



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

**On Behalf of the Republic of Latvia**

**Riga, 25 November 2010**

**Case No. 2010-06-01**

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to application of the State Audit office [*Valsts Kontrole*],

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1<sup>st</sup> indent, Article 17 (1), 6<sup>th</sup> indent, and Article 28.<sup>1</sup> of the Constitutional Court Law,

on 26 October 2010 in writing examined the case

**“On Compliance of Section 19 (5) of the Law on Budget and Financial Management, Section 44 (2) of the Law on the State Audit Office and Section 19 (2) of the Ombudsman Law with Article 1, Article 83 and Article 87 of the Satversme of the Republic of Latvia”.**

## The Facts

1. On 24 March 1994, the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima), adopted the Law on Budget and Financial Management that came into effect on 20 April 1994.

1.1. When adopting the Law on Budget and Financial Management, the first and the second sentence of Section 19 (3) thereof obtained the following wording: “The Minister for Finance shall evaluate budgetary requests on the basis of their conformity to the purpose intended, economy and efficiency and, if necessary, request necessary additional information for the relevant evaluation. Upon the basis of the results of such evaluation and information provided, the Minister for Finance shall take a decision regarding inclusion of the budgetary request in the draft State Budget Law up to its submission to the Cabinet”.

1.2. The legislator has amended normative acts several times by changing procedure for reviewing budgetary requests. On 1 April 1998, the Saeima introduced amendments into the Law on Budget and Financial Management by supplementing Section 19 thereof by Indent 4 having the following wording: “A budgetary request from the *Saeima* shall not be amended, in the course of the examination of budgetary requests, up to the submission of the draft budget law to the Saeima, without the consent of the submitter of the request.”

1.3. On 25. November 1999, the Saeima adopted the Law “Amendments to the Law on Budget and Financial Management” by supplementing Section 19 of the Law on Budget and Financial Management with indent 5 reading as follows: “The Cabinet of Ministers shall accept the maximum permitted amount of budget expenditures of each ministry and other central State institutions for the following economic year. The Cabinet has the right to include funds for unforeseen expenditures in the State budget without a budgetary request.”

However, on 23 November 2009, the Saeima introduced amendments to Indent 5 of Section 19 of the Law on Budget and Financial management by providing the following wording: “The Cabinet of Ministers shall accept the maximum permitted amount of budget expenditures of each ministry and other central State institutions for an

average term. The Cabinet has the right to include funds for unforeseen expenditures in the State budget without a budgetary request

**1.4.** On 9 May 2002, the Saeima adopted the State Audit Office Law that came into effect on 12 June 2002. Section 44 (2) of this Law provides that until the submission of a budget draft law to the Cabinet, a budgetary request of the State Audit Office is not to be amended without the consent of the submitter of the request.

**1.5.** On 31 October 2002, the Saeima supplemented Section 19 of the Law on Budget and Financial management with Indent 5 having the following wording: “Until the submission of a budget draft law to the Cabinet, a budgetary request of the Chancellery of the State President, the Supreme Court and the State Audit Office is not to be amended without the consent of the submitter of the request.” These amendments came into force on 1 January 2003.

**1.6.** On 6 April 2006, the Saeima adopted the Ombudsman Law that came into effect on 1 January 2007. Section 19 (2) of the Ombudsman law provides that the budget request of the Ombudsman’s Office until the submission of a draft budget law to the Cabinet shall not be amended without the consent of the Ombudsman’s Office.

On 19 December 2006, the Saeima included the above mentioned wording into the Law on Budget and Financial Management by introducing amendments into Section 19 (5) of the Law. Wording effective after 1 January 2007 of Section 19 (5) of the Law on Budget and Financial Management provided that the budgetary requests the Chancellery of the State President, the Supreme Court and the State Audit Office shall not be amended, up to the submission of the draft budget law to the Cabinet, without the consent of the submitter of the request.

**2. The applicant – The State Audit Office** (hereinafter – the Applicant) – holds that Section 19 (5) of the Law on Budget and Financial Management, Section 44 (2) of the State Audit Office Law and Section 19 (2) of the Ombudsman Law (hereinafter – the Contested Norms) do not comply with Article 1, Article 83 and Article 87 of the Satversme of the republic of Latvia (hereinafter – the Satversme).

**2.1.** The Applicant indicates that the Cabinet of Ministers has the right to amend budgetary requests of independent institutions without the consent of submitters of the request, which threatens financial and functional independence of them.

For instance, the Ombudsman Office is an institution that controls other State institutions and it is not subject to the Cabinet of Ministers. The Contested Norms might result in indirect influence by the Cabinet of Ministers onto the Ombudsman Office when performing duties by the latter, as well as infringe independence of the Ombudsman.

**2.2.** The Applicant emphasizes that the State Audit Office is an independent institution. Independence of its activities is closely related with financial independence, namely, the right to freely use budget resources allocated to it. The procedure of budgetary request does not ensure independence of the State Audit Office. When deciding on the budgetary request of the State Audit Office, the Cabinet of Ministers has a possibility to indirectly affect fulfilment of duties of the first. This is an institution, where the State Audit Office makes audits and that decides on budget of the State Audit Office. Therefore, a situation when the State Audit Office is no more capable of executing stipulated duties might occur.

**2.3.** According to the Applicant, Section 19 (5) of the Law on Budget and Financial Management contradicts Section 7 of the Law “On Ensuring of Work of the State President” that establishes that budget of the Chancellery of the State President shall be established by the Saeima when adopting annual State budget. It cannot be permitted that the Cabinet of Ministers would have the right to change budgetary request of the State President without the consent of the latter.

