THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, October 18, 2007

in case No. 2007-03-01

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 the Latvian National Human Rights Office and constitutional complaint of Andrejs Lepse,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Item 1 of Section 16, Item 8 and 11 of the first part of Section 17, Sections $28.^{1}$ and $19.^{2}$ of the Constitutional Court Law,

on September 18, 2008, at the Court session in writing examined the case

"On Compliance of the Words "for an Unlimited Term" of Part 1 of Section 7 of the Constitutional Court Law with Article 83, Part 1 of Article 91 and Part 1 of Article 101 of the Satversme (Constitution) of the Republic of Latvia".

The Constitutional Court has established:

1. On June 5, 1996, the Saeima (Parliament) of the Republic of Latvia (hereinafter – Saeima) passed the Constitutional Court Law, which came into force on June 28, 1996.

The fourth part of Section 7 of the Constitutional Court Law provides: "If a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term, is confirmed a justice of the Constitutional Court, he/she, after the expiry of the term of office of a justice of the Constitutional Court, shall have the right to return to his/her former position, unless he/she has reached the age-limit allowed for a judge to hold an office."

2. The Latvian National Human Rights Office (under Para 2 of the Transitional Provisions of the Ombudsman Law, the legal successor of the Latvian National Human Rights Office is the office of the Ombudsman) demands, in its application, to recognize the words "for an unlimited term" of the fourth par of Section 7 of the Constitutional Court Law as being incompliant with Article 83, the first sentence of Article 91 and the first part of Article 101 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – Satversme).

The Latvian National Human Rights Office (hereinafter – Ombudsman) indicates hat the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law confers the rights to return to the former position only to those justices who, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term. However, one has to take into account the fact that as a justice of the Constitutional Court can also be confirmed a justice who pursuant to the Law "On Judicial Power" has been approved to the office of the judge in a court of general jurisdiction for a restricted term of office or who has been approved to the office of a judge of this court for a definite term.

The Ombudsman expresses a viewpoint that, disregarding the fact whether a judge has or has not been confirmed to the office of a judge in a court of general jurisdiction for an unlimited term, all judges of courts of general jurisdiction whose term of office at the Constitutional Court has expired, enjoy equal and comparable conditions. Hence it would be necessary to guarantee the rights to return the former position to all judges of courts of general jurisdiction that are being confirmed justices of the Constitutional Court.

It is indicated in the application that depending on the fact whether a person has been approved to the office of judge for an unlimited term, the words "for an unlimited

term" of the fourth part of Section 7 of the Constitutional Court Law provide for different rights of persons. For those who have been judges for an unlimited term before confirming a justice of the Constitutional Court, the legislator has preserved the rights to return to the former position and continue holding the position of a judge. Whist the legislator does not provide for such rights to those who were not confirmed for an unlimited term. Hence the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law provide for a different attitude towards persons who enjoy equal and comparable conditions, however there is no objective and reasonable grounds for such attitude.

In this case, according to the Ombudsman, the principle of legal equality shall be analysed jointly with the first part of Article 101 of the Satversme, which provides that every citizen of Latvia has the rights to hold a position in the civil service. The above Article of the Satversme also protects the rights the rights of each citizen to hold and continue holding the position of a public prosecutor and a judge.

The application contains a viewpoint that the first part of Article 101 of the Satversme, together with the first sentence of Article 91 of the Satversme, requires that the principle of legal equality were observed when preserving the right to hold the office of a judge. Although it does not follow from the first part of Article 101 of the Satversme that persons are entitled to occupy a certain position, still if the legislator has conferred the rights to one group of persons to continue the civil service, then such rights shall also be conferred to that group of persons who enjoy equal and comparable conditions if compared to the first group. The words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law does not provide for it, and therefore is in conflict with the first part of Article 101 of the Satversme.

The Law "On Judicial Power" does not prohibit a justice of the Constitutional Court the possibility to stand for a position one more in courts of general jurisdiction; however one has to take into account the fact that when a justice repeatedly stands for a position in the judicial system one can violate the principle of independence of judges. Moreover, at present there is no normative regulation regarding the way how a justice of the Constitutional Court, after expiry of the term of office could continue the carrier of a judge.

It is also indicated in the application that the legislator has not resolved the issues of carrier development for judges and has left this task to the persons who are authorized to make decisions regarding progression of a judge in the judicial system. Hence the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law also jeopardized independence of judges and hence is in conflict with Article 83 of the Satversme.

3. Andrejs Lepse (hereinafter – Applicant), in his constitutional complaint on compliance of the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law with Articles 83, 91 and the first part of Article 101 of the Satversme, indicates that he fully shares the opinion of the Ombudsman.

The Applicant indicates that in 1990 he was approved a justice of the Supreme Court of the Republic of Latvia for the term of 10 years. Under Para 5 of the Resolution of December 15, 1992 by the Supreme Court of the Republic of Latvia "On Order of Coming into Force of the Law of the Republic of Latvia "On Judicial Power"", the authority of the justices of the Supreme Court were not revised and the issue regarding their confirmation for an unlimited term shall be revised in 2000.

A. Lepse was confirmed a justice of the Constitutional Court on November 14, 1996. According to the Applicant, then in the Saeima, the Supreme Court and the Ministry of Justice there existed a viewpoint that confirmation of a justice of the Supreme Court to the position of a justice of the Constitutional Court for a definite term does not automatically absolves him from the position of a judge but suspends his authorization in the position of a justice of the Supreme Court, namely, the justice can return to the position of a judge of the Supreme Court for the remaining term.

Soon after confirmation of A. Lepse a justice of the Constitutional Court, the Chief Justice of the Supreme Court has changed his opinion and asked to dismiss A. Lepse from the position of a justice of the Constitutional Court. The Saeima executed the requirement on January 23, 1997. The Applicant has submitted applications to the Supreme Council on April 2006 and expressed his will to return to the position of a justice in the Supreme Court, but the Chief Justice has indicated that there are no

vacancies the Chamber of Criminal Cases of the Supreme Court and the Department of Criminal Cases of the Senate.

According to the Applicant, the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law has no legitimate objective and it does not comply with the principle of proportionality, as well as prohibits a submitter of the constitutional complaint to exercise the rights to continue the professional carrier of a judge. The constitutional complaint contains a reference to the 27 year standing of A. Lepse as a judge – he has been working as a justice of a district court, the Chief Judge of a district court, a Justice of the Supreme Court having the 1st category of qualification, the President of the Chamber of Criminal Cases of the Supreme Court and finally a Justice of the Constitutional Court. A. Lepse has also been elected the President of the Latvian Judge's Association.

4. The institution that passed the contested act – **the Saeima** – indicates in its response notes that the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law comply with Articles 83, 91 and the first part of Article 101 of the Satversme.

The Saeima indicates that one can distinguish between three different situations, namely, application of this norm to justices who are approved according to the Constitution of the Latvian SSR, to the former justice of the Constitutional Court A. Lepse and justices that are appointed or confirmed according to the Satversme and the Law "On Judicial Power".

There is no reason to apply the regulation of Articles 82 and 101 of the Satversme to the justices that are before the Satversme fully came into force. Moreover, the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law at present are not applicable to and do not relate to a judge who is appointed according to those regulatory enactments that were effective before coming into force of the Satversme. Neither there is any legal basis to discuss the provisions of the above norm regarding the rights to return to the position, wherefrom a person has been dismissed by a decision of the Saeima.

