political situation of the German Democratic Republic were able to rise to high and highest functions and some of whose pension entitlements are based solely on resolutions of the Council of Ministers, without a legal basis in the relevant pensions regulations. But if the framework conditions of the Unification Treaty cannot be complied with, the need for legislation arises. 60-61
>
> Anticipating the results after the individually acquired entitlements and expectancies, taking account of the income limits contained in §§ 6 and 7 with regard to the amount of the benefit, have been transferred, the provision restricts the pensions and the supplementary and special pensions at the beginning of the month following the pronouncement of this Act to 1,500 German marks per month and for benefits under the pensions scheme of the Ministry for State Security (*Ministerium für Staatssicherheit*) to 600 German marks per month. The limits correspond approximately the pensions income 62-63

under the maximum limits, rounded off, under § 7.1 and §7.2. They replace the previous provisions on protection of possession in the Unification Treaty, under which persons who were entitled to a pension on 3 October 1990 or who become entitled to a pension by 30 June 1995, had the amount payable for July 1990 protected.

c) Important retroactive changes were made to the Transfer of Titles and Expectancies Act by the Pensions Transfer Amendment Act (*Gesetz zur Ergänzung der Rentenüberleitung, Rentenüberleitungs-Ergänzungsgesetz – RÜ-ErgG*) of 24 June 1993 (Federal Law Gazette I p. 1038). The provisions on the restriction of the wages or income under § 6.2 to § 6.4 of the Transfer of Titles and Expectancies Act were extensively modified. In addition, the provision on the provisional restriction of the amount paid in § 10 of the Transfer of Titles and Expectancies Act was partly redrafted (Article 3.6 of the Pensions Transfer Amendment Act). Following this alteration, § 10.1 of the Transfer of Titles and Expectancies Act, which continues to apply without amendment today, has the following wording: 64

> The sum of the amounts payable under pensions of the same kind of the pensions insurance scheme and benefits of the supplementary pensions systems under Annex 1 no. 2, 3 or 19 to 27 and the amounts payable of benefits of the special pensions systems under Annex 2 no. 1 to 3 or the sum of the amounts payable of benefits under § 4.2 nos. 1 and 2 shall, including the matrimonial allowance, be limited to the following maximum amounts from the first of the calendar month following the pronouncement of this Act: 65
>
> 1. for pensions for the insured, 2,010 German marks, 66
>
> 2. for pensions for widows or widowers, 1,206 German marks, 67
>
> 3. for pensions for orphans, 804 German marks, and 68
>
> 4. for pensions for persons who have lost one parents, 603 German marks. 69
>
> Sentence 1 applies to the sum of the amounts payable under pensions of the same kind of the pensions insurance scheme and benefits of the supplementary pensions systems under Annex 1 no. 1 or 4 to 18, subject to the proviso that from 1 August 1991 on the maximum amounts for pensions for the insured shall be 2,700 German marks and for widows or widowers 1,620 German marks. The restriction under sentence 2 shall also be made is when the pension is recalculated the compulsory contribution periods are to be based on the wages or income from employment under § 6.1. 70

Under this provision, the total amount payable for insured persons' pensions, composed of pensions of the pensions insurance scheme and benefits under specific 71

supplementary pensions systems existing on 31 July 1991 – which differs from the amount in the original version of § 10.1 of the Transfer of Titles and Expectancies Act (2,010 German marks) – is provisionally restricted to a maximum amount of 2,700 German marks (§ 10.1 sentence 2 of the Transfer of Titles and Expectancies Act). […] The provision makes it clear that the provision of the highest amount payable also applies if, when the pension is recalculated under the Sixth Book of the Code of Social Law, the compulsory contribution periods are to be based on the wages or income from employment under § 6.1 sentence 1 of the Transfer of Titles and Expectancies Act (in conjunction with Annex 3). As grounds for the increase of the maximum sum payable, the following is also stated (see *Bundestag* document *loc. cit.*, p. 21):

> In addition, the sum of 2,700 German marks is linked to the pension amount that was generally reached by members of the old-age pensions system for the intelligentsia with a gross salary of between 3,000 and 3,500 East German marks per month and a pension commitment of between 60% and 80% of this gross salary together with the pension under the Mandatory Social Security Insurance Scheme of 340 East German marks per month. 72

The restriction provision of § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act also affects persons entitled under the supplementary pensions system for members of academic, arts, pedagogical and medical institutions (see Annex 1 no. 4 on § 1.2 of the Transfer of Titles and Expectancies Act). According to the information given by the Federal Insurance Institute for Salaried Employees, in 955 cases (1.1 per cent of all pensions of insured persons under the supplementary pensions systems named in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act) the amount payable was restricted to 2,700 German marks. The effects varied greatly in the individual cases. On average, the difference from the total amount payable that was still paid in July 1991 from pensions under the pensions insurance scheme and a payment under supplementary pensions systems was 610.95 German marks (18.46 per cent). 73

**II.**

1. The proceedings are based on the following facts: 74

a) The complainant and plaintiff in the original proceedings, who was born in 1923 (hereinafter: the plaintiff) was a full professor of urology at the Humboldt University in Berlin and at the end of his career – until his retirement in the year 1988 – the Director of the Urological Clinic and Polyclinic, and head of the scientific research department of the Charité Hospital. In the last year of his career (from February 1987 to January 1988), his gross annual salary was 55,440 East German marks, and therefore his average monthly salary was 4,620 East German marks. The plaintiff belonged to the supplementary pensions system for members of academic, arts, pedagogical and medical institutions of the German Democratic Republic (see Annex 1 no. 4 to § 1.2 of 75

the Transfer of Titles and Expectancies Act).

