



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, April 11, 2006

JUDGMENT in the name of the Republic of Latvia

in matter No. 2005 – 24 – 01

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

on the basis of the claim by the Riga Vidzeme suburb court

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 1), 17 (Item 9 of the first Part) and 281 of the Constitutional Court Law

in written proceedings at March 14, 2006 Court session reviewed the matter

”On the Compliance of Section 5 (Item 8 of the third Paragraph) of the Law on Corruption Prevention and Combating Bureau with the First Paragraph of Section 101 of the Republic of Latvia Satversme”.

The establishing part

1. On April 18, 2002 the Republic of Latvia Saeima (henceforth – the Saeima) adopted the Law on Corruption Prevention and Combating Bureau (hereinafter – the Bureau Law), which took effect on May 1, 2002. The aim of the Law is to define the legal status and objectives of the Corruption Prevention and Combating Bureau (hereinafter – the Bureau) in order to realize prevention and fighting of corruption as well as to monitor compliance of political organizations (parties) and their associations with party financing regulations. Section 5 (Paragraph 3) of the Law includes requirements a person shall comply with to be an

official of the Bureau. Initially this norm determined that a person, who complied with the requirements, established by law for receiving the special permit for access to the State secret, may be an official of the Bureau.

On January 27, 2005 the Saeima passed the Law "Amendments to the Law on Corruption Prevention and Combating Bureau". By this Law – in addition to the existing requirement, that is, the necessity to receive the special permit for access to the State secret, another criterion was determined. Namely, the third Paragraph of Section 5 of the Law was supplemented with Item 8, which anticipates that a person " who is not and has not been a regular staff or contractual employee of the USSR , Latvian SSR State Security Committee or an agent, resident or a holder of an apartment, used for conspirative meetings, of other states, which are not Member States of the European Union or North Atlantic Treaty Organization, security services, intelligence or counter intelligence may be an official of the Bureau" (hereinafter – the impugned norm).

- 2. The submitter of the claim** – the Riga Vidzeme suburb Court, when reviewing at the Court session the civil case on the claim by Valdis Bekešs requesting to declare the notice by the employer (the Bureau) null and void as well as restoration to the post and recovery of average salary for the forced non-attendance of office, has concluded that the norm, which shall be applied in this matter, does not comply with the legal norm of higher legal force.

The Court points out that the impugned norm restricts the possibilities of a certain range of Latvian citizens to hold a position at the Bureau. Namely, it restricts the right of holding a position in the State service, which has been set out in the first Part of Section 101 of the Satversme.

It is stressed in the claim that the impugned norm has been incorporated in the Law fifteen years after renewal of the independence of Latvia, even though the Constitutional Court in several Judgments (*August 30, 2000 Judgment in case No. 2000-03-01; March 22, 2005 Judgment in case No. 2004-13-0106*) has ruled that the legislator shall periodically assess the situation in the State and take the decision on specification of restrictions and determination of terms.

The Court in its resolution mentions the Report by the Legal Affairs and Human Rights Committee of the European Council (Document No. 7568) – Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law – in which it is stressed that disqualification as the result of the lustration process shall not exceed the term of five years, as positive changes in the attitude and habits of people are possible. After

that time the democratic system in the former communist totalitarian states should be stable.

The Court holds that the restriction, established in the impugned norm has features of collective responsibility. Besides, the legislator has determined an analogous restriction not only to the officials of the Bureau, but also to the employees, thus denying the right of an official of the Bureau, if he/she formally does not comply with the requirements, also to become an employee.

3. **The Saeima** – the institution, which has passed the impugned act – in its written reply expresses the viewpoint that the claim of the Court in groundless and requests to declare the impugned norm as conformable with Section 101 (the first Part) of the Satversme.

It is pointed out in the written reply that the impugned norm shall be considered as the restriction, which has been determined in publicly legal relations, to ensure adequate activities of the State service. Even though the officials of the Bureau formally are in legal labor relations, as a matter of fact they discharge State service and regarding the contents, their relations with the State shall be assessed as publicly legal.

