



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

**on Behalf of the Republic of Latvia
in Riga on 2 December 2021
in Case No. 2021-07-01**

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa, having regard to an application by the Administrative District Court, on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17 (1), Section 19¹ and Section 28¹ of the Constitutional Court Law,

at the court hearing of 2 November 2021, examined in written procedure the case

“On Compliance of Section 14 (6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities with Article 91 and Article 107 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 1 December 2009, the *Saeima* adopted the Law on Remuneration of Officials and Employees of State and Local Government Authorities (hereafter – the Remuneration Law), which entered into force on 1 January 2010.

Section 14 of the Remuneration Law defines general supplements to persons referred to in Section 2. Section 14 (6) of the Remuneration Law sets out conditions for granting supplements or rest days to employees for overtime work or for work on holidays. Section 14 (6) of the Remuneration Law initially provided: “Officials (employees), except for soldiers and officials with special service ranks of the institutions of the system of the Ministry of the Interior and

the Prisons Administration, shall receive a supplement for overtime work or for work on holidays in the amount of 100 per cent of the hourly salary rate determined for them, or shall be compensated for overtime work by granting paid rest time on another weekday.”

Section 14 (6) of the Remuneration Law has been amended several times.

By the law of 6 November 2013 “Amendments to the Law on Remuneration of Officials and Employees of State and Local Government Authorities”, Section 14 (6) of the Remuneration Law was expressed in new wording. Following the aforementioned amendments, Section 14 (6) of the Remuneration Law has not been amended and is in force in the following wording: “Officials (employees), except for soldiers and officials with special service ranks of the institutions of the system of the Ministry of the Interior and the Prisons Administration, shall receive a supplement for overtime work or for work on holidays in the amount of 100 per cent of the hourly salary rate determined for them, or shall be compensated for overtime work by granting paid rest time on another weekday according to the number of overtime hours worked” (hereafter – the contested norm).

2. The applicant – the Administrative District Court (hereafter – the Applicant) – holds that the contested norm, insofar it restricts the officials’ right to receive appropriate compensation for work during official public holidays established in the state (hereafter – public holidays), is incompatible with Article 91 and Article 107 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicant is hearing administrative case No. A420133120 with regard to issuing such a favourable administrative act by which a person, in the framework of the administrative case, would be compensated for financial losses that the person has incurred by not receiving supplements for working on public holidays in the period from 24 December 2017 until 9 June 2019. The person, for the protection of whose rights an application has been submitted in the administrative case, is an official with a special service rank of the Prison Administration, to whom the Ministry of Justice has refused to compensate for the financial losses, substantiating the refusal by the contested norm.

The Applicant holds that the contested norm is incompatible with the principle of equal rights, defined in the first sentence of Article 91 of the *Satversme*, and also restricts unfoundedly a person’s right to receive

commensurate remuneration for the work done, enshrined in Article 107 of the *Satversme*.

The Applicant notes that also remuneration for work on public holidays should be considered as falling within the scope of Article 107 of the *Satversme* regarding commensurate remuneration for the work done. Guarantees regarding remuneration for working on public holidays are said to be included also in international provisions binding upon Latvia, i.e., sub-para “d” of Article 7 of the International Covenant on Economic, Social and Cultural Rights (hereafter also – the Covenant), as well as Para 2 of Article 2 of the Revised European Social Charter of the Council of Europe (hereafter also – the Revised Social Charter). Latvia has already implemented the aforementioned guarantees in legal employment relations and, in the contested norm, also with respect to part of the Remuneration Law’s subjects.

The Applicant does not doubt that the contested norm has been adopted in compliance with the procedure and order set out in regulatory enactments and has been promulgated and is publicly accessible in compliance with statutory requirements. Likewise, the contested norm is said to be sufficiently clear and unambiguous.

However, the contested norm is said to be lacking a legitimate aim. Legal regulation that does not provide for supplements for working on public holidays to officials with special service ranks of the institutions of the Ministry of the Interior and the Prison Administration has been taken over historically and, substantially, has not changed since the Cabinet Regulation of 14 October 2003 No. 567 “Regulation on Remuneration for Work to Employees with Special Service Ranks of the Institutions belonging to the System of the Ministry of the Interior” entered into force on 18 October 2003. It is contended that the historical origins of this legal regulation prove that, basically, this had been a matter of law policy and general issue of saving budget resources.

The concept of a new remuneration system for officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration, approved by the Cabinet’s Order of 27 December 2013, No. 675 “On the Concept of a new remuneration system for officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration” points to the existing problem; however, a solution to it has not been found. The current regulation cannot be considered as

being a solution to economic crisis because the restriction on receiving supplements for working on public holidays affects only part of public officials.

The contested norm is said to be incompatible with Article 91 of the *Satversme* since it envisages unfounded differential treatment of officials with special service ranks vis-à-vis other employed persons (employees and other public officials). Pursuant to Section 29 (1) of the law “On the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration (hereafter – the Law on Career Course), all officials with special service ranks may be involved in the fulfilment of duties on public holidays. However, an exception that denies commensurate compensation for working on public holidays has been envisaged only with respect to the officials with special service ranks. The Applicant holds that the legitimate aim of this differential treatment cannot be identified because, pursuant to findings expressed by the Constitutional Court, economy of state budget resources cannot be the legitimate aim for the differential treatment of groups of persons who are in similar and in accordance with certain criteria comparable circumstances.

3. The institution, which issued the contested act, – the Saeima – holds that the contested norm is compatible with Article 91 and Article 107 of the *Satversme*.

Substantially, the legal regulation included in the contested norm has been in force already since 18 October 2003. This regulation has been revised several times and had been considered as being sufficiently important to be enshrined in regulatory enactments and, currently, also in the Remuneration Law.

In the present case, the compliance of the contested norm with Article 91 and Article 107 of the *Satversme* should be examined in conjunction.

As regards the right, set out in Article 107 of the *Satversme*, to receive remuneration that is commensurate with the work done, it should be reviewed whether remuneration is commensurate with the responsibility and workload of the position, requirements of independence, as well as restrictions that follow from the position and the position’s rank within the constitutional legal order. At the same time, the aforementioned considerations do not permit a person to demand a specific amount of remuneration from the State.

The *Saeima* notes that soldiers, officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison

Administration are not in similar and in accordance with certain criteria comparable situation with those employed in the private sector. The State, in regulating service legal relations, is said to enjoys greater discretion than in regulating employment legal relations. Moreover, military service and service in institutions belonging to the system of the Ministry of the Interior or the Prison Administration should be differentiated from other types of public service.

Allegedly, military service takes place in strictly regulated environment, in circumstances of increased mental, psychological and physical tension, threat to health or life, the length of service day depends on the needs of the service. Military service is organised in compliance with the State's imperative military interests, aimed at ensuring the existence of the State and its sovereignty. Employing a soldier on public holidays should not be considered as being an exception but rather a logical necessity that follows from the specificity of military service and ensures continuous operation of it.

Continuity of the service is said to be also essential in institutions belonging to the system of the Ministry of the Interior or the Prison Administration, which perform functions of national importance in 24-hours regime – guarding of the national security and ensuring public safety and welfare. Hence, greater restrictions, related to the organisation of work, may be imposed upon the respective officials.

The nature of official duties and the special organisational regulation on working time that follows from it, as well as restrictions linked to the position allow concluding that soldiers and officials with special service ranks are not in comparable circumstances with other officials or employees of public institutions or the private sector. Hence, it is alleged that the contested norm does not envisage differential treatment of persons who are in similar and in accordance with certain criteria comparable circumstances. It is maintained that, therefore, the contested norm is compatible with the principle of legal equality.

4. The summoned person – the State Chancellery – holds that the contested norm is compatible with Article 91 and Article 107 of the *Satversme*.