In the year 1971, on the basis of an individual contract, the pensions rate was raised from 60 per cent to 80 per cent of the last average monthly gross salary. In addition, the maximum restriction of the pension under the supplementary pensions system that applied till that date, to 800 East German marks, was cancelled to the advantage of the plaintiff. […] 76

b) On 1 July 1990, the plaintiff's total old-age pension in the amount of 4,066 East German marks per months was paid in German marks, on the basis of the Treaty. […] 77

[T]he total pension benefits for drawing dates from 1 August 1991 [were], under § 10.1 no. 1 of the Transfer of Titles and Expectancies Act as amended by the Act to Create Legal Uniformity in the Statutory Pensions and Accident Insurance, provisionally reduced to 2,010 East German marks and then retroactively raised from this date, under § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act as amended by Article 3 of the Pensions Transfer Amendment Act, to 2,700 German marks per month. 78

[…] Eventually, the plaintiff's pension was finally assessed under § 307.b of the Sixth Book of the Code of Social Law, taking into account the provisions of the Sixth Book of the Code of Social Law and of the Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic, and from 1 July 1990 it was retroactively adjusted […] After this, the plaintiff's monthly pension, at the beginning of the year 1995, was still less than the maximum amount of 2,700 German marks per month laid down in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act. 79

c) […]The plaintiff's legal action for the award of a higher pension for pension drawing from 1 July 1990 was unsuccessful at the Social Court (*Sozialgericht*) […] The plaintiff appealed directly to the Federal Social Court (*Bundessozialgericht*), bypassing the Higher Social Court (*Landessozialgericht*); the Federal Social Court passed a part judgment on part of the appeal proceedings (pension drawing dates from 1 July 1990 to 31 July 1991) on 14 June 1995, and it is against this part judgment that the plaintiff's constitutional complaint is directed. The court stayed the remainder of the proceedings (pension drawing dates from 1 August 1991 to 17 January 1994) and requested the Federal Constitutional Court to make a decision under Article 100.1 of the Basic Law. 80

aa) […] 81-84

bb) […] It submitted to the Federal Constitutional Court the question 85

> whether § 10.1 sentence 2 of the Act on the Transfer of Entitlements and Expectancies under Supplementary and Special Pensions Systems of the German Democratic Republic, pronounced as 86

Article 3 of the Pensions Transfer Act of 25 July 1991, which entered into force on 1 August 1991, amended by the Act Amending the Pensions Transfer Act (*Gesetz zur Änderung des Renten-Überleitungsgesetzes*) of 18 December 1991 and the Pensions Transfer Amendment Act of 24 June 1993 is compatible with Article 14.1 sentence 1 provision 1 and sentence 2, and with Article 20.1 of the Basic Law to the extent that the sum of the amounts payable under pensions of the same kind of the pensions insurance scheme and pensions under the supplementary pensions system in Annex 1 no. 1 or 4 to 18 was restricted to 2,700 German marks.

[…] 87-93

2. In his constitutional complaint, the plaintiff challenges the part judgment of the Federal Social Court and the other judicial and administrative decisions to the extent that these do not relate to the matter in dispute not covered by the Federal Social Court's decision to stay the proceedings and make a referral to the Federal Constitutional Court. *Inter alia*, he challenges an infringement of his rights under Article 14, Article 3.2 and Article 20.3 of the Basic Law. 94

[…] 95

**III.**

[…] 96-114

**IV.**

[…] 115

**B.**

[…] 116

**C.**

The provisional restriction of payment in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act, referred to this court for review, infringes Article 14.1 sentence 1 of the Basic Law. 117

**I.**

The provision is above all to be tested against this fundamental right. When the decision of the Unification Treaty to transfer entitlements and expectancies under the supplementary and special pensions systems of the German Democratic Republic to the statutory pensions insurance scheme, on which the provision is based, is examined from the point of view of constitutional law, Article 3.1 of the Basic Law applies in addition. 118

1. The entitlements and expectancies under supplementary and special pensions systems acquired in the German Democratic Republic and recognised in the Unification Treaty in accordance with its provisions as legal positions in the all-German legal system are protected by Article 14.1 sentence 1 of the Basic Law. 119

a) With regard to pensions entitlements and pensions expectancies that were acquired in the area of applicability of the Basic Law, the legal protection of property has long been recognised. As the Federal Constitutional Court has assumed in its established case-law since its judgment of 28 February 1980 (Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 53, 257 (289 ff.)), the pensions-law positions based on statute have a social function, and it is precisely the duty of the fundamental right to property to protect this function; these positions also have the constitutive characteristics of property in the meaning of Article 14 of the Basic Law. 120

In the total structure of the fundamental rights, the fundamental right to property has the task of ensuring that the subjects of this fundamental right have a sphere of freedom in the area of property law, and in this way to enable them to shape their lives on their own responsibility. In modern society, the majority of the population succeed in securing their livelihood less through private assets than through earned income and the associated old-age pension, which is borne solidarily and which has historically always been closely connected to the idea of property. Thus, the rights of the individual to benefits under the pensions insurance scheme have replaced private providing for and securing one's future and therefore they need the same protection of fundamental rights that attaches to this. 121

