# THE CONSTITUTIONAL COURT
# OF THE REPUBLIC OF LATVIA

**J U D G E M E N T**

**on Behalf of the Republic of Latvia**

**in Case No 2013-01-01**

**8 November 2013, Riga**

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court sitting Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to an application submitted 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), as well as Section$19^1$ and Section $28^1$ of the Constitutional Court Law,

on 15 October 2013 in written procedure examined the case:

**"On the Compliance of Para 3 of Section 3 of the Law on the Service Pensions of the Officials of the Corruption Prevention and Combating Bureau with Article 91 and Article 109 of the Satversme of the Republic of Latvia".**

## The Facts

**1.** On 2 October 2008 the Saeima adopted the Law on the Service Pensions of the Officials of the Corruption Prevention and Combating Bureau" (hereinafter KNAB Service Pensions Law), which entered into force on 1 January 2009.

KNAB Service Pensions Law was adopted to ensure to the officials of the Corruption Prevention and Combating Bureau (hereinafter – the Bureau) the right, envisaged in law, to service pension and to establish a procedure for granting, calculating and disbursing the service pension, guaranteeing to the Bureau's officials the protection of social interests, compensation for early loss of capacity for work, the additional restrictions imposed during the period of service and workload, as well as ensuring the stability and quality in the Bureau's operations.

Para 3 of the KNAB Service Pensions Law establishes the procedure for calculating the service period necessary to receive service pension:

"The following shall be counted into the service period that gives the right to service pension:

1) the time period served in the status of an official of the Bureau;
2) the time period served (working) in the status of an official of institutions of state security of the Republic of Latvia;
3) the time period served in an institution belonging to the system of the Ministry of Interior of the Republic of Latvia;
4) the time period worked in positions of a prosecutor in the institutions of the Prosecutor's Office of the Republic of Latvia (or positions of employees certified by the Prosecutor's Office, which had been established in institutions of the Prosecutor's Office until 1 October 1994) or positions of a judge, if the person has worked in the Bureau at least for 10 years;
5) the period of time worked in the status of the Bureau's employee, performing corruption combatting functions;
6) 80 per cent of the time worked in the status of an official of a state institution, if the official has worked at least 15 years at the Bureau."

**2.** The Applicant – **the Administrative District Court** (hereinafter – the Applicant) –, examining a case upon the application submitted by Elvīra Torohoviča requesting revoking the decision adopted by the State Social Insurance Agency (hereinafter – SSIA) and issuing a favourable administrative act, adopted the decision to suspend legal proceedings and submit an application to the Constitutional Court regarding the compatibility of Para 3 of Section 3 in the KNAB Service Pensions Law (hereinafter – the contested norm) with Article 91 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

**2.1.** Pursuant to the contested norm, the time period served in institutions belonging to the system of the Ministry of the Interior of the Republic of Latvia is counted into the service period of the Bureau's official that gives the right to service pension. Allegedly, the contested norm does envisage counting into the service period the time period served in institutions belonging to the system of the Ministry of Interior of the Latvian SSR.

The Applicant holds that the contested norm infringes upon the right of the applicant in the administrative case – E. Torohoviča – to social security, as it prevents her from receiving the service pension of a Bureau's official and, thus, ensuring to her means of subsistence. Therefore it is alleged that the contested norm is incompatible with Article 109 of the Satversme. Moreover, it is said that the contested norm is incompatible also with Article 91 of the Satversme, since the procedure for calculating the service period envisages differential treatment of the Bureau's officials compared to prosecutors, judges and employees of institutions belonging to the system of the Ministry of Interior.

**2.2.** The Applicant notes that by including only that period of time, which a person has served in institutions belonging to the system of the Ministry of Interior of the Republic in Latvia into the service period, the applicant in the administrative case is placed into an unequal situation compared to younger employees of the system of the Ministry of Interior, whose service period predominantly has formed in the Republic of Latvia, not the Latvian SSR. Thus, the applicant in the

administrative case, to accrue service period pursuant to Para 2 of Section 2(1) of the KNAB Service Pensions Law, should have to work longer, even though her occupational disease and loss of capacity for work has been established. E. Torohoviča has not yet reached the age allowing to receive old-age pension, and therefore, in view of the restriction established by the contested norm, is not provided with means of subsistence. Hence, her right to social security established in Article 109 of the Satversme is restricted.

**2.3.** The Applicant holds that the Bureau's officials, employees with special service ranks of the system of the Ministry of Interior, prosecutors and judges as the potential recipients of service pensions are under similar and comparable circumstances. Therefore work performed in the institutions belonging to the system of the Ministry of Interior should be similarly counted into their service period. I.e., the time that the Bureau's officials have served in the institutions belonging to the system of the Ministry of Interior should be included into the service period, as it is done with regard to the employees of the system of the Ministry of Interior, prosecutors and judges. Since the legitimate aim of the differential treatment cannot be established, allegedly the contested norm is incompatible with the principle of equal treatment included in Article 91 of the Satversme.

