



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, December 18, 2003-12-23

## JUDGMENT

in the name of the Republic of Latvia

**in case No. 2003 – 12 – 01**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Ilze Skultāne, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins and Andrejs Lepse on the basis of the constitutional claim by Gaida Galakrodzniece pursuant to Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 11 of the first part) and 28<sup>1</sup> holding the proceedings in writing on November 25, 2003 at the Court session reviewed the case

**”On the Conformity of Section 41 (Item 1, Sub-item ”f”) of the State Civil Service Law with Articles 91, 101 and 106 of the Satversme (Constitution)”.**

### **The establishing part**

1. On September 7, 2000 the Saeima adopted the State Civil Service Law. Section 41 (Item 1, Sub-item ”f”) determines that State civil service relations shall be terminated ”when reaching the age of the retirement determined by the State, except in cases where there is a reasoned order of the head of the institution for the relevant civil servant to remain in his or her position or a minister’s order for the head of an institution to remain in his or her position”. This legal norm took effect on January 1, 2001.
2. **The submitter of the constitutional claim** – Gaida Galakrodzniece (henceforth – the submitter) challenges the conformity of Section 41 (Item 1, Sub-item ”f”) of the Civil Service Law – henceforth the challenged legal norm - with Articles 91, 101 and 106 of the Republic of Latvia Satversme (henceforth – the Satversme).

The submitter points out that on September 16, 1993 she started working in the institution of the Ministry of Environmental Protection and Regional Development – the State Environmental Inspection. On September 15, 1994 the submitter was granted the status of the civil service candidate but on January 18, 2000, after passing the civil service qualification examination,- the status of an official. At the moment when the submitter was granted the status of the official, she had reached the determined by law age for granting of pension, in her case - 58 years of age. On April 18, 2001 the submitter received the order of the Head of the State Environmental Inspection to terminate the civil legal relations on the basis of reaching the pensioning age.

Holding that the challenged norm limits the right of the person to retain the workplace, the submitter expresses the conviction that the challenged norm is unconformable with Article 106 of the Satversme. The above Article envisages that the right of the person to retain his/her workplace depends on the abilities and qualifications of the person. To her mind reaching of a certain age cannot serve as the objective reason for the assessment of person's abilities and qualifications, it cannot be a justifying reason for restricting the right of the person to retain his/her workplace.

The submitter points out that the rights, set out in Article 106 of the Satversme, may be subject to restrictions in circumstances provided for in Article 116 of the Satversme. However, the restrictions have to be provided for by law, shall have a legitimate aim and be necessary in a democratic society. The submitter admits that the restriction to the rights envisaged in Article 106 has been determined by law, however – to her mind it does not have a legitimate aim. When excluding from the state civil service persons, who have reached the pensioning age, protection of the rights of other people, the democratic structure of the State and public safety, welfare and morals is not advanced. Besides, the submitter holds that the above restriction is not needed in a democratic society. She points out that by the Cabinet of Ministers February 13, 2001 Regulations No. 2 "The Procedure of Assessment of Activities of an Official and its Results" the system has been created under which the work of any official is being assessed regardless of his/her age. As the above system of assessment of qualification and activities of officials exists, then - to the mind of the submitter - the restriction of the rights, guaranteed in Article 106 of the Satversme is not proportionate and is not needed in a democratic society.

The submitter has used all the above arguments also for substantiating the unconformity of the challenged legal norm with Article 101 of the Satversme.

Besides, the submitter holds that the challenged legal norm does not comply with Article 91 of the Satversme, as – when applying the norm - a differentiated attitude towards persons who are in equal and comparable circumstances has been expressed. Namely, persons, who have reached the pensioning age, are denied the right of continuing working in the civil service, however, persons, who have the same education and qualification but are younger may continue working. The submitter holds that the above differentiated attitude has no legitimate aim. When discharging a person from work because he/she has reached the pensioning age, the person is obliged to retire, thus the right of elderly persons to participate in public life is being restricted.

