



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

### ON BEHALF OF THE REPUBLIC OF LATVIA

in Case No. 2012-21-01

12 June 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 the application submitted by Māris Ciniņš,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para1 of Section 16, Para 11 of Section 17(1) and Section 19<sup>2</sup> and Section 28<sup>1</sup> of Constitutional Court Law,

at the court sitting of 15 May 2013 examined in written procedure the case

**“On the Compliance of Section 5 of the Law of 12 March 2009 "Amendments to 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 Prisons Administration" with Article 1 and 91 of the Satversme of the Republic of Latvia.”**

### The Facts

1. On 15 June 2006 the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted 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 Prisons Administration (hereinafter – the Law on the Career Course), which entered into force on 1 October 2006. The Law on the Career Course defines the legal status of professional service in institutions of the system of the Ministry of the Interior and the Prisons Administration, as well as the career course of service of officials.

Section 33 (3) of the Law on the Career Course initially provided:

“Officials who are involved in the direct combating of crime, direct guarding and control of the State border, direct ensuring of the execution of detention as a safety measure or imprisonment as a criminal sentence, as well as fire-fighting work, rescue work and underwater search work, shall be granted annual paid leave — 40 calendar days, not including public holidays.”

On 4 December 2008, 12 March 2009 and 1 December 2009 the Saeima adopted laws “Amendments to 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 Prisons Administration”.

The law of 12 March 2009 “Amendments to 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 Prisons Administration” (hereinafter – the Amendments) came into force on 2 April 2009. Section 5 of the Amendments (hereinafter – the contested norm), *inter alia*, deleted from the Law on the Career Course the third part of Section 33.

At the same time the Amendments added to the Transitional Provisions of the Law on the Career Course Para 14, worded as follows: “If an official, who has not used the leave in the duration of 40 calendar days, which was stipulated in Section 33(3) of this Law before the respective amendments were introduced, is retired from service, the number of unused days of leave shall be calculated proportionally to the duration of leave defined in the respective period of time by law.”

2. The applicant – **Māris Ciniņš** (hereinafter – the Applicant) – holds that the contested norm is incompatible with Article 1 and Article 91 of the Satversme of the Republic of Latvia (hereinafter – the Satversme ).

The Applicant held the position of a senior inspector at the Riga Central Prison. On 18 June 2009 in accordance with Section 33(2) of the Law on the Career Course he had been granted the annual paid leave (hereinafter – the leave) – 30 days. Whereas in accordance with Section 33(4) of the Law on the Career Course the leave had been extended by six days (supplementary leave for years of service), and in accordance with Section 34(1) of the Law on the Career Course 34(1) later supplementary leave had been granted – three days (the number of the days on leave had been recalculated in accordance with the ruling by a court of general jurisdiction).

The Applicant had requested the Governor of Riga Central Prison to grant him the remaining ten days of the leave. The Governor of Riga Central Prison, on the basis of the contested norm, had rejected this request. On 4 December 2009 the Director of the Latvian Prisons Administration issued an administrative act No. 1/9-C/5143, by which left unchanged the decision of 6 October 2009 by the Governor of Riga Central Prison No. 3/1-1385p/s.

The Judgement of 10 April 2012 by the Administrative District Court in Case No. A420553910 only partially satisfied the Applicant's request regarding issuing of a favourable administrative act (granting of ten more days of leave). I.e., the Administrative District Court imposed the obligation upon the institution to grant to the Applicant a leave of three days, whereas in the other part the request was rejected. The judgement by the Administrative District Court has entered into legal force. Thus, the contested norm had deprived the Applicant of the right to receive seven more days of leave for the year 2009.

The Applicant notes that Section 33(6) of the Law on the Career Course provided that a leave was granted to an official in accordance with the schedule of leaves approved by the head of an institution or by an official authorised by him or her. This schedule allegedly is elaborated in order to ensure that the institution fulfils its functions continuously. Therefore not all officials have the opportunity to take their leave at the

time they prefer to, but must take it at the time envisaged in the schedule. However, an official expresses his or her wish to go on leave already in December of the previous year.

Therefore the official's right to leave had originated already in January 2009. When the schedule of leaves was elaborated, a leave in the duration of 40 days, as envisaged by law, had been planned for all officials. All officials had developed legal expectations that the concrete right would be maintained and exercised. The Applicant had relied upon legal regulation, which was in force at the moment, when his right to leave originated, and these expectations had been legal, reasonable and founded. Thus, the contested norm restricts the already acquired right to leave, which is protected by Article 107 of the Satversme.