**3.** The institution that adopted the contested act – **the Saeima** – holds that the contested norm complies with Article 91 and Article 109 of the Satversme.

**3.1.** The Saeima does not uphold the arguments provided by the Applicant that the contested norm restricts E. Torohoviča right to social security, since this right is currently ensured by the service pension granted to E.Torohoviča as an employee with special service rank of the Ministry of Interior. Thus, allegedly, the State has compensated to E.Torohoviča the lost capacity for work, which had set in before reaching the age set for receiving old-age pension, while working in institutions belonging to the system of the Ministry of Interior. Moreover, it is said that Article 109 of the Satversme does not impose upon the State a duty to grant to a person a new type of service pension, including into the service period the time

period, for which a service pension has been granted already. The Saeima holds that the contested norm complies with Article 109 of the Satversme, since E.Torohoviča's right to receive service pension has not been infringed upon.

**3.2.** Likewise, the Saeima recognises as unfounded also the Applicant's opinion that the Bureau's officials are under similar and comparable circumstances with the employees with special service ranks of the system of the Ministry of Interior, prosecutors and judges. It is said that the system of service pensions shows that the service period to be included in the service period of the respective officials has not been established arbitrarily, but by carefully considering the functions of each group of officials.

The guarantee granted to the employees with special service ranks of the system of the Ministry of Interior – counting the period of time served in an institution belonging to the system of the Ministry of Interior of the Latvian SSR – is said to follow not only from the respective service pension law, but also Para 4 in the decision adopted by the Supreme Council on 4 June 1991 "On the Procedure of Coming into Effect of the Law "On Police"". Since this allegedly is a special and individual guarantee with regard to calculation of the service period promised to the employees of the system of the Ministry of Interior during the period when the independence of the State of Latvia was restored, the legislator has kept this promise by adopting the particular law on service pensions. Whereas as regard the service period of prosecutors and judges, not just any period served in the institutions belonging to the system of the Ministry of Interior, but only period worked in specific positions is taken into consideration. The Saeima also notes that in calculating the service period of prosecutors, the special guarantees that were granted to them during the period of restoring the independence of Latvia's statehood and that follow from the law "On the Public Prosecutor's Supervision in the Republic of Latvia", as well as Para 2 in the Transitional Provisions in the Office of the Prosecutor Law. It is said that a similar situation applies also to judges.

The Saeima holds that the Bureau cannot be equalled to a typical institution

belonging to the system of the Ministry of Interior. The general principle of service pensions envisages that the period of time served in institutions belonging to the system of the Ministry of Interior of the Republic of Latvia is counted into the service period. Whereas during the period of restoring the State, the legislator envisaged special guaranteed to particular groups of officials, and with regard to these officials the laws on service pensions envisage certain exceptions to the general law. Therefore, it is alleged that the contested norm complies with the principle of equality established in Article 91 of the Satversme.

**4.** The summoned person – **the Ministry of Justice** – holds that the Bureau's officials are under similar and according to concrete criteria comparable circumstances with the officials of the Constitution Protection Bureau (hereinafter – SAB), employees with special service ranks of the system of the Ministry of Interior, prosecutors and the military. However, legal regulation envisages differential treatment of the aforementioned persons, i.e., the service period is established according to different criteria, with regard to some groups of persons counting into it also the service in the system of interior before the independence of the Republic of Latvia was restored.

The Ministry of Justice notes that differential treatment is admissible only if it has a legitimate aim. The draft of the Law on the Service Pensions of the Officials of the Corruption Prevention and Combating Bureau had been submitted to the Presidium of the Saeima by members of the Saeima, and the Ministry of Justice did not participate in the approval of this draft. Therefore, it does not have at its disposal information on the legislator's intended aim in adopting the contested norm and cannot draw any conclusions on the proportionality of the differential treatment and whether it complies with the principle of equality.

However, the Ministry of Justice expresses the opinion that the contested norm collides with the aim of the KNAB Service Pensions Law – to ensure stability and quality in the Bureau's operations. It is noted in the annotation to the draft law that the employees of other law enforcement institutions, upon changing jobs and starting to work at the Bureau, have no possibility to receive service

pension. Thus, these employees lose the social guaranteed they would be entitled to if working at other law enforcement institutions. However, pursuant to the regulation established by the contested norm, for those employees, who transfer to work at the Bureau from the system of the Prosecutor's Office or the Ministry of Interior and have served in the system of interior prior to the restoration of the independence of the Republic of Latvia, the situation as regards calculating the service period worsens.

**5.** The summoned person – **the Corruption Prevention and Combating Bureau** – does not uphold the Applicant's opinion that the Bureau's officials are being discriminated against compared to officials of other law enforcement institutions who had previously worked in institutions belonging to the system of the Ministry of Interior and for whom the time worked in institutions belonging to the system of the Ministry of Interior of the Latvian SSR is counted into the service period. The Bureau allegedly does not see similarity between its functions and those of other law enforcement institutions.