The submitter expresses the viewpoint that the challenged norm discriminates persons also on the ground of gender. Even though in accordance with the Law "On State Pensions" the age determined for retiring is 62 years, at the present moment the Transitional Provisions of the Law, which envisage gradual increase of the age for granting pension to 62 years, are applied in practice. As before adopting the Transitional Provisions various age for granting pension to men and women was determined, various is also the time when men and women of the same age-group will reach the pensioning age, i.e., men have reached the pensioning age – 62 years already in 2003 but women shall reach it only in 2008.

- 3. The Saeima** in its written reply does not agree with the viewpoint of the submitter that the challenged norm is unconformable with Articles 91, 101 and 106. It points out that in accordance with Article 101 of the Satversme every citizen of Latvia has the right, as provided for by law, to hold a position in the civil service. The same provision is included also in the State Civil Service Law, the purpose of which is to determine the legal status of the State civil service, which ensures the legal, stable, efficient and transparent operation of the administration of the State. The Saeima, making a reference to the Constitutional Court judgment, points out that the rights, guaranteed in Article 101 of the Satversme, are not absolute as they incorporate the provision "as provided for by law". Therefore the Saeima holds that the legislator experiences the right of determining by law both - how the civil service shall be realized and the range of persons, who have the right of carrying out the duties of a civil servant.

The Saeima expresses the viewpoint that the challenged norm complies with Article 106 of the Satversme. It motivates the viewpoint by the Constitutional Court Judgment, which determines that the right of everybody to freely choose the employment and not just the possibility to do it shall be ensured. Besides, as concerns state regulated professions, like civil servants, specific regulation may be applied. Thus

the Saeima concludes that a different regulation may be applied to relations of civil service if compared with legal labour relations.

Besides, the Saeima points out that the rights, guaranteed in Article 106 of the Satversme may also be subject to restrictions, envisaged in Article 116 of the Satversme and the above restrictions shall be determined by law, shall serve a legitimate aim and be proportionate.

The challenged norm, which envisages the restriction of the rights guaranteed in Article 106 of the Satversme, is incorporated in the State Civil Service Law and the Saeima holds that the norm has a legitimate aim – to create a professional State civil service, which ensures efficient and stable operation of the administration of the State. When motivating its viewpoint the Saeima expresses disquiet that because of objective reasons the situation may arise that the official – after reaching the pensioning age – is not able to carry out his/her duties as qualitatively as is needed for efficient operation of the administration of the State. First of all the continuity of the operation of the State administration may be endangered as the civil servant (official) after reaching the pensioning age may terminate his/her civil service relations. Secondly, if – in the interests of the State – the official shall be transferred to another position then his/her age may be of hindrance for mastering new duties and for getting over additional work load. Thirdly, if a person has reached a pensioning age then objective circumstances, like worsening of health and lasting rehabilitation may arise and that would hinder carrying out the duties assigned to the person in the needed quality. Making the reference to the Constitutional Court Judgment the Saeima expresses the viewpoint that the legislator has objectively determined the restrictions to the civil servants, who have reached the pensioning age, besides it is not useful for the State to invest in planning the career of the above civil servants. Efficient and professional State civil service may be ensured by creating the service process for every particular civil servant.

The Saeima holds that the challenged norm is proportionate. As the above norm envisages also exceptional cases, when the official (civil servant) may remain in his/her position even after reaching the pensioning age, one cannot evaluate the challenged norm as the restriction on the basis of the certain age. Besides, the challenged norm is needed for reforming the state administration in compliance with the principles of qualitative state administration.

The Saeima is positive that the challenged norm complies also with Article 91 of the Saeima as it concerns both men and women. A differentiated pensioning age, connected with the historical situation during the transition period and determined in Item 8 of the Transitional Provisions of the Law "On the State Pensions" is limited in time. As

during the transitional period the pensioning age for men and women is different and lower than determined in the Law "On the State Pensions", namely, lower than 62 years of age, it is necessary for gradual implementation of the pension reform and equalization of the differentiated pensioning age.