Pension entitlements and expectancies, as property that can be assessed in financial terms, also have the essential characteristics of property, which is constitutionally protected. They are exclusively allocated to the private subject of rights and intended for his or her personal use. The individual can also dispose of them like an owner in the process of shaping their legal nature. Their scale is partly determined by the personal efforts of the insured, as expressed above all in the contributions paid. The entitlement is therefore connected with a person's own performance, which is recognised as a particular reason justifying protection of the ownership position. This entitlement is thus not based solely on a claim that is granted by the state in fulfilment of a duty of welfare and which does not enjoy the legal protection of property because there is no performance on the part of the beneficiary. Finally, it also secures the individual's livelihood (see BVerfGE 69, 272 (300-301); established case-law). 122

b) In principle, nothing else can apply in the case of the pension entitlements and expectancies under supplementary and special pensions systems established in the German Democratic Republic and existing at the date of its accession to the Federal Republic of Germany. 123

aa) As legal positions that the Unification Treaty in principle recognised, they enjoy the protection of Article 14 of the Basic Law. Admittedly, Article 14 of the Basic Law 124

has its protective effect only in the area of application of the Basic Law. Before the unification of the two German states, this did not extend to the area of the German Democratic Republic. Nor did the Basic Law enter into force retroactively there on accession. Until accession, therefore, the pension entitlements and expectancies acquired in the German Democratic Republic were not protected by Article 14.1 of the Basic Law. On the accession and on being recognised by the Unification Treaty, however, like other legal positions that have the value of an asset, they entered the area of protection of this fundamental right (see BVerfGE 91, 294 (307-308)).

125 The Unification Treaty provides that the entitlements and expectancies acquired in the pensions systems of the German Democratic Republic are to be transferred into the all-German legal system, without regard to the reason and nature of their creation, and to be transferred to the statutory pensions insurance scheme by further legislative steps. The Treaty admittedly provides that the pensions systems not yet discontinued at the date when the treaty enters into force are to be discontinued by 31 December 1991. However, this is not intended to extinguish the entitlements and expectancies acquired in these pensions systems. Instead, the Federal Republic of Germany, in principle, will enter the benefits-law relationships created under the pensions systems of the supplementary and special pensions systems (see also, for other legal relationships that continued, BVerfGE 84, 133 (147); 85, 360 (373); 91, 294 (309); 95, 267 (305, 306-307)). The pensions systems were accordingly continued until the entitlements and expectancies acquired under them were transferred to the pensions insurance scheme and until they were adjusted to the general regulations of the social security scheme. Until this transfer, those responsible for paying the benefits were the relevant successors in function to the pensions systems (Annex II chapter VIII subject area H part III no. 9 letter c of the Unification Treaty).

126 bb) The entitlements and expectancies that had been acquired in the supplementary and special pensions systems of the German Democratic Republic also have the essential characteristics of property in the meaning of Article 14 of the Basic Law.

127 Like corresponding legal positions under the West German statutory pensions insurance scheme, they were allocated to those entitled for their private use and served to secure their livelihood. Nor did they lack an appreciable element of performance by the pensioner himself or herself, if one takes into account the special circumstances of the old-age provision system of the German Democratic Republic. Contributions were made not only to the Mandatory Social Security Insurance Scheme and to the Voluntary Supplementary Pensions Insurance Scheme. Employees who were members of supplementary and special pensions systems often paid contributions that were sometimes up to 10 per cent of their gross earnings. But there were exceptions to this. If there was a liability to pay contributions, the contributions were also sometimes low and not adequate for the pension payment promised. However, these special cases do not conflict with the fact that these are property rights worthy of protection.

As the Federal Constitutional Court has already emphasised in connection with West German positions under social-security law, the protection of property in this area essentially rests on the fact that the legal position in question is partly determined by the personal work performance of the insured, which is expressed *inter alia* in the income-related benefits (see BVerfGE 69, 272 (301)). The court therefore imputed not only the contributions paid by the insured persons themselves, but also the employers' contributions to the statutory pensions insurance scheme to the property-relevant performance of the employee himself or herself (see BVerfGE 69, 272 (302)). Consequently, the fact that a position under pensions law, like tangible assets that are acquired with the help of subsidies or tax relief, is partly or predominantly based on state grant does not automatically conflict with the assumption that the insured made considerable contributions, if, at all events, the insured can regard it as "his or her" legal position, exclusively due to him or her (see BVerfGE 69, p. 272 (at p. 301)). 128

With regard to the special conditions of the old-age pension and remuneration system in the German Democratic Republic, therefore, legal protection of property applies even if the pension entitlements and expectancies were acquired not in the first instance by the payment of contributions, but substantially through work performance. The necessary connection between the supplementary pension and the work performance was created in many ways in the remuneration system of the German Democratic Republic. In some supplementary pensions provisions, the importance of occupational performance and success at work was expressly emphasised and named as a justification of the amount of the pension (see § 9.1 of the Ordinance on the Old-Age Pension of the Intelligentsia at Academic, Arts, Pedagogical and Medical Institutions of the German Democratic Republic of 12 July 1951, Law Gazette of the German Democratic Republic p. 675). In some cases, promises of a relatively high old-age pension were also intended to compensate for a lack of remuneration appropriate to performance, since the state, by reason of its financial position, was not able to pay remuneration appropriate to performance in every case (see Bienert, *Zeitschrift für Sozialreform – ZSR* 1993, p. 349 (351-352)). 129

Often, entry to a supplementary pensions system was not a matter as to which the persons entitled had any choice. Similarly, they had no influence on whether and in what amount they had to make contributions to their supplementary pensions themselves. Advantages in the area of social security, such as exemption from contributions or small contributions for professors and full-time employees of the state machinery, often served to compensate for the higher taxation of these occupational groups. This was set out by the expert witness Professor Dr. Kaufmann in the oral hearing. In every case, the provision of supplementary pension payments was linked to the work performance of the insured and was not understood as a measure of state welfare, even if the funds largely came from the state budget. In the Federal Republic of Germany too, the benefits paid by the Federal and *Länder* Government-Service Supplementary Pension Agency (*Versorgungsanstalt des Bundes und der Länder*) 130

and the supplementary direct insurance by the employers are based on such considerations.

