



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

**Riga, November 1, 2007**

**in case No. 2007-08-01**

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma, Uldis Ķinis and Viktors Skudra

having regard to the application of Valentīna Andžāne,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Articles 16 (1), Section 17 (1) (11) and Section 28.<sup>1</sup> of the Constitutional Court Law,

on October 2, 2007 in the Court Session examined the following case in written proceedings,

**“On Compliance of Parts 2, 3 and 4 of Section 7 of Prevention of Corruption Law with Articles 91 and 106 of the Satversme (Constitution) of the Republic of Latvia”**

**The Constitutional Court has established:**

1. On April 18, 2002, the Saeima of the Republic of Latvia (hereinafter – the Saeima) passed the Law on Corruption Prevention and Combating Bureau (hereinafter the Bureau Law). The Law came into force on May 1, 2002. The objective of the Law

is to establish the legal status and activities of the Law on Corruption Prevention and Combating Bureau (hereinafter – the Bureau), in order to be able to prevent and fight corruption and monitor compliance of political organisations (parties) and their associations with party financing regulations..

The third part of Article 5 of this law includes requirements for a person to comply with to be able to become an official of the Bureau. Initially the above provision established that a person can be an Official of the Bureau if he/she complies with the mandatory requirements that are established in the Law in order to receive a special permission to access to the State secrets.

On January 27, 2005, the Saeima passed the Law “On Amendments to the Law on Corruption Prevention and Combating Bureau”, which took effect on March 1, 2005. By this Law the third part of Article 5 of the Bureau Law acquired a new wording. The amendments put forward several requirements for a person that applies for a position of an official of the Bureau, including the requirement of higher education and working experience corresponding to the position.

By means of the above mentioned Law, there were amendments made to the Transitional Provisions of the Bureau Law (hereinafter – the Transitional Provisions). They were supplemented by Para 7, which provides: “The requirement related to higher education of the Bureau’s officials who is appointed for a position before this rule enters into force mentioned in Section 5, Paragraph three, Clause 3 of this Law is applicable from 1 January 2009. An official of the Bureau who has not started studies at the higher education body till the date then this rule has entered into force, shall start studies in the higher education body by the 1 October 2005 and submit to the Head of the Bureau a notification on commencing studies. An official of the Bureau who studies at the higher education body each year by 15 October submit to the Head of the Bureau a notification issued by the higher education body on continuation of the studies. An official of the Bureau, who has not started higher education studies by the deadline set in this Clause or does not continue studies, has to be dismissed due to not complying with the criteria set for the position. If there are left four or less years between a day when this rule comes into force and a reach of a retirement age stipulated by the law, then an official of the Bureau is allowed to hold the position of an official without the highest education.

**2. The submitter of the constitutional complaint - Valentīna Andžāne** (hereinafter – the Applicant) contests compliance of the second, third and fourth sentence of Section 7 of the Transitional Provisions with Articles 91 and 106 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The second, third and fourth sentence of Para 7 of the Transitional Provisions establish: “An official of the Bureau who has not started studies at the higher education body till the date then this rule has entered into force, shall start studies in the higher education body by the 1 October 2005 and submit to the Head of the Bureau a notification on commencing studies. An official of the Bureau who studies at the higher education body each year by 15 October submit to the Head of the Bureau a notification issued by the higher education body on continuation of the studies. An official of the Bureau, who has not started higher education studies by the deadline set in this Clause or does not continue studies, has to be dismissed due to not complying with the criteria set for the position” (hereinafter – the Contested Provision).

**2.1.** On July 28, 2003, the Applicant concluded a labour agreement with the Bureau and occupied the position of the Head of the Report Centre.

Since the Applicant has not higher education, she did not initiate studies at a higher education institution until October 1, 2005 and respectively did not submit a notification on initiation of studies until October 15, 2005, the Head of the Bureau, on April 10, 2006 passed the Order No. 2-1/313 on dismissal of the Applicant from the position, based on Item 12 of the sixth part of Article 12 of the Bureau Law and Para 7 of the Transitional Provisions.

**2.2.** The Applicant holds that the Contested Provision violates her rights guaranteed by Article 106 of the Satversme to freely choose employment and workplace according to a person’s abilities and qualifications, as well as the right to preserve the former workplace.