The State Chancellery subscribes to the arguments expressed in the *Saeima's* written reply, noting additionally that the issue of supplements for working on public holidays to officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration should be examined in conjunction with the system of

remuneration, envisaged in the Remuneration Law, for officials with special service ranks of institutions belonging to the system of the Ministry of the Interior and the Prison Administration, some elements of which are said to balance out the restrictions. The aforementioned officials have been granted a series of such elements of remuneration that have not been granted to, for example, to civil servants or employees, i.e., supplements, benefits, bonuses, extended annual leave, paid health care, as well as service pensions.

5. The summoned person – the Ministry of the Interior – holds that the contested norm complies with Article 91 and Article 107 of the *Satversme*.

The right, enshrined in Article 91 of the *Satversme*, is said to be relative, namely, it may request equal treatment but *per se* is unable to reveal what this treatment should be like, i.e., favourable or unfavourable. Therefore, to establish whether supplements for working on public holidays should be granted to officials with special service ranks, considerations that exceed the limits of equality concept should be made.

The fact that increased remuneration for performing official duties on public holidays is not envisaged for officials with special service ranks as one of the elements constituting remuneration for work *per se*, allegedly, does not cause an infringement on fundamental rights. I.e., in verifying whether a legal norm is incompatible with the principle of legal equality, the area of law, to which the contested legal norms belongs, should be taken into account. Predominantly, the principle of legal equality should be applied in conjunction with other fundamental rights, even more so because, often, it is impossible to conclude solely on the basis of this principle how the particular case should be resolved.

Allegedly, Article 107 of the *Satversme* guarantees to a person neither the right to a certain amount of remuneration, nor supplements for working on public holidays. Namely, it cannot be established that, in the process of determining remuneration, a person would be guaranteed a mandatory, absolutely homogenous structure of elements that constitute remuneration and, hence, also remuneration similar to that of other persons.

The contested norm is said to be compatible also with Article 91 of the *Satversme* because officials with special service ranks are not in similar and comparable circumstances with the employees, who are employed in accordance with the Labour Law, as well as employees in other public institutions, and, thus, cannot be compared to these. This can be substantiated by the nature of official

duties and the regulation on how to organise time for discharging the special official duties and on restrictions related to the position.

The Ministry of the Interior points out that the legitimate aim of the contested norm is public welfare, which comprises protection of human life, freedom, health, honour and property.

To protect public welfare and the rights of other persons, institutions referred to in the Law on Career Course constantly perform their functions, defined in regulatory enactments and, thus, officials with special service ranks can be imposed greater restrictions, related to organisation of performing the duties of service, compared to those employed by other institutions. Substantially, such specificity in the discharge of the official duties by officials with special service ranks should be recognised as normal regime of work. Therefore, in this case, the legislator is said to enjoy discretion not to envisage increased remuneration for the fulfilment of official duties on public holidays, in determining the total remuneration for performing the official duties.

Allegedly, the valid system of remuneration, in general, guarantees compensation for the special regime of work by such social guarantees that are not envisaged either for employees who are employed on the basis of the Labour Law or for civil servants.

6. The summoned person – the Ministry of Justice – holds that the contested norm complies with Article 91 and Article 107 of the *Satversme*.

The Ministry of Justice subscribes to the arguments expressed in the *Saeima's* written reply, pointing out additionally that the Constitutional Court already has recognised that those officials whose employment relations are regulated by the Law on Career Course are not in comparable circumstances with other officials or employees of public institutions or the private sector.

The military service also organises working time in a special way and has service-related prohibitions, obligations and restrictions, as well as a different system of remuneration and social guarantees.

In view of the fact that work in the aforementioned services cannot be compared to the work in other public services, also the system of remuneration for the respective officials has been formed differently. Hence, it is alleged that the contested norm does not envisage differential treatment of persons who are in similar and in accordance with certain criteria comparable circumstances and is compatible with the Article 91 of the *Satversme*.

In reviewing compliance of the contested norm with Article 107 of the *Satversme*, it should be examined systemically. Namely, it should be taken into account that the system of remuneration has been established for officials with special service ranks and soldiers that includes such financial instruments that compensate for the exception included in the contested norm and do not apply to other officials and employees of public institutions or the private sector. Such financial instruments are, for example, higher supplements, length of service benefits, health insurance, compensation for the purchase of clothing, food rations for soldiers, longer period of annual leave. Hence, systemic examination of the contested norm and the regulation on remuneration for officers with special service ranks and soldiers, included in the Remuneration Law, allows concluding that the contested norm complies with Article 107 of the *Satversme*.

7. The summoned person – the Ministry of Finance – holds that the adoption of the contested norm had been a law policy matter.

Materials in the case do not allow concluding that, in adopting the contested norm, the general principle of saving budget recourses had been applied because, already since 2003, legal norms do not envisage supplements in the amount of 100 per cent for working on public holidays to officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration. Allegedly, in this case, there are no reasons to assume that economy of resources had been applied at the expense of a group of persons. Why the legal grounds for remuneration for work, including the supplements, have been exactly as they are now, already since 2003, is said to be a law policy matter of the Ministry of the Interior and the Ministry of Justice.

8. The summoned person – the Ombudsman – holds that the contested norm complies with Article 91 of the *Satversme* but is incompatible with Article 107 of the *Satversme*.

Allegedly, Article 107 of the *Satversme* applies both to legal employment relations and to other forms of employment since the right to freely choose one's employment according to one's abilities and qualifications, established in Article 106 of the *Satversme*, is closely related to the right to remuneration for work and rest. Therefore, performance of salaried work should be recognised as the most important criterion in establishing whether a person has the rights defined in Article 107 of the *Satversme*.

The concept of “commensurate remuneration”, included in Article 107 of the *Satversme*, is said to include also remuneration for working on public holidays. The content of Article 107 of the *Satversme* should be clarified, *inter alia*, in conjunction with Article 89 of the *Satversme*, i.e., taking into account the human rights standards, included in international treaties binding upon Latvia.

Pursuant to Article 7 of the Covenant, the Parties to the Covenant have undertaken to ensure remuneration for work on public holidays. The Committee on Economic, Social and Cultural Rights, in providing explanations regarding Article 7 of the Covenant, has pointed out that employees who have to work on public holidays should receive at least the same salary as for any other work day, as well as compensatory time for rest, corresponding to the time worked.

Pursuant to Para 2 of Article 2 of the Revised Social Charter, with a view to ensuring the effective exercise of the right to just conditions of work, Latvia has undertaken to provide that work on public holidays must be paid for. The European Social Committee, explaining the content of the aforementioned Charter, has pointed out that work on public holidays can be done only in exceptional situations and must be compensated for by remuneration in at least double amount. Remuneration can be ensured also by granting time for rest; however, in such a case, it should be at least twice as long as the days worked.

The State’s obligation to ensure that work is not done on public holidays and, thus, the right to rest is ensured is said to follow from Article 17 of the Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time. An employee may be employed on a public holiday only in special circumstances, when uninterrupted course of work needs to be ensured, and appropriate remuneration must be granted for it – payment in at least double amount or compensating for the time worked on a public holiday by granting additional resting time.

Hence, the State has the obligation to ensure, firstly, that work is not done on public holidays, unless special circumstances require it, and, secondly, if work is done on a public holiday, remuneration must be received for it in at least double amount or in the form of additional days of rest.

The restriction on fundamental rights is said to be established by law. It is maintained that the restriction lacks a legitimate aim; neither the *Saeima* has indicated such. It is said to follow from the annotation to the Remuneration Law that the overarching aim of the law is to establish common principles for setting remuneration and supplements for employees of the public sector. However, the

legitimate aim of the contested norm cannot be derived from the annotation. The historical origins of the contested norm prove that the adoption of this norm had been, predominantly, a law policy choice to save budgetary resources. The Ombudsman holds that saving of budgetary resources cannot be a legitimate aim for the existence of the contested norm because, currently, the state is not experiencing economic recession and officials with special service ranks perform important national functions. The prohibition for officials with special service ranks to receive supplement for working on public holidays, substantially, could jeopardise qualitative work of the respective institutions and public safety.