[…] 131

c) The constitutional protection of property, however, applies to the pension entitlements and expectancies only in the form they had on the basis of the provisions in the Unification Treaty. 132

In the case of legal positions under pensions-insurance law too, the concrete scope of the fundamental right to property follows only from the determination of the content and limits of property, which under Article 14.1 sentence 2 of the Basic Law is the matter of the legislature (see BVerfGE 53, 257 (292)). However, the legislature does not have complete freedom here. On the contrary: it has to take into account the fundamental character of private use and power of disposal that are part of the concept of property (see BVerfGE 37, 132 (140)), and may not restrict these disproportionately. But its scope for decision varies in this, depending on the proportion of personal and social components of the property. 133

These principles also apply to the definition by the Unification treaty of ownership positions that go back to work performance and contributions paid in the German Democratic Republic. Admittedly, these legal positions were subjected to the protection of Article 14 of the Basic Law only on the basis of the Treaty and when it came into force. But this does not alter the fact that when the legislature ratified the Unification Treaty it was bound by the Basic Law. It was therefore not permitted to pass provisions determining the content and limits of ownership that are incompatible with Article 14.1 of the Basic Law (see BVerfGE 91, 294 (308-309)). 134

However, when the legislature determines the content and limits of pensions-insurance-law positions, in principle it has great freedom of drafting. Pension entitlements and expectancies are strongly related to the individual. But at the same time they have an obvious relation to society as a whole (for detail, see BVerfGE 53, 257 (292-293)). And it is for this reason that Article 14.1 sentence 2 of the Basic Law gives the legislature the power to restrict pensions entitlements and pensions expectancies, to reduce benefits and to restructure entitlements and expectancies, to the extent that this serves a purpose in the public interest and satisfies the principle of proportionality (see BVerfGE 53, 257 (293)). However, its freedom of drafting is reduced to the extent to which pensions entitlements and pensions expectancies are shaped by the personal connection of the proportion of the insured person's own performance. 135

The legislature that passed the Unification Treaty was confronted with the pensions entitlements and expectancies in the modified form that they had taken on as a result of the legislation of the German Democratic Republic, which was not subject to the standards of the Basic Law and can therefore not be measured against it. These legal positions entered the area of application of the Basic Law because they were recog- 136

nised by the legislature that passed the Unification Treaty, which laid down the conditions and consequences of accession, and subject to the conditions laid down for them by that legislature in exercise of its power under Article 14.1 and 14.2 of the Basic Law.

2. When the legislature transferred the pensions entitlements and expectancies, it was bound not only by Article 14.1 sentence 1 of the Basic Law, but also by the principle of equality before the law under Article 3.1 of the Basic Law. This requires that all people are treated equally before the law. However, this does not prohibit the legislature from all differentiation. But if it treats one group of persons who are addressed by a specific statute differently than another, although there are no differences between the two of such a nature and such weight that they might justify the unequal treatment, it violates the fundamental right (see BVerfGE 87, 1 (36); 92, 53 (68-69); 95, 143 (154-155); 96, 315 (325)). But when the legislature creates legal unity in the statutory pensions insurance scheme and transfers the entitlements and expectancies acquired in the area of the former German Democratic Republic, its scope of drafting is particularly wide (see BVerfGE 95, 143 (157-158)). 137

**II.**

The provision in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act, which is submitted for constitutional review, is not unconstitutional merely for the reason that the fundamental decision made by the Unification Treaty in Annex II chapter VIII subject area H part III no. 9 letter b sentences 1 and 3 (known as a system decision), and one which § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act is based, is unconstitutional. On the contrary: if this is interpreted in conformity with the Basic Law, it is compatible with the Basic Law. 138

1. Whereas, for members of the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme, old-age pensions improved after integration into the statutory pensions insurance scheme, as a result of the conversion to the Western level of the wages, salaries or income from employment received in the German Democratic Republic, the ongoing index-linking of the pensions and the steady increase of the current pension value (East), for many members of the pensions systems the transfer worked to their disadvantage, despite the fact that they too enjoyed the benefits of the index-linking. This results from the fact that the upper earnings limit puts a ceiling on contributions and the guaranteed level in the statutory pensions insurance scheme is reduced from approximately 90 per cent to approximately 70 per cent of the insured's average lifetime earnings. 139

2. The fundamental decision, if interpreted in conformity with the Basic Law, is not inconsistent with Article 14.1 sentence 1 of the Basic Law. 140

a) Article 14.1 sentence 1 of the Basic Law does not give rise to any obligation on the part of the legislature to retain the old-age pension system of the German Democratic Republic including the supplementary and special pensions. The legislature was 141

not prevented from incorporating this system, in a form that seemed appropriate to it, into the pensions insurance scheme of the Federal Republic of Germany. This does not constitute a weakening of the constitutional guarantees made to the population of the German Democratic Republic. The pensions system of the Federal Republic of Germany as a system also enjoys no constitutional protection of legal continuity, but it would be possible for the legislature to change its foundations.