The Applicant indicates that, based on Section 19 (5) of the Law on Budget and Financial Management, the government also has the right to reduce funding for the Supreme Court and the Constitutional Court. This fails to ensure independent adjudication and normal functioning of the judicial branch. This might reduce trust of the society into the judicial power and infringe their right to a fair court as established in the Satversme.

**2.4.** The applicant indicates that only the draft budget elaborated by the Cabinet of Ministers is provided to the Saeima for the latter to adopt a decision. Consequently, the Saeima fails to assess and decide on budget requested and substantiated by a

constitutional institution, this budget serving as an alternative for the one suggested by the Cabinet of Ministers. The cabinet of Ministers shall not have the right and it is not competent to assess tasks to be fulfilled by constitutional institutions, neither has it the right to determine priorities when fulfilling these tasks or decide on resources necessary for the fulfilment.

The Applicant holds that true independence of independent institutions and implementation of the principle of separation of powers can be achieved only if budgetary requests of the above mentioned institutions are reviewed by the legislator, namely, the Saeima, and all principles characteristic to a law-governed State enshrined in the Satversme are observed.

**3.** The institution that issued the contested act, **the Saeima** does not share the opinion of the Applicant and holds that the Contested Norms do comply with Article 1, Article 83 and Article 87 of the Satversme.

**3.1.** In the initial wording of the Law on Budget and Financial Management, it was established that the Minister of Finance would adopt a decision regarding reduction of requested budget expenditures or other amendments into budgetary requests of constitutional institutions. Only amendments of 1 April 1998 of the above mentioned Law establishes a special procedure for assessing budgetary requests of the Saeima.

The Saeima indicates that all constitutional institutions are granted financial autonomy that manifests itself in preparation of budgetary requests, budget fulfilment and control of expense of financial resources. Such financial independence is necessary due to functions fulfilled by the particular institutions and the principle of separation of powers. However, in reality, no absolute financial independence can be granted to any institution, even the parliament, because it would also have to count with opinion of the government in case of increase of its expenditures.

Section 19 (5) of the Law on Budget and Financial Management has been elaborated taking into account opinions of representatives of the Supreme Court, the Constitutional Court, the State Audit Office, the Ministry of Justice, and the Ministry of Finance.

**3.2.** The Saeima indicates that, from the objective point of view, other constitutional institutions cannot have the same regulation as established for review of Saeima budgetary request because they do not adopt State budget and they have not been elected in direct national ballot. In order to ensure completeness of draft budget to be submitted, the Cabinet of Ministers has to take into account the initial will of the institution that adopts the budget, namely, the legislator, this will having been stated in its budgetary request.

Responsibility for elaboration, balancing, and execution of the State budget falls upon the Cabinet of Ministers that has the duty to observe principles of the Satversme, including that of separation of powers, as well as responsibility established in Article 66 of the Satversme. If only the Saeima were commissioned to amend budgetary requests of constitutional institutions, this would contradict Article 66 of the Satversme. The opinion that only the parliament can ensure observance of the principle of separation of powers and protect constitutional institutions from arbitrary action of the government is incomplete. The principle of separation of powers should be understood as provisions to be observed to ensure effective functioning and mutual balance among branches of power.

**3.3.** The Saeima regards the opinion of the applicant that the Cabinet of Ministers does not have the right to decide on budgetary request of the State Audit Office because the State Audit Office makes audits at the Cabinet of Ministers and institutions subject thereto as ungrounded. If such opinion would be recognized as correct, the Saeima would not have the right to decide, for instance, on budget of the Constitutional Court because the Constitutional Court decides on compliance of laws with the Satversme. The Cabinet of Ministers is responsible for feasibility and effectiveness of State budget execution. Moreover, if an ungrounded budgetary request of a constitutional institution is included into the draft budget non-amended, this might serve as grounds for resigning of the Cabinet of Ministers.

According to the Saeima, it is logical if, in the frameworks of the system of separation of powers, certain institutions are established priority in a particular question. None of the states of the world can suggest a uniform approach to elaboration and review of budget; neither exists there any standard principle of separation of powers in questions regarding budgets of constitutional institutions.

If expenditures of constitutional institutions reflected in budgetary requests were separated from other budget expenses and the Cabinet of Ministers was not allowed to contextually integrate them into the budget system, then the draft budget would be incomplete. These deficiencies should be eliminated by the Saeima; however, this would render budget planning procedure more complex and would not be rational.

**3.4.** Decisions of the Saeima regarding draft budgets of constitutional institutions and their adjustments are adopted in accordance with opinion of the Cabinet of Ministers after the Cabinet has made a proposition or given positive opinion. Each institution showing such will are heard by respective Saeima committees; they can also express their opinion in writing.

Parameters forming budgetary requests are often precisely determined by law and in such cases the Cabinet of Ministers is not entitled to freely decide on allocation of financial resources. Political decision of the legislator can also be negative in respect to constitutional institutions. The Saeima holds that constitutional institutions already have flexible mechanisms at their disposal for them to be able to protect their budgetary requests before the Cabinet of Ministers and the Saeima.

**4.** A summoned person – **the Supreme Court of the Republic of Latvia** holds that Section 19 (5) of the Law on Budget and Financial Management, which permits the Cabinet of Ministers amending budgetary request of the Supreme Court without the consent of thereof, does not comply with the principle of separation of powers. Interference of the executive power threatens independence of the judicial power.