4. In an answer to the Constitutional Court letter, the Saeima additionally points out that the main aim of the challenged norm is to determine the time until which the official may remain in civil service relations, so that it is possible to create a professional civil service, advance its performance to ensure the activities of the state administration and a good management. The Saeima holds that the aims of the challenged norm are the legitimate objectives mentioned in Article 116 of the Satversme, i.e., protection of the state democratic structure and welfare (namely, the social welfare).

Besides, the Saeima explains that creation of the State civil service in Latvia started in 1994. In its turn, the reform of the State civil service started when the State Civil Service Law took effect – on January 1, 2001. The process of the State civil service reform, regulated in the above Law, is an ingredient of the reform and – inter alia- it includes also perfecting one's knowledge and transfer of the officials to other position, or the so-called rotation. The aim of the legislator was to envisage the same age for automatic termination of the civil service relations of both –men and women. The Saeima stresses that the above procedure is determined also in other European states, moreover, without the possibility of prolonging the term of civil service relations of an official, who has reached the pensioning age. As the State civil service reform has not been completed and the professional civil service is not yet created, the Law anticipated the possibility of allowing the official to remain in the position in exceptional cases.

5. **The State Civil Service Administration** (hereinafter – the Administration), when answering to the questions of the Constitutional Court stresses that because of objective circumstances not all the citizens of Latvia are able to realize the right to hold a position in the civil service, guaranteed in Article 101 of the Satversme. Therefore the Article envisages that the citizen may realize the right as provided for by law. However, the Administration points out that Article 1 of the Satversme assigns the legislator with the duty of determining reasonable and fair criteria for choosing civil servants (officials), which would ensure realization of the rights guaranteed in Article 101 of the Satversme to the widest range of citizens. The main criterion, the legislator shall take into consideration, is the principle of proportionality and prohibition of arbitrariness, following from Article 1 of the Satversme.

The Civil Service Administration points out that a competent and legally functioning state civil service is one of those four basic elements from the performance of which the quality of the State administration depends. Just the officials of the State civil service ensure realization of the State management functions and from the performance of the above officials the protection of the rights of other people, the democratic structure of the State, public safety, welfare and morals depends. The Administration holds that it is essential to ensure continuous performance of the State administrative management in any democratic state and to do it, the state civil service shall be well-organized – the possibility to ensure and rely upon professional people who are able to professionally realize the functions of the State management shall be found. The Administration stresses that the State Civil Service Law determines several restrictions, among them also the right of discharging the official, who has reached the pensioning age. The Administration points out that the age limit has been set out by taking into consideration the circumstance that the workmanship abilities decrease when reaching old age besides the person, who has reached the pensioning age has the right of receiving state pension. Thus the Administration concludes that the determination of the pensioning age allows avoiding unpredictable situations, when the person wishes to terminate the state civil service relations because of his/her years of age.

The Administration stresses that the Cabinet of Ministers February 13, 2001 Instruction No. 2 "On the Procedure of Assessment of the Activities of an Official and its Results" envisages that assessment of the performance of an official and its results is just one of the ways of checking the ability of the official to carry out his/her duties. Besides it gives the possibility of examining the quality of the official just once a year and for the period, which has passed. In its turn the challenged norm gives the possibility to additionally evaluate the necessity for continuing civil service relations with the official, who has reached the pensioning age. Civil service relations with the officials, who have reached the pensioning age, are continued mostly in cases when the official is a really good specialist or in cases when there are no other officials who could carry out the particular assignments.