According to the Saeima, the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law, in fact, explain only one situation – whether a justice that was confirmed to a position of a judge in a court of general jurisdiction for an unlimited term has rights to work as a judge after the expiry of the term of office of a justice of the Constitutional Court. Exclusion the words "for an unlimited term" from the fourth part of Section 7 of the Constitutional Court Law would not change the provision, because it contains a reference to approval of a judge. Taking into account the terminology used in laws, justices are "appointed" to the position for a definite term (with a restriction of the term of office), but "approves" – without restriction of the term. Whereas, "election" of justices before coming into force of the Law "On Judicial Power" in fact can be regarded as appointing of justices for a definite term (with a restriction of the term of office). Under Article 85 of the Satversme, the Saeima shall confirm the appointment of judges "for the term provided by law".

The Saeima expresses a viewpoint that the above provision does not restrict the basic rights of neither of the parties. Even if the law would not include such norm, none of justices appointed for a definite term and confirmed a justice Constitutional Court could not automatically return to the former position after the expiry of the term of office of a justice of the Constitutional Court.

If it happens that, for example, a justice of a district court who has been appointed for the term of three years returns to the position of a judge, the basis of activities of this justice would be contestable since the initial term of appointment would have came to an end, but the Saeima has not reappointed this person for a definite term, nor has it approved it for an unlimited term. Hence there would a contradiction emerge with the first sentence of Article 84 of the Satversme, which provides that only the Saeima decides on appointing and removing judges.

The Saeima indicates that it would be wrong to consider that all justices of courts of general jurisdiction enjoy completely equal and comparable conditions because some judges are appointed for a definite term, while others – without restriction to the term of office. Hence the first sentence of Article 91 of the Satversme is not applicable in this case.

As it follows from the response note and information provided by the Saeima: if a justice who is appointed to the position of a judge for a definite term and then is confirmed a justice of the Constitutional Court, would be, by law, conferred the rights the automatically return to the previous position of a judge after the expiry of the term of office of a justice of the Constitutional Court, such provision would be formal and it would not guarantee confirmation of a justice for ever because this judge should observe all procedures established in regulatory enactments necessary for confirmation for ever.

The Saeima indicates that no rights to automatic reinstatement if the term of office has expired follow from Article 101 of the Satversme. And even then, if such rights would follow thereof, they would not guarantee a desirable result – confirmation for ever. Moreover, the rights to continue the civil service shall be implemented also without returning to the former position.

When supplementing the opinion expressed in the response note, the Saeima indicates that the law does not require to dismiss of a justice if he or she has been confirmed a justice of the Constitutional Court. It is also testified by the present practice when the justice Ilze Skultāne, the justice Aija Branta and the justice Uldis Ķinis were confirmed to the position of a justice of the Constitutional Court. However, in the case of the justice A. Lepse, the Saeima, according to a suggestion of the Chief Justice of the Supreme Court, has made an opposite decision. Legal norms do not require or prohibit the Saeima making such decision.

When answering to the question whether Item 2 of Section 82 of the Law "On Judicial Power" can be applicable to dismissal of a justice also in cases if the justice continues working in another position of a judge, the Saeima indicates that the above legal norms is to be considered jointly with Section 86.[1] of the above Law and the fourth part of Section 7 of the Constitutional Court Law. Item 2 of Section 82 of the Law "On Judicial Power" is not applied to these special norms.

The Saeima indicates that the law does not prohibit confirming a justice who has been appointed with restriction to the term of office and then, during the term of office, confirmed a justice of the Constitutional Court to a position of a judge for an

unlimited term. In this case, the decision of the Saeima shall be drawn up so that it would disclose specific features of a particular situation.

Finally, the Law "On Judicial Power" does not provide for suspension of the term of office of a judge. If such issue has not been deliberately regulated then the Law does not provide for suspension of the term of office of a judge. No such notion has been used in the Law. Hence in all cases one shall take into account the term of office of a judge, which follows from the decision by the Saeima.

5. The Chief Justice of the Supreme Court of Republic of Latvia, Andris Guļāns supports the viewpoint of the Saeima and holds that there is no reason to apply the regulation of Articles 83 and 101 of the Satversme to the judges that were appointed to the position before full coming into force of the Satversme.

Item 2 of Section 82 of the Law "On Judicial Power" must be applied to the case of A. Lepse, which provides that judge shall be removed from office in connection with reaching the maximum age for fulfilling the office of a judge as specified by law. By recognizing the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law as being valid, no possibility to automatically return to the position of a justice of the Supreme Court would not be guaranteed to the Applicant, since anyway one would have to observe the order established by law.

Justices of district (city), who are appointed by the Saeima for the term of three years according to Section 60 of the Law "On Judicial Power", can not be candidates for the position of a justice of the Constitutional Court since their qualification and compliance to the requirements of the position of a judge is still undergoing assessment.

If the justice of the Constitutional Court, under the Constitutional Court Law, is entitled to return to the former position in the Supreme Court, then the Chief Justice and the administration of the Supreme Court are obligated to ensure observance of these rights by timely planning the budget, equipping of premises and work place, providing numerical structure of personnel and vacancies to the position of a judge.

6. The Ministry of Justice, when answering the questions set by the Constitutional Court, indicates that the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court are closely related with the legal regulation included in the second part of Section 60 of the Law "On Judicial Power". However, it has not been taken into account that, according to the legal norms of normative acts of the so-called transitional period, namely, under Article 152 of the Constitution of the Latvian SSR, justices were appointed to the position for the term of ten years, but not for an unlimited term.

The Ministry of Justice explains that the majority of justices, who, according to regulatory enactments of the transitional period, were appointed for the term of ten years, were confirmed to the position of a judge for ever after enactment of the Law "On Judicial Power". However, no such decision was made in relation to some justices due to objective reasons. According to the Ministry of Justice, an objective reason is holding of office of a justice of the Constitutional Court during a certain period of time.

Simultaneously, the Ministry of Justice expresses a viewpoint that confirmation to the position of a justice of the Constitutional Court can not cause loss of the status of a judge but it can suspend holding of an office in a court of general jurisdiction or an administrative court. After the expiration of the term of office of a justice of the Constitutional Court the term of office in courts of general jurisdiction or an administrative court is automatically restored for the remaining term of office when returning to the position in the above institutions. Whereas, after the expiration of the term of office, according to the second part of Section 60 of the Law "On Judicial Power" one shall decide on the issue regarding reinstatement of a judge for an unlimited term or appointing to the position of a judge for the period of up to two years.

Having performed interpretation of the norms of the Constitutional Court Law, the Ministry of Justice concludes that the objective and sense of the words "for an unlimited term" of the second part of Section 7 of the Constitutional Court Law is to ensure that after the expiration of the term of office of a justice of the Constitutional

Court high-qualified professional judges return to the former positions disregarding the fact whether a justice was appointed for the term of ten years before coming into force of the Law "On Judicial Power" or confirmed for an unlimited term according to the second part of Section 60 of the Law "On Judicial Power". As to the justices, who were approved to the position for the period of ten years according to the legal norms of regulatory enactments of the transitional period, one does not have to assess compliance of the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law with Article 83, the first sentence of Article 91 and the first part of Article 101 of the Satversme, but to interpret them adequately.

The Ministry of Justice concludes that, taking into consideration the objective and sense of the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law, one may establish a legal gap, which should be filled by means of legislation, without restricting the rights to hold an office of a justice after the expiry of the term of office of a justice of the Constitutional Court also in case if a justice has been appointed to the position for a definite period of time.