The Applicant holds that the contested norm has a retroactive force, which, in accordance with the principle of legal certainty that follows from Article 1 of the Satversme, is inadmissible. The annotation to the draft law and the discussions in the Saeima do not reveal the reason why the contested norm came into force at the end of the first quarter of a calendar year. Allegedly the legislator, in adopting a regulation less favourable for an official, was obliged to envisage a more lenient transition to the new legal regulation, however, this was not done.

Allegedly the contested norm is incompatible with the first sentence of the Satversme. The criteria and circumstances for granting the leave are similar to all officials of the respective institution; moreover, the right to leave for them originated at the same time. The contested norm allegedly allows without reasonable grounds differential treatment of persons, who are in same circumstances that are comparable according to concrete criteria. I.e., the contested norm unfoundedly divides these officials into two groups: persons, to whom the leave was granted prior to April 1 2009, and persons, to whom the leave was granted after this date. The first group of persons had the right to use a leave of 40 days, whereas the other group of persons – only 30 days of leave.

It is noted in the application that saving of the State budget resources *per se* can be the legitimate aim of the contested norm; however, such restriction of rights is said to be neither admissible, nor necessary in a democratic state. Moreover, no appropriate calculations or considerations had been made, whether the legitimate aim could be

reached by measures less restrictive upon persons' rights and whether the restriction on persons' rights did not exceed the benefit gained by society.

3. The institution, which adopted the contested act, – **the Saeima** – does not uphold the Applicant's opinion and holds that the contested norm complies with Article 1 and Article 91 of the Satversme.

The Saeima draws attention to the fact that the contested norm was adopted as one of the measures for overcoming the economic crisis. In addition to this the Saeima notes that the responsible committee of the Saeima – Defence, Internal Affairs and Corruption Prevention Committee – in the course of discussing the draft law meticulously assessed the compliance of the contested norm with the principle of legal certainty. The State Secretary of the Ministry of the Interior had noted during the sitting of the Committee: "If the leave of 40 days is kept, there will be shortage of people to serve, and under the current circumstances it is impossible to employ new people due to lack of financial resources." Likewise, the Committee had been informed about the compensatory measures planned by the Cabinet of Ministers, i.e., possibilities to grant additional days of leave for overtime work and to grant a supplementary leave. The respective considerations had been also reflected in the letter by the Ministry of the Interior, addressed to the responsible Committee of the Saeima, which particularly underscored the possibilities for using compensatory mechanisms: "[.] if circumstances of service allow for it, a supplementary leave could be used as an alternative possibility, which could amount to 10 calendar days, granted in the form of award." Thus, the granting of a leave, reduced by a certain amount, could be compensated for by applying legal norms.

The Saeima upholds the opinion expressed in the Judgement of 22 March 2012 by the Department of Administrative Cases of the Supreme Court Senate (hereinafter – the Senate) in Case No. SKA-207/2012 (hereinafter – the Judgement in Case No. SKA-207/2012) that in granting a leave for 2009 following the amendments to Section 33 of the Law on the Career Course, the length of the leave should be determined proportionally to the period served before and after the Amendments, taking into account the length of leave defined in the law before and after the Amendments. Thus, in adopting

the contested norm, a reasonable balance between a person's certainty and those interests that were ensured by amending the regulation had been ensured.

The Saeima holds that the Applicant had misunderstood the content of the contested norm and the legislator's aims. The intention of the legislator is said to be reflected in Para 14 of the Transitional Provisions in the Law on the Career Course, i.e., the amendments to the law envisage proportional decrease of 40 day leave to all subjects of Section 33 (3) of the Law on the Career Course.

The Saeima underscores that the contested norm had been granted immediate force, thus protecting the addressees' right to retain the part of leave already acquired. The Saeima holds that the Judgement in Case No. SKA-207/2012 provides an accurate assessment of the application of the contested norm: "[...] the annual leave is granted for 12 calendar months of service. This finding also complies with the general labour law understanding of the institution of leave. I.e., the right to a leave is defined by the existence of legal employment relationship, and every month when such relationship exists gives to a person the right to one twelfth part of the annual leave." Thus, all considerations by the Applicant had been examined in the framework of the concrete administrative case, giving to them precise legal assessment, corresponding to the legislator's will.