As regards the compliance of the contested norm with Article 91 of the *Satversme*, the Ombudsman upholds the statements made in the *Saeima's* written reply that officials with special service ranks are not in comparable circumstances with other employees, in the meaning of the Labour Law or the Remuneration Law.

9. The summoned person – the Prison Administration – holds that the contested norm complies with Article 91 and Article 107 of the *Satversme*.

The Prison Administration notes that, pursuant to Section 27 and Section 29 of the Law on Career Course, those officials, for whom regular time for fulfilling the duties of office has been set, fulfil their duties on public holidays only in special circumstances and only on those occasions when the work needs to be done beyond the time set for fulfilling the duties of service. If it is impossible for a person to comply with the regular time for fulfilling the duties of service, pursuant to Section 28 of the Law on Career Course, aggregated time for fulfilling the duties of service is determined.

Pursuant to Part 7 and Part 7¹ of Section 14 of the Remuneration Law, officials with special service ranks are remunerated for fulfilling their duties of service outside the determined time for fulfilling the duties of service. Hence, irrespectively of whether the regular or the aggregated working time has been determined for an official with a special service rank, these persons are said to be in equal circumstances, and the legislator has compensated for fulfilling the duties of service beyond the time determined for fulfilling the duties of service. Thus, differential treatment of the aforementioned groups of persons, in terms of employment and determining remuneration for working on public holidays, cannot be discerned. Likewise, it cannot be established that persons' right to receive remuneration commensurate with the work done is infringed upon.

The Prison Administration upholds the statements made in the *Saeima*'s written reply that work in public service differs from work in the private sector both with respect to legal aspects of establishing employment relations and the purpose of work, which is closely linked to the fulfilment of the State's tasks. Moreover, within the Prison Administration, officials with special service ranks have been provided better social guarantees, for example, longer holiday, earlier retirement, health care, allowance in case of injury, mutilation or other damage to health, as well as death, and supplement for the length of service.

10. The summoned person – the Free Trade Union Confederation of Latvia – holds that the contested norm is incompatible with Article 91 and Article 107 of the *Satversme*

The Free Trade Union Confederation of Latvia upholds the arguments presented by the Applicant. Additionally, the Confederation points out that persons' right to be remunerated for work done on public holidays follows from Para 2 of Article 2 of the Revised Social Charter and sub-para "d" of Article 5 of the Covenant. Primarily, public holidays should be holidays; however, if it is necessary to work on a public holiday then employees are entitled to commensurate remuneration. Supplement is part of remuneration for work also in the meaning of Section 59 of the Labour Law and Section 3 of the Remuneration Law.

In view of the practice the European Social Committee, it should be recognised that Latvia has not complied with the requirements of the Revised Social Charter regarding granting of supplements for work on public holidays.

Persons who receive supplements for working on public holidays have significant advantages compared to persons who do not receive supplements for working on public holidays. Thus, the contested norm is said to violate the principle of legal equality. Allegedly, the contested norm is another exemption included in the Remuneration Law, the need for which has not been substantiated.

11. The summoned person – Dr. iur. Annija Kārklīņa, Associate Professor of the Faculty of Law, the University of Latvia – holds that the contested norm complies with Article 91 and Article 107 of the *Satversme*.

The first sentence of Article 91 of the *Satversme* is said to protect against such legal regulation that, without any reasonable grounds, envisages differential treatment of persons who are similar and comparable circumstances.

Whereas Article 107 of the *Satversme* comprises two rights of an employee in the area of employment – the right to remuneration for work and the right to rest. Article 107 of the *Satversme* is applicable also to the rights of soldiers and officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration to remuneration for work and to rest.

The legitimate aim of the differential treatment, included in the contested norm, is said to be ensuring a stable state budget and, thus, also public welfare, at the same time respecting society's security interests. The essence of the activities that soldiers and officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration are engaged in, as well as economic considerations allow concluding this. I.e., continuous activities by these officials are in society's security interests. However, if the legislator had envisaged supplement for overtime work or work on public holidays in the amount of 100 per cent also for these officials they would be entitled to regular supplement in the amount of 100 per cent for absolutely all public holidays on which they have been working and for overtime work, and that would be substantive additional expenditure from the state budget.

In examining, whether the contested norm is incompatible with the principle of legal equality, referred to in Article 91 of the *Satversme*, the fact that a number of other guarantees that persons with special service ranks enjoy has been enshrined in legal norms should be taken into account. The legislator has used these advantages to justify the restriction on fundamental rights, included in the contested norm, and had balanced it with the rights of officials in other state and local government institutions.

12. The summoned person – Mg. iur. Edgars Pastars – holds that the contested norm is incompatible with Article 91 of the *Satversme*.

The Remuneration Law had been drafted in great haste, at the lowest point of economic recession. The law had been needed to aggregate and align, to the extent possible, various remuneration systems existing in the state. In the drafting of the Remuneration Law, a major challenge had been developing consistent regulation that would combine the basic principles of both the Labour Law and the Remuneration Law. Namely, the Labour Law does not prohibit the employer from granting to an employee higher remuneration, whereas the approach of the Remuneration Law is quite to the contrary.

In the course of drafting the law, including various legal norms, a number of contradictions had arisen, which later had been eliminated by amendments to the law. However, the sixth and the tenth part of Section 14 of the Remuneration Law still constitute inconsistent legal regulation. Namely, if additional work is done on public holidays, soldiers and officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration are not entitled to supplement for this work, whereas other officials and employees receive the supplement in addition to the salary.

In drafting the contested norm, no other considerations, except saving of monetary resources, had been discussed at the *Saeima*.

Allegedly, an exception related to the importance of public service relations cannot be used to justify any differential treatment of officials, otherwise the legislator could act arbitrarily. Those working in the public service are not the only ones who are considered as being employees important for society who should work on public holidays. The fact that the officials of the Prison Administration had been entrusted with the State's power has no causal relation to not paying these officials for working on public holidays. If any restrictions are envisaged for officials there should be causal relation between the restrictions and the reason why, otherwise, the discharge of their duties would be hindered or why, in principle, the discharge of the duties does not allow it (i.e., must live for a year in barracks or participate in a combat operation or prolonged training).

The supplement for working on public holidays is said to be certain compensation to the employee, working for the employer and society, in difference to all other persons, with respect to whom Section 144 (1) of the Labour Law provides that such employees may be employed on such days only to ensure continuity of functions. It serves as an incentive for an employee to consent to working in public holidays.

In cases where an official is constantly in service, it is not important, in terms of organising the working time of the persons, what day exactly it is, and the course of this person's day cannot be compared to a person employed in the procedure of aggregated working time (for example, a person is deployed in an international military mission), the matter could be examined whether the differential treatment of such officials is necessary.

Since the purpose of the Remuneration Law still is guaranteeing equivalent remuneration, Article 91 of the *Satversme* also should be interpreted from the

perspective of this purpose: in the absence of special considerations, in setting remuneration for officials, treatment should be equal.

The Findings

13. The Applicant is adjudicating an administrative case, which involves a dispute whether an official with a special service rank of the Prison Administration is entitled to supplement for working on public holidays. The contested norm envisages such supplement to part of employees referred to in Section 2 of the Remuneration Law, but does not envisage it to soldiers, officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration. Moreover, the contested norm regulates not only establishing supplement for working on public holidays but also establishing supplements and time of rest for overtime work. Hence, the contested norm applies to various legal relations and also to several groups of persons.

Hence, in the present case, first and foremost, the scope for the review of the contested norm's constitutionality needs to be specified (*compare, see Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 166, and Judgement of 19 December 2011 in Case No. 2011-03-01, Para 13*).

The Constitutional Court has recognised: in examining a case that has been initiated on the basis of a court's application, it should take into account the requirements set forth in the Constitutional Court Law and assess the situation only insofar as required for adjudicating the particular case. At the same time, the Constitutional Court must examine the situation of all those persons who are in circumstances that are similar or comparable to the circumstances to be examined by the Court (*compare, see, for example, Judgement of 7 July 2014 by the Constitutional Court in Case No. 2013-17-01, Para 19*). Moreover, the Constitutional Court must ensure comprehensive and objective examination of the case, as well as procedural economy and the existence of such a legal system, in which regulation that is incompatible with the *Satversme* is eliminated as fully and comprehensively as possible (*see Judgement of 24 November 2017 by the Constitutional Court in Case No. 2017-07-01, Para 12.2*).

