# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, February 22, 2002

**JUDGMENT**
**in the name of the Republic of Latvia**

**in case No. 2001 – 06 – 03**

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Andrejs Lepse, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Ilze Skultāne and Anita Ušacka, with the secretary of the Court session Egija Freimane,

in the presence of the submitter of the constitutional claim Ivars Silārs and his representative - the sworn advocate Anita Šnēvele

as well as the representative of the institution, which has issued the challenged act - the Saeima the sworn advocate Eduards Ikvilds,

under Article 85 of the Republic of Latvia Satversme (the Constitution) as well as Articles 16 (Items 1 and 3) , 17 (Item 11, part 1) and $19^2$ of the Constitutional Court Law

in a public hearing in Riga, on January 22, 2002 reviewed the case

**"On Compliance of Items 4, 5, 6, 7, 8 and the First Sentence of Item 9 of the Saeima Presidium February 28, 2000 Regulations " On the Procedure of Compensating Expenses Occurred to the Deputies while Exercising their Authority" with Article 91 of the Republic of Latvia Satversme".**

**The Constitutional Court**

***established:***

Article 33 of the Republic of Latvia Satversme (henceforth – the Satversme) determines that members of the Saeima shall receive remuneration from state funds.

Article 14 of the Law ”Rules of Procedure of the Saeima”, which has been adopted on March 23, 1923, determines that the deputy shall receive salary from the budget resources allotted for this purpose: ” a) a salary for the period of time worked; the first half on the 15th. date of every month and the second half on the very last day of the month; b) compensation for the participation in the work of the Committees; c) subsistence allowance for the deputy during the business trips connected with his/her duties outside the Saeima. The traveling expenses shall be compensated as well.” Article 16 of the same Law envisaged that upon producing his/her deputy’s identification card, the deputy had the right to a free use of railways and ships.

In its turn Article 28 specified the functions of the Saeima Presidium. The Presidium was attained the task of : ”a) determining the internal rules and the procedure of work of the Saeima Chancellery and other structure units of the Saeima; b) appointing and dismissing the employees; c)preliminary resolving of issues on the Saeima activities in coordination with the Council of the Factions; d) providing conclusions on the documents submitted and forward these documents as prescribed by the Rules of the Procedure; e) preliminary resolving in coordination with the Council of Factions of issues, which cannot be settled through the Rules of Procedure or the Saeima rulings.” Confirmation of the Saeima was needed to the Presidium of Council of Factions’ decisions on issues envisaged in Items ”c” and ”e”.

On April 10, 1929 a new Law “”The Rules of Procedure of the Saeima” was adopted. And in accordance with Article 25 the ”preliminary resolving of issues on the Saeima activities” was not included into the Saeima competence. In its turn, preliminary resolving by the Saeima Presidium of issues, not settled through the Rules of Procedure or the Saeima rulings, did not any more need the accept of the Saeima.

Article 14 of the above Law determined the amount of the deputies’ salary – ” the deputy shall receive a salary in correspondence with the civil servants’ qualification category 1 for the period of time worked… compensation for the participation in the work of the Saeima Committees, subsistence allowance for the deputy during the business trips connected with his/her duties outside the Saeima as well as reimbursement for travel expenses in accordance with budget allocations”.

On May 28, 1990 the Republic of Latvia Supreme Council (henceforth – the Supreme Council) adopted the Law ”On the Status of the Republic of Latvia People’s Deputy”. The fifth part of its Article 24 envisaged that the Supreme Council should determine the procedure of reimbursement of expenses incurred while fulfilling the activities of a deputy. Article 26 of the Law guaranteed the right of a deputy to a free use of the means of public transport in the territory of Latvia, except taxi services. The Republic of Latvia Council of Ministers was authorized to determine the procedure of settlement of accounts with transport organizations as well as elaborate the regulations on use of the cars, assigned to the deputies, while fulfilling their duties.

On May 29, 1990, on the basis of the above Law, the Supreme Council confirmed the Regulations ” On the Material Insurance of the Activities of the Republic of Latvia Deputies”. Item 10 of this Law determined the basic salary of deputies, the amount of extra payments and the demand that ”the above shall be imposed with taxes”. Item 3 envisaged that ” a deputy shall monthly be paid 200 roubles to cover the expenses occurred to the deputy while exercising his/her authority. This sum shall not be imposed with taxes.” Item 7 of the Regulations guaranteed that in cases ” if the deputy, while fulfilling his/her duties, uses his/her own car, the incurred additional expenses shall be compensated in the procedure stipulated by law”. In its turn Item 8 established that ”the salaried deputy, if he/she wishes it, shall receive refunds for covering hotel expenses or is given a living space for his/her family in Riga for the period of service. The deputy shall pay for it and the public utilities himself/herself.”

On June 25, 1990 the Supreme Council confirmed new Regulations ”On Material Insurance of the Republic of Latvia Deputies’ Activities” but on June 30, 1992 made amendments to it. After amending the Regulations, the first part of Item 1 envisaged that ” the Presidium of the Republic of Latvia Supreme Council shall determine the amount of the salary of a deputy and the procedure of payment”. The first sentence of Item 3 – in its turn –established that ”the deputy shall monthly receive a certain amount of money, determined by the Supreme Council Presidium, to cover the expenses occurred while fulfilling his/her duties”. The second part of Item 10, the second sentence of Item 3 of the Regulations as well as Articles 7 and 8 were analogous with the norms of those, confirmed on May 29, 1990.

On the very first session of the 5$^{th}$. Saeima, i.e. – on July 6, 1993, the Saeima adopted the decision to adapt the 1929 Rules of Procedure together with the amendments and supplements (among them also Article 14) to its activities with an exception of Articles 26, 124, 126 (the second sentence), 127, 139, 147, 148 (the note) and 185.

On July 21, 1993 the Saeima, on the basis of Article 25 (Item 4) and Article 120 of the Rules of Procedure of the Saeima, reached the decision that the issue

on determination of the deputy's salary "on its merit shall not be considered at the Saeima but shall be within the competence of the Saeima Presidium (henceforth – the Presidium).

The Law "On the State Civil Service" was passed on April 21, 1994.

The initial wording of Article 12 of the Rules of Procedure of the Saeima (henceforth – Rules of Procedure), passed on July 28, 1994 determined that "a deputy shall receive a salary in correspondence with the civil servants' qualification category No.1 for the days he/she has been at work. The salaries shall be paid on the dates set by the Presidium". Besides it was stated that "compensation for participation in the work of the Saeima Committees, the money spent for meals during the time when the deputy goes on business trips connected with his/her duties outside the Saeima, as well as the money for representation expenses shall be received by the deputy from the budget resources allotted for this purpose".

The first part of Article 14, in its turn, envisaged that "upon showing his/her deputy identity card, a deputy shall have the right to a free use of state or local government means of public transportation in the territory of Latvia, except taxi services". The second part of this Article established that " if a deputy incurs expenses while fulfilling his/her duties, these expenses shall be reimbursed from the Saeima budget in the procedure set by the Presidium".

On May 15, 1997 the Law "Amendments to the Rules of Procedure of the Saeima" was passed. Article 14 was expressed in a new wording. Among other things, the first part of the Article envisaged: " If a deputy incurs expenses while performing his/her duties, they shall be reimbursed from the Saeima budget in the procedure set by the Presidium. The reimbursement may not exceed 75 percent of the determined salary of the deputy (Part 1 of Article 12) per month".

After making a reference to the above norm of the Law, on May 26, 1997 the Presidium adopted the Decision "On the Procedure of Granting and Paying Compensations to the Saeima Deputies" on May 26, 1997 thus confirming the Regulations on Compensating Expenses Occurred to the Deputy while Fulfilling his/her Duties". Among other things the Regulations envisaged:

"4. Compensation for purchasing office supplies, for paying communication services and covering representation costs in the amount of 15 percent of the determined salary shall be established for the period of authority of the deputy. If the deputy is also the member of the government, he/she shall not be granted the above compensation.

5. Payments of refunds for covering transportation costs within the territory of Latvia shall be granted to all the deputies, who do not have a car of the

Saeima transport depot at their disposal, in the amount of 25 percent of the determined salary.

6. The deputy, who lives 60 – 150 km from Riga and who does not have a car of the Saeima transport depot at his disposal, shall receive an enlarged for 10 percent compensation (i.e. 10 percent are added to the 25 percent mentioned in Item 5 of the Regulations) for covering transportation costs. A deputy, who lives more than 150 km from Riga and who does not have a car of the Saeima transport depot at his disposal, shall receive an enlarged for 20 percent compensation.

7. Payments of refunds for covering rental expenses for dwelling space in the amount of 15 percent of the determined salary shall be granted to the deputy, who does not have a permanent registration of Riga residence and who does not receive the compensation envisaged in Item 6 (additional 10 or 20 percent for covering transportation expenses).