The Supreme Court holds that independent institutions should be established a special character and they should be granted financial independence. The Supreme Court indicates that its budgetary request should be assessed by the legislator. The Plenum of the Supreme Court asked the Saeima and the Cabinet of Ministers to ensure the same procedure for budget analysis for the Supreme Court as it is for budget of the Saeima.

**5.** A summoned person – **Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that the State Audit office, the Ombudsman and the courts are

constitutional institutions functioning as an effective control mechanism with the purpose to prevent or eliminate, as much as possible, all mistakes of public power institutions.

It can be concluded from Section 10 (1) of the State Administration Structure Law that, when drawing up annual draft budget, the Cabinet of Ministers must take into account the meaning and purpose of constitutional institutions, as well as aims of their functioning. The Ombudsman holds that, when forming a constitutional institution, the Saeima has granted it the same confidence as that given to ministers in the light of Article 59 of the Satversme. The legislator wants constitutional institutions to properly fulfil their functions, as well as to prevent all such situations when execution of these functions would depend on cut of funding.

The Ombudsman indicates that allocation of funding to constitutional institutions shall not be regarded only as technical calculations because it is necessary to find out opinion of the institution itself. The Cabinet of Ministers has failed to observe objections of the Ombudsman against cut of budget of the Ombudsman Office. Due to an inadequately reduced funding, capacity of the Ombudsman to fulfil basic functions within stipulated terms has considerably reduced. Consequently, the Contested Norms do infringe functioning, independence and existence of the Ombudsman and also other constitutional institutions.

**6. The summoned person – the Chancellery of the President of the Republic of Latvia** (hereinafter – the Chancellery) indicates that the regulatory framework included in the Law on Budget and Financial Management does not facilitate independence of the Chancellery as an institution formed separately from the institutional system of the executive power.

According to the Chancellery, influence of the executive power on financial independence of the institution also means the ability of the executive power to influence actions of any other institution that requires financial support.

The Chancellery indicates that it does not fulfil functions that fall into the scope of competence of the executive power. Pursuant to the Bylaws of the Chancellery of the President of the Republic of Latvia, based on priorities set forth by the State president, the Chancellery shall draw up and manage its budget, as well as ensure its expedient use.

The Law “On Ensuring of Work of the State President” grants the Chancellery status of a legal person that proves its institutional independence.

7. The summoned person – **the Ministry of Finance of the Republic of Latvia** indicates that, when elaborating State annual draft budget, norms of the Law on Budget and Financial Management are observed, economic and fiscal situation of the state is taken into account, as well as decisions of the Cabinet of Ministers regarding budgetary expenses of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office are considered.

Exclusion of these institutions from the common process of drawing up of State draft budget would deny the Minister of Finance the possibility to elaborate State draft budget grounded from fiscal and economical point of view. This would also hamper approval, by the Cabinet of Ministers, of medium-term macro-economic development and fiscal policy framework, as well as adoption of a decision regarding submission of draft law on the State budget to the Saeima. Consequently, this would considerably restrict ability of the government to prepare the State draft budget in general and adoption of decision regarding measures of fiscal consolidation in particular.

The Ministry of Finance indicates that the aim of the budget is to establish and to substantiate what resources are necessary for the government, other state administration institutions and local governments to fulfil their duties, as well as to ensure that all expenses would be covered by adequate incomes. In case if it was not possible to assess and, in case of necessity, reduce budgetary requests of independent institutions submitted to the Cabinet of Ministers, it would be necessary to cut funding of other institutions. Consequently, this would not ensure observance of fiscal discipline and planning of expenditures in accordance with economic possibilities. In after years, it is planned to take substantial measures to reduce expenditures of all administrative bodies, central public institutions included.

8. The summoned person – **a sworn advocate Mr. Linards Muciņš** indicates that, in fact, the applicants request granting another competence to independent institutions, although such competence can only be assigned by law.

Mr. L. Muciņš holds that the Applicant interprets the term “democracy” in a narrow manner and takes the notion of independence referred to in Article 83 and Article 87 of the Satversme as absolute. The State President, the Supreme Court, the Constitutional Court and the State Audit Office are constitutional bodies of public power of indirect representation that have been granted a lesser independence level if compared to the Saeima, however, it is grater if compared with other institutions of the Republic of Latvia. Although, in the field of budgetary independence, the legislator has equated the Ombudsman Office with other constitutional bodies of public power of indirect representation, the Ombudsman Office, if compared to the State Audit office, is not a constitutional body of public power.

Mr. L. Muciņš indicates that the Applicant wants, without reason, to obtain the same level of budgetary independence as that of the Saeima and therefore Mr. L. Muciņš asks to reject the application.

### **The Constitutional Court has established:**

9. The applicant asks to assess whether normative regulatory framework of the Contested Norms allowing the Cabinet of Ministers to amend budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office complies with the principle of separation of powers enshrined in Article 1 of the Satversme, as well as its compliance with Article 83 and Article 87 of the Satversme.

Section 19 (5) of the Law on Budget and Financial Management is also applicable to the Constitutional Court. However, the Constitutional Court has the right to assess constitutionality of decisions adopted by other branches of power also in cases when these decisions are related with the judicial power (*see: Judgment of 18 January 2010 in the case No. 2009-11-01, Para 5*). Consequently, assessment of constitutionality of the Contested Norms does pertain to the scope of competence of the Constitutional Court.

**10.** The applicant has drawn attention not only to non-compliance of the Contested Norms with the principle of separation of powers enshrined in Article 1 of the Satversme but also with independence of courts and the State Audit Office established in Article 83 and Article 87 of the Satversme.

The Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*see: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 13*). The principle of wholeness of the Satversme prohibits interpretation of separate norms of the Satversme as isolated from the other Satversme norms, because the Satversme as a document, which is a cohesive whole, influences the contents and sense of the norm (*see: Judgment of 16 October 2006 by the Constitutional Court in the case No. 2006-05-01, Para 16*).

Independence of courts and the State Audit office from other public institutions follow from Article 83 and Article 87 of the Satversme. The notion of independence also includes budgetary independence. Consequently, compliance of the Contested Norms with Article 1 of the Satversme, insofar as it applies to budgetary requests of the Supreme Court, the Constitutional Court and the State Audit Office, shall be assessed in conjunction with principles of independence of the above mentioned institutions established in Article 83 and Article 87 of the Satversme. Insofar as the Contested Norms apply to the Chancellery and the Ombudsman Office, the Constitutional Court shall assess compliance thereof with the principle of separation of powers enshrined in Article 1 of the Satversme.

**11.** In a democratic State, the principle of separation of powers is implemented by three branches of power. The necessity to reach the aims of separation of powers in certain cases allows deviating from formal implementation of the principle of separation of powers. In the legal science it is recognized that particular deviations from the principle of separation of power may be regarded as admissible, if it makes the realization of functions of the state power more efficient, strengthens independence of a certain institution of the State power from another power or secures functioning of

mutual balance and counterbalance system of the three powers (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 7*).

For the division of power to reach its objective, separate functions of power shall be passed over to different constitutional institutions. In the Satversme, the Latvian State competence is divided among the institutions of constitutional State power mentioned in the Satversme – the body of Latvian citizens, the Saeima, the State President, the Cabinet of Ministers, the State Control, the courts and the Constitutional Court (*see: Judgment of 16 October 2006 by the Constitutional Court in the case No. 2006-05-01, Para 10.3 and 10.4*).

**Consequently, the Satversme includes an exhaustive list of constitutional institutions (bodies) that implement public power.**

**12.** When adopting law on annual State budget, like any other law, it is necessary to observe proper procedure. It is also necessary to observe the special procedure established for elaboration and review of draft law on budget.

Article 66 of the Satversme provides that annually, before the commencement of each financial year, the Saeima shall determine the State Revenues and Expenditures Budget, the draft of which shall be submitted to the Saeima by the Cabinet. Pursuant to Section 114 (2) (2) of the Saeima Rules of Procedure, State draft budget and amendments to the State budget shall be adopted by the Saeima in two readings.

The Budget is the financial plan of the state, which on the basis of the existing laws envisages revenues and expenditure for a certain period of time – the financial year. The objective of the Budget shall be to establish and substantiate what resources are required for fulfilling those state obligations the funding of which is established by legislative acts. All the state institutions and offices are inter – related with the Budget (*see: Judgment of 27 November 1998 in the case No. 01-05 (98), Para 1*).

First, the State draft budget is elaborated in parts by different offices. The main task of the Cabinet of Ministers is to unify and coordinate budget of different offices, as well as to balance State expenditures and incomes (*see: Dišlers K. Latvijas valsts varas*

*orgāni un viņu funkcijas. Rīga: Tiesu namu aģentūra, 2004, pp.150*). Since the State budget is a single document, the Cabinet of Ministers is responsible for balancing of budgetary requests submitted by State institutions.

**Consequently, elaboration of State draft law falls merely in the competence of the Cabinet of Ministers, whilst the Saeima reviews and approves the budget.**

13. The Applicant holds that budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office should be assessed according to the same procedure as established for review of budgetary request of the Saeima.

Pursuant to Section 183.<sup>1</sup> of the Saeima Rules of Procedure, the Saeima is financially independent institution, and its budgetary request cannot be amended without the consent of the Presidium up to submission of the draft law on the State budget to the Saeima. This is also established in Section 19 (4) of the Law on Budget and Financial Management. Consequently, different procedure is applied when reviewing budgetary request of the Saeima, if compared with that applied to the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office.

In the present case, there is no dispute regarding the fact that budget of the Republic of Latvia can be adopted only by the Saeima, i.e. the legislator. The Saeima is the only constitutional institution that is elected by the people in general, equal, direct, closed and proportional elections. However, the above mentioned election procedure does not serve as sufficient grounds for a different procedure of review of budgetary requests.

Differences in the procedure for reviewing budgetary requests can be explained by functions of the Saeima as legislative power in a parliamentary republic. The Satversme grants the Saeima the decisive role in legislation and adoption of decisions relevant to the State. Adoption of annual law on the State budget is one of such decisions.

The Saeima budgetary request is included in a draft law on annual State budget that the Cabinet of Ministers submit to the Saeima. Consequently, the different procedure for review of Saeima budgetary request does not contradict the duty of the Cabinet of

Ministers to elaborate a single draft budget of the State. If the Saeima budgetary request could be amended by the Cabinet of Ministers without the consent of the first, then this would not prevent situation when the Saeima would again amend it when adopting the draft law on the State budget at the Saeima. Therefore it can be concluded, that the procedure for reviewing Saeima budgetary request serves as a rational balance between competence of the legislator and that of the executive power when preparing the budget.

**Consequently, the regulatory framework for reviewing Saeima budgetary request does comply with the role of the Saeima in a democratic and law-governed State and the principle of separation of powers.**

**14.** In order to establish whether the procedure established in the Contested Norms comply with Article 1, Article 83 and Article 87 of the Satversme, the Constitutional Court must first concretize legal status of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office, and the Ombudsman Office.