The Saeima stresses that the first Part of Section 101 of the Satversme does not determine the absolute right of a person to hold a position in the civil service but indicates that this right shall be realized according to the law.

The impugned norm has been set by the law, adopted under the anticipated procedure. It has several objectives, which – depending on the situation – shall be directed to the protection of different interests. First of all the legitimate aim is ensurance of adequate activities of the State service. To reach this aim the State has the duty of choosing such measures, which guarantee appropriate accomplishment of the respective institution, do not undermine confidence in State institutions, do not violate the rights of other persons and do not create threat to the democratic structure of the State or national safety.

To the mind of the Saeima the impugned norm does not violate the principle of proportionality and is appropriate for reaching the legitimate aim. Making references to the European Court of Human Rights May 20, 1999 Judgment in case *Rekvenyi v. Hungary* the Saeima points out that the impugned and similar to it restrictions comply with the principle of ” self - defending democracy”, found in the case-law of the European Court of Human Rights; and all in all of the restriction it is possible to reach the legitimate aim.

The Saeima stresses that effective reaching of the legitimate aim cannot be achieved only by the restriction, included in Section 5 (the third Paragraph) of the Bureau Law, which initially determined and also at the present moment determines that for obtaining the status of an official of the Bureau it is necessary to receive special permission to access to State secrets.

Additionally the Saeima points out: it would be incorrect to conclude that the former restriction has a more considerate solution. Namely, the impugned norm has not introduced a new restriction, but has only specified the already existing restriction, as well as has deleted the procedure of exception, determined in the Law "On the Official Secret".

Besides, the impugned norm shall be assessed only as read together with other normative acts, which determine the competence of the Bureau or are connected with its performance. First of all, in accordance with the security requirements of the North Atlantic Treaty Organization (henceforth – NATO) and the European Union; access to classified information of NATO and the European Union is denied to persons, whose activities had been connected with the USSR State Security Committee. At the Bureau there is a confirmed and harmonized by the Constitutional Protection Bureau list of those officials, to who – in connection with realization of their duties - access to such information is necessary. Secondly, even though the Bureau is not a security institution, its activities are directly connected with the protection of State security, independence and democracy. Therefore this restriction shall be similar to the restriction, which has been determined in Section 18 (Item 9 of the second Paragraph) of the State Security Institutions Law.

The Saeima marks that one of the duties of the Bureau is monitoring observance of financing regulations, by political organizations (parties) and their associations as well as carry out investigation on corruptive criminal offences committed by State officials, also those, to whom restrictions, similar to the impugned norm, have been determined in the laws. The Saeima concludes that a situation, when restrictions refer to a person to be controlled, in its turn to the checking official restrictions of the same contents do not refer, is unbecomable with the structure of a democratic state. Thus, necessity of maintenance of the restrictions is connected with realization of the Bureau competence. By preserving the existing restrictions and elaborating new ones the legislator has rooted substantiation of his action in the thesis that in the situation, when the rights of a person and State security interests clash, priority shall be given to the State security interests.

The Saeima points out that the assessment of the restriction, included in the impugned norm is an issue to be politically resolved. The restriction has been determined comparatively recently and its re-estimation is not necessary at the moment.

- 4. The Cabinet of Ministers** points out: the impugned norm ensures that persons, who have been members of the organizations, mentioned in the impugned norms, will by no means be able to work in the Bureau. The Cabinet holds that with the Amendments conditions have been indirectly created for more efficient fighting against corruption in the State and public confidence both in the activities of the Bureau and the employees, working in it.

The Cabinet of Ministers stresses that the right to hold a position in civil service, incorporated in Section 101 (the first Part) of the Satversme is not absolute and the manner of its use shall be determined by law. The restriction, determined in the impugned norm, is directed to the protection of interests of national security and territorial integrity of Latvia.

