THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

in Riga, May 10, 2007

in Case No. 2006-29-0103

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

with the secretary of the sitting of the Court, Arnis Žugāns,

with participation of the submitter of the constitutional complaint, Pēteris Šķeltiņš, and his plenipotentiary, sworn advocate Evija Kmeļevska,

representative of the institution that passed the contested act – the Saeima, the head of the Saeima Legal Office, Gunārs Kusiņš,

the representatives of the institution that proclaimed the contested act – the Cabinet of Ministers, consultant of the State Chancellery Policy Co-ordination Department, Inga Bite-Perceva, and the deputy director of the State Chancellery Policy Co-ordination, Rudīte Osvalde,

under Article 85 of the Satversme (Constitution) of the Republic of Latvia and Items 1 and 3 of Article 16, Item 11 of the first part of Article 17 and Article 19.^{2} of the Constitutional Court Law,

in Riga, on April 10, 2007, in an open Court session examined the case

"On Compliance of Para 5 of the Transitional Provisions of the State Civil Service Law and Regulation of 20 February 2001 by the Cabinet of Ministers No. 79 "Regulations on Application Order and Term of the Mandatory Requirement

for Civil Servants – Higher Education" with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia"

The Constitutional Court has established:

1. State civil service was restored in the Republic of Latvia by the Law "On State Civil Service" (hereinafter – 1994 Civil Service Law) that was passed by the Saeima of the Republic of Latvia (hereinafter – the Saeima) on April 21, 1994. The Law became effective on May 3, 1994.

Clause 2 of the first part of Section 6 of the above Law provided that "A person may be a candidate for a civil servant position who: [..] has at least a higher education". However the second part of Section 10 provided that "civil servants (candidates for a civil servant position), during performing the duties of the position, shall take qualification examinations in the School of Public Administration for acquisition of the desirable category of a civil servant".

2. On September 7, 200, the Saeima passed the State Civil Service Law that became effective on January 1, 2001. By coming into force of the said Law, the Law "On State Civil Service" became invalid.

2.1. The first Part of Section 3 of the State Civil Service Law provides that "A civil servant is a person who forms the policy or development strategy of a sector, co-ordinates the activity of a sector, distributes or controls financial resources, formulates regulatory enactments or controls observance thereof, prepares or issues administrative documents and prepares or takes other decisions related to the rights of individuals [..]".

2.2. Section 7 of the State Civil Service Law provides for mandatory requirements for candidates for a civil servant Position. According to Clause 3 of the said Section "A person may be a candidate for a civil servant position who: [..] has a higher education", but the first part of Section 9 provides that the suitability of candidates for a civil servant position shall be assessed by a commission for

assessment of candidates and civil servants. However, according to the fifth part of Section 11, the candidate who is appointed to a civil service position for the first time shall be determined a term of probation of six.

2.3. Sub-point "e" of Clause 1 of Section 41 of the State Civil Service Law provides that State Civil Service relations shall be terminated in relation to non-conformity to the mandatory requirements for a civil servant.

2.4. Para 5 of the Transitional Provisions of the State Civil Service Law: "Clause 3 of Section 7 of this Law refers to the civil servants and candidates who, on the day of coming into force of this law, occupies, according to this Law, the position of a civil servant in the State administration institutions mentioned in the first part of Section 3 of this Law. The Cabinet shall determine the procedures and time periods for the application of Section 7, Clause 3 with respect to the aforementioned persons (hereinafter – Para 5 of the Transitional Provisions).

3. On March 29, 2001, the Saeima Commission for Economic, Agricultural, Environmental and Regional Policy submitted the draft law "Amendments to the State Civil Service Law" (*see: case materials, Vol. 3, pp. 59 – 60*), that provided for supplementing Para 7 of the Transitional Provisions of the State Civil Service Law in the following wording: "Up to January 1, 2010, a person may occupy the position of a civil servant who has a higher education suitable for the requirements of the position." At the same day the above draft law was passed on urgent basis.

4. Under Para 5 of the Transitional Provisions, on February 20, 2001, the Cabinet of Ministers passed the Regulation No. 79 "Regulations on Application Order and Term of the Mandatory Requirement for Civil Servants – Higher Education" (hereinafter – Regulation No. 79). The Regulation came into force on March 9, 2001.

After coming into force of the Law "On Amendments to the State Civil Service Law", a corresponding supplementation was made to the Regulation No. 79 (*see: Cabinet of Ministers Regulation of October 2, 2001 No. 424 "Amendments to the Cabinet of Ministers Regulation of February 20, 2001 No. 79 "Regulations on*

Application Order and Term of the Mandatory Requirement for Civil Servants – Higher Education"").

During the examination of the case, Regulation No. 79 came into force in the following wording:

> "1. These regulations establish the application order and term of the mandatory requirements for the candidate for a civil servant position – a higher education (hereinafter – the mandatory requirement) to the person, who as of the date of coming into force of the State Civil Service Law, in accordance with the State Civil Service Law, hold a civil service position and who has no higher education (hereinafter – a civil servant).
>
> 2. The mandatory requirement shall be applied to civil servants of a ministry, the secretariat of the Special Assignments Minister and the State Chancellery from August 1, 2004.
>
> 3. The requirement shall be applied to civil servants of a ministry or public administration institutions subordinated to the Special Assignments Minister from August 1, 2005. The requirement shall be applied to civil servants of the State Forest Service who have a higher vocational education suitable for the position from January 2, 2010.
>
> 4. Civil servants of a ministry, secretariat of the Special Assignments Minister and State Chancellery who as of the date of coming into force of the State Civil Service Law has not initiated higher education studies, shall start studies in a higher education institution until October 1, 2002 and submit a note issued by the higher education institution regarding initiation of studies to the head of the State administration institution.
>
> 5. Civil servants of a ministry or State administration institution that is subordinated to the Special Assignments Minister who as of the date of coming into force of the State Civil Service Law have not initiated studies in a higher education institution, shall start studies in a higher education institution until October 1, 2002 and submit a note issued by the higher education institution regarding initiation of studies to the head of the State administration institution.
>
> 6. Civil servants who are a student of a higher education institution shall, until October 15 submit a note issued by the higher education institution regarding initiation of studies to the head of the State administration institution.
>
> 7. Civil servants who, within the term established in Paras 4, 5 and 6 of these Provisions, have not submitted a not, shall be dismissed from the position of a civil servant due to non-compliance with the mandatory requirements.
>
> 8. If civil servants of a ministry, Secretariat of Special Assignments Minister and State Chancellery, on as of the date of coming into force of the

State Civil Service Law have
remaining five years or less till retirement, are allowed to occupy the position of a civil servant having no higher education.

9. If civil servants of a ministry or state administration institution that is subordinated to the Special Assignments Minister who as of the date of coming into force of the State Civil Service Law have remaining five years or less till retirement, are allowed to occupy the position of a civil servant having no higher education.

10. Paras 5, 6, 7 and 9 of these Regulations are not applied to civil servants of the State Forest Service who has vocational education suitable for the requirements of the position.

5. On June 15, 2006, the Saeima passed the Law On the Career Course of Service of Civil Servants with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration that came into force on October 1, 2006. The second part of Section 9 of this Law provides:

(2) In order to be accepted into service a person shall be required to have the following education:

1) in appointing to office complying with the special service rank of a private, corporal, sergeant, first sergeant or warrant officer – at least a secondary education;

2) in appointing to office complying with the special service rank of a lieutenant, first lieutenant or captain – at least the first level vocational higher education;

3) in appointing to office complying with the special service rank of a major, lieutenant colonel, colonel or general – academic or the second level vocational higher education.

However Para 8 of the Transitional Provisions of this Law provides: "Until 1 July 2016 the position of a civil servant may also be occupied by a person who does not have higher education complying with the requirements of office."

6. Submitter of the Constitutional Complaint, Pēteris Šķeltiņš (hereinafter – the Submitter of the application) contests compliance of Clause 3 of Section 7, sub-point

"e" of Clause 1 of Section 41 and Para
5 of the Transitional Provisions with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). The Constitutional Court instituted proceedings regarding only a part of the claim, namely, compliance of Para 5 of the Transitional Provisions and Regulation No. 79 (hereinafter – the Contested Provisions) with Articles 1, 91, 101 and 106 of the Satversme.

6.1. The Submitter of the application started working as a regional fish protection inspector of the then department "Baltribvod", the Daugava inspectorate. Although the titles of the positions have changed, the Submitter of the application holds that the job in its essence remained the same.

In February 1995, the State Civil Service Administration has recognized that the Submitter of the application has passed certification of a civil servant (*see: Resolution of the State Civil Service Administration of February 21, 1995 No. 1114, case materials, Vol. 1, pp. 27*), and he has been appointed to the position of the State inspector in the Environmental Protection Committee of the Orge district (*case materials, Vol. 1, pp. 38*). In May 2001, the Submitter of the application was assigned the status of a civil servant (*see: Resolution of the State Civil Service Administration of May 16, 2001 No. 1601, case materials, Vol. 1, pp. 28*). In July 2005, he took the position of the senior inspector in the Control Department of the State Environmental Service Marine and Inland Waters Administration, the Riga Inland Waters control sector.

Since the Submitter of the application has only a secondary education, by the Order of August 11, 2005 by the above Administration No. 200-p, he has been dismissed from the state service due to non-conformity with the mandatory requirement of a civil servant – a higher education (hereinafter – the mandatory requirement).

6.2. The Submitter of the application holds that the fish protection inspector, which was his profession, is the job that he could do at a high quality. It is testified by commendation certificates, notes of thanks and awards. No negligence has been found.

6.3. There is a viewpoint expressed in the constitutional complaint that the Contested Provisions are in conflict with the principles of a legal state. The Submitter

of the application emphasized that the
principle of legal security implies confidence that after 30 years of honest and professional work the State shall provide for a possibility to continue working in the same position until retirement. He holds that the transitional period of a couple of years "can not preserve the principle of legal security, which has been violated" (*see: case materials, Vol. 1, pp. 7*).

Simultaneously the Submitter of the Application emphasizes that he was not provided for a possibility to acquire free higher education.

6.4. The Submitter of the application holds that the Contested Provisions are in conflict with Articles 101 and 106 of the Satversme. Namely, the rights to choose occupation and hold public office according to his abilities and qualification of a fish protection inspector of the Submitter of the application have been restricted without reason.

The Submitter of the application holds that the established restriction of basic rights in relation to him is in conflict with Article 116 of the Satversme, because the restriction has no legitimate objective, as provided in the said Article.

The statement of the State Civil Service Administration that the dismissal of the Submitter of the application from the State service corresponds to the principle of proportionality is incorrect. The Society gains no benefit out of it because there are many vacant positions in his professions, whereas the number of trespassers (poachers) has a tendency to increase. The indices of working quality of newly engaged inspectors (number of resolved violations, amount of seized tools of poaching and confiscated fish) are considerably lower than that of the dismissed inspectors.