When concretizing the answers, the Ministry of Justice informs that there are no decisions made in relation to the justice, who has been confirmed a justice of the Constitutional Court, wherewith the status of the justice would be regulated in any other position of a judge for the period when he or she holds the office of a justice of the Constitutional Court. Moreover, the effective regulatory enactments neither provide for it. As to a judge that has been confirmed to the position of a justice of the Constitutional Court, there are no decisions made regarding dismissal of the judge from the former position in courts of general jurisdiction or an administrative court.

7. The Latvian Judge's Association draws attention to the first part of Section 4 of the Constitutional Court Law, which provides that the Plenum of the Supreme Court may select candidates for the office of a justice of the Constitutional Court only from among judges of the Republic of Latvia. The above provision of the Law does not restrict the rights of judges that are appointed for a definite term to stand for the position of a justice of the Constitutional Court and be confirmed to the position for ten years.

The Latvian Judge's Association does not agree to the viewpoint of the Ombudsman that after the expiry of the term of office of a justice of the Constitutional Court a judge that has been confirmed to the position for an unlimited term and a judge that has been confirmed to the position for a definite term enjoy equal and comparable conditions.

A judge, who has previously been confirmed to the position for an unlimited term, according to the rights guaranteed by the fourth part of Section 7 of the Constitutional Court Law may return to the former position. However, a judge of a court of general jurisdiction confirmed to the position for a definite term after ten years spend working in the Constitutional Court can not return to the former position, because the term established has came to an end and he has lost his former status of a judge.

Taking into account the fact that, under Article 84 of the Satversme, only the Saeima shall confirm justices to the position, it is impossible that the Saeima substitutes confirmation of a judge to the position or the established term is filled by years spent in the position of a justice of the Constitutional Court. For the judge, the term of a judge of a court of general jurisdiction has expired during the term of office of a justice of the Constitutional Court, to be able to continue working as a judge in any of the courts of Latvia, the Saeima must re-confirm him or her to the position of a judge.

Moreover, the Latvian Judge's Association holds that the contested provision in the established order does not jeopardize independence of justices and complies with the Satversme.

8. Assoc. Prof of the Faculty of Law of the University of Latvia, Dr. iur. Kristīne Strada-Rozenberga indicates that that the application of the Ombudsman contains a nonconformity between the claim established therein, i.e. the demand to recognize the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law as being in conflict with the Satversme and motivation of the application. Exclusion of the above words from Section 7 of the Constitutional Court Law would not change anything because, according to the terminology of the Law "On

Judicial Power", the words "confirms to the position" are not applicable to the persons that are appointed as justices according to the Constitution of the Latvian SSR.

It is incorrect to consider that all justices of courts of general jurisdiction enjoy equal and comparable conditions. Since a part of the judges are confirmed to the position for an unlimited term, whereas others – for a definite term, then there exists a difference between them. The Applicant has not contested the difference between terms of office of judges established in the Law "On Judicial Power".

The fourth part of Section 7 of the Constitutional Court Law shall not be applicable to the former justice of the Constitutional Court A. Lepse. This persos has been dismissed on the basis of a special resolution. Hence "automatic" reinstatement of a person that has been dismissed is impossible.

However, as long as it is possible to appoint justices for a definite term, it would necessary to regulate, by law, a situation where a person would find him/herself, who has previously been appointed a justice in a court of general jurisdiction, after the expiry of the term of office of a justice of the Constitutional Court. There is no reason to apply to such person, if he or she wants to continue working in a court of general jurisdiction, the same requirements and procedure that are applied to persons who start the carrier of a judge.

The Constitutional Court holds that:

9. The application of the Ombudsman and the constitutional complaint of A. Lepse contains a demand to assess compliance of the words "for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law with Article 83 and the first part of Articles 91 and 101 of the Satversme.

It follows from the application of the Ombudsman and the constitutional complaint of A. Lepse that in fact it is contested that the fourth part of Section 7 of the Constitutional Court Law guarantees the rights to the former position of a judge only for a person who, under the Law "On Judicial Power" has been confirmed to the position of a justice for an unlimited term.

The duty of the Constitutional Court is to solve disputes on compliance of the act of lower legal force with the norms of higher legal force. The dispute is solved both in cases if the challenged act is declared to be in compliance and in cases when it is declared as unconformable with the norm of higher legal force (*see: Judgment of February 22, 2002 by the Constitutional Court in the Case No. 2001-06-03, Para 2.2. of the Establishing Part).*

When assessing cases with regard to constitutional complaints of persons, the duty of the Constitutional Court is to assess compliance of a legal norm, which in fact has violated basic rights of a person, with norms of a higher legal force.

If a person has incompletely identified the norm that has violated his or her basic rights or has indicated the norms that are closely related to the contested legal norm, the duty of the Constitutional Court is to assess *ex officio* compliance of all legal norms that have caused violation of the rights of person indicated in the application with the norms of a higher legal power (*see: Judgment of May 2, 2007 by the Constitutional Court in the case No. 2006-30-03, Para 8*).

Hence, in the frameworks of this case, one has to assess compliance of the words "a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law with the legal norms of a higher power.

10. The first part of Article 101 of the Satversme provides: "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.

The civil service is a public legal position of persons who are assigned to fulfil a task of the State (*see: Dišlers K. Ievads administratīvo tiesību zinātnē. Rīga: Tiesu namu aģentūra, 2002, pp. 153*). The work in civil service differs from that of the social sector in both, juridical aspects of founding legal relations and objective of work that is closely related to fulfilment of State tasks. Persons fulfilling public service are in special relations with the State, namely, the rights of these persons are restricted and they are laid under special obligations.

To determine whether persons belong to the State service in the understanding of Section 101 of the Satversme, one shall assess both – the functions, which are carried out by persons, when performing their duties, and the restrictions, which have been determined to them in connection with the duties of their post (*see: Judgment of April 11, 2006 by the Constitutional Court in the Case No. 2005-24-01, Para 7*).

11. If there is doubt regarding the content of the basic rights established by the Satversme, *inter alia* – at what extent one can interpret the notion "civil service" included in the first sentence of Article 101 of the Satversme, bearing in mind that the objective of the constitutional legislator was not to oppose the norms of human rights established in the Satversme with international norms of human rights.

A possibility and even a necessity to apply international norms for interpretation of the basic rights established in the Satversme *inter alia* follow from Article 89 of the Satversme, which provides that the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international ones. Besides Chapter VIII of the Satversme "Fundamental Human Rights" was adopted after Latvia had undertaken the above international liabilities (*see: Judgment of August 30, 2000 by the Constitutional Court in the case No. 2000-03-01, Para 5 of the Establishing Part, and Judgment of January 17, 2002 in the case No. 2001-08-01, Para 3 of the Establishing Part*).

International liabilities of Latvia in the field of human rights influence interpretation of fundamental rights and the principle of the law-governed state. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Constitutional Court*).

Hence, when interpreting the norms of basic rights established in the Satversme, one has to take into account international liabilities of Latvia in the field of human rights.

12. The rights to fulfil a civil service are included in several international documents on human rights.

The second part of Article 21 of the UNO Universal Declaration of Human Rights provides that "Everyone has the right to equal access to public service in his country." Whilst Article 25 of the UNO International Covenant on Civil and Political Rights provides that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions to have access, on general terms of equality, to public service in his country.

