THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 22 June 2010
In Case No. 2009-111-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

with the secretary of the hearing of the Court Līva Rozentāle,

with participation of the representative of the applicants Inese Nikuļceva, and

the representative of the institution that adopted the contested act – the Saeima [the Parliament] – sworn attorney-at-law Jūlija Jerņeva,

on the basis of Article 85 of the Satversme [the Constitution] of the Republic of Latvia, Paragraph 1 of Article 16, Paragraph 11 of the first part of Article 17 and Article 19 of the Constitutional Court Law,

in Riga on 18 May 2010 examined in an open hearing the case

"On Compliance of the Second Sentence of Paragraph 7 and the second sentence of Paragraph 20 (in the wording of 16 June 2009) and the third sentence of Paragraph 20 of the Transitional Provisions of the Law "On Judicial Power" with Articles 1, 83 and 107 of the Satversme of the Republic of Latvia".

The Constitutional Court has established:

1. The system for calculating judges' remuneration was defined in the law "Amendments to the Law "On Judicial Power" of 19July 2003, which came into force on 1

July 2003. The reform in judges' remuneration system, which was launched with the said Law, was based upon the Concept Document "Remuneration of Judges and Court Employees", approved with the Order No. 706 of the Cabinet of Ministers of 19 December, 2002 (hereinafter – the Concept Document). The main aim of the Concept Document was to set up judges' remuneration system that would be the basis for the existence of an independent, professional and fair court.

1.1. In accordance with Article 119[1] of the Law "On Judicial Power", a judge's monthly salary was linked to the gross average monthly salary of the employed persons in the state in the previous year, applying to it coefficient 4.5. At the same time a gradual transition to the amount of remuneration set by the law was envisaged. Till 2006 a judge's monthly salary was calculated on the basis of the gross average monthly salary of 2001. Moreover, in accordance with the Transitional Provisions of the Law "On Judicial Power" (hereinafter – the Transitional Provisions) in 2003, 2004 and 2005 60, 70 and 80 percent, respectively, of the calculated salary were paid.

1.2. The amendments to the Law "On Judicial Power" of 23 February, 2006 provided that the salary should be tied to the monthly average gross remuneration of 2001 not till 2006, but till 31 December, 2006. The second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power" also provides that the monthly salary of judges in 2007 and 2008 shall be calculated, taking into consideration the average monthly gross remuneration of 2005, but in 2009 – the average monthly gross remuneration of the employees in 2006, and that the coefficient 4.5 shall remain unchanged.

1.3. With the 14 November, 2008 Law "Amendments to the Law "On Judicial Power"", Paragraph 7 of the Transitional Provisions was worded differently. The second sentence of this paragraph provided: "The monthly salary of a judge, except the monthly salary of a judge of a Land Register Office, in 2007, 2008 and 2009 shall be calculated, taking into consideration the average monthly gross remuneration of employees in 2005, keeping the coefficient 4.5 unchanged"

1.4. On 12 December 2008 the Saeima adopted the Law "Amendments to the Law "On Judicial Power"", with which Paragraph 7 of the Transitional Provisions was supplemented, envisaging that "in 2009 a judge's monthly salary, except the monthly salary of a judge of a Land Register Office shall be set in accordance with Paragraph 20 of the Transitional Provisions", and Paragraph 20 was added to the Transitional Provisions, expressed as follows: " The remuneration set out in this Law (monthly salary, bonuses, etc.) in 2009 shall be set in accordance with the Law "On the Remuneration of Officials and Employees of State and Municipal Institutions in 2009"".

1.5. On 16 June 2009 the Saeima adopted the Law "Amendments to the Law "On Judicial Power"", with which the term of functioning of the mechanism for calculating the salary envisaged in the second sentence of Paragraph 7 of the Transitional Provisions was extended till the end of 2010. Paragraph 20 of the Transitional Provisions, in its turn, was expanded and envisaged for the future: "Starting with the day when the Amendments to the Law "On the State Budget for the Year 2009", adopted in June 2009, till 31 December 2010 the remuneration of judges and judges of Land Register Offices shall be set as 85 % of the remuneration set in accordance with Paragraph 7 and 17 of these Transitional Provisions (hereinafter – the contested second sentence of Paragraph 20).

1.6. On 1 December 2009 the Saeima adopted the Law "Amendments to the Law "On Judicial Power"", which came into force on 1 January 2010.

With these amendments the term of functioning of the mechanism for calculating salary envisaged in the second sentence of Paragraph 7 of the Transitional Provisions was extended till the end of 2011: "The monthly salary of a judge, except for the monthly salary of a judge of the Land Register Office, in 2007, 2008, 2009, 2010 and in 2011 shall be calculated, taking into consideration the average monthly gross remuneration of the employed in 2005, leaving the coefficient 4.5 unchanged (hereinafter – the contested second sentence of Paragraph 7).

The payment of 85 percent of the remuneration envisaged in the second sentence of Paragraph 20 was set till 31 December 2009, and a third sentence was added to this Paragraph: "From 1 January 2010 till 31 December 2011 the amount of

the remuneration of judges and judges of Land Register Offices is set in the amount of 73 % of the remuneration, which is set in accordance with Paragraph 7 and 17 of these Transitional Provisions, but without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions in 2009 (hereinafter – the contested third sentence of Paragraph 20). The contested second sentence of Paragraph 7, the contested second sentence of Paragraph 20 and the contested third sentence of Paragraph 20 hereinafter also – the contested provisions).

1.7. The Constitutional Court with the Judgement of 18 January 2010 in the Case No. 2009-11-01 "On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law "On Judicial Power" (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia" (hereinafter – the Judgement of 18 January 2009) declared the second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power", in the wording of the law from 14 November, 2008, 16 June, 2009 and 1 December, 2009 incompatible with Article 83 of the Satversme of the Republic of Latvia and invalid starting with 1 January, 2011.

2. The Applicants – Dace Ābele, Madara Ābele, Inga Akmeņlauka, Dzintra Amerika, Sandra Amola, Ingūna Amoliņa, Ilze Amona, Lolita Andersone, Dzintra Apine, Ilze Apse, Lala Apšeniece, Aija Āva, Ina Baiko, Daina Baltā, Dzintra Balta, Brigita Baltraite, Doloresa Bambere, Alfs Baumanis, Jānis Bazēvičs, Marika Bebriša, Inese Belicka, Svetlana Beļajeva, Kaspars Berķis, Santa Bernharde, Anita Bērziņa, Dagnija Bērziņa, Iveta Bērziņa, Mārtiņš Birkmanis, Intars Bisters, Ingrīda Bite, Maruta Bite, Dace Blūma, Stella Blūma, Olita Blūmfelde, Līga Blūmiņa, Dina Bondare, Tatjana Bormane, Helmuts Brasovs, Sandra Briķe, Iveta Brimerberga, Tamāra Broda, Rita Bruce, Skaidrīte Buivide, Brigita Būmeistere, Ilze Celmiņa, Andis Celms, Dzintra Danberga, Signe Dektere, Uldis Danga, Agita Dmitrenoka, Vilis Donāns, Diāna Dumbre, Imants Dzenis, Anita Dzērve, Diāna Dzērviniece, Aiga Freimane, Gunta Freimane, Ilze Freimane, Ilze Freimane, Juris Freimanis, Viesturs Gaidukēvičs, Ligita Gavare, Boriss Geimans, Sandra Gintere, Solvita Glaudāne,

Smaida Gļazere, Inese Grauda, Lelde Grauda, Elita Grigoroviča, Ērika Gulbe, Līga Hāzenfuse, Rihards Hlevickis, Biruta Horuna, Skaidrīte Hrebtova, Aelita Ignatjeva, Baiba Jakobsone, Ināra Janēviča, Dace Jansone, Irīna Jansone, Baiba Jēkabsone, Inta Jēkabsone, Ingrīda Junghāne, Agnese Jurevica, Daiga Kalniņa, Inta Kalniņa, Signe Kalniņa, Kristīne Kalvāne-Radziņa, Irina Kaļiņina, Sanita Kanenberga, Līga Karlsone, Dace Kantsone, Adrija Kasakovska, Karīna Kazārova, Astra Klaiše, Dainis Pēteris Kļaviņš, Regīna Knabe, Juris Kokins, Iluta Kovaļova, Renāte Krasovska, Irēna Krastiņa, Karina Krastiņa, Laima Kraule, Iveta Krēvica, Guna Krieviņa, Inga Krigena-Jurkāne, Iveta Kromāne, Sandra Krūmiņa, Agija Kudrēviča, Zita Kupce, Ļubova Kušnire, Ligita Kuzmane, Guntars Kveska, Biruta Ķeire, Dace Ķeire, Zinaida Lagzdiņa, Selga Lapejeva, Gundega Lapiņa, Ilze Lazdiņa, Elmārs Lenšs, Rinalda Liepiņa, Staņislavs Linkevičs, Irēna Logina, Svens Lorencs, Sarmīte Lucava, Irīna Makovska, Valērijs Maksimovs, Svetlana Maršāne, Dzintars Melbārdis, Iveta Meldere, Sandra Meliņa, Sandra Mertena, Rudīte Migla, Anna Mihailova, Una Mihailova, Andrejs Mihaļčenko, Irēna Millere, Maija Miltiņa, Anita Misiuna, Anita Moļņika, Inese Mudele, Aina Nicmane, Margarita Osmane, Ilze Ošiņa, Arvīds Ozerskis, Ineta Ozola, Sanita Ozola, Sigita Ozola, Baiba Ozoliņa, Gunta Ozoliņa, Roze Paegle, Agita Papule, Aija Pāvele, Zane Pētersone, Ilona Petrovska, Lidija Pliča, Kornēlija Poča, Ojārs Priedītis, Viktors Prudņikovs, Inguna Preisa, Solvita Pujāte, Inga Putra, Vineta Ramba, Ieva Reikmane, Silva Reinholde, Aija Reitupe, Gunta Rezgoriņa, Kaspars Rinčs, Normunds Riņķis, Iveta Risberga, Ināra Rozīte, Inta Rubene, Inese Rubina, Sanita Rūtenberga, Silvija Sēbriņa, Rinalds Silakalns, Velta Silamiķele, Vija Siliniece, Inese Siliņeviča, Juris Siliņš, Dace Skrauple, Inese Skudra, Līvija Slica, Santa Sondare, Visvaldis Sprudzāns, Kārlis Stārasts, Elita Stelte-Auziņa, Sanita Strakše, Ināra Strautiņa, Ziedonis Strazds, Inese Strelča, Sandra Strence, Inese Strode, Iveta Stuberovska, Juris Stukāns, Guntars Stūris, Jānis Stūrmanis, Elga Sudāre, Dina Suipe, Mārtiņš Sviķis, Marita Šalta, Ineta Škutāne, Mairita Šķendere, Māris Šļakota, Gatis Štauers, Ināra Šteinerte, Lauma Šteinerte, Marianna Terjuhana, Daina Treija, Aivars Uminskis, Gvido Ungurs, Vineta Vaiteika, Sarmīte Vamža, Ilze Vanaga, Kristīne Vanaga, Aelita Vancāne, Valdis Vazdiķis, Linda Vēbere, Agnese Veita, Linda Vēbere, Žaneta Vēvere, Iveta Vīgante, Aldis Vīksne, Signe Vilne, Daiga Vilsone,