6.5. The constitutional complaint includes a viewpoint that the Contested Provisions are in conflict with Article 91 of the Satversme. The Submitter of the application indicates that Article 91 of the Satversme does not provide for explanation of the term "discrimination". However Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or

other opinion, national or social origin,
association with a national minority, property, birth or other status.

The Submitter of the application indicates that he has been dismissed from civil service only on the grounds of education, without taking into consideration his actual knowledge and working indices, thus discriminating him "on the ground of education criterion".

The Submitter of the application emphasizes that a fish protection inspector, when exercising his or her duties, enjoy the same conditions as policemen, moreover, functions of policemen in resolving and preventing crimes are even more difficult than those of a fish protection inspector, however it not provided by law that policemen should at present have higher education.

Simultaneously it is indicated in the constitutional complaint that the Submitter of the application is being discriminated on the grounds of his education profile, because the position of a civil servant in the State Forest Service can be occupied "by a person having higher education" up to 2010.

6.6. The Submitter of the application explained during the sitting of the Court that preparation for certification required additional efforts and stress. In addition to this, many colleagues of his have not passed the certification. He holds that he has already proven his qualification of a civil servant, passed certification and was entitled to rely on the fact that the status shall never change if he would continue working in his profession and exercise his basic duties.

Without denying that higher education can help in his present work, the Submitter of the application emphasized that for exercising the duties of a fish protection inspector "one needs courage, ability to orient oneself in the specific field of the profession" (*see: case materials, Vol. 5, pp. 32*). The work of a fish protection inspector demands extra nervous tension because one often has to get involved into unpleasant and dangerous situations. Due to long-term working in this position, the health condition of the Submitter of the application has worsened. Both, the nature of the work and health condition, mainly vision problems, have encumbered his studies.

The Submitter of the application holds that during examination of the case, he has been working as a guard; the work has not been related to the profession of a fish

protection inspector, it was physically
and mentally easier but less remunerated. He will reach the retirement age in 2015.

6.7. The representative of the Submitter of the application emphasized during the sitting of the Court that acquisition of the status of a civil servant has entitled the Submitter of the application to rely on the fact that the status shall never change if he would continue working in his profession and exercise his basic duties. She noted that the Submitter of the application has one of the eldest fish protection inspectors.

She expressed a viewpoint that the group of persons mentioned in Para 5 of the Transitional Provisions, i.e. those people who have been occupied in civil service for many years, can not be compared to that group of persons who enter civil service in the status of a civil servant again. These groups of person can not be applied the same requirements.

The representative of the Submitter of the application noted that the legislator had the possibility to choose more lenient means for reaching its objective, without applying the education-related restrictions to a person who has decently worked in his profession for 30 years.

7. The institution that passed the contested act – the Saeima – in its response note asks to recognize the application as ungrounded, but Para 5 of the Transitional Provisions as compliant with Articles 1, 91, 101 and 106 of the Satversme.

The Saeima emphasizes that Para 5 of the Transitional Provisions can not be in conflict with Articles 91 and 106 of the Satversme since it does not prohibit the Submitter of the application to freely choose the occupation and workplace according to his abilities and qualification. Para 5 of the Transitional Provisions *per se* does not provide for a different attitude, but it provides for authorization to the Cabinet of Ministers to establish a more detailed regulation. Hence compliance of Para 5 of the Transitional Provisions only with Article 101 of the Satversme (whether the rights to hold public office provided by law are violated), as well as with Article 1 of the Satversme (whether a more lenient transition is established when regulating new requirements in the normative acts) is assessed in the response note.

The Saeima indicates that Para 5 of the Transitional Provisions has a double meaning. First, this norm provides that the requirement regarding a higher education for all persons (including those who were employed as civil servants and had no higher education as on the date of coming into force of the Law) is applicable on the date of coming into force of the State Civil Service Law. Second, in order to facilitate implementation of these regulations, the Cabinet of Ministers was obligated to establish the order and term of application of this requirement.

By referring to the Judgment of May 13, 2—5 by the Constitutional Court No. 2004-18-0106, the Saeima indicates: in order to observe Article 1 of the Satversme when the State Civil Service Law became effective, it was necessary to establish a more lenient transition in relation to the persons who occupied the position of a civil servant and who had no higher education. Such lenient transition is established by Para 5 of the Transitional Provisions.

Whereas, in order to establish whether the requirement of a higher education is applicable as of the date go coming into force of the State Civil Service Law, Articles 1 and 101 of the Satversme are jointly analysed in the response note.

By referring to the Judgment of August 30, 2000 by the Constitutional Court No. 2000-03-01, the Saeima emphasizes that Article 101 of the Satversme includes the conditions “according to the order established by law”. Hence Article 101 of the Satversme does not provide for absolute rights to hold public office, but it indicates that these rights are to be implemented according to the order established by law.

The response note includes a viewpoint that the rights to hold public office for the persons who under the 1994 Civil Service Law occupied the position of a civil servant and who had no higher education, were restricted in the way that these persons had to acquire higher education in order to preserve the former rights (position of a civil servant).

The Saeima holds that the restriction of basic rights established in the Contested Provisions fully correspond to the principle of proportionality, since it is established in the interests of the society, the benefit for the society from this restriction is considerably higher than the restriction of rights of each person, moreover, the Cabinet

of Ministers has established a gradual
and flexible order and terms of application regarding the above restriction.

The response note includes a viewpoint that the Contested Provisions does not demand disproportionate efforts from a person in a long period of time because, according to the Vocational Education Law, the first level vocational education also is regarded as higher education, which can be acquired even in two years.

In the sitting of the Court, the representative of the Saeima hold the viewpoint that Para 5 of the Transitional Provisions comply with Articles 1, 91, 101 and 106 of the Satversme. He emphasized that Para 5 of the Transitional Provisions can not be in conflict with Article 91 of the Satversme, because the Transitional Provisions *per se* "do not include the two groups" (*see: case materials, Vol. 5, pp. 39*). It can not be in conflict with Article 106 of the Satversme, where the basic rights are established in accordance with qualification of a person.

He recognized that in this case one should assess compliance of Para 5 of the Transitional Provisions with Article 101 and Article 1 of the Satversme, moreover, "one, at a certain extent, should consider Article 101 in relation to Article 106 of the Satversme" (*see: case materials, Vol. 5, pp. 40*).

The representative of the Saeima emphasized that in a democratic and legal State, when making amendments to normative acts, the duty of the institution that passes it must consider and provide for a lenient transition to the new regulation. It has to establish reasonable terms for implementation of the new requirements. The legislator would have acted improperly if it had implemented the requirement immediately.

The representative of the Saeima emphasized that Article 101 of the Satversme does not provide for absolute rights to hold public office, but it indicates the fact that these rights are to be implemented in the procedure established by law. He noted that the rights established by Article 101 of the Satversme can be provided for restrictions, however one can not provide for such restrictions that are unreasonable. Whereas the assumption that one can not provide for any restrictions would be in conflict with both, the basic rights guaranteed for other people by the Satversme and other norms of the Satversme. Therefore one should provide the conditions included in Article 101 of the

Satversme, according to the procedure
established by law, for the way of its application, and this must be established by law.

The representative of the Saeima recognized that the rights of one group of persons to public service were restricted in the way that these persons had to acquire a higher education in order to preserve the former rights and the position of a civil servant.

He indicated that Section 4 of the Vocational Education Law provides for the levels of vocational education. This division was already effective in the period then the new State Civil Service Law was passed. On November 23, 2000, the Saeima has made amendments also to the Law on Institutions of Higher Education and established that the basic task of colleges of higher education institutions is to implement the first level higher vocational education programmes, which is a part of the second level higher vocational education acquired in higher education institutions. The period of implementation of such college education is two to three years.

When replying to the question regarding the way how the terms “abilities and qualification” included in Article 106 of the Satversme are to be interpreted, the representative of the Saeima expressed a viewpoint that in this case one has to assess two things – document on education and skills that the respective person has acquired.

The representative of the Saeima indicated that the principle of good administration requires that an honest, competent and motivated civil service would function in the State. It is admissible to restrict rights to hold public office in order to protect the democratic regime of the State and welfare of the society. The society is interested in that the positions of civil servants were occupied by persons who are able to fulfil his or her functions and tasks as well as possible. The objective of the mandatory requirements for candidates is to find a suitable possible civil servant rather than guarantee a certain person to occupy a position. Moreover, one also has to protect the rights of other persons, especially because of the fact that the civil servants pass administrative acts that can violate the rights of other persons.

He emphasized that Para 5 of the Transitional Provisions fully comply with the principle of proportionality. The restriction provided therein is established for the sake

of interests of the society and the
benefit of the society of such restriction is considerably higher that restrictions of rights of each person.

8. The institution that passed the contested act, the Cabinet of Ministers, emphasized in its response note and additional information that Regulation No. 79 are passed by basing on Para 5 of the Transitional Provisions. Mandatory requirements for civil servants of civil service established in Regulation No. 79 are restriction of a private person that is provided by law and on the basis of regulations passed by the Cabinet of Ministers.

By referring to the Judgment of December 18, 2003 by the Constitutional Court in the case No. 2003-12-01, the Cabinet of Ministers indicates that the rights established by Articles 101 and 106 of the Satversme are not absolute and the way of their exercising is to be established by law. Moreover, it is admissible that the rights to hold public office, if compared with legal labour relations, are regulated by other legal norms and this legal regulation may differ.

The Cabinet of Ministers emphasize that the objective of the State Civil Service Law is to establish the statues of a professional, politically neutral State civil service that would ensure a legal, stable and open State administration. The Contested Provisions are worked out in order to ensure a professional State civil service and facilitation of its activities and therefore – not only to ensure the principle of good administration, but also to protect the values established in Article 116 of the Satversme.

The Cabinet of Ministers indicate that restriction of the basic rights of the Submitter of the application has several legitimate objectives established in Article 116 of the Satversme. One of such objectives is protection of rights of other people. Taking into account the fact that a civil servant of civil service implements the State power and he or she is entitled to restrict rights of other persons under the procedure established in normative acts, a particular attention is paid to competence, education and intelligence of a civil servant of civil service, since only an educated, professional

and competent civil service can ensure
an adequate level or protection of rights of persons.

The Cabinet of Ministers expresses a viewpoint that it is possible to form an educated, professional and competent civil service, ensure a proper and obliging attitude towards the society and separate its representatives only by means of perceiving the higher education as one of the basic requirements so that a person could be engaged in civil service, because the public service simultaneously envisages provision of these persons with the State power in accordance with the scope of competence of the position. Fish protection inspectors also are "provided with the State power when performing repressive State administration function, therefore it is particularly important to observe all State administration principles when occupying this position" (*see: case materials, Vol. 1, pp. 81*). Hence restriction of rights of a private person is a proportionate and the objective set can not be reached by other means that would restrict the rights of a private person at a lesser extent.