The notion "public service" used in Article 25 of the International Covenant on Civil and Political Rights is not defined in the text of the Covenant. As it is recognized in the practice of application of the Covenant, public service includes all public positions of legislative, executive and judicial power institutions (*see: Nowak M. U. N. Covenant on Civil and Political Rights: CCPR Commentary. Kehl, Strasbourg, Arlington: N. P. Engel, 1993, pp. 451*).

13. One can agree to the opinion of the Ombudsman that the rights to fulfil civil service, as established in the first part of Article 101 of the Satversme, are not limited only by the rights to hold an office of a civil servant or a similar position in public administration (*see: case materials, pp. 3*). Both, international liabilities of Latvia and the first part of Article 101 of the Satversme include the rights to fulfil public service also in the position of a public prosecutor or a justice.

The rights to fulfil public service include the rights to equal access to the civil service, the rights to continue civil service unless there exists a reasonable and objective grounds for dismissal from the civil service. These basic rights also regulate separate conditions of fulfilling public service, for instance, promotion, dismissal from fulfilment of duties of a position (*see: case materials, pp. 4*).

The basic rights established in Article 101 of the Satversme are not absolute, as Article 101 of the Satversme includes the condition "in the manner prescribed by law". Thus the Satversme determines that the way of employing the right shall be established by law (*see: Judgment of August 30, 2000 by the Constitutional Court in the case No. 2000-03-01, Para 1 of the Establishing Part*). It has been recognized in the theory of constitutional law that a constitution may leave determination of the content and limits of the basic rights to the legislator. "In such case the basic rights are valid "according to the criteria of law" [..] Authorization of regulation of the legislator may be positive or negative: positive as the rights to determine more precisely the contents of the basic rights; negative as authorization to restrict the basic rights" (*Deutsches Staatsrecht. Dr. Theodor Maunz und Dr. Reinhold Zippelius. München: C.H.Beck'sche Verlagsbuchhandlung, 1991, S. 158 – 159*).

14. The rights to fulfil the civil service do not guarantee a person the rights to occupy a certain position in the civil service. The first part of Article 101 of the Satversme generally provide for the rights of a person to continue fulfilling of the civil service unless there exists a reasonable and objective grounds for dismissal from the civil service. However, the rights to continue fulfilling of civil service shall be implemented according to the order established by law. First of all, a legislator is the one that established the balance of exercising and implementation of these rights.

As to the justices of the Constitutional Court, whose term of office has expired, the legislator has not provided that they are not entitled to continue civil service.

The fact that the legislator has not provided for a special procedure for the justices of the Constitutional Court for continuation of civil service after the expiry of the term of office does not *per se* violate the basic rights established in the first part of Article 101 of the Satversme. The rights to continue civil service in another position by standing for a position according to a general order are preserved.

The fact that the fourth part of Section 7 of the Constitutional Court Law provides for a different order of continuation of the civil service for the justices of the Constitutional Court is the issue of legal policy and it falls within the competence of the legislator. Regulating of these issues could be useful. However, absence of a

separate regulation *per se* does not violate the basic rights established in the first part of Article 101 of the Satversme.

Hence the words "a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term" included in the fourth part of Section 7 of the Constitutional Court Law comply with the first part of Article 101 of the Satversme.

15. The fact that establishment of a special order for continuation of civil service for separate groups of persons is the issue of political determination of the legislator does not relieve the legislator of the responsibility to observe the basic rights and general legal principles established in the Satversme. Particularly in these cases the legislator is obligated to observe the established principle of legal equality.

The principle of legal equality was established in the Satversme already on February 15, 1922 by providing in Article 82 of the Satversme that "All human beings in Latvia shall be equal before the law and the courts". By the amendments of October 15, 1998 to the Satversme and, in particular, to Article 82, the constitutional legislator included the principle of legal equality into the first sentence of Article 91 of the Satversme.

Article 25 of the International Covenant on Civil and Political rights emphasizes in particular that each citizen every citizen shall have the right and the opportunity, without any of the distinctions to have access, on general terms of equality, to public service in his country.

The UNO Human Rights Committee has established that these rights do not provide each citizen with a guaranteed position in the civil service (*see: Communication No. 552/1993; Wieslaw Kall v. Poland. United Nations. Report of the Human Rights Committe. Volume II United Nations. New York, 1999, pp. 105-112*). However, if the legislator has conferred certain rights to one group of person to continue fulfilling civil service, then the same rights must be conferred to those groups of persons who enjoy equal and comparable conditions if compared to the first group.

Hence, it is necessary to verify whether the words "a person, who pursuant to the Law "On Judicial Power" of the fourth part of Section 7 of the Constitutional Court Law comply with the first sentence of Article 91 of the Satversme.

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

16.1. The Ombudsman asked to assess compliance of the contested norm with the first sentence of Article 91 of the Satversme, whereas A. Lepse has included into the claim the demand to assess its compliance with the entire Article 91 of the Satversme.

Although the constitutional claim of A. Lepse includes a demand to assess compliance of the contested norm with the entire Article 91 of the Satversme, it still follows from the constitutional complaint that one has to assess compliance of the contested provision with the first sentence of Article 91 of the Satversme, which guarantees equality of all persons. This means that, in the frameworks of this case, one has to analyze the contested norm in the context of the principle of equality, rather than that of prohibition of discrimination.

16.2. The principle of legal equality does not prohibit public institutions to pass such norms that permit without reasonable grounds different attitude towards persons who enjoy equal and comparable conditions (*see: Judgment of April 3, 2001 by the Constitutional Court in the case no. 2000-07-0409, Para 1 of the Establishing Part*). The principle of equality shall guarantee the existence of unified legal procedure. Namely, its task is to ensure that the demand of the law-governed state of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law (*see: Judgment of September 14, 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.1*). However such unity of legal order does no imply leveling because "Equality allows a differentiated approach,

if it can be justified in a democratic society" (*see: Judgment of June 26, 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 4 of the Establishing Part*).

Hence the principle of equality permits and even requires a different attitude towards persons who enjoy different conditions, as well as permits a different attitude towards persons who enjoy equal conditions if this has an objective and reasonable grounds (*see: Judgment of April 3, 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Establishing Part*).

16.3. In order to assess whether the contested provision complies with the first sentence of Article 91 of the Constitution, one has to establish:

first, whether there are persons (groups of persons) who enjoy equal and comparable conditions;

second, whether the contested norm provides for an equal or different attitude towards these persons;

third, whether such attitude has an objective and reasonable grounds, namely, whether there exists a legitimate objective and whether the principle of proportionality is observed.

A different attitude has no objective and reasonable grounds if it has no legitimate objective or it is not proportionate (commensurate) with the means selected and objectives set (*see: Judgment of December 23, 2002 by the Constitutional Court in the case No. 2002-15-01, Para 3 of the Establishing Part*).

17. In order to establish what persons or groups of persons enjoy equal and, according to certain criteria, comparable conditions, it is necessary to find the common feature of this group (*see: Judgment of June 14, 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14*).

17.1. Both, the Ombudsman and the Applicant A. Lepse hold that those justices of the Constitutional Court who have ceased fulfilling the respective duties but have previously been justices in courts of general jurisdiction and an administrative court enjoy equal and comparable conditions disregarding the fact whether a judge in the

respective court has or has not been approved to the position of a justice without restrictions to the term of office.