However, when such a change of system takes place, it entails transitional problems for those persons who have already acquired entitlements or expectancies, and here the fundamental right to property in Article 14.1 sentence 1 of the Basic Law must be taken into account. But this does not give absolute protection to the individual legal position. This applies in particular if the legislature is confronted with the task of adapting a system that was integrated in a legal system governed by quite different principles to the legal system of the Federal Republic of Germany. Here, it is not constitutionally obliged to treat the persons entitled under pensions systems of the German Democratic Republic in such a way as if their working lives had taken place in the Federal Republic of Germany (see BVerfGE 84, 90 (122-123); 95, 267 (309)). 142

Under Article 14.1 sentence 2 of the Basic Law, the legislature determines the content and limits of property; in doing this, it must, under Article 14.2 of the Basic Law, take into account the principle that ownership involves social obligations. This power also includes the power to alter legal positions that have been attained. This applies not only to the legal positions recognised in the Unification Treaty of the pensioners and future pensioners from the German Democratic Republic; it also undisputedly includes those from the Federal Republic of Germany (see BVerfGE 53, 257 (293); 69, 272 (304)). Article 14.1 sentence 2 of the Basic Law, however, does not permit the conversion to entail losses that conflict with the principle of proportionality and unacceptably reduce ownership positions. 143

b) From this point of view, there are in principle no constitutional objections to the fact that the legislature replaced the entitlements and expectancies acquired in the German Democratic Republic by a unified pension payment deriving exclusively from the statutory pensions insurance scheme, omitting supplementary benefits that are similar to the occupational old-age pension or the supplementary pension of the civil service in West Germany. The same applies to the further reduction of the guaranteed level resulting from the fact that the insured wages, salaries or income from employment are taken into account only up to the upper earnings limit. Both these steps preserve the relationship to the insured's personal work performance and essentially preserve the pensions' function of guaranteeing a livelihood. The transfer as a whole serves an important reason of public interest, in that harmonisation of law in pensions law at the same time ensures that the social security system can continue to be financed. Extending the upper earnings limit to the benefits transferred is predetermined by the decision to integrate pensions of the German Democratic Republic into the pensions insurance scheme of the Federal Republic of Germany, which is admissible under constitutional law, and it could not be forgone without destroying the pen- 144

sions system.

c) The reduction is normally proportionate. For by way of the guaranteed amount payable in Annex II chapter VIII subject area H part III no. 9 letter b sentences 4 and 5 of the Unification Treaty, the legislature added a protective measure in favour of those affected by the reduction. This is intended to prevent a situation where in the course of closing the pensions systems and transferring the entitlements and expectances acquired therein to the statutory pensions insurance scheme there is a disproportionate reduction of pension payments for pensioners and those approaching retirement age. However, this function presupposes that the guaranteed amount payable has created a legal basis for concrete social-welfare claims. The court submitting this matter for review also understands it in this sense […] There are no constitutional objections to this. 145

d) As long as the amount payable compensates in value for the loss resulting from the transfer, the persons affected by the change of system are not disproportionately disadvantaged. 146

In the normal case, the guaranteed amount payable also had this compensatory effect. Usually it bridged only a short period until the index-linked pension under the Sixth Book of the Code of Social Law exceeded the amount payable. In this way, the standard attained in the German Democratic Republic did not deteriorate with lasting effect. 147

In the case of higher-earning persons entitled under supplementary and special pensions systems, such as the plaintiff in the original proceedings, the application of the provisions of the Unification Treaty can, however, have the effect that, for a long period of time or even permanently, only the guaranteed amount payable under § 307.b.3 sentence 2 of the Sixth Book of the Code of Social Law is paid, because the monthly amount of the pension calculated under the Sixth Book of the Code of Social Law on the basis of the upper earnings limit does not reach this amount, either at first or ever. In this way, the pension level of this group of persons, despite the fact that the amount payable nominally remained the same, would gradually be reduced to that of pensioners with entitlements only from the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme. In addition, as a result of inflation, the pension would steadily be reduced in value. In these circumstances, the guaranteed amount payable under the Unification Treaty could no longer fulfil its intended function of protection and compensation. This would not comply with the intentions of the Unification Treaty, for the guarantee of continued payment of the amount applying in July 1990 under Annex II chapter VIII subject area H part III no. 9 letter b sentences 4 and 5 of the Unification Treaty was intended to be only a transitional measure until the former pension was finally integrated into the statutory pensions insurance scheme. 148

This related to the Sixth Book of the Code of Social Law, which at the date when the Unification Treaty had already been pronounced, but had not yet entered into force. 149

The pensions and pension expectancies from the German Democratic Republic were to be subjected to the provisions of the Code of Social Law, not those of the Reich Insurance Code. This determined the length of the transitional period; it ended when the Sixth Book of the Code of Social Law entered into force on 1 January 1992. Until then, it was inevitable that separate steps would be taken to make adjustments in the new *Länder*. The disadvantages connected with this for existing pensioners were reasonable in view of the adjustment that was to be made later. From the date when all pensions were transferred to the statutory pensions insurance scheme, however, it was no longer necessary for these disadvantages to be suffered. Otherwise, the persons affected would not benefit from two fundamental characteristics of the pensions insurance scheme. Firstly, it would not be guaranteed that the relative position within the generation of pensioners in question attained by lifetime contributions was maintained after the pension became payable; secondly, these persons would be permanently excluded from index-linking, which since 1957 has been one of the characteristics of the statutory pensions insurance scheme.