The Cabinet of Ministers emphasizes that the State-recognize diploma on acquisition of a higher education testifies that a person has acquired systemic knowledge, skills and experience of a certain level in the State-accredited or recognized education acquisition process. Hence the State, when assessing conformity of a person to the position of a civil servant and his or her qualification, is entitled to put forth the requirement to have a higher education and regard it as testimony of knowledge and skills of a certain level that has been recognized by the State.

The Cabinet of Ministers notes that, according to the 1958 Convention Concerning Discrimination in Employment of the International Labour Organization, no such discrimination, exclusion or privilege regarding a particular job that is based on its basic requirements is regarded as discriminatory.

It is emphasized in the response note that a higher education is a relevant criterion that causes a considerable different between the two groups of persons, therefore a different attitude in such conditions is admissible and even necessary.

By referring to the Judgment by the Constitutional Court in the cases No. 2002-12-01 and 2002-12-01, it is indicated in the response note that each criterion, due to which observance of the principle of legal security is to be examined, implies presence

of a lenient transition. The requirements, according to which a civil servant only has to start studies in the nearest future and must not immediately submit the document on a higher education, complies with the understanding of a lenient transition.

During the sitting of the Court, the Representative of the Cabinet of Ministers also indicated that Regulation No. 79 distinguishes between two different categories of civil servants. The first category is the persons who work in ministries, Secretariat of Special Assignments Minister and the State Chancellery. A shorter transitional period was established for persons in these institutions. Civil servants of the other category work in institutions that are subordinated to ministries, Secretariat of the Special Assignments Minister and the State Chancellery. The Submitter of the application worked in one of those institutions. A longer transitional period is established for the letter persons. The difference between the two categories is established by assessing the fact that the job of persons working in ministries is more responsible, and hence the mandatory requirement should be applied in a lesser time frame.

She simultaneously pointed out the third category of persons, namely, persons of pre-retirement age. The Cabinet of Ministers, when passing the Regulation, has assessed the influence of the mandatory requirement on persons who would reach the retirement age within five or, correspondingly, six years. Taking into account the fact that these persons may have difficulties to enter a higher education institution and acquire a higher education, it is provided in the regulations of the Cabinet of Ministers that the mandatory requirement is not related to the above persons.

The representative of the Cabinet of Ministers drew attention to the fact that in case if the Contested Provisions, regarding the Submitter of the application, were recognized as being in conflict with the Satversme even if backdated, then he would enjoy a more privileged situation if compared to all other civil servants of State civil service, because he would turn out to be the only a civil servant having no higher education. When assessing proportionality and the fact whether a lenient transition is established taking into account the fact that “the State has done its best to be obliging to people and provide them with a possibility to study”, namely, “there are many higher education institutions and even more study programmes, it is possible to get

study loans" (*case materials, VO. 5, pp. 105*). The State Civil Service Law provides for a possibility to pay a part of the study fee, as well as for a possibility to take academic leaves.

The representative of the Cabinet of Ministers as the reason why a shorter transition period is established for the employees of the Ministry of the Interior who have no higher education mentioned the possibility of these persons to acquire a secondary vocational education in their field, as well as the fact that there are many such persons, therefore it is not possible to matriculate them all in higher education institutions.

The representative of the Cabinet of Ministers explained that each year civil servants are assessed, and as soon as the evaluation is not satisfactory, the civil servant must leave civil service. However she does not think that it would be possible to assess suitability for State civil service of those persons who occupied the position of a civil servant as of the date of coming into force of the State Civil Service Law but who had no higher education.

9. An external person – the State Civil Service Administration – indicates that the objective of the Contested Provisions is to ensure presence of a professional civil service, which would be able to perform their duties at a high quality, observing the legal principles consistent with a legal and democratic State, ensuring protection of rights of persons and their legal interests, as well able to ensure fulfilment of State administration functions effectively, legally and at a high level.

The State Civil Service Administration holds that reaching of the above objectives is not the issue of one year or one point of reference, namely, setting on of a legal fact, but the issue of several decades and constant amelioration of functioning of State civil service, as well as ensuring of a corresponding normative regulation, control of lawfulness of activities of civil service, training of civil servants and improvement of professional skills. The above objectives can be reached only in a long term by complexly approaching the problems of State civil service development.

The representative of the State Civil Service Administration, the head of the Civil Service Control Department, Inga Juhņeviča, indicated that by appealing the dismissal,

the Submitter of the application "did
not mention any subjective factors. The only fact that indicated regarding the, according to him, ungrounded dismissal was that the State could not set forth or change these requirements in relation to him as a person who has already passed the examination of candidate for a civil servant position and has worked as a civil servant for several years" (*case materials, Vol. 5, pp. 84*).

She noted that, under 1994 Civil Service Law, in order to occupy the respective position, its candidate has not only to conform to the requirements established by the Law, but also to pass the examination for the candidate for a civil servant position.

Under 1994 Civil Service law, it has been planned that after three to five years of working in the position of a civil servant the candidate shall take a civil servants examination and after passage thereof he or she shall be conferred the status of a civil servant. However only a small number of civil servant candidates took the above examination, because the new Civil Service Law was passed, which did not provide for such examination. At present the persons who want to become civil servants, must not take the examination, but a six-month test period is determined for them.

She recognized that the State should have taken into account the number of people and the term wherein to ensure acquisition of a higher education. The period has been established with the aim to achieve that those persons who are employed would have a possibility to conform to this requirement "and to dismiss them by taking them into account" (*case materials, Vol. 5, pp. 88*).

10. An external person – the State Environmental Service Marine and Inland Waters Administration (hereinafter – the Waters Administration) indicates that requirement for civil servants to acquire higher education provides for formation of a professional and competent civil service, which favours protection of interests of the society. Dismissal of the Submitter of the application form the position of the civil servant has not ameliorated, nor worsened the quality of activities of the Administration.

According to the Waters Administration, the quality of activities of the inspector and its assessment is dependent on knowledge, ability to apply his or her knowledge

into practice, skills of cooperation and
communication, physical training, orientation towards development a.o. factors. Waters Administration has not established that due to the lack of higher education in particular the Submitter of the application was improperly exercising responsibilities. Higher education acquired in any field improves the general level of education of a person, develops intellect and ability to bear responsibility. Since an inspector, according to Section 21 of the Environmental Protection Law, has the right to impose administrative fines and make other decisions, a higher education is an essential factor for exercising the responsibilities of the position at a high professional level. However, for a successful exercising of the duties of the position of an inspector, the practical working experience is also important.

The Waters Administration gives explanations that a summarized working hours was determined for the Submitter of the application, which obligated him to work more than eight hours per day in separate cases.

During the sitting of the Court, a representative of the Waters Administration – the head of the legal department of the State Environmental Service Marine and Inland Waters Administration, Laura Rozenberga, informed that the Submitter of the application occupied the position of the State environmental inspector in the Waters Administration. Duties of his position included controlling of observation of industrial fishing and angling regulations. When exercising these responsibilities, he had the right to draw up protocols of administrative violations, make decisions regarding administration of punishment to persons. The State Environmental law and the Latvian Administrative Violations Code entitles a State inspector to interfere with the life of private persons, for instance, enter the objects in a private property and access private waters in order to inspect the way of fishing or angling. The inspector is also entitled to check belongings of persons, to seize fishing nets, the fish caught, make decisions regarding imposing administrative fines and confiscation. A person in this position fulfils the representative functions of the State.

She admitted that the work of a State environmental inspector is related to a psychological tension. However it can not be coordinated with studies in a higher education institution, which is testified by the following data: in 2003, five inspectors

acquired the first level education, in
2005 – two inspectors, in 2006 – three inspector, in 2007 – four inspectors who at present are studying would graduate a higher education institution.

The Representative of the Waters Administration indicated that the decision regarding an administrative fine can be made only by civil servants. But legal norms provide for involving the so-called public inspectors who are conferred the right to draw up reports on administrative violations, because this is just the fist stage in record keeping of administrative violations, and therefore "it is not that grievous in respect to a private person" (*case materials, Vol. 5, pp. 72*). Usually the work of public inspectors is not remunerated. Therefore they are called "public". These are the persons who voluntarily work in the field of environment protection. In separate cases, when a State institution is allocated some additional resources, it engages inspector assistants. The Submitter of the application also had such agreement.

She recognized the following model of acquisition of a qualification of an inspector as the most optimal: "a higher education plus the practice that can be acquired in our Service. In fact, we ourselves organize training courses for the new staff, because there is no such higher education institution" (*case materials, Vol. 5, pp. 77*). It was simultaneously admitted that "the experience that is acquired in other State institutions in similar positions is useful" (*ibid.*).

The representative of the Waters Administration informed that during the process of case examination, there are two persons of the pre-retirement age employed, who, according to the Regulation No. 79, could continue their service without acquisition of higher education. It will be examined whether these persons will continue working, because "they are provided for a possibility to preserve the position" (*see: case materials, Vol. 5, pp. 83*).

11. An external person – the School of Public Administration – maintains that it is beyond the scope of the School of Public Administration to define the body of knowledge and skills that would pertain to "any higher education".

The School of Public Administration emphasizes that it, according to the operating order of the State Chancellery regarding curriculum, ensures implementation

of the respective curriculum and learning process. However the State Chancellery forms the above order "by assessing models of respective competences of a position and establishing what abilities, knowledge and skills should be additionally taught to civil servants who have already acquired a higher education" (*see: case materials, Vol. 4, pp. 148*).

During the sitting of the Court, the principal of the School of Public Administration, Uģis Rusmanis, indicated that the School of Public Administration carries out surveys of the needs of civil servants and, according to the results, ensures further education of civil servants. There have been about one hundred training worked out that last, in average, a day and a half, including six blocks of training – issues related to the rights, issues on the European Union, management skills, different psychological skills, issues related to ethics, conflicts of interests etc. The School of Public Administration does not ensure a higher education.

He expressed a viewpoint that none of the higher education institutions provide for such comprehensive and wide spectrum of knowledge that is needed for a civil servant. There is one learning block in the School of Public Administration, which is provided for new civil servants and is in demand. One can conclude from such demand that knowledge acquired elsewhere are not sufficient.

The Constitutional Court holds that:

12. The Submitter of the application contests, in the Constitutional Court, both, compliance of Para 5 of the Transitional Provisions and Regulation No. 79 that was passed under this Para with the Satversme. In the question whether the mandatory requirement can at all be applied to the persons who already are civil servants, the legislator made its choice in Para 5 of the Transitional Provisions. As it was justly indicated in the response note by the Saeima, Para 5 of the Transitional Provisions, when establishing the term when the mandatory requirement is to be applied to the persons who as to the date of coming into force of the Law occupied the position of a civil servant un the 1994 State Civil Service Law and who did not have any higher

education could be formulated in two
ways. The legislator could establish that these persons:

1) can proceed exercising the duties of their position without acquisition of a higher education or

2) must acquire a higher education in a definite time frame of abandon civil service.