The restrictions that are applied to the Bureau's officials and employees are said to be as strict as the ones applied to those serving and working at institutions of state security. The aim of these restrictions is said to be due operation of the state service, loyalty to the State, as well as preventing threats to the democratic order of the State and national security.

The Bureau holds that the employees with special service ranks of the Ministry of Interior and the Bureau's officials are not under similar and comparable circumstances. The service pension of the Bureau's employees as a type of social guarantee as to its scope can be equalled to remuneration for work and social guarantees of the employees of state security institutions, to motivate them to work for long period at the Bureau. The Bureau does not belong to the system of the Ministry of Interior, it is not an institution of state security, and the career possibilities for Bureau's officials within the framework of one institution are said to be very limited. Moreover, also the time period worked at the Bureau is not included into the total service period entitling to service pension for the

employees of all law enforcement institutions. Thus, with regard to the recipients of service pensions working at different institutions different conditions for calculating the service pension period have been established.

The Bureau holds that the contested norm complies with Article 91 and Article 109 of the Satversme.

**6.** The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with Article 91 and Article 109 of the Satversme.

**6.1.** The Ombudsman, having assessed the legal regulation and the functions of a number of law enforcement institutions, points to the fact that the rules on calculating the service pensions of SAB officials and the military cannot be equalled to the situation of employees of law enforcement institutions. Hence, the military and SAB officials are not under similar and comparable circumstances with the Bureau's officials.

However, the Ombudsman holds that such groups of persons as the Bureau's officials, police employees and prosecutors are under similar and according to concrete criteria comparable circumstances. Therefore these groups of persons should be also treated equally. However, a different procedure has been established for calculating the service period of the Bureau's officials.

The Ombudsman notes that the legislator adopted the KNAB Service Pensions Law with the aim of eliminating the inequality that could be found in the field of social security between the Bureau's officials and the employees of other law enforcement institutions. Moreover, the annotation to the respective draft law does not examine any other additional circumstances that would point to the fact the Bureau's officials would be in a different situation in the context of service pensions. Therefore, it is alleged, the differential treatment does not have objective and reasonable grounds. Quite to the contrary, with regard to the right to receive service pension, the legislator underscored the necessity to abide by the principle of equality with regard to the Bureau's officials and employees of other law enforcement institutions. The fact that only the period worked in the system of the

Ministry of Interior of the Republic of Latvia in calculating the service period of the Bureau's officials is taken into account is said to be discriminatory compared to the calculation of the service period in other law enforcement institutions, for example, employees of the Ministry of Interior and prosecutors. Therefore it is alleged that the contested norm is incompatible with Article 91 of the Satversme.

**6.2.** The law envisages that a Bureau's official, who is entitled to several service pensions simultaneously, can choose one of the service pensions. Such possibility is envisaged by the regulatory enactments regulating service pensions of employees of law enforcement institutions that are under similar and comparable circumstances with the Bureau's officials. Thus, the legislator had envisaged that those officials of law enforcement institutions, who have accrued experience in various law enforcement institutions, might be entitled to a number of service pensions, and, accordingly, granted to a person the right to choose one service pension, which would allow the person to exercise his or her right to social security in the best possible way.

The Ombudsman notes that the compatibility of the contested norm with Article 109 of the Satversme should be examined in interconnection with Article 91 of the Satversme. A person cannot exercise his or her right to social security within the scope of Article 109 of the Satversme, since it is prohibited by the contested norm, which violates the principle of equality. Thus, the Ombudsman holds that the contested norm is also incompatible with Article 109 of the Satversme.

**7.** The summoned person –**lecturer of the Faculty of Law, University of Latvia, doctoral student Anita Kovaļevska** – holds that the contested norm is incompatible with the first sentence in Article 91 and Article 109 of the Satversme.

**7.1.** A. Kovaļevska notes that the service pensions of the Bureau's officials were established with the aim of both compensating for the additional restrictions imposed upon them and the workload during the service, and also to promote quality operations of the Bureau, as well as to compensate to the representatives of the particular occupation early loss of capacity for work. Thus, in the context of

service pensions, the Bureau's officials are under similar and comparable circumstances with the military, SAB employees, employees with special service ranks of the interior system and prosecutors.

The laws on service pensions of the employees of the aforementioned law enforcement institutions provide different regulations on the time period to be counted into the service period. However, they envisage, with certain conditions applying, both with regard to the employees of the system of the Ministry of Interior and prosecutors, as well as the military, that the time served in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR is included into the service period, however, it is not envisaged with regard to the officials of the Bureau and SAB.

A. Kovaļovka makes a theoretical assumption that the aim of the differential treatment is to ensure social justice and, thus, also public wellbeing, without allowing persons to gain additional social guarantees in connection with their activities to protect undemocratic regime, as well as to attract to work in the Bureau persons that are loyal to the State. However, the contested norm is not an appropriate measure for reaching such an aim. There are no grounds to consider that all persons, who served in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR, had turned against the independence or democratic order of the Republic of Latvia. Other measures are said to be better suited for reaching the aforementioned aim, for example, restrictions regarding filling a certain position in the Bureau.