17.2. One can agree to the opinion of the Ombudsman of A. Lepse that, according to the context of the fourth part of Section 7 of the Constitutional Court Law, equal and comparable conditions are enjoyed by those justices of the Constitutional Court who have ceased fulfilling the duties of the respective position and have previously been justices in courts of general jurisdiction or administrative courts. Enjoyment of equal and comparable conditions affects several rights of these justices, including the rights to continue civil service.

The justices of the Constitutional Court, whose term of office has expired, can be divided into three categories:

1) justices of the Constitutional Court who before confirmation to this position were justices in courts of general jurisdiction or administrative courts confirmed to the position for an unlimited term according to the second part of Section 60, Sections 61 and 62 of the Law "On Judicial Power";

2) justices of the Constitutional Court who before confirmation to this position were justices in courts of general jurisdiction or administrative courts confirmed to the position for a definite term according to the first or the second part of the Law "On Judicial Power";

3) justices of the Constitutional Court who before confirmation to this position were justices in the Supreme Court elected to the position of a justice according to Article 152 of the Constitution of the Latvian SSR before coming into force of the Law "On Judicial Power" and may continue fulfilling their duties after coming into force of the Law "On Judicial Power".

The Constitutional Court Law provides that all justices of the Constitutional Court are equal in their rights. The Constitutional Court Law does not provide for separate rights to the justices of the Constitutional Court depending on their former carrier, including the term of office of the justices in other courts.

Hence, the justices of the Constitutional Court, whose term of office has expired and who have previously been justices in courts of general jurisdiction or administrative courts, enjoy equal and comparable conditions.

18. In this case, there is no dispute regarding the rights of those justices of the Constitutional Court to return to their former positions in a court of general jurisdiction or an administrative court, who were confirmed to the position for an unlimited term. These rights are established by the contested norm.

19. One can consider as the second group those justices of the Constitutional Court who, before confirmation to this position, were appointed to another position of a justice for the term of three years or for a repeated term – for two years.

Under the first part of Section 60 of the Law "On Judicial Power", Judges of a district (city) court shall be appointed to office by the *Saeima*, upon the recommendation of the Minister for Justice, for three years. Whereas, the second part provides that After a judge of a district (city) court has held office for three years, the *Saeima*, upon the recommendation of the Minister for Justice, and on the basis of an opinion of the Judicial Qualifications Board, shall confirm him or her in office, for an unlimited term of office, or shall re-appoint him or her to office for a period of up to two years. After the expiration of the repeated term of office, the *Saeima*, on the recommendation of the Minister for Justice, shall confirm in office a judge of a district (city) court for an unlimited term of office.

The Constitutional Court Law does not prohibit nominating and confirming such judges to the position of a justice of the Constitutional Court if they meet the requirements established for a justice of the Constitutional Court.

20. The third group is formed by justices who in 1990, according to Article 152 of the Constitution of the Latvian SSR were elected to the position of a justice of the Supreme Court for ten years. In 2000, these justices ceased their work in the judicial system, whilst others, according to the Law "On Judicial Power" and having regard to

the proposition of the Chief Justice of the Supreme Court were confirmed to the position for an unlimited term.

Justices were confirmed to the position for an unlimited term according to Para 5 of the Resolution of December 115, 1992 by the Supreme Council of the Republic of Latvia "On Order of Coming into Force of the Law of the Republic of Latvia "On Judicial Power"", which provided that the term of office shall be preserved up to the end of the term for those justices, whose term of office has not expired after coming into force of the Law "On Judicial Power".

The Applicant A. Lepse, in the frameworks of the case under examination is the only representative of this group of persons.

21. In the contested norm, the legislator has provide for special rights for the persons, who, according to the Law "On Judicial Power", were confirmed to the position of a justice for an unlimited term. These persons are entitled to return to the former position, unless he/she has reached the age-limit allowed for a judge to hold an office

The contested norm does not establish such rights for those justices who were appointed to the position of a justice for a definite term.

Hence, the contested norm provides for a different attitude towards the justices of the Constitutional Court regarding their rights to return to the former position, during fulfilling of which they were confirmed to the position of a justice of the Constitutional Court.

22. In order to determine whether such different attitude has an objective and reasonable grounds, one has to establish whether it has a legitimate objective.

22.1. The legitimate objectives that can justify the different attitude towards groups of persons that enjoy equal and comparable conditions are established in Article 116 of the Satversme (*see: Levits E. Par tiesiskās vienlīdzības principu // Latvijas Vēstnesis, May 8, 2003, No. 68*).

The responsibility to present and justify the legitimate objective of the different treatment falls, during the proceedings of the Constitutional Court, first or all, upon the institution that has passed the contested act, in this case, the Saeima. The Saeima has not mentioned the legitimate objective in the response note that would justify the different treatment established by the contested norm towards the justices of the Constitutional Court regarding their rights to continue working as a justice in courts of general jurisdiction or administrative courts after the expiry of the term of office.

The Ombudsman and the Applicant A. Lepse holds that the different attitude has no legitimate objective.

22.2. The condition that the Saeima has not indicated the legitimate objective of the different treatment still does not relieve the Constitutional Court form the responsibility to find it out.

The case materials do not show that the different attitude would be established with the objective to protect the democratic State regime, social security, welfare or morality.

22.3. The legitimate objective, due to which it is necessary to establish certain requirements for the persons who stand for positions of justices, and the order, according to which persons are being confirmed to the position of a justice, is the rights of other persons to a fair court, as provided by the first sentence of Article 92 of the Satversme.

The rights to a fair court are one of the most important rights of persons (*see: Judgment of October 6, 2003 by the Constitutional Court in the case No. 2003-08-01, Para 1 of the Establishing Part*). When analysing the first sentence of Article 92 of the Satversme, the Constitutional Court has established that the notion "fair court" mentioned therein include two aspects, namely, "a fair court" as an institution of the judicial power that adjudicates a case, and "a fair court" as a commensurate and adequate process, during which a case is adjudicated.

Article 92 of the Satversme provides for both, the duty to form a proper judicial institution system and the duty to pass adequate procedural norms (*see: Judgment of March 5, 2002 by the Constitutional Court in the case No. 2001-10-01, Para 2 of the*

Establishing Part). The system of institutions formed by the State shall be independent and competent. These requirements are applicable to the judicial system in general, as well as to each person who wants to become a civil servant within the judicial system.

The rights of persons to a competent court, as established in the first sentence of Article 92 of the Satversme, *inter alia* include a requirement of a professional court. Justices must be professionally able to fulfil their duties, namely, a justice must have the necessary knowledge of law and training experience as a lawyer (*see: Levits E. Rakstu krājums administratīvajiem tiesnešiem. Rīga: Publisko tiesību institūts, 2003 pp., 157 – 158*).

Hence, the contested norm has a legitimate objective.

23. In order to justify the different treatment, its legitimate objective must comply with the principle of proportionality.

Proportionality in the context of the principle of legal equality implies that the benefit that is gained by the society by means of a different attitude towards comparable situations must be greater than the loss that these persons, who enjoy the most unfavourable of the both situations, incur (*see: Levits E. Par tiesiskās vienlīdzības principu // Latvijas Vēstnesis, May 8, 2003, No. 68*).

In order to establish whether the principle of proportionality has been observed, one has to investigate whether the means selected by the legislator are fit for reaching the legitimate objective, whether there exist more lenient means to reach the objective and whether the action of the legislator is commensurate or proportionate.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001-12-02, Para 3.1 of the Establishing Part*).