The fact that the guarantee in the Unification Treaty relates to a specific amount payable does not prevent its being index-linked after the transfer of the pensions. The Unification Treaty linked to an amount that reflected the status of the individual pensions entitlements and expectancies in the pensions system of the German Democratic Republic. In doing this, after the recognition by the legislature that passed the Unification Treaty of the entitlements and expectancies under the supplementary and special pensions systems, it also marked a property position of those receiving benefits under that system in relation to the position of the other pensioners. This position had already deteriorated twice, as a result of the two increases of the pensions under the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme, by 15 per cent in each case, through the two Pensions Adjustment Ordinances, from which those entitled under supplementary and special pensions systems with high entitlements did not profit. 150

After the end of the transition period, which lasted until 31 December 1991, the legislature could no longer, without disproportionately disadvantaging this group of people, rely on the broad freedom of drafting that it has when it makes transitional legislation. Otherwise, the failure to index-link the benefit would be an unreasonable encroachment upon the entitlements of those affected, which are protected as property. If there were no index-linking for the existing pensions under supplementary and special pensions systems, this would be tantamount to removing their relative position under pensions law. The value of their entitlements would steadily be reduced to a fraction of its original value. Those who, like the plaintiff, at the date of accession were still drawing about eight times the value of an average pension, would finally be reduced to drawing 1.8 times that value. 151

e) This unconstitutional result, however, may be avoided by interpreting the legislation in conformity with the Basic Law. 152

Under Annex II chapter VII subject area H part III no. 9 letter b sentence 4 of the Unification Treaty, when adjustment is made under sentence 3 no. 1, the amount payable may not be less than the amount payable for July 1990 under the social security scheme and the pensions system. This permits the legislation to be understood to provide that the guaranteed amount payable is to be adjusted to the development of wages and incomes if it continues to be significant for the existing pensions affected after 31 December 1991 (see § 307.b.3 sentence 2 of Book Six of the Code of Social Law), because the monthly amount of the newly calculated pension is less than this amount on 1 January 1992. 153

In this interpretation, the guaranteed amount payable permanently retains its compensatory function, and then the integration of existing pensioners in the statutory pensions insurance scheme under the Sixth Book of the Code of Social Law does not infringe the fundamental right of property in the Basic Law (see also Merten, *Verfassungsprobleme der Versorgungsüberleitung*, 2nd ed., 1994, pp. 86 ff.). The deterioration of the legal positions protected as property that results from the reduction to the guaranteed level existing under the statutory pensions insurance scheme and the application of the upper earnings limit is compensated for by index-linking the pensions for drawing dates from 1 January 1992. Whether and how far the generally intended adjustment of pensions in current law (see § 63.7 of the Sixth Book of the Code of Social Law) falls in the scope of protection of Article 14 of the Basic Law need not be decided here. 154

3. When interpreted in conformity with the Basic Law, the fundamental decision is also compatible with Article 3.1 of the Basic Law. 155

a) The legislature's decision to discontinue the supplementary and special pensions systems of the German Democratic Republic and to transfer the entitlements and expectancies acquired there exclusively to the statutory pensions insurance scheme, admittedly, disadvantages higher-earning persons insured in the pensions system in relation to members of equivalent occupational groups in former West Germany, who, in addition to or in place of entitlement or expectancies in the statutory pensions insurance scheme, have entitlements or expectancies under other old-age pensions systems and therefore have a higher degree of security in their old age. 156

The group of persons mentioned, in addition, is in an inferior position in contrast to the persons with rights under supplementary and special pensions systems whose income was below or at the upper earnings limit and therefore was taken into account in full when the pensions were newly calculated under the provisions of the Sixth Book of the Code of Social Law. These persons entitled too, as a result of the transfer to the statutory pensions insurance scheme, lose their full guarantee in the amount of 90 per cent of their net earnings. However, after the adjustment of pensions has been completed, they have a pension in the same amount as comparable West German insured persons and are thus at all events treated better than higher-earning persons insured in the pensions systems, who in comparison with members of their occupa- 157

tional groups in former West Germany receive considerably smaller amounts.

Other groups that are advantaged in contract to the group of persons affected are members of the Mandatory Social Security Insurance Scheme and of the Voluntary Supplementary Pensions Insurance Scheme, and those entitled under supplementary and special pensions systems who are still capable of gainful employment and for this reason are in a position of acquiring expectancies and entitlements in another pensions system in addition to the benefits of the statutory pensions insurance scheme or instead of it. These groups will be able to adapt to the new pensions situation and improve its situation by a supplementary old-age pensions measure. 158

b) However, the unequal treatment is substantially justified by important reasons. 159

The occupational groups that have rights to a pension higher than the statutory pensions insurance scheme in the Federal Republic of Germany on the one hand and in the German Democratic Republic on the other hand do not completely coincide. They differ not only by areas of work, scope and qualification. Instead, it is also significant that those entitled in West Germany normally paid considerably higher contributions for their benefits exceeding the basic pension. This conflicts with a duty to treat higher-earning insured persons under supplementary and special pensions systems of the German Democratic Republic retroactively and free of charge in such a way as if they had satisfied the requirements of the supplementary pension in West Germany. It must also be taken into account that in the Federal Republic of Germany too the supplementary pension, which was referred to as the “second pillar” of provision for old age, was not accessible to everyone in the past. 160