Hence, the Saeima requests examining, whether it is useful to continue legal proceedings in the case, in view of the fact that in the process of applying legal norms the principle of equality is complied with. Therefore the issue, whether with respect to the Applicant, an infringement on fundamental rights, caused by the contested norm, can be established at all.

**4.** The summoned person – **the Ministry of Justice** – holds that the contested norm complies with Article 1 and Article 91 of the Satversme.

The Ministry of Justice notes that the Applicant's right to a leave should be examined in interconnection with the period of service. Allegedly it follows from the Law on the Career Course that the leave to be granted is to be equally linked to both the calendar year and the period of service. I.e., the leave is granted for 12 months in service. Therefore the Applicant's statement that the officials' rights to leave had originated already

in January 2009 cannot be upheld. As correctly noted in the application, the schedule of leaves only comprises the persons' wishes to exercise their expected right and this cannot be regarded as document confirming the rights that the persons have already acquired.

The Ministry of Justice holds that the leave for the period served until 1 April 2009 had to be calculated for all persons, taking as the basis the envisaged length of leave – 40 days, irrespectively of the period of the calendar year, when the leave is taken. For example, if the person were to take a leave in 2010 for the period served until 1 April 2009, the number of the days of the leave should be calculated in accordance with the regulation that was in force in the respective period. Taking of the leave later, not in the respective period, is in no way connected to the rules on leave that were applied in that later period.

In the particular case the amendments to the legal regulation in no way influenced the rights that had been already acquired, but applied only to the right to be expected in the future. Therefore it cannot be held that persons, who were in similar and comparable circumstances, had been treated differently.

5. The summoned person – **the Prisons Administration** (hereinafter – the Administration ) – informs that for the persons, who by 1 April 2009 had used part of the leave for the year 2009 by 1 April 2009, after 2 April 2008 the number of remaining days of leave was calculated proportionally to the length of leave defined in the respective period of time. Whereas to those officials, to whom the leave for 2009 was granted after the Amendments came into force, it was granted in accordance with the provisions of Section 33(2) and Section 33 (4) of the Law on the Career Course.

The Administration notes that the Amendments had caused dissatisfaction among officials, since the Law on the Career Course does not contain any stipulation on applying the contested norm to those officials, to whom a leave is granted after the Amendments have come into force and who are not retired from service.

The Administration expressed the opinion that the right to social security at least on the minimum level had not been affected. Whereas Article 107 of the Satversme does not guarantee to officials the right to a certain length of leave.

Even though the Constitutional Court has repeatedly noted that prevention of violation of interests important for society should be given a higher priority compared to the principle of legal certainty, the Administration, nevertheless, holds that the Amendments had violated a person's legal certainty.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the contested norm is incompatible with Article 1 and Article 91 of the Satversme.

The Ombudsman notes that the regulation included in Section 33(3) of the Law on the Career Course had been precise and clear. Moreover, before the first quarter of 2009 the possibility of amending this regulation was not discussed. Thus, officials had the right to rely upon this legal regulation and at the end of 2008 plan the leave for the next year in the amount of 40 calendar days.

The Ombudsman holds that the legislator, in adopting a regulation less favourable to officials in the framework of the already existing employment relationship, had the obligation to envisage a more lenient transition to the new legal regulation. The legislator has failed to do so. Moreover, the time from the moment when the contested norm was adopted to its entering into force had been excessively short.

Information on the alternatives to the contested norms is said to be contradictory. No confirmation can be gained that the Cabinet of Ministers or the Saeima had made a sufficient assessment of whether the defined aim could be reached by other, alternative means, less restrictive upon a person's fundamental rights.

The Ombudsman expresses the opinion that the saving of the State budget resources ensured by the application of the contested norm could be reached by other measures, i.e., decreasing spending in some other categories of expenditure in the State budget. Allegedly, the benefit gained by society by applying the contested norm does not exceed the infringement upon the Applicant's right.

The Ombudsman holds that the contested norm should be applied in accordance with the interpretation provided by the Administrative District Court in the Judgement of 10 April 2012 in Case No. 420553910. I.e., the length of the leave should be defined proportionally to

the time served before and after the Amendments, taking into consideration the length of leave defined in the law before and after the Amendments, respectively.