8. Compensation for covering transportation expenses in the territory of Latvia (Items 5 and 6 of the Regulations) and compensation for covering rental expenses for dwelling space (Item 7 of the Regulations) shall be granted by the Saeima Administrative Committee, which – after receiving a written application from a deputy – reviews it within two next weeks and adopts a special ruling on it.

9. The deputy is responsible for the truth of the submitted data and shall inform (in a written form) the Administrative Committee for any changes (on changing the dwelling space, making use of a car of the Saeima car depot etc.) within seven days.

10. If the deputy has handed in false information or has not informed the Committee in the fixed term, the Administrative Committee resolves to withhold the groundlessly granted sum from the salary of the deputy".

On October 29, 1998 the 6th. Saeima adopted the Law " On Guarantees for Deputy's Activity", determining that the Law would take effect on January 1, 1999. However, the law did not take effect as the newly elected 7th. Saeima revoked it on December 17, 1998.

On December 16, 1999 the Saeima adopted the Law "Amendments to the Law " On the Rules of Procedure of the Saeima"". The first and the second parts of Article 14 of the Rules of Procedure were expressed in the following wording:

"(1) If while exercising his/her authority expenses have occurred to a deputy, they must be refunded from the Saeima budget in that amount and procedure determined by the Presidium.

(2) Payments of refunds determined by the Presidium – purchasing of office supplies, for paying communication services and covering representation cost, for paying transportation costs within the territory of Latvia, for covering rental services for dwelling space – shall not be imposed with taxes and social insurance payments."

The above norms took effect on January 12, 2000. On February 28, 2000, making a reference to the norms, the Saeima Presidium adopted the Decision "On the Procedure of Granting and Paying Compensations to the Saeima deputies", with which the Regulations "On the Procedure of Compensating Expenses Occurred to the Deputies While Exercising Their Authority" were confirmed. The Regulations took effect on March 1, 2000. Among other things the Regulations envisage:

"4. During the period of his/her authority – the deputy shall receive 55 lats every month to cover expenses for purchasing office supplies and for paying communication services.

5. Compensation – 93 lats every month- for transportation expenses in the territory of Latvia is granted to the deputy, who does not have the Saeima depot car at his disposal.

6. The deputy, who lives 60 – 150 km from Riga and who does not have a Saeima depot car at his disposal receives a monthly compensation of 130 lats for covering transportation expenses, but the deputy, who lives more than 150 km from Riga –receives a monthly compensation of 167 lats.

7. Compensation for covering rental expenses for dwelling space is granted to those deputies, who have to rent a dwelling space for the time of their authority. Compensation for covering rental expenses is determined pursuant to the sum named by the deputy himself/herself but its amount shall not exceed 200 lats a month.

8. Compensation for covering transportation costs in the territory of Latvia (Items 5 and 6 of the Regulations) and compensation for covering rental costs for dwelling space (Item 7 of the Regulations) shall be granted by the Saeima Administrative Committee Ruling after receiving a written application from the deputy. The Administrative Committee reviews the deputy's application and adopts a ruling on it.

9. The deputy, who wants to receive any of the above compensations, submits an application of a certain standard to the Administrative Committee (the form in the supplement). The deputy is responsible for truthfulness of the information and it is his/her duty within 7 days to present in writing any changes of that part of information, which has served as the basis for granting

the compensation or changing it ( change of dwelling space or payment for it, usage of the Saeima depot car etc.).

10. If the deputy has handed in false information or has not submitted information on changes in the fixed term, the Administrative Committee resolves to withhold the groundlessly paid amount of money from the salary of the deputy".

**The submitter of the application (constitutional claim) Ivars Silārs** in his claim and specification of it challenges conformity of Items 4, 5, 6, 7, 8 and 9 (the first sentence) of February 28, 2000 Presidium Regulations "On the Procedure of Compensating Expenses Occurred to the Deputies While Exercising Their Authority" with Article 91 of the Satversme.

I. Silārs does not object to payment of refunds, which have occurred to a deputy while fulfilling his/her duties and are enumerated in the challenged act. He points out that instead of envisaging compensations for real expenses, which have occurred to deputies while exercising their authority, the act has in fact granted illegal benefits with no taxes imposed. Thus, quite a number of the Saeima deputies – J.Bungšs, I.Burvis, J.Dalbiņš, O. Deņisovs, I.Geige, V.Ģīlis, A.Kalniņš, I.Kalniņš, A.Kiršteins, M.Lujāns, A.Požarnovs, N.Rudevičs, I.Solovjovs, M.Sprindžuks, D.Stalts and M.Vītols – all of them have private apartments in Riga or they have worked in Riga already before becoming deputies. The fact that they have been elected deputies has not created additional expenses, connected with the necessity of renting dwelling space to fulfill their duties. Nevertheless, the above deputies have submitted applications for receiving payments of refunds and have received them.

The applicant holds that in such a way the deputies receive illegal extra payment to their salary in the amount of 200 lats a month to pay for the dwelling space and up to 167 to pay the monthly transportation costs. The illegally granted subsidies are paid from the state budget, that is from the tax-payers'- in their midst also his- money.

The Regulations do not envisage submission of any covering vouchers, which confirm the validity and existence of expenses occurred, while exercising the authority of the deputy. I.Silārs points out that he – the assessor of the Riga Regional Court- also receives salary from the state budget, however he has no right of receiving monthly compensations with no taxes imposed, if he does not submit covering documents. In its turn, the challenged act is applied not only to pay illegal grants but also allows the deputies to avoid observing the Law " On the Income Tax" and paying taxes.

The applicant is of the viewpoint that the challenged norms are not in compliance with Article 91 of the Satversme, which determines that all persons

in Latvia are equal before the law. He requests the Court to revoke the challenged norms from the moment of their adoption and make the deputies repay the illegally received money.

At the Court session I.Silārs upheld the above claim.

Besides he motivated the violation of Article 91 of the Satversme and violation of his fundamental rights, pointing out that he and the deputies of the Saeima were in alike and comparable circumstances, because the norm of Article 33 of the Satversme, determes that the members of the Saeima ”shall receive remuneration from state funds”. He, as the assessor of the Riga Regional Court, also receives remuneration from the state funds. The salary of a deputy is calculated in conformity with August 14, 2000 Presidium Ruling ”On the Salary of the Saeima Deputies”. The average salary of the state employees served as the basis for it. Thus the salary of the deputy is approximated to that of any employee, thus –also to his salary. At the same time there exists a differentiated attitude towards I.Silārs and the deputies, which can be proved by Chapter 8 of the Latvian Labour Code. It does not envisage the possibility of receiving monthly compensations with no taxes imposed – i.e. additional payments, if no covering documents, proving the existence of the expenses, have been submitted.

Besides I.Silārs made a reference to the Law ” On the Legal Status and Pensions of the Deputies of the Supreme Council Deputies”, stating that in compliance with the above Law his pension is directly depending on the salary of the deputies.

In an answer to the question whether he was going to run for the deputy of the next Saeima I.Silārs maintained that even though he had always wanted to carry on his political career and the mass media have written about it , the ” obscure rules of the game” denied him to undertake the obligations of the representative of the people.

**The institution, which has passed the challenged act – the Presidium** in its written reply declared that the claim was ungrounded and to be rejected.

In the written reply it is stressed that in accordance with the first part of Article $19^2$ of the Constitutional Court Law, the constitutional claim to the Constitutional Court may be submitted, if the person holds that his/her fundamental rights, established by the constitution, have been violated by applying a normative act, which is not in compliance with the legal norm of higher legal force. As the applicant is not the Saeima deputy, the challenged norms do not concern him.

The Presidium points out that everybody – the President, the employees, who realize legislative and executive power and those, who represent the

judicial power receive their salary from the state budget. The salaries and payment systems applied to the above officials differ because of the different status of the officials. The Presidium holds that the statement of the applicant, namely, that his status of the Riga Regional Court assessor is on the same level as that of the Saeima deputy, is quite groundless as the deputies have a special constitutional status, roots of which can be found in the basic law – the Satversme. It is stressed in the written reply that the applicant of the claim and the Saeima deputies are not in equal and comparable circumstances.

The Presidium expresses the viewpoint that the Rules of Procedure and not the challenged act determine the condition that the compensations, paid to the deputies, shall not be imposed with taxes. Rules of Procedure delegate the Presidium to establish the amount and the procedure of compensations.

In the written reply the Presidium points out that compensations with no taxes imposed on them do exist and their amount is determined by the existing laws. Besides compensations of a certain amount are granted in several sectors and it is not demanded to submit documents, confirming the expenses.