Moreover, at the time when KNAB Service Pensions Law was adopted, it had been declared that its aim was ensuring equality of the Bureau's officials to the officials of other law enforcement institutions, as well as to attract to the positions of Bureau's officials persons, who previously had been officials at other law enforcement institutions. This is the context, in which differential treatment of Bureau's officials and officials with special service ranks of the institutions belonging to the system of the Ministry of Interior should not be allowed, since before the Bureau was established, the functions that later were transferred to it were performed by various institutions belonging to the system of the Ministry of

Interior. Therefore it is not clear, why, for example, the period of time served in institutions belonging to the system of the Ministry of Interior of the Latvian SSR can be included into the service period of a person, who after the establishment of the Bureau continued working at the institutions belonging to the system of the Ministry of Interior, whereas the same period of time cannot be counted into the service period of a person, who after the establishment of the Bureau went from working in institutions belonging to the system of the Ministry of Interior to the Bureau, retaining the previous functions.

A. Kovaļevska concludes that the contested norm allows differential treatment of persons, who are under similar and comparable circumstances, and that this differential treatment does not have objective and reasonable grounds. Therefore, it is alleged that the contested norm is incompatible with Article 91 of the Satversme.

**7.2.** In examining the compatibility of the contested norm with Article 109 of the Satversme, it must be taken into consideration that service pension is an additional social guarantee and that neither Article 109 of the Satversme, nor international treaties binding upon Latvia envisage the obligation of the State to ensure service pension to a person. The State has broad discretion in defining the time periods to be included into the service period. The fact that the State decides to not include a certain period into a person's service period *per se* cannot constitute a violation of Article 109 of the Satversme.

The contested norm could cause an infringement of the rights established in Article 109 of the Satversme, if, in establishing the right to a service pension, the general principles of law are not complied with. Since the a contested norm allegedly is incompatible with Article 91 of the Satversme, it, in A. Kovaļevksa's opinion, is incompatible with Article 109 of the Satversme, since with regard to social security – service pension – the principal of legal equality has not been complied with.

## The Findings

**8.** Article 109 of the Satversme provides: "Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law."

The Constitutional Court has found that "service pension is an additional social guarantee to persons, who in special circumstances have performed certain functions in the interests of the State (*Judgement of 4 December 2003 by the Constitutional Court in Case No. 2003-14-01, Para 7*). The Constitutional Court has also defined the aims for granting service pensions to persons, who work in professions or perform service or duties of office that allow these persons to claim service pension. In such cases the granting of service pension is justified by legitimate aims, i.e., both by the protection of the interests of society, by ensuring the work of the particular services, or the protection of the social interest of a person working the particular profession or performing particular duties of office (*see Judgement of 4 January 2007 by the Constitutional Court in Case No.2006-13-0103, Para 7*).

The State may select various measures to compensate to persons for special circumstances linked to the service. However, if the state has by law established a system of service pensions then this system becomes part of the state social security system (*see Judgement of 31 March 2010 by the Constitutional Court in Case No.2009-76-01, Para 5.5).*

**Therefore the issue of granting service pensions must be examined in the context of ensuring and protecting the fundamental rights established by Article 109 of the Satversme.**

**9.** The special nature of social rights defines the limits of review by the judicial power in this field. In realising social rights, the legislator enjoys broad discretion, to the extent it is reasonably linked with the economic situation in the state. Likewise, the legislator has also broad discretion in defining the periods of time to be included into a person's service period. However, this discretion is not unlimited (*see Judgement of 2 November 2006 by the Constitutional Court in Case*

*No. 2006-07-01, Para 13 – 14).* Whereas "the judicial power has the obligation to examine, whether the legislator has abided by the limits of this discretion" (*Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 16).* In examining the legislator's action in the field of ensuring and protecting social rights, it must be verified, whether: 1) the legislator has implemented measures to ensure to persons the possibility to exercise their social rights; 2) these measures have been duly implemented, i.e., the possibility is ensured to persons to exercise their social rights at least in the minimum scope; 3) the general principles of law have been complied with *(see Judgement of 19 December 2007 by the Constitutional Court in Case No. 2007-13-03, Para 8.4).*

Article 109 of the Satversme does not guarantee to persons the right to particular types of pension, *inter alia*, the service pension, which is calculated in accordance to concrete criteria or in concrete amount. Likewise, the fact that the State decides to not include a certain period into the service period, *per se*, does not constitute a violation of Article 109 of the Satversme. The case under review does not contain a dispute on whether in the particular instance the right to a social security at least on minimum level is infringed. Neither does the case contain materials giving grounds for the conclusion that the scope of social protection previously guaranteed to the Bureau's officials had decreased. Legal acts have never envisaged that the time served in institutions belonging to the system of the Ministry of Interior of the Latvian SSR should be included in the service period of these persons. However, if the State has envisaged a pension of a particular type in law, then Article 109 of the Satversme requires that the action of the State should comply with the fundamental principles of a judicial state. As regards general principles of law, in the case under examination the dispute concerns only compliance with the principle of legal equality.