The violation of the principle of legal equality can be discerned in the fact that the legislator has not provided an unbiased and reasonable substantiation, why the austerity measures introduced under the conditions of economic crisis were not applied to other groups of officials. Not only judges and prosecutors, but also officials who are involved in the direct combating of crime, direct guarding and control of the State border, direct ensuring of the execution of detention as a safety measure or imprisonment as a criminal sentence, as well as fire-fighting work, rescue work and underwater search work (hereinafter – officials with special ranks of service) work in the interests of society under the conditions of particular stress, and, thus, the aforementioned groups of persons with regard to the need for additional period of rest are in similar and comparable situation.

### **The Findings**

7. The Applicant holds that the contested norm is incompatible with the principles of legal certainty and equality and requests the Constitutional Court to examine its compliance with Article 1 and the first sentence of Article 91 of the Satversme.

In examining the compliance of a legal norm with legal principles that follow from the fundamental constitutional values of the State defined in the Satversme, the fact that in different fields of law the manifestations of these principles can differ must be taken into account. The nature of the contested norm, its links with norms of the Satversme and its place in the legal system influenced the control exercised by the Constitutional Court. I.e., the legislator may have a broader or narrower discretion in regulating a specific issue, and the Constitutional Court must examine, whether the scope of discretion exercised by the Saeima complies with the one established in the Satversme (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 15.2 and Para 15.3*).

It is important in the case under examination that the right to a leave, envisaged in Article 107 of the Satversme, is a type of social rights included in the Satversme.

The Constitutional Court in its rulings has repeatedly noted that the State should be granted broad discretion in deciding on issues of social rights. In the field of social rights it is of special importance, whether the State by its positive actions is able to ensure to a person the minimum that follows from particular fundamental rights, since the scope in which the guaranteed social rights are provided may change, depending upon the amount of financial resources at the State's disposal. However, irrespectively of the economic situation in the State, persons' fundamental rights defined in the Satversme are binding to the legislator (*see, for example, Judgement of 25 February 2002 by the Constitutional Court in Case No. 2001-11-0106, Para 1 of the Findings, and Judgement of 22 December 2005 in Case No. 2005-19-01, Para 9*).

Hence, in examining the compliance of the contested norm with Article 1 and the first sentence of Article 91 of the Satversme, in this case it must be established, whether the actions by the Saeima comply with the provisions of the Satversme; i.e., whether the legislator has abided by the limits of discretion granted to it and has not placed ungrounded restrictions upon the Applicant's fundamental rights.

The legal substantiation included in the Applicant's complaint is linked with abiding by the principle of equality in granting leaves. The Applicant holds that the contested norm is incompatible with the principle of equality enshrined in the first sentence of Article 91 of the Satversme, because it envisages differential treatment of persons, depending upon the period of time they exercised their time to take a leave.

**Thus, the Constitutional Court first of all will examine the compliance of the contested norm with Article 91 of the Satversme.**

8. The first sentence of Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind."

The principle of equality forbids state institutions to adopt such norms, which without reasonable grounds allow differential treatment of persons, who are in similar and in accordance with definite criteria comparable circumstances. The principle of equality allows

and even demands differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for that (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings, and Judgement of 29 December 2008 in Case No. 2008-37-03, Para 7*).

In assessing, whether the contested norm complies with the first sentence of Article 91 of the Satversme, the Constitutional Court must establish, whether the contested norm comprises regulation that envisages differential treatment of persons, who are in similar and comparable circumstances, i.e., it must establish: 1) whether and which persons (groups of persons) are in similar and in accordance with definite criteria comparable circumstances; 2) whether the contested norm envisages similar or differential treatment of these persons: 3) whether such treatment has objective and reasonable grounds; i.e., whether it has a legitimate aim and whether the principle of proportionality has been abided by.

**8.1.** Before amendments were introduced to the Law on the Career Course, officials with special service ranks had the right to take a leave of 40 calendar days. The legislator introduced amendments, which as of 2 April 2009 decreased the number of leave days to 30 calendar days.

The amendments to the regulation on leave differentiates between two groups of persons:

- 1) officials with special service ranks to whom leave was granted before 1 April 2009;
- 2) officials with special service ranks to whom leave was granted after 2 April 2009.

Officials, who at the beginning of 2009 had the right to plan and to take the 30 day long leave envisaged at the time by the Law in the Career Course, belong to these two groups.