When assessing the necessity to retain the restriction the Cabinet of Ministers points out that at its May 3, 2005 session, discussing the informative report "Assessment and substantiation of the necessity of restrictions, determined to State Security Committee staff contractual employees as well as SSC informers" worked out by the Ministry of Justice working group, it was decided to support the viewpoint of the Minister of Justice, that the issue on retaining or non-retaining of the restriction is an issue to be politically resolved .

- 5. The Corruption Prevention and Combating Bureau** when answering to the questions, asked by the Constitutional Court, informs that on April 23, 2003 the Head of the Bureau, on the basis of Section 9 (the fifth Paragraph) of the Law "On Official Secrets" has forwarded to the Director of the Constitutional Defense Bureau (henceforth – CDB) a request to grant the Chief of the Bureau Department V.Bekešs the special permit to access to the State secret.

On April 28, 2003 CDB granted special permits to two officials, also to V.Bekešs. At the time of adoption of the impugned norm he still worked at the Bureau. Taking into consideration the Amendments to the Law, which had taken effect, on March 31, 2005 V.Bekešs was informed about the notice and – under the procedure, established by law – was dismissed as of May 2, 2005.

6. **The State Human Rights Bureau** (henceforth – SHRB) points out that the impugned norm shall be declared as unconfordable with Section 101 of the Satversme.

When assessing the restriction, determined by the Law, the Human Rights Bureau stresses that the former regulation, which was in effect till the moment of adoption of the impugned norm, complies with the standards of human rights much better. Besides, the impugned norm has been included in the Law more than two years after the commencement of the activities of the Bureau. When assessing the conformity of the restrictions to Section 101 of the Satversme one shall take into consideration the implication, pointed out in the Report (Document No. 7568) by Legal Affairs and Human Rights Committee, included in Supplement to Resolution 1096 (1996) on Measures to Dismantle the Heritage of Former Communist Totalitarian Systems. Namely, the restrictions to hold certain positions, based on lustration, shall not last for more than five years.

The concluding part

7. Section 101 (the first Part) of the Satversme establishes: "Every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government, and to hold a position in the civil service".

"State service is a publicly - legal status, in which persons, who have been entrusted with the fulfillment of State duties, find themselves" (*Dišlers K. Ievads administratīvo tiesību zinātnē; Dišlers K. Introduction in the Science of Administrative Rights; Rīga, Tiesu namu aģentūra, 2002, p.153*). Employment in State service differs from the employment in private sector both on the legal aspects of creation of legal relations, and on the aim of the work to be done, which is closely connected with the fulfillment of State duties. Persons, employed in the State service, are in special relations with the State, namely – the rights of those persons are restricted and they have specific duties. To determine whether persons belong to the State service in the understanding of Section 101 of the Satversme, one shall assess both – the functions, which are carried out by persons, when performing their duties, and the restrictions, which have been determined to them in connection with the duties of their post.

Officials of the Bureau formally are in legal labor relations; however, they shall be regarded as belonging to the State service in the understanding of Section 101 of the Satversme. First of all, it follows from the place of the Bureau in the system of State Administration.

Secondly, it follows from both - the duties, determined for the Bureau officials and from the restrictions, established for the held position.

In accordance with Section 2 (the first Paragraph) of the Bureau Law the Bureau is an institution of the State Administration under the supervision of the Cabinet of Ministers, performing the functions defined in this Law to prevent and fight corruption and monitor compliance of political organizations (parties) and their associations with party financing regulations. In Section 11 of the Bureau Law it is determined that the duty of officials and employees of the Bureau is to act in the best public interests, but in Section 12 it is pointed out that a Bureau official is a representative of Government authority and in accordance with Section 13 of the Law the obligations of officials of the Bureau are provided for in the Law "On the Prevention of Conflict of Interest in the Actions of Civil Servants".