**Thus, the compatibility of the norm, which is contested in the case under review, with Article 109 of the Satversme must be examined in interconnection with the principle of legal equality that Article 91 of the Satversme comprises.**

**10.** The Applicant holds that the contested norm does not comply with the first sentence in Article 91 of the Satversme, since it envisages differential treatment of the Bureau's officials compared to prosecutors, judges and employees with special service ranks of the institutions belonging to the system of the Ministry of Interior.

The first sentence in Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the court." In interpreting this norm, the Constitutional Court has recognised that the principle of equality prohibits state institution from adopting such norms, which without reasonable grounds allow differential treatment of persons, who are under similar and according to concrete criteria comparable circumstances. The principle of equality allows and even demands differential treatment of persons, who are under different circumstances, as well as allows differential treatment of persons, who are under similar circumstances, if there are objective and reasonable grounds for it. Differential treatment has no objective and reasonable grounds, if it lacks legitimate aim or if the relationship between the chosen measures and the set aims is not commensurate. Thus, in examining, whether the contested norms comply with the first sentence in Article 91 of the Satversme, it must be established:

1) whether and which persons (groups of persons) are under similar and according to concrete criteria comparable circumstances;
2) whether the contested norms envisage similar or differential treatment of these persons;
*3)* whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, Judgement of 10 June 2011 by the Constitutional Court in Case No. 2010-69-01, Para 9 – 10).*

**11.** First of all it must be assessed, whether the Bureau's officials are under similar and comparable circumstances with other recipients of service pension.

The Applicant notes that such groups of persons as the Bureau's officials, employees with special service ranks of the system of the Ministry of Interior, prosecutors and judges are under similar and comparable circumstances. Whereas the Saeima holds that the Bureau cannot be equalled to a typical institution belonging to the system of the Ministry of Interior and that its officials are not under similar and comparable circumstances with the employees of an institution like that.

**11.1.** The Constitutional Court has noted that all recipients of service pension share have in common one essential element, i.e., service relationship with the State. However, it can be established that there are three main reasons why service pension is guaranteed to these persons:

1) it is assumed that upon reaching a certain age or after practicing a particular profession for a certain period of time, the ability to perform the specific duties of work of the particular service or profession decreases or is lost;

2) the respective person performs such service, important for the State, the course of which significantly differs from the work conditions of those persons, who work on the basis of a civil law agreement. During the period of service the person is subject to significant restrictions established by the State (regulations on the course of service, etc.), the person has the obligation, in performing the service, to become involved in unpredictable, often – dangerous circumstances. Service pension, on the one hand, compensates for the untimely lost capacity of work during the service period, but, on the other hand, serves as compensation for the restrictions imposed during the period of service, irrespectively of the fact, whether these restrictions have or have not caused early decrease of capacity for work;

3) service pension indirectly constitutes "postponed remuneration", as it were, for impeccable service during a prolonged period of time and promotes quality in the work of the respective services and institutions, especially as regards anti-corruption (*see Judgement of 4 January 2007 by the Constitutional Court in Case No.2006-13-0103, Para 7.1).*

In view of the above-mentioned, the Constitutional Court has divided service pensions into three groups:

1) service pensions, which are predominantly established with the aim to compensate for early loss of capacity for work in a particular profession, i.e., service pensions to artists;
2) service pensions, which are predominantly established with the aim to compensate for the additional restrictions imposed during the period of service and the workload, as well as to promote high quality work of respective services and institutions, especially as regards anti-corruption, but are not linked to the need for the respective persons to take early retirement, i.e., service pensions to judges and diplomats;
3) service pensions, which are established with all the aforementioned aims; i.e., service pensions to the military, SAB employees, employees with special service ranks of the interior system, as well as prosecutors (*see Judgement of 4 January 2007 by the Constitutional Court in Case No.2006-13-0103, Para 7.1).*

Pursuant to Section 1 in KNAB Service Pensions Law, service pensions compensate to the Bureau's officials early loss of capacity for work, additional restrictions imposed during the period of service and workload, as well as ensure the Bureau's stability and high quality work. Hence, the service pensions of the Bureau's officials belong to the third group of service pensions. Thus, the Bureau's officials, with regard to the right to receive service pensions, are under similar and comparable circumstances with the military, SAB employees, employees with special service ranks of the interior system, as well as prosecutors.

**11.2.** To establish, whether the officials and employees of the aforementioned institutions are comparable, the functions of these institutions must be considered.

Pursuant to Section 8 (1) of the Law on Corruption Prevention and Combatting Bureau, the Bureau performs the following functions: 1) holds public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law; 2) carries out investigative and operational actions to discover criminal offences provided in the

Criminal Law in the service of State authorities, if they are related to corruption. Thus, the Bureau is both a subject of operational actions and an investigatory institution.