13.1. It has been recognised in the Constitutional Court's case law that, in the case of a court's application or in the framework of the so-called concrete constitutional review, the circumstances of the particular case are important for adjudicating the case (*see Judgement of 11 October 2018 by the Constitutional Court in Case No. 2017-30-01, Para 10*). The case that the Applicant is reviewing involves a dispute regarding granting of supplement for working on public holidays, not regarding supplement or time of rest for working overtime. Likewise, the application (decision) to the Constitutional Court comprises arguments regarding the constitutionality of the contested norm only with respect to the legal regulation on remuneration for working during public holidays.

As such, situations where work is done on public holidays or above the established working hours are different. Only separate group of persons work on public holidays in cases defined in law (*see Section 27 (2) and Section 29 (1) of the Law on Career Course, Section 144 (1) and (2) of the Labour Law*). Whereas overtime work is done in addition to the work that the employee does in a regular situation (*see Section 29 (1) of the Law on Career Course, Section 136 (1) of the Labour Law*). Undeniably, an employee may have, simultaneously, the right to receive both the supplement for working on public holidays and the supplement or resting time for overtime work. However, such possibility is determined only by coincidence of circumstances if work is done on a public holiday and above the defined working hours.

Moreover, the issue of overtime work, substantially, is defined also by other norms of the Remuneration Law. Thus, officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration have been granted the right to receive supplement or resting time for discharging duties of service above the time set for discharging the duties of service. This right is defined in Part 7,7¹, 8, 9, 9¹ and 10 of Section 14 of the Remuneration Law 14.

Hence, it follows from the system of the Remuneration Law that the right to receive supplement for working on public holidays should be differentiated from the right to receive supplement or resting time for overtime work. Thus, in the present case, the constitutionality of the contested norm should be examined insofar it applies to the right to receive supplement for working on a public holiday.

13.2. The contested norm does not envisage the right to receive supplement for working on public holidays to soldiers, as well as officials with special ranks of the institutions belonging to the system of the Ministry of the

Interior and the Prison Administration. In this respect, the contested norm applies to three groups of officials.

The tasks to be performed by all these groups of officials are related to fulfilment of important functions of the State, in ensuring of which continuity is of particular importance. As noted by several summoned persons, also organisation of work is important in the context of the right to receive supplement for working on public holidays (*see, for example, opinion of the Ministry of Justice in Case Materials, Vol. 5, p. 70, opinion of the Ministry of the Interior in Case Materials, Vol. 5, p. 56, and the Ombudsman's opinion in Case Materials, Vol. 5, p. 80*). The normative regulation that defines remuneration for work done, including working on public holidays, is closely related to the normative regulation on organisation of work (*compare, see, Judgement of 2 May 2019 by the Constitutional Court in Case No. 2018-14-01, Para 14.1.*). The system of remuneration for work applicable to the particular legal relations, as well as whether and in what circumstances persons may be employed on public holidays depend on the organisation of work. Hence, the way work is organised is an essential feature that unites or separates officials.

Some aspects in the organisation of work of officials with special service ranks of institutions belonging to the system of the Ministry of the Interior and the Prison Administration are defined within the framework of united legal regulation – Chapter VII “Organisation of Time for the Fulfilment of the Duties of the Service” of the Law on Career Course. Likewise, the arguments included in the *Saeima's* written reply, essentially, are applicable to the officials with special service ranks of both the Prison Administration and institutions belonging to the system of the Ministry of the Interior. Persons summoned in the case, *inter alia*, the Ministry of the Interior, have expressed opinions regarding the constitutionality of the contested norm with respect to officials with special service ranks of institutions belonging to the system of the Ministry of the Interior. Hence, there are sufficient materials in the case for the Constitutional Court to examine also the compliance of the contested norm with respect to officials with special service ranks of institutions belonging to the system of the Ministry of the Interior.

Moreover, the Administrative District Court has informed the Constitutional Court about suspending legal proceedings in the case related to compensating the remuneration for work on a public holiday for an official of an institution belonging to the system of the Ministry of the Interior (*see Case Materials, Vol. 6, pp. 29–32*). A situation, in which the Constitutional Court had

to initiate and review new cases regarding the same constitutional law issue, which could be decided on within the framework of the present case, would be contrary to the principle of procedural economy.

Whereas, pursuant to Section 9 (3) of the Military Service Law, the organisation of soldiers' duties in active service is defined in the Rules of Procedure for the Military Service Structure (hereafter – the Rules of Procedure). Chapter 7 of the Rules of Procedure sets out the allocation of time and daily routines for active soldiers, such as the arrangements for morning roll-call and entering of the guards in the morning, the organization of meals, the location of the unit and the arrangements for evening roll-calls. The duration of a day of service in a unit, taking into account the specifics of the unit's service, is determined by the order of the commander (superior) in accordance with regulatory enactments (*Para 178 of the Rules of Procedure*). A soldier may leave the location of a unit (subunit) in his or her free time without special permission, unless the unit commander has established another procedure (*see Para 192 of the Rules of Procedure*). Chapters 8 and 9 of the Rules of Procedure define, *inter alia*, the procedure for 24-hour posting of soldiers. Personnel are put on 24-hour posting for ensuring the internal arrangements of the unit (sub-unit), guarding its military equipment, other equipment, premises and property, as well as for discharging other tasks of internal service (*see Para 206 of the Rules of Procedure*). The composition of 24-hour posting, the number of the personnel, number of shifts and changes in the posting is determined by the commander of the unit by issuing a unit's order (*see Para 208 of the Rules of Procedure*). Following changing of the shift of 24-hour posting, the commander releases the soldier from discharging the duties of service and gives time for rest not less than 12 hours (*see Para 220 of the Rules of Procedure*). It follows from the aforementioned legal regulation that the way, in which soldiers' service is organised, differs significantly from the organisation of work of officials with special service ranks of institutions belonging to the system of the Ministry of the Interior and the Prison Administration.

Therefore, in the present case, the Constitutional Court will review the constitutionality of the contested norm insofar it applies to the right of all officials with special service ranks of institutions belonging to the system of the Ministry of the Interior and the Prison Administration (hereafter – an official in service) to receive remuneration commensurate with the work done for working on public holidays.

14. If the compliance of a legal norm with several legal norms of higher legal force has been contested then the Constitutional Court, in view of the merits of the case, must determine the most effective approach to this compliance review (see, for example, *Judgement of 8 April 2021 by the Constitutional Court in Case No. 2020-34-03, Para 9*).

The main matter in the case is related to the right to receive commensurate remuneration for working on public holidays because the Applicant holds that the legislator has not envisaged, without grounds, the right of the officials in service to receive supplement for work on public holidays. Hence, the Constitutional Court, first and foremost, will review the compatibility of the contested norm with Article 107 of the *Satversme*.

15. Article 107 of the *Satversme* provides: “Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.” I.e., Article 107 of the *Satversme* sets out two important rights of an employee – both the right to receive remuneration for work and the right to rest.

The Constitutional Court already has recognised that Article 107 of the *Satversme* defines the scope of fundamental rights in the area of employment, which has been specified in regulatory enactments and applies to all persons in paid employment (compare, see *Judgement of 21 October 2008 by the Constitutional Court in Case No. 2008-02-01, Para 8.3.*, and *Judgement of 22 June 2010 in Case No. 2009-111-01, Para 19*). I.e., the right referred to in Article 107 of the *Satversme* is applicable to all employees – both to an employee who is employed in accordance with the Labour Law and to various public officials, e.g., civil servants and the officials in service.

The *Satversme* is a coherent whole, and the norms included therein must be interpreted systemically, therefore, in specifying the content of Article 107 of the *Satversme*, also other provisions of the *Satversme* should be taken into account (see, for example, *Judgement of 22 October 2002 by the Constitutional Court in Case No. 2002-04-03, Para 2 of the Findings*).