**Thus, both groups of persons were in similar and comparable circumstances.**

**8.2.** It follows from Article 33 of the Law on the Career Course that a leave is granted for 12 calendar months in service. Thus, the right to take a leave contains two elements, which must be differentiated: the right to take a leave and the granting of a leave. The right to

take a leave originates with the start of service, but the leave is granted proportionally to the time spent in service. In accordance with the legal regulation, after amendments were introduced to the Law on the Career Course, in 2009 the number of leave days was calculated proportionally to the time spent in service, taking into account the maximum number of leave days before and after the Amendments. This means that a leave for the service during the first three months of the calendar year was granted, calculating it proportionally from 40 days, but for the remaining period of service – proportionally from 30 days.

Thus, in the case under examination the fact, whether before amendments were introduced to the Law on the Career Course the leave had been used fully or partially, is of importance. If prior to 1 April 2009 the leave had been granted for the whole year of 2009, then the duration of the leave was 40 calendar days. In such a case the leave was granted in advance – presuming that the official would continue serving for the whole respective calendar year. Whereas with regard to those officials with special service ranks, who before the Amendments had used their leave only partially and took the remaining part of it or even the whole of it after the Amendments, the number of leave days were calculated similarly – proportionally to the period of service before and after the Amendments and taking into account the duration of leave envisaged in the particular period of time.

**Thus, all officials had equal rights to take the leave, however, the treatment was differential with regard to the duration of the leave that was granted.**

9. The Constitutional Court has repeatedly noted with regard to Article 91 of the Satversme that the rights enshrined in this legal norm are “comparative”; i.e., they may require equal treatment, but *per se* cannot reveal what kind of treatment this should be, i.e., whether it should be favourable or unfavourable. To select one of these solutions, another considerations that fall outside the limits of the concept of equality must be taken into consideration (*see, for example, Judgement of 11 November 2005 by the Constitutional Court in Case No. 2005-08-01, Para 5 and Para 6.1, and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 15*).

The Saeima emphasizes: neither the contested norm, nor the preparatory materials for the contested norm reveal a legislator’s intention to envisage differential treatment of

persons, who exercise their right to take a leave in different periods of one calendar year. Quite to the contrary – allegedly the contested norm equally applies to all officials with special service ranks in defining the duration of the leave to be granted to them for the year 2009. Moreover, it should be taken into consideration that the contested norm was adopted in a complicated situation of an economic crisis. I.e., in 2008 due to decreased funding in the institutions and facilities for deprivation of liberty in the system of the Ministry of the Interior the number of officials was significantly decreased, as the result of which the institutions with the human resources at their disposal, due to the duration of leave for officials envisaged in the Law on the Career Course, no longer could fulfil their functions defined in regulatory enactments. To overcome the economic crisis, the legislator introduced a number of measures, *inter alia*, adopted the contested norm. Hence, the legitimate aim of decreasing the number of leave days was not only safeguarding the interests of the State budget, but also the constitutional values referred to in Article 116 of the Satversme – public safety and other persons' rights, in view of the State's obligation to ensure functioning of the facilities for deprivation of liberty, as well as fulfilling other obligations of the State.

The Constitutional Court has provided legal assessment of measures for preventing economic recession in a number of its rulings (*see, for example, Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Judgement of 21 December 2009 in Case No. 2009-43-01, and Judgement of 31 March 2010 in Case No. 2009-76-01*). In the framework of the case under examination there is no need to verify repeatedly, whether at the time when the contested norm was adopted the State budget expenditure had to be decreased. The Constitutional Court has no grounds to give a different assessment of the measures for preventing economic recession.

The Constitutional Court has recognised that the regulation elaborated with the aim of decreasing the State budget expenditure has a legitimate aim – ensuring public welfare (*see, for example, Judgement of 15 March 2010 by the Constitutional Court in Case No. 2009-44-01, Para 16*). Likewise, there are no doubts that the at the institutions for deprivation of liberty the prison regime and order must be ensured. Thus, uninterrupted fulfilling of the functions of these institutions complies with the interests of society.

The circumstances, in which the contested norm was adopted, show that immediate actions were required – the legislator had to implement measures to protect interests of public importance and ensure the possibility to exercise the respective right at least on the minimum level.

The Satversme does not prohibit the legislator from introducing to the existing regulation such amendments that comply with norms of higher legal force. Amendments to the regulatory enactments almost always lead to a situation, where the changes in the legal regulation *per se* create both two groups of persons and differential treatment thereof.