**14.1.** Article 83 of the Satversme provides: “Judges shall be independent and subject only to the law”. This norm of the Satversme establishes independence of judges and the courts, which is one of the fundamental principles of a democratic and law-governed State.

However, Article 82 of the Satversme provide a list of those courts that perform adjudication, namely, district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also by military courts. Pursuant to norms of Chapter “Judicial System” of the Law “On Judicial Power”, the Supreme Court is a constituent part of the judicial system. Consequently, it can be concluded that, according to Article 82 of the Satversme, the judicial system shall be recognized as a constitutional institution.

Constitutional status of the Constitutional Court is regulated in Article 85 of the Satversme, as well as Section 1 (3) of the Law “On Judicial Power” that provides that judicial power in the Republic of Latvia is also vested in the Constitutional Court.

**Consequently, the Constitutional Court is a constitutional institution that implements its competence on behalf of the State, whilst the Supreme Court is a part of a constitutional institution, i.e. the judicial system.**

**14.2.** Article 87 of the Satversme provides: “The State Audit Office shall be an independent collegial institution.” Jurisdiction of the State Audit Office is established in the State Audit Office Law. The State Audit Office in performing financial and efficiency audits, as well as examining the conformity of transactions and activities with regulatory enactments and the planned results, shall control revenues and expenditures of the State budget and local government budget resources, utilisation of the resources of the European Union and other international organisations or institutions, and actions with State and local government property or a part thereof. Control of use of resources of the European Union and other international organizations or institutions also falls within the jurisdiction of the State Audit Office.

**The State Audit office is a constitutional institution that, when making audits, implement control function in respect to use of resources of the State, local governments, the European Union and other international organizations or institutions in the State.**

**14.3.** The Chancellery is a supporting institution for functioning of a constitutional institution of the State power, i.e. President of the Republic of Latvia. The Chancellery ensures fulfilment of functions of the State President established in the Satversme. The Chancellery is directly subject to the State President. Consequently, it shall be regarded as an administrative unit of a constitutional public body, which does not pertain to the administrative institutions of the State subject to the Cabinet of Ministers, as established in Article 58 of the Satversme. Since the Chancellery is a supporting institution for functioning of the State president, Section 19 (5) of the Law on Budget and Financial Management reasonably establishes that it is a submitter of budgetary request.

**The Chancellery is a supporting institution of a constitutional institution of the State power that is subject to the State president and provides the State President with resources necessary for implementation of functions established in the Satversme.**

**14.4.** According to Section 1 of the Ombudsman Law, the purpose of the ombudsman institution is to promote the protection of human rights and to facilitate that the State authority is exercised legally, efficiently and in conformity with the principles of good administration. The Ombudsman shall be an official approved in accordance with the procedures specified by this Law, who performs the functions and tasks specified by the law. The Ombudsman shall be independent in his or her activities and shall be governed exclusively by the law. However, to ensure activities of the Ombudsman, the Ombudsman's Office shall be established.

In 2001, when elaborating a conception for introducing the institution of ombudsman in Latvia, it was indicated that ombudsman is independent, and none of State or local government institutions can issue orders to it (*see: Concept for introducing the institution of ombudsman in Latvia, [Konceptija ombuda institūcijas ieviešanai Latvijā] // Latvijas Vēstnesis, 2001, No. 39*). Independence from direct influence of other State institutions is a substantial precondition for effective implementation of functions of Ombudsman.

The institution of ombudsman in different states differs as to its legal status and ways of functioning (*see: Mikainis Z. Ombudsmena institūts. Satversmes reforma Latvijā: par un pret. Rīga: Sociāli ekonomisko pētījumu institūts „Latvija”, 1995, pp. 52 – 55*).

The Ombudsman Office does not pertain to administrative institutions of the State subject to the Cabinet of Ministers, as established in Article 58 of the Satversme of the Republic of Latvia. Unlike the State president, the courts and the State Audit Office, the status of the Ombudsman has not been enshrined in the Satversme. However, taking into account independence of the Ombudsman, the legislator has provided the Ombudsman Office the similar rights in the field of budget planning as those conferred to constitutional institutions mentioned in Section 19 (5) of the Law on Budget and Financial Management.

**The ombudsman Office is an independent State institution that ensures execution of functions of the Ombudsman.**

**15.** The Applicant indicates that the Contested Norm forms a situation when the executive power can affect financial support necessary for constitutional institutions to fulfil their functions established by law. This results in failure to ensure financial and functional independence of the above mentioned institutions.

**15.1.** The Satversme and normative acts regulating work of constitutional institutions serve as legal grounds for functional independence of the above mentioned institutions. They establish the special legal status of constitutional institutions that should be observed by other state institutions.

For a constitutional institution to be able to fulfil its function in an effective manner, State institutions, including the legislator and the executive power, cannot affect work of such institution or to make political pressure without reason. Functional independence of constitutional institutions is directly related with their financial independence. Namely, the state has to ensure financial support for constitutional institutions at the amount that regulates wholesome functioning of the above mentioned institutions.

When assessing the content of independence of courts and judges included in Article 83 of the Satversme, the Constitutional Court has indicated that the state, by envisaging an appropriate funding, guarantees an effective legal protection of a person in a competent and independent court. Therefore only such funding of the judiciary, which ensures the fulfilment of these duties, complies with the Satversme (*see: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01, Para 8.1*).