Gunta Viļumsone, Linda Vīnkalna, Rita Vīva, Vita Vjatere, Lauma Volberga, Vivita Voronova, Inta Zaļā, Aivars Zāģeris, Zaiga Zaiceva, Sanita Zakrevska, Jolanta Zaškina, Milda Zelmene, Dzintra Zemitāne, Inese Laura Zemīte, Valda Zommere, Antra Zute, Dzintra Zvaigzneskalna-Žagare, Ārija Ždanova and Žanete Žimante (hereinafter – the Applicants) are of the opinion that the contested provisions define a more disadvantageous regulation compared to regulation that was in force previously, since till 31 December 2009 judges' remuneration was set in the amount of 85 percent, but starting with 1 January 2010 – only in the amount of 73 percent of the calculated remuneration. Moreover, the Applicants consider that by changing the procedure for calculating judges' remuneration and by repeatedly decreasing the amount of judges' remuneration, the principle of solidarity in setting and decreasing remuneration in all branches of the state power was not complied with.

2.1. The Applicants note that it follows from Article 107 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), which, inter alia, defines the rights to every employee to receive a commensurate remuneration for the work done, that a commensurate remuneration is such, which also adequately reflects the character of the work done. Thus, for a remuneration to be commensurate, when setting it the work to be done by the person, as well as the skills needed to perform this work, as well as the responsibility, the set restrictions and the importance of the decisions taken must be taken into consideration. The fact that, in setting judges' remuneration, the principle of the independence of courts must be taken into consideration is also said to follow from the right to a commensurate remuneration for the work done. I.e., judges' remuneration could be recognised as commensurate for the work done only, if, when setting it, the principle of the independence of courts were taken into consideration. Judges' remuneration must be commensurate with the dignity and the burden of responsibility of the judge's office.

A situation, when officials of public administration, who prepare administrative acts or control their legality, have higher remuneration than judges, who control the work of these officials, indicates that the amount of judges' remuneration is not commensurate. Disproportionate decreasing of judges' salaries also makes this office unattractive for highly qualified lawyers.

2.2. The Applicants express the opinion that in setting judges' remuneration the principle of legal certainty, the principle of legal stability (Article 1 of the Satversme) and the principle of the independence of courts (Article 83 of the Satversme) have been violated.

The judges' reliance on the regulation on setting the salary, included in the Law "On Judicial Power" must be protected, since there are several factors connected with the office of a judge that should be taken into consideration. The career of a judge is said to be a long-term choice, therefore stable guarantees are important. Very strict restriction with regard to combining jobs have been set for the office of a judge, therefore judges are especially affected by changes in remuneration, because they have very few possibilities to find another way of earning money. If a judge's career is temporarily suspended, the office is not preserved and the career of a judge must be built anew. The Applicants indicate that judges were not given sufficient time for adjusting to the decrease of remuneration, i.e., to re-plan their everyday life, which is linked with the satisfaction of their own and their family members' basic needs, and to review the commitments that they had undertaken.

The Applicants emphasize that the contested provisions also violate the principle of legal stability. The amendments to the procedure for calculating the salary set in the Law "On Judicial Power" deprive the Applicants of the opportunity to found their future activities on valid acts of legislation and effectively plan their income and expenditure.

2.3. The Applicants do not see logical or legal grounds for the restriction set in the contested third sentence of Paragraph 20, i.e., that a judge's remuneration may not exceed the Prime Minister's remuneration. Such an interpretation of the principle of equality, as the result of which an identical level of remuneration to all branches of the state power is set, is not acceptable. Taking into consideration various factors, for example, the nature of the work, the level of stability in performing the office, the authorisation linked with the functions to be performed, the period of tenure, there are no grounds to compare the offices and to demand that the officials belonging to one branch of power should earn as much as the officials belonging to another branch of power earn.

2.4. In addition to that during the court hearing **the Applicants' representative Inese Nikuļceva** noted that it follows from Article 107 of the Satversme in interconnection with Article 83, that even under the conditions of a crisis judges must be ensured such circumstances that they would be able to administer justice without any pressure, in an unbiased way and independently, so that they would have financial security and economic independence. Also under the conditions of a crisis the remuneration must be commensurate with the responsibility, required qualification, dignity of the profession, prestige and the restrictions connected to the office. A situation when the state decreases judges' remuneration to the extent that a judge, who has assumed financial commitments commensurate with remuneration, becomes insolvent or that his independence comes under threat is inadmissible. Referring to the case law of the German Federal Constitutional Court I. Nikuļceva indicated that the income of the civil servants should be such as to ensure their legal and economic independence and not only meeting the basic needs, but also a minimum comfort in life.

I. Nikuļceva emphasized that the principle of the division of power demands observing a balance between all three branches of state power, therefore, when deciding upon the financing of the judiciary, several criteria must be abided by. The legislator should have listened to the representatives of the judiciary, assess their arguments, as well as to provide arguments in case the opinion of the representatives of the judiciary is not taken in to consideration. In adopting the contested provisions, the legislator did not comply with these criteria; therefore the principle of the division of power has been violated.

During the discussion I. Nikuļceva expressed the opinion that judges do not live in a social vacuum and that the concrete situation existing in the state applies also to them. She indicated that judges are ready to participate morally and legally in the overcoming of the economic crisis, alongside other social groups, thus manifesting social solidarity, taking into consideration the conditions and principles mentioned in the Appeal of the Judges' Conference. That means that the judges have never considered themselves to be in special or exceptional circumstances. The judges had expressed the opinion that under the conditions of a crisis judges' remuneration can be

decreased, if these measures are temporary, have a serious social goal and if the principles set out in the Satversme are complied with. However, in adopting the contested provisions, the said principles were violated; thus, the contested provisions are incompatible with the Satversme.

3. The institution, which passed the contested provisions – the Saeima – request to declare the contested provisions as being compatible with the Satversme.

The Saeima in its written response indicates that the adoption of the contested provisions was connected with the economic recession, which is not over yet. To compensate for the lack of finances, Latvia took international loans, in order to obtain and to use them a number of conditions were set for Latvia, including ones applicable to the decrease of remuneration in the institutions financed from the state budget, as well as ensuring proportionality of remuneration in all fields of employment. Thus, the measures for preventing recession are aimed at reaching the goal mentioned in Article 116 of the Satversme – protection of the rights of other people and public welfare. Moreover, the contested provisions have a fixed term.

3.1. The Saeima simultaneously indicates that the principle of the independence of courts cannot be linked only with the amount of judges' remuneration set in the legislation. A complex and systemic assessment of compliance with this principle is needed. The independence of the system of courts (the institutional dimension) and the independence of judges (the individual dimension) is said to follow from numerous criteria: absence of direct interference of other powers (executive and legislative) in the administration of justice, sufficient funding to the system of courts for fulfilling its organisational and administrative functions, guaranteed social security and activities to the judges (selection of candidates for the office of judge, irrevocability and immunity of a judge), impartial allocation of cases, the reviewing of the court judgements according to the procedure set out in the legislation, etc.

The Saeima emphasizes that at present the remuneration for judges' work is commensurate with the nature of the job, the skills needed for performing the job and the responsibility, conforms with the requirements and restrictions set in the law, and, moreover, is balanced with the status and the remuneration of other officials of the

judicial system, as well as with the general level of salaries in the state. Therefore a breach of Article 107 of the Satversme cannot be identified.

3.2. The Saeima holds the opinion that the setting of the remuneration falls within the sphere of social rights, which is inseparably linked with the state's financial possibilities. Therefore the legislator, in regulating the aforementioned legal relationship, has been granted a wide discretion and as strict requirements as with regard to the ensuring of other human rights cannot be set for the legislator.

In view of the fact that for everybody, whose remuneration is paid from the state budget, including the President of the State, the Prime Minister, the ministers and the members of the Saeima, the remuneration was decreased, the Saeima considers that in adoption of the contested provisions the principle of solidarity was complied with.

3.3. The Saeima does not agree to the Applicants' opinion that the contested provisions are inconsistent with the principle of legal certainty. The principle of legal certainty is one of the corner-stones of a democratic state; however, it does not prohibit introducing amendments, conforming to certain requirements, to the existing legal regulation.

The Saeima emphasizes that neither the principle of legal stability or fairness prohibit deviating away from the previous practice. It is not only permissible, but even necessary in those cases, when the most appropriate and suitable solution to the situation must be chosen. The Saeima believes that in the concrete situation retreating from the legal regulation most favourable to the person is admissible, since the individual is granted the possibility to understand the motivation behind these actions, as well as whether regulation like this under these conditions is objectively necessary and whether the breach is not arbitrary.

3.4. During the court hearing **the representative of the Saeima, sworn attorney-at-law Jūlija Jerņeva** in addition to the already mentioned arguments regarding the necessity and proportionality of the contested provisions, indicated that in this case the principle of legal certainty must be considered in the context of equality, namely, that the leaving the "benefits" granted to one group of persons intact or their increasing would automatically mean worsening of the material status of other group of persons. Thus, a situation when the decrease of remuneration affected all

employees of the public sector, but not the representatives of the judiciary and therefore even a greater decrease of the remuneration were applied to other employees of the public sector would not be permissible.