The fact alone that the in the framework of the new legal regulation persons' rights are regulated differently is not a violation of the principle of equality. If the legislator intends to apply different regulation to groups of persons, who are in similar and comparable circumstances, then it has the obligation, in view of the concrete situation and circumstances, to consider the impact of the intended legal regulation upon those persons who have developed certainty regarding keeping or exercising particular rights.

**Therefore, the Constitutional Court must assess, whether the legislator in adopting the contested norm has complied with the principle of legal certainty.**

**10.** Article 1 of the Satversme provides that Latvia is an independent democratic republic. It follows from the concept of a democratic republic included in this Article that the State in its actions has the obligation to abide by a number of fundamental principles of a judicial state, *inter alia*, the principle of legal certainty (*see, Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98, the Findings, and Judgement of 24 March 2000 in Case No. 04-07(99, Para 3 of the Findings).*

The Applicant expresses the opinion that the contested norm is incompatible with the principle of legal certainty, because the legislator, by decreasing the number of leave days, had restricted rights that had already been acquired and did not envisage a more lenient transition to the new regulation.

**10.1.** The Constitutional Court has noted that in accordance with the principle of legal certainty the state institutions in their actions must be consistent with regard to the regulatory enactments that they adopt and must take into consideration the legal certainty that persons

might have developed in connection with a particular legal norm. Whereas an individual, in accordance with this principle, may rely upon the constancy and unchangeability of a legally adopted legal norm. He or she may safely plan his or her future in connection with the rights granted by this legal norm (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.2 of the Findings, and Judgement of 8 November 2006 in Case No.2006-04-01, Para 21*).

However, the principle of legal certainty does not exclude the possibility to amend the existing legal regulation. A contrary approach would lead to the inability of the State to respond to changing circumstances of life. At the same time, upon amending legal regulation, those rights, with regard to keeping or exercising of which a person might have developed valid, founded and reasonable certainty, must be taken into consideration. Thus, to examine, whether the legal act, which defined deviation from rights granted to a person, complies with the principle of legal certainty, it must be established:

- 1) whether a person has developed legal certainty regarding retaining or exercising of certain rights, and
- 2) whether a reasonable balance has been ensured between the protection a person's legal certainty and ensuring society's interests.

**10.2.** To establish, whether a person has developed legal certainty as regards retaining or exercising certain rights, it must be taken into consideration that the main objective of this principle is to protect a person's rights in those cases when amendments to the legal regulation cause or might cause deterioration in the legal status of private persons (*see Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 21*). The principle of legal certainty requires creating such circumstances that would allow a person, relying upon legal norms, to adopt not only short-term decisions, but also make long-term plans for the future (*see Judgement of 25 October 2004 by the Constitutional Court in Case No. 2004-03-01, Para 9.2*). In the functioning of the principle of legal certainty also the fact, whether the legal regulation as to its nature is sufficiently definite unchanging to trust it, is also of importance (*see, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.2 of the Findings, Judgement of 25 October 2004 in Case*

*No. 2004-03-01, Para 7, and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 21).*

The legal regulation, which envisages leave for officials with special service ranks, has been in force since 15 June 2006. Over time the regulation of the Law on the Career Course on the issues of leave has changed; however, until the contested norm was adopted the changes always had been favourable to persons. Thus, the legal regulation is to be recognised as being definite.

Moreover, it must be taken into consideration that to an official with a special service rank a leave is granted in accordance with a schedule of leaves approved by the head of the institution or an official authorised by him or her. Usually the schedule of leaves is made at the end of the previous calendar year, and, thus, all officials must plan their leave in accordance with the conditions for granting a leave established in law. Thus, the Applicant had developed grounded and reasonable certainty that he would be able to take the leave at a particular period of time according to the procedure and in the scope defined in law.

Moreover, the Constitutional Court has already noted that a person, who has acquired a special service rank and has served for a sufficiently long period of time, has already made his or her choice, i.e., has decided to enter the respective service under respective conditions, *inter alia*, the terms regarding the granting and duration of leave. At the time when the contested norm entered into force this person no longer could choose, whether, in view of the respective social services, he or she would have undertaken the service (*compare, Judgement of 31 March 2010 by the Constitutional Court in Case No. 2009-76-01, Para 6.2.1*).