The Applicant indicates that her rights have been restricted in to ways. The first restriction is the general requirement of higher education established in the Bureau Law, which was applied to the officials of the Bureau from January 1, 2009. The second restriction is the dismissal if an official has not initiated studies in a higher education institution until October 1, 2005.

However the restriction violate the basic rights of the Applicant, she does not contest the first restriction because she holds that it has a legitimate objective – to establish qualification standards for officials of the Bureau, which ensures compliance of these persons with the occupied position and, among the rest, a successful fulfilment of their basic work tasks.

However, the requirement included in Para 7 of the Transitional Provisions of the Bureau Law regarding entering a higher education institution up to October 1, 2005 does not serve for any legitimate objective. The Applicant holds: the fact that an official has entered a higher education institution does not *per se* ensure compliance of the official with the qualification standards. It can be ensured only by the acquired higher education. However a person is deemed to have acquired higher education if, according to Section 29 of the Law on Higher Education Establishments and the State-accredited study programme, has received a bachelor degree (an academic degree) or a professional qualification that can be acquired by graduating a four year State-accredited higher education study programme. The legislator has given a possibility for those officials who plan continuing to work at the Bureau to acquire higher education up to January 1, 2009. The Applicant is not planning to work at the Bureau after the above date.

**2.3.** The Applicant holds that by means of the Contested Provision, the principle of legal equality guaranteed by Article 91 of the Satversme has been breached.

The Applicant indicates that she enjoys equal conditions with other officials of the Bureau who, up to October 1, 2005, have initiated studies at a higher education institution. None of these persons have higher education, but absence of higher education in particular is the common feature that unites the both situations – the situation of the Applicant and the that of the officials of the Bureau who have not yet acquired higher education but who have initiated studies at a higher education institution up to October 1, 2005. Hence a different attitude towards the Applicant has been permitted.

A different treatment has no reasonable grounds. The Law gives a possibility for those officials who plant to continue working at the Bureau after January 1, 2009 to acquire higher education. However, the Applicant has not planned to continue working

after the above date, therefore she has no reasonable grounds to spend material resources and time on studies.

The Applicant draws attention to the fact that a draft law on long service pensions of the officials of the Bureau is being worked out. If the law would come into force, then the time left for her until the retirement would constitute less than one year. Hence she would not need to continue working in the Bureau after January 1, 2009.

A different attitude has no legitimate objective because the legitimate objective is reached by means of acquisition of higher education, rather than by the requirement to enter a higher education institution up to a certain date. Moreover, it is non-proportionate, because “the benefit that the society gains from the different attitude towards similar situations must be greater than the loss that is incurred by those persons who enjoy less advantageous of the two situations”.

The Applicant holds that her qualification is not lower than that of officials of the Bureau who have initiated studies at higher education institutions but who have not yet acquired higher education. The benefit (if any) that the society could gain from her dismissal would not be compared to the losses that she would undergo when spending material resources and time for studies.

**3. The institution that passed the contested act – the Saeima** – expresses its viewpoint in the reply that the application is ungrounded and it asks to recognize the norm as compatible with Article 91 and 106 of the Satversme.

**3.1.** It is indicated in the reply that the Contested Provision must be assessed as a restriction that is established in public legal relations in order to ensure an appropriate functioning of State services. Although officials of the Bureau formally have entered legal labour relations, they in fact are holding public service in the sense of Article 101 of the Satversme. It follows from both, the position of the Bureau in the State administration system and the work tasks established for officials of the Bureau, as well as from the restriction established for the position. However the Applicant has asked to assess compliance of the Contested Provision with, first of all, Article 106 of the Satversme, the Saeima holds that, when assessing the status of officials of the Bureau, this Article must be interpreted together with Article 101 of the Satversme. The Saeima quotes the Judgment of May 10, 2007 by the Constitutional Court in the

case No. 2006-29-0103, where the Court has established that “On the one hand, Article 101 provides for restrictions to Article 106, e.g. only a citizen may hold public service. On the other hand, only such restrictions can be established to Article 101 of the Satversme, that comply with Article 106 of the Satversme, namely, that are related to abilities and qualification or are established according to Article 116 of the Satversme”.