The Presidium maintains that additionally to the Saeima Inspection Committee, another ”controlling mechanism” is envisaged in the challenged act.

In an answer to the Constitutional Court justice’s questions, the Saeima representative stressed the importance of the deputy’s signature on the application for receiving compensation. The signature – to his mind- confirms the truthfulness of the information and averts the potential misunderstanding on the amount of the compensation, at the same time implying that the deputy assumes full responsibility for truthfulness of information.

At the Court session the representative of the Presidium Eduards Inkvilds upheld the viewpoint that the constitutional claim was ungrounded and requested to reject it. He maintained that Article 91 of the Satversme referred to all the residents of Latvia, in its turn the specific norm, which had been challenged, was the object of regulation of public rights and referred to particular officials, therefore different officials or material options and their expression of different institutions could not be confronted.

Making a reference to the principle of legitimate trust he stressed that the elected representatives of the people found themselves in a particular situation and should be trusted.

**The invited person – the Saeima Deputy Secretary Aleksandrs Bartaševičs** explained the necessity of adoption of the challenged act. He pointed out that the main objective of the amendments has been to solve the

problem with the building of the Saeima hotel at No.23 Valdemāra street as quickly as possible to economize the Saeima funds, as the building had been returned to its former owner, who wanted to increase rent.

A.Bartaševičs expressed the viewpoint that by adopting the challenged act side by side with the objective to economize the Saeima money, they had wanted to provide dwelling space for the deputies, who needed it. He explained that as concerned compensation for transportation expenses, purchasing of office supplies and covering of representation costs, the procedure had not been changed in 2000.

**The invited person – the head of the Saeima Administrative Committee Juris Dobelis** at the Court session stressed that the deputy carries out the main duty in the state as everything depended on him/her – beginning with the budget and finishing with every law. Deputies have the adequate level of responsibility and the approach to the concrete issue depends on it. This approach is like this: all the deputies regardless of the place they live shall be guaranteed equal possibilities. It means that the right to use transport, take part in activities and work with the voters shall be equal. How much a deputy makes use of the above rights, is another issue.

J.Dobelis expressed the viewpoint that the Administrative Committee participated in the processes, which concerned the administrative activities of the Saeima. It means the Committee participates in the elaboration of the draft budget as well as elaboration of different drafts of the decisions. In its turn the decisions on spending money are taken by the Presidium.

He explained that the attitude of the Administrative Committee towards the Saeima deputies was positive. When receiving an application one had just to examine if it had been correctly drawn up. J.Dobelis stressed that he held it disgraceful to ” run after the deputy and pester him/her with questions ” on the place of residence.

**The invited person – the head of the Saeima Audit Committee Pāvels Maksimovs** explained that the session of the Audit Committee, which started reviewing the issue on compensations, their legality and usefulness had taken place already in December 2000 – at the time when the first critical publication on compensations for the deputies by I.Silārs had appeared in press. In its turn, when carrying out the yearly auditing, the Committee had ascertained that the challenged act did not envisage a controlling mechanism.

P.Maksimovs stressed that the principle of checkup was incorporated into the challenged act, but the mechanism of its realization had not been envisaged. The viewpoint of the Audit Committee is that the mechanism has to envisage certain criteria, which could be used during the checkup process. There had

been no criteria in the act, therefore in April 2001 the Audit Committee had addressed the Presidium with a proposal to improve the Regulations by including a controlling and accounting mechanism and envisaging submission of a certain report or a covering voucher.

**The Constitutional Court**

***concluded:***

**1.** To establish whether the case on I.Silārs constitutional claim is within the competence of the Constitutional Court, one has first of all to state if compliance of the case on a normative act, passed by the Presidium with the legal norms of higher legal force iswithin the competence of the Constitutional Court.

**1.1.** Item 3 of Article 16 of the Constitutional Court Law envisages examining of compliance of ”other normative acts” with the legal norms of higher legal force. The fact, whether a specific act corresponds to the term ”normative act” included in Article 16 of the Constitutional Court Law, should be evaluated not only from the title of the challenged act but also from its contents. Besides, the competence to pass a particular legal norm is a precondition of the act being legal and to be applied. However, if the act has been passed by exceeding one’s authority, it does not mean that the act does not comply with the indications of a normative act and cannot be incorporated into a claim to the Constitutional Court (see July 9, 1999 Constitutional Court Judgment in case No. 04-03/99/).

The viewpoint of the applicant that the Presidium when passing the challenged act , contrary to its authority, has envisaged unforeseen additional payments ( without imposing taxes on them), which are not connected with fulfilling the duties of the deputy, has to be examined by analyzing the conformity of this act with the legal norms of higher legal force. And such an examination is within the competence of the Constitutional Court.

**1.2.** The status of the Presidium follows from the Satversme. ” The Satversme Committee agreed that the Articles of the Satversme should incorporate definite thoughts expressed in a definite way. Even if we cannot find the Article stating what the Saeima is etc., we still know how it is formed and from certain Articles we learn what rights the Saeima experiences” (Verbatim reports of the Constituent Assembly, Number 14, page 1309). The definition of the Presidium is not included into the Satversme either; however its legal status may be concluded from the norms of the Satversme.

The Presidium is mentioned in the Satversme, however it does not have the status of a constitutional institution. Duties and obligations of the Presidium are derived from the status and authority of the Saeima. The Presidium carries

out strictly determined organizing functions – convenes sessions and specifies the dates of regular or extraordinary sessions, as well as ensures continuous functioning of the Parliament during the break of the sessions and sittings. The fact that the Presidium is not a higher institution than the Saeima follows from Article 21 of the Satversme, which envisages that the Saeima shall draw up the Rules of Procedure for the regulation of its internal proceedings. The Article does not envisage that the procedure shall be determined by the Presidium. The Presidium has the right of determining the internal proceedings just as much as the Rules of Procedure or other law authorizes the Presidium to do so.

When on July 6, 1993 the Saeima decided to approximate the 1929 Rules of Procedure of the Saeima to its activities, its Article 14 envisaged that the deputy should receive a salary in correspondence with the civil servants' qualification category I. However at that time the State Civil Law had not been passed. On July 21, when deciding that the issue on determining the amount of the Saeima deputy's salary shall not be determined by the Saeima but by the Presidium, the Saeima to a certain extent passed the authority of the Presidium of the Supreme Council to the Saeima Presidium.

In compliance with the Satversme the Presidium may not be the institution, which passes generally binding (external) normative acts. And that is where the Saeima Presidium differs from the Supreme Council Presidium, namely – the acts passed by the latter were generally binding (external) and they had a certain place in the system of normative acts. Acts, passed by the Saeima Presidium, do not have that place. Both – the fact that the procedure of publishing, taking effect and being valid of the Presidium acts is not envisaged by the Law "On the Procedure by which Laws and Other Acts, Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take effect and Being Valid" and the fact that the acts of the Supreme CouncilPresidium (and not those of the Saeima Presidium), including those, determining the salary of the employees of the state institutions are amended or abrogated by law or the Cabinet of Ministers Regulations passed under Article 81 of the Satversme (see e.g.June 8, 1994 Law "On Recognition as Null and Void the Republic of Latvia Supreme Council Presidium and the Republic of Latvia Council of Ministers January 21, 1993 Resolution "On the Republic of Latvia Defense Forces, National Guard, the Ministry of the Interior Armed Units and Security Service Posts' Division in Accordance with the Qualification Categories and Ranks and on Extra Payments to Salaries"" as well as December 28, 1993 Cabinet of Ministers Regulations No. 42 passed under Article 81 of the Satversme "On Recognition as Null and Void the Supreme Council Resolutions on Issues of Salaries").

However, the Presidium acts, which concern the deputies, cannot be regarded as internal normative acts in their traditional meaning. Namely, "one of the main features, dividing the legal acts into internal and external ones, is the addressee of the particular act. The public legal subject passes internal

normative acts to determine the procedure of activities of an institution, subordinated to it or to explain the procedure of application of an external normative act. The above acts are binding only on the passer of the act, its structural units and employees. Whereas external normative acts are binding on an abstract range of persons and by the acts legal relations between the public legal subject on the one hand and the individual or other legal subjects on the other hand are regulated." (July 9, 1999 Judgment of the Constitutional court in case No.04-03 /99/).