J. Jerņeva expressed the opinion that in this case the scope, in which the compliance of the contested third sentence of Paragraph 20 with the legal norms of higher legal power should be assessed. The Saeima, referring o the calculation provided in the annotation to the draft law, expresses the opinion that the words of the contested third sentence of Paragraph 20 "but without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions" do not violate the fundamental rights, defined in the Satversme, of any of the Applicants. Thus, only the words of the contested third sentence of Paragraph 20 "from 1 January 2010 to 31 December 2001 the remuneration of judges and judges of Land Register Offices shall be set in the amount of 73 percent of the remuneration, which is set in accordance with Paragraph 7 and 17 of these Transitional Provisions", as far as they set judges' remuneration, should be examined in the framework of the Case.

3.5. The Saeima in its written answer in Case No. 2010-24-01 has indicated that Article 83 of the Satversme envisages only one concrete threshold of remuneration that should be ensured to all judges in order to protect the independence of courts and judges and that all judges "would feel equally protected and called to fulfil their duty – to administer justice fairly." The Saeima is of the following opinion: "The Satversme imposes an obligation to the legislator to ensure to all judges at least such irreducible remuneration, which would ensure the independence of courts and judges. However, the legislator enjoys discretion in developing a detailed system of remuneration for judges in conformity with the insights of the management theory of its time."

The Saeima has no information at its disposal "that following the adoption of the contested provision a situation would develop, in which the courts would no longer be able to administer justice independently. In this respect it can be established that the limits of the legislator's discretion have not been exceeded."

With regard to consultations with the judiciary, the Saeima Rules of Procedure is binding for the Saeima, which "does not define mandatory consultations with

regards to the adoption of the contested provisions with the representatives of the judiciary, it does not grant the veto rights to the representatives of the judiciary either." Simultaneously the written answer notes that regular meetings and a dialogue with the representatives of the judiciary had been held.

The Saeima believes that "the legal regulation on the monthly salary of judges was not characterised by sufficient stability to create in judges legal certainty that Article 119[1] of the Law "On Judicial Power" would be applied in a clearly defined year. The legislator's actions in extending the transitional period in setting the monthly salary of judges, do not ensure legal certainty to the extent that persons would have relied upon inchangeability of the legal regulation."

3.6. Moreover, J. Jerņeva indicated: if the Constitutional Court were to declare the contested provisions as incompatible with the Satversme and they were revoked starting with the date of their coming in force, as requested by the Applicants, then additional 36.5 million lats would be needed from the state budget to cover the difference in remuneration. That would mean looking for these monetary resources, reassessing the expenditure allocated as remuneration to other social groups. However, under the conditions of a crisis, everybody should abide by the principle of solidarity with regard to the decrease of remuneration.

4. The invited person – the Chairman of the Saeima Budget and Finances (Taxation) Committee - Guntis Bērziņš – at the court hearing indicated that at the end of 2008 the Cabinet of Ministers had to adopt the so-called budget of crisis for the year 2009, as well as to ask the assistance of the International Monetary Fund and the European Commission in the amount of 7.5 million euros. At that time the forecasts had been that the gross domestic product in 2009 would decrease by 12 percent, however, a few months later the estimated decrease reached 18 percent. Thus, consolidation in the amount of 500 million lats was necessary, i.e., the revenue had to be increased or the expenditure decreased.

When the budget was adopted the estimate had been that the revenue in 2009 would be approximately 5.3 billion lats, but the actual revenue was only 3.9 billion lats. At the end of 2009 the difference between the estimates and the reality had been

1.4 billion lats or 26 percent. The Case under examination is part of this general economic situation.

During the first three months of 2010 the average remuneration was 431 lats – 26.3 percent less compared to 2008. It almost precisely coincided with the decrease included in the contested provisions.

At present a judge's salary is 808 lats. For only ten percent of the employees working in the public sector remuneration exceeds 800 lats, therefore judges' remuneration should be considered to be adequate. It is commensurate with the requirements set for the office of the judge, as well as a judge's professionalism and social status.

When the contested provisions were examined at the meetings of the Committee for the Budget and Finance (Taxation), no representatives of the judiciary were heard; however, G. Bērziņš explained that the said Committee has not got the practice to invite interested persons to express their opinion. However, during the meeting of June and of November 2009 the Committee had been informed that the issue of the judges' salaries had been discussed with the judges. For example, at the end of 2009 during several meetings of the Cabinet of Ministers, with the participation of the representatives of the judiciary, the issue of judges' remuneration had been discussed.

5. The invited person – Solvita Āboltiņa, the Chairperson of the Subcommittee of the Saeima Legal Affairs Committee for working on the Judicial Structure Law – pointed out at the court hearing that the contested provisions were adopted to consolidate the budget of 2010, saving the state from bankruptcy. Their aim had not been to turn against judges. When adopting the amendments, their compatibility with the Satversme had been assessed. In a situation of economic crisis such decrease of remuneration is justified. The financial situation in the state radically worsened, and the situation that had developed had been much worse than the one at the end of 2008, when judges' salaries were frozen.

S. Āboltiņa does not agree that prior adopting the contested provisions the judges' opinion had not been listened to. A dialogue with judges is ongoing both at the

Legal Affairs Committee and the Subcommittee on the Judicial Structure Law. While working on the draft law "On the Judicial Structure" and preparing amendments to the Law "On Judicial Power", judges are heard regularly. On many occasions the judges' opinions are not unanimous. Likewise, the Association of Judges in each concrete case also find a possibility to express their opinion to the Committee.

S. Āboltiņa indicates that in April 2009 at the Conference of Judges the issue of decreasing judges' remuneration had been discussed and the judges had been invited to establish a working group, which would participate in the drafting of the said amendments to the law. Judges did not establish such a working group, indicating that the scope of the current dialogue was sufficient. Likewise, the Minister for Justice Mareks Segliņš met with the chief judges of all courts and discussed the issue of remuneration. Moreover, the vice-chairman of the Supreme Court, Senator Pāvels Gruziņš participated at the meeting of the Cabinet of Ministers, during which the said amendments were discussed, he expressed support to the decrease of remuneration, but retaining the system of judges' remuneration in the framework of the Law "On Judicial Power".

Judges are also among those state officials, whose social guarantees have been preserved. The office of a judge is adequately remunerated, which is proven by the fact that several candidates compete for one position of a judge.

When looking taking a retrospective look at the system of judges' remuneration included in the Law "On Judicial Power", S. Āboltiņa indicated that prior to 2003 judges' remuneration was not adequate.

6. The representative of the invited person – the Ministry of Justice – Kristīne Drēviņa, the Director of the European Court Department the Ministry of Justice, pointed out that the Ministry of Justice agrees with the opinion expressed by the Saeima that the contested provisions do not contain a violation of the rights defined in Article 1, 83 and 107 of the Satversme.

K. Drēviņa emphasized that the office of a judge was still sufficiently prestigious, sufficiently well remunerated and endowed with sufficient social guarantees. Therefore there were no grounds to consider that judges would leave their

office because of their remuneration. That was proven by several numbers: in 2007 12 judges left their office at their own will, in 208 – seven, but in the critical 2009 – only two judges, but in 2010 thus far only one judge had left the office at his own will. Since 4 June 2009 till the day of the court hearing nine new judges had been appointed to the office. At the announced competitions to the office of judge the average number of candidates per one office had been 4.36.

At present the income of other highly qualified lawyers is also rapidly decreasing. For example, the average monthly salary of a notary in 2009 decreased by 28 percent compared to 2008. The salary of the State Secretary of the Ministry of Justice since November 2008 had decreased by 40 percent. The salaries at the Ministry of Justice on average have been decreased by 29 percent, to the senior employees – by 30 percent, and not a single employee had had a salary decrease lower than 20 percent.

K. Drēviņa indicated that the duty to consult with the representatives of the judiciary was fulfilled, for example, on 6 March 2009 a meeting with the chief judges of district and regional courts was held, the issue of judges' remuneration was also discussed at the annual Conference of Judges, the participants of which, inter alia, agreed not to delegate their representative for further negotiations and emphasized the previous good cooperation with the Ministry of Justice. During this conference an Appeal to the President of the State, to the Saeima and the Cabinet of Ministers, confirming judges' readiness to participate on the basis of solidarity in overcoming the economic crisis, was adopted. On 19 May 2009 the Minister for Justice invited the chief judges of district and regional courts to discuss the economic situation in the state and the impact of the budget cuts upon the work of courts. But on 21 September the Ministry of Justice informed courts in writing about the call expressed by the Cabinet of Ministers to carry out cuts in the spirit of solidarity and asked the chief judges of the courts to provide proposals on the best ways of implementing it. Moreover, on 13 and 16 October 2009 the Cabinet of Ministers took note of the objections expressed by the vice-chairman of the Supreme Court, Senator P. Gruziņš concerning the inclusion of the office of a judge into the united system of remuneration, therefore the respective decrease of remuneration was included in the Law "On Judicial Power".

K. Drēviņa emphasized that the Ministry of Justice had examined also several alternative solutions. For example, the proposal to decrease judges' remuneration by 20 or 30 percent was not supported, it was planned to decrease the work-load of courts. Moreover, the state fees have been increased, and this measure allowed collecting additional 1.5 million lats. These resources were channelled to decrease judges' remuneration in as considerate manner as possible.

The representative of the Ministry of Justice, the Secretary of State Mārtiņš Lazdovskis drew attention to the fact that the decrease of judges' remuneration was an integral part of the decrease of the budget of the Ministry of Justice. Without decreasing judges' remuneration, it would not have been possible to ensure the fulfilment of the functions of the Ministry of Justice within the framework of the allocated budget.

7. The representative of the invited person–Mārtiņš Brencis, the Director of the Legislative Department of the Ministry of Finances characterised the financial situation in the state. In 2009 it had been necessary to finance the budget from the loan; that is why radical measures of fiscal discipline were introduced.

The decrease of remuneration affected a large part of society: the remuneration was decreased by 25 percent in all public administration, but in the central staff of ministries – by 33 percent. Likewise the average salary (440 lats in March) is by 25 percent lower that at the end of 2008. The decrease affected also judges, because the financing of the Ministry of Justice in the state budget was significantly decreased. The actual decrease for a district court judge is 28 percent, for a regional court judge – 20 percent, but for a judge of a Land Register Office – 32 percent. But the remuneration of the members of the Saeima was decreased by 15 percent on 1 March 2009, and is still frozen. The remuneration of the members of the Cabinet of Ministers since 1 July 2009 was decreased by 20 percent and is still frozen.