The Saeima draws attention to what has already been concluded in several judgments by the Constitutional Court regarding the fact that Article 1 of the Satversme provides for a possibility to the legislator to introduce such amendments to the legal regulations that comply with the Satversme. However the legislator, when making such amendments, must provide for a lenient new regulation. In such cases it has to establish reasonable terms or provide for compensation of the lost incurred.

By emphasizing that the Applicant has not contested the fact that the requirement of higher education is being applied to those officials of the Bureau who have started fulfilling the duties of the position before inclusion of the respective norm into the Bureau Law, the Saeima indicates that, according to what has been concluded by the Constitutional Court in the case No. 2006-29-0103, it was admissible to put forth a requirement of higher education for officials of the Bureau and include Para 7 into the Transitional Provisions of the Bureau Law.

**3.2.** The Saeima holds that the Contested Provision complies with the Satversme also in respect to the part, which prohibits the Applicant to continue holding the office until January 1, 2009 if she has not initiated studies in a higher education institution.

Persons who do not initiate studies do not enjoy equal and comparable conditions if compared to the persons who have initiated or continue studies. The Contested Provision established different attitude towards different groups or persons depending on the fact whether the respective person has initiated studies or continue them. Hence the Contested Provision complies with the first sentence of Article 91 of the Satversme.

**3.3.** The Saeima agrees to the opinion of the Applicant regarding the fact that the Contested Provision establishes a relative restriction of the rights of a person established in Article 106 of the Satversme. Namely, it delegates the responsibility to

initiate or continue studies in order to be able to fulfil the duties of the position. If this responsibility is not fulfilled, labour relations shall be terminated.

Contrary to the opinion of the Applicant, the Saeima holds that the Contested Provision, like the requirement of higher education, has a legitimate objective – mainly protection of the rights of other persons.

The Saeima also emphasizes that the objective of the Contested Provision is not to provide officials having no higher education who have decided to leave the job at the Bureau before the date when the mandatory requirement of higher education takes effect with a “discount” of several years. If the legislator would have been formulated the Contested Provision in a more advantageous wording for the Applicant, the legitimate objective would not have been reached at a sufficient rate and such legal norm would be non-compliant with the interests of the society. Namely, other persons having higher education could not occupy a position at the Bureau because it would be occupied by a person without higher education. It is also necessary to take into consideration the fact that none of persons have subjective rights to occupy any particular position, moreover for the time period chosen by the persons themselves by ignoring the requirement of the Law regarding acquisition of higher education.

The Saeima indicated that the Contested Provision allows a person to make a choice – to acquire higher education and continue holding an office at the Bureau or to find another job. The period from March 1, 2005 to October 1, 3005, according to the Saeima, has been sufficient for making the choice, including looking for another job, since the Applicant has not chosen to initiate studies and acquire higher education. The Saeima also indicates that other normative acts regarding the decision of the employee on notice and dismissal provide for even shorter term, within which a person may find another work place without ceasing working.

The Saeima does not agree with the opinion of the Applicant regarding the fact that during studies a person does not have the necessary knowledge, and it is acquired only after receiving of a document on acquisition of higher education. This opinion is not grounded because persons make progress during studies. Knowledge can not be acquired only on the day of reception of the diploma. The diploma only manifests the presence of knowledge acquired gradually during a certain period of time. Hence the

Contested Provision ensures a continuous development of an employee, but the diploma only manifests that a person has acquired qualification of a respective degree.

Since an official of the Bureau implements the State power and may be entitled to restrict the rights of other people, the competence, education and culture of this person is of a particular importance. A person who has accumulated respective, knowledge, has cultivated the skill of acquiring knowledge and developed the necessary abilities for communicating with other members of the society, he or she got a better understanding of the basic rights of other persons and can ensure protection of these rights at a higher level. The Saeima holds that the prerequisite of acquisition of such skills and knowledge is acquisition of higher education.

**4. The Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) holds that the Contested Provision does not comply with Article 91 of the Satversme.

Each person who has become an official of the Bureau before coming into force of the Contested Provision – March 1, 2005, and has proven his or her compliance with the position, have enjoyed equal and comparable conditions.

The Ombudsman holds that a different attitude is admissible because it has been established based on an objective criterion – acquisition of education. The different attitude can not be regarded as autocratic because it is justified by the necessity of higher education in the work of an official of the Bureau.