The first part of Article 101 of the *Satversme* provides: “Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.” Pursuant to

Section 2 (1) of the Law on Career Course, the officials in service fulfil one type of public service, thus exercising their rights, included in Article 101 of the *Satversme*. Public service is public legal relations and persons in these relations have been entrusted with performing the functions of the State (*compare, see Judgement of 1 June 2001 by the Constitutional Court in Case No. 2020-50-01, Para 13*). The work in public service differs from the work in private sector both in the legal aspects of establishing legal relations and in the aim of the work, which is closely related to performing tasks of the State (*see Judgement of 11 April 2006 by the Constitutional Court in Case No. 2005-24-01, Para 7*). Therefore, the way, in which persons exercise their rights to be in public service, included in the first part of Article 101 of the *Satversme*, should be defined by law (*compare, see Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 1 of the Findings*). Hence, the legislator enjoys broad discretion in determining how the work of the officials in service should be organised, which includes, *inter alia*, organisation of the fulfilment of official duties and organisation of working time. The aforementioned should be taken into account in specifying the fundamental rights included in Article 107 of the *Satversme*.

16. The Applicant holds that public holidays should be, primarily, time for rest and that the officials in service are entitled to supplement for working on public holidays. To establish, whether the officials in service should be compensated additionally for working on public holidays, the Constitutional Court, first and foremost, should reveal the meaning of public holidays and the way in which working on public holidays influences employment relations. Then, the concept of remuneration for work, included in Article 107 of the *Satversme*, must be specified with respect to the officials in service, and it must be established what remuneration for working on public holidays should be considered as being commensurate.

16.1. Section 1 of the law “On Holidays, Commemoration and Celebration Days” defines exhaustively the holidays, which are considered to be public holidays in Latvia. They are significant for reinforcing Latvia as a democratic state governed by the rule of law. Public holidays are the ones that underscore the most important events in the formation of the State, thus maintaining and strengthening the common historic memory and awareness of statehood among Latvia’s population. Public holidays highlight the values that the entire society shares. Honouring of these values and passing on the traditions of celebration from one

generation to the next reinforces the national identity. Essentially, public holidays, established in Latvia, also embody the statement made in the fifth paragraph of the Preamble to the *Satversme*: “Since ancient times, the identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values.” I.e., public holidays is an important element in the life of society, which safeguards the values uniting it.

16.2. In establishing the content of fundamental rights, defined in the *Satversme*, Latvia’s international commitments in the area of human rights also must be taken into account. Article 89 of the *Satversme* provides that the State recognises and protects fundamental rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. It follows from this Article that the legislator’s aim is to achieve harmony between the human rights provisions, included in the *Satversme*, and the norms of international law. The international human rights provisions, binding upon Latvia, and the practice of applying thereof on the constitutional level serve also as a means for specifying them, to establish the content of scope of human rights and other general legal principles, insofar this does not lead to decreasing the protection of human rights, included in the *Satversme* (compare, see *Judgement of 10 July 2020 of the Constitutional Court in Case No. 2019-36-01, Para 9, and Judgement of 12 May 2016 in Case No. 2015-14-0103, Para 15.1.*).

Para 2 of Article 2 of the Revised Social Charter is binding upon Latvia, it provides: with a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay. The European Committee of Social Rights oversees the implementation of the Revised Social Charter and provides authoritative interpretation thereof (hereafter – the Committee) (see: *Khaliq U., Churchill R. The European Committee of Social Rights. In: Langford M. (Ed) Social Rights Jurisprudence. Emerging Trends in International and Comparative Law. New York: Cambridge University Press, 2008, p. 428*). In revealing the content of Para 2 of Article 2 of the Revised Social Charter, the Committee has explained that work on public holidays, basically, should be prohibited, i.e., these days should be holidays. It has been noted that work on public holidays may be undertaken only in special cases set out in a law or collective agreements (see: *Digest of the Case Law of the European Committee of Social Rights, 31 December 2018, p. 67*).

Sub-para “d” of Article 7 of the Covenant also provides that the States Parties to this Covenant recognise the right of everyone to just and favourable conditions of work which ensure, in particular, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The Committee on Economic, Social and Cultural Rights (hereafter – the Committee on Economic Rights) has stated in its general comments regarding application of sub-paragraph “d” of Article 7 of the Covenant: the remuneration of those employees who do not work on public holidays should not be decreased, i.e., they should receive for public holidays remuneration equivalent to that which they would receive on another working day (*see: Committee on Economic, Social and Cultural Rights: General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, p. 11*). Thus, public holidays should be holidays that are paid for, during which employees may, *inter alia*, rest. Rest, which provides possibilities for renewing energy and, thus, capacity for work, as well as satisfies a person’s needs to socialise, family life related and other interests, is very important in the life of every person. Rest allows maintaining balance between the professional, family and personal life and avoiding stress, accidents and diseases caused by work (*see: Committee on Economic, Social and Cultural Rights: General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, p. 9*). Namely, the time of rest, including that on public holidays, is an important part in the life of all employees, which, on the one hand, provides the possibility to honour the events that are the basis for public holidays and, on the other hand, performs the functions of recreation.

The Constitutional Court concludes: it follows from Article 107 of the *Satversme*, in conjunction with Latvia’s international commitments, that public holidays, primarily, should be holidays, which, accordingly, allows reaching the aim of public holidays. Moreover, public holidays should be paid holidays. Working on public holidays is admissible only in exceptional circumstances.

16.3. The legislator, in accordance with the way the work of the officials in service is organised, has specified the concept of remuneration, included in Article 107 of the *Satversme*, and included it in the Remuneration Law. Thus, Section 3 (1) of the Remuneration Law provides that remuneration for work done is constituted by remuneration for work, social guarantees and holidays.

Remuneration for work consists of the monthly salary, supplements, bonuses and monetary awards, i.e., it consists of the constant and the variable part. Usually, an official's in service monthly salary is part of the regular remuneration. Whereas supplements, bonuses and monetary awards belong to the variable part of the remuneration for work (*compare, see Judgement of 26 October 2017 by the Constitutional Court in Case No. 2016-31-01, Para 18.1*).

It follows also from Latvia's international commitments in the area of human rights that remuneration for work consists of various elements. For example, the Committee has explained that salary with all the benefits that the employer pays to the employee for work done directly or indirectly, in cash or in kind, are elements of remuneration for work (*see: Digest of the Case Law of the European Committee of Social Rights, 31 December 2018, p. 88*). Likewise, the Court of Justice of the European Union has noted that remuneration for work comprises any kind of compensation – in cash or in kind, immediate or expected in the future – upon the conditions that an employee receives it, even indirectly, for work done from the employer (*see Judgement of 17 May 1990 by the Court of Justice of the European Union in Case No. C-262/88 “Douglas Harvey Barber v Guardian Royal Exchange Assurance Group”, Para 12 and 13*).

Hence, the concept of remuneration for work with respect to the officials in service, in the meaning of Article 107 of the *Satversme*, should be understood broadly – as remuneration for work done, and this remuneration may consist of various elements.

16.4. The Constitutional Court already concluded that work on public holidays was exceptional in nature, substantiated by the special meaning of public holidays for society. Work on public holidays should be differentiated from work on other days because the employee, in difference to other inhabitants, cannot celebrate public holidays and rest. Hence, payment to the officials in service determined for work done on public holidays may not be the same as the one determined for work done on other working days.