When developing the united system of remuneration, it was planned to include in it also the employees of the judiciary, and the remuneration of the Prime Minister was selected as the highest remuneration. However, the representatives of the judiciary did not support this solution, insisting on retaining the already existing system of

judges' remuneration in the framework of the Law "On Judicial Power". In adoption of the contested provisions, the opinion of the representatives of the judiciary was taken into consideration; however, their remuneration was restricted with the amount of the Prime Minister's remuneration. In this way judges' remuneration was equated with the remuneration of the public administration employees.

The **representative of the Ministry of Finances, the head of unit of the Policy for the Remuneration of Public Sector Employees , Department of Management and Methodology Department Inga Ošina** at the court hearing examined the process of united remuneration system and emphasized that historical aspects should also be taken into consideration. Since 1998 essentially no reforms in the field of remuneration had been implemented in public administration. The remuneration increased at the expense of the increased minimum salary and increase of the institutional budgets. This led to a situation when very little difference existed between qualified employees and employees without qualification performing manual work. A serious reform of salaries was launched in 2005, when the catalogue of professions was developed, and from 2006 to mid-2007 the system of remuneration for work was also implemented in its entirety. The state budget of 2007 and 2008 envisaged funding for increasing salaries.

I. Ošiņa pointed out that initially the remuneration of the Prime Minister was tied with the average remuneration in the state, multiplied by coefficient 9. In the course of time it changed several times, and the present remuneration of the Prime Minister is set in the amount of 1908 lats. Within the framework of the united system of remuneration it has been set as the highest remuneration with the coefficient applied to average remuneration for work in the state. Lower coefficients have been set for other public sector employees in the state.

I. Ošina admitted that the setting of the Prime Minister's remuneration had been a political decision. It can be changed depending upon the political situation in the state. Moreover, the Prime Minister's remuneration is not founded upon calculations or objective criteria.

The representative of the Ministry of Finances, the Director of the Budget Department Ilonda Stepanova indicated that it was decided to decrease the resources

allocated for remuneration by 20 percent for all institutions. When this decision was taken, no calculations were made about its impact upon various groups of persons. This decrease was implemented by the institutions themselves. But the Ministry of Finances, when planning its expenditure, had set the first decrease of judges' remuneration only in the amount of 15 percent, since it had found a possibility to increase its revenue from the collected state duties.

8. The representative of the invited persons– the Ombudsman's Office of the Republic of Latvia - legal consultant Santa Tivanenkova pointed out that the contested provisions are compatible with Article 1, 83 and 107 of the Satversme.

S. Tivanenkova emphasized that Article 107 of the Satversme should be assessed in interconnection with the United Nations Covenant of Economic, Social and Cultural Rights. The provisions of the said Covenant request the member states to declare that everybody has a right to work and its protection, so that everyone would have the possibility to earn one's living in work that he freely chooses or accepts.

The concept included in Article 107 of the Satversme "a remuneration commensurate with the work done" can be also interpreted to mean that judges' remuneration must be commensurate with the qualification of a judge and the requirements set for a judge, i.e., education, work experience, impeccable reputation, and that this work must be remunerated for adequately with the load imposed and the necessary qualification.

When adopting the amendments to the Law "On Judicial Power" in Paragraph 7 and 20 of the Transitional Provisions, the legitimate aim had been the protection of the wellbeing of the state and maintaining of economic stability, and the corresponding restriction was adopted on the basis of a law in connection with an urgent societal need.

S. Tivanenkova indicated that the judiciary, even though being independent, nevertheless in its functioning is not separated from its source of financing. The state budget and the economic recession in the state may affect judges' remuneration.

In 2002 when the Concept Document was adopted, the government could not envisage that in 2008, under the impact of global economic crisis, the economic

condition of the state would worsen to the extent that it would become necessary to decrease the remuneration for all employees of the institutions financed by the state budget. Therefore under the conditions of crisis the suspension of the Concept Documents was a logical measure, in which a violation of the principle of legal certainty cannot be discerned. The benefits that the society gains from this measure are definitely greater than the restrictions imposed upon judges.

Judges' remuneration cannot be declared to be unfair. In accordance with the provisions of the European Social Charter, the remuneration includes also bonuses and other payments, inter alia, social guarantees. The Law "On Judicial Power" envisages a number of social guarantees: a five-week long annual holiday and the granting of additional holiday after serving five years in the office of a judge, the possibility to receive life and health insurance. Thus, the contested provisions are compatible with Article 1 and 107 of the Satversme.

The compatibility with Article 83 of the Satversme, in its turn, should be assessed in Connections with the Basic Principles of the Independence of the Judiciary, adopted by the UN. These documents contain no reference to remuneration for work as the foundation of the independence of the judiciary. Thus, the state should strive to ensure adequate remuneration to judges; however, it cannot be linked either with a judge's understanding of justice or guaranteeing of independence. The remuneration, which is in force, is adequate and does not influence judges' independence, therefore is compatible with Article 83 of the Satversme.

The Constitutional Court has established:

I

9. One of the claims included in the Applications is the following: to examine the compatibility of the contested second sentence of Paragraph 7 with Article 1, 83 and 107 of the Satversme.

On 18 January 2010 the Constitutional Court passed a Judgement in the Case No. 2009-11-01 declaring the second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power" in the wording of the Law of 14 November

2008, 16 June 2009 and 1 December 2009 incompatible with Article 83 of the Satversme and invalid starting with 1 January 2011.

Paragraph 5 of the first part of Article 29 of the Constitutional Court Law sets out that proceedings in the case may be closed before the judgment is announced by a decision of the Constitutional Court, if a judgment in another case on the same claim subject has been announced.

Thus, the claim included in the Case regarding the compatibility of the contested second sentence of Paragraph 7 with Article 1, 83 and 107 of the Satversme must be regarded as already adjudicated and thus the proceedings regarding this claim shall be closed.

II

10. The Saeima in its written answer and at the court hearing asked to close the proceedings in the Case in the part regarding the compatibility of the words of the contested third sentence of Paragraph 20 “but without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions” with Article 1, 83 and 107 of the Satversme, since this claim does not meet the requirements set in the first part of Article 19^2 of the Constitutional Court Law.

Paragraph 3 of Article 20 of the Constitutional Court Law envisages that proceedings in a case can be closed prior to announcing the judgement with a decision of the Constitutional Court, if the Constitutional Court establishes that the decision on initiating the case does not meet the requirements of the fifth part of Article 20 of the Constitutional Court Law. This Article, inter alia, sets out that a constitutional application must meet the requirements of Article 19^2 of the Constitutional Court Law. It follows from the first part of Article 19^2 that a person may appeal to the Constitutional Court only in case if a direct link exists between the restrictions of the person’s fundamental rights and the legal provision contested in the Application.

The Constitutional Court has indicated several times that a constitutional application can be submitted in cases when, firstly, the infringement of fundamental rights is direct, concrete, when the contested provision infringes upon the applicant

itself, and, secondly, infringes at the moment of submitting the application *(see, for example, Judgement of 20 May 2002 by the Constitutional Court in the Case No. 2002-01-03 and the Decision of 11 November 2002 on terminating the proceedings in Case No. 2002-07-03)* or if a totality of circumstances exists demanding that the case is examined "now" *(see, for example, Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.4. of the Concluding Part).*

The Saeima, referring to the estimates provided in the annotation to the draft law, is of the opinion that the words of the contested third sentence of Paragraph 20 "without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions" do not violate the fundamental rights included in the Satversme of any of the Applicants.

Therefore the Constitutional Court will establish, whether the quoted words of the contested third sentence of Paragraph 20 infringe upon Applicants' fundamental rights.

The said words were included in the draft law; the estimates included in the annotation to this draft law were based upon the provisions that with the Judgement of 18 January 2010 were declared unconstitutional and invalid starting with 1 January 2011. Consequently, starting with 1 January 2011 judges' salaries will be calculated in accordance with Article 119^1 of the Law "On Judicial Power", taking into consideration the contested third sentence of Paragraph 20, i.e., the salary must be set in the amount of 73 percent of the remuneration envisaged by the law, but not exceeding the Prime Minister's remuneration, which is set in accordance with the Law on Remuneration of the Officials and Employees of State and Municipal Institutions. Thus, also if the a judge's salary is set in the amount of 73 percent, the restriction with regard to the maximum amount of remuneration may affect several Applicants – the judges of district and regional courts with higher categories of qualification.

The conclusion that an infringement, which can be expected in the future or is potential, must also be regarded as an infringement of the fundamental rights, is enshrined in the case law of the Constitutional Court *(see: Judgement of 22 February*

2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.4 of the Concluding Part and Judgement of 20 May 2002 in Case No.2002-01-03). The following opinion has been expressed in the legal doctrine – that the theory of the infringement of the fundamental rights allows recognising as real also an infringement expected in the future or a potential infringement. I.e., a potential infringement or an infringement expected in the future means that a justified and credible possibility exists that the application of the contested provision could cause adverse consequences to the applicant submitting the constitutional claim. In the assessment of the restrictions to a person's rights, both the risk that this restriction would inevitably affect the concrete person and the possible infringement of the person' s lawful rights must be taken into consideration *(see; Judgement of 18 February 2010 by the Constitutional Court in Case No. 2009-74-01, Para 12.1).*

The majority of the Applicants are judges, who with the decision of the Saeima have been appointed to their office for unlimited tenure. Starting with 1 January 2011 the contested third sentence of Paragraph 20 will apply to these Applicants. Thus, the issue about the restrictions included in the contested third sentence of Paragraph 20 must be adjudicated in the framework of the Case under examination.

Thus, the proceedings in this part of the Case must be continued.

11. The Applicants request to assess whether the restriction included in the contested third sentence of Paragraph 20 – i.e., that a judge's remuneration may not exceed the Prime Minister's remuneration – is compatible with the principle of equality, which follows from Article 1 of the Satversme.