When establishing the different attitude, the individual conditions are also taken into consideration at a sufficient extent. Namely, the Contested Provision is closely related to the legal norm, which provides that only such person may work as an official of the Bureau who has acquired higher education. The Applicant has contested this norm. Whereas, the Contested Provision has been introduced into the Law in order to ensure a lenient transition. Para 7 of the Transitional Provision (the fifth sentence thereof) also provides for an individual approach, namely, it provides that If there are left four or less years between a day when this rule comes into force and a reach of a retirement age stipulated by the law, then an official of the Bureau is allowed to hold the position of an official without the highest education.

The Applicant wants that the regulation would be individualized even more, taking into account the fact that a draft law on long service pensions for officials of the Bureau is already prepared. However, the fact that a draft law is being elaborated does not per se authorize a person to rely on the fact that such regulation would come into force in the future.

The Ombudsman agrees that the Contested Provision provides for restriction of the rights of the Applicant established in Article 106 of the Satversme. The restriction of these basic rights regarding education of those persons who have already worked as officials at the Bureau at the date of coming into force of the Bureau Law and who had no higher education has been established in order to protect the rights of other persons. Taking into consideration the fact that officials of the Bureau implement the State power and are entitled to restrict the rights of other people, their competence and education is of a particular importance.

The Ombudsman holds that the Contested Provision does not violate the principle of proportionality, because a sufficiently long time period has been offered for the persons so that they could initiate studies in a higher education institution. Moreover, the Applicant has not mentioned any objective problems, due to which she could not initiate studies.

When assessing whether it is possible to reach the legitimate objective by other means that would restrict the rights of a persons at a lesser extent, the Ombudsman refers to the opinion of the Applicant regarding the fact that a more lenient measure for her would be continuing working without acquisition of higher education up to January 1, 2009. However, thus it is impossible to reach the above mentioned legitimate objective, because a more lenient measure is deemed to be the one, by means of which it is possible to reach the legitimate objective at the same quality.

The Ombudsman indicates that, when assessing the consequences caused for a person by the restriction, it is necessary to take into consideration the fact that the mandatory requirement regarding higher education could be introduced in two ways. First of all, by achieving that persons who already work as officials of the Bureau acquire higher education, and second, by dismissing those officials who have no higher education. In both cases the consequences of the restriction in relation to the

person are different. They are less grave in the case if a person is offered an opportunity to continue working by simultaneously acquiring higher education.

The Ombudsman expresses a viewpoint that the society in general gains a greater benefit from the restriction included in the Contested Provision and therefore the Provision is fit for reaching the legitimate objective. Although the requirement regarding acquisition of higher education requires additional efforts, it is generally directed towards development of individuality and it can not be regarded as a considerable violation of the basic rights of a person.

**5. The Corruption Prevention and Combating Bureau** indicates that during the time period when the Contested Provision came into force, 11 officials of the Bureau had not acquired higher education. According to the provisions of the Contested Provisions, three officials have initiated studies at a higher education institution, but seven officials continued their studies.

The Bureau explains that the requirement included in the official instructions of the Head of the Report Centre, namely, higher education is required for holding this office, was one of the optional criteria for the candidates to the office. During the time when selection of the candidates for the vacant position of the head of the centre took place, higher education was not included into the Bureau Law as a mandatory requirement.

Although the Applicant had no higher education, the commission took into consideration her previous working experience, as well as the fact that she had worked at the Bureau from December 2002. If compared to other candidates, the Applicant had considerable advantages; therefore she was selected as the most appropriate candidate. However it was reminded to the Applicant in written and orally that she must initiate studies up to October 2005.

### **The Constitutional Court holds:**

**6.** The Contested Provision is related to Item 3 of the third part of Section 5 of the Bureau Law, which provides that a person can be an Official of the Bureau if he/she has higher education. The Applicant does not contest this norm, but she holds

that the Contested Provision in particular does not comply with Article 91 and 106 of the Satversme. It obligates her to initiate studies and to acquire education up to January 1, 2009, although she is planning to leave the job before the above date.

7. Article 106 of the Satversme provides: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.”

The justification of the constitutional claim does not touch upon the violation of labour prohibition; therefore, in the case under review, only compliance of the Contested Provision with the first sentence of the Article shall be assessed.