To realize the aims set out in the Law, the Bureau develops strategy of corruption prevention and combating and draws up a national programme, co-ordinates observance of restrictions for State officials provided in normative acts, reviews and carries out checks suggested by the President of Latvia, the Saeima, the Cabinet of Ministers and the Procurator General, compiles and analyses information contained in declarations submitted by the State officials, any violations found in these submissions and failure to observe the restrictions provided by law, develops a method for the prevention and fighting of corruption in State and municipal institutions and the private sector, educates the public in the area of the law and ethics as well as realize other significant functions.

8. To assess conformity of the impugned norm with the fundamental rights, fixed in Section 101 of the Satversme, one shall ascertain whether any of the restrictions of these rights are included in the norm (*see the Constitutional Court March 22, 2005 Judgment in case No. 2004-13-01-06; Item 20*).

The impugned norm determines that a person, who is not and has not been a regular staff or contractual employee of the USSR or Latvian SSR State Security Committee, or an agent, resident or a holder of an apartment, used for conspiratorial meetings, of other states, which are not the Member States of the European Union or the North Atlantic Treaty Organization security services, intelligence or counter intelligence, may be an official of the Bureau. Thus the impugned norm restricts the possibilities for a certain range of Latvian citizens to hold a position in the Bureau. Namely, it restricts the right of these citizens to hold a position in the civil service.

The Saeima and the Cabinet of Ministers have expressed the viewpoint that the issue on determination of such a restriction is political by nature. The Constitutional Court has already previously declared that it shall abstain from assessing political issues, because these issues are within the competence of the democratically legitimized legislator (*see the Constitutional Court November 11, 2005 Judgment in case No. 2005-08-01, Item 9; the Constitutional Court October 29, 2003 Judgment in case No. 2003-05-01, Item 29 and the Constitutional Court Judgment in case No. 2005-02-0106, Item 18*). However, "it is necessary to take into consideration that it is possible to assess to a certain extent the contents of the Satversme norms also from the legal viewpoint. There is no doubt about the fact that the law and politics in the basic law are closely connected notions, because in a law-governed state politics may not be free from law and the legislative power and the executive power are also connected with the provisions of the Satversme" (*the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103, Item 17*). The impugned norm concerns implementation of the fundamental rights, determined in Section 101 of the Satversme. Thus, determination of the above restriction is not only of political but also of juridical nature. Thus it is possible to size up its compliance to the Satversme.

At the same time it is stressed 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" (*see the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01; Item 1 of the concluding part*).

It is recognized in the theory of constitutional rights that the Constitution may leave determination of contents and boundaries of concrete fundamental rights for the legislator. In this case fundamental rights are in effect "according to the standards of the law". Everything depends on the legislator. Authority of the legislator may be positive or negative: positive – as the right to determine the contents of the fundamental rights in detail; negative – as the authority to restrict fundamental rights (*see: Deutsches Staatsrecht. Dr. Theodor Maunz und Dr. Reinhold Zippelius. C.H.Beck'sche Verlagsbuchhandlung, München, 1991, S. 158 -159*).

By including in the text of Section 101 of the Satversme words "as provided for by law" the legislator has determined that the person, making use of the right shall in every concrete case interpret the words "every citizen of Latvia" as read in conjunction with the restrictions, determined by the laws (*see the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01; Item 1 of the concluding part*). In this matter the right to hold a position in civil service shall be assessed as read in conjunction with the restrictions determined in the Bureau Law.

The State determines the procedure of realization of fundamental rights (requirements) in a legislative way. In such a way the State ensures both – realization of fundamental rights and also protects the rights of other persons and other constitutional values. However, setting up of arbitrary restrictions for realization of fundamental rights is inadmissible. Fundamental rights may be subject to restrictions only in cases anticipated by the Satversme, if the protection of significant public interests requires it and if the principle of proportionality has been observed.

To assess constitutionality of the restriction, one has to ascertain whether it has been determined by law, whether it is determined for the protection of the legitimate aim and whether it complies with the principle of proportionality. Besides the impugned norm shall be assessed not as a restriction to the right of a person to employment, but as a restriction, which has been determined in publicly legal relations to ensure adequate State service.