24. The legislator has considered that the contested norm reaches the objective set – to ensure the rights of other people to a competent court – by providing a

different attitude towards the justices of the Constitutional Court who were provided for a different term of office when confirming them to the position.

If a justice of the Constitutional Court, before his confirmation to the position, has been employed as a justice of other court for an unlimited term, he is entitled to return to the former position. Whilst, if a justice was appointed or elected to the former position of a justice for a definite term, he has not been conferred such rights by the legislator.

The fact whether the action of the legislator is fit for reaching the legitimate objective can be assessed from different aspects.

24.1. The Constitutional Court is an important constitutional institution of the public power, which may recognize as invalid also a legal norm passed by the legislator. Therefore it is important that persons with highest possible professional qualification are confirmed to the position of a justice of the Constitutional Court (*see: case materials, pp. 2 -3*).

One can agree to the opinion of the Ombudsman that it is essential that each judge of a court of general jurisdiction is interested to become a justice of the Constitutional Court and hence ensure that the best candidate possible is confirmed to the position of a justice of the Constitutional Court.

A person may work as a justice of the Constitutional Court not more than for ten years in turn. Therefore the fact whether a person agrees to become a candidate for the position of a justice of the Constitutional Court depends also on the fact what the guarantees will be after the expiry of the term of office of a justice of the Constitutional Court. A person who wants to become a justice usually takes into account stability and predictable development of the carrier that is offered by this position. Hence the rights to return to the former position after the expiry of the term of office of a justice of the Constitutional Court is a substantial guarantee for the fact that a justice of a court of general jurisdiction would agree to candidate for a position of a justice of the Constitutional Court.

Hence, it would be necessary to guarantee the rights to return to the former position to all justices of courts of general jurisdiction, who are confirmed to the position of a justice of the Constitutional Court.

24.2. There is no reason to consider that a justice of the Constitutional Court after the expiry of the term of office has lost his or her professional qualification and that he can not be conferred the rights to continue fulfilling civil service in the position of a judge without providing for a special order, according to which it is possible to return to the former position.

During the term of office of ten years in the Constitutional Court, which is also regarded as an institution of the judicial power that administers justice, (*see: Judgment of December 20, 2006 by the Constitutional Court in the case No. 2006-12-01, Para 9.2*) justices continue fulfilling their duties and consequently improve their professional qualification.

By observing the task of administering justice – to find a veritable and just solution of a case – a justice, in the frameworks of the case under examination, assesses the specific conditions. When interpreting and applying a law, he or she may only guide himself or herself by the law and his or her opinion, which depends on professional knowledge and skills of the justice, his or her understanding of legal and social processes, culture, mental look, political opinions and other factors (*see: Judgment of February 4, 2003 by the Constitutional Court in the case No. 2002-06-01, Para 2.4 of the Establishing Part).*

Consequently, qualification of a justice is a substantial guarantee of proper judicature. For instance, the Constitutional Court of the Republic of Lithuania has established that another guarantee of proper administration of justice by judges is their qualification: only persons who have life experience and high legal qualification may be appointed as judges. They must be of irreproachable reputation. The judge must feel greatly responsible for the way he administers justice, i.e. the way he performs the duty established to him by the Constitution (*see: Judgment of December 21, 1999 by the Constitutional Court of the Republic of Lithuania in the case No. 16/98*).

Such conditions would favour high-quality development of the judicial system of Latvia and would effectively ensure the rights of a person to a competent court.

25. When assessing proportionality of the contested norm, it is necessary to consider also the situation of the Applicant.

25.1. On November 14, 1996, the Saeima confirmed A. Lepse to the position of a justice of the Constitutional Court, but on January 23, 1997, according to the decision of the Chief Justice of the Supreme Court, it passed a resolution regarding dismissal of A. Lepse from the position of a justice of the Supreme Court. The Resolution of January 23, 1997 by the Saeima was justified by Item 2 of Section 82 of the Law "On Judicial Power".

The Constitutional Court does not agree with the opinion of the Saeima that Item 2 of Section 82 of the Law "On Judicial Power" can also be applied to a judge who continues working in another position of a judge (*see: case materials, pp. 112*).

The four Items of Section 82 of the Law "On Judicial Power" enumerates cases when a judge shall be removed from office, namely:

1) pursuant to his or her own request;

2) in connection with election or appointment to another Office;

3) due to his or her state of health if it does not allow him or her to continue to work as a judge; or

4) in connection with reaching the maximum age for fulfilling the office of a judge as specified by law.

It clearly follows from Items 1, 2 and 4 of Section 82 of the Law "On Judicial Power" that they shall be applicable in cases when a judge does not continue working in the judicial system after the removal from office. When interpreting Item 2 of Section 82 of the Law "On Judicial Power" jointly with Items 1, 3 and 4, one can conclude that Item 2 shall be applicable only in the cases when a judge is elected or appointed to a position out of the judicial system.

Under the third part of Section 1 of the Law "On Judicial Power", the Constitutional Court is an institution that belongs to the judicial power. Therefore confirmation of A. Lepse to the position of a justice of the Constitutional Court could not be regarded as election or appointing to another position in the sense of Item 2 of Section 82 of the Law "On Judicial Power". The Law did not require the Saeima to decide on removal of A. Lepse from the position of a justice of the Supreme Court.

25.2. It follows from the Protocol of January 14, 1997 of the Legal Commission of the Saeima that the actual objective of the resolutions regarding A. Lepse was to vacate the particular office of a justice that had to be filled in order to ensure continuity of the work of the Supreme Court. The Resolution regulated only the labour relations of A. Lepse with the Supreme Court. As the Chief Justice of the Supreme Court emphasized during the meeting of the Legal Commission, "It is necessity to appoint a new judge to substitute A. Lepse in order to ensure a proper work. One can not wait for ten years until A. Lepse would return to the position." A member of the Legal Commission, Ilmārs Bišers, indicated during the meeting that "all guarantees established by law are preserved to A. Lepse after removal from office" (*see: case materials, pp. 67*).

By the Resolution of January 23, 1997 of the Saeima, A. Lepse lost his position of a justice of the Chamber of Criminal Cases of the Supreme Court. He still worked as a justice, since he fulfilled the duties of a justice of the Constitutional Court. Under Chapter 6 of the Satversme and the third part of Article 1 of the Law "On Judicial Power", the Constitutional Court is an independent institution of the judicial power. Justices of the Constitutional Court, who have worked as judges in other courts, preserve their status of a judge also when holding an office of a justice of the Constitutional Court.

25.3. By confirming A. Lepse to the position of a justice of the Constitutional Court, the Saeima expressed not only confidence to him as a high-qualified, but also certain consent to his future activities in the position of a judge. It was also necessary to preserve the status of A. Lepse as a judge also because of the fact that he continued fulfilling the duties of a justice of the Constitutional Court without making a repeated oath after the Resolution by the Saeima regarding his removal from office of a justice of the Supreme Court. Also the fact that nomination of A. Lepse in 2000 for his confirmation to the position of a judge for an unlimited term was not regarded as a necessity manifests that he has preserved the status of a judge even in the status of a justice of the Constitutional Court.

25.4. The Constitutional Court agrees with the opinion of the Saeima that the Law "On Judicial Power" does not provide for suspension of the term of office of a judge. However, in the case of A. Lepse, the legal situation is particular.