The Constitutional Court has recognized that in the understanding of Article 106 of the Satversme, the right to freely choose employment and workplace first of all means equal access to labour market to every person and, secondly, the fact that the state is not allowed to determine restricting criteria but only requirements for abilities and qualification, which are necessary for the person to carry out the duties of the position. Moreover, the rights to freely choose a workplace also mean the rights to preserve the present workplace (*see: Judgment of May 29, 2003 by the Constitutional Court in the case No. 2002-21-01, Para 1 of the Concluding Part and Judgment of April 23, 2003 by the Constitutional Court in the case No. 2002-20-0103, Para 3 of the Concluding Part*).

The Constitutional Court has also concluded that qualification requirements for any profession include the minimum education level and a certain level of theoretic knowledge, abilities and responsibility, needed to successfully discharge one’s basic duties (*see: Judgment of June 4, 2002 by the Constitutional Court in the case No. 2001-16-01, Para 2.2 and 4.2 of the Concluding Part*).

Hence the first sentence of Article 106 of the Satversme provides a person with the rights to freely choose employment, taking into account the body of abilities, knowledge and skills that characterize preparedness and suitability of a person for fulfilment of a particular job, taking into account education, practical experience at the particular work, as well as other knowledge, skills and abilities that a particular person has acquired and developed.

Consequently, Article 106 of the Satversme does not prohibit the State to establish requirements, according to which a person, when choosing his or her employment, must testify his or her skills and qualification. For instance, it is possible to ask a person to pass certain tests or acquire education during a State-recognized studying process.

However no arbitrary establishment of restrictions for execution of the basic rights shall be permissible.

8. In order to assess compliance of the requirement of higher education with the basic rights established in Article 106 of the Satversme, it is necessary to find out whether this requirement contains any rights restrictions (*see: Judgment of March 22, 2005 by the Constitutional Court in the case No. 2004-13-0106, Para 20*).

The Constitutional Court agrees that the basic rights of the Applicant have been restricted. Namely, the rights to hold an office of the official of the Bureau for the persons who were already employed at the Bureau and who had no higher education, including the Applicant, were restricted in the way that these persons had to acquire higher education in order to be able to preserve the present rights (the status of an official).

**Consequently, the requirement of higher education for officials of the Bureau restricts the basic rights established in Article 106 of the Satversme.**

9. The Applicant holds that the Contested Provision, which obligates her initiating studies in a higher education institution before October 1, 2005, establishes, without an objective and reasonable grounds, a different attitude regarding exercising of the basic rights established in Article 106 of the Satversme. Therefore the Contested Provision does not comply with the principle of legal equality.

This principle is enshrined in Article 91 of the Satversme, which provides: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

Although the constitutional complaint includes a requirement to assess compliance of the Contested Provision with Article 91 of the Satversme, it still follows from the complaint that compliance of the Contested Provision with the first sentence

of the Article only, which guarantees equality of all persons before the law, shall be assessed.

The Constitutional Court has indicated in several judgments that the principle of legal equality forbids the state institutions to pass norms, which without a reasonable ground permits different attitude to persons who are in really equal and comparable conditions (*see: Judgment of December 5, 2001 by the Constitutional Court in the case No. 2001-07-0103. Para 3 of the Concluding Part and Judgment of March 26, 2004 by the Constitutional Court in the case No. 2003-22-01, Para 8*).

Simultaneously the Constitutional Court has emphasized that the principle of legal equality permits and even requires a different attitude towards person who enjoy different conditions. Only if it has been established that it has an objective and reasonable grounds, the principle of equality permits a different attitude towards persons who enjoy equal conditions or equal conditions towards persons who enjoy different conditions (*see: Judgment of November 2, 2006 by the Constitutional Court in the case No. 2006-07-01, Para 14*).

In order to assess whether the Contested Provision complies with the principle of legal equality guaranteed in Article 91 of the Satversme in relation to Article 106 of the Satversme, it is necessary to establish:

- 1) whether and what persons enjoy equal or, according to some certain criteria, comparable conditions;
- 2) whether the Contested Provision provides for an equal or different attitude towards these persons;
- 3) whether the different attitude has an objective and reasonable grounds, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed.

