



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, January 4, 2007

in case No. 2006-13-0103

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Aija Branta, Juris Jelāgins, Gunārs Kūtris and Andrejs Lapse

on the basis of the claim of the State Human Rights Bureau

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Items 1 and 3), 17 (Paragraph 1, Item 8) and 28¹

in written proceedings at December 5, 2006 Court session reviewed the matter

”On the Compliance of Item 3 of the Cabinet of Ministers August 15, 2000 Regulations No. 272 ”Amendments to the Military Persons’ Term of Service Pension Law”, Section 3 of November 30, 2000 Law ”Amendments to the Military Persons’ Term of Service Pension Law” and May 25, 2006 Law ”Amendments to Military Persons’ Term of Service Pension Law” with the First Sentence of Section 91 and Section 109 of the Republic of Latvia Satversme”.

The establishing part

1. On March 19, 1998 the Saeima adopted the Military Persons' Term of Service Pension Law. Section 5, Paragraph 1 of the Law envisages that "the Term of Service Pension is calculated as the average sum of the monthly remuneration of the military person for the last five years prior to retirement from service".

In its turn Paragraph 2 of Section 5 initially determined: "The remuneration for service by which the Term of Service Pension is calculated includes the wages for position, the additional payment for rank, as well as the additional payment, the types of which are determined by the laws and normative acts of the Cabinet of Ministers."

1.1. On August 15, 2000 under the procedure determined in Section 81 of the Satversme were issued the Cabinet of Ministers Regulations No. 272 "Amendments to Military Persons' Term of Service Pension Law" (hereinafter – regulations No. 272). Item 3 of the Regulations deleted from Section 5, Paragraph 2 of the Military Persons' Term of Service Pension Law the words "as well as the additional payment, the types of which are determined in the laws and normative acts of the Cabinet of Ministers". Thus Section 5, Paragraph 2 of the above Law was in effect in the following wording: "The remuneration for service by which the Term of Service Pension is calculated includes the wages for position, the additional payment for rank, the additional payment for length of service."

1.2. Regulations No. 272 were submitted for review of the Saeima and were reviewed as the draft Law under the procedure envisaged in the Rules of Procedure of the Saeima. No changes were made regarding Section 5, Paragraph 2 of the Draft Law of Military Persons' Term of Service Pensions. On November 30, 2000 the Draft Law was adopted. Section 5, Paragraph 2 of the Law remained in effect in the following wording: "The remuneration for service by which the term of Service Pension is calculated includes the wages for position, the additional payment for rank, the additional payment for length of service."

1.3. At the time of adoption of the Military Persons' Term of Service Pension Law remuneration for the soldiers was regulated by Section 45, Paragraph 1 of the Law "On Defence Forces", which establishes: "Officers and re-enlistment instructors and privates receive remuneration and gratis uniforms for service in Defence Forces. The remuneration includes a salary, a bonus for the rank, a long-service bonus and other bonuses, the amount of which is determined by the Cabinet of Ministers. Several acts by the Cabinet of Ministers determined the amount of the remuneration: the Cabinet of Ministers August 5, 1997 Regulations No. 296 "On Military Persons' Remuneration at the Institutions, which are Subject and Subordinated to the Ministry of the Defence"; "the Cabinet of Ministers August 9, 1994 Regulations No. 157 "On the Remuneration and Financial Guarantees for the Counter- Intelligence Service Soldiers of the Ministry of Defence". From July 1, 1999 remuneration of soldiers and national guard was determined by the Cabinet of Ministers June 29, 1999 Regulations No. 241 "On the Remuneration System for Soldiers and National Guard".

On July 1, 2002 the Military Service Law took effect; and its Section 48, Paragraph 1 determined that "during active service a soldier shall receive a service remuneration determined by the Cabinet. Service remuneration shall include a salary depending on the service rank and the length of service, and supplements provided for in Cabinet Regulations". On the basis of the above norm on March 8, 2004 the Cabinet of Ministers issued Regulations No. 131 "Regulations On Service Remuneration for Soldiers".

In accordance with the above changes for the service remuneration of soldiers, the Saeima adopted the Law "Amendments to the Military Persons' Term of Service Pension Law" on May 25, 2006, which expressed Section 5, Paragraph 2 of the Law in the following wording: "The Remuneration for service by which the Term of Service Pension is calculated includes the wages for position and length of service".

2. From April of 1998 till December of 2006 the Saeima passed several laws, which determine term of service pensions.

2.1. On April 2, 1998 the Saeima passed the Law "On Term of Service Pensions for Ministry of the Interior System Employees with Special Service Ranks", which took effect on April 30, 1998. In its Section 1 it is determined that the purpose of this Law is "to provide the Ministry of the Interior system employees with special service ranks (henceforth – employees) rights to a term of service pension and to determine the procedure for its granting, calculation and payment".

Section 4 of the above Law envisages: " the term of service pension is calculated from the average monthly payment for service (henceforth – payment for service) of the employee for last five years before discharge from the service.

(2) The payment for service includes salary, bonus, additional pay for special service rank, additional pay for length of service and other additional pay determined by the Cabinet of Ministers".

The Cabinet of Ministers October 14, 2003 Regulations No. 567 "On the Service Salary of Ministry of the Interior System Employees with Special Service Ranks" determined the salary of the above employees till December 31, 2006.

In its turn on June 15, 2006 the Saeima adopted the Law on the Course of Service of the Ministry of the Interior Institutions with Special Service Ranks and Officials of Prisons' Administration; Section 32, Paragraph 1 of which envisages that an official shall receive service remuneration, which includes a monthly salary, additional payments and bonuses.

On October 31, 2006 and in accordance with this Law the Cabinet of Ministers issued Regulations No. 904 "Regulations on the System of Service Remuneration and – Complying with their Posts- Highest Special Service Ranks for the Ministry of the Interior System Employees with Special Service Ranks and the Officials of Prisons' Administration".

2.2. On May 13, 1999 the Saeima passed the Law of Term of Service Pensions for Prosecutors, which took effect on January 1, 2000. Section 1 of this Law establishes that its purpose is ” to ensure for prosecutors those rights for the prosecutors’ term of service pension (henceforth – term of service pension) determined in the Public Prosecutor’s Office Law and to regulate the procedure by which the term of service pension shall be granted, calculated and paid”.

Section 5 of the above Law envisages:

”(1) The term of service pension shall be calculated from the average monthly salary of a prosecutor for the last five years prior to discharging him/her from the position of prosecutor.

(2) In this salary shall be included the wages, additional payment for rank of position, the premium and other additional payments, which are anticipated in the Public Prosecutor’s Law.

In its turn Section 52, Paragraph 1 of the Public Prosecutor’s Office Law envisages:

”Remuneration for the work of a prosecutor shall consist of a monthly salary, additional payments and bonuses”,

2.3. On December 18, 2003 the Saeima adopted the Law on Term of Service Pensions for the Officials of the Constitution Defence Bureau. The purpose of this Law in accordance with its Section 1 is ” to ensure to the officials of the Constitution Defence Bureau the right to term of service pension and to regulate the procedure by which the pension is granted, calculated and paid”.

Section 6 of the above Law envisages:

”(1) The term of service pension shall be calculated from the average monthly salary of the Constitution Defence Bureau official for the last three years prior to discharging him/her from the post;

(2) In this salary shall be included the wages, additional payment for the length of service and bonuses.

(3) As concerns an official for whom in accordance with Section 4 of this Law an increased amount of length of service is determined then in the salary of him/her are included the wages, which this person had before his/her leaving on an intelligence or counter-intelligence assignment in foreign states.”