The Resolution of January 23, 1997 by the Saeima in fact only suspended the term of office of A. Lepse in the position of a justice of the Supreme Court, but it did not deprive him of the status of a judge. During passage of the above Resolution, six and a half years have passed since the beginning of the term of office of A. Lepse in the Supreme Court. Para 5 of the Resolution of December 15, 1992 by the Supreme Council of the Republic of Latvia "On Order of Coming into Force of the Law of the Republic of Latvia "On Judicial Power"" provides that judges, the term of office of whom has not expired after coming into force of the Law "On Judicial Power", the term of office shall be preserved up to the end of the term. Therefore the term of office of A. Lepse in the position of a justice of the Supreme Court shall continue till the end of the term of ten years.

25.5. The Constitutional Court agrees to the opinion of the Ministry of Justice that the objective and sense of the contested norm is ensure return of high-qualified judges to the former position of a justice after the expiry of the term of office.

The professional qualification of A. Lepse is justified by 25 year long and successful carrier of a judge. A. Lepse has been a justice of the Riga North District Court, the Chief Justice of the Saldus Regional Court, a justice of the Supreme Court and the Chief Justice of the Chamber of Criminal Cases of the Supreme Court, as well as a justice of the Constitutional Court. A. Lepse has also been a President of the Latvian Judge's Association.

Moreover, A. Lepse has been granted the 1st qualification category of a judge. Under Section 98 of the Law "On Judicial Power", this is the highest category of qualification that can be granted to a judge. According Para 5 of the Transitional Provisions of the Law "On Judicial Power", this qualification category has been preserved for A. Lepse.

25.6. The contested norm does not *expressis verbis* confer the rights to A. Lepse to return to the position of a justice of the Supreme Court.

Disregarding the experience accumulated when in the position of a judge and wide knowledge, A. Lepse was refused a possibility to return to the position of a justice of the Supreme Court, however, as it follows from the constitutional complaint,

he would like to continue the work of a judge (*see: Answers of the Supreme Court to Applications of A. Lepse, case materials, pp. 97 – 98*).

The contested norm is a forma criterion, according to which certain justices of the Constitutional Court, after the expiry of the term of office, are guaranteed a possibility to return to the former position of a judge. In the case under examination, one does not assesses competence of the judge, nor his or her ability to hold office, although such assessment could manifest endeavours to ensure the rights of persons to a competent court.

Hence, the means selected are not for to reaching the legitimate objective.

Since the contested norm does not comply with any of the criteria of proportionality, it is not proportionate with Article 91 of the Satversme.

26. Article 83 of the Satversme provides that "Judges shall be independent and subject only to the law." Independence of judges and courts established in this constitutional norm is one of the basic principles of a democratic state.

The role of the judiciary in such a state is that, while administering justice, the courts must ensure the implementation of law expressed in the Constitution, the laws and other legal acts, to guarantee the rule of law and to protect human rights and freedoms (*see: Judgment of December 21, 1999 by the Constitutional Court of the Republic of Lithuania in the case No. 16/98*).

Article 93 of the Satversme includes such general characteristic of the judicial power – "fair court". First of all, it implies that a case is adjudicated by an independent and objective institution of the judicial power.

The content of the principle of independence of judges is also explained in sources of international law. The Basic Principles of Independence of the Judicial Power codified by the United Nations Organization provide that the State shall guarantee independence of the judicial power and it shall be established in the constitution or the basic law of the State. According to these principles, the representatives of the judicial power shall adjudicate objectively, without restrictions, external influence, threat, direct and indirect intervention of any third party, which can

not be permitted (*see: Apvienoto Nāciju Tiesu varas neatkarības pamatprincipi // Latvijas Vēstnesis, September 28, 1995, No. 148*).

The requirements for the judicial power shall be established taking into account both –the principle of separation of power and the principle of independence of judges (courts), *expressis verbis* fixed in Article 83 of the Satversme (*see: Judgment of February 4, 2003 by the Constitutional Court in the case No. 2002-06-01, Para 1 of the Establishing Part*). When analysing the content of the notion "independent court" included in the first sentence of the first part of Section 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has established that one has to take into account several criteria, e.g. the order, according to which members of the respective institutions are appointed to a position: the term, for which they are appointed; guarantees against external influence; presence of external features of independence (*see: Judgment of the European Court of Human Rights in the Case "Campbell and Fell v. The United Kingdom" 78. § , case "Langborger v. Sweden" 32. §, case "Bryan v. The United Kingdom" 37. §, case "Coeme and others v. Belgium" 120. §*).

As institutional guarantees of independence of courts and judges, the Satversme determines subjection of a judge to the law (Article 83 of the Satversme), appointment or confirmation of a judge to the position by a decision of the legislator (Article 84 of the Satversme) and irrevocability of a judge form office (Article 84 of the Satversme).

Exceptions of the above principle shall be determined by the Satversme. For instance, the principle of irrevocability of judges has been amended in Article 85 of the Satversme in relation to judges by providing that justices of the Constitutional Court shall be elected for a definite term.

27. In a judicial state, separation of power is valid as a principle, which particularly protects independence of justices form intervention of the executive power (*see: Cipeliuss R. Vispārējā mācība par valsti. Rīga: izdevniecība AGB, 1998, pp. 244*).

In a democratic society formation of the court shall be left in the hands of the legislator so as to avert influence of the executive power on it. The above conclusion

on the guarantees of the independence of the judicial power, fixed in the Satversme, is confirmed also by the fact that only the Saeima or the people may amend the laws on the court structure and process (*see: Judgment of November 5, 2004 by the Constitutional Court in the case No. 2004-04-01, Para 10.1*).

Consequently, to ensure that a judge could implement the function of judicature and other functions assigned to the judicial power, it is necessary that the judge is appointed or confirmed by the Saeima.

28. The principle of independence of judges established by the UNO International Covenant on Civil and Political Rights first of all is related to the order of appointing of judges and qualification needed for the appointment, to guarantees for preservation of the position of a judge up to the age of retirement or the expiry of the established term, and conditions for promotion and appointing to another position, to order of suspension and termination of the term of office, as well as a factual independence of the judicial power from political influence of the executive power and the legislator (*see: International Covenant on Civil and Political Rights, Article 14, General Comment No. 32, Para. 19*).

Conditions of the term of office of a judge are essential for ensuring independence of judges in the sense of Article 83 of the Satversme.

Already on November 9, 1921 at the session of the Constitutional Assembly the member of the Commission for Elaboration of the Satversme Jānis Purgals pointed out: "We need an independent court. Therefore we shall elaborate such a procedure for the appointment of judges, which guarantees such independence". [..] If we appoint the chief judges just for six years, then their independence would not be secured; the judges would not be sure that they were able to use their experience in practice. Every judge will figure out for what period he/she is elected…" (*see: Transcript of 20th meeting of Session IV of the Constitutional Assembly of the Republic of Latvia, November 9, 1921*).

Just the non-existence of the limitation of the term of authority secures the independence of the judge – during this term the judge may be removed from office or

dismissed only in cases, established by law (*see: Judgment of November 5, 2004 by the Constitutional Court in the case No. 2004-04-01, Para 11.3*).

In separate cases, one can permit appointing of a judge to the position for a definite term, however in such cases it is necessary to ensure additional guarantees for independence of a judge (*see: Judgment of November 5, 2004 by the Constitutional Court in the case No. 2004-04-01, Para 11.1 and 11.3*).

Consequently, from the point of view of independence of a court, it is also important that the term of office of a judge would protect the judge form any influence on his or her decisions.