The Administration objects to the viewpoint that the challenged legal norm is at variance with Article 91 of the Satversme. It points out that the term "pensioning age" under the Article 11 of the Law "On State Pensions" shall be understood as the age of 62 years, which is determined in Item 8 of the Transitional Provisions of the Law. Thus the Civil Department Administration holds that the claim of the submitter on the discriminating age factor is in fact the claim on Article 11 of the Law "On State Pensions" and not on the challenged norm. Besides the Administration emphasizes that the above norms of the Law "On State

Pensions” shall not be evaluated as discriminating as, when commencing the transitional period to gradual increase of the pensioning age, the same age for men and women was not determined.

### **The concluding part**

6. The application includes the claim on the conformity of the challenged norm with Articles 91, 101 and 106 of the Satversme.

From the contents of the claim follows that the compliance of the challenged norm with Article 91 of the Satversme shall be assessed, namely, that all human beings in Latvia shall be equal before the law and the courts and that human rights shall be realized without discrimination of any kind. However, as concerns Article 101 of the Satversme then only the norm, incorporated in the first part of the Article - ”every citizen of Latvia has the right to hold a position in the civil service ” – has to be evaluated. As concerns Article 106 of the Satversme – only the compliance of the first sentence of it – ”everyone has the right to freely choose their employment and workplace according to their abilities and qualifications” shall be assessed.

To evaluate the conformity of the challenged norm with Article 91 of the Satversme, with the norm included in the first part of Article 101 and with the first sentence of Article 106, one has to ascertain:

- 1) whether the right of the person to freely choose the employment, guaranteed in the first sentence of Article 106 of the Satversme, includes also employment in the State administration, especially in the state civil service;
  - 2) whether the norm incorporated in the first part of Article 101 of the Satversme ” the right... to hold a position in the civil service” allows different legal regulation of labour relations as envisaged for legal labour relations;
  - 3) whether the challenged norm creates a differentiated attitude to the officials, who have reached the pensioning age and those, who have not reached it as well as whether it creates a differentiated attitude to men and women who have reached the pensioning age.
7. By the notion ”employment”, which is incorporated in Article 106 of the Satversme, one shall understand work which demands adequate qualification and which is the source of means of existence of a person or as the profession, which is closely connected with the personality of an individual.

The right of a person to employment is also guaranteed in the international human rights norms, which attribute the right to employment both in the private and the public sector. For example,

Article 1 (the first part) of the European Social Charter the notion "employment" is attributed to work in the private and the public sector (see *Gomien D.Harris, D.Zwaak L. Law and practice of the European Convention on Human Rights and the European Social Charter. Council of Europe Publishing. 1996, p. 384*). In its turn the Council of Europe Committee of Ministers November 27, 2000 Directive No 2000/78/EC, which determines a unified system as concerns the attitude to employment and professions (hereinafter – the Directive). The first part of Article 3 of the above Directive determines that "not exceeding its competence the Directive shall be applied to all persons both in the state and the private sector, including the State institutions...". A similar understanding of the notion "employment" is found also in the court practice. For example, the German Federative Constitutional Court has concluded that the right to freely choose the profession shall be attributed to the employment freely chosen by any individual, inter alia the employment, which is connected with the state civil service (see *BVerfGE 7, 377[397f.]*). The Constitutional Court has also stressed that the concept "employment" embraces performance of the offices of the procurator, the sworn advocate and the sworn notary, i.e. to occupations in which legal relations are not based on the labour agreement, regulated by the Labour Law" (see *the Constitutional Court June 4, 2002 Judgment in case No. 2001-16-01, Item 2.1 of the concluding part*).

As working in the State civil service is considered to be the employment, which is the source of means of existence of a person and requires an adequate qualification, the rights, guaranteed in Article 106 of the Satversme may be attributed to it. Thus the State has an obligation to ensure equal access to the State civil service.

**8.** However job in the civil service differs from work in the private sector both in the juridical aspects of establishment of legal relations and the objectives of the work to be accomplished.