The Presidium in its written reply has with good reason pointed out that the Saeima deputy is constitutionally recognized as the representative of the people (Article 6 of the Satversme). The Saeima deputy is a legitimate pronouncer of the people's will at the state constitutional institution – the Saeima and his/her status is determined in the fundamental state law – the Satversme. The viewpoint that the deputies are subordinated to the Presidium (analogous to the employees of ministries who are subordinated to the minister) contradicts the principle of independence of the deputy. Besides, the viewpoint that the Presidium acts are only internal normative acts contradicts the fact that by determining the Saeima deputies' salary, the Presidium has also determined the amount of the special state pensions for the former Supreme Council deputies; however these persons are not and cannot be subordinated to the Presidium. Namely, in compliance with the first part of Article 5 of the Law "On the Legal Status and Pensions of the Deputies of the Supreme Council of the Republic of Latvia", those former deputies of the Republic of Latvia Supreme Council, who voted "for" the May 4, 1990 Declaration "On the Renewal of the Independence of the Republic of Latvia" or the constitutional Law "On the Republic of Latvia Status as a State" shall receive pension in the amount of 80 percent from the salary of the Saeima deputy, which, in its turn, is determined by the Presidium.

The term "normative acts", incorporated into Article 16 (Item 3) of the Constitutional Court Law includes both – the generally binding (external) and internal normative acts. To ascertain whether examination of a particular normative act is within the competence of the Constitutional Court, Article 16 of the Constitutional Court Law shall be read together with the objectives of the activity of the Constitutional Court in a democratic, law-based state. "One of the fundamental principles of a democratic state is the principle of separation of power. It follows that there exists control of the judicial power over the legislative and executive power. No legal norm or activity of the executive power shall remain out of control of the judicial power, if it endangers interests of an individual".(July 9, 1999 Constitutional Court Judgment in case No.04-03/99/).

The judicial power as a whole and the Constitutional Court as its constituent part shall insure control over both other state powers. As concerns the judicial power, the competence of the Constitutional Court "steps back" behind the competence of the court of general jurisdiction and is interpreted as narrowly as

possible. First of all it concerns the cases of constitutional claims. The law envisages that all the general means of protection shall be exhausted.

In its turn examination of the Presidium normative acts is not within the competence of any court of general jurisdiction, therefore such an interpretation of Article 16 of the Constitutional Court Law, which denies control of the above acts in case of violation of rights, would be at variance with Article 1 of the Satversme. Thus from the point of view of Article 16 of the Constitutional Court Law, a case on conformity of a challenged act with the legal norms of higher legal force is within the competence of the Constitutional Court.

**2.** Ungrounded is the viewpoint that the Constitutional Court is not authorized to review I.Silārs case on compliance of the challenged act with the legal norms of higher legal force. Article $19^2$ of the Constitutional Court Law determines that " any person, who holds that his/her fundamental rights have been violated by a legal norm, which is not in compliance with the legal norm of higher legal force, may submit a claim (application) to the Constitutional Court. To ascertain whether the Constitutional Court should review the case on I.Silārs claim, one has to clarify if the claim is in compliance with the requirements of the above Article.

**2.1.** There is no argument in the case on the fact that I.Silārs as a physical entity is "everybody" in the understanding of Article 91 of the Satversme, "a person" in the understanding of Article 17 (the first part of Item 11) of the Constitutional Court Law and "every person" in that of Article $19^2$ of the same law.

**2.2.** In compliance with the first part of Article $19^2$ of the Constitutional Court Law a person who "holds…" may submit a constitutional claim. The Law puts a stress to the viewpoint of the person on violation of the particular right and not that of the court. The Law demands the person to hold that the fundamental rights fixed in the Satversme have been violated. However this demand has to be read together with the sixth part of Article $19^2$ of the Constitutional Court Law, which determines that the viewpoint has to be substantiated. Thus, to initiate a case on a constitutional claim, it is necessary to establish that the claim includes a sufficient legal substantiation about it. However, the Constitutional Court Panel has no obligation of evaluating the viewpoint of the applicant "to the end". The Constitutional Court Panel has the right of refusing to initiate the case only in case if the legal justification of the claim is evidently insufficient to satisfy the appeal. In its turn it has the obligation to do it only if there is no legal justification.

An opposite assumption, namely, that the Constitutional Court Panel, already when examining the constitutional claim and reaching the decision of initiating a case or refusing to initiate it, has to establish that the fundamental

rights of a person have been violated, would contradict the logical advancement of the Constitutional Court proceedings, which has been determined by law. The issue on the fact whether the fundamental rights of the applicant of the constitutional claim have been violated has to be adjudicated by the Constitutional Court in its judgment.

The experience of the Constitutional Courts of other states in their practice have also proved that while making a decision on review of the case the so-called ”possibility theory” (Mőglichkeitstheorie) is used. For example, when commenting upon the German Federal Constitutional Court Law it has been pointed out that ”the submitter of the claim shall clearly formulate the possibility that the rights, enumerated in the first part of Paragraph 90 of the German Federal Constitutional Court Law have been violated. However the violation of the fundamental rights has not to be set forth convincingly – as it is the issue of validity- at the same time the possibility has to be stated convincingly.” (Bundesverfassungsgerichtsgesetz: Mitarbeiterkommentar und Handbuch. Heidelberg, C.F. Műller Juristischer Verlag, 1992, S. 1180 – 1181).

I.Silārs in his constitutional claim and the supplement to it has incorporated a convincing possibility of the violation of the fundamental rights, fixed in Article 91 of the Satversme. Evaluation of whether this viewpoint has any legal substantiation and whether it is or is not evidently insufficient has to be left to the panel, which takes the decision on the claim and initiating the case.

The objective of the sixth part of Article 20 of the Constitutional Court Law is to release the Constitutional Court from ”working idle” and examining evidently insufficient claims. In cases, when the legal substantiating exists but there is doubt that it might be evidently insufficient to satisfy the claim, the above norm shall be interpreted in compliance with its objective. First of all one has to take into consideration whether the particular constitutional issue has been reviewed in the practice of the Constitutional Court. The content of Article 91 of the Satversme has not been enlarged upon in the Constitutional Court judgments. In this case all the doubts shall be interpreted in favour of initiating a case. Besides, one should remember that the duty of the Constitutional Court is to solve disputes on compliance of the act of lower legal force with the norms of higher legal force. The dispute is solved both in cases if the challenged act is declared to be in compliance and in cases when it is declared as unconformable with the norm of higher legal force.

**2.3.** After the case has been initiated, the Constitutional Court bases its work on the arguments and evidence of the participants in the case – the submitter of the application and the institution, which has passed the disputable act, at the same time it may look for arguments and evidence elsewhere.

As concerns the issue on whether the particular case is within its authority, during the stage of reaching the judgment, the Constitutional Court is not

obliged to base its work just on the legal substantiation of the applicant, the Court has to evaluate all the circumstances, ascertained while reviewing the case. In this case it means that the Constitutional Court has to evaluate the potential violation not only towards I.Silārs as the assessor of the Regional Court but also towards I.Silārs as a person, who receives the pension, determined by the Law ”On the Legal Status and Pensions of the Deputies of the Supreme council of the Republic of Latvia”, as well as towards I.Silārs as the potential Saeima deputy candidate. Besides, the case shall be reviewed on its merit, if there exists a legally motivated possibility that the challenged legal act, if it is unconformable with the legal norms of higher legal force, violates the fundamental rights – fixed in the Satversme- of the applicant.

**2.4.** Ungrounded is the statement, included into the Saeima written reply, that there is the necessity of establishing such a violation of the rights of the person, which has arisen when a legal norm (act), unconformable with the legal norm of higher legal force, has been applied. The occasion, when the legal norm has been applied is just one of the cases of violating the fundamental rights of a person in the interpretation of Article $19^2$ of the Constitutional Court Law. The second part of the above Article envisages the possibility of submitting the constitutional claim not only after exhausting the ordinary legal remedies (usually in cases an act has been passed) but also if there are no other means. The Constitutional Court Law demands that to submit a claim, the challenged act (norm) has to violate the fundamental rights of the applicant, however it does not demand that in all the cases just application of a certain norm(act) would serve as the basis for submitting the claim.

The notion ”violates” has been incorporated into the Law to dissociate the constitutional claim from the claim for general benefit. It establishes that there shall exist a well-grounded possibility of the challenged norm violating the rights of the applicant.

From I.Silārs’ explanation at the Court session it follows that he feels ”endangered” as the potential deputy of the $8^{th}$. Saeima. Persons, who run for the post of the Saeima deputy, take the decision to accept the above post or not also following from the legal status of the deputy. Namely, what guarantees for the activities are envisaged, what financial means for him and his family are established, whether the status of the deputy does not endanger his/her honor and respect and - the most important of all –will the deputy be able in equal circumstances with other deputies to discharge the duties undertaken by him/her. I Silārs maintains that the existing ”rules of the game” deny the possibility to do it.

Thus, to decide whether there is the possibility of running for the post, to qualify for mandate and in case he is elected to accept the post, the issue on the conformity of that Presidium act, which would be binding to I.Silārs only after he were elected, is to be decided already now. Besides, the issue on possible changes in the sphere of financial conditions shall be solved immediately also

because otherwise, if, say, the challenged act were repealed after the 8th. Saeima first gathering, the interests of the deputies, who have relied upon the previous financial conditions and who have the right to await it on the basis if the principle of legitimate trust, would be violated.