**Thus, the Applicant had developed valid, founded and reasonable legal certainty that he would be able to take the leave in accordance with the procedure and in the amount envisaged by the Law on the Career Course.**

**11.** In the case under examination, in assessing the compliance of the contested norm with the principle of legal certainty, the fact, whether the contested norm has a retroactive force must be taken into consideration. In a judicial state, cases, when a law is granted a retroactive force, should be considered to be exceptions. However, in some cases the legislator can grant a retroactive force to a law to safeguard constitutional values (*see*

*Judgement of 1 December 2010 by the Constitutional Court in Case No. 2010-21-01, Para 13.3 and Para 21.1).*

At the time when the Applicant submitted to the institution the application requesting granting a leave, the new legal norm, which envisaged a smaller number of leave days than the Law on the Career Course had defined before, was already in force. Taking into consideration the findings expressed in the Judgement in Case No. SKA-207/2012, the number of leave days for the Applicant until 1 April 2009 was calculated proportionally to the leave of 40 calendar days, whereas the remaining days of the leave – proportionally from a leave of 30 calendar days. Hence, the contested norm does not have a retroactive force, since it did not have an impact upon the calculation of the number of leave days until 1 April 2009.

The amendments to legal regulation did not affect the rights that had already been acquired, but only the rights to be expected in the future.

**12.** The scope of protection of legal certainty differs, depending on whether a person has relied upon already acquired or upon expected rights (*see, Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 25*).

The Constitutional Court has already previously noted that a legal norm may create legal certainty to be protected, if it defines expected right, i.e., the regulatory enactment envisages a right, but all prerequisites for exercising it are not yet fulfilled. In particular this kind of certainty arises if the legal norm applies to already commenced legal relationship (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 24*).

The terms of leave were changed by the contested norm before the leave had been granted to the Applicant. Thus, the Applicant had actually developed legal certainty that the leave for 2009 would be granted to him proportionally to the duration of service, calculating it from 40 calendar days. The fact that the Applicant had not yet requested a leave and it had not been granted to him influences the level of protection for legal certainty, but not the fact whether he could have developed legal certainty.

In accordance with the legal regulation an official could rely that the number of leave days would be proportional to the duration of service. Moreover, as established in Para 11 of this Judgement, the amendments to the legal regulation did not affect rights that had been already acquired, but pertained only to rights to be acquired in the future.

**The Applicant had developed legal certainty with regard to expected, not acquired rights.**

13. In assessing, whether a reasonable balance has been ensured between the need to protect persons' legal certainty and ensure the interests of society, it must be taken into account whether a lenient transition to the new legal regulation has been envisaged. The Constitutional Court has noted already before that such lenient transition can manifest itself as establishing of a reasonable term for transition or envisaging compensation (*see Judgement of 25 March 2003 by the Constitutional Court in Case No. 2002-12-01, Para 2 of the Findings*). However, the aforementioned does not exclude the possibility to ensure transition by other mechanisms. Moreover, in some cases the existence of a more lenient transition cannot be the sole criterion for deciding, whether a reasonable balance has been observed.

13.1. A reasonable term of transition or compensation predominantly apply to those cases, when a person is deprived of the rights that have already been granted or are expected in near future. Thus, in such cases the protection of interests important for society and the limits of the legislator's discretion become the most important criterion for legal certainty, since neither the new regulation may violate persons' fundamental rights (*see Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 12*).

The legislator established a restriction with regard to the duration of the leave, but retained the right to take a leave. The contested norm had an immediate, but not a retroactive force. Hence, the decrease in the number of leave days could not apply to those officials with special service ranks, who had used the whole leave before the Amendments were introduced. In this instance it is important that the leave had already been granted, by issuing an act on applying law. If a leave has been granted, by issuing an act on applying law, then, in fact, the right to a concrete number of leave days has already been acquired.

As the Constitutional Court established above, the officials had developed a legal, well-founded and reasonable legal certainty that in 2009 they would be granted a leave in accordance with the procedure established by regulatory enactments (*see Para 10.2 of this Judgement*). However, they could not have developed legal certainty that the leave would be granted in any concrete amount. I.e., the right to a leave follows from service relationship, and a person gains the right for one twelfth of the annual leave for each month when such a relationship exists. Therefore the certainty of officials with special service rank to taking a leave is to be linked with abiding by the prerequisites set out in regulatory enactments, not with a concrete number of leave days.