When assessing whether each of these options comply with the Satversme, it is at first necessary to assess their compliance with the principle of legal security, i.e. compliance of Para 5 of the Transitional Provisions with Article 1 of the Satversme.

12.1. It has been established in the jurisprudence of the Constitutional Court that a range of principles of a legal State follows from Article 1 of the Satversme, *inter alia*, the principle of legal security. The Constitutional Court has indicated that "state institutions shall be consistent in their activities as regards normative acts passed by them, they shall take into account trust in law, that could arise on the basis of a specific normative act" (*see: Judgment of June 10, 1998 by the Constitutional Court in the Case No. 04-03(98), paragraph 3 of the Concluding Part*).

The Constitutional Court has established that the essential part of the principle of legal security is the fact that reliance of a person upon a legal norm is legal, justified and reasonable, as well as the fact whether the legal regulation in its essence is defined and unchangeable enough so that one could rely on it. Moreover one should take into account the fact that this principle can protect only such rights that have already been conferred to a person (*see: Judgment of November 8, 2006 by the Constitutional Court in the Case No. 2006-04-01, Para 21*).

Hence, in order to establish whether the principle of legal security is of any importance in this case, one has to assess:

1) what essential elements characterized the legal status the person mentioned in Para 5 of the Transitional Provisions, *inter alia*, that of the Submitter of the application;

2) whether the former regulation provided for particular duties for persons that were mentioned in Para 5 of the Transitional Provisions in order to preserve the former status and whether the Submitter of the application exercised these responsibilities;

3) whether Para 5 of the Transitional Provisions considerably changed this regulation.

12.2. Civil Service relations are particular relations between a person and the State. In many European States the institution of civil service has old traditions and its principles are established at a constitutional level. For instance, the fourth and the fifth parts of Article 33 of the Basic Law for the Federative Republic of Germany provides that exercising of the sovereign power of the State is entrusted to members of the public service who stand in a relationship of service and loyalty defined by public law. The law governing the public service shall be regulated with due regard to the traditional principles of the professional civil service.

Such principles are, for instance, loyalty to the service, neutral (non-party) exercising of the duties of the position, vocational education, entering civil service for ever, the rights to demand remuneration (*see: Judgment of the Federal Constitutional Court of Germany in the Case No. BvR 2/58 [BVerfGE 9, 268, 286[*).

In Latvia, these principles were not established at a constitutional level, they were implemented based on the Latvian Civil Service Statute. The professor Kārlis Dišlers notes that "by employing persons in civil service one establishes legal relations between the State and an employee for his or her entire life: the State demands for all abilities of the employee and for this the State ensures his or her existence by providing legal alimonies in the form of regular payments" *(Dišlers K. Ievads administratīvo tiesību zinātnē. Administratīvo tiesību kursa vispārīgā daļa. Rīga, Latvijas Universitāte, 1938, pp. 147).* He also emphasizes that Section 11 of the Latvian Civil Service Statutes provided the following: "when appointing to any position, the preference is given to an employee who is already undergoing service in the respective department or field of service, i.e. serves for a longer period of time" (*ibid. pp. 142).*

Clause 2 of Section 6 of the 1995 Civil Service Law provided that "a person may be a candidate for a civil servant position who: [..] has at least secondary education", whereas the second part of Section 10 provided that "Civil servants (candidates for a civil servant position) take qualification examinations in the School

of Public Administration in order to acquire the desired category or qualification of a civil servant".

During the State administration reform the person who was already working in a public institution in the position of a civil servant could continue working only in the case if he or she has passed certification of a civil servant. The certification took place under Cabinet of Ministers Regulation of May 10, 1994 No. 102 "On the Order or Registration and Certification of Candidates for a Civil Servant Position of State Civil Service".

The data of the State Civil Service Administration manifests that in 1994 and 1995, formation of professional civil service was initiated by at first carrying out certification of candidates for a civil servant position. In 1994, the qualification examinations were passed by 7824 candidates, 214 candidates did not; in 1005 – respectively 6236 and 250 candidates (*see:* www.vcp.gov.lv/21/).

On February 21, 1995, the State Civil Service Administration, taking into consideration the suggestion of the Commission of Candidate Certification regarding certification of the Submitter of the application, acknowledged certification of the Submitter of the application as passed and indicated that this resolution serves as the basis for appointing Submitter of the application to the position of a civil servant in the status of a candidate for a civil servant position (*see: Resolution of February 21, 1995 by the State Civil Service Administration No. 1114, case materials, Vol. 1, pp. 27*). Based on this resolution, the Submitter of the application started exercising the duties of State civil service of the Republic of Latvia.

At the time when the 1994 Civil Service Law was effective, a status similar to that of the Submitter of the application enjoyed more than 17 thousand persons. The edition of 1999 of the Civil Service Administration "Jaunā Pārvalde" informs when answering to the question "how many persons became candidates for a civil servant position?": "17 097 persons out of all candidates passed the qualification examinations since 1994" (*see: Jaunā Pārvalde, 1999, No. 2,* www.vcp.gov.lv).

These persons were entitled to rely on the fact that in the case if they would decently exercise their duties established by law, the State shall ensure the rights and

guarantees, *inter alia*, the right to a permanent civil service position to the civil servant (candidate for a civil servant position).

12.3. The 1994 Civil Service law provided for a responsibility of a civil servant to improve his or her professional skills. Namely, Section 22 of the above Law provided that "a civil servant (candidate for a civil servant position) shall regularly perfect his or her knowledge and improve professional skills". Moreover the second part of the above Section provided: "The head of the State civil institution shall ensure a possibility to the civil servants (candidates for a civil servant position) to improve their qualification not less than during 45 days in the time period of three years by preserving their remuneration and covering training expenses if improvement of qualification takes place in Latvia". This Law did not provide civil servants (candidates for a civil servant position) for a responsibility to acquire a higher education, but it favoured acquisition of necessary specific knowledge on their own account or in the School of Public Administration.

Simultaneously Sub-points "c" and "e" of Clause 1 of Section 60 provided that State civil service relation terminate if a civil servant (candidate for a civil servant position) is dismissed from State civil service by applying the dismissal as a disciplinary penalty or in relation to nonconformity with the tenable position, which is testified by the State Civil Service Administration based on the results of certification. This implies that the Law did not establish rights for a person to continue State civil service without any restriction (in any case).

In the sitting of the Court, the representative of the State Civil Service Administration noted that the State, when establishing civil service relation with a person, undertakes the responsibility to provide this person with the rights to a permanent civil service position, which does not imply that a person, in the course of his or her development, may stay at the same level as at the beginning of State civil service.

Hence the Submitter of the application has rights to rely that he will be able to continue constantly exercising the duties of civil service, if participating in the undertakings organizes within the frameworks of civil service for improvement of

qualification, acquiring the necessary
knowledge on his own account, as well as showing the work results that conform with the established requirements, and he shall not be applied any other considerable requirements (to invest, spend time and money) outside the service.

12.4. The order signed by the head of the Riga Inland Waters Sector, A. Strautiņš, testifies that the Submitter of the application "exercise the responsibilities of his position decently, the labour discipline norms were not violated" (*see: case materials, Vol. 1, pp. 93*).

The Submitter of the application has decently exercised the responsibilities established by the 1994 Civil Service Law, and was entitled to rely on the fact that the State shall ensure him the rights established by law.

12.5. The State Civil Service Law has considerably changed separate aspects of the structure of State civil service. It is noted in the draft law annotation submitted to the Saeima: "Taking into account the fact that the present examination of the candidates for a civil servant position is general and is not established for the transitional period, which is over for the Latvian civil service, the draft law provides for no general examination for acquisition of the status of a civil servant, because it is not an effective instrument for selection of civil servants. Conformity of a candidate for a particular civil servant position is examined in the institution itself by appointing the candidate to the position and establishing a test period" (*Annotation to the draft law "State Civil Service Law", case materials, Vol. 3, pp. 32*). By abandoning a central examination system, a test term is also established after appointing of a candidate to a civil servant position, as well as the requirement regarding "a secondary education" was substituted by the requirement "a higher education".

One has to take into account that during passage of the State Civil Service Law if compared to the time when the 1994 Civil Service Law was passed, the situation in the field of education, *inter alia* higher education has changed. On June 1, 1999, a new Education Law came into force, but on July 14, 1999 – Vocational Education Law. Arrangement and subordination of the education system to common standards formed preconditions for the fact that the State could, without additional examination,

recognize the persons who has acquired
a certain level of education as suitable for a position of a civil servant.

The mandatory requirement only implies that only such persons shall be admitted to State civil service who can testify, according to a certain order, the fact that they have corresponding theoretical skills and practical training in both ways, formally (testified by means of a document on education) and practice, namely, a person must exercise his or her service responsibilities at a definite level. The representative of the Waters Administration and the representative of the State Civil Service Administration admitted that, by having watched the activities of civil servants for a definite period of time, one has taken into account the fact that the requirements in relation to work results are proportionate with the education requirements established for civil servants (*see: case materials, Vol. 5, pp. 76 and pp. 91*).

Hence, Para 5 of the Transitional Provisions established considerably new requirements, if compared to the former regulation, whereto the principle of legal security was to be applied.

12.6. The Constitutional Court has established that Article 1 of the Satversme does not prohibit the legislator to make such amendments to the existent legal regulation that complies with the Satversme. In a democratic and legal State, the principle of legal security requires that the legislator, when making such amendments, would provide for a more lenient transition to the new regulation. In such cases one has to establish reasonable terms and provide for compensation of harm done (*see: 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 in the case no. 2005-16-01, Para 18*).

Hence, the opinion of the Submitter of the application that observance of the principle of legal security in this case implies reliance of each person on the fact that the State shall provide for a possibility to continue working till the retirement age, is ungrounded.

Para 5 of the Transitional Provision, insofar as it relates the mandatory requirement to already employed civil servants, does not *per se* violate the principle of legal security, if a lenient transition is provided for.

12.7. Para 5 of the Transitional Provisions authorizes the Cabinet of Ministers to establish the duration of the transitional period.

However the legislator has acted in a different manner in a range of cases by providing for the transitional period for the requirement regarding a higher education or the one that corresponds to the requirements of the position in the transitional provisions of laws, namely: Para 7 of the Transitional Provisions of the State Civil Service Law regarding civil servants of the State Forest Service, Para 11 of the Transitional Provisions of the Law "On the State Revenue Service" regarding the SRS civil servants, Para 8 of the Law On the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration regarding officials employed in this system.

In the sitting of the Court, the representative of the Saeima indicated that a general authorization was established only for the purpose to establish regulation that would differ for each ministry and that "the Cabinet of Ministers must take into consideration all those corresponding transition periods, these possibilities in higher education institutions" (*see: case materials, Vol. 5, pp. 47*).