The German Federal Constitutional Court has reviewed a similar case - the constitutional claim by the former landtag (Parliament of the state) deputy, who also happens to be a potential deputy in future, on the conformity of a legal norm, regulating the compensation to be reimbursed to the landtag deputies with the first part of Article 3 of the Fundamental Law of the German Federative Republic (see November 5, 1975 Federal Constitutional Court of Germany Judgment in case No. 2 BvR 193/74; published: BVerfGE 40, 296).

Thus ungrounded is the viewpoint of the Presidium that the Constitutional Court is not authorized to review the case on I.Silārs constitutional claim i.e. on the compliance of the challenged act with the legal norms of higher legal force.

**3.** Article 91 of the Satversme determines that all the people within Latvia are equal before the law and the courts. The rights of the people are implemented without any discrimination. ”The principle of equality follows from the first sentence of the Article, which forbids the state institutions to pass norms, which without a reasonable ground permit different attitude to persons, who find themselves in similar circumstances. The second sentence of Article 91 determining that ”human rights are implemented without any discrimination”, does not restrict the first sentence but supplements it.” (April 3, 2001 Constitutional Court Judgment in case No. 2000-07-0409).

To establish the content of the Satversme Article 91, one need not confine oneself only to the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights. The fact that Article 91 of the Satversme incorporates the second sentence, construction of which corresponds to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and is directed towards the rights, fixed in the document but also the first sentence- both indicate that the objective of the Latvian legislator has been to determine a wider range of the rights if compared with the Convention.

Other international instruments, among them also ”The International Covenant on the Citizen and Political Rights ” determine general prohibition of discrimination. The European legal thought also develops towards it. Namely, the Convention for the Protection of Human Rights and Fundamental Freedoms has been supplemented with Protocol No. 12, in its turn, the Charter of the European Union Fundamental Human rRghts incorporates Article 20 – ”Equality before the Law” and Article 21 – ”Non-discrimination”. Besides the European Court, when interpreting the rights of the European community, has formulated the general principle of equality, which in comparable situations

does not allow to treat persons differently, if the differences cannot be objectively justified.

Similarly, general prohibitions of discrimination have been incorporated into several Constitutions of the European states (see Article 3 of the German Federative Republic Fundamental Law, Article 3 of the Republic of Italy Constitution, Article 1 of the Kingdom of Netherlands Constitution, and Article 1 of the Republic of France Constitution). Analogous to the first sentence of Article 91 of the Satversme, the German Federative Republic Fundamental Law (Article 3, part 1) determines that " all the people are equal before the law". The principle of equality, incorporated into this Article is evaluated as the right, which shall function immediately. The courts of Germany and the greatest part of special literature acknowledge the first part of Article 3 of the Fundamental Law as the subjective public right to equal attitude ( see *Grundgesetzkommentar. Band 1, 5. Auflage, Műnchen, Verlag C.H.Beck, 2000, S. 195).* This right is binding also on the legislator.

Ungrounded is the statement of E.Ikvilds that "Article 91 of the Satversme concerns all the residents of the Republic of Latvia, in its turn – the particular norms, which are challenged are the objects, regulating public rights and concern only particular officials". Article 91 of the Satversme determines limits of the legislators' activities in all the cases when persons, among them also officials, are in equal and comparable conditions.

**4.** Article 1 of the Satversme determines that "Latvia is an independent, democratic republic". A number of the principles of the law-based state, among them also the principles of separation of power and rule of law follow from it. The principle of separation of power manifests itself in division of the state power into legislative, executive and judicial power, to be realized by independent and autonomous institutions. This principle guarantees balance and mutual control and facilitates moderation of the power. In its turn the rule of law determines that the law and the rights are binding on any institution of the state power as well as on the legislator itself. In a democratic republic the parliament has to observe the Constitution and other laws, also those, passed by the parliament itself. (See October 1, 1999 Constitutional Court Judgment in case No. 03-05/99/).

The Saeima, as well as all of its institutions and the deputies not only enjoy an autonomous status but at the same time are subjected to the control of the relevant Saeima institutions and that of the judicial power. Besides these persons are free in their activities only as far as the Satversme and the law do not limit it. Any situation when the state official or institution finds itself being out of control is controversial to the Satversme.

**5.** Article 21 of the Satversme determines that ”the Saeima shall draw up the Rules of Procedure for the regulation of its internal proceedings.” The Article incorporates the principle of the Saeima sovereignty, namely, the Saeima itself makes decisions on several issues, which concern its members: reviews the qualifications of its members (Article 18 of the Satversme), gives consent to commence criminal prosecution and levy administrative fines against the Saeima members (Article 30), takes a decision in cases envisaged in Article 29 of the Satversme. In all the above the Saeima exercises the right of freely voicing its will as far as the Satversme allows it. For example, the Saeima does not have the right to envisage another procedure for amending the Satversme than that established by the Satversme or it cannot refuse confirming the authority of its member without a legal justification.

**5.1.** In the same way the Saeima takes the decision not only on the state budget, but also on its own budget, its utilization and salary of the deputies. However ungrounded is the statement of the Head of the Administrative Committee J.Dobelis that ” it is on our conscience what budget we determine for ourselves, as we may determine whatever we want”. Even in solving the above issues not only the will and conscience but also the ”spirit and letter ”of the Satversme is binding for the Saeima.

”Under conditions of parliamentary democracy it is impossible to avert the possibility that the parliament passes decisions for itself, when the issue is on the amount and arrangement of its financial regulation, connected with the status of a deputy. However just in this case the principle of a democratic, law-based state (Article 20 of the Fundamental Law) demands that the process of the development and the result of that ”will” shall be transparent and the result reached ”before the eyes of the society”. It is the only effective control. The parliamentary democracy is based on the confidence of the people, but confidence is not possible without transparency, which allows to follow the political processes ” (November 5 1975 German Federal Constitutional Court Judgment in case NO. 2 BvR 193/74, published : BVerfGE 40, 296, 3270.

Similar ideas have been constitutionally fixed in many democratic states, envisaging for example that ”the members of the Folketing shall shall be paid such remuneration as may be provided for in the Elections Act (Article 58 of the Kingdom of Denmark Constitution)”; ”the senators and representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States (the sixth part of Article 1 of the USA Constitution)”; ”the Parliament members shall receive remuneration determined by law (Article 69 of the Republic of Italy Constitution, similar to it is also Article 161- the second part, Item ”d” of the Republic of Portugal Constitution )”; Article 63 of the Kingdom of Netherlands establishes that ” maintenance of the deputies, the former deputies and persons to be maintained by them shall be determined by an act of the Parliament. Chambers pass the act only with the 2/3 of votes”, but Article 75 of the Republic of Estonia

Constitution demands the law to determine both – remuneration to the deputies of the Parliament and limitations to receive extra income , besides the Law may be amended only with regard to the next parliament. In its turn Article 66 of the Belgium Constitution determines the amount of the salary of the deputy.

Thus the democratic states focus their attention to the fact that remuneration, received by the deputies, shall be determined at least by the law. It, on the one hand, guarantees versatile exchange of viewpoints and reasonable transparency, but on the other hand – provides the needed stability to the status of every deputy. Remuneration, paid from the state budget, first of all serves as the guarantee of his independence. For example, in compliance with Article 48 (the first sentence of its third part) of the German Federative Republic Fundamental Law ”the deputy has the right of receiving adequate remuneration, which may ensure his/her independence”.

The right to remuneration of members of the Saeima from state funds has also been fixed in the Satversme, in Article 33. Initially the principle of remuneration of members of the Saeima –similarly to other democratic countries was determined by the Law – the Rules of Procedure. At the present moment the Saeima, by incorporating this important issue into the authority of the Presidium, has endangered transparency of the process of passing the decision on the issue. Besides, a reasonable concern about the stability of the status of a deputy arises.

**5.2.** To ensure a financially feasible activity of all the deputies at the Parliament, regardless of their financial position and place of residence, different guarantees alongside with the salary play an important role. Guarantees, connected with movement within the territory of state, should be mentioned first of all. In several states they have been envisaged on a constitutional level, e.g., in Article 66 of the Belgium Constitution, in Article 161 (its second part) of the Republic of Portugal Constitution. The third part of Article 48 of the German Federative Republic Fundamental Law also envisages that the deputies ” have the right of free of charge using means of public transportation”.