2.4. On June 17, 2004 the Saeima passed the Law on the Service Pension of State and Local Government Professional Orchestra, Choir, Concert Organization, Theatre and Circus Artists, which took effect on January 1, 2005. In accordance with Section 2 of this Law, its purpose is ”to ensure the right to a service pension for State and local government professional orchestra, choir, concert organization, theatre and circus artists (hereinafter –person) in light of the fact that working in these professions over a period of time is connected with the loss of one’s professional skills before reaching the age determined for the granting of an old-age pension, and to lay down the procedures for the granting, calculation and payment of the service pension.”

Section 5 of the above Law determines:

”(1) A service pension shall be calculated from the average remuneration for one month for the last 36 months worked in the respective profession. [...]

(2) [...] Work remuneration includes working wages, additional payments specified in laws and regulations, collective agreements or employment contracts as well as bonuses.”

2.5. On June 22, 2006 the Saeima adopted the Law of Term of Service Pensions for Judges, which took effect on July 21, 2006. In accordance with Section 1 of the Law its purpose is ”to strengthen the independence of the judges by guaranteeing their right, envisaged by Law, to adequate financial security after leaving the office and to determine the procedure for granting, calculation and payment of the term of service pensions for judges”.

Paragraphs 1-5 of Section 5 of the above Law envisage that the term of service pension for a judge shall be calculated from his/her average monthly salary of a certain period prior to his/her discharging from the position. Depending on the fact when the

judge has been discharged from the position this period of time may be different (one to five years).

In its turn Section 5, Paragraph 6 envisages that "work remuneration includes working wages, additional payment for qualification category and bonuses".

In accordance with Section 119 of the Law "On Judicial Power" "work remuneration of a judge includes monthly salary, additional payment for qualification category and bonuses".

2.6. On November 2, 2006 the Saeima passed the Law of Term of Service Pensions for Diplomats, which took effect on January 1, 2007. Section 1 of this Law determines: "The purpose of the Law is to ensure for diplomats the rights for the diplomats' term of service pension and regulate the procedure by which it shall be granted, calculated and paid to further the stability and succession of the diplomatic and consular service".

Section 6 of this Law envisages:

"(1) The term of service pension shall be calculated from the average monthly salary of the diplomat for the last three years prior to discharging him/her from the position at the diplomatic and consular service.

(2) This work remuneration includes monthly salary, additional payments and bonuses."

In its turn Section 19, Paragraph 1 "Work Remuneration and Additional Payment for the Diplomatic Rank" of the Diplomatic and Consular Service Law determines: "Diplomats, officials and employees of the diplomatic and consular service shall receive monthly salary, allowances, additional payment and bonuses according to the Law on State Civil Service or the Latvian Labour Code as far as they are not determined by this Law. Diplomats shall receive additional payment for diplomatic rank according to the specific regulations of the Cabinet of Ministers. The Saeima, the

Ministry of the respective branch or the Bank of Latvia shall pay additional payment for the granted diplomatic rank to specialized attachés.”

3. The submitter of the claim – the State Human Rights Bureau – holds that Item 3 of Regulations No. 272; Section 3 of November 30, 2000 Law ”Amendments to the Military Persons’ Term of Service Pension Law” and May 25, 2006 Law ”Amendments to the Military Persons’ Term of Service Pensions Law” (hereinafter – the impugned norms) are at discrepancy with Sections 91 and 109 of the Republic of Latvia Satversme (hereinafter – the Satversme) and requests to declare the norms as null and void as of the moment of their adoption, simultaneously determining that Section 5, Paragraph 2 of the Military Persons’ Term of Service Pensions Law shall be in effect in the wording, in which it has been in effect till the day of Regulations No. 272 taking effect.

By making reference to the Constitutional Court practice it is pointed out in the claim that the principle of equality, which follows from Section 91 of the Satversme, inter alia prohibits the State institutions to pass norms, which without a reasonable ground permit a differentiated attitude to persons, who are in the same circumstances. To assess whether the impugned norms comply with Section 91 of the Satversme it is necessary to establish:

- 1) which persons are in equal or different circumstances;
- 2) whether the impugned norms envisage equal or different attitude to these persons;
- 3) whether such attitude has an objective and reasonable basis, namely, whether there is a legitimate aim and whether the principle of proportionality has been observed.

The State Human Rights Bureau holds that military persons, who receive term of service pensions and other groups of persons, who receive term of service pensions, are in equal circumstances.

During the time of submission of the claim term of service pensions were envisaged for five groups of persons: military persons, prosecutors, officials of the Constitution Defence Bureau, Ministry of the Interior System employees with special service ranks and State and local government professional orchestra, choir, concert organization, theatre and circus artists. In its turn draft laws on term of service pensions for judges and employees of diplomatic service were reviewed in the Saeima.

The State Human Rights Bureau holds that all persons, belonging to the above five groups are in equal circumstances, as all of them are persons, employed by the State and to whom the State – by taking into consideration specifics of the respective work – has envisaged a social guarantee – the term of service pension. A separate Law regulates term of service pensions for each of the groups however, that cannot serve as the reason for holding that the circumstances are different.

A viewpoint has been expressed in the claim that to establish whether the above groups of persons are in equal circumstances, purposes of the granted pensions, basic principles of determination of pensions as well as the structure of the particular laws shall be compared.

When analysing the attached to the claim replies by the State institutions on the necessity of having term of service pensions, the State Human Rights Bureau concludes that a different purpose can be seen for the term of service pensions to be granted to judges and prosecutors; in their turn the other term of service pensions are granted in professions, in which specifics of work is connected with untimely loss of one's professional skills. Thus, these term of service pensions can be mutually compared and assessed in compliance with the requirements of the equality principle. Besides, all the term of service pensions are granted by the State and they are being granted for work in the State services and structures.

When comparing the structure of term of service pensions and the basic principles, included in it, it is concluded in the claim that all the Laws on Term of Service Pensions have a similar structure. Length of service has been chosen as the basic criterion for granting of the term of service pensions to all the groups; but the age of a

person is an additional criterion, which in separate cases is not taken into consideration. Term of service pensions for all the groups are calculated as a certain percentage from the previous remuneration. Previous remuneration refers to a certain period of time before retirement. The other provisions are also similar to all the groups.

The State Human Rights Bureau holds: the impugned norms create a procedure that in the remuneration for military persons, from which the term of service pensions are calculated, only a part of it - namely – only the salary is included. In their turn the other term of service pensions are calculated from complete remuneration, which the person has received, namely, the remuneration from which the term of service pensions are calculated, includes the wages for position, the additional payment and bonuses. Thus, as concerns the military persons, who receive term of service pensions, a different attitude for vital provisions on calculation of pensions has been determined.

A viewpoint has been expressed in the claim that the regulation, included in term of service pension laws, may be divided into two blocks: 1) regulation on obtaining of the right to term of service pensions; 2) regulation on the calculation of the term of service pensions.

Regulation of the basic principles on obtaining of the right (the needed time of service, minimum age, time of service, which is included in the length of service) is unified, however, several differences, which are connected with the specifics of a respective service or profession, can be noticed. For example, as concerns the sector of culture, a different age has been determined to the right for receiving a service pension, and it is connected with the loss of one's professional skills. In its turn, no certain age has been determined for military persons and that is connected with the fact that in Section 41 of the Military Service Law has been determined the maximum military age for every concrete post (rank). The State Human Right Bureau holds that this differentiated attitude shall be justified, because it has an objective and reasonable basis.

In its turn, one cannot see an objective and reasonable basis for the differentiated regulation on work remuneration, from which the amount of the term of service pension is calculated. Thus to their mind the impugned norms do not comply with the principle of equality, which is fixed in the first sentence of Satversme Section 91.

Besides it is pointed out in the claim, that the impugned norms do not comply with Section 109 of the Satversme either, as it diminishes the social guarantees determined for military persons.