The Committee has pointed out the need to compensate especially for work done on public holidays, by interpreting Para 2 of Article 2 of the Revised Social Charter. The Committee's practice allows concluding that all employees should be compensated for working on public holidays both in the private and the public sector (*see: European Committee of Social Rights, Conclusions 2018, Bosnia and Herzegovina: Article 2§2 of the European Social Charter, 24 January 2019; Conclusions 2014, Ukraine: Article 2§2 of the European Social Charter,*

5 December 2014; *Conclusions 2018, Ukraine: Article 2§2 of the European Social Charter, 24 January 2019*). In its practice, the Committee has focused on, *inter alia*, how police officers are compensated for working on public holidays (*see: European Committee of Social Rights, Conclusions 2014, Bosnia and Herzegovina: Article 2§2 of the European Social Charter, 5 December 2014; Conclusions 2018, Bosnia and Herzegovina: Article 2§2 of the European Social Charter, 24 January 2019*). The Committee has underscored that states enjoy certain discretion in choosing the way how to compensate for work done on public holidays. However, such remuneration should be commensurate. The Committee has explained that compensation in addition to the salary may be granted in at least one of these ways: as supplement in the amount of the salary or double amount of resting time. Compensation mechanisms should be defined in regulatory enactments or included in collective agreements, and it should be granted, irrespective of whether the salary for the employee is calculated for a day, for the period of a week or a month (*see: Digest of the Case Law of the European Committee of Social Rights, 31 December 2018, p. 67, see, for example: European Committee of Social Rights, Conclusions 2018, Slovenia: Article 2§2 of the European Social Charter, 24 January 2019*).

The Committee on Economic Rights has concluded that an employee, who has to work on public holidays, should receive, in addition to the salary, resting time that would be commensurate to the time worked on public holidays (*see: Committee on Economic, Social and Cultural Rights: General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, p. 11*).

Hence, it follows from the practice of applying provisions of international law, binding upon Latvia, that work on public holidays should be compensated for additionally. The Committee has recognised that appropriate compensation could be supplement in double amount of the salary or resting time in double amount. Hence, the legislator, in creating the system of remuneration for work for the officials in service, pursuant with Article 107 of the *Satversme*, should determine appropriate remuneration for work done on public holidays, which, moreover, should perform not only the remunerative but also the compensatory function for work done.

Article 107 of the *Satversme* includes the legislator's obligation to create such a system of remuneration for work for the officials in service that

envisages commensurate payment for work done on public holidays. Commensurate payment for work done on public holidays must fulfil not only the remunerative but also the compensatory function.

17. It should be verified in this case whether, with respect to the officials in service, the legislator has fulfilled its positive obligation, included in Article 107 of the *Satversme*, to create such a system of remuneration for work that envisages commensurate remuneration for work done on public holidays. Hence, the Constitutional Court must verify whether: 1) measures have been implemented to create such a system of remuneration for work for the officials in service that envisages payment for work done on public holidays; 2) whether these measures have been duly implemented, i.e., whether the remuneration determined for officials on service fulfils, *inter alia*, the compensatory function exactly for work done on public holidays; 3) general legal principles have been complied with.

18. To verify, whether the legislator has implemented measures to create for the officials in service such a system of remuneration for work that envisages payment for work done on public holidays, the Constitutional Court must, first and foremost, establish how the work of the officials in service is organised on public holidays. Consequently, it must be established whether the legislator has envisaged payment to the officials in service for work done on public holidays.

Organisation of officials' in service work in regular and aggregated working time is defined in the Law on Career Course. Section 27 (2) of the Law on Career Course provides with respect to the officials for whom the regular time for fulfilment of the duties of service has been set, that they are not employed on public holidays defined in the law. Section 28 of the Law on Career Course does not include prohibition to employ on public holidays those officials for whom the aggregated time for fulfilling the duties of service has been determined. Pursuant to Section 29 (1) of the Law on Career Course, taking into account the necessity of the service, an official may, by an order (writ) of the head of Institution or an authorised official thereof, be involved in the fulfilment of the duties of the service outside the specified time for the fulfilment of the duties of the service, during week's days of rest and on the public holidays specified in the law, as well as during week's time of rest without exceeding 144 hours during a period of four months. Such organisation of the officials' in service work on public holidays is substantiated by the need to ensure national security and implement continuously the national policy in the areas of the interior affairs, as well as implementing

detention and deprivation of liberty, also on public holidays (*see the Saeima's written reply in Case Materials, Vol. 1, p. 27, the opinion of the Ministry of the Interior in Case Materials, Vol. 5, p. 56, the Ombudsman's opinion in the Case Materials, Vol. 5, p. 79, the opinion of the Ministry of Justice in Case Materials, Vol. 5, p. 68, compare, see opinion of Dr. iur. Annija Kārklīņa in Case Materials, Vol. 6, p. 15*). The organisation of the officials' in service work is substantiated, *inter alia*, by the discretion, granted to the legislator by Article 101 of the *Satversme*, to decide on how public service should be organised.

To determine remuneration for employees of the public sector, *inter alia*, the officials in service, the legislator has adopted the Remuneration Law. An official in service is paid salary for working on public holidays. Thus, Para 3 of Section 7² (5) and Section 8 (1) of the Remuneration Law provide that the salary of the officials in service is determined in accordance with the Cabinet Regulation on the groups of monthly salaries appropriate for categories of the officials in service. The Cabinet Regulation of 13 December 2016 No. 806 "Regulation on the Procedure for Determining Monthly Salaries and Special Supplements to Officials with Special Service Ranks of the Institutions Belonging to the System of the Ministry of the Interior and the Prison Administration" determines, *inter alia*, the minimum and maximum amount of salary to be disbursed monthly to the officials in service.

Thus, it can be concluded that the legislator has implemented measures and created such a system of remuneration for work that envisages payment to the officials in service for work done on public holidays.

19. To conclude, whether the legislator has implemented these measures duly, the Constitutional Court must establish whether the payment, determined by the legislator, to the officials in service for work done on public holidays is commensurate or such that fulfils the compensatory function exactly for working on public holidays.

The *Saeima* and several persons summoned in the case have noted that the legal regulation, introduced by the contested norm, with respect to the officials in service is substantiated by its lengthy existence, other social guarantees and supplements granted to the officials in service, as well as the need to ensure continuity in the fulfilment of important State's functions that the officials in service have been entrusted with. The Constitutional Court shall examine successively each of these considerations.

20. The *Saeima* has noted in its written reply that the principle, included in the contested norm, has been reviewed repeatedly and deemed to be sufficiently important to be consolidated in regulatory enactments, initially – in the Cabinet Regulation and currently – in the Remuneration Law (*see the Saeima's written reply in the Case Materials, Vol. 1, p. 23*).

Historically, supplement or resting time in addition to salary for work done on public holidays had not been envisaged for the officials in service (*see, for example, the Cabinet Regulation of 3 July 2001 No. 283 "Regulation on Remuneration for Work to Employees with Special Service Ranks of the System of the Ministry of the Interior", Para 4*). The legal regulation that envisages that no additional payment should be paid to part of the officials in service for working on public holidays was introduced by Para 6 of the Cabinet Regulation of 29 April 2003 No. 218 "Regulation on Remuneration for Work to Employees with Special Service Ranks of the System of the Ministry of the Interior, which provided that if working in shifts had been determined for an employee he received the determined monthly salary or the rate of hourly wages also for working during the resting time of the week or during holidays

Similar legal regulation was included also in Para 6 of the subsequent Cabinet Regulation of 14 October 2003 No. 567 "Regulation on Remuneration for Work to Employees with Special Service Ranks of the System of the Ministry of the Interior" (hereafter – Regulation No. 567), providing that if working in shifts or aggregated working time had been determined for an employee he received remuneration in accordance with the determined monthly salary or the rate of hourly wages also for work done during the resting time of the week or during holidays.

Likewise, the Cabinet Regulation, issued on 31 October 2006, No. 904 "Regulation on the System of Remuneration for Work of Officials with Special Service Ranks of the Institutions belonging to the System of the Ministry of the Interior and the Prison Administration and on Highest Special Service Ranks Appropriate for Positions" (hereafter – Regulation No. 904), as well as the Cabinet Regulation of 27 January 2009 No. 86 "Regulation on the System of Remuneration for Work of Officials with Special Service Ranks of the Institutions belonging to the System of the Ministry of the Interior and the Prison Administration and on Highest Special Service Ranks Appropriate for Positions" (hereafter – Regulation No. 86), essentially, take over the previous regulation.