If historically one of the most important guarantees of the activities of a deputy is the possibility of traveling within the territory of the state, then at the present moment one shall take into consideration also the requirements of the up-to-date communication services. The fact, whether the deputy is able to duly and in an equal way with the other deputies realize the mandate of the Saeima member depends also on possibilities of receiving information and exchanging it, not only when listening to the viewpoint of voters at different regions and by getting acquainted with the real situation there, but also on the technological equipments. In its turn, to insure the possibility of the Saeima deputies from different regions to participate in the activities of the Saeima, guarantees of receiving the dwelling space are also essential.

Thus, regulation of the issues, which refer to compensation of expenses, which have occurred while carrying out the duties of the deputy, is an essential part of the status of a deputy. Regulation of the procedure of determination of it shall be in compliance with the same principles as determination of remuneration.

A similar viewpoint has been expressed also by the German Federal Constitutional Court, which has stressed that from the constitutionally legal point of view the fact that the law authorizes the landtag Presidium to determine issues connected with issues on remuneration of deputies might be objected to, because the essential part of the financial insurance of the deputies is determined under the procedure, which is not subjected to public control (see November 5, 1975 German Federal Constitutional Court Judgment in case No. 2 BvR 193/74, published: BVerfGE 40, 296, 327).

**Thus, in a democratic and law-based state remuneration of the deputies and guarantees for their activity shall be determined by law.**

**6.** The Presidium, when passing the challenged act, experienced the right to determine only these things, which were included in the authority, envisaged by the Rules of Procedure. Besides the Presidium was also obliged to take into consideration other normative acts –and above all the Satversme. When adopting the challenged act, the Presidium, alongside with other things, had to do everything possible to dispel the deficiency of transparency, which was created by passing the right of determining the above issue to the Presidium.

When interpreting Article 14 of the Rules of Procedure, not only the interpretation of grammatical but also (especially) of the systemic, teleological and historical legal norms has to be used.

When interpreting Article 14 of the Rules of Procedure systemically, one should take into consideration also Article 33 of the Satversme and Articles 12 and 13 of the Rules of Procedure. The objective of the these Articles of the Rules of Procedure was to realize the requirements of the Satversme Article 33 – to determine remuneration to the Saeima members from state funds.

When passing the Satversme, a progressive for that time viewpoint, namely, that the Saeima members shall receive ”remuneration”, was fixed in it. While reviewing the Satversme draft in its first reading at the Constituent Assembly, the reporter Marģers Skujenieks acknowledged that ”the Commission wanted to express the main thought of the above Article: the activity of the representative of the people has to be remunerated” (Verbatim reports of the Latvian Constituent Assembley, Number 18, page 1697). The Latvian legal scientists have already accepted the status of the Saeima deputy as that of the member of the Parliament of a democratic state, because ”an up-to-date law-

based state – especially a democratic republic- strongly differs from the dual constitutional monarchy of the 19th. century. … Deputies are carrying out duties of their public servitude, are doing the job, needed for the state just like other employees of the state; … and there is no reason to maintain a principal difference between the deputies and other state employees" (Dišlers K. Introduction into the State of Latvia Science of Rights. Riga, A.Gulbis, 1930, page 125).

Actually the Satversme has already initially fixed the status, which the other states, by adopting the norms of earlier constitutions, established later. Namely, from compensations for specific expenses, connected with fulfilling the duties of the parliament member, allowance for the deputy and his family, which is paid from the state funds, was established as remuneration for deputies' full-time activities in the parliament. From compensation to a person, who holds an honorary post, remuneration for the activities at the Parliament was established.

Articles 12 and 13 of the Rules of Procedure establish not only the right of the deputy to receive remuneration but also the duty of paying the taxes. On the one hand the deputy "earns" his/her salary as the representative of the state power – i.e. fulfilling the functions of the Saeima member. That means the right of the deputy to receive remuneration follows from his/her status as an elected representative of the people. Therefore well-grounded is the statement, included into the Saeima written reply, that the Saeima deputy and the assessor of the regional court do not find themselves in alike and comparable conditions. However, only this far as the amount of the remuneration is concerned.

The remuneration of the deputy shall correspond to the responsibility and workload of the post as well as the rank of the post in the constitutionally legal system. The income of the deputy shall be in the amount not to endanger the freedom of deputies' decisions and the possibility of fulfilling parliamentary activities so as to be able to give up receiving income from his/her profession. Besides one should take into consideration the restrictions determined to the administrative activity of the deputies by the Satversme and the Corruption Prevention Law.

In 1929, when delivering a report on the Rules of Procedure draft, the deputy Alberts Kviesis stressed: "Up to now the salary of the deputies was established under the procedure of the budget. But the Commission is of the viewpoint that it is not quite right as every year discussions on the issue are renewed and that usually leads to demagoguery, which does not help anybody. If everybody receives a definite salary, then the deputies should be no exception. Up to now the salaries of the deputies were in correspondence with the civil servants' qualification category IV. The Commission acknowledges that the status of the deputies, their responsibility and duty demands that their remuneration shall not be lower than that of the civil servants, therefore they reached the decision

that the deputy shall receive a salary in correspondence with the civil servants' qualification category I" (Verbatim reports of the republic of Latvia III Saeima. Riga, the Republic of Latvia Saeima, 1929, page 580).

In a democratic state, the parliament experiences the right of freely determining– of course taking into consideration a certain amount of money – the remuneration of the parliament deputy. However, the process is transparent and under public control.

On the other hand, when paying the taxes, the deputy acts just like any citizen, who has a family, a certain income, justified expenses and the space of dwelling but not as a representative of the state power.The duty of paying taxes follows from the status of the deputy – the citizen of the state, a person, who receives income or has a property but not from the relations of the deputy as the representative of the state power with the state. In these relations the deputy is equal with other physical entities, who receive similar incomes with taxes imposed according to the procedure stipulated by law. The post of the deputy alone is not and cannot serve as the basis of tax exemption or extra payments.

The Saeima has envisaged it in Articles 12 and 13 of the Rules of Procedure by determining the regulation of the remuneration, but in the fourth part of Article 12 it is stressed that the remuneration shall be imposed with taxes in the procedure stipulated by law.

Thus Article 12 of the Rules of Procedure thoroughly enumerates what is included into the remuneration of the deputy, i.e., income of the deputies for their activities in the parliament. The Presidium has the right and the duty to determine the remuneration of the deputy, that is – monthly salary, additional payments to the members of the Presidium and officials of the committees and factions, as well as compensation for participation in the activity of the commissions. Other extra payments, compensations or income from the activities in the Parliament, which is named differently, the Presidium is not authorized to determine.

**6.2.** The second part of Article 12 of the Rules of Procedure establishes that "the money for representation shall be received by the deputy from the budget resources allotted for this purpose". From the fourth part of the above Article as well as from the second part of Article 14 it follows that this specific compensation, in difference from the determined in Article 12 remuneration of the deputy, shall not be imposed with taxes. Similar guarantees are envisaged also for several other high level state officials, however, just because of being connected with the activities of a deputy, they acquire a specific content. Taking into consideration the fact that the activity of the deputy is carried out in specific, connected with politics conditions; it would be problematic to subject these expenses to settlement and acceptance of a parliamentary or non-parliamentary institution. The viewpoint of different political parties on the

necessity and usefulness of this or that representation would certainly differ and that could hinder the possibilities of representation of the minority deputies. And that, in its turn, is not in compliance with the parliamentary practice of a democratic state. Therefore representation expenses are a specific guarantee for the activity of the deputy and are considered as compensation. The public control guarantees that the determination of the amount of representation expenses does not exceed the reasonable limit. Thus, the sum of remuneration shall be precisely determined, besides the equality principle demands that it is equal to all the deputies.

The Saeima in Article 12 of the Rules of Procedure has determined the compensation of representation expenses as a separate position. The first part of Article 14 of the Rules of Procedure, when read together with Article 12 shall be interpreted in the following way: the first part of Article 14 speaks of ”other, not mentioned before, expenses”, which have occurred to the deputy, while fulfilling the duties. The second part of Article 14 specifies the issue of imposing taxes but does not determine the compensation. The fact that the Presidium in the challenged act has determined the total sum of representation expenses together with other expenses to be compensated hinders the public control over it.

**6.3.** The first part of Article 14 of the Rules of Procedure establishes that the Presidium shall determine the amount and the procedure of compensation of other expenses (with an exception of representation expenses), which have occurred to the deputy while fulfilling his/her activities.