Since the State Civil Service Law is related to a wide range of different institutions, the legislator justly held that the government enjoys better positions in order to establish in a more detailed manner a corresponding lenient transition. Moreover, the legislator was entitled to presume that the government, when establishing this transition, would observe the norms and principles of the Satversme. The opinion expressed by the representative of the Saeima is grounded: the fact that the legislator has, in one case, chosen to establish the term by law does not prohibit it to delegate the Cabinet of Ministers the responsibility to establish it. Authorization *per se* is not in conflict with the requirement of a lenient transition.

Hence Para 5 of the Transitional Provisions in general complies with Article 1 of the Satversme.

13. In order to assess whether, in each case, the newly established regulation complies with the requirements of a lenient transition, one has to take into consideration the fact

whether the new regulation restricts the
basic rights established for a person by the Satversme. A transition shall be considered as lenient only in the case if the restrictions to the basic rights of a person comply with the Satversme.

Hence, compliance of the Regulation No. 79 with the principle of legal security is to be assessed together with the compliance with Articles 91, 101 and 106 of the Satversme.

14. The Constitutional Court has established in several judgments that the principle of legal equality requires equal attitude towards persons who enjoy equal and comparable conditions. A different attitude towards these persons is admissible only in the case if it has reasonable and objective grounds. The principle of legal security permits and even requires a different attitude towards persons who enjoy different conditions. The principle of legal equality permits different attitude towards persons who enjoy equal conditions or equal attitude towards persons who enjoy different conditions only in the case if it has been established that it has objective and reasonable grounds (*see, e.g.: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 13 of the Concluding Part and Judgment of January 4, 2007 in the case No. 2006-13-0103, Para 6*). In order to assess whether the Contested Provisions comply with the principle of equality established by Article 91 of the Satversme, one has to establish: 1) what persons enjoy equal or, according to certain criteria, comparable conditions; 2) whether the Contested Provisions provide for an equal or different attitude towards these persons; 3) whether such attitude has objective and reasonable grounds.

14.1. Each person who, according to the 1994 Civil Service Law, had passed the examination (certification) of a civil servant (candidate for a civil servant position), was appointed to the position of a civil servant and had proven, by means of their activities, their suitability for exercising of responsibilities of the position, enjoyed equal and comparable conditions. Namely, the criteria for comparison are as follows:

– passing of examination

(certification) of a civil servant (candidate for a civil servant position), whereby a person proves his or her suitability for exercising responsibilities of the position;

– appointing of a person to the position of a civil servant, whereby the person has acquired the status of a civil servant, i.e. additional responsibilities and rights, *inter alia*, the rights to a permanent civil service position;

– performance of the respective position considering that activities of a civil servant are periodically assessed, and persons who are not able to exercise their responsibilities at an adequate level are dismissed form State civil service.

Civil servants who have a higher education could continue their civil service, whereas civil servants who had no higher education were obligated to acquire the education of abandon civil service. Respectively, a different attitude was established according to the criterion of a formal education.

Such different treatment is admissible because it has been established under an objective criterion – acquisition of education. The Cabinet of Ministers justly indicates that a State-recognized diploma regarding acquisition of a higher education testifies that a person has, in an accredited or recognized process of training, acquired systemic knowledge and skills of a definite level. 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 a Civil servant.

Hence, the opinion of the Submitter of the application that he has been discriminated regarding his "position of formal education" is ungrounded.

14.2. A different transitional period is established for civil servants of different public institutions in general and specialized State civil service, according to which the mandatory requirement becomes effective. The data by the State Civil Service Administration show that in the institutions, the transitional period of which was exceeded August 1, 2005, there were 11 032 persons (54.85 percent) having no hither education as on September 1, 2005, whilst in the State Revenue Service – 459 persons (11.19 percent), but in the State Forest Service – 608 persons (45.14 percent) (*see: case materials, Vol. 1, pp. 171*).

All civil servants who, under the
1995 Civil Service Law, started exercising responsibilities of a civil servant position and fulfilled the same functions provided for in Section 3 of the State Civil Service Law that were fulfilled by the Submitter of the application when enjoying equal and comparable conditions.

The State Civil Service Administration admits that according to the description of the position of a senior inspector of the Control Department of Inland Waters Administration, the Riga Inland Waters control sector, the Submitter of the application "has held public office in accordance with Section 3 of the State Civil Service Law by fulfilling the same functions that are related to control of observance of normative acts, working out or passage of administrative acts and preparation and receiving of decisions related to rights of other persons. [..]

According to the information included in the unified register system of the State Civil Service Administration on the personnel of public administration institutions, responsibilities of State officials in the State Forest Service are exercised by persons who have secondary vocational education that is acquired in respective secondary education institutions. The above civil servants of the State Forest Service usually occupy the civil servant positions of lower or middle rank, i.e. the position of a forest-guard, engineer of a forest district, in separate cases – deputy district forester or the position of a district forester. According to the responsibilities established for each above position of State civil servants, they are the same as those of the Submitter of the application, i.e. control of observance of normative acts, working out or passage of administrative acts and preparation and receiving of decisions related to rights of other persons" (*case materials, Vol. 4, pp. 165*).

Yet, the opinion of the Cabinet of Ministers that Para 7 of the Transitional Provisions of the State Civil Service Law is applicable to the persons with secondary vocational education, but the Submitter of the application does not have any. Hence a different attitude towards the Submitter of the application is justified by an objective criterion.

No such information is at the disposal of the Constitutional Court that a person with a suitable secondary vocational education who has been fulfilling the above

functions established in Section 3 of the
State Civil Service Law would be dismissed from State civil service; therefore it is not necessary to assess such situation.

14.3. Under Para 8 of the Transitional Provisions of the Law On the Career Course of Service of Civil Servants with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration, persons who have no suitable higher education may continue occupying a position in these institutions up to July 1, 2016. Both, civil servants of these institutions having special rank grades and the Submitter of the application, fulfil one and the same function, namely, the repressive function of the State. Hence, both, these persons and the Submitter of the application, enjoy equal and comparable conditions.

The Cabinet of Ministers holds that a justification of the different attitude in this case is a possibility of persons to acquire vocational education in their field of work. This is not possible for fish protection inspectors, but possible for civil servants of the State Forest Service and persons employed in the system of the Ministry of the Interior and the Prisons Administration. Such opinion is ungrounded, because the term established in Para 8 the Transitional Provisions of the Law On the Career Course of Service of Civil Servants with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration is not related to the requirement of secondary vocational education.

However a different attitude is objective and reasonable, because civil servants of the State Forest Service and persons employed in the system of the Ministry of the Interior and the Prisons Administration exercise responsibilities of a specialized State civil service, which is particular as to its contents. This service is regulated by a special Law. It provides for a different attitude towards persons, more strict order or certification related to assigning special rank grades. Hence it is admissible that persons who have no formal higher education may exercise responsibilities of these services.

Hence, the Contested Provisions comply with Article 91 of the Satversme.

15. 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.” Evidently, one has to assess compliance of the Contested Provisions with the first sentence of the above Article.

The Constitutional Court has established: “By the notion "employment", which is incorporated in Article 106 of the Satversme, one shall understand work which demands adequate qualification and which is the source of means of existence of a person or as the profession, which is closely connected with the personality of an individual. [..] As working in State civil service is considered to be the employment, which is the source of means of existence of a person and requires an adequate qualification, the rights, guaranteed in Article 106 of the Satversme may be attributed to it.” (*see: Judgment of December 18, 2003 by the Constitutional Court in the case No. 2003-12-01, Para 7*). “Thus, 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.” (*see: Judgment of May 20, 2003 by the Constitutional Court in the case No. 2002-21-01, Para 1 of the Concluding Part*).

The Constitutional Court has also recognized that “The rights to freely choose an employment, guaranteed by Article 106 of the Satversme, are inseparably connected with the abilities and qualifications of persons. Thus the limit of freely choosing the employment has been determined by Article 106 of the Satversme.” (*see: Judgment of June 4, 2002 by the Constitutional Court in the case No. 2001-16-01, Para 2.2*). “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”, however “[higher legal] education is just one of the criteria for the person to prove its suitability for holding the corresponding

office" (*see: Judgment of June 4, 2002*
by the Constitutional Court in the case No. 2001-16-01, Paras 2.2. and 4.2).

The first sentence of Article 106 of the Constitution provides a person with the rights to free choose their employment taking into account the body of shills, knowledge and abilities that characterise preparedness of a particular person and his or her suitability for fulfilment of responsibilities of a certain position by taking into account his or her education, as well as the practical experience in the position and other knowledge, skills and abilities that the above person has acquired and developed.

It does not prohibit the State to establish requirements, according to which a person, when choosing an employment, has to prove his or her skills and qualification. For instance, one can ask passing State-established examinations or acquire education in a State-acknowledged study process. However these requirements are to be justified and they are to be regarded as restriction of the respective basic rights, namely, according to the criteria established in Article 116 of the Satversme.

One can agree to the opinion of the Submitter of the application and the Cabinet of Ministers that **the Contested Provisions establishes restriction of the basic rights provided for in Article 106 of the Satversme to the Submitter of the application.**

16. Article 116 of the Satversme provides that the rights established in Article 106 of the Satversme "may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals". Hence restriction of rights established in Article 106 of the Satversme is to be assessed in accordance with the criteria of Article 116.

This implies that restriction of rights established in Article 106 of the Satversme must comply with the following requirements: 1) it must be established by law; 2) it must comply with a legitimate objective that is to be achieved by establishing such restriction; 3) it must comply with the principle of proportionality (*see: Judgment of May 20, 2003 by the Constitutional Court in the case No. 2002-21-01, Para 2*).

In this case, there is no dispute about the fact that restriction to the basic rights established in Article 106 of the Satversme, as well as in accordance with it. Therefore

one has to only assess whether the
restriction has a legitimate objective and whether the restriction complies with the principle of proportionality.

In the cases when exercising of rights established in Article 106 of the Satversme takes place in the frameworks of State civil service, restriction to these rights are to be assessed jointly with Article 101 of the Satversme.

17. 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 civil service". Whilst the second part provides: "Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language." It is evident that, in this case, compliance of the Contested Provisions with the first part of Article 101 of the Satversme is to be assessed.

When considering the first part of Article 1010 of the Satversme jointly with the second sentence of Article 91 of the Satversme, one has to conclude that the basic law established in the first part of Article 1010 of the Satversme are to be implemented without any discrimination, i.e. equally. Hence a citizen is entitled to hold public office without any discrimination.

Similar rights are *expressis verbis* included in constitutions of many other states. Researchers of comparative constitutional law have noted that equality of citizens of states along with equality of active and passive right of vote are particularly manifested through approach to public positions and functions (see: *Weber A. Menschenrechte. Texte und Fallpraxis. München, Sellier. European Law Publishers, 2004, pp. 893).*

For instance, the first part of Article 33 of the Constitution of the Republic of Lithuania provides that Citizens shall have the right to enter on equal terms in the State service of the Republic of Lithuania; the fourth part of Article 32 of the Constitution of the Russian Federation provides that Citizens of the Russian Federation shall have

equal access to State service; the first
part of Article 50 of the Constitution of the Portuguese Republic provides that All citizens have the right, equally and without restriction, to hold public office; the fourth part of Article 30 of the Constitution of the Slovak Republic provides that Citizens have access to elected and other public posts under equal conditions (*see: www.codices.venice.int).*

These rights coincide with the second part of Article 21 of the UNO Universal Declaration of Human Rights that provides: "Everyone has the right of equal access to public service in his country". Whilst Article 25 of the UN 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.