Civil servants are the State officials, who are entrusted with the assignment of State duties in the State administrative system. They are in such public legal relations with the State, in which – contrary to the norm determined in the Labour Law - there does not exist the equality principle of the contracting parties. These employment relations are not established by concluding the labour contract or contract of another type, but are established by competent State institutions, which appoint this or that person to a position of an official. Taking into consideration the role and duties of the officials in the implementation of the State management functions, the state unilaterally regulates also the authority, protection of labour rights, including salary and social guarantees as well as termination of service relations of them.

When reviewing the matter on the age limitation in the Higher School Law and the Law "On Scientific Activities", the Constitutional Court stressed that the

restrictions, which regulate the employment of the State civil service officials as well as that of judges, procurators, policemen and border guards cannot be compared with restrictions to legal employment relations. The above persons are either state officials or employees, representing the judicial power and their legal employment relations are not based on contracts (*see the Constitutional Court May 20, 2003 Judgment in case No. 2002-21-01, Item 1 of the concluding part*).

The right to holding a position in the civil service as the independent right is guaranteed by the United Nations Organization International Covenant on Civil and Political Rights (hereinafter – the Covenant). In its turn the right to employment is guaranteed in the International Covenant on Economic, Social and Cultural Rights. The right guaranteed by the Satversme to hold a position in the civil service is also regulated in Article 101 (part 1) of the Satversme but the right to employment - in Article 106 of the Satversme.

Thus it is admissible that the right to hold a position in civil service, when compared with legal employment relations, is regulated by other legal norms and this legal regulation may be different.

**9.**The State Civil Service Law determines in what way the officials may use the right "to hold a position in the civil service" guaranteed in Article 101 of the Satversme. One of the preconditions, incorporated in the above Law, is its conformity with the determined age limit. Namely, the challenged norm establishes the maximum age of the official, equaling it to the State determined pensioning age. As the norm prohibits a person to hold a position in the State civil service for unlimited time, it shall be regarded as set out by the law restriction to realization of the fundamental rights. In accordance with the earlier conclusions of the Constitutional Court establishment of the restriction of this type shall comply with the legitimate aims, anticipated in Article 116 of the Satversme and with the principle of proportionality (*see the Constitutional Court November 6, 2002 Judgment in case No. 2002-09-01, Item 1 of the concluding part and October 22, 2002 Judgment in case No. 2002-04-03, Item 2 of the concluding part*). Besides, the international normative acts establish that the restrictions of the right to hold a position in the state civil service shall be well-grounded. For example, Article 25 of the Covenant determines: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions... c) to have access, on general terms of equality, to public service in his/her country".

Therefore it is essential to assess the aims of the challenged norm as the restriction of the fundamental rights, the means, used to reach them as well as the proportionality of the restriction.

**9.1.** One may agree with the Saeima viewpoint that the objective of the State Civil Service Law is to determine the legal status of the

professional, politically neutral, stable and transparent performance of the state management. The challenged norm is anticipated for the advancement of activities of a professional State civil service, thus ensuring not only implementation of the principle of good management, but also the protection of the democratic structure of the State and public welfare, incorporated in Article 116 of the Satversme.

The structure of the democratic state is characterized by separation of the three powers of state, namely, the legislative power, the executive power and the judicial power. The duty of the executive power is to implement those aims, which the legislator has included in the normative acts, in the interests of public. Specified implementation of the above aims is assigned to the State administrative institutions subordinated to the Cabinet of Ministers and the officials, working in them. The legislator has to determine both – the preconditions of the state administrative system and the status of the official so that the executive power is able to efficiently realize its functions. One of the preconditions of the status of an official is the admissible age of him/her, which is determined in Section 7 (Item 4) the State Civil Service Law, as well as in the challenged norm.

Besides, the duty of a democratic state is to ensure the possibilities to work for its inhabitants, and these possibilities shall be implemented in life, not only established in the Constitution. The challenged norm serves for equalization of the State civil service structure on the basis of age as well as for ensuring that the persons of the younger generation may hold a position in the State civil service.