9. The impugned norm is incorporated in the Bureau Law by January 27, 2005 Law "Amendments to the Law on Corruption Prevention and Combating Bureau" adopted by the Saeima, which was promulgated in the procedure established by law and is valid.

Thus the restriction of the fundamental rights, included in the impugned norm, is determined by law.

10. The Saeima has pointed out that the legitimate aim of the restriction, incorporated in the impugned norm, is appropriate performance of the State service, as well as the necessity to avert endangering of the democratic structure and national security of the State.

It follows from the annotation of the draft law that the aim of the Amendments was to determine more exact and strict criteria for the officials and employees of the Bureau; "to create guarantees that under no circumstances persons, who will be or have been members of certain organizations, shall be able to work in the Bureau" (*Likumprojekta "Grozījumi Korupcijas novēršanas un apkarošanas biroja likumā" anotācija, aplūkots mājaslapā 20.03.2006; Annotation to the Draft Law "Amendments to the Law on Corruption Prevention and Combating Bureau", on 20.03.2006 viewed in www.saeima.lv*).

Thus the aim of the Amendments is to protect the democratic structure of the State from participation of persons, who have been members of institutions, which have been connected with destruction of democratic values, in the State service.

The Constitutional Court has already ruled that the right to hold a position in State service may be restricted to protect the democratic structure of the State and public welfare (*see the Constitutional Court December 18, 2003 Judgment in case no. 2003-12-01, Item 9*). The European Court of Human Rights in its practice has also declared that restrictions to the former employees of the State Security Committee to hold certain positions shall be recognized as necessary for ensuring state security, welfare as well as the protection of the rights of other individuals (*see: Sidabras and Džiautas v. Lithuania, No. 55480/00 and 5933/00, [2004]ECHR 395, para. 53-55*).

To guarantee stability and efficiency of the democratic system, it may be necessary for the state to use such measures, which will protect the above values (*see: Ždanoka v. Latvia, [GC], No. 58278/00, para. 100*). It especially refers to the new democratic states, also to Latvia. One of the most important duties of these states is to ensure confidence of the people in the state institutions, as it is an essential precondition of democratic stability.

Activities of the USSR Security institutions were directed against both – the democratic values and also against the renewal of independence in Latvia; that is, these institutions on their essence were anti-constitutional. Therefore in the Supreme Council August 24, 1991 Resolution "On Termination of the Activities of the USSR Security institutions in the Territory of the Republic of Latvia" it has been pointed out that "Activities of the USSR Security institutions and their structural units, also that of the Latvian SSR State Security Committee in the territory of the Republic of Latvia shall be recognized as criminal and directed against the interests of the Latvian nation".

Thus the restriction, incorporated in the impugned norm has a legitimate aim, namely – to protect the State democratic structure and public security.

11. When establishing the legitimate aim it is necessary to assess the conformity of the restriction of the fundamental rights with the principle of proportionality. First of all, whether the applied measures are appropriate for reaching the legitimate aim. Secondly, whether the aim cannot be reached by other measures, which restrict the rights and legitimate interests of an individual in a lesser degree. Thirdly, whether the benefit, gained by the public is greater than the losses caused to an individual. If, when assessing the legal norm, it is declared that it does not comply with at least one of the above criteria, it is unconstitutable with the principle of proportionality and is illicit (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.1 of the*

concluding part and June 27, 2004 Judgment in case No. 2003-04-01, Item 3 of the concluding part).

- 11.1.** In public the former employees of the State Security Committee (henceforth – SSC) are mostly associated with the previous totalitarian regime. In its time SSC was a powerful tool in the hands of the communist party and actively participated in realization of its policy.