It is essential that an equal number of leave days can be ensured in the course of applying legal norms – calculating this number individually for each official, as well as taking into consideration the possibility to apply supplementary support measures for excellence in fulfilling tasks of service or good performance results. Moreover, the circumstances in which the contested norm was adopted show that the legislator had to find an immediate solution to the issue of public safety and introduce urgent measures to ensure that the functions of facilities for deprivation of liberty were fulfilled. Therefore, when the number of leave days was decreased, actually it was impossible to establish a transition period.

To establish, whether the protection of interests of public importance should be given priority over the principle of legal certainty, it must be established, whether the legislator had appropriate grounds for amending the legal regulation, i.e., whether, indeed, the particular regulation had to be amended to realise and safeguard values of constitutional importance. Thus, in the case under examination the significance of two opposing interests – the protection of persons' legal certainty and the need to amend the particular regulation in favour of society – must be compared.

**14.** The Applicant notes that the benefit gained by society does not exceed the infringement upon his rights and interests, which was manifest in the fact that the contested norm significantly decreased the amount of social guarantees. The Applicant holds that

significant restriction of a person's rights for the purpose of saving financial resources is inadmissible.

**14.1.** The economic crisis continued in 2009. This resulted in a new economic situation. A system of remuneration for all officials and employees of institutions funded from the State budget had to be developed, based on uniform principles, *inter alia*, on the principle of proportionality (*see Decision of 28 March 2012 by the Constitutional Court on the termination of legal proceedings in Case No. 2011-10-01, Para 29.1*).

The process of aligning the system of remuneration and social guarantees for officials and employees of public administration commenced. Already on 1 December 2009 the Saeima adopted Law on Remuneration of Officials and Employees of State and Self-government Authorities (hereinafter – Law on Remuneration). The legislator included in it uniform criteria for determining the remuneration and social guarantees for officials (employees) of state and local government institutions. At the same time the legislator envisaged eliminating part of social guarantees, and decreasing part of them (*see annotation to the draft law “Law on Remuneration of Officials and Employees of State and Self-government Authorities”*. *Accessible* : <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/971F0E7A788C9469C225766200358B2B?OpenDocument>).

The Law on Remuneration is aimed at eliminating in public administration differences in remuneration and social guarantees and ensuring uniform, fair and economically effective system. The legislator, in drafting the Law on Remuneration, deleted from the Law on the Career Course all norms, which regulated the terms of leave, since there was an intention to regulate together all issues of remuneration and social guarantees to officials (employees) of the institutions of public administration.

Section 41(5) of the Law on Remuneration envisages a similar number of leave days both to the officials of the institutions belonging to the system of the Ministry of the Interior and officials with special service ranks. The decrease in the number of leave days for the officials with special service ranks, on the one hand, is part of measures for overcoming the economic crisis, but, on the other hand, it was envisaged to establish a uniform system for granting social guarantees within the framework of public administration.

By adopting the Law on Remuneration the legislator has implemented a reform covering the whole of public administration for effective use of the State budget resources. The introduction of uniform criteria for granting social guarantees in the public administration complies with public interests.

**14.2.** The Constitutional Court has already noted that the protection of interests of public importance should be given higher priority compared to the principle of legal certainty (*see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 25*).

The contested norm was adopted to ensure that institutions of public administration fulfil their functions and that the State budget resources are used effectively. Considerable deterioration of the economic situation denied the State the possibility to guarantee such totality of social benefits that was envisaged during the years of economic growth. Social solidarity under the conditions of economic crisis means that all citizens assume proportional responsibility for eliminating the consequences of crisis (*see Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 10.3*). Unless measures for dealing with the situation had been implemented, the ability of the State to effectively govern itself would have been affected.

The differential treatment of officials with special service ranks, to whom leave was granted after 2 April 2009, can be justified by legitimate aims, i.e., both the protection of public interests, ensuring the work of respective services, as well as the protecting the interests of other officials of the particular service.

Thus, the terms of leave for officials with special service ranks were changed both in order to ensure important public interests and to safeguard constitutional values.

**The comparison of the significance of the Applicant's and public interests shows that the need for the contested norm counterbalances the fact that the right, upon the realisation of which a person could rely, is ensured in limited scope. Therefore, the contested norm complies with Article 1 and Article 91 of the Satversme.**

## **The Substantive Part**

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

**held :**

**to recognise Section 5 of the Law of 12 March 2009 “Amendments to 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 Prisons Administration” as being compatible with Article 1 and Article 91 of the Satversme of the Republic of Latvia.**

The Judgement is final and not subject to appeal.

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

Chairperson of the court sitting

G. Kūtris