In the viewpoint, which the State Human Rights Bureau has submitted after getting acquainted with the matter is stressed that "the prevalent element, which makes the above situations comparable is the fact that these persons receive the social guarantee of one type – the term of service pension. Term of service pensions for all these persons have the same purpose and unified basic principles are envisaged for determining it. A unified social guarantee unites the above persons under the basic notion – receivers of term of service pensions. Thus, the military persons and the receivers of other term of service pensions are in equal and comparable circumstances. The enumerated elements – different duties, system of remuneration as well as different labour conditions, specifics, wages etc. – may serve as the basis for justification of a differentiated attitude".

When assessing the conformity of the impugned norms with Section 109 of the Satversme, the submitter of the claim does not hold that military persons have subjective rights to including of additional payment in the object of calculation of service pensions. However, Section 109 of the Satversme and the principles of social rights prohibit ungrounded restriction of the guarantees granted before.

The submitter of the claim, making references to 1990 Universal Comment No. 3 of the UNO Committee of Economic, Social and Cultural Rights, expresses the viewpoint that any regressive measures may be justified only then, if the accessible resources of the State have been completely used.

4. The Saeima and the Cabinet of Ministers –**institutions, which have passed the impugned acts** –have submitted written replies.

4.1. The Saeima in its written reply does not agree with the viewpoint of the submitter of the claim and holds that the impugned norms are not contradictory to the legal norms of higher legal force.

The Saeima stresses: to assess the compliance of the impugned norms with the principle of legal equality, which is incorporated into Section 91 of the Satversme, first of all it shall be established which persons are in equal or comparable under certain criteria circumstances and whether the impugned norms envisage a differentiated attitude to these groups of persons.

To the mind of the Saeima it is not possible to analyse the issue, indicated by the submitter of the claim just by assessing the conformity of the impugned norms with the principle of legal equality, as one cannot assume that all the officials (for example, judges, prosecutors, military persons and the officials of the Constitution Defence Bureau), who under the procedure set by the law have the right of laying claim to term of service pensions, are in equal and comparable circumstances. A different procedure for calculation of term of service pensions and the object, which establishes the amount of the pension, may be determined for different groups of officials.

The Saeima points out that for different officials different age for retiring and requesting the term of service pension has been determined. For separate military persons it may be 35 years of age, even though for prosecutors and Ministry of the Interior system employees with special service ranks this age is at least 50 years. Thus to their mind these officials are not in equal and comparable circumstances.

In the written reply the viewpoint is expressed that the impugned norms may not be regarded as the restriction of the fundamental rights, determined for a person in Section 109 of the Satversme. Fundamental rights to social security, incorporated in Section 109 of the Satversme to their opinion are subject to a more detailed regulation

by the law. When analysing the impugned norm as the restriction of the fundamental right, it might be concluded that the right of a soldier to receive the guarantee that different additional payments will be taken into consideration when calculating his term of service pension directly follows from Section 109 of the Satversme.

Making a reference to the Constitutional Court Judgment in case No. 2003-14-01, the Saeima stresses that – when envisaging service pensions for the employees of a respective sector - it is presumed that the loss of professional skills may take place earlier. In connection with this, the purpose of the term of service pensions is to ensure subsistence means for persons, whose work is connected with the earlier loss of professional skills, which may take place before reaching the age determined for the granting of an old-age pension. Besides, taking into consideration the increased amount of term of service pensions, which is connected with the formula for calculation of it, the term of service pension is an additional social guarantee for persons, who have under certain conditions carried out particular functions in the interests of the State. They hold that service pensions on their essence are a specific State support, an additional social guarantee, which may be paid under a different procedure than, for example, old-age pension.

It is pointed out in the written reply that the impugned norms should be reviewed as read in conjunction with Section 48 of the Military Service Law, which at the present moment does not envisage additional payment for service rank and length of service.

The Saeima expresses the viewpoint that the amount of the term of service pension shall be reviewed by taking into consideration the monthly remuneration at least in two aspects:

- 1) the term of service pension shall be sufficient enough for meeting the needs of a person;
- 2) it shall be proportionate to the service remuneration and thus motivate the soldiers to continue their service duties but not retire untimely.

Additional payment to the mind of the Saeima is a short-term payment, and – even though the amount of the term of service pension is determined by taking into consideration the income of the last five years, the term of service pension shall reflect success achieved during the whole period of service and the former circumstances.

In the written reply it is stated: the impugned norms do not mean that the specific duties, carried out by a soldier shall not be taken into consideration. In Section 4 of the Military Persons' Term of Service Pension Law a special regulation is incorporated, namely, including an extended service time into the length of service. As there exists such a normative regulation, achievement of a soldier in specific situations and under certain circumstances is taken into consideration when calculating the term of service pensions; only – it is being taken into consideration in another way.

4.2. The Cabinet of Ministers in its written reply expresses the viewpoint that the impugned norms comply with Sections 91 and 109 and requests to reject the claim.

The Cabinet of Ministers informs that the adoption of Regulations No. 272 was first of all connected with the fact that the number of international operations, in which the military persons of the Latvian National Armed Forces (hereinafter – NAF) participated, increased. There has been a necessity to send military persons, who have a greater military service experience and a longer length of service, to separate international operations. As the remuneration of the military persons for participation in international operations was high, many military persons made use of the above circumstances in their personal interests so as to receive disproportionately big – in comparison with other military persons- and unconfomable with their contribution to the service pensions.

Simultaneously, the adoption of Regulations No. 272 was connected with the 1999 reform of service remuneration, as the result of which the amount of the term of service pensions increased from 65 to 80 percent. During the time of submission of the claim the average term of service pension, calculated for a military person, is higher than the average term of service pension, calculated for the employees of the system of

the Interior Affairs, but lower than the average term of service pension of the employees of the Prosecutor's Office.

In the written reply is expressed the viewpoint that the amount of the term of service pensions shall be sufficient, but proportionate to the service remuneration, to motivate the soldiers to remain in the service but not retire untimely. The Cabinet of Ministers stresses that retaining of the previous regulation would with time create a negative socio economic effect – existing of a range of persons, who are able to work, but to not work. "A situation may arise that a soldier of the professional service after ten years of service will receive the term of service pension (from 300 Lats on) at the age of 28 – 30 years, and it's amount will be the same, or even surpass the pension of a 60 year old respected general, who has been in the military service for more than 40 years". Besides, at the moment the youngest pensioner is only 32 years old – he has retired from the military service being in an excellent physical form, having good knowledge and noticeable work experience.

It is pointed out in the written reply that those groups of persons, who receive term of service pensions, are not in comparable circumstances. To their mind the State Human Rights Bureau has not taken into consideration the fact that labour specifics, circumstances and requirements of universal physical and psychological qualification of the above professions cannot be mutually compared. The criteria for granting term of service pensions to military persons (the length of service) radically differ from the criteria, envisaged for other groups of persons (the length of service and age).

The Cabinet of Ministers expresses the viewpoint that the aim of determination of additional payment for soldiers, is to financially stimulate the soldier to carry out certain duties for a limited period (for example, when participating in international operations, undertaking heightened responsibility), at a specific place of service or under specific circumstances. After the completion of the above factors, additional payment is not paid.

Besides, the additional payments, not included in the calculation of pensions, are taken into consideration, when including the above period in the twofold or threefold length of service.

5. On the request of the State of the Human Rights Bureau, the Ministry of Defence, the Ministry of the Interior, the Prosecutor General's Office, the Constitution Defence Bureau, Court Administration, the Ministry of Foreign Affairs and the Ministry of Culture, expressed the viewpoint on the necessity of term of service pensions.