The Constitutional Court has already earlier ruled that the legislator has the right to determine restrictions, which are appropriate for reaching the legitimate aim, to the former SSC employees. The Constitutional Court has also pointed out that the State shall be protected from those, who by their activities have proved, that they have not been loyal to the democratic structure of the State; that is, from persons, who have worked in the apparatus of immediate oppression and immediate repression of the occupational power (*see the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 6 of the concluding part; March 22, 2005 Judgment in case No. 2004-13-0106, Item 13.1*). Besides the impugned restriction complies with ensurance of the principle of ”democracy which is capable of protecting itself”, which has been recognized in the case law of the European Court of Human Rights (*see: Vogt v. Germany, No. 17851/9, [1996] ECHR 34, para.59; Ždanoka v. Latvia, [GC], No. 58278/00, para. 100*) and by it is possible to reach the legitimate aim.

Taking into consideration the historical and political context, such a restriction has been determined to protect the State democratic structure against persons, who create danger for its existence, or against such persons, who because of ethical reasons do not deserve to be officials in a democratic state. The restriction, included in the impugned norm, has been determined not only to avert real threat to State security and its democratic structure but also to ensure that the citizens are not forced to appreciate as the representatives of the State power persons, who have been staff employees of the repressive regime security structures (*see: Rekvenyi v. Hungary, No. 25390/94, ECHR 1999-III, para. 41*). By determining restrictions public trust in State institutions is achieved.

Thus the restriction, included in the impugned norm, shall be recognized as appropriate for reaching the legitimate aim.

- 11.2.** The restriction of fundamental rights, determined in the impugned norm, is proportionate only then if there are no other measures, which would be as operative and by choosing which fundamental

rights are restricted in a less perceptible way. When determining restrictions of fundamental rights the legislator has to choose the most considerate measures for reaching the legitimate aim. When assessing whether the legitimate aim might be reached by different means, the Constitutional Court stresses that a more considerate measure is not any other, but only such measure by which the legitimate aim may be reached in the same quality (*see the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 19 of the concluding part*).

The initial wording of Section 5 (the third Part) of the Bureau Law, which as a precondition for a person to hold a position of an official of the Bureau determined the necessity to receive special permission to access to State secrets, as compared to that included in the impugned norm, might be assessed as a more considerate measure. However, the initial wording did not ensure reaching of the legitimate aim as effectively as the impugned norm.

One of the basic elements, which characterize relations of an individual in State service, especially in administrative relations, is political loyalty. The State shall strive for ensurance of democratic, law-based, effective, open and accessible to public State administration. It is necessary to trust that the employees of the State administration shall be loyal to the State and will carry out their duties in the State and public interest. Political loyalty shall be understood not as the support to political aims of the respective government but as the loyalty to the State, for the welfare of which persons, belonging to State service, carry out their duties.

In its turn the previous regulation allowed that the employees of the security structures of the former repressive regime, who could be disloyal to the State of Latvia, might work at the Bureau. Namely, the Head of the Bureau, on the basis of the procedure, determined in Section 9 (the fifth Paragraph) of the Law " On Official Secrets" could ask the Director of the Constitutional Protection Bureau to grant access to official secrets also to individuals, who had previously been connected with the structures, mentioned in the impugned norm. In case of a positive resolution these persons could become the officials of the Bureau.

The Saeima in its written reply reasonably points out that "refusal from the above procedure of exception is not a violation of the rights of a person. To grant the special permit to an official under the procedure of exception is the display of the discretionary power of the CPB Director". Application of the procedure of exception is not a public subjective right of a person. Therefore it cannot be considered

as an effective mechanism for individual assessment of a person. The procedure of exception has another aim, namely, protection of the official secret. However, issues connected with the personnel policy of the Bureau shall not be solved in the above way.