The Constitutional Court has indicated several times in its judgements, that the principle of legal equality forbids state institutions to adopt such regulations that without reasonable grounds allow different treatment of persons who are in equal and comparable circumstances (*see, for example, Judgment of 5 December 2001 by the Constitutional Court in Case No. 2001-07-0103, Para 3 of the Concluding Part).* Simultaneously the Constitutional Court has emphasised that the principle of legal equality allows and even demands different treatment of persons who are in different circumstances. Only if objective and reasonable grounds are established, the principle

of equality allows different treatment of persons who are in similar circumstances or a similar treatment of persons who are in different circumstances (*see, for example, Judgement of 2 November 2006 by the Constitutional Court in Case No. 2006-07-01, Para 14).*

To establish, whether the contested provision is compatible with the principle of legal equality, it must be assessed whether persons are in similar and comparable circumstances, whether the contested provision envisages different or similar treatment and whether the different treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the proportionality principle has been complied with - proportional (commensurate) relationship between the chosen measures and the set aims.

11.1. The system of remuneration for judges was developed with the aim to facilitate a judge's career development and envisages different remuneration to judges of different levels, thus ensuring commensurate remuneration for work. In order to transfer to work at a higher level court, a judge needs higher qualification, since the complexity of the cases to be examined and the significance of the decision taken increases, consequently, a higher salary is envisaged. Thus a judge is focused upon personal growth and improvement of qualification (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 17.3*). The principle that the judges of various courts receive different remuneration is at work in all democratic states. The difference in the remuneration of judges of lower and higher level courts are different in various states. The average difference in the European Union is more than twice, but in some countries the difference is threefold [*see: European judicial systems, Edition 2008 (data 2006): Efficiency and quality of justice, Council of Europe, September 2008, p.p. 185, 186*]. In Latvia this difference is 2.3 times.

The law envisages different remuneration also to judges of the same level court, as well as to the chief judge and the deputy chief judge of the court, who are simultaneously also judges.

Since a higher level court requires higher qualification and, moreover, the complexity of the cases to be examined increases, the judges of different courts are not

in similar and comparable circumstances. The judge and the chief judge of the said court are also in different circumstances, as the chief judge alongside fulfilling the obligations of a judge is also managing the work of the institution.

11.2. The Constitutional Court already established that the restriction, which prohibits exceeding the Prime Minister's remuneration, starting with 1 January 20101 would apply to judges with higher qualification, among them, many chief judges of courts.

This will lead to a situation, in which an equal remuneration will be set for judges from courts of different levels and with different qualifications.

12. To establish, whether the different treatment has objective and reasonable justification, it must be examined, whether it has a legitimate aim and whether the principle of proportionality is complied with.

The legitimate aim of the restriction included in the contested third sentence of Paragraph 20, linked with the Prime Minister's remuneration is not indicated in the written responses of the Saeima, neither can be established from the case materials. The Constitutional Court assumes that the aim of the restriction was to put the whole system of remuneration in public administration in order. The Prime Minister heads the work of the Cabinet of Ministers and is the highest official of the executive power; therefore the legislator's decision to set his monthly salary as the highest one in the public administration would be entirely justified and logical.

13. On 15 May 2008 the Saeima adopted the Law on the Order of the Cabinet of Ministers, which defines the Prime Minister's monthly salary, which, in the legislator's opinion, was adequate to the work done by the Prime Minister. The legal regulation, which is currently in force, envisages Prime Mister's salary more than two times lower than the one initially envisaged by the legislator. At the court hearing the representative of the Ministry of Finances pointed out that this had been a political decision. In her opinion the remuneration of the Prime Minister, considering his obligations, is not adequate.

However, the choice of the candidate for the position of the Prime Minister, the appointment of the Prime Minister, as well as his term of office and remuneration can be an issue of political choice; therefore the legislator does not need to provide a legal substantiation and motivation regarding the amount of the Prime Minister's remuneration.

Neither the amount of the Prime Minister's remuneration, nor the system of remuneration in force within the system of public administration is being assessed in the framework of the Case under examination.

14. The setting of any salary paid from the state budget falls within the jurisdiction of the legislator, and, to a certain extent, it is always a political decision. However, the Satversme sets limitations also upon political decisions; therefore the Saeima's scope of discretion in adopting decisions concerning the remuneration of the Prime Minister and of judges is different.

It is admissible that the Prime Minister's remuneration is set freely, without assessment. However, setting of judges' remuneration in this way, based only upon the legislator's political will, is contrary to the principle of the division of power and the principle of the independence of courts. If the legislator were given unlimited right to influence the salaries of judges in accordance with its political will, the concept of judicial independence would become meaningless (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.3*).

The European Charter on the Statute of Judges also recognises the significance of the condition that the level of judges' remuneration should be such as to protect judges from pressure, it does not provide harmonisation of the level of remuneration with the remuneration of the highest officials of the legislative or executive power, because such comparison is impossible (*see: European Charter on the Statute of Judges and Explanatory Memorandum, Council of Judges, 8–10 July 1998, Para 6.1*).

15. The Constitutional Court in its Judgement of 18 January 2010 concluded that "the principle of the division of power does not define special arithmetic proportions between the levels of remuneration in different branches of power [..] The

comparison of positions in different branches of power is always controversial, considering the diverse complicated factors characterising a position. Quite frequently these are completely different jobs with completely different scopes of responsibility. The character of the work, degree of stability in serving in the office, the authorisation linked with the functions to be fulfilled, also the time of tenure differ to the same extent. Because of these and other similar reasons it is unjustified to compare positions and to demand that officials belonging to one branch of power should earn exactly as much as the officials belonging to another branch of power." (*Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 21.4*).

Several constitutional courts (for example, in Estonia, Canada, Poland), dealing with the issues linked with judges' remuneration, have noted that the levelling of remuneration in various branches of power should not be set as an aim (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 21.4*).

The Constitutional Court already established that there were no grounds to question the legislator's decision to set the Prime Minister's monthly salary as the highest within the public administration (*see Para 12 of this Judgement).* Several laws contain such a restriction. However, at the same time such a restriction has not been applied to the remuneration of the members of the Saeima, as well as to the remuneration of the officials of several independent institutions and state companies.

The Constitutional Court already established that this restriction did not ensure a different treatment of judges of different level courts and with different qualifications, i.e., of persons, who are in different circumstances. Such a levelling of remuneration, as well as the mechanical levelling of remuneration in various branches of power, does not have impartial and reasonable grounds.

Thus, the restriction included in the contested third sentence of Paragraph 20 – i.e., that judges' remuneration may not exceed the Prime Minister's remuneration, which is set in accordance with the Law on the Remuneration of the Officials and Employees of State and Municipal Institutions, - is incompatible with the principles of equality and division of power.

Thus, the words of the contested third sentence of Paragraph 20 "without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions" is incompatible with Article 1 of the Satversme.

III

16. On 10 December 2009 the Constitutional Court initiated Case No. 2009-111-01 on the compatibiliyt of the second sentece of Paragraphand the second sentence of Paragraph 20 (in the wording of 16 June 2009) of the Transtitonal Provisions of the Law "On Judicial Power" with Article 1, 83 and 107 of the Satversme of the Republic of Latvia.This Case contests Paragraph 20 of the Transitional Provisions of the Law "On Judicial Power" in the wording, which was in force till 1 January 2010. But the Case initiated on 9 April 2010. 2010-24-01 contests the provision of Paragraph 20 of the Transitional Provisions of the Law "On Judicial Power", which regulates judges' remuneration starting with 1 January 2010.

Cases No. 2009-111-01 and No. 2010-24-01 contest the provisions to the extent they apply to judges' remuneration. The Applications comprise a request to assess whether the proportional decrease of judges' remuneration and the restriction, which prohibits exceeding the Prime Minister's remuneration, are compatible with Article 1, 83 and 107 of the Satversme. Consequently the second and the third sentence of Paragraph 20, to the extent they refer to the judges of the Land Register Offices, are not examined in the framework of this Case.

The decrease in percentage of judges' remuneration is set both in the contested second sentence of Paragraph 20, which envisages setting the remuneration in the period from 1 July 2009 to 31 December 2010 (in the following amendments to the Law this date was substituted with 31 December 2009) in the amount of 85 percent of the remuneration for work, as well as in the contested third sentence of Paragraph 20, envisaging to set it from 1 January 2010 to 31 December 2011 in the amount of 73 percent of the remuneration for work.

The instances of proportional decreasing of judges' remuneration pertain to different periods of time, and also various amounts of decrease of judges' remuneration were set – by 15 and by 27 percent. This decrease is applied to judges' monthly salary, which was frozen already since 2007 and which the Constitutional Court in its Judgement of 18 January 2010 declared to be incompatible with Article 83 of the Satversme. However, neither the Applicants, nor the Saeima have noted the differences in the actual conditions under which the two contested sentences of Paragraph 20 were adopted and the legal considerations, why these provisions should be examined separately. No information proving that the contested instances of decrease in percentage create essentially different infringements for the Applicants has been submitted.

Thus, in assessing the compatibility of the contested provisions with the provisions of the Satvermse, the decrease in percentage, which is in force and applies to judges' remuneration and which has already been declared incompatible with Article 83 of the Satversme (hereinafter – the decrease in percentage of judges' remuneration), must be assessed.

17. The Constitutional Court in its Judgement of 18 January 2010 already concluded that Article 83 of the Satversme contains a prohibition to decrease a judge's remuneration envisaged by the law during his term of tenure. At the same time the Constitutional Court indicated that under exceptional conditions – in a situation of economic recession, when the state is forced to carry out general decrease of remuneration in the institutions financed by the state budget, – derogation from the principle, which prohibits decreasing judges' remuneration may be possible (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 10.2 and 10.3*).

The contested third sentence of Paragraph 20 envisages a fixed term for the payment of judges' remuneration in the amount of 73 percent – till 31 December 2001. Thus, the decrease in percentage of judges' remuneration is admissible, if the principles that follow from the Satversme are abided by (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 16*).

18. The applicants contest the compatibility of the decrease in percentage of judges' remuneration with the principle of legal certainty (legal stability)and the principle of solidarity, which follow from Article 1 of the Satvermse, and the principle of the independence of courts following from Article 86 of the Satversme and with Article 107 of the Satversme.