5.1. The Ministry of Defence when answering to the question about the necessity of term of service pensions points out that term of service pensions for retired military persons is an integral part of the system of social guarantees. The Ministry stresses that military service is very specific and cannot be compared with other professions. Military persons are in service the whole time and the course of this service is determined and regulated by a specific law and specific normative acts, which cannot be attributed to civil persons. The Ministry of Defence mentions such reasons:

- For soldiers the time of service is especially limited and to continue service till the time of granting old-age pension is practically impossible.
- The term of service pension is necessary to ensure for the soldiers after retiring from the military service the possibility of integrating in civil life (give the possibility to master a civil profession; ensure means of subsistence, give the possibility to settle issues of social life).
- Provisions, requirements and circumstances of the service may significantly influence the further possibilities of the soldiers to compete in the labour market.
- Besides, the term of service pension is one of the factors, which stimulates (motivates) the choice of a military career.
- The term of service pension is one of the factors, which compensates limitations, which are in effect during the time of military service.

5.2. The Ministry of the Interior points out that in the system of the Ministry service pensions are regulated by the Law "On Term of Service Pensions for Ministry of the Interior System Employees with Special Service Ranks". Since the transition of

the places of imprisonment to subordination of the Ministry of Justice the above Law refers also to the employees of the Administration of Places of Imprisonment with special service ranks.

The term of service pension in the Ministry of the Interior system serves as both – the ensurance of the financial position and a social guarantee for the employee, who has devoted a certain period of his life to execution of significant for the state functions – the protection of the State internal security, besides – under specific, physically and psycho-emotionally complicated, not always to be expected service circumstances. The employees of the service even in their free time may be involved in the process of liquidation of havoc caused by elements of nature, fire and effects of other catastrophes as well as in realization of duties, significant to the State, if the human resources at the disposal of the State are insufficient. The ability of carrying out service duties under the above circumstances diminishes with years.

At the same time, the term of service pension is one of the elements, which motivates experienced employees to continue their service in the Ministry of the Interior system.

5.3. The Court Administration expresses the viewpoint that term of service pensions for the judges are necessary to ensure the principle, mentioned in the European Charter, namely, that to judges, who have worked in the position of the judge for the needed time, respective pensions shall be paid as well as to ensure for the judges real social guarantees at the time, when the maximum age, determined for the judges in the law, sets in.

5.4. The Ministry Of Foreign Affairs stresses that the term of service pensions for the employees of the diplomatic service are necessary in order to ensure adequate social guarantee for diplomats, who have carried out certain functions under specific circumstances and have dedicated their efforts to further the development and successful performance of the diplomatic and consular services of Latvia.

The term of service pension is an additional guarantee for the employees of the diplomatic and consular services. It might help to lessen the number of experienced diplomats leaving the service and involve in the service new, qualified employees.

5.5. Prosecutor General's Office remarks that the Law of Term of Service Pensions for Prosecutors envisages the right to the term of service pensions for working prosecutors, who have reached the age of 50 years and is directed to exchange that part of the Office of the Prosecutor personnel, whose professional skills have diminished after 20 years long tense work in pursuit and realization of other duties, which has been connected with continual stress as well as with circumstances of psychologically emotional and physical overwork. The term of service pensions give these persons the possibility for retraining and choosing another profession.

The term of service pension is one of the important factors, which prevents the prosecutor, during the time of carrying out the duties of his/her position, to occur in the situation of interest conflict and corruption.

The term of service pension is a vital argument for young and educated lawyers to connect their career and professional development with the Office of the Prosecutor and in such a way ensures choice of adequate personnel.

The Prosecutor General's office inter alia remarks, that the work of the prosecutors and investigators of the Ministry of the Interior system is similar as regards its nature, degree of complication, intensity and psychological workload.

5.6. The Constitution Defence Bureau (hereinafter – CDB) stresses that the necessity of the term of service pensions, established in the Law on the Term of Service Pensions of the Employees of the Constitution Defence Bureau, has been dictated by the increased psychological load under the circumstance of heightened risk, which causes untimely decrease of specific working skills.

5.7. The Ministry of Culture stresses that determination of term of service pensions for the State and local government professional orchestra, choir, concert organization, theatre and circus artists is substantiated in Section 2 of the Law on the Service Pension of State and Local Government Professional Orchestra, Choir, Concert Organization, Theatre and Circus Artists. Namely, "in light of the fact that working in these professions over a period of time is connected with the loss of one's professional skills before reaching the age determined for the granting of an old age pension".

The Ministry of Culture remarks that the labour specific in the above professions is connected with enormous physical, mental and nervous strain as well as exertion of memory. To maintain the adequate professional level and high artistic quality the artist has to be in a very good physical form (especially paying attention to immaculate health of certain organs). Besides high psychological stability shall be maintained the whole period of activities. The representatives of the professions, mentioned in the Law, have no possibility of possessing adequate professional level till the time of reaching the pensioning age. By losing the skills required by the employer (at about 38 – 55 years of age) the employee becomes socially unprotected, as his/her age, state of health and specific of education makes it difficult to retrain in accordance with the requirements of the labour market.

The concluding part

6. Section 91 of the Satversme determines that " all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind". The Constitutional Court in its Judgments has reiterated that the principle of legal equality requires equal attitude to persons, who are in equal and comparable circumstances. A differentiated attitude to such persons is permissible only if it has a reasonable and objective aim. The principle of legal equality permits and even requires a different attitude to persons, who are in different circumstances. Only in case, if it is established that there exists an objective and reasonable basis, the

principle of equality permits a different attitude to persons, who are in equal circumstances or equal attitude to persons, who are in different circumstances (*sk., piemēram, Satversmes tiesas sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 13. punktu // see, for example, the Constitutional Court Judgment in case No. 2004-18-0106, Item 13*).

Cases on the conformity of such norms, which have been passed in the sector of social rights, with Section 91 of the Satversme have been frequently reviewed in the Constitutional Court practice (*sk., piemēram, Satversmes tiesas spriedumu lietā Nr. 2006-07-01 // see, for example, the Constitutional Court Judgment in case No. 2006-07-01*). Even though – in accordance with Section 109 of the Satversme – the legislator is entitled to extensive freedom of action when choosing regulation in this legal sector, the regulation shall comply with Section 91 of the Satversme.

Also the European Court of Human Rights, when reviewing the case “*Stec v. the United Kingdom*”, in which the submitters inter alia complain about inequality in the system of welfare, has stressed that the system of allowances or pensions, created by the State, shall comply with Section 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*see: Stec v. the United Kingdom, ECHR [GC], [2006], para. 53*).

Even though ” the principle of legal equality in legal systems of different states and international conventions has been regulated and formulated differently, [...] the principle of legal equality in the aggregate – based on one or both of its ingredient parts – functions more or less similarly (still not in the same amount) in all democratic and law-based states” (*Levits E. Par tiesiskās vienlīdzības principu Latvijas Vēstnesis, 2003. gada 8. maijs Nr. 68 // Levits. E. On the Principle of Legal Equality; Latvijas Vēstnesis, May 8, 2003, No. 68*).

In the same way the first sentence of Section 91 of the Satversme, Section 3, Paragraph 1 of the German Basic Law determines: ”All human beings shall be equal before the law”. When analysing the case law of the German Federative Constitutional

Court, the German scientists of the legal sector have pointed out that Section 3, Paragraph 1 of the German Basic Law has a noticeable importance in all the sectors of life. The significance of this norm in the social sector has been inter alia especially stressed. The efforts of the legislator to realize justice by determining more and more specific regulations often simultaneously leads to conflict with Section 3, Paragraph 1 of the Basic Law and persons, to who such regulations have not determined any advantages, often refer to it (*see: Gubelt M. in: von Münch/Kunig, Grundgesetz-Kommentar, Band 1, 5. Aufl. 2000, Rn. 4 zu Art. 3*).