Hence, it must be established, which institutions can be recognized as being subjects of operational actions and which institutions perform investigatory actions, i.e., to identify the group of institutions, the officials of which perform similar functions and therefore are under similar and according to concrete criteria comparable circumstances.

Section 25(1) of Operational Activities Law provides that the system of subjects of operational activities consists of State security and defence institutions, institutions for maintaining public order, and other specially authorised State bodies which by law are granted the right to perform operational activities measures within the scope of their competence and whose specially authorised officials are entitled to carry out such activities in accordance with procedures laid down in law. Whereas Section 386 of the Criminal Procedure Law provides an exhaustive list of investigatory institutions.

Pursuant to Section 11(1) of the Law on State Security Institutions, the aggregate of State security institutions consists of SAB, Defence Intelligence and Security Service and the Security Police, these institutions, within the limits of their jurisdiction, perform intelligence and counter-intelligence activities and are subjects of operational activities. Thus, the functions of state security institutions differ from the Bureau's functions, since the Bureau investigates criminal offences, but state security institutions are mainly engaged in intelligence and counter-intelligence activities. From among the state security institutions only the Security Police is also an investigatory institution.

Whereas the institutions of state defence or military service comprise the military structural units subject to the National Armed Forces and the Ministry of Defence, as well as the Latvian National Guard (Para 1 of Section 2 of the Military Service Law, Section 1 of Law on Service Pensions for Military Persons). The functions of these institutions, respectively, are defence of the territory of the state and the society. Only the Military Police, which belongs to the National Armed

Forces, performs tasks, which are similar to the Bureau's functions, is a subject of operational activities and also an investigatory institution (National Armed Forces Law, Section 3(5)). Thus, essentially, the functions of these institutions of defence also differ from the Bureau's functions.

Legal acts do not define directly institutions that ensure public order; however, by taking into account the respective functions, the State Police can be considered to be an institution of this kind (institution subordinated to the Ministry of Interior). Section 3 of the law "On Police" defines, *inter alia*, the following tasks for the police: to prevent criminal offences and other violations of law, to disclose criminal offences and search for persons who have committed criminal offences, as well as to implement, within the scope of its competence, administrative sanctions and criminal sentences. The State Police is both a subject of operational activities and an investigatory institution. The aforementioned tasks coincide with the Bureau's tasks. Thus, police employees can be considered as being a group of persons, which is in comparable circumstances with the Bureau's officials.

The Prosecutor's Office is also a law enforcement institution, which is directly linked with both investigatory and operational activities. Pursuant to Section 2 of "Office of the Prosecutor Law", it supervises the pre-trial investigation and the process of operational investigatory activities. Thus, prosecutors can be considered as being a group of persons, which is in comparable circumstances with the Bureau's officials.

**11.3.** In addition it must be noted that since 1 January 2011 SSIA provides uniform administration of all service pension, except for the administration of the service pensions of the military and SAB employees. The administration of the military's service pensions is supervised by the Ministry of Defence, so that the calculation of pensions would not differ from other social guarantees that the military are entitled to. Whereas SAB acknowledged that the disbursement of officials' service pensions could be performed by SSIA in a centralised way; however, objected to centralised granting of these pensions, because it considered that the granting of service pensions to SAB officials, due to the specificity of

work, should be left under the competence of SAB itself (*see 38 § of the Minutes No. 53 of the Cabinet of Ministers Sitting on 18 August 2009 – Informative Report "On Centralised Administration of All Pensions by the State Social Insurance Agency" (TA-2637), accessible: http://likumi.lv/doc.php?id=196385, accessed 15.10.2013.]*.

**Thus, the Bureau's officials, employees with special service ranks of the system of the Interior and prosecutors can be considered as being groups of persons that are under similar and according to concrete criteria comparable circumstances.**

**12.** In analysing, whether the contested norm envisages differential treatment of persons, who are under similar and comparable circumstances, it can be concluded that the regulation included in regulatory enactments that are applicable to the aforementioned groups of persons regarding the periods of work (service) to be included in the service period is not identic. The contested norm envisages that only the time served at institutions belonging to the system of the Ministry of Interior of the Republic of Latvia is included into the service period of the Bureau's official, but the period served in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR is not included.

Para 1 of Section 3(1) of the law "On Service Pensions to the Employees with Special Service Ranks of the System of the Ministry of Interior" provides that the term of service – the time that an employee has served in institutions belonging to the system of the Ministry of Interior – is counted into the service period. This norm does not limit the time to be included into the service period only to the period served in institutions belonging to the system of the Ministry of Interior of the Republic of Latvia, but allows including also the term served in institutions belonging to the system of the Ministry of Interior of the Latvian SSR. Thus, the contested norm envisages differential treatment of the Bureau's officials and the employees with special service ranks of the Ministry of the Interior.