The Applications contain a request to assess the compatibility of the contested provisions with Article 107 of the Satversme in general, however, it follows from the Applications and the statements by the Applicants' representative during the court hearing that as to its merits the compatibility of the contested provisions with the words of Article 107 of the Satversme "every worker has the right to receive remuneration commensurate with the work done" are being contested.

19. To assess the compatibility of the decrease in percentage of judges' remuneration with Article 107 of the Satversme, it must be verified, whether this decrease restricts the right to receive remuneration commensurate with the work done in the understanding of Article 107 of the Satversme.

19.1. Considering the conclusions made in the Judgement of 18 January 2010, that such a remuneration for a judge's work can be considered commensurate, which is commensurate with the responsibility and the work-load of the office, requirements of independence and restrictions following from the office, as well as the rank of the office in the constitutional legal order (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 21*). The following remuneration for work must be considered to be commensurate with the office of a judge, which, "firstly, it is sufficiently competitive to attract to the position of a judge capable and competent lawyers. Secondly, [..] is sufficient for the judges to enjoy adequate financial independence, taking into account the significance and the impact of the decisions taken by judges, the prohibition to hold another job set in the law, as well as the workload of judges" (*Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 20*).

19.2. The rights included in Article 107 of the Satversme pertain to the field of social rights. The Constitutional Court already concluded that this Article protects also judges' right to receive remuneration commensurate with the work done. At the same time an adequate remuneration for judges' work belongs to the content of the judges' independence, included in Article 83 of the Satversme (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 6 and 8.2*). The Constitutional Court already in its Judgement of 18 January 2010 concluded that the issue of setting judges' remuneration falls not only within the field of social rights, in which the legislator has broad discretion, but also within the field, where stricter restrictions apply to the legislator's discretion (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01,Para 20*).

Thus, the compatibility with the right included in Article 107 of the Satversme to receive remuneration commensurate with the work done with regard to judges must be assessed in interconnection with the independence requirement included in Article 83 of the Satversme.

19.3. Even though the Satversme does not set *expressis verbis* the amount of judges' remuneration, the contents of the principle of the independence of courts included in Article 83 of the Satversme contains a requirement to the legislator to guarantee judges' financial security (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.2*). In 2003 the legislator, developing a system of remuneration for judges, which was capable of guaranteeing the financial security of judges to the extent needed to protect the independence of judges, and including it into Article 20 of the Law "On Judicial Power", selected a solution that remuneration commensurate with the office must be calculated, taking into consideration the average gross monthly salary of the employees in the state as officially announced by the Central Statistical Bureau, multiplying it with coefficient 4.5

The legislator, by approving this system, declared that it should be recognised as being commensurate with the office of a judge, i.e., firstly, it envisages such remuneration for work, which is sufficiently competitive to attract able and competent

lawyers to the vocation of judge. Secondly, the remuneration set in this way is sufficient to allow judges to enjoy adequate economic independence, taking into consideration the significance of the decisions taken by judges, the prohibition to combine jobs set in the law, as well as the work-load of judges (*see: Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 20*).

Such a system complies with the balance of the branches of power and ensures that the judiciary has no need to discuss with the executive power or the legislator the amount of judges' salary, which could cause threats to the independence of the judiciary. At the same time this system is flexible – it ensures adjustment of the amount of a judge's salary to the average remuneration for work in the state.

Thus, the legislator has already laid down that commensurate remuneration to a judge for the work done, which ensures to him sufficient economic independence, remuneration, which is 4.5 larger than the average gross monthly remuneration of the employees in the state during the previous year.

19.4. The system of remuneration for judges at the time was developed because a situation had developed in the state, when judges' remuneration was not adequate to the duties and responsibility of their job. When this system was implemented, the annotation to the draft law noted that the judges' remuneration, which is too low, is the reason why no serious competition for the position of judge exists, and consequently, it is impossible to attract sufficiently highly qualified lawyers to work at courts and that it also creates conditions for corruption (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 17).*

The annual reports prepared by the European Commission, which analysed Latvia's as a member state's of the European Union progress in meeting the accession criteria, in 2000, 2001 and 2002 point out the low remuneration of judges, inadequate funding of the judicial system and the related risk [*see: Regular Report on Latvia's Progress Towards Accession, Brussels, 9.10.2002., SEC(2002) 1405, 13.11.2001., SEC(2001) 1749, 8.11.2000., http://www.mfa.gov.lv/lv/eu/3883/3903/, accessed on 26 May, 2010].* The 2003 Monitoring Report, in its turn, includes a positive assessment that in dealing with the problem of the independence of courts, the amendments to the Law "On Judicial Power" have been drafted and have come into force on 1 July 2003,

envisaging gradual increasing of a judge's salary till 2006, when judges' salaries would be doubled compared to the period before launching the reform of judges' remuneration (*see: Comprehensive Monitoring Report on Latvia's Preparations for Membership, http://www.mfa.gov.lv/lv/eu/3883/3903/, accessed on 26 May, 1010).* During the court hearing S. Āboltiņa also pointed out that the judges' remuneration prior the reform of judges' salaries, which was implemented in 2003, was not commensurate with the office of a judge (*see: case materials, Vol. 5, p.123).*

The Constitutional Court, assessing the amount of judges' remuneration prior to the introduction of the system of judges' remuneration, establishes that a judge's salary was 1.8 to 2.5 larger than the average gross monthly salary of the employees in the state as announced in the official statistical report of the Central Statistical Bureau for the previous year. It can be concluded that both the experts of the European Commission and the legislator recognised that a judge's salary, which is calculated by applying the coefficient 1.8 to 2.5, was inadequate.

The remuneration of a district court judge in 2010, just like in 2007, 2008 and 2009, was calculated on the basis of the average gross monthly salary of the employees in 2005, applying coefficient 4.5. The contested provisions decrease this remuneration by additional 27 percent. Thus, the general decrease of remuneration is caused both by the decrease in percentage and by the fact that a judge's salary in 2010 was calculated by applying the coefficient not to the average monthly gross salary of 2008, but the average salary of 2005. Thus, in 2010 the amount of a district court judge's salary is the same as if calculated on the basis of the average gross monthly salary of 2008, applying coefficient 1.7.

Thus in 2010, when setting judges' remuneration, the actual applied coefficient is 1.7, which is almost three times lower than the coefficient set by the legislator for calculating the appropriate salary.

19.5. At the court hearing the representative of the Ministry of Justice mentioned that during the previous year 4.36 candidates had applied per one vacancy for the position of a judge. The Constitutional Court points out that the number of candidates does not prove that in the state under these conditions, with a high level of unemployment, a real and sufficient competition exists that would allow selecting the

best qualified lawyers for the position of judge. Moreover, as the information provided by the Ministry of Justice, shows, of 529 positions of a judge 28 are still vacant (*see: case materials, Vol. 5, p. 181).*

The Constitutional Court already in its Judgement of 18 January 2010 noted: in order to attract for the position of a judge the most competent and knowledgeable specialists, judges should receive an adequate remuneration compared to the remuneration of other highly qualified lawyers. At the same time the Court also pointed out that a judge's remuneration should not be directly compared with the income of attorneys-at-law, legal advisors or notaries It is understandable that the aim of such a comparison is to attract to the position of a judge highly qualified lawyers, however, a direct comparison would not be appropriate, taking into consideration the risks and additional expenses related to the financial independence of these professions. To assess, whether the level of judges' remuneration is adequate, it should be evaluated in interconnection with the general trends in the level of remuneration and its proportions in the public sector. Likewise, the Court established that reasonable proportionality in setting remuneration to judges and to the employees of the public administration working in legal professions should be established (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01,Para 21.5 and 21.6).*

During the court hearing the representatives of the Saeima and of the ministries, trying to provide arguments proving that the judges' remuneration is commensurate, compared it with the average salary of the employees working in the public administration and in the institutions financed from the state budget, as well as with the salary paid to employees of different professions, for example, doctors, teachers and prison guards; however, they did not provide reasons why these social groups should be compared. The Constitutional Court already noted that to assess the adequacy of judges' remuneration only such comparison, which is deemed to be justified, should be used (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 21.3*). Considering the rank of judge's office within the constitutional legal order, the responsibility of this office, the requirements with regard to competence, qualification and experience set to this office, as well as

the requirement of independence and the restrictions following from the judge's office, it can be concluded that a judge's remuneration cannot be directly compared with the remuneration of any of the mentioned groups. The comparison with the amount of the average salary is not appropriate either, because employees working in the public sector perform jobs requiring different qualifications and the remuneration of highly qualified employees, whose number is not too high, significantly exceeds the average remuneration. Moreover, the legislator, by setting up a system of remuneration for judges, has already recognised the way, in which a judge's remuneration should be valued compared to the average gross monthly salary of the employees in the state.

The representative of the Ministry of Justice at the court hearing pointed out that the law envisaged significant social guarantees to judges, inter alia, life and health insurance. The case materials reveal that, for example, in 2010 the cost of health insurance of a district court judge for the state was 159 lats, bet life insurance – slightly less than 20 lats (*see: case materials, Vol. 5, p. 62).* Undoubtedly, health and life insurance is an additional social guarantee for judges, however, considering its costs per one judge, it cannot be considered that this guarantee significantly increases judges' remuneration.

At the same time the Constitutional Court established that a judge's salary was still significantly lower than the salaries of the heads of the legal departments at the ministries or leading legal specialists working in the other branches of power or independent institutions (*see: case materials, Vol. 5, pp. 1 – 615).* Thus, a judge's remuneration is not of the kind able to attract the best qualified lawyers for the position of a judge.

19.6. Already the annotation to the law "Amendments to the Law "On Judicial Power" (the wording of 14 November 2008) pointed out that "in 2009 judges and judges of the Land Register Offices would not be ensured remuneration commensurate with the work load and the nature of the work." The annotations to the laws of 16 June 2009 and 1 December 2009 pointed out the same risks. However, neither the representatives of the Saeima, nor the ministries could provide information on the way the mentioned risks were assessed and what measured were planned to mitigate or to prevent them in the process of adopting the law.