In its turn when reviewing the case on the Republic of Lithuania Law on Special State Pensions to the Employees of the Interior Affairs Service, Special Investigation Service, the State Security Service, the Institutions of Defence and Prosecutor's Office as well as the soldiers, the Republic of Lithuania Constitutional Court stresses that the principle of equality shall be observed when adopting the laws and when applying them. This principle requires to juridically assess homogeneous facts in one and the same manner and it prohibits assessing facts that are essentially equal in a different manner. On the other hand, the constitutional principle – equality before the law – does not prohibit determining by law a distinctive legal regulation regarding separate categories of persons, who are in various situations. Diversity of social life may serve as the basis for the manner and content of the legal regulation (*sk. Lietuvas Republikas Konstitucionālās tiesas 2000. gada 23. aprīļa spriedumu lietā Nr. 27/2000 // see the Republic of Lithuania Constitutional Court April 23, 2000 Judgment in case No. 27/2000*).

The Republic of Lithuania Constitutional Court concludes that the legislator, when elaborating the procedure for calculation and recalculation of the State pensions for employees of services and officials, differentiates this procedure, taking into consideration different circumstances of the service, taking effect of the formal pension regulation, the post, length of service, category, education etc. However, for all the above categories of persons, the pension is calculated on the basis of the fact, what a post (position) the soldier or the official holds at the month, when he/she retires. The salary together with additional payments for rank, length of service and

category are also taken into consideration. The Republic of Lithuania Constitutional Court has not found in the above regulation unequal attitude to the above persons and has concluded that the impugned norms comply with Section 29 of the Republic of Lithuania Constitution (*sk. Lietuvas Republikas Konstitucionālās tiesas 2000. gada 23. aprīļa spriedumu lietā Nr. 27/2000,; see the Republic of Lithuania Constitutional Court April 23, 2000 Judgment in case No. 27/2000 // www.codices.coe.int*).

Thus, the practice of the Constitutional Court, as well as the European Court of Human Rights and that of the Constitutional Courts of other States in certain cases allows assessing whether the social guarantee, determined for different groups of persons, complies with the principle of legal equality.

7. To assess whether the impugned norms comply with Section 91 of the Satversme, it is necessary to establish:

- 1) which persons are in equal and comparable under certain criteria circumstances;
- 2) whether the impugned norms envisage equal or differentiated attitude to these persons;
- 3) whether such an attitude has an objective and reasonable basis, namely, whether there exists a legitimate aim and whether the principle of proportionality has been observed.

The State Human Rights bureau holds that military persons, who receive term of service pensions and other groups of persons, who also receive term of service pensions, are under comparable circumstances.

In its turn to the viewpoint of the Saeima, it is impossible to assess the conformity of the impugned norms with the principle of legal equality, as one cannot be of the opinion that all the officials (for example, the judges, prosecutors, military persons and officials of the CDB) who - in accordance with the Law and under the procedure, determined by the Law - are entitled to term of service pensions are in similar and comparable circumstances.

Such a viewpoint by the Saeima is ungrounded as "two situations are never completely identical. Therefore for the comparison one shall choose such a situation, which has one or several elements common with the situation to be verified. The common element shall unite both situations under one *genus proximum*" (*Levits E. Par tiesiskās vienlīdzības principu. Latvijas Vēstnesis, 2003. gada 8. maijs, Nr. 68 // Levits E. On the Principle of Legal Equality. Latvijas Vēstnesis, May 8, 2003, No. 68*).

The Cabinet of Ministers stresses that it is not possible to mutually compare the labour specific, circumstances and requirements regarding the general physical and psychological qualification of military persons and other professions to representatives of which service pensions have been determined. One may agree with this statement, however, that does not mean that there are no criteria for comparing these persons.

For example, the Arbitrage Court of Belgium has concluded that during the process of the police reform unequal attitude to the officials of the Court Police and Municipal Police has been permitted, when determining a different time for the requirement on mandatory retirement of the persons, who have reached a certain age. Simultaneously in the same matter the Arbitrage Court compared also the norms, which determined differences in this sector regarding the officers of the Court Police and the rank and file (*sk. Beļģijas Arbitrāžas tiesas 1999. gada 10. marta spriedumu lietā Nr. 31/99; see the Arbitrage Court of Belgium March 10, 1999 Judgment in case No. 31/99 // www.codices.coe.int*).

When choosing several elements, which are common for military persons, who receive service pensions, and another group, it is possible to identify several common surplus notions.

7.1. All the receivers of the term of service pensions can be characterized by one common element, namely, service or labour relations with the State. Looking from this viewpoint all the persons, who have or have had either service or labour relations with the State, are in equal and comparable circumstances. Envisaging of the term of

service pensions for only one part of the above persons already in itself creates a differentiated attitude, and that – in accordance with Section 91 of the Satversme – shall be objectively substantiated.

In the case, in which the procedure for granting term of service pensions for the employees of the Prosecutor's Office was challenged, the Constitutional Court first of all reviewed the essence of this pension and its connection with pensions of other types. The Constitutional Court concluded that "when envisaging service pensions for the employees of a particular sector, it is presumed that the loss of professional skills may set in earlier. If a person, working in a respective sector, holds that his/her skills have been lost already before reaching the age, determined for old-age pensions, he/she may hand in notice and request granting a term of service pension. [...] The main purpose of the term of service pension is to guarantee subsistence for persons, whose job is connected with an earlier loss of professional skills, which may set in before reaching the age, determined for granting old-age pensions. Besides, taking into consideration the increased amount of the service pensions, which is connected with the formula for its calculation (*sk. šā sprieduma 2.3. punktu // see Item 2.3. of this Judgment*), the term of service pension is an additional social guarantee to persons, who have performed certain functions in the interests of the State under specific circumstances" (*Satversmes tiesas sprieduma lietā Nr. 2003-14-01 7. punkts // the Constitutional Court Judgment in case No. 2003-14-01, Item 7*).

In its turn in the Law "On State Pensions" passed by the Supreme Council on November 29, 1990 it was determined that the term of service pensions shall be granted to the citizens, employed in specific professions for which - after reaching a certain length of service, work is related to loss of professional skills or social risk.

It follows from Section 2 of the Law on the Service Pension of State and Local Government Professional Orchestra, Choir, Concert Organization, Theatre and Circus Artists that the above service pensions are needed to ensure the right to a service pension for State and local government professional orchestra, choir, concert organization, theatre and circus artists in light of the fact that working in these

professions over a period of time is connected with the loss of one's professional skills before reaching the age determined for the granting of an old-age pension.

In accordance with Section 1 of the Judges' Term of Service Pension Law, service pensions serve for strengthening of the independence of judges, guaranteeing their rights to adequate financial security after resigning from their posts, which is envisaged in the law.

It follows from the Diplomats' Term of Service Law that the rights of the diplomats to the term of service pensions are necessary to further the stability and succession of the diplomatic and consular service.

The Military Persons' Term of Service Pensions Law, the Law "On Term of Service Pensions for Ministry of the Interior System Employees with Special Service Ranks", the Term of Service Pensions Law for the Employees of the Constitution Defence Bureau and the Law of Term of Service Pensions for Prosecutors do not include a substantiation of the fact why the State has determined term of service pensions for the above persons. However, from the explanations of the relevant Ministries about the aim of the above service pensions, one may deduce that determination of term of service pensions is necessary because of several reasons.