**10.** To make out whether and what persons or groups of persons are in equal and comparable under certain criteria circumstances, it is necessary to find the uniting feature of this group (*see: Judgment of May 21, 2004 by the Constitutional Court in the case No. 2003-23-01, Para 12*).

The Applicant holds that she enjoys equal conditions with those officials of the Bureau who have initiated studies at a higher education institution up to October 1,

2005 because none of these persons, as well as the Applicant, still have no higher education, but initiation of studies does not mean that a person has a higher professional qualification. The Constitutional Court may not agree to this viewpoint.

Before adoption of the amendments to the Bureau Law, any person can be an Official of the Bureau (except for the Head of the Bureau) if he/she complied to the only criterion established by Law – namely, the requirements that were established in order to receive a special permission to accede the State secrets. If a person complied with this requirement, it did not matter whether the person had or had not higher education. An official fulfilled the duties of the position in accordance with the official instruction of the position, as well as received remuneration which complied with the position. The Applicant was also employed as the Head of the Report Centre, although her official instruction of the position did not contain a requirement of the necessity of higher education. The notice issued by the Bureau testifies that 11 persons without higher education were employed at the Bureau before adoption of the amendments to the Bureau Law (*see: case materials, Vol. 1, pp. 62*). Such a situation is permissible because the Bureau Law did not provide for higher education as mandatory prerequisite for employment in the position of an official at the Bureau.

**Consequently, those officials of the Bureau who have become officials of the Bureau before March 1, 2005 and have proved their suitability for the position by means of their work enjoy equal and comparable conditions.**

**11.** If persons enjoy equal and comparable conditions, it is necessary to find out whether the Contested Provision provides for a different treatment.

The requirement of higher education for an official that has been appointed to the position before the date of coming into force of the Contested Provision shall be applied from January 1, 2009. The officials of the Bureau having higher education, as well as the officials who have initiated studies in a higher education institution before October 1, 2005 or continued studies were entitled to occupy a position at the Bureau. Whilst those officials who had not initiated studies at a higher education institution or had not continued studies were dismissed from the position.

**Hence the Bureau Law established a different attitude based on the education criteria.**

**13.** Having established that the attitude is different in comparable situations, it is necessary to verify whether the different attitude is justifiable, i.e. it is necessary to assess the reasons, upon which the different attitude is grounded (*see: Judgment of June 26, 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 4 of the Concluding Part*).

Such different attitude shall be justifiable if it has been established based on an objective criteria – acquisition of education. The notice on initiation of studies or continuation thereof testifies that a person acquires knowledge and skills of a certain level at a State-accredited education process in order to acquire a State-recognized diploma on acquisition of higher education at the end of the process. Such different treatment is not regarded as autocratic, it can be reasonably grounded by the fact how important is the higher education in the development of the carrier of an official of the Bureau (*see: Judgment of May 10, 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 14.1*). The Saeima, too, justly indicates that a person makes progress during studies, whilst the Contested Provision ensures continuous development of officials.

**14.** The Constitutional Court has already concluded that in the basis of each restriction of the basic rights of the person there must be conditions and arguments of why such restriction is necessary. Thus restriction is determined for the sake of important interests – the legitimate aim (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 16 of the Concluding Part*).

According to the second part of Article 2 of the Bureau Law, the Bureau is a public administration institution that falls under the supervision of the Cabinet of Ministers, and it has been formed in order to prevent and fight corruption and monitor compliance of political organisations (parties) and their associations with party financing regulations. Article 11 of the Bureau Law provides that the duty of officials and employees of the Bureau is to act in the best public interests, but it is indicated in Article 12 of the Law that a Bureau official is a representative of Government Authority. In order to implement the objectives set forth in the Law, the Bureau shall implement some important functions.

The Saeima has indicated in its reply that the legitimate objective of the restriction included in the Bureau Law is mainly protection of the rights of other persons. The Saeima, by referring to the judgment of the Constitutional Court, indicates: since an official of the Bureau implements public power and may be entitled to restrict the rights of other people, the competence, education and culture of the official of the Bureau is of a particular importance. Establishment of more precise and strict criteria ensures successful fulfilment of the duties of the officials of the Bureau (*see: case materials, Vol. 1, pp. 52 and 57*).