Likewise, no materials have been submitted to the Constitutional Court that would substantiate the conclusion expressed in the Saeima's written answer that "the remuneration that is currently set for judges is commensurate with the nature of the work, the skills needed to fulfil the office and the responsibility, the legal requirements and restrictions, and is harmonised with the status and remuneration of other officials of the judicial system, as well as with the salaries in the state in general (*see: case materials, Vol. 2, p. 6).* Already in 2008, when the decision on freezing a judge's salary was adopted, the annotation to the draft law pointed out the possible risks. However, neither the legislator, nor the executive power assessed these risks, but the decrease of judges' remuneration was performed in a purely mechanical fashion. Only on 10 February 2010, during the meeting of the Saeima Legal Affairs Committee, when taking the decision on the enforcement of the Judgement of 18 January 2010 by the Constitutional Court, the members of the Saeima for the first time asked the Ministry of Finances and the Ministry of Justice to assess the balance of remuneration. (*see: case materials, Vol. 4, pp. 69 – 76).*

Thus, for judges the right included in Article 107 of the Satversme to receive commensurate remuneration for the work done, assessing it in interconnection with the requirement of independence included in Article 83 of the Satversme, are restricted.

20. To verify, whether the restriction of fundamental right is compatible with Article 107 of the Satversme, the Constitutional Court has to examine, whether the restriction has been set out in a law, whether the restriction has a legitimate aim and whether the restriction is proportional.

21. The contested provisions are included in the Law "On Judicial Power: with the Laws adopted by the Saeima on 16 June 2009 and 1 December 2009 "Amendments to the Law "On Judicial Power"". The Laws have been published in the official newspaper "*Latvijas Vēstnesis"* and are in force.

The restriction to the right to receive remuneration commensurate with the work done is set out in law.

22. The Constitutional Court already concluded that the prevention of economic recession at the time when the state is in a complicated financial situation, can be considered an action aimed at the protection of the rights of other persons and the well-being of society, and thus must be recognised as striving for a legitimate aim.

Thus, the contested restriction has a legitimate aim.

23. To assess the proportionality of the restriction, both the fact that the right included in Article 107 of the Satversme is a social right, and the fact that the requirement to set appropriate (commensurate) remuneration for a judge follows from Article 83 of the Satversme, must be taken into consideration. Thus, the Constitutional Court has to verify, whether the decrease of judges' remuneration can be considered reasonable and fair, i.e., whether the Saeima, in adopting the contested provisions, complied with the restrictions set for the legislator's discretion – whether it has abided by the principles following from the Satversme (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.4, 11.5, 16 and 20*).

24. The Applicants contest the compatibility of the decrease in percentage of judges' remuneration with the principles of solidarity and legal certainty (legal stability), which follow from Article 1 of the Satversme and the principle of the independence of courts, which follows from Article 83 of the Satversme.

25. Article 1 of the Satversme provides that Latvia is an independent, democratic republic. The obligation of the state to abide in its actions with a number of basic principles of a judicial state, including the principle of legal certainty, follow from the concept of a democratic republic included in this Article *[see, for example, Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98), Concluding Part, and Judgement of 24 March 2000 in Case No. 04-07(99), Concluding Part, Para 3]*.

The Constitutional Court has already indicated that in compliance with the principle of legal certainty the state institutions in their actions have to be consistent as regard the legal acts that they have issued and have to comply with the legal certainty

that persons might develop in accordance with a concrete legal provision. An individual, in his turn, in accordance with this principle can rely upon the permanence and unchangeability of an issued legal norm (legal stability). He can safely plant his future in connection with the rights granted by this provision *(see, for example, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Concluding Para 3.2 and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 21).*

And yet the principle of legal certainty does not exclude the possibility for the state to amend the existing legal regulation. A contrary approach would lead to the inability of the state to respond to changing life circumstances. However, also when changing the legal regulation, the legislator has to take into consideration the limits of its discretion.

The Constitutional Court already in its Judgement of 18 January 2010 established that the legislator, in setting the remuneration for judges, enjoys certain discretion, however, strict restrictions apply to this field (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 20*). Taking into consideration the principle of the division of power and the principle of the independence of courts, as well as the fact that a stable salary is one of the components constituting the independence of court and judges, the legislator's discretion in deciding about judges' salary is different compared to the discretion when deciding upon restrictions in other public spheres (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.4).*

In assessing whether a certain legal provision is compatible with those principles that follow from the fundamental constitutional values defined in Article 1 of the Satversme, it should be taken into consideration that these principles may manifest themselves differently in various fields of law. The control implemented by the Constitutional Court is inevitably linked with the nature of the contested provisions, their link with other constitutional provisions and place in the system of law. Namely, the legislator's discretion in regulating a concrete issue may be broader or narrower, and the Constitutional Court has to examine, whether the scope of discretion exercised by the Saeima complies with the one defined in the Satversme

(*see: Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 15.2 and 15.3*). Thus, in this Case the compatibility of the contested provisions with the principle of legal certainty must be examined in interconnection with Article 83 of the Satversme and the requirement following from it – of a financial security for judges, which is guaranteed by a stable system of remuneration (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01,Para11.3*).

To assess, whether a legal act, which defined a deviation from rights granted to a person, complies with the principle of legal certainty, it must be established, whether:

1) a person developed legal certainty with regard to maintaining or implementing concrete right and

2) whether a reasonable balance has been observed in safeguarding the legal certainty of a person and ensuring public interests *(see: Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 23).*

26. The Saeima in its written response indicated that "the legal regulation on judges' monthly salaries was not characterised by sufficient stability, which could create legal certainty in judges about the implementation of Article 119[1] of the Law "On Judicial Power" in a clearly defined year. The action of the legislator, consistently prolonging the transitional period in setting judges' salary, does not ensure legal certainty to the extent that would have made persons rely upon the uncheangabelity of the legal regulation."

The Constitutional Court already in its Judgement of 18 January 2010 stated that the system of judges' remuneration should be stable in long-term (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.5*). At the same time the Court also established that the legislator had several times introduced amendments to the legal regulation, prolonging the period for coming into force of the remuneration system, thus influencing the actual value of judges' remuneration. Taking into consideration the conclusions included in the Judgement of 18 January 2010, such action by the legislator restricts the principle of the

independence of courts. Therefore it cannot be a justification for a repeated similar action of the legislator.

27. The Constitutional Court in its Judgement of 18 January 2010 indicated that the regulation included in the Law "On Judicial Power" created the right to judges to feel certain that starting with 2010 they would be paid full amount of remuneration, i.e., in accordance with Article 119[1] of the Law "On Judicial Power"
(*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 17.8*).

At the same time, in assessing the extent, to which the Satversme protects judge's legal certainty regarding the remuneration envisaged in the law, it must be taken into consideration that temporary decreasing of judges' remuneration is admissible, if there are serious, socially justifiable reasons and if the decreasing complies with the principles enshrined in the Satversme. The legislator has defined that judges will receive remuneration in full amount starting with 2010. Thus, the decrease in percentage has a fixed term.

In the framework of the Case under examination it is not disputed that in 2009 remuneration was decreased also in other branches. The materials of the case allow concluding that the average decrease of remuneration in institutions funded by the state budget was approximately 20–30 percent (*see: case materials, Vol. 4, pp. 95-106).*

The Constitutional Court in its Judgement of 18 January 2010 emphasized that "the system of judges' remuneration already *per se* envisages automatic decrease of their remuneration in a situation like that, and it would not be fair to allow a repeated decrease of the judges' remuneration – both simultaneously with the decrease of the remuneration of employees in other state institutions, and on the basis of the decrease of the average monthly gross remuneration of the employees in the state" (*Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 17.2).* However, under the conditions of economic recession, because of the lack of financial resources, the legislator's decision to decrease judges' remuneration simultaneously with the decrease of the salaries of everybody working in the public sector is

understandable and justifiable. However, the legislator had to consider the consequences of double decreasing and assess the fairness of the adopted decisions.

The decrease in percentage of judges' remuneration is admissible, if a similar decrease in percentage to the decrease of remuneration for employees in the other branches of power is applied and is calculated, taking as the basis such remuneration for judges, on which they could lawfully rely upon.

As the result of the decrease in percentage of judges' remuneration the coefficient applied in calculating a judge's salary is lowered from 4.5 to 1.7. Thus, the remuneration for work, upon which judges could lawfully and justifiably rely upon, actually is decreased by 62 percent.

Thus, the decrease in percentage of judges' remuneration set by the contested provisions, even though is temporary, cannot be regarded as proportional and does not comply with the principle of legal certainty.

28. The Constitutional Court in its Judgement of 18 January 2010 established that also under the conditions of economic recessions the financing can be decreased only and solely by abiding by the constitutional principles, including the principle of solidarity (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 19*).

When adopting the contested provisions, which envisage decrease in percentage of judges' remuneration, neither the legislator, nor the executive power evaluated or substantiated the amount of decease for each group of employees working in the public sector, nor the treatment of different social groups was compared and evaluated. At the court hearing the representatives of the ministries provided information on the evaluation, which has been performed. Namely, the provided comparison is only information about the results of the decrease in remuneration and only about the average salary. It does not take into consideration the fact indicated in the Judgement of January 18, 2010, that during the recent years prior adopting the contested provisions, the remuneration for public sector employees was considerably increased, but the salary of judges, in its turn, was frozen for several years (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 21.6*).

Thus the comparison of changes in remuneration noted by the Ministries is not justified. The use of average salary as a criterion is not appropriate either *(see: Para 19.5 of this Judgement).*

The Constitutional Court already in its Judgement of 18 January 2010 established: "When deciding upon a decrease of salary, which would meet equality and solidarity criteria, not only the amount of remuneration of concrete persons, but also the scope of work, different functions, requirements and restrictions set for the office in all branches of power – judges, the representatives of the legislative and executive power, as well as independent institutions should be taken into consideration, moreover, the option of giving up certain functions or the possibility of decreasing the number of positions should be considered. Solidarity has not been observed in the decrease of salaries, if it applies to all employees of the public sector, but the amount of decrease has not been assessed and substantiated separately for each group working in the public sector" (*Judgement of 18 January 2010 in Case No. 2009-11-01, Para 19).*

Thus, the decrease of salaries was not performed solidary.

29. Article 83 of the Satversme provides: "Judges shall be independent and subject only to the law." The independence of the judges and the court defined by this provision is one of the fundamental principles of a state, which is democratic and governed by the rule of law.