The objective of Article 14 of the Rules of Procedure is to create possibilities for the deputies to participate in the Saeima activities and represent their voters regardless of the region in which the deputies live, as well as to guarantee compensation of the expenses, occurred to the deputies, while carrying out their duties. In this case the Rules of Procedure incorporate authorization to the Presidium to determine compensations on the expenses ”which have really occurred”. Article 14 of the Rules of Procedure does not incorporate authorization to the Presidium to determine what, which, how big and in what a way spelled are the expenses, which could be named compensations ( as could be understood from September 27, 2001 letter No. 9/3-243 by the Saeima Legal Committee to the Saeima Audit Committee). Quite on the contrary, from Article 14 of the Rules of Procedure follows the right of the Presidium to determine compensations for expenses, which have occurred and besides- are objectively connected with fulfilling of the duties of the deputy. And only the above compensations, determined by the Presidium, shall not be imposed with taxes. Besides the Presidium had to determine the procedure, which meets the requirements of the limits of the authorization.

The practice of other states, e.g., Germany, proves that only compensation for specific expenses, which have really occurred, are objectively determined

and connected with the mandate, shall not be imposed with taxes (*see November 5, 1975 German Federal Constitutional Court Judgment in case No. 2 BvR 193/74; published: BVerfGE 40, 296, 328).*

**7.** The issue on the procedure of compensation is left for the Presidium to decide, however the procedure shall guarantee compensation of all the expenses, which have really occurred while realizing the authority of the deputy.

**7.1.** At the Court session E. Ikvilds declared that the ”normative mechanism of remuneration of expenses” has been chosen. Such a mechanism could be applied only in cases, when acquisition of justifying documents is impossible or in cases, when the economy of time and efforts, which arises when demanding documents confirming the expenses, is proportionate to the economy of precise bookkeeping.

The above method is economically well-grounded or based upon permanent experience of calculations. Criteria, based on particular calculations, shall be clearly expressed so that not only every tax-payer but also deputy and candidate could understand what part from the particular sum is envisaged for representation expenses, what – for communication services etc.

From the viewpoint of equality it cannot be excused that the deputies who have a service mobile phone at their disposal receive the same compensations as the deputies, who pay for their mobile phone calls from the above compensations.

Objectively ungrounded are also compensations for transportation. For example, Item 6 of the challenged act envisages that the deputies, who live more than 60 km from Riga, shall receive enlarged and differentiated compensation. The Presidium points out that the notion ”lives” does not mean the actual place of residence of the deputy, but his constant dwelling place out of Riga, where he resided before becoming the deputy. The fact that the deputy rents a dwelling space in Riga and receives compensation for the above expenses to their mind serves as no reason for the deputy to receive an enlarged compensation for transporting expenses. They state that the deputy is elected in the region of his constant dwelling place and to meet his family and voters, extra expenses occur.

This viewpoint, expressed in the written reply is unconformable with the fact that ”the Parliament is the institution of the representatives of the people and the Parliament members (deputies) are the representatives of the people, but not the representatives of a particular state district (electoral district, election constituency)” (*Dišlers K. Introduction into the Latvian Science of the State Rights).*

Besides, as can be seen from the material in the case, compensations for transportation expenses have been paid also to deputies, who have required compensations for rental expense and who permanently live in Riga. Thus the above deputies are either in a better position than the other Parliament members, because they can allow to spend more money on transportation, or they obtain the possibility of spending the money for other purposes, i.e., as an extra income.

Evidently unconformable with the objective of Article 14 of the Rules of Procedure is the determination of the rental compensation with the ”normative method”. The fact that when determining the amount of compensation no specific calculations have been made, could be seen from the answers to the justices' questions. Initially E. Ikvilds declared that ” when preparing for the Court session, he has had the opportunity to receive information, that the previous expenses and the existing Riga apartment price were taken into consideration”. After listening to the question ”Price?”, he corrected himself and said: ”No, the rent.” The deputy of the Saeima Secretary A.Bartaševičs could not explaim about what apartment (how big) compensation could be received. He only pointed out that ”the amount of compensation was determined to pay for the apartment ” so that the deputy could live near the Saeima . The compensation was determined after consulting , if I am not mistaken, three companies, real estate companies, which rent apartments and therefore the sum – 200 lats was decided upon.”

Thus, it cannot be stated that Item 7 of the challenged act is base on accurate, economically based calculations. Besides, extra duties, which could arise if documents, confirming the expenses, like receipts for rental payments and rental agreements were demanded, would not require disproportionately great consumption of time and work if compared with the sum – 200 lats – to be compensated.

**7.2.** The condition, incorporated into Item 7 of the challenged act ”necessity to rent” is evidently unconformable with Article 14 of the Rules of Procedure. Taking into consideration that a dwelling space is needed by every deputy, the deputy may either be the owner of the space, he lives in, or the lodger of it. He/she might also be the family member of the person, who owns the dwelling space or rents it. Division of the deputies on the above criteria has no connection whatsoever with the fulfilling of the duties of the deputy. The fact that the deputy ”has the necessity of renting” the dwelling space does not mean that the necessity has arisen because of the duty fulfilling activities of the deputy. From the case material it can be seen that the deputies do not substantiate the necessity of renting an apartment with the duty of fulfilling their duties but also with the necessity or repairing their flats etc. At the Court session E. Ikvilds mentioned the possibility that the deputy might need renting an apartment just for the reason that ”families part, families unite, everything may happen…”.

Rental expenses for the dwelling space usually are among the expenses, which the person covers from his/her income. The fact that rent and public utilities are included in the minimum subsistence ”basket”, which is calculated in accordance with April 8, 1991 the Republic of Latvia Council of Ministers Ruling No. 95 ”On Insurance of Indexation of People’s Income” (the third Supplement). Expenses, which are necessary to ensure the deputy with the dwelling space, conformable with the status of the deputy, should be taken into consideration when determining the amount of the salary (with the taxes imposed). The salary the deputy receives at the present moment ensures the above possibility.

Rental expenses may be regarded as expenses to be compensated only in those cases, if - because of fulfilling the duties of the deputy – the person needs to rent another dwelling space or an extra dwelling space, i.e., the dwelling space in another region or the dwelling space with particular qualities. At the Court session J.Dobelis confirmed that at the present moment all the deputies had comfortable offices at the Saeima. Thus, it cannot be stated that the deputy needs an extra space for work.

One cannot agree to the Presidium viewpoint that the deputy has the right of renting a dwelling space in any part of the territory in Latvia, and asking compensation for it, because Article 15 of the Satversme envisages that the Saeima shall hold its sittings in Riga.

Rental expenses may be connected with fulfilling of the activities of the deputy in cases when the deputy is obliged to rent a dwelling space in Riga – in the place where the Saeima sittings are held- because he/she does not live in Riga, but in a place, which is situated a certain distance from it. To compensate such expenses shall be an obligation because inadmissible inequality among the deputies from different regions of the state might arise.

However in this case the Presidium has to determine clear and motivated criteria on the basis of which the above expenses are compensated, and on the basis of which it is possible to state, whether they have occurred in connection with fulfilling the activities of a deputy. Besides, in accordance with the objective of the Article, the notion ”rental expenses for the dwelling space” shall be precisely defined”.

**Thus, the challenged act is unconformable with the Saeima authorization, incorporated into Article 14 of the Rules of Procedure, on the procedure of compensating expenses, which have occurred to the deputy and which are connected with fulfilling of the duties of the deputy.**

**8.** Taking into consideration the norm on the elections, expressed in Article 6 of the Satversme, one should remember that everybody shall have the

possibility of realizing his rights of the citizen in a maximum equal way. That refers not only to realization of the active and passive election rights in their narrowest meaning but also to realization of the mandate. Article 5 of the Satversme determines that the Saeima shall be composed of one hundred representatives of the people. The election rights and parliamentary rights do not include any circumstances with regard to the deputy, which could justify differences in the status of him/her. The members of the Parliament shall be formally equal. The general equality principle consolidates the above circumstance. And from it follows: everybody, regardless of the social differences, of the financial position shall have an equal possibility of becoming a Parliament member and -when elected –to realize the mandate in equal conditions with the other deputies. Besides, all the deputies – regardless of the fact whether they own an apartment or rent it, as well as how far from Riga they live, are due to an equal salary.

Differences of remuneration shall be permitted only if important factors allow it : say, with regard to those Saeima members, who carry out specific parliamentary duties, e.g., the Chairperson of the Saeima, the Saeima Secretary.

Just in the same way the above should be applied to the Saeima members, ensuring their possibilities to fulfill the activities both in the Saeima and out of it. It is inadmissible that, depending on circumstances, connected with the deputies' place of residence etc., the deputy experiences better or worse possibilities of realizing his/her authority.

The above possibilities shall be equal. To realize them or not depends on the deputy himself/herself. However, absolutely inadmissible is the situation when the deputy has a material stimulus not to fulfil his/her activities, i.e., to receive money for transportation or communication services even if it is not spent for the established objective.

The Presidium in the challenged act has not determined equal possibilities tothe deputies for implementing their authority. Criteria, allowing the deputies to receive a certain sum of compensation for every expense, are not objective. Thus the challenged act is also at variance with Article 91 of the Satversme.