Yet the UNO Human Rights Committee has established that these rights do not provide each citizen with a guaranteed position in civil service (*see: Communication No. 552/1993; Wieslaw Kall v. Poland. United Nations. Report of the Human Rights Committee. Volume II. United Nations. New York, 1999, pp. 105-112).*

However, the Federal Constitutional Court of Germany has established that in the professions that are related to the State "the freedom of choice of a profession exists only in the framework of those positions that are formed by the State" (*Judgment of the Federal Constitutional Court of Germany in the case 1BvR 787/80 [BVerfGE 73, 280, 292]).*

Article 101 of the Satversme, too, obligates the State to ensure a possibility to hold public office for each person who wants to. The Constitutional Court has established that "the first part of Section 101 of the Satversme does not determine for a person the absolute right to hold a position in civil service, but points out that this right shall be realized "as provided for by law". Consequently, the way of exercising these rights are to established by law" (*see: Judgment of April 11, 2006 by the Constitutional Court in the Case No. 2005-24-01, Para 8*).

It has been expressed in the Saeima response note that the right to hold a public office for the persons who, according to the 1994 Civil Service law were working as

civil servants and who had no higher
education, were restricted in the way that these persons had to acquire a higher education in order to preserve the former rights (position of a civil servant).

The Cabinet of Ministers also admit s that Regulation No. 79 provide for restriction of the basic rights of the Submitter of the application established by Article 101 of the Satversme.

In order to establish whether the above restrictions comply with Article 101 of the Satversme, one has to assess, whether these restrictions:

1) are established as provided for by law;
2) are admissible from the point of view of the principle of unity of the Satversme.

17.1. In the sitting of the Court, the representative of the Saeima justly indicated that the mandatory requirement as such is established by law. If a law provides for such requirement, then the Cabinet of Ministers may delegate establishment date and order of coming into force of this requirement. Hence, restrictions are established "as provided for by law.

17.2. When assessing the fact what restrictions, "as provided for in the law", can be established for the rights to hold public service guaranteed by Article 101 of the Satversme, one has to take into consideration the principle of unity of the Satversme. The Constitutional Court has reiterated that "the Satversme is a single whole and the norms enshrined into it shall be interpreted systemically" (*Judgment of October 22, 2002 by the Constitutional Court in the case No. 2002-04-03, Para 2 of the Concluding Part and Judgment of November 2, 2006 in the case No. 2006-07-01, Para 14*).

When assessing Articles 101and 106 of the Satversme jointly, one can conclude that Article 101 of the Satversme is at the same time *lex specialis* and *lex generalis* in relation to Article 106 of the Satversme. 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 Constitutional Court of the Republic of Lithuania, too, when assessing interaction of similar constitutional norms, indicates: "the right to enter into the State service of the Republic of Lithuania under equal conditions, entrenched in Paragraph 1 of Article 33 of the Constitution, is linked with the right of every person to freely choose a job, entrenched in Paragraph 1 of Article 48 of the Constitution. In this regard the provision "Citizens shall have the right to [...] enter into the State service of the Republic of Lithuania under equal conditions" of Paragraph 1 of Article 33 of the Constitution is both *lex specialis* and *lex generalis* linked with the provision "each human being may freely choose a job and business" of Paragraph 1 of Article 48 of the Constitution" (*Judgment of December 13, 2004 by the Constitutional Court of the Republic of Lithuania in the case No. 51/01-26/02-19/03-22/03-26/03-27/03, Para 26,* http://www.lrkt.lt/ *dokumentai/2004/r041213.htm).*

Hence, form the point of view of the principle of unity of the Satversme in this case, only such restrictions are admissible to the basic rights established in Article 101 of the Satversme as provided for by law, which 1) are established with the legitimate objective established in Article 116 of the Satversme, and 2) are commensurate (proportional) therewith.

18. The Constitutional Court has established: "At the basis of restriction of any fundamental right of a person there shall be circumstances and arguments about why it is necessary. Thus restriction is determined for the sake of important interests – the legitimate aim." (*Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 16 of the Constitutional Part*).

The task of the Contested Provisions is to establish transition from the former regulation to the new requirements that would comply with the principles of a legal State. These norms are simultaneously directed towards ensuring of efficient activity of State civil service (short-term and long-term), as well as towards ensuring of interests of those persons who, as on the date of coming into force of the State Civil Service Law, already held pubic office. The Saeima justly indicates in the response note that it is difficult to mark out one particular objective of the norm, because the

norm, depending on the situation, is directed towards protection of several interests (*see: case materials, Vol. 1, pp. 76*).

Restriction of the basic rights established in Articles 101 and 106 of the Satversme to the persons who, as on the date of coming into force of the State Civil Service Law already held public office and who had no higher education is established by the Contested Provisions in order to protect the democratic regime of the State and the rights of other persons.

The most essential of the above objectives is protection of the rights of other persons. Respecting the fact that a State civil servant impalements the power of the State and he or she is entitled, according to the order established in the normative acts, to restrict the rights of other people, competence, education and intelligence of a State civil servant is of a great importance. 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.

Simultaneously the democratic State regime is protected. The principle of democracy established in Article 1 of the Satversme *inter alia* requires implementation of the State functions in accordance with the principles of a democratic and legal State. The task of public administration is to implement these principles in practice. Civil servants, who can not understand and implement these principles, bring discredit to the State in general and hence decrease loyalty of its inhabitants to their State and its democratic political system.

Moreover, the representative of the Submitter of the application neither denied that the principle of good administration requires that an honest, competent and motivated civil service functions in the State.

Hence the Contested Provisions serve as the legitimate objective established in Article 116 of the Satversme – protection of the rights of other people and protection of the democratic regime of the State – for restriction of the basic rights established in Articles 101 and 106 of the Satversme.

19. The Constitutional Court has established that in the case if the public power restricts the rights of a person and his or her legal interests, one has to observe a reasonable balance between the interests of the society and those of a person. In order to establish, whether the principle of proportionality is observed, one has to investigate whether there exist more lenient means for reaching of these aims and whether the action of the legislator is consistent or proportional. If, when assessing a legal norm, it is established that it is in conflict with at least one of these criteria, then it is in conflict with the principle of proportionality and is unlawful (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 17 of the Concluding Part*).

19.1. In the situation of an ideal type, the Contested Provisions are fully consistent for reaching of the legitimate objectives. Namely, an objective can be reach in two ways:

1) civil servants, who have experience and in education of whom the State has already invested its efforts and resources, improve their qualification by acquiring a higher education;

2) civil servants, who do not wish to acquire higher education, are substituted by civil servants who have acquired a forma higher education and who additionally acquire specific and practical skills necessary for the qualification.

Yet the legislator and public administration institutions, when establishing this regulation, are obligated to take into account not only the best situation theoretically, but also the actual level of economic development of the society, level of education and skills. The regulation may not be directed towards theoretically correct model; practical abilities also have to be taken into consideration.

When passing the Contested Provisions, the legislator had planned to transform the State civil service in a complex way, by *inter alia* ensuring a competitive wage and prestige of State civil service. As the representative of the Cabinet of Ministers indicated in the sitting of the Court, there existed a viewpoint during elaboration of Regulation No. 79 that one has to establish a short transitional period "taking into consideration the fact that there is an insufficient number of candidates for state civil servant position having a higher education" (*case materials, Vol. 5, pp. 56*). However,

after passage of Regulation No. 79, the
situation in the labour market did not change. Hence, difficulties regarding involving of new and qualified personnel for particular positions of state officials could emerge in separate institutions.

For instance, the Directorate General of the State Archives of Latvia, in the letter of November 10, 2005 indicates to the State Civil Service Administration that due to different objective reasons, several civil servants have not acquired a higher education in the term established. Taking into account the working experience of these civil servants, as well as relatively low remuneration, which are one of the main reasons for their substitution by employees who have a higher education, the Directorate General of the State Archives of Latvia asks permitting these civil servants to continue working in the position by preserving the term of implementation of the mandatory requirement (*see: case materials, Vol. 1, pp. 179*).

It was also indicated in the letter of the Director General of the State Forest Service that was submitted to the Saeima before supplementation of the State Civil Service Law by Para 7 of the Transitional Provisions: "Indices of the structural units in fact turn out to be hostages of the existent situation: on the one hand, the State Forest Service Law requires liability for fulfilment of tasks. The situation when the State Forest Service refuses to bring forest fires under control is inadmissible. On the other hand, the State Civil Service law does not allows staffing of employees who do not conform to the requirements of this Law" (*case materials, Vol. 3, pp. 66*).

The Wagers Administration, in its letter of June 20, 2006 No. 431 regarding the application of the Submitter of the application to the Administrative Court informs that, in 2005 (the year when the relations of State civil service were ceased with the Submitter of application), the Administration has announced 26 vacancies to positions of civil servants, and 19 of vacancies were filled (*see: case materials, Vol. 1, pp. 90*). Yet one can agree to the opinion of the Cabinet of Ministers that this fact is of no importance in ensuring of protection of interests of the society. The vacant positions of civil servants can be filled also by re-announcing vacancies, by means of substitution and transferring of employees (*see: case materials, Vol. 3, pp. 9*). Existence of a

vacancy *per se* does not justify
delegation of responsibility to a person who is not able to fulfil them at a proper level.

But the Submitter of the application, after termination of labour relations, concluded such labour agreements regarding fulfilment of such functions that partially coincide with those of the former position. Namely, the responsibilities, according to his labour agreement, were drawing up of administration violations protocols (*see: labour agreement No. 55, Para 1.3, case materials, Vol. 1, pp. 99*).

The Submitter of the application fulfilled these functions when working in the position of public inspector. The second part of Section 46 of the Law "On Environmental Protection" provided that one can involve public inspectors for the control of environmental protection and use of natural resources by delegating them the rights to draw up protocols on administrative violations. The Submitter of the application was entitled to perform the respective activities; however there is doubt whether in this case the legitimate objective was reached. Namely, on the one hand, the position of a civil servant is vacant for a long time, but, on the other hand, a part of the functions of this position is fulfilled by a person that is temporarily employed and does not have the status of a civil servant.

Drawing up of an administrative protocol is one of the functions of a civil servant established in the first part of Section 3 of the State Civil Service Law. It implies the function "to control implementation of administrative acts". The society is interested in the fact that this function is fulfilled, in the form of professional activity, by a person that has service relations with the State, namely, is a civil servant who is provided for certain restrictions, as well as social guarantees. This is a body of rights and duties, which is *inter alia* directed towards maximum prevention of corruption risk.