An official of the Bureau shall testify its theoretical and practical preparedness for fulfilment of the respective duties in a State-recognized education process. The benefit that the society gains from application of this formal criterion, first of all is the security that the public office at the Bureau is held by persons who have sufficient theoretical and practical preparedness. The Satversme has established that a person who has accumulated respective knowledge, cultivated skills of learning and developed necessary abilities for contacting with other members of the society, better understands the basic rights of other people and is able to ensure protection of these rights at a higher level (*see: Judgment of May 10, 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 18*).

The Applicant neither contests the necessity of higher education in the work of an official of the Bureau, but, on contrary, she indicates that the mandatory requirement of the necessity of higher education ensures successful fulfilment of the duties of an official of the Bureau.

Moreover, not only the requirement of higher education but also the legitimate objective of the Contested Provision regarding higher education, as the Saeima indicates, is analogous – persons who have no higher education are offered an opportunity to initiate studies and acquire higher education in order to ensure protection of the rights of other people (*see: case materials, Vol. 1, pp. 52*).

**Consequently, the legitimate objective of the Contested Provision is protection of the rights of other people.**

**15.** The Constitutional Court has concluded that to evaluate whether the legal norm complies with the proportionality principle one has to ascertain if the means,

used by the legislator are suitable for achieving the legitimate objective and if it is not possible to attain the objective by other means, which would less limit the rights of an individual as well as show whether the activity of the legislator is proportionate. If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, it is unconformable with the principle of proportionality and illegitimate (*see, e.g.: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part and Judgment of June 27, 2004 by the Constitutional Court in the case No. 2003-04-01, Para 3 of the Concluding Part*).

It is necessary to take into consideration the fact that the restriction of the basic rights is proportionate only in the case if there are no other measures that would be of the same efficiency and the restriction of the rights in the result of application thereof would be lesser. Moreover, when establishing restriction of the basic rights, the legislator must select the most lenient means for reaching the legitimate objective. When assess whether it is possible to reach the legitimate objective by other means, the Constitutional Court emphasizes that a more lenient means is not any other measure but the one, by means of which it is possible to reach the legitimate objective at the same quality (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 19 of the Concluding Part*).

**15.1.** The State has the duty of ensuring adequate activities of its institutions, as well as determining such regulation, which guarantees implementation of State power in compliance with public interests. One of the ways how to reach it is determining qualification and impartiality requirements to persons, who have been entrusted to realize functions significant to the State or society (*see: Judgment of February 23, 2006 by the Constitutional Court in the case No. 2005-22-01, Para 9*).

When establishing the mandatory requirements for officials of the Bureau – higher education, the legislator has planned to introduce more strict qualification criteria for State officials and hence to improve protection of the rights of other people. The amendments were necessary in order to ensure a more efficient functioning of the Bureau and implementation of the principle of good administration at an adequate level. The Constitutional Court has established: “The requirement on acquisition of a higher education requires additional efforts from a person, but is in general directed

towards ensuring of development of individuality and should not be regarded as a considerable violation of the basic rights of a person” (*see: Judgment of May 10, 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 19.4.1*). It is possible to conclude that the benefit that the society gains from application of the mandatory requirement in this case is substantial, especially in the case if the mandatory requirement is applied to State officials, who, according to the law, work in the interests of the society and implement public power (Bureau Law, Articles 11 and 12).

**15.2.** When assessing the consequences that the restriction causes to a person, it is necessary to take into consideration the fact that the mandatory requirement of higher education could be introduced in two ways. First of all, by establishing that a person, who already is an official of the Bureau, shall acquire higher education. Second, by dismissing officials of the Bureau, who have no higher education, from the position. In both cases the consequences of the restriction are different. There is no doubt that the consequences are less grave in the case if a person is offered an opportunity to fulfil the duties of a State official by simultaneously acquiring higher education.

The Constitutional Court agrees to the viewpoint of the Saeima that the objective of the Contested Provision is not to provide officials having no higher education who have decided to leave the job at the Bureau before the date when the mandatory requirement of higher education takes effect with a “discount” of several years. Thus the legitimate objective would not be reached, and such a provision would not comply with the interests of the society, namely, persons with higher education would not apply for the position because it would be occupied by a person without higher education.