It is possible to agree with the Saeima stating that, during elaboration of draft budget, the government takes the role of an intermediary with the purpose to facilitate wholesome functioning of constitutional institutions, the Ombudsman Office included. When the Cabinet of Ministers elaborates the draft budget and the Saeima approves it, both above mentioned institutions should abstain from all activities that could affect functional independence of the State President, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman without reason. Likewise, the legislator and the government cannot infringe execution of functions of constitutional institutions. Ensuring of independence of constitutional institutions and the Ombudsman is not only the duty of the legislator but also that of the executive power.

The Constitutional Court concludes that, when elaborating, approving and using budgets of the constitutional institutions and the Ombudsman, it is necessary to observe certain preconditions that ensure independence of these institutions regarding budgetary issues. The above mentioned institutions must be given the possibility to prepare budgetary requests, to substantiate it for the Cabinet of Ministers and the Saeima, as well as to administer their budgets.

In the reply, the Saeima has reasonably indicated that, when elaborating and approving draft State budget, it is necessary to ensure independence of constitutional institutions by allocating them resources necessary for effective functioning thereof.

**15.2.** Independence of the constitutional institutions and the Ombudsman does not mean that any activities by the Saeima and the government that could affect financial support for the above mentioned institutions are prohibited.

However, even under circumstances of economic recession, the State is committed to ensuring independence of activities of the State President, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman. The Cabinet of Ministers has the right to reduce financial resources indicated in budgetary requests of the State President, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman; however, such reduction should be objectively grounded and proportional. The Cabinet of Ministers does not have the right to make such amendments of the budgetary requests that might result in hampering of effective fulfilment of functions of the State President, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman as established in the Satversme and normative acts.

**A democratic and law-governed State requires effective procedure for ensuring functional and financial independence of constitutional institutions.**

**16.** The Applicant holds that only the Saeima should have the right to amend budgetary requests of constitutional institutions and the Ombudsman Office.

**16.1.** The Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office prepare their budgetary request in accordance with Section 18 of the Law on Budget and Financial Management, namely, they elaborate

and submit them to the Ministry of Finance in accordance with fundamental principles regarding elaboration of budgetary requests.

Pursuant to Section 19 (2) and (3) of the Law on Budget and Financial Management, the Minister for Finance shall develop a draft annual State Budget Law on the basis of the medium term macroeconomic development and fiscal policy framework and budgetary requests, as well as shall evaluate budgetary requests on the basis of their conformity to the purpose intended, economy and efficiency and, if necessary, request necessary additional information for the relevant evaluation.

Taking into account furnished information, the Minister of Finance includes budgetary requests into the draft law on the State budget. At any stage of reviewing draft law on the State budget, the Minister of Finance can express its opinion, attach necessary conclusions, as well as results of certain audits.

The Contested Norms clearly show that the Ministry of Finance does not have the right to amend budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office before submission of a draft law on annual State budget to the Cabinet of Ministers. It cannot be permitted that the Ministry of Finance would reduce amount of requested resources without the consent of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office.

**16.2.** The Ministry of Finance transfers draft law on the State budget to the Cabinet of Ministers that, pursuant to the procedure established in Section 20 of the Law on Budget and Financial Management, assesses it and decided on its submission to the Saeima.

It has already been indicated in Para 12 of the present judgment that drawing up of draft budget falls within the competence of the Cabinet of Ministers. This means that only the Cabinet of Ministers has the right to draw up draft law on the State budget, which, after full elaboration, is transferred to the Saeima for its assessment and adoption of the final decision.

The first sentence of Article 59 of the Satversme provides that in order to fulfil their duties, the Prime Minister and other Ministers must have the confidence of the Saeima and they shall be accountable to the Saeima for their actions. The fact whether

the Cabinet of Ministers would preserve trust of the Saeima depends on approval of the draft budget by the Saeima, namely, on results of voting on the draft law. If the Saeima, when voting, in the first or the second reading, on draft law on annual State budget submitted by the Cabinet of Ministers rejects it, then the Cabinet of Ministers is deemed to be expressed no-confidence pursuant to Section 30 of the Saeima Rules of Procedure. This means that the Cabinet of Ministers has to undertake political responsibility for elaborated draft State budget.

The principle of separation of powers does not require that budgetary requests of constitutional institutions were assessed and amended only by the legislator. It is possible to agree with what the Saeima has indicated, namely, that none of the states of the world can suggest a uniform approach to elaboration and review of budget; neither exists there any standard principle of separation of powers in questions regarding budgets of constitutional institutions (*see: Case materials, pp. 34*). Article 66 of the Satversme commits the Cabinet of Ministers to submitting draft State budget to the Saeima. However, the Saeima assesses it and decides on its takeover. The Saeima can introduce changes in funding established for constitutional institutions and the Ombudsman Office in the draft State budget submitted by the Cabinet of Ministers.

**16.3.** The Constitutional Court does not share the opinion of the Applicant, namely, that the right of the Cabinet of Ministers to amend budgetary requests of constitutional institutions and the Ombudsman Office is at variance with independence of the above mentioned institutions; therefore their budgetary requests could only be amended after the requests are submitted to the Saeima. Independence of constitutional institutions does not mean absolute autonomy. State power is united; its branches interact and are mutually dependant. Public institutions that do not pertain to legislative or executive power can, in certain fields, be related with decisions of the above mentioned branches of power.

The State President, the Supreme Court, the Constitutional Court, the State Audit Office, and the Ombudsman pertains to the system of public bodies, within which each of them has been conferred certain functions and competence. Elaboration of a draft law of the State budget falls within the scope of competence of the Cabinet of Ministers, and the regulatory framework included in the Contested Norms provide for legitimate interaction between executive power and the above mentioned institutions during the elaboration

process rather than establish any infringement to independence of the constitutional institutions and the Ombudsman.