The challenged norms, which shall be binding for the deputies of the next Saeima, shall violate the right of every potential deputy, among them possibly also I.Silārs, to realize his/her authority in equal circumstances with the other deputies. Besides the shadow of self-interest is enveloping not only the deputies, who make use of all the compensations, envisaged for expenses, but also those, who are honest and ask to compensate only those expenses, which have really occurred when fulfilling the activities of the deputy, is offending. At the Court session the Head of the Saeima Administrative Committee J.Dobelis acknowledged:" I do agree and I as one of the one hundred deputies am responsible for the reputation of the Saeima. Unfortunately in the state of Latvia the Saeima and the Saeima deputy are regarded as somebody about

whom one may have a laugh". Grounded is the viewpoint that a person may find it difficult to take a decision on undertaking the duties of a deputy before the working provisions of the deputies are put in order in accordance with the requirements of the Satversme.

**Thus the challenged act is unconformable not only with Article 14 of the Rules of Procedure but also with Article 91 of the Satversme.**

**9.** Not only the Satversme and the Rules of Procedure, but also other laws, among them the laws on taxes and the Law "On Accountancy" were binding on the Presidium when passing the challenged act.

The second and third part of Article 4 of the Law "On Taxes and Duties" envisages that "each person who acquires income in the Republic of Latvia, is a payer of resident income tax or enterprise income tax, if the specific tax law does not stipulate otherwise" and " any income acquired by persons who are inland (home) taxpayers, is imposed with the resident income tax or enterprise income tax, if the specific law does not stipulate otherwise".

Ungrounded is the viewpoint of E. Ikvilds that Item 16 of Article 9 of the Law " On the Resident Income Tax" clearly establishes that "if the laws and government regulations determine the types of compensations, then these compensations are not imposed… ". The above Item determines that "compensations determined in the laws and the Cabinet of Ministers' acts shall not be included in the yearly income with taxes imposed". Besides, the above Article, taken as the whole, confirms that the legislator has strictly limited the sum which is not imposed with the resident income tax and names not only the type of the compensation but also its amount. Thus, in compliance with Item 14 the survivor benefit, paid by the employer in not imposed with the tax if its amount does not exceed 150 lats.

Thus the Presidium had to take into consideration not only the type of the compensation but also its amount. Namely, in accordance with the Law "On the Resident Income Tax", compensations shall not be imposed with taxes only in cases established by the laws and regulations of the Cabinet of Ministers norms. Thus– compensations to be paid to the deputies are not imposed with taxes only in cases envisaged in the Rules of Procedure and in the amount corresponding to the expenses, which have occurred to the deputies when fulfilling the duties of the deputy.

When determining remuneration, which in several cases is greater than the expenses but in other cases is not connected with expenses, occurred while fulfilling the duties of the deputy, at all, the Presidium has in fact not only determined additional income, which exceeds the salary but also has illegally allowed not to impose taxes on it.

Both the Saeima deputies and I.Silārs – as the assessor of the Regional Court (a judge) are the representatives of two branches of the state power – the legislative and the judicial, which receive income for fulfilling the duties of an elected official. In this respect they are in equal and comparable circumstances. However the Presidium has groundlessly determined a different attitude to the Saeima deputies thus creating the possibility for a group of the Saeima deputies to receive income not imposed with taxes.

**Thus the challenged act is not in compliance both with Item 16 of Article 9 of the Law "On the Resident Income Tax" and Article 91 of the Satversme.**

**10.** Groundless is the statement of the Presidium that the challenged act ensures the possibility of controlling the fact whether the compensations have been legally requested.

In the Supplement to the challenged act – the form to be filled in by the deputy – only the signature of the deputy, stating that he needs the compensation, is required. Although the challenged act envisages that the decision of the Saeima Administrative Committee is needed to receive compensation, no norms have been incorporated into the act, demanding the Administrative Committee to make sure if the compensation has been requested with good reason. Item 10 of the challenged act envisaging the possibility of deducting the groundlessly paid sum, does not ensure control over it. In practice - as follows from the words said by J.Dobelis – the Committee headed by him does not control the validity of the requirement of the deputies for remuneration. Thus, the truth of the data in the application (to receive compensation) on expenses, occurred to the deputy is not examined and the control, envisaged in Item 10 of the challenged act, can be regarded as a declarative norm.

State Control shall examine the purposefulness and lawfulness of spending the state budget funds by the institutions of the executive and judicial power. However in compliance with the second part of Article 1 of the Law "On State Control", State Control activities shall not be referred to the Saeima – the legislative power. Analogous functions in the Saeima are carried out by the Saeima Audit Committee. In conformity with the first part of Article 185 of the Rules of Procedure, it shall audit the purposefulness and lawfulness of all expenses of the Saeima.

As follows from the statement of P.Maksimovs, already in autumn of 2000 the Audit Committee has concluded that among its duties were not only auditing the purposefulness and lawfulness of the expenses of the Saeima but also the necessity of verifying the compensations, paid to the deputies. In its turn, when carrying out the yearly auditing, the Committee realized that the challenged act did not incorporate the auditing mechanism. Therefore it asked

the Presidium to establish what justifying documents were to be submitted, because the deputies, making references to the challenged act, refused to submit the required documents. The Saeima Legal Affairs Committee and the Legal Bureau on the one hand, by referring to Article 185 also state that the Audit Committee shall audit the Saeima accounts, the purposefulness and lawfulness of the expenses, but on the other hand they hold that neither the Rules of Procedure nor the challenged act envisage the right of requiring submission of justifying documents.

Ungrounded is the viewpoint of the Saeima Legal Bureau, that making additional inquiries may violate the status of the deputy determined by law. The fourth part of Article 17 of the Rules of Procedure, denying the right of confiscating documents, possessed by the deputy, based on the immunity of the deputy incorporated in Articles 29 and 30 of the Satversme as the matter of fact is connected with criminal prosecution or administrative fines but not with the internal control in the Saeima. The objective of the immunity of the deputy is to protect the deputy from ungrounded influence of other branches of state power, which could intrude upon his/her work. The fourth part of Article 17 of the Rules of Procedure is turned against confiscation of the documents.

The Saeima Audit Committee as the Saeima institution experiences the right of asking the deputy to confirm that he/she has purposefully made use of the Saeima budget funds. Several deputies have acknowledged the above right and – as P.Maksimovs states- have shown the rental agreements to the Committee.

At the same time the challenged act, not envisaging incorporation of thorough information into the form for requesting compensation, has burdened the activities of the Committee.

As there is no internal controlling mechanism as concerns compensations, paid to the deputies, these officials are outside of any control and the society cannot be convinced that the deputies receive compensation for the expenses, which have really occurred while fulfilling their activities. And that not only contradicts Article 1 of the Satversme, but also affronts every deputy (and potential deputy), as doubt on decency of particular deputies when requesting compensations may also be attributed to other deputies, who are honest and ask to grant compensations with good reason. This situation makes difficult the activity of any deputy in the Parliament, endangers the belief in the Parliamentary system, aids and abets legal nihilism.

In a democratic and law-based state the use of the budget has to be lawful and purposeful and the information on it shall be transparent and in full view. Deputies as persons, who – while fulfilling the duties of the state official - are spending budget funds are in equal and comparable circumstances with every other state official, who is spending state money to fulfill his/her duties. By not

envisaging a controlling mechanism in the challenged act, attitude towards the Saeima deputies differs from that towards other state officials. Such an attitude contradicts Article 91 of the Satversme.

**Thus the challenged act contradicts Articles 1 and 91 of the Satversme.**

**11.** Even though I.Silārs requests to declare only Items 4, 5, 6, 7, 8 and the first sentence of Item 9 as null and void, one should take into consideration that the above items are connected with other items of the challenged act. Without the above items the challenged act loses its meaning. When establishing unconformity of several items of the act with legal norms of higher legal force, compliance of the whole act shall be considered.

**12.** When taking the decision on the moment the challenged act shall be declared as invalid, one should take into consideration that the norms incorporated into it is the only legal regulation, determining compensations also to the deputies, who fulfill their activities in the Saeima, at the same time retaining apartments in far away cities and districts of Latvia and to whom expenses connected with mandate have really occurred.

On the basis of Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

***decided:***

To declare February 28, 2000 Presidium of the Republic of Latvia Regulation ”On the Procedure of Granting and Paying Compensations to the Saeima Deputies” and confirmed by it ”Regulations on the Procedure of Compensating the Expenses, which have Occurred to the Deputies while Fulfilling their Duties” as **unconformable with Articles 1 and 91 of the Satversme and null and void from the day of publishing of the Judgment.**

The judgment is final and allowing of no appeal.

The Judgment was declared on February 22, 2002 in Riga.

Chairman of the Court session A.Endziņš