Para 1 of Section 3(1) of the Law on Prosecutors' Service Pensions provides that the period of time served in the office of a prosecutor or a judge, or in the

institutions belonging to the system of the Ministry of Interior in the capacity of an investigator, head or deputy-head of an investigatory structural unit, is included into the term of service that gives the right to receive service pension. Thus, this norm allows including into the service period the time served in institutions belonging to the system of Ministry of Interior of the Latvian SSR; however, only the period served in positions linked to investigation, i.e., positions, the duties of which are comparable to a prosecutor's duties of office. Thus, the contested norm envisages differential treatment of the Bureau's officials and prosecutors, since it does not envisage the possibility to include into the service period of the Bureau's officials also the period served in institutions belonging to the system of the Ministry of Interior of the Latvia SSR, even in comparable positions.

**Thus, the contested norm envisages differential treatment of the Bureau's officials compared to the employees with special service ranks of the Ministry of Interior and prosecutors.**

**13.** Since the contested norm envisages differential treatment of groups of persons that are under similar and comparable circumstances, the Constitutional Court must examine, whether this differential treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with.

It is noted in the application that the regulation that the contested norm comprises might be linked to the need to ensure that the Bureau's officials were loyal to the State.

The Saeima notes that in calculating the service period of the employees with the special service ranks of the system of the Ministry of Interior, prosecutors and judges the special guarantees given at the time when the independence of Latvian State was restored are taken into consideration, whereas the Bureau was established after the independence of the State had been restored, on the basis of the Law on Corruption Prevention and Combating Bureau of 18 April 2002. Section 2(1) of this Law envisages specific functions of the Bureau: prevention and combating of corruption, as well controlling compliance with the rules on funding

political organisations (parties) and their associations. Even though the Bureau is not an institution of state security, allegedly, its activities are closely linked with the protection of state security, independence and democracy.

The Bureau has also noted that it is not an institution of state security, however, its activities are closely linked to the protection of state security, independence and democracy. Therefore the restrictions that are imposed upon the Bureau's officials and employees are as strict as those that apply to employees of the state security institutions. The aim of these restrictions are due operations of the state service, loyalty to the State, preforming the duties of office in the interests of the State and society, as well as preventing threats to democratic state order and national security (*see Case Materials, Vol.1, p.36*).

Whereas the Ombudsman expressed the opinion that differential treatment in this particular situation does not have a legitimate aim.

In view of the above, it could be assumed that the aim of differential treatment is linked to the need to protect the democratic state order and public safety, not permitting that persons gain additional social guaranteed in connection with their activities in the interior system of undemocratic system, and, thus, achieving that such persons do not apply to work at the Bureau.

However, the Constitutional Court must verify, whether such legitimate aim can be reached by the chosen measure.

**14.** Service in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR *per se* cannot be a proof that a person has acted against the interests of the Republic of Latvia. When serving in these institutions, persons performed different functions. Thus, it cannot be asserted that all these persons definitely acted against the independence of the Republic of Latvia or democratic order. Whereas the demand regarding loyalty to one's State is equally applicable to all state officials, *inter alia*, also to the employees with special service ranks of institutions belonging to the system of the Ministry of Interior and prosecutors. Laws allow including the time period served in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR into the service period of

these persons. Thus, these laws prove: the legislator in the respective cases did not hold the opinion that service in the institutions belonging to the system of the Ministry of Interior of the Latvia SSR was a fact, which as such would characterise a person's attitude towards the Republic of Latvia.

Even if in some particular cases service in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR could, indeed, cause doubts regarding a person's loyalty to the State, not including this service into the service period is not an appropriate measure for ensuring that the Bureau's officials are loyal to the State of Latvia. By not including this term in the service period of a person, but allowing the person to work at the Bureau this aim is not reached. It could be reached by prohibiting concrete persons from working at the Bureau. Thus, for example, Para 8 of Section 5(3) of the Law on Corruption Prevention and Combating Bureau prohibits those persons, who have worked in particular positions at the Ministry of Defence of the USSR or State Security Committee of the USSR or Latvian SSR, from working at the Bureau.

**15.** The following is noted in the annotation to KNAB Service Pensions Law: "The necessity to adopt the legal act follows from the fact that, in difference to other law enforcement institutions, service pensions are not envisaged for the officials of the Corruption Prevention and Combating Bureau, thus placing the officials of the Corruption Prevention and Combating Bureau in a unequal situation compared to officials of other law enforcement institutions. We are also drawing attention to the fact that if employees of other law enforcement institutions transfer to work at the Corruption Prevention and Combating Bureau, they do not have the possibility to use those social guarantees that they were entitled to when working at other law enforcement institutions" (*Para 1 in Annotation to the draft law "Law on Service Pensions of Officials of the Corruption Prevention and Combating Bureau",*
*http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/D10AD13C0D195D54C225722E004CB020?OpenDocument, accessed 25.10.2013.).*

Thus, KNAB Service Pensions Law was adopted with the aim to ensure equality between the Bureau's officials and officials of other law enforcement institutions, as well as to encourage persons, who previously have been officials of other law enforcement institutions and have professional experience, to become the Bureau's officials. It is of particular importance not to allow differential treatment of the Bureau's officials and officials with special service ranks of the institutions belonging to the system of the Ministry of Interior in this context.