As it has already been mentioned, when elaborating draft budget and deciding on budgetary requests of the constitutional institutions and the Ombudsman Office, the Cabinet of Ministers must abstain from all activities that could affect functional independence of the particular constitutional institutions without reason or to infringe execution of their functions. Ensuring of independence of the constitutional institutions and that of the Ombudsman Office is a constitutional duty of the Cabinet of Ministers that follows from Article 1, Article 66, Article 83 and Article 87 of the Satversme.

**Consequently, the right of the Cabinet of Ministers to amend, during the period from elaboration of the draft law on the State Budget to submission thereof to the Saeima, budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office does not contradict the principle of separation of powers; it neither infringes independence of the courts and the State Audit Office.**

17. The Applicant asks to assess compliance of the Contested Norms with the Satversme, however, the regulatory framework included in the Contested Norms only partially apply to review of draft law on the State budget, including budgetary requests of the constitutional institutions and the Ombudsman Office, executed by the government. The Saeima indicates that at present actions of the constitutional institutions are ensured with flexible mechanisms for the institutions to be able to defend their budgetary requests before both, the Cabinet of Ministers and the Saeima. Consequently, the Constitutional Court must assess whether the Law on Budget and Financial Management includes normative regulatory framework establishing procedure for review of budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office by the Cabinet of Ministers.

17.1. The Constitutional Court may broaden the *ex officio* limits of the claim only by observing certain criteria, first of all “conception of close relation”. In order to conclude whether it is possible and necessary to *ex officio* broaden the limits of the claim in relation to other norms, it is necessary to investigate: 1) whether those norms, in relation to which the

claim is being *ex officio* broadened, are so closely related to the contested norms *expressis verbis* contested in the case under review that assessment of them is possible in the frameworks of the same justification or necessary for adjudication of the case under review; 2) whether broadening of the limits of the claim is necessary for observation of the Constitutional Court procedure (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 17*).

The Contested Norms are closely related with the regulatory framework included in other norms of the Law on Budget and Financial Management. Section 19 of the Law on Budget and Financial Management regulates analysis of State budgetary requests, whilst norms on review of draft law on the State budget are included in Section 20 of the same Law. However, it follows from the principle of procedural economy that it is not useful for the Constitutional Court to repeatedly decide on issues that could be solved in the frameworks of the case under review. Consequently, compliance of the Contested Norms with the Satversme shall be assessed in conjunction with the regulatory framework on review of the draft law on the State budget by the Cabinet of Ministers included in the Law on Budget and Financial Management.

**17.2.** It can be concluded from Section 19 of the Law on Budget and Financial Management that, in the frameworks of analysis of State budgetary requests, the Minister of Finance performs initial assessment of the budgetary requests. However, the Contested Norms prohibit the Minister of Finance to amend budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office without the consent of the applicants.

Section 20 (2) of the Law on Budget and Financial Management provides that The Minister for Finance shall seek to attain agreement with the heads of the relevant ministries and other State central institutions. If agreement is not attained, he or she shall attach, to the draft State Budget Law to be submitted to the Cabinet, a statement of the objections regarding which agreement has not been attained. This regulatory framework also applies to the institutions mentioned in the Contested Norms, provided that the Minister of Finance does not have the right to unilaterally change budgetary requests. If the Minister of Finance fails to reach an agreement with the Chancellery, the Supreme Court, the Constitutional Court, the State Audit Office and the Ombudsman Office

regarding their budgets, then these questions shall be reviewed by the Cabinet of Ministers.

It can be concluded that norms of the Law on Budget and Financial Management regulating review of budgetary requests of the constitutional institutions and the Ombudsman Office before submission of the draft law on the State budget to the Cabinet of Ministers establish a certain procedure, namely, consultations and coordination of opinions with the above mentioned institutions.

**17.3.** The Applicant indicates that, when drawing up the State budget for 2010, the government has reduced expenses of constitutional institutions without their consent (*see: Case materials, pp. 6*). The Ombudsman indicates that, when elaborating the State budget, opinion of the constitutional institutions has not been heard (*see: Case materials, pp. 91*).

The Constitutional Court has emphasized, in its case-law, the necessity for cooperation between branches of the State power and their duty to substantiate decisions. The legislator must provide an opportunity to the judiciary to express its opinion about the issue affecting the functioning of courts and falling within the competence of the legislator (*see: Judgment of 22 June 2010 by the Constitutional Court in the case No. 2009-111-01, Para 29.1*). If the legislator does not take into consideration or takes it into consideration only partially, it has the duty to provide substantiation for one's actions (*see: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01, Para 11.5*). The Constitutional Court has also indicated that the obligation to listen to the opinion of an institution representing the judiciary follows from the principles of the division of power and the independence of judges (*see: Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01, Para 24.4*).

The above mentioned conclusions of the Constitutional Court shall also be applicable to the duty of the executive power to cooperate with the State President, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office regarding issues related with budgetary requests of the particular institutions and preparation of draft law of the State budget. The principle of separation of powers includes the duty of not only the legislative power but also of the executive power to hear opinion of the constitutional institutions, the Ombudsman Office included. Since

preparation of draft law of the State budget before its submission to the Saeima is a common action of the legislative power, for which the Cabinet of Ministers is the responsible party, the institutions mentioned in the Contested Norms should also be heard after the Minister of Finance has submitted draft law on the State budget to the Cabinet of Ministers. If the Cabinet of Ministers amends budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office, whilst the particular institutions raise objections, then the government must inform the legislator on such objections.