Para 4 of Regulation No. 86 set out: providing that if aggregated working time had been determined for an official for fulfilling the duties of service he received remuneration in accordance with the determined monthly salary or the rate of hourly wages also for fulfilling the duties of service during the resting time of the week or during holidays. The reasons for adopting such legal regulation are not mentioned in the preparatory materials of Regulation No. 567, Regulation No. 904 and Regulation No. 86, submitted by the Cabinet (*see Case Materials, Vol. 1, pp. 59–150, Vol. 2 and Vol. 3, pp. 1–14*).

Section 1 of the Remuneration Law provides: the purpose of the law is to attain that equal conditions are conformed to in determination of remuneration for officials of State and local government authorities. However, it follows from the preparatory materials of the Remuneration Law (*see audio recording of the sitting of the Saeima Budget and Finance(Taxation) Committee on 19 November 2009, Case Materials, Vol. 5*) and the opinion expressed by the summoned person *Mg. iur.* Edgars Pastars that, *inter alia*, with respect to the officials in service, the previous legal regulation was taken over and codified in the Remuneration Law (*see Case Materials, Vol. 5, p. 82*). It can be concluded that, by including the contested norm in the Remuneration Law, legal regulation that had existed for a long time was retained, only specifying that, *inter alia*, the officials in service did not receive additional payment for work done on public holidays, irrespective of the form determined for organising their work – the aggregated or regular working time.

The preparatory materials of the Remuneration Law allow concluding that Member of the *Saeima* Juris Dalbiņš submitted a proposal to the *Saeima* Budget and Finance (Taxation) Committee before the second reading of the draft law, requesting deleting from the contested norm the words “except a soldier and an official with a special service rank of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration” (*see Case Materials, Vol. 4, pp. 41–43*). Whereas the faction of the union of political parties “Harmony Centre” submitted a proposal, requesting deleting from the contested norm the words “and an official with a special service rank of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration” (*see Case Materials, Vol. 4, pp.4. 49–50*). Both proposals were dismissed at the Committee’s sitting on 20 November 2009 (*see audio recording in Case Materials, Vol. 5*). At the *Saeima*’s sitting, deputy Juris Dalbiņš withdrew his proposal but the proposal by the union of political parties “Harmony Centre” was dismissed when the draft

Remuneration Law was examined in the second reading at the sitting on 1 December 2009 (*see the transcript of the Saeima's sitting on 20 November 2009. Available: <https://www.saeima.lv/lv/transcripts/view/1758>*). Although, in general, during drafting of the Remuneration Law, considerations regarding economy of the state budget resources were expressed, use of the state budget resources was not discussed in the context of the contested norm. Other amendments have been made to the contested norm; however, they were not aimed at introducing changes to paying for work done on public holidays to the officials in service.

At the time when the contested norm was adopted, the European Social Charter of the Council of Europe of 18 October 1961 (hereafter – the Social Charter) was already in force in Latvia, it was ratified in Latvia by the law of 1 December 2006 “On the European Social Charter”. Para 2 of Article 2 of the Social Charter is identical to the respective article of Revised Social Charter and provides: with a view to ensuring the effective exercise of the right to just conditions of work, the State Parties has undertaken to provide that work on public holidays must be paid for. However, exercising the right set out in Para 1 of Article 20 of Part III of the Social Charter to select the articles binding upon the State Party, Latvia had not recognised this provision as being binding upon it.

Upon ratifying the Revised Social Charter on 14 February 2013 and recognising its Para 2 of Article 2 of Part II as being binding upon Latvia, the legislator undertook to abide by the requirements set out therein. By the Cabinet's order of 27 December 2013 No. 675 “On the Concept of New System of Remuneration for Work for Officials with Special Service Ranks of the Institutions Belonging to the System of the Ministry of the Interior and the Prison Administration”, a concept was approved that, as a policy planning document, envisaged determining a new system of remuneration for work for the officials in service (*available: <http://polsis.mk.gov.lv/documents/4601>*). The fact that the work done by the officials in service on public holidays is not paid for additionally is noted in the concept paper in the chapter on problems identified in the regulation on remuneration for work, i.e., the Cabinet had been aware of the existing situation already in 2013, but the concept paper makes no references to possible solutions to improve the situation.

The aforementioned allows concluding that for a prolonged period of time neither supplements nor additional time for rest had been envisaged for the officials in service for work done on public holidays.

21. Several persons summoned in the case have noted that the constitutionality of the contested norm with respect to the officials in service should be examined in conjunction with other social guarantees and supplements granted to these officials that are not available to other employees, e.g., service pension, health insurance provided by the State, longer holidays, as well as an allowance to be disbursed in the case of an injury, mutilation or other damage to health or in case of death (*see the opinion of the State Chancellery in Case Materials, Vol. 5, pp. 51–52, the opinion of the Ministry of Justice in Case Materials, Vo. 5, p. 70, the opinion of Dr. iur. Annija Kārklīņa in Case Materials, Vol. 6, p. 18, the opinion of the Prison Administration in Case Materials, Vol. 5, p. 49*).

As the Constitutional Court already concluded, pursuant to Section 3 (1) of the Remuneration Law, the remuneration of the officials in service is constituted by payment for work, social guarantees and holidays. In the meaning of the Remuneration Law, social guarantees are benefits, compensation, insurance and covering of other expenditure as provided for by the Remuneration Law. To establish whether the granting of social guarantees, supplements and other benefits, envisaged in the Remuneration Law, fulfils also the compensatory function for working on public holidays, *inter alia*, the aim of these instruments and the connection thereof to working on public holidays must be revealed.

The Remuneration Law provides for the right of the officials in service to receive various benefits. For example, a benefit in case of the death of a family member or a dependant is envisaged (*see Section 20 of the Remuneration Law*), as well as resettlement allowance (*see Section 24 (2) of the Remuneration Law*), service benefit (*see Section 25 (4) of the Remuneration Law*), benefit to be disbursed in the event of injury, mutilation or other damage to health or in the case of death (*see Part 1, 2¹, 2², 2³, 2⁴, 4 and 4¹ of Section 19 of the Remuneration Law*). However, each benefit envisaged in this law has its purpose and conditions of eligibility. Thus, for example, the benefit in the case of damage to health, substantially, is a guarantee provided by the State that in case an official were to incur damage to health of certain severity while fulfilling one's duties of service, he would be entitled to compensation (*see Section 19 (2³) of the Remuneration Law*). The pre-condition for the disbursement of this benefit is incurring of damages to health. Thus, the purpose of the benefit is to compensate to the person the inflicted damage to health and, *inter alia*, the temporary loss of capacity for

work. Hence, the benefit is not connected to work done on public holidays and does not fulfil a compensatory function.

Pursuant to Section 39 (1) of the Remuneration Law, the officials in service are entitled to paid health service. Pursuant to Para 2 of the Cabinet Regulation of 21 June 2010 No. 569 “Procedure in which Officials with Special Service Ranks of the Institutions Belonging to the System of the Ministry of the Interior and the Prison Administration Receive Paid Health Care Services”, for the officials in service, the health care services provided for by the State are paid for in the amount of patient co-payment, as well as some other medical services, provided in the Republic of Latvia, in the amount defined in Para 4 of the Regulation. To receive the paid health care, naturally, some health problems need to occur, for the resolving of which an official in service needs to receive health care. Hence, also the provision of health care cannot be connected to working on public holidays and does not fulfil a compensatory function.

Likewise, an annual holiday longer than for other officials and employees has not been envisaged for the officials in service. I.e., in accordance with Section 41 (1) of the Remuneration Law and Section 149 (1) of the Labour Law, for example, civil servants and employees in public service are granted an annual leave of four weeks, not counting public holidays. Whereas the officials in service, pursuant to Section 41 (5) of the Remuneration Law, are granted an annual leave of 30 calendar days, not counting public holidays. Thus, the annual leave of the officials in service, civil servants and employees, on average, is one month long. Hence, it cannot be discerned that the annual holiday granted to the officials in service could be linked to work done on public holidays and would fulfil a compensatory function.