29. The Ombudsman holds that the contested norm does not comply with Article 83 of the Satversme, since it prohibits returning to the former position to those persons who were appointed or elected to the position of a judge of a court of general jurisdiction or an administrative court for an unlimited term. The Ombudsman indicates that by making a judge to stand for office repeatedly, as it can be observed in the case of A. Lepse, the principle of independence of judges would be violated.

The fourth part of Section 7 of the Constitutional Court Law established only the principle that justices of the Constitutional Court are entitled to return to the former position of a judge. However, neither the Constitutional Court Law, nor the Law "On Judicial Power" provides for a clear order, according to which the return of judges would take place, namely, the Law does not provide for procedural decisions, on the basis of which a judge could return to the former position of a justice, or terms, in which the Supreme Court, the Ministry of Justice and other responsible institutions would have to ensure implementation of rights.

Section 86.[1] of the Law "On Judicial Power" provides for a possibility to appoint a judge to the position in another court (also in the court of first instance), the Ministry of Justice, the Court Administration or an international organization. Moreover, in this Section, the legislator has regulated in details the order of implementation of the respective rights, *inter alia* indicating also the procedural aspects related to appointing and return of a judge to the position of a justice.

No such regulation is established in relation to the rights established in the fourth part of Section 7 of the Constitutional Court Law. Therefore one can agree to the conclusion of the Ministry of Justice that the legal regulation, which ensures return of justices of the Constitutional Court to the former position of a judge after the expiry of the term of office of a justice of the Constitutional Court, is not efficient enough. The legislator has not provided for a precise order, according to which judges, *inter alia* justices of the Supreme Court whose term of office of a justice of the Constitutional Court has expired, may exercise their rights to return to the former position (*see: case materials, pp. 75*).

"Authors of the Satversme of Latvia and constitutions of democratic states of the world insist on an independent judicial power and a particular status of judges not because they would like it to be so, but because this is an absolutely necessary component part of a democratic and law-governed state" (*Endziņš A. Tiesu sistēmas un politikas saskarsme un dinamika // Jurista Vārds, May 7, 2002, No. 9*). As it was also indicated by the Plenum of the Supreme Court, the claim of an independent court is not a caprice of judges, but the rights of each person (*see: Resolution No. 1 of March 11, 1991 by the Plenum of the Supreme Court "On Independence of Courts of the Republic of Latvia"*).

Article 83 of the Satversme requires that the legislator shall clearly establish development of the carrier of a judge in the laws on judicial system. Absence of such order of freedom of action provided for institutions of the executive power when deciding on development of the carrier of a judge may jeopardize independence of judges.

The words "a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law do not comply with Article 83 of the Satversme, because the legislator has not provided for an order of exercising of rights established in this Article.

30. The Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. Each provision of the Satversme has its own place in

the System of the Satversme, and none of the norms of the Satversme may be granted a superior significance than it is provided by the will of the Constitutional Assembly and the text of the Satversme. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*see: Judgment of December 16, 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 13*). The principle of unity of the Satversme prohibits interpreting a separate constitutional norm apart from other norms of the Satversme, because the Satversme as a single document affects the scope and content of each norm.

The principle of independence of courts and judges established in Article 83 of the Satversme can not be regarded separately from other norms of Chapter VI of the Satversme that are included into the Satversme with the view to confer a constitutional rank to the basic elements of the principle of independence of courts and justices. In the case under examination, Article 83 of the Satversme shall be regarded jointly with Article 84 of the Satversme.

31. The first sentence of Article 84 of the Satversme provides that justices are confirmed by the Saeima and they are irrevocable.

The fourth part of Section 7 of the Constitutional Court Law specifies the requirements of Article 84 of the Satversme regarding justices of courts of general jurisdiction and administrative courts that are confirmed to the position of a justice of the Constitutional Court after the expiry of the term of office of a justice of the Constitutional Court.

To ensure independence of judges, it is necessary to ensure irrevocability of judges before the end of the term of office unless the case established in Article 84 of the Satversme has set it. The term, for which a judge is confirmed to the position of a justice of a court of general jurisdiction or an administrative court, namely, two three or ten years or for an unlimited term, can be shortened despite the will of the judge in the case if, based on a decision of a judgment of a court in the criminal case or decision of a council of disciplinary cases, a judge is removed from office.

Confirmation of a judge to the position of a justice of the Constitutional Court can not be regarded as removal from office but rather as evaluation of the competence and professionalism of a judge. Therefore Article 84 of the Satversme requires preserving a possibility for a justice of the Constitutional Court after the expiry of the term of office to work in the former position for the remaining term.

If a person has not been confirmed to the position of a judge for an unlimited term, it may return to the former position of a judge and continue administering justice.

If a person has been confirmed to the position of a judge for a definite term, it is entitled to return to the former position for the remaining term and, after the expiry of the term, to deal with the issue of continuation of the carrier of a judge in the judicial system according to the general order.

32. Under the third part of Section 32 of the Constitutional Court Law, the legal norms that were recognized by the Satversme as being non-compliant with the legal norms of higher legal power are considered as invalid as of the day of publishing of the Judgment of the Constitutional Court unless the Constitutional Court has established otherwise.

32.1. The fourth part of Section 7 of the Constitutional Court Law only partially ensures observance of the requirements of Articles 83, 84 and 91 of the Satversme. The Constitutional Court has established in its Judgment that the contested norm does not comply with Article 83 and the first sentence of Article 91 of the Satversme.

Since the necessity of the rights established in the fourth part of Section 7 of the Constitutional Court law is provided for by Article 84 of the Satversme without conferring rights to the legislator to assess usefulness of the respective regulation, the duty of the legislator is to specify this norm of the Constitutional Court Law otherwise so that it would comply with legal norms of a higher legal power.

32.2. In order to ensure that application of the fourth part of Section 7 of the Constitutional Court Law before elaboration of specifications and coming into force of the respective amendment would not cause violation of the basic rights of persons

established in the Satversme, the above norm must be applied by the legislator, public administration institution and courts according to Article 83, Article 84 and the first part of article 91 of the Satversme.

32.3. Since the contested norms violate the basic rights of the Applicant A. Lepse, the tasks of the Constitutional Court is to prevent violation of the basic rights of the Applicant that was caused in the result of application of the contested norm.

The fourth part of Section 7 of the Constitutional Court Law was applicable to the Applicant A. Lepse according to the requirements of Articles 83 and 84 of the Satversme, as well as the principle of legal quality from the moment when the term of office of a justice of the Constitutional Court of A. Lepse expires, namely, from January 4, 2007.

The Substantive Part

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

holds:

1. The words "a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term" included in the fourth part of Section 7 of the Constitutional Court Law comply with the first part of Article 101 of the Satversme.

2. The words "a person, who pursuant to the Law "On Judicial Power" has been approved to the office of a judge for an unlimited term" of the fourth part of Section 7 of the Constitutional Court Law do not comply with Article 83 and the first sentence of Article 91 of the Satversme and invalid from April 1, 2008.

3. The fourth part of Section 7 of the Constitutional Court Law shall be applicable according to Article 83, Article 84 and the first sentence of Article 91 of the Satversme of the Republic of Latvia.

4. The fourth part of Section 7 of the Constitutional Court Law is applicable to the Applicant Andrejs Lepse according to Article 83, Article 84 and the first sentence of Article 91 of the Satversme of the Republic of Latvia.

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