There are no grounds to assume that persons, who have previously served in institutions belonging to the system of the Ministry of Interior of the Latvian SSR and currently meet all the requirements that law sets for the position, would be less qualified for performing the concrete tasks. Quite to the contrary, the annotation to the draft KNAB Service Pensions Law, referred to above, points to the need of attracting to the Bureau persons, who have previously worked in law enforcement institutions and have the necessary experience.

Prior to the establishment of the Bureau its functions, predominantly, were performed by various institutions belonging to the system of the Ministry of Interior *[see First Evaluation Round. Evaluation Report on Latvia. Greco Eval I Rep (2002) 2E. Adopted by GRECO at its 9th Plenary Meeting (Strasbourg, 13–17 May 2002), http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1%282002%292_Latvia_EN.pdf, accessed 25.10.2013.]*. Thus, no substantiation can be found why the time served in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR can be included in the service period of a person, who after the establishment of the Bureau continued working in institutions belonging to the system of the Ministry of Interior, but for a person, who after the establishment of the Bureau transferred from work in institutions belonging to the system of the Ministry of Interior to working at the Bureau, moreover, performed the same functions, this period of time cannot be included into the service period.

Currently the Bureau's functions in the field of combatting corruption also to a very large extent coincide with the functions of other investigatory institutions and subjects of operational activities, for example, the functions of the State Police.

Pursuant to Section 8(1) of the Law on Corruption Prevention and Combating Bureau, in the field of combatting corruption the Bureau performs the following functions: 1) holds public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law; 2) carries out investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption. The officials of the State Police also hold persons administratively liable and apply sanctions for administrative offences, as well as carry out investigative and operations actions to discover the criminal offences envisaged in the Criminal Law.

In view of the functions of the Bureau and the State Police, no reasonable and objective substantiation can be discerned for the differential treatment of officials of these institutions in determining the service period.

**16.** There are no grounds for justifying the differential treatment also with the fact the Bureau, due to its special competence, needs greater independence than, for example, the State Police. Both Article 6 and Article 36 of the UN Convention against Corruption, as well Article 20 of the Council of Europe Criminal Law Convention on Corruption require ensuring to institutions for preventing and combating corruption the independence necessary for them. However, this requirement linked to the independence of these institutions is linked to the specialised field of their activities, not with the fact that functions of such institutions would be essentially different than the functions of police institutions *(see, for example, Institutional Arrangements to Combat Corruption. A Comparative Study. United Nations Development Programme, 2005, p.5–6, http://regionalcentrebangkok.undp.or.th/practices/governance/documents/corruption_comparative_study-200601.pdf, accessed 15.10.2013.).* The independence requirement does not point to the fact that the Bureau's officials performed functions that significantly differed from, for example, functions of the officials of the State Police. It is noted in Explanatory Report to the European Council Criminal Law Convention on Corruption that anti-corruption institutions should

be, to the extent possible, integrated into and coordinated with the work of the police and the prosecutor's office *(Criminal Law Convention on Corruption. Explanatory Report, paras. 95–100, http://www.conventions.coe.int/Treaty/en/Reports/Html/173.htm, accesssed 15.10.2013.).*

Moreover, neither the UN Convention against Corruption, nor the European Council Criminal Law Convention on Corruption demand that institutions for combating and preventing corruption should mandatorily be separated from police institutions or that they should not be subordinated to the government (*see, for example, Institutional Arrangements to Combat Corruption. A Comparative Study. United Nations Development Programme, 2005, p.5–6, http://regionalcentrebangkok.undp.or.th/practices/governance/documents/corruption_comparative_study-200601.pdf*; *Criminal Law Convention on Corruption. Explanatory Report, paras. 95–100, http://www.conventions.coe.int/Treaty/en/Reports/Html/173.htm, accessed 15.10.2013.).*

Thus, also the necessity to ensure sufficient independence of the Bureau does not point to reasonable and objective grounds for the differential treatment.

**17.** Since differential treatment of persons, who are under similar and comparable circumstances, has been permitted without objective and reasonable grounds, the contested norm is incompatible with the principle of legal equality included in Article 91 of the Satversme and also collides with Article 109 of the Satversme.

## Substantial Part

The Constitutional Court, on the basis of Section 30 – 32 of the Constitutional Court Law,

**held:**

**to recognise Para 3 of Section 3 of the Law on the Service Pensions of the Officials of the Corruption Prevention and Combating Bureau, insofar it does not envisage including service in the institutions belonging to the system of the Ministry of Interior of the Latvian SSR into the service period, as being incompatible with Article 91 and Article 109 of the Satversme.**

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day of its publication.

Chairman of the court sitting G. Kūtris