**Thus the aim of the challenged norm, determined by the legislator, is legitimate.**

**9.2.** The principle of good management in a democratic state requires functioning of honest, fair, competent and motivated civil service. Ensurance of the existence of such a civil service includes also issues on: first of all – termination of service relations and planning of career, secondly, professional competence of the civil servant, thirdly, possibility of further qualification and rotation. The challenged norm is one of the means for solving the above issues as it allows the head of the institution to find out in advance whether another candidate is able to substitute the official, who has reached the pensioning age and whether additional funds are needed to prepare the candidate for the job.

**Thus the means, chosen by the legislator, in total are appropriate for reaching the aim of the challenged norm.**

**9.3.** When assessing the conformity of the age limit determined in the challenged norm with the principle of proportionality, one has to

ascertain whether the public benefit gained by the challenged norm is greater than the loss of the rights and lawful interests of an individual.

In Item 9 of this Judgment it has already been pointed out that the international normative acts, regulating employment rights, permit the possibility of restricting the right to hold a position in civil service in order to protect the state democratic structure and public welfare. Therefore it is in the interests of the society to ensure that the "corps" of the officials does not grow old and the age of the persons working in civil service is balanced. Besides, one has to take into consideration that the issue on employment policy does not concern only the officials holding positions in civil service but also the society as the whole, because when restricting the right to employment to persons, who already have a well provided source of subsistence, namely – the pension, the possibility to work is enlarged for the persons, who are able to earn subsistence only by work. The Directive also permits a differentiated attitude in the sector of employment, if it is justified by lawful aims of the employment policy and circumstances in the labour market (*see Item 25 of the Preamble of the Directive*).

Any restriction of the rights shall be evaluated in the context of every particular case; however, it should be done on the basis of the principle of proportionality and by taking into consideration the general political situation of the state (*see Nowak M. U.N. Covenant on Civil and Political Rights. CCPR Commentary – Kiel: Engel 1993, p. 455*). Thus it is important to balance the interests and rights of several generations, inter alia also the right to employment. In the particular case of the challenged norm the above interests have been balanced. Namely, the challenged norm has affected only a small part of the officials who have reached the pensioning age. From the reply of the Civil Service Administration to the Constitutional Court it can be seen that on July 1, 2003 371 officials, who had reached the pensioning age, were working in the State administrative institutions. In its turn civil service relations have been terminated only with 47 officials, who had reached the pensioning age. The other 324 officials continue holding their positions. The above practice of application of the challenged norm allows concluding that the challenged norm is used not only in cases when the official, who has reached the pensioning age, is a highly qualified professional but also in cases when no other adequate person stands for the position. Thus the challenged norm permits the possibility of holding the position for the official, who has reached the pensioning age and ensures the implementation of the principle of good management.

**Thus the challenged norm all in all complies with the principle of proportionality.**

**9.4.** However, when shaping the state employment policy the economical and social conditions of the state shall be taken into consideration.

Thus, for example, the Swedish expert, the sworn advocate from Stockholm Larss Viklung, when expressing his conclusion on the State Civil Service Law has pointed out that the greatest number of the European state pension systems is based on the presumption that persons, when reaching the pensioning age, leave work and pass over the working possibilities to the next generation. However, the expert has stressed that these principles do not comply with the situation in Latvia, where the pensions are very low and people have to leave work at 58-60 years of age (*see page 252 of the first volume of this Judgment*).

Besides, the demographic situation has to be taken into consideration, namely, at the present moment the society is becoming old and there are very many persons near the pensioning age not only in Latvia but also in the other states of Europe as well. Thus, it is in the public interests to allow elderly persons to work as long as possible. Recently both the public and juridical viewpoint on the discrimination on the ground of age has changed, e.g. the so-called old age discrimination has been *expressis verbis* prohibited by the Constitutions of several states (like Finland, Switzerland), international norms as well as Latvian Labour Law.