Thus, the Ministry of Defence points out that for soldiers the length of carrying out service is especially limited and it is not possible to continue the service till reaching the age, determined for granting of old-age pensions. Term of service pensions ensure for the retired soldiers the possibility of integrating into civil life, namely, the possibility of mastering a civil profession, besides it provides subsistence for them, taking into consideration the fact that the requirements, provisions and circumstances of the service may essentially influence the possibilities of the soldiers to compete in the labour market. Besides, the service pension is one of the factors, which compensates restrictions, which are in effect for the soldiers at the time of carrying out the duties of the military service.

When debating on the Military Persons' Term of Service Pensions Law in its second reading, the Saeima deputy Ģirts Valdis Kristovskis stressed: "Social guarantees – it is the most important and to my mind the "most sensitive" issue for the military persons, because their loyalty to the State and also security for future depends on the fact how the social issues have been settled. And – as the matter of fact- military specific requires an especially accountable access for the solution of the social issues" (6. Saeimas 1998. gada 26. februāra sēdes stenogramma. Latvijas Vēstnesis, 1998. gada 3. marts, Nr. 55/56 // *The Verbatim Report of the 6th. Saeima February 26, 1998. sitting. Latvijas Vēstnesis, March 3, 1998 No. 55/56*).

The Ministry of the Interior points out that in the Ministry of the Interior system term of service pensions serve as both – ensuring of the financial security and as a social guaranty for an employee, who has dedicated a certain period of his/her life for realization of important for the State functions – the protection of the State security, besides under specific, physically and psycho-emotionally hard and not always to be prognosticated circumstances of service. The employees of the service also during the time free from duties may be involved in liquidation of the damages, caused by forces of nature, fire and other kinds of catastrophes or in carrying out the duties, significant for the State, if the number of persons, at the disposal of the State is insufficient. The skills for carrying out the duties of service under the above circumstances decrease with years.

In its turn the Prosecutor General's Office stresses that determination of term of service pensions is directed to replacement of the Prosecutor's Office personnel, who after 20 years of long, exerting and stressful work, as well as the job, connected with psychologically emotional and physically hard circumstances in criminal prosecution and other assignments, have lost the needed professional skills. Term of service pension gives the above persons the possibility of retraining and choosing another profession. Simultaneously, term of service pension is one of the essential factors, which at the time of carrying out his/her duties, withholds the prosecutor from getting into an interest conflict and a corruptive situation.

All the above arguments, which substantiate why a specific social guarantee – term of service pension – shall be determined for certain categories of State employees, may be divided into several groups:

1) specific features of the respective service or profession are connected with decreasing or loss of professional skills at the time of reaching a certain age or after working in this profession for a certain time (having a certain length of service. This argument refers to the representatives of the sector of art professions, employees of the Ministry of the Interior system, military persons, employees of the CDB and the Offices of the Prosecutor; however, it cannot be directly attributed to the judges and the employees of the diplomatic service.

2) the respective person carries out the duties in the service, significant for the State, the course of which noticeable differs from the labour conditions of those persons, who work on the basis of a civil agreement. At the time of the service a person is subject to vital restrictions determined by the State (Regulations of the service etc.), his/her duty is to participate in realization of the service under unforeseen, often also dangerous circumstances. The term of service pension on the one hand compensates the professional skills, which are lost untimely, but – on the other hand it serves as the compensation for the restrictions, determined for the time of the service, regardless of the fact whether these restrictions have or have not caused the untimely decrease of working skills. This argument refers to all those receivers of term of service pensions, who have service relations with the State; it partly refers also to the judges, however, it does not refer to the representatives of the art sector.

3) The term of service pension indirectly as if creates "a postponed remuneration" for an irreproachable service for a long period of time and it advances qualitative performance of the respective services and institutions, especially in the aspect of anti-corruption. This argument refers to all these receivers of term of service pensions, who have service relations with the State; however, it does not refer to the representatives of the artistic professions.

A differentiated attitude to persons, who work in the above professions and realize the duties of the above service or profession, can be justified by legitimate aims, namely, by the protection of public interests and securing the performance of the particular

service as well as by the protection of social interests of every person, working in the respective profession or realizing certain professional duties.

When elaborating the provisions for receiving service pensions, the legislator shall in each concrete case ascertain whether the advantages, which the State has determined for the receiver of the term of service pension, but has not determined for other persons employed by it, are proportionate.

7.2. By summarizing the above arguments about the purpose of granting the term of service pensions, all the term of service pensions may be divided into three groups:

- 1) the service pension, which has been determined mainly with the purpose of compensating untimely loss of skills in a profession, namely – term of service pensions for the artists;
- 2) term of service pensions, which have been determined mainly with the purpose of compensating the additional workload and restrictions established for the period of the service, as well as to further qualitative performance of the respective services and institutions, especially in the aspect of anti-corruption; however, it is not connected with the necessity of untimely retiring of the above persons, namely, term of service pensions for the judges and diplomats.
- 3) Term of service pensions, which have been determined with the three above purposes, namely, term of service pensions for military persons, employees of the CDB, as well as for Ministry of the Interior system employees with special service ranks.

Not denying the possibility of comparing under certain criteria all the persons, who receive service pensions, the Constitutional Court concludes that first of all in equal and comparable under certain criteria are those persons, who receive term of service pensions, mentioned in the last group, namely, 1) military persons; 2) CDB employees; 3) Ministry of the Interior system employees with special service ranks and 4) the prosecutors.

The common element, which makes the above situations comparable, is the fact, that all these persons have been employed by a state institution of a certain type and in the connection with this work or service the persons receive a social guarantee of one type – term of service pension, which has been determined to reach the same aims.

As has been already discussed (*sk. šā sprieduma 7. punktu // see Item 7 of this Judgment*), in the Republic of Lithuania persons of a similar category receive term of service pensions on the basis of unified criteria.

The legislator of Latvia has by separate laws determined the term of service pensions for each of the groups of persons, but as the matter of fact has also indicated the similarity and mutual connection of these pensions.

Section 23 of the State Security Institutions Law anticipates that "State security institution officials shall be granted pensions in accordance with the normative acts, which regulate long-service pensions to employees of defence and internal affairs institutions as well as to employees of the Constitution Defence Bureau".

Section 3 of the Constitution Defence Bureau Term of Service Pensions Law envisages that in the length of service, which establishes the right to service pensions, inter alia is also included the time, which the employee of the Bureau has served in the Republic of Latvia Ministry of the Interior system institution, the mandatory active military service and the time of professional military service in the Republic of Latvia National Armed Forces as well as the time of employment in the post of the prosecutor at the Offices of the Prosecutor.

Section 3 of the Law "On Term of Service Pensions for Ministry of the Interior System Employees with Special Service Ranks" envisages that in the length of the term of service, which provides for the receiving of a term of service pension inter alia is included also mandatory active military service time, time of service in the home guard and active military service time in the (former) military structure units, subordinated to and under the authority of the Ministry of Defence as well as the time

of employment of the Prosecutor's Office before joining the Ministry of the Interior service.

Section 3 of the Military Persons' Term of Service Pension Law also envisages including into the length of service, which gives the right to a term of service pension, both – the time in service of the Ministry of Interior Of the Republic of Latvia and the time of service in the Procurator's Office institutions.

Besides, Section 48, Paragraph 2 of the Military Service Law envisages that the length of service of a soldier *inter alia* shall encompass the time of service in the institutions of the Ministry of the Interior system, State Security institutions and Office of the Prosecutor in positions with special service ranks.