**17.4.** It can be concluded from the annotation to the draft law prepared by the Ministry of Finance “Amendments to the Law “On Budget and Financial Management”” that the wording of Section 19 (5) of the Law on Budget and Financial Management has been elaborated in accordance with suggestion of the Saeima Legal Committee, and the aim of the particular wording is ensuring preparation of transparent draft law of the State budget and explications thereto (*see: Case materials, pp. 67*). The aforesaid can be applied also to the normative regulatory framework established in Section 44 (3) of the State Audit Office Law and Section 19 (2) of the Ombudsman Law.

When establishing a separate regulatory framework, in Section 19 (5) of the Law on Budget and Financial Management, for review of budgetary requests of the constitutional institutions and the Ombudsman Office, the legislator has emphasized the special status of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office, as well as the necessity to ensure transparency of the process of budget elaboration. The legislator has established broader rights for the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office when reviewing budgetary requests, if compared to institutions, budgetary requests of which can be amended by the Minister of Finance. In the context of the Contested Norms, transparency means that the constitutional institutions and the Ombudsman Office must be heard by the Cabinet of Ministers, whilst the Cabinet of Ministers must substantiate its decisions.

Section 20 (2) of the Law on Budget and Financial Management commissions the Minister of Finance to attach, to draft law of the State budget to be submitted to the Cabinet of Ministers, a note on those objections, in relation to which no agreements have been reached. However, Indent 4 of the same Section provide that the heads of ministries

and other State central institutions may refer questions not settled during the process of the examination of budgetary requests, to the Cabinet for the resolution thereof. However, norms of Section 20 of the Law on Budget and Financial Management does not commit the Cabinet of Ministers to hearing the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office after the Minister of Finance has submitted, to the Cabinet of Ministers, draft law on the State budget.

The Constitutional Court does not share the opinion of the Saeima that the constitutional institutions already have flexible mechanisms at their disposal for them to be able to protect their budgetary requests before the Cabinet of Ministers and the Saeima. The Saeima indicates that any institution that expresses such will is heard by respective Saeima committees, and they can also express their opinion in writing. However, such possibility, which has not even be established in legal norms, does not justify gaps in the Law on Budget and Financial Management.

Since there is no normative regulatory framework ensuring the right of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office to be heard by the Cabinet of Ministers in relation to examination of their budgetary requests, the aim of the Contested Norms is not achieved. Absence of such normative regulatory framework permits a situation that does not comply with the principle of separation of powers, as well as independence of the courts and the State Audit Office, namely, a situation when the Cabinet of Ministers can amend budgetary request of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office without the consent thereof and without finding out opinions of the particular institutions. Consequently, the Contested Norms do not reach their aim.

**17.5.** Taking into account findings of this judgment, the Constitutional Court recognizes that normative regulation of the Law on Budget and Financial Management regarding procedure of review of draft law on the State budget by the Cabinet of Ministers as obviously incomplete. As it has already been indicated, norms of Section 20 of the Law on Budget and Financial Management do not commission the Cabinet of Ministers to hear the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office after the Minister of Finance has submitted

draft law on the state budget to the Cabinet of Ministers. The above mentioned commissioning includes, among the rest, the duty of the Cabinet of Ministers to substantiate the decision amending budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office, as well as to ensure that objections of the particular institutions raised before the Cabinet of Ministers against amendments into the budgetary requests are communicated to the legislator.

In a democratic and law-governed State, by observing the limits of functions conferred to public institutions, establishing and eliminating of gaps in regulatory framework primarily falls within the scope of competence of the legislator. Herewith, the Constitutional Court draws attention of the Saeima to the fact that normative regulatory framework included in the Law on Budget and Financial Management is incomplete and it fails to ensure procedure for reviewing budgetary requests of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office compliant with the Satversme.

**Consequently, the Contested Norms, reviewed in conjunction with the established gaps of Section 20 of the Law on Budget and Financial Management, do infringe the principle of separation of powers enshrined in Article 1 of the Satversme, as well as independence of the courts and the State Audit Office established in Article 83 and Article 87 of the Satversme.**

**18.** The law not only authorises the Constitutional Court, but also places responsibility upon it, so that its judgements in the social reality would ensure legal stability, clarity and peace (*see: Judgment of 21 December by the Constitutional Court in the case No. 2009-43-01, Para 35.1, and judgment of 18 January 2010 in the case No. 2009-11-01, Para 30*).

The legislator needs time to prevent all deficiencies of the normative regulation referred to Para 17.4 and Para 17.5 of the present judgment. Taking into account the material character of the issue under consideration and the case-law of the Constitutional Court regarding establishing of terms for eliminating established infringements, the Constitutional Court establishes the term of six months, namely, the term up to 1 June

2011, for the legislator to eliminate all gaps of the particular normative regulation referred to Para 17.4 and Para 17.5 of the present judgment.

### **The Constitutional Court**

According to Section 30-32 of the Constitutional Court Law,

#### **h o l d s :**

**Section 19 (5) of the Law on Budget and Financial Management, Section 44 (2) of the Law on the State Audit Office and Section 19 (2) of the Ombudsman Law in conjunction with Section 20 of the Law on Budget and Financial Management, insofar as it fails to establish the right of the Chancellery, the Supreme Court, the Constitutional Court, the State Audit office, and the Ombudsman Office to be heard by the Cabinet of Ministers regarding issues related with their budgetary requests, do not comply with Article 1, Article 83 and Article 87 of the Satversme of the Republic of Latvia and shall be null and void as from 1 June 2011.**

The Judgement is final and not subject to appeal.

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

Presiding Judge

G. Kūtris