One may agree with the viewpoint expressed in the Saeima written reply that the challenged norm shall not be assessed as the general restriction connected with the age of the person, as it gives to every institution the possibility of assessing the activities of every single official, who has reached the pensioning age and take the decision whether it is possible and necessary to continue civil service relations with him/her. However, the challenged norm envisages that only the head of the institution or the minister and not a commission (as has been determined in Section 35 of the State Civil Service Law, the first part of which determines that the head of an institution shall establish an assessment commission, which shall each year assess the activities of a civil servant and the results thereof) experiences the above right. Thus this norm admits that the head of an institution, when taking the decision on discharging a civil servant, who has reached the pensioning age, sometimes may be subjective and/or partial.

Taking into consideration the fact that improving the activities in the sector of employment and state management is the issue of the State policy, the Saeima shall assess and take the decision not only on the issue of raising the age limit determined for the civil servants but also on

the procedure of leaving the official, who has reached the pensioning age, in his/her position.

**10.** Both Article 91 of the Satversme and Article 2 of the Covenant prohibit discrimination of any kind, also on the ground of age and sex. However, the norms mentioned in this matter shall be assessed in connection with the norms, regulating the right to employment, i.e., Articles 101 and 106 of the Satversme and Article 25 of the Covenant.

Any of the rights established in these norms may be subject to restrictions, if the restrictions have a legitimate aim, envisage appropriate means for reaching the aim as well as if the proportionality between the interests of an individual and the society has been balanced. Arguments concerning age limitations in the sector of civil service are set forth in Item 9 of this Judgment. Thus in the understanding of Article 91 of the Satversme the differentiated attitude to the employees of the State civil service is justifiable.

However, the materials in case affirm that there exists a differentiated attitude as concerns men and women officials of the State civil service, as the challenged norm is applied by reading it together with Item 8 of the Transitional Provisions of the Law on State Pensions.

Namely, the submitter has been discharged from her position by the Environmental State Inspection April 17, 2001 Order because she had reached the pensioning age, determined by law. Both the State Civil Service Administration and all the three court instances concluded that the discharging had been lawful and well-grounded, stressing that at the time when the submitter was discharged from her position in accordance with Item 8 of the Transitional Provisions of the Law on State Pensions the pensioning age for women was 58 years of age and not 62 years of age as was determined in Article 11 of this Law.

Thus, when interpreting the challenged norm on the basis of Item 8 of the Transitional Provisions of the Law "On State Pensions" till this day and up to July 1, 2008 it would be unlawfully permitted to discharge men and women from the positions in the civil service at different years of age. Thus, for example, the Court of the European Community has concluded that a certain Ms Marshall, who was discharged from her position because of reaching the pensioning age, was discriminated on the ground of sex, as the state normative acts envisaged different pensioning age for men and women [*see the Court of the European Community February 26, 1986 Judgment in case "M.H. Marshall v. Southampton and South – West Hampshire Area Health Authority (Teaching)"*].

When examining the conformity of the legal norm with the legal norm of higher legal force, it shall be interpreted in the compliance with the Satversme. The challenged norm anticipates that the civil service relations with the civil servant, who has reached the pensioning age, shall be terminated. The years of age, namely, 62 years, which are the same for both – men and women, are determined by a valid legal norm, i.e., Article 11 of the Law "On State Pensions".

In its turn Item 8 of the Transitional Provisions of the Law on State Pensions had quite a different aim – to ensure even and steady rising of the pensioning age and this Item shall not be used for interpretation and application of the challenged norm.

Thus, when applying the challenged norm as read together with Item 8 of the Transitional Provisions of the Law on State Pensions" a differentiated attitude towards the submitter G.Galakrodziniece has been permitted in this way discriminating her on the ground of sex.

**However, when interpreting the challenged norm as read together with Article 11 of the Law "On State Pensions" one has to conclude that it complies with Article 91 of the Satversme.**

### **The substantive part**

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

**hereby rules:**

to declare Section 41 (Item 1, Sub-item "f") of the State Civil Service Law as conformable with Articles 91, 101 and 106 of the 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