In the stage of imposing of an administrative penalty by trying to protect the society against the risk that could be related to insufficient education of a civil servant, it is admissible that in the stage of drawing up of an administrative protocol, the State power is implemented by a person who does not have the status of a State official.

The Federal Constitutional Court of Germany has indicated that in the Basic Law of the Federative Republic of Germany, the principles of civil service are established

not for the purpose to protect subjective
rights of civil servants, but rather for the purpose to ensure existence of civil service for the sake of the society (*see: Judgment of the Federal Constitutional Court of Germany in the Case 2BvF 2/58 [BVerfGE 9, 268, 286]).*

Consequently, legitimate objectives in a short term might not be reached in separate cases; however these separate cases are to be assessed jointly with the benefit that is gained by the society form the Contested Provisions, especially in a long term.

19.2. As it has already been indicated in Para 12.5 of this Judgment, implementation of the mandatory requirement has a double effect. On the one hand, it established essentially new requirements regarding service and development of individuality of each civil servant. On the other hand, it is a formal requirement to acquire education in a process developed by the State.

The mandatory requirement jointly with the requirement to regularly assess the work of a civil servant is directed towards ensuring an effective functioning of State administration and implementation of the principle of good administration at an adequate level. One has to take into account that relevant requirements regarding quality of State administration are set forth in relation to both, development of the legal system of Latvia, e.g. introduction of the Administrative Procedure Law, and joining of Latvia to the European Union. The necessity to adjust oneself to new requirements obligates each civil servant to improve their knowledge and develop their skills disregarding the fact whether he or she already has an education.

The benefit that the society gains from application of mandatory requirements is essential in this case, especially in the vases when the mandatory requirement is applied to civil servants who fulfil such functions mentioned in Section 2 of the State Civil Service Law as formation of the policy of the field and development strategy, co-ordination of activities of the field, distribution or control of financial resources, elaboration of normative acts.

Simultaneously the mandatory requirement establishes a formal criterion – a civil servant must prove his theoretical and practical training that is fit for exercising difficult duties in the State-recognized process of acquisition of education. The benefit that the society gains from application of this criterion is, first of all, confidence that

persons who are entitled to hold public
office are theoretically and practically prepared enough.

The document on a formal education testifies existence of theoretical and practical training, however presence of such document *per se* does not always manifest that a person lacks the respective knowledge and skills.

Yet in the cases when a person is delegated the State power, not only the fact that the person is trained well enough, but also the fact that this training is testified in a certain way and the society may be confident that the person is able to fulfil his or her duties at a high quality is of great importance.

Hence the society gains considerable benefit from restriction established in the Contested Provisions, and the Contested Provisions in general are suitable for reaching the legitimate objectives, especially in a long term.

19.3. When assessing proportionality of restriction of basic rights, one has to assess whether the restrictions are necessary, namely, whether the legitimate objectives can be reached by other effective means that would restrict the rights of persons at a lesser extent (*see: Judgment of April 11, 2007 by the Constitutional Court in the case No. 2006-28-01, Para 20*).

The representative of the Submitter of the application expressed a viewpoint that it would be possible for the Submitter of the application to preserve the position in civil service without acquisition of a higher education up to the retirement age if more lenient means were applied. However, thus it is not possible to reach the above legitimate objectives. The Constitutional Court has established that "a more lenient means are not any means, but only such by which the aim may be reached in 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*).

The participants of the case did not mention any other more lenient means for reaching the legitimate objective.

19.4. When assessing compliance of the Contested Provisions with the principle of proportionality, one mainly has to investigate consequences caused by means employed by the legislator, i.e. whether application of the legal norm causes any greater harm to the rights and legal interests of a person if compared to the benefit that

is gained by the society (*see: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1.3 of the Concluding Part and Judgment of April 22, 2006 in the case No. 2005-24-01, Para 11.3*).

When assessing consequences caused by the restriction to a person, one has to take into account the fact that the mandatory requirement could be implemented in two ways. First, by achieving that persons who already hold public office would acquire a higher education. Second, by dismissing from civil service those persons who do not have a higher education. In both cases consequences from implementation of the restriction are different.

19.4.1. Less relevant consequences from implementation of the restriction can be achieved in the case if a person is provided with a possibility to continue working in civil service by simultaneously acquiring a higher education.

Already in the 1994 Civil Service Law there were norms included that stimulated a civil servant (candidate for a civil servant position) to acquire education. Under Section 40 of the said Law, a civil servant (candidate for a civil servant position) who, without ceasing civil service, was successfully studying in an education institution in order to acquire knowledge necessary for holding pubic office, was entitled to receive a compensation that would cover a part of his or her study fee. Moreover, Section 43 provided a civil servant (candidate for a civil servant position) who, without ceasing civil service, was successfully studying in an education institution, for a leave for studies and examinations. Similar norms are also contained by the State Civil Service Law.

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.

It is cumbersome and restrictive insofar as it is related to the necessity to invest a considerable amount of time (especially in the cases when it is impossible to spend a sufficient amount of time with under-age children due to such investment), additional load for health, including vision, necessity to invest additional financial resources

(payment for entrance examinations, a
part of the study fee that is not covered by the institution, expenses for training aids, expenses of transportation to the education institution, etc), loss of that part of incomes that a person could earn if he or she worked instead of studying.

The above consequences affect and restrict a person even more, if the time for acquisition of a higher education is short.

19.4.2. Consequences of the restriction are considerable in the case if a person is dismissed form the civil service. It particularly concerns the persons who spend much time and effort for acquisition of knowledge and skills necessary for civil service, but are dismissed form service at the age when acquisition of a new profession is encumbered.

These consequences are, in Items 8 and 9 of the Regulation No. 79, precluded for the group of persons that would be the most influenced thereby. Namely, persons who have 5 – 6 years left to the retirement age.

It was also indicated in the constitutional complaint of the Submitter of the application that application of the Contested Provisions to him has caused considerable consequences. He, at the age of 52, has lost both, the work and the profession, and he can apply only for a non-qualified, which means – poorly remunerated work. In the sitting of the Court, the Submitter of the application explained that he at present works as a guard and hence he has an easier but less remunerated work.

However Para 5 of the Transitional Provisions were not directed towards that persons who were civil servants as on the date of coming into force of the State Civil Service Law and who had no higher education would be dismissed form the service. When interpreting Paras 4 and 5 of the Transitional Provisions of the State Civil Service law, one can conclude that the legislator did not try to achieve that persons, who hold public office but do not conform with the mandatory requirement, would immediately abandon service. On contrary – the legislator has assigned the status of a civil servant to the candidates to a civil servant position disregarding their education.

Namely, Para 4 of the Transitional Provisions of the State Civil Service Law provided that within the period of six month, after coming into force of this law, candidates for a civil servant position who, under this Law, hold public office, are

assigned the status of a civil servant by
the State Civil Service Administration. Based on this Para of the Transitional Provisions, by Resolution of May 16, 2001 by the State Civil Service Administration No. 1601, the status of a civil servant was assigned to the Submitter of the application (*see: case materials, Vol. 1, pp. 28*).

In the sitting of the Court, the representative of the Saeima, too, indicated that the objective of the Legislator, when delegating establishment of the term to the Cabinet of Ministers, was to achieve such terms that would ensure a possibility to acquire a higher education.

Restriction of the basic rights established in Para 5 of the Transitional Provisions comply with the principle of proportionality. Hence Para 5 of the Transitional Provisions comply with Articles 101 and 106 of the Satversme.

19.5. Proportionality of the restriction of the basic rights included in the Regulation No. 79 is to be, at first, assessed in relation to the principle of legal security. The restriction is proportionate only in the case if it ensures an adequate lenient transition to the new regulation. The State Civil Service Administration, in the letter of September 5, 2000 No. 13/1027, which was addressed to the chairman of the Saeima Commission on State Administration and Municipal Affairs, informs that 6219 civil servants and candidates for a civil servant position were employed in State administration at that moment. 68 percent of them had higher education, 23 percent – secondary vocational education and 9 percent – secondary education (*see: case materials. Vol. 1, pp. 151*). This constitutes about one third out of all persons that are employed in State civil service and do not conform to the mandatory requirement of the State Civil Service Law.

19.5.1. As it has always been established (*see: Para 19.4.2 of this Judgment*), Paras 8 and 9 of the Regulation No. 79 were directed towards implementation of a more lenient transition. Under these Paras, persons, for whom it would not be useful to acquire a higher education shortly before the end of the service but immediate dismissal of which from the service would cause considerable consequences for these persons, were allowed to precede working in civil service up to the retirement age.

Paras 8 and 9 of the Regulation No. 79 does not establish any restriction of the basic rights for persons and comply with Articles 101 and 106 of the Satversme.

19.5.2. Restrictions of the basic rights are neither established by Paras 1 and 10 of the Regulation No. 79.

Hence, Paras 1 and 10 of the Regulation No. 79 comply with Articles 1, 101 and 106 of the Satversme.

19.5.3. In the sitting of the Court, the representative of the State Civil Service Administration emphasized that it was planned to implement the mandatory requirement "not by means of dismissal from service, but by establishment of a time period" (*case materials, Vol. 5, pp. 88*). She admitted that the transitional period was established with the objective to reach that those persons who already held public office, had a possibility to comply with the mandatory requirement.

Paras 2 – 5 of the Regulation No. 79 provide a person with a possibility to choose more lenient consequences out of all possible, namely, acquisition of education.

However, in order to make the transition lenient in this case, persons had to simultaneously be provided with real possibilities to acquire a higher education, namely, the time limit had to be long enough so that there would be a possibility to acquire a higher education if it is necessary, for instance, for fulfilment of urgent and immediate responsibilities of civil service, due to important conditions in a family, health condition or short term material difficulties.

19.5.4. The Saeima holds that the Cabinet of Ministers has established a gradual and flexible order and terms of application of the restriction. Moreover, the Contested Provisions does not require non-commensurate effort for a long period of time, because, according to the Vocational Education Law, the first level vocational education is also regarded as a higher education that can be acquired in the period of two years (*see: case materials, Vol. 1, pp. 77*).

This statement is based mainly on theoretical possibilities. Paras 2 and 3 of the Regulation No. 79, if applied to persons, who acquire a higher education according to the order established in the following paras, provide for a real possibility to acquire a higher education only in separate study programmes. For instance, education in natural

sciences, which is recognized, by the
Waters Administration, as preferable for a fish protection inspector, could not be acquired during the time period of two and a half years neither during passage of the Regulation No. 79, nor at present.