The Remuneration Law provides for various supplements that the officials in service are entitled to, for example, a supplement for additional pedagogical work in an educational institution(*see Section 14 (1) of the Remuneration Law*), a supplement for night-work (*see Section 14 (4) of the Remuneration Law*), a supplement for a special service rank (*see Section 15 (1) of the Remuneration Law*). However, separate conditions for the receipt of each supplement have been set out in the law and they serve other purposes indicated in the Remuneration Law and do not directly fulfil the compensatory function for work done on public holidays.

The service pension, in turn, is an additional social guarantee envisaged for the representatives of certain professions as compensation for the adverse impact

on their health, caused by the conditions in which they have fulfilled their duties and work, as well as for the restrictions related to the particular positions but not as a compensation for work done on public holidays (*compare, see Judgement of 2 May 2019 by the Constitutional Court in Case No. 2018-14-01, Para 15, and Judgement of 4 January 2007 in Case No. 2006-13-0103, Para 7.2.*). Moreover, the service pension is granted upon attaining the length of service and age stipulated in law (*see, for example, Section 2 (1) of the law "On Service Pensions of Employees with Special Service Ranks of Employees of the System of the Ministry of the Interior*). Thus, the service pension should be separated from payment for working on public holidays.

In view of the above, the Constitutional Court concludes that for each social guarantee, supplement and other benefits that the officials in service are entitled to in certain circumstances separate pre-conditions for receipt and purposes have been defined. As the Constitutional Court has already noted in this judgement, public holidays are intended for celebrating events of national importance, as well as for rest. The Constitutional Court does not establish that the social guarantees, supplements and other benefits granted to the officials in service could be linked to payment, envisaged in Article 107 of the *Satversme*, directly for working on public holidays. Thus, substantially, they do not fulfil the compensatory function for work done on public holidays.

22. The *Saeima* has underscored in its written reply that the officials in service fulfil such public service, the functions of which must be performed continuously and are linked to ensuing protection of national security, public safety and wellbeing (*see the Saeima's written reply in Case Materials, Vol. 1, p. 27*).

The Constitutional Court has already recognised in its case law that the nature of the duties of service, the special regulation on the organisation of working time following from it and the restrictions related to the position single out the officials in service, compared to other officials or employees of public institutions or the private sector (*see Judgement of 2 May 2019 by the Constitutional Court in Case No. 2018-14-01, Para 15*). The officials in service, by working also on public holidays, ensure continuous fulfilment of important state functions. The national security and public welfare directly depend on the work done by the officials in service. They, in performing their service, protect the constitutional principles, upon which the order of a democratic state governed by the rule of law is based on (*compare see Judgement of 11 June 2021 by the Constitutional Court in Case*

No. 20-50-01, Para 19.2.). The officials in service, by fulfilling their duties of service on public holidays, allow other employees to enjoy paid rest. Therefore the State should do everything possible to promote stable and professional public service, which, taking into account the special status of the officials in service, would ensure qualitative work of the institutions belonging to the system of the Ministry of the Interior and, thus, also national security and public welfare.

The fact that the officials in service do not receive compensation for work done on public holidays can in no way promote national security or public welfare or even facilitate continuous fulfilment of the duties of service. The fact *per se* that the officials in service ensure continuity in the functions of national importance is linked only to the organisation of work and the legislator's discretion, included in Article 101 of the *Satversme*, to define pre-conditions for employing the officials of service on public holidays, but not to matters of remuneration for work.

Likewise, it should be taken into account that not all officials in service are employed on public holidays. However, to all those officials in service who do not work, *inter alia*, on those public holidays, which otherwise are week-days, are paid the respective salary determined for them. I.e., a paid holiday is ensured to them on public holidays. In a democratic state governed by the rule of law, the principle of justice envisages that the legal norms and the outcome of application thereof should be fair. With respect to remuneration for work to the officials in service, this means that officials should receive not only commensurate but also comparable remuneration for work done in certain circumstances. Therefore a situation where, having worked an equal number of hours within a certain period, those officials in service who have to work on public holidays, receive the same remuneration as the public officials who do not have to work on public holidays, is incompatible with the principle of justice.

The need to ensure continuity of the State's functions related to the service *per se* cannot justify the establishment of such remuneration system that does not envisage compensation to the officials in service for work done on public holidays.

Hence, the legislator has not introduced appropriate measures to fulfil the positive duty, included in Article 107 of the *Satversme*, to determine commensurate remuneration to the officials in service for work done on public holidays that would perform not only the remunerative function but also the compensatory function for work done.

Thus, the contested norm, insofar it does not provide for the right of an official in service to receive commensurate payment for work done on public holidays, is incompatible with Article 107 of the *Satversme*.

23. If incompatibility of the contested norm with even one article of the *Satversme* is established it must be recognised as being unlawful and void. Since the contested norm has been recognised as being incompatible with Article 107 of the *Satversme* examination of its compatibility with the first sentence of Article 91 of the *Satversme* is not necessary.

24. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm or higher legal force, must be recognised as being void as of the date when the judgment is published, unless the Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in the judgement the date, as of which the contested legal norm, which has been recognised as being incompatible with a legal norm of higher legal force, becomes void.

The Constitutional Court has recognised: in deciding on the date, as of which the contested norm becomes void, in cases that had been initiated on the basis of an application by a court, the Constitutional Court must assess, *inter alia*, the impact that its judgement will have on the respective case (*see, for example, Judgement of 5 December 2019 by the Constitutional Court in Case No. 2019-01-01, Para 25*). At the same time, the Constitutional Court must ensure that the situation that could arise after the contested norm has become void would not cause new infringements on fundamental rights defined in the *Satversme*, as well as would not cause significant harm to the interests of the State and society (*see Judgement of 2 November 2020 by the Constitutional Court in Case No. 2020-14-01, Para 14*).

24.1. The contested norm pertains to a broad circle of the officials in service. Moreover, remuneration to public officials is disbursed from the state budget resources, therefore changes in the system of remuneration are closely related to expenditure envisaged in the state budget and the planning thereof. The Constitutional Court may not replace the legislator and point to the most appropriate decisions or decide on the allocation of the state budget resources (*see*

Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 22).

The contested norm shall be recognised as being void as of 1 January 2023 because the legislator needs time for the adoption of new legal regulation, which, *inter alia*, may require revision of the entire system of remuneration for work established for the officials in service.

24.2. In assessing the impact of this judgement upon the case No. A420133120, adjudicated by the Administrative District Court, it must be concluded: in order for the outcome of this judgement to impact the legal situation of the person, for the defence of whose rights the application had been submitted in the administrative case, the contested norm needs to be recognised as being void as of the moment when the infringement on the person's fundamental rights occurred, i.e., as of the moment when the contested norm was applied.

The Constitutional Court has been informed about two more administrative cases, in which legal proceedings have been suspended, while waiting for the outcome in the present case. Moreover, the possibility that another person has begun defending their fundamental rights, which had been infringed by the contested norm, cannot be excluded.

To protect the fundamental rights of those persons, who have begun defending their rights, it must be determined that, with respect to these persons, the contested norm becomes void as of the moment when the infringement of their fundamental rights occurred.

The Substantive Part

On the basis of Section 30–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To recognise Section 14 (6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities, insofar it does not provide for the right of officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration to receive commensurate remuneration for work done on

public holidays, as being incompatible with Article 107 of the *Satversme* of the Republic of Latvia and void as of 1 January 2023.

2. With respect to persons, who have begun defending their fundamental rights by general legal remedies, to recognise Section 14 (6) of the Law on Remuneration of Officials and Employees of State and Local Government Authorities, insofar it does not provide for the right of officials with special service ranks of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration to receive commensurate remuneration for work done on public holidays, as being incompatible with Article 107 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement of these persons' fundamental rights occurred.

The judgement is final and not subject to appeal.

The judgement enters in force on the day of its publication.

Chairperson of the court hearing

Sanita Osipova