Also the Head of the Saeima Social and Employment Matters Committee Ludmila Kuprijanova, when on January 15, 1998 making a report at a Saeima sitting on the Draft Law of the Military Persons' Term of Service Pensions, pointed to the similarity of this Law with the Draft Law on Term of Service Pensions for the respective employees of the Ministry of the Interior system. She said: "I think that much has been said and discussed about this issue, namely – specific pensions for military persons. This morning we already backed such pensions for the employees of the Ministry of the Interior system, therefore I would not like to take your time, thus I just invite you to back this Draft Law in its first reading" (*6. Saeimas 1998. gada 15. janvāra sēdes stenogramma. Latvijas Vēstnesis, 1998. gada 20. janvāris, Nr. 13/14 // The Verbatim Report of the 6th. Saeima January 15, 1998 sitting. Latvijas Vēstnesis, January 20, 1998, No. 13/14*).

Thus, the military persons and other receivers of the service pensions are in equal and comparable under certain criteria circumstances.

7.3.At the same time one shall take into consideration that in certain cases it is possible and even necessary to compare also separate persons, which are in one and the same service. For example, in cases, when separate provisions refer to persons of one gender

or have been determined in the connection with membership in a concrete political party or nation etc.

All the persons, who carry out the duties of the military service, are in equal and comparable under certain criteria circumstances. A differentiated attitude to separate persons, inter alia, when determining the amount of the remuneration or a service pension shall be permitted only as far as it follows from the specific of the respective service and other objective circumstances.

In the same way in certain cases it is possible to compare also separate persons, who perform functions, which are similar in their content, at different services. The Prosecutor General's Office acknowledges that "work of investigators, employed in the system of the Ministry of the Interior and this of the prosecutors is similar in its nature, degree of complicacy, intensity and psychological load". The employees of the Ministry of the Interior system when standing guard over diplomatic missions and special objects as well as the Security Service of the State President and the Saeima, when taking care about personal security of high officials of the State of Latvia, carry out similar in their content functions.

8. When comparing the construction of the term of service pension laws and the basic principles, included in them, the conclusion of the submitter of the claim that all the term of service pension laws have similar structure is well grounded. A certain length of service has been determined as the basic criterion for all the groups, but age – as an additional criterion, which is not taken into consideration in separate cases. The term of service pension for all the groups is calculated as a certain percentage from the previous salary. Previous salary is counted for a certain period of time till the retirement (granting of the term of service pension). Other provisions are also similar for all the groups.

In their turn different provisions are envisaged for the amount of the payment for service from which the term of service pensions are calculated. The payment for service determined in the laws concerning the Ministry of the Interior system

employees with special service ranks as well as the employees of CDB and the Office of the Prosecutor and the remuneration, from which the term of service pensions are calculated, is the same (*sk. šā sprieduma 1. punktu // see Item 1 of this Judgment*).

For example, Section 4, Paragraph 1 of the Law "On Term of Service Pensions for Ministry of the Interior System Employees with Special Service Ranks" envisages that "the term of service pension is calculated from the average monthly payment for service (hereinafter – payment for service) of the employee for last five years before discharge from the service".

In its turn, in accordance with Paragraph 2 of the same Section, the payment for service includes salary, bonus, additional pay for special service rank and other additional pay determined by the Cabinet of Ministers.

Section 32, Paragraph 1 of Law on the Ministry of the Interior Institution Employees as well as the Officials of Prisons' Administration with Special Service Ranks envisages that the employee shall receive payment for service, which consists of a monthly salary, additional payments and bonuses.

In their turn for military persons the term of service pensions are calculated only from a part of payment for service, namely, the additional payment, determined for the respective military person is not included into it. Thus, a differentiated attitude is determined to military persons – in accordance with the impugned norms the term of service pensions are calculated only from a part of the payment for service. Namely, additional payments, determined for the respective military person are not included in it.

8.1. Ungrounded is the viewpoint of the Saeima that additional payments are short-term payments, but the term of service pension shall reflect the accomplishment of the whole term of service as well as the former circumstances.

One may agree with the above viewpoint only as far as it refers to additional payment of one type, namely, for participation in international operations. However, even in

this case one has to take into consideration that these additional payments do not essentially influence the pension of military persons, as Section 5, Paragraph 3 of the Military Persons' Term of Service Pension Law envisages that "for a military person, who during the period of service has participated in those international operations mentioned in Paragraph 1 of Section 4 of this Law, when calculating term of service pension, for the period of carrying out those operations that remuneration for service, established in the second Paragraph of this Section, which for the position of a military person was established for his permanent place of service within Latvia prior to sending him to a aforementioned international operation, shall be taken into consideration".

In their written replies both the Saeima and the Cabinet of Ministers mainly discuss the above additional payments for participation in international operations, however, they do not take into consideration the fact that for the military persons have been determined also several other relevant additional payments, for example, additional payments are also received by the specialists, whose duty is explosive ordnance disposal; sappers, who perform the duties of detonating land mines; divers; members of the ship or airplane rescue teams (crew); soldiers of the Saeima and the State President Security Service, who perform personal guard of the officials; soldiers, who convoy or convey dangerous loads.

Additional payments have been also determined for soldiers with the service in specific (hard) circumstances. For example, such additional payments are received by a soldier or a cadet, who performs his service duties on a ship in the sea; the member of an airplane crew; a soldier of a special task team; a soldier of the corps of instructors, who trains other soldiers out in the field, a soldier of the military police, who – in accordance with normative acts – carries out investigation or operative activities.

In the same way additional payments are determined to soldiers for specific, especially needed in NAF education and service in a position adequate to this education (for example, the Head of the information technology or communication system project; a

specialist of information technology or communications), as well as to soldiers for high responsibility, which is connected with the management of the subordinated personnel.

These additional payments reflect relevant features of the service of the particular person. When not taking them into consideration a differentiated attitude is permitted to these persons, first of all if compared with the soldiers of other military services, who do not receive such additional payments, as they perform the duties of the service in less intensive and stressful circumstances; but they are entitled to claim term of service pensions of the same amount.

A differentiated attitude can be established also when comparing military persons with the employees of other service, for example, the Ministry of the Interior system employees with special ranks as for them similar additional payments are taken into consideration when calculating their term of service pensions. Thus, in accordance with the Cabinet of Ministers October 31, 2006 Regulations No. 904 "Regulations on the System of Service Remuneration and –Adequate for their Posts – Highest Special Service Ranks for the Ministry of the Interior System Employees with Special Service Ranks and the Officials of Prisons' Administration", additional payments in the Ministry of the Interior system, inter alia, are determined for performing service on a ship; for the performance of service in an airplane; for the officials of the State Police, who keep watch over embassies and special objects, for carrying out duties in the sectors of information technology and communications.

8.2. The Saeima expresses the viewpoint that the differentiated attitude to military persons is justified by the fact that there exists a different age for requesting the term of service pension. For separate military persons it can be 35 years of age, even though for prosecutors and the Ministry of the Interior system employees with special service ranks this age usually is at least 50 years. Thus, to their mind these officials are not in equal and comparable circumstances.

However, it shall be taken into consideration that the age necessary for a military person to obtain the right to the term of service pension has not been determined, as Section 41 of the Military Service Law determines the maximum age at the military service for every concrete post. For a lieutenant in active service it is 35 years, for other military persons – from 45 till 60 years.

The age at which the person retires might justify the differences in the amount of the pension, as far as one can assume that – when retiring at the age of, for example, 35 years – the person has the possibility of mastering another profession. The aim of the term of service pension is first of all to ensure support for the person during the period of retraining; in its turn for a person, who retires near to the time of reaching the age envisaged for old-age pension, adequate subsistence shall be ensured, as there is minimum possibility that the person will retrain at this age. However, the impugned norm does not envisage a differentiated attitude to persons, who retire at the same age as the employees of the Prosecutor's Office or the respective employees of the internal affairs institutions and those persons, who retire earlier. Thus the additional payments are not taken into consideration also regarding those military persons, who have served to the age at which the employees of the Prosecutor's Office or the employees of the internal affairs institutions.