The impugned norm is substantial for the Bureau to realize its basic competence – to investigate connected with corruption criminal offences, which have been committed by State officials, also those, who work in the State Security institutions, Public Procurator's Office, specialized civil service or are judges. In several laws (the State Security Institutions Law, the Public Procurator's Office Law, the Civil Service Law, the Law "On Judicial Power") similar restrictions to those included in the impugned norm are determined to the above officials. Theoretically there is a possibility that some of the above officials, to whom the above restrictions refer, might commit a criminal offence, connected with corruption. It will be investigated by the Bureau official, to whom the restriction does not refer, if the impugned norm were not adopted. Thus the impugned norm is necessary for the situation, when restrictions refer to the person to be controlled, in its turn restrictions of the same contents do not refer to the official, carrying out the controlling process as it does not comply with the structure of a democratic state.

The impugned norm shall be assessed as read in conjunction also with other normative acts, which anticipate the competence of the Bureau or are connected with the activities of the Bureau. The Bureau is not a security institution; however, its activities are directly connected with the protection of State security, independence and democracy. Therefore the restriction should be similar to the restriction, which is determined in Section 19 (Item 9 of the second Paragraph) of the State Security Institutions Law.

Besides, the circumstance that the restriction was not already initially incorporated in the Bureau Law is of no determinant importance. The Bureau commenced its activities in October of 2002. Thus it is understandable that at the moment of its formation it was not possible to precisely determine the criteria for the status of the Head of the Bureau, of the official or the employee.

Thus it is not possible to reach the legitimate aim in the same quality with a more considerate measure.

- 11.3.** When assessing the compliance of the impugned norm with the principle of proportionality, the results created by the measures, used by the legislator, shall be mainly assessed; i.e., whether application of a legal norm does not cause greater losses to the rights and

legitimate interests of the individual than the benefits gained by the public (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.1.3. of the concluding part*).

Any restriction of rights shall be assessed in the context of every definite case; however, it shall be done on the basis of the principle of proportionality and by taking into consideration the universal political situation of the state (*see: Nowak M. U.N. Covenant on Civil and Political Rights. CCPR Commentary – Kiel: Engel 1993, p. 445*). In every case it is necessary to assess as far as the protection of state security interests is needed to ensure democratic stability and the rights of other persons. Namely, it is important to balance the right of individuals to hold definite positions in civil service with the interests of the whole public. In this concrete case these interests are coordinated. The impugned norm influences only the possibilities of a small range of persons to hold a definite position. In its turn it ensures the protection of State security interests and the democratic structure. The impugned norm ensures also the principle of good administration, which is expressed as trust in the Bureau officials. Besides, from the above trust indirectly depends the State economical stability and development, because fighting the corruption is a relevant element of ensurance of the State economical stability.

Besides, the restriction, incorporated in the impugned norm does not prohibit the person to choose another profession, appropriate for his/her abilities and qualification not only in the private but also in the State sector. By the above restriction the person's right to choose employment and provide for subsistence has not been restricted. He/she is only denied the possibility to hold definite positions in civil service.

The restriction, included in the impugned norm, refers only to definite positions. Namely, the restriction refers to the Bureau officials, who guarantee realization of the functions of the Bureau and are responsible for it - the Head of the Bureau, his/her Deputies, Heads of the Central and Territorial Departments, investigators and specialists (experts). Thus this restriction refers to positions with specific duties and functions. Specification of the restriction, incorporated in the impugned norm, complies with the earlier statement of the Constitutional Court that the restriction shall be connected with the nature of the particular position and its labor requirements (*see the Constitutional Court March 22, 2005 Judgment in case No. 2004-13-0106, Item 19*).

Besides, the restriction, included in the impugned norm has a time limit. It is terminated and shall be assessed in conjunction with Section 17 of the Law "On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts about Persons' Collaboration with the State Security Committee", which determines limitation of the establishment of the fact of collaboration with the SSC.

Thus the restriction complies with the principle of proportionality.

The operative part

On the basis of Sections 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

To declare Section 5 (Item 8 of the third Paragraph) of the Law on Corruption Prevention and Combating Bureau as conformable with the first Part of Section 101 of the Republic of Latvia Satversme.

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