One can conclude form the letters of the State Civil Service Administration that it has recognized the terms established in Paras 2 and 3 of the Regulation No. 79 for implementation of the mandatory requirement – "August 1, 2004" and "August 1, 2005" as being in conflict with the principle of expedience and proportionality. It was indicated to the Waters Administration in the letter of July 25, 2005 by the State Civil Service Administration No. Nr. 08/2377 that:

"Taking into account the fact that justification of expedience of the dismissal of a civil service, under Para 3 of the Regulation No, 79 [..], is the fact established in relation to his or her non-acquisition of a higher education in the prescribed order (but not at the determined date, because the date is of no importance), the institution is entitled to dismiss those civil servants who have not observed the order established in the Regulations. Thus, if a civil servant has observed the established order (has timely initiated studies in a higher education institution, was a successful student and has informed the institution thereof), then the institution is not entitled (if there is no justification of expediency) to dismiss a civil service because of the fact that the studies would be finished in October 2005, not on August 1, 2005. Similarly, if a civil servant has timely initiated studies, the duration of which constitutes the period of four, five or more years (but not three), the institution is not entitled to dismiss the civil servant" (*case materials, Vol. 4, pp. 161*).

Whilst in the letter of February 1, 2007 No. 08/198, the State Civil Service Administration indicated: "If a civil servant has initiated studies in the term established in Paras 4 and 5 of the Regulation to acquire academic or second level higher education, duration of which, according to the study programme, constitutes four, five or more years (in addition, in Latvia there are mainly such kinds of higher education), the civil servant in fact could not acquire a higher education in the term established, respectively, in Para 2 or 3 of the Regulation. However, taking into consideration the objective of the legal norms and the principle of proportionality, if a civil servant, as

on the date established in Para 2 and 3
of the Regulation, has observed the timeframe (timely initiated studies in a higher education institution – respectively, up to 01.10.2001 or 01.10.2002, has been a successful student and has informed the institution thereof), but has not managed to acquire the higher education because, due to objective reasons (duration of the studies, according to the study programme, is four, five or more years) has completed the third grade only, the civil servant could proceed occupying the position of a civil servant" (*case materials, Vol. 1, pp. 149*).

The data of the State Civil Service Administration show that, as on September 1, 2005, 158 persons (2.62 percent out of the total number of employed civil servants), to whom the mandatory requirement regarding acquisition of a higher education up to September 1, 2005 was applicable and who had not yet finished studies, proceeded working in civil service (*case materials, Vol.1, pp. 169*).

Hence Paras 2 and 3 of the Regulation No. 79, if they are interpreted as a requirement for a person to acquire a higher education within the terms established therein or to abandon State civil service, do not comply with the principle of legal security, as well as the principle of proportionality and expediency.

However the above Paras comply with the legal norms of a higher judicial power, if they are interpreted as norms that are not applicable to persons who are mentioned in Paras 4 and 5 of the Regulation No. 79, namely, persons who have initiated studies in the established term and continued them while informing the institution thereof.

The Regulation No. 79 distinguishes between and differently regulates several groups of civil servants, namely:

1) pre-retirement age persons;
2) persons who are not of the pre-retirement age and are in the process of acquisition of a higher education;
3) persons who are not of the pre-retirement age and are not in the process of acquisition of a higher education.

If Paras 2 and 3 of the Regulation No. 79 are to be, first of all, understood so that they provide for a common date of becoming effective of the requirement in relation to

the civil servants of the institutions
mentioned in these Paras, who have held public office as on the date of coming into force of the State Civil Service Law and who are not provided for another regulation by other norms of this Regulation, then, **Paras 2 and 3 of the Regulation No. 79 comply with the principle of legal security, as well as with the principle of proportionality, and hence with Articles 1, 101 and 106 of the Satversme.**

19.5.5. Paras 4 and 5 of the Regulation No. 79 provided that a civil servant must initiate studies within, respectively, six months or a year. As one can conclude from the letters by the State Forest Service, these Paras, during the time of their passage, did not provide a part of civil servants with a real possibility to acquire an adequate education.

For instance, it was indicated in the letter of January 19, 2001 by the Ministry of Agriculture No. 10/154 that: "by providing in the Regulations that those civil servants, who have no higher education, initiate studies till October 1, 2003, about 350 civil servants shall be dismissed from the State Forest Service because the maximum capacity of the Agriculture University is about 150 external students per year" (*case materials, Vol. 4, pp. 210*).

One see from the letter of September 5, 2000 by the State Civil Service Administration No. 13/1027 to the Saeima Commission on State Administration and Municipal Affairs the number of civil servants who at that time had a higher education, secondary vocation education or secondary education. For instance, in the Ministry of Environmental Protection and Regional Development, there were, respectively, 290, 79 and 26 such persons. In the Ministry of Agriculture – 1467, 940 and 159 persons (*see: case materials, Vol. 1, pp. 151 – 152*). Hence one can contest whether, when passing the Regulation No, 79, it was considered what would happen if the civil servants and candidates for a civil servant position of the two above Ministries only, i.e. more than 1200 persons having no higher education would want to initiate their studies in one and the same speciality in the same academic year. However, this requirement was changed in relation to civil servants of the State Forest Service having secondary vocational education by passing Amendments to the State

Civil Service Law, namely, by supplementing Para 7 of the Transitional Provisions of the Law.

The term established in Paras 4 and 5 of the Transitional Provisions is reasonable and compliant to the Principle of legal security insofar as there persons had real possibility to initiate studies in the respective speciality.

In separate cases the fact that a person had to enter a higher education institution in a rather short term, which had to be done simultaneously by very many civil servants, this could cause problems in separate specialities or to certain persons. However, there is no information at the disposition of the Constitutional Court that such problems were really caused and that persons, due to objective reasons, could not initiate their studies.

Moreover, the Submitter of the application explained that in autumn 2002 he has entered two higher education institutions: the Latvian University of Agriculture, Forest Faculty, and the Riga Graduate School of Law. First of all, he took examinations in the Riga Graduate School of Law, but could not receive the answer for a long time and therefore entered the Forest Faculty of the Latvian University of Agriculture. In this case, the term established for initiation of studies was sufficient (*see: case materials, Vol. 4, pp. 174*).

Hence Paras 4 and 5 of the Regulation No. 79 comply with the principle of proportionality and the principle of legal security, and therefore – with Articles 1, 101 and 106 of the Satversme.

9.5.6. Para 6 of the Regulation No. 79 provides for a responsibility to a civil servant to submit to the head of the State administration institution a note issued by the higher education institution on initiation of studies. This Para *per se* does not establish any restriction of the basic rights of a person; therefore it **complies with Articles 1, 101 and 106 of the Satversme.**

19.5.7. Para 6 of the Regulation No. 79 provides: "Civil servants who, within the term established in Paras 4, 5 and 6 of these Provisions, have not submitted a not, shall be dismissed from the position of a civil servant due to non-compliance with the mandatory requirements." The State Civil Service Administration interprets it as a requirement to acquire a higher education in the shortest time possible, i.e. without any

pauses due to conditions that are relevant to the civil servant (child care or other important conditions of a family, health problems, short-term financial difficulties) or due to fulfilment of responsibilities vital for the service, as well as due to change of the education institution according to the speciality.

For instance, the State Civil Service Administration, without assessing whether a higher education institution was changed due to knowledge that is necessary for the position occupied, has demanded to discontinue civil service relations with the person who worked in the Rural Support Service, and the studies, which were initiated in the Police Academy of Latvia, where two years were finished, were continued in the Latvian University of Agriculture (*see: case materials, Vol. 1, pp. 221 – 229*).

Similarly, the State Civil Service Administration demanded discontinuation of civil service relations with the person who has taken an academic leave due to financial conditions in the family, because there were two children in the family, but the studies were initiated by both parents according to the requirements of State civil service. Moreover, it did not take into consideration the fact that this person, in addition to direct responsibilities of the position, had fulfilled extra duties during the academic leave by thus ensuring control of observance of environment protection regulations in the palace determined by the Ramsar Convention – the military complex in Lubāna (*see: case materials, Vol. 1, pp. 193 – 196*).

The State Civil Service Administration indicates to the institutions in its letters: "circumstances of personal or material nature, change of the education institution without continuation of the reach level of education or disablement (including a leave for child care) can not serve as an objective obstacle for non-observance of the above order, in the result of which the above circumstances can not serve as a justification for non-observance of the order established in the Regulation" (*case materials, Vol. 1, pp. 178, 183, 192, 196*).

Such interpretation of the Regulation No. 79 in many cases does not comply with the principle of legal security, as well as the principle of proportionality. The benefit that the society gains obviously is not greater than restriction of the rights of a person.

Unlike the third part of Section 30

of the State Civil Service Law that provides that An institution shall cover half of the annual tuition fee for a civil servant who „successfully studies" at an education institution, Para 4, 5 and 6 of the Regulation No. 79 requires that a civil servant studies and submits a note on studies (but not study successfully and graduates in the shortest time possible). The Law on Institutions of Higher Education provides for the rights to discontinue studies for a definite period of time, and then to resume them.

A lenient transition and proportionality in ensured if a higher education is acquired in the time period that is reasonable for certain conditions and person.

Hence, as to the persons who initiated studies in an institution of higher education and discontinued them due to relevant and justifying conditions, Para 7 of the Regulation No. 79 is in conflict with the principle of legal security and the principle of proportionality, and hence with Articles 1, 101 and 106 of the Satversme.

The Constitutional Court also took into consideration the fact that the State Civil Service Law provides for regular assessment of civil servants' activities. Under the Order of February 13, 2001 by the Cabinet of Ministers No. 2 "Regarding the Order of Assessment of Civil Servants Activities and Results Thereof", activities of civil servants and the results of these activities are examined by the Examination Commission of Candidates and Civil Servants. The result of assessment can be used only as justification for the decision regarding non-suitability of a civil servant to position. Hence there exists a mechanism, which, disregarding the fact whether acquisition of a formal higher education is completed, allows only those civil servants, the body of factual knowledge and skills ensure fulfilling of responsibilities of the position at the necessary level, continuing holding public office.

The Substantive Part

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

holds:

1. Para 5 of the Transitional Provisions of the State Civil Service Law complies with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia.

2. Paras 1 – 6 and Paras 8 – 10 of the Regulation of February 20, 2001 by the Cabinet of Ministers No. 79 "Regulations on Application Order and Term of the Mandatory Requirement for Civil Servants – Higher Education" comply with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia.

3. Para 7 of the Regulation of February 20, 2001 by the Cabinet of Ministers No. 79 "Regulations on Application Order and Term of the Mandatory Requirement for Civil Servants – Higher Education" complies with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia if it is related to the persons mentioned in Para 4 of the Concluding Part of the Judgment.

4. As to the persons who initiated studies in an institution of higher education and discontinued them due to relevant and justifying conditions, Para 7 of the Regulation of February 20, 2001 by the Cabinet of Ministers No. 79 "Regulations on Application Order and Term of the Mandatory Requirement for Civil Servants – Higher Education" is in conflict with Articles 1, 91, 101 and 106 of the Satversme of the Republic of Latvia and invalid as of the day of coming into force.

The Judgment is final and not subject to appeal.

The Judgment was announced on May 10, 2007.

The Presiding judge Gunārs Kūtris