There is also no infringement of equality to the extent that the group of persons affected are treated differently from such members of pensions systems who continue to be capable of gainful employment and therefore will be able to influence their insurance record positively in future. In principle, the legislature decides what elements of the standards of living of the persons in question are to be regarded as relevant for equal or unequal treatment (see BVerfGE 81, 108 (117)). The legislature remains within the limits of its power of drafting if it refuses to fully compensate, to the detriment of the community of insured persons or of the general public, the circumstance arising from age or fortune that persons who are at an age where they are capable of gainful employment have better opportunities than pensioners and persons near to retiring age of finding access to supplementary old-age pensions systems. It is compatible with Article 3.1 of the Basic Law that the beneficial effect of the guaranteed amount payable under the Unification Treaty for existing pensioners and new pensioners had a cut-off point on 30 June 1995. 161

c) However, the unequal treatment would be constitutionally questionable if persons with entitlements under pensions systems who received a higher income in the German Democratic Republic were referred for a long time or permanently to the guaranteed amount payable under the Unification Treaty without this amount being index-linked. There is no sufficiently good reason to treat existing pensioners from the 162

German Democratic Republic differently with regard to the adjustment of their pensions depending on whether they belong to a supplementary or special pensions system and their income was above the upper earnings level or whether they were insured only in the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme.

Such a differentiation cannot be justified by the argument that the persons affected are persons with top incomes who would at all events receive a higher pension with the guaranteed amount payable than they would be entitled to under the provisions of the Sixth Book of the Code of Social Law on the basis of their history of insurance. It cannot be inferred from the provisions of the Unification Treaty that these distinctions were intended to be levelled out. Instead, the Unification Treaty is drafted in such a way that the connection to payment or contributions and to the pensions paid in July 1990 would maintain the differences in the level of pension between persons entitled under supplementary and special pensions systems on the one hand and members of the Mandatory Social Security Insurance Scheme and the Voluntary Supplementary Pensions Insurance Scheme on the other hand when all the entitlements and expectancies were transferred to the legal system of the Federal Republic of Germany. It contradicts these differentiated transfer provisions if some of the benefits under supplementary and special pensions systems are excluded for a long time or even permanently from a pensions adjustment. 163

In this respect too, however, the constitutional objections can be removed if the provision on the guaranteed amount payable is interpreted in conformity with the Basic Law. If the pensions are index-linked and the guaranteed amount payable is understood in this connection as a guarantee of the real value (see Merten, *loc. cit*.), then in a way conforming with Article 3.1 of the Basic Law the intervals that existed between the pensions level of persons receiving supplementary and special pensions and that of the other pensioners of the German Democratic Republic are preserved. For under the interpretation in conformity with the Basic Law described, those entitled under supplementary and special pensions systems, as in the case of all other pensioners from the area of the former German Democratic Republic, retain their standard of living linked to the occupation that they had at the date of reunification. 164

The decision re C II was passed by five votes to two. 165

**III.**

Independently of the fundamental decision, the provision in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act infringes the fundamental rights of ownership of Article 14 of the Basic Law. 166

1. Article 135.a.2 of the Basic Law did not release the legislature from complying with this fundamental right. Under this provision, the federal legislature may rule that the Federal Republic of Germany is not obliged to comply, or to comply in full, with liabilities of the German Democratic Republic or of its legal entities. However, the appli- 167

cation of this Article is not relevant in the present case.

a) The legislative concept chosen in Annex II chapter VIII subject area H part III no. 9 of the Unification Treaty for the legal treatment of the entitlements and expectancies based on the supplementary and special pensions systems itself takes into account whether the expenses entailed can be financed by the budgets of the federation and of the *Länder* (Annex II chapter VIII subject area H part III no. 9 letter d of the Unification Treaty). The public purse will be burdened only to the extent to which the funds are not raised in the pay-as-you-go system. The public purse will be relieved for one reason in that when the pension payments are calculated, the upper earnings limit will be taken into account (see § 6.1 sentence 1 of the Transfer of Titles and Expectancies Act in conjunction with Annex 3). The Unification Treaty also provides that in the course of the transfer unjustified benefits are to be abolished and excessive benefits are to be reduced (Annex II chapter VIII subject area H part III no. 9 letter b sentence 3 no. 1 of the Unification Treaty). In addition, the guaranteed amount of pension payable under the Unification Treaty is restricted to the group of existing pensioners and persons of certain ages approaching pensionable age. Apart from this special provision, there is no room for the general financing reservation of Article 135.a.2 of the Basic Law. 168

b) […] 169-171

2. The legislature encroached upon a legal position protection by Article 14.1 sentence 1 of the Basic Law (see above under B I 1) by ordering in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act that the guaranteed total amount payable under pensions of the pensions insurance scheme and benefits under specific supplementary pensions systems for pension drawing dates from 1 August 1991 be limited to a maximum amount of 2,700 German marks per month. From this date, part of the total amount payable granted to the plaintiff in the Unification Treaty in the amount of the difference between 4,066 German marks monthly and the maximum amount of 2,700 marks monthly is withheld. 172

The encroachment is of substantial weight. As a result of the “provisional” limitation of the amount payable, in fact part of the total amount payable is permanently withheld, because under current law there is no question of a later payment of arrears. The restriction of the maximum amount in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act continues in effect by way of the provision protecting possession in § 307.b.3 sentence 2 of the Sixth Book of the Code of Social Law. The loss thus incurred is all the greater the greater the difference between the old and the new amount payable and the longer it takes for the newly calculated pension, as a result of pension adjustments, to reach the amount payable guaranteed by the Unification Treaty. 173