The Constitutional Court in its Judgement of 18 January 2010 stated that the independence of judges is closely linked with the implementation of the principle of division of power (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.3).* Thus, the legislator's action in setting the remuneration for judges is regulated, inter alia, by the principle of the division of power. To establish, whether the legislator in adopting the contested provisions, has complied with the independence of the branches of the state power included in the principle of the division of power, the Constitutional Court must examine the procedure of adopting the contested provisions.

29.1. Both the annotation to the draft law, with which judges' remuneration was set in the amount of 85 percent, and to the draft law, with which it was decreased to 73 percent, notes that no consultations with the judiciary have taken place. Moreover, there is no substantiation why they were not held. The Ministry of Justice asserts the opposite. Namely, the Minister for Justice participated in the annual Conference of Judges, meetings with the chief judges of courts were held, answers to judges' letters were provided (*see: case materials, Vol. 2, pp. 167-211).*

The Constitutional Court in its Judgement of 18 January 2010 pointed out that the legislator, prior adopting a decision on the operation of courts – both with regard to the budget and other issues linked with the fulfilment of court functions, must provide an opportunity to the judiciary or an independent institution, representing the judiciary, if such has been established, to express its opinion about the issue affecting the functioning of courts (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.1 and 11.5*). The requirement that it is the duty of the legislator to provide an opportunity to the judiciary to express its opinion on issues, which affect the functioning of courts, but are within the discretion of the legislator to decide upon, does not prohibit the executive power to communicate with an institution representing the judiciary or even the judiciary itself regarding issues important to it. However, such a relationship between the executive power and the judiciary does not replace communication realised by the legislator itself.

Moreover, the Constitutional Court already in its Judgement of 18 January 2010 indicated that in the context of the division of power hearing the opinion of the judiciary means that in case if this opinion is not taken into consideration or taken into consideration only partially, it is the duty of the legislator to provide substantiation of its action to the extent that if the court had had to assess its compliance with the Satversme, this substantiation would provide all information necessary for assessment (*see: Judgement of 18 January, 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.5*).

At the same time it must be noted that the involvement of some representatives of the judiciary in solving the issue of judges' remuneration might influence the public trust in the independence and objectivity of courts. In discussion on the issues of

budget the judiciary is, undoubtedly, in weaker positions compared to other branches of power. Thus, direct negotiations between the legislator and some representatives of the judiciary about these issues is not the most suitable way of communication between the branches of power, because in such negotiations the legislator has the possibility to at least seemingly influence the judiciary and the decisions adopted by it, but even such a perceived possibility is inadmissible [*See: Judgement of 18 September, 1997 of the Supreme Court of Canada in the case Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, (1997) 3 S.C.R. 3*].

29.2. Both the Saeima in its written response and the representatives of the Ministry of Justice at the court hearing, referring to the Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, pointed out that listening to the opinion of the judiciary can be likened to consultations with any person or social group and in this way a balance is found between the conflicting interests of different members of society. The Constitutional Court in the aforementioned judgement pointed out that the principle of justice requires finding as fair balance as possible between the conflicting interests of different members of society. One of the ways to realise this principle is to ensure that the person's right to participate in the adoption of various decisions and in the formation of political will are abided by. The Constitutional Court, without judging about the effectiveness of politics, at the same indicated that the contested provision could not be declared being compatible with Article 1 of the Satversme, if the procedure of drafting and adopting it would not comply with the principles of a democratic republic (*see; Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 7).*

The legislator has the duty to listen to the opinion of the judiciary with regard to issues that are important for its functioning; it follows from the principle of the division of power. Thus, there is a significant difference not only in the scope of the legislator's discretion, i.e., the obligation to hear the judiciary and to substantiate its decision, but also in the competence of the Constitutional Court in assessing, where the opinion of the judiciary was heard and was taken into consideration and whether a substantiation has been provided, if this opinion was not taken into consideration or was taken into consideration only partially (*see: Para 29.1 of this Judgement*).

29.3. It can be established from the case materials that the annotations to the draft laws "Amendments to the Law "On Judicial Power"" (both the wording of the Law of 16 June 2009 and of 1 December 2009), which were submitted to the Saeima, provided information on the possible problems and risks. It was pointed out that "[...] a repeated decrease of judges' remuneration could leave an impact upon the principle of the independence of courts, [...] in 2010 and 2011 remuneration commensurate with the work-load and the nature of work will not be ensured to judges, [...] there is a possibility of negative consequences with regard to the future development of the whole judicial system, including difficulties to fill all positions of judges and judges of Land Register Offices, [...] by changing the procedure for calculating the monthly salary enshrined in the law, the principle of the independence of the judiciary and judges, which is enshrined in Article 83 of the Satversme of the Republic of Latvia may be indirectly affected, and also the principle of legal certainty may be infringed." The Saeima was informed that the Supreme Court had objected to decreasing of judges' remuneration. The legislator had also received the resolution adopted at 20 November 2009 meeting of Latvian Association of Judges, which noted that judges' remuneration was not commensurate, as well as the procedure for planning the budget and discussing the related draft laws as unacceptable in a democratic and judicial state (*see: case materials, Vol. 4, p. 49*).

The case materials and the information provided at the court hearing shows that the legislator was aware of the risks existing in connection with the contested provisions and was informed about the objections of the judiciary, however, did no assess the respective situation – neither the actual conditions, nor the legal arguments.

A situation, when the legislator does not treat the risk forecasts, expressed by experts, with sufficient seriousness and does not take timely measures to prevent the risks, is inadmissible in a judicial state. If the risks are not prevented timely, the judicial system can be weakened even to the extent that reviving of its normal functioning would take longer time and require much larger resources. Moreover, doubts can arise, whether the state in general is judicial.

Thus, by adopting the contested provisions, the legislator did not respect the principle of the division of power.

30. In 2009 judges' remuneration was decreased in percentage, moreover, it was applied to judges' monthly salary, which had been frozen already since 2007 and which the Constitutional Court in its Judgement of 18 January 2010 declared incompatible with Article 83 of the Satversme. The Constitutional Court concluded that the total decrease was disproportionally large and that in setting it the principle of legal certainty was violated.

With regard to the principles of solidarity and legal certainty the Constitutional Court concluded that in adoption of the contested provisions the procedure had been violated.

The legislator has failed to respect the limits of its discretion; the contested total decrease in percentage of judges' remuneration is not proportional and is incompatible with Article 107 of the Satversme in interconnection with Article 83 of the Satversme.

31. The law not only authorises the Constitutional Court, but also imposes a responsibility to ensure that its judgements would ensure stability, clarity and peace in social reality (*see: Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1 and Judgement of 18 January 2010 in Case No. 2009-11-01, Para 30*).

The Constitutional Court has already concluded that it has to ensure, to the extent possible, that the situation, which could arise starting from the moment when the contested provisions become invalid, would not create infringement of the fundamental rights guaranteed to the Applicants and to other persons in the Satversme, and should not cause significant damage to the interests of the state or society (*see: Judgement of 16 December 2006 by the Constitutional Court in Case No.2005-12-0103, Para 25 and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 35.1).*

32. The principle of justice requires achieving as fair a balance as possible between the conflicting interests of various members of society (*see: Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106 Para 7 of the Concluding Part and Judgement of 15 May 2010 in Case No. 2009-44-01, Para 23)*. In the concrete situation the Constitutional Court has to assess the interests of society with regard to ensuring the stability of the basic budget of the state, the judges' right to receive remuneration commensurate with the work done and the interests of society with respect to fair and independent court.

The legislator needs time to eliminate the violations identified by this Judgement. For drafting significant amendments to the law or for dealing with budget related issues the Constitutional Court usually sets a period of six months, thus, the legislator would need time till 1 January 2011 for these purposes.

If the Constitutional Court were to adjudicate that the contested decrease in percentage of judges' remuneration should be revoked starting with the day of its coming into force, the payment of judges' salary in full amount and compensation of all unpaid sums could significantly threaten the stability of the state budget and consequently the well-being of all society, including that of the Applicants.

Also the conclusions of the Judgement of 18 January 2010 must be taken into account: on 1 January 2011 the second sentence of Paragraph 7 of the Transitional Provisions in the wording of 14 November 2008, of 16 June 2009 and 1 December of 2009 Law "On Judicial Power" becomes invalid. Thus, starting with 1 January 2011 judges' remuneration will be set in the amount of 73 percent of the remuneration commensurate with judges' work set in Article $119^1$of the Law "On Judicial Power". Moreover, the respective decrease has a fixed term – till 31 December 2011 (*see Para 17 of this Judgement*). Thus, in assessing the legal consequences of this Judgement, also the adjudication of 18 January 2010 must be taken into consideration.

The Constitutional Court also takes into account the readiness expressed by the Applicants to be solidary with the whole of society (*see: case materials, Vol. 5, p. 179)*. Moreover, natural inclusion of the judiciary in the society must be ensured. The public esteem and respect for the judiciary could become damaged, if in a

situation when remuneration for all social groups is decreased, it would not apply to judges.

Thus, the decrease in percentage of the remuneration envisaged in the law is admissible and can be considered solidary, if it is short-term and is applied to the remuneration envisaged by the law, upon which the judges could lawfully rely in accordance with the Judgement of 18 January 2010 by the Constitutional Court.

The Substantive Part

On the basis of Paragraph 5 of the first part of Article 29 and Articles 30 -32 of the Constitutional Court Law, the Constitutional Court holds:

1. To declare the second sentence and the words of the third sentence "from 1 January 1010 till 31 December 2011 judges' remuneration shall be set in amount of 73% percent of the remuneration foe work, which has been set in accordance with Paragraph 7 of these Transitional Provisions" of Article 20 of the Transitional Provisions of the Law "On Judicial Power" compatible with Article 1, 83 and 107 of the Satversme of the Republic of Latvia, if starting with 1 January 2011 the remuneration is set and paid in accordance with Article 119^1 of the Law "On Judicial Power", i.e., in compliance with Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01.

2. To declare the words of the third sentence of Paragraph 20 of the Transitional Provisions of the Law "On Judicial Power" "without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions" incompatible with Article 1 of the Satversme of the Republic of Latvia and invalid from 1 January 2011.

3. To close proceedings in the part regarding the compatibility of the second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power" with Article 1, 83 and 107 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

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

The Presiding Judge G. Kūtris