9.It is stressed in the annotation to Regulations No. 272, submitted to the Saeima for review that they are necessary "because during the period of the last year the as concerns international operations, in which the Latvian military persons take an active part, more and more often unordinary situations arise in the practice of granting term of service pensions to pensioned off military persons, who have participated in them during their service.

The essence of these unordinary situations is like this: by taking into consideration the provisions for participation in separate international operations, those military persons, who have a greater experience of military service and, naturally, also a greater length of service shall be chosen.

Very often the length of service of these military persons is 20 or more years. Taking into consideration the fact that the remuneration of the military persons for participating in international operations and depending on their service rank and position is high – 750 –950 lats per month, many military persons may use these circumstances in their personal interests in order to receive disproportionately high – as compared with other military persons – and inadequate for their contribution to service term of service pensions. In practice there have been cases, when a military person, who has acquired the length of service, which is necessary for granting of term of service pension, on the very next day after returning from international operations, submits an application on retiring in order to receive a bigger pension. Making use of the above situation, the military person – depending on his service rank and position – has the possibility of receiving a pension of 300 lats (for instructors- soldiers of service on reenlistment) or even over 400 lats (for officers).

The Ministry of Defence holds that a situation when a military person after a short service period (6 months) has the possibility of obtaining inadequately big for his contribution service pension is not normal and does not comply with the interests of the State. Such situation causes misunderstanding and discontent among the military persons. It is understandable as for the military persons, who participate in international operations Section 4, Paragraph 1 of the Military Persons' Term of Service Pension Law other privileges are determined as well – every one day service is added as an extended service time to the length of service time, which gives the possibility of retiring sooner as well as increases the amount of the pension” (7. *Saeimas likumprojekta Nr. 651 "Grozījumi Militārpersonu izdienas pensiju likumā" anotācija; Annotation to the 7th. Saeima Draft Law No. 651 "Amendments to the Military Persons' Term of Service Pension Law // www.saeima.lv).*

In their written replies the Saeima and the Cabinet of Ministers also stress only the substantiation of the fact why, when calculating term of service pensions, the additional payments for participation in international operations shall not be taken into consideration.

One can find the substantiation for the differentiated attitude regarding all the other additional payments neither in the annotation nor in the written replies.

Thus the differentiated attitude, determined in the impugned norms does not have a reasonable and objective basis and **the impugned norms are unconformable with Section 91 of the Satversme.**

9. The Constitutional Court has reiterated that from Section 1 of the Satversme – which shall be regarded as one of the cornerstones of the Republic of Latvia as a democratic and law-governed State – follow several principles of a law-based state, inter alia also the principle of trust in law. Section 1 of the Satversme does not prohibit the legislator to make such amendments to the existing legal regulations, which comply with the Satversme. However, in a democratic and law-governed state the principle of trust in law requires the legislator when adopting such amendments to envisage a "considerate" transition to the new regulation (*sk. Satversmes tiesas 2003. gada 25. marta sprieduma lietā Nr. 2002-12-01 secinājumu daļas 2. punktu, 2005. gada 8. marta sprieduma lietā Nr. 2005-16-01 18. punktu // see the Constitutional Court March 25, 2003 Judgment in case No. 2002-12-01, Item 2 of the concluding part; March 8, 2005 Judgment in case No. 2005-16-01, Item 18*).

When adopting the Military Persons' Term of Service Pension Law it was determined that persons shall receive such service pensions, which will be calculated by taking into consideration the whole remuneration of a person (including additional payments) for the last five years of service. Thus, after the above Law took effect, those military persons, who already had a corresponding length of service, had the right to trust that the remuneration in its full amount will be taken into consideration, when determining the term of service pensions. In separate cases these provisions, envisaged for military persons' term of service pensions, might turn out to be of importance for the person – especially under the financially complicated circumstances before the reform of the remuneration – to continue performing the duties of service or undertake additional duties.

The Cabinet of Ministers in its Regulations No. 272 does not envisage any transition to the new regulation. The respective Amendments to the Military Persons' Term of Service Pension Law, do not envisage the transition either. For example, it would have been possible to determine that when calculating the term of service pensions for the time of the day of the Military Persons' Term of Service Pension Law taking effect until the day of Regulations No. 272 taking effect the additional payments to the remuneration are also taken into consideration.

Neither the Cabinet of Ministers nor the Saeima envisaged such or similarly "considerate" transition when adopting the impugned norms. **Thus, the impugned norms do not comply with Section 1 of the Satversme.**

11. When establishing unconformity of the impugned norms with at least one Section of the Satversme, they shall be declared as illegitimate and null and void. Therefore, it is not necessary to assess the conformity of the above norms with Section 109 of the Satversme.

12. When determining the moment from which the impugned norms lose their effect the Court takes into consideration the fact that during the period, while the impugned norms were in effect, the remuneration system of the military persons has changed, therefore it is not reasonable to declare that at this moment Section 5 of the Military Persons' Term of Service Pensions shall be in effect in the wording in which it was valid before the adoption of Regulations No. 272.

Simultaneously, it shall be taken into consideration that pensions for the military persons are paid from the finances, envisaged in the State budget for the respective Ministry. Radical increase of the finances to be paid for pensions without duly anticipating amendments to the State Budget Law might vitally influence payment of remuneration to serving military persons as well as inconvenience performing of the Ministry functions and thus – violate vital State interests.

Thus the legislator needs time for improvement of the normative regulation as well as for making adequate changes in the State budget.

Simultaneously the Constitutional Court holds that the rights of those military persons, who during the period from the day of the Military Persons' Term of Service Pension Law taking effect till the day of Regulations No. 272 taking effect – i.e. August 19, 2000- decided to continue their military service, relying on the fact that term of service pensions for that time shall be calculated from the whole amount of remuneration, have to be ensured. To ensure the protection of the rights of these persons and give them the possibility to receive adequately calculated service pensions, the impugned norms shall be declared as null and void from the moment of their issuance regarding those retired military persons to whom – when calculating term of service pensions the time till the moment of Regulations 272 taking effect, calculation of the term of service pensions for this time is taken into consideration.

13. If it is necessary and possible, the Constitutional Court in the operative part of the Judgment may declare that legal norms, that have been amended by such an impugned act, which the Constitutional Court has recognized as unconfirmable with the legal norms of higher legal force, recover their legal force (*sk. Satversmes tiesas sprieduma lietā Nr. 2005-12-0103 25. punktu // see the Constitutional Court Judgment in case No. 2005-12-0103, Item 25*).

The operative part

**On the basis of Sections 30 –32 of the Constitutional Court Law
the Constitutional Court**

hereby rules:

1. To declare Item 3 of the Cabinet of Ministers August 15, 2000 Regulations No. 272 "Amendments to the Military Persons' Term of Service Pension Law", Section 3 of November 30, 2000 Law "Amendments to the Military Persons' Term of Service

Pension Law” and May 25, 2006 Law ”An Amendment to the Military Persons’ Term of Service Pension Law” **as unconfirmable with Section 91 of the Republic of Latvia Satversme and null and void from July 1, 2007.**

2. As regards those military persons whom – when calculating term of service pensions – the period till August 19, 2009 was taken into consideration, including the calculation of term of service pensions for this time to declare Item 3 of the Cabinet of Ministers August 15, 2000 Regulations No. 272 ”Amendments to Military Persons’ Term of Service Pension Law” and May 25, 2006 Law ”Amendments to Military Persons’ Term of Service Pension Law” **as unconfirmable with Sections 1 and 91 of the Republic of Latvia Satversme and null and void as from the day of their adoption.** In this case Section 5, Paragraph 2 of the Military Persons’ Term of Service Pension Law is in effect in the wording in which it was valid till the day of Regulations No. 272 taking effect.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session

A.Endziņš