3. The provision in § 10.2 sentence 2 of the Transfer of Titles and Expectancies Act exceeds the limits covered by Article 14.1 sentence 2 of the Basic Law. 174

a) When the legislature passed the Transfer of Entitlements and Expectancies Act in the year 1991, it cited as reasons for reducing the amounts payable guaranteed in the Unification Treaty the fact that guaranteed amount payable created vested rights far exceeding the theoretically achievable maximum pension of the statutory pensions insurance scheme and in this way favoured a particular group of persons that had succeeded in rising to high and highest functions in the political circumstances of the German Democratic Republic. For this reason, it argued, the retention of the provision in protection of possession in the Unification Treaty was completely indefensible (see the Federal Government's bill of 11 April 1991, *Bundesrat* document – *BR-Drucks* 197/91, p. 113, and the bill of the CDU/CSU and F.D.P. parliamentary parties of 23 April 1991, *Bundestag* document 12/405, p. 113). 175

The provision in § 10 of the Transfer of Titles and Expectancies Act was also intended to limit the pensions and supplementary and special pensions in anticipation of the results of the transfer of the individually acquired entitlements and expectancies taking account of the restrictions of income contained in §§ 6 and 7 of the Transfer of Titles and Expectancies Act with regard to the amount of the benefit (see the Federal Government's bill, *loc. cit.* p. 148, and the bill of the CDU/CSU and F.D.P. parliamentary parties, *loc. cit.*, p. 148). The legislature retained these goals and their justification when it supplemented § 10 of the Transfer of Titles and Expectancies Act by the provision here challenged in subsection 1 sentence 2 (see above under A I 5 c). 176

b) This does not display a sufficient public interest to justify the encroachment effected by § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act. 177

The guaranteed amount payable in the Unification Treaty is not a promise of benefits that was made by the legislature that passed the Unification Treaty on the basis of its social and political discretion. It has a central protective function in the overall structure of the provisions relating to the transfer and in this way contributes to the reasonableness of this. For the benefit of the existing pensioners and persons of certain ages approaching pensionable age it compensates for disadvantages arising from the decision in the Unification Treaty to transfer the benefits under the supplementary and special pensions systems of the German Democratic Republic to the statutory pensions insurance scheme (see above under B II 2 c). 178

In essence, the guaranteed amount payable therefore primarily serves to protect pension entitlements and expectancies above the maximum limits of the general pensions insurance scheme. It was plain to see that in individual cases this protection would result in benefits up to several times the maximum pension, and the legislature that passed the Unification Treaty accepted it when it created the relevant categories. Nor did the legislature that passed the Unification treaty fail to realise that the guaranteed amount payable would also benefit privileged groups of persons and their “excessive” entitlements. It expressly exempted them from the reservation that excessive benefits are to be reduced. In doing so, it gave priority to protection of public confidence in this respect too (Annex II chapter VIII subject area H part III no. 9 letter 179

b sentences 4 and 5 of the Unification Treaty). Without new circumstances or findings that could justify a different understanding of the legislature's intention, this protection of public confidence cannot be removed. The mere statement that it is politically unacceptable is at all events not sufficient.

c) Other reasons relating to the public interest that could justify § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act are not apparent. 180

aa) The reduction of the amount payable can in particular not be justified by the argument that it serves to preserve the ability to function and efficiency of the system of the statutory pensions insurance scheme in the Federal Republic of Germany in the interest of all and to adapt it to the changed conditions, in particular following reunification (on this, see BVerfGE 53, 257 (293); 58, 81 (110); 74, 203 (214); 75, 78 (98); 95, 143 (162)). The maximum amount provision in § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act does not benefit the statutory pensions insurance scheme, because the extra expenses arising from the transfer are borne by the Federal Government and by the *Länder* in the area of the former German Democratic Republic (see Annex II chapter VIII subject area H part III no. 9 letter d sentences 2 to 4 of the Unification Treaty; § 15 of the Transfer of Titles and Expectancies Act). 181

bb) But in order to justify the restriction of the amount payable under § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act, the aspect of relieving the state budgets of the Federal Government and the *Länder* cannot be called upon either. The savings effected in this way are not of decisive weight in the light of the total expenses of the public budgets in question. The no. of pensions of insured persons that are provisionally reduced to a monthly amount payable of 2,700 German marks under the new version of § 10.1 of the Transfer of Titles and Expectancies Act is less than one thousand. The monthly ceiling amount is an average of 610.95 German marks (see A I 5 c above). With regard to the month of August 1991, this gave a monthly “ceiling volume” of 583,475.25 German marks. The Federal Insurance Institute for Salaried Employees stated that it was not possible to state the exact amount of the savings resulting from § 10.1 sentence 2 of the Transfer of Titles and Expectancies Act. In this connection, it drew attention to the effect resulting from the cessation of pension payments. The difference between the guaranteed amount payable and the newly calculated pension as a result of the annual pensions adjustments was steadily decreasing, it stated; as a result, the financial relief of the state budget was steadily decreasing (see also Merten, *loc. cit.*, p. 100). 182

4. […] 183-185

5. […] The provision submitted for review is unconstitutional and is therefore declared void (§ 82.1 in conjunction with § 78 sentence 1 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz – BVerfGG*). As a result of the nature of the infringement of the Constitution established, limitation to merely declaring the provision incompatible with the Basic Law is not possible. The financial effects cannot justify refraining from annulment. The annulment of the restriction provision affects a 186

relatively small no. of existing pensions. In addition, the additional expenditure by way of pension benefits is financed from day to day above all by the index-linking of the pensions calculated on the basis of the Sixth Book of the Code of Social Law.

**D.**

[…] 187-200

**E.**

[…] 201

Grimm Kühling Jäger

Haas Hörnig Steiner

Jentsch

**Bundesverfassungsgericht, Urteil des Ersten Senats vom 28. April 1999 - 1 BvL 32/95, 1 BvR 2105/95**

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