**15.3.** The Constitutional Court has stressed that Section 1 of the Satversme does not anticipate prohibition of incorporating such amendments into legal regulation, which comply with the constitutional principles fixed in the Satversme. In a democratic state the principle of trust in law requires the legislator to envisage a “considerate” transition to a new regulation when adopting the above amendments. Reasonable terms shall be established or due compensation for the incurred losses shall be anticipated (*see, e.g.: Judgment of March 25, 2003 by the Constitutional*

*Court in the case No. 2002-12-01, Para 2 of the Concluding Part and Judgment of March 8, 2006 by the Constitutional Court in the case No. 2005-16-01, Para 18).*

Such transition to the new regulation is ensured by means of the Contested Provision. It made the officials of the Bureau having no higher education to initiate studies within seven months (from March 1, 2005 to October 1, 2005).

According to the information provided, three officials out of 11 who had no higher education as on the day of coming into force of the Contested Provision initiated studies, but seven officials continued studies. However, the Applicant has not mentioned that she has any objective reasons that would hamper her initiating studies in the above mentioned term. The Constitutional Court recognizes that this term is deemed to be reasonable and compatible with the principle of legal security because a person is provided with a sufficient term for initiation of studies.

The requirement of higher education is restrictive insofar as it is related with the necessity to a considerable amount of time and resources. In this situation, what has been established in Article 21 of the Bureau Law is of great importance, namely, in the case of a Bureau official or employee who successfully attends an educational facility in order to improve his/her knowledge in the line of his/her duties, while continuing to perform his/her duties, the Bureau shall pay one half of the annual tuition costs, as well as what has been established in Article 22 of the Bureau Law, namely, the Bureau officials and staff members shall be entitled to annual vacation in accordance with the Bureau vacation schedule and a Bureau official or staff member shall be paid a vacation benefit in the amount of a month's salary.

Hence it is possible to conclude that it was not planned to implement the mandatory requirement by dismissing the officials. The transitional period was established in order to achieve that those persons who fulfilled the duties of an official of the Bureau would have an opportunity to comply with the mandatory requirement. By means of the Contested Provision, a person is offered an opportunity to choose more lenient consequences out of all potential consequences, namely, acquisition of education.

The Contested Provision has been implemented in order to ensure a more lenient transition to the new area of regulation – so that persons who have no higher education could acquire it in a certain time period and they would not have to leave the

work at the Bureau. Consequently, the task of the Contested Provision is to establish a transition from the old regulation to the new requirements in accordance with the principles of a law-governed State. The Contested Provision is directed towards ensuring of an adequate functioning of the Bureau, as well as to protection of the interests of those persons who worked as officials of the Bureau on the date of coming into force of the amendments to the Bureau Law. Whilst those persons who did not want to acquire higher education had to accept dismissal from the work at the Bureau.

The Constitutional Court holds that the mandatory requirement of higher education and the period established for acquisition of higher education does not prohibit a person to choose a profession that would fit to his or her skills and qualification not only in the private, but also in the public sector. The restriction under consideration in this case is related with the officials of the Bureau who ensure fulfilment of the functions of the Bureau and are responsible for it, especially – the heads of special departments. Consequently, the mandatory requirement of higher education is related to the positions with specific functions and tasks. The Constitutional Court has already indicated that the restriction must be related with the character and respective tasks to be fulfilled by the employee of the respective position (*see: Judgment of March 22, 2005 by the Constitutional Court in the case No. 2004-13-0106, Para 19*).

**15.4.** The Constitutional Court takes into account the arguments of the Applicant regarding the fact that a draft law on long service pensions for officials of the Bureau has been elaborated, but it simultaneously admits that the presence of the draft law gives no ground for the Applicant to rely on such regulation in the future. The presence of the draft law does not imply that it shall be adopted. Moreover – adopted in exactly the same wording, which is favourable for the Applicant.

**Consequently, the Contested Provision, which restricts the rights established in Article 106 of the Satversme, has an objective and legitimate objective and it complies with the principle of proportionality and Article 91 of the Satversme.**

## **The Substantive Part**

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

**holds:**

**The second, third and fourth sentence of Para 7 of the Transitional Provision of the Law on Corruption Prevention and Combating Bureau complies with Article 91 and Article 106 of the Satversme.**

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